CHAPTER 19

TAXES ON REAL PROPERTY

Learning Objectives

After studying this chapter, a student should be able to:

- ☑ Discuss the main taxes that apply to the purchase or sale of real property in British Columbia, including the Goods and Services Tax and the Property Transfer Tax
- ☑ Discuss capital gains and how they are taxed upon the sale of property
- ☑ Discuss the main taxes that apply to the ownership or use of real property in British Columbia, including Property Tax
- ☑ Describe certain tax exemptions and reliefs relating to Property Tax
- ☑ Describe the process of property assessment, including the appeal procedures
- ☑ Discuss common issues and misconceptions relating to the taxation of real property

INTRODUCTION

Tax is a complex matter. Considerable legal and accounting training is required in order to provide tax advice. The laws imposing and governing the administration of the various taxes that apply to real property, as a relatively valuable type of property, are dense and sophisticated. Real estate licensees are required to have a general understanding of relevant tax laws, but must exercise extreme caution when confronted with a potential tax issue.

The central goal of this chapter is to discuss taxes that relate to real property in a manner that provides licensees with the background knowledge needed to competently discharge their professional obligations. This includes being able to provide useful information, but not advice, concerning the application of relevant taxes.

In this respect, it is critical to keep in mind that these taxes do not lend themselves to simple explanations. No overview of an area of tax, let alone the multiple taxes discussed below, will be exhaustive or definitive. Nothing in this chapter should be taken as a substitute for the tax laws themselves. There will always be exceptions and other details in particular tax rules that complicate the conversation, even if they do not appear here. For this reason, licensees should at all times be prepared to refer a client to a tax professional no matter how straightforward the issue might seem.

As a Licensee...

Licensees have a duty to their clients under section 30(d) of the *Real Estate Services Rules* to advise their clients to seek independent professional advice on matters outside of the expertise of the licensee. In one case, a licensee was disciplined by the former Real Estate Council for acting outside of his area of expertise when he negligently drafted a clause in the Contract of Purchase and Sale, and failed to advise his client to obtain independent professional advice regarding whether GST was applicable in the purchase. As a result, the licensee was required to pay a $2,500 discipline penalty to the Council, pay $1,500 in enforcement expenses, and complete the Real Estate Trading Services Remedial Education Course.

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There are two main types of taxes on real property that licensees must be familiar with:

- taxes that apply to the purchase or sale of real property; and
- taxes that apply to the ownership or use of real property.

Many of these taxes apply to real property in British Columbia in roughly the same manner as they apply in other provinces. This is the case with respect to both residential and commercial real property. These taxes include the Goods and Services Tax/Harmonized Sales Tax (commonly referred to in British Columbia as the "Goods and Services Tax" or "GST"). GST is a federal tax that applies in virtually the identical way across the country. Taxes that apply to real property also include the Property Transfer Tax (commonly referred to as the "PTT") and Property Tax, which are provincial taxes that are similar in concept to equivalent taxes in other provinces.

Despite this, several real property taxes that licensees ought to be familiar with are also unique to British Columbia, and more specifically, Vancouver. This is because of a series of housing-related tax measures that were introduced in 2016 by the provincial government in light of significant activity in the market. These taxes include the additional PTT for foreign buyers (commonly referred to as the "Foreign Buyers' Tax") and the Vacancy Tax, each of which is novel and by and large poorly understood – including by many real estate professionals.

All of the taxes mentioned above are discussed in this Chapter. You will also read about taxes on capital gains upon the sale of real property in this Chapter. Income tax implications related to real property are complex and are outside the scope of both this Chapter and the Course. However, income tax, primarily as it relates to corporations, was briefly discussed in Chapter 8: "Financial Statements".

TAXES ON THE PURCHASE OR SALE OF REAL PROPERTY

Real property transactions in British Columbia generally involve the application of GST and PTT. When they apply, the burden of each tax is generally borne by the buyer, but the seller is not necessarily relieved of liability in respect of the payment of each tax. These obligations and other distinctions are described in this chapter.

The following discussion includes an overview of how each tax is imposed and describes the particular issues in relation to each tax that licensees should understand in order to assist their clients.

Goods and Services Tax ("GST")

GST is often overlooked by licensees and other professionals involved in real property transactions, such as lawyers and accountants, because of the relatively low rate of the tax (i.e., 5% in British Columbia). As compared to income tax rates, GST might therefore appear to some to be a largely inconsequential tax – something to be figured out later or not at all. As a result, GST issues frequently arise as an afterthought, when a GST-related concern or question arises only after the purchase documents have been signed and the closing is imminent or is in the process of being completed. Unfortunately, it is not uncommon for tax lawyers who advise on GST issues to receive frantic calls from licensees, their clients, or others involved in a transaction on the morning of a closing, with a panic concerning the application of GST.

Goods and Services Tax (GST)
a federal tax paid on goods and services sold or provided in Canada

This approach is problematic. GST amounts can add up quickly, especially when dealing with real property given the high prices involved. As well, even when GST amounts are low, GST issues that arise in the middle of a transaction can put an end to the deal or even lead to litigation between the parties.

Accordingly, it is vital for licensees to have a good sense of how GST applies to the purchase and sale of real property. Basic GST knowledge is needed so that licensees can make clear the scope of their role to their clients and understand when to urge the involvement of expert advice from a tax professional. As well, how a licensee decides to manage the impact of GST on a transaction might lead to a significant benefit or loss to their client. Finally, licensees often act for developers and others in the industry and are expected to be able to explain to them, in general terms, the relevant aspects of GST.

As an even more practical example, a licensee who is aware that GST might apply to a purchase might well inform their client at the very early stages of their search to expect the need to prepare a budget that includes GST. A buyer who learns later on, particularly after an offer has been accepted, that they will need to pay GST on top of the sale price will almost always fault the licensee for this surprise.

The following discussion summarizes how GST applies to real property and the specific GST issues that licensees ought to understand.

Overview of the GST

Tax is a broadly-used instrument that is supported by legislation. It is relied on by governments at every level to raise public funds and to achieve certain social and economic objectives and therefore comes in many different forms.

In that light, GST is a comprehensive federal *"value-added" tax*. The goal of a value-added tax is to tax final value created through the production of an item, such as new housing. In Canada, this is accomplished generally by requiring sellers to collect GST on transactions and enabling them to recover GST paid on their inputs. In the real property setting, this means sellers of commercial or new residential real property generally need to collect tax and can recover GST paid on development and other costs. Commercial real property, in particular, has little GST confusion, as purchases are almost always GST-taxable and GST paid on purchases is almost always recoverable by the purchaser.

value-added tax
a form of taxation used to raise funds on the final value created through the production of an item

Accordingly, most of the following discussion is focused on residential real property, which is subject to a host of GST rules that are commonly misunderstood or overlooked in the industry.

Imposition of the GST

GST is imposed under Part IX of the *Excise Tax Act* (Canada) (the "ETA"). Under the provisions of the ETA, GST is designed to apply to every transaction that is not specifically exempted from the tax. This means that, despite popular assumptions to the contrary, most types of transactions are subject to GST, including many kinds of real property transactions. It is only where an exemption is expressly listed in the ETA that the burden of GST is removed. As a result, the default position when considering how GST might apply to a purchase or sale is to assume that it applies unless an exemption can be relied on to displace the tax.

To obtain a better understanding of GST, it is important to briefly consider some of the central terms in the ETA that figure prominently in the operation of the tax. They will be used repeatedly throughout this portion of the Chapter. For example, subsection 165(1) of the ETA, which is the provision that imposes the tax, states as follows:

> Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

The meaning of many of the terms in this provision is not obvious. In that regard, subsection 123(1) of the ETA includes a series of relevant definitions:

- "Taxable supply" is "a supply that is made in the course of a commercial activity".
- "Supply" is broadly defined to mean the provision of property or services in any manner whatever.
- "Property" is defined to mean any property, including real property.
- "Real property" is defined to include, among other things, every interest in real property.
- "Commercial activity" includes the making of a supply of real property other than an exempt supply.

These definitions may seem awkward or unnecessarily complex. The bottom line is that, for GST purposes, the transfer of real property is a *taxable supply* unless it is an exempt supply.

An *exempt supply* is a supply included in Schedule V to the ETA and is not subject to the GST. Exempt supplies of real property are set out in Part I of Schedule V. Schedule V includes exemptions for certain used residential real property, long-term rentals, ground leases, and certain sales of non-commercial or vacant land by individuals. Again, unless the supply of real property is listed in Schedule V, the supply is a taxable supply.

taxable supply
a provision of property or services in any matter that is made in the course of a commercial activity, which includes the transfer of real property, unless it is an exempt supply

exempt supply
property or services, included in Schedule V of the ETA, which are not subject to the GST

These definitions support the overall framework of GST as described above, which is that transactions are initially presumed to be taxable. The definitions also demonstrate that GST potentially applies to any right to real property, such as an option to purchase. In this way, GST has an incredibly broad scope, and a licensee should never assume that it does not apply to a transaction.

Functioning of the GST

The functioning of GST relies on each party to a transaction having a particular series of obligations under the ETA. These obligations are the components in the scheme or design of GST.

The Buyer's Obligation to Pay

One party to the transaction is the buyer, who is the tax-payer for GST purposes. As specified in subsection 165(1) of the ETA, the buyer (referred to as the "recipient") has an obligation to pay the tax to the government.

The amount of tax owed by the buyer is calculated by applying the rate of tax (i.e., 5%) to the consideration or price paid for the supply. In the context of a real property transaction, it is important for licensees to be aware of which amounts on statements of adjustments are legally components of the purchase price. This will be taken into account when calculating the amount of GST owed by the buyer and, if applicable, when determining the recipient's eligibility for the GST/HST New Housing Rebate, among other things.

One issue that often arises is whether an amount shown as a charge on the statement of adjustments is consideration for the real property, or for some other specific property or service. No GST applies to reimbursements for prepayments. Similarly, it is important to note that the payment of a deposit is generally not subject to GST. GST only applies to the amount of the deposit once it belongs to the seller (e.g., at closing). For example, if a $50,000 deposit on the purchase of a new home is paid to the seller on January 1st, the buyer does not also have to pay GST on that amount on January 1st. Instead, GST is only owed on that amount once the closing occurs and the full amount of the sale price, including the deposit, becomes taxable.

The Seller's Obligations to Collect and Remit

The other party in the transaction with obligations under the ETA is the seller. This is the person who is making the taxable supply. Sellers are generally required to collect GST as an agent for the government. The tax dollars they collect are deemed to be held in trust for the government until they are remitted. While the obligation to pay the tax in a taxable supply is on the buyer, a failure by the seller to collect the tax makes the seller equally liable to the government for the amount of the tax. Ordinarily, the Canada Revenue Agency (commonly referred to as the "CRA") will assess, or send a tax bill to, the seller for the uncollected GST. The seller will then have the right to pursue the buyer for the GST.

There is one main exception in real property transactions to the rule that the seller must collect the GST. It involves circumstances where the buyer is purchasing real property – most commonly, commercial real property – and is registered for GST by the time of closing. This does not apply, however, where the buyer is an individual and the property is a residential complex (discussed below), such as a detached home. Leaving aside that exclusion, there is an allowance where the rule applies for the seller to decline to collect the tax. The buyer, in turn, is required to report the tax due in its next GST return. If the buyer is entitled to an input tax credit (discussed below) in respect of the purchase, then the buyer can claim that input tax credit on the same return, potentially leaving no net GST liability.

This is known as "self-assessing" the GST. It is specific to real property because of the high prices in play. The rule was introduced to address the cash flow problem that arises with the buyer having to pay the tax to the seller, the seller remitting the tax, and then the buyer claiming it back through an input tax credit. Essentially, without the "self-assessing" rule, many buyers would be out-of-pocket for the tax for a certain period, which could needlessly harm their businesses.

Example

Consider an office building in Vancouver's financial district that is sold for $100 million. GST on the sale would be $5 million. The buyer would be fully entitled to an input tax credit. Rather than requiring the buyer to pay the $5 million to the seller and recovering it several months later, GST rules permit the buyer to avoid payment of the tax altogether, which prevents a potential cash flow problem for the buyer.

