

**FACILITATING THE PAYMENT AND ADMINISTRATION OF THE LAND TRANSFER TAX**  
**UNDER SECTION 3 OF THE LAND TRANSFER TAX ACT**

Under the *Land Transfer Tax Act* (Act), land transfer tax (LTT) applies to transfers of land, whether registered or unregistered, with few exceptions.

Under section 3 of the Act, where there is an unregistered disposition of a beneficial interest in land, a person who acquires a beneficial interest in land, as well as a person whose beneficial interest in land is increased as a result of the disposition, must file a return and pay tax within 30 days after the date of the disposition, unless the tax is otherwise exempt, deferred or cancelled under the Act and regulations under the Act.

The section 3 LTT was introduced in 1989 to address tax avoidance. Today, increasingly complex partnership and trust structures are being used to acquire and hold land in Ontario. This complexity has created challenges to the effective administration and collection of the LTT in respect of unregistered dispositions of beneficial interests in land.

One of the key factors contributing to these challenges is that partnerships and trusts are not treated as “persons” (i.e., having legal personality) for LTT purposes. Consequently, to determine the person(s) liable for tax, one must “look through” any one or more partnerships and/or trusts to ascertain the individual(s) and/or corporation(s) who have acquired a beneficial interest in the land by way of the partnership(s) and/or trust(s), as applicable. The ability to ascertain the individual(s) and/or corporation(s) who have acquired a beneficial interest in land, or whose beneficial interest in land has increased, may be restricted for a number of different reasons.

It has also come to the attention of the Ministry of Finance that some taxpayers may not be applying the appropriate tax rate when an unregistered disposition of a beneficial interest in land occurs.

Request for Public Input

Given the administrative complexities that may arise in respect of unregistered dispositions of beneficial interests in land, the Ministry of Finance is seeking input on a proposed approach to facilitate compliance with section 3 of the Act, and to ensure that the appropriate amount of LTT is remitted to the Ministry in an efficient manner when a beneficial interest in land is acquired in certain circumstances. The proposed approach is set out below.

In developing potential legislative and regulatory amendments to facilitate the payment and administration of the LTT under section 3 of the Act, the Ministry is guided by certain principles, including:

1. Rules should generally aim to level the playing field between persons who acquire a registered interest in land and those who acquire an unregistered interest in land.
2. A balanced approach to administration must take into account the principles of the application of the LTT, as well as the practicalities of compliance in the current real estate and commercial context.
3. Rules should aim to facilitate compliance and reduce the administrative burden on taxpayers wherever possible, while maintaining the integrity of the LTT regime.

## **PROPOSAL TO FACILITATE THE PAYMENT AND ADMINISTRATION OF LAND TRANSFER TAX UNDER SECTION 3 OF THE *LAND TRANSFER TAX ACT***

*This document, and any consultation arising from it, is for information gathering purposes only. This consultation will not necessarily result in any amendment, or proposal to amend, the Land Transfer Tax Act or its regulations, and will not necessarily result in any changes to the current administrative practices of the Ministry of Finance. The Ministry of Finance is not limited to the options that are set out in this document.*

### **1) Targeted Rules to Address Compliance Complexities**

Compliance complexities may arise for entities that are not corporations or individuals—entities which are generally referred to in this document as “vehicles”. The Ministry of Finance has developed a proposal that aims to facilitate the payment and administration of the LTT under section 3 of the *Land Transfer Tax Act* (Act) in certain circumstances, while maintaining the integrity of the LTT regime.

Under the proposed approach, two new categories of vehicles for the purposes of the Act would be introduced. Targeted rules would be created for vehicles in each of the two new categories, to address administration and compliance complexities.

Please see the table below for further details.

### **2) New Disclosure Requirements at Registration**

To help facilitate enforcement, new rules would require the disclosure of persons, trusts, partnerships and other vehicles for whose benefit land is held at the time of title registration.

For example, at the time of title registration, a nominee would be required to disclose the legal names and business registration numbers of the partnerships and/or trusts on whose behalf the nominee acquires and holds title.

