

## **2017 ONTARIO TAX CHANGES**

This issue of the Legal Business Report provides current information to the clients of Alpert Law Firm Professional Corporation regarding important tax changes outlined in the November 14, 2017 Ontario Fall Economic Outlook and Fiscal Review (“Fall Economic Statement”). Although these proposals are likely to be implemented in their present form, they are not yet law and final legislation should be reviewed before initiating any transaction. It is also important to note that this Legal Business Report contains tax change highlights only, and the Fall Economic Statement should be consulted in full for a more in-depth view of the proposed changes.

Alpert Law Firm Professional Corporation is experienced in providing legal services to its clients in matters including corporate-commercial transactions, tax planning, estate planning, wealth preservation, tax dispute resolution, tax litigation, and estate administration. Howard Alpert, C.S. has been certified by the Law Society as a Specialist in Estates and Trusts Law as well as Corporate and Commercial Law.

### **I. MEASURES AFFECTING BUSINESSES**

#### **A. CORPORATE INCOME TAX RATES**

1. There will be no changes to Ontario’s General and Manufacturing and Processing (M&P) corporate tax rates, which remain as follows for the 2017-2019 taxation years:

	<b>Federal</b>	<b>Ontario</b>	<b>Combined Federal and Ontario</b>
General	15%	11.5%	26.5%
M&P	15%	10%	25%

#### **B. SMALL BUSINESS INCOME TAX RATE**

2. The provincial Small Business Income (the “SBI”) Tax Rate applicable to Canadian controlled private corporations (“CCPCs”) resident in Ontario was reduced from 4.5% to 3.5% on January 1, 2018. The SBI Tax Rate applies to the first \$500,000 of active business income earned by CCPCs.

3. As Canada has also reduced the Federal SBI Tax Rate, the combined SBI Tax Rate applicable to Ontario CCPCs is as follows for the 2017-2018 taxation years:

	<b>Taxation Year Ending</b>	<b>Federal</b>	<b>Ontario</b>	<b>Combined Federal and Ontario</b>
Small Business Income Tax Rate (CCPCs)	Dec 31, 2017	10.5%	4.5%	15%
	Dec 31, 2018	10%	3.5%	13.5%
	Dec 31, 2019	9%		12.5%

4. The reduction in the SBI Tax Rate will be prorated for any non-calendar taxation years straddling the 2017 and 2018 calendar years.

### **C. GRADUATED APPRENTICESHIP GRANT FOR EMPLOYERS**

5. Ontario's Apprenticeship Training Tax Credit (ATTC) will be replaced with the new Graduated Apprenticeship Grant for Employees Program (the "GAGE Program"). The GAGE Program will be available to the 125 trades which are currently eligible under the ATTC as well as five new trades; hairstylist, cook, horticultural/landscape technician, baker/patisserie, and appliance service technician.

6. Employers must register their apprentice program with the Ontario College of Trade after November 14, 2017 to be eligible for the GAGE Program. The GAGE Program is intended to incentivize employers to ensure their apprentices achieve completion in their respective programs. As such, the employer will only receive the specified grant amounts after the apprentice completes each specified level of his apprenticeship program.

7. The GAGE Program also incentivizes employers to provide apprentice programs to individuals in what Ontario called "Underrepresented Groups" which include women, Indigenous peoples, francophones, people with disabilities, newcomers, and visible minorities. The GAGE Program and its graduated credit system for eligible apprentices is as follows:

		Apprentices in "Underrepresented Groups"	All other apprentices
Apprentice Completes:	Level one	\$3,000	\$2,500
	Level two		
	Level three	\$4,000	\$3,500
	Level four		
Apprentice attains a certificate of apprenticeship or qualification		\$5,200	\$4,700

8. The ATTC will be phased out with the implementation of the GAGE Program. Employers. Eligible apprentices registered in an apprenticeship program on or before November 14, 2017 will be eligible to receive the ATTC for up to 36 months while transitioning to the GAGE Program.

