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Measure ULA: New Transfer Tax on Los Angeles Residential and Commercial Real Property Sales Over $5 Million

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Measure ULA, commonly known as the “mansion tax,” would impose a new “Homelessness and Housing Solutions Tax” on transfers of residential and commercial real property in the city of Los Angeles valued in excess of $5 million.[1] The revenue raised by the new tax, expected to be between $600 million and $1.1 billion annually, is intended to be used to fund affordable housing and tenant assistance programs. As of the date of this Client Alert, the measure is ahead in the latest vote count.

Under the measure, sales of residential and commercial real property valued at over $5 million but less than $10 million would be subject to an additional tax at the rate of 4%, while sales of properties valued at $10 million or more would be subject to an additional tax at the rate of 5.5%. The new tax would apply to the entirety of the sale value, not solely the amount in excess of the $5 million and $10 million thresholds, and regardless of whether the property is sold at a gain or a loss. The thresholds would be adjusted each year based on inflation. The tax would apply to property sales occurring on or after April 1, 2023.

The new tax would be in addition to the existing documentary transfer tax imposed on property sales in the city of Los Angeles, which is imposed at a combined city and county rate of 0.56%.

The tax differs in some respects from the existing documentary transfer tax imposed by the city and county of Los Angeles. For example, while the existing documentary transfer tax is calculated by excluding the value of any liens or encumbrances remaining on the property at the time of the sale, the new tax appears to follow the model of other cities, such as San Francisco, and is imposed on the gross value of the property, i.e., by including the value of liens or encumbrances remaining on the property at the time of the sale. In addition, there are certain exemptions from the tax that are not applicable to the existing documentary transfer tax, including exemptions for transfers to certain non-profit entities and to certain community land trusts and limited-equity housing cooperatives that, subject to certain exceptions, demonstrate a history of affordable housing development and/or affordable housing property management experience.

Similar to the existing documentary transfer, however, given the language used in Measure ULA, it appears likely that Los Angeles would interpret the tax as applying to a transfer of interests in a legal entity that results in a change in ownership of real property held by the legal entity for property tax purposes. See our [prior Client Alert[2]] for a more detailed discussion of this topic.[3] In addition, it appears that the tax would be subject to the same general exceptions set forth in the Los Angeles city ordinance that apply to the exiting city of Los Angeles documentary transfer tax (*e.g.*, mere changes in identity, form, or place of organization). Somewhat less clear is whether the exceptions set forth in the California state transfer tax statute would apply to the new tax (*e.g.*, foreclosures and deeds in lieu of foreclosures). In addition, it remains to be seen how certain aspects of the law will be interpreted, including the application of the $5 million and $10 million thresholds

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Lorna Wilson

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to transfers that include separate interests in real property (*e.g.*, land and improvements, commercial condos).

If enacted, the Homelessness and Housing Solutions Tax would represent a significant increase in the transfer taxes applicable to residential and commercial property sales in the city of Los Angeles valued in excess of $5 million and, as such, is expected to have a significant impact on sales of residential and commercial property in the city of Los Angeles going forward.

Please contact any Gibson Dunn tax lawyer for updates on this issue.

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[1] https://clkrep.lacity.org/election/Initiative_Ordinance_ULA.pdf

[2] https://www.gibsondunn.com/california-supreme-court-upholds-los-angeles-countys-interpretation-of-documentary-transfer-tax-act/

[3] Notably, Measure ULA authorizes the Director of Finance to issue rules and regulations further defining the term "realty sold," which triggers both the existing documentary transfer tax and the new tax, and which other cities have used to clarify that the property tax change in ownership rules apply to the documentary transfer tax. *See*, *e.g.*, Section 1114(b) of Article 12-C, San Francisco's Real Property Transfer Tax Ordinance ("Notwithstanding subsection (a), "realty sold" includes any acquisition of transfer of ownership interests in a legal entity that would be a change of ownership of real property under California Revenue and Tax Code Section 64.").

This alert was prepared by Lorna Wilson.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these and other tax-related developments. If you have any questions, please contact the Gibson Dunn lawyer with whom you usually work, any member of the Tax or Real Estate practice groups, or any of the following:

Tax Group: Dora Arash – Los Angeles (+1 213-229-7134, darash@gibsondunn.com) Eric B. Sloan – Co-Chair, New York (+1 212-351-2340, esloan@gibsondunn.com) Lorna Wilson – Los Angeles (+1 213-229-7547, lwilson@gibsondunn.com) Daniel A. Zygielbaum – Washington, D.C. (+1 202-887-3768, dzygielbaum@gibsondunn.com) Brian R. Hamano – Los Angeles (+1 310-551-8805, bhamano@gibsondunn.com) David W. Horton* – Los Angeles (+1 213-229-7613, dhorton@gibsondunn.com) George Liang – Los Angeles (+1 213-229-7230, gliang@gibsondunn.com)

**David W. Horton is an associate working in the firm's Los Angeles office who is admitted only in New York.*

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