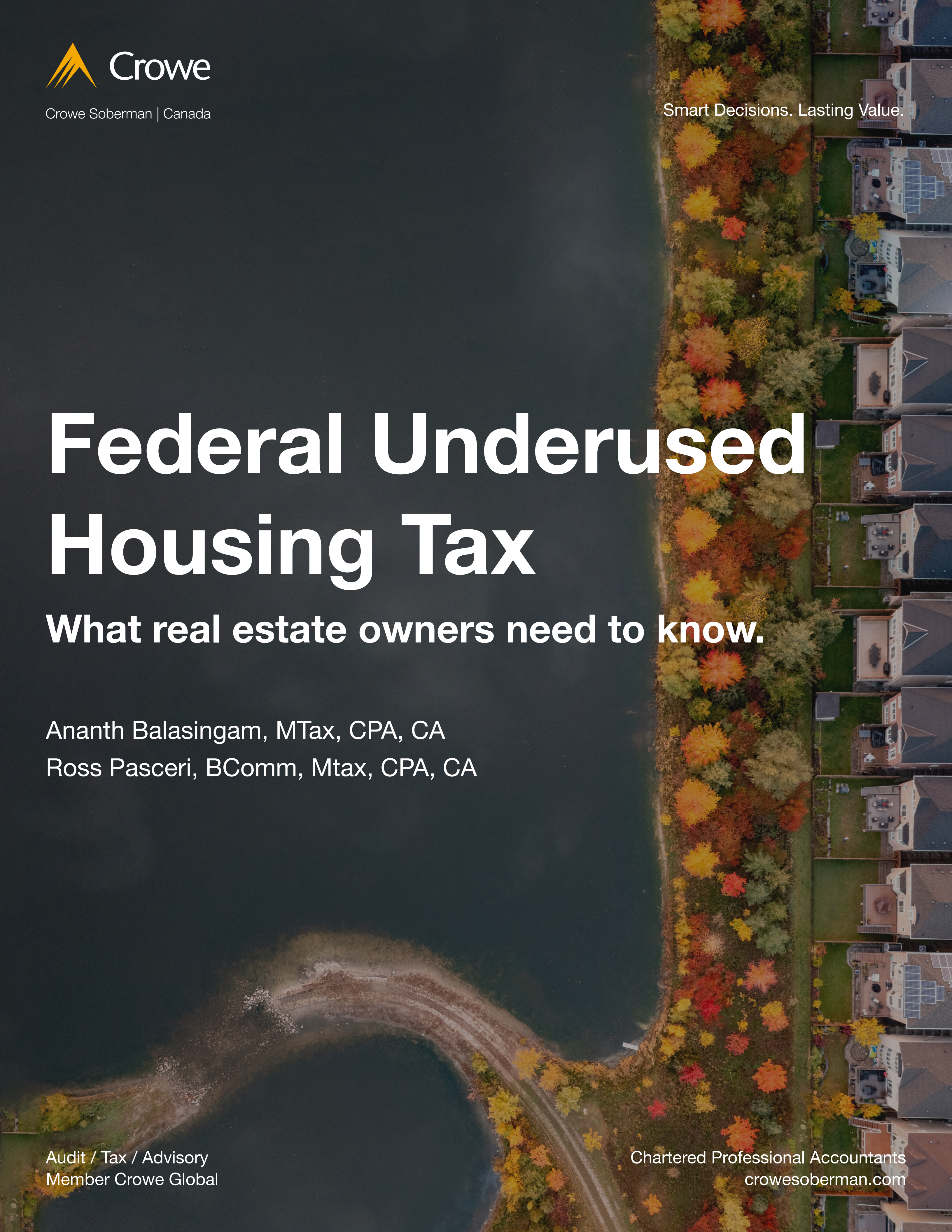

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Federal Underused Housing Tax

What real estate owners need to know.

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The Federal Underused Housing Tax ("**UHT**") is an annual 1 per cent tax on the ownership of vacant or underused residential property in Canada. The law took effect on January 1st, 2022, and while the UHT is intended to be targeted towards non-Canadians who hold residential real estate property in Canada that is vacant, many Canadians will still have an obligation to file a UHT tax return (the "**UHT Return**"). Significant penalties will apply if the UHT Return is not filed on time, even where no tax is due.

For the purposes of the UHT, residential real estate properties include, but are not limited to, detached houses, semi-detached houses, condominium units, townhouses, duplexes/triplexes, and cottages or cabins.

UHT at a Glance

What is the UHT?

The UHT is **an annual 1 per cent tax based on the property value of vacant or underused residential property in Canada**. The UHT applies to each property owned on December 31st of each year, beginning in 2022.

The property value used to calculate the UHT applicable is the greater of:

1. The property's assessed value for property tax purposes; and

2. The property's most recent sale price on or before December 31st of the relevant year.

Alternatively, an owner may elect to use the property's fair market value as at any time between January 1st of the relevant calendar year and April 30th of the following calendar year. An owner electing to use the fair market value of a residential property to calculate the UHT must get an appraisal of the property.

What is the purpose of the UHT?

The UHT is a part of the Federal government's efforts to ensure that housing is affordable to Canadians.

It is intended to help ensure that foreign owners who simply use Canada as a place to passively store their wealth in housing, pay their fair share; while increasing the supply of housing for Canadians by discouraging foreign ownership of vacant Canadian residential real estate properties.

Why is the UHT relevant?

1. An owner of a residential real estate property in Canada may be required to file the UHT Return (even if no tax is owing).

2. An owner of a residential real estate property in Canada may be liable to pay the UHT.

The UHT Return

Every person that is an owner (other than an ″**excluded owner**”) of a residential property in Canada is generally required to file an annual UHT Return, **Form UHT-2900**, for the calendar year.

