

This last rate came into effect on January 1, 2017. The increased rate for consideration over \$400,000 was already applicable to properties with one or two single-family residences on them. The January 1, 2017 changes to the Ontario land transfer tax also added an increased rate of 2.5 percent for one- or two-single-family residence properties on consideration for the transfer which exceeds \$2 million.

Pursuant to the *City of Toronto Act, 2006*, an additional Toronto land transfer tax at rates equivalent to the provincial rates is levied. The city increased the Toronto land transfer tax rates to match the new provincial rates effective March 1, 2017, which effectively doubles the land transfer tax payable on any conveyance of real property located within the City of Toronto.

To convey legal ownership of the Toronto warehouse strata lot to Mr. Strange and Laura as trustees of the alter ego trust or to Mr. Strange's holding company as a bare trustee for himself, the transfer must be registered on title. All conveyances in Ontario must be electronically registered because the land registry offices no longer accept paper deeds.

The electronic registration system includes "trustee" as a possible category for transferees. However, land registry offices appear to have a policy of rejecting this category for registration (although the policy is not consistently enforced). In the event that registration is rejected, the trustees can instead be registered on title as joint tenants with the right of survivorship, which should achieve the same result from a practical perspective.

The registration of a property in the name of a corporation should present no title registration problems. However, if Mr. Strange were to transfer his Toronto warehouse strata lot to his

holding company as a bare trustee, the corporation would hold it for him personally as the continuing beneficial owner, and not for the trustees of the alter ego trust. Beneficial ownership would therefore pass to Mr. Strange's estate after his death. This result may not address all of his planning concerns in the circumstances.

Regardless of which of the two planning methods Mr. Strange decides to implement, the transfer of the Toronto warehouse strata lot back to Mr. Strange from either the corporation or the alter ego trust, or to the beneficiaries of the alter ego trust or Mr. Strange's estate after his death, can also currently be completed without land transfer tax. Although a sale of the property would trigger the payment of this tax, it is the purchaser or transferee who would bear the tax obligation.

Mr. Strange's Vacation Property in Quebec

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There is a relatively straightforward exemption from land transfer tax for Mr. Strange's vacation property in Quebec, and the property may be registered on title in the name of the trust.

In Quebec, the land transfer tax is commonly referred to as a "land transfer duty" and a "mutations tax" as a result of the French-language version of the legislation. For simplicity, however, it is referred to here as a "land transfer tax."

Under *An Act Respecting Duties on Transfers of Immovables* (also known as the Land Transfer Tax Act or LTTA), graduated rates apply. One set of rates applies throughout Quebec (the top rate is 1.5 percent), except that a higher set of rates applies in the City

of Montreal (where the top rate is 2.5 percent). The rates are not affected by the use made of a property.

If no exemption were available and Mr. Strange were paying tax on the fair market value (FMV) of his Quebec vacation property on the basis of the graduated rates, the land transfer tax would be \$14,000 if the property were located in the City of Montreal and \$12,000 if it were located elsewhere in the province.

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Section 6 of the LTTA indicates the time when the tax is triggered. Formerly, only registered transfers were subject to the tax. However, a major change took place on March 18, 2016, when unregistered transfers also became subject to the tax. The LTTA stipulates exemptions from the tax in certain circumstances, which are the same for both registered and unregistered transfers (see LTTA sections 17 to 20).

The property value used to calculate the land transfer tax is not its FMV for income tax purposes. Rather, it is generally the greater of any sale price or other consideration given for the

transfer (in Mr. Strange's case nil) and the municipality's assessed value for the property, which is generally set every three years and appears on the municipal tax role (LTAA sections 1.1 and 2). In Mr. Strange's case, if an exemption were not available, the land transfer tax would have been based on the property's municipal value.

The transfer of the Quebec vacation property to the trust is exempt from land transfer tax. It falls within the exemption concerning transfers from an individual to a trust when the transferor and the beneficiaries of the trust are either the same person, or in relation to each other are close family members.

Because the land transfer tax (and the applicable exemptions) are the same regardless of whether or not the transfer is registered, the transfer of the vacation property to the alter ego trust should be registered. If the trust held ownership without registering title, a third party to the transfer such as Andrea, the estranged daughter, could use the simulated agreements rules in an attempt to claim, for example, that a nominee agreement between a registered title holder and the trust as true and beneficial owner is unopposable or void in relation to herself. (See *Miracle Mile Industrial Park Corporation v. City of Montreal*, [1987] RDI 239 (QCA), as nuanced by articles 1451-2 of the *Civil Code of Québec* (CCQ) which came into force later, in 1994.)

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from an individual to a trust when the transferor and the beneficiaries of the trust are either the same person, or in relation to each other are close family members (ascendants or descendants in the direct line, spouses or common-law spouses, and certain others) under LTAA section 20(e). Most commentators feel that the exemption would be

lost if one of the potential present or future trust beneficiaries is a non-family member, such as a corporation. If later the property is transferred from the trust to one or more of the above-mentioned trust beneficiaries, this transfer should also be exempt from the tax (LTAA section 20 (e.1)).

The following brief points are also useful to note:

1. The land registry office accepts registration either in the name of the trust or in the names of the trustees on behalf of the trust, and there is no practical difference between these two modes of registration.
2. A copy of the trust deed is not registered and is not given to the land registry office. However, if a municipality reviews the transaction after the transfer, it may ask to see the trust deed to verify whether the exemption conditions apply.
3. In addition to the exemption for certain trusts referred to above, exemptions are available for transfers among certain close family members, transfers involving closely related corporations in which 90 percent of the voting shares are held at the time of the transfer and for 24 subsequent months, corporate amalgamations without a hold period, transfers among charities, and other stated situations. In the context of estate planning, an exemption can often (but not always) be found.
4. Because under Quebec private law partnerships essentially have a distinct personality (akin to a trust patrimony), changes in partners (unlike changes in co-owners) should not give rise to land transfer tax (9197-6837 *Quebec Inc. v. City of Terrebonne*, 2015 QCCA 1492). However, there are no tax exemptions for transfers of property into or out of the partnership.
5. Under CCQ article 1275, Quebec private law requires every trust, including alter ego trusts, to have at least one independent trustee who is neither the settlor nor a present or future beneficiary. Although Mr. Strange's alter ego trust does not seem to comply with this requirement, the rule is presumably inapplicable because under the terms of Mr. Strange's trust BC law governs and the trust has significant ties to British Columbia (CCQ article 3107). ■