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Standing Committee on International Trade
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
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E-mail: CIIT@parl.gc.ca

RE: Committee study on the impacts of the Underused Housing Tax

Dear Members of the Committee:

BDO Canada LLP was asked to make a submission to your committee as you study the impact of the Underused Housing Tax Act (UHTA) and accompanying regulations on Canadians, and in particular farmers.

About BDO Canada LLP

BDO Canada LLP is a leading provider of professional services in Canada. Our clients are at various sizes and stages of growth. Many of our clients are entrepreneurs and the entrepreneur's owner-managed businesses. BDO delivers assurance, accounting, tax, and advisory services with deep industry knowledge and has been serving Canadians for over 100 years. BDO Canada LLP has been at the forefront of advising entrepreneurs of the consequences of the Underused Housing Tax (UHT) on their businesses. BDO Canada LLP is a member firm of the international BDO network.

Background to the UHTA

In the 2020 Fall Economic Statement, the federal government announced that it would take steps to implement a national, tax-based measure targeting the unproductive use of domestic housing that is owned other than by Canadian citizens or permanent residents of Canada. Following this announcement, the 2021 federal budget proposed a "Tax on Unproductive Use of Canadian Housing by Foreign Non-resident Owners". This would be an annual 1 per cent tax on the value of non-resident, non-Canadian owned residential real estate that is vacant or underused, effective January 1, 2022. The tax would require all owners, other than Canadian citizens or permanent residents of Canada, to file a declaration as to the current use of the property, with significant penalties for failure to file.¹

Following a public consultation, legislation to implement this proposed tax was tabled in Bill C-8 - "An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021, and other measures" and the UHTA was passed into laws on June 9, 2022.²

¹ Page 305 of A RECOVERY PLAN FOR JOBS, GROWTH, AND RESILIENCE – the 2021 federal budget

² <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-8/royal-assent>



As stated in the budget documents, this tax “will help to ensure that foreign, non-resident owners, who simply use Canada as a place to passively store their wealth in housing, pay their fair share”. There was nothing in the initial proposals that indicated that Canadian citizens or permanent residents of Canada would need to make any filing under this new law.

Brief description of parts of the UHTA

The UHTA levies a tax on certain owners of “residential property”, a defined term, and distinguishes “excluded owners” from other owners. The Canada Revenue Agency, CRA, tasked with administering the UHT, calls all non-excluded owners “affected owners”.

- Excluded owners do not need to make any filing under the UHTA and are not subject to the UHTA.
- Affected owners do need to file a UHTA return and those that can claim an exemption from the UHTA in that filing we will refer to as “exempt owners”.
- Exempt owners are subject to penalties for failure to file the UHTA return on time, even where no tax is due because of an exemption.
- The minimum stated penalty for failure to file a UHT return when required is \$5,000 for affected owners who are individuals and \$10,000 for affected owners who are not individuals. Where UHT is owed, the penalties for failure to file may be more than this minimum.³

Individuals who are Canadian citizens or Canadian permanent residents under the *Immigration and Refugee Protection Act* are both, in general, excluded owners. This document will refer to these excluded owners collectively as “Canadians” and other individuals as “non-Canadians”.

The UHTA has three exemptions that are granted based on ownership or control by Canadians, as well as certain other exemptions based on use, condition, or location of the property.

These three exemptions based on ownership are in respect of:

- Specified Canadian corporations (SCC);
- Specified Canadian partnerships (SCP); and
- Specified Canadian trusts (SCT).

All three of these exemptions are defined terms in the UHTA, and each is an exemption based on primary or exclusive ownership of the entity by Canadians.

The completion of the form is onerous for exempt owners due to the following disclosure requirements, and the fact that a separate filing is required for each residential property:

- Identifying information about the owner
- Description of the property including physical address, property tax or assessment roll number
- Type of residential property
- First year of ownership
- If there is more than one owner, the name and percentage ownership of any other owner that owns more than 10% of the property
- Assessed value
- Most recent sales price of the property

³ Division 8 of the UHTA



Application to farmers

Many Canadian farmers carry on the business of farming in a Canadian corporation or in a partnership. It is common that residential properties that sit on the farm property would be owned by the corporation or the partnership. This creates a filing requirement for the corporation (or the partners) under the UHTA, because these entities own residential property. However, provided that the Canadian ownership requirements under the UHTA are met, an exemption can be claimed solely based on the ownership of the corporation by Canadians, or the status of the partners as Canadians. Holding farmland, including the residential property on the farm, in a bare trust is also a common arrangement. Where this is the case, at least one trustee will be on title as the owner of the property, and this arrangement will also require an annual UHT return. Where the beneficiaries of the trust are all Canadians, the specified Canadian trust exemption will apply such that no UHT will be due.

