ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien

September 8, 2017

The Hon. Charles Sousa
Minister of Finance
Ministry of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

Dear Minister Sousa:

RE: Facilitating the Payment and Administration of the Land Transfer Tax
17-MOF010

As Chair of the Ontario Bar Association ("**OBA**") Taxation Law Section, I am enclosing submissions in respect of Phase One of "Facilitating the Payment and Administration of the Land Transfer Tax Under Section 3 of the *Land Transfer Tax Act*". The following submissions were prepared by members of our section together with the Canadian Bar Association/Chartered Professional Accountants of Canada Joint Committee on Taxation, in particular:

- Thomas A. Bauer – Bennet Jones LLP
- Corrado Cardarelli – Torys LLP
- R. Ian Crosbie – Davies Ward Phillips & Vineberg LLP
- Jarrett Freeman – Goodmans LLP
- Ken Griffin – PwC LLP
- Jane Helmstadter – Bennet Jones LLP
- K.A. Siobhan Monaghan – KPMG Law LLP
- Angelo Nikolakakis – EY Law LLP
- Janice Russell – Deloitte LLP
- Mitchell Sherman – Goodmans LLP
- Antony Schiefer – KPMG LLP
- Lorne Shillinger – KPMG LLP
- Maria Scullion – Deloitte LLP
- Jeffery Trossman – Blake Cassels & Graydon LLP

We thank you for taking time to consider this submission.

Yours Truly,

Larry Nevsky
Chair, OBA Taxation Law Section

cc: Justin Cooke, Ministry of Finance, Corporate and Commodity Taxation Branch

300-20 Toronto Street, Toronto, ON, Canada M5C 2B8
tel/tél: 416.869.1047 | **toll free/sans frais**: 1.800.668.8900 | **fax/téléc**: 416.869.1390 | **info@oba.org** | **www.oba.org**

Submission re: Facilitating the Payment and Administration of the Land Transfer Tax under Section 3 of the *Land Transfer Tax Act*

The following submissions were prepared by members of the Ontario Bar Association ("**OBA**") Taxation Law section together with the Canadian Bar Association/Chartered Professional Accountants of Canada Joint Committee on Taxation (the "**Joint Committee**"). The submissions respond to the regulatory proposal titled "Facilitating the Payment and Administration of the Land Transfer Tax under Section 3 of the *Land Transfer Tax Act*" (the "**Public Consultation"**).[1] Our submissions are organized to respond to the Ministry's general overview of proposed approach, which "sets out an overview of a proposed approach to facilitate the payment and administration of the land transfer tax (LTT) on unregistered dispositions of beneficial interests in land" (the **Table**).[2] The Table is organized into three "groups" of proposals to which we will address in turn.

GROUP 1

The Group 1 proposals represent a fundamental change to the administration of the *Land Transfer Tax Act* (Ontario) (the "**LTTA**"). Changing the taxation of "look-through" entities to treat them for taxation purposes as "regarded" taxpayers requires a comprehensive regime for tax reporting, acquisitions of land, and reorganization transactions. Our primary concern with the Group 1 proposals is that they raise many unanswered questions in respect of ordinary commercial transactions. Below we suggest an alternative proposal in respect of Group 1 vehicles for your consideration and comment on the Group 1 proposals.

1. Existing Regime Amendments

An alternative to the Group 1 proposals would be to amend the existing "look-through" framework applicable to Group 1 vehicles rather than create a new subset of "regarded" trusts and partnerships. In our view, this approach may be easier to implement than addressing the many technical issues that arise under the Group 1 proposals.

Prior to the "clarification" of the *de-minimis* exemption pursuant to Ontario Regulation 35/16, we understand that the Minister had concerns with how certain Group 1 vehicles were applying the *de minimis* exemption. The Minister also has expressed concerns with the rate of tax being paid by certain Group 1 vehicles. If these are the Minister's primary concerns, it is unclear to us why the Minister is proposing an entirely new regime for Group 1 vehicles.

