

NON-RESIDENT DISPOSITION

When a non-resident vendor sells property, the disposition must be reported to the Department of National Revenue.

There are two methods by which such reporting can be accomplished:

- (1) Form T2062 is filed prior to the closing date along with a payment on account of tax. Such payment is 25% of the net gain from the sale. The vendor and the purchaser will then receive a certificate from the Department which is a clearance if the facts stated on the certificate agrees with the facts on the completed transaction.
- (2) Form T2062 is filed within 10 days of closing along with a payment on account of tax as above, or accompanied by an undertaking to pay tax liable in the case of a U.S. resident.

In situation #2, the purchaser's solicitor normally holds back enough money from the vendor to pay tax for which the vendor may be liable. The limit of the purchaser's liability in any event is 15% of the purchase price and normally this is the amount of the holdback. It should be noted, however, that where the purchaser, after making reasonable inquiry, had no reason to believe that the vendor was, in fact, a non-resident, the purchaser is relieved of the obligation to pay the 15% tax on the purchase price.

Information Circular 72-1782 is attached and describes the procedure concerning disposition of taxable Canada Property.

Interpretation Bulletin 1T-150R (also attached) explains the **situation with respect to acquisition** from a non-resident by **death or** mortgage foreclosure.

Form T2062 has been amended, in recent years, and is now more comprehensive than the form used in the past. A copy of form T2062 can be found at the end of this paper.

The Department of National Revenue has prepared an instruction sheet for the completion of Form T2062 and relevant documentation with regard to disposition of real property in Canada by non-residents. A copy of the instructions are attached. Note that the form of undertaking has recently been changed in that the reference to "permanent establishment in Canada as defined by protocol 3(f) of the Canada-U.S. Convention" has been removed.

The District Taxation Office for the Halifax Region has developed a questionnaire to be answered by the non-resident. Now Revenue Canada will determine if a non-resident has **permanent** establishment within the meaning of Protocol 3(f) of the treaty rather than including it in the undertaking.

On August 16, 1984, the new Canada - U.S. tax treaty was signed. The convention will come into effect in January, 1985. The reporting procedure to the Department of National Revenue will remain the same but it appears that in all cases when Form T2062 is filed, a payment on account of tax will have to be made. An undertaking may no longer be sufficient.

Also note that where a mortgagee is a non-resident and the mortgagor is resident in Canada, the mortgagor must withhold tax at the appropriate rate, on the interest portion of the payment, before paying the non-resident (Section 215(1)). Where a mortgagor has failed to deduct or withhold any amount of withholding tax, he becomes personally liable for the amount of the tax (Section 215(6)). However, he is **entitled to recover** that amount from future advances or collect the money through collection procedures if possible.

All enquiries with respect to non-resident disposition of real property in Canada may be made to:

Mr. Wilbur Williams
Revenue Canada Taxation

426-2210

1557 Hollis Street
Halifax, N.S.
B3J 2Y4

NON-RESIDENT ACQUISITION

The Land Holdings Disclosure Act, S.N.S. 1969, c. 13, provides that every non-resident who acquires a land holding in the Province shall immediately upon completion or operation of the document of conveyance deliver to the Registrar of Land Holdings a disclosure statement.

A non-resident means an individual who is not a permanent resident of Nova Scotia and includes a person who acquires or acquired a land holding for or on behalf of an individual who is or was not a permanent resident of Nova Scotia.

In addition, within one year of the Act coming into force, (which was 1969), every non-resident was to deliver a disclosure statement to the Registrar.

In practice, the Registrar is not receiving many disclosure statements on a voluntary basis. The Registrar is having to seek out the registration of non-residents from examining assessment rolls.

It is an offence under the Act to "wilfully fail to comply" and is liable on summary conviction to a penalty not exceeding one thousand dollars.

One point to keep in mind is that the Act does not apply to a land holding that is within the boundaries of a City or Town. Therefore, this Act is of more concern to non-resident purchasers buying rural property or any property outside a town or city.

The Act also applies to non-resident Corporations. Corporations exempt from the Act are (1) Nova Scotia Companies; (2) Companies registered under the Corporations Registration Act; (3) a Company that actually carries on its business and has erected an office, plant, factory or other structure on the property.

