Ministry of Finance
Tax Bulletin

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Fair Market Value of Land Subject to a Trust Agreement

Property Transfer Tax Act

This bulletin outlines application of the ***Property Transfer Tax Act*** to the transfer of property that is subject to a trust agreement.

There has been, in the past, some confusion about whether the Act applies to the transfer of property subject to a trust agreement. In April 1991, several amendments were made to clarify that the Act **does** apply to property encumbered by a trust. These amendments **overrule** the 1991 decision of ***The Shon Yee Benevolent Association of Canada* v. *Her Majesty the Queen in Right of the Province of British Columbia*** (Vancouver Court Registry: C907597), which held that land subject to a trust agreement had no fair market value.

Two areas of the Act reflect that a trust agreement will not affect the fair market value of a property that is transferred. Firstly, the definition of "fair market value" states that the existence of a trust must be ignored when determining the value of the property subject to the trust. Secondly, a specific section clarifies how the tax will be calculated where property is held in trust. These provisions mean that taxpayers are unable to create trusts to avoid paying the tax.

Please note: This bulletin replaces Information Bulletins 1-91 and 4-91.

How is the Fair Market Value of Property Subject to a Trust Agreement Calculated?

Property transfer tax is based on the fair market value of the property being transferred. Section 1(1) defines fair market value as:

- the amount that would have been paid for a fee simple interest in land had it been sold...on the open market by a willing seller to a willing purchaser **free of any trust**...

This definition makes it clear that the transfer of property subject to a trust **is** subject to tax.

How is the Tax Calculated when Property Transferred is Held in Trust?

Section 1(3) addresses the situation where the person who is registered as the legal owner of a property is not the beneficial owner of that property because it is subject to a trust agreement. This section states that even if there is this separation of legal and beneficial ownership, the person who is registered as the legal owner of the property will be **deemed to be both the legal AND beneficial owner** for the purpose of calculating and paying the tax. The effect is that the value of the registered interest acquired in the taxable transaction cannot be changed by creating a trust arrangement.

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