There is a second exception to the general rule that the seller must collect the GST; namely, where the seller is a non-resident. A non-resident seller may not fully understand their obligations to collect and remit GST, and since the amount of GST can be very significant, in such circumstances, the tax rules provide that buyers must "self-assess" the GST.

Tax Recovery Mechanisms

Another notable feature of the GST is the tax recovery mechanisms; most significantly, the *input tax credit*. Generally, an input tax credit is a GST deduction a person can claim in their GST return for the amount of GST paid by that person on the acquisition of property or services.

> **input tax credit**
> a GST deduction a person can claim in their GST return for the amount of GST paid by that person on the acquisition of property or services

For example, suppose a furniture manufacturing company collects $20,000 of GST each month on the sale of its products. However, in order to manufacture the products, the company needed to acquire lumber and other materials, on which the company paid $5,000 of GST. Accordingly, the company would be entitled to a $5,000 input tax credit. When the company completes a GST return for the month, the return would show $20,000 of GST collected, less a $5,000 input tax credit, leaving a balance of $15,000 for the company to remit to the government.

The input tax credit available to a person on a specific amount of GST paid is determined by the extent (expressed as a percentage) to which the person is acquiring the property or services for consumption, use, or supply in the course of their commercial activities. Some businesses might acquire a property for use in both their commercial (taxable supplies) and non-commercial (exempt supplies) activities. The business would be required to allocate the GST and claim an input tax credit only to the extent that the property will be used in commercial activities.

Example

A doctor might buy an office building partly to operate a medical clinic (exempt supply) and partly to lease to a pharmacy (taxable supply). The doctor would be entitled to an input tax credit for the GST paid on the purchase, but only for a portion of the GST that reasonably relates to the lease to the pharmacy. The remainder of the GST would be unrecoverable.

A second type of recovery mechanism in the ETA is *rebates*, which are essentially ways that non-businesses can recover GST paid. They were generally introduced with limited policy goals in mind and are designed to alleviate the burden of the tax (either in whole or in part) with respect to certain transactions, including many real property transactions. New housing rebates are the most common, which were introduced effectively to allow buyers of homes having a purchase price of less than $450,000 to recover a portion of the GST paid on the purchase in an effort to combat the potential affordability problem. This rebate is called the GST/HST New Housing Rebate. Individuals entitled to the rebate are generally required to file a rebate application form with the CRA within two years of the purchase. Sometimes, developers can agree to credit the rebate to the buyer and submit the form to the CRA, leading to a corresponding GST deduction for the developer. New housing rebate applications are commonly audited and the rebates are refused if the CRA believes that one of the conditions for the rebate has not been met, such as the requirement that the property being purchased must have been intended to be used as the buyer's primary place of residence.

rebates
a form of tax recovery that allows non-businesses to recover GST paid with respect to certain transactions

As a Licensee...

It is important to note that this new housing rebate may appear as a credit to the buyer on a statement of adjustments. A detailed discussion of statements of adjustments can be found in Chapter 24: "From Contract to Completion".

The Administration of the Tax

The final significant component of GST involves the administration of the ETA and, in particular, the dispute resolution processes. As previously discussed, the CRA has the power to audit and then assess a buyer or seller in respect of a GST amount. Once the CRA assesses – correctly or not – the amount assessed becomes a debt owed by the assessed party, such as a seller of real property, to the CRA. That debt is ordinarily collectible immediately, even if the assessed party intends to dispute the *assessment*.

The party generally has 90 days from the date of the assessment to file a document with the CRA known as an *objection*, which sets out the facts and reasons needed to explain why the assessment must be cancelled. The objection must be reviewed by a separate division of the CRA known as the Appeals Division. If an appeals officer at the CRA confirms the assessment, then the assessed party has 90 days to appeal the matter to the Tax Court of Canada. A decision of the Tax Court can be appealed to the Federal Court of Appeal and then possibly on to the Supreme Court of Canada.

assessment
a determination by the CRA of the amount of tax owed by the assessed party

objection
a document, filed by an assessed party with the CRA, setting out the facts and reasons for which an assessment is being disputed

Application of GST to Real Estate

Much of the discussion so far has focused on the more broadly applicable features of the GST system. Now we turn to more concrete issues related to the application of GST to real property; namely, the meaning and significance of the term "residential complex", the so-called used residential housing exemption, the "self-supply" rule for newly constructed homes, and the determination of whether the price of a taxable home is GST-inclusive. These are the GST issues that arise most commonly for licensees.

Residential Complex, the Hotel Exclusion and Excess Land

The term residential complex is central to understanding how the GST applies to real property.

As previously discussed, for commercial real property transactions, it is generally the buyer who is responsible for reporting the GST and claiming an input tax credit if applicable. However, if the property is identified as a residential complex, the seller may be required to collect the GST. The definition of residential complex appears in subsection 123(1) of the ETA and includes most dwelling units (including detached homes and condominium units) other than those akin to a hotel. Any type of home which is used for short-term rentals, particularly through Airbnb or similar marketing sites, would fall within the hotel exclusion and is generally subject to GST (which will be reported and paid by the buyer) no matter the age or history of use as a family home.

The residential complex definition also includes only land that is "reasonably necessary" for the use and enjoyment of the complex as a place of residence. This is significant as under the ETA, the GST status of excess land must be considered separately from the GST status of the residential complex. The Courts have generally held that the meaning of the words "reasonably necessary" involves an objective test considering whether an owner could have reasonably used and enjoyed the house as a place of residence without also having the excess land.

Even if excess land must be considered separately for GST purposes, this does not mean that the excess land is necessarily taxable. There are several exemptions unrelated to residential complexes in Schedule V to the ETA that might apply, such as one for bare land sold by an individual that was not used for a business.

The concepts of whether GST is payable and who pays the GST can be quite complicated in the context of a hotel or hotel-like property and when excess or bare land is involved. Licensees are encouraged to refer a client to a tax professional for advice on GST.

Used Residential Housing and the Concept of a Builder

Contrary to what may be understood in the real estate industry, there is no GST exemption for used residential housing provided for in the ETA, just as there is no specific rule affirming that new housing is necessarily taxable. Instead, there is an exemption for sales by a person who is not a *builder*. Licensees should be familiar with the meaning of a builder under the ETA.

builder (GST)
a party who holds an interest in real property while it is being constructed, including anyone who holds an interest in newly constructed property after construction is completed but before it is first occupied as a place of residence

The builder definition in the ETA is far broader than the ordinary meaning of the word. A builder for GST purposes is essentially anyone who holds an interest in real property while it is being constructed or substantially renovated. It also includes anyone who holds such an interest in newly constructed or substantially renovated real property before it is first occupied as a place of residence, even if they only acquired such an interest after construction was completed. If the person is an individual, then the builder definition further requires that the person be acting in the course of a business or an adventure or concern in the nature of trade, such as a developer.

The concept of a builder comes into play where an individual has possibly engaged in a one-time development and sale of a new home. Is such an individual a builder for GST purposes?

Example

Mr. Jones purchases a brand new home in Vancouver with the intention of using it as his primary place of residence. However, prior to moving into the home, Mr. Jones is transferred from his current job in Vancouver to a posting in Halifax. Mr. Jones decides to sell the Vancouver house and purchase a new house in Halifax. In this case, Mr. Jones is not viewed as a builder because he is selling the yet-to-be occupied house otherwise than in the course of a business or in the course of an adventure or concern in the nature of trade.

Source: GST/HST New Memorandum 19.2.1, "Residential Real Property – Sales" (February 1998).

This generally turns on whether the individual built the home for resale, or whether it was built for their own personal use but a change of plans arose that caused a sale to occur prematurely. This question arises where an individual has built a new home but then sells it before having lived in it or before having lived in it for very long. Certainly, there are reasonable explanations for such a scenario, such as marital distress. However, the CRA views this scenario with serious concern, intent on ensuring "one-off" developers do not introduce new housing into the market without the imposition of GST.

During periods of rapidly rising housing prices, the possibility of resale may be on an owner's mind. In determining whether GST may apply upon sale, the Courts will look to whether profit was the "operating intention" of the owner.

In light of the foregoing, a newly constructed or substantially renovated home that the owner insists can be sold GST-exempt is perhaps the most common circumstance in which expert GST advice is required. In such cases, a licensee who fails to identify the need for such advice puts their client at considerable risk.

Example

Consider an owner whose children have recently moved out of the family home. The owner decides to undertake a substantial renovation – partly with the expectation they would live there after the renovation but also partly with the hope that the renovation will dramatically increase the value of the home for resale purposes. During the renovation, the owner decides that they want to move closer to their eldest child in a different city. They move back in to the home briefly and then list it for sale. Based on the owner's assumption that the sale of the home should be exempt from GST, the licensee proceeds to include the following in the MLS® listing: "Brand new home. No GST."

In this case, the licensee has failed to identify to the owner that the sale of the home might attract GST and that they should pursue expert advice. As well, because of the statement in the listing, the licensee might have actively taken steps to attract an audit and assessment of GST by the CRA.

ALERT

A licensee was reprimanded by the former Real Estate Council for failing to obtain independent professional advice with respect to whether GST was applicable to the transaction in which her client was involved. As a result, the licensee was required to pay a discipline penalty of $2,500, pay enforcement expenses of $1,500, and successfully complete the Real Estate Trading Services Remedial Education Course. (2016 CanLII 37937 (BC REC))

A licensee was reprimanded by the former Real Estate Council for, among other things, making false representations that the home he was listing was a new show home and that the list price was for $699,000 plus GST. In fact, the licensee was living in the home, and therefore the home was not new and the purchase was not subject to GST. The licensee's licence was suspended for 60 days, and he was ordered to pay enforcement expenses of $1,000, and to successfully complete the Real Estate Trading Services Remedial Education Course. (2012 CanLII 39105 (BC REC))

Self-Supply Rule

Generally, if a builder sells new housing, then they have made a taxable supply and must collect and remit GST on the sale. However, there is another GST rule that applies where the builder moved into the home before the sale. This is known as the "self-supply" rule.

The "self-supply" rule deems the builder to have sold the home to themselves at the time of the move-in. This essentially means that the builder owes GST on the value of the home even though there was no actual sale. The same rule applies when the builder rents out the home to a long-term tenant prior to a sale; the move-in by the tenant triggers the "self-supply" and the tax is owed. The eventual sale is exempt, given that the tax liability already arose on the move-in.

In such circumstances (either a taxable sale or a "self-supply"), builders are generally entitled to recover the GST they paid on their construction costs, either through an input tax credit or what is known as a non-registrant rebate.

As previously explained, it is important for licensees involved in the purchase or sale of new, or relatively new, housing to think critically about whether the seller might be a builder and to seek expert advice, if necessary, regarding the possible implications in the particular case. More specifically, if the seller is indeed a builder and they lived in the home prior to the sale, then the obligation to pay GST might be on the builder by virtue of the "self-supply" rule, even though the home was eventually sold. In such cases, the liability for the GST does not shift to the buyer. It remains on the seller. If the buyer is charged the GST when the seller should have paid the GST themselves at an earlier date, then the result might be a double payment of GST.

The buyer would have paid the tax in error and, if the issue is identified within two years of the payment, the buyer could apply for a refund.

703008 B.C. Ltd. v. The Queen, 2015 TCC 208

In this case, a struggling developer of a large condominium complex in Kelowna offered the public long-term leases with an option to purchase instead of an outright sale. The Court found that the developer had misunderstood its GST obligations, affirming that the "self-supply" rule applied. The developer was liable to pay the GST on each lease, and anyone who paid GST to the developer within such arrangements was entitled to a refund.

Is GST Extra?