For example, amendments could be proposed to confirm that a Group 1 vehicle will pay tax on behalf of its unitholders, that a Group 1 vehicle will be entitled to the lower rates of land transfer tax once, and that a Group 1 vehicle itself will be entitled to the *de minimis* exemption. Depending on the scope of Group 1 vehicles, Regulation 70/91 also could be expanded to confirm that unit issuances and redemptions for other Group 1 vehicles are treated similarly to mutual fund trusts and that distribution/dividend reinvestment plans ("**DRIPs**") are exempt from land transfer tax. However, under

[1] 17-MOF010 available online,
[2] Land Transfer Tax Consultation Document at p. 3, available online.

this approach, for all other purposes of the LTTA, a Group 1 vehicle would still be treated as a "look-through" vehicle.[3] This approach would limit the need to create a complete code for the Group 1 vehicles as actual taxpayers, and mitigate certain of the concerns discussed below.

2. Group 1 Proposals

As noted above, an approach that intends to change the taxation of "look-through" entities to treat them as "regarded" taxpayers must be comprehensive. Although the Public Consultation is only in Phase One, the general overview of the Group 1 proposals does not describe certain aspects of the proposed regime, making it challenging to provide detailed submissions. Nevertheless, below we have identified certain questions and concerns regarding the proposed taxation of Group 1 vehicles.

Description of Vehicles

SIFT Partnerships

Except for the inclusion of "SIFT partnerships", the scope of Group 1 vehicles is comprised of certain trusts. "SIFT partnerships" are not commonly used to acquire and hold land situated in Ontario. In general, "SIFT partnerships" are inefficient vehicles from an income tax perspective – unlike ordinary partnerships, they are not "flow-through" entities for income tax purposes and they cannot qualify for the exemption from SIFT tax available for "real estate investment trusts" as defined in the *Income Tax Act* (Canada) (the "**Tax Act**"). Given that a comprehensive regime will be needed for all Group 1 vehicles, consideration should be given to whether including "SIFT partnerships" within Group 1 justifies the additional complexity that it will create (for example, see discussion below under "Change of Status – Other Group 1 Vehicles").

Change of Status – Mutual Fund Trust

In many circumstances, it is desirable for a trust to qualify as a "mutual fund trust" within the meaning of the Tax Act. To qualify as a "mutual fund trust", a trust must satisfy conditions in respect of its tax status (it must be a "unit trust" as defined in the Tax Act), its undertakings (only certain undertakings are permitted that are generally related to passive investment), its unit distribution (generally units must be qualified for distribution to the public or acquired pursuant to an exemption under provincial securities law), and its unit ownership (generally it must have at least 150 unitholders that each hold a "block of units", the fair market value of which exceeds $500).

While a trust that intends to qualify as a "mutual fund trust" ordinarily will conduct its affairs to preserve such status, from time to time its status may change. For example, land situated in Ontario may be contributed to a trust (or acquired by a trust) that is not a "mutual fund trust" but later becomes a

[3] In these circumstances, we would still recommend introducing an exemption from land transfer tax on section 132.2 transactions, described further below.

"mutual fund trust".[4] Conversely, an existing publicly-listed "mutual fund trust" may be acquired pursuant to a public-takeover transaction and no longer satisfy the unit ownership condition described above. The Group 1 proposals do not specify how land transfer tax will apply to a trust that changes its status to, or from, a "mutual fund trust" (a Group 1 vehicle) from, or to, a non-mutual fund trust (a Group 2 vehicle).[5] These complex issues must be addressed before any proposals can be enacted.

In addition, while the proposals clearly identify a Group 1 vehicle as the "Taxpayer", it is unclear whether a Group 1 vehicle will be considered the beneficial owner, separate and distinct from its unitholders. Further clarification is necessary.

