

Canadian tax issues for individuals in Hong Kong



by Barry Macdonald

This article answers some commonly asked questions pertaining to Canadian tax compliance requirements for Hong Kong residents, including former residents of Canada, who own Canadian residential or commercial real estate.

I AM A NON-RESIDENT OF CANADA BUT I OWN RENTAL REAL ESTATE IN CANADA. AM I REQUIRED TO PAY CANADIAN TAX?

Yes. The tenant, or the Canadian property agent, is required to deduct 25 per cent from each gross rental payment and remit this withholding tax to Revenue Canada. You are jointly liable for these withholding tax payments. Without these withholding tax procedures, Revenue Canada could find it difficult to collect an income tax liability from a non-resident owner. You have the option each year to file an income tax return within two years and report the rental income on a "net" basis (gross rent minus deductible expenses). This would normally result in a refund of most or all of the withholding tax.

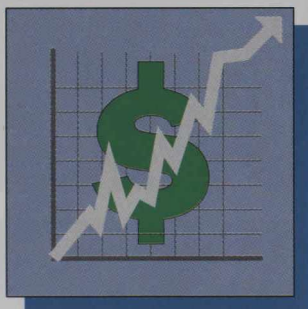
WHAT DO DEDUCTIBLE EXPENSES INCLUDE?

Mortgage interest expense (but not principal repayments), property tax, insurance, agent fees, and repairs and maintenance. Capital cost allowance (tax depreciation) could be claimed if the above expenses are not sufficient in a year to reduce income to nil; however, CCA claims are not advisable if the rental property is your former, or will subsequently become your, principal residence.

CAN I FINANCE THE PROPERTY ACQUISITION WITH A LOAN FROM A HONG KONG CREDITOR?

Yes, it is possible. The interest expense should still be deductible to you. As long as you are a non-resident of Canada, the loan is not secured by a mortgage on the property, and you are

not viewed as carrying on business in Canada, no withholding tax should be liable on the interest expense payments to the non-resident creditor.



AS I KNOW MY NET RENTAL INCOME WILL BE NIL OR NEGATIVE, CAN I OBTAIN A WAIVER FROM THE 25 PER CENT WITHHOLDING TAX?

Yes. An NR6 form can be filed with Revenue Canada before the beginning of the year (or before the first rental payment is due in the year). A Canadian resident agent must jointly sign this form (and becomes jointly liable if any tax liability does result in the year). Revenue Canada will then grant a waiver indicating that the 25 per cent withholding tax only applies on any "net" rents in the year. You must file an income tax return by 30 June of the following year.

CAN THIS NR6 WAIVER ALSO APPLY TO INTEREST INCOME FROM A CANADIAN BANK ACCOUNT MAINTAINED FOR THE PROPERTY?

No. The Canadian bank is still required to deduct and remit a non-refundable 25 per cent withholding tax on interest

income. This interest income would not be reported on your income tax return as it is already subject to the 25 per cent withholding tax.

MY PROPERTY AGENT IS RELUCTANT TO SIGN THE NR6 WAIVER. WHY AND WHAT ARE MY ALTERNATIVES?

Some professional property agencies are reluctant to sign these forms as they become jointly liable with you if an unpaid tