
Explanatory Notes Relating to the Underused Housing Tax

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Preface

These explanatory notes describe proposed amendments to the *Underused Housing Tax Act* and related regulations. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Underused Housing Tax Act

Clause 1

Definitions

UHTA

2

Existing section 2 of the *Underused Housing Tax Act* (the Act) defines terms that are used in the Act.

Subclause 1(1)

Definition of excluded owner

UHTA

2

The definition “excluded owner” in section 2 of the Act contains a list of persons. An excluded owner of a residential property on December 31 of a calendar year is not required to file a return under subsection 7(1) of the Act or to pay tax under subsection 6(3) of the Act in respect of the residential property for the calendar year.

The definition “excluded owner” is amended to include a trustee of a trust that is a specified Canadian trust, a partner of a partnership that is a specified Canadian partnership (see commentary on the amendments to the definitions of specified Canadian trust and specified Canadian partnership below), a specified Canadian corporation and a Canadian subsidiary of certain trusts or corporations.

The structure of the definition “excluded owner” in section 2 is also consequentially amended to be consistent with the new section 4.1 of the Act, which amends the Act so that it applies to a person that is an owner of a residential property in more than one capacity as if the person were a separate person in the different capacities listed in new section 4.1 (see commentary on new section 4.1 below).

These amendments are deemed to have come into force on January 1, 2023.

Subclause 1(2)

Definition of owner

UHTA

2

Under existing paragraph (e) of the definition “owner” in section 2 of the Act an owner of a residential property generally does not include a person that gives continuous possession of land on which the residential property is situated to a life lease holder or long-term lease holder. That paragraph is amended to make a correction by replacing the expression “all of the land” with

“the land” for greater consistency with other instances of the same expression in the Act and is also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment is deemed to have come into force on January 1, 2022.

Subclauses 1(3) and (4)

Definitions of specified Canadian partnership and specified Canadian trust

UHTA

2

As a consequence of changes to and restructuring of the definition “excluded owner” (see commentary on definition “excluded owner” above), the definitions “specified Canadian partnership” and “specified Canadian trust” in section 2 of the Act are amended to reflect those changes. Under amended paragraph (a) of the definition “specified Canadian partnership”, a partnership is a specified Canadian partnership if each of its members is

- a person referred to in paragraph (c) of the definition of excluded owner in section 2,
- another partnership or a trust, each member or beneficiary of which is such a person, or
- a trust referred to in any of subparagraphs (a)(ii) to (iv) of that definition.

Similarly, under amended paragraph (a) of the definition “specified Canadian trust”, a trust is a specified Canadian trust if each beneficiary having a beneficial interest in the residential property is

- a person referred to in paragraph (c) of the definition of excluded owner in section 2,
- a partnership or another trust, each member or beneficiary of which is such a person, or
- a trust referred to in any of subparagraphs (a)(ii) to (iv) of that definition.

These amendments are deemed to have come into force on January 1, 2023.

Clause 2

Owner – multiple capacities

UHTA

4.1

New section 4.1 of the Act establishes that, where a person that is an owner of a residential property in their capacity as a partner or trustee is an owner of the property in more than one capacity, the person is treated as if the person were a separate person in each capacity in which the person is an owner of the residential property. For example, an individual who is not a citizen

or permanent resident of Canada and is an owner of a residential property in their individual capacity and in their capacity as a trustee of a specified Canadian trust may be an excluded owner in their capacity as trustee of the specified Canadian trust, but not in their capacity as an individual. This individual would be required to file a return in their individual capacity and pay the underused housing tax (if an exclusion is not available) on the ownership percentage in their individual capacity in respect of the residential property.

New section 4.1 is deemed to have come into force on January 1, 2022.

Clause 3

Application of tax

UHTA

6

Existing section 6 of the Act sets out rules that apply for the purposes of establishing an owner's liability for tax under the Act, including circumstances where the tax would not be payable by an owner.

Subclause 3(1)

Tax payable

UHTA

6(3)

Existing subsection 6(3) of the Act is the charging provision for the tax. Under this subsection, subject to other provisions of the Act, every person that is, on December 31 of a calendar year, an owner of a residential property (other than an excluded owner as defined under section 2 of the Act) is required to pay to His Majesty in right of Canada tax in respect of the residential property for the calendar year in the amount determined by a formula.