Change of Status – Other Group 1 Vehicles

The "SIFT rules" generally are intended to subject certain trusts and partnerships to entity-level tax in a manner similar to corporations. Whether a partnership or trust is considered a "SIFT partnership" or a "SIFT trust", respectively, is determined at the end of that entity's taxation year (or fiscal period) and such status can change from year to year. Similar to "mutual fund trust" status, the Group 1 proposals do not describe how land transfer tax applies where a trust or partnership becomes, or ceases to be, a "SIFT trust" or "SIFT partnership" as the case may be. Moreover, such change of status may arise inadvertently or in circumstances that are beyond the control of the entity.

For income tax purposes, it would be unusual for a trust that is a "SIFT trust" but not a "mutual fund trust" to hold land situated in Ontario. Accordingly, a trust that becomes or ceases to be a "SIFT trust" may be a "mutual fund trust" at all times and, therefore, still fall within the scope of Group 1 vehicles. For example, a publicly-listed mutual fund trust may fail the conditions to qualify as a "real estate investment trust" in a particular taxation year and thereby change its tax status from a "real estate investment trust" to a "SIFT trust" in that year. However, in the following taxation year, the trust may again qualify as a "real estate investment trust" and not a "SIFT trust". Neither of these changes would affect its status as a "mutual fund trust" at all times. The proposed approach for the taxation of Group 1 vehicles should clarify that no adverse land transfer tax consequences arise in these circumstances.

Further clarification is also needed in respect of "SIFT partnerships". A partnership that holds Ontario land may intentionally or inadvertently become a "SIFT partnership". The partnership may be a Group 2 or Group 3 vehicle in the previous fiscal period, and such partnership could again become a Group 2 or Group 3 vehicle in a subsequent fiscal period. We submit that it would be inappropriate for

---

[4] Where a trust that is not a "mutual fund trust" satisfies all of the conditions to become a "mutual fund trust" prior to the 91st day after its first taxation year, it can make an election pursuant to subsection 132(6.1) of the Tax Act to be deemed to have been a "mutual fund trust" at all times since its formation. The Group 1 proposals do not describe the consequences of this election.

[5] A trust that loses its status as a "mutual fund trust" generally will be a "unit trust" for purposes of the Tax Act.

this status change to result in adverse land transfer tax consequences. Again, the Group 1 proposals do not describe the consequences to the partnership or its partners when the partnership's tax status changes.

Distribution of Land to Unitholders

The uncertainty in respect of a trust's or partnership's change of status similarly extends to transactions between a "mutual fund trust" and its unitholders, or a partnership and its partners. For example, a mutual fund trust (or a former mutual fund trust) may distribute land situated in Ontario to one or more of its unitholders. Under current rules, land transfer tax would arise to the extent that such distribution resulted in a change of beneficial ownership (assuming no changes to title registration were made in connection therewith). The Group 1 proposals do not address how to analyze the land transfer tax implications of transactions between a Group 1 vehicle and its unitholders or partners, as the case may be.

Distributions of Land to or from a Corporate Subsidiary

Subsections 3(9) to 3(12) of the LTTA generally permit affiliated corporations to transfer beneficial interests in land without attracting land transfer tax provided that the corporations remain affiliated or are deemed to be affiliated for 36 months, among other conditions. These rules recognize that it would be inappropriate to impose land transfer tax on certain transactions within an affiliated corporate group.

The Group 1 proposals do not address whether the corporate deferral rules will be extended to transactions involving Group 1 vehicles. Ontario land may be transferred by a Group 1 vehicle to an "affiliated" corporation (i.e., a corporation that controls or is controlled by the Group 1 vehicle) or by an "affiliated" corporation to a Group 1 vehicle. Under current rules, this transfer would be subject to land transfer tax to the extent that it results in a change of beneficial ownership (again assuming no changes to title registration were made in connection therewith). If the Group 1 proposals are adopted, then it would be appropriate for the corporate deferral rules to apply to transactions between Group 1 vehicles and "affiliated" corporations (i.e., where land is transferred by a Group 1 vehicle to an affiliated corporation, and where land is transferred by an affiliated corporation to a Group 1 vehicle).

