

# Tsleil-Waututh Nation

*People of the Inlet*



To Whom it May Concern:

**RE: Tsleil-Waututh Nation Property Transfer Tax Law, 2016**

The Tsleil-Waututh Nation ("TWN") recently enacted the *Tsleil-Waututh Nation Property Transfer Tax Law, 2016* (the "PTT Law"), pursuant to the *First Nations Fiscal Management Act* (the "FMA"). In accordance with the requirements of the FMA, after completing the 30-day representation period, the PTT Law was signed by the TWN Council and submitted to the First Nations Tax Commission ("FNTC") for approval. The PTT Law was approved by the FNTC on September 14, 2016, and came into force on September 15, 2016.

To ease the transition, TWN will delay implementation of the PTT Law until **October 1, 2016**. This means that, effective October 1, 2016, all transfers to applicable interests in TWN land will be subject to property transfer tax.

PTT is payable at the time an interest is submitted for registration in the Tsleil-Waututh Lands Register. Required forms will be available at the TWN Lands Office and on the TWN website.


The PTT Law is modeled closely on the provincial *Property Transfer Tax Act*. The PTT Law adopts the provincial rate of 1% of the first \$200 000 of the fair market value of the taxable transfer, 2% of the fair market value that exceeds \$200 000 but does not exceed \$2 million, and 3% of the remaining fair market value.

The PTT Law adopts the same exemptions as are offered off-reserve, including exemptions for first-time home buyers, and the recently-added exemption on new construction. There are additional exemptions for transfers to TWN, a TWN Corporation, or a member.

We have enclosed for your reference a plain language summary of the PTT Law, together with Frequently Asked Questions, which were distributed during the 30-day representation period.

Should you have any further questions about the PTT Law, please contact Jolyn Redhead at (604)929-3454 or [jredhead@twnation.ca](mailto:jredhead@twnation.ca)

Sincerely,

  
David Ko  
Chief Financial Officer

## ***Tsleil-Waututh Nation Property Transfer Tax Law, 2016***

### **OVERVIEW**

Property transfer tax (“PTT”) is a tax on an interest in land. Unlike property tax, which is charged annually, PTT is charged and paid at the time the property is transferred to (and registered in the name of) another person. Many local and provincial governments in Canada – including British Columbia – charge PTT, but they do not usually charge PTT on the transfer of interests on reserve lands.

First Nations like the Tsleil-Waututh Nation (“TWN”) that are scheduled to the federal *First Nations Fiscal Management Act* (the “FMA”) have the authority to enact a PTT Law. Such laws must comply with the FMA and its regulations, and with standards developed by the First Nations Tax Commission (the “FNTC”), and do not come into force until they are enacted by the Council and approved by the FNTC.

The *Tsleil-Waututh Nation Property Transfer Tax Law, 2016* (the “PTT Law”) is based on the FNTC sample PTT law, which is modeled on the *Property Transfer Tax Act* (BC). The PTT Law applies a tax on leasehold interests on reserve, which is charged at the time of registration. The PTT Law adopts the provincial rate of 1% of the first \$200 000 of the fair market value of the taxable transfer, 2% of the fair market value that exceeds \$200 000 but does not exceed \$2 million, and 3% of the remaining fair market value. The PTT Law includes provisions for the appointment of an administrator, for filing a tax return and paying the tax at the time of registration of the transfer, exemptions for certain including for newly constructed homes with a value of up to \$800 000, and for leaseholds having a term of 30 years or less, powers of inspection and tax assessment for the administrator, taxpayers’ rights to reconsideration and appeal, and provisions for penalties, interest, and tax collection and enforcement. The PTT Law also includes transitional provisions that exempt certain transactions from PTT, where those transactions are entered into before the PTT Law comes into force.

### **SUMMARY**

We have prepared a plain language summary of the PTT Law, which is followed by a Questions and Answers section.

#### **Parts I and II – Citation, Definitions and References**

The citation of the PTT Law is set out at section 1. Subsection 2(1) sets out the definitions that are used in the PTT Law. Other interpretive rules are found at subsections 2(2)-(5).

#### **Part III – Administration**

Under section 3, the Council appoints an Administrator, who is responsible for administering and enforcing the PTT Law and performing duties as assigned by the Council. If the Council approves, the Administrator may delegate some of their duties to another person. The Administrator must report to the Council each year on matters under the PTT Law.

