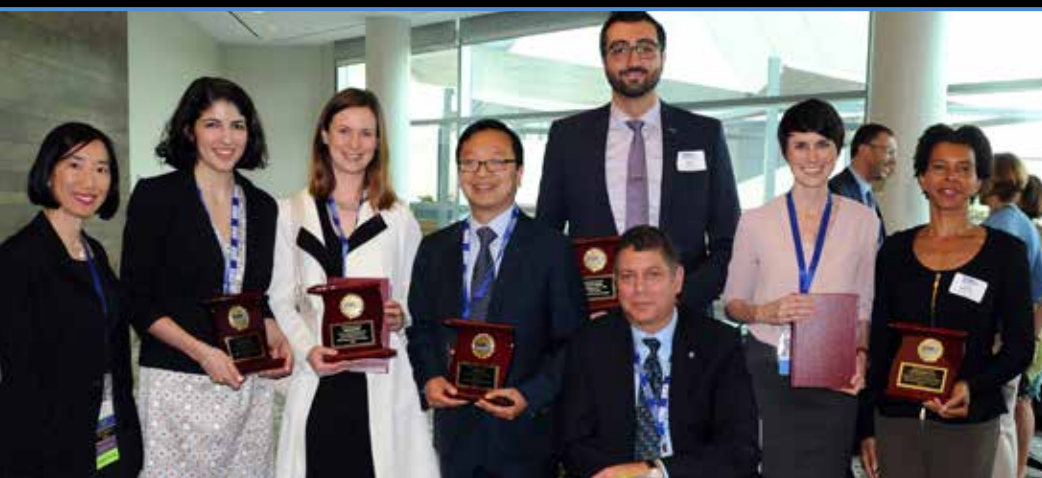
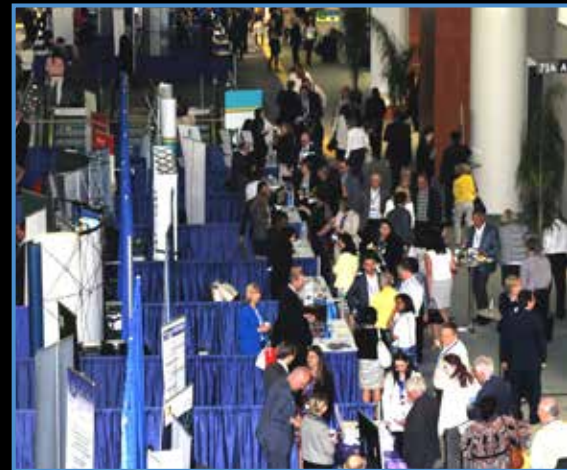


STEP Inside

NEWSLETTER OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (CANADA)

2017 ANNUAL STEP CONFERENCE



ONTARIO LAND TRANSFER TAX REVIEW ANNOUNCED

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On July 14, 2017, the Ontario Ministry of Finance announced a review of the land transfer tax applicable to unregistered dispositions of beneficial interests in land for the stated purposes of improving “administrative effectiveness and enforcement” and ensuring “the integrity and equity of the [land transfer tax] system.”

At present, when there is an unregistered disposition of a beneficial interest in land, tax is payable and a return must be filed by the person who acquires the beneficial interest in land or whose interest is increased. The ministry has a longstanding administrative lookthrough approach to partnerships and trusts; for example, each partner of a partnership is regarded as having a beneficial interest in the property of the partnership. Accordingly, the issuance or transfer of interests in partnerships or trusts that own or acquire Ontario real property is

considered to be the acquisition of a beneficial interest in land by the unit-holder, partner, or beneficiary. There is potential Ontario land transfer tax liability, depending on the value of the consideration and the reporting obligations. The foregoing is subject to a limited number of exemptions – for example, the de minimis 5 percent partnership interest exemption was amended in 2016, retroactive to 1989.

The ministry announced that there will be two phases of the review. The consultation period in phase 1

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was originally scheduled to end on August 28, 2017, but was extended to September 8, 2017. The ministry stated that it was seeking comments on a proposed approach to facilitate compliance with the reporting and payment of land transfer tax required under section 3 of the Land Transfer Tax Act with respect to unregistered dispositions. This proposal relates only to certain widely held investment vehicles and not generally to all unregistered dispositions. Under the proposal, liability for collecting and paying land transfer tax in the case of

certain widely held vehicles may rest with the vehicle itself, rather than the unitholders or partners.

Two groups of vehicles are proposed:

1. Group 1 vehicles include specified investment flowthrough trusts and mutual fund trusts. It is proposed that these vehicles themselves be subject to land transfer tax on the acquisition of an interest in land. Transactions involving interests or units of group 1 vehicles will no longer be looked through.
2. Group 2 vehicles include Ontario limited partnerships with more than 50 arm's-length unitholders. The lookthrough approach will continue to apply to these vehicles, but the onus of collecting the land transfer tax will rest with the vehicles themselves. A different minimum number of unitholders (other than 50) may be determined after the consultation.

No changes are proposed in the case of vehicles that are neither corporations nor individuals and do not fit within the widely held focus of group 1 or group 2 vehicles. Thus, the current rules and practices will continue to apply to the typical discretionary family trust or estate and family partnership structures.

One aspect of the phase 1 review that has received little comment is the statement that there will be new disclosure rules at the time of registration, requiring the disclosure of persons, trusts, partnerships, and other vehicles for whose benefit land is held. As an example, the consultation document states that a nominee will be required to disclose the legal names and business registration numbers of the partnerships or trusts for whose behalf the

nominee holds title. The reference to a "business registration number" is unclear. While an Ontario partnership will have an Ontario business registration number as a result of the formalities for registration of a partnership or limited partnership in Ontario, a trust will not necessarily have such a number. It is also unclear whether this proposal will be limited to disclosure of partnerships or trusts that are beneficial owners, or will extend to all beneficial interests of any person or entity in which a nominee holds title.

The disclosure proposal is interesting in light of the reporting requirements that came into effect on April 24, 2017 as a result of the addition of section 5.0.1 to the *Land Transfer Tax Act*. Section 5.0.1 requires every transferee (whether in a registered or unregistered disposition) to provide the minister "with such additional information as may be prescribed about the transferee and the conveyance or disposition." To date, the prescribed form applies only to purchases of residential homes and agricultural lands. Information regarding beneficial owners is required, but the form contemplates individual beneficial owners and corporate beneficial owners only. It does not contemplate partnerships or trusts. The new section 5.0.1 additional reporting requirements came into force at the same time as the non-resident speculation tax and was widely considered to be the means of facilitating assessment and enforcement.

Presumably, the consultation proposal may result in an extension of the section 5.0.1 reporting requirements to partnerships and trusts as beneficial owners.

Phase 2 of the consultation process will involve a more extended review of land transfer tax "in the modern real estate context." No details have yet been provided.