Buying and Selling Canadian Property: An Overview for Non-Residents

Non-Residents Buying Canadian Real Estate

There are no restrictions for non-residents purchasing real estate in Canada, though they may become subject to Canadian income tax laws, and will certainly encounter the following taxes on their transactions:

1. Effective August 2, 2016, an additional PTT charged at a rate of 15% of the fair market value applies to residential property transfers to foreign entites in Metro Vancouver. Foreign entities are transferees that are foreign nationals, corporations or taxable trustees. The additional tax applies on the foreign entity's proportionate share of any applicable residential property transfer, even when the transaction may normally be exempt from the PTT. This includes transactions between related individuals, a transfer resulting from an amalgamation, a transfer to a surviving joint tenant, and a transfer where the transferee is or becomes a trustee in relation to the property, even if the trust does not change. The 15% PTT does not apply to trusts that are mutual fund trusts, real estate investment trusts or specified investment flow-through trusts.

2. The PTT is charged on the fair market value of a property at a rate of:
- 1% on the first $200,000
- 2% on the balance up to and including $2,000,000
- 3% on the balance greater than $2,000,000

If the property is transferred without money changing hands – for example, an inheritance, (known as an arm's length transaction) – the value is determined by an independent appraisal or BC Assessment.

3. Goods and Services Tax (Canada) – The six per cent GST applies to the purchase price of newly constructed and substantially renovated homes.

4. Property Tax (municipal) – If the seller has already paid the full year's property taxes to the municipality, the buyer will have to reimburse them for the remainder of the year's taxes.

Residence Status and Income Tax

If non-residents stay in Canada for more than 182 consecutive days, they may be considered Canadian residents for Canadian income tax purposes.

Non-residents of Canada pay tax on income received from sources in Canada. The type of tax paid, and the requirement to file income tax returns, depends on the type of income received.

Canada has tax treaties with many countries, including the United States. A tax treaty is designed to avoid double taxation for people who would otherwise pay tax on the same income in two countries.

More information:

- Non-Residents, Canada Revenue Agency
  www.cra-arc.gc.ca/tax/nonresidents/individuals/nonres-e.html
- Tax Treaties, Canada Revenue Agency
  www.cra-arc.gc.ca/tax/nonresidents/treaty-e.html
- Cross Border Tax Issues: The Canadian Perspective, Reinhold G. Krahn. Vancouver: Lawson Lundell, December 2000
  www.lawsonlundell.com/resources/CrossBorderTaxIssues.pdf

Non-Resident Sales

When selling or disposing of Canadian real estate, non-residents must notify the Canadian government within ten days of the completion of the transaction to obtain a certificate of compliance. A certificate of compliance will only be issued if the CRA has received either a prepayment on account of the taxes owing or appropriate security for the prepayment.

On January 1, 2004, the CRA will start charging a financial penalty to non-resident owners of taxable property in Canada who sell that property and do not, within ten days, provide notice of the sale to the CRA. In other words, CRA is tightening its tax reporting condition for non-residents who own Canadian property and will charge them the greater of either $100 or $25 times the number of days beyond the ten that pass before the sales notice is filed with CRA. For example, if a non-resident sells taxable Canadian property and does not notify CRA until 21 days after the ten-day grace period, that individual will be charged a $525 penalty ($25 x 21 days).

There are exceptions to this new policy, though an accountant or lawyer is best suited to interpret their applicability in a given situation. An individual can also apply to waive or cancel the penalty through a government "fairness committee."

More information:

- Procedures Concerning the Disposition of Taxable Canadian Property by Non-Residents of Canada, Canada Revenue Agency
  www.cra-arc.gc.ca/E/pub/tp/ic72-17r5/README.html

- "Tax Obligations Imposed on Non-Resident Vendors Disposing of Real Property in Canada." Real Estate Update, Lawson Lundell, Fall 2001
  www.lawsonlundell.com/resources/RealEstateUpdate.pdf

Note: The above is provided for informational purposes only and does not constitute professional advice. For more information, consult legal, financial and real estate professionals, as appropriate.

Clearance Certificate Information:

If the owner is a Non Resident, a Clearance Certificate from Revenue Canada (New Name - CCRA - Canada Customs & Revenue Agency) has to be obtained. The process to get a Clearance Certificate can be outlined by your Lawyer or Notary Public. Depending on the circumstance, the normal fee that is charged to get this Clearance Certificate is approximately $500. It involves an accountant that the Lawyer or Notary selects to file an income tax return on behalf of the individual. The Clearance Certificate outlines to CCRA that there are no outstanding Tax issues with the property. This is especially important when there is a profit or Capitol Gain after the sale occurs. In the event the Clearance Certificate cannot be obtained by the closing date, the holdback by the Notary or Lawyer will be anywhere between 33% - 50% of the sale price. This holdback can cause a problem in the event there are not enough funds after paying off the mortgage. The normal time frame to process a Clearance Certificate is between 6-8 weeks.

There are no restrictions on non-residents purchasing property in British Columbia. There is no citizenship requirement to own land in B.C. There are restrictions on how much time may be spent in B.C. each year as a non-resident property owner. There are also income tax considerations to be aware of when a non-resident rents out a property or sells a property in British Columbia.

Non-residents may move permanently to Canada and may operate a business after obtaining legal status by qualifying for immigration. New Canadian immigration rules have been in effect since June 2002. There are five main categories under which individuals may apply for permanent residence to Canada under a point system. For more information about immigrating to Canada, go to David Aujla Immigration Lawyer , http://www.ccra-adrc.gc.ca/tax or contact an Immigration office close to you.

Part Timers

Non-residents may stay in Canada for less than 180 consecutive or cumulative days in a calendar year. For this reason, many international buyers have bought second homes on Salt Spring Island and have adopted a '6 month here and 6 month there' lifestyle.

When the property is ready for occupancy in **2008** the new buyer (assignee) shall complete the sale with the Developer under the same terms and conditions per the original purchase and sale agreement. **Please Note:** In the event buyer two (assignee) does not complete the said transaction, the developer may go after buyer one (assignor). In this case buyer one should seek Legal Advice.
Tax Consequences

Non-residents who overstay in Canada can be deemed to be Canadian residents for Canadian income tax purposes and be taxed in Canada on their world income, even if they have paid taxes in another country.

Non-residents who rent out a property must, by law, remit 25% of their monthly revenue to Revenue Canada in anticipation of filing a Canadian Income Tax Return on their rental 'business' by the end of the next tax year. Timely filing of the required form confirming a net loss on the rental investment may preclude the requirement for the 25% remittance.

When a non-resident owner sells Canadian property, Canadian law requires a 25% holdback of the proceeds of the sale pending filing of a Canadian Income Tax return by the end of the next tax year calculating Canadian tax owed on any Capital Gain. Alternatively, the owner may obtain a 'Clearance Certificate' that may be applied for in advance of the sale. This Certificate may reduce the holdback to a percentage of the capital gain instead.

There is a tax treaty in effect between Canada and many countries, including the U.S., which allows a credit against the tax owed in Canada in the amount of what tax has been paid in the treaty country on any capital gain. Numerous countries have signed tax conventions with Canada. For details on how this may affect your status with regards to income taxation, please consult with your tax accountant.

Caution: Regulations change and exchange rates fluctuate on a regular basis. This information is provided as a guideline only. For details on how any of this information may affect your taxation or legal status, please consult with your tax adviser or nearest immigration center.