Section 107.4 Transactions

The Tax Act contains certain trust reorganization rules that may be used by a Group 1 trust vehicle that owns Ontario land. For example, pursuant to section 107.4 of the Tax Act, a trust may transfer property to another trust on an income tax-deferred basis provided a number of conditions are satisfied. Paragraph 107.4(1)(a) of the Tax Act requires that "the disposition does not result in a change in the beneficial ownership of the property" (i.e., the beneficiaries of both trusts must be the same). The Group 1 proposals do not address these transactions involving Group 1 vehicles. Under current rules, a transfer of an interest in Ontario land that does not result in a change of beneficial ownership generally is not subject to land transfer tax (again assuming no change to title registration in connection therewith).

We submit that transactions described in section 107.4 should continue to be exempt from land transfer tax, even if Group 1 vehicles are changed from "look-through" vehicles to "regarded" taxpayers.

Mutual Fund Trust "Mergers" – Section 132.2

The Tax Act contains a specific regime in order for one "mutual fund trust" to merge with another mutual fund trust on an income tax-deferred basis. Section 132.2 generally requires (i) the transferor trust to transfer all or substantially all of its assets to the transferee trust for units of the transferee, (ii) the transferor trust to redeem its units by distributing to its unitholders the units of the transferee trust, and (iii) the transferor and transferee trust to jointly file a tax election.

A section 132.2 transaction has certain characteristics that are similar in substance to a corporate amalgamation: the transferee trust generally owns the assets of both trusts following completion of the section 132.2 transaction, and the unitholders of both trusts become unitholders of the transferee trust. While trusts cannot amalgamate in the same legal manner as corporations, the Tax Act recognizes that it is appropriate for a "merger" of mutual fund trusts to be income tax-deferred (similar to amalgamations). Mutual fund trust "mergers" generally are structured as an asset sale, followed by a redemption, because of the conditions in section 132.2. We submit that subjecting mutual fund trusts "mergers" to land transfer tax is inappropriate tax policy, particularly when contrasted with the taxation of corporate amalgamations. Therefore, these trust merger transactions should not be subject to land transfer tax.

Moreover, we submit that section 132.2 transactions should be exempt from land transfer tax on a retroactive basis to February 18, 2012. Prior to the clarification of the *de minimis* exemption in Ontario Regulation 35/16, it was generally understood that the *de minimis* exemption would apply to a section 132.2 transaction where the asset of the transferor trust consisted of a partnership interest. As noted above, in our view, this is appropriate tax policy.

De Minimis / DRIPs

We agree that it is appropriate to permit a Group 1 vehicle itself to rely on the *de minimis* exemption and to exempt DRIPs of such vehicles from land transfer tax. In our view, both changes should be made retroactive to February 18, 2012. These retroactive changes will ensure that Group 1 vehicles and their investors are not inappropriately taxed or subject to burdensome compliance obligations resulting from Ontario Regulation 35/16.

As described further below, it is very concerning that the *de minimis* exemption is not available for Group 2 vehicles and Group 3 vehicles. Group 1 vehicles (particularly "mutual fund trusts") often make investments in land indirectly through Group 3 vehicles ("unit trusts" with less than 50 unitholders or limited partnerships with less than 50 partners). By not extending the *de minimis* exemption to Group 3 vehicles (and potentially Group 2 vehicles), the benefit of providing a Group 1 vehicle itself with the *de minimis* exemption is undermined. There is no discernable policy rationale for this approach, and the Minister will be creating a regime that ignores commercial realities and imposes tax on an anomalous basis.

GROUP 2

The Group 2 proposals similarly propose fundamental changes to certain aspects of the application of the LTTA. These proposals are troubling and do not address the many concerns raised by the OBA and Joint Committee in our letter dated March 17, 2016 (the "**OBA/JC Letter**").

