



# OLSEN JOLY LLP

The new Underused Housing Tax (UHT) imposes a 1% annual tax on the value of residential real estate considered to be vacant or underused that is owned on December 31 of each year. The government indicated that the tax would target property owned by non-Canadians; however, the scope of filing requirements extends to many Canadian entities and individuals, including private corporations, and trustees of a trust. The first filings and taxes are due on April 30, 2023.<sup>1</sup>

This summary is intended to be a general guide in determining filing obligations and tax exposure. The specific [legislation](#), [regulations](#) and [CRA administrative policy](#) should be reviewed for a complete and detailed understanding.<sup>2</sup>

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## STEP 1: Are you subject to the UHT rules?

Were you the legal owner (the person/entity registered on title), jointly or otherwise, of a residential property in Canada as of December 31<sup>3</sup>?

If so, go to STEP 2. If not, you are not subject to the UHT Act.

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## STEP 2: Are you required to file an annual return?

Excluded owners are not required to file a UHT return.

Excluded owners include<sup>4</sup>:

- Canadian citizens or permanent residents** (under the Immigration and Refugee Protection Act)
  - individuals that hold an interest in the property as a **partner** of a partnership or as a **trustee** of a trust (except personal representatives of a deceased individual<sup>5</sup> [ex. executor of an individual's will]) are **carved out of this exclusion**
- corporations** that are both incorporated under the laws of Canada or a province and listed on a **Canadian stock exchange** (that is, **private corporations** are **not** excluded owners)
- registered charities**
- cooperative housing corporations
- municipalities, Indigenous governing bodies, or corporations owned by such entities
- the Government of Canada and government of a province, or an agent of either
- various forms of publicly-traded trusts
- certain other public service bodies (e.g. universities, public colleges, school authorities, hospital authorities)

If you are an excluded owner, you have no obligations or liabilities. If you are not an excluded owner (CRA refers to these persons as "affected owners"), you must file a UHT return by April 30 – go to STEP 3.

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## STEP 3: Are you required to pay the UHT?

If you meet any one of the exemptions set out below under four broad categories, no tax will be payable when you file your return.

### 3A – Type of Owner of the Property:

- a **specified Canadian corporation** – where foreign owners (corporations incorporated or continued outside the laws of Canada or a province and individuals that are not Canadian citizens nor permanent residents) do not own or control, directly or indirectly, 10% or more of the corporation (by share value or voting rights)<sup>6</sup>

- a **specified Canadian partnership** – where each member is, on Dec. 31, an excluded owner or a specified Canadian corporation<sup>7</sup>
- a **specified Canadian trust** – where each beneficiary that has a beneficial interest in the property is, on Dec. 31, an excluded owner or a specified Canadian corporation<sup>8</sup>
- new owner** – owner acquired the property in the year and was not an owner of that property at any time in the prior 9 years<sup>9</sup>
- owner died** in the year or prior year<sup>10</sup>
- the **personal representative** of a **deceased individual**<sup>4</sup> (exemption applies for the year of death and subsequent year) and the person was not an owner of the property in either of the years<sup>11</sup>
- a **co-owner** of a property where another co-owner held at least 25% of the property at their death (exemption applies for the year of death and subsequent year)<sup>12</sup>

### **3B – Availability of the Property:**

- if the property is under **construction** and is **not substantially completed** before April of the year<sup>13</sup>
- if **construction** of the property is **substantially completed** between January 1 and March 31, the property is put for sale to the public during the year and the property was never occupied by an individual as a place of residence during the year<sup>14</sup>
- property is **not suitable** to be **lived in year-round**<sup>15</sup> or **seasonably inaccessible** due to public access not maintained year-round<sup>16</sup>
- property is **uninhabitable** (at least 60 continuous days in the year) due to a **disaster** or hazardous conditions (this exemption is only available for a maximum of two years in respect of the same disaster)<sup>17</sup>
- property is **uninhabitable** (at least 120 consecutive days in the year) due to ongoing **major renovations** (this exemption is only available once every 10 years)<sup>18</sup>

### **3C – Occupant of the Property:**

- primary place of residence** for the year of the individual, their spouse or common-law partner<sup>19</sup>, or their child<sup>20</sup> attending a designated learning institution
- one of the following individuals continuously occupies the property for a period of at least a month (**qualifying occupancy**), for a total of at least 180 days in the year<sup>21</sup>
  - an arm's length individual who occupies the property under a written agreement
  - a non-arm's length individual who occupies the property under a written agreement and pays at least fair rent (5% of the value of the property)
  - the owner or their spouse or common-law partner, while the individual is in Canada for work, and the occupancy relates to that purpose
  - the owner or their spouse or common-law partner, parent or child who is a Canadian citizen or permanent resident

### **3D – Location and Use of the Property:**

- vacation property** located in an **eligible area** of Canada (certain areas that are more rural) and used by the owner or their spouse or common-law partner for at least 28 days in the year<sup>22</sup> (see the [UHT vacation property designation tool](#) to determine eligible regions)

If you do not meet any exemptions, go to STEP 4. If you meet at least one exemption, go to STEP 5.

