

Underused Housing Tax in Canada

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Tax News

Since 2022, any owner of residential property located in Canada may be subject to the *Underused Housing Tax Act*.¹ These owners must file a declaration and, in some cases, pay an annual tax of 1% of the property value.

This tax applies essentially to vacant or underused residential property that belongs directly or indirectly to non-resident foreigners. Canadian citizens and permanent residents who personally own residential property in Canada are not subject to this law.

Taxable private Canadian corporations as well as Canadian citizens and permanent residents who own residential property through a personal trust or partnership are not excluded owners. They can be exempt from the tax, but they must file an annual return with the Canada Revenue Agency (CRA). Failure to comply with this obligation can lead to substantial penalties.

Here is a brief overview of these measures.

1. SCOPE OF THE LAW

Owners of residential property located in Canada as at December 31 of a given year who do not meet the definition of “excluded owner” must file an annual declaration either to declare the tax due or request an exemption.

The Act does not apply to excluded owners. The latter do not have any annual declarations to file or taxes to pay.

1.1. Prescribed residential property

Residential property prescribed by the Law is property located in Canada that is, as applicable:

- A detached house, duplex or triplex;
- A semi-detached or row house;
- A condominium.

The proportion of appurtenances, common areas, and the subjacent and immediately contiguous land reasonably necessary for the use and enjoyment as a place of residence for this purpose. Multiplexes,

¹ Similar taxes may also be imposed by provincial or municipal governments in Canada. For example, a vacancy tax is applicable in several areas of British Columbia and the City of Ottawa has announced its intention to implement a vacancy tax. Some jurisdictions, such as Ontario, have also implemented a special tax when a non-resident acquires residential real property in their territory.

that is, residential properties having more than three units, are not included.

1.2. Excluded owners

The following individuals and entities that own a property as at **December 31 of the calendar year**, are excluded owners:

- A Canadian citizen or permanent resident of Canada;
- A public corporation incorporated in Canada whose shares are listed on a Canadian stock exchange;
- A registered charity;
- A cooperative housing corporation;
- A federal or provincial government authority, a school or hospital authority, a public college or university, a municipality, a paramunicipal organization and an Indigenous governing body;
- A trustee of a mutual fund trust, real estate investment trust (“REIT”) or specified investment flow-through trust (as defined in the ITA).

For this purpose, “owner” refers to the legal owner of the residential property (e.g., the person registered in the title registry). Generally, if there is more than one property owner, each owner is considered to own the property according to his or her respective share of the property.²

If the individual holding the real property is not a Canadian citizen or permanent resident, or if the residential property is not personally owned, no tax may be payable but a declaration may be required!

1.3. Exemptions from paying tax

The Act provides for several exemptions to the payment of the Underused Housing Tax. Such an exemption may be granted by filing an annual declaration with the CRA.

² If the percentage held is not indicated in the title registry, each owner is deemed to hold an equal share (100% / number of owners)

1.3.1. Exempt entities

The following entities that own residential property may be exempt from the tax for a calendar year if they meet the conditions on December 31:

- A **specified Canadian corporation**, that is, a corporation incorporated in Canada (including any private corporation),³ in which less than 10% of the votes⁴ and value of the shares belong to one of the following persons or a combination of these:⁵
 - an individual who is neither a citizen nor a permanent resident of Canada;
 - a corporation incorporated or continued otherwise than under the laws of Canada or a province;
- A **specified Canadian trust**, either a trust where each beneficiary having a beneficial interest in a residential property is an excluded owner or specified Canadian legal entity;
- A **specified Canadian partnership** means a partnership each member of which is, on December 31 of the calendar year, an excluded owner or a specified Canadian corporation.

Foreign individuals may hold less than 10% (by vote and value) of a private corporation without disqualifying it for purposes of this exemption. However, any interest of a foreign individual in a trust or partnership will disqualify the trust or partnership. Similarly, if the trust that owns the real property has a trust as a beneficiary, it will not qualify for the tax exemption.