Finally, there is one remaining issue for a licensee to consider when acting for a buyer or seller in a transaction that might be subject to GST; namely, whether the GST, if it applies, will be included within the purchase price, or whether it will be extra. If the purchase documents are silent on this point, the Courts have generally said that the GST is extra. If acting for the buyer, a licensee should use the following clause: *The purchase price to include GST, if applicable*. That way, if GST indeed applies, then it will be included in the purchase price and the buyer will not have to pay any extra for GST. The opposite should be considered when acting for a seller, who will want either to keep the purchase documents silent or to have them affirm that tax is extra, if it applies, by including the recommended clause: *The purchase price to not include GST, if applicable.*

Current Issues

While many of the GST issues described above are constantly present, there are other GST issues that appear to have current significance, in part because of the CRA's existing audit practices and in part because of recent trends in the real estate market.

Short-Term Rentals

The first such issue involves resort condos. Certain licensees in resort towns, such as Whistler, encourage their clients purchasing new condos or those exclusively used for short-term rentals to "defer the GST". This involves registering for GST and "self-assessing", thus indicating an intention to use the condo mainly for commercial activities, but then using it mainly for personal purposes. Here, the buyer would not actually be entitled to the input tax credit.

A related issue concerns condo-owners who use their property mainly for short-term rentals, but then wind up in disputes with the CRA concerning how the percentage of use in commercial activities ought to be determined. For instance, the CRA considers only nights rented out, and not nights merely listed for rental, as being included in the count of commercial use. Owners engaged in such use should be encouraged to make clear, comprehensive logs detailing how the property was used and when. In this regard, the CRA provides the following example:

Example

Sally made a taxable purchase of a condominium unit at a ski resort on December 1. She planned on using the condo for her personal use for 35 days of the year, and the rest was to be for short-term rentals. Sally registered for GST/HST before purchasing the condo so she would not have to pay GST/HST on its purchase. Sally claimed a full input tax credit based on her understanding that the condo would be in the rental pool for 330 days (365 – 35 days of personal use). After the year ended, the number of days her condo was actually rented on a taxable short-term basis was 40 days, and the number of days that her condo was occupied for personal use was 35 days. For each reporting period, Sally is required to determine the extent the condo was used for taxable short-term rentals using a method that is fair and reasonable and applied consistently throughout the year. It would have been reasonable to assume that Sally's condo would be rented 40 days of the year. The CRA provides the following example:

40 days rental ÷ (35 days personal + 40 days rental) = 53%.

Any cumulative change of use in commercial activities of 10% or more in one reporting period will trigger a change in use for GST/HST purposes.

Source: GST/HST Info Sheet GI-025, "The GST/HST and the Purchase, Use and Sale of Vacation Properties by Individuals" (February 2007).

Assignment Fees

A second issue to arise recently involves the application of GST to assignment fees. A person who assigns an agreement to purchase a newly constructed home might constitute a builder of the home and therefore GST might apply to the assignment fee. If the assignor acted in the course of a business or an adventure or concern in the nature of trade, the assignment is generally subject to GST, which must be calculated. Assignment fees ordinarily include a deposit recovery amount. While the Courts have made clear that the GST calculation should not include the deposit, the CRA's policies continue to differ on that point.

Residential Care Facilities

Residential care facilities continue to attract significant GST scrutiny. Recent legislative changes effectively ensure that most residential care facilities will be treated as if they are apartment buildings. Among other things, this means that if a developer builds a residential care facility and a first tenant moves in, this will generally trip the "self-supply" rule.

Leases

Another issue occurs when a lease may not be considered a lease. For instance, if a developer grants a 99-year lease in a newly constructed home, is this considered a "sale" for GST purposes? The Courts have ruled that the developer must still "self-assess" in accordance with the "self-supply" rule. However, expert advice should be sought to ensure that the matter is addressed properly.

First Nations Land

Finally, developments on reserve or treaty land raise a series of important and complex GST issues. Licensees involved with such developments should ensure their clients obtain expert GST advice, if possible, prior to construction.

Property Transfer Tax

Property Transfer Tax ("PTT") is a tax that licensees should understand because PTT specifically applies to the transfer of real property.

Imposition of the PTT

Under the *Property Transfer Tax Act* (the "PTTA"), the PTT generally applies to any transfer of an interest in real property that is registered at the Land Title Office. These transfers are referred to as taxable transactions, which include most commonly the sale of a fee simple interest in a home that is conveyed from a seller to a buyer. Taxable transactions also include other interests in real property that can, and often are, registered in the Land Title Office, such as the right to purchase a property (conveyed through an agreement for sale), a life estate, and a Crown grant.

Where PTT applies, it is payable by the buyer (also referred to as the transferee in the PTTA to describe whomever will appear on title as the holder of the interest). The amount of the tax is based on the fair market value of the property at the date of registration, subject to any applicable exemptions. The definition of *fair market value* in the PTTA is complex. Nonetheless, it essentially refers to the amount that would have been paid for the property (i.e., both land and any improvements) had it been sold in an open market by a willing seller to a willing buyer free of any mortgage or other charge.

fair market value
the amount that would have been paid for a property had it been sold in an open market by a willing buyer free of any mortgage or other charge

Ordinarily, the fair market value is the sale price paid by the buyer to the seller. In certain circumstances, however, it will not be that simple. For example, occasionally, a transaction will involve a barter (i.e., trade) component, which will reduce the amount actually paid in cash to the seller for the property. Additionally, when there is a long closing period, the property might increase in value significantly between the time the price is agreed to and the time the closing occurs. In that case, if the contract is assigned during that period, then arguably any assignment fee paid to the original buyer should be included in the price of the property for PTT purposes, even though it would exceed the price owed to the seller.

There are various exceptions to these fair market value rules for pre-construction condominium units. In short, despite any increase in the value of a unit between when the price was agreed to and when the transaction closes, PTT is only paid on the price itself. Generally, this price will be the purchase price agreed to in the purchase and sale agreement for the unit. However, in the case where the pre-construction condominium unit was subject to one or more assignments, PTT is paid on not only the price of the unit, but also in respect of any additional consideration paid to any assignors and the developer. Note that in the case where an assignee agrees with the developer to purchase upgrades to the strata lot (e.g. improved fittings, additional construction, etc.), the consideration paid for the upgrades by the assignee must also be included for property transfer tax purposes, as this is part of the total consideration paid by the assignee for the strata lot.

With respect to commercial real property, it is important to keep in mind that PTT is generally calculated with reference to all fixtures, including some machinery or equipment that might be subject to Provincial Sales Tax as well. In this case, the distinction between fixtures and chattels (explored in Chapter 3: "What the Purchaser Buys: "Estates and Interests in Land") is important. In one particular case (*Zellstoff Celgar Limited v. British Columbia*, 2014 BCCA 279), the categorization of a pulp mill's machinery and equipment as fixtures (which was disputed by the buyers of the property) caused the total PTT payable to rise from less than $300,000 to $4.5 million!

Once the fair market value of the property has been ascertained, the next step is applying the rate(s) of tax in order to calculate the PTT payable. Since 2018, the applicable rates have been:

- 1% on the first $200,000;
- 2% on the portion of the fair market value greater than $200,000 and up to and including $2,000,000;
- 3% on the portion of the fair market value greater than $2,000,000; and
- if the property is residential, a further 2% on the portion of the fair market value greater than $3,000,000 (effective February 21, 2018).

Example

If the fair market value of a home is $3,000,000, then the PTT payable will be $68,000 (i.e., $2,000 on the first $200,000; $36,000 on the next $1,800,000; and then $30,000 on the remaining $1,000,000).

There are numerous exemptions that potentially apply. Some exemptions that have been often used include exemptions for transfers of principal residences amongst related individuals or a transfer between spouses pursuant to a written separation agreement or court order under the *Family Law Act*, and also transfers of family farms.

First Time Home Buyers' Program

The First Time Home Buyers' Program in British Columbia allows eligible buyers to claim an exemption from property transfer tax for certain eligible residential properties. Through this program, the PTT payable can possibly be eliminated in full on the purchase of an individual's first home. The conditions for the Program include the following:

- The buyer must be a Canadian citizen or permanent resident of Canada.
- The buyer generally must have lived in the province for a year before the purchase.
- The buyer cannot have previously owned a principal residence anywhere in the world.
- The property must become the buyer's principal residence, have a fair market value of less than $500,000, and be 0.5 hectares or smaller.

There is also a partial exemption provided if the property has a fair market value not more than $25,000 above the threshold (i.e., up to $525,000), is larger than 0.5 hectares, or has another building on the property other than the principal residence. The threshold amounts listed here are applicable to purchases registered on or after February 22, 2017. Please note that the provincial government may change the threshold amounts at any time.

If two individuals are buying the property and one of the buyers has previously owned a home, then the amount of the relief is limited with reference to the interest in the property to be acquired by the other buyer (if they are otherwise eligible). As a related note, if neither of the individuals previously owned a home (and are each eligible independently), then they cannot combine the threshold amounts on the purchase of a property for the purposes of the Program. In other words, they cannot together purchase a $1 million property exempt from PTT in its entirety.

Newly Built Home Exemption Program

The Newly Built Home Exemption was introduced in 2016 for a buyer of a newly built home and the conditions for this relief are closely related to those of the First Time Home Buyers Program. For example, the buyer must be an individual who is a Canadian citizen or permanent resident, and the property must be used as their principal residence and have a fair value market of $750,000 or less. A partial exemption is available if the fair market value is more than $750,000 but less than $800,000. The rationale for allowing higher thresholds for newly built homes appears to be to encourage the continued inclusion of new homes in the real estate market.

ALERT

While there are transactions that are exempt from PTT under the PTTA, the PTTA also has provisions to prevent transactions that are structured to primarily reduce, avoid, or defer PTT and those involved in these transactions are subject to consequences, such as administrative penalties. Therefore, if a client asks a real estate professional about avoiding PTT, the real estate professional should not advise their client and should, instead, refer them to seek independent professional tax and legal advice.

Functioning of the PTT

Any PTT payable by the buyer must be paid to the government before the buyer's interest in the property can be registered. In contrast with the operation of GST, the seller has no collection obligation. Rather, PTT is paid directly to the government by the buyer along with a PTT return, which must be submitted to the Land Title Office.

In 2016, the province introduced a disclosure requirement for an interest acquired through a bare trust. A bare trust is essentially a company that sits on title as the registered owner of the property but only as an undisclosed agent for the true (or "beneficial") owner. The bare trustee is not the real owner of the property and has no independent discretion to sell or mortgage it, for instance. It takes instructions from the beneficial owner. Buyers often use bare trusts for privacy or other purposes. In such cases, in addition to the regular information to be provided on the PTT return, the buyer must complete a special schedule containing information about the party or parties who will become the beneficial owner(s) upon registration of the transfer. More specifically, the schedule requests citizenship details, which are effectively intended to help the province gather information about foreign real property ownership in the province as well as to facilitate audits concerning the Foreign Buyers' Tax (discussed in the following section).

The province regularly audits PTT returns to determine if, in its view, the correct amount of PTT has been paid on a transfer. The audits often result in PTT assessments being made against transferees. An assessment can be met with an objection, which must be reviewed by the Province. If the assessment is confirmed, then the matter can be appealed to the British Columbia Supreme Court and, if necessary, then on to the British Columbia Court of Appeal and possibly the Supreme Court of Canada.

The Additional PTT for Foreign Buyers

The Foreign Buyers' Tax was introduced in 2016 in order to address the rapidly increasing housing prices in the Greater Vancouver Regional District and the perception that interest from outside of Canada was driving up real estate prices. Accordingly, the Province made changes to the PTTA that essentially added an extra rate of tax on certain purchases. This means that, after the calculation of the basic PTT payable, the Foreign Buyers' Tax must be added to the PTT amount. Effective February 21, 2018, the Foreign Buyers' Tax was increased from 15% to 20%. Furthermore, the tax was extended outside of the Greater Vancouver Regional District to include the Capital Regional District, Fraser Valley, Central Okanagan, and the Nanaimo Regional District.

Example

Based on the example above where the fair market value of a home is $3,000,000, that would mean an extra $600,000 of PTT on the purchase as the amount of the Foreign Buyers' Tax, leading to a total PTT bill of $668,000 (i.e., $600,000 plus $68,000).

