TaxNewsFlash

Canada

Residential Property Owners — New Tax Filing Due April 30

February 6, 2023
No. 2023-04

Owners of residential property in Canada may have to act soon 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, will now 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. To meet their new obligations for the 2022 calendar year, affected owners must file a separate UHT return and pay any related UHT by April 30, 2023 for each qualifying residential property they owned on December 31, 2022.

Some Canadian residential property owners, including nominee corporations, corporations wholly owned by Canadian citizens and subsidiaries of public corporations, may be surprised to find they have to meet these filing obligations, even if no tax is ultimately payable. With the filing deadline drawing near, these and other affected owners should act quickly to comply with these rules or else they may face significant penalties.

Note that affected property owners must meet this new federal tax obligation in addition to other vacant and unused home taxes recently introduced at the provincial and municipal levels.

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 the *Underused Housing Tax Act*, effective January 1, 2022. Under these rules, affected owners would be liable for the 1% UHT, unless they qualified for certain

exemptions. The return (and tax, if applicable) would be due by April 30 of the following year. Finance announced additional exemptions in the 2021 federal Fall Economic Update for certain owners' primary place of residence and certain vacation/recreational properties. The UHT rules were enacted on June 9, 2022.

For more details, see *TaxNewsFlash-Canada* 2021-21, "2021 Federal Budget Highlights" and *TaxNewsFlash-Canada* 2021-62, " Highlights of the 2021 Federal Fall Economic Update" and *TaxNewsNow*, "Proposed underused Homes Tax — Finance Seeks Feedback".

Are you required to file a return?

Non-resident, non-Canadian owners of certain residential real estate in Canada, as well as certain Canadian individuals and private corporations, may have to file a return under the UHT rules, even if they are not ultimately subject to the 1% UHT. Owners are required to meet this filing obligation depending on whether they are considered an "affected owner" and the type of residential property owned. For purposes of these rules, 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.

Generally, you are considered to own a residential property where:

- You are identified as an owner of the property in the land registration system where the property is located (or are considered an owner of the property based on this system)
- You are a life tenant under a life estate in the property
- You are a life lease holder of the property
- You are a lessee that has continuous possession of the land on which the property is situated under a long-term lease

However, you are not considered the owner of a residential property if you give continuous possession of the land on which the residential property is situated to a life lease holder or a lessee under a long-term lease.

Corporations

Corporations that are incorporated outside of Canada or a province, as well as certain Canadian corporations, that own residential property in Canada are generally required to file an annual return for each property they own and may also be liable for the 1% annual UHT. This includes corporations that own residential property in their own capacity as a partner of a partnership or trustee of a trust that is not a mutual fund trust, real estate investment trust (REIT) or specified investment flow-through (SIFT) trust for Canadian income tax purposes.

In addition, the following Canadian corporations that own residential property in Canada in any capacity may also be subject to these rules:

- Corporations incorporated under the laws of Canada or a province that do not have shares listed on a designated Canadian stock exchange for Canadian income tax purposes
- Corporations incorporated under the laws of Canada or a province without share capital.

Certain entities, among others, are not considered affected owners, including a corporation incorporated under the laws of Canada or a province whose shares are listed on a designated stock exchange in Canada. Other entities that may not be subject to the rules include government agencies, para-municipal organizations, Indigenous governing bodies, registered charities, cooperative housing corporations, municipalities, public colleges and universities, among others. As a result, these entities do not have a filing or payment obligation under the UHT (provided they directly hold the legal title to the residential property).

KPMG observations
Under these rules, many Canadian corporations that own residential property may be surprised that they are required to meet filing obligations under the UHT rules, including but not limited to:

- Nominee corporations that own Canadian residential property under a bare trust arrangement
- Subsidiaries of public companies
- Corporations that are the trustee of a trust (other than a mutual fund trust (MFT), a REIT and a SIFT trust)
- General partner corporations that hold a legal title on behalf of a partnership
- Companies that hold semi-detached houses, rowhouse units, residential condominium units or other similar premises.

