

Canada: British Columbia *Land Owner Transparency Act* receives first reading

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Executive summary

In its 2018-19 budget delivered on 20 February 2018, British Columbia (BC) announced a 30-point plan to address the provincial housing affordability crisis and encourage a fairer housing market. The budget documents noted that "currently in B.C., true ownership of real estate can be hidden. This means numbered companies, offshore and domestic trusts, and stand-in owners obscure the source of funds in the real estate market." Therefore, as part of this plan, the BC Government stated it would establish a registry containing information about beneficial ownership of real property in the province. The registry would "help give tax authorities and law enforcement the information they need to crack down on tax evasion, and identify tax fraud and money laundering."

On 2 April 2019, Bill 23, *Land Owner Transparency Act* (LOTA), received its first reading in the BC legislative assembly. If enacted, the LOTA will establish a registry of beneficial ownership of real property in BC, to be administered by the Land Title and Survey Authority (LTSA). Although the LOTA is not a tax statute, the information contained in the registry that it establishes will be publicly available and could be shared with tax and law enforcement authorities to assist in investigations.

Detailed discussion

The purpose of the LOTA

The stated purpose of the LOTA is to prevent the “hidden ownership” of real estate in BC. The disclosure requirements and enforcement provisions in the LOTA would enable interested parties to look beyond legal ownership, i.e., the name of the person registered on title, to the *beneficial owner* who essentially owns and controls the real property.

Reporting bodies

In essence, the LOTA would require certain entities (reporting bodies) that are registered owners of real property in BC to provide information about individuals (interest holders) who hold beneficial interests in the property. Reporting bodies include relevant corporations, trustees of relevant trusts, and partners of relevant partnerships.

Relevant corporation means a corporation or a limited liability company, but not does include any entity listed in Schedule 1 of the LOTA (discussed below under **Exemptions**).

A *relevant partnership* includes (among other things) a general partnership, limited partnership, limited liability partnership, professional partnership, or foreign partnership within the meaning of the *Partnership Act*, as well as a legal relationship created in another jurisdiction, that is similar to any of these partnership relationships.

Relevant trust means an express trust (including a bare trust), as well as a legal relationship, created in another jurisdiction, that is similar to an express trust, but does not include any trust listed under Schedule 2 of the LOTA (discussed below under **Exemptions**).

Interest holders

For LOTA purposes, an interest holder includes a beneficial owner, a corporate interest holder, and a partnership interest holder. A *beneficial owner* includes an individual who has a beneficial interest in land that is registered or to be registered in the name of a trustee of a relevant trust, or who has the power to revoke the relevant trust and receive the interest in the land.

A *corporate interest holder* includes an individual who holds direct or indirect control of at least 10% of the issued shares of a relevant corporation, and/or rights relating to the election, appointment or removal of the corporation’s directors.

In general, an individual would be deemed to be a *partnership interest holder* in respect of an interest in land that is partnership property if:

- ▶ The individual were a partner of the relevant partnership; or
- ▶ The individual were a corporate interest holder of a relevant corporation that was a partner in the relevant partnership.

Requirement to file transparency declarations and reports

The LOTA would require a transferee that is applying to be registered under the *Land Title Act* as an owner of an interest in land to file a transparency declaration. In its declaration, the transferee would have to identify whether it is a reporting body and, if so, the type of reporting body.

A transferee that is a reporting body would be required to file a transparency report with the registrar, along with the application to register the interest in land. In general, the transparency report would have to contain the following information:

- ▶ The reporting body’s primary identification information, such as the reporting body’s business name and registered office address
- ▶ Information about each individual who is an interest holder, including their date of birth, social insurance number, and a description of how the individual is an interest holder
- ▶ The parcel identifier assigned to the land to which the report relates

The registrar would be obligated to refuse the application to register the interest in land if the transferee failed to file a transparency declaration or transparency report, or failed to certify and sign the declaration or report.

Transparency reports for pre-existing owners

A reporting body that is currently the registered owner of an interest in land (i.e., it was a reporting body before the LOTA came into force) would be required to file a transparency report within a prescribed period (yet to be determined). The LOTA would also require a transparency report to be filed if:

- ▶ The registered owner of an interest in land became a reporting body at a time after the interest was registered.
- ▶ A previously filed transparency report did not disclose the current interest holders.

Or

- ▶ A determination of incapacity was made with respect to a current interest holder.

In these circumstances, the filing deadline for a transparency report would be two months. For example, a reporting body would be required to file a transparency report within two months after becoming aware that a prior report was no longer accurate. However, a reporting body could at any time file a new report to complete or correct information in a previously filed report, as it deemed necessary.

Exemptions

Schedules 1 and 2 of the LOTA exclude certain entities from the requirement to file transparency declarations and reports. These exempt entities include, among others:

- ▶ Corporations listed on a designated stock exchange
- ▶ Strata corporations
- ▶ Savings institutions
- ▶ Insurance companies
- ▶ Trust companies
- ▶ Charitable trusts
- ▶ Testamentary trusts
- ▶ Alter ego trusts or joint spousal or common-law partner trusts
- ▶ Pension plan trusts
- ▶ Mutual fund trusts
- ▶ SIFT trusts

Furthermore, the LOTA does not apply to certain Indigenous lands, including, for example, treaty lands of a Treaty First Nation.

