



Certificates of Compliance Non-Residents Disposing of Taxable Canadian Property



Canada Revenue
Agency

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Background

- Under Section 116 of the Income Tax Act,
 - NR vendors disposing of certain taxable Canadian property (TCP) are required to notify the CRA either before they dispose of TCP or within 10 days of disposition
- The CRA will issue a “Certificate of Compliance” to NR vendor once
 - required information is submitted and verified, and
 - receipt of appropriate payment of tax or security is remitted
- A copy of Certificate of Compliance is sent to purchaser – protects purchaser from further tax liability

Presentation Outline

- Explain key elements impacting the issuance of a Certificate of Compliance
- How NR vendors and/or their representatives can assist in expediting the process
- Discuss CRA initiatives designed to improve efficiencies in the S116 process
- Resources

Note: Discussion will be limited to “real” property for the interest of the target audience

Key Elements in the Process

- Vendor identification issues – ITN
- Administrative issues with T2062 forms
- Supporting Documentation
- Miscellaneous topics

Vendor Identification Issues - ITN

- A Certificate of Compliance requires an account number before the certificate can be issued. For example:
 - Social Insurance Number (SIN)
 - Business Number (BN)
 - Temporary Taxation Number (TTN)
 - Individual Tax Number (ITN)
 - Trust Number *
- If NR *individual* vendor does not have an account number, an ITN must be obtained
- *T1261 - Application for a Canada Revenue Agency Individual Tax Number (ITN) for Non-Residents*

Vendor Identification Issues - ITN

- Common oversights in T1261 applications
 - Supporting Documents
 - Document(s) are current
 - verify identity including name and date of birth
 - are original or certified or notarized copy
 - Include a photograph
 - General Instructions
 - Form T1261 should *not* be submitted if vendor already has a SIN, ITN or TTN.
 - Form must be signed by applicant

Vendor Identification Issues

Vendor identification is crucial to:

- Ensure the proper recording of
 - Notification by the NR
 - payment and/or security received allocated to NR
- Facilitate the processing of income tax returns reporting the disposition
- Ensure the correct information is entered on the Certificate of Compliance

Administrative Issues – T2062

Reporting Dispositions of TCP

- **T2062** - *Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Taxable Canadian Property*
- **T2062A** - *Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Canadian Resource or Timber Resource Property, Canadian Real Property (Other than Capital Property), or Depreciable Canadian Property*
- **T2062B** - *Notice of Disposition of a Life Insurance Policy in Canada by a Non-Resident of Canada*
- **T2062C** - *Notification of an acquisition of treaty-protected property from a non-resident vendor*

Administrative Issues – T2062

T2062 – *Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Taxable Canadian Property*

- Used to report the **gain** on the land and/or building

This is the most common form used when NR vendors are disposing of their real estate

Administrative Issues – T2062

T2062A – *Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Canadian Resource or Timber Resource Property, Canadian Real Property (Other than Capital Property), or Depreciable Canadian Property*

- Used to report the recapture of capital cost allowance (CCA) or terminal loss on a *depreciable* property

Administrative Issues – T2062

Rental Property

- Two notifications generally required:
 - T2062 for gain on the land and on the depreciable property
 - T2062A to report any recapture of CCA or terminal loss on the depreciable property
- A breakdown between land and building is required
- Two certificates will be issued

Administrative Issues – T2062

- Personal-use property (PUP)
 - One notification generally required for PUP (T2062)
 - No breakdown between land and building is required
 - One certificate will be issued

Administrative Issues – T2062

General Guidelines / Clarifications in order to Expedite the Process

- When more than one vendor involved a separate notification must be filed for each individual
- If the vendor was formerly a resident of Canada the “date of departure” should be provided on the notification
- Provide the *complete* address of the property including the postal code

Administrative Issues – T2062

- Provide answers to *all* questions on the form whether or not they apply
- Use the most recent version of applicable form
- Provide actual sales price (POD) - not the “net” after deducting outlays and expenses
- Provide the vendor’s *non-Canadian* address not just a Canadian “care of” address
- Ensure the notification form(s) is/are signed

Administrative Issues – T2062

- If using a cover letter
 - **Use term “Certificate of Compliance”**
 - Using the term “clearance certificate” = DELAYS
- Forward form to the Tax Services Office serving the area in which property located
- Ensure inclusion of all requested Supporting Documents from the Supporting Documents List

Supporting Documentation

- 40% of applications for certificates received without proper supporting documentation
- Certificates not issued without relevant supporting documentation
- Lack of documentation results in delays as taxpayer / representative contact is required
- “Supporting Documentation” checklist exists on each of the notification forms and should be consulted when deciding what is required

Supporting Documentation

Sale of land or buildings

- If selling land or building, include copies of:
 - the offer to purchase (proposed disposition);
 - the sales agreement (actual disposition);
 - the purchase agreement (when property was acquired);
 - the registered deeds on purchase; and
 - the registered deeds on sale

Supporting Documentation

Principal residence

- If the property is a principal residence, also include:
 - Form T2091(IND), *Designation of a Property as a Principal Residence by an Individual (Other than a Personal Trust)*;
 - and
 - Form T2091(IND)-WS, *Principal Residence Worksheet*.

