City of Burnaby

Item	....
Meeting	.... 2016 Sep 19

COUNCIL REPORT

TO:	CITY MANAGER	**DATE:**	2016 September 12
FROM:	DIRECTOR PLANNING AND BUILDING	**FILE:** *Reference:*	1020 20 *Provincial Housing Tax*

SUBJECT: **ADDITIONAL PROPERTY TRANSFER TAX ON FOREIGN ENTITIES IN THE METRO VANCOUVER REGION**

PURPOSE: To provide information on the Province of British Columbia's July 2016 amendment to the Property Transfer Tax Act.

RECOMMENDATIONS:

1. **THAT** the Metro Vancouver Board be requested to gather municipal views on the implementation of the new Housing Priority Initiatives Fund for conveyance to the Provincial Government, as outlined in this report.

2. **THAT** the Provincial Government be requested to consult with local governments on data collection and analysis as it relates to the Property Transfer Tax to improve the understanding of investment in the property market and the policy basis for application of the tax going forward.

3. **THAT** a copy of this report be sent to all Burnaby MLAs.

REPORT

1.0 BACKGROUND

At the regular Council Meeting of 2016 July 25, staff was requested to provide information on the July, 2016 amendment, by the Province of B.C., to the Property Transfer Tax Act to include an 'Additional Property Transfer Tax on Residential Property Transfers to Foreign Entities in the Greater Vancouver Regional District'.

On 2016 July 25, the Province introduced Bill 28, Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016.[1] The intent of the new legislation, as articulated by the province, is to create "new measures to help make home ownership more affordable, establishes a fund for market housing and rental initiatives, strengthens consumer protection, and gives the City of Vancouver the tools it requested to increase rental property supply."

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[1] See pages 62-6 of the Budget and Fiscal Plan 2016/17 -1018/19 for details Electronic version available at: http://bcbudget.gov.bc.ca/2016/bfp/2016_Budget_and_Fiscal_Plan.pdf

Bill 28, Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016 included the following inter-related provisions:

- An additional property transfer tax rate of 15 per cent that will apply to purchasers of residential real estate who are foreign nationals or foreign-controlled corporations. The additional tax took effect Aug. 2, 2016, and the tax applies to foreign entities registering their purchase of residential property in Metro Vancouver, excluding the treaty lands of the Tsawwassen First Nation.
- A new Housing Priority Initiatives Fund for provincial housing and rental programs. The fund will receive an initial investment of $75 million. It will receive a portion of revenues from the property transfer tax, including revenues from the new additional tax on foreign buyers.
- Amend the Real Estate Services Act to increase the superintendent of real estate's authority and oversight.
- Amend the Vancouver Charter to provide the legislative authority for the city to implement and administer a tax on vacant homes.

The Province has stated that these measures and "additional future initiatives" are intended to address "the complex causes of rising housing prices in Metro Vancouver, as well as other regions of the province." It is stated that this work will focus on "ensuring the dream of home ownership remains within the reach of the middle class, increasing housing supply, smart transit expansion, supporting first-time home buyers, strengthening consumer protection and increasing rental supply." The full scope and timing of future Provincial initiatives and implementation of these program initiatives have not been advanced to the public or municipalities at this time.

This report outlines the scope of the Provincial Government's program related to the additional Property Transfer Tax and the 'Housing Priority Initiative.' The additional tax's potential impact on the City of Burnaby's: residential real estate market, housing affordability, potential tax avoidance and loopholes, and use of the new "Housing Priorities Initiatives" account have been outlined for the information of Council.

A number of issues that may impact all municipal governments have been identified in this report. These identified concerns include the need for information to be shared by the Ministry of Finance directly with municipalities, and the need for further consultation with all municipal governments, through the Metro Vancouver Board, regarding the purpose and use of the new Housing Priority Initiatives Fund. As such, recommendations regarding these issues have been advanced for the consideration of Council at this time.

2.0 ADDITIONAL PROPERTY TRANSFER TAX

Effective 2016 August 02, an additional 15 per cent property transfer tax will apply to residential property transfers to *foreign entities* who register their residential property in Metro Vancouver. The additional tax will apply on all applicable transfers registered with the Land Title Office on or after 2016 August 02, regardless of when the contract of purchase and sale was entered into.

