

## Disposition of taxable Canadian Property by Non-Residents of Canada

There is a requirement under s. 116 of the Income Tax Act for non-resident vendors who dispose of real property in Canada to notify Canada Revenue Agency (CRA) about the disposition either before they dispose of the property or within ten days after the disposition. When the CRA has received the amount of money to cover the tax on any capital gain the vendor realizes upon the disposition the CRA will issue a Certificate of Compliance to the vendor. A copy of the Certificate of Compliance is also provided for the purchaser. If the purchaser is not provided with the certificate on the day of the closing of the sale transaction, the purchaser is entitled to withhold 25% of the purchase price until the certificate is provided.

In order to ascertain the amount of the tax payable, it is necessary to calculate the capital gains tax. The gain is equal to the sale price less the adjusted cost base. If the property was acquired before December 31, 1971, you can use either the value of the property as of December 31, 1971 or December 31, 1984 and there are two different formulas for calculating the tax. Whichever date provides the lowest tax may be used. If you have made capital improvements to the property, the amount of the capital improvements may be used to reduce the gain. You must be able, however, to provide receipts for the capital improvements being claimed.

The tax payable at the time of the filing of the Request for a Certificate of Compliance (form T2062), is 25% of the gain.

After the sale transaction is complete, and the tax paid to obtain the Certificate of Compliance, the non-resident vendor may file a Canadian Income Tax Return to report the transaction. This is advisable to do since at the time of the filing of the tax return, outlays and expenses related to the disposition of property (real estate commission, brokerage fees, legal fees and disbursements) may be claimed. Also, only one-half of the gain is taxed at the non-resident vendor's tax rate. The non-resident vendor will, in most cases, receive a refund of a portion of the taxes paid at the time of the sale.

If the form T2062 is not filed within ten days of the sale transaction, the non-resident vendor will be subject to penalties of \$25.00 a day (with a minimum penalty of \$100.00 and a maximum penalty of \$2,500.00)

The above is a brief overview of the procedure to obtain a s.116 Certificate of Compliance on the sale of property by a non-resident. There may be exceptional factors which apply to your situation (for example, if the property was used for any period of time as your principal residence). If you are a non-resident contemplating the sale of your Canadian real property you should contact my office to discuss the matter.

Detailed information regarding the Canada Revenue Agency requirements may be found in CRA Information Circular IC72-17R6 dated September 29, 2011.