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Underused Housing Tax in Real Estate

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On June 9, 2022, the *Underused Housing Tax Act* (Canada) (the “UHTA”) received royal assent and was deemed to come into force on January 1, 2022, and applies to most Canadian residential real estate.¹ The UHTA levies a 1% tax annually on the fair market or taxable value of properties that are categorized as underused or vacant homes.² While many taxes applicable to real estate are levied in respect of the property by the municipal taxing authority, the structure of the UHTA levies the applicable tax on the owners, targeting primarily those persons who are not Canadian citizens or permanent residents.³ However, Canadian owners may also be subject to the tax in certain situations.

Affected Owners

All affected owners must file an Underused Housing Tax (UHT) return for each residential property they own in Canada.⁴ Upon filing of the return, affected owners may indicate whether an exemption applies. The presence of an exemption to pay the tax, however, does not relieve them of the requirement to file. Affected owners includes, but is not limited to:

- individuals who are not Canadian citizens or permanent residents;
- Canadian citizens or permanent residents who own a residential property as a trustee of a trust (other than as a personal representative of a deceased individual);
- any person (including Canadian citizens and permanent residents) that owns a residential property as a partner of a partnership;
- a corporation that is incorporated outside Canada;
- a Canadian corporation whose shares are not listed on a Canadian stock exchange; and
- a Canadian corporation without share capital.⁵

Excluded Owners

Excluded owners that are exempt from filing a return and from payment of the applicable tax include, but are not limited to:

- Canadian citizens or permanent residents (unless included in the list of affected owners);

¹ A full overview of the UHTA can be found here: <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/underused-housing-tax.html>

² *Underused Housing Tax Act*, SC 2022, c 5, s 6(3).

³ *Underused Housing Tax Act*, SC 2022, c 5, s 6(3).

⁴ *Underused Housing Tax Act*, SC 2022, c 5, s 7(1).

⁵ *Underused Housing Tax Act*, SC 2022, c 5, s 2.

- any person that owns a residential property as a trustee of a mutual fund trust, real estate investment trust, or specified investment flow-through trust (SIFT);
- a Canadian corporation whose shares are listed on a Canadian stock exchange;
- a registered charity;
- a cooperative housing corporation; and
- an Indigenous governing body or a corporation wholly owned by an Indigenous governing body.⁶

Compliance

The deadline for filing the return and paying the tax for the 2022 taxable year was April 30, 2023.⁷ However, no penalties or interest will be applied for returns and payments the Canada Revenue Agency (CRA) receives prior to November 1, 2023, to provide transitional relief.⁸ A separate return must be filed by each owner for each applicable property. Failing to file a return on time subjects individuals to a minimum penalty of \$5,000.00 and for corporations a minimum penalty of \$10,000.00.⁹

Exemptions

Affected owners may be exempted from paying the tax for a calendar year (but they must still file the return) if they qualify for an exemption.¹⁰ Factors that need to be considered in determining the applicability of an exemption include: the ownership type, the availability of the residential property, the location of the property, the use of the property, and the occupant of the residential property.¹¹

Type of owner

Their ownership may be exempt if they are:

- a specified Canadian corporation;
- a partner of a specified Canadian partnership, or a trustee of a specified Canadian trust;
- a new owner in the calendar year; or
- a deceased owner, or a co-owner or personal representative of a deceased owner.¹²

Availability of the residential property

Their ownership may be exempt if the property is:

- newly constructed;

⁶ *Underused Housing Tax Act*, SC 2022, c 5, s 2.

⁷ Returns can be filed here: [Ready to file \(cra-arc.gc.ca\)](https://www.cra-arc.gc.ca).

⁸ Government of Canada, "Underused Housing Tax" (1 June 2023), online: *Government of Canada* <[Underused Housing Tax - Canada.ca](https://www150.ca.ca/underused-housing-tax)>.

⁹ *Underused Housing Tax Act*, SC 2022, c 5, s 47(1).

¹⁰ *Underused Housing Tax Act*, SC 2022, c 5, s 6(7).

¹¹ *Underused Housing Tax Act*, SC 2022, c 5, s 6(7).

¹² *Underused Housing Tax Act*, SC 2022, c 5, s 6(7).

- not suitable to be lived in year-round, or seasonally inaccessible; or
- uninhabitable for a certain number of days because of a disaster or hazardous conditions, or renovations.¹³

Location and use of the residential property

Their ownership may be exempt if the property is a vacation property located in an eligible area of Canada and used by the individual or their spouse or common-law partner for at least 28 days in the calendar year.¹⁴

Occupant of the residential property

Their ownership may be exempt in either of the following situations:

- It is the primary residence for them or their spouse, common-law partner, or child who is attending a designated learning institution.¹⁵
- The ownership of the property encompasses at least 180 days throughout the calendar year as part of one or more qualifying occupancy periods.^{16, 17}

Special rule for individual owners of multiple residential properties

If an individual and their spouse or common-law partner collectively own multiple residential properties, their ownership may not qualify for either the primary place of residence or qualifying occupancy exemption unless they file an election with the CRA to designate only one property for the exemption.¹⁸

Calculate Tax Owed

Multiply the value of the residential property by the 1% tax rate and then multiply that by the individual's ownership percentage of the property.¹⁹ The value of the property is generally its taxable value. The person must file an election with the CRA if they want to use its fair market value instead and get a property appraisal by an accredited real estate appraiser.²⁰

For the 2022 calendar year, a fair-market-value election for a residential property or an election to designate a residential property that is part of a late-filed UHT return is allowed if the return is filed by October 31, 2023.²¹ For a fair market value election, the fair market value must be established between January 1, 2022, and April 30, 2023.²²

¹³ *Underused Housing Tax Act*, SC 2022, c 5, s 6(7).

¹⁴ See: https://apps.cra-arc.gc.ca/ebci/sres/ext/pub/ntrUhtExpnTI?request_locale=en_CA to determine if your residential property is located in an eligible area of Canada for the exemption.

¹⁵ *Underused Housing Tax Act*, SC 2022, c 5, s 6(8).

¹⁶ *Underused Housing Tax Act*, SC 2022, c 5, s 6(9).

¹⁷ A qualifying occupancy period is at least one month in a calendar year during which a qualifying occupant has continuous occupancy of the residential property: *Underused Housing Tax Act*, SC 2022, c 5, s 6(9).

¹⁸ *Underused Housing Tax Act*, SC 2022, c 5, s 6(10).

¹⁹ *Underused Housing Tax Act*, SC 2022, c 5, s 6(3).

²⁰ *Underused Housing Tax Act*, SC 2022, c 5, s 6(4).

²¹ Government of Canada, "Underused Housing Tax" (1 June 2023), online: *Government of Canada* <[Underused Housing Tax - Canada.ca](https://www.canada.ca/en/govcanada/services/underused-housing-tax.html)>.

²² Government of Canada, "Underused Housing Tax" (1 June 2023), online: *Government of Canada* <[Underused Housing Tax - Canada.ca](https://www.canada.ca/en/govcanada/services/underused-housing-tax.html)>.