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Tax Alert – Canada

Underused Housing Tax Act: 2022 filing deadline fast approaching and no extensions announced for 2023

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

Canada's *Underused Housing Tax Act* (UHTA) will soon be entering its second year of enforcement. The first UHTA filing and payment deadline for *affected owners* for the 2022 calendar year, which was extended by the Canada Revenue Agency (CRA) to 31 October 2023, is fast approaching.

While the CRA will waive penalties and interest for the 2022 calendar year if UHTA returns and payments are received before 1 November 2023, there is currently no indication that a delayed filing timeline will be provided for the 2023 calendar year. The UHTA filing and payment deadline for affected owners of residential property with respect to the 2023 calendar year is 30 April 2024.

The purpose of this Tax Alert is to serve as a reminder that the UHTA contains broad annual filing requirements for affected owners, and significant late-filing penalties of at least $5,000 for individuals and $10,000 for affected owners that are not individuals (such as corporations) apply for each residential property, even if no underused housing tax is owing.

For an overview on who is affected by the UHTA and the resulting implications, see EY Tax Alert 2023 Issue No. 10. For EY's complete summary of the UHTA released when the legislation first became law, see EY Tax Alert 2022 Issue No. 35.

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Refresher: what is the UHTA?

The UHTA came into effect on 1 January 2022 and remains unchanged as currently enacted. The primary purpose of the legislation is to levy a tax on the direct and indirect ownership by nonresidents of certain residential properties situated in Canada that are considered vacant or underused. However, Canadian individuals and entities may fall into the scope of being an *affected owner* and thus have annual UHTA filing obligations despite no tax ultimately being payable.

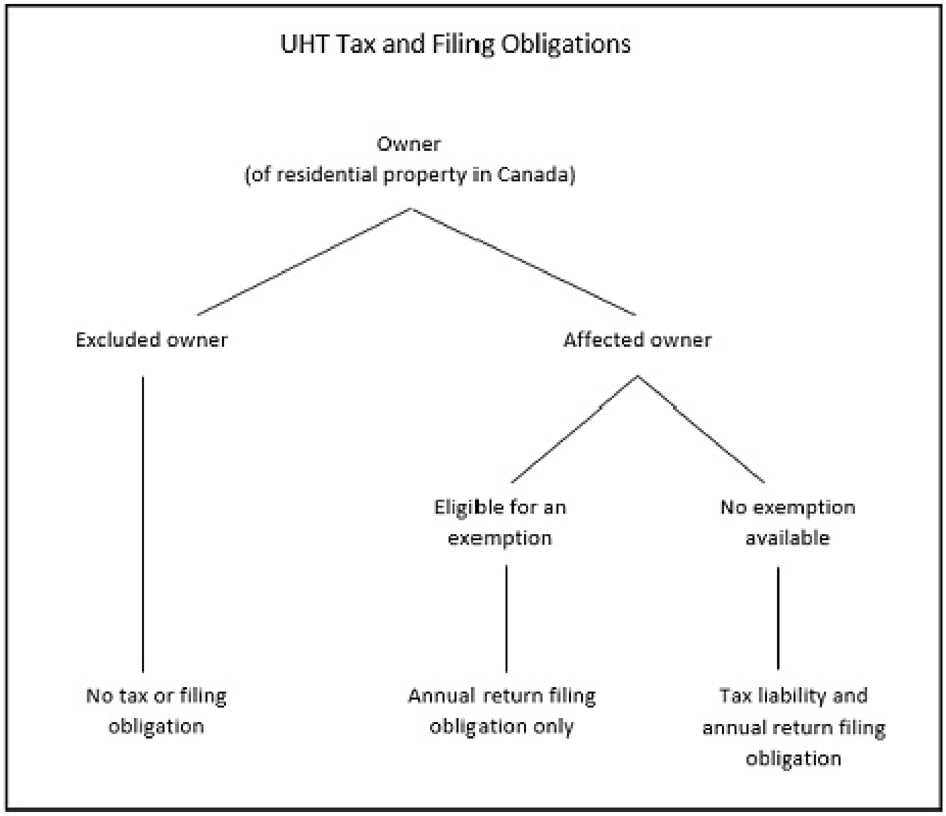
Broadly speaking, the UHTA categorizes owners of residential property situated in Canada as either affected owners or excluded owners. Affected owners of residential property are required to file an annual UHTA return and may also be liable for a 1% tax on the residential property's taxable value unless one of several exemptions applies. On the other hand, excluded owners are exempted from both the annual UHTA return filing obligation and the 1% tax.

Properties covered by the UHTA are "residential property", generally meaning a detached house or similar building (containing not more than three dwelling units), or a part of a building that is a semi-detached house, row-house unit, residential condominium unit or other similar premises. Owners of high-density rental real estate such as apartment buildings should be unaffected; however, owners of stratified properties with separate title will be impacted. The UHTA could therefore also extend to include Canadian real estate developers as affected owners who own completed but unsold inventory on 31 December that meets the "residential property" definition, or Canadian investment funds that own pools of residential property.

Generally speaking, an owner is a person identified in respect of the residential property in the applicable land registration system where the residential property is located. An excluded owner generally includes publicly listed corporations, registered charities and individuals who are citizens or permanent residents of Canada, but generally excludes individuals acting in their capacity as a trustee or as a partner in a partnership. Unfortunately, privately owned Canadian resident corporations, personal trusts and partnerships that are owners of residential property do not fall within the scope of an excluded owner and are therefore required to file an annual UHTA return for each residential property owned; however, certain exemptions from the imposition of the 1% tax may be available. Whether an exemption from the 1% tax is available for certain complex real estate ownership structures may require consultation with your advisor.

The CRA continues to provide guidance, such as an interactive self-assessment tool and a series of underused housing tax notices addressing questions and topics.

The chart below may assist you in determining your obligations under the UHTA.



What are the next steps?

We recommend you consult with your real estate lawyer to identify all instances of Canadian residential property ownership, including bare trust and nominee ownership arrangements, and discuss with your advisor a recommended approach to ensuring compliance with the UHTA.

As noted above, a failure to file the UHTA return by 31 October 2023 exposes an entity to a minimum penalty of $10,000 per return, even if no UHTA tax is owing as a result of accessing a particular exemption.[1] Since a separate UHTA return is required for each property owned, the exposure for non-compliance could therefore be multiplied across the number of properties owned.

[1] The minimum penalty for individuals is $5,000 per return.

Learn more

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