

Exemptions for Transfers in the Course of Subdivisions

Property Transfer Tax

This bulletin outlines the exemptions provided under the [Property Transfer Tax Act](#) (Act), for certain property transfers undertaken to subdivide land if the original owners have the same proportionate share of the fair market value of the land before and after the subdivision.

Amendments over the years have clarified that the subdivision of a single parcel of land is treated differently than the subdivision of adjacent parcels of land.

Section 14(3)(j) applies where a single parcel of land with more than one owner is subdivided into smaller parcels. Sections 14(4)(k) and (k.1) apply where adjacent parcels of land with more than one owner are subdivided.

Recent provisions have been added to the Act by the [Taxation Statutes Amendment Act](#), 1999 (Bill 52). These amendments clarify how original owners and trustees will be taxed if the property transfers to subdivide land fail to meet the requirements of the exemption provisions.

Because of the complexities of ownership calculations, the Administrator recommends that if parties are considering subdividing property, that they first seek an advance ruling so that the tax implications will be known beforehand. Please see [Bulletin PTT 021](#), *Advance Tax Rulings*, for further information about advance rulings.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Property Transfer Tax Act* and Regulations can be found on the web at www.gov.bc.ca/sbr

Note: This Bulletin replaces Information Bulletins 1-96 and 2-99

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LEGISLATIVE HISTORY

On March 31, 1999 the Honourable Joy K. MacPhail, Minister of Finance and Corporate Relations introduced the [Taxation Statutes Amendment Act, 1999](#) (Bill 52).

Introduced were amendments to the wording of section 14(3)(j) to clarify the intent of the exemption and to the exemption provided in section 14(4)(k), to base the exemption on the fair market value of

the land being subdivided rather than its area. This approach is consistent with the overall scheme of the Act. The amendments also separated the exemption provided in the former section 14(4)(k) into two separate sections, (k) and (k.1), to clarify how the exemption works. Section 14(4)(k) deals with the transfers to the trustee, and section 14(4)(k.1) deals with the transfers from the trustee to the original owners.

New provisions in sections 3(3.2) through (3.5) have been added to clarify how taxpayers and trustees will be treated when they fail to meet the specific requirements of the exemptions.

SUBDIVISION OF A SINGLE PARCEL

Sections 14(3)(j) and 3(3.2), Code 34

General

Section 14(3)(j) applies to situations where a single parcel of land, registered to two or more owners is

subdivided into smaller parcels. This exemption requires that the original owners receive a proportionate share of the fair market value of the land after the subdivision that is not greater than the share he or she held before the subdivision.

Subsection (3.2) was added to the taxing provision in section 3 of the Act in 1999, to respond to owners who receive a greater proportionate share of the fair market value of the land after subdivision than they held before subdivision. Subdivisions of single parcels no longer fail to qualify for the exemption in their entirety where any one owner receives a greater proportionate share. Rather, only the owner receiving the greater share pays the tax due on that increased share.

If claiming this exemption, use code 34.

Exemption Provided in Section 14(3)(j)

There are two requirements for a transfer to be exempt under section 14(3)(j):

1. when the original parcel is subdivided into smaller parcels, the transferees of those smaller parcels must be the registered owners of the original parcel,
2. each transferee, must acquire a registered interest in one or more of the parcels

created by the subdivision with a share of the total fair market value of all the new parcels that is no greater than the share in the fair market value of the original parcel which he or she had before the subdivision.

Therefore, for the full exemption to be available, the transferee's proportionate share of the fair market value of the land after the subdivision, (calculated using the fair market value immediately after the subdivision), cannot be greater than his or her proportionate share of the fair market value of the original parcel, (calculated using the fair market value immediately prior to the subdivision).

When determining the fair market value attributable to each registered owner before the subdivision, the fair market value of all improvements on the land will be allotted to all the owners, based on their respective registered interests in the parcel, regardless of any unregistered agreements concerning the improvements or which party contributed them.

