

Non-resident Deed Transfer Tax Act

SCHEDULE OF CHAPTER 4 OF THE ACTS OF 2022

as amended by

2023, c. 2, ss. 17-26



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SCHEDULE OF CHAPTER 4 OF THE ACTS OF 2022
amended 2023, c. 2, ss. 17-26

**An Act to Provide for a Deed Transfer Tax
Respecting Non-residents of Nova Scotia**

title amended 2023, c. 2, s. 17.

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Non-resident Deed Transfer Tax Act*.
2022, c. 4, Sch., s. 1; 2023, c. 2, s. 18.

Interpretation

2 In this Act,

(a) “Administrator” means a person appointed under Section 21
by the Minister to administer this Act;

JULY 1, 2023

- (b) *repealed 2023, c. 2, s. 19.*
- (c) “assessed value” means the assessed value of a residential property pursuant to the assessment roll under the *Assessment Act*;
- (d) “corporation” includes
 - (i) a corporation limited by shares,
 - (ii) a non-profit society or corporation,
 - (iii) a co-operative association or other incorporated co-operative,
 - (iv) a registered charity that is incorporated or otherwise considered a legal person capable of owning real property, and
 - (v) any other body corporate that is prescribed as a corporation by the regulations or that meets the criteria prescribed in the regulations;
- (e) “Court” means the Supreme Court of Nova Scotia;
- (f) “deed transfer tax” means the tax levied under Section 4;
- (g) “dwelling unit” means a dwelling unit as defined in the *Municipal Government Act*;
- (h) “Minister” means the Minister of Finance and Treasury Board;
- (i) “non-resident” means an individual or corporation that is not a resident of the Province;
- (j) and (k) *repealed 2023, c. 2, s. 19.*
- (l) “ownership interest” means an owner’s interest in a residential property determined under Section 3;
- (m) “prescribed” means prescribed by the regulations;
- (n) “Property Valuation Services Corporation” means the Property Valuation Services Corporation established by the *Property Valuation Services Corporation Act*;
- (o) “proof of Nova Scotia residence” means
 - (i) a Nova Scotia health card, or
 - (ii) both
 - (A) a Nova Scotia driver’s licence or a Nova Scotia identification card, and
 - (B) proof of residence acceptable to the Administrator;
- (p) *repealed 2023, c. 2, s. 19.*
- (q) “registered charity” means a charitable organization that is registered as such with the Canada Revenue Agency;
- (r) “residence status” means a person’s status as a non-resident or resident of the Province;
- (s) “resident of the Province” means

- (i) an individual who is a resident of the Province for income tax purposes, or
- (ii) a corporation that has
 - (A) its central management and control in the Province,
 - (B) 50% or more of its directors who are individuals falling under subclause (i), and
 - (C) fulfils one of the following criteria:
 - (I) if the corporation is limited by shares, 50% or more of its issued and outstanding shares, determined by number of votes or as a percentage of fair market value, are owned by persons falling under subclause (i), whether such ownership is direct, indirect or beneficial,
 - (II) if the corporation consists of members, 50% or more of the members are persons falling under subclause (i), or
 - (III) if the corporation has neither shares nor members, the corporation meets the prescribed requirements, if any;
- (t) “residential property” means property that is
 - (i) classified as residential property under the *Assessment Act* and has no more than three dwelling units, or
 - (ii) of such other classification as may be prescribed;
- (u) “sale price” means the sale price as defined in the *Municipal Government Act*;
- (v) “tax” means the deed transfer tax;
- (w) “tax assessment” means a notice of tax made under this Act and includes a tax bill.
- (x) *repealed 2023, c. 2, s. 19.*

2022, c. 4, Sch., s. 2; 2023, c. 2, s. 19.

