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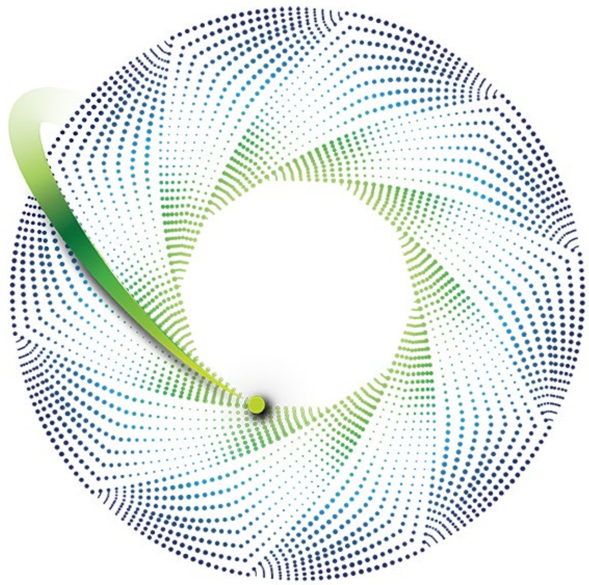

Canadian Tax & Legal Alert

Underused Housing Tax: First return due April 30, 2023

February 14, 2023

Background

Canada's Bill C-8, *Economic and Fiscal Update Implementation Act, 2021*, received Royal Assent on June 9, 2022 (S.C. 2022, c. 5). Among other things, the Bill implements Canada's underused housing tax (UHT). The *Underused Housing Tax Act* (herein referred to as the "UHT Act" or the "Act") imposes a 1% tax on the value of vacant/underused residential property owned directly or indirectly by foreign persons. In addition to setting out the rules for determining one's tax liability, the UHT Act imposes a filing requirement for a broader group of property owners.

On January 31, 2023, the Canada Revenue Agency (CRA) released the prescribed form under the UHT Act (UHT-2900 – *Underused Housing Tax Return and Election Form*). Residential property owners who are required to file a UHT return for the 2022 calendar year must do so on or before April 30, 2023. Significant penalties may be levied for non-filing.

Overview

The UHT is a 1% tax on the value of non-Canadian owned residential real estate that is vacant or underused. This tax will apply as of January 1, 2022. All property owners who are not "excluded owners" will be required to file a UHT return for the 2022 calendar year with the CRA on or before the April 30, 2023, deadline, even if they are exempt from paying the tax.

Computation of the underused housing tax

In order to calculate the UHT, a 1% tax rate is multiplied by the value of the residential property. This amount is then prorated by the owner's ownership percentage in the property. The value of the residential property is based on either of the two following methods:

Taxable value: This value is the greater of (a) the assessed value for the year as determined by the relevant authority for property tax purposes, or (b) the most recent sale price on or before December 31 of the calendar year; and

Fair market value: This method permits the use of the property's fair market value as determined on or after January 1 of the calendar year and on or before April 30 of the following calendar year, provided an election is filed with the CRA (by April 30 of the following calendar year) and that the value is supported by an appraisal report (as prepared by a professional real estate appraiser).

Residential property

"Residential Property" is defined in the UHT Act and is generally any real or immovable property situated in Canada that is either a detached house or similar building, containing not more than three dwelling units; part of a building that is a semi-detached house, rowhouse unit, residential condominium unit or other similar premises; and any prescribed property.

Excluded owner

Under the UHT Act, an "excluded owner" as of December 31 of a given calendar year is exempt from the UHT and also from the related filing obligations. "Excluded owner" is a defined term in the UHT Act and includes the following:

- An individual that is a **Canadian citizen or permanent resident** (as defined in the *Immigration and Refugee Protection Act)* except in circumstances where that individual is an owner of the residential property as a partner of a partnership or a trustee of a trust (other than a personal representative in respect of a deceased individual);
- A **publicly traded corporation** that is incorporated under federal or provincial laws;
- A person that is an owner of the residential property in their capacity as a trustee of a **mutual fund trust, a real estate investment trust or a specified investment flow-through trust (SIFT trust)** as defined in the *Income Tax Act*;
- A **registered charity** as defined in the *Income Tax Act*;
- A **cooperative housing corporation** as defined in the *Excise Tax Act*;
- An **Indigenous governing body** or a **corporation owned by an Indigenous governing body** as defined in the *Department of Indigenous Services Act*;
- **Municipal organizations** and other public institutions and government entities as defined in the *Excise Tax Act*;
- Other public service bodies such as **universities**, **public universities**, **school authorities** and **hospital authorities**;
- The **Government of Canada** or agent of the government of Canada;

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- The **government of a province** or agent of the government of a province;
- A prescribed person.

Who is required to file a return?

An owner of a residential property who is not considered an **excluded owner** will have an obligation to file a UHT return annually and must assess whether they are liable for the UHT. Ownership is based on the name identified as owner, under the applicable land registration system, and can also include certain long-term lease holders. As noted above, while an excluded owner is defined in the UHT Act, an owner of a residential property that is subject to the UHT is specifically not defined. However, the CRA does refer to such an owner administratively as an "affected owner." Such owners include (but are not limited to):

- An individual who is not a Canadian citizen or permanent resident of Canada;
- An individual who is a Canadian citizen or permanent resident and owns residential property as a **trustee of a trust**;
- Any person who owns a residential property as a **partner of a partnership**;
- A corporation **incorporated outside of Canada**;
- A **Canadian corporation whose shares are not publicly traded** (including any Canadian private company); and
- A Canadian corporation **with no share capital** (e.g., a non-profit organization that is not a registered charity).

Filing, payments, and what information is required?

An affected owner of one or more residential properties as of December 31 of a calendar year must file a return for **each** residential property on or before April 30 of the following calendar year. The return must be filed in prescribed form (UHT-2900), contain prescribed information, and state the amount of tax that the owner is liable for. Furthermore, payment of the UHT is also due on or before April 30 of the following calendar year. Payments amounting to $50,000 or more must be made at a credible financial institution such as a bank, a credit union, or a trust corporation. The information required to be reported in prescribed form (UHT-2900) in respect of each property includes:

- Legal name of owner;
- A valid CRA tax identifier number (i.e., social insurance number (SIN), individual tax number (ITN), or business number (BN) with an underused housing tax (RU) program account identifier code). A trust account number cannot be used to file UHT returns;
- Contact information;
- Type of ownership;
- Owner's interest in the property as well as names of other owners whose interest in the property exceeds 10%;
- Address of property;
- Residential property type;
- Value of property (taxable or fair market value);
- Property ID used in land registration system;
- Property tax or assessment roll number; and
- Exemptions claimed in respect of the property, if any.

Non-compliance penalties

Every person that fails to file a return as and when required under the UHT Act is liable to a penalty equal to the **greater** of:

- **$5,000** if the owner is an individual, or **$10,000** if the owner is not an individual (e.g., a private corporation); and
- The total of:
    - 5% of the applicable tax in respect to the residential property for the calendar year; and

- 3% of the applicable tax in respect to the residential property for the calendar year for each month past the due date.

The penalties may increase where a return for a particular calendar year is not filed by December 31 of the following year. Furthermore, additional penalties may apply in circumstances of gross negligence or misrepresentation.

UHT exemptions

As noted above, if a residential property owner is not an excluded owner, the owner must file an annual UHT return. However, if the ownership qualifies for an exemption, the owner should not ultimately be liable for UHT. The following are circumstances where an owner may be exempt from UHT:

- **Primary place of residence** – The residential property is the primary place of residence of the owner, spouse/common-law partner or that of a child that is attending a designated learning institution. An election may be required if multiple residential properties are held.
- **Qualifying occupancy** – At least 180 days in a calendar year are included in the owner's *qualifying occupancy period* of the residential property.
    - **Qualifying occupancy period** means a period of at least one month in a calendar year during which one of the following individuals had continuous occupancy of the residential property:
        a) an individual with a written contract who is not related to the owner (or spouse);
        b) an individual with a written contract who is related to the owner (or spouse) and who pays a rent at least equal to fair rent. Fair rent is defined as equal to 5% of the taxable value of the residential property for the year;
        c) an individual who is the owner, who has a Canadian work permit and who occupies the dwelling for that purpose; and
        d) an individual who is a spouse, common-law partner, parent or child of the owner and who is a Canadian citizen or permanent resident.
- **Specified Canadian corporation** – A corporation that is incorporated or continued under the laws of Canada or a province that generally has less than 10% of its votes/value held by foreign persons (e.g., an individual who is not a Canadian citizen or permanent resident, and a corporation incorporated outside of Canada) on December 31 of the calendar year.
- **Specified Canadian partnership** – A partnership where each partner is either an excluded owner (defined above) or a specified Canadian corporation (defined above) on December 31 of the calendar year.
- **Specified Canadian trust** – A trust where each beneficiary is either an excluded owner (defined above) or a specified Canadian corporation (defined above) on 31 December of the calendar year.
- **Periodic residence** – The residence is uninhabitable and/or inaccessible for periods of the year and is thereby unsuitable for year-round use (e.g., due to winter access issues).
- **Disaster or hazardous conditions** – The residence is uninhabitable for at least 60 consecutive calendar days due to disaster or hazardous conditions beyond the owner's control.
- **Renovations** – The property is uninhabitable for at least 120 consecutive calendar days due to renovation work carried out diligently and without delay. This exemption may be relied upon only once every ten years.
- **Year of acquisition of property** – The first calendar year in which the owner acquires an interest in the property.
- **Deceased owner** – The person died during the calendar year or the prior calendar year. The exemption also applies for deceased co-owners provided their ownership percentage was at least 25% at the time of death.
- **New property** – A residential property that is newly constructed and not substantially completed before April of the calendar year.
- **New property held as inventory** – The construction of the residential property is substantially completed in January, February or March of the calendar year, and the residential property is:
    a) offered for sale to the public during the calendar year; and

b) the residential property had never been occupied by an individual as a place of residence or lodging during the calendar year.

- **Recreational properties** – The vacation property is located in a prescribed area and used by the owner or spouse/common-law partner for at least 28 days during the calendar year.

The prescribed areas for the recreational property exemption may be searched through a tool on the CRA's website, which allows a user to search by postal code.

Additional residential vacancy taxes

Various municipalities, including Vancouver, Toronto, Hamilton, and Ottawa have enacted a vacancy tax on underused residential properties with the hope of increasing the supply of rental properties. These taxes apply to all property owners, including Canadian citizens and permanent residents, as opposed to the UHT which generally applies to foreign property owners, as discussed above.

A residential property will be considered vacant if it has not had a person living in it for at least six months of the prior year unless an exemption applies. Exemptions are similar to the UHT's, where the tax will not apply if the vacancy was due to safety concerns, renovations, natural disasters, or death of the previous owner.

Mandatory declarations must be filed each year with the city, regardless of being exempt from the tax. Each city has their own late filing fees if declarations are not filed on time. The Ontario municipal taxes are 1% of the assessed property value. Vancouver is 3% (however, will be increased to 5% next year). Taxes are levied through property tax statements and have late-payment penalties if not paid on time.

Additionally, British Columbia also has their own provincial speculation and vacancy tax, on top of Vancouver's empty home tax. The tax charged is 2% for foreign owners and satellite families (meaning less than 50% of family income is not taxed in Canada) or 0.5% for Canadian citizens or permanent residents who are not members of a satellite family.

For example, an unused residential property in Vancouver could result in all three levels of taxation totalling 6% (1% UHT + 3% Vancouver's empty home tax + 2% British Columbia's speculation and vacancy tax).

How can Deloitte help you?

Deloitte's professionals can help you understand how these measures may impact your business.

If you have questions on any of the above, please reach out to your Deloitte advisor or any of the individuals noted on this alert.

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