

February 12, 2021

The Honourable Peter Bethlenfalvy  
Minister of Finance  
c/o Budget Secretariat  
Frost Building North, 3<sup>rd</sup> Floor  
95 Grosvenor Street  
Toronto, Ontario M7A 1Z1

Dear Minister Bethlenfalvy,

Via e-mail to: [submissions@ontario.ca](mailto:submissions@ontario.ca)

Enclosed is our submission on repealing the Estate Administration Tax ("EAT").

Several members of the STEP Canada Tax Technical Committee participated in discussions concerning our submission and contributed to its preparation, in particular:

Ian Lebane (TD Wealth)  
Maureen Berry (Fasken LLP)  
Chris Ireland (PPI Advisory)

We would be pleased to discuss our comments with you at your convenience.

Yours very truly,



Maureen Berry  
Co-Chair of Tax Technical Committee  
Faskens LLP



Chris Ireland  
Co-Chair of Tax Technical Committee  
PPI Advisory

## **SUBMISSION ON REPEALING THE ESTATE ADMINISTRATION TAX ("EAT"):**

EAT is levied at 1.5%, calculated on the fair market value of all of the property of the deceased at the time of death (subject only to a deduction for encumbrances registered against any real property).<sup>1</sup> Unlike several other provinces<sup>2</sup>, **in Ontario there is no limit on the amount of EAT that may be payable.** Below is an example of how these rules could apply to small businesses.

*Example:*

*Irene starts a small unincorporated manufacturing business using all of her personal assets (\$50,000), along with an additional \$2,000,000 of bank loans secured on her business assets. Shortly after launching her venture, she dies suddenly with her only assets being the assets of the business.*

Under EAT, the debts owing to the bank are ignored and consequently, even though her estate is only actually worth \$50,000, EAT will be exigible on the gross value of the estate assets of \$2,050,000. To probate Irene's Will, her executors would owe the Ontario government \$30,000, which comprises more than half of the \$50,000 net value of her estate.

### **Arguments for Repeal of EAT in Ontario**

1. It exists without any underlying tax policy.
2. It generates a miniscule portion of Ontario's total revenues. In the 2019-20 fiscal period, Ontario collected EAT of \$214,507,699 out of total revenues of \$156B – only 0.137%.
3. It is regressive in its effect. Wealthy individuals engage professionals to assist in reducing EAT, while people of more modest means cannot afford such planning.
4. Persons of modest means choose joint ownership with a right of survivorship as a means of passing on wealth to the next generation. This can lead to many negative unintended consequences, including:
  - loss of absolute control over property;
  - adverse income tax problems arising from the change of ownership;
  - potential elder abuse of increasingly vulnerable parents by their adult child(ren);
  - exposure of property to the risks of financial claims against the adult child(ren); and

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<sup>1</sup> In Ontario, EAT was eliminated for the first \$50,000 of the estate as of January 1, 2020.

<sup>2</sup> Alberta (maximum \$525), Quebec (flat fee to produce a court certificate), and Manitoba (probate fees abolished effective November 6, 2020).

- acrimony among surviving siblings arising after both parents are gone.

### **Recent legislative history in Ontario**

In Ontario, Monte McNaughton's Bill 120, the *Estate Administration Tax Fairness Act, 2015*, was introduced in September 2015 and would have allowed a deduction for liabilities other than mortgages along with a deduction for charitable donations. It also stipulated a maximum EAT of \$3,250. Two months later, Bill 136 – the *Estate Administration Tax Abolition Act, 2015*, was introduced. That Act would have abolished the tax completely and limited the fee for the Certificate to the same nominal level as a Statement of Claim.

### **Recommendations**

For the reasons delineated above, STEP respectfully submits that EAT be repealed. In the alternative, measures should be enacted to ameliorate the burden of it along the lines of the *Estate Administration Tax Fairness Act, 2015*.