ALERT - HIGH IMPORTANCE FOR RESIDENTIAL PROPERTY OWNERS

DUE DATE OF MAY 1st, 2023 – WITH POTENTIAL SUBSTANTIAL PENALTIES!

Dear Client,

Starting for calendar year 2022, legal owners who meet the filing requirements, must file an annual return with CRA for the Underused Housing Tax (UHT) (Form UHT 2900). This Form is due before April 30th of the following calendar year regardless of whether UHT is payable. April 30, 2023 falls on a Sunday, so the first UHT return must be filed no later than May 1st, 2023. Note that legal owners are defined as the legal entity or individual listed on the property title.

Late filers may be liable to pay significant penalties starting at $5,000 for individual owners and $10,000 for non-individual owners (i.e. corporations, partnerships, or trusts).

In order to assess your UHT filing obligation, please review the following questions. If the answer is "yes" to any one of these questions, you may have a UHT filing and/or payable obligation(s) and you should complete the enclosed, more detailed, UHT checklist.

- Are you a shareholder of a Canadian private corporation that owns at least one residential property in Canada?
- Are you a partner of a Canadian partnership that owns at least one residential property in Canada?
- Are you a trustee of a trust that owns at least one residential property in Canada?
- Are you a non-resident individual (neither a Canadian citizen nor permanent resident of Canada) who owns at least one residential property in Canada?
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BACKGROUND:

As background, the *Underused Housing Act* ("UHT Act") implements an annual 1% tax on the value of vacant or underused residential property directly or indirectly owned by non-resident non-Canadians, effective January 1, 2022. The purpose for introducing a national underused housing tax was to ensure that non-resident owners who were using Canada as a place to passively invest their wealth in the housing market would pay their fair share of taxes. While UHT was designed with the intention to apply only to non-residents, it also creates filing obligations for other entities including private corporations, partnerships, and trusts.

The following types of *residential property* are included in the UHT Act definition*:*

- Detached homes and similar buildings with up to three dwellings units such as a duplex or triplex
- Semi-detached homes, townhouses, residential condominium units, and another other similar premises

We have determined that there will be a **minimum fee of $400 per property owned** to file the UHT 2900 as it is separate from any other corporate, partnership, trust or personal tax filing; and must be paper filed. More complicated filings or filings when UHT tax is owing due to non-resident ownership, will result in billings above the minimum fee noted.

I**n order to ensure we file a timely 2022 UHT 2900 Form, please review the four questions above and if applicable, complete and return to us the enclosed checklist no later than <u>March 31, 2023</u>**. In the meantime, please let us know if any questions or need to discuss UHT in further detail.

Yours truly,

Ariel Epstein, CPA, CGA

Tax Principal / Co-owner

Enclosure

Underused Housing Tax (UHT) – Quick Reference Chart

The UHT imposes a 1% annual tax on the value of residential real estate considered to be vacant or underused that is owned on December 31 of each year. The government indicated that the tax would target property owned by non-Canadians; however, the scope of filing requirements extends to many Canadian entities and individuals, including CCPCs and trustees of a trust. The first filing and taxes are due on **May 1, 2023 (as April 30 falls on a Sunday)**.

This chart is intended to be a general guide in determining filing obligations and tax exposure. The specific legislation, regulations and CRA administrative policy should be reviewed for a complete and detailed understanding.

STEP 1: Are you subject to the UHT rules?

Were you the legal owner (the person/entity registered on title), jointly or otherwise, of a residential property in Canada as of December 31?

If so, go to STEP 2. If not, you are not subject to the UHT Act.

STEP 2: Are you required to file an annual return?

Excluded owners are not required to file a UHT return.

Excluded owners include:

- ☐ **Canadian citizens or permanent residents** (under the Immigration and Refugee Protection Act)
  - individuals that hold an interest in the property as a **partner** of a partnership or as a **trustee** of a trust (except personal representatives of a deceased individual (ex. Executor of an individual's will) are **carved out of this exclusion**
- ☐ **corporations** that are both incorporated under the laws of Canada or a province and listed on a **Canadian stock exchange** (that is, **private corporations** are **not** excluded owners)
- ☐ **registered charities**
- ☐ cooperative housing corporations
- ☐ municipalities, Indigenous governing bodies, or corporations owned by such entities
- ☐ the Government of Canada and government of a province, or an agent of either
- ☐ various forms of publicly-traded trusts
- ☐ certain other public service bodies (e.g. universities, public colleges, school authorities, hospital authorities)

If you are an excluded owner, you have no obligations or liabilities. If you are not an excluded owner (CRA refers to these persons as "affected owners"), you must file a UHT return by April 30 (May 1 for the 2022 calendar year) – go to STEP 3.