Determination of ownership interest

- 3 (1)** A person’s ownership interest in residential property must be determined in accordance with this Section.
- (2)** Where two or more owners each hold an interest in a residential property,
- (a) owners who are joint tenants are considered to have equal interests; and
 - (b) owners who are tenants in common are considered to have one of the following, as applicable:

(i) the interest specified on the parcel register where the residential property is registered under the *Land Registration Act* or on the title instrument; or

(ii) where no interest is specified under subclause (i), equal interests.

(3) Where a residential property is held in a trust, the beneficiaries are considered to have an ownership interest in the residential property in proportion to their beneficial interest in the trust unless

(a) the trustee or settlor, or a person related to either of them, has the power to revoke the trust; or

(b) the trustee or settlor, or a person related to either of them, has the power to add or change the beneficiaries of the trust.

(4) Where clause (3)(a) or (b) applies, the Administrator may consider an ownership interest to be held by a person who has the power to revoke the trust or add or change the beneficiaries of the trust, and may determine the amount of the ownership interest held by that person.

(5) Subject to subsection (6), where a residential property is held in a trust, the Administrator may consider the ownership interest to be held by the trustee, beneficiary or settlor and may determine the percentage amount of the ownership interest, depending on

(a) whether the residential property was acquired in or transferred to a trust in order to avoid taxation under this Act; and

(b) any other circumstances the Administrator considers relevant.

(6) The total of the percentage of ownership interests owned in a residential property for the purpose of this Act may not exceed 100%. 2022, c. 4, Sch., s. 3.

DEED TRANSFER TAX

Liability for tax

4 (1) Every person who on or after April 1, 2022, and until July 1, 2023, tenders for registration in the Province a deed in respect of residential property that grants an ownership interest of greater than 50% to one or more non-residents shall, before the deed is registered, pay to the Minister a deed transfer tax of five per cent of the greater of

(a) the sale price; and

(b) the assessed value of the residential property.

(2) Every person who on or after July 1, 2023, tenders for registration in the Province a deed in respect of residential property that grants an ownership interest to one or more non-residents shall, before the deed is registered, pay to the Minister a deed transfer tax of five per cent of the greater of

(a) the sale price; and

(b) the assessed value of the residential property, multiplied by the percentage ownership interest granted to each non-resident. 2022, c. 4, Sch., s. 4; 2023, c. 2, s. 20.

Exemptions

5 (1) The deed transfer tax does not apply if a deed or instrument transfers residential property

- (a) between spouses or common law partners;
- (b) between former spouses or common law partners, if the transfer is for the purpose of division of marital or jointly held assets;
- (c) under an agreement of purchase and sale entered into before April 1, 2022;
- (d) to a foreclosing mortgagee;
- (e) from an executor to a beneficiary under a will, where the beneficiary is a spouse, common-law spouse, child, grandchild, parent or sibling of the testator or a child or grandchild of the testator's spouse or common-law spouse;
- (f) from an administrator of an estate to a person entitled to the estate under the *Intestate Succession Act* or the intestacy laws of another jurisdiction; or
- (g) to a grantee who is a non-resident individual who intends to become a resident of the Province within six months of the date the property is transferred and files an affidavit to that effect.

(2) The deed transfer tax does not apply if

- (a) the deed merely confirms, corrects, modifies or supplements a deed previously given;
- (b) there is no consideration beyond one dollar; and
- (c) the deed does not include more residential property than the deed previously given.

(3) Where the grantee is a registered charity, the deed transfer tax does not apply if

- (a) the residential property is not to be used for any commercial, industrial or other business purpose and if an officer of the grantee makes and files a declaration to that effect; and
- (b) any other prescribed conditions are met.

(4) The deed transfer tax does not apply in such other circumstances as may be prescribed.

(5) A grantee who claims an exemption from the deed transfer tax under clause (1)(g) must provide proof of Nova Scotia residence to the Administrator within six months of the date the residential property was transferred to the grantee.

(6) Where proof is not provided under subsection (5) within the time required by that subsection, the Administrator shall assess the grantee for the deed transfer tax and interest calculated at the prescribed rate from the date of transfer and may assess a penalty as prescribed.

