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Tax Alert – Canada

***Underused Housing Tax Act:* Canadian entities may be required to file new tax returns**

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

Canada's new *Underused Housing Tax Act* (UHTA) contains tax filing requirements and significant late-filing penalties that could impact Canadian owners (other than individuals) of residential real estate. The new legislation came into effect on 1 January 2022, and the first filing deadline is fast approaching on 30 April 2023. For EY's complete summary of the UHTA released when the legislation first became law, see [EY Tax Alert 2022 Issue No. 35](#).

While the stated intention of the UHTA is to levy a tax on the direct or indirect ownership of "underused" residential property by nonresidents, the UHTA as drafted has a broad annual tax filing requirement that applies even if the owner of a property is exempt from the annual tax. Absent the introduction of any changes to the UHTA regulations prior to 30 April, multiple categories of Canadian real estate owners and investors will be required to file a UHTA tax return, with substantive penalty exposure if they fail to comply.

Who is affected and why?

The UHTA requires that **all owners** of residential property that is situated in Canada file a UHTA tax return for the calendar year. Only an “excluded owner” is exempt from the requirement to file the new tax return. An “excluded owner” is generally an individual who is a Canadian citizen or permanent resident (but excludes an individual acting in their capacity as a trustee or as a partner in a partnership). Certain publicly traded entities, registered charities and cooperative housing corporations are also excluded owners under the UHTA. An “owner” is defined to be the person identified under the land registry system with respect to the ownership of a residential property. Unfortunately, privately owned Canadian corporations, personal trusts and partnerships that are owners of residential property, including, for example, bare trust corporations and other nominee entities, are not excluded from the UHTA filing requirements.

Properties covered by the UHTA are “residential property”, generally meaning a detached house or similar building (containing not more than three dwelling units), or a part of a building that is a semi-detached house, row-house unit, residential condominium unit or other similar premises. Owners of high-density rental real estate such as apartment buildings should be unaffected; however, owners of stratified properties with separate title will be impacted. The UHTA could therefore also extend to include Canadian real estate developers who own completed but unsold inventory on 31 December that meets the “residential property” definition, or Canadian investment funds that own pools of residential property.

Implications

The requirement to file a UHTA tax return does not mean the filer is liable to tax. Several categories of purely domestic Canadian property owners are entitled to claim an exemption from the tax, including certain Canadian corporations, trusts and partnerships, but are still required to file a UHTA tax return for each residential property (situated in Canada) that is owned on 31 December 2022. **A failure to file the UHTA tax return by 30 April 2023 exposes the entity to a minimum penalty of \$10,000 per return, even if no UHTA tax is owing** as a result of accessing a particular exemption.¹ Furthermore, as indicated above, **a separate UHTA return is required for each property owned, and the exposure for non-compliance could therefore be multiplied across the number of properties owned.**

The Canada Revenue Agency (CRA) has also confirmed that domestic corporations must register for a separate UHTA program account as a new extension to their existing business number (for example, the BN with the extension RU0001) to file a UHTA tax return.

¹ The minimum penalty for individuals is \$5,000 per return.

The requirement to file a UHTA tax return for each property owned is anticipated to be a significant burden for real estate development and investment entities. For example, a bare trust corporation holding title to 30 condominium units at 31 December 2022 would need to file 30 UHTA tax returns by 30 April 2023; failure to file all 30 UHTA tax returns would expose the bare trustee corporation to a minimum \$300,000 penalty, despite no UHTA 1% tax being exigible.

Unlike the Toronto Vacant Home Tax or Vancouver Empty Homes Tax, which use an online declaration tool, the UHTA requires a tax return to be filed with the CRA. The return is completed using Form UHT-2900, *Underused Housing Tax Return and Election Form*, which is available, along with published guidance, on the [UHTA section of the CRA's website](#).

There are several instances where the law is ambiguous as to whether an exemption is available for certain complex real estate ownership arrangements amongst Canadian entities. Consultation with your advisor is highly recommended in these circumstances.

It should further be noted that the government has the authority to adjust these broad filing requirements for Canadian entities by prescribing additional categories of excluded owners under the UHTA regulations; however, such modifications have not been made at the time of drafting this Tax Alert.

What are the next steps?

We recommend you consult with your real estate lawyer to identify all instances of Canadian residential property ownership, including bare trust and nominee ownership arrangements, and discuss with your advisor a recommended approach to ensuring compliance with the UHTA.

Learn more

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