Subsection 6(3) is amended to clarify that the determination of whether a person is excluded from the application of that subsection by virtue of being an excluded owner is to be made in relation to a particular residential property (and the particular capacity in which the person is the owner of that property; see commentary on new section 4.1 of the Act above). For example, a person may be an excluded owner of a residential property in one capacity, but may not be an excluded owner of another residential property or of the same residential property in another capacity.

These amendments come into force on royal assent.

Subclause 3(2)
Consequential amendments

UHTA
6(7)

Existing subsection 6(7) of the Act sets out exclusions where tax under subsection 6(3) is not payable by a person in respect of a residential property for a calendar year.

Paragraphs 6(7)(a) and (b) are repealed. The existing exclusions available to partners of specified Canadian partnerships, trustees of specified Canadian trusts and specified Canadian corporations are not required because these persons are included in the definition of excluded owner of a residential property and excluded owners are not required to pay tax under subsection 6(3).

This amendment is deemed to have come into force on January 1, 2023.

Subclause 3(3)
Primary place of residence

UHTA
6(8)

Existing subsection 6(8) of the Act provides that no tax is payable under subsection 6(3) by an individual in respect of a residential property for a calendar year if a dwelling unit that is part of the residential property is, for the calendar year, the primary place of residence of the individual or the individual's spouse or common-law partner, or a child of the individual or the individual's spouse or common-law partner who occupies the residential property for the purposes of authorized study at a designated learning institution (as defined in section 211.1 of the *Immigration and Refugee Protection Regulations*).

Paragraph 6(8)(b) is amended to clarify that a child of the individual seeking the exclusion, or of the individual's spouse or common-law partner, need only occupy a dwelling unit that is part of the residential property, not the entire residential property.

These amendments are deemed to have come into force on January 1, 2022.

Clause 4
Return required

UHTA
7(1)

Existing subsection 7(1) of the Act imposes a requirement on an owner (other than an excluded owner as defined in section 2 of the Act) of one or more residential properties in Canada to file a return in respect of each residential property they own for a calendar year.

Subsection 7(1) is amended to clarify that the determination of whether a person is excluded from the application of that subsection by virtue of being an excluded owner is to be made in relation to a particular residential property (and the particular capacity in which the person is the owner of that property; see commentary on new section 4.1 of the Act above). For example, a person may be an excluded owner of a residential property in one capacity, but may not be an excluded owner of another residential property or of the same residential property in another capacity.

These amendments come into force on royal assent.

Clause 5

Confidential information

UHTA

32(1), (6) and (7)

Existing section 32 of the Act provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information may not be used or communicated unless specifically authorized under one or more of the exceptions contained in the section.

Existing subsection 32(6) enables disclosure of confidential information to a person for purposes of the administration or enforcement of the Act, the federal or provincial formulation or evaluation of fiscal policy and various other specified federal or provincial government operations. This subsection incorporates by reference, with necessary modifications, subsection 211(6) of the *Excise Act, 2001*. Existing subsection 32(7) provides a related restriction on the provision of confidential information under subsection 32(6).

Section 32 is amended to correct a cross-reference in the definition “confidential information” in subsection 32(1) and to replace subsections 32(6) and (7) with an amended subsection 32(6) to provide greater clarity on how subsections 211(6) and (6.1) of the *Excise Act, 2001* are incorporated by reference to provide for and restrict the disclosure of confidential information under the Act.

These amendments are deemed to have come into force on January 1, 2022.

Clause 6**Failure to file**

UHTA

47

Existing section 47 of the Act imposes a penalty on any person that fails to file a return under section 7 of the Act for a residential property for a calendar year as and when required by the Act.

Subclause 6(1)**Failure to file**

UHTA

47(1)

Existing subsection 47(1) of the Act provides that the amount of the penalty is equal to the greater of two amounts: (1) a minimum penalty amount; and (2) an increasing penalty amount. The minimum penalty amount is \$5,000 if the person is an individual, and \$10,000 if the person is not an individual.

Subsection 47(1) is amended to reduce the minimum non-filing penalty per property to \$1,000 if the person is an individual, and \$2,000 if the person is not an individual.

