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TaxNewsFlash

Canada

Underused Housing Tax — CRA Offers Penalty & Interest Relief

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Owners of residential property in Canada now have additional time to meet new tax filing obligations under the Underused Housing Tax (UHT) rules. Generally, certain Canadian private companies and individuals, as well as non-resident, non-Canadian owners, have to file an annual return for specific types of residential property they own, and also determine whether they are liable for a 1% annual UHT on that property. Although affected owners must file a separate UHT return and pay any related UHT by April 30, 2023 for each reportable residential property they owned on December 31, 2022, the CRA has now announced that it will waive penalties and interest for any late-filed UHT return and for any late-paid UHT, provided the affected owner files any required returns and pays any related UHT by October 31, 2023.

Although this announcement provides some welcome relief in light of the fast-approaching deadline for the 2022 taxation year, affected residential property owners should continue to act quickly to comply with these rules so they do not face significant penalties, even where a return is required, but no tax is ultimately payable. In particular, entities should identify all affected owners in their structures who owned reportable residential property on December 31, 2022 and ensure these owners prepare a separate UHT return for each reportable residential property and, unless they meet an available exemption, pay any related UHT.

Many property owners may be surprised to find they have a filing (and potentially a payment) obligation under these rules, such as private Canadian corporations (including bare trustee corporations and subsidiaries of public corporations, real estate investment trusts (REITs), registered charities and public sector entities) and Canadian individuals that own reportable property as a trustee of a trust or as a partner of a partnership.

Background

Finance announced a new 1% UHT in the 2021 federal budget 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, affected owners are liable for the 1% UHT, unless they qualify for certain exemptions. The return (and tax, if applicable) are due by April 30 of the following year. The UHT rules were enacted under the *Underused Housing Tax Act*, on June 9, 2022, effective January 1, 2022.

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.

"Excluded owners" are generally exempt from the filing and payment obligations under the UHT if they directly hold legal title to reportable residential property. Individuals who are Canadian citizens or permanent residents (unless they own the property as a trustee of a trust or as a partner of a partnership) generally qualify as excluded owners, as does a corporation incorporated under the laws of Canada or a province whose shares are listed on a Canadian stock exchange. In addition, registered charities (as defined in the *Income Tax Act*) are generally excluded owners as are cooperative housing corporations, hospital authorities, municipalities, para-municipal organizations, public colleges, school authorities and universities (as defined in the *Excise Tax Act*). An Indigenous governing body or a corporation wholly owned by such body also qualifies as an excluded owner. A person who owns a residential property as a trustee of a mutual fund trust, a REIT or a specified investment flow-through trust also qualifies as an excluded owner. However, if legal title to the property is not held directly by an excluded owner, but indirectly through another entity, that other entity may still have filing (and potentially payment) obligations 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 for corporations (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" and *TaxNewsFlash-Canada* 2023-10, "Charities and NPOs — Don't Miss Housing Tax Obligations".

We can help

Your KPMG adviser can help you assess the implications of the UHT for your residential properties, including whether you may have reporting and/or payment obligations. KPMG has also developed time-saving digital tools to assist taxpayers who are required to file a high volume of UHT returns. For more details, contact your KPMG adviser.