

TO: INTERNATIONAL TRADE COMMITTEE
RE: EFFECT OF UHT ON BORDER TOWN COMMUNITIES
FROM: RICHARD STEPHEN HALINDA, BARRISTER AND SOLICITOR
DATE: JUNE 23, 2023

BRIEF

Purpose of Underused Housing Tax Act

We were advised that the purpose of this statute was to deal with the current housing crisis in our large urban areas by freeing up the underused residential units in such urban centers, like Toronto, where non-residents have parked their money and are not occupying these properties. The intent was to either get these residential units back on the market where they could be purchased or rented as homes for and by Canadians or have these non-Canadians pay a tax in lieu of getting such residential property back into the housing market.

Exemptions from paying the Tax

The UHT legislation and its regulations attempted to take into account the fact that some of the residential units in Canada are in fact seasonal homes, cottages or recreational homes used by non-Canadian property owners and should be exempt from the UHT because these properties are not the properties that are causing our housing crisis. A number of exemptions were created and are provided for in the UHT Return. However, the granting of these exemptions is limited in scope resulting in tax liability where it should not apply.

There are three areas of inequity with the current exemption relating to the use of the property for more than 28 days:

1. Limiting the 28 day use exemption to only properties located in the "rural" designation as determined by the Census Mapping and not recognizing that seasonal homes, cottages and recreational properties are located in "urban" areas as determined by the Census Mapping.
2. Limiting the 28 day use exemption to only individuals and not to personal holding corporations or trusts that hold the registered title for the individuals for estate planning purposes.
3. Limiting the 28 day use exemption to each individual property owner only when the property is owned by more than one individual.

Analysis of these is provided below.

Analysis of the Inequity of the Existing Exemptions

1. The "**28 day exemption**". This exemption is based upon use and rightly so. The Act is the Underused Housing Tax Act and the criteria for assessing the Tax should be based upon usage. The legislation recognizes that use for more than 28 days is sufficient for exemption from tax, but, only so long as the property is located in a "rural" designated area as defined by the Census Mapping. The Census Mapping does not take into account where the seasonal homes, cottage or recreational properties are in fact located.

The Census Mapping is based upon Census Metropolitan Areas and Census Agglomeration Areas and small communities, such as Crystal Beach, Ridgway, Port Colborne and Fort Erie, which should be exempt on their own account as being small communities and not the target of the underused housing found in the large urban centers, find themselves pooled within a larger Agglomerated Area of St. Catharines/Niagara and brought into

the “urban” designation pursuant to the Census mapping and such properties lose the ability of the property owner, who in fact uses the property for more than 28 days, to be able to claim the exemption.

Crystal Beach is a perfect example of this inequity. It is a very small community, built around the Crystal Beach Amusement Park in the late 1890s and has a beautiful public beach. There is no question that this is a small, resort and tourism community. However, much of it is defined as “urban” pursuant to the Census mapping and the 28 day exemption is not applicable to these properties.

This makes no practical sense, in these smaller communities, the Census mapping criteria is inappropriate. What difference does it make whether the cottage property is located within or outside the “urban” boundary of the Census mapping? If it is being used by the property owner for more than the required 28 days, it is not underused. The purpose of the Act was to go after underused housing units, and yet we have housing units that are not underused but as result of the Census mapping (which was not done to determine where these cottages in fact are located) are subject to the tax. This needs to be corrected. If it is used, it is used, regardless of where it is located. This is an inequitable and discriminatory effect of this Statute.

2. The “**individual only 28 day exemption**”. The second inequity of the 28 day exemption is to whom it can apply to. It only recognizes registered owners who are individuals and not corporations, LLCs or trusts. For estate planning purposes, many US citizens place the title to their seasonal homes, cottages and recreational properties into either a US personal holding corporation or LLC (limited liability corporation) or a Trust.

In dealing with the holding corporations, these are not operating companies, they are simply holding title for their family that owns them and uses the cottage. The individual instead of being the registered owner of the property is the owner of the shares in the corporation or LLC that is the registered owner of the property. The property is being used and occupied by that family.

In dealing with the Trusts, here too the Trust is simply holding title for the family that is the beneficial owners of the Trust and which family uses the cottage. The individual instead of being the registered owner of the property is the owner of the beneficial interest in the Trust that is the registered owner of the property. The property is being used and occupied by that family.

