

# 2019 BRITISH COLUMBIA TAX CONFERENCE & LIVE WEBCAST

## TOPIC OUTLINE

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### A POTPOURRI OF REAL ESTATE ISSUES

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*For the past 10 years, the topic of real estate has consistently been in the news in British Columbia. The discussion originally began with how high real estate prices could go and then unsurprisingly, changed to issues of unaffordability and how to control the prices. Over the past several years, all three levels of government have undertaken various initiatives, such as the following:*

- Vancouver Empty Homes Tax;
- BC Foreign Buyer's Tax;
- BC Speculation and Vacancy Tax;
- BC Land Ownership Transparency Act; and
- Information sharing amongst governments and CRA audit initiatives in the real estate sector

*This session will review these initiatives and provide an update with respect to, amongst other things, changes that could be coming down the pipeline. This session will also review considerations with structuring real estate ownership for investment and development in the current legislative environment.*

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#### 1) Foreign Buyer Tax

- a) Audit trends/targeted transactions
- b) Legal issues
  - i) Province's use of the presumption of resulting trust – a discussion on the (in)applicability of the presumption
    - (a) Taxable amount where there is a *taxable trustee*
    - (b) Province's position: as long as the entity on title holds even a sliver amount of interest for another person, entire amount held by the entity on title is subject to FBT
    - (c) But what is the correct interpretation of s. 2.02(5)?

#### 2) Speculation and Vacancy Tax

- a) Stated purpose
- b) The (surprising) need to look to immigration status to determine taxability
- c) Issues with popular exemptions
  - i) Principal residence – problems for returning residents; non-individuals as titleholders
  - ii) Tenancy
    - (1) what is the test for “non-arm's length” (BC's interpretation per website vs. legislation and common law)
    - (2) audit issues and owner's due diligence in reporting correctly
- d) Issues with declaration process
- e) Late file and (lack of) appeal rights

#### 3) Empty Homes Tax

- a) Recent changes
- b) Upcoming potential changes
- c) Recurring issues
  - i) Construction/renovation exemption and timing of permits
  - ii) Misalignment in proof required under Bylaw vs. evidence accepted upon audit

#### **4) GST**

- a) Audit trends and issues
  - i) House flips
  - ii) Gross negligence penalties
  - iii) Differences from income tax
- b) Tips and traps re: rental properties (these issues may come up more frequently if SVT increases rental supply)
  - i) The difference between long-term vs. short term residential rentals
  - ii) Headleases, look-through rules, and changes-in-use re: residential property
    - (1) *Prima Properties*

#### **5) Income Tax**

- a) Change-in-use rules (including recent proposed amendments)
- b) Principal residences
- c) Structuring considerations
- d) Non-resident withholding tax – remittance and reporting

#### **6) Land Ownership Transparency Act**

- a) Stated purpose
- b) Summary of reporting/disclosure requirements
- c) Information available to tax authorities (vs. information available to general public)
- d) Effect on taxes (potential increased audit risk)