Minden Gross LLP BARRISTERS AND SOLICITORS
145 King Street West, Suite 2200, Toronto, ON M5H 4G2
P. 416.362.3711 ▪ F. 416.864.9223 ▪ @MindenGross ▪ www.mindengross.com

Bare Trusts, Nominee Corporations, and Other Canadian Property Owners

Beware of Underused Housing Tax Reporting Requirements

By: Wills and Estates and Tax Groups– Minden Gross LLP

March 21, 2023

Many Canadian individuals and corporations may not be aware that they have filing obligations under the new Underused Housing Tax Act (the "Act") due April 30, 2023. These filing obligations extend to bare trusts, nominee corporations, and individuals acting in the capacity of trustees who are holding legal title to real property but who do not have a beneficial interest in such property. Such structures are commonly used in many situations, including in connection with planning that is intended to avoid "probate" fees on the value of a property that would otherwise require a "probated" Will in order to be transferred on the death of the original legal owner.

The Act came into force on January 1, 2022. It imposes filing obligations and a 1% tax on the value of vacant or underused residential property situated in Canada and owned by individuals who are neither citizens nor permanent residents of Canada.[1] For purposes of the Act, residential properties include, but are not limited to, detached houses with not more than three units, semi-detached houses, rowhouse units, and condominium units situated in Canada.

Every legal owner of a residential property who is not an "excluded owner" under the Act must file an annual Underused Housing Tax Return (the "UHT Return"). As registered legal owner, a bare trust or nominee corporation holding legal title to a residential property is therefore required to file a UHT Return (and not the beneficial owner). An owner also includes a person that is a life tenant under a life estate, a person that is a life lease holder, and a person that has, under a long-term lease, continuous possession of the land on which the property is situated.

"Excluded Owners" are not required to file a UHT Return or to pay the 1% tax. Excluded owners include:

- Canadian citizens and permanent residents (except when that person is a trustee of a trust, a nominee, or a partner of a partnership),

[1] Note, the UHT is separate from the City of Toronto's Vacant Home Tax. More information on the Toronto Vacant Home Tax can be found at: https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/

- a personal representative of an estate,
- publicly-traded Canadian corporations,
- a trustee of a mutual fund trust,
- real estate investment trust or SIFT trust,
- registered charities,
- universities,
- hospitals, and
- Indigenous governing bodies.

For owners who are required to file the UHT Return, there are numerous exemptions available for the payment of the 1% tax. The exemptions are based on the type of owner of the property, the occupant of the property, the availability of the property, and the location and use of the property. A tax exemption likely applies to a nominee corporation and bare trust structure. Affected owners should review the exemptions to determine whether any are available to them while keeping in mind that, so long as the owner is not an "excluded owner", the filing obligations for the UHT Return still apply.

The UHT Return relates to property owned on December 31 of a calendar year and is due by April 30 of the following calendar year. Failing to file a required UHT Return results in a minimum penalty of $5,000 for individual owners or $10,000 if the owner is not an individual. These penalties apply to each residential property for which the owner fails to file a UHT Return.

For more information and discussion on the above, please contact a member of Minden Gross LLP's Tax Group or Wills and Estates Group.

This article is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors.