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Dispositions of A Canadian Real Property by Non-Resident Vendors (Canadian Tax Implication)

Non-Resident Vendor – Compliance Requirement

Certificate of Compliance
In general, the agent (Lawyer or Notary) acting for a non-resident vendor(s) is required to withhold 25% of the *sale price* until a Certificate of Compliance is received. Where the property had been rented, the sale price would be appropriated for land, building and other depreciable properties; appropriate withholding tax rates will apply.

If the property disposed of was a rental property, the vendor(s) will also be subject to additional withholding tax of 25% on gross rent receipts, if not already remitted to Canada Revenue Agency. Please refer to Rental Income Earned From A Canadian Real Property By Non-Residents for further details.

A request for a Certificate(s) of Compliance may be submitted for a proposed disposition. If submitted 30 days prior to the completion date, CRA may be able to issue a Certificate before sale closing. However, a request must be submitted ***within 10 days of the completion date.***

If the submission package is complete and the non-resident vendor does not have unresolved tax matters, the review process takes approximately 4 to 8 weeks. However, a priority review may be requested, if a delay in obtaining the certificate could expose the non-resident vendor to significant financial damages. A certificate may be obtained within a week if a priority review is requested.

None compliance or late-submission is subject to a penalty, equals to the greater of $100 and $25 per day up to a maximum of $2,500 for each non-resident vendor, plus applicable interest.

The certificate request reduces withholding tax to 25% of the *net gain* (sale price in excess of purchase cost), plus applicable federal tax on recapture of capital cost depreciation for tax purposes. Once CRA completes their review **and** withholding tax is remitted, a certificate of compliance will be issued. The remaining holdback will be released upon receipt of the certificate(s).

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Canadian Income Tax Return
In general, every vendor of taxable Canadian property is required to file a Canadian income tax return to report the sale transaction. Tax liability is considered settled when the tax return is assessed. A Canadian income tax return is required if nil withholding tax is made when obtaining certificate(s).

The Canadian income tax return calculates tax payable at the *current marginal tax rate*. Outlays and expenses related to the disposition may also be claimed. In addition, a non-resident vendor may be entitled to claim certain non-refundable tax credits to further reduce tax payable. Therefore, filing a Canadian income tax return will generally result in refund of excess withholding tax remitted for the certificate.

Please note that the Canadian income tax return will not be filed until February to April of the following year.

<u>Purchaser Liability Assessment</u>
If a non-resident vendor does not adhere to the compliance requirement, the purchaser will be subject to purchaser liability assessment. There are *no time restrictions*, so Canada Revenue Agency (CRA) can assess the liability at any time.

The purchaser must remit the required tax withholding to CRA ***within 30 days from the end of the month acquiring the property***. For late or none remittance, a penalty of 10% of the required tax withholding will be assessed.

In general, the purchaser is entitled to withhold and remit required tax withholding:
- 25% of the purchase price for personal use property
- 50% of the purchase price for non-personal use property, i.e. rental property

The purchaser will not be liable if, after reasonable inquiry, there is no reason to believe the vendor is a non-resident, or if the vendor adheres to the compliance requirement and obtains the required certificate(s).