Our Services

Income Tax

Acquisition
Advising with respect to appropriate ownership structure
Coordinating with your realtor and lawyer
Calculating the Adjusted Cost Base of land, building and furniture
Advising regarding the implications of a change in use

Annual
Keeping track of and calculating the ACB during the period of ownership

Disposition
Estimating and explaining income tax on capital gain
Preparing of the request for Certificates of Compliance and Comfort Letter, arranging payment of estimated taxes to CRA and delivery of Certificates to lawyer
Preparing and filing of T1 personal tax return to report gain on sale and applying for income tax refund, if applicable

Tax planning issues which should be discussed include ownership structure, capitalization of expenditures to reduce tax on future gains, risks of borrowing outside Canada and other issues.

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For more detailed pamphlets, questions, or information on business income, nightly rentals or monthly rentals, please see our web site and please contact us.

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Canadian Tax for Non-residents Investing in Canadian Real Estate

(No Rental)

Providing You with Peace of Mind

Income and Transfer Tax

Purchase

Property Transfer Tax is payable at the time of purchase. This tax is calculated as 1% on the first $200,000 and 2% on the excess over $200,000. Other acquisition costs may include inspection fees, appraisals and legal fees.

Harmonized Sales Tax ("HST") of 12% will generally be charged on the purchase of a newly built property or on the purchase of a commercial property that had been rented by the previous owner. British Columbia Social Service Tax (commonly called Provincial Sales Tax or "PST") was replaced by HST as of July 1, 2010. A purchaser of property, used for personal purposes, cannot and should not register for HST. HST will not be charged on the purchase of a used residential property (personally used property), which includes most homes, townhouses or condos.

Adjusted Cost Base

For Canadian tax purposes, the tax cost of the property is referred to as the Adjusted Cost Base or "ACB". The ACB of a property is important when determining the amount of any gain upon the sale of the property.

Items which may be added to the ACB include the purchase price, Property Transfer Tax, HST (for new properties), legal fees relating to the purchase, the cost of furniture and fixtures (including taxes) which are sold with the property and the cost of major additions or renovations.

Canadian Tax Return

A non-resident owner of a property, which is not rented, is not required to file an annual income tax return as there is no income to report.

The non-resident owner will not be required to file an income tax return until the property is sold. If the property is sold for a gain, the non-resident must file an income tax return to claim a refund of taxes withheld (see *Sale*). If the property is sold for a loss, the non-resident cannot claim the loss as CRA considers this to be a personal expense.

Change of Use

This brochure assumes that the property is being used 100% for personal use and is not rented at any time, either for nightly rental or monthly rental.

There are special very complex rules for the full or partial change of use of the property. For example, for income tax purposes, there will be a deemed disposition and re-acquisition at the fair market value if the property is changed from revenue producing (nightly or monthly rentals) to not producing revenue, or from not producing revenue to revenue producing. This could result in income taxes being payable on any increase in value, even though the property has not been sold. It may be possible to avoid the deemed disposition by doing a special election.

There may be additional complications for a change to a mixed use property (e.g. part-year nightly rental or part-year monthly rental and personal use).

In addition, there will be HST complications if the owner commences to rent the property on a nightly basis. If the owner is considering renting the property on either a monthly or a nightly basis, there will be implications for both Canadian income tax and HST, on the rental and on the eventual sale.

Sale

Any gain on the disposition of rental property in Canada will be subject to tax in Canada. This tax is levied in two stages. First, there is a withholding tax at the time of disposition and then a final calculation of tax as reported in the T1 personal tax return which is due after year end.

The withholding tax is paid by filing a form **T2062** and paying a **withholding tax of 25% (on the land portion) and up to 50% (on the building portion) of the interim gain on sale.** The interim gain is calculated as the selling price less the ACB. At this stage, commissions, legal and accounting expenses are not deductible in the calculation of the interim gain. Once this form is accepted by CRA and the tax has been paid, CRA will issue a **"Certificate of Compliance".**

CRA is concerned that the non-resident may sell the property, take the proceeds out of Canada and never pay any tax. It would be very difficult for CRA to collect tax from a non-resident who no longer has any assets in Canada. Therefore, the way that CRA enforces the collection of this tax is to transfer the obligation to pay tax from the non-resident vendor to the purchaser of the property. Unless the purchaser receives a signed declaration that the vendor is a resident of Canada or receives the above-mentioned Certificate of Compliance, the purchaser will be liable for withholding tax of **25% (or in some cases, 50%) of the selling price.**

Therefore all knowledgeable purchasers will request a Certificate of Compliance when purchasing property from a non-resident. This procedure applies whether the purchaser is a Canadian resident or not. In practice, the purchaser's lawyer will generally hold back 25% (or in some cases, up to 50%) of the entire purchase price until he receives the Certificate.

It currently takes about 12 to 16 weeks for CRA to process a Certificate of Compliance. The application form T2062 may be filed prior to sale but must be filed within 10 days of closing. We suggest that it be filed as early as possible. Penalties will be assessed if it is filed later than 10 days after closing.

After the end of the taxation year in which the property is sold, the non-resident may file a T1 personal tax return to report the disposition of the property and calculate the actual gain and the final tax. In this calculation of the actual gain, the non-resident can deduct all related selling expenses such as commissions, legal and accounting fees.

In addition, depending on the circumstances, the non-resident may be allowed **"capital gains treatment"** which means that only 1/2 of the gain will be taxable. The taxable income will be subject to progressive rates from **22% to 43%** (for 2010) and since the total tax will be less that the withholding tax paid at the time of obtaining the Certificate, the non-resident will be entitled to a refund of the difference.