It is important to note that ownership refers to legal title ownership, identified as an owner of the property in the land registration, not beneficial ownership.

Excluded owners

An excluded owner is not required to file the UHT Return and/or pay the UHT. An excluded owner includes:

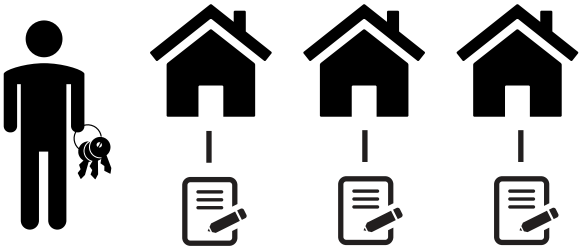
- An individual Canadian citizen or permanent resident of Canada (unless included in the list of “affected owners” below).
- Any person that owns a residential property as a trustee of a mutual fund trust, real estate investment trust, or specified investment flow-through trust.
- A publicly traded Canadian corporation.
- A cooperative housing corporation.
- A registered charity.
- An Indigenous governing body or a corporation wholly owned by an Indigenous governing body.

If you are not an “**excluded owner**” you are considered an **“affected owner” and will have an obligation to file the UHT Return.** This would generally include the following:

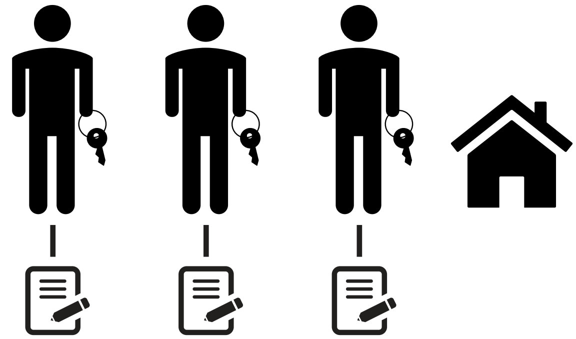
- An individual who is not a Canadian citizen or permanent resident of Canada.
- An individual who is a Canadian citizen or permanent resident and who owns a residential property as a trustee of a trust (other than as a personal representative of a deceased individual).[1]
- Any person, including an individual who is a Canadian citizen or permanent resident, that owns a residential property as a partner of a partnership.
- A corporation incorporated outside of Canada.
- A bare trust corporation.
- A regular Canadian private corporation.

[1] The trustee is only an “excluded owner” in the year of and the year after the deceased individual’s death. After this period, the trustee must meet one of the other types of “excluded owners” to be an “excluded owner”.

Important facts to note:



If multiple properties are owned by the same owner, a separate return must be filed for each property.



If a property has multiple owners, each owner must file a separate return.

Penalties for failure to file the UHT return:

If you are obligated to file the UHT Return, and you fail to file the return when it is due, the following are the minimum penalties that can apply:

$5,000

if the person is an individual; and

$10,000

in all other cases.

Additional penalties may also be applicable in certain circumstances.

UHT Exceptions and Exemptions

Exceptions from incurring the UHT

Generally, no tax will be applicable if:

1. The owner is an "**excluded owner**";

2. If the owner is a "**specified entity**"; or

3. If one of the **specific exemptions** applies.

Note: The UHT Return is still required to be filed even if the owner is a "specified entity" or if one of the specific exemptions applies. The only time the UHT Return is not required to be filed is if the owner is an "excluded owner."

Specified entity

A "Specified Entity" includes the following:

"Specified Canadian corporation":

A corporation incorporated or continued under the laws of Canada, whose total voting or equity interest of individuals who are neither permanent residents or citizens of Canada, and non-Canadian corporations totals less than 10%.

"Specified Canadian partnership":

A partnership, each member of which is either an excluded owner, or a specified Canadian corporation.

“Specified Canadian trust”:

A trust, each beneficiary of which is either an excluded owner, or a specified Canadian corporation.

Exemptions

The exemptions listed below are a high-level summary of some of the common exemptions that may be available. It is important to consult with your tax advisor with respect to the applicability of any exemption.

Some exemptions from the UHT may include, but are not limited to, the following; if the property was:

- Used as a primary place of residence by you, your spouse or your child attending school;
- Continuously occupied by a tenant for at least 180 days[2] in the year pursuant to a written agreement;[3]
- Acquired in the year;
- A vacation property that is located in an eligible area (i.e., rural areas) occupied for at least 28 days in the calendar year;
- Not suitable for year-round use;
- Seasonally inaccessible;
- Uninhabitable during the calendar year due to a disaster or hazardous condition for more than 60 days;
- Uninhabitable as a result of a renovation lasting for more than 120 days;[4]
- Owned by someone who died in the year or previous year and left the property to a non-Canadian citizen and non-permanent resident; or
- Newly constructed.[5]

Provincial and municipal jurisdictions in Canada may also impose taxes on non-residents and foreign ownership of residential real estate property (such as British Columbia’s provincial Speculation and Vacancy tax, Toronto’s municipal Vacant Home Tax, etc.). These are separate from the Federal UHT and can apply on top of the UHT.

It is important for purchasers and owners of Canadian real estate to be wary of these rules, as penalties and fines could be applicable for non-compliant taxpayers. Contact **your Crowe Soberman advisor** to see how the UHT may impact you.

[2] Short-term rentals under a month (i.e., Airbnb rentals) will not count towards the 180-day test.
[3] Where the tenant is **not** dealing at arm’s length with the owner, the tenant must pay at least fair rent on the property.
[4] This exemption is only available once every 10 years.
[5] This exemption is available for a calendar year if the property was not substantially constructed before April of the year. Where the property was substantially constructed before April of a calendar year, the exemption is available for the year only if it was offered for sale during the year and was not occupied as a place of residence in the year.

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About Crowe Soberman LLP

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