1.3.2. Exemption for usual residence

An individual who owns real property is not required to pay tax for a calendar year if a dwelling unit in the real property is used as the primary place of residence of any of the following:

- The owner or their spouse;⁶
- The child of the owner or their spouse who occupies the property to undertake eligible studies.

1.3.2.1. Holding several residential properties

If an individual who is not a Canadian citizen or permanent resident owns more than one residential property on December 31 of a calendar year, the individual may elect to designate one of the properties as his or her primary place of residence for the year. If the individual does not file the election by April 30 of the following calendar year, the exemption cannot be claimed. It will also not be possible to claim the exemption described in the following section as a qualified occupant, in respect of the occupancy of the property by the individual or the individual's spouse.

If the individual and the individual's spouse are neither citizens nor permanent residents and each owns at least one residential property,

the same rule applies. In this case, they must jointly elect to designate a single property for the purpose of the primary place of residence and the qualified occupancy exemptions.

In conclusion, spouses are only allowed one exemption for their personal occupancy annually.

1.3.3. Exemption for qualifying occupancy

No tax is payable by an owner for a particular year if the property meets the qualifying occupancy test for the year.⁷ To meet this test, a dwelling unit in the property must be occupied for continuous periods of at least one month each, which total at least 180 days in the calendar year,⁸ by one or more of the following persons:

- The owner or the owner's spouse, who is in Canada to pursue authorized work under a Canadian work permit;
- The spouse, parent or child of the owner, if that person is a Canadian citizen or permanent resident of Canada;
- Under a written agreement (lease), by a tenant who:
 - Is at arm's length⁹ with the owner and their spouse;
 - Is not at arm's length with the owner or their spouse and pays a consideration that is not below the fair rent for the property.

FAIR RENT

Fair rent is the amount determined in prescribed manner. In the absence of such terms (as is currently the case), it is equal to 5% of the taxable value of the property for the calendar year, prorated over the occupancy period.¹⁰

A qualifying occupancy period excludes any calendar month in which the only qualifying occupants of the residential property are the owner and/or the owner's spouse, parent, or child, if each of them resides at a place other than the property for a number of days equal to or greater than the time they reside in the property during the particular month.

Spouses are not permitted to claim an exemption for more than one residential property for their own occupancy in a year. Therefore, if they own more than one residential property on December 31, they must make the election described in section 1.3.2.1 in order to claim the exemption as qualified occupants. Without this election, their occupancy of the property will not be considered for this purpose.

1.3.4. Other exemptions

The owner of the property who is not an excluded owner or is not subject to one of the exemptions described above is required to pay the tax, **except** in the following situations:¹¹

- The owner, or one of the individuals who owned at least 25% of the property, died in the year or the preceding year;¹²

units in a triplex are occupied simultaneously for 90 days, the total number of days of qualifying occupancy will be limited to 90 days for the calendar year.

⁹ Generally, the concept of non-arm's length is the same as for the purposes of the ITA, but a member of a partnership is deemed to be related to the partnership.

¹⁰ The greater of the assessed value of the property for the given year and the most recent sale price obtained before the end of the calendar year.

¹¹ Certain specific conditions may apply for the purposes of these various exemptions.

¹² All persons who were co-owners of the property at the time of death are exempt from the tax if the deceased owned at least 25% of the property at the time of death. The executor or representative of the estate of the deceased is not personally liable for the tax if he or she holds the property solely in that capacity.

³ Means a corporation incorporated or continued under the laws of Canada or a province. A public corporation, which is not an excluded owner, may also be exempt from tax if it meets these conditions.

⁴ Shares must carry 10% of the votes in some or all circumstances.

⁵ In the case of a corporation without share capital, the chair of the board of directors (or any individual acting as chair) and more than 90% of the directors must be citizens or permanent residents of Canada.

⁶ In this document, the term "spouse" includes a spouse and a common-law partner.

⁷ Thus, in the presence of co-owners, the criterion must be analyzed for each of them, in order to determine their respective exclusion.

