c 93 The Land Transfer Tax Amendment Act, 1974 (No. 2)

Ontario
CHAPTER 93

An Act to amend
The Land Transfer Tax Act, 1974

Assented to December 10th, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) Clause e of subsection 1 of section 1 of The Land Transfer Tax Act, 1974, being chapter 8, is amended by adding at the end thereof “and a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed”.

(2) Subclauses i and ii of clause f of subsection 1 of the said section 1 are repealed and the following substituted therefor:

(i) that has allotted and issued shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by one or more non-resident persons, but this subclause does not apply where it is established to the satisfaction of the Minister that such one or more non-resident persons do not in fact directly or indirectly exercise control over the corporation and that subclause v does not apply to the corporation,

(ii) that has allotted and issued shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by any one non-resident person, but this subclause does not apply where it is established to the satisfaction of the Minister that such non-resident person does not in fact directly or indirectly exercise control over the corporation and that subclause v does not apply to the corporation,
(3) Clause $g$ of subsection 1 of the said section 1 is amended by striking out "partnership property" in the fourteenth line and inserting in lieu thereof "property of such partnership, syndicate, association or other organization" and by striking out "established by a non-resident person within the meaning of subclause i, ii or iv or" in the seventeenth, eighteenth and nineteenth lines.

(4) Clause $m$ of subsection 1 of the said section 1 is amended by striking out "or" at the end of subclause iii and by adding thereto the following subclauses:

(v) in the case where a lease of land, a transfer of the interest of a lessee under a lease of land, or a notice in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land is not exempt from tax by virtue of subsection 4, the fair market value, ascertained as at the time of the tender for registration, of the land to which the lease extends or of a smaller portion of such land if only such smaller portion is conveyed, or

(vi) in the case of a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed and that is not a notice in writing described in subclause v, the value of the consideration, determined under subclauses i to iv, for the land conveyed by the instrument or writing that is referred to in such notice or caution in writing that is not a notice in writing described in subclause v.

(5) Clause $a$ of subsection 3 of the said section 1 is repealed.

(6) The said section 1 is amended by adding thereto the following subsection:

(4) Notwithstanding any other provision of this Act, no tax is payable on the tender for registration of a conveyance that is a lease of land, the transfer of the interest of a lessee under a lease of land, or a notice in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land if the lease, at the time the lease or transfer or notice of either of them is tendered for registration, is for an unexpired term which, including any renewals or extensions of such term provided for in the lease, cannot exceed fifty years.
2.—(1) Subsection 3 of section 2 of the said Act is amended by adding at the end thereof “and where the Minister or a collector is satisfied that the value of the consideration for a conveyance that has been registered is the value of the consideration for a subsequently registered conveyance that does not create with respect to the land conveyed any beneficial interest therein in any person beyond that evidenced by the first mentioned conveyance, and if the conveyances are made as part of the same transaction, tax is payable only once and upon the value of the consideration for the first of such conveyances that was registered”.

(2) Subsection 5 of the said section 2 is amended by inserting after “paid” in the fourth line “or that no tax is payable" and by inserting after “that” where it occurs in the first instance in the ninth line “no tax is payable or that”.

3.—(1) Subsection 6 of section 4 of the said Act is amended by adding at the commencement thereof “Except as provided in subsection 7,.”.

(2) The said section 4 is amended by adding thereto the following subsection:

(7) Notwithstanding subsection 3, no affidavit is required under that subsection on the tender for registration of a conveyance to or in trust for a transferee who is expressly named in the conveyance and who is Her Majesty in right of Ontario, Her Majesty in right of Canada, a Crown agency within the meaning of The Crown Agency Act, the corporation of a municipality, including a district, metropolitan or regional municipality, in Ontario, a local board, as defined in The Municipal Affairs Act, of any such municipality in Ontario or Ontario Hydro or any corporation prescribed by the Minister by regulation or any individual acting in an official capacity prescribed by the Minister by regulation, but the Minister may make regulations under this subsection only if he is satisfied that the corporation or the official capacity of the individual is such that the corporation or the individual acting in his official capacity is not, and is not likely to become, a non-resident person.

