

From: CAIRP <cairp_acpir@cairp.ca>
Sent: Friday, October 20, 2023 4:02 PM
To: Jovita Dsa
Subject: Update regarding the Underused Housing Tax



Since February 2023 CAIRP has been working with the OSB to obtain clarification from CRA on the application of the Underused Housing Tax Act (UHTA) and UHT requirements specifically for LITs. A meeting was convened with CRA, OSB and CAIRP on September 25, 2023 and the CRA committed to providing written clarification following a review with their legal team. The written clarification has not yet been provided to the OSB and CAIRP. Given that the October 31, 2023 deadline is almost upon us, we want to share with you what the CRA staff shared with us verbally. We **caution that the information we are providing has not gone through CRA legal review**, however based on the discussions we feel it is sufficient to give you some guidance.

The CRA advises there are two potential scenarios for LITs under UHTA. The determining factor between these two scenarios is whether the Trustee is a registered owner on the land registration system/or similar provincial system or whether the bankrupt continues to be the registered owner. "Owner" of a residential property under the UHTA is partly defined as a person that is identified as an owner in respect of the residential property under the land registration system or other similar system applicable where the residential property is located, or that could reasonably be considered to be an owner in respect of the residential property based on such a system.

Scenario One: The LIT exercises their right to register an ownership interest on title in the Land registration system and they remain on title **on December 31st** of the calendar year, then the Trustee would be considered an owner for the purposes of UHTA. It is very important to note that if the Trustee goes on title on January 1st and goes off title on December 15th of that calendar year, the Trustee has no obligation as an owner, under UHTA, because they were not an owner **on December 31st** of that calendar year. The CRA advises the dates are important. Based on the assumption that the Trustee exercises their right to go on title and they are on title on December 31st of the calendar year, under most circumstances the Trustee itself would be an affected owner and the Trustee would have to file an underused housing tax return for the residential property and possibly pay the UHT. Trustees who were on title of affected residential property on

December 31st, 2022 should review the UHTA to assess their obligations with the specific circumstances of each estate.

Scenario Two: The LIT does not exercise their right to register an ownership interest and the Bankrupt stays on title. If the bankrupt is on title on December 31st of the calendar year, the LIT is still liable to file any return up to the day of the bankruptcy. LIT should therefore assess whether the bankrupt was an affected owner at any time prior to the bankruptcy and whether the return was filed. If the bankrupt is an affected owner they are required to file an UHTA return and possibly pay the UHT for the period beginning the day after the day of the bankruptcy.

By way of background, the Underused Housing Tax (UHT), an annual federal 1% tax on the ownership of vacant or underused housing in Canada, took effect on January 1, 2022 pursuant to the *Underused Housing Tax Act* (UHTA). The tax generally applies to foreign national owners of housing in Canada. However, in some situations, this tax also applies to some Canadian owners (such as certain partners in a partnership, trustees, and corporations). Based on the Canada Revenue Agency's (CRA) general guidance, an LIT may be an affected owner of a residential property under the UHTA and may be required to file a return and pay the UHT.

The CRA provides general guidance on their website on the UHT, including who must file a return and pay the UHT. The owner of a residential property, as defined in the UHTA, was required to file a return and pay the UHT by April 30, 2023, however, on March 27, 2023, CRA sent a notice that penalties and interest under the UHTA for the 2022 calendar year would be waived, provided that the return is filed and UHT is paid by October 31, 2023.

We will forward any CRA clarification. In the meantime, if you have any questions, they can be directed to CRA by **telephone** at 1-800-959-5525 or by **fax** at 1-418-566-0319.

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