These amendments are deemed to have come into force on January 1, 2022.

Subclause 6(2)**Failure to file**

UHTA

47(2)

Existing subsection 47(2) of the Act provides that, if a person fails to file a return in respect of a residential property for a particular calendar year by December 31 of the following calendar year, in calculating the increasing penalty amount, the tax calculated under section 6 of the Act in respect of the residential property for the particular calendar year is to be determined without reference to paragraphs 6(7)(c) to (f) and subsections 6(8) and (9). The excluded references contain exemptions from payment of the tax.

Subsection 47(2) is amended to add a reference to paragraph 2(3)(a) of the *Underused Housing Tax Regulations*, which provides for an exemption for eligible vacation properties, to the list of exemptions that must be excluded from the calculation of the tax under section 6 for the purposes of the calculation of the increasing penalty amount.

These amendments apply in respect of returns for the 2023 and subsequent calendar years.

Clause 7**Inspections**

UHTA

62

Existing section 62 of the Act provides that a person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act. The person may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered is a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 62(2) is amended to ensure that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act at all reasonable times.

Paragraph 62(2)(b) is amended by requiring that authorized persons be given all reasonable assistance and that all their proper questions be answered. Paragraph 62(2)(b) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of the Act.

Paragraph 62(2)(b) further sets out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 62(2)(b) sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 62(2) is amended by adding paragraph (c). New paragraph 62(2)(c) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under the Act.

Section 62 is also amended by updating cross-references in subsection 62(3) and paragraph 62(4)(a) consequential to the amendments made to subsection 62(2) and to generally update the wording in accordance with current legislative drafting standards.

These amendments come into force on royal assent.

Clause 8**Tax liability – transfers not at arm’s length**

UHTA

80

Existing section 80 of the Act provides rules under which a transferee of property may be liable for unpaid tax of the transferor when the two parties are not dealing at arm’s length.

Section 80 is amended by adding new subsections 80(0.1) and (6). These amendments come into force on royal assent.

Subclause 8(1)**Meaning of transaction**

UHTA

80(0.1)

Consequential to the introduction of the section 80 anti-avoidance rules in new subsection 80(6) of the Act, section 80 is amended by adding new subsection 80(0.1). Subsection 80(0.1) provides that a “transaction” has the meaning assigned by subsection 12(1) of the Act. Under that subsection, a transaction includes an arrangement or event.

Subclause 8(2)**Anti-avoidance rules**

UHTA

80(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm’s length tax debtor is determined under existing subsection 80(1) of the Act. The Minister of National Revenue may assess the person for such a liability under existing subsection 80(3).

Subsection 80(1) applies in situations where

- there has been a non-arm’s length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the calendar year of the transfer.

If these conditions are met, the transferee is jointly and severally or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 80(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 80.

New paragraph 80(6)(a) addresses planning that attempts to circumvent the application of section 80 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 80, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary, liability of the transferee and transferor for an amount payable under the Act.

New paragraph 80(6)(b) addresses planning that attempts to circumvent the application of section 80 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the calendar year in which the property is transferred, or any preceding calendar year. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 80, regardless of whether the Minister has made an assessment under subsection 80(3) for that amount) is deemed to have become payable in the calendar year in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of future tax debt by the transferor or transferee.

New paragraph 80(6)(c) addresses planning that attempts to effectively avoid section 80 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 80, element A of the formula in paragraph 80(1)(d) is intended to limit the joint and several, or solidary, liability in respect of any tax liability of the transferor for the calendar year in which the transfer took place, or any preceding calendar year. Element A limits the joint and several, or solidary, nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph 80(6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary, liability applies under section 80, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph 80(6)(c) deems the amount determined under element A in paragraph 80(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph 80(6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary, liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Underused Housing Tax Regulations

Clause 9

Definition of residential property

Underused Housing Tax Regulations

1.1

New subsection 1.1 of the *Underused Housing Tax Regulations* (the Regulations) has the effect of excluding a residential condominium unit that is part of a building containing four or more residential condominium units from the definition of “residential property” in section 2 of the *Underused Housing Tax Act* (the Act) if two conditions are satisfied.

