

Tax Law

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Ontario Land Transfer Tax: Government Amends *De Minimis* Partnership Exemption

Yesterday, the Ontario Government enacted amendments to the “*de minimis*” exemption contained in the regulations to the Ontario *Land Transfer Tax Act*.

For Ontario land transfer tax purposes, a partner of a partnership that owns real estate in Ontario generally is treated as having a direct beneficial interest in the partnership’s real estate. Accordingly, a transfer of an interest in a partnership that owns Ontario real estate generally is subject to Ontario land transfer tax unless the *de minimis* exemption applies. Pursuant to the *de minimis* exemption, transfers of partnership interests were exempt from land transfer tax where the person acquiring the partnership interest did not, within a fiscal year, increase its interest in the partnership by more than 5%. Before yesterday’s amendment, it was generally considered that the 5% test was determined using a “look through” approach. That is, if Partnership A acquired an interest in Partnership B, the exemption would be available if a partner of

Partnership A indirectly acquired less than a 5% interest in Partnership B. Rulings were previously provided confirming this interpretation.

Yesterday’s amendments, which are described by the Ontario Government as “clarifying”, narrow the scope of the *de minimis* exemption such that it no longer applies where the acquiror of the partnership interest is another partnership or trust (including a REIT). We anticipate that the amendments will give rise to anomalous and unexpected results. For example, the *de minimis* exemption does not apply even where a partnership or a trust acquires less than a 5% interest in a partnership.

The amendments can affect a broad range of transactions, including public and private real estate structures. Of particular importance, the amendments are stated to be effective retroactively to transfers of partnership interests that occurred on or after July 19, 1989. Notably, however, the Ontario Government has stated that a person who previously received a ruling relating to an acquisition of a partnership interest will generally be entitled to continue to rely on that ruling.

We are continuing to consider and assess the ramifications and practical implications of this amendment. Should you have any questions or comments about the amendments to the *de minimis* exemption, please contact any member of our Tax Group or Commercial Real Estate Group.