

This document should be adapted to suit your practice and the matter for which it is being used. See endnote.

As a real estate lawyer, navigating the complex landscape of tax-related issues is crucial when representing buyers and sellers. While it is not an exhaustive list, this checklist covers some tax-related matters that you should consider turning your attention to.

Tax	When Acting for the Purchaser	When Acting for the Seller
<p>Land Transfer Tax (LTT)</p>	<ul style="list-style-type: none"> □ Ensure you are calculating the current LTT rate □ Ensure the LTT is applied to the value of the consideration □ Determine if any LTT refunds apply □ Ensure you collect the LTT prior to registration of the transfer or ensure the LTT is prepaid □ Refund for overpayment of LTT can be applied for via the Ministry of Finance 	
<p>Harmonized Sales Tax (HST)</p>	<ul style="list-style-type: none"> □ Confirm if the property is subject to HST (e.g., <i>newly constructed, substantially renovated, rental property, investment property, vacant land</i>) □ Determine if the purchaser is entitled to the new housing HST rebate <ul style="list-style-type: none"> □ If yes, review the agreement of purchase and sale and determine if: <ul style="list-style-type: none"> □ 1. the seller is paying or crediting the rebate amount to the purchaser (ensure it appears on the statement of adjustments) or; □ 2. the purchaser will be filing an application directly with CRA for the rebate post-closing (buyer's lawyer: discuss if this is a separate retainer) □ Ensure you are familiar with the current rebate amount, including the maximum rebate allowable □ Understand how HST is calculated for the statement of adjustments (from a total purchase price which includes the HST) 	
<p>Non-Resident Seller</p>	<ul style="list-style-type: none"> □ Undertake due diligence that the seller is not a non-resident (statement of non-residency is not conclusive – see Kau v. the Queen, 2018 TCC 156) □ Request certificate of compliance from the seller's lawyer or withhold the appropriate withholding tax and consider the steps in this flowchart 	<ul style="list-style-type: none"> □ Determine if your client is a non-resident □ If non-resident, request a compliance certificate from CRA or prepare your client for a holdback and consider the steps in this flowchart

Tax	When Acting for the Purchaser	When Acting for the Seller
<p align="center">Non-Resident Speculation Tax (NRST)</p>	<ul style="list-style-type: none"> □ Check foreign buyer prohibition □ Determine if your client is subject to NRST <ul style="list-style-type: none"> □ If yes, determine if the property your client is purchasing is subject to NRST □ Ensure you are familiar with how NRST is calculated, especially when there are multiple buyers □ Review any exemptions or rebates/refunds the buyer may qualify for 	
<p align="center">Underused Housing and Vacant Home/Unit Tax</p>	<ul style="list-style-type: none"> □ Be aware of the federal Underused Housing Tax <ul style="list-style-type: none"> □ Refer clients to a tax specialist/advisor and document your scope of work in your retainer and reporting 	
<p align="center">Capital Gains Tax</p>	<ul style="list-style-type: none"> □ Be aware of general tax implications for properties subject to capital gain □ Refer clients to a tax specialist/advisor and document your scope of work in your retainer and reporting letter 	
<p align="center">Trust Reporting Requirement</p>	<ul style="list-style-type: none"> □ Be aware of trust reporting requirements that apply when real property is held (in full or in part) in trust 	
<p align="center">Business Income</p>	<ul style="list-style-type: none"> □ Be aware of the Residential Property Flipping Rule □ Be aware of additional usages of the property that may result in business income 	
<p align="center">Property Tax</p>	<ul style="list-style-type: none"> □ Review requirements of the title insurer to ensure your client has coverage for property tax arrears □ Review the property tax adjustment on the statement of adjustments □ Advise your client on payments they should be making post-closing, especially payments required shortly after closing 	<ul style="list-style-type: none"> □ Request property tax information from your client, including the total amount due and what has been paid to date (preferably a copy of the latest tax bill) □ Advise your client on payments they should be making prior to closing, if any

Continued on the next page

Tax	When Acting for the Purchaser	When Acting for the Seller
Property Tax	<ul style="list-style-type: none"> <input type="checkbox"/> Consider discussing with your client whether to order a tax certificate or not <hr/> <ul style="list-style-type: none"> <input type="checkbox"/> Ensure you have notified the property tax department of change in ownership 	<ul style="list-style-type: none"> <input type="checkbox"/> Enquire whether their mortgage lender is paying the tax or if they are on an automatic monthly payment plan and account appropriately <input type="checkbox"/> Include the appropriate property tax adjustment on the statement of adjustments

LAWPRO Resources

1.	Unlocking Real Estate Wisdom (2024) - CPD - see last two speakers
2.	Important Reminder: Update to Non-Resident Speculation Tax
3.	Common HST Errors in Real Estate Transactions
4.	HST Now Applies to All Assignments of New Home/New Condominium Contracts (i.e. flipping)
5.	Vacant Home Tax: Is your client buying or selling
6.	New Federal Underused Housing Tax
7.	CRA's New Trust Reporting Rules

NOTE & DISCLAIMER: This checklist may not be complete and should be carefully reviewed and adapted to the specific circumstances of a real estate file. Its suitability will depend upon a number of factors, such as the specific needs and preferences of your client, and the circumstances surrounding the matter. It is provided by LAWPRO for your consideration and use when you draft your own documents and advise clients. It is NOT meant to be used "as is". It may need to be modified to correspond to current law and practice. This checklist does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.