

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

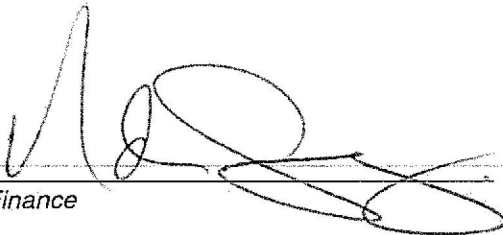
Order in Council No. 152, Approved and Ordered March 15, 2017

  
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Property Transfer Tax Regulation, B.C. Reg. 74/88, is amended,

- (a) effective August 2, 2016, as set out in the attached Appendix 1,
- (b) effective March 31, 2017, as set out in the attached Appendix 2, and
- (c) effective August 2, 2017, as set out in the attached Appendix 3.

  
Minister of Finance

  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

Authority under which Order is made:

Act and section: *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378, s. 37

Other: O.C. 364/88

March 13, 2017

R/139/2017/18

## APPENDIX 1

*I The following Part is added to the Property Transfer Tax Regulation, B.C. Reg. 74/88:*

### PART 4 – ADDITIONAL TAX UNDER ACT

#### Provincial nominee exemption – specified transactions

- 18 (1) In this section:
- “**principal residence**” has the same meaning as in section 12.01 (1) of the Act;
  - “**provincial nominee**” means an individual who is named in a valid nomination certificate issued by the government in accordance with an agreement referred to in section 8 (1) of the *Immigration and Refugee Protection Act* (Canada) between the government and Canada;
  - “**qualifying transferee**”, in relation to a specified transaction referred to in subsection (2), means an individual who
    - (a) on the registration date,
      - (i) is both a foreign national and a provincial nominee, and
      - (ii) intends to inhabit the improvement referred to in subsection (2) (a) as the individual’s principal residence,
    - (b) immediately after the registration of the transaction, holds an interest in the residential property that is the subject matter of the transaction in a capacity other than as a taxable trustee, and
    - (c) has not previously been a qualifying transferee under a specified transaction to which subsection (3) applies;
  - “**registration date**”, in relation to a specified transaction, means the date on which the application for registration of the specified transaction is made at a land title office;
  - “**specified transaction**” means a taxable transaction for which an application for registration is made at a land title office before March 31, 2017;
  - “**taxable transaction**” means a taxable transaction to which section 2.02 (3) of the Act applies.
- (2) Subsection (3) applies to a specified transaction if
- (a) on the registration date, the residential property that is the subject matter of the specified transaction includes an improvement that is permanently affixed to the property and is intended to be a dwelling, and
  - (b) any transferee is a qualifying transferee.
- ~~(3) Subject to subsection (4), a transferee who applies for registration, at a land title office, of a specified transaction to which this subsection applies is exempt from the obligation to pay tax under section 2.02 (3) (a) of the Act on that transaction in respect of that portion of the transaction’s taxable amount that is equal to the qualifying transferee’s proportionate share of the transaction’s fair market value.~~
- (4) If, immediately after the registration of the specified transaction, the qualifying transferee holds an interest in the residential property as a taxable trustee and in

a capacity other than as a taxable trustee, the transferee referred to in subsection (3) is not exempt from the payment of tax under section 2.02 (3) (a) of the Act on that transaction in respect of the interest held as a taxable trustee.

## APPENDIX 2

### 1 Part 4 of the Property Transfer Tax Regulation, B.C. Reg. 74/88, is amended by adding the following section:

#### Definitions

##### 17.1 In this Part:

“**eligible transaction**” means a taxable transaction for which an application for registration is made at a land title office on or after March 31, 2017;

“**principal residence**” has the same meaning as in section 12.01 (1) of the Act;

“**provincial nominee**” means an individual who is named in a valid nomination certificate issued by the government in accordance with an agreement referred to in section 8 (1) of the *Immigration and Refugee Protection Act* (Canada) between the government and Canada;

“**qualifying transferee**” means the following:

(a) in relation to a specified transaction referred to in section 18 (2), an individual who

(i) on the registration date,

(A) is both a foreign national and a provincial nominee, and

(B) intends to inhabit the improvement referred to in section 18 (2) (a) as the individual’s principal residence,

(ii) immediately after the registration of the transaction, holds an interest in the residential property that is the subject matter of the transaction in a capacity other than as a taxable trustee, and

(iii) has not previously been a qualifying transferee under a specified transaction to which section 18 (3) applies;

(b) in relation to an eligible transaction referred to in section 19 (1), an individual who

(i) on the registration date,

(A) is both a foreign national and a provincial nominee, and

(B) intends to inhabit the improvement referred to in section 19 (1) (a) as the individual’s principal residence,

(ii) immediately after the registration of the transaction, holds an interest in the residential property that is the subject matter of the transaction in a capacity other than as a taxable trustee, and

(iii) has not previously been a qualifying transferee under

(A) a specified transaction to which section 18 (3) applies, or

(B) an eligible transaction to which section 19 (2) applies;

**“registration date”** means the following:

- (a) in relation to a specified transaction, the date on which the application for registration of the specified transaction is made at a land title office;
- (b) in relation to an eligible transaction, the date on which the application for registration of the eligible transaction is made at a land title office;

**“specified transaction”** means a taxable transaction for which an application for registration is made at a land title office before March 31, 2017;