4. Section 6 of the said Act is repealed.

5. Section 8 of the said Act is amended by adding thereto the following subsection:

(3) Where a conveyance is registered that is a notice or caution in writing signifying the existence of any instru-
6. Subsection 2 of section 14 of the said Act is amended by striking out “the designated land the tax imposed on which is under appeal” in the sixth and seventh lines and inserting in lieu thereof “the land the tax on the tender for registration of a conveyance of which is under appeal”.

7.—(1) Subsection 1 of section 16 of the said Act is repealed and the following substituted therefor:

(1) Where tax has been paid or may be payable on the registration of a conveyance of land to a non-resident person, and that non-resident person satisfies the Minister that the land was or is to be acquired,

(a) for the purpose of the development and resale of land for residential, commercial or industrial purposes;

(b) for the purpose of establishing, expanding or relocating any active commercial or industrial business that is or will be carried on by the non-resident person who shall undertake to obtain, within such time as is agreed upon with the Minister, any zoning changes necessary to permit the land to be used as proposed and to complete, within such time as is agreed upon with the Minister, the establishment, expansion or relocation for which the land was or is to be acquired;

(c) by a non-resident person who is a Canadian citizen and who undertakes to the Minister to cease to be a non-resident person within five years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land;

(d) by a non-resident person who is an individual other than a Canadian citizen and who undertakes to the Minister to cease to be a non-resident person within two years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land;
(c) by a non-resident corporation that is a non-resident person because of the ownership of shares in that corporation, whether directly or indirectly, by a non-resident person described in clause c who undertakes to the Minister that the corporation will cease to be a non-resident person within five years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land;

(f) by a non-resident corporation that is a non-resident person because of the ownership of shares in that corporation, whether directly or indirectly, by a non-resident person described in clause d who undertakes to the Minister that the corporation will cease to be a non-resident person within two years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land; or

(g) by a non-resident corporation that undertakes to the Minister to cease to be a non-resident corporation within five years from the date of the grant of the deferral or remission under this subsection with respect to the acquisition of the land,

the Minister may, with the approval of the Lieutenant Governor in Council, defer the payment of the tax, or remit the tax paid, on such conditions as to the use and development of the land or otherwise as are considered advisable and sufficient to ensure the development of the land as proposed or compliance with any undertakings given by the non-resident person acquiring the land, and any tax deferred or remitted under this subsection constitutes a first lien and charge in favour of Her Majesty in right of Ontario on the land so acquired or to be acquired, and the lien and charge shall be effective upon registration by the Minister of a notice thereof, and the Minister may discharge the lien and charge in whole or in part as the conditions that he has imposed or the undertakings that have been given to him are fulfilled or complied with, and may, where he considers it necessary and advisable to enable the performance of any condition or undertaking, postpone, release or waive the lien and charge with respect to all or any part of any land affected by the lien and charge.

(2) Subsection 2 of the said section 16 is amended by striking out “, or a rebate under subsection 4,” in the first and second lines.
(3) Subsection 4 of the said section 16 is repealed and the following substituted therefor:

(4) Upon the tender for registration of a conveyance that is described in any of clauses a to e and that is made to a non-resident person, the tax imposed by subsection 2 of section 2 shall, notwithstanding any other provision of this Act, be reduced to an amount equal to the tax that would result if only the rates of tax mentioned in subsection 1 of section 2 were applicable.

