

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 |
|---|--|----------------------------|
| Land Transfer Tax (LTT) | <ul style="list-style-type: none"> <input type="checkbox"/> Ensure you are calculating the current LTT rate <input type="checkbox"/> Ensure the LTT is applied to the value of the consideration <input type="checkbox"/> Determine if any LTT refunds apply <input type="checkbox"/> Ensure you collect the LTT prior to registration of the transfer or ensure the LTT is prepaid <input type="checkbox"/> Refund for overpayment of LTT can be applied for via the Ministry of Finance | |
| Municipal Land Transfer Tax (MLTT) | <ul style="list-style-type: none"> <input type="checkbox"/> Check if the Municipality has MLTT (such as Toronto) <input type="checkbox"/> Ensure the MLTT is applied to the value of the consideration <input type="checkbox"/> Determine if any MLTT refunds apply <input type="checkbox"/> Ensure you collect the MLTT prior to registration of the transfer or ensure the MLTT is prepaid | |
| Harmonized Sales Tax (HST) | <ul style="list-style-type: none"> <input type="checkbox"/> Confirm if the property is subject to HST (<i>e.g., newly constructed, substantially renovated, rental property, investment property, vacant land</i>) <input type="checkbox"/> Determine if the purchaser is entitled to the new housing HST rebate <ul style="list-style-type: none"> <input type="checkbox"/> If yes, review the agreement of purchase and sale and determine if: <ul style="list-style-type: none"> <input type="checkbox"/> 1. the seller is paying or crediting the rebate amount to the purchaser (ensure it appears on the statement of adjustments) or; <input type="checkbox"/> 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) <input type="checkbox"/> Ensure you are familiar with the current rebate amount, including the maximum rebate allowable <input type="checkbox"/> Understand how HST is calculated for the statement of adjustments (from a total purchase price which includes the HST) | |

| Tax | When Acting for the Purchaser | When Acting for the Seller |
|---|--|---|
| Non-Resident Seller | <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 |
| Non-Resident Speculation Tax (NRST) | <ul style="list-style-type: none"> □ Check foreign buyer tax □ 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 | |
| Municipal Non-Resident Speculation Tax (MNRST) | <ul style="list-style-type: none"> □ Check if the municipality has a foreign buyer tax (such as Toronto) □ Determine if your client is subject to MNRST <ul style="list-style-type: none"> □ If yes, determine if the property is subject to MNRST □ Ensure you are familiar with how MNRST is calculated, especially when there are multiple buyers □ Review any exemptions or rebates/refunds the buyer may qualify for | |
| Underused Housing | <ul style="list-style-type: none"> □ Be aware of the federal Underused Housing Tax □ Refer clients to a tax specialist/ or advisor □ Document your scope of work in your retainer and reporting letter | |
| Vacant Home/Unit Tax | <ul style="list-style-type: none"> □ Be aware of municipal vacant home/unit tax implications □ Consider requesting a copy of the filed declaration from the seller's lawyer | <ul style="list-style-type: none"> □ Be aware of municipal vacant home/unit tax implications □ Consider requesting a copy of the filed declaration from your client |

LAWPRO Resources

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| 1. | <u>Unlocking Real Estate Wisdom (2024) - CPD</u> - <i>see last two speakers</i> |
| 2. | <u>Important Reminder: Update to Non-Resident Speculation Tax</u> |
| 3. | <u>Common HST Errors in Real Estate Transactions</u> |
| 4. | <u>HST Now Applies to All Assignments of New Home/New Condominium Contracts (i.e. flipping)</u> |
| 5. | <u>Vacant Home Tax: Is your client buying or selling</u> |
| 6. | <u>New Federal Underused Housing Tax</u> |
| 7. | <u>CRA's New Trust Reporting Rules</u> |
| 8. | <u>A real estate cautionary tale – Tribulations of tax check boxes</u> |