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SPECULATION AND VACANCY TAX ACT SUMMARY

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The *Speculation and Vacancy Tax Act* (the “**Act**”) received Royal Assent on November 27, 2018. The *Act* imposes a new Speculation and Vacancy Tax (the “**Speculation Tax**”) on owners of residential properties within specified areas of British Columbia (“**B.C.**”).

The Speculation Tax is applicable for the 2018 tax year and subsequent years moving forward. Between January and February 2019, owners of residential property within the specified areas that are subject to the Speculation Tax will receive a letter from the Province and related instructions for how to complete a declaration for the 2018 tax year and register for an exemption, if applicable (the “**Declaration**”).

The deadline for Declarations is March 31, 2019

Declarations can be completed either by telephone or online. Further information regarding the Declaration is available on the Provincial website: <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/speculation-and-vacancy-tax/declaration>

Payment

If applicable, the Speculation Tax is due and payable on or before July 2, 2019.

Taxable Specified Areas

The Speculation Tax applies to residential properties located within the following specified areas (subject to certain exclusions):

- A municipality within the Capital Regional District
- A municipality within the Metro Vancouver Regional District (other than the Village of Lions Bay and Bowen Island)
- The part of Electoral Area A with the Metro Vancouver Regional District that comprises the University of BC and University Endowment Lands
- The City of Abbotsford
- The City of Chilliwack



- The City of Kelowna and the City of West Kelowna
- The City of Nanaimo
- The District of Lantzville
- The District of Mission

Notably, islands that are accessible only by air or water are not part of the specified areas and are not subject to the Speculation Tax.

Tax Rates

The Speculation Tax rate varies based on the owner and is levied on the assessed value of the property as determined by the B.C. Assessment Authority on July 1 of the calendar year immediately prior to the year in which the Speculation Tax is due. The Speculation Tax is subject to various exemptions. If no exemption is available, possible tax credits may be accessed.

The Speculation Tax rate is divided into three categories as follows:

Owner Category	Rate	Year	Available Credits
Foreign Owners and “Satellite Families”	0.5%	2018 only	20% credit based on B.C. Income (*maximum credit discussed below)
	2%	2019 and subsequent years	
B.C. Residents	0.5%	2018 and subsequent years	Maximum credit of \$2,000 on a secondary property
Other Canadian Citizens and Permanent Residents	0.5%	2018 and subsequent years	Credit base on B.C. Income (*maximum credit discussed below)

Corporations, Partnerships, and Trusts

Corporate, Partnership, and Trust owners must meet specific rules in order to qualify for the lower tax rate (0.5%), exemptions, or credits.

A corporation, partner or trustee will pay tax at the highest rate that would be applicable to any of the corporate interest holders, partnership interest holders, or beneficial owners if they held the property individually.

Corporations, Partnerships, and Trustees should carefully review the tax rates, exemptions, and credits and seek legal or accounting advice prior to filing the Declaration. The RBS real estate team is available to offer guidance as to the application of the specific definitions and provisions of the Act that govern in these



circumstances.

Multiple Owners

The Speculation Tax is applied to each owner based on their registered interest in the property (as reported on title). If no interest is specified (as is the case for joint tenancies), the registered owners are considered to each have equal interests in the property.

Categories and Credits

Foreign Owners and “Satellite Families”

Foreign Owners

Foreign owners are not specifically mentioned or defined in the Act, and these owners will fall into the category of “Other Owners”. “Other Owners” essentially captures all owners that are not eligible for the lower Speculation Tax rate shown in the table above.

Satellite Families

The Declaration takes into account where in the world the majority of the combined spousal income of registered owners is reported.

Individuals who declare less than 50% of their total combined household income for the year on Canadian income tax returns may pay tax at the highest rate and may not be entitled to all exemptions. Although “satellite family” is also not defined in the Act, individuals in this situation are referred to as members of a satellite family. This may apply even if the individuals are Canadian citizens and/or B.C. residents.

