

SPIEGEL SOHMER



Underused Housing Tax

UHT - Executive summary

- 1% tax
- On the “taxable value” of residential property
- Owned by a Non-resident
- If vacant or “underused”
- Starts January 1, 2022



UHT - Status

- Not in force, but retroactive application to Jan. 1, 2022
- Public consultation complete
- Draft legislation introduced in December 2021
- Second reading complete
- Review in committee complete
- Missing 3rd reading and senate approval
- Similar taxes provincially (BC 0,5%, Toronto 1%).
Quebec/Montreal?





UHT DEFINITIONS

“Residential Property”

- Detached homes, duplexes and triplexes
- Semi-detached homes, row-house units, residential condominium units and any other similar premises
- “Prescribed property” (none so far)



Owner of Residential Property

- the legal owner of the property (e.g., the person registered on title).



Taxable value

- Prescribed amount or
- The greater of
 - The value established for the purpose of property tax
 - Most recent sale price
- Option for election at FMV with appraisal
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EXEMPTIONS

Exemptions

- Canadian resident
- Canadian citizen
- Government, municipalities, universities
- Registered charity
- Specified Canadian Corporations
- Specified Canadian Partnerships
- Specified Canadian Trusts
- Qualifying occupancy period
- Hazardous and other uninhabitable conditions
- Estates and other situations



General

- Exemptions are generally tested as of December 31 of each year
- i.e. if shareholders at December 31 are all Canadian residents, it will be a Specified Canadian Corporation
- Unless otherwise noted, exemptions applicable to an owner that is an individual would also be available, in some cases with modifications, to an owner that is a corporation, a partner of a partnership or a trustee of a trust.



Excluded Owners

- An individual that is a **Canadian citizen or a permanent resident of Canada**
 - Except where the individual holds an interest in property
 - as a partner of a partnership, or
 - as a trustee of a trust, but not including a personal representative of a deceased individual or the estate of a deceased individual;
- Canadian corporation listed on a Canadian stock exchange;
- A registered charity;
- A cooperative housing corporation;
- An Indigenous governing body or a corporation owned by an Indigenous governing body;
- A municipality or a corporation owned by a municipality;
- The government of Canada or an agent of the Government of Canada;
- The government of a province or an agent of the government of a province;
- Certain other public service bodies (e.g., universities, public colleges, school authorities, hospital authorities); and
- A prescribed person or a person of a prescribed class (none so far)



Specified Canadian Corporations

- Owned by a foreign person, i.e. who has ownership or control, directly or indirectly, of either
 - 10% or more FMV of shares
 - 10% or more voting rights
- Foreign person
 - Individual who is neither a citizen or permanent resident
 - A corporation other than a Canadian corporation
 - A combination of the above
- A corporation without share capital if non-Canadians are
 - The chairperson or other presiding officer
 - 10 per cent or more of the directors or other similar officers
- A prescribed corporation or a corporation of a prescribed class.



Specified Canadian Partnership

Every member of the partnership was one or more of the following:

- An excluded owner;
- A specified Canadian corporation; or
- A prescribed person or person of a prescribed class.



Specified Canadian Trust

If every person with a beneficial interest in the real estate is

- An excluded owner (Canadian)
- A specified Canadian corporation; or
- A prescribed person or person of a prescribed class.





QUALIFYING OCCUPANCY PERIOD

Exemption for Qualifying Occupancy

Tested on a calendar year basis (does not follow the year of a corporation, trust or partnership if different than calendar)

■ Qualifying occupancy

- 180 days or more
- By periods of 1 month
- Where the property is occupied by a “qualifying occupant”:

Qualifying occupant

- Arm's length individual to the owner or spouse. With written agreement.
- Non-arm's length individual to the owner or spouse. With written agreement at fair rent.
- If owner is an individual
 - Owner or spouse (non-Canadian). While in Canada for work (with permit) and occupancy relates to it
 - Canadian spouse, child or parent of owner (who is non-Canadian)
 - Except if occupant has another residence for an equal or greater number of days (not clear if based on month or calendar year)



Fair rent

- The amount determined in prescribed manner (none so far); or
- 5% of the taxable value





HAZARDOUS AND OTHER CONDITIONS

Hazardous Conditions

- If, due to a disaster or hazardous conditions
- the property is uninhabitable
- for at least 60 consecutive days of the calendar year.
- Until the conditions affecting the property are resolved and the property is safe for occupancy, to a maximum of two calendar years.



Not Suitable for Year-Round Use

- The property is uninhabitable (e.g., not winterized) or is inaccessible (e.g., access road not winter maintained) for a portion of the year and is therefore not suitable for year-round use.



Major Renovations

- Due to renovation
- Uninhabitable for at least four months
- Provided that the work is being diligently pursued without unreasonable delay, other than a delay caused by circumstances beyond the reasonable control of an owner of the property
- Available once every 10 years
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Year of Acquisition of an Interest in Property

- Exemption for the first calendar year in which the owner first acquires an interest in the property.



Newly Constructed Property

- The property is a newly constructed property that was not substantially completed before April 1 of the calendar year due to the property being under construction.





ESTATES AND OTHER SITUATIONS

Personal or Other Legal Representative of Deceased Individual

- If an owner of residential property dies, the owner's interest in the property would be exempt for the calendar year in which the death occurred and for the following calendar year. This exemption would extend to the personal or other legal representative of the deceased owner (e.g., trustee of the estate of the deceased individual).



Death of other Owner

- If an owner of residential property dies, and on the date of death has at least a 25-per-cent interest in the property, any other owner's interest in the property would be exempt for the calendar year in which the death occurred and for the subsequent calendar year provided that the other owner was an owner of the property on the date of death.



New Property Held by a Developer as Inventory for Sale

- The property is held by the owner as inventory on December 31 of the calendar year.
- Only be available to be claimed by an owner in respect of a property for the calendar year in which the property first became capable of being occupied.





REPORTING

Mandatory Declaration

- Except “excluded owner”
- Annual declaration to CRA
- For each residential property
- By April 30 of following year



Content of Declaration

- The calendar year to which the declaration relates;
- The civic address of the property and other property-related information;
- The legal name of the owner;
- Contact information of the owner;
- The type of owner (e.g., individual other than as a partner of a partnership or trustee of a trust, corporation, partner of a partnership, trustee of a trust);
- The owner's interest in the property (as a percentage), and if the interest is less than 100 per cent:
 - The form of ownership (i.e., joint tenants, tenants-in-common), and
 - The names of any other owners of the property having an interest in the property of 10 per cent or more;
- The residential property type (e.g., detached home, semi-detached home, row-house unit, residential condominium unit, duplex, triplex);
- The specified value of the property and how it was determined; and
- The exemptions claimed in respect of the property and information related to any exemptions.



Payment Due Date

- April 30 of the following calendar year.



Penalties

- \$5,000, if the owner is an individual, or \$10,000 if the owner is not an individual; and
- The amount that is the total of
 - 5 per cent of the UHT; and
 - 3 per cent of the UHT for each calendar month the declaration is past due.

If declaration not filed By December 31 of following year, loss of following exemptions:

- Qualifying Occupancy;
- Property Not Suitable for Year-Round Use;
- Property Uninhabitable Due to a Disaster or Hazardous Conditions; and
- Property Undergoing Major Renovations.

No statute-barring until filing is made

Other penalties if false statement or omission



Certificates of Compliance

- Starting 2023
- Automatic audit for UHT when applying for a 116 certificate
- Notaries will likely withhold based on UHT





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