There are two main conditions for the application of the Foreign Buyers' Tax. The first is the nature and location of the property. In short, it only applies to residential property within the areas described previously. The second condition involves the identity of the buyer (i.e., the transferee). Briefly, the Foreign Buyers' Tax provisions of the PTTA focus on three potential buyers that are subject to the additional PTT: foreign nationals, foreign corporations and taxable trustees. The definition of a foreign national is straightforward. It refers to a person who is not a Canadian citizen or permanent resident of Canada. The definitions of a foreign corporation or taxable trustee, however, are very complex:

- A foreign corporation is a corporation that is not incorporated in Canada or is controlled by a foreign national or another foreign corporation. The question of control is interpreted with reference to the *Income Tax Act*. Despite the apparent simplicity of the word, it is a very broad term that has been subject to considerable discussion by the Courts in the income tax context. For example, one cannot assume that a corporation created in the province, without any "foreign" shareholders, is necessarily outside the scope of the definition of a foreign corporation for the purposes of the Foreign Buyers' Tax.
- A taxable trustee is a trustee of a trust that is holding title to property and is a foreign national or foreign corporation. Alternatively, a taxable trustee can also include a Canadian citizen or non-foreign corporation that is holding title for a foreign national or foreign corporation.

These classifications are very challenging to apply. Licensees should refer clients to tax professionals who are familiar with these rules and can provide opinions on how the definition might be interpreted by the Courts.

There are rules in the PTTA to accommodate split scenarios, such as where a single property has both residential and commercial components. In that case, the Foreign Buyers' Tax would only relate to the residential component rather than the entire purchase. However, no such rule applies when there are multiple buyers and, for example, only one of the buyers is a foreign national. In such circumstances, the entire purchase might be subject to the additional tax. The same would apply where there is a single bare trustee and multiple beneficiaries, one of whom is a foreign national or foreign corporation, or multiple bare trustees, only one of whom is a foreign national or foreign corporation.

There are a number of issues related to the Foreign Buyers' Tax that have prompted additional concern. For example, the PTTA now includes what is known as an "anti-avoidance rule". It is a provision intended to penalize any steps taken that are inconsistent with the spirit of the law, even though those steps might comply with the text of the law. That said, individuals are nonetheless entitled to take any legal measures available to minimize their tax burden. Over time, interpretation of the "anti-avoidance rule" will become clearer.

Additional concerns involve the application of certain exemptions. There are a handful of exemptions that apply to the basic PTT but not to the Foreign Buyers' Tax. For example, if a Canadian citizen's spouse dies and leaves title to the family home to the surviving foreign national spouse, then the Foreign Buyers' Tax might potentially apply on the transfer of title, even though the basic PTT would be relieved.

After the Foreign Buyers' Tax was introduced, the Province subsequently introduced new exemptions and rebates for foreign national individuals who are living and working in the areas of British Columbia subject to the Foreign Buyers' Tax. One such exemption applies to individuals who reside under the British Columbia Provincial Nominee Program, which is a labour-based method for extending permanent residency status to foreign workers. If a property is purchased by such an individual and it is subsequently used as their principal residence, the exemption applies. As well, there is a rebate available for an individual who purchases property, pays the Foreign Buyers' Tax, and within a year becomes a permanent resident or Canadian citizen. In that case, the individual would be eligible to claim back the Foreign Buyers' Tax that they paid.

Shave v. Century 21 Assurance Realty, 2022 BCSC 183

This case sets out the responsibilities that licensees have when it comes to providing information to their clients about the Foreign Buyers' Tax and handling Foreign Buyers' Tax issues in the course of their practice. In this case, the buyers had recently moved to BC from the United Kingdom for work. The licensee, as designated agent for the buyers, was aware of this. The buyers made a conditional offer on a property. The offer contained a representation that the buyers were not Canadian citizens or permanent residents of Canada. That was true. The offer transaction did not proceed.

The buyers then travelled to the United States to finalize their work visas. The licensee misunderstood what the buyers said about the trip and thought that the buyers had obtained their permanent residency. The buyers made an offer on a different property. The licensee changed the Canadian residency declaration to "yes" without confirming that with the buyers. While the licensee had thoroughly reviewed the first offer, in person, with the buyers, the licensee did not review the second offer with the buyers. Instead, the licensee sent it by email for electronic signature by the buyers, asking them to read it carefully. The licensee did not bring the residency change to the attention of the buyers. After the transaction completed, the province charged the buyers with the 20% Foreign Buyers' Tax – almost $175,000.

The court found the licensee 75% liable, the buyer's lawyer 20% liable and the buyers 5% liable. The court found the licensee had a duty to advise the buyers of the existence of the tax. However, the licensee did not need to advise on whether the tax would be payable. The licensee needed to bring the issue to the attention of the buyers so they could seek appropriate advice. The judge found "I find that any reasonable Realtor® would understand that the risk, or the requirement, of paying an extra 20% for a family home would be an extremely important piece of information for prospective purchasers." Further the judge found that the licensee was also negligent when he made a change on the standard form contract for the second offer despite knowing that the buyers had declared that they were not permanent residents in the first offer. Having the information that the buyers were not permanent residents at the start of his relationship with them, the licensee clearly had an obligation to confirm their status at the time of the second offer. The licensee's explanation for the change was the licensee's understanding that the buyer's citizenship was "finalized" when they made their trip to the United States.

Licensees should take several lessons from this case:

- Licensees do not have to be experts on matters of Property Transfer Tax. They need to advise potential buyers of the existence of the tax, but beyond that, they need to send the client to a professional advisor for proper advice.
- Licensees must also not make changes to documents without thinking about the change. In this case, the licensee was mistaken about the facts of the case and made a significant change to the contract of purchase and sale without confirming the matter with the buyers. Remember, clients usually sign documents prepared for them by licensees without too much thought. This is because trading services licensees are considered experts in real estate sales. Clients assume, understandably, that everything is all right, and that their advisors would tell them if this was not the case.

As a Licensee...

On January 1, 2023, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the "Act") and its regulations came into force. The Act bans the purchase of residential real estate by non-Canadians until January 1, 2025. Certain individuals are exempt from the prohibition, such as temporary residents if they are international students, work permit holders, or refugees, but only if certain conditions are met in each case. In addition, there are also exemptions for certain estate, family law, trust, secured lending, and property development scenarios. Because of differing definitions of "residential property" and differing sets of exclusions, it may be possible for someone to be able to purchase residential real estate without breaching the Act, and still be subject to pay the Foreign Buyers' Tax. As a result, it is important for licensees to understand the Foreign Buyers' Tax and how it works. More information about the prohibition can be found in Chapter 11: "Contracts for Real Estate Transactions".

Withholding Taxes for Non-Residents Who Sell Property

Under Canadian income tax law, a non-resident of Canada selling Canadian real property is subject to Canadian income tax on any gain on sale. If the seller is a resident of Canada, the buyer does not need to withhold part of the purchase amount. If the seller is not a resident of Canada, the buyer is required to withhold 25% of the gross purchase price if the property is non-depreciable property (a residence of the seller) or 50% where the real estate is a depreciable property (a building used for rental or business purposes).

The withholding amount is held in a lawyer's trust account in trust for the Canada Revenue Agency until a Tax Clearance Certificate is obtained. Once the Tax Clearance Certificate is obtained, the taxes are paid from the withholding amount and the seller receives any amount left over. The withholding amount is not a final tax, but a temporary withholding tax, as there may be applicable treaties that reduce the tax amount owed.

A seller who wishes to avoid this withholding amount must provide to the buyer, on or before closing, a Tax Clearance Certificate from the Canada Revenue Agency certifying the applicable taxes on the transaction. If the seller does this then no withholding amount if necessary. Instead, on the closing date, the amount stated in the Tax Clearance Certificate is deducted from the sale proceeds and sent directly to the federal government by the seller's lawyer.

ALERT

It is very important that purchasers are made aware of the withholding tax requirement whenever they are purchasing from a seller who is a non-resident. If the purchaser, unsure of the seller's residency status, fails to make the required withholding, and then the seller later fails to pay their applicable taxes, the *purchaser* may be held responsible for paying this tax to the CRA. This amount of tax could be substantial. Under section 116(5) of the *Income Tax Act*, purchasers can protect themselves from this liability by making a "reasonable inquiry" about the seller's residency status.

In the case of *Mao v. Liu*, 2017 BCSC 226, the buyers hired the defendant, a notary public, to assist them with their purchase of a property. The transaction was conducted by a creditor of the sellers, under a court-ordered sale process. In the engagement letter signed by the notary, the notary agreed to take on the duty to make the appropriate inquiries on the purchaser's behalf.

The notary tried to determine whether or not the seller was a Canadian resident by contacting the creditors of the seller and asking that they provide the appropriate representations. However, the creditors refused, because they were not the sellers and therefore not able to provide this assurance. Nevertheless, the notary allowed the transaction to go forward. The notary failed to advise his clients of the risks of continuing with the transaction, and did not advise that any tax be withheld. After the sale completed, it was discovered that one of the sellers was in fact not a Canadian resident, and so the buyers were assessed over $695,000 in taxes. The court found that in this case, the notary failed to take the steps that would have constituted a reasonable inquiry, and therefore, the notary was found to be liable to his clients for damages.

While licensees would not be involved in the conveyance of a property, they should try to assist their clients in determining if a seller is non-resident and informing the lawyer or notary involved in the conveyance, especially if there is any indication that the seller might be non-resident. Failure to report that a seller is non-resident when they in fact are could result in substantial financial risk to the client.

Taxes on Capital Gains Upon Sale of Real Property

When a property is sold for a price greater than what it was purchased for, the seller may realize what is called a capital gain. For example, consider a party who purchased a property for $1,000,000 and later sells it for $1,500,000. The $500,000 profit made on the sale of the property will most commonly be treated as a *capital gain* for tax purposes.

capital gain
profit earned from the sale of a property or other investment

Usually, 50% of capital gains are taxable ($250,000 in the previous example) at an individual's tax rate (or at the corporate tax rate, if applicable). However, capital gains are exempt from taxation if the property sold was the seller's principal residence. A property will generally qualify as a principal residence where the seller has lived in the property during the year and no other property is designated as the principal residence. However, in the case that the property was not the seller's principal residence for certain years during the time they owned it, or a part of the property was not used as the principal residence, taxes may be owed on a portion of the capital gain corresponding to those years or that part of the property. For example, if a portion of the property was used for rental income, the question of whether the entire property will be considered a principal residence (and be completely exempt from taxation) or if taxes will be due for the rented portion of the property will depend on the surrounding circumstances.

business income
money earned from any activity that is carried on for the purpose of making a profit

In certain instances, profit made on the sale of a property will be categorized as *business income* rather than as a capital gain. If this is the case, then 100% of the profit is taxable ($500,000 in the previous example) at an individual's tax rate (or at the corporate tax rate, if applicable). Business income includes money earned from any activity that is carried on for the purpose of making a profit.

Effective January 1, 2023, profits from a "flipped property" will be deemed to be business income, as opposed to a capital gain if the property was held for fewer than 12 months, subject to numerous exceptions. Such a property will also not qualify for the principal residence exemption. Generally speaking, a "flipped property" is a housing unit (i.e., a residential property) that was purchased and sold by the taxpayer with an intent of making a profit.

Exceptions to these anti-flipping rules include:

- the death of the taxpayer (or related person);
- the breakdown of the marriage or common-law partnership of the taxpayer;
- the threat to the personal safety of the taxpayer (or a related person);
- an "eligible relocation" of the taxpayer or their spouse or common-law partner (e.g., moving closer to work);
- the involuntary termination of employment of the taxpayer or the taxpayer's spouse or common-law partner; and
- the insolvency of the taxpayer.

There are more exclusions, and each exclusion is technical and can come with many conditions. As such, licensees should never advise clients on the tax implications of real estate sales.

