

FAQ ON INTERNATIONAL TAX

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SALE OF A CANADIAN PROPERTY BY NON-RESIDENTS

Tax Question:

As a non-resident of Canada do I owe Canadian tax on the sale of my Canadian real estate?

Facts:

If a property owned by a non-resident is sold in Canada there is tax due. The risk is on the purchaser (not the seller) that Canada Revenue Agency (CRA) will try to collect tax from them if the tax is not handled appropriately at the time of the sale.

Discussion:

CRA requires a 25% withholding tax as a default rate of tax on the gross sales price of property held by non-residents of Canada. The tax is not calculated on the profit but on the total gross sales price. This can amount to a substantial amount of tax.

There is a mechanism to reduce this tax to a smaller amount, however the seller must apply to CRA, with full details, prior to the sale or within 10 days after the date of the sale/disposition. Under this application, the seller can have the withholding tax reduced to be only calculated on the net profit. If the deadline is missed penalties will be assigned at a daily rate.

Given the narrow window of time to make this application and that it can take a few weeks for CRA to process, the seller may miss their deadline. Although the penalty may still be applicable it is likely that the tax saved would be greater than the penalty so it would still be worth making the application. If the seller misses this window there are two remedies.

- 1) They can file a Canadian tax return with full details and ask for a refund. There are also deadlines for this and there are issues with whether CRA will permit this filing as the first disclosure was required at the time of sale. You cannot wait until tax return preparation time to file the application with CRA. You must start the process at the date of sale and then apply for the refund at normal tax return filing time.
- 2) They can apply to have the tax used as a foreign tax credit in their home country. The challenge with this is that the tax may be much higher than the home country tax and although they get a credit they do not get a refund.

The forms involved are T2062, T2062A and non-resident tax returns.

Recommendation:

If you are interested in learning more about the sale of Canadian property by non-residents, please contact Gilmour Knotts Chartered Accountants to discuss the transaction and tax issues further.

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