

# Non-Resident Tax *Revisited*



**S**everal times a year, a Realtor® will contact our office to seek advice on a pending property sale by a Non-Resident client.

Usually he or she wants to first confirm how much will be held back on the sale and, second, what it will cost for our firm to handle the tax filing.

I advise the callers that:

- 25 to 50 percent of the sale proceeds must be held back;
- this is reduced to 25 percent of the “Net” gain by obtaining a Clearance from Canada Revenue Agency (CRA); and
- in most cases, the 25 percent will be further reduced by filing a section 216 T1 in the following year.

Finally I make the Realtor® aware that almost every situation is different. CRA is very thorough in the review of the Clearance request and it is not unusual for the section 216 return to take well over a year before the refund will be issued to the client of the Realtor®.

Here are some examples of what makes each transaction different.

- The residence to be sold was inherited by a parent’s death and the beneficiary has recently moved to another country.
- A foreign investor bought the property to keep as a temporary residence but now is anxious to sell and realize a profit.

**...it is in the vendor’s interest to ensure full cooperation with CRA, to minimize the withholding tax.**

- A rental property was the owner’s residence before he or she moved to the US and now the individual plans to sell.
- An ex-Canadian purchased an interest in a local rental project, but ignored the fact that he had declared bankruptcy 10 years ago.
- Property was acquired by a Non-Resident for renovation and resale.

Each of these examples is a story in itself, but I will expand only on the last event, which is treated differently than any of the items discussed when this topic was extensively covered in *The*

*Scrivener* two years ago [www.notaries.bc.ca/scrivener. Archives: Vol. 12, No 4, Dec. 2003]. The following quote was the last word received from one of the agents involved in the conveyance.

“We are the solicitors for the Purchaser. We have no authority to take instruction to hold back any fund [sic].”

Let’s start at the beginning. An offshore couple invested in a local property and, when it came time to sell, I obtained all the pertinent details on our questionnaire form and filed the relevant T2062 to request Clearance.

The current CRA practice is that once all identification information and supporting documents have been received in their office, the file is assigned to a Disposition Officer for final review. In this situation, CRA requested that we provide the original supplier invoices in support of the “renovation/improvement” costs we had added to our calculation of the Adjusted Cost Base (ACB).

As an aside here, I want to emphasize that it is in the vendor’s interest to ensure full cooperation with CRA, to minimize the withholding tax. If CRA determines they do not have full disclosure and cannot, for whatever reason, issue a Clearance, there will arise a potential “Purchaser’s Liability Assessment” (PLA),

in which case those of you acting for the purchaser should be concerned.

CRA contacted me by phone to let me know this application had cleared for the amount we calculated. The Disposition Officer indicated that a transmittal letter setting out the details would be faxed to my attention that day.

CRA's transmittal letter confirms the amount to be paid to the Receiver General and provides specific instructions that this letter, along with a Trust cheque for the agreed amount, are to be delivered to a specific CRA office location where the documents will be exchanged, in this situation, for the Certificate of Compliance (T2064).

Another new administrative step is that CRA will open a Non-Resident account even before the Clearance has been processed. This allows the funds to be paid to CRA at the time of closing.

On the same day the Certificate was received, which was over 10 days before scheduled completion, I called the purchaser's agent and explained to the secretary what was happening. I let her know I would be faxing CRA's transmittal letter to her and that it was important that it be delivered with the cheque so that the exchange could be

completed on a timely basis. My fax that day reiterated those instructions.

Usually, as accountant for the vendor, we will contact the conveyancing clerk to make the arrangements. In some situations, the purchaser's agent has insisted that the vendor's agent hold back 25 to 50 percent in compliance with section 116, until a Clearance is received.

**Nobody took any steps to issue payment to CRA or to follow-up on the holdback that was sitting in the trust account for over 60 days.**

Because the Certificate of Compliance had been obtained prior to the completion date, I contacted the purchaser's representative; she was aware that authority was granted for the holdback to be reduced.

Contacting the purchaser's agent was probably a big mistake on my part, because the only thing that happened was that when the documents were forwarded from the purchaser's representative to the vendor's agent, the vendor's Notary was advised to withhold only the exact amount that CRA had approved.

Nobody took any steps to issue payment to CRA or to follow-up on the holdback that was sitting in the trust account for over 60 days.

On calling the offices of both agents, each suggested the other was responsible for obtaining the Clearance from CRA. In the end, the vendor's agent, who was still holding the funds, provided our office with a cheque that we exchanged with the CRA staff.

As far as we know, CRA is not contemplating a penalty for late remittance.

At the time of this writing, the conveyancing market is probably as busy as it has been in the past 10 years. This is, however, no excuse for not providing professional service to the client.

I agree that as the vendor's accountant, I have no authority to provide instructions to the purchaser's agent but, in this situation, his client would have been responsible to pay 25 percent of the sale proceeds, had the Certificate of Compliance been left to sit in CRA's file.

Similarly there was no follow-up by the vendor's agent, who ignored several calls to her office on this matter and did not question why these funds were still in her trust account more than 60 days after completion of a sale.

It may be a good time to review the December 2003 archives and become familiar with the Non-Resident Vendor rules.

The latest twist is that CRA now wants a Clearance under this section for any distribution to a Non-Resident beneficiary of an estate. Real estate does not have to be part of this event. But we can discuss these issues another day. ▲

The accounting firm of **Peter McLaren**, CFE, CGA—McLaren Trefaneko Inc., Certified General Accountants—focuses on services to estate Executors, Administrators, and Solicitors.

Voice: 604 524-8688  
Fax: 604 526-0455  
peter@mclaren-cga.com