The CRA may still reassess a seller on account of business income in respect of the profits from the sale of a property, even if the property was sold before January 1, 2023, or if it was held beyond the 12 months. While there is no law to automatically deem the sale as a "flipped property" in this case, the CRA may consider the following factors:

- The intention of the owner at the time they purchased the property and the extent to which they carried out that intention
- The financing used to purchase the property (e.g., short term financing indicates an intention to sell quickly for profit)
- The owner's profession and the extent to which they have previous dealings in real estate
- The length of time the seller owned the property
- The circumstances surrounding the sale of the property, including the owner's motivation for selling the property
- Whether other parties have an interest in the property, and if so, how they intend to use it

***Happy Valley Farms Ltd. v. The Queen,* [1986] 2 C.T.C. 259 (Fed. T.D.)**

The Court in *Happy Valley Farms* identified several tests that have been used to determine whether a gain is of an income or capital nature. These include:

- The nature of the property sold;
- The length of the period of ownership;
- The frequency or number of other similar transactions by the taxpayer;
- Work expended on or in connection with the property realized;
- The circumstances that were responsible for the sale of the property; and
- The motive of the taxpayer.

While all of these factors have been considered, the court in *Happy Valley Farms* noted that the motive of the taxpayer generally has the greatest influence on the Court. Canadian courts have referred to the "secondary intention" test, whereby a gain on the sale of an asset would be held taxable as income, rather than capital, if the Court believed that, at the time of acquisition, the taxpayer had in their mind the possibility of reselling as an operating motivation for the acquisition. This means that the taxpayer must have had hopes of being able to resell for a profit upon a specific type of circumstance arising.

Wall v. Canada, 2021 FCA 132

In this case, a licensee bought, renovated, and resold three different properties in Vancouver between 2004 and 2010, making a profit on each resale (a practice sometimes referred to as "flipping"). The licensee failed to report any income arising on the sale of the properties to the Canada Revenue Agency, assuming that the properties would qualify as his principal residence for the purposes of the *Income Tax Act*.

The licensee was later reassessed by the Canada Revenue Agency, and the income generated from the sale of the three properties was attributed to the licensee as business income. The licensee disputed the reassessments and appealed to the Tax Court. After hearing the evidence, the Tax Court Judge was not convinced that the licensee actually lived in any of the three homes. The Tax Court Judge stated, "it is abundantly clear from the evidence in this case that Mr. Wall carried on the development of the Three Homes in the course of a real estate development business which he carried on as a sole proprietor, and that the profit he earned therefrom was accordingly earned on account of income." The licensee further appealed the Tax Court judgment to the Federal Court of Appeals. However, his appeal was dismissed.

Where there is a reasonable possibility that a client may be involved in "flipping" activities, licensees should avoid suggesting that the sale of the client's property will be exempt from tax based on the principal residence exemption. Clients who may be engaged in these types of activities should be told to consult with a lawyer about potential tax liabilities that they may face in a particular transaction.

TAXES PAID WHILE HOLDING REAL PROPERTY

The remainder of this chapter discusses taxes that apply to the ownership and use of real property.

Property Tax

Licensees must have a basic understanding of the structure of property tax in British Columbia: the terminology, the determination of gross and net taxes, and the assessment and dispute processes.

Licensees are frequently called upon to offer advice concerning real property assessments and taxes. For instance, at the time a property is sold, some allocation of taxes between the seller and buyer is generally required; a seller or buyer may ask what their tax liability will be on the closing date. At another level, licensees may be asked for their opinion as to the accuracy of a property assessment. Property owners may have questions regarding whether their assessment is too high, whether they are being treated fairly relative to neighbouring properties, and how they can appeal their assessment.

With the Property Tax system, a given tax rate applies with respect to each $1,000 of net taxable value (called a "mill rate"). The *net taxable value* is the actual value of the real property as determined by the assessor, less any exemptions that apply.

net taxable value
the actual value of the real property, as determined by the assessor, less any exemptions which apply. This value, when multiplied by the tax rate, produces the amount of real property taxes payable.

Example

A mill rate of 4.62 means a real property tax of $4.62 for every $1,000 in net taxable value. If a property has a net taxable value of $1 million and the tax rate is 4.9762, then the tax payable is $4,976.20.

There is no single statute in British Columbia that provides a comprehensive explanation of the Property Tax system. At the present time, the significant legislation includes:

- *Assessment Act* (RSBC 1996, c. 20)
- *Assessment Authority Act* (RSBC 1996, c. 21)
- *Community Charter* (SBC 2003, c. 26)
- *Home Owner Grant Act* (RSBC 1996, c. 194)
- *Land Tax Deferment Act* (RSBC 1996, c. 249)
- *Local Government Act* (RSBC 2015, c. 1)
- *School Act* (RSBC 1996, s. 412)
- *Taxation (Rural Area) Act* (RSBC 1996, c. 448)
- *Vancouver Charter* (SBC 1953, c. 55)

While this is a simplification of the Property Tax system currently in operation in British Columbia, it serves as a foundation from which to explore the details of the system as a whole; that is, the tax liability (i.e., who pays taxes?), the tax base (i.e., what asset is taxed?), the basis of assessment (i.e., what value is taxed?), the tax rates (i.e., how are they set?), the exemptions and reliefs from taxation, the administrative arrangements, and the appeals procedure. Property is assessed by BC Assessment, a Crown corporation of the British Columbia government.

Additional School Tax for Residential Properties Assessed at Over $3 Million

Every property owner pays school tax as a component of their property tax in order to share in the cost of providing education to children in the province. The school tax is not based on whether a property owner has children or whether the children of a property owner are enrolled in the public school system.

The British Columbia *School Act* includes an additional school tax on certain residential properties assessed at over $3 million. This additional tax applies only to the portion of a residential property's taxable assessed value that exceeds $3 million. It is not applied to the first $3 million in value. If a property is classified as mixed-use, the additional tax applies only to the residential portion of the property that has a taxable assessed value over $3 million. The additional tax rate is 0.2% on the portion of the assessed value between $3 million and $4 million, and 0.4% on the portion of the assessed value exceeding $4 million.

The Tax Liability: Who Pays the Property Tax?

The first aspect of a real property tax system is to identify who has the statutory liability for payment of the tax. In British Columbia, as in most provinces, the liability to pay the tax is on the owner of the interest in real property being taxed.

The *Community Charter*, which is one of the relevant Property Tax statutes, clearly establishes the liability of the owner:

> s. 251. (1) A person who, in any year, is an assessed owner of land, improvements or both, in a municipality, or of a taxable interest in them, is liable to the municipality for
>
> (a) all taxes imposed by the municipality under any Act or former Act on the land, improvements or both during the year, and
>
> (b) all unpaid taxes imposed in a previous year.

Under section 1 of the *Assessment Act*, "owner" is defined as follows:

> **"owner"**, in respect of real property, means the registered owner of an estate in fee simple, and includes,
>
> (a) if a person is a registered owner of a life estate, the tenant for life,
>
> (b) if there is an agreement for sale and purchase of the real property, the registered holder of the last registered agreement for sale and purchase, and
>
> (c) if the real property is held or occupied in the manner referred to in sections 26, 27 and 28, the holder or occupier.

In parts (a) and (b) above, "registered" refers to registration in the Land Title Office as at November 30th of the year in which the Assessment Roll is completed. Hence, the registered owner, who may or may not be an occupier, is liable for the Property Tax, and this includes the owner of a fee simple interest, a life estate, and the holder of an agreement for sale. Part (c) above generally refers to Crown and municipal land, in which case the Property Tax might be payable directly by a tenant, for example, even though they are not the owner.

Under the foregoing rules, the holder or occupier is usually liable for the Property Tax on the land and all improvements on the land, if any, whether or not the holder or occupier owns or uses the improvement. There are two exceptions to this rule provided in the *Assessment Act*:

1. Certain types of improvements, such as pipe lines, tunnels, bridges, roads, pole lines, cables, transmission equipment, or other continuous structures, may be assessed to the person owning, leasing, maintaining, operating, or using them – even though the improvement extends over, under, or through land owned by some other person. Since these types of improvements usually traverse many kilometres over hundreds of individual parcels owned either by private citizens or the Crown, it would be impractical to assess each segment of the improvement to each owner of the land over which they lie.

2. In the case of land cooperatives or multi-dwelling leased parcels, each residential building located on such property must be separately assessed.

Finally, a distinction between statutory liability to pay Property Taxes, as previously described, and contractual liability to pay Property Taxes should be kept in mind. As an example of the latter, a lease may require the tenant to pay current taxes, or a contract of purchase and sale may require the seller and buyer to share the liability for current taxes.

The Tax Base: What Is Taxed?

The second requirement in establishing a tax structure is to determine the nature of the property that is to be taxed. The two general categories of taxable property in British Columbia are land and improvements.

The definition of land includes lands covered by water, quarries, sand, and gravel, but excludes coal or other minerals. Meanwhile, section 1 of the *Assessment Act* contains the following definition:

> **"improvements"** means any building, fixture, structure or similar thing constructed or placed on or in land, or water over land, or on or in another improvement, but does not include any of the following things unless that thing is a building...
>
> (a) production machinery;
>
> (b) anything intended to be moved as a complete unit in its day to day use;
>
> (c) furniture and equipment that is not affixed for any purpose other than its own stability and that is easily moved by hand.

This includes virtually all property that is affixed to land.

The Basis of Assessment: What Value Is Taxed?

The primary purpose of the assessor acting under the *Assessment Act* is to provide an equitable base of assessed (actual) values, with the appropriate classification, on which to apply tax levies for general, school, hospital, and other purposes.

In British Columbia, the assessed value is the *actual value* of each parcel of taxable property. "Actual value" is defined in section 19(1) of the *Assessment Act* as the market value of the fee simple interest in the land and improvements. The relevant date for establishing actual value is July 1 of the year during which the Assessment Roll is completed.

actual value
the market value of the fee simple interest in land and any improvements in or on it

Furthermore, the *Assessment Act* states factors that the assessor may consider in determining actual value, including: present use; location; original cost; replacement cost; revenue or rental value; selling price of the land and improvements and comparable land and improvements; economic and functional obsolescence; and any other circumstances affecting value. These are all normal appraisal considerations that the assessor applies in making the determination of actual value. The primary difference between an assessment appraisal and a private fee appraisal is that the assessor for an assessment appraisal is constrained to certain dates and must value all interests in land.

The Property Tax statutes also provide for special assessment, at other than actual value, for a variety of special types of utility and industrial lands and improvements. Unlike the previous classifications, this group of properties is characterized as presenting unique assessment problems and a different basis of assessment is used as a "proxy" for actual value, which is necessitated by the absence of market evidence on which to determine actual value.

The second important element of any assessment is the property class or classes that the assessor assigns. In classifying property, the assessor considers its use, and whether it satisfies the criteria for the particular class as specified in the government regulation. These property classes are set by government regulation and, since each class of property may attract a different tax rate, the classification may have a substantial effect on the amount of tax for which the property owner is liable.

The regulation prescribes the following classes:

- Class 1 – Residential
- Class 2 – Utilities
- Class 3 – Supportive Housing
- Class 4 – Major Industry
- Class 5 – Light Industry
- Class 6 – Business and Other
- Class 7 – Managed Forest Land
- Class 8 – Recreational/Non Profit Organization
- Class 9 – Farm

A property with more than one use might fall into separate classes, and the assessor would divide the property's value between the classes, resulting in a *split classification*.

split classification
a division of a property's value between two or more property classes, by an assessor, following a consideration of its use and satisfaction of certain criteria prescribed by regulation

The Tax Rates: How Are They Set?

The amount of the tax burden in any property tax system is controlled by the taxation authorities, which set tax rates in the spring of each taxation year sufficient to raise their desired revenues.

There are a number of separate taxing authorities operating in British Columbia. The principal taxation authorities include:

- municipalities;
- Surveyor of Taxes (rural areas);
- Ministry of Education (residential and non-residential properties);
- school districts (residential property only, if voters pass a referendum);
- BC Assessment;
- Municipal Finance Authority;
- regional districts;
- Regional Transit Commission.

These taxing authorities levy various real property taxes that are appropriately grouped together as Property Tax. These include the school tax, the general tax, the hospital district tax, the regional district tax, and other taxes such as a business tax or frontage tax.