Description of Vehicles

Pursuant to the Group 2 proposals, a limited partnership with 50 or more arm's length partners would qualify as a Group 2 vehicle. It is unclear to us why a distinction is being drawn between a limited partnership and a general partnership. While many general partnerships would not have 50 or more partners, the rationale for including a general partnership with 50 or more arm's length partners in the Group 3 vehicles rather than the Group 2 vehicles is not clear.

Undue Compliance Burden

The Group 2 proposals impose a compliance burden on the Group 2 vehicles that it may not be able to satisfy practically. The right of the Group 2 vehicle to deduct land transfer tax paid on behalf of a unitholder or partner may be illusory if there is no cash to be distributed to such unitholder or partner, as the case may be. For example, if a partner's interest of a Group 2 vehicle is redeemed, each remaining partner is considered to have acquired an increased interest in the land held directly or indirectly by the Group 2 vehicle. The Group 2 vehicle may not have cash available to satisfy the land transfer tax obligations of the other Group 2 partners on a timely basis (the land may be illiquid or not yet producing cash profits). Moreover, the other Group 2 partners may not have relief in these circumstances as a result of Ontario Regulation 35/16 (i.e., if the partner of the Group 2 vehicle is a Group 3 vehicle, it is not entitled to the *de minimis* exemption).

Many partnership agreements have strict restrictions on a general partner's ability to require a limited partner to advance further capital to the partnership, and it would be unusual for a declaration of trust to allow trustees to require a beneficiary to contribute cash. Limited partnership agreements and trust declarations have not been drafted taking into account these proposed compliance obligations, and it likely will not be possible to amend many such agreements in a satisfactory manner.

In addition, a transaction may occur between investors in a Group 2 vehicle that gives rise to land transfer tax without the knowledge of the Group 2 vehicle. For example, a partner may transfer its beneficial interest in a Group 2 partnership interest without notifying the general partner of the Group 2 vehicle. Clearly, it is inappropriate to impose penalties on the Group 2 vehicle in these circumstances.

In our view, there are many circumstances where it is inappropriate to shift the burden of collecting land transfer tax from the taxing authority to the Group 2 vehicle.

Partners of Group 2 Vehicles

The special calculation rules to facilitate compliance may increase the land transfer tax that is payable. For example, for purposes of computing land transfer tax, the partner of a Group 2 vehicle is treated as a person. However, if the partner is itself a trust or partnership, then its beneficiaries or partners may be able to benefit from lower rates of land transfer tax, even though the Group 2 vehicle is required to impose tax at higher rates.

In addition, it is unclear to us whether the Group 2 vehicles will impose land transfer tax in circumstances in which tax is not currently payable (because the partner or unitholder is treated as a person), including Group 2 partner reorganizations. For example, if a partner in a Group 2 vehicle is itself a partnership, its interest in the Group 2 vehicle could be transferred to another partnership comprised of the same partners with the same interest without payment of tax on the basis that there has been no change of beneficial ownership. The Group 2 proposals need to clarify that land transfer tax is not payable under these proposals if land transfer tax would not otherwise be payable under the LTTA. However, even if such clarifications are made, the Group 2 vehicle may not have sufficient information from its Group 2 partner to appropriately apply land transfer tax. In our view, it is inappropriate to require the Group 2 vehicle to analyze the land transfer tax consequences of its partners' transactions.

De Minimis / DRIPs

We agree that it is appropriate to exempt DRIPs of Group 2 vehicles from land transfer tax. As noted above and described more fully in the Group 3 proposals, we also believe that a Group 2 vehicle itself should be able to rely on the *de minimis* exemption. In this context, we struggle to distinguish a Group 2 vehicle from a Group 1 vehicle. Both vehicles have a large number of unitholders or partners, as the case may be, and are likely to invest in Ontario land indirectly through a subsidiary vehicle.

As is the case for Group 1 vehicles, both changes should be made retroactive to February 18, 2012. These retroactive changes will ensure that Group 2 vehicles and their investors are not inappropriately taxed or subject to burdensome compliance obligations resulting from Ontario Regulation 35/16.

