

Understanding Manitoba Land Transfer Tax

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I often get calls from clients and counsel from other provinces about the workings of Manitoba land transfer tax. The requirement to pay land transfer tax in Manitoba arises out of Part III of The Tax Administration and Miscellaneous Taxes Act. The tax is exigible on the registration of a transfer at a Land Titles Office (LTO). The LTO is made the agent of the Crown for purposes of collecting and remitting that tax.

Rates

Manitoba land transfer tax is applied on a sliding scale. The scale is based on the declared fair market value (FMV) of the land being transferred.

There is no land transfer tax paid on the first \$30,000 in FMV, 0.5% on the next \$60,000 in FMV, 1% on the next \$60,000 in FMV (which takes us to \$150,000) and 1.5% of FMV on the next \$50,000. Two (2%) percent land transfer tax applies to the FMV over \$200,000. My own “quick calculation method” is that the land transfer tax amounts to \$1,650 on the first \$200,000 in declared FMV, plus 2% of the FMV above \$200,000.

What is the FMV?

The calculation is based on the FMV of the “land as a whole”. This prevents registration of dozens of transfers of fractional interests each having FMV’s below \$30,000 to avoid payment of the tax. For example, if a one-half interest is being transferred, you first calculate the land transfer tax that would be payable based on the FMV of the land as a whole, and then divide that by two. If you are looking at transfers of interests other than fractional interests, it would be advisable to get some local advice on establishing the FMV of the interest being transferred.

The FMV may be different than the consideration that is paid for land. Even in the case of a gift of land, or a non-arm’s length transfer, the actual FMV must be stated. At common law, this is usually taken to mean “the price that a willing buyer would pay to a willing seller”.

All of this can get complicated. What is the FMV of land with partially constructed

improvements? What is the FMV of land held under a leasehold title? What if the purchaser is actually being paid to take over a property with environmental contamination? In any of those circumstances some extra rigour and professional advice may be warranted.

When Is It Payable?

As I mentioned above, the land transfer tax is payable on presentation of a transfer for registration at the LTO. A “transfer” is defined to include certain other instruments, such as a direction contained in a Real Property Application, deed or grant from the Crown “or other instrument, whereby any land is granted, assigned, conveyed or otherwise transferred”. It does not include a transmission, request, mortgage or a caveat.

Land transfer tax has not been applied to the registration of vesting orders, used in a variety of circumstances such as acquisition of properties out of insolvencies, Municipal Board Orders and certain corporate reorganizations. Because the tax is payable on registration of a transfer in the LTO, it does not apply to unregistered transfers of beneficial interests or to leases. More significantly, it does not apply to the sale of shares of a corporation that owns the underlying land. Where title is held by a nominee corporation, proper transaction structure can result in substantial land transfer tax savings.

Exemptions

The Act contains several exemptions. No land transfer tax is exigible where:

- there is a transfer of farmland to a farmer or family farm corporation and the land will continue to be used for farming
- the transferor is a registered charity and the transferee is a non-profit corporation controlled by the transferor
- the transferee is a registered charity
- the transfer is made for the benefit of an Indian band under the Indian Act
- the transfer is the result of the dissolution of a corporation and the transferee owned all of the issued shares of the transferor corporation immediately prior to dissolution
- there is a transfer of non-commercial property by the transferor to his or her spouse

There are a few other exemptions that arise with less frequency. Feel free to contact me to get the complete list. Note that the LTO will look to the declaration of FMV that forms part of the transfer for evidence that supports any claim for an exemption.

Assessments, Offences and Penalties

The LTO will, on occasion, flag a transfer that contains a value declaration that appears to be out of whack. In those circumstances, the Minister of Finance may determine the FMV of the

value of the land as a whole and collect the land transfer tax on that basis and provide a notice of assessment to the taxpayer (land transfer tax is payable by the party who registers the transfer, i.e., the transferee). The taxpayer has the right to pay the amount under a Notice of Objection, which will be considered by the Minister. The Minister's decision may be appealed to the Manitoba Court of Queen's Bench.

A failure to pay land transfer tax is an offence, as is making a false or deceptive statement in the declaration of FMV. On top of that, any person who participates in, assents to or acquiesces in the making of the false or deceptive statement or other specified actions with the intent of evading land transfer tax, is also guilty of an offence. Signing a declaration of FMV on behalf of either the transferor or transferee is not something that should be done lightly. On top of that, making a false land transfer tax declaration has the same effect as making a false affidavit or statutory declaration, with all of the same potential criminal and other consequences.

If you have any other questions regarding Manitoba land transfer tax, please feel free to contact me. I will do my best to answer them.

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