Property tax, PTT, and other taxes on interests in land under the FMA are known as “local revenues”. Section 4 requires PTT revenues to be placed in TWN’s local revenue account, and provides that the moneys in that account can only be spent by passing an expenditure law or in accordance with the FMA.

#### **Part IV – Tax Liability and Payment of Tax**

At section 5, the PTT Law applies to all interests in TWN reserve lands. PTT is charged on the sale or transfer of all interests in land in the reserve, except for transactions that are exempt from PTT. PTT is charged and payable at the time a property is transferred, and is paid by the new interest-holder (the “transferee”).

At section 6, the transferee must complete and file a PTT return and pay the PTT in full, at the time of registration. The Administrator will not register the transfer until the transferee has sent in the Return and paid the PTT. PTT is calculated based on the “fair market value” of a property. At section 7, where fair market value cannot be calculated, the Administrator may agree to register the property if the transferee pays an estimate of the PTT, as determined by the Administrator.

The PTT rate at section 8 is the same as the rate charged by BC on off-reserve transfers: 1% of the first \$200 000 of the fair market value of the taxable transfer, 2% of the fair market value that exceeds \$200 000 but does not exceed \$2 million, and 3% of the remaining fair market value. Subsections 8(2)-(5) prevent transferees from “splitting” taxable transfers in an attempt to reduce the PTT.

Section 9 states that the transferee or their agent must certify the PTT Return; this is formal confirmation that the information in the Return is complete and correct. Section 10 provides a process for applying a PTT payment where a transfer was made in error, and a further transfer is required to correct the original transfer (a “correcting transfer”).

#### **Part V – Exemptions from Taxation**

At section 11, a person who claims an exemption from PTT must claim the exemption and provide the Administrator with information in support of the claim.

Section 12 sets out a long list of exemptions, which are modeled on the exemptions in the BC *Property Transfer Tax Act*. Of particular interest is paragraph 12(2)(u), which means that PTT is not payable on leases with a term of 30 years or less. Section 13 gives an exemption to PTT members for their primary residence, and exempts TWN, and companies that are wholly-owned or majority-held by TWN. Sections 14-18 create an exemption for first-time home buyers, which is modeled on an exemption in the provincial Act. Sections 19 to 24 create an exemption for new homes with a value of up to \$800 000; this exemption is modeled on a new exemption in the provincial Act. Section 25 states that a transferee can have either the first-time home buyers’ exemption or the new home exemption, but not both.

#### **Part VI – Investigations, Information Requests and Inspections**

Section 26 requires the Administrator to review every Return and every claim for an exemption. Sections 27 and 28 give the Administrator the authority to request information and conduct inspections related to PTT.

#### **Part VII – Refunds**

At section 29, the Administrator must provide a refund where it is determined that the PTT paid is more than the amount that was owed, and interest must be paid on refunded amounts. At section 30, a person who paid PTT even though they were not required to, is entitled to a refund.

#### **Part VIII – Assessment, Reconsideration and Appeal**

Section 31 gives the Administrator the authority to determine the amount of PTT that should have been paid on a transfer. If the Administrator determines that PTT is owing, the Administrator will prepare and deliver to the transferee a Notice of Tax Assessment. The outstanding balance must be paid within 30 days of the Notice of Tax

## Assessment.

A person who receives a Notice of Tax Assessment or a notice of refusal to provide a refund may request the Administrator to reconsider their decision, under section 32. The request must be made within 60 days, and the Administrator must consider the request and make a decision within 30 days of receiving the request, and provide written notice of the decision. Section 33 states that reconsideration decisions at section 32 may be appealed to a court within 60 days of receiving the Administrator's decision.

### **Part IX – Records, Receipts and Tax Certificates**

Sections 34 and 35 require the Administrator to maintain records regarding the administration of PTT, and to issue receipts for all PTT payments. When requested, and upon payment of a \$50 fee, the Administrator will issue a Tax Certificate that shows whether PTT has been paid in respect of a taxable transfer, at section 36.

### **Part X – Penalties and Interest**

Interest of 15% accrues on all unpaid PTT, under section 37. At sections 38 to 40, a penalty of 10% may be charged where false or misleading information is provided, or where PTT remains unpaid.