Time to Issue a Notice of Assessment

Section 18(6.1) of the Act extends the time during which the Administrator may issue a notice of assessment where an exemption is claimed under section 14(3)(j). The Administrator has two years,

Example of the Exemption Provided in Section 14(3)(j)

Factual Situation

Parcel A Fair Market Value (FMV) = \$250,000	
X has registered interest in 1/3 of parcel A	Y has registered interest in 2/3 of parcel A

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Lot 1 FMV = \$80,000		Lot 2 FMV = \$100,000		Lot 3 FMV = \$120,000	
X has registered interest in 1/3 of Lot 1	Y has registered interest in 2/3 of Lot 1	X has registered interest in 1/3 of Lot 2	Y has registered interest in 2/3 of Lot 2	X has registered interest in 1/3 Lot 3	Y has registered interest in 2/3 Lot 3

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X transfers its 1/3 interest in Lot 1 to Y	Y transfers its 2/3 interest in Lot 2 to X	X transfers its 1/3 interest in Lot 3 to Y
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Lot 1 held by Y FMV = \$80,000	Lot 2 held by X FMV = \$100,000	Lot 3 held by Y FMV = \$120,000
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rather than one after the date of the first transfer after the subdivision within which to issue a notice of assessment in relation to the exemption claimed.

Application of Section 14(3)(j) Because Y transferred its two-thirds interest in lot 2, X is the registered owner of the entire lot 2 which has a fair market value of \$100,000.00. As the fair market value of the entire subdivided parcel is \$300,000.00 X has retained the same proportionate fair market share as it had prior to the subdivision, and the exemption provided in section 14(3)(j) applies.

Because X transferred its one third interest in lots 1 and 3 to Y, Y is the registered owner of lots 1 and 3 with a combined fair market value of \$200,000.00. As the fair market value of the entire subdivided

parcel is \$300,000.00 Y has retained the same proportionate fair market share as it had prior to the subdivision, and the exemption provided in section 14(3)(j) applies.

When Section 3(3.2) of the Act Applies

Where a transferee receives a greater proportionate share of the full fair market value of the subdivided land than he or she had before the subdivision, the exemption provided in section 14 (3)(j) is not available with respect to that transferee. Section 3(3.2) clarifies how the tax will apply in these instances.

Section 3(3.2) provides that in these situations property transfer tax is payable only on the transferee's net increase in his or her share of the fair market value of the subdivided property. This

Example of the Exemption Provided in Section 14(3)(j) When Section 3(3.2) Applies

Factual Situation

Parcel A Fair Market Value (FMV) = \$250,000	
X has registered interest in 1/3 of parcel A	Y has registered interest in 2/3 of parcel A

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Lot 1 FMV = \$80,000		Lot 2 FMV = \$100,000		Lot 3 FMV = \$120,000	
X has registered interest in 1/3 of Lot 1	Y has registered interest in 2/3 of Lot 1	X has registered interest in 1/3 of Lot 2	Y has registered interest in 2/3 of Lot 2	X has registered interest in 1/3 Lot 3	Y has registered interest in 2/3 Lot 3

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X transfers its 1/3 interest in Lot 1 to Y	X transfers its 1/3 interest in Lot 2 to Y	Y transfers its 2/3 interest in Lot 3 to X
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After Subdivision

Lot 1 held by Y FMV = \$80,000	Lot 2 held by Y FMV = \$100,000	Lot 3 held by X FMV = \$120,000
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section provides a simple formula to determine the fair market value of the increase in the transferee's proportionate share, and determine the tax that will be due.

Application of Section 14(3)(j) Exemption When Section 3(3.2) Applies

Tax Payable for X

X originally held 33.3% of the fair market value calculated immediately before subdivision, and now holds 40% of the fair market value of the new parcels, calculated immediately after subdivision (\$120,000 / \$300,000). The tax payable is on the net increase of X's share of the fair market value, and is determined by using the formula set out in section 3 (3.2) of the Act:

$$\begin{array}{rcl}
 \text{FMV (proportionate -} & \text{proportionate} & \times \\
 = \text{ share of} & \text{share of} & \text{FMV of all} \\
 \text{FMV} & \text{FMV immediately} & \text{original} \\
 \text{immediately} & \text{before} & \text{parcels at} \\
 \text{after} & \text{subdivision of} & \text{time of} \\
 \text{subdivision of} & \text{parcels owned)} & \text{transfer to X} \\
 \text{parcels} & & \\
 \text{received} & & \\
 \text{FMV (40\%} & - \text{ 33.3\%)} & \times \text{ \$300,000.00} \\
 = & & = \\
 & & \text{\$20,100.00}
 \end{array}$$

Tax payable = \$201.00

Tax Payable for Y

Y has decreased its proportionate share from 66.7% to 60%, and therefore is still qualified for the section 14(3)(j) exemption; Y does not pay tax on the property transfer

Pre-Plan Transfers and the Exemption Provided in Section 14(3)(j)

Sometimes owners of land that will be subdivided alter their shares in that land just before the subdivision is filed at the Land Title Office. These transfers are done to achieve a particular arrangement of ownership after the subdivision, and are known as "pre-plan transfers". Despite these transfers being made to facilitate the subdivision, they are subject to property transfer tax. The tax is calculated using the fair market value of the interest in the property which is transferred.

