Underused Housing Tax: Impacts to Canadians and Non-Residents

Property owners with vacant homes in Canada should be aware of the new Underused Housing Tax (UHT), which came into effect on January 1, 2022. This new tax requires affected owners to file a UHT return with the Canada Revenue Agency (CRA) annually. Even if an affected owner meets an exception and isn't required to pay the UHT, they must still file a return to declare the exemption.

An "affected owner" must file their 2022 UHT return by April 30, 2023, as annual UHT returns are due by April 30 of the following calendar year. If the UHT applies, affected owners will be required to remit payment on April 30 or interest will be charged at the prescribed rate.

The UHT is calculated as 1% of the taxable value of the property as of December 31 of the previous year. The taxable value equals the greater of the value for property tax purposes and the most recent sales price at year end. However, the owner may be able to elect to use fair market value if they obtain a qualifying appraisal report.

Note that affected owners with multiple residential properties must file separate UHT returns for each property and if you are a joint owner, each affected owner must file separate UHT returns.

What types of properties are reportable?

Under the UHT rules, the definition of "residential property" is narrower than the ordinary meaning and generally includes:

- detached houses or similar buildings with no more than three units (including cottages, cabins, and chalets unless they are considered commercial property)
- semi-detached houses, row-house units, residential condominium units and similar separate or divided premises such as a coach house or laneway house

Other types of buildings are generally not considered residential property for UHT purposes, such as high-rise apartment buildings, hotels and quadruplexes.

Who is an affected owner?

Under the UHT rules, an affected owner is generally the title holder of the residential property under the applicable land registration system. However, life tenants, life lease holders or a person that has continuous possession of the land on which the residential property sits under a long-term lease may also be considered an affected owner.

Affected owners of a residential property include but may not be limited to:

- privately held corporations that are incorporated in Canada (even if all shareholders are Canadian)
- corporations incorporated outside of Canada
- individuals who are non-residents (and aren't citizens or permanent residents of Canada)
- partnerships (any partners identified in the land registry system would be affected owners)
- trusts and trustees (subject to some exceptions)

Who is an excluded owner?

Property owners that are generally excluded from any UHT filing obligations or liabilities include:

- most Canadian citizens and permanent residents of Canada (who may still have obligations if they're a trustee or a partner of a partnership)
- publicly-listed Canadian corporations if their shares are listed on a Canadian stock exchange on December 31
- registered charities and Indigenous governing bodies or their wholly-owned corporations
- cooperative housing corporations, hospital authorities, municipalities, public colleges, a school authorities and universities (as defined in the *Excise Tax Act*)
- a trustee of a mutual fund trust, real estate investment fund trust or specified investment flow-through trust

When and how can you assert an exemption?

An affected owner is liable for the UHT unless they're eligible to claim an exemption based on:

- location and use of the property
- availability of the property
- occupant of the property
- type of owner

Affected owners must file their UHT returns to claim the exemption. If a return is filed later than December 31 of the following year, the exemption will be denied and UHT will be charged in addition to a late-filing penalty for failing to meet the April 30 deadline. Furthermore, the owner must keep sufficient evidence to support the exemption or the CRA may deny it.

Register as soon as possible

Affected owners must have a valid CRA tax identification number in order to file their UHT return, even if they're claiming an exemption. If you need to apply for one of these numbers, it's important to do so now as the registration process takes time. Note that:

- Canadian citizens and permanent residents who need to file (e.g., as a trustee or partner) require a valid Social Insurance Number (SIN)
- non-residents who need to file require a valid SIN or Individual Tax Number (ITN)
- other taxpayers (e.g., corporations) require a business number and must register for a UHT program account

What are the non-compliance penalties?

Significant penalties apply if the affected owner fails to file their return even **one day** past the April 30 deadline. Late-filing penalties are the greater of:

- $10,000 ($5,000 for individuals)
- the sum of:
  - 5% of the UHT for the year
  - 3% of the UHT for the year multiplied by the number of months the return is late

Affected owners may be subject to additional penalties for failing to provide supporting documentation when required, gross negligence and misrepresentation.

Furthermore, where a non-resident sells a Canadian residential property and they're non-compliant with UHT obligations, the CRA can deny a request for a certificate of compliance under s.116 of the Income Tax Act.

How do you file?

Affected owners will need to file their return using Form UHT-2900, Underused Housing Tax Return and Election Form, which can be found here on the CRA website.

Don't forget about provincial or local vacancy taxes

The federal UHT is part of a growing trend of jurisdictions in Canada to implement taxes on non-residents and foreign investment in residential property. The UHT joins other declarative property taxes in Canada such as British Columbia's provincial speculation and vacancy tax and other vacancy taxes in Vancouver, Toronto and Ottawa.

These types of tax regimes are increasing — all owners need to review the taxes and levies that apply in the jurisdictions of their properties. Owners should also ensure they complete all appropriate filings and claim any applicable exemptions. Each tax regime is unique and even though not all properties or owners are subject to taxation, some may require declarations or filings to claim an exemption.

Have questions?

Navigating the UHT legislation is complex—but you're not alone. The federal government will be releasing further details on the UHT in the coming weeks. Contact your local advisor or reach out to us here.

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