The following information available on this Provincial initiative has been provided in a provincial 'Tax Information Sheet' issued in July, 2016. The following summarizes the available information:

2.1 Foreign Entities

Foreign entities are transferees that are foreign nationals, foreign corporations or taxable trustees.

Foreign nationals are transferees who are not Canadian citizens or permanent residents, including stateless persons.

Foreign corporations are transferees that are corporations:

- not incorporated in Canada;
- incorporated in Canada, but controlled in whole or in part by a foreign national or other foreign corporation, unless the shares of the corporation are listed on a Canadian stock exchange.

Taxable trustees are trustees that are a foreign national or foreign corporation, or a beneficiary of a trust that is a foreign or foreign corporation.

2.2 Application of the Additional Tax

Foreign entities will pay the additional 15 per cent tax on the fair market value of the residential component of the foreign interest in property. Fair market value is the price that would be paid by a willing purchaser to a willing seller for a property in the open market on the date of registration. For mixed-use properties, the additional tax would apply on the residential component of the foreign interest in the property. The additional tax does not apply to non-residential property (e.g. commercial, industrial or agricultural lands).

The additional tax applies to Metro Vancouver residential properties; however, the Province can prescribe in regulation other areas where the additional tax would apply. For instance, regional districts outside of Metro Vancouver can be included in the tax. The size and footprint of the tax can be adjusted by the Province once it is understood how the tax affects the market. The tax can be increased or decreased between 10 and 20 per cent.

The additional tax applies to the foreign entity's proportionate share of any applicable residential property transfer, even when the transaction may normally be exempt from the property transfer tax. This includes transactions such as:

- a transfer between related individuals;
- a transfer resulting from an amalgamation;
- a transfer to a surviving joint tenant; and,

- a transfer where the transferee is or becomes a trustee in relation to the property, even if the trust does not change.

The additional tax does not apply to trusts that are mutual fund trusts, real estate investment trusts or specified investment flow-through trusts.

The additional property transfer tax is in addition to the regular property transfer tax which is paid on property that is registered at the Land Title Office. The regular property transfer tax is charged at a rate of:

- 1% on the first $200,000;
- 2% on the portion of the fair market value greater than $200,000 and up to and including $2.0 million; and
- 3% on the portion of the fair market value greater than $2.0 million.

The property transfer tax exemption for newly built homes with a fair market value of $750,000 or less is not available to foreign entities as they would not qualify as a Canadian citizen or a permanent resident.

2.3 Filing and Paying the Tax

Foreign entities registering a transfer (or their legal representative) must complete and file an 'Additional Property Transfer Tax Return'. The return must be filed at the same time the property transfer is registered with the Land Title Office. All purchasers must indicate their country of citizenship on the form. Proof of citizenship is not required.

The additional property transfer tax must be paid with the provincial property transfer tax at the time the property transfer is registered with the Land Title Office. Each transferee is jointly and severally liable for the additional tax payable. If the foreign transferee does not pay the required additional tax at registration, the other transferees must pay that foreign transferee's share of the additional tax owed by the foreign purchaser(s).

2.4 Enforcement, Tax Avoidance and Penalties

The Province has stated that audit measures already in place for the provincial property transfer tax will be extended to encompass the additional property transfer tax. The Province has announced that additional auditors will be required and that the process is underway to begin recruitment to ensure the additional tax is paid by those required to do so under the legislation. The amendments extend the limitation period for audit and enforcement of the additional tax to six years. The existing limitation period for the property transfer tax is one year.

Amendments to the Provincial legislation include anti-avoidance rules that are designed to capture transactions that are specifically structured to avoid tax. Where transactions involve Canadian citizens and permanent residents, their identity must be verified using official government issued identification. The social insurance number (SIN) must be collected and verified to be that of the transferee by reviewing the SIN card and comparing the name or by viewing either a T4 Statement of Remuneration Paid (slip) or a Canada Revenue Agency Notice of Assessment.

The Canadian citizen's social insurance number must be collected on the provincial 'Property Transfer Tax Return' document. Invalid social insurance numbers or other discrepancies on a return will lead to an audit and investigation of the transaction.

