

Application to Multiple Leases in Respect of the Same Land

Property Transfer Tax Act

This bulletin outlines application of the *Property Transfer Tax Act* where a taxpayer takes undue advantage of the exemption provided in section 14(4)(o) for the transfer of a lease agreement where the remaining term of the lease, including all extensions, as of the date of transfer, is 30 years or less. If the lease agreement is for more than 30 years, no exemption is available.

Please note: This bulletin replaces Information Bulletin 1-94.

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The Issue of Stacked Leases

There have been instances where taxpayers have tried to take undue advantage of this exemption provision by stacking leases. This occurs when the taxpayer registers a series of leases of the same premises to different, but related parties. No two consecutive leases are registered to the same person, and each one is for a term of less than 30 years. Each lease begins just after the previous lease expires.

If this were allowed, the result would be that the taxpayer could transform what is actually a fully taxable transfer of a leasehold interest in the property into a series of transfers of tax exempt leases.

The Response to the Stacking of Leases

In 1994, the Act was amended to prevent this abuse of the exemption. Section 1(1) of the Act defines taxable transaction. Paragraph (g) of this definition must be read together with the exemption provided in section 14(4)(o), as it curtails the exemption by specifically addressing the issue of stacked leases.

These two provisions read together mean that when certain conditions are met, conditions which signify that the taxpayers is indeed, stacking leases, the series of leases will be treated as one transaction for the purposes of the tax.

When will the Transactions be Viewed as a Single Transaction?

Under certain circumstances, the Act will treat the registration of technically separate leases as one transaction. The various leases or options to lease will be aggregated and viewed as a single transaction where the following conditions exist:

- where the transactions are in respect of the same land,
- where the applications for registration of the different leases or options to lease are registered in the land title office within six months of one another,
- where each of the transactions provides either the right to occupy the land, or with an option to lease, the right to enter a lease agreement, and
- if the total duration of all the leases and options to lease are greater than 30 years, (not including certain plans specified in the Act).

Where the total duration of all leases and options to lease **does not exceed** 30 years, the transactions will be treated as separate transactions, and the exemption will be available.

What Happens When the Transactions are Viewed as a Single Transaction?

If the four conditions referred to above are met, the series of leases will be defined as a taxable transaction, despite the exemption provided in section 14(4)(o). Despite being registered to different lessees, the transactions will be viewed as one transaction for the purposes of the Act. Because the total duration is greater than 30 years, the lease transfer is outside the scope of the exemption in section 14(4)(o). The individual lease transfers. Where this occurs, each lessee will be required to pay their own proportionate share of the tax assessed.

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