### **Part XI – Collection and Enforcement**

Section 41 states that TWN has the authority to recover unpaid PTT in court and as provided in the PTT Law. Before taking enforcement action under the PTT Law, section 42 requires the Administrator to give written notice to the taxpayer. Section 43 states that unpaid PTT is a lien against the property that can be enforced by TWN.

### **Part XII – General Provisions**

Sections 44 and 45 set out the circumstances under which information or records obtained or created under the Law can be disclosed, including for research and statistical purposes. Section 46 says that an error or omission by TWN under the PTT Law does not make the PTT Law invalid. Section 47 sets a 6-month time limit for starting an action to recover moneys paid under the PTT Law. Section 48 sets out the methods of giving notice under the PTT Law. Section 49 sets out general rules of interpretation.

### **Part XIII – Transitional Provisions and Coming into Force**

Section 50 sets out transitional rules. At 50(a), there is no PTT on a new residential property (a "pre-sale") where the pre-sale agreement was entered into within one year of the PTT Law coming into force and where the home is finished and the sale completes within two years of the PTT Law coming into force. At 50(b), there is no PTT on the sale of a residential property where the agreement of sale was executed before the PTT Law came into force and the sale completes within six months of the PTT Law coming into force.

Section 51 provides that the PTT Law comes into force on the day after it is approved by the FNTC.

### **Schedule I – Fair Market Value Determination**

This Schedule sets out the rules and formulae for calculating the fair market value of a taxable leasehold interest.

### **Schedules II-VI**

These Schedules set out the format and the information that must be included on various documents under the PTT Law, including the PTT Return, Notice of Property Transfer Tax Assessment, Property Transfer Tax Certificate, Costs Payable by Debtors, Request for Information and Request for Reconsideration.

## Questions & Answers

**Q Will members have to pay PTT?**

A The PTT Law only applies to leases of more than 30 years, not to CPs or other interests. Members who purchase and register residential leases will be exempt from PTT on their primary residence (see 13(d)). If a member purchases more than one residential lease, they will have to pay PTT on all homes other than the house in which they live.

**Q I own a property that is not exempt under the PTT Law. Does this mean I have to pay PTT retroactively?**

A No. PTT will not be charged retroactively. It is only charged at the time a property is transferred and registered in the name of another person. If you sell one of your properties to a new owner after the PTT Law comes into force, the new owner will have to pay PTT when they register the property in their name (unless it is exempt under the transitional rules at section 50.)

**Q What are PTT revenues used for?**

A PTT revenues are “local revenues” under the FMA, just like property tax revenues. PTT revenues must be kept in the local revenue account and can only be spent on items permitted under the FMA and FNTC standards. For example, PTT revenues may be used to pay for sewer, water, garbage, recycling and compost services, snow removal, sidewalks, cultural events, administration, bylaw enforcement, community development, and capital projects.

**Q Could PTT revenues be used to provide additional services, such as recreational facilities?**

A Yes, so long as the additional services and revenues are permitted under the FMA. Each year, the Council will make a decision on how to spend the local revenues for that year, and must pass an expenditure law to account for how the revenues will be spent.

**Q Won't TWN just make a huge profit on PTT?**

A No. Under the FMA, local revenues must be allocated and spent each taxation year. A small percentage may be set aside for contingencies for unexpected shortfalls, and some may be set aside in reserve funds for future needs, but the majority of the tax revenues must be spent on services, infrastructure, and other items set out in the annual expenditure law.

**Q How will taxpayers' interests be protected?**

A Taxpayers have the right to request the Administrator to reconsider their decision regarding PTT owing on a property (see section 32). At section 42, the Administrator must give notice before commencing enforcement actions.

The PTT Law will be enacted under the FMA, and it will not come into force until it has been reviewed and approved by the FNTC. The FNTC will not approve the PTT Law unless it complies with the FMA and its regulations, and with standards set by the FNTC. The FNTC standards closely model provincial practices off-reserve. The FMA, its regulations and the FNTC standards are designed to protect equally the interests of First Nations and the interests of taxpayers.