SUBDIVISION OF TWO OR MORE ADJACENT PARCELS

Sections 14(4)(k) and (k.1), Code 10

General

Sections 14(4)(k) and (k.1) of the Act provide exemptions from property transfer tax where adjacent parcels of land registered to two or more owners are transferred to a trustee for the purposes of subdivision, and the newly created parcels are transferred back to the original owners. The exemptions require the trustee to transfer the land back **only** to the original owners (not third parties), and that the trustee not retain any of the subdivided land in trust. The exemptions also require each original owner to receive a proportionate share of the fair market value of the subdivided land that is **not greater** than the proportionate share of the fair market values of the original parcels he or she had before the subdivision.

Subsections 3.3 and 3.4 were added to the taxing provisions in section 3 of the Act in 1999, to respond to owners and trustees who fail to meet the conditions of these exemptions.

If claiming this exemption, use code 10. The Exemption Provided in Section 14(4)(k)

There are two requirements for a transfer to be exempt under sections 14(4)(k):

1. the trustee must be registered as a trustee under the [Land Title Act](#); and
2. the property must be transferred to the trustee for the purpose of subdividing the original parcels of land.

The Exemption Provided in Section 14 (4)(k.1)

Section 14(4)(k.1) clarifies that an exemption is available when property which has been transferred to a trustee for the purposes of subdividing it is transferred back to the original owners. There are three pre-conditions for this exemption:

1. the Trustee must be registered as a Trustee under the [Land Title Act](#);
2. the transfer must be from the Trustee to any one or more of the original owners. and
3. the original owner's proportionate share in the fair market value of the parcels created

by the subdivision cannot be greater than his or her proportionate share in the fair market value of the original parcels before the subdivision.

Again, it is important to note that the **fair market value of the land rather than the area** of the land must be used to calculate an original owner's proportionate share both before and after subdivision.

For the exemption to be available, the original owner's proportionate share of the fair market value of the land **after** the subdivision (calculated using the fair market value immediately after the

subdivision), cannot be greater than his or her proportionate share of the fair market value of the original parcel, (calculated using the fair market value immediately prior to the subdivision).

Time to Issue a Notice of Assessment

Section 18(6.2) of the Act extends the time during which the Administrator may issue a notice of assessment where an exemption has been claimed under section 14(4)(k.1).

The Administrator has **two** years, rather than one, after the date of the first transfer after the subdivision within which to issue a notice of assessment in relation to the exemption claimed.

**Example of the Exemption Provided in Sections 14(4)(k) and (k.1)
Factual Situation**

Parcel 1
X is registered owner
Fair Market Value = \$100,000.00

Parcel 2
Y is registered owner
Fair Market Value = \$150,000.00

To Z in Trust

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X	X	X	X	Y	Y	Y	Y	Y	Y
Lot 1	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6	Lot 7	Lot 8	Lot 9	Lot 10
\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000

Application of Exemption Sections 14(4)(k) and (k.1)

Because X held 40% of the fair market value of the property both before **and** after subdivision, the exemption provided in section 14(4)(k) is available, and no tax is payable.

Because Y held 60% of the fair market value of the property both before **and** after subdivision, the exemption provided in section 14(4)(k) is available, and no tax is payable.

When Section 3(3.3) and (3.4) Apply

There are situations where the property transfer is not exempt under section 14(4)(k) and (k.1) because the pre-conditions are not met. Where the trustee transfers some of the subdivided property to a third party (not an original owner), or retains part of that land in trust, the section 14(4)(k) exemption is not available.

In March of 1999 subsection 3.3 was added to section 3 of the Act, clarifying how the trustee in this situation will be treated. Tax will only be paid

by the trustee on lands which were not transferred back to the original owners (either transferred to a third party or retained by the trustee). This section provides a simple formula to determine the fair market value of that land to calculate the tax payable.

There are also situations where the transfer is not fully exempt under section 14(4)(k.1) because an original owner received a proportionate share of the fair market value of the subdivided land **greater** than his or her share prior to the subdivision.

In March of 1999, subsection 3.4 was added to section 3 of the Act, clarifying how the transferee in this situation will be treated. Tax is only to be paid on the net increase of the original owner's share in the fair market value of the land. This section provides a simple formula to determine the fair market value of the increase in the original owner's proportionate share, to determine what tax will be paid on that increase.

