

The Underused Housing Tax and Reporting Requirements for Affected Owners

Tax

30 March 2023

The *Underused Housing Tax* (the "Act"), which came into effect on January 1, 2022, introduces an annual 1% tax on the value of vacant or underused residential property in Canada that is directly or indirectly owned by a non-resident, non-Canadian.[1] The purpose of the Act is to ensure that foreign, non-resident owners, who simply use Canada as a place to passively store their wealth in housing, pay their fair share of tax.[2] Essentially, the goal is to encourage non-resident owners to sell underused property in Canada to free up empty homes and improve housing affordability for Canadians. However, as the Act currently exists, it imposes filing obligations on certain resident Canadians, rather than just foreign property owners, even where the tax would not be applicable.

All owners of residential property are required to file the *Form UHT-2900* by **April 30** for each residential property owned in Canada on December 31 of the previous year, unless they are an "excluded owner." [3] An "excluded owner" is one of the following: 1) individuals holding residential property in their own name; 2) specific kinds of trusts (mutual fund, real estate investment and specified investment flow-through); 3) publicly traded Canadian corporations; 4) registered charities; 5) cooperative housing corporation; 6) indigenous governing bodies; 7) municipal organizations or other public institutions and government bodies; and 8) prescribed persons.[4] As such, an "excluded owner" generally does not include Canadian corporations holding property in Canada and therefore such corporations will be considered "affected owners" and subject to filing obligations under the Act.[5] This includes corporations holding such property as bare trustee for probate planning purposes.[6]

It is possible that such "affected owners" may qualify for an exemption from paying the tax under the Act. These exemptions include categories based on the type of owner, the availability of the residential property, the location and use of the residential property and the occupancy of the residential property.[7] While this would prevent the "affected owner" from having to pay the 1% tax, it would not remove the filing obligations. "Affected owners" are obligated to file *Form UHT-2900*, which includes providing a specific information about themselves as owners, as well as details about the residential property in question.

Where an "affected owner" fails to file a return, they are subject to significant penalties. A person who fails to file a return is liable for the greater of: a) \$5,000 if the person is an individual or \$10,000 if the person is not an individual; and b) the amount that is the total of 5% of the UHT payable by the person and 3% of the UHT multiplied by the number of complete months from the date on which the return was required to be filed.[8] This means that even where exemptions apply to an "affected owner" they can still face significant monetary penalties if they fail to file a return.

[1] Spiegel, Ian. "Does the Underused Housing Tax Apply to You? The Answer May Surprise You." *Gardiner Roberts LLP*, Nov. 8, 2022.

[2] Archived - Part 4 - Fair and Responsible Government | Budget 2021 (canada.ca).

[3] *Supra* note 1.

[4] *Underused Housing Tax*, S.C. 2022, c. 5, s. 10 at s. 2 [UHTA].

[5] Underused Housing Tax - Canada.ca

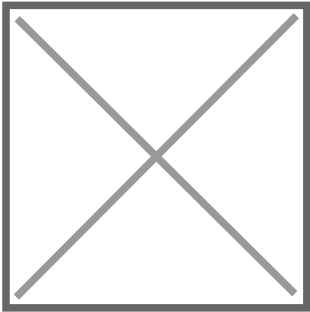
[6] The term "prescribed person" has yet to be defined by the regulations to the Act, so it is possible this may not be the case in future.

[7] *Supra* note 1.

[8] UHTA, at s. 47(1)

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Author



Ian Spiegel

Associate

416.865.6658

ispiegel@grllp.com

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com