In the transfer of title to these corporations or trusts are reported to CRA and the individuals have pay the capital gains tax to CRA as required by the Income Tax Act in order to have title transferred to these Corporations, LLCs or Trusts by such families. They have followed all of the rules to have these estate planning tools implemented, paid the appropriate tax to CRA and now find themselves the victim of the UHT Act as it does not provide the same exemptions as are available to those that have title still registered in their names personally. This too may not have been understood or considered by the drafters of this legislation. This is another inequitable and discriminatory effect of this Statute.

3. The “**individual 28 day exemption in the case of multiple owners**”. The current 28 day exemption only applies to those individual property owner (where the property is in an eligible area – ie “rural designation according to the Census mapping) where “the property has been used as a place of residence or lodging by the registered owner, his or her spouse or his or her common law partner” for at least 28 days in the calendar year.

However, there are a number of situations where the title is held by more than one individual and where the co-owner or co-owners are not the spouse or common law partner of such registered owner. Simple examples are siblings who are co-owners or parent and child who are co-owners. As an example, let’s look at an elderly parent (eg mother) who holds title to the family cottage along with her adult child (eg daughter). The mother is unable to come to Canada due to health issues, confined to hospital or nursing home.

The daughter uses the cottage for more than 28 days and is entitled to the exemption. The mother is not able to come to Canada to use the cottage and as such is not entitled the exemption and is liable to pay the tax, even though the daughter may have used the cottage all summer.

Why would the mother be required to pay the tax? The property is certainly not being underused, by the definition contained in the Act and yet the mother because she personally could not use the property is taxed. Is the mother expected to rent out the property for 180 days (another exemption available under the Act) to a stranger to occupy the cottage together with her daughter, in order to be able to claim and exemption from the Tax? That would be a preposterous result. One cannot imagine that this was contemplated by the drafters of the legislation and accordingly this needs to be addressed as it is another inequitable effect of this Statute.

Recommendations to Cure Inequities of the Existing Exemptions

The "28 day exemption" requires amendment to the Regulations that will provide for:

1. The availability of this exemption for seasonal homes, cottages and recreational properties located in other than "rural" areas as now strictly defined by the Census mapping.

Proposed Regulation Amendment:

Section 2(2) of Regulation 2022-12-15, which deals with "prescribed areas" be amended to include a further subsection (c), specifically:

(c) an area that is within the municipal boundary of any municipality having a population of less than 50,000 people.

Section 2 (3) of Regulation 2022-12-15, which deals with "prescribed condition" be amended to extend the 28 day exemption to any property located in a municipality of less than 50,000 people, specifically:

For the purposes of paragraph 6(7) (m) of the Act, a prescribed condition, for a calendar year and in respect of a person that is an owner of a residential property located in an area referred to in subsection 2 or subsection 3, is that the residential property is used as a place of residence or lodging by the owner or the owner's spouse or common-law partner for at least 28 days during the calendar year.

By creating a prescribed area of a municipal population with a ceiling of no more than 50,000 people, the intent of the Act to deal with the housing crisis in the true urban centers in our country is maintained. This is a simple way of dealing with the inequitable situation that the current Act and its regulations have created and is not detrimental in the government's objective of trying to deal with the housing crisis in our urban centers.

2. The availability of this exemption to those seasonal homes, cottages and recreational properties that are registered in the names of corporations, LLCs or Trusts where the said properties are used by the shareholders or beneficial owners of those properties.

Proposed Regulation Amendment:

Section 2(3) of Regulation 2022-12-15, which deals with "prescribed condition" be amended to include residential property that is owned by a corporation, LLC or Trust that is used as a place of residence or lodging by a shareholder of the corporation or unit owner of the LLC or beneficial owner of the Trust, or his or her spouse or common-law partner for at least 28 during the calendar year.

And

Section 2(2) (b) (ii) of Regulation 2022-12-15, which deals with “prescribed area” be amended to provide that whether or not a residential property is located in a “population center or not” it deemed to be a prescribed area for the purpose of Section 2(2) (b) (ii) if it is owned by a person, a corporation, LLC or Trust that is used as a place of residence or lodging by the person, a shareholder of the corporation or unit owner of the LLC or beneficial owner of the Trust, as the case may be, or his or her spouse or common-law partner for at least 28 during the calendar year.

By these two amendments the exemption is now rightfully available to all families who have seasonal homes, cottages and recreational properties regardless of the manner in which they have decided to hold title for themselves.

