UNDERUSED HOUSING TAX

FEBRUARY 2023

The federal budget in 2021 announced a national annual 1% tax will apply on the value of non-resident, non-Canadian owned residential real estate that is considered to be vacant or underused. This is known to be the Underused Housing Tax ("UHT"). This was in effect as of January 1, 2022.

Who's affected by this.

Every homeowner that is **NOT an excluded owner** that owns a residential property on December 31 of the calendar year is required to file **an annual declaration** with CRA for each residential property that they own.

Residential property generally includes:

- Detached homes and similar buildings with up to three dwelling units (such as a duplex or triplex)
- Semi-detached homes, row-house units, residential condominium units and any other similar premises

Note this only applies to a residential property that is owned on December 31 of the calendar year. If a residential property is owned on January 1 and disposed of on December 30 during the calendar year, there is no need to make a declaration.

Excluded owners

In general, excluded owners are individuals who are a Canadian citizen or permanent resident of Canada.

It is important to note that excluded individuals is not a test on whether the individual is a resident or non-resident of Canada for income tax purposes. For example,

- If an individual is a non-resident of Canada for income tax purpose but is a Canadian citizen. This individual is an excluded owner and is exempt from filing the declaration.
- If an individual who is a resident of Canada but not a Canadian citizen or a permanent resident, this individual is required to file the declaration.

Other excluded owners also include public corporations and registered charities. For a list of excluded owners, please refer to the government link below.[1]

It is important to note that **private corporations, partner of a partnership (individual or corporate partner) and Trustee of a Trust** that own residential properties on December 31 are NOT excluded owners so they will have to file a declaration.

1 https://www.canada.ca/en/department-finance/programs/consultations/2021/tax-unproductive-use-housing-non-resident-non-canadian-owners/underused-housing-tax.html

UHT Exemptions

For homeowners that do not meet the excluded owners test, they will need to file a declaration even if they are exempt from owing UHT taxes. The following situations will exempt homeowners from UHT.

1. Primary place of residence

UHT is exempt if the property is use as primary place of residence for the owner or the owner's spouse or common-law partner.

Where an individual who is the child of the owner or the owner's spouse or common-law partner, it is only exempt if the child occupies the residence for the purpose of authorized study at a designated learning institution.

Where a noncitizen/resident owns two or more residential properties (e.g., two kids at Canadian universities), only one property is exempt.

Where spouse 1 owns one property and spouse 2 owns a separate property, they must do a joint election that only one of the properties is a principal residence

2. Qualifying occupancy

Generally speaking, if the residential property is rented out to an arm's length tenant for at least 180-day period, it is exempt from UHT.

If the property is rented out to a non-arm's length (related) tenant, there needs to be an agreement evidenced in writing and for consideration that is at leased fair market rent for the residential property prorated for the period.

3. Specified Canadian Corporation

UHT is exempt for Canadian corporation where it does NOT have a non-Canadian or permanent resident shareholder that owns 10% or more of the equity or voting rights of the Canadian corporation.

4. Specified Canadian Partnership

UHT is exempt for a Partnership for which each member is either an excluded owner or a specified Canadian corporation on 31 December of the calendar year.

5. **Specified Canadian Trust**

UHT is exempt for a trust under which each beneficiary (having a beneficial interest in the residential property) is either an excluded owner or a specified Canadian corporation on 31 December of the calendar year.

6. **The residential property is not suitable for year-round use as a place of residence.**

7. The residential property is seasonally inaccessible because public access is not maintained year-round – (ex. can't access in the winter)

8. The residential property was uninhabitable due to a disaster or hazardous condition beyond reasonable control by the homeowner for at least a 60 consecutive days period.

9. A dwelling unit that is part of the residential property is uninhabitable for a period of at least 120 consecutive days in the calendar year as a result of a renovation to the residential property, any work in relation to the renovation is carried on without unreasonable delay and this paragraph did not apply in respect of the residential property for any of the nine prior calendar years.

10. The person becomes an owner of the residential property in the calendar year and was never an owner of the residential property in the prior nine calendar years.

11. The person died during the calendar year or prior calendar year that owns at least 25% of the property.

12. The person is the personal representative in respect of a deceased individual who was an owner of the residential property during the calendar year, or the prior calendar year and the person was not otherwise an owner of the residential property in either of those calendar years.

13. The construction of the residential property is not substantially completed before April of the calendar year

14. The construction of the residential property is substantially completed after March of the calendar year. The residential property is then offered for sale to the public during the calendar year and the residential property has never been occupied by an individual as a place of residence or lodging during the calendar year

15. The residential property is located in a prescribed area and prescribed conditions, if any, are met- NO details on this yet.

Application of Tax

The UHT is 1% of residential property's value. The property's value is the greater of:

- Property's assessed value for property tax.
- The most recent sales price before December 31 of the calendar year.

In other words, if the assessed value for property tax is less than a recent sale, then the sales price is used.

Filing and payment Due date

The declaration and UHT are due on April 30 of the subsequent year. For example, the first year of filing will be April 30, 2023.

Penalties

Greater of:

1) $5,000 for individual; $10,000 if not an individual
2) The total of
    a. 5% of the tax for the calendar year
    b. 3% of the tax for each complete calendar month the return is late

Final Thoughts

If you are not a Canadian citizen or a permanent resident that owns a residential property in Canada on December 31, it is likely that you need to file a declaration by April 30 of the subsequent year.

If you own a residential property via a private corporation, partnership and a Trust, these entities will need to file a declaration.

It is important for you to file the declaration by April 30 of the subsequent year even if the UHT does not apply to you through the application of an exemption. If a return is not filed by December 31 of that subsequent year, the exemption may no longer be available to eliminate the UHT. Forgetting to file the declaration could result in significant penalty and the application of UHT even if you are exempt from UHT.

If you are unsure whether you need to file a declaration, please consult with one of our professionals and will assist you with the filings.