Foreign owners and satellite families may be eligible for a tax credit equal to 20% of their B.C. income to reduce the 2% Speculation Tax rate. The tax credit cannot reduce the tax rate below the tax rate for an equivalent B.C. resident, which is zero on a principal residence or 0.5% on other properties. Unused B.C. income may be carried forward for up to two years or transferred to a spouse. This tax credit is pro-rated for 2018 as the tax rate is 0.5% for all owners.

B.C. Residents

For 2018 and subsequent years, the Speculation Tax rate will be 0.5% for an individual who is, at the end of the last day of the calendar year, a resident in B.C. for income tax purposes.

B.C. owners are eligible for a tax credit of up to \$2,000 on a secondary property. This effectively exempts an



owner on a property otherwise subject to the tax that is assessed at up to \$400,000, or provides a \$2,000 reduction in Speculation Tax on a property assessed above \$400,000 (for example, a property assessed at \$500,000 would be subject to Speculation Tax on \$100,000).

The tax credit is limited to \$2,000 per owner and \$2,000 per property (for example, for two equal owners of a property, each owner's tax credit is limited to \$1,000). This tax credit cannot be carried forward or transferred to a spouse and the total reductions made for a calendar year in respect of all properties in which the owner holds an interest cannot exceed \$2,000.

Other Canadian Citizens and Permanent Residents

For 2018 and subsequent years, the Speculation Tax rate will also be 0.5% for an individual who is, at the end of the last day of the calendar year, a Canadian citizen or a permanent resident of Canada. Satellite families are specifically excluded from this category.

Canadian citizens or permanent residents who are not resident in B.C. may be eligible to claim a tax credit based on the amount income claimed in B.C. The tax credit cannot reduce the tax rate below the tax rate for an equivalent B.C. resident.

Unused tax credits may be carried forward for up to two years or transferred to a spouse. These tax credits are pro-rated in 2018, when the tax rate is 0.5% for all owners.

Exemptions

Principal Residence

The term 'principal residence' is defined to mean "the place in which the individual resides for a longer period in a calendar year than any other place."

Generally, one exemption must be shared between a married couple or common-law spouses. The principal residence exemption does not apply to individuals who are part of a satellite family.

Rental - Tenant Occupied Property

For 2018, a tenant must occupy the property for a minimum of three one-month periods for the exemption to apply. In 2019, the threshold will increase to a minimum of six one-month periods.

The Speculation Tax distinguishes between tenants at arm's length from the owner and those that are non-arm's length. Generally, a person who is at arm's length is a person who has no special advantage in their



dealings with the owner. Family members, such as parents, adult children, or siblings, are automatically non-arm's length. Friends and others may be non-arm's length depending on the circumstances.

(a) Arm's Length Tenant

In order for the exemption to apply, the tenancy must be pursuant to a written tenancy agreement and the property must be the place that the tenant makes the tenant's home.

Since the exemptions are individual, each owner of the property must evaluate their eligibility for the exemption. The tests must be evaluated with respect to each owner and the tenant.

(b) Non-Arm's Length Tenant

Within the category of non-arm's length tenancies, there is a further distinction and separate treatment between Canadian citizen owners and foreign owners.

(i) Non-Arm's Length Tenant – Canadian Owner

The owner of the property, their spouse, or a minor child of the owner that is living with the child's parent or guardian in the residence may not be tenants.

Non-arm's length tenants do not require a written tenancy agreement. The non-arm's length tenant must reside in the residence for a longer period in the month than any other place.

If the owners are Canadian citizens or permanent residents and they file Canadian income tax returns, then there is no minimum rental rate. However, the rental rate should be considered with advice from a tax advisor.

(ii) Non-Arm's Length Tenant – Foreign Owner

Foreign owners with non-arm's length tenants are only exempt in limited circumstances.

