

# Real Estate Law

## What You Need to Know About the New Non-Resident Speculation Tax (and the PIPS5 Form)

By: Haley Wong and Sarah Newman\*

The Ontario government has introduced a 15% non-resident speculation tax (“NRST”) that applies to the purchase or acquisition of residential properties located in certain areas of Ontario by foreign corporations, foreign nationals and taxable trustees. NRST is payable in addition to provincial and municipal (in the case of Toronto) Land Transfer Tax. All payment of NRST became mandatory on May 5, 2017.

### Properties Subject to NRST

Residential properties subject to NRST are those which contain at least one and not more than six single family residences. NRST does not apply to residential apartment buildings with more than six units, agricultural land, commercial land or industrial land. The affected geographical areas are Brant, Dufferin, Durham, Haldimand, Halton, Hamilton, Kawartha Lakes, Niagara, Northumberland, Peel, Peterborough, Simcoe, Toronto, Waterloo, Wellington and York.

### Entities Subject to NRST

NRST applies to acquisitions by foreign entities (foreign nationals and/or foreign corporations) and taxable trustees. A foreign national is an individual who is not a citizen or permanent resident of Canada. A foreign corporation is a corporation that is either (i) not incorporated in Canada; (ii) incorporated in Canada, but is controlled wholly or in part by a foreign national or other foreign corporation; or (iii) is controlled directly or indirectly by a foreign entity. A taxable trustee is either (i) a foreign entity holding title in trust for beneficiaries; or (ii) a Canadian citizen, permanent resident of Canada, or a corporation holding title in trust for foreign entity beneficiaries.

### Application of NRST

If a transferee is a foreign entity or taxable trustee, then NRST applies to the value of consideration for the property. Each transferee, even if only one of which is a foreign entity or taxable trustee, is jointly and severally liable for all NRST payable. If transferred land includes both residential and another type of property, NRST only applies to the consideration associated with the residential portion. NRST does not apply when a person purchases or acquires residential property as a trustee of the property of a mutual fund trust, real estate investment trust or specified investment flow-through trust. Failure to pay required NRST may result in a penalty, fine and/or imprisonment.

### Exemptions to and Rebates for NRST

Exemptions are available to a foreign national who receives confirmation as a nominee by the Ontario Immigration Nominee Program, who has status as a convention refugee or a person in need of protection, or who jointly purchases a residential property with their spouse who is a citizen or permanent resident of Canada, a nominee, a convention refugee or person in need of protection.

Rebates are also available to a foreign national who becomes a citizen or permanent resident of Canada within four years of the date of the purchase or acquisition, who is a student enrolled full-time for at least two years from the date of purchase or acquisition in an approved Ontario education institution, or who legally works full-time in Ontario for a continuous period of one year after the date of purchase or acquisition.

**Prescribed Information for the Purposes of Section 5.0.1 Form**

Completion of the Prescribed Information for the Purposes of Section 5.0.1 Form (“**PIPS5 Form**”) is a new requirement that became mandatory on May 5, 2017 for purchases and acquisitions of land that contains at least one and not more than six single family residences, or agricultural land. The PIPS5 Form must also be completed by a purchaser of these types of land even if he or she is a Canadian resident and NRST would not otherwise apply. Failure to submit the PIPS5 Form may constitute an offense under the *Land Transfer Tax Act*.

For more information on the non-resident speculation tax, or other related topics, please contact any **member** of our **Real Estate Group**.

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