GROUP 3

With respect to Group 3 vehicles, no changes to the current regime are proposed. Accordingly, none of the significant concerns raised in the OBA/JC Letter have been addressed and all remain valid today. As noted above, we believe the Minister is creating numerous tax anomalies that cannot be explained in tax policy terms. We have summarized and reproduced certain of these concerns below.

De Minimis

The *de minimis* exemption applies if the person seeking to rely on it would not be entitled to a percentage of profits of the partnership in the year of acquisition that exceeds, by more than 5%, the percentage of profits that the person was entitled to at the beginning of the fiscal period. The clarified *de* *minimis* exemption now distinguishes between a person who was previously a partner in the partnership and a person who became a partner in the partnership as a result of the disposition in question. Because the operative provision of the exemption continues to require that the increase in the profit percentage not exceed 5%, we do not understand the purpose of distinguishing between these two situations. If the Ministry intends that these two situations are to be treated differently in any respect, we suggest that the Ministry advise taxpayers of the intended difference. If there is no distinction, we believe that the separation into two distinct clauses is both unnecessary and confusing.

The clarified *de minimis* exemption uses the words “as a partner” in certain clauses in subsection 1(2) of Ontario Regulation 35/16. The prior *de minimis* exemption did not contain this requirement. We believe the Ministry should explain the reason for this addition.

Subsection 1(4) of Ontario Regulation 35/16 provides that a partner means a limited partner or a general partner as determined under the *Limited Partnerships Act* (Ontario) where such a partnership has, or was required to, file a declaration under that act. We do not understand the need for this provision. We would have thought that the relationship of “partner” and “partnership” should be determined under the applicable governing law of the partnership. Furthermore, this provision does not address general partnerships or partnerships established in other jurisdictions (except, perhaps, to the extent that a limited partnership is required to file a declaration under the *Limited Partnerships Act* (Ontario) as an extra-provincial limited partnership because it owns real property situated in Ontario). We believe that the Ministry should elaborate on the rationale for this deeming provision.

Subsection 1(3) of the Ontario Regulation 35/16 provides that subsection 1(2) does not apply if the partner who acquires the interest in the partnership is a trust or another partnership. Limiting the *de minimis* exemption in this manner produces inappropriate and anomalous results. We have identified below a number of specific situations that demonstrate these concerns and that are not addressed by the creation of the Group 1 and Group 2 vehicles. We have no doubt that countless more examples of unfair and inconsistent taxation will be uncovered.

Consider the example of a trust with a single beneficiary. If the beneficiary of the trust were to directly acquire a *de minimis* partnership interest (less than 5%), the *de minimis* exemption would apply. However, if the trust acquires a *de minimis* partnership interest, the exemption is not available pursuant to subsection 1(3) of the Ontario Regulation 35/16. In both cases, the same person obtains the same beneficial interest in land as a result of the acquisition of the same *de minimis* partnership interest. We cannot think of any policy rationale or substantive basis to distinguish the land transfer tax consequences of these transactions. Our view would be the same if the trust in our example had multiple beneficiaries.

We are concerned that the restriction in subsection 1(3) of the Ontario Regulation 35/16 (and possibly the change in wording in subsection 1(2) of the Ontario Regulation 35/16, discussed below) will not apply properly to tiered structures. Trusts and partnerships (including multiple tiers of trusts and partnerships) may be used as investment vehicles for various reasons (including limiting liability, control rights, commercial/business considerations, financing requirements, family/succession planning, etc.).

Creating a blanket restriction in the *de minimis* exemption for trusts and partnerships not only creates anomalous land transfer tax results, but also may inappropriately influence investment decisions and structures.

Consider a real estate partnership fund with 40 equal individual partners. The fund is formed as a limited partnership (the "**Master Partnership**"). The Master Partnership has an interest in numerous real estate projects, which are held in separate subsidiary limited partnerships for various commercial reasons, including limiting liability. Assume the Master Partnership acquires a 40% interest in another existing real estate partnership. Historically, we would expect the *de minimis* exemption to apply because each of the 40 partners would be treated as acquiring a 1% co-tenancy interest in the underlying real property by virtue of the acquisition of an interest in that other partnership. Ontario Regulation 35/16 now precludes this result. In contrast, if each of the partners of the Master Partnership had instead directly acquired a 1% interest in that other partnership, the *de minimis* exemption would clearly apply in respect of each acquisition.