**“taxable transaction”** means a taxable transaction to which section 2.02 (3) of the Act applies.

**2** *Section 18 (1) is repealed.*

**3** *The following sections are added:*

**Provincial nominee exemption – eligible transactions**

- 19** (1) Subsection (2) applies to an eligible transaction if
- (a) on the registration date, the residential property that is the subject matter of the eligible transaction includes an improvement that is permanently affixed to the property and is intended to be a dwelling, and
  - (b) any transferee is a qualifying transferee.
- (2) Subject to subsections (3) and (4) and section 20, a transferee who applies for registration, at a land title office, of an eligible transaction to which this subsection applies is exempt from the obligation to pay tax under section 2.02 (3) (a) of the Act on that transaction in respect of that portion of the transaction’s taxable amount that is equal to the qualifying transferee’s proportionate share of the transaction’s fair market value.
- (3) If, immediately after the registration of the eligible transaction, the qualifying transferee holds an interest in the residential property as a taxable trustee and in a capacity other than as a taxable trustee, the transferee referred to in subsection (2) is not exempt from the payment of tax under section 2.02 (3) (a) of the Act on that transaction in respect of the interest held as a taxable trustee.
- (4) The transferee referred to in subsection (2) must tender with the application for registration of the eligible transaction an application for an exemption under this section that
- (a) is in the form required by the minister, and
  - (b) includes a consent, in the form required by the minister, by which the qualifying transferee consents to the administrator conducting inquiries respecting the qualifying transferee that the administrator considers necessary to confirm the qualifications of the qualifying transferee for the purposes of this section.

**Provincial nominee refund – eligible transactions**

- 20** (1) A transferee who is entitled to an exemption under section 19 in respect of an eligible transaction and who fails to apply for that exemption on the registration date may, within 18 months after that date, apply to the administrator for a refund

of the tax paid by the transferee under section 2.02 (3) (a) of the Act on the registration of the transaction.

- (2) On receiving an application for a refund under subsection (1), the administrator,
  - (a) if satisfied that the transferee would have qualified for an exemption under section 19 on the registration date, must refund to the transferee the portion of the amount of tax paid by the transferee that is equivalent to the amount of the exemption for which the transferee would have been entitled had the application for the exemption been made on the registration date, or
  - (b) if not satisfied that the transferee would have qualified for an exemption under section 19 on the registration date, must refuse the application and provide the transferee with written notice under subsection (3) of the refusal.
- (3) If an application for a refund under subsection (1) is refused, the administrator must send a letter to the applicant stating the reason for the refusal, and the letter is deemed to be a notice of assessment made under section 18 of the Act for the purposes of allowing the applicant to file a notice of objection under section 19 (1) of the Act.

### APPENDIX 3

*1 The following section is added to the Property Transfer Tax Regulation, B.C. Reg. 74/88:*

**Refund of additional tax under Act if transferee becomes citizen or permanent resident**

- 21
- (1) In this section, “**registration date**”, in relation to a taxable transaction referred to in subsection (2), means the date on which the application for registration of the taxable transaction is made at a land title office.
  - (2) A transferee may apply to the administrator for a refund of the tax paid by the transferee under section 2.02 (3) (a) of the Act on the registration of a taxable transaction if all of the following apply:
    - (a) on the registration date, the transferee is a foreign national;
    - (b) immediately after the registration of the transaction, the transferee holds an interest in the residential property that is the subject matter of the transaction in a capacity other than as a taxable trustee;
    - (c) on the registration date, the residential property includes an improvement that is permanently affixed to the property and is intended to be a dwelling;
    - (d) the transferee continuously inhabits the improvement referred to in paragraph (c) as the transferee’s principal residence throughout a period of not less than one year beginning on a date that is not more than 92 days after the registration date;
    - (e) the transferee becomes a Canadian citizen or a permanent resident of Canada on or before the first anniversary of the registration date;

- (f) the transferee has not previously
    - (i) obtained a refund under this section, or
    - (ii) been a qualifying transferee under
      - (A) a specified transaction to which section 18 (3) of this regulation applies, or
      - (B) an eligible transaction to which section 19 (2) applies;
  - (g) the application for the refund is made on a date that is
    - (i) after the first anniversary of the date on which the period referred to in paragraph (d) begins, and
    - (ii) before the date that is 18 months after the registration date.
- (3) On receiving an application for a refund under subsection (2), the administrator,
- (a) if satisfied that the requirements for the refund set out in subsection (2) (a) to (g) have been met but subject to subsection (4), must refund to the transferee the portion of the amount of tax paid by the transferee under section 2.02 (3) (a) of the Act that is attributable to the transferee's proportionate share of the taxable transaction's fair market value, or
  - (b) if not satisfied that the requirements for the refund set out in subsection (2) (a) to (g) of this section have been met, must refuse the application and provide the transferee with written notice under subsection (6) of the refusal.
- (4) If, immediately after the registration of the taxable transaction, the transferee holds an interest in the residential property as a taxable trustee and in a capacity other than as a taxable trustee, the amount of the refund payable under subsection (3) (a) is equal to the portion of the amount of tax paid by the transferee that is attributable to the interest held in the capacity other than as a taxable trustee.
- (5) Interest, calculated from the day after the registration date, is payable on tax refunded to a transferee under subsection (3) (a).
- (6) If an application for a refund under subsection (2) is refused, the administrator must send a letter to the applicant stating the reason for the refusal, and the letter is deemed to be a notice of assessment made under section 18 of the Act for the purposes of allowing the applicant to file a notice of objection under section 19 (1) of the Act.
- (7) Sections 6 (1) (b) and 7 of the Interest on Overdue Accounts Payable Regulation, B.C. Reg. 215/83, apply for the purposes of calculating interest payable under subsection (5) of this section.