Personal use property (PUP)

- If selling other PUP, include:
 - a letter describing the use of the property for the
 - ownership period; and
 - a list of adjustments to the adjusted cost base.

Supporting Documentation

Rental property

- If selling rental property, include:
 - capital cost allowance (CCA) schedules for all years;
 - copies of your Canadian income tax returns and notices of assessment for the last three years;
 - documents to support the allocation of the proceeds between land and building;
 - documents to support subsection 21(1) and (3) elections regarding capitalization of interest; and
 - a completed Form T2062A

Supporting Documentation

Sale of depreciable property (other than rental property)

- For this type of transaction, include copies of:
 - the sales agreement;
 - the capital cost allowance (CCA) schedules for all years;
 - documentation to support the cost amount; and
 - a completed Form T2062A.

Supporting Documentation

Fresh Start Rule – Exemptions under Canada-US Tax Convention

- For exemptions claimed under Article XIII, paragraph 9, include:
 - Proof that you were a continuous resident of US from September 26, 1980, to date of sale
 - Value of property on December 31, 1971 (for property acquired before January 1, 1972); and
 - A calculation of the exempt portion of the gain accrued to December 31, 1984; or
 - An appraisal report for the fair market value of the property on December 31, 1984.

Supporting Documentation

General Documentation

- Appraisal report or letter of opinion from an appraiser or agent to support FMV value for transactions between non-arm's length parties
- List of improvements to property and receipts/invoices to support the additions
- Documents to support subsection 21(1) and (3) elections for capitalization of interest
- If “change in use” took place (from income-producing to personal use or vice versa) FMV at time change in use occurred (if no election made)

Miscellaneous Topics

■ Rental income

- Non-Residents required to pay 25% withholding tax on gross rental income from real property in Canada or as timber royalties earned in Canada

Options

- NR accepts 25% withholding as the final tax liability
- NR can file section 216 tax return to calculate tax on net income rather than gross income and use 25% withholding tax as credit against tax calculated
- NR can make an “Electing under Section 216”
 - NR files **NR6** - *Undertaking to File an Income Tax Return by a Non-Resident Receiving Rent from Real Property or Receiving a Timber Royalty*
 - NR6 – Withholding tax is calculated based on proposed net rental income
 - NR must file a tax return to report rental income

Resource: IT-393R2 - Election Re: Tax on Rents and Timber Royalties

Miscellaneous Topics

■ Residency

- Section 116 applies when vendor is a non-resident or considered to be a non-resident under the Act.
- If vendor is a resident of Canada before property disposed of, but will be non-resident when the property is finally disposed of, Section 116 will apply
- Purchaser's country of residence is not relevant for S116 - may be either Canadian resident or non-resident
- Purchaser must take prudent measures to confirm vendor's residence status (doubt = request certificate)

CRA Initiatives to Improve Efficiency

Pilot Project – Regional Intake Centre

- Established a Regional Intake Centre (RIC) in Kitchener/Waterloo (KW)
 - The RIC will
 - Collect all supporting documents
 - Conduct TP contact as required
 - Risk assessment
 - issue the Certificates of Compliance for low risk files
- Pilot includes **ONLY** the 4 GTA Tax Service Offices (TSOs) and London, KW and the Thunder Bay TSOs.

Resources

- Useful resources:

- *IC72-17 Procedures Concerning the Disposition of Taxable Canadian Property by Non-Residents of Canada – Section 116*
- *IT-173 Capital Gains Derived in Canada by Residents of the United States*
- *T4058 Non-Residents and Income Tax Guide*
- *T4037 Capital gains Guide*

Resources

For questions regarding s116 filing requirements please contact the International Tax Services Office

- 1(800) 267-5177.

Mailing address:

International Tax Services Office
Canada Revenue Agency
2204 Walkley Road
Ottawa, On K1A 1A8
Canada

QUESTIONS??

Questions regarding this presentation

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