(7) Where a grantee claimed an exemption from the deed transfer tax under clause (1)(g) and the grantee will no longer become a resident of the Province within the time required under that clause, the grantee

(a) shall notify the Administrator by filing the required form; and

(b) may request an extension of the time period for the tax exemption set out in clause (1)(g), based on extenuating circumstances that have occurred since the time of the transfer.

(8) Where a grantee makes a request pursuant to clause (7)(b), the Administrator may, in the Administrator's sole discretion, grant an extension of the time period in clause (1)(g), taking into account any extenuating circumstances outlined in the grantee's request.

(9) Where the Administrator has reason to believe an ownership interest in residential property was granted to one or more non-residents, and none of the exemptions under subsections (1) to (4) are applicable, the Administrator may assess the grantee for

(a) the deed transfer tax;

(b) interest at the prescribed rate; and

(c) a penalty determined in accordance with the regulations, which may not exceed 100% of the tax,

and these amounts become due and payable by the grantee.

(10) Where the Administrator makes an assessment under subsection (6) or (9), the Administrator shall send a tax assessment to the grantee and the grantee shall pay the assessed amounts by the due date shown on the tax assessment.

(11) Where there is more than one grantee, the grantees are jointly and severally liable for the deed transfer tax, the interest and any penalty. 2022, c. 4, Sch., s. 5; 2023, c. 2, s. 21.

Provision of information

6 (1) Every person who tenders a deed in respect of real property shall, prior to registering the deed, provide the information required by the Administrator to determine whether the deed transfer tax applies to the transfer.

(2) Notwithstanding the *Registry Act*, a registrar of deeds may not accept a deed for registration unless the deed contains all the information required by the Administrator.

(3) Every person who tenders a deed in respect of residential property shall file a form and, where required, an affidavit made by the grantee or by someone having full knowledge of the facts setting out

- (a) the name and address of each grantee;
- (b) where there is more than one grantee, the percentage ownership interest of each grantee;
- (c) where a grantee is an individual,
 - (i) the grantee's social insurance number, if any,
 - (ii) whether the individual is a resident of the Province for income tax purposes, or whether the individual intends to become a resident of the Province within the next six months, and
 - (iii) any other prescribed information required to determine the grantee's residency status;
- (d) where the grantee is a corporation,
 - (i) the corporation's business number, if any, and
 - (ii) any prescribed information required to determine the corporation's residency status;
- (e) where the grantee is acting as a trustee who will be holding the property in trust for one or more others, any prescribed information required to determine the residency status of the trustees, the beneficiaries and the settlor of the trust;
- (f) where the grantee claims exemption from the deed transfer tax, the basis for the exemption;
- (g) any other information required by the Administrator or the Minister; and
- (h) any other prescribed information.

(4) A form or affidavit required under subsection (3) must be filed in a form and manner acceptable to the Administrator.

(5) Where the Administrator has reason to believe that any of the information on the affidavit is not accurate or missing, the Administrator may require the grantee to submit further information. 2022, c. 4, Sch., s. 6.

7 to 15 *repealed 2023, c. 2, s. 22.*

GENERAL

Taxes due on date shown

16 (1) The tax levied by the Minister under this Act is overdue if unpaid, either in whole or in part, on the due date.

- (2) Where the tax is not paid in full by the due date,
 - (a) interest must be paid on such tax as prescribed; and
 - (b) a penalty may be charged as prescribed.

(3) Subject to subsection (4), the tax collectable by the Administrator under this Act includes all interest and penalties charged against the tax.

(4) Interest ceases to accrue on the tax as of the date the person liable to pay the tax files an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada). 2022, c. 4, Sch., s. 16; 2023, c. 2, s. 23.

Amount owing is debt

17 An amount owing under this Act is a debt due to the Province and may be recovered in any court of competent jurisdiction. 2022, c. 4, Sch., s. 17.

