

# Tax News Flash

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## Ontario Reverses Land Transfer Tax Partnership Exemption

By: Louise Summerhill and Jack Bernstein

On Thursday, February 18, 2016, the Ministry of Finance (Ontario) (the “MOF”) quietly filed an amendment to the land transfer tax regulations which has potentially far reaching consequences. By way of background, the MOF started imposing land transfer tax on transfers of beneficial interests in land in 1989. Because the MOF does not recognize partnerships for land transfer tax purposes, where a partnership owns land, the owner of a partnership unit is considered to be the beneficial owner of the land. O. Reg. 70/91 was therefore implemented to provide an exemption in respect of “*de minimus*” transfers of partnership interests. In particular, there was a general exemption from land transfer tax where a person acquired an interest in a partnership that did not give rise to an entitlement of more than 5% of the profits of the partnership in a particular fiscal year of the partnership. At the time, it was felt that the “*de minimus*” exemption was necessary to ensure that immaterial transfers of partnership interests would not give rise to land transfer tax consequences.

In the 17 years since the exemption was granted, taxpayers have relied upon the exemption on thousands of occasions. With its recent amendment, the MOF has partially removed the exemption. In particular, if the acquiring entity is a trust, including a real estate investment trust or another partnership, the “*de minimus*” exemption is not available. In other words, the MOF is saying that entities which are “look through” entities for land transfer tax purposes do not qualify for the exemption. What is particularly concerning is that the amendment is retroactive to 1989 (except in cases where a ruling was obtained). The

MOF’s backgrounder suggests that the amendment is for “clarification.” Nothing could be further from the truth. As originally drafted, the exemption was clear.

There is no word yet as to whether the amendment will be mirrored in the legislation for the City of Toronto land transfer tax, but we presume that it will be.

The fact that the amendment is retroactive suggests that the MOF intends to proceed against taxpayers in respect of previously exempted transactions. In the coming weeks we will be analyzing the amendment further and will be available to provide advice to clients.

For further information contact:

Louise Summerhill  
416-865-3416  
[lsommerhill@airdberlis.com](mailto:lsommerhill@airdberlis.com)

Jack Bernstein  
416-865-7766  
[jbernstein@airdberlis.com](mailto:jbernstein@airdberlis.com)