**Q I want to buy a property that is valued at \$200 000. The property is not exempt from PTT. How much PTT will I have to pay?**

**A** PTT is charged at a rate of 1% of the first \$200 000 of value, so the PTT payable at the time of registration will be \$2000:

$$\$200\,000 \times 1\% = \mathbf{\$2000}$$

**Q I want to buy a property that is valued at \$500 000. The property is not exempt from PTT. How much PTT will I have to pay?**

**A** PTT is charged at 1% of the first \$200 000, and 2% of the balance, so the PTT is \$8000.

$$(\$200\,000 \times 1\%) + (\$300\,000 \times 2\%) = \mathbf{\$8000}$$

**Q On March 15, 2016, I entered into an agreement to buy a home with 45 years remaining on the lease. The PTT Law came into force on July 15, 2016. The sale completes and the transfer is registered into my name on October 15, 2016. Will I have to pay PTT?**

**A** No. The purchase is exempt under section 50, because the sale and transfer completed within six months of the PTT Law coming into force.

**Q I purchased a new home with a value of \$740 000. Is the purchase subject to PTT?**

**A** No. The purchase is exempt under subsection 20(1) because the value is under \$750 000.

**Q I purchased a new home with a value of \$790 000. Is the purchase subject to PTT?**

**A** The purchase is subject to a partial exemption under subsection 20(2) because the value is over \$750 000 but under \$800 000. The purchase would qualify for an exemption of \$2760. The total PTT payable would be **\$11 040**.

**Here is a table setting out exemptions on New Homes with values of up to \$800 000:**

Fair Market Value	Amount of Exemption	PTT Payable
Less than \$750 000	Full amount of PTT	\$0
\$750 000	\$13,000.00	\$0
\$751 000	\$12,759.60	\$260.40
\$752 000	\$12,518.40	\$521.60
\$753 000	\$12,276.40	\$783.60
\$754 000	\$12,033.60	\$1,046.40
\$755 000	\$11,790.00	\$1,310.00
\$756 000	\$11,545.60	\$1,574.40
\$757 000	\$11,300.40	\$1,839.60
\$758 000	\$11,054.40	\$2,105.60
\$759 000	\$10,807.60	\$2,372.40
\$760 000	\$10,560.00	\$2,640.00
\$761 000	\$10,311.60	\$2,908.40
\$762 000	\$10,062.40	\$3,177.60
\$763 000	\$9,812.40	\$3,447.60
\$764 000	\$9,561.60	\$3,718.40
\$765 000	\$9,310.00	\$3,990.00
\$766 000	\$9,057.60	\$4,262.40
\$767 000	\$8,804.40	\$4,535.60
\$768 000	\$8,550.40	\$4,809.60

<b>Fair Market Value</b>	<b>Amount of Exemption</b>	<b>PTT Payable</b>
\$769 000	\$8,295.60	\$5,084.40
\$770 000	\$8,040.00	\$5,360.00
\$771 000	\$7,783.60	\$5,636.40
\$772 000	\$7,526.40	\$5,913.60
\$773 000	\$7,268.40	\$6,191.60
\$774 000	\$7,009.60	\$6,470.40
\$775 000	\$6,750.00	\$6,750.00
\$776 000	\$6,489.60	\$7,030.40
\$777 000	\$6,228.40	\$7,311.60
\$778 000	\$5,966.40	\$7,593.60
\$779 000	\$5,703.60	\$7,876.40
\$780 000	\$5,440.00	\$9,015.60
\$781 000	\$5,175.60	\$8,444.40
\$782 000	\$4,910.40	\$8,729.60
\$783 000	\$4,644.40	\$9,015.60
\$784 000	\$4,377.60	\$9,302.40
\$785 000	\$4,110.00	\$9,590.00
\$786 000	\$3,841.60	\$9,878.40
\$787 000	\$3,572.40	\$10,167.60
\$788 000	\$3,302.40	\$10,457.60
\$789 000	\$3,031.60	\$10,748.40
\$790 000	\$2,760.00	\$11,040.00
\$791 000	\$2,487.60	\$11,332.40
\$792 000	\$2,214.40	\$11,625.60
\$793 000	\$1,940.40	\$11,919.60
\$794 000	\$1,665.60	\$12,214.40
\$795 000	\$1,390.00	\$12,510.00
\$796 000	\$1,113.60	\$12,806.40
\$797 000	\$836.40	\$13,103.60
\$798 000	\$558.40	\$13,401.60
\$799 000	\$279.60	\$13,700.40
\$800 000	\$0	\$14,000.00