Certificate where non-payment

18 (1) Where a person fails to pay an amount owing to the Province under this Act, the Administrator may issue a certificate specifying the amount owed and the name of the person who owes it.

(2) The Administrator may file a certificate issued under subsection (1) with the Court.

(3) A certificate filed under subsection (2) has the same force and effect, and all proceedings may be taken under the certificate, as if it were a judgment of the Court in favour of the Province for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

(4) Where the amount specified in a certificate is different from the actual amount owing to the Province under this Act, the Administrator may issue a new certificate specifying the certificate it replaces, the amount owed and the name of the person who owes it.

(5) The Administrator may file a certificate issued under subsection (4) with the Court.

(6) A certificate filed under subsection (5)

(a) replaces the certificate filed under subsection (2);

(b) is deemed to be filed at the same time as the certificate it replaces; and

(c) has the same force and effect, and all proceedings may be taken under the certificate, as if it were a judgment of the Court in favour of the Province for the recovery of a debt in the amount specified in the certificate against the person named in the certificate. 2022, c. 4, Sch., s. 18.

Effect of remedies and penalties

19 (1) Remedies available to the Province for the recovery of an amount owing to the Province under this Act may be exercised separately, concurrently or cumulatively.

(2) The liability of a person for an amount owing to the Province under this Act is not affected by a penalty imposed on or paid by the person for contravention of this Act. 2022, c. 4, Sch., s. 19.

Lien

20 (1) Where a person is required to pay an amount to the Province under this Act in respect of a residential property and the person does not pay the amount, the Administrator may register a lien against the residential property or any other real property owned by the person in the Province by registering a certificate of lien in the prescribed form in the appropriate land registration office under the *Land Registration Act* or the *Registry Act*.

(2) The lien referred to in subsection (1) is not a charge against the land until a certificate of lien is registered under the *Land Registration Act* or the *Registry Act*. 2022, c. 4, Sch., s. 20.

Administrator

21 (1) The Minister shall appoint a person or persons in the public service to be the Administrator to administer this Act.

(2) The Administrator may, in writing, delegate any of the Administrator's powers or duties under this Act to a person or to a class of persons. 2022, c. 4, Sch., s. 21.

Sharing of information

22 (1) The Property Valuation Services Corporation shall provide to the Administrator access to all information required by the Administrator in relation to the administration of this Act.

(2) The Minister may enter into an information-sharing agreement for the purpose of the administration of this Act with

- (a) the Minister of Service Nova Scotia;
- (b) the Minister of Municipal Affairs and Housing;
- (c) the Government of Canada or a department or agency of that government;
- (d) a public body as defined in the *Freedom of Information and Protection of Privacy Act*; or
- (e) the Property Valuation Services Corporation. 2022, c. 4, Sch., s. 22; O.I.C. 2023-148.

Appeal to Minister

23 (1) Subject to this Section, an appeal to the Minister lies from any decision made under

- (a) subsections 3(3), 5(8) and (9) and Section 26;
- (b) any other provision of this Act that the regulations provide may be appealed to the Minister; and
- (c) any provision of the regulations that the regulations provide may be appealed to the Minister.

(2) Written notice of the appeal must be given to the Minister within 180 days after the date of the tax assessment or the determination, as the case may be.

(3) The notice of appeal must contain a statement of all material facts and the reasons in support of the appeal.

(4) On receiving the notice of appeal, the Minister shall

- (a) consider the matter;
- (b) affirm, amend or change the assessment or determination, as the case may be; and
- (c) promptly give the appellant written notice of the Minister's decision.

(5) The Minister may, in writing, delegate any of the Minister's powers or duties under this Section to a person or class of persons. 2022, c. 4, Sch., s. 23; 2023, c. 2, s. 24.

Appeal to Court

24 A decision of the Minister under Section 23 may be appealed to the Court within 30 days of the Minister's decision. 2022, c. 4, Sch., s. 24.

