



TaxNewsFlash

Canada

Property Owners — Meet October 31 UHT Deadline

August 11, 2023

No. 2023-29

Owners of certain residential property in Canada should act quickly to meet their obligations under the Underused Housing Tax (UHT) before first-year transitional relief runs out on October 31, 2023. Under the UHT rules, affected owners are generally required to file an annual return for each reportable property they own as of December 31, and pay the 1% UHT where applicable. The CRA has issued UHT guidance that may help owners assess how the UHT applies in specific situations, including where a property has recently sold, newly constructed property and converted residential properties, among other potential circumstances. Although the 2022 UHT filing deadline of April 30, 2023, has already passed, the CRA has indicated that it will provide relief from late-filing penalties and interest to affected owners that file their UHT returns for the 2022 calendar year and pay any related UHT by October 31, 2023.

Affected owners who have not yet met their UHT obligations for 2022 have limited time to obtain the information they need to file their UHT return before the relief expires. This is particularly important for owners that have complex ownership structures with several entities that own certain residential property in Canada. Owners who face a high volume of reporting may benefit from the help of KPMG's time-saving digital tools to capture required data and prepare the UHT returns to meet this upcoming deadline. Affected corporations who do not meet their UHT obligations face a minimum penalty of \$10,000 per return (\$5,000 per return for individuals), among other potential penalties. In addition, the CRA now has the discretion to decline issuing a section 116 certificate in certain circumstances where the non-resident vendor of a reportable property has not filed the required UHT returns related to the property or paid the applicable UHT.

Background

Starting for the 2022 calendar year, certain Canadian and non-Canadian owners of reportable property in Canada must file a separate annual return for each property owned as of December 31, and may also have to pay the 1% UHT unless they qualify for certain ownership exemptions, by April 30 of the following year.

Many types of owners may have to meet these requirements, such as non-residents, private Canadian corporations (including bare trustee corporations), as well as subsidiaries of public corporations, real estate investment trusts (REITs), registered charities and public sector entities. Canadian citizen or permanent resident individuals that own reportable property as a trustee of a trust or as a partner of a partnership may also have UHT obligations. Note that while some owners may qualify as “excluded owners” and are therefore not subject to the UHT rules, their subsidiaries may still be required to meet UHT filing and remittance requirements if the subsidiary holds legal title to the reportable property.

Generally, the person registered under the land registration system for the particular property is considered the owner for UHT purposes. Under the UHT rules, reportable 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.

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](#)".

Although affected owners are generally required to meet their annual UHT filing and remittance requirements by April 30 of the following year, the CRA announced that it will waive penalties and interest for any late-filed UHT return and for any late-paid UHT for the 2022 calendar year, provided the affected owner files any required returns, and pays any related UHT, by October 31, 2023. See *TaxNewsFlash-Canada* 2023-19, "[Underused Housing Tax – CRA Offers Penalty & Interest Relief](#)".

A non-resident vendor may request a section 116 certificate from the CRA when certain Canadian property is disposed of, in order to limit the amount the purchaser is required to remit to the CRA on behalf of the non-resident's tax liability with respect to the disposition of that property. Without a section 116 certificate, the purchaser is generally required to withhold and remit either 25% or 50% of the purchase price of the property (depending on whether the property is a capital property or inventory). The CRA may decline to issue a section 116 certificate where a non-resident vendor has not filed all the required UHT returns related to a reportable property or not paid the applicable UHT.

UHT guidance

The CRA has issued guidance on the UHT rules that may be of interest to owners facing challenges in determining their UHT obligations. Among other topics, this wide-ranging guidance clarifies certain definitions and exemptions, discusses the various types of owners and provides information related to the completion of UHT returns.

In particular, the guidance offers details on how the UHT rules apply to specific situations such as newly constructed property, the sale of property, the conversion of certain property and the determination of the assessed value of the property, among other details.

High-density buildings and stratified units

The guidance confirms that dwelling units in a high-density building that are owned on separate distinct legal titles (i.e., stratified units or condominiums) would likely be reportable properties, even if the building is operated as an apartment complex. However, a similar high-rise apartment building with more than three dwelling units that is under one legal title is generally not subject to the UHT rules.