Administrative Procedures

The *Assessment Notice* and the tax notice are the methods by which the taxpayer in British Columbia is informed of the assessed value and tax liability of their property. A sample Assessment Notice is enclosed as Appendix 19.1 and a sample property tax notice is enclosed as Appendix 19.2.

Assessment Notice
a notice informing a property owner of the value of the property as of July 1 of the previous year

The first method to consider is the Assessment Notice, which involves valuation. Valuation of real property for property taxation purposes is done annually. A full Assessment Roll is completed using a valuation date of July 1. Section 18(2) of the *Assessment Act* provides that when the actual value is being determined on July 1, it is to be determined as if the property's status, in regard to physical condition and permitted use, as of the following October 31 were the status as of July 1. So, if the status of a property changes materially after July 1 but before October 31, the actual value of the property as of October 31 is the value that will be used for the Assessment Roll. The Assessment Roll must be completed by December 31. Figure 19.1 is a summary of the key dates.

FIGURE 19.1: Key Dates for Property Assessment

July 1
Valuation date for Assessment Roll

October 31
State and condition of property is established for assessment notice

November 30
Ownership established

December 31
Assessment Rolls and totals are produced and assessment notices mailed to owners of record

January 31
Last date for filing an appeal of assessed value to the Property Assessment Review Panels

March 31
Property Assessment Review Panels confirm and authenticate the Assessment Roll

April 30
Deadline for filing an appeal to the Property Assessment Appeal Board

There is generally no obligation for an owner who renovates their property between July 1 and October 31 to report such renovations for valuation purposes. In such circumstances, the property would have a valuation for the year that is inaccurate (and low), and the increase in value resulting from the renovations would ordinarily be picked up in the following year's assessment. However, owners may be required to complete questionnaires sent by BC Assessment regarding the current physical condition of the property, which might lead to more precise valuations.

One other point should be noted with respect to the liability of the owner. According to the *Assessment Act*, the assessor is to use the Land Title Office records as they stand on November 30 of each year. Hence, the name of the owner on the Assessment Roll will be the owner appearing on the books of the Land Title Office on November 30. Therefore, if a sale occurs sometime after November 30, this change in ownership will not be reflected in the Assessment Roll nor in the legal liability, by statute, for the subsequent year's Property Taxes. Accordingly, licensees representing buyers or sellers of real property should be aware of this date whenever they rely upon the Assessment Roll for data concerning ownership. Since Property Taxes are paid for a calendar year, the amount of the taxes for the year must be apportioned between the parties as of the adjustment date on the Statement of Adjustments, as will be discussed in Chapter 24.

Additionally, when referring to values in the Assessment Roll, licensees should keep in mind the July 1 valuation date for the annual roll, since in an active market, the assessed value can become outdated very quickly. Use of the value shown in the roll for purposes other than assessment could place the user at risk and, for this reason, should be avoided. For example, in a moving market, values produced on a new Assessment Roll completed at December 31 would likely already be out of date except for assessment purposes. In *Dosanjh v. Liang*, 2015 BCCA 18, the Court held that the assessed value could not be relied upon as evidence of the true value of the property for the appraisal. The Court could not determine how the assessor made his assessment, whereas appraisals contain the methods used to determine market value, in addition to the information considered in formulating the market value. It is important to note that an increase in the assessed value of real property does not necessarily mean an increase in Property Taxes. A number of factors, including the amount of revenue a municipality or taxing authority requires to deliver services, are taken into consideration when determining the amount of Property Tax owed for a property in any given year.

Once valuation is determined through this process, the next method to consider is the *tax notice*. Municipalities and other taxing authorities set the tax rates each year. The municipalities or the province's Surveyor of Taxes Office issues tax notices in the spring. The tax rates are multiplied by the appropriate net taxable values to calculate gross taxes payable in respect of a particular property. For any reserve or treaty lands, different rules apply which are outside the scope of this Chapter.

Property Taxes are payable each year on or about July 1, although for a few municipalities a different date applies. In these municipalities, taxes are often billed in two instalments, separating utility charges from the other Property Tax components; however, both instalments still represent the calendar year's taxes. Tax notices (statements requesting payment of taxes) are sent to each property owner.

tax notice
a statement distributed to each property owner requesting the payment of taxes based on the net taxable value of their property

Exemptions and Reliefs

Exemptions from either assessment or taxation of real property are granted for a variety of reasons. The motives may be based on benefits for charitable organizations, administrative convenience, a desire to redistribute the tax burden based on some provincial policy, or a desire to influence a particular form of land use. In British Columbia, some of these exemptions are mandatory, while others are left to the discretion of the local authorities.

With respect to exemptions from taxation, certain classes of property are granted mandatory, full, or partial exemptions from taxation because of their ownership. A partial list includes properties owned by the Crown, both federal and provincial, unless occupied by a non-exempt occupier, and churches and other places of worship.

Relief is also provided from assessment depending on the use of the property. While the general basis of assessment in British Columbia is actual value, which is defined as market value, a basis other than full market value is used in some cases to provide a measure of protection or relief for specified land uses, such as farm land, forest land, and certain residential property. For real estate classified as farm land, the assessor must consider only the value of the property as a farm, excluding value attributable to any other potential uses. Similarly, a special provision permits certain residential properties to be assessed according to the value based solely on their current residential use if the resident-owner has lived continuously in the residence for ten years, the resident-owner makes applications with the assessor each year, and the property has been zoned for a higher use or influenced by other non-residential uses of adjoining properties (see example below). Private forest lands are valued on a two part basis: first, the bare land value incorporates factors such as soil quality, topography, parcel size, location, and accessibility; second, there will be an added value for cut timber when logging takes place. Finally, the *Community Charter* provides for a municipal council to enter into an agreement with the owner of a golf course or cemetery land setting a specific assessed value (at other than actual value) for general tax purposes for a period of at least ten years.

Example

A single family residence in Vancouver's West End may be located on land zoned for high rise apartments. The owner-resident who has lived there continuously since 1987 may apply for an assessment based on their current residential use rather than on the property's actual value as an apartment site.

More common relief is available through grants offered broadly to individuals. Since 1957, the provincial government has provided tax relief to owner-occupiers of residential properties. The *Home Owner Grant Act* states that an owner of an eligible residence, who is the registered owner of the property, is ordinarily resident in British Columbia, is a Canadian citizen or permanent resident of Canada, and occupies the property as their principal residence, is entitled to a basic grant. This grant is $570 for properties in the Metro Vancouver, Fraser Valley and Capital Regional Districts, and $770 for properties in a "northern and rural area", defined in the *Home Owner Grant Act* as anywhere else within the province. This amount is deducted from the Property Tax payable by the particular owner. However, the grant amount also varies based on the value of a property and the Property Taxes

home owner grant
a type of tax relief from property taxes for an owner of an eligible property, if they occupy it as a principal residence

payable. The grant is phased out for homes with higher assessed values, the threshold of which is adjusted annually. As well, owners must generally pay at least $350 in Property Taxes before obtaining the benefit of the grant, so it does not cancel out the Property Tax bill of owners with lower value homes.

Additional grants are available, under different terms, for seniors, veterans, and others. For example, the grant for seniors requires that the registered owner is 65 years of age or older, among other things. Eligible seniors generally receive a grant of $275 on top of the regular grant of $570. Similarly, the grant for people with disabilities requires that the owner either receives disability assistance or meets other requirements associated with living with a disability.

Furthermore, upon receipt of the tax notice, an owner may be able to apply for a low-interest loan and defer payment of the current year's Property Taxes on their principal residence. There are two programs for Property Tax deferral: the regular program and the families with children program. In the regular program, when a registered property owner (a registered owner in fee simple or tenant for life under a registered life estate) is a Canadian citizen or permanent resident who has lived in British Columbia for at least one year, and is 55 years of age or over, or a surviving spouse of any age, or a permanently disabled person, they may make application to defer up to 100% of the net Property Taxes payable on their principal place of residence. The owner must also have a minimum equity of 25% in their home. In the families with children program, a registered property owner who is a Canadian citizen or permanent resident, has lived in British Columbia for at least one year, and is financially supporting a child (under certain circumstances), may make application to defer up to 100% of the net Property Taxes payable. The property owner must have a minimum equity of 15% of the property's assessed value and be financially supporting a child. If the application is approved, the province pays the unpaid Property Taxes on the owner's behalf. The tax deferral arrangement appears on title as a registered charge, and the loan accrues interest. The program allows individuals to defer paying taxes for a low simple interest charge that accrues until they withdraw from the program voluntarily, upon ownership transfer, or upon death. Deferred taxes and interest must be repaid before a property can be sold or legally transferred to a new owner. If the loan is repaid in full with guaranteed funds, such as a certified cheque, trust cheque, bank draft, money order or cash, the owner will receive a Notice of Satisfaction. The Land Title Office will then release the charge on title when they receive the Notice of Satisfaction and the transfer of a property can proceed.

Assessment Appeals

Any person may, under the *Assessment Act*, make a complaint against an entry in an Assessment Roll on one or more of the following grounds:

- the name of a person has been wrongfully included in or omitted from the roll;
- a property has been wrongfully included in or omitted from the roll;
- a property has been valued at too high or too low an amount;
- a property has been improperly classified (e.g., as farmland); or
- an exemption has been improperly allowed or disallowed.

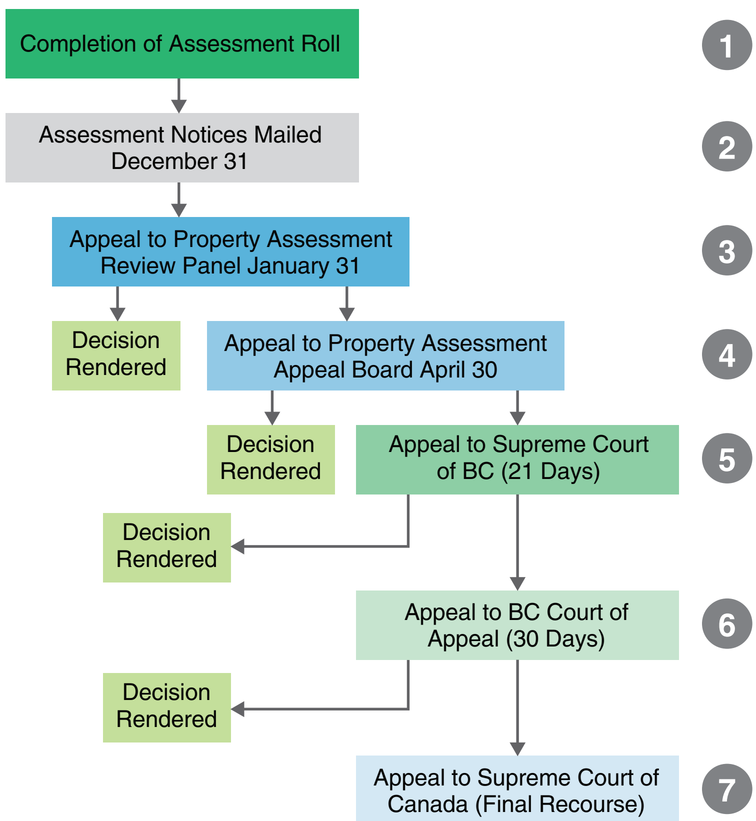
It follows that not only may the owner of a property complain that the property has been incorrectly assessed, but also some person other than the owner may complain that the property has been incorrectly assessed for any of the reasons set out above. This latter objection would be quite valid in principle. If some properties are under-assessed, their owners are not bearing their intended share of taxes and others must correspondingly pay more if the same tax money must be raised. Note that a property owner cannot appeal Property Taxes but can appeal property assessments.

Part 4 of the *Assessment Act* provides for the establishment of Property Assessment Review Panels as the first level of appeal from property assessments. The panels sit between February 1 and March 15 to hear complaints about the Assessment Roll. The panels have the authority to amend or confirm the Roll entry or entries for which there has been a complaint. An appeal against a real property assessment must be submitted initially for adjudication by the Property Assessment Review Panels. Notice of a complaint must be made in writing and filed with the assessor responsible for the assessment not later than January 31. Following the hearing of all appeals and the ordering of any necessary corrections, the Assessment Roll must be approved and authenticated by the Property Assessment Review Panel not later than March 31. It then becomes final and binding for taxation purposes for the taxation year that was the subject of the appeal, except insofar as it may be varied on appeal to the Property Assessment Appeal Board.

