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NON-RESIDENT SALE OF BC REAL ESTATE

Many non-resident homeowners know all too well that the privilege of owning recreational real estate in BC comes with the obligation to pay rental income and capital gains tax.

To ensure these taxpayers do not escape this obligation by living abroad, the *Income Tax Act* contains provisions that impose liability on a purchaser of real estate from a non-resident to pay up to 50% of the purchase price to satisfy any tax owing by the non-resident. To avoid this liability, purchasers must be satisfied that no tax is owing by having the non-resident seller obtain a Clearance Certificate from Canada Customs and Revenue Agency (CCRA).

The Clearance Certificate is issued only when any tax owing is paid. Tax payable by the non-resident will include capital gains tax (on the increase in value of the property), tax on rental income from the property, GST and recapture of any capital cost allowance.

In calculating capital gains tax for Clearance Certificate purposes, the seller can only claim the following items as part of their adjusted cost base:

< the original purchase price
< property transfer tax
< legal fees and disbursements on the original purchase
< cost of furnishings included in the sale
< strata corporation special assessments (for capital improvements)
< GST on the original purchase price
< mortgage interest (if the seller has filed the appropriate elections on tax returns to have the mortgage interest capitalized).

It is important to note that sellers must be able to provide receipts for all furnishings included in the sale and customs documentation for furnishings that have been brought to the property from outside of Canada.

At the time of calculating the capital gain for Clearance Certificate purposes, the seller will not be entitled to deduct real estate commission or legal fees being paid on the sale. By filing a Canadian tax return subsequent to the sale, the seller may claim these expenses and recover some of the tax paid to obtain the Clearance Certificate.

The Canadian tax return must be filed at the end of the tax year in which the sale completed. For individuals the return is due April 30 for the preceding tax year, for corporations it is due six months after the end of the year in which the sale completed, and for trusts it is due 90 days after the end of the trust's tax year in which the sale completed. CCRA then calculates the actual amount of tax resulting from the sale. If there is a difference between the calculated amount and the amount paid at the time the Clearance Certificate was issued, the difference is either paid by the seller or refunded by CCRA. If the seller claims real estate commission and legal expenses on the sale, it is usually a refund.

Only 50% of the capital gain is taxable. The rate of tax on this taxable gain will vary depending on the total taxable income of the individual, corporation or trust. Non-residents are encouraged to contact a Canadian accountant or CCRA for further information on marginal tax rates for non-residents. CCRA has a website at www.ccra-adrc.gc.ca.

Delays in obtaining Clearance Certificates are often lengthy (up to 8 weeks). A seller should contact their lawyer or accountant to request a Clearance Certificate as soon as an offer to purchase the property has been accepted. If a sale completes before the Clearance Certificate is issued, a percentage of the selling price ranging from 25% to 50% will have to be held back from the seller's proceeds until a Clearance Certificate is issued.

We would be pleased to facilitate obtaining a Clearance Certificate on your behalf. Please contact us by phone or email.

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