UNDERUSED HOUSING TAX (UHT)

March 9, 2023

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Underused Housing Tax

Key Learning Objectives

1	Overview of the Underused Housing Tax
2	Who is required to file and who is excluded?
3	What types of property are subject to the tax?
4	What exemptions are available?
5	Bankruptcy trustees, receivers and UHT
6	Calculation of the tax
7	Penalties, administration and enforcement
8	Recap and examples

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Underused Housing Tax

Overview

- Underused Housing Tax ("UHT") was announced in the 2021 federal budget
- The Underused Housing Tax Act ("UHTA") was tabled on December 14, 2021, received Royal Assent in June 2022 and is applicable for calendar years beginning January 1, 2022
- The intention is to impose an annual 1% tax on vacant or underused housing in Canada owned directly or indirectly by persons who are not Canadian citizens or permanent residents

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Overview

- Applies to affected owners of residential property in Canada on December 31 (from the 2022 calendar year onward)
- An affected owner of residential property may qualify for exemption from paying the UHT
- The UHT tax return and election form (UHT-2900 *Underused Housing Tax Return and Election Form*) must be filed for each property owned by an affected owner in a calendar year even if the affected owner qualifies for an exemption

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Who is an owner?

- An owner of a residential property is a person who is identified as an owner of the property in the land registration system or similar system where the property is located, and includes:
  - A life tenant under a life estate in the property
  - A life lease holder of the property
  - A lessee that has, under a long-term lease, continuous possession of the land on which the property is situated
  - A prescribed person (none prescribed at this time)

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Who is required to file?

- An affected owner is a person who owns a residential property in Canada on December 31 of a calendar year and includes:
  - An individual who is not a Canadian citizen or permanent resident of Canada
  - A Canadian citizen or permanent resident who owns a residential property as
    - A partner of a partnership, or
    - A trustee of a trust (certain exclusions apply)
  - A corporation that is incorporated outside Canada
  - A Canadian controlled private corporation (CCPC) or other privately held Canadian corporation
  - A Canadian corporation without share capital (e.g., NPO)

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Who is not required to file?

- An excluded owner is a person who owns a residential property in Canada on December 31 of a calendar year and is not required to file a UHT return.
- An excluded owner includes:
  - An individual who is a Canadian citizen or permanent resident of Canada except where an individual is an owner of the residential property as
    - A trustee of a trust, or
    - A partner in a partnership
  - A Canadian corporation whose shares are listed on a stock exchange in Canada
  - A trustee of a mutual fund trust, REIT, SIFT trust
  - A registered charity
  - A cooperative housing corporation, hospital authority, municipality, public college, school authority or a university; and
  - An Indigenous governing body

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What types of properties are subject to the tax?

A residential property situated in Canada that may be subject to UHT includes:

- A detached house or similar building containing not more than three dwelling units, together with the land reasonably necessary for its use and enjoyment as a place of residence for individuals
  - A dwelling unit is a residential unit that contains private kitchen facilities, a private bath, a private living area
  - A residential unit is a single self-contained set of rooms in a building or part of a building that is distinguished from any other such set of rooms in the building or part and that is characteristic of, and suitable as, a residence
  - Up to a half hectare of land that is subjacent and immediately contiguous to a residential building is generally considered to be reasonably necessary for the use and enjoyment as a place of residence for individuals
- A part of a building that is a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel, along with any common areas, appurtenances and related land

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What types of property are not subject to the tax?

Residential properties in Canada that are not subject to UHT include:

- Buildings with more than three units (Fourplexes+)
- High-rise apartment buildings
- Buildings that are primarily (more than 50%) for retail or office use and that contain an apartment
- Commercial condominium units
- Boarding houses and lodging houses
- Cottages, cabins and chalets that are commercial cottages
  - Used by the operator of an establishment to provide lodging to several unrelated business or leisure travellers at once in separate cottages, cabins or chalets
- Hotels, motels, inns and B&Bs
- Floating homes and mobile homes
- Travel trailers, motor homes and camping trailers

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Who can claim an exemption?