Individuals

Individuals who are not citizens or permanent residents of Canada and who own residential property in Canada in any capacity are subject to the UHT rules. However, Canadian citizens or permanent residents must also meet these new requirements where they own residential property in their capacity as:

- A trustee of a trust (other than as a personal representative of a deceased individual and other than as a trustee of a mutual fund trust, REIT or SIFT trust for Canadian income tax purposes), including a trustee that holds a legal title in a bare trust arrangement

- A partner of a partnership.

Are you also liable for the 1% UHT?

Affected owners that are required to meet this filing obligation must also determine whether they are liable for an annual 1% UHT on their property. In particular, where you own a residential property in Canada that is not your primary place of residence, and you don't qualify for any other specific property or owner exceptions to these rules, you are liable for the annual 1% UHT.

Property exemptions

Certain residential property is exempt from the 1% UHT, including property that is:

- Vacation property that is located in an eligible area of Canada and is occupied by the owner for 28 days of the year

- Used as a primary place of residence by the owner or for qualifying occupancy of 180 days or more in a calendar year

- Not suitable for year-round use as a residence

- Seasonally inaccessible

- Uninhabitable during the calendar year for a minimum period of at least 60 or 120 consecutive days, depending on other conditions being met

- Newly constructed, subject to certain substantial completion dates.

Owner exemptions

In addition, the following owners generally would not be liable for the UHT:

- Certain partners of a specified Canadian partnership, certain trustees of a specified Canadian trust or a specified Canadian corporation, as defined in the UHT rules

- A new owner (i.e., a person who becomes an owner in the calendar year and was never an owner in the prior nine calendar years)

- A deceased individual who was an owner of the residential property in the calendar year or preceding calendar year, or their personal representative or co-owner (where the deceased owned at least 25% of the property).

Calculating the UHT

If you are an affected owner with residential property in Canada that does not meet these exemptions, you are liable for the 1% UHT. To calculate this tax, you must generally multiply the taxable value of the property by 1%. The taxable value is generally the greater of the assessed value of the property established for purposes of calculating a property tax and the property's most recent sale price on or before December 31 of the calendar year. Alternatively, you may elect to use the fair market value of the property, as determined any time from January 1 of the calendar year to April 30 of the following calendar year. If there are multiple owners of one property, each owner is liable for this tax in proportion to their "ownership percentage" in the property.

How to file the UHT return

Affected owners, including those who are not liable for the 1% UHT, must file Form UHT-2900, "Underused Housing Tax Return and Election Form", for each Canadian residential property they own. Where a residential property has multiple owners, each affected owner must file a return for that property. These owners must also keep records to support the determination of their obligations and liabilities.

For the 2022 calendar year, affected owners must file this form, and remit any UHT owed to the CRA, by April 30, 2023 for each property owned on December 31, 2022.

Penalties

If you are an affected owner and you fail to file this return you may be subject to significant penalties under these rules, even where you are not liable for the 1% UHT. These owners may be subject to penalties that are the greater of either:

- $5,000 for affected owners who are individuals or $10,000 for affected owners that are not individuals (such as corporations), or

- The total of 5% of the UHT payable for the residential property for the calendar year, plus 3% of the UHT payable for the residential property for the calendar year multiplied by the number of complete calendar months that the return is past due.

Affected owners who fail to file their return by December 31 of the following calendar year, are subject to an adjustment that could result in even higher penalties that can, in some cases, ignore certain exemptions that otherwise would have applied.

KPMG observations
As affected owners only have a short time to meet these upcoming obligations, it's important that you start preparing now by gathering required details to complete the new

UHT return. In particular, if you are an affected owner that owns multiple residential properties, you should take extra care to ensure to file a separate UHT return for each property as required, or you may otherwise face substantial penalties.

Corporations that are required to file a UHT return must have a valid business number (BN) and an Underused Housing Tax "RU" program account identifier code. To receive an identifier code, these corporations must register on an online portal that the CRA says will open after February 6, 2023. Corporations that do not have a BN must apply for this number before they can register. Affected individual owners must have a valid CRA tax identifier number such as a social insurance number (SIN) or an individual tax number (ITN).

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.