Most family farm corporations, partnerships and trust arrangements will meet the requirements to be exempt from UHT, but under current law, are required to file an annual UHTA return. If a farm business is carried out as a proprietorship (unincorporated, and with only one Canadian owner), there would be no filing requirement under the UHTA, even though the only significant difference between the proprietorship and the corporation, partnership or trust may be the organizational structure.

Another element to the UHT is that determining whether a business is a partnership at law, or whether in fact “partners” are actually co-owners in the business will affect whether a UHT return is required to be filed. Co-owners who are Canadian citizens are excluded from a filing requirement under the UHT, but if the residential property is a partnership asset, a UHT return will need to be filed by the person, or persons on record as the owner of the property, even if they are Canadian citizens. With a farm property, the real estate could be co-owned by spouses, but the business of farming that property could be carried out by the spouses as a partnership. In many such informal arrangements, it can be difficult to determine the appropriate filing under the UHT.

A separate filing is required to be made for each residential property owned by the corporation, partnership, or trust and the failure to file for any property will carry a minimum \$5,000 or \$10,000 fine. This is an annual filing.

Because the legislation was initially targeted only at non-Canadians, many farmers operating farms in a corporation or partnership may not even be aware of the requirement to file under the UHTA, meaning that missing the filing year over year will compound the fines related to not filing.

Application to other Canadian business owners

The UHTA will affect many other Canadian business owners who also own residential property in a corporation or a partnership in much the same way that it affects farmers. For example, an entrepreneur who has run a successful manufacturing business, may decide to acquire an investment residential property with corporate funds that are not required to run the manufacturing business. The ownership of residential property in a corporation creates an obligation to file a UHT return.

However, again, where the corporation is wholly owned by Canadians, there will be no UHT to pay on that property, but the owner of the corporation is faced with the compliance burden of completing an annual UHTA return.



There are countless situations where Canadians are required to file a UHT return, because of where they hold residential property, but where no tax can be levied under the UHTA because of these ownership exemptions.

Other comments

The UHTA is administered by the Canada Revenue Agency (CRA). Canadian individuals, corporations, trusts, and partnerships are, with few exemptions, all required to file income tax returns with the CRA. The UHTA requires all UHT forms to be filed by the same filing deadline - April 30 of the year following the year to which the UHT applies and the same filing deadline applies to all filers. Of the four entities mentioned above, only individuals have a fixed April 30 tax return filing deadline. Corporations have a filing deadline of 6 months after their fiscal year end, most trusts have a 90 day after December 31 filing deadline, and partnerships have either 5 months after their fiscal year-end to file their income tax information returns, or the returns are due March 31 (the difference depends on the tax status of the partners).

Recommendation 1

As the completion of the form is onerous, carries onerous penalties for failure to file, and the net result for Canadian owners meeting the SCC, SCP or SCT tests is an exemption from the tax, it is recommended that the exemptions for SCC, SCP and SCT be re-characterized as exclusions, so that there will no longer be a requirement by these entities (or the property owners on record) to file to show that an ownership exemption has been met.

This will reduce the compliance burden on the exempt owners of the property, and the compliance burden on the CRA, as the CRA is currently required to process many returns that will not yield any UHT.

Recommendation 2

Where the same owner owns more than one residential property under the UHTA, the owner be able to file one UHT return to cover all such residential properties owned, rather than having to make separate filings for each residential property owned.

Recommendation 3

Where recommendation 1 is not acted upon because the ownership information of the property is still required, consideration should be given to implementing the recommendation and also amending the Income Tax Act to allow certain information currently being collected on the UHT return to be incorporated into annual income tax returns. In addition, it should be possible to have a few questions on the annual income tax returns to determine whether any key facts relevant to UHT have changed since the last return - such as the purchase or sale of a new property, or a change in ownership in the entity.

These suggestions would simplify the administration of the information gathering that is part of the UHTA and help to prevent inadvertent late filing of UHT returns due to asynchronous filing deadlines.



Thank you for the opportunity to provide our comments about this new legislation. If you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

Kurt Oelschlagel, FCPA, FCA, TEP
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*practicing through a professional corporation