Bare trusts and their trustees

The CRA guidance confirms that bare trusts are considered trusts for purposes of the UHT. In particular, the CRA notes that trustees of bare trusts may also have UHT reporting requirements. Therefore, unless a corporation qualifies as an excluded owner, the corporation must file a UHT return if it owns reportable property in its capacity as a trustee of a bare trust. In addition to filing a UHT return, the corporation may also have to pay UHT unless it qualifies for an ownership exemption, such as the exemption for a trustee of a qualifying specified Canadian trust.

Construction of residential property

In its guidance, the CRA confirms that affected builders of new residential properties may only be required to report a property under the UHT rules when its construction is substantially completed (i.e., generally 90% completed or more) on December 31. Therefore, for example, a property that is only 50% completed on December 31 would not have to be reported under the UHT rules.

KPMG observations

Affected builders that determine that they have a reportable property should also consider whether they may be eligible for any ownership exemption for newly constructed residential properties available under the UHT rules.

Sales of reportable property late in the year

The CRA guidance notes that affected owners may be subject to the UHT rules where they sell a reportable property before the end of a calendar year but the transfer of the property

is not finalized in the particular land registration system until after the end of the calendar year.

KPMG observations

Affected owners should be aware that each province has its own land registration system. The specific time when registered ownership of a reportable property transfers between owners may become an issue in jurisdictions where these systems are not automated or still operate with paper processes.

Converted residential property

Owners that have converted residential properties and use these properties in their business activities, such as a residential building converted into commercial offices, may be surprised to learn that they could still have UHT obligations related to these properties. The CRA guidance confirms that residential property that is used for other purposes may still qualify as reportable property for UHT purposes, depending on whether the altered, renovated or converted building loses its structural characteristics or internal configuration as a house, or loses suitability as a residence.

Assessed value for reportable property on large parcel of land

Based on CRA guidance, an affected owner of a reportable property located on a large parcel of land that is subject to the 1% UHT would have to report, on its UHT return, the full assessed value of the property established by an authority for computing property taxes. However, the CRA adds that owners may elect to use the fair market value of the property as the basis for calculating the amount of UHT payable. The CRA notes that the fair market value would generally be based on the building and the half hectare of land subjacent and immediately contiguous to the building that is considered to be reasonably necessary for the building's use and enjoyment as a place of residence for individuals.

KPMG observations

Although affected owners may be able to reduce their overall UHT liability by making the fair market value election, it appears that these owners would have to incur the additional cost of hiring an accredited appraiser to determine that fair market value for UHT purposes.

Other issues

The CRA guidance also confirms and clarifies other aspects of the UHT requirements, including that:

- Affected owners must prepare and file a separate UHT return for each reportable property and cannot simply attach a spreadsheet to the return that lists details for each property
- Individuals who are owners of reportable properties solely as trustees of trusts may also be beneficiaries of the trusts for UHT purposes
- Two trustees of the same trust may each have UHT reporting and payment obligations (subject to available exemptions)
- Some UHT rules may continue to apply to deceased owners until they are no longer identified as owners in land registration systems.
- A residential property must have at least one “dwelling unit” (e.g., a room in a long-term care facility with no private kitchen or bathroom is not reportable property)
- An owner can report the “assessed value” and the “most recent sale price” on the UHT return as “zero” where no tax is payable and the return is filed by December 31 (note that, although the guidance refers to December 31, late-filing penalties apply to UHT returns that are not filed by the April 30 filing deadline, subject to the limited relief available for 2022 UHT returns filed by October 31, 2023)
- Contingent beneficiaries are generally not considered beneficiaries of a trust for UHT purposes.

KPMG observations

Although the CRA’s UHT guidance provides clarity for owners in certain situations, there continues to be uncertainty in some cases, such as where ownership structures include stacked corporations, trusts and/or partnerships.

We can help

Your KPMG adviser can help you assess the implications of the complex UHT rules for your residential properties, including whether you may have reporting and 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.

kpmg.ca



[Contact Us](#) | [KPMG in Canada Privacy Policy](#) | [KPMG On-Line Privacy Policy](#) | [Legal](#)

Information is current to August 10, 2023. The information contained in this *TaxNewsFlash-Canada* is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2023 KPMG LLP, an Ontario limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.