There is no supportable basis for the difference in land transfer tax consequences of the two transactions described above. In our view, any exemption from land transfer tax should apply equally regardless of whether the acquisition of a partnership interest is acquired at the top-tier or any other tier in an investment structure.

Private real estate funds are commonly structured as limited partnerships. Frequently, various types of trusts invest in such private real estate fund partnerships as limited partners. These include trusts governed by registered pension plans, First Nations trusts, charitable trusts, and family trusts. Assuming that the trust has a less than 5% partnership interest in the limited partnership at all times, it is unfair that the trust would have to pay land transfer tax when it acquires limited partnership interests, or when its percentage interest in the fund is increased as a result of another investor's limited partnership interest being redeemed. Investors that are not trusts or partnerships would not be subject to land transfer tax in the same circumstances.

As noted above, private real estate funds are commonly structured as limited partnerships. Sometimes there are "feeder" funds that pool investments from different types of investors and in turn invest in the main fund limited partnership ("**Fund LP**").

To take a simple example, suppose that there are two feeder funds that invest in Fund LP, which directly acquires Ontario real estate. The first feeder fund ("**Feeder LP**") is structured as a limited partnership, and the second feeder fund ("**Feeder Ltd.**") is structured as a corporation. The Fund LP has monthly closings of new investments, and also permits redemptions by investors. The percentage interest that each of Feeder LP and Feeder Ltd. has in Fund LP accordingly fluctuates monthly as a result of additional investments and redemptions.

For example, consider a small investment in Fund LP made through Feeder LP, which results in the new investor (which is not itself a trust or partnership) acquiring a 1% interest in Feeder LP. Assume no investment is made through Feeder Ltd. at the same time (and there are no redemptions at the same time), so that Feeder LP's percentage interest in Fund LP increases by 0.5%. The clarified *de minimis* exemption would not be available to the new investor (even though it is not a trust or a partnership), because the acquisition of the additional 0.5% interest in Fund LP (the partnership that owns the real estate) is an acquisition by another partnership, Feeder LP, of an interest in a partnership.

To take another example, consider that a small investor in Feeder Ltd. that redeems its shares of Feeder Ltd., and as a result Feeder Ltd. redeems some of its interests in Fund LP to fund its obligation to pay the share redemption price, resulting in Feeder LP's interest in Fund LP increasing by 0.1%. None of the investors in Feeder LP would be entitled to the clarified *de minimis* exemption because Feeder LP's "acquisition" of the additional percentage interest in Fund LP is an acquisition by another partnership.

Full land transfer tax will have been paid when Fund LP acquired the Ontario real estate, and so this is truly a case of small changes in the percentage interests in an existing partnership that already owns "tax paid" real estate, the very situation the *de minimis* exemption was intended to cover. It may not be feasible or desirable for commercial reasons for existing funds and feeder funds to be restructured to eliminate the tiers, so the loss of the *de minimis* exemption would put them in an untenable situation. In certain circumstances, the tax compliance costs can exceed the quantum of tax payable.

CONCLUSION

As noted above, we have significant concerns with the proposals advanced by the Minister that are the subject of the Public Consultation. Although the Public Consultation is only in Phase One, the proposals create taxpayer uncertainty and undue compliance obligations and do not address the anomalous results caused by the clarifying amendments in Ontario Regulation 35/16.

We appreciate the opportunity to engage with the Minister to create a framework that both addresses the Minister's concerns and allows taxpayers to apply land transfer tax principles in an appropriate and equitable manner taking into account commercial structures frequently used by taxpayers. We remain ready to continue this dialogue with you and your representatives.