Form LHD100 is the disclosure statement required for individuals and Form LHD101 is the disclosure statement required for corporations. Both these forms can be obtained from

Bruce Wilmshurst 424-5490
Department of Lands and Forests
Registrar of Land Holdings
1740 Granville Street
Halifax, Nova Scotia

Instructions Re Disposition of Real Estate Situated in Canada by Non Residents of Canada

Completion of Form T2062 and relevant documentation

All appropriate blocks are to be filled in on the form which is to be completed and signed in duplicate by the vendor concerning the disposition of his or her interest.

If form is signed by a person authorized by the vendor, documentary evidence of this authority is to be submitted along with evidence which substantiates that the information submitted on the form has been provided by the vendor himself.

Full address of the vendor must be shown on the form as well as the full address of the purchaser.

B. Particulars of Property

(1) Full date on which closing of sale has taken place or on which it is to take place.

(2) The type and extent of the vendor's interest in the property, i.e., one half interest as a joint tenant with so and so or as a tenant in common with so and so.

Dower interests or interests in courtesy being inchoate are not considered to have been disposed of and should not be reported as a disposition on Form T2062. Brief description of the property and its use are to be stated and a reference to the legal description of the property being furnished in three copies is to be made. The legal description should indicate a full recital of the details as to how vendor acquired his interest in the property.

(3) The adjusted cost base to the vendor of his interest in the property is his cost of acquisition of it, plus the cost of improvements made to the property thereafter.

If the property was held as of the 31st of December, 1971, i.e., Valuation Day, the adjusted cost base for the vendor's interest in it would be **his share of the fair** market value of it as of V-Day, plus cost of improvements subsequent to V-Day.

A statement showing details of the vendor's adjusted cost base should accompany form T2062.

(4) Gross proceeds of the vendor's share of the disposition are to be indicated.

For example $1/2 \times \$50,000.00$ equals $\$25,000.00$.

If payment to the vendor is in U.S. dollars or any other foreign currency, the gross proceeds must be expressed at their Canadian Dollar equivalent based on the exchange rate of conversion which was in effect on the date on which the transaction was closed.

Note: that legal fees, real estate commissions or expenses incidental to the disposition are not deductible from the gross proceeds of the sale. Also they cannot form part of the adjusted cost base.

C. Article VI(1) of the Canada - U.S. Tax Convention

(1) As provided under the above Article of the Canada - U.S. Tax Convention, gains derived by a resident of the U.S.A. on a "sale or exchange of capital assets" are exempt if the vendor does not have a permanent establishment in Canada as defined in Protocol 3(f) of the Convention.

Please note that a gain on a deemed disposition on death is precluded from the above exemption and that an Income Tax Return is to be filed on behalf of the deceased by the Executor or Administrator of the estate to report it instead of Form T2062.

In the case of a disposition by way of an inter vivos gift, it is to be reported on Form

T2062 by the transferor in the usual manner. However, as provided under SS116(5.1), the proceeds received by him are deemed to be fair market value at the time of the disposition and the gain incurred is precluded from the exemption under the Convention.

(2) Whether or not a vendor resident in the U.S.A. has a permanent establishment in Canada as defined in Protocol 3(f) depends on the use he has made of the property he is disposing of and of OTHER REAL ESTATE owned by him situated in Canada. If he carries on business in Canada through an agent or an employee established here who has general authority **to contract for him**, then he has a permanent establishment in Canada and the gain on his disposition is not exempt.

D. If his gain is not exempt under the convention for one of the reasons stated above, payment on account is required in accordance with the T2062 form.

If the gain is exempt we may be able to issue a compliance certificate without payment under the following conditions:

(1) The Notice (T2062 Form) is submitted at least 30 days in advance of the date of disposition. (2) The attached questionnaire is completed and the applicable information is submitted. (3) A written undertaking to pay all legal taxes owing (see format attached).

(full name and address of non-resident transferor) a resident of the U.S.A., in consideration of the issue of a certificate under subsection 116 of the Income Tax Act in respect of the disposition of my (extent of interest i.e. full or one-half interest as the case may be) in real property at (full address of property) to (full name and address of purchaser(s)) on (full date of disposition) undertake to pay all taxes legally owing by me under the laws of Canada.

Signature of Non-resident