TaxNewsFlash
Canada

Charities and NPOs — Don't Miss Housing Tax Obligations

March 15, 2023
No. 2023-10

Registered charities, public sector entities and non-profit organizations (NPOs) may have obligations under the Underused Housing Tax (UHT) rules due April 30, 2023. Although registered charities and many public sector entities are generally exempt from these new federal UHT requirements, they may still be affected where they indirectly hold reportable residential property through other entities in their structures, such as trusts or nominee corporations. In this case, the trustee or nominee corporation that holds the legal title to the property must file an annual UHT return for each reportable residential property and determine whether it is also liable for the 1% UHT. Note that NPOs and public sector entities that are not exempt under these rules must also determine whether they meet the filing and payment UHT obligations for property that they hold the legal title to directly.

To meet this fast-approaching deadline for the 2022 calendar year, charities, public sector entities and NPOs should identify all affected owners in their structures who owned reportable residential property on December 31, 2022 and ensure these owners file a separate UHT return for each reportable residential property and, unless they meet one of several exemptions, pay any related UHT by April 30, 2023. Entities that do not meet these new requirements may face significant penalties of at least $10,000 per property, even where no tax is ultimately payable.

Background
In the 2021 federal budget, Finance announced new rules to require non-resident, non-Canadian owners of certain residential real estate in Canada, as well as certain Canadian owners, to file an annual return for each property owned as of December 31. Under these rules, which were enacted on June 9, 2022 and begin to apply for the 2022

calendar year, affected owners must file a UHT return for each reportable residential property, and pay the 1% UHT unless they qualify for certain exemptions. The returns (and tax owed, if applicable) are due by April 30 of the following year. Many types of owners, including certain charities, public sector entities, and NPOs may be affected by the new UHT rules.

Generally, owners are required to file the new UHT return if they own legal title to certain types of residential property (i.e., usually this means the owner that is registered under the land registration system), unless they qualify as an "excluded owner". For purposes of these rules, reportable residential property generally includes houses or similar buildings with three or fewer dwelling units, as well as the part of a building that is a semi-detached house, rowhouse unit, residential condominium or similar premises.

Entities that qualify as "excluded owners" are generally exempt from the filing and payment obligations under the UHT if they directly hold legal title to reportable residential property. Registered charities (as defined in the *Income Tax Act*) are generally "excluded owners" as are certain public sector entities, including cooperative housing corporations, hospital authorities, public colleges, school authorities and universities (as defined in the *Excise Tax Act*). However, other entities within their structures may not qualify as "excluded owners". Also, NPOs are not identified as excluded owners under the UHT rules.

Affected owners that do not qualify as "excluded owners" are generally required to file annually a separate UHT return for each reportable residential property they own. In addition, these owners may also be liable for the 1% annual UHT, unless they meet one of the available ownership exemptions. Failure to file a return as required may result in a minimum penalty of $10,000 per return (minimum $5,000 per return for individuals), among other potential penalties.

For more details, see *TaxNewsFlash-Canada* 2023-04,"Residential Property Owners — New Tax Filing Due April 30".

Filing requirements for charities and public sector entities

Registered charities and public sector entities that qualify as excluded owners, should be aware that they still may be affected by the UHT rules where they indirectly hold a reportable residential property through another entity in their structure. In particular, charities and public sector entities commonly hold title to such assets through one or more trusts and corporations in their structure. Where this is the case, these trusts and corporations may be subject to the UHT rules.

For example, where a registered charity's structure includes a nominee corporation that owns the legal title to a reportable residential property, that nominee corporation would generally be required to file a UHT return, and may also have to pay the 1% UHT unless one of the ownership exemptions apply.

Public sector entities may face a similar requirement. Although certain public sector entities that meet the specific definitions of cooperative housing corporations, hospital authorities, public colleges, school authorities and universities, are not subject to the UHT rules for property they hold legal title to directly, they may also be affected where a reportable residential property is owned through another entity in their structure. NPOs and public sector entities that do not qualify as excluded owners, should also carefully determine their filing obligations under the new UHT rules to help avoid costly penalties.

