New underused housing tax filings for land owners and income tax filings for trusts

March 09, 2023

This article contains important information regarding new tax filing obligations under the *Underused Housing Tax Act* (Canada) affecting many owners of residential property throughout Canada and under the *Income Tax Act* (Canada) which affects the Canadian income tax filing obligations for many trusts and bare trusts.

What is the underused housing tax?

The Government of Canada has implemented a new annual underused housing tax effective Jan. 1, 2022. This is an annual tax based on the usage of the housing, in addition to other such taxes such as the City of Toronto vacant homes tax, City of Vancouver vacancy / empty homes tax, and the British Columbia speculation and vacancy tax that have been in effect for several years.

The underused housing tax primarily targets individuals who: (a) directly or indirectly own residential property throughout Canada; and (b) are not Canadian citizens or permanent residents. However, **many Canadian entities will nonetheless have an obligation to file an underused housing tax return under this new tax regime**. All owners of property that may be considered residential property are strongly advised to consider whether they have a filing obligation.

Who must file a return?

All "**owners**" **of** "**residential property**" **throughout Canada on December 31 of a given calendar year must file a underused housing tax return unless they qualify as an** "**excluded owner**". The definition of an excluded owner is very limited. While an excluded owner includes individuals that are a citizen or permanent resident of Canada, as well as certain other entities (such as certain Canadian public corporations, registered charities, real estate investment trusts, mutual fund trusts, and others), such exclusion does not apply if the owner holds the property as a trustee of a trust or partner of a partnership. **This means that all non-Canadian individuals, private companies** (whether or not they are Canadian company), **partnerships** (whether or not they are Canadian partnership), **and trusts** (including bare trusts, whether or not they are Canadian trust) **must file an underused housing tax return as an affected owner**.

The deadline to file is April 30 of the following calendar year and each owner on title (other than an excluded owner) is required to file a return. **For the 2022 calendar year, affected owners must file by *May 1, 2023***.

A paper return for filing can be found at the following link: Paper Return; and an electronic return for filing can be found at the following link: Electronic Return.

The failure to file an underused housing tax return can result in significant penalties – the minimum penalty is $5,000 for individuals, and $10,000 for other entities (such as corporations, partnerships or trusts). The amount of the penalty may be greater depending on the amount of tax payable and number of months by which the return is late filed.

What is the tax rate?

The underused housing tax imposes a tax at a rate of one per cent of the greater of: (a) the assessed value of the property; and (b) the latest sale price. Owners also have an option to elect to use fair market value determined in accordance with prescribed rules. Additional assistance with determining the amount of tax can be found at the following link: Calculating the Underused Housing Tax Payable.

What exemptions are available?

There are a number of exemptions available to the underused housing tax for various circumstances, including:

1. Exemptions for specified Canadian partnerships, trusts and corporations;
2. Exemptions for qualifying vacation properties that are owned by individuals, used for at least 28 days in the calendar year by the owner or a spouse / common-law partner, and located within an eligible area (this vacation property designation tool can assist with determining whether the residential property is in an eligible area);
3. Exemptions for a primary place of residence or a qualifying occupancy (limitations apply for individual owners of multiple residential properties);
4. Exemptions for residential properties that cannot be used year-round;
5. Exemptions for uninhabitable properties;
6. Exemptions for new owners;
7. Exemptions for deceased individuals and their personal representatives or co-owners; and
8. Exemptions for new residential properties.

Careful attention must be given to the relevant exemptions and the specified requirements to meet the qualifications for the exemption. When claiming an exemption, owners should keep records to support the exemption claimed in the event of an audit (owners are generally required to keep records for six years).

For more information, technical information is available from Canada Revenue Agency. For additional assistance, contact your tax advisor or accountant.

Additional income tax filings required for the 2023 taxation year

Beginning for the 2023 taxation year, changes to the *Income Tax Act* (Canada) will require most trusts and bare trusts to file an income tax return on an annual basis, with very limited exceptions. **This means that many trusts that were not required to file a tax return on an annual basis** (such as personal trusts with no income, dispositions or other information to report for the relevant taxation year) **and trusts that previously had no federal income tax filing obligations (bare trusts) will now be required to file a return**. The trust T3 return is due 90 days after the end of the taxation year, meaning the first required annual filing for the 2023 taxation year will be due March 30, 2024.

For more information, see the following link and note the change to the effective date (the original proposal was to be effective for the 2021 taxation year and subsequently delayed to the 2023 taxation year): Reporting Requirements for Trusts. For additional assistance, contact your tax advisor or accountant.

By

Scott Gorski

Expertise

Tax, Commercial Real Estate

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749