(a) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance and stating,

(i) that he has been lawfully admitted to Canada and is lawfully in Canada as an immigrant admitted under the Immigration Act (Canada) for permanent residence in Canada, or that he is lawfully in Canada for the purpose of engaging in a trade, profession, calling, occupation or employment that he is authorized to engage in in Canada, and the nature of that trade, profession, calling, occupation or employment,

(ii) that the land being conveyed to him is being acquired by him for the purpose of enabling him to establish thereon his principal residence in Canada, and will not be used as the residence of persons other than the transferee or members of his family or members of his usual domestic establishment,

(iii) the number and expiration date of the employment visa, if any, issued to him pursuant to the Immigration Act (Canada) or regulations made thereunder and the length of time during which he intends to engage in the trade, profession, calling, occupation or employment for which he was admitted into Canada, and

(iv) that he is not in Canada as a tourist or visitor or for the purpose of passing through Canada to another country, or as a student admitted to Canada under the provisions of paragraph f of subsection 1 of section 7 of the Immigration Act (Canada);
(b) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance and stating,

(i) that the transferee is a Canadian citizen, and

(ii) that the land being conveyed to him is being acquired by him for the purpose of enabling him to establish thereon a place of residence or recreation to be his principal residence or principal recreational property upon his return to Canada to take up permanent residence in Canada;

(c) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, stating,

(i) that the transferee, on and after the 9th day of April, 1974, has continuously occupied premises in Canada where the transferee carried on an active commercial or industrial business that is not principally,

(A) the rental of land or premises for possession or occupancy for a period of one month or more,

(B) the acquisition of land,

(C) the sale of land owned by the seller,

(D) the holding of land, or

(E) the development of land,

(ii) the nature of such business so carried on by the transferee, and the principal location in Canada from which such business is carried on, and

(iii) that the land being conveyed to the transferee is being acquired for the purpose of enabling the transferee to acquire the freehold of only the leased premises on which such business is being carried on and not of other premises, or is being acquired for the purpose of expanding or relocating the operations of
such business where such expansion or relocation is not prevented by any zoning restrictions affecting the land conveyed;

(d) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, and stating that the land being conveyed to him is being acquired by him as part of his normal business practice and either,

(i) for the principal purpose of selling the land to an employee of the transferee or to such employee and his spouse as the residence of that employee and members of his family or members of his usual domestic establishment, or

(ii) for the principal purpose of making the land available for the exclusive use of his employees and members of their families or members of their usual domestic establishments as a place of residence; or

(e) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, stating,

(i) that the land being conveyed to him is being acquired by him as the result of a final order of foreclosure under a mortgage or charge affecting the land or is being acquired in any other manner for the sole purpose of satisfying the obligations of the transferor to the transferee under a mortgage or charge affecting the land,

(ii) that the land being conveyed to him is being acquired by him only for the purpose of safeguarding or giving effect to rights or interests of the transferee as mortgagee or chargee and in respect of an outstanding loan that was owed by the transferor to the transferee and that is in default,

(iii) that the transferee is dealing in all respects with the transferor as though the parties were strangers, and
(iv) that the conveyance was not arranged with the intention of defeating the incidence of tax imposed by this Act.

(5) Where it is established to the satisfaction of the Minister that land being acquired by a person is acquired for the purpose of replacing land that was taken from him under statutory authority, that was sold by him to a person by whom notice of an intention to take the land under statutory authority was given, or that was sold by him to a person having the power to take the land under statutory authority and in the reasonable expectation that, had the land not been so sold, it would have been taken from him by that person under statutory authority, the value of the consideration for the land being so acquired shall be reduced by an amount equal to the proceeds of sale reasonably attributable to the land that was so taken or sold.

(6) Every person who, knowing it to be false, makes an affidavit described in subsection 4, is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of the tax that, had the true facts been stated, would have been payable, plus an amount of not less than $50 and not more than $1,000.

8.—(1) This Act, except section 4, comes into force on the day it receives Royal Assent.

(2) Section 4 shall be deemed to have come into force on the 10th day of April, 1974.

9. This Act may be cited as The Land Transfer Tax Amendment Act, 1974 (No. 2).