Payment obligations for charities and public sector entities

Charities and public sector entities that hold a residential property through an entity that is required to file an annual UHT return must also determine whether that entity is required to remit the 1% UHT. Public sector entities and NPOs that own such a property directly and who are not excluded owners, must also make the same determination. An owner that qualifies for one of the various ownership exemptions, including for a "specified Canadian corporation" or a "specified Canadian trust", is not subject to the 1% UHT. However, the owner is still required to file a UHT return for each reportable residential property by April 30, 2023.

Specified Canadian corporation exemption

Where a charity or public sector entity has a nominee corporation in its structure that holds the legal title to a reportable residential property, the nominee corporation may qualify as a "specified Canadian corporation" and be exempt from paying the 1% UHT. Generally, to qualify as a specified Canadian corporation for a particular calendar year, the nominee corporation must be incorporated or continued under the laws of Canada or a province, and shares representing less than 10% of the votes and value of the corporation are owned directly or indirectly by an individual who is not a Canadian citizen or permanent resident or a corporation that is not incorporated or continued under the laws of Canada or a province, or any combination of these individuals or corporations.

In addition, incorporated NPOs that hold legal title to property directly may also qualify as a "specified Canadian corporation". Specifically, an NPO that is a corporation that does not have share capital may also be a "specified Canadian corporation" if it is incorporated or continued under the laws of Canada or a province, and the chairperson and other presiding officers, as well as more than 90% of its directors, are Canadian citizens or permanent residents.

Specified Canadian trust exemption

Where a charity or public sector entity has a trust in its structure that holds the legal title of a reportable residential property, the trustee who owns the property solely in its capacity as the trustee of a "specified Canadian trust" may qualify for an ownership exemption under the UHT rules. A trust will meet this definition for a particular calendar year if, on December

31 of that year, all of its beneficiaries that have a beneficial interest in the residential property are either an excluded owner (e.g., registered charities and certain public sector entities) or a specified Canadian corporation.

Other exemptions

In addition to the "specified Canadian corporation" and "specified Canadian trust" exemptions, the rules include several other ownership exemptions from the 1% UHT that generally consider the type of property, the use of the property and the extent of foreign ownership. For further details on the rules, including these exemptions and how to calculate the tax if it applies, see *TaxNewsFlash-Canada* 2023-04,"Residential Property Owners — New Tax Filing Due April 30".

Penalties

Charities, public sector entities, and NPOs affected by the UHT rules should ensure that all legal owners of a reportable residential property in their structures file a UHT return when required, even where they are not liable for the 1% UHT, or they may face significant penalties. In particular, the entity that holds the legal title to the particular reportable residential property may be subject to penalties that are the greater of either $10,000, or the total of 5% of the UHT payable for the property for the calendar year, plus 3% of the UHT payable for the property for the calendar year multiplied by the number of complete calendar months that the return is past due.

Affected entities who fail to file their returns by December 31, are subject to an adjustment that could result in even higher penalties that can, in some cases, ignore certain ownership exemptions that otherwise may have applied.

KPMG observations

As affected charities, public sector entities and NPOs only have a short time to meet any upcoming UHT filing or payment obligations, it's important to identify whether they hold any reportable residential property and if so, which entity holds legal title. Any entity within the organization that has a new tax obligation under the UHT rules should prepare now by gathering the required details to complete the new UHT returns. In particular, affected charities, public sector entities and NPOs that own multiple residential properties subject to these new UHT obligations should take extra care to ensure the owners (i.e., legal title holders) of those properties file a separate UHT return for each property as required, or they may otherwise face substantial penalties.

We can help

Your KPMG adviser can help you assess the effect of the UHT on your tax obligations. For more details, contact your KPMG adviser.