The first condition is that the person is the owner of all or substantially all of the residential condominium units in the building. The second condition is that all or substantially all of the residential condominium units in the building of which the person is the owner are held by the person for the purpose of providing individuals with continuous occupancy of a residential condominium unit as a place of residence or lodging for a period of at least one month.

Whether or not a particular property is considered to be “residential property” is relevant in determining if certain obligations exist in respect of the particular property (e.g., to pay tax under section 6 of the Act or to file a return under section 7 of the Act).

This amendment is deemed to have come into force on December 31, 2022.

Clause 10

Prescribed areas and conditions

Underused Housing Tax Regulations

2

Under existing paragraph (m) of subsection 6(7) of the Act, tax is not payable by a person in respect of a residential property (as defined in section 2 of the Act) for a calendar year if the residential property is located in a prescribed area and prescribed conditions, if any, are met. Existing section 2 of the Regulations prescribes areas and a condition for the purposes of that paragraph.

Subclauses 10(1) and (2)

Prescribed Areas

Underused Housing Tax Regulations

2(2)

Existing subsection 2(2) of the Regulations prescribes the followings areas:

- an area that is, as determined in the last census published by Statistics Canada before the calendar year, neither within a census metropolitan area (as defined in subsection 2(1)) nor within a specified census agglomeration (as defined in subsection 2(1)), and
- an area that is, as determined in the last census published by Statistics Canada before the calendar year, within a census metropolitan area or specified census agglomeration, and not within a population centre (as defined in subsection 2(1)).

Paragraphs 2(2)(a) and (b) are amended to clarify that, for the 2022 calendar year, the above determination of whether an area is a prescribed area is to be made with reference to the census for 2021 as published by Statistics Canada. For 2023 and subsequent calendar years, that determination will continue to be made with reference to the last census published by Statistics Canada before the calendar year.

Subclauses 10(3) and (4)**Prescribed Conditions***Underused Housing Tax Regulations*

2(3)

Existing subsection 2(3) of the Regulations sets out a condition for the purposes of paragraph 6(7)(m) of the Act.

Subsection 2(3) is amended by moving the existing condition to new paragraph 2(3)(a) and by adding a new condition in new paragraph 2(3)(b). For the purposes of paragraph 6(7)(m) of the Act, residential property will be included under that paragraph if it is located in an area prescribed by subsection 2(2) and meets either the condition set out in paragraph 2(3)(a) or the condition set out in paragraph 2(3)(b).

The new condition set out in paragraph 2(3)(b) in respect of a particular residential property for a calendar year is that a person referred to as the “operator” (i.e. the person referred to in subsection 6(7) of the Act or another person that is related to that person) carries on business in Canada and the particular residential property is held during the calendar year primarily to provide a place of residence or lodging to an individual at a location at which the individual is required to be in the performance of the individual’s duties as:

- an officer or employee of the operator,
- a contractor, or an employee of the contractor, engaged by the operator to render services at that location to the operator, or
- a subcontractor, or an employee of the subcontractor, engaged by such a contractor to render services at that location that are acquired by the contractor for the purpose of supplying services to the operator.

This amendment applies to the 2023 and subsequent calendar years.

Subsection 2(3) is further amended by modifying the condition set out in paragraph 2(3)(a). Amended paragraph 2(3)(a) requires that all of the following three conditions set out in subparagraphs 2(3)(a)(i) to (iii) be met for the overall condition set out in paragraph 2(3)(a) to be satisfied in respect of a particular residential property for a calendar year:

- New subparagraph (a)(i) sets out the existing condition, previously set out in paragraph (a), that the particular residential property is used as a place of residence or lodging by the person or the person’s spouse or common-law partner for at least 28 days during the calendar year.

- The condition in new subparagraph (a)(ii) requires that the person indicates that no tax is payable in respect of the particular residential property under paragraph (a) and paragraph 6(7)(m) of the Act in the return filed under the Act by the person for the particular residential property and for the calendar year.
- The condition in new subparagraph (a)(iii) requires that neither the person nor the person's spouse or common law partner indicates that no tax is payable in respect of any residential property other than the particular residential property under paragraph (a) and paragraph 6(7)(m) of the Act in a return filed under the Act by the person or the person's spouse or common law partner for the calendar year.

This amendment applies to the 2024 and subsequent calendar years.