⁸ For the purpose of calculating the total number of days of qualifying occupancy in a calendar year, the same day cannot be counted more than once. For example, if two

- The property is not located in a census metropolitan area or agglomeration with a population of at least 30,000 and is used by the owner or the owner's spouse for at least four weeks of the year (vacation or recreational property);¹³
- The property was acquired during the year¹⁴ or its construction was not substantially completed before April of the given year;
- The construction of the property was substantially completed between January and March of the given year and it was put up for sale in that year without ever having been inhabited;
- The property is not suitable for year-round use as a place of residence (seasonal cottage) or is seasonably inaccessible, because public access is not maintained year-round;
- The property is uninhabitable for at least 60 consecutive days in a year, as a result of a disaster or hazardous condition caused by circumstances beyond reasonable control;¹⁵
- A dwelling unit in the property is uninhabitable for at least 120 consecutive days as a result of renovation work;¹⁶

2. TAX AMOUNT

The tax is equal to 1% of the value of the property. For this purpose, the owner may elect to use the fair market value (FMV) of the property, which must be determined in a manner satisfactory to the Minister.¹⁷

In the absence of such an election, the tax is determined based on the greater of the following amounts:

- The assessed value of the property for the given year;
- The property's most recent sale price obtained before the end of the calendar year.

The value of the property must include the value of the appurtenances, common areas, and subjacent or contiguous land reasonably necessary for residential use, as they are deemed to form part of the property.

Each owner is required to pay the tax by April 30 of the following calendar year in proportion to the owner's interest in the property.

3. ANNUAL DECLARATION

Any owner (other than an excluded owner) of one or more residential properties on December 31 of a calendar year is required to file a declaration for that year for each such property.

The declaration must be filed with CRA by April 30 of the following calendar year.¹⁸

3.1. Information to report

The declaration shall indicate the amount of tax payable or, if applicable, the exemption claimed in respect of the property.¹⁹ If tax is payable, the declaration must specify the value of the property and how it was determined.

In addition to this information, the declaration includes various information about the owner (name, contact information, percentage of ownership in the property, etc.) and the property (address, type of property, etc.).

3.2. Failure to file

Failure to file a declaration for a residential property in a given year can have significant consequences for an owner, in addition to penalties and interest.

The penalty for failing to file is equal to the greater of the following amounts:

- \$5,000 if the owner is an individual, or \$10,000 in other cases;
- The total of:
 - 5% of the tax payable by the person in respect of the property for the calendar year;
 - 3% of the tax payable by the person in respect of the property for the calendar year, for each complete calendar month the declaration is past due.

3.2.1. Other consequences

Access to certain tax exemptions may be lost if the declaration is not filed by December 31 of the following calendar year.

The CRA may also refuse to issue a Certificate of Disposition²⁰ to a non-resident owner who is not in good standing with respect to the *Underused Housing Tax Act* obligations.

Your Raymond Chabot Grant Thornton advisor can help you determine which measures apply to your situation and can help you undertake the necessary steps to help you meet your obligations. Do not hesitate to contact us.

For additional information, visit our website: rcgt.com

¹³ For census data published by Statistics Canada, see the [Standard Geographical Classification](#) (SGC) document. A property that is located in a metropolitan area or agglomeration with a population of at least 30,000 may be exempt if it is not located in a population center according to the latest census published by Statistics Canada.

¹⁴ To the extent that the person has not owned the property in the previous nine calendar years.

¹⁵ Including earthquake, fire, flood, landslide, spill or leak of oil, gas or other toxic or hazardous substance or any other natural disaster or hazardous event. The exemption may only be claimed for two calendar years for the same loss or hazardous condition.

¹⁶ If a unit in a triplex is not habitable for 120 days, then the entire property is exempt from the tax. The work must be done without unreasonable delay and the exemption can be claimed at most once every 10 years.

¹⁷ The FMV for a given year must be determined at any time from January 1 of the year to April 30 of the following year. The election must be filed by April 30 of the following calendar year.

¹⁸ If it is a corporation, the deadline is also April 30, regardless of the corporation's fiscal year-end.

¹⁹ Information in support of the exemption must be provided with the return.

²⁰ ITA 116.