- Affected owners who qualify for an exemption are required to file a return but will not be required to calculate and pay the UHT in a calendar year
- Exemptions may be available:
  - For primary place of residence
  - Based on qualifying occupancy period test
  - Based on ownership
  - For vacation, seasonal and uninhabitable residential properties
  - For new owners and new residential properties
  - For deceased individuals and their estate

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Exemption for Primary Residence

- Only available to affected owners who are individuals
- The residential property must be the primary place of residence for:
  - The owner or their spouse or common-law partner
  - The child of the owner, their spouse or common-law partner who occupies the property while pursuing authorized study at a designated learning institution
- An affected owner who is an individual who is neither a Canadian citizen nor a permanent resident and who, along with their spouse or common law partner, owns multiple residential properties in Canada is required to make an election to qualify for the primary residence exemption

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Exemption – Qualifying Occupancy

- Applies to affected owners when a residential property has one or more qualifying occupancy periods which total at least 180 days in the calendar year
- A qualifying occupancy period is at least one month in a calendar year during which one of the following qualifying occupants has *continuous occupancy* of the residential property:
  - An arm's length tenant who has a written contract i.e., a lease agreement
  - A non-arm's length tenant with a written contract who pays at least fair rent (5% of the value of the property for the calendar year)
  - An individual or their spouse or common-law partner who has a Canadian work permit
  - An individual's spouse or common-law partner, parent, or child who is a Canadian citizen or permanent resident
- An affected owner who is an individual who is neither a Canadian citizen nor a permanent resident and who, along with their spouse or common law partner, owns multiple residential properties in Canada is required to make an election to qualify for certain qualifying occupancy exemptions

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Exemption – Ownership

- Affected owners of residential properties qualify for exemption in a calendar year if they hold ownership of a residential property as:
  - *A specified Canadian Corporation* which is a corporation incorporated or continued in Canada where:
    - More than 90% of either equity or voting shares are owned or controlled directly or indirectly by individuals who are Canadian citizens or permanent residents, a corporation incorporated or continued under the laws of Canada or a province, or any combination thereof; or
    - It is a corporation without share capital where the chairperson, other presiding officers and more than 90% of its directors are Canadian citizens or permanent residents
  - A trustee of a *specified Canadian trust* which is a trust whose beneficiaries that have a beneficial interest in the residential property are all, on December 31, excluded owners or specified Canadian corporations
  - A partner of a *specified Canadian partnership* which is a partnership whose members are, on December 31, any of the following:
    - Excluded owners
    - Individuals who are citizens or permanent residents of Canada
    - Specified Canadian corporations

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Exemption – Use

- Vacation properties
  - Only available to affected owners who are individuals
  - Based on the last census by Statistics Canada before the calendar year, the residential property is located in an eligible area
  - Is occupied for at least 28 days in the calendar year by the owner, the owner's spouse or common law partner
- Seasonal use or access
  - Where the residential property is not suitable for year-round use as a place of residence or is seasonally inaccessible because public access is not maintained year-round
- Property is uninhabitable
  - For at least 60 consecutive days in the calendar year as a result of a disaster or hazardous condition which are beyond the owner's control (two calendar years maximum)
  - For at least 120 consecutive days in the calendar year due to renovations, and exemption was not claimed in any of the nine previous calendar years

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Exemption – New owners and new residential properties

- New owners
  - An affected owner is exempt if they became an owner of the residential property in the calendar year and they were never an owner of the property in the previous nine calendar years
- New residential properties
  - Affected owners of new residential properties are exempt in a calendar year if property is not substantially completed by March 31 of the calendar year
  - If property is held as inventory, it is exempt in a calendar year if all the following conditions are met:
    - Construction is substantially completed in January, February or March of the calendar year
    - The property is offered for sale to the public in the calendar year
    - The property has never been occupied by an individual as a place of residence or lodging in a calendar year

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Exemption – Deceased individuals and their estate

- Deceased individuals
  - A deceased individual who is an affected owner is exempt from UHT if they died in the calendar year or the previous calendar year
- A personal representative of a deceased individual is any of:
  - The executor of the individual's will
  - The liquidator of the individual's succession
  - The administrator of the estate of the individual
  - Any person that is responsible under the appropriate law for the assets of the estate or succession of the individual

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Exemption – Deceased individuals and their estate

- A personal representative of a deceased individual is exempt from UHT in a calendar year if both of the following conditions are met:
  - The residential property was owned by the deceased individual in the calendar year or the previous calendar year
  - The personal representative did not co-own the property of the deceased
- Co-owner exemption:
  - Co-owner of an affected owner who is a deceased individual is exempt from UHT in a calendar year if the following two conditions are met:
    - The co-owner and the deceased co-owned a residential property in the calendar year or the previous calendar year
    - The deceased individual's ownership percentage in the property at the time of death was at least 25%

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Trustees in bankruptcy, receivers and representatives