3. The availability of this exemption to those seasonal homes, cottages and recreational properties to all registered owners of such properties so long as any one of the owners or his or her spouse or his or her common law partner uses such property for at least 28 days in the calendar year.

Proposed Regulation Amendment:

Section 2 (3) of Regulation 2022-12-15, which deals with “prescribed condition” be further amended to extend the 28 day exemption to any property owner so long as some other family related property owner has used the property for at least 28 days during the calendar year, specifically:

For the purposes of paragraph 6(7) (m) of the Act, a prescribed condition, for a calendar year and in respect of a person that is an owner of a residential property located in an area referred to in subsection 2 or subsection 3, is that the residential property is used as a place of residence or lodging by the owner or the owner’s spouse or common-law partner for at least 28 days during the calendar year, or by any other owner who is related to the property owner by blood or marriage, where the other owner or the owner’s spouse or common-law partner has used the residential property as a residence or lodging for at least 28 days during the calendar year.

By this amendment the inequitable situation involving family cottages owned by multiple family members, not all of which may be able to use and occupy the cottage during any given year is not subject to paying of the tax when the cottage is in fact used by other co-owner family members.

Urgency for Amendments

October 31st is the extended filing and tax payment deadline for those property owners who owned seasonal homes, cottages and recreational properties as of December 31st, 2022. So, there is urgency in having Regulation amendments made prior to that filing deadline.

My understanding is that the Regulations may be amended by the Ministry without having to be passed by further Act of Parliament. These need to be done in the coming few months. The current UHT Return does not have to be amended to accommodate the suggested changes. Delay in making these changes until the required of filing the 2023 UHT Return is not necessary. This can still be done in this fiscal year prior to the October 31st extended filing deadline and correct the inequities that the current Regulations and Act have created.

Further Assistance

As indicated at my appearance before the Committee on June 5th, I am more than prepared to further work with the Committee or the Ministries involved in bringing about these changes. I have written to the Honourable Chrystia Freeland and Honourable Diane Leboutthiller in February of this year in regards to this matter, for which no reply has been received to date. A copy of my said letter is attached for your reference.

I appreciate the time and effort the Committee is taking into looking into this matter and bringing about a satisfactory resolution to the inequities created by the current form of the Act and its Regulations.



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February 24, 2023

Honourable Chrystia Freeland, MP
Minister of Finance
House of Commons
Ottawa, ON K1A 0A6

— COPY —

Honourable Diane Lebouthillier, MP
Minister of National Revenue
House of Commons
Ottawa, ON, K1A 0A6

RE: Underused Housing Tax

Dear Ministers Freeland and Lebouthillier:

I am a lawyer that has been practicing law in the Niagara Region for over forty years. A good part of my practice is looking after clients from the US who have cottages located in Ontario, most of which are located here in our Region. My representation involves the buying and selling of such cottage properties as well as assisting them in estate planning and the passing of these cottages from one generation to the next. I not only look after the legal aspect of the property title changes with these matters but also look after the Canadian tax filings involved in such transactions and in particular the reporting of capital gains and the payment of the taxes for the same. As such I am in contact with various departments at CRA on a regular basis.

I have followed this UHT matter since it was first introduced to Parliament. I am very concerned as to how this has rolled out and those that are affected, who were not to be affected. For this, I am writing this letter.

We were advised that the purpose of this statute was to free up the underused residential units in the urban centers, like Toronto, where non-residents have parked their money and are not occupying these properties. The intent was to either get these residential units back on the market where they could be purchased or rented as homes by Canadians. We were advised that this new Statute would not affect recreational or cottage properties and exemptions would be provided for those properties. This has turned out not to be the case. The government has failed to appreciate that "cottage country" is not just in the northern regions of the country but in fact exists and has existed along all of the lakes in the southern area of the country for upwards of 100 years. These families, many of which are Americans, have purchased, built and have occupied these properties for generations. They have been the summer residents of our communities, have paid their property taxes, have supported our local businesses and have belonged to our religious and cultural organizations. They are part of the fabric that makes up our communities. These are not the people who have created any housing shortage in our Country, caused the increase in market prices, nor have they parked their money here taking up residential units in our urban centers.

These are cottagers. People who own, use and occupy these properties during the summer months. The legislation and the regulations fail to take this into account, even though we were advised these types of properties were to be exempt.

