Vacancy taxes: How Canadian property owners are impacted

Over the year, a number of new taxes impacting owners of real property in Canada have come into effect. The Underused Housing Tax, Vacant Home Tax, and Vacant Unit Tax are three examples of these new “vacancy” taxes intended to disincentivize holding properties that are not being lived in or rented out.

What is the Underused Housing Tax?

The Underused Housing Tax (UHT) is a new federal tax starting in 2022. The UHT is a one per cent tax payable by certain holders of Canadian real estate and calculated on the market value of the property. The tax will apply beginning January 1, 2022, with the first UHT returns being due on April 30, 2023.

Why is it important to be aware of the UHT?

The UHT is intended to target foreign owners of Canadian real estate who are not making productive use of the property. Despite the intended target, the UHT can have significant implications for property holders within Canada.

If an individual is required to file a UHT return and fails to do so, they are subject to a minimum penalty of $5,000 and may lose access to exemptions that would otherwise apply to eliminate the tax owing. If the non-compliant owner is not an individual, the minimum penalty is $10,000, however, there is no impact on certain exemptions available to the entity. A separate return is required for each residential property, with penalties assessed on each return.

As non-compliance can result in significant penalties and individuals owing tax even if they would normally be exempt, property holders must determine their obligations under these new rules.

Although most property owners located in Canada will not be required to pay the tax, many will still be required to file returns. In many situations, a return must be filed to claim an exemption from the tax.

Which properties does the UHT apply to?

Properties to which the UHT can apply are referred to as “residential properties”.

For example, owners of detached and semi-detached houses, duplexes, triplexes, or condominium units may need to file a UHT return and pay the tax.

Traditional apartment buildings are not subject to UHT, as the units (apartments) are not intended to be owned apart from other units in the building.

A residential property is any house or similar building with no more than three dwelling units and any portion of a building that is intended to be owned apart from any other unit in the building.

Who must file a UHT return?

A UHT return must be filed by every owner of a residential property unless they are an excluded owner. An owner is generally the person identified as the property holder in the land registry or similar system. There are some special situations in which a tenant may be considered an owner for the purposes of the UHT, such as when the tenant has the option to purchase the land they are renting.

The determination of whether an owner qualifies as an excluded owner occurs on December 31st of each year. An owner will qualify if they are:

- A citizen or permanent resident of Canada
- A Canadian corporation with shares traded on a registered Canadian stock exchange
- A trustee of a trust with units traded on a registered Canadian exchange
- A registered charity
- A cooperative housing corporation, hospital authority, municipality, public college, school authority, or university
- An indigenous governing body

The definition of an excluded owner does not include private corporations (other than registered charities), estates, personal trusts, or partnerships. If a residential property is held by one of these entities, a UHT return will be required. This return is required regardless of whether the owner will have a UHT balance owing.

As the owner of the property is determined based on the land registry or similar system, there are a number of special considerations that should be taken into account for properties owned by trusts and partnerships. More specifically, for the purposes of land registry, neither trust nor a partnership can be an owner of the property, but instead one or more of the trustees or partners, respectively, will be listed in the land registry as an owner. These persons will be considered excluded owners and will not have any filing obligation if they are one of the following:

- A trustee of a mutual fund trust, real estate investment trust, or SIFT trust; or
- An executor or administrator of an estate and they are a citizen or permanent resident.

A person identified as an owner on the land registry in their capacity as a trustee or partner (other than those noted above) is required to file a UHT return in respect of the property. This return is filed under the tax identification number of the person, not the number of the trust or partnership.

There is no carve-out from filing requirements for newcomers to Canada. If a person living in Canada is neither a citizen or a permanent resident, they will be required to file a UHT return.

The rules have the opposite impact on Canadian citizens living abroad. As the definition of excluded owner does not consider current residency, a person with Canadian citizenship will never be required to file a UHT return, regardless of the use of their property in Canada or the country in which they currently live.

Where a nominee or bare trust is used to hold a property on behalf of another entity, it will be the nominee or bare trust that is viewed as the owner and is required to file a UHT return, unless they are an excluded owner.

Despite being required to file a UHT return (which can be found here), there are various exemptions available to shield owners from paying UHT.

How to register to file a UHT return?

Any corporation required to file a UHT return must register for a UHT program account (RU account) with the CRA in advance of filing the return. Filings will not be accepted for a corporation that has not registered for this account. The registration can be performed online (for both Canadian and foreign corporations) via the services found on the CRA website. Please note that a separate service has been created for the registration of a non-resident business for a UHT account.