When the assessor notifies a complainant or owner of the decision of the Property Assessment Review Panel on an assessment appeal, they must also include notice of the further right of appeal to the Property Assessment Appeal Board. Any person, including a municipality, who is dissatisfied with the panel's decision may appeal to the Property Assessment Appeal Board. An appellant must give written notice to the Board not later than April 30, together with the prescribed fee. The grounds of appeal must be indicated. The Board's decision is usually reserved and is subsequently communicated in writing to the parties. The assessor must make any necessary changes to the Assessment Roll.

An appeal on a point of law may generally be made from the Property Assessment Appeal Board to the British Columbia Supreme Court. Similarly, an appeal can be made from the British Columbia Supreme Court to the Court of Appeal, but only upon a point of law raised by the lower court judge and governed by the usual rules applying in any appeal between the two courts. In rare circumstances, appeals from the British Columbia Court of Appeal may be ultimately considered by the Supreme Court of Canada. In these cases, the point of law raised would have to be of national importance. Figure 19.2 outlines the assessment appeal procedure.

FIGURE 19.2: Assessment Appeal Procedure Flowchart



Speculation and Vacancy Tax

The Province of British Columbia has introduced a Speculation and Vacancy Tax ("SVT") applicable to the 2018 calendar year and onwards. The SVT is an annual tax that is payable by any registered owner or co-owner of residential property located in designated taxable areas of British Columbia, unless the owner qualifies for an exemption. Certain owners who do not qualify for an exemption in connection with a property may be eligible for full or partial tax credits.

Each residential property owner in the designated taxable areas will have to complete an annual declaration. Where there are multiple owners of a property, a declaration must be completed for each owner, including spouses.

The SVT is implemented and governed by the *Speculation and Vacancy Tax Act* (the "SVT Act"). The Province's stated intent for the SVT is to curb property speculation, and to help turn vacant and underutilized properties into homes for people who live and work in British Columbia's urban centres. The SVT affects residents of British Columbia, although the Province expects more than 99% of British Columbians to be exempt from the SVT. Foreigners and Canadian citizens (including permanent residents) not residing in British Columbia, but who own residential property in designated taxable areas of British Columbia, will be affected by the SVT but may be able to claim an exemption, or in very limited circumstances be eligible for a tax credit.

Residential properties located within the City of Vancouver may be subject to both the SVT and the City of Vancouver's Empty Homes Tax, which is discussed later in this chapter.

Taxable Areas

The SVT generally applies to residential properties located in the following areas of British Columbia:

- Capital Regional District;
- Metro Vancouver Regional District;
- City of Abbotsford;
- City of Chilliwack;
- City of Kelowna;
- City of Nanaimo;
- City of West Kelowna;
- District of Lantzville;
- District of Mission;
- City of Duncan;
- District of North Cowichan;
- District of Squamish;
- Town of Ladysmith;
- Town of Lake Cowichan; and
- Village of Lions Bay.

There are, however, some exclusions that apply. For example, reserve lands, treaty lands, and lands of self-governing Indigenous Nations are not part of the taxable areas. Islands that are accessible only by air or water are also not part of the taxable areas. In addition, some residential properties are excluded from the SVT even though they are located within a taxable area. These include residential properties owned by:

- an Indigenous Nation;
- municipalities, regional districts, governments, and other public bodies;
- registered charities;
- housing co-ops; and
- certain not-for-profit organizations.

Refer to the Government of British Columbia's website (provided later in this section) for detailed and up to date information regarding the taxable areas and exclusions that apply.

Tax Rate

The SVT rate varies depending on the owner's tax residency, and whether the owner is a Canadian citizen or permanent resident, or a member of a "satellite family" (defined later).

Since 2019, the SVT has been levied at:

- 2.0% for foreign owners and satellite family members; and
- 0.5% for Canadian citizens or permanent residents of Canada who are not members of a satellite family.

The SVT is levied on a person who owns the property on December 31 of each year. The tax amount due will be calculated based on the assessed value of the property on July 1 of the taxation year. Tax levied on December 31 is due the following July.

Where there are multiple owners of a property, each owner's percentage interest in the property will be multiplied by the assessed value before applying the rate in order to determine the tax amount for that particular owner.

Satellite Family

The Province describes a "satellite family" as an individual or spousal unit that declares less than 50% of their total combined household income for the year on Canadian income tax returns. Accordingly, an individual may be considered part of a satellite family even though they are a Canadian citizen or British Columbia resident.

The Province has provided two examples of a "satellite family":

- One spouse is a Canadian citizen but isn't the home owner, while the other spouse is the owner but isn't a Canadian citizen or permanent resident. Around 70% of their combined worldwide income is earned outside of Canada and is not reported on a Canadian income tax return. Both spouses are members of a satellite family.
- One spouse owns the home but is out of the country most of the time, earning 100% of their income outside Canada with no obligation to report to Canada Revenue Agency. The other spouse and their children live in their British Columbia house. Since the combined income of these two spouses is entirely unreported on Canadian tax returns, they are both considered members of a satellite family.

The rules in the SVT Act that apply to "satellite family" members are exceptionally complex. When a client seeks advice regarding the applicability of the SVT to their particular circumstances, licensees should refer that client to a tax professional who can examine those circumstances and provide further advice.

Corporations, Partnerships, and Trusts

The SVT also applies to corporations, partnerships, and trusts that own residential property within the designated taxable areas. These entities must also provide annual tax declarations in respect of their residential property and may be eligible for exemptions and tax credits provided by the SVT Act. The SVT Act's provisions with respect to corporations, partnerships, and trusts are complex and take into account corporate interest-holders, beneficial owners, and partnership interest-holders in determining whether SVT is applicable and to what extent. There are special rules and definitions used to determine (among other things) ownership interest, interest holding, and income. In the case where a client seeks advice regarding the applicability of the SVT to corporations, partnerships, or trusts, licensees should refer that client to a tax professional who can provide expert advice.

Tax Declaration Letter

Each owner of residential property in a designated taxable area must complete an annual declaration. The annual declaration letter is sent out by the Province by mail to each owner in January in respect of the previous calendar year. The letter will list all the residential properties owned by the person in the designated taxable areas. Where there are multiple owners of a home, a declaration must be completed by each owner, including spouses. The declaration must be completed and returned even if the owner believes that they are not eligible for an exemption. Declarations can be made online or via telephone. Regardless of method, all declarations must be made by March 31. Payment of the SVT is due in July. Owners who do not complete the declaration will receive a tax notice charging the SVT at the maximum tax rate.

Principal Residence and Rental Exemptions

An owner may qualify for an SVT exemption or tax credit. Numerous exemptions are provided for within the SVT Act, though they are each subject to significant limitations and exclusions.

Many British Columbia home owners affected by the SVT are able to claim the principal residence exemption (and not have to pay any SVT) because they live in their home full-time and their home is their principal residence for the calendar year. To qualify for this exemption, the owner must also be a Canadian citizen (or permanent resident of Canada) who is a British Columbia resident for income tax purposes, and not part of a satellite family. Note that couples are generally deemed to have only one principal residence for the purposes of the SVT. People who have multiple homes must determine which home is their principal residence, based on where they resided for the longest duration during the year.

Other major exemptions apply to rental property and there are several types of rental exemptions available. For the rental exemptions, the property must be occupied by a tenant for at least six months of the year, in increments of one month or longer.

Additionally, the SVT Act differentiates between “arm’s length” and “non-arm’s length” rentals. The Province describes an arm’s length tenant as someone with whom the owner has a business-only relationship, while it describes a non-arm’s length tenant as someone with whom the owner has a special advantage in their dealings, such as parents, adult children, or siblings.

Once the occupation period requirement is met, each owner of a rental property will be eligible for an exemption in respect of an arm’s length tenant, so long as there is a written tenancy agreement in place under the *Residential Tenancy Act*. An owner who is a Canadian citizen or permanent resident of Canada, and is not a satellite family member, will also be eligible for this rental exemption in respect of a non-arm’s length tenant, so long as the residence is the tenant’s principal residence. An owner who is not a Canadian citizen or permanent resident of Canada may be able to claim an exemption in respect of a non-arm’s length tenant if the tenant earns and reports income in British Columbia that is equal to at least three times the market value rent of the property.

The particulars of what is considered arm’s length under the SVT Act mirrors the definitions provided in sections 251 and 252 of the federal *Income Tax Act*. A more detailed description of this, together with a number of examples, can be found on BC Government’s Speculation and Vacancy Tax website, provided at the end of this section.

Additional Exemptions

Besides the main exemptions outlined previously, there are also a number of exemptions available for special circumstances, such as major home renovations and life events (e.g. divorce or illness). Exemptions are available relating to hazardous or damaged property; year of acquisition; medical absence from primary residence; spousal separation; bankruptcy; death; testamentary trusts for minors; strata accommodation units; licensed daycares; and land under development.

Tax Credit Eligibility

Those not eligible for an exemption may qualify for a tax credit. British Columbia-resident owners are eligible for a tax credit of up to $2,000 on a secondary property. This means that an owner of a property with an assessed value of up to $400,000, who would otherwise pay the SVT, will effectively be exempt, since the value of the tax credit is equal to or more than the amount they would owe. This also means that an owner of a property with an assessed value over $400,000 will only pay SVT on the amount over $400,000. For example, for a $500,000 property, the owner will only pay SVT on $100,000. The credit is limited to $2,000 per owner and $2,000 per property (in the case of multiple owners) per year. The credit cannot be carried forward or transferred to a spouse.

Non-British Columbia resident Canadians will be eligible for a tax credit based on their income earned in British Columbia, if any. However, the tax credit cannot reduce the tax rate below the tax rate for an equivalent British Columbia resident (0% on a principal residence or 0.5% on other properties). In this case, unused tax credits may be carried forward for up to two years or transferred to a spouse.

Foreign owners and members of satellite families can claim a tax credit equal to 20% of any income earned in British Columbia to reduce the 2% SVT owing. The tax credit cannot reduce the tax rate below the rate for an equivalent British Columbia resident (0% on a principal residence or 0.5% on other properties). Unused British Columbia income may be carried forward for up to two years or transferred to a spouse.

Further Information

Licensees can find further information and additional details on the SVT on the BC Government’s Speculation and Vacancy Tax website at: *www2.gov.bc.ca/gov/content/taxes/speculation-vacancy-tax*.

There, you can find more details on the operation of the SVT, including the various designated taxable areas (including maps), the various exemptions that are available, and the requirements to qualify for a tax credit.

The SVT laws are very complex. Licensees should understand the basic concepts relating to the SVT but should always refer clients to seek professional tax advice whenever questions relating to the SVT arise.

The City of Vancouver's Vacancy Tax[1]

The City of Vancouver's *Vacancy Tax By-Law No. 11674* (the "Bylaw"), provides that homes in Vancouver that are unoccupied for six full months of the year or more will be subject to a 3% Empty Homes Tax (EHT). EHT is intended to make empty and under-used homes available for rent to people who live and work in Vancouver. Homes that are determined or deemed to be vacant will be subject to an EHT equal to 3% of the property's taxable assessed value in addition to the existing Property Tax owed. The EHT is applied annually.

Who Is Subject to the EHT?

Most Vancouver homes will not be subject to the EHT. Residences being used as a principal residence by the owner, a family member, or a friend for at least six months of the tax year will not be charged the EHT, nor will properties that are rented long-term (with a written tenancy agreement) for at least 30 days in a row for a minimum of six months in aggregate over the course of a year. The Bylaw provides that a principal residence is defined as:

> The usual place where an individual lives, makes their home and conducts their daily affairs, including without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

Investors renting their investment property out for six 30-day terms throughout the year will be exempt from the tax, even if those six 30-day terms are not consecutive. Investors using their property as a short term rental (Airbnb) without a hotel or B&B licence (which would be in breach of the City's Zoning & Development By-law) will be subject to the EHT, if those rental periods are shorter than 30 days long.