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## **STEP 4: Calculate the tax.**

The UHT is 1% of the greater of the property's assessed value for the year for property tax purposes and the most recent sale price, applied to the ownership percentage. An owner can also elect to use the property's fair market value as determined at any time during the year and up to April 30 of the following year. CRA requires an appraisal with specific parameters to use this election.<sup>23</sup>

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## **STEP 5: File the annual return and pay the tax (if no exemption is met) by April 30.**

Those who are required to file should complete and file Form UHT-2900, Underused Housing Tax Return and Election Form. A separate return is required for each owner of each property. Individual owners that fail to file the return on time are subject to a minimum \$5,000 penalty, while corporations are subject to a minimum \$10,000 penalty. Additional penalties can apply to the filings under various circumstances, including loss of access to the exemptions under Paragraphs 6(7)(c) to (f) and Subsections 6(8) and (9) (not usable for the full year, uninhabitable, primary place of residence and qualifying occupancy) when computing the penalty tax if the return is not filed by December 31 of the following year.<sup>24</sup> There is no time limit for CRA to assess the UHT tax liabilities, penalties and interest where taxpayers fail to file a required return.<sup>25</sup>

## Additional UHT Resources

- General CRA Administrative Guidance – <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/underused-housing-tax.html>
- Underused Housing Tax Technical Information – <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/underused-housing-tax/underused-housing-tax-technical-information.html>
- Underused Housing Tax Notices – <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/underused-housing-tax/underused-housing-tax-technical-information/underused-housing-tax-notices.html>
- Underused Housing Tax Forms – <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/underused-housing-tax/underused-housing-tax-technical-information/underused-housing-tax-forms.html>
- Underused Housing Tax Vacation Property Designation Tool – <https://apps.cra-arc.gc.ca/ebci/sres/ext/pub/ntrUhtExpnTI>
- Underused Housing Tax Act And Related Regulations made under this Act – <https://laws-lois.justice.gc.ca/eng/acts/U-0.5/index.html>

- 1 As April 30, 2023 falls on a Sunday, CRA has confirmed that the return, payments and elections are made on time if they receive them by May 1, 2023.
- 2 All legislative references refer to the [Underused Housing Tax Act](#), unless otherwise noted. Note that many of the below terms are defined in Section 2 of the UHT Act. Many provisions of the UHT Act provide for modification by future regulation. All reference to “year” in the chart refer to “calendar year,” unless otherwise noted.
- 3 A residential property includes a detached house or similar building containing not more than three dwelling units, as well as a part of a building that is a semi-detached house, row house unit or residential condominium unit (definition of residential property in Section 2). CRA provided numerous examples of buildings that they consider to fall within, and outside, of this definition in [UHTN1 Introduction to the Underused Housing Tax](#). Those who are a life tenant or have a life lease and those who have a long-term lease of land (20 year or longer lease, or lease with an option to purchase land) on which a residential property sits may also be subject to these rules.
- 4 Definition of excluded owner in Section 2
- 5 A personal representative, in respect of a deceased individual, means the executor of the individual’s will, the liquidator of the individual’s succession, the administrator of the estate of the individual or any person that is responsible under the appropriate law for the proper collection, administration, disposition and distribution of the assets of the estate or succession of the individual (definition of personal representative in Section 2)
- 6 Paragraph 6(7)(b) and definition of specified Canadian corporation in Section 2  
Where a corporation has no share capital, a specified Canadian corporation is a corporation having no chairperson or other presiding officer who is not a citizen nor a permanent resident or a corporation not having 10% or more of its directors who are neither Canadian residents nor citizens.
- 7 Subparagraph 6(7)(a)(i) and definition of specified Canadian partnership in Section 2
- 8 Subparagraph 6(7)(a)(ii) and definition of specified Canadian trust in Section 2
- 9 Paragraph 6(7)(g)
- 10 Paragraph 6(7)(h)
- 11 Paragraph 6(7)(i)
- 12 Paragraph 6(7)(j)
- 13 Paragraph 6(7)(k)
- 14 Paragraph 6(7)(l)
- 15 Paragraph 6(7)(c)
- 16 Paragraph 6(7)(d)
- 17 Paragraph 6(7)(e)
- 18 Paragraph 6(7)(f)
- 19 If an individual and their spouse or common-law partner own multiple residential properties, they must file an election to designate a single property for the purposes of the exemption. Subsections 6(10) - (12)
- 20 Subsection 6(8)
- 21 Subsection 6(1)
- 22 Paragraph 6(7)(m)
- 23 Subsections 6(3) and (4)
- 24 CRA has the discretion to waive interest and penalties (Sections 26 and 48).
- 25 Subsections 6(5) and (6), and Sections 7, 47 – 52

**If you have any questions, give us a call!**

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