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CANADA'S UNDERUSED HOUSING TAX – WHAT RESIDENTIAL PROPERTY OWNERS NEED TO KNOW

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While the majority of homeowners in Canada will have no obligations under the federal government's *Underused Housing Tax Act* (the "**Act**"), it is important to note that the deadline for the filing and tax remittance under the Act for 2022 is fast approaching as those not explicitly defined as an "excluded owner" (as discussed below) must file a return by April 30, 2023, for each residential property they own.

Unless a person is an "excluded owner", the Act requires an owner to file an annual return with the Canada Revenue Agency (CRA) reporting the occupancy status of the residential property ("**UHT Return**"), and unless exempted, the 1% tax on the value of the vacant or underused residential property (the "**UHT**") directly or indirectly owned by non-permanent residents or non-Canadians.

As of October 31, 2023, the CRA announced that it will waive the application of penalties and interest (for the 2022 calendar year only) for any UHT Return that is filed and UHT that is paid by April 30, 2024.

The owner of a residential property for the purposes of the Act is the registered owner of the property (as opposed to the beneficial owner). In addition, an owner may also be:

- a life tenant under a life estate;
- a person that is a life lease holder;
- a person that has continuous possession (i.e., a lease for a period of at least 20 years) of the lands on which their residential properties are located; and
- tenants who have an option to purchase the lands which their residential properties are located.

Who does not need to file a UHT Return?

"Excluded owners" have no obligations or liabilities under the Act and are not required to file the UHT Return or remit the UHT on any of their residential property holdings. All residential property owners need to consider whether the Act applies to them and what their obligations are.

Under the Act, "excluded owners" may be any of the following:

- Canadian citizens and permanent residents that own residential property in Canada other than in their capacity as a trustee of a trust or partner of a partnership;
- Canadian corporations whose shares are traded on a public Canadian stock exchange;
- entities who own residential properties as trustees of mutual fund trusts, real estate investments trusts, or specific investment flow-through trusts;
- a registered charity;
- hospital or school authorities;
- municipalities;
- cooperative housing corporations; and
- Indigenous governing bodies or a corporation wholly owned by such bodies.

An owner who does not qualify as an "excluded owner" is not specifically defined but is referred to by the CRA as an "affected owner", which includes, but is not limited to:

- non-Canadian citizens and non-permanent residents;
- Canadian citizens and permanent residents who own residential properties as partners of partnerships and trustees of a trust (other than trustees considered "excluded owners" and personal representatives of deceased individuals);
- a corporation that is incorporated outside of Canada; and
- a Canadian corporation whose shares are not listed on a Canadian stock exchange;

Exemptions from the UHT

Exemptions under the Act are based on the occupant, the owner, the availability, and the residential property's location.

Occupant of the Property:

The UHT may not be payable if the property is:

- the primary place of residence of the individual owner, their spouse or common-law partner, or their child while the child is a student at a designed learning institute;
- occupied for a period of at least 180 days (so long as within that time there are continuous occupancy periods of at least 1 month each) in the calendar year by:
    - an arm's length individual under a lease, a non arm's length individual under a lease who pays fair rent; or
    - an individual who is the owner or their spouses or common-law partner who have a Canadian

work permit; or a Canadian citizen or permanent resident who is the spouse, common-law partner, parent or child of the owner.

Type of Owner:

The UHT may not be payable if the owner is:

- a specified Canadian Corporation, which is a corporation incorporated in Canada whose shares are not listed on a Canadian stock exchange, where the controlling persons (those who own 10% or more of the total equity or voting shares, directly or indirectly) are Canadian citizens or permanent residents;
- partners of specific Canadian partnerships, which include partnerships where each partner is an excluded owner or a specified Canadian Corporation;
- trustees of specified Canadian trusts, which include trusts under which each beneficiary having a beneficial interest in the residential property is an excluded owner or a specified Canadian corporation;
- owners who acquired the residential property in the calendar year, as long as the owner never owned the residential property in the previous nine calendar years;
- a deceased owner or an individual who owns the same residential property as a deceased owner (if the deceased individual's ownership percentage at the time of death was at least 25%); or
- personal representatives of deceased owners.

Availability of the Property:

The UHT may not be payable if the property is:

- not suitable for year-round use as a place of residence or where it is seasonably inaccessible because public access is not maintained year-round;
- under renovations for a period of at least 120 consecutive days in the calendar year;
- rendered uninhabitable for a period of at least 60 consecutive days in the calendar year due to a natural disaster or hazardous condition; or
- newly constructed and either 1) not substantially completed before April of the calendar year, or 2) substantially completed before April of the calendar year, and within that same year offered for sale to the public.

Location of the Property:

The UHT is not payable if the property is located in certain prescribed areas of Canada and used as a residence or lodging by the owner, the owner's spouse or common-law partner for at least 28 days during the calendar year.

The Government of Canada has designed this tool to assist affected owners with determining whether a property is located in a prescribed area.

Moreover, where more than one affected owner owns the same residential property, each owner must file a separate UHT Return for that property even if they can claim an exemption from the UHT.

Penalties:

Failure to file the UHT Return as required may result in significant penalties under the Act, by which affected owners may be liable to a penalty equal to $5,000.00 for individuals and $10,000.00 for non-individuals, in addition to 5% of the UHT payable plus 3% of the UHT payable for each complete month that the UHT Return is not filed.

If the UHT Return for a calendar year is still not filed by December 31 of the following calendar year, then the maximum amount of the penalty is determined as if certain exemptions to the UHT (such as those based on the occupant of the property and the availability of the property) were not available and UHT was otherwise payable.

Further penalties and interest may also apply in relation to failure to provide information or false statements made under a filing.

It is important to note that just because you do not have any tax to pay, does not mean you do not have a filing obligation.

We encourage you to consult your accountant for assistance with filing a UHT Return.

Find more information on how to file the UHT return here.

Should you have any questions about this, please contact the author of this article Jeevan V. Ahuja at jahuja@rbs.ca, or any member of our real estate group.