Annual Declaration

In December of each year, all owners of residential properties in Vancouver will receive instructions to complete a Property Status Declaration (PSD) from the City that must be completed and returned to the City. If the owner fails to submit the PSD before the deadline, the property will be deemed to be vacant and subject to the EHT. False declarations can result in a fine of up to $10,000, in addition to the payment of the tax.

Tax Notice

The City's Collector of Taxes will review the completed PSD and determine whether or not the property is subject to the EHT. The Collector of Taxes may require a property owner to provide additional information such as personal identification, ICBC vehicle insurance and registration, income tax documents, and tenancy agreements to support the PSD. Where a residential property is determined or deemed to be vacant, it will be subject to the EHT.

The City will mail an EHT notice to each registered owner of a property that is subject to EHT by the end of the second week of March each year. An owner who disputes the EHT notice may submit a complaint to the Vacancy Tax Review Officer. The decision of the Vacancy Tax Review Officer can be further appealed to the Vacancy Tax Review Panel.

Empty Home Tax Due Date and Penalty

The EHT is due and payable by the owner on or before the 10th business day of April of the year that the EHT Notice is issued. Owners who miss the late declaration deadline can file a late PSD up to five years after the tax reference year in which they missed the filing deadline. Filing a late PSD can result in a reversal of the EHT that was levied against a property. In order for the reversal to be granted, the owner must provide

[1] This section is derived from "Vancouver's Empty Homes Tax: What REALTORS® Need to Know". 2017. *The Bulletin.* August 2017 Edition. *www.bcrea.bc.ca*

evidence that supports the declaration status. When an owner files a late declaration they are charged a late declaration penalty equal to 5% of the EHT that was levied against the property. In special circumstances, the penalty may be waived for hardship.

Tax Exemptions

A home may be exempt from EHT if it falls under one of the following exemptions:

1. The property was not a principal residence, but the registered owner occupied it for at least six months of the year in order to work full-time in Greater Vancouver.
2. The property was undergoing redevelopment or major renovations for which permits had been issued during the relevant year, and which were being carried out diligently and without delay.
3. The occupiers who previously occupied the residential property as a principal residence or all tenants or subtenants who were previously occupying the residential property were residing in a hospital, long-term, or supportive care facility.
4. The registered owner is deceased in the vacancy year.
5. Title of the property was transferred during the year.
6. The use of the property was limited to vehicle parking; or, as a result of the size, shape, or other inherent limitation of the parcel, a residential building could not be constructed.
7. The property was under a court order prohibiting occupancy.
8. The property is new inventory that is unsold after the occupancy permit is obtained.
9. The property was not able to be occupied due to a hazardous condition or disaster for a least six months of the year in which the event occurred.
10. The property was being used as a secondary residence situated closer to medical treatment.
11. The property was exempt from the EHT in the 2022 reference year because it was subject to a strata bylaw that restricted the number of units that may be rented, and the maximum allowable number of rentals had already been reached. This exemption is applicable only for the 2023 vacancy reference year.

It is important to note that each of the above exemptions has certain limitations as described in more detail in the Bylaw.

As a Licensee...

Licensees should make inquiries of the seller as to the vacancy status of the property during the current and previous year. Licensees acting for buyers will also want to consider inserting terms into the Contract of Purchase and Sale providing:

- that the seller must provide the buyer with a copy of the completed and filed PSD;
- that the seller will provide a statutory declaration at closing confirming the filed PSD is true and correct;
- an express representation and warranty confirming that the property has not been vacant (as defined by the Bylaw) for more than 180 days during the current or prior year;
- that where the City has not yet determined if a property is subject to the EHT, that there be a holdback of the potential tax pending the City's determination; and/or
- that where the property is clearly subject to the EHT, that an adjustment will be carried out by the buyer's conveyancer and the EHT will be payable solely by the seller.

Underused Housing Tax

The Underused Housing Tax ("UHT") is an annual tax on the value of certain non-Canadian-owned residential real estate. The tax is payable by the owner or co-owner of a residential property unless the owner falls into the definition of an "Excluded Owner" or qualifies for one of the exceptions.

The *Underused Housing Tax Act* governs the UHT. This legislation is the federal government's action plan to reduce the speculation of the Canadian residential property market by non-Canadians.

Tax Rate

The UHT is a 1% tax on one of the following,

a. the fair market value of the property (as determined in a manner satisfactory to the Minister); or,

b. the taxable value of the residential property

The UHT is levied on a person who owns the property on December 31 of the relevant year. It is also proportional to the owner's interest in the property, similar to the SVT.

Excluded Owner

An excluded owner ("Excluded Owner") doesn't have obligations or liabilities under the *Underused Housing Tax Act*. Therefore, they are not expected to pay UHT or file a UHT return. The definition of Excluded Owner includes:

- Canadian citizens and permanent residents (except to the extent they hold their interest as a partner in a partnership or as a trustee of a trust);
- corporations incorporated in Canada or in a Canadian province whose shares are listed on a stock exchange in Canada;
- trustees of mutual fund trusts, real estate investment trusts, and SIFT trusts;
- registered charities; and,
- cooperative housing corporations, hospital authorities, a municipality, a public college, a school authority, or a university.

Someone who falls outside of the Excluded Owner category (i.e., an "Affected Owner") has an obligation to file a UHT return and potentially pay the tax.

UHT Return

Affected Owners must file a UHT return for each residential property they own in Canada on December 31 of the relevant year. Returns are due on or before April 30 of the following year. Any tax payable is also due on April 30. Failure to file subjects an Affected Owner to a minimum penalty of $5,000 if they are an individual or a minimum penalty of $10,000 if they are a corporation.

Exemptions

Affected Owners are exempt from the tax if they fall into one of the exemptions. However, they are still required to file a return and face penalties if they do not file a return.

Many Affected Owners should be able to claim an exemption based on primary place of residence or a qualifying occupancy. Under the primary place of residence exemption, an Affected Owner does not owe UHT if the residential property is the primary place of residence of the Affected Owner, their spouse or common-law partners, or the child of the Affected Owner (or their spouse or common-law partner) where the child occupies the residential property to study at a designated learning institution.

Another UHT exemption is if the residential property has 180 days or more in a relevant year under a "qualifying occupancy period". A "qualifying occupancy period" includes a continuous occupancy of at least one month by one of the following categories of peoples:

- an arm's length tenant;
- a non-arm's length tenant who pays fair rent;
- an owner or the owner's spouse or common law partner who is in Canada for the purpose of a Canadian work permit; or,
- the spouse, common-law partners, parent, or child of the owner and who is a Canadian citizen or permanent resident.

Some of the other exemptions include:

- Where the owner:
  - is a specified Canadian corporation, partner in a specified partnership, or a trustee for a specified trust;
  - has become the residential property's owner within the relevant year and was never the owner in the prior nine calendar years; and,
  - has died during the relevant year or the prior year.
- Where the residential property is:
  - newly constructed;
  - not suitable to be lived in year-round use as a place of residence;
  - uninhabitable due to disaster, hazardous conditions, or renovation; or,
  - a vacation property located in an eligible area of Canada and used by the owner or their spouse or common-law partner for at least 28 days in the calendar year.

Although the City of Vancouver and the Province of British Columbia have similar taxes to counter speculation, this is the first tax of its kind on a federal level. A vacant home in the City of Vancouver owned by a non-Canadian could be subject to all three levels of tax. The UHT is much narrower in scope than the EHT or SVT. Ultimately, the UHT generally does not apply to Canadian citizens or permanent residents regardless of whether they reside in their property.

APPENDIX 19.1

Sample Property Assessment Notice

BC ASSESSMENT

IMPORTANT INFORMATION FOR PROPERTY IDENTIFICATION

Area: 01 - Capital
Jurisdiction: 308 – District of Saanich (SD61)
Roll: 51-9500-059

Bulk Mail: BMC1234
School District: 61 – Saanich
Neighbourhood: 051

CONFIDENTIAL PIN: 0123

2018 PROPERTY ASSESSMENT NOTICE

Property Location & Description

1234 ANYWHERE STREET
LOT 5, PLAN VIP4888, SECTION 98, LAKE LAND DISTRICT
PID: 012-345-678

2018 Assessment – represents your property value as of July 1, 2017

ASSESSED VALUE	**VALUE**	**CLASS**
LAND	58,445	RESIDENTIAL
	10,110	FARM
BUILDINGS	263,000	RESIDENTIAL
2018 ASSESSED VALUE	$331,555	

TAXABLE VALUE	**MUNICIPAL**	**SCHOOL/OTHER**
	331,555	331,555
Less Exemptions		24,855
2018 TAXABLE VALUE	$331,555	$306,700

This Is Not a Tax Notice.
Tax Notices Are Issued by Your Local Government.

This notice contains important information about your property. Please review and keep for your records.

No action is required unless you disagree with your assessment.

YOUR PROPERTY VALUE HISTORY

A change in your assessed value does not necessarily mean a change in your taxes

2018	+11%	$331,555
2017	+1%	$298,152
2016	+7%	$295,180
2015	+5%	$276,512
2014	+3%	$263,890

APPENDIX 19.2

Sample Property Tax Notice

CITY OF VANCOUVER
Property Tax Office
PO Box 7747 Stn Terminal
Vancouver BC V6H 8RI

2020 PROPERTY TAX NOTICE

DUE DATE: Monday, July 2, 2020

5% PENALTY IF NOT PAID OR GRANT NOT CLAIMED BY JULY 2, 2020

FOLIO NUMBER	999-999-00-0000	**ACCESS**	074490
LEGAL DESCRIPTION			
LOT 11 of 1&2 BLOCK 31 DISTRICT LOT 139 PLAN 4302			

DAVID B MELROSE
2305 W. 87TH AVE
VANCOUVER BC X6M 1P5

Property Value	Assessed			Averaged	Taxable		
	2020	**2019**	**2018**	**2020 Land**	GENERAL	SCHOOL	GVTA
Residential	440,000	400,000	395,000	411,666	411,666	411,666	411,666
Buildings	33,000	33,000	33,000		33,000	33,000	33,000
Total	473,000	433,000	428,000		444,666	444,666	444,666

PROPERTY ADDRESS	2305 W. 87TH AVE			**COLUMN A** NO GRANT	**COLUMN B** BASIC GRANT	**COLUMN C** ADDITIONAL GRANT
PID	123-123-123	**CLASS**	**RATE**			

	RATE	COLUMN A	COLUMN B	COLUMN C
School - Residential	2.91461	1,296.03	1,296.03	1,296.03
Less: Home Owner Grant			-570.00	-875.00
NET SCHOOL TAXES		**1,296.03**	**726.03**	**451.03**
BC Assessment	0.12065	53.65	53.65	53.65
Municipal Finance Authority	0.00031	0.14	53.65	53.65
Regional District	0.10716	47.65	47.65	47.65
TransLink	0.29917	133.03	133.03	133.03
NET OTHER TAXING AUTHORITIES		**234.47**	**234.47**	**234.47**
City of Vancouver General Levy	3.17221	1,410.57	1,410.57	1,410.57
Garbage/Yard Trimmings		121.00	121.00	121.00
Recycling		26.00	26.00	26.00
Sewer - 1 Dwelling		152.00	152.00	152.00
Water - 1 Dwelling		271.00	271.00	271.00
NET CITY TAXES		**1,980.57**	**1,980.57**	**1,980.57**
TOTAL 2020 TAXES		**3,511.07**	**2,941.07**	**2,666.04**
Payments/Adjustments		-1,451.00	-1,451.00	-1,451.00
TOAL OUTSTANDING TAXES		**2,060.07**	**1,490.07**	**1,215.07**

You are not currently enrolled in the Tax Instalment Payments Plan. See reverse for more information.
To claim your Home Owner Grant, complete the form below in full, sign, and remit it by July 2, 2020. Or visit vancouver.ca/ehog

Customer Copy

AMOUNT DUE JULY 2, 2020

A - NO GRANT	B - BASIC GRANT	C - ADD'L GRANT
$2,060.07	$1,490.07	$1,215.07