## II. MEASURES AFFECTING INDIVIDUALS

### A. PERSONAL INCOME TAX RATES

9. As of January 1, 2018, the non-eligible dividend tax credit will fall to 3.2863%, thus increasing the non-eligible dividend tax rates. All other personal income tax ("PIT") rates will remain the same. The top combined federal and provincial PIT rates (i.e., rates on income over \$220,000) are as follows:

Personal Tax Rates on Income earned over \$220,000	2017	2018	2019
Ordinary Income	53.53%		
Capital Gains	26.76%		
Eligible Canadian Dividends	39.34%		
Non-eligible Canadian Dividends	45.30%	46.65%	47.40%

**B. LAND TRANSFER TAX CHANGES**

10. On December 8, 2017 the Ministry of Finance released new Provincial Land Transfer Tax Statements in Teraview. Teraview is the program which enables Ontarians to proceed through the Electronic Land Registration System (ELRS) when registering a land transfer. These statements became effective as of December 16, 2017. In effect, these statements require transferees to affirm and acknowledge a number of new obligations under the Land Transfer Tax Act.

11. There are three sets of new statements. The first requires transferees to account for the application of the new Non-Resident Speculation Tax (NRST). The second requires transferees to acknowledge their obligation to maintain all documents, records, and accounts required to accurately determine tax liability under the Land Transfer Tax Act. The third requires any declarant, who is a solicitor, to acknowledge that he has fulfilled his obligations as a solicitor under the Law Society's Rules of Professional conduct and its By-Laws.

**1) THE NON-RESIDENT SPECULATION TAX**

12. The NRST took effect on April 21, 2017. Any binding agreements of purchase and sale signed on or before April 20, 2017 and not assigned after April 20, 2017 are not subject to the NRST. The NRST is a 15% tax, applied in addition to the general land transfer tax, to the purchase or acquisition of property within the Golden Horseshoe Region of Ontario by non-residents, foreign corporations, and taxable trusts.

13. The NRST is calculated at 15% of the total value of consideration paid for a conveyance of designated land, meaning land which is within the Greater Golden Horseshoe Region which contains at least one and no more than six single family residences, by individuals who are not citizens or permanent residents of Canada or by foreign corporations and taxable trustees. In the event that a portion of the land conveyed is used for purposes other than residential purposes, the NRST is apportioned such that only the portion of the value of consideration attributable to residential purposes is taxed.

14. The Greater Golden Horeshoe Region includes; the City of Barrie, County of Brand, City of Brantford, County of Dufferin, Regional Municipality of Durham, City of Guelph, Haldimand County, Regional Municipality of Halton, City of Hamilton, City of Kawartha Lakes, Regional Municipality of Niagara, County of Northumberland, City of Orillia, Regional Municipality of Peel, City of Peterborough, County of Simcoe, City of Toronto, Regional Municipality of Waterloo, County of Wellington, and Regional Municipality of York.

15. The NRST applies to purchases of designated land, by foreign entities, being foreign corporations or foreign nationals, and taxable trustees. A foreign corporation is any corporation which is;

- (1) not incorporated in Canada, or
- (2) incorporated in Canada but the shares of which are not listed on a stock exchange in Canada and is controlled, directly or indirectly in any manner by a one or more of;
  - (i) a foreign national,
  - (ii) a corporation not incorporated in Canada, or
  - (iii) a corporation which would, if each share owned by a foreign national or corporation not incorporated in Canada were owned by a single person, be controlled directly or indirectly in any manner whatsoever by such person.

16. A foreign national is an individual who is not a Canadian citizen or a permanent resident of Canada.

17. A taxable trustee includes trustees of trusts with at least one trustee that is a foreign entity or a beneficiary of the trust is a foreign entity, if there are no foreign entity trustees. Taxable trustees do not include trustees for mutual fund trusts, real estate investment trusts, or specified investment flow-through trusts, as defined by the Canadian Income Tax Act.

18. The NRST applies to the transfer of land containing at least one and no more than six single family residences. Examples of land containing one single family residences include detached houses, semi-detached and townhouses, or condominium units. In the event of a purchase of multiple condominium units, each unit is considered "land containing one single family residence". Purchases of duplexes, triplexes and the like would constitute land containing more than one single family residence.

19. The NRST applies to such purchases where any of the transferees is a foreign entity or taxable trustee. For example, if a transfer is made to four transferees, each receiving a quarter share in the land, the NRST would still apply to the full 100% value of the consideration for said transfer. Each transferee is jointly and severally liable for the NRST. The NRST also applies to unregistered dispositions of a beneficial interest in residential property.