- Trustees in bankruptcy
  - Liable for all returns and payments under the UHTA in respect of the activities of the person to which the bankruptcy relates, unless the receiver has authority
  - Responsible for calendar years ending between the day after the trustee became the trustee in bankruptcy and the day the discharge of the trustee is granted under the Bankruptcy and Insolvency Act
- Receivers and representatives
  - Receiver is a person appointed to operate or manage a business or property of a person
  - Receiver is required to file returns for all affected properties for all calendar years in which they act as receiver
  - Before distributing property, a receiver or representative who does not obtain a clearance certificate certifying that all required amounts have been paid is personally liable

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How the tax is calculated

- UHT must be calculated by affected owners at a rate of 1% x taxable value x ownership percentage
- The value of the property can be calculated using the following methods:
  - *The General Method*
    - The taxable value is the greater of the assessed value for property tax purposes, and
    - the most recent sale price on or before December 31 of the calendar year
  - *Fair Market Value (FMV) Method*
    - FMV of the property at any time from January 1 of the calendar year to April 30 of the following calendar year
    - Election required
    - Must be determined in a manner satisfactory to the Minister

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When are the returns and payment due – it is not a corporation's fiscal year end!

- An affected owner of residential property on December 31 is required to file a return for each residential property by April 30 of the following calendar year – regardless of the owner's fiscal year-end
- The return must be filed using prescribed form and must contain prescribed information (UHT-2900 *Underused Housing Tax Return and Election Form*)
- Non-resident individuals will require an ITN number to complete and file the return
- Payment of any UHT owing for 2022 is due on or before May 1, 2023 (because April 30 falls on Sunday in 2023)

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Penalties, Administration and Enforcement

Every person that fails to file a return in respect of a residential property as and when required is liable to a penalty equal to the <u>greater</u> of:

- $5,000 if the person is an individual or $10,000 if the person is not an individual, and
- The amount that is the total of:
  - 5% of the UHT payable by the person in respect of the property for the calendar year, and
  - 3% of the UHT in respect of the property multiplied by the number of complete months from the date on which the return was required to be filed

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Penalties, Administration and Enforcement

- The UHTA contains general anti-avoidance provisions which have a very broad reach
- The UHTA also contains a very comprehensive list of administration and enforcement provisions including:
  - Failure to file penalties
  - Objection and appeal processes
  - Inspection of a dwelling with consent of the owner or a warrant

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Recap

- You may have a filing and payment obligation under the UHTA if:
  - You are an owner of the residential property in Canada
  - You are not an excluded owner
- Affected owners are required to file a return even if they qualify for an exemption
  - Penalties may apply even if no tax is payable

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Examples

- Farm corporation owns one or more residential properties on December 31, 2022
  - You have a filing obligation
  - A separate return must be filed for each residential property owned
  - Determine if the corporation qualifies for an exemption, such as a Specified Canadian Corporation.
- A “bare trust” company has legal title to a farm with a residence, the farm is beneficially owned by your farm operating company.
  - The “bare trust” company has a filing obligation – it is the legal owner and trustee.
  - A separate return must be filed for each residential property owned
  - Determine if the corporation qualifies for an exemption, trustee of a trust that is Specified Canadian Trust (beneficiaries are all excluded owners or Specified Canadian Corporations)

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Examples

- Farm partnership owns one or more residential properties
  - The legal owner of the property has a filing obligation, not the partnership
  - A separate return must be filed for each residential property owned by the partnership, by the legal owner of each property. For example, two partners on title for one property, then two UHT returns.
  - Determine if the legal owner qualifies for an exemption, such as owning the property as a partner of a Specified Canadian Partnership.
- Is the property a partnership asset or owned outside the partnership?
  - Is there a partnership agreement?
  - How has the property been reported for HST and income tax?
  - Provincial Partnership Acts – partnership resources used to buy an asset
  - File to avoid potential penalty - $5,000 per property per legal owner

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Examples

- Farm owned by a corporation or partnership and only has bunkhouses for temporary foreign workers
  - Is this a residential property? There is an exemption for boarding houses and lodging houses
  - A "dwelling unit" has private kitchen, private bath and private living area. Suitable as a residence
  - Not sure? File return if exempt from UHT anyway? Maybe more guidance coming?
- Built your personal house on corporate-owned land. It cannot be severed and legal title in the name of the company. The company holds the house "in trust" for you and there is a long-term lease to you for the land it sits on – say 2 to 5 acres
  - Is there a filing requirement since legally the house is owned by the corporation and it is also holding it as a trustee? File return to avoid potential penalties.

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Learn more about UHT

- How the Underused Housing Tax May Affect Owners of Residential Property in Canada
- Underused Housing Tax Program: Considerations for Canadian Corporations, Partnerships, and Trusts
- The Underused Housing Tax and Your Farm Operation

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QUESTIONS?

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