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Investing in Canadian Real Estate as a Non-Resident

Tax Tips for Non-Resident Landlords

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Many non-residents do not realize that serious income tax repercussions can arise when investing in Canadian real estate. While Canada typically taxes its residents on their worldwide income, non-residents are also required to pay taxes in Canada under certain circumstances. The most common non-resident tax is withholding tax, by which a prescribed percentage of certain amounts a Canadian resident pays to a non-resident is held back and remitted to the Canada Revenue Agency ("CRA").

If you are a non-resident landlord renting out property in Canada, the tenant is ordinarily required to withhold 25 percent of any gross rental payments made to you and remit that amount to the CRA. This step is often skipped for various reasons, most commonly because the payor simply did not know that they needed to withhold on these payments. Oftentimes, the CRA goes after the payee for delinquent taxes that were supposed to be withheld against rental payments made to the non-resident in addition to interest.

Filing a Section 216 tax return

Beyond the 25 percent gross withholding tax, non-residents generally have no further Canadian tax obligations. However, non-residents have the option to file a Canadian Section 216 tax return, which can levy the tax on your net rental income, as opposed to gross rental income. This election can be quite beneficial if you have a large amount of expenses incurred in order to earn rental income. Non-residents have up to two years after the end of a given year to file a Section 216 tax return.

Preparing an NR6 waiver for reduced withholdings

Non-residents can also consider preparing an optional NR6 waiver, to help reduce the gross withholding tax burden throughout the year. If accepted by the CRA, an NR6 would reduce the withholding tax requirement from 25 percent of the gross rent payments to instead 25 percent of the net forecasted rental income, which can create a significant cash flow advantage for the non-resident.

In order to file an NR6, the non-resident would have to estimate their approximate income from their rental activities for an upcoming fiscal period.

If a non-resident opts to file an NR6, the requirement to file a Section 216 return is no longer optional but is instead required to be filed by June 30 of the following year. An NR6 should be prepared prior to the first payment of rent for a given year. If you are planning on renting Canadian real estate in 2020, it is recommended that you begin this process as soon as possible.

Selling Real Estate in Canada

When a non-resident sells Canadian real estate, eventually, there is yet another withholding tax obligation equal to 50 percent of the proceeds of sale. Rest assured, in contrast to renters, Canadian real estate lawyers will not forget this withholding requirement and you will need to ensure you are fully compliant at this point if you expect to receive your proceeds. If you were historically renting the property, you would be liable for all taxes that you failed to pay since you began renting out the property.

If you have not completed proper withholdings and filings, the CRA can levy significant interest and penalties both on your annual taxes owing and also with respect to failed withholdings. However, the CRA administratively provides relief and may not levy penalties under this policy if this is a taxpayer's first time coming forward to catch-up.

Sample Scenarios

Jacob, a foreign resident, purchased a condominium in Toronto in 2016 for $700,000 CAD and used it for leisure. During the summer of 2019, Jacob decided to rent the property starting in 2020 and began looking for a tenant. He secured a one-year rental agreement beginning on January 1, 2020, renting the property for $3,000 monthly. Jacob, as part of the rental agreement, is responsible for paying all property taxes and condo fees. His monthly expenses income statement is estimated as follows (ignoring tax depreciation):

Rental revenue: $3,000

Condo fees: -$700

Property taxes: -$450

Mortgage interest: -$1,500

Net monthly income: $350

Scenario 1: Jacob does not file any optional Canadian compliance forms

Total 2020 taxes owing: $9,000 ($3,000 monthly times 25 percent times 12 months)

Scenario 2: Jacob files only a Section 216 return for 2020 (due December 31, 2022)

Total withheld taxes during 2020: $9,000 (as above)

Total yearly income: $4,200 ($350 times 12 months)

Total 2020 taxes owing: $950 (approximate)

Tax refund on filing: $8,050

Scenario 3: Jacob files an NR6 (due before first rent payment) and a Section 216 return for 2020 (due June 30, 2021)

Total withheld taxes during 2020: $1,050 (estimated yearly income of $4,200 times 25 percent)

Total yearly income: $4,200 (as above)

Total 2020 taxes owing: $950 (approximate)

Tax refund on filing: $100

It is essential that you discuss structuring options with your professional tax advisor in order maximize tax savings, engage in proactive tax planning, and protect your wealth.

This article has been prepared for the general information of our clients. Specific professional advice should be obtained prior to the implementation of any suggestion contained in this article. Please note that this publication should not be considered a substitute for personalized tax advice related to your particular situation.

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