## GENERAL OVERVIEW OF PROPOSED APPROACH\*

*This table sets out an overview of a proposed approach to facilitate the payment and administration of the land transfer tax (LTT) on unregistered dispositions of beneficial interests in land. The table is not exhaustive and some potential measures to maintain the integrity and equity of Ontario's tax and revenue collection system are not included. The Ministry of Finance is not limited to the options that are set out in this document.*

	GROUP 1	GROUP 2	GROUP 3
<b>Description of Vehicle</b>	<ul style="list-style-type: none"> <li>- Specified investment flow-through (SIFT) trusts and SIFT partnerships as defined in the federal <i>Income Tax Act</i>.</li> <li>- Vehicles defined in s. 1(1) of O. Reg. 70/91 under the <i>Land Transfer Tax Act (Act)</i>.</li> <li>- Pension trusts exempt under s. 149(1)(o) of the federal <i>Income Tax Act</i>.</li> </ul>	<ul style="list-style-type: none"> <li>- A vehicle that is either a "unit trust" under s. 108(1) of the federal <i>Income Tax Act</i>, or a partnership that has filed or was required to file a declaration under the Ontario <i>Limited Partnerships Act</i>; and</li> <li>- The vehicle has issued its "investments" to 50 or more arm's length unitholders or partners, as applicable, or such other minimum threshold(s) that the Ministry of Finance determines appropriate based on public consultation, which may include a threshold for the number of taxpayers and/or a threshold for the number of unitholders or partners, as applicable, that are look-through vehicles; and</li> <li>- The vehicle is not a Group 1 vehicle.</li> </ul>	<ul style="list-style-type: none"> <li>- A vehicle that is not a Group 1 or 2 vehicle, not a corporation and not an individual.</li> </ul>
<b>Proposed LTT Treatment of Vehicle</b>	Deemed person for the purposes of the <i>Land Transfer Tax Act</i> and the regulations	This vehicle would be deemed to be an LTT collector and would be required to collect and remit LTT calculated at the vehicle's partner/unitholder level, as applicable. Special calculation and reporting rules would apply to facilitate compliance: <ul style="list-style-type: none"> <li>- Every unitholder/partner of the vehicle, as applicable, would be treated as a person for LTT calculation purposes only.</li> <li>- Where the vehicle remits an amount of LTT in respect of a unitholder/partner, as applicable, it would be entitled to collect this amount by deducting or withholding from any amount paid or payable by the vehicle to that unitholder/partner.</li> <li>- If the vehicle fails to collect or collects insufficient amounts, the vehicle, as an LTT collector, would be subject to a penalty of at least the amount it failed to collect.</li> </ul>	No changes proposed
<b>Who is the Taxpayer</b>	The Group 1 Vehicle	No change	No change
<b>Reporting</b>	No change (Within 30 days of transfer)	Quarterly, or such other period that the Ministry determines appropriate based on public consultation	No change (Within 30 days of transfer)
<b>PROPOSED APPLICATION OF THE LTT</b>			
<b>Vehicle Acquires Land or an Interest in Land</b>	✓	✓	✓
<b>Partner/Unitholder Acquires an Interest in the Vehicle</b>	✗	✓	✓
<b>DRIP</b>	✗	✗	✓
<b>Redemption of a Unit</b>	✗	✓	✓
<b>Does the <i>De Minimis</i> Apply to Unit Trades?</b>	N/A (Unit trades would not be taxable)	Available to a qualifying individual partner, corporate partner or Group 1 vehicle partner of a Group 2 vehicle that is a limited partnership.	Available to a qualifying individual partner, corporate partner or Group 1 vehicle partner of a Group 3 vehicle that is a partnership.
<b>Can the Vehicle Itself Use the <i>De Minimis</i>?</b>	YES (Available to a qualifying Group 1 vehicle that is a partner in a partnership)	NO	NO

\*Cells that are shaded identify proposals to change the law. "DRIP" refers to a distribution/dividend reinvestment plan, which would be defined for LTT purposes. "*De Minimis*" refers to the *de minimis* partnership exemption under s. 1(2) of O. Reg. 70/91. Please note that the term "vehicle" is used in this table to refer to an entity that is not a corporation or individual. The Ministry would generally classify foreign entities for the purposes of the LTT based on the Canada Revenue Agency's classifications of such entities.