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UNDERUSED HOUSING TAX (UHT)

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Underused Housing Tax (UHT)

On June 9, 2022, the Canadian government enacted the "UHT Act". This tax is intended to discourage the ownership of vacant or underused Canadian real estate. Although it primarily targets ownership of Canadian real estate by non-resident non-Canadians, this tax may be applicable to certain Canadian-Controlled Private Corporations (CCPCs), trusts and partnerships. The UHT will be administered by the Canada Revenue Agency.

Overview

The UHT imposes a 1% tax on the taxable value of residential property to owners on December 31 of a calendar year, other than "excluded owners", of residential property in Canada beginning with 2022. The taxable value is the greater of the property's assessed value for property tax purposes and the property's most recent sale price on or before December 31 of the calendar year. Owners can also choose to file an election between January 1st and April 30th of the following calendar year to use the fair market value of the property to determine the UHT owing, if they obtain an appraisal.

Who does the UHT affect and who is required to file?

The legal owner of the residential property will need to determine if they are an excluded owner for the purposes of the UHT. An excluded owner is not required to file a return and the tax does not apply to them.

Common examples of excluded owners are defined as owners who, on December 31 of the relevant calendar year, are:

- Canadian citizens or permanent residents of Canada (regardless of their residency for income tax purposes)
- Public Canadian corporations
- Registered charities
- Real estate investment trusts
- A cooperative housing corporation, as defined in the Excise Tax Act (Canada)

Important omissions from the excluded owner definition are private CCPCs, partnerships and trusts.

If the owner of the residential property is not an excluded owner, the owner must file a return and pay the UHT or claim an exemption from the UHT. Some of these exemptions include:

- A residential property which is the primary place of residence for the owner, their spouse, or child(ren)
- The property was occupied by a tenant for at least 180 days of the year and charged fair rent
- The property was uninhabitable for a period of at least 120 consecutive days due to ongoing renovations
- The person purchased the property within the year
- The owner died during the year or in the previous year
- Construction of the property is not substantially complete before April of the calendar year
- A specified Canadian corporation owns the residential property, which is a Canadian corporation of which 10 percent or more of the votes or value of its shares is not owned by foreign individuals or corporations
- A specified Canadian partnership owns the residential property, which is a partnership for which each member is either an excluded owner or a specified Canadian Corporation
- A specified Canadian trust owns the residential property, which is a trust under which each beneficiary (having a beneficial interest in the residential property) is either an excluded owner or a specified Canadian corporation on December 31 of the calendar year

These are a few of the exemptions that can allow owners of residential property to avoid the imposition of the UHT. It is important to note that in many cases, even if an exemption eliminates the tax liability, a filing requirement will still exist if the owner is not considered an excluded owner. This requires CCPCs, partnerships, and trusts to file a return even if one of the above exemptions can be claimed to exempt the entity from paying the UHT.

The requirement to file a return also extends to individuals who own a home and are neither a Canadian citizen nor a permanent resident. Canadian residency for income tax purposes and permanent residency are two different distinctions. Permanent residency looks to an individual's immigration status. Income tax residency is irrelevant in determining whether an individual is an exempt owner.

Filing Details and Penalties

The UHT and the related return are due on April 30 of the following year. Any owner who fails to file as required is subject to a penalty of the greater of:

1) $5,000 for individuals ($10,000 if not an individual), or

2) The amount that is the total of

   I. 5% of UHT for the calendar year plus
   II. 3% of the UHT multiplied by the number of complete months from the date on which the return is required to be filed

If a person fails to file a return for a calendar year by December 31 of the following calendar year, the penalty for failing to file a return becomes the applicable tax on the basis that certain exemptions are not available.

Final Thoughts

The filing obligation falls to the registered owner of the property, not necessarily beneficial owners. Where there is a corporation as a bare trustee on title, the corporation would need to file the UHT return.

The CRA will also review the applicability of the UHT before issuing a clearance certificate when non-residents sell Canadian residential property.

Further details will be released by CRA regarding the applicable forms to submit.

We would be pleased to review your situation to determine your specific filing requirements with respect to the UHT and prepare any required returns as the new legislation can be complicated and the penalties for non-compliance can be significant. Filing a return will be very important to limit potential penalties.

Please contact us for more information about this article at (613) 235-2000, send an email to info@hwllp.ca or contact your service provider at Hendry Warren.