

Knock Knock – Underused Housing Tax Filings Due October 31, 2023

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The administrative extension to file the Underused Housing Tax (“UHT”) return and pay the UHT expires on October 31, 2023. After this date, registered owners (other than excluded owners) of Canadian residential property as at the end of 2022, who fail to meet their UHT obligations, will face penalties and interest.^[1]

The failure to file penalty is the greater of (a) \$10,000 per return for corporations and \$5,000 per return for individuals, and (b) the sum of 5% of the UHT for the year and 3% of the UHT multiplied by the number of months the return is late. Overdue amounts will also be subject to daily compounding interest (currently at a rate of 9%), with amounts for 2022 calculated from April 30, 2023.

The *Underused Housing Tax Act*^[2] (the “Act”) implements an annual 1% tax on certain vacant or underused housing in Canada owned as of December 31 of the relevant calendar year. Unless an exemption applies, the UHT will be 1% of the taxable value of the applicable property.

Registered owners of residential properties that may be affected, such as individuals without Canadian citizenship or permanent residency, non-resident corporations, and trustees, should confirm their obligations under the Act are fulfilled on or before October 31, 2023.

Who needs to file a return?

Registered owners (other than Excluded Owners) (the “**Affected Owners**”) of Canadian residential property as of December 31 of a year are required to file a UHT return for that year. In general, **Excluded Owners** include Canadian citizens or permanent residents; trustees of mutual fund trusts, real estate investment trusts and specified investment flow-through trusts;^[3] Canadian corporations whose shares are listed on a “designated stock exchange”; registered charities, cooperative housing corporations, hospital authorities, municipalities, public colleges, school authorities, and universities;^[4] and certain Indigenous governing bodies^[5] and corporations wholly owned by such bodies.

Who needs to pay the UHT?

While all Affected Owners must file a UHT return, some may be exempt from paying UHT. Exemptions will, subject to certain conditions, generally include (among others) circumstances where in respect of the applicable calendar year:

1. the property was the Affected Owner’s primary place of residence;
2. the property was occupied for at least 180 days;
3. the Affected Owner became the owner in the year (and was never an owner of the residential property in the prior nine years);

4. the property was not suitable for year-round use as a place of residence or was uninhabitable for a minimum specified period for certain specified reasons (e.g., natural disasters or a renovation);
5. construction of the property was not substantially completed before April, or it was substantially completed in the year before April, put up for sale and was unoccupied;
6. the Affected Owner died during the year or the prior year;
7. a co-owner with at least 25% ownership died during the year or the prior year;
8. the Affected Owner was at the end of the year a Canadian corporation, at least 90% of the shares of which were held and controlled by Canadian citizens or permanent residents and Canadian corporations;
9. the Affected Owner is an owner solely in their capacity as a partner or trustee of a partnership or trust, as applicable, all the partners or beneficiaries of which were at the end of the year excluded owners or a corporation described at #8; and
10. the Affected Owner is an owner solely by virtue of acting as a personal representative of a deceased individual who was an owner of the property during the year or the prior year.

What needs to be done?

An Affected Owner must file a UHT-2900 return by April 30th of a particular year for each residential property owned by them on December 31 of the preceding year. This deadline was extended to October 31, 2023 for the 2022 year. Each Affected Owner must also pay the UHT by the deadline in respect of each such property unless, for any particular property, the owner qualifies for an exemption.

The UHT-2900 return is accessible at <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/uht-2900/uht-2900-22e.pdf>

How much is the tax?

Subject to an exemption, an Affected Owner must pay tax in respect of a residential property in the amount of 1% of the “taxable value” of the property unless the owner elects for the tax to apply on the fair market value (“FMV”) of the property, in proportion to their “ownership percentage” of the property. In general, the “taxable value” of a property will be the greater of (i) the value established for property tax purposes, and (ii) the property’s most recent sale price on or before December 31 of the year to which the return relates.

The FMV election might be considered where only a portion of a property is appropriate to regard as residential property. The FMV election can reflect the FMV of the property as at any date between January 1 of the year to which the return relates and April 30 of the following year. The UHT-2900 return indicates that the FMV reported by the Affected Owner must be supported by a written appraisal prepared by an arm’s length accredited real estate appraiser.

Conclusion

Owners of residential properties should ascertain their obligations (if any) before the upcoming October 31, 2023 deadline. Given the breadth of potentially Affected Owners and the ongoing requirement to file and/or pay UHT, it is recommended that owners of residential properties review in detail what is required of them every year to avoid non-compliance penalties.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

This article is a modified and updated version of the New Taxes on Underused and Vacant Residential Properties in Canada article written by Lucinda (Lucy) Main and Sanaya Mistry of WeirFoulds LLP for the June 2023 – Issue 16-2 of Taxes & Wealth Management.

[1] <https://www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2023/underused-housing-tax-penalties-and-interest-waived.html>

[2] *Underused Housing Tax Act*, S.C. 2022, c. 5, s. 10.

[3] Each as defined for Canadian income tax purposes.

[4] Each as defined in the *Excise Tax Act (Canada)*, R.S.C., 1985, c. E-15.

[5] As defined in the *Department of Indigenous Series Act*, S.C. 2019, c. 29, s. 336.

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