The residential market in southern Ontario has been subject to a 15% land transfer tax for non-resident purchasers of residential properties since April, 2017. This has been increased to 20% since . This literally killed the purchase of these properties by American cottagers. Studies show that the recent increase in the prices in the housing market was not caused by non-residents. It was created by Canadians. The Prohibition on the Purchase of Residential Property by Non-Canadians passed by the Federal Government was an unnecessary Statute and will have little or no positive effect on the market place where the Province has already put prohibitions in place.

It is important to understand that these cottage owners are not vacant property owners who have parked their money in the Canadian real estate market. As stated above they use and occupy these places and are part of our community. It would be hard to imagine that the Government is requiring them to rent out these cottage properties during the winter months to Canadian families to live in, when their own families are not using them, in order to qualify for an exemption from the UH tax. To have Canadian families move into these cottages in the winter months and then move out again in the summer so that the owner's family could use them in the summer time is a ridiculous and very unpractical intent of the legislation if this is what the Government is implying be done. Most of these places are inhabitable during the winter months.

In realty, it makes no difference if these cottage or recreational properties are located in the urban or the rural designated areas determined by the Census mapping that the Government is using as its basis for determining what properties are eligible or not eligible for an exemption. We happen to live in the Niagara Region. The mapping puts a number of our smaller communities into the "urban" designation, despite the fact that they are cottage communities. If you take Crystal Beach as an example. Most of it is mapped as "urban", however, Crystal Beach is a lakefront vacation area and has been for over 100 years and is strewn with cottages that have been used by the family owners for generations. They are not the cause of the housing issue that the Government is trying to address.

This statute also does not take into account that many of our summer residents for estate planning purposes have transferred the title to their family cottages into US holding Corporations or US Limited Liability Corporations (LLC) or Trusts, while at the same time the shareholders of those corporations or LLCs or beneficial owners of the Trusts are the family members who continue to use and occupy these cottage properties, as they had when title was held in their names personally. These are not operating, business corporations. They are holding corporations of the title of these cottage properties. The transfer of title to these corporate or trusts have been reported to CRA and the owners have paid the capital gains tax to CRA as required by the Income Tax Act in order to have title held for them by these Corporations, LLCs or Trusts. They have followed all of the rules to have these estate planning tools implemented and now find themselves the victim of the UHT Act as it does not provide the same exemptions as are available to those that have title still registered in their names personally. This too may not have been understood by the drafters of this legislation. This is another inequitable and discriminatory effect of this Statute.

We were advised all during 2022 that the Regulations for this Statute would take care of the exemptions for cottage properties and we waited all year for these to be published. This did not happen until the end of the year. In fact, the Regulations did not provide relief for the inequities described above. The American cottage owners are not the source of the problem that this Statute is trying to address. Steps need to be taken to right the wrong created by the text in the Statute and Regulations. This for us is a community issue. The Americans may not be part of the community in Ottawa where you sit, however, that is not the case in our communities here in Niagara and much of the north shore of Lake Erie from Buffalo to Detroit and beyond. Many of those families have been here longer than our families have. They need to be treated fairly. We would not want to see the US impose similar legislation for Canadians owning vacation properties in their country, which is now being threatened by some American politicians.

So, we suggest that the Regulations be amended to include:

Section 2(3) of Regulation 2022-12-15, which deals with “prescribed condition” be amended to include residential property that is owned by a corporation, LLC or Trust that is used as a place of residence or lodging by a shareholder of the corporation or unit owner of the LLC or beneficial owner of the Trust, or his or her spouse or common-law partner for at least 28 during the calendar year.

And

Section 2(2) (b) (ii) of Regulation 2022-12-15, which deals with “prescribed area” be amended to provide that whether or not a residential property is located in a “population center or not” it deemed to be a prescribed area for the purpose of Section 2(2) (b) (ii) if it is owned by a person, a corporation, LLC or Trust that is used as a place of residence or lodging by the person, a shareholder of the corporation or unit owner of the LLC or beneficial owner of the Trust, as the case may be, or his or her spouse or common-law partner for at least 28 during the calendar year.

We need to right the unintended wrong that has been created by the present form of the Statute and its Regulations. I am more than happy to discuss this more fully with those in charge of managing the administration of this Statute. I am prepared to further discuss this by video conference or even come to Ottawa to meet in regards to the same. I am prepared to help the Government understand and address these issues. This is within your power to correct and we ask that this be done.

Thanking you in advance for your time and attention to this matter.

Yours truly,



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