STEP 3: Are you required to pay the UHT?

If you meet any one of the exemptions set out below under four broad categories, no tax will be payable when you file your return.

3A – Type of Owner of the Property:

- ☐ a **specified Canadian corporation** – where foreign owners (corporations incorporated or continue outside the laws of Canada or a province and individuals that are not Canadian citizens nor permanent residents) do not own or control, directly or indirectly, 10% or more of the corporation (by share value or voting rights)
- ☐ a **specified Canadian partnership** – where each member is, on Dec. 31, an excluded owner or a specified Canadian corporation
- ☐ a **specified Canadian trust** – where each beneficiary that has a beneficial interest in the property is, on Dec. 31, an excluded owner or a specified Canadian corporation
- ☐ **new owner** – owner acquired the property in the year and was not an owner of that property at any time in the prior 9 years
- ☐ **owner died** in the year or prior year
- ☐ the **personal representative** of a **deceased individual** (exemption applies for the year of death and subsequent year) and the person was not an owner of the property in either of the years
- ☐ a **co-owner** of a property where another co-owner held at least 25% of the property at their death (exemption applies for the year of death and subsequent year)

3B – Availability of the Property:

- ☐ if the property is under **construction** and is **not substantially completed** before April of the year
- ☐ if **construction** of the property is **substantially completed** between January 1 and March 31, the property is put for sale to the public during the year and the property was never occupied by an individual as a place of residence during the year
- ☐ property is **not suitable** to be **lived in year-round** or **seasonably inaccessible** due to public access not maintained year-round
- ☐ property is **uninhabitable** (at least 60 continuous days in the year) due to a **disaster** or hazardous conditions (this exemption is only available for a maximum of two years in respect of the same disaster)
- ☐ property is **uninhabitable** (at least 120 consecutive days in the year) due to ongoing **major renovations** (this exemption is only available once every 10 years)

3C – Occupant of the Property:

- ☐ **primary place of residence** for the year of the individual, their spouse or common-law partner, or their child attending a designated learning institution
- ☐ one of the following individuals continuously occupies the property for a period of at least a month (**qualifying occupancy**), for a total of at least 180 days in the year
  - ☐ an arm's length individual who occupies the property under a written agreement
  - ☐ a non-arm's length individual who occupies the property under a written agreement and pays at least fair rent (5% of the value of the property)
  - ☐ the owner or their spouse or common-law partner, while the individual is in Canada for work, and the occupancy related to that purpose
  - ☐ the owner or their spouse or common-law partner, parent or child who is a Canadian

3D – Location and Use of the Property:

- ☐ **vacation property** located in an **eligible area** of Canada (certain areas that are more rural) and used by the owner or their spouse or common-law partner for at least 28 days in the year

If you do not meet any exemptions, go to STEP 4. If you meet at least one exemption, go to STEP 5.

STEP 4: Calculate the tax.

The UHT is 1% of the greater of the property's assessed value for the year for property tax purposes and the most recent sale price, applied to the ownership percentage. An owner can also elect to use the property's fair market value as determined at any time during the year an up to April 30 of the following year. CRA requires an appraisal with specific parameters to use this election.

STEP 5: File the annual return and pay the tax (if no exemption is met) by April 30.

Those who are required to file should complete and file Form UHT-2900, Underused Housing Tax Return and Election Form. A separate return is required for each owner of each property. Individual owners that fail to file the return on time are subject to a minimum $5,000 penalty, while corporations are subject to a minimum $10,000 penalty. Additional penalties can apply to the filings under various circumstances, including loss of access to exemptions under the UHT Act (not usable for the full year, uninhabitable, primary place of residence and qualifying occupancy) when computing the penalty tax if the return is not filed by December 31 of the following year. There is no time limit for CRA to assess the UHT tax liabilities, penalties and interest where taxpayers fail to file a required return.