Failure to pay the additional property transfer tax as required or purposely completing the property transfer tax return or the additional property transfer tax return with incorrect or misleading information may result in a penalty of the unpaid tax plus interest and a fine of $200,000 for corporations or $100,000 for individuals and/up to two years in prison. The penalties apply to anyone who participates in tax avoidance.

2.5 Collection and Remittance

All property transfer taxes collected by the Land Title Office are remitted to the Minister of Finance. The province collected more than $1.53 billion in property transfer taxes for fiscal 2015-16 which represented an increase of $468 million, or a jump of almost 44 per cent, over the previous 12 months. The value contribution of the new 15% tax will become available as the tax is collected and reported by the Province.

3.0 CONSIDERATIONS

The additional property transfer tax came into effect on August 2, 2016, and as such, a useful data set is not yet available to determine the impact of the tax on Burnaby's housing market, regional housing market, or affordability of housing for Burnaby residents. However, views expressed on the Provincial Housing Programs, and specifically the Additional Property Transfer Tax has found that there a number of potential areas of concern.

3.1 Data Collection

The Province of B.C. initiated its recent 'Housing Priority Initiative' as part of a Budget announcement in February, 2016 and stated that it would develop better data on cost drivers in the housing market. Included was a specific commitment to begin the process of collecting data on the scope and extent of foreign nationals' participation in the residential real estate market, with the view of making this new information publically available.

It was noted that citizenship disclosure was required with land transfers until 1998 under the Land Title Act. The collection of this data was suspended largely because of compliance costs to those that registered property and the fact that the information was "seldom if ever used."

In this new effort to collect data, the Property Transfer Tax Act authorizes government to collect new information from owners when they register their property. It was stated that the process will: "generate data that will allow government to monitor the volume of foreign investment and use of bare trusts and assess what effect, if any, they have on pricing." These new reporting requirements require:

- Purchasers to identify themselves as Canadian citizens or permanent residents.
- Individual transferees, who are not Canadian citizens or permanent residents, to disclose their citizenship.
- Corporations to disclose their directors' citizenship.
- Transferees to disclose whether or not they are holding the land as bare trustees when they register and provide information on the settlor and beneficiaries of the bare trust.

Data collected by the Province under the new system for the period 2016 June 10 – July 14, revealed the following:

- In B.C. as a whole, 6.6 per cent of all residential property transactions involved foreign buyers.
- In Metro Vancouver 9.7 per cent of all residential property transactions involved foreign buyers and accounted for $885,393,373 out of a total $8.8 billion worth of transactions.
- Richmond had the highest percentage at 18.2 per cent of all residential property transactions.
- Burnaby had the second highest percentage at 17.7 per cent of all residential property transactions (117 out of a total of 662 property transfers).
- The other municipalities included Vancouver at 10.9 per cent and Surrey at 8.4 per cent of transactions with foreign buyers.

The collection of the property transfer data in the limited form and content undertaken by the Province to date, presents concerns regarding its reliability for use to formulate and implement amendments to existing taxation programs. The number of transactions is a relatively low sampling over a relatively short period of time (a total of 35 days in June and July). Also the data released does not provide any further information related to the number of bare trustees (foreign corporations or taxable trustees) that comprise the total number of foreign nationals identified.

Additionally, the data collection date has been developed without broad input or review. To date the Province has not committed or proposed to release any further refined statistics on the breakdown of transactions which could further advance insight into the foreign national interest in Metro Vancouver's residential market. For example, it may be useful for future policy analysts to understand the detailed breakdown of the investment pattern in residential, commercial and other property types by age, type and form of land ownership (fee simple, strata units, number rental units, etc.). This information may assist in understanding the demand and nature of property investment and how tax policy could or should be focused.

In summary, in consideration of the scope of potential impacts of the new Property Transfer Tax, a more considered and robust review and analysis of the data over a longer period of time, with more detailed analytics, may prove useful in developing effective and deliberate responses to policy issues.