Information searches

Part 3 of the LOTA sets out provisions for inspections and searches of transparency records and reported information. In general terms, the LTSA will be required to maintain information provided under the LOTA and to make the information available for inspection and search.

Searches by officials

An enforcement officer (as designated under the LOTA) may search records and information to determine general compliance with the LOTA and the regulations. However, the LOTA also sets out search parameters for various public officials. For example, an employee or official of the

BC Ministry of Finance may conduct searches to compile statistical information, formulate fiscal policy, or formulate policies to combat money laundering.

The LOTA allows an employee or official of a taxing authority to conduct searches for the purpose of administering or enforcing any BC or federal law that imposes or requires collection of a tax, royalty or duty.

An employee or official of a regulator may conduct searches in order to administer or enforce a law for which the regulator is responsible. In this context, a *regulator* includes the BC Securities Commission, the Financial Institutions Commission, the Law Society of British Columbia, and the Financial Transactions and Reports Analysis Centre of Canada.

Law enforcement officials may access information to conduct an investigation in Canada, including policing or criminal intelligence operations in Canada.

In general, information obtained by taxing authorities, regulators and law enforcement officials from searches of the registry may be shared with similar authorities outside Canada, if the assistance is authorized under provincial or federal law.

Searches by the public

In addition, any person may conduct a search of publicly accessible information to obtain information regarding:

- ▶ The parcel identifier for a parcel of land, in order to determine the persons who are interest holders or settlors in relation to the parcel; and
- ▶ A person's name, to ascertain the interests in land for which the person is an interest holder or settlor.

The LOTA contains certain privacy safeguards. For example, the administrator would be required to omit an individual's primary identification information if a transparency report indicated that the individual was under 19 years of age, or determined to be incapable of managing his or her own financial affairs. An individual could also apply to the administrator to request that certain information be omitted from or obscured in publicly available information, if the individual's health or safety could be put at risk.

Administrative rules

The LOTA contains a range of administrative rules setting out enforcement powers and sanctions in relation to the new reporting requirements. The LOTA would give an enforcement officer the power to enter a reporting body's

business premises, or a place where records are kept, to carry out an inspection to determine compliance with the LOTA. If records are kept at a lawyer's office, the right to inspect would be subject to any claim of solicitor-client privilege in respect of the records. The enforcement officer can also issue a demand notice specifying a time limit within which a written statement or record must be produced.

An enforcement officer could also impose substantial administrative penalties in a number of situations. For example, a corporation that failed to file a transparency report as a pre-existing owner of an interest in land could be required to pay a penalty of 5% of the assessed value of the property (the minimum penalty being CA\$50,000). Before deciding to impose an administrative penalty, the enforcement officer must consider several factors, including any previous enforcement actions against the person concerned. Once the penalty is imposed, the person subject to the penalty would have 14 days to either pay it or dispute it by filing a written notice with the enforcement officer. Decisions by the enforcement officer to confirm or vary an administrative penalty may be appealed to the Minister.

Alternatively, a person who failed to comply with certain provisions of the LOTA could be prosecuted with an offense and be liable to a fine. If both a penalty and an offense could be applicable to the same contravention, only one or the other would be applied. For example, in the same situation as above, a corporation that failed to file a transparency report as a pre-existing owner of an interest in land could be prosecuted with an offense and would be subject to a fine of 15% of the assessed value of the property (the minimum penalty being CA\$50,000). An administrative fine would not also be charged in this instance.

Impact for beneficial owners of property

The LOTA will, for the first time, require the beneficial ownership of real property in BC to be reported to the LTSA. This new reporting requirement is of particular interest when considered in conjunction with some of the other provincial tax statutes that impose taxes on real property. For example, historically, transfers of beneficial ownership

of real property were never required to be registered with the LTSA and thus have not been subject to tax under the *BC Property Transfer Tax Act* (PTTA). While the introduction of the reporting requirements under the proposed LOTA will not directly result in transfers of beneficial ownership being subject to the Property Transfer Tax (PTT), the information gathered under the LOTA will almost certainly be used by provincial tax authorities to assist with the enforcement of taxing provisions that look through the legal title holder to the beneficial owners to determine the application of tax. Examples of such taxing provisions include the additional 20% PTT imposed under the PTTA on the transfer of legal title to residential property to a transferee that is a corporation controlled by foreign nationals or to a trust that has a foreign entity as a beneficiary, as well as the new Speculation and Vacancy Tax imposed under the *Speculation and Vacancy Tax Act* on foreign and domestic speculators who own residences in BC but don't pay taxes in the province. Additionally, if, at some point in the future, the province decides that transfers of beneficial ownership of real property should be subject to PTT, the information gathered under the LOTA will make it very easy for the province to begin taxing such transactions.

Finally, the information obtained under the LOTA could also be used in cases where the tax authorities are considering whether a particular transaction would constitute a tax avoidance transaction under the general anti-avoidance rules contained in various taxing statutes.

The requirement to file transparency and disclosure reports would increase compliance costs for entities that hold real property. The LOTA may also lead to delays in real estate transactions, since the LOTA provides that the Land Title Office can refuse to register an interest in land where the necessary transparency reports are not filed or do not meet the requirements of the LOTA. Because non-compliance with the LOTA can result in the application of considerable penalties and even the prosecution of a criminal offense, property owners should review their situation to make sure they are prepared to file the necessary disclosures once the LOTA takes effect.

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