Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017

OVERVIEW

Property transfer tax ("PTT") is a tax on an interest in land. Unlike property tax, which is charged annually, PTT is charged and paid at the time the property is transferred to (and registered in the name of) another person. Many local and provincial governments in Canada – including British Columbia – charge PTT, but they do not usually charge PTT on the transfer of interests on reserve lands.

First Nations like Tk'emlúps te Secwépemc ("TteS") that are scheduled to the federal *First Nations Fiscal Management Act* (the "FMA") have the authority to enact a PTT Law. Such laws must comply with the FMA and its regulations, and with standards developed by the First Nations Tax Commission (the "FNTC"), and do not come into force until they are enacted by the Council and approved by the FNTC.

The *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017* (the "PTT Law") is based on the FNTC sample PTT law, which is modeled on the *Property Transfer Tax Act* (BC). The PTT Law applies a tax on leasehold interests on reserve, which is charged at the time of registration. The PTT Law adopts the provincial rate of 1% of the first $200,000 of the fair market value of the interest in land, 2% of the portion of the fair market value that exceeds $200,000 but not $2,000,000, and 3% of the remaining fair market value.

The PTT Law includes provisions for the appointment of an administrator, for filing a tax return and paying the tax at the time of registration of the transfer, exemptions for certain transfers including for leaseholds having a term of 30 years or less, powers of inspection and tax assessment for the administrator, taxpayers' rights to reconsideration and appeal, and provisions for penalties, interest, and tax collection and enforcement.

SUMMARY

We have prepared a plain language summary of the PTT Law, which is followed by a Questions and Answers section.

Parts I and II – Citation, Definitions and References
The short title of the PTT Law – *TteS PTT Law, 2017* – is set out at subsection 1(1). Subsection 2(1) sets out the definitions that are used in the PTT Law. Other interpretive rules are found at subsections 2(2)-(5).

Part III – Administration
Under section 3, the Council appoints an Administrator, who is responsible for administering and enforcing the PTT Law and performing duties as assigned by the Council. If Council approves, the Administrator may delegate some of their duties to another person. The Administrator must report to the Council each year on matters under the PTT Law.

Property tax, PTT, and other taxes on interests in land under the FMA are known as "local revenues". Section 4 requires PTT revenues to be placed in TteS' local revenue account, and provides that the moneys in that account can only be spent by passing an expenditure law under the FMA.

Part IV – Tax Liability and Payment of Tax

At section 5, the PTT Law applies to all interests in TteS reserve lands. PTT is charged on the sale or transfer of all interests in land in the reserve, except for transactions that are exempt from PTT. No partial exemptions are available. PTT is charged and payable at the time a property is transferred, and is paid by the new interest-holder (the "transferee").

At section 6, the transferee must complete and file a PTT return and pay the PTT in full, at the time of registration. The Administrator will not register the transfer until the transferee has sent in the Return and paid the PTT. PTT is calculated based on the "fair market value" of a property. At section 7, where fair market value cannot be calculated, the Administrator may agree to register the property if the transferee pays an estimate of the PTT, as determined by the Administrator.

The PTT rate at section 8 is 1% on the first $200,000, 2% on the portion of the fair market value that exceeds $200,000 but not $2,000,000, and 3% on the remaining fair market value. This mirrors the PTT rate charged by BC on off-reserve transfers. Subsections 8(2)-(5) are designed to prevent transferees from "splitting" taxable transfers in order to reduce the PTT.

Section 9 states that the transferee or their agent must certify the PTT Return; this is formal confirmation that the information in the Return is complete and correct. Section 10 provides a process for applying a PTT payment where a transfer was made in error, and a further transfer is required to correct the original transfer (a "correcting transfer").

