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New Underused Housing Tax : You May Have to File a Return and Pay Tax by May 1, 2023

The *Underused Housing Tax Act* ("**UHTA**") was enacted in the summer 2022 and, effective January 1, 2022, creates the Underused Housing Tax ("**UHT**"). The UHT is an annual 1% tax on the ownership of vacant or underused housing in Canada. The UHT is usually payable by non-resident, non-Canadian owners. In some situations, however, it also applies to Canadian owners. Starting with the 2022 calendar year and for each following calendar year, owners of residential properties located in Canada have to determine if they have to (i) file UHT returns and (ii) pay the UHT on their residential properties. <u>Note that there can be filing obligations even if there is no tax payable. The penalties for failure to file a return as required are significant.</u>

Crowe BGK issued a previous publication regarding the UHT in August 2022. As the first filing due date (May 1, 2023) is approaching, we have prepared a summary of the rules governing the UHT. Note these rules are complex and detailed. Please speak to your Crowe BGK advisor to determine if you are subject to any UHT obligations.

1. Who is Subject to the UHT?

Any owner of a "residential property" located in Canada as of December 31 (beginning in 2022) can be subject to the UHT, unless they qualify for an exemption.

- Who is required to <u>pay</u> the UHT? Any owner, unless they are an "excluded owner" OR the owner's ownership benefits from an exemption.
- Who is required to <u>file a UHT return</u>? Any owner, unless they are an "excluded owner". <u>Therefore, an owner may have to file a tax return even if there is no tax owing.</u>

A corporation or an individual can file a UHT return in their own capacity, or in their capacity as a partner of a partnership or a trustee of a trust. It is the partners and the trustees that have obligations under the UHTA, not partnerships nor trusts.

2. Who is an "Excluded Owner"?

An "excluded owner" generally means the following:

- An individual who is a Canadian citizen or permanent resident of Canada – unless they are included in the list of affected owners below;

- Certain public Canadian corporations;
- A registered charity for Canadian income tax purposes;
- Any person - including an individual who is a Canadian citizen or permanent resident - that owns a residential property as a trustee of a mutual fund trust, real estate investment trust, or specified investment flow-through trust (SIFT) for Canadian income tax purposes;
- A cooperative housing corporation for Canadian GST/HST purposes.

Note that the definition of "excluded owner" does not include private Canadian corporations, or wholly owned subsidiaries of public corporations who are "excluded owners".

If an owner is not an excluded owner, the Canada Revenue Agency ("CRA") refers to the owner as an affected owner and the owner has obligations under the UHTA regarding their residential property located in Canada. An affected owner includes, but is not limited to:

- An individual who is not a Canadian citizen or permanent resident;
- Any person - including an individual who is a Canadian citizen or permanent resident - that owns a residential property as a partner of a partnership;
- Any person - including an individual who is a Canadian citizen or permanent resident - that owns a residential property as a trustee of a trust (other than as a "personal representative" of a deceased individual);
- A Canadian corporation (except certain public Canadian corporations);
- A corporation that is incorporated outside Canada.

The determination as to whether an owner is an excluded owner is made on December 31 of the relevant calendar year.

3. What are the Possible Exemptions?

The various exemptions are based on the following factors:

- The type of owner of the residential property;
- The availability of the residential property;
- The location and use of the residential property;
- The occupant of the residential property.

The exemptions contain various conditions. Please make sure to contact your Crowe BGK advisor to determine if one is applicable to your situation.

Below is a summary of the available exemptions:

1. The owner is a "specified Canadian corporation", a partner of a "specified Canadian partnership", or a trustee of a "specified Canadian trust";

- A "specified Canadian corporation" generally means a corporation that is incorporated (or continued) under the laws of Canada (or a province) other than a corporation that is, on December 31 of the calendar year, a corporation in respect of which any of the following persons have ownership or control, directly or indirectly, of shares of the corporation representing 10% or more of the value of the equity in the corporation or carrying 10% or more of the voting rights under all or some circumstances:
    - An individual who is neither a Canadian citizen nor a permanent resident of Canada;
    - A corporation that is incorporated (or continued) otherwise than under the laws of Canada (or a province); or
    - Any combination of individuals or corporations referred to above.

- A "specified Canadian partnership" generally means a partnership whose members are all, on December 31 of the calendar year, any of the following:
    - Excluded owners;
    - Individuals who are citizens or permanent residents of Canada and who would be excluded owners if they were not owners of the residential property as partners of a partnership; or
    - Specified Canadian corporations.

- A "specified Canadian trust" generally means a trust under which each beneficiary having a beneficial interest in the residential property is, on December 31 of the calendar year, an excluded owner or a specified Canadian corporation.

2. The residential property is used as a primary place of residence by the individual owner or the owner's common-law partner or child who is attending a designated learning institution;
    - This exemption is subject to a special rule for individual owners of multiple residential properties (see point 4 below).