Sending of documents

25 (1) A tax assessment or other document that, under this Act, is required or permitted to be given or sent to a person by the Administrator, the Minister or the Property Valuation Services Corporation may be sent

(a) by mail to the person's most recent address in the records of the Minister, the Administrator, the Property Valuation Services Corporation, or a register under the *Land Registration Act*, and the person is deemed, in the absence of evidence to the contrary, to have received it not later than the fifth day after mailing; or

(b) by electronic mail, if the person has provided an address for electronic mail to the Administrator, and the person is deemed, in the absence of evidence to the contrary, to have received it on the day it was sent.

(2) Where there is more than one owner of a residential property, a notice or other document that, under this Act, is given or sent to one of the owners is deemed to have been given or sent to all of them.

(3) Where the Administrator cannot ascertain the address of a person in whose name a tax has been assessed pursuant to this Act, the assessment may be delivered or posted as prescribed. 2022, c. 4, Sch., s. 25; 2023, c. 2, s. 25.

Avoidance transactions

26 (1) In this Section,

(a) "avoidance transaction" means a transaction

(i) that, but for this Section, would result, directly or indirectly, in a tax benefit, or

(ii) that is part of a series of transactions, which series, but for this Section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit;

(b) “tax benefit” means

(i) a reduction, avoidance or deferral of tax, or of another amount, payable under this Act, or

(ii) an increase in a refund of tax, or of another amount, under this Act;

(c) “tax consequences”, in relation to a person, means any amount of tax or another amount that is payable or refundable to the person under this Act or that is relevant for the purposes of calculating that amount;

(d) “transaction” includes an arrangement or event.

(2) In this Section, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

(3) Where a transaction is an avoidance transaction, the Administrator may, by assessment, determine the tax consequences to a person who is an owner of a residential property in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this Section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction. 2022, c. 4, Sch., s. 26.

Regulations

27

(1) The Minister may make regulations

(a) prescribing forms for the purpose of this Act;

(b) providing for the extension of any deadline referred to in this Act.

(2) The Governor in Council may make regulations

(a) governing the application of this Act;

(b) prescribing those matters that are required or permitted to be prescribed;

(c) respecting the procedures and forms to be used by the Administrator in the billing and collection of the tax;

(d) respecting audit powers and procedures;

(e) providing for the Minister to enter into agreements with agents related to the billing and collecting of the tax;

(f) *repealed 2023, c. 2, s. 26.*

(g) determining different classifications of residential properties;

(h) respecting refunds of the tax;

(i) respecting proration of the tax;

- (j) respecting appeals;
- (k) exempting from the deed transfer tax any class of person, instrument or transaction;
- (l) respecting prepayment and instalment payment of the tax;
- (m) respecting the collection and payment of the tax by a mortgagee, judgment creditor or other person having a lien, charge or encumbrance on the taxable property;
- (n) respecting due dates for the tax under this Act;
- (o) providing for procedures for adjustments and repayments of the tax;
- (p) respecting affidavits required to be filed under this Act;
- (q) prescribing a rate of interest to be applied to unpaid taxes;
- (r) respecting the amount and application of any penalties that may be charged pursuant to this Act, and the waiver of any such amounts;
- (s) prescribing forms for the better carrying out of the intent and purpose of this Act;
- (t) defining any word or expression used but not defined in the Act;
- (u) respecting any matter or thing that the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

~~(2)~~ **(3)** A regulation made pursuant to this Act may be made retroactive to a date not earlier than the coming into force of this Act.

~~(3)~~ **(4)** The exercise by the Minister or the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. 2022, c. 4, Sch., s. 27; 2023, c. 2, s. 26.

CONSEQUENTIAL AMENDMENTS

Assessment Act amended

28 and 29 *amendments*

Halifax Regional Municipality Charter amended

30 to 35 *amendments*

Municipal Government Act amended

36 to 41 *amendments*

Property Valuation Services Corporation Act amended

42 *amendments*

2022, c. 4, Sch.

non-resident deed transfer tax

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Effective date

43 This Act has effect on and after April 1, 2022.
