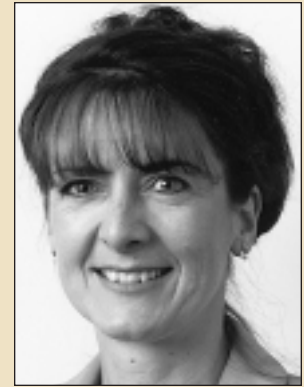


INTERNATIONAL INTERESTS

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Real Estate and Non-Residents: Things You Should Know

A legal professional is often looked to by clients as a source of information on a wide variety of issues. These issues sometimes include matters relating to real estate owned by non-residents of Canada. This article is intended to provide a general description of the tax filing requirements for non-residents involved in certain real estate transactions.

Non-Resident's Sale of Real Estate

An individual involved in the conveyancing process may encounter a situation where a non-resident client has sold real estate in Canada. For the purposes of this article, the term "non-resident" is used to describe an individual who is not resident in Canada for Canadian income tax purposes, although corporations can be "non-resident," as well. In these circumstances, special tax rules and additional filing requirements apply to the non-resident.

A general description of the requirements relating to a non-resident vendor's sale of real estate follows.

1. **Canada Customs and Revenue Agency (CCRA) is required to be advised of the disposition** no later than 10 days after the date of sale, by calculating the gain/loss and filing forms T2062 and T2062A. Alternatively, to speed up the process, one may advise CCRA in advance of the sale date by filing the

forms with CCRA prior to the actual date of sale. (Final approval will generally not, of course, be provided by CCRA until the sale is completed.)

While assisting clients with their non-resident filings, it occasionally comes to our attention that rental income earned by the non-resident has not been reported in the past.

2. **A payment equalling 25 percent of the net gain must be paid to CCRA.** (If a loss results, no payment is required.) A certificate of compliance (T2068) will be issued by CCRA only after the transaction has closed *and* the required payment has been made.

It is important to ensure that these steps are followed and that the appropriate withholding is remitted to CCRA. Otherwise, the party representing the purchaser may be compelled to withhold 25 to 50 percent of the gross sales price *and* remit this amount to CCRA rather than release the "excess" holdback to the vendor's representative. The

purchaser's representative could be liable for failure to comply.

3. **A Canadian tax return must be filed to report the disposition by April 30 of the following year.** Any payments made when applying for the certificate of compliance will be considered interim payments. Outlays and expenses, i.e., commissions, Notary/lawyer fees, etc., relating to the sale can be claimed when the non-resident files his or her Canadian tax return in the year following the sale. Any resulting overpayment of taxes will be refunded when the return is assessed.

Rental Income Reported by Non-Residents

While assisting clients with their non-resident filings, it occasionally comes to our attention that rental income earned by the non-resident has not been reported in the past. (In this regard, the July 2003 *Scrivener* issue provides an article that may assist you with "Voluntary Disclosure"—a process whereby a person may avoid CCRA penalties for failure to comply in previous years.) To assist in the handling of this potential situation, a brief outline of the filing requirements for non-residents with rental activity is provided below.

When a non-resident receives rental income from Canada, the payer, i.e., the tenant or a property manager, is required

to withhold non-resident tax at the rate of 25 percent on the monthly **gross** rental income. The payer must remit this withholdings tax to CCRA by the 15th day of each following month.

For practical purposes, however, we generally recommend that non-resident clients file form NR6, in order that the non-resident tax is calculated and withheld at 25 percent on the **net** rental income, i.e., calculated after certain deductions. Until form NR6 is filed, the non-resident tax must be withheld on the gross rental income.

The form NR6 must be filed annually with the International Tax Services Offices of CCRA on or before January 1 of each year or when the first rental payment is due. If the form NR6 is approved by CCRA for the year, the non-resident must file a Canadian tax return pursuant to Section 216 *Income Tax Act* by no later than June 30 of the following year. Any balance of taxes owing, however, is due for payment by April 30.

If form NR6 has not been filed for the year, the non-resident may still elect to file a "Section 216 return" to have taxes calculated on the net rental income, even though the withholdings remitted during the year were based upon the gross rents. In this event, the taxpayer must generally file the return within two years from the year during which rental income was earned. (Earlier filing is, of course, recommended, when a refund may be forthcoming!)

Caution: Please be reminded that the above comments are general in nature; different requirements may apply depending upon the particular circumstances of the non-resident. Appropriate professional advice, which would consider each client's specific circumstances, is always recommended. ▲

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