3. At least 180 days in the calendar year are included in one or more "qualifying occupancy periods" (*note 1*);
    - This exemption is subject to a special rule for individual owners of multiple residential properties (see point 4 below).

4. The property is not suitable for year-round use as a place of residence or is seasonally inaccessible;

5. The residential property is uninhabitable for a specified number of days due to disasters or hazardous conditions beyond the reasonable control of an owner (60 consecutive days in the calendar year) or due to renovations (120 consecutive days in the calendar year);
    - This exemption is subject to a number of detailed conditions.

6. The owner of the property acquired the property in the calendar year (certain conditions apply) or the construction of the property was not substantially completed before April of the calendar year (another narrow exemption is available if the construction was substantially completed in January, February or March of the calendar year);

7. The owner (or another co-owner owning at least 25%) of the residential property died in the calendar year or in the previous calendar year;
    - Certain conditions apply. The representative of the deceased owner can also benefit from an exemption in certain circumstances.

8. The property is a vacation property located in an eligible area of Canada and used by the owner or their spouse or common-law partner for at least 28 days in the calendar year (*note 2*).

Note 1

A qualifying occupancy period is at least one month in a calendar year during which one of the following qualifying occupants has continuous occupancy of the residential property:

- An individual with a written contract who deals at arm's length with the owner and their spouse or common-law partner;
- An individual with a written contract who does not deal at arm's length with the owner or their spouse or common-law partner, and who pays at least "fair rent" for the property (*note 3*);
- The owner, or their spouse or common-law partner, for the purpose of pursuing authorized work under a Canadian work permit; or
- The owner's spouse or common-law partner, parent, or child who is a Canadian citizen or permanent resident.

Note 2

An eligible area refers to any of the following locations in which the residential property is located:

- Outside both a census metropolitan area and a census agglomeration;
- Inside a census agglomeration having a total population of less than 30,000 residents; or
- Inside a census metropolitan area or a specified census agglomeration, but outside a population centre that is part of such an area or agglomeration.

A specified census agglomeration has a total population of 30,000 or more residents.

The CRA has developed an online tool that will help determine if the residential property is located in an eligible area of Canada for the purposes of this exemption. It is important to perform this verification each year before claiming the exemption for vacation properties.

Note 3

Fair rent is the amount that is 5% of the “taxable value” of the residential property for the calendar year (see point 5 below of the definition of “taxable value”).

4. Special Rule for Individual Owners of Multiple Residential Properties

If the owner and their spouse or common-law partner owns multiple residential properties, the owner’s ownership may not qualify for the exemptions for either primary place of residence or qualifying occupancy unless the owner files an election with the CRA to designate only one property for the purposes of the exemption. The election is filed on the UHT return.

5. Calculation of the Tax Payable

The UHT is calculated as follows: 1% x “taxable value” of the residential property x ownership percentage

The “taxable value” is the greater of the assessed property tax value for the property, determined by the applicable province (e.g., municipal valuation), or the most recent sale price. Owners can also elect to be taxed on the fair market value if they so choose, which requires a valuation report prepared by a professional real estate appraiser (certain conditions apply).

6. Filing a UHT Return

To file a UHT return, the owner must use form UHT-2900, which requires providing extensive information.

Multiple Residential Properties
Affected owners who own two or more residential properties in Canada on December 31 must file a separate UHT return for each property.

Multiple Owners
Affected owners of a residential property located in Canada on December 31 who share ownership with one or more co-owners who are also affected owners must each file separate UHT returns for the property.

Filing and Payment Due Date

The filing and payment due date is April 30 of the following year (for 2022, as April 30, 2023 falls on a Sunday, the due date is May 1, 2023).

Tax Numbers

To file a UHT return, a social insurance number or an individual tax number is required for individuals and a business number with an Underused Housing Tax (RU) program account identifier code is required for corporations.

If the corporation already has a business number, the corporation will have to register its RU program account before a UHT return can be filed. It is possible to register for a RU program account online.

7. Penalties $$$

There are significant penalties for owners who fail to file a UHT return on time.

The owner is liable to a penalty for each property equal to the greater of:

a. $5,000 if the person is an individual or $10,000 if the person is a corporation, and
b. the amount that is the total of:
    I. 5% of the tax payable by the person in respect of the residential property for the calendar year, and
    II. 3% of the tax payable by the person in respect of the residential property for the calendar year multiplied by the number of complete months that the return is past due.

8. Keeping Records

Records must be kept to support the determination of the owner's obligations and liabilities. Even if the ownership is exempt and no tax has to be paid, the owner must still keep records. If an exemption is claimed but the owner does not have adequate records to support that exemption, the CRA may disallow it.

Please contact your Crowe BGK advisor today if you have any questions regarding the UHT or need assistance to comply with your UHT obligations.