



GMS Flash Alert



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Canada - Extensions for Time to File 2022 Underused Housing Tax (UHT) Returns

In [GMS Flash Alert 2022-129](#) (June 28, 2022), we reported on the new (then proposed) laws (now effective as of January 1, 2022) that impact the ownership of residential real estate in Canada for persons other than individuals who are citizens or permanent residents of Canada. There have been some moves by the Canada Revenue Agency (CRA) regarding filing deadlines that could lighten taxpayers' burdens.

Owners of vacant or "underused" real estate in Canada are potentially subject to a federal UHT tax equal to 1 percent of the value of their property. Generally, the tax applies to real estate that is not owned, directly or indirectly, by Canadian citizens or permanent residents. Note that the test is not whether the owner is an income tax resident of Canada, but rather whether he or she has the immigration status of a Canadian citizen or permanent resident.¹

However, even in cases where the tax may not apply, persons who are not "excluded owners" need to file an annual tax return, Form UHT-2900, to report their interest in Canadian real estate, and calculate the tax, if any. Such return is generally due on April 30 of the following year.

Since the legislation was enacted, the Canada Revenue Agency (CRA) has provided some relief regarding the filing deadlines for 2022 returns. In particular, it has stated that it will not impose any interest or penalties if both the UHT returns and tax payments are made by October 31, 2023.

WHY THIS MATTERS

As we describe in this newsletter, individuals who own Canadian real estate but are not Canadian citizens or permanent residents (e.g., mobile employees on assignment to Canada) will have to file annual returns to report their interest in the property (generally due on April 30 of the following year). Further, if they don't occupy the property for at least 180 days in the year, or occupy it as their primary place of residence, they could be subject to an annual tax equal to 1 percent of the value of their property.

However, some relief in the form of a filing deadline extension has been provided.

Background

(1) The Filing Requirement

The government of Canada recently passed the Underused Housing Act (“the Act”), which imposes a 1 percent tax on certain vacant and underused real estate owned by non-citizens and non-permanent residents of Canada.² The purpose of the Act was to discourage non-residents from owning Canadian real estate that is not being used or rented, thus increasing housing and rental prices.

Each owner (other than an “excluded owner”) that is registered as having legal title of a “residential property” is generally required to file a return for each “residential property” for the calendar year. An “excluded owner” is generally an individual who is a Canadian citizen or permanent resident, other than in their capacity as trustee of a trust or a partner of a partnership, or a publicly-Canadian-incorporated entity listed on a Canadian exchange. A “residential property” means property situated in Canada (other than non-condominium buildings containing more than three dwelling units, as well as some exceptions for cottage-type vacation properties).

The filing requirement extends to private corporations, trusts, or partnerships, even if each of the shareholders, beneficiaries, or partners are Canadian citizens or permanent residents (though they may not necessarily be subject to the 1-percent tax – see below).

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Finally, even if there is no tax payable, an individual who fails to file the return can be subject to a penalty of \$5,000 (or \$10,000 for non-individuals). (All dollar figures expressed are Canadian dollars.) Further, if the return is not filed by December 31 of the following year, and an exemption arises from the use of the property as a primary place of residence or qualifying occupancy (see below), there could still be a penalty equal to 5 percent of the hypothetical UHT tax otherwise payable plus 3 percent of such hypothetical tax per month in which the return is late. It is thus incumbent for anyone that has a filing requirement to file a return, even where there is no tax due.

(2) The UHT Tax

The 1-percent tax is generally imposed on the taxable value, or (if the filer elects by obtaining an appraisal) the fair market value, of the residential property. Some exceptions are available. The tax does not apply where the property is the primary place of residence of the individual, his or her spouse, or a student-child.

In addition, the tax does not apply if the property is under a “qualifying occupancy” for 180 days or more in the year. This refers to continuous occupancy by:

- (a) an individual who deals at arm’s length with the owner and is given continuous occupancy by the owner under a written agreement;
- (b) an individual who does not deal at arm’s length with the owner but is paying fair rent for the property under a written agreement;
- (c) an individual who is the owner or spouse of the owner, who is in Canada in order to pursue authorized work under a Canadian work permit and who occupies the unit for that purpose; or
- (d) an individual who is a spouse, parent, or child of the owner and who is a Canadian citizen or permanent resident.

Note that, in calculating the 180-day test, one does not include a month in which the owner, spouse, parent, or child resided in another property for an equal or greater number of days.

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Further, the tax does not apply where the owner is a “specified Canadian corporation” (e.g., where more than 90 percent of the shares are held by Canadian citizens or permanent residents), a partner of a “specified Canadian partnership” (e.g., where each partner is a Canadian citizen or permanent resident), or a trustee of a “specified Canadian trust” (e.g., where each beneficiary is a Canadian citizen or permanent resident). This can include, for example, bare trust or nominee arrangements where legal title is held by a corporation or trust, but the beneficial ownership is held by a Canadian citizen or permanent individual. In this way, though such entities will still need to file the annual return, they may not have any tax payable.

It also does not apply in the year where the owner is a first-time owner of the property or has died during the year or the prior year, or where the construction is not “substantially completed.”

Additional Relief Where No Tax Payable

The return requires the reporting of the “taxable value” of the residential property, which is the greater of (i) the assessed value for property tax purposes (e.g., by the municipality) and (ii) the property’s most recent sale price on or before December 31 of the calendar year.

The CRA has provided some recent additional administrative relief against the reporting of the taxable value of the residential property where no tax is payable in respect of the property due to the person’s ownership being exempt from the UHT for the year, and the person files the UHT-2900 return by December 31, of the following calendar year.

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Individuals on assignment to Canada who are not Canadian citizens or permanent residents will have to pay close attention to these rules if they acquire a Canadian residential property. Even if they become Canadian income tax residents, they will still be subject to, at the least, a UHT return filing requirement (which is separate from their general Canadian income tax return filing requirement). Further, even if they are not ultimately subject to the UHT tax (e.g., because of their occupancy of their property), failure to file a return can subject them to significant penalties.

The good news is that the filing deadline for the 2022 return has been extended from April 30, 2023 to October 31, 2023.³

FOOTNOTES:

- 1 For related coverage, see [GMS Flash Alert 2023-079](#), April 6, 2023.
- 2 For the text of the legislation, see the [Underused Housing Tax Act](#), S.C. 2022, c.5, s.10.
- 3 For the extension of the 2022 filing deadline, see the CRA Newsroom webpage: [“Underused Housing Tax penalties and interest waived”](#) (March 27, 2023).

Contact us

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