NEW TAX ON UNDERUSED HOUSING ("UHT")

Starting in 2022, any owner of a residential building located in Canada may have to file a UHT-2900 form and be subject to the UHT.

Below is a brief summary of the application procedures for the UHT, with the first UHT-2900 form due to the Canada Revenue Agency on April 30.

Declaration period

Everyone subject to the UHT must file a declaration covering the 2022 calendar year no later than April 30, 2023.

Buildings targeted

Essentially, vacant or underutilized residential buildings owned directly or indirectly by nonresidents are targeted.

The following are considered targeted residential buildings:

- A single-family home, a duplex or a triplex;
- A semi-detached or row house;
- A condominium.

Multiplexes, or residential buildings with more than three units, are not targeted.

Liability is by building and not by "door." For example:

A corporation, trust or partnership that owns ten triplexes, even if there are 30 "doors," must file ten separate forms. Otherwise, it may be subject to penalties totaling $100,000 (10 x $10,000).

A corporation, trust or partnership that owns an eight-unit condo tower (i.e., a building with eight condo units) must file eight separate forms because there are eight separate property identifications. Otherwise, it may be subject to penalties totaling $80,000 (8 x $10,000).

UHT Calculation

The UHT corresponds to 1% of the value as of December 31st, 2022.

The owner may use:

- The fair market value determined using an acceptable method;
- The property value (municipal evaluation) of the building;
- The most recent sale price obtained before the end of the year.

Form to be completed and filed with the Canada Revenue Agency no later than April 30, 2023

UHT-2900 "Declaration of Tax on Underused Housing and Choice Form"

Subject individuals must file one UHT-2900 declaration per building.

Minimum Penalty for Non-Filing

Individuals $5,000 (per building)

Corporations $10,000 (per building)

Exempt Owners

"Exempt owners" do not have to file a UHT-2900 declaration.

Exempt owners include the following persons:

- An individual who is a Canadian citizen or a permanent resident of Canada (even if they are a non-resident for tax purposes);

  A Canadian tax resident may not be a permanent resident and may be subject to the UHT (e.g., a foreign student or worker).
- A Canadian public company listed on a Canadian stock exchange, a registered charity, a housing cooperative, a government agency or a public administration.

Private corporations, partnerships, and trusts are not exempt owners. They must file a declaration when they own a property, even if they are not liable for the tax, to avoid a penalty of $10,000 per declaration. Several exemptions are provided in the UHT-2900 declaration. The most likely exemption to be used is the one provided in box 510 of section 5.

If applicable, they may request an exemption and will not be subject to the 1% tax.

When a property is held by a trust or a partnership, the trustees and partners are each required to file a UHT-2900 declaration according to their respective ownership percentages.

Exempt entities

The owner of a residential property may be exempt from paying the tax if they qualify as an "exempt entity," but they must still file a UHT-2900 declaration.

Exempt entities include:

- A specified Canadian corporation: a corporation incorporated in Canada in which less than 10% of the votes and value of the shares belong to an individual who is not a Canadian citizen or permanent resident or a Canadian corporation.

  For example, a Canadian corporation with a shareholder holding 10.5% of the shares will be subject to the tax.

- A specified Canadian trust: a trust for which each beneficiary is an excluded owner or a specified Canadian corporation.
- A specified Canadian partnership: a partnership in which each partner is an excluded owner or a designated Canadian corporation.

In short, all corporations, trusts, and partnerships are required to file the UHT-2900 declaration, but most should be exempt from paying the tax. Entities that have at least one non-resident shareholder, beneficiary, or partner will need to be closely analyzed to determine if they are exempt from paying the tax.

An individual does not have to pay the tax if the property serves as the owner or their spouse's principal residence or if their child occupies it to pursue eligible studies.

These exemptions are very complex, and each case will need to be analyzed separately.

Tax numbers

Owners will need to use their social insurance number (SIN) or business number (BN) with the RU identifier. When a non-resident individual does not have a SIN, they will need to use their tax identification number (ITN, possibly to be obtained).