Individuals will file the UHT return using their SIN or ITN. A non-resident required to file a UHT return will need to apply for an ITN if they do not already have one. Lastly, partnerships and trusts are not required to register under UHT, as returns related to their properties will be filed by partners or trustees.

Who must pay UHT?

There are several exemptions available that must be claimed on a UHT return to exempt the filer from tax. Some of these exemptions apply to multiple properties, while others will not.

One of the most significant exemptions is for specified Canadian corporations, trusts, and partnerships. These entities are eligible for a full exemption from UHT, and as such will not have any tax owing on their filings. The requirements for these exemptions are outlined below:

Entity type	Exemption available	Requirements
Private corporation	Full exemption for "Specified Canadian Corporations"	A Canadian corporation for which less than 10 per cent of its votes and value are held directly or indirectly by a combination of: Individuals who are neither permanent residents nor citizens Non-Canadian corporations
Personal trust or estate	Full exemption for "Specified Canadian Trusts"	A trust under which each beneficiary with a beneficial interest in the residential property is an excluded owner or specified Canadian corporation
Partnership	Full exemption for "Specified Canadian Partnerships"	A partnership with all partners being excluded owners or specified Canadian corporations

The eligibility for these exemptions is determined on December 31st of the year. As such, it is possible to perform a reorganization to meet the exemption before year end.

As noted earlier in this article, these specified Canadian entities are required to file UHT returns and are subject to a minimum penalty of $10,000 (per residential property) if returns are filed late. As such, although these entities will not be required to pay UHT, it is essential that returns are filed on time.

Some other exemptions which could apply to fully exempt an owner from UHT include:

- Exemptions for uninhabitable properties (due to disaster, hazardous condition, or renovation)
- Exemption for the first year of ownership
- Exemption related to the death of the owner
- Exemption for the property being used as a primary place of residence

In addition, there is also an exemption available for certain vacation properties. In order to be eligible for this exemption, the property must not be located within a census metropolitan area, a specified census agglomeration, or a population center (as determined by Statistics Canada). In addition, the property must be used by the owner or the owner's spouse or common-law partner as a place of residence or lodging for at least 28 days during the year. An online tool that can be used to determine whether the residential property is located in an eligible area of Canada for the vacation property exemption can be found here.

If no other exemptions are available to exempt the property from UHT for the year, the qualifying occupancy exemption may be available. This exemption is designed so that the UHT applies only to underused property. If a property is in use (either by the owner or tenants) for at least six months during the year, the qualifying occupancy exemption will generally be available to exempt the property from UHT.

Note: allowing friends or family to use the property for low or no rent may fall outside of the qualifying occupancy exemption, and result in UHT being payable.

Many of the above exemptions have criteria that must be met to claim them. It is recommended that care be taken to ensure that an exemption is available before filing the UHT return.

New municipal vacancy taxes

The Vacant Home Tax (VHT) and Vacant Unit Tax (VUT) are two other new taxes targeting vacant or underused residential properties. The VHT specifically applies to all owners of residential property located in Toronto, Ontario, whilst the VUT applies to all owners of residential property located in Ottawa, Ontario.

These taxes apply effective January 1, 2022, with the first related filings or declarations due on February 2, 2023, for declarations under the VHT and March 16, 2023, for the VUT. Failure to file these declarations will result in a minimum penalty of $250, and if the declarations are not filed by April 30th, there is potential for tax to be assessed regardless of the use of the property.

Any person or entity holding a residential property, as determined under the existing property tax system, in Toronto or Ottawa must make one of these declarations per property. There is no exemption from the filing requirement like there is under UHT. As a result, citizens of Canada living abroad may be required to pay these taxes.

Similar to UHT, the amount of tax owing will be calculated as one per cent of the value of the vacant property. A residential property will be considered vacant if it has not had a person living in it for at least six months of the prior year unless an exemption applies. Exemptions are similar to UHT, where the tax will not apply if vacancy was due to safety concerns, renovations, or the death of the previous owner, among other exemptions.

These taxes will be implemented as part of the existing property tax system, with any taxes owing being charged on the normal property tax statement for the property.

In conclusion

These new vacancy taxes will have a major impact on owners of property located in Canada, regardless of where they reside. Care should be taken to ensure that all required returns and declarations are filed on time to avoid the imposition of significant penalties and the potential imposition of tax where exemptions would otherwise be available.

If you are a Fuller Landau client and have questions about these new taxes, please reach out to your engagement partner.

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