In order for the exemption to apply the tenant must:

(A) be a Canadian citizen or permanent resident,

(B) be a resident of B.C. for income tax purposes at the end of the last day of the calendar year,

(C) not be a member of a satellite family, and



(D) have a B.C. income for the calendar year that is equal to or greater than three times the annual fair market rent for the entire residential property.

Landlords are entitled to ask tenants for certain types of personal information, including proof of income. The RBS real estate team is available to offer guidance regarding the information that should be requested and documented prior to entering into a non-arm's length tenancy agreement.

Tenancy Exemption for "Widely Held Owners"

There is also an exemption for property owned by a widely held entity (including a corporation listed on a public stock exchange and certain trusts including a real estate investment trust, a mutual fund trust and a specified investment flow-through trust). These entities need only meet the tenancy duration tests.

Land Under Development

There are exemptions for properties under construction or substantial renovation, and for properties undergoing the development and permitting process. There are specific conditions that apply to these exemptions, but the exemptions are broad and contemplate construction, substantial renovation and development. The exemptions also specifically include applications for financing and permits, as well as entering into contracts for designing, building, and construction of the development.

Other Exemptions

(a) Rental Restrictions (applicable to 2018 and 2019 tax years only)

The rental restriction must have been in place on or before October 16, 2018. The owner must also have purchased the property before that date.

(b) Property is a strata hotel (2018 and 2019 tax years only)

(c) Medical Treatment (this requires documentation from a medical practitioner)

(d) Transfer of Property – year of acquisition

(e) Death of an Owner

(f) Property Uninhabitable

(g) Breakdown of Relationship



(h) Separation for Work

(i) Bankruptcy

(j) Property is in a trust created by a will for a minor

(k) Property includes a licensed child daycare

(l) No residence on the property (2018 tax year only)

Other discrete exemptions may apply based on individual circumstances. A legal or tax representative should be contacted before a Declaration is completed.

Declaration, Assessment, and Penalties

All residential property owners in the specified areas must complete the Declaration. Where there are multiple owners of a home, a declaration must be completed by each owner, including spouses.

The declaration letter from the Province will list all the residential properties owned by the owner in the specified areas and will outline how to declare and claim any relevant exemptions. The letter will be sent to the mailing address on file with BC Assessment.

If the Declaration is not completed, the owner will receive a Notice of Assessment assessing the Speculation Tax at the maximum rate of 0.5% for 2018 and 2% for 2019 and subsequent years. The Declaration must be completed on or before March 31 in the year following the calendar year. Any Speculation Tax owing is due and payable on or before July 2 in the year following the calendar year.

The Act contains an anti-avoidance provision and several penalty provisions in respect of matters that include incomplete information on a declaration, gross negligence, and misrepresentation by third parties.

The maximum penalties are as follows:

For individuals

(a) a fine equal to an amount:

(i) that is not less than the amount of tax that was sought to be evaded, and

(ii) that is not more than the sum of the following:

(A) the amount of tax that was sought to be evaded;



(B) \$100,000,

(b) imprisonment for not more than 2 years, or

(c) both the fine and imprisonment.

For Corporations

(a) A fine equal to an amount:

(i) that is not less than the amount of tax that was sought to be evaded, and

(ii) that is not more than the sum of the following:

(A) the amount of tax that was sought to be evaded;

(B) \$200,000.

What to do next?

The Speculation Tax is nuanced and can easily create confusion in the course of completing the Declaration. Our team can assist in navigating these new complexities and in advising on the utility of corporate, partnership, and trust structures for your real estate and real estate development strategies.

IMPORTANT NOTE: *The information in this material is for general information and guidance on estate planning, as at March 1, 2019 in British Columbia. Such information is provided without any knowledge regarding your identity or specific circumstances. Richards Buell Sutton LLP cannot be held liable for any errors or inconsistencies. This information is not to be construed as legal advice. Due to the general nature of this material, it cannot be relied upon by you. You are urged to consult with a lawyer and tax advisor before acting in any manner on the information contained in this material.*