Example of the Exemption Provided in Sections 14(4)(k) and (k.1) When Sections 3(3.3) and (3.4) Apply
Factual Situation

X is registered owner of Parcel 1
 Fair Market Value (FMV) = \$100,000.00

Y is registered owner of Parcel 2
 FMV = \$150,000.00

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Z in Trust
 FMV = \$100,000.00

Z in Trust
 FMV = \$150,000.00

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Z in trust Lot 1 \$50,000	Z in trust Lot 2 \$50,000	Z in trust Lot 3 \$50,000	Z in trust Lot 4 \$50,000	Z in trust Lot 5 \$50,000	Z in trust Lot 6 \$50,000	Z in trust Lot 7 \$50,000	Z in trust Lot 8 \$50,000	Z in trust Lot 9 \$50,000	Z in trust Lot 10 \$50,000
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X Lot 1 \$50,000	Y Lot 2 \$50,000	Y Lot 3 \$50,000	Y Lot 4 \$50,000	Y Lot 5 \$50,000	Y Lot 6 \$50,000	Y Lot 7 \$50,000	Y Lot 8 \$50,000	A (3rd party) Lot 9 \$50,000	Z retains Lot 10 in trust \$50,000
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Tax Payable by the Trustee

As required by section 14(4)(k), the Trustee will pay tax based on the one parcel that is retained as well as the parcel that is transferred to A, the third party.

The tax payable is based on the fair market value determined by the formula set out in section 3(3.3) of the Act.

FMV =	(proportionate share of FMV + immediately after subdivision of parcels transferred to A 50,000/500,000	proportionate share of FMV x immediately after subdivision of parcels retained 50,000/500,000)	FMV of all original parcels immediately before subdivision
FMV =	(10%	+ 10%)	x \$250,000.00 = \$50,000.00

Tax payable is = \$500

If the parcel that is retained is later transferred back to an original owner within six years, as required under the exemption, the Trustee may ask the Administrator for a refund of this tax paid.

Tax Payable by X

X originally held 40% of the fair market value of the land before subdivision, and now holds 10% of the fair market value of the subdivided land. X is therefore not disqualified from the exemption and does not have to pay tax.

Tax Payable by Y

Y originally held 60% of the fair market value of the land before subdivision, and now holds 70% of that land. The exemption in section 14(4)(k.1) is limited to an original owner who receives no greater than his or her original share in the fair market value of the subdivided land. Y will have to pay tax on her net increase in the share of the fair market value of the subdivided land, in accordance with the formula provided in section 3(3.4).

FMV =	(proportionate share of FMV immediately after subdivision of parcels received	-	proportionate share of FMV immediately before subdivision of parcels originally owned)	x	FMV of all parcels created by the subdivision at the time of the transfer to Y
FMV =	(70%	-	60%)	x	\$500,000.00 = \$50,000.00

Tax payable is = \$500

Tax Payable by A

A will have to pay property transfer tax on the full fair market value of the land received because he was not an original owner, and therefore cannot claim the exemption.

Pre-Plan Transfers and the Section 14(4)(k) and (k.1) Exemption

Sometimes owners of land that is going to be subdivided will alter their shares in that land just before the land is transferred to the trustee. These transfers are done to achieve a particular arrangement of ownership after the subdivision, and are known as "pre-plan transfers". Despite these transfers being made to facilitate the subdivision, **they are subject to property transfer tax**. The tax is calculated using the fair market value of the interest in the property which is transferred.

Additional Comments Regarding the Exemptions Provided in Sections 14(3)(j), (4)(k) and (k.1)

The Registrar may allow for land to be subdivided following a process not contemplated by this Act. While this may be done, all the requirements of the exemptions provided in sections 14(3)(j), 14(4)(k) and (k.1) must be met, in order for the exemptions to be claimed.

NEED MORE INFO?

This bulletin is presented as an aid to understanding the *Property Transfer Tax Act*. It is not intended to replace the need to consult the legislation for possible application to a particular fact pattern. Where there is a conflict between this bulletin and the legislation, the legislation prevails.

For further information, please contact:

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Information is also on the web at www.gov.bc.ca/sbr While there, you can subscribe to our free electronic update service.

Property Transfer Tax Returns and Guides can be obtained through the forms reorder line at 250 387-2183. Your request can also be faxed to 250 356-2550.