Part V – Exemptions from Taxation

At section 11, a person who claims an exemption from PTT must claim the exemption and provide the Administrator with information in support of the claim. Section 11 also sets out criteria for exemptions under sections 12-13, including the requirement that all transferees of the taxable transfer must qualify for the exemption, which means that no partial exemptions are available. This requirement also applies to first-time home buyers at section 14.

Section 12 sets out a long list of exemptions, which are modeled on the exemptions in the BC *Property Transfer Tax Act*. Of particular interest is paragraph 12(2)(v), which means that PTT is not payable on leases with a term of 30 years or less. Paragraph 13(2)(u) exempts headleases and subleases to developers where the property is to be subdivided into at least 5 lots, developed and sold within 5 years. Section 13 gives an exemption to TteS members for their primary residence, and exempts TteS and companies that are wholly-owned by TteS.

Section 15 gives an exemption to first-time home buyers, which is similar to the exemption in the provincial Act. Sections 15 to 18 set out the rules for qualifying for the first-time home-buyer exemption. At section 17, a transferee has 18 months to apply for the first-time home-buyer exemption, and may apply for a refund of the PTT paid if they become eligible for the exemption within one year of the registration date.

Section 20 provides an exemption for new housing on eligible properties, similar to the provincial Act. Sections 20-24 set out rules for the new housing exemption. Section 22 provides that a transferee has 18 months to apply for the new housing exemption. Sections 22 - 23 provide that a transferee may apply for a refund of PTT paid if they become eligible for the exemption within one year of the registration date, where applicable.

Section 25 provides that a transferee is not entitled to both a first-time home buyers' exemption or refund and a new housing exemption or refund in respect of the same taxable transfer.

Part VI – Investigations, Information Requests and Inspections
Section 26 requires the Administrator to review every Return and every claim for an exemption. Sections 27 and 28 give the Administrator the authority to request information and conduct inspections related to PTT.

Part VII – Refunds
At section 29, the Administrator must provide a refund where it is determined that the PTT paid is more than the amount that was owed, and interest must be paid on refunded amounts. At section 30, a person who paid PTT even though they were not required to, is entitled to a refund.

Part VIII – Assessment, Reconsideration and Appeal
Section 31 gives the Administrator the authority to determine the amount of PTT that should have been paid on a transfer. If the Administrator determines that PTT is owing, the Administrator will prepare and deliver to the transferee a Notice of Tax Assessment. The outstanding balance must be paid within 30 days of the Notice of Tax Assessment.

A person who receives a Notice of Tax Assessment or a notice of refusal to provide a refund may request the Administrator to reconsider their decision, under section 32. The request must be made within 60 days, and the Administrator must consider the request and make a decision within 30 days of receiving the request, and provide written notice of the decision. Section 33 states that reconsideration decisions at section 32 may be appealed to a court (likely the British Columbia Supreme Court) within 60 days of receiving the Administrator's decision.

Part IX – Records, Receipts and Tax Certificates
Sections 34 and 35 require the Administrator to maintain records regarding the administration of PTT, and to issue receipts for all PTT payments. When requested, and upon payment of a fee if applicable, the Administrator will issue a Tax Certificate that shows whether PTT has been paid in respect of a taxable transfer, at section 36.

Part X – Penalties and Interest
Interest of 15% accrues on all unpaid PTT, under section 37. At sections 38 to 40, a penalty of 10% may be charged where false or misleading information is provided, or where PTT remains unpaid.

Part XI – Collection and Enforcement
Section 41 states that TteS has the authority to recover unpaid PTT in court and as provided in the PTT Law. Before taking enforcement action under the PTT Law, section 42 requires the Administrator to give written notice to the taxpayer. Section 43 states that unpaid PTT is a lien

against the property that can be enforced by TteS.

Part XII – General Provisions
Sections 44 and 45 set out the circumstances under which information or records obtained or created under the Law can be disclosed, including for research and statistical purposes. Section 46 says that an error or omission by TteS under the PTT Law does not make the PTT Law invalid.