As noted, to date the Province has not consulted broadly on the implementation or impacts of the tax policy changes. The Province has only committed to release data on a monthly basis. The Province has also not sought to gather land use and other data information on transactions, which could add significant value to the analysis of the potential effectiveness of tax amendment proposals and/or the ultimate impacts of the tax. Given the narrow geographic application and target of the tax amendment, and the Province's acknowledgement of its direct and substantive impact on municipalities within the Metro Vancouver region, improved, broader and shared data may add significant value to the understanding of the nature of investment and the suitability of the provincial taxation approach.

On this basis, staff would propose that that the Province consult with the regional government and local governments on data collection and analysis as it relates to the Property Transfer Tax to improve the understanding of investment in the property market and the policy basis for application of the tax going forward.

3.2 Value of the Property Transfer Tax by Property

To more fully illustrate the tax payments under this tax program, the following provides examples of the application of the Property Transfer Tax (PPT) and the Additional 15% PTT. The values are based on the median single family detached house value and the median apartment value for Burnaby, as reported by the BC Real Estate Association's "Multiple Listing Service – Home Price Index" in July, 2016.

It is noted that there is some variability in Burnaby's residential market values, based on its location, supply and recent sales, therefore, median values are presented for North, South and East Burnaby as a point of comparison.

Single Family Residence (Detached)

Location	Median Value	PTT	Additional 15% PTT	Total Tax
South Burnaby	$1,710,300	$32,006	$256,545	$258,545
North Burnaby	$1,604,100	$30,080	$240,615	$270,695
East Burnaby	$1,250,400	$23,008	$187,560	$210,568

Apartment Residence

Location	Median Value	PTT	Additional 15% PTT	Total Tax
South Burnaby	$535,000	$8,700	$80,250	$88,950
North Burnaby	$461,700	$7,234	$69,255	$74,489
East Burnaby	$549,000	$8,980	$82,350	$91,330

The Additional Property Transfer Tax on foreign entities is added to the Property Transfer Tax when the transfer is registered at Land Titles.

As a further example, a luxury single family detached residence with a fair market value of $3.5 million, purchased by a foreign entity, would pay $608,000 in total property transfer taxes, or an effective tax rate of 17.3 per cent.

Regular Property Purchase Tax	
1% on first $200,000	$ 2,000
2% on $1,800,000	$ 36,000
3% on $1,500,000	$ 45,000
Subtotal	**$ 83,000**
Additional Property Purchase Tax	
15% on $3,500,000	$525,000
Total Property Purchase Tax	**$608,000**

Without benefit of either the data and analysis that was utilized by the Ministry of Finance, it is not certain what are the intended impacts or targets which were set by the Province to determine the success of the program in the near to long-term. The actual changes to the local residential real estate market that would result from the introduction of the new program will have to be determined in context with other variable factors, including the inventory available, local real estate market conditions and the overall strength of the real estate market in the months and years to come.

However, on August 25, 2016, the Vancouver Sun reported Multiple Listing Service sales data for the period August 1 – 15, 2016, and compared sales numbers to those during the same period in 2015. Burnaby sales dropped 80 per cent compared to the same time period in the previous year. Other local jurisdictions saw similar drops in sales. While this indicates the tax had a cooling effect on the real estate market in the short term, the data period is too short to be conclusive of the tax's effect longer term, and a clear understanding of the cause and effect of the tax is not yet apparent. Further releases of both residential sales data and further analysis of the participation of foreign nationals in the residential market over the next months and years would assist in determining the overall impact of the program.

3.3 Housing Affordability

Housing affordability is a result of many factors, including tax rates, interest rates, development cost, consumer demand, land supply, and level of senior government investment in housing. The Additional Property Transfer Tax is one factor out of many that may impact affordability.

At this point, clear information of the impact of the tax on affordability is not available. As well, the impact of the tax on the market and property value across the housing spectrum remains to be understood.

3.4 Development and Construction Industry

The ability to confirm presales is an important consideration for the development industry. Banks finance projects on the basis of presales, as such if presales slow, financing and construction activity may also slow. The Additional Property Transfer Tax may impact presales of multi-family units by confirmed foreign buyers canceling presales contracts due to the tax.

