

Non-Residents of Canada Sale of Canadian Real Estate

1. Certificate of Compliance

If you sell the Canadian rental property in a later year while a non-resident of Canada, any capital gain appreciation in the property will be subject to Canadian tax. A non-resident Canadian return is also required to be filed to report the sale transaction.

Generally, any person who is purchasing the real property (called "taxable Canadian property") from a non-resident ("vendor") is required to withhold 25% of the gross purchase price, and remit the funds to the CRA (Canada Revenue Agency) as a non-resident withholding tax. The amount which must be withheld by the purchaser can be reduced if the vendor applies for the applicable notification forms (T2062 and T2062A) and receives a **Certificate of Compliance** from the CRA prior to closing.

Essentially, a non-resident vendor who proposes to dispose of a Canadian real property can estimate the anticipated gain and prepay 25% of the value of the net gain rather than having the 25% apply on the full purchase price. In cases where a Certificate of Compliance has been obtained prior to the actual sale, and the actual sales price turns out to be more than the estimated sales price on the certificate, the purchaser's liability to withhold tax is adjusted to 25% of the revised gain.

If the Certificate is filed after the transaction is completed and the non-resident vendor pays an amount equal to 25% of the actual gain, the purchaser will be relieved from the withholding obligation upon issuance of the Certificate of Compliance by the CRA. Non-resident vendors who fail to notify CRA of the disposition within the 10 day period will be liable to a penalty. This penalty is \$25 a day for each day the notification is late, with a minimum of \$100 and a maximum of \$2,500.

Where the purchaser fails to satisfy the withholding obligation, liability to pay tax on behalf of the non-resident vendor may arise.

Since processing of a Certificate of Compliance can take several months, the Certificate should be applied for as far in advance as possible of the closing date. It should be noted that the issuance of a Certificate of Compliance by the CRA does not relieve the non-resident vendor from the obligation to file a Canadian tax return reporting the sale.

Furthermore, as long as the property is purchased and used as a rental property and the property is rented out to a third party at market rate, just owning the rental property itself should not jeopardize your non-resident status in Canada.

2. Canadian tax return

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

The non-resident usually is allowed “capital gain treatment” in Canada, which means only 1/2 of the capital gain is taxable. The taxable capital gain will be subject to graduated tax rates from 22% to 44% (for 2012 in BC). If the total tax is less than the withholding tax paid as approved on the Certificate of Compliance, the non-resident will be entitled a refund of the difference.

Let's talk

Please note that this information is of a general nature and not intended to address the circumstances of any particular individual or entity. We would be pleased to assist and address to your specific situation. For a deeper discussion of how this issue might affect your Canadian tax exposure, please contact:

Kaman Kwok Inc.
659-G Moberly Road
Vancouver, BC V5Z 4B2
(604) 877-1838
info@cross-bordertax.com