20. NRST rebates are given to (i) a person who becomes a citizen or permanent resident within four years of the transfer, (ii) a foreign national working for a continuous one year period post acquisition and who uses the property as his principle residence during that time, and (iii) an international student enrolled in full time programs for at least two years from date of acquisition at Ontario institutions approved by the Ministry.

21. Additionally there are exemptions made for some foreign nationals such as nominees of the Ontario Immigrant Nominee Program who have applied, or certify that they will apply, to become Canadian permanent residents, refugees and other protected persons under the Immigration and Refugee Protection Act, and foreign nationals acquiring property jointly with a spouse, who is a Canadian citizen. Note that these exemptions only apply as long as the exempted person does not purchase the property with another foreign national who is not exempted.

22. The NRST will not apply to purchases made by trustees for mutual fund trusts, real estate investment trusts, or specified investment flow-through trusts.

23. The NRST will be collected by Teraview and become part of the registration process.

24. A taxpayer can pre-pay NRST directly to the Ministry, and not through Teraview. However, to do so, the Taxpayer must pay all land transfer tax directly to the Ministry and must do so prior to registration. Taxpayers will receive a receipt number which is to be inserted into the relevant statements in Teraview to denote the tax as being prepaid.

## **2) THE RECORD KEEPING OBLIGATION**

25. The *Land Transfer Tax Act* imposes an obligation on all who register a conveyance to keep such documents, records, and accounts in a form and containing information which enables an accurate determination of taxes payable under the Act. These documents must be kept for at least seven years after the later of; (1) the date of the conveyance registration or (2) their delivery to the Ministry. As of December 16, 2017 transferees will be required to expressly acknowledge this obligation on Teraview as an additional statement within their registration. The transferee may designate his lawyer or agent as the custodian of the records.

## **3) THE SOLICITOR'S STATEMENT**

26. The new solicitor's statement requires any declarant who is a lawyer, to acknowledge that he has fulfilled his professional obligations under the Law Society of

Ontario's Rules of Professional Conduct and By-Laws. Failure to complete this statement will not prevent completion of a registration so long as the declarant is not a licensed lawyer practicing in Ontario. Additionally, Teraview will not allow a registration to be completed in the case that a non-lawyer declarant completes the statement.

27. The Ministry of Finance released a comfort letter on December 8, 2017 addressing the concern that a lawyer could be deemed to have assisted in a client's false statement despite having no knowledge of the falsity, complying with his professional obligations, and acting in good faith. In the comfort letter, the Ministry stated that it will exercise its discretion not to enforce the provision in cases where a lawyer makes or assists in making such a statement on behalf of his client and meets his professional obligations.

### III. OTHER MEASURES

#### A. UNDERGROUND ECONOMY

28. Ontario is keen to combat revenue lost due to underground economic activity. Ontario proposed amendments to the *Ministry of Revenue Act* with the goals of (i) increasing information sharing among regulatory bodies and (ii) encouraging compliance by raising awareness of convictions under tax statutes.

#### B. UNREGULATED TOBACCO TAXES

29. Ontario will undertake a number of new measures in conjunction with communities and enforcement agencies to ensure compliance with provincial tobacco laws. Additionally, *Tobacco Tax Act* amendments will provide additional grounds for issuing, suspending, and cancelling registrations issued pursuant to the *Tobacco Tax Act*.

#### C. PROPERTY TAX AND ASSESSMENT SYSTEM

30. Ontario is reviewing the fairness and efficacy of the property tax and assessment system. With this in mind, municipalities will now be permitted to reduce property tax rates on the first \$50,000 of assessed value on certain value-added and commercial activities by up to 75%. These reductions will only be allowed for on-farm processing and commercial facilities, assessed below \$1 million.

31. Ontario will also review its approach to the education property tax component of the business vacancy rebate and reduction programs. Ontario promised to take further action to reduce inequities in taxation of northern communities by phasing in a

Provincial Land Tax rate of \$250 per \$100,000 of assessed value for all residential properties over the next four years (2018-2022).

**This issue of the Legal Business Report is designed to provide information of a general nature only and is not intended to provide professional legal advice. The information contained in this Legal Business Report should not be acted upon without further consultation with professional advisers.**

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