3.5 Tax Avoidance and Loopholes

The success of provincial legislative changes that enable the new tax to be included in anti-avoidance rules will need to be assessed by the Province over time. The potential for avoidance of the tax could reduce the Provincial intent of the tax to regulate foreign investment to an extent to improve affordability in the Lower Mainland by damping foreign demand for residential property.

3.6 Proceeds of Tax to Fund Affordable Housing

The Province announced that proceeds from the 15 per cent tax are to be directed to a "Housing Priorities Initiatives" account. $75 million has been set aside to seed the fund, drawing from the $1.5 billion the government has collected in PTT for the 2015-2016 fiscal year (about 5 per cent). However, it has not indicated the amount to be contributed to the Fund on an annual basis.

According to the Provincial government, the fund can be used for "increasing housing supply; linking communities together better with smart transit investments; supporting first-time home buyers who are trying to enter the market; protecting consumers from shady practices; and increasing rental supply". The fund could be used for acquiring, constructing, maintaining or renovating "housing or shelter", acquiring land for same purposes, and supporting the acquisition of same by other governments and non-profits.

The provincial government has very open and broad powers to use the fund. The enabling legislation allows the provincial government to make changes on the use of the fund without having to go back to the legislature. While the tax is derived from the Metro Vancouver region, the fund is not committed to supporting projects within the region. Nor is there a commitment to direct the fund to BC Housing, or make it accessible to Metro Vancouver municipalities and non-profits to build more affordable, social housing.

Arising from the results of the data collection and the demonstration that the core of the market is being impacted in the Metro Vancouver region, and specifically the municipalities of Vancouver, Burnaby, Richmond and Surrey, some provision should be made to consult with regional municipalities and ensure that a fair portion of the funds collected be made available for housing projects and initiatives within these cities.

The Metro Vancouver Board recently adopted a Regional Affordable Housing Strategy, which sets out housing priorities for the region based on evaluation of regional housing needs and consultation with regional partners. Similarly, local governments in the Metro Vancouver region have set their own affordable housing priorities, in alignment with regional goals. Any use of the Housing Priority Initiatives Fund should be aligned with both regional and local government housing priorities. Therefore, there should also be clarity on the use of the new Fund.

Further, as noted, the province has indicated that it has provided $75 million to seed the Fund. However, it has not indicated the amount to be contributed to the Fund on an annual basis. Since the additional Property Transfer Tax is collected from within the Metro Vancouver region with the purpose of easing housing affordability, the total amount of that additional tax should be directed to the Fund. Furthermore, the basic Provincial Transfer Tax should be used to support housing affordability in the Metro Vancouver region through provision of non-market housing.

Staff would propose that Metro Vancouver be requested to gather the views of local governments, and convey those to the Provincial Government, to establish the process by which the funding will be used, and criteria for evaluating the projects to be funded, and to direct the funds to affordable non-market housing within the Metro Vancouver region.

4.0 CONCLUSION

As outlined in this report the 15 per cent Additional Property Transfer Tax on Foreign Entities was just one of the new provisions introduced by the Province as Bill 28, Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016. The intent of the new legislation was to make home ownership more affordable and to assist with the establishment of a fund for housing initiatives.

As outlined in this report the data collection on foreign national investment into British Columbia's residential real estate markets remains at a preliminary stage. It will be necessary to continue to monitor and analyze the information before any conclusions can be reached regarding the effectiveness of the measure within the Metro Vancouver region.

The introduction of a new Housing Priorities Initiatives Fund from the Property Transfer Tax presents an opportunity for the provincial government is of align the use of the fund to meet the affordable housing goals of Metro Vancouver governments.

Based on the above, it is recommended that:

- the Metro Vancouver Board be requested to gather municipal views on the implementation of the new Housing Priority Initiatives Fund for conveyance to the Provincial Government, as outlined in this report.

- the Provincial Government be requested to consult with local governments on data collection and analysis as it relates to the Property Transfer Tax to improve the understanding of investment in the property market and the policy basis for application of the tax going forward.

- a copy of this report be sent to all Burnaby MLAs.

Lou Pelletier, Director
PLANNING AND BUILDING

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cc: Deputy City Manager
Director Finance
City Solicitor

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