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Underused Housing Tax (UHT) Update - June 2023

UHT is a 1% federal tax intended to apply to the value of vacant or underused residential real property owned by non-resident non-Canadians. However, many Canadian individuals and other entities are also required to file UHT returns and may even be liable for the tax. Numerous exemptions from the tax itself exist, but significant penalties can apply where the required return is not filed, even if no tax is payable.

UHT was first applicable to the 2022 year, with the first filing deadline being April 30, 2023. However, CRA recently announced (March 27, 2023) that penalties and interest for the 2022 calendar year will be waived for any late-filed UHT return and any late-paid UHT payable, provided the return is filed or the UHT is paid by October 31, 2023. The late filing penalties start at $5,000 for individuals and $10,000 for corporations.

In general, UHT returns must be filed by all persons (which include both individuals and corporations) that are on title of a residential property on December 31 of each year, unless that person is an excluded owner. No tax is applicable if there is no filing obligation.

From an individual perspective, the only excluded owners are Canadian citizens and permanent residents. However, individuals that are on the title of a property in their capacity as a trustee of a trust, or a partner of a partnership, cannot be excluded owners, even if they are Canadian citizens or permanent residents.

From a for-profit corporate perspective, the only excluded owners are public corporations (i.e. listed on a Canadian stock exchange). That is, a private Canadian corporation is not an excluded owner.

Even if a filing obligation exists, an owner may still benefit from one of fifteen exemptions from the tax liability. The exemptions broadly fit into four categories: type of owner; availability of the property; occupant of the property; and location and use of the property. Even though the exemption eliminates the tax, the person still has a filing obligation. The exemptions are listed in Parts 4 through 6 of the UHT Return and Election Form (UHT-2900).

Some of the more common questions and concerns related to the UHT are noted below.

Is my property a "residential property"?

In general, a "residential property" is a property that contains a building with one to three dwelling units under a single land registry title. A unit is considered a dwelling unit if it contains private kitchen facilities, a private bath and a private living area. CRA provides various examples of properties that they view as residential properties in Notice UHTN1, such as: detached houses, duplexes, laneway houses, condominium units and cabins. Apartment buildings, commercial condominiums, hotels and motor homes would not be residential properties. Properties provided through accommodation platforms are likely residential properties (see Notice UHTN15).

How would an income-earning property (such as an Airbnb property or long-term condo rental) that is held by two or more individuals, such as a married couple, be treated?

Although both individuals may be Canadian citizens or permanent residents, there is a possibility that the property is being held in their capacities as partners of a partnership. In that case, the individuals are not excluded owners. The analysis generally starts with determining whether the operating relationship for the income-earning activity constitutes a partnership, which can be complicated. In general, a partnership is a relationship between two or more people carrying on a business, with or without a written agreement, to make a profit. See Notice UHTN15 for guidance.

A parent or child is on title of a property for probate or mortgage purposes.

Where a person is on title but is not a beneficial owner (such as where a relative is on title only for probate or mortgage purposes), they may be holding an interest in the property in their capacity as a trustee of a trust, even if no formal trust agreement is in place. As such, filing may be required even if the individual is a Canadian citizen or permanent resident. Professional advice may be required.

Properties sold before year-end.

UHT may apply in respect of a property sold prior to December 31 if the applicable land title registry has not been updated by the year's end.

Multiple returns to file.

One return must be filed for each of the properties owned by the person, potentially resulting in multiple filings by a person. Likewise, if multiple persons are on title for a single property, each has their own filing obligation.

Private corporations that own residential property.

Most private corporations that are on title of a residential property will have filing obligations, even if they are holding the property in trust and even if they are exempt from the tax liability.

Owner of residential property passes away.

Usually, some time is needed to transfer title of a property from a deceased person to a beneficiary or executor/trustee of an estate. In cases where an individual has died but is still on title of the property, a filing obligation may still exist. However, if the owner was an excluded owner before their death, CRA has indicated that they will continue to consider them excluded after death. Where the property title has been transferred to a personal representative of the deceased (such as an executor), a special provision applies which allows the new holder to be an excluded owner for a limited period even though they are holding the property in their capacity as a trustee.

ACTION: Consider whether you or your corporation may have UHT filing or tax obligations.