

RECENT DEVELOPMENTS TO BRITISH COLUMBIA'S PROPERTY TRANSFER TAX REGIME

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"Insights into the latest developments in BC's land transfer processes and their impact on seniors housing."



There have been two significant developments to the property transfer tax regime in British Columbia that may have positive effects on the seniors living industry:

- First, two new property transfer tax exemptions for purpose-built rental buildings became effective as of January 1, 2024 and January 1, 2025, respectively.
- Second, the courts have provided some recent commentary on the anti-avoidance rule in the *Property Transfer Tax Act* (the “**Act**”), which was added to the Act by a 2016 amendment.

New Purpose-Built Rental Building PTT Exemptions

Purpose-built rental buildings are non-stratified buildings that are held as rentals, on a monthly basis or longer, for at least 10 years. To incentivize the construction of new rental buildings, the Government of British Columbia has provided certain exemptions from property transfer tax for purchasers of such buildings.

Purchasers of qualifying purpose-built rental buildings between January 1, 2024 and December 31, 2024 have been eligible for an exemption from the 2% property transfer tax imposed on the amount of the residential property's fair market value that exceeded \$3,000,000. If a purchaser did not claim this exemption on closing when the transfer of the property was registered, the purchaser may still be eligible for a refund of the exempt amount if they make a claim for the same within 18 months after closing.

Effective January 1, 2025 until December 31, 2030, transfers of new qualifying purpose-built rental buildings will be exempt from general property transfer taxes.

To qualify for the general property transfer tax exemption, certain conditions must be met both at the time of the transfer and during the subsequent 10-year period. Namely:

- At the time that the transfer of the property is registered at the Land Title Office, the purpose-built rental property must:
 - contain at least four separate apartments;
 - be located in British Columbia;
 - be newly constructed as a rental building;
 - not be a resale;
 - not have been previously occupied as a residence; and
 - not have been stratified;

- Within 92 days after registration of the transfer, the residential portions of the building must be rented or offered for rent on a monthly basis or longer; and
- For 10 years after registration of the transfer:
 - the conditions on registration must continue to be met;
 - the residential portions of the building must be used entirely for rental purposes (subject to exemptions for owner / manager use of up to two apartments so long as the remaining residential portion of the building contains four or more other apartments that are used for rental purposes); and
 - the purchaser must not sell the property.

Purchasers may claim the exemption at the time of closing by indicating so on their Property Transfer Tax Return. If a purchaser fails to apply for the exemption when the transfer is registered, they may, within 18 months after that date, apply for a refund of the property transfer tax paid if the transfer was eligible for an exemption.

Purchasers who claim an exemption have ongoing reporting requirements, including:

- If within 10 years after registration of the transfer of the property at the Land Title Office, the building or a portion of the building is sold, if another taxable transaction in respect of the property occurs, such as stratifying the building, or another change of use occurs such that the conditions to the exemptions are no longer met (except to the extent the change is due to circumstances beyond the owner's control or due to reasonably required renovations or repairs), the owner must report the change of use to the administrator within 92 days and repay a portion of the exemption; and

- Within 92 days after the 10th anniversary of the registration of the transfer of the property at the Land Title Office, the owner must submit a final declaration to the administrator confirming that during such period all the conditions for the exemption continued to be met. Failure to do so may result in the issuance of a notice of assessment for the full exemption amount.

The administrator may apply a penalty if a purchaser makes a false or misleading application when claiming the exemption or refund, does not notify the administrator of a change in use, provides a false or misleading notice, fails to notify the administrator of a change in use within the 92-day deadline provided, or provides a false or misleading final declaration.

New Judicial Commentary on the PTT Anti-Avoidance Rule

In August 2016, the Act was amended to include an anti-avoidance rule, providing that transactions entered solely to avoid payment of property transfer tax may still incur tax consequences, imposed at the discretion of the administrator, acting reasonably, unless the transaction could reasonably be considered to have been undertaken or arranged primarily for a *bona fide purpose other than for the purpose of a tax benefit*.

The PTT anti-avoidance rule does not include clear guidance as to what constitutes a “bona fide purpose”. The courts have released recent decisions that provide some helpful commentary on what may constitute a “bona fide purpose”: *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, [2023 BCSC 1476](#) (“**Peakhill**”), affirmed on appeal in *British Columbia v Peakhill Capital Inc.*, [2024 BCCA 246](#) (the “**Peakhill Appeal**”).

In *Peakhill*, the court was asked to approve a transaction in the insolvency context that involved a property sale effected by way of the transfer of shares of the registered property owner after residual assets were transferred from it to another person. The proposed transaction structure resulted in significant property transfer tax savings and the proceeds available to the company's creditors were increased accordingly. The trial court determined that the proposed transaction structure was appropriate for its purpose: namely to maximize recovery for the creditors.^[1]

The Province of British Columbia, as a stakeholder in the matter, argued that the court should not approve the proposed transaction because “to exercise jurisdiction and approve the [transaction] would be to bless the objective of avoiding a tax liability.”^[2] The trial court rejected this argument on the basis that: (a) courts have approved similar transactions that have conferred tax benefits on the parties in insolvency proceedings.^[3]; and (b) outside of the insolvency context, the transfer of property by means of sale of the corporate property owner's shares does not generally amount to a taxable transaction.^[4]

In particular, in making its decision, the court took into account that, outside of the insolvency context, the parties would have been permitted to carry out the transfer of the property by means of the transfer of shares to a nominee in order to avoid paying property transfer tax.^[5] The court further noted that there are no current regulations under the Act that would deem a sale of shares of a nominee holding real property to be a taxable transaction.^[6]

In the *Peakhill Appeal*, the Court of Appeal re-evaluated the Province's arguments and ultimately affirmed the trial judge's decision.^[7]

While the decisions in *Peakhill* and the *Peakhill Appeal* are not direct rulings on the application of the anti-avoidance rule under the Act, these decisions do provide useful guidance as to what the courts may consider to be a “bona fide purpose” within the meaning of the property transfer tax anti-avoidance rule, as it currently stands.

For more information on the *Property Transfer Tax Act*, please contact a member of our seniors housing group: Peter M. Roth, Jamie R. Matthews, Ryan McCracken, Cassandra R. Enns, or Vanessa Locke.

This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances.

¹ *Peakhill* at paragraph 81.

² *Peakhill* at paragraph 59.

³ *Peakhill* at paragraph 61.

⁴ *Peakhill* at paragraph 62.

⁵ *Peakhill* at paragraphs 63-64.

⁶ *Peakhill* at paragraph 69.

⁷ *Peakhill Appeal* at paragraphs 28-31.