Section 47 sets a 6-month time limit for starting an action to recover moneys paid under the PTT Law. Section 48 sets out the methods of giving notice under the PTT Law. General rules of interpretation are set out at section 49.

Part XIII – Transitional Provisions and Coming into Force
Section 50 sets out that PTT does not apply where a written agreement respecting a transfer was entered into on or before the date the PTT Law comes into force, and the transfer completes within 90 days after the PTT Law comes into force.

Section 51 provides that the PTT Law comes into force on the day after it is approved by the FNTC

Schedule I – Fair Market Value Determination
This Schedule sets out the rules and formulae for calculating the fair market value of a taxable leasehold interest.

Schedules II-VI
These Schedules set out the format and the information that must be included on various documents under the PTT Law, including the PTT Return, Notice of Property Transfer Tax Assessment, Property Transfer Tax Certificate, Request for Information, and Request for Reconsideration.

Schedule VII
This Schedule sets out the costs payable to TteS as a result of the collection and enforcement of unpaid taxes.

Questions & Answers

Here are some of the specifics of the PTT Law presented in a question and answer format:

Q Will members have to pay PTT?

A Members will be exempt from PTT on their primary residence (see 13(c)). If a member purchases more than one home, they will have to pay PTT on all homes other than the house in which they live.

Q I own a property that is not exempt under the PTT Law. Does this mean I have to pay PTT retroactively?

No. PTT will not be charged retroactively. It is only charged at the time a property is transferred and registered in the name of another person. If you sell one of your properties to a new owner after the PTT Law comes into force, the new owner will have to pay PTT at the time of registering the property in their name.

Q What are PTT revenues used for?

A PTT revenues are "local revenues" under the FMA, just like property tax revenues. PTT revenues must be kept in the local revenue account and can only be spent on items permitted under the FMA and FNTC standards. For example, PTT revenues may be used to pay for sewer, water, garbage, recycling and compost services, snow removal, sidewalks, cultural events, administration, bylaw enforcement, community development, and capital projects.

Q Could PTT revenues be used to provide additional services, such as recreational facilities?

A Yes, so long as the additional services and revenues are permitted under the FMA. Each year, the Council will make a decision on how to spend the local revenues for that year, and must pass an expenditure law to account for how the revenues will be spent.

Q Won't TteS just make a huge profit on PTT?

A No, under the FMA, local revenues must be allocated and spent each taxation year. A small percentage may be set aside for contingencies for unexpected shortfalls, and some may be set aside in reserve funds for future needs, but the majority of the tax revenues must be spent on services, infrastructure, and other items set out in the annual expenditure law.

Q How will taxpayers' interests be protected?

A Taxpayers have the right to request the Administrator to reconsider their decision regarding PTT owing on a property (see section 32). At section 42, the Administrator must give notice before commencing enforcement actions.

The PTT Law will be enacted under the FMA, and it will not come into force until it has been reviewed and approved by the FNTC. The FNTC will not approve the Laws unless they comply with the FMA and its regulations, and with standards set by the FNTC. The FNTC standards closely model provincial practices off-reserve. The FMA, its regulations and the FNTC standards are designed to protect equally the interests of First Nations and the interests of taxpayers.

The Council is also developing a Taxpayer Representation Law that will establish mechanisms for taxpayers to be informed about property taxation matters and bring concerns to TteS.

Q I want to buy a property that is valued at $200 000. The property is not exempt from PTT. How much PTT will I have to pay?

A PTT is charged at a rate of 1% of the first $200 000 of value, so the PTT payable at the time of registration will be $2000:

$200 000 x 1% = $2000

Q I want to buy a property that is valued at $500 000. The property is not exempt from PTT. How much PTT will I have to pay?

A PTT is charged at 1% of the first $200 000, and 2% of the fair market value between $200,000 and $2,000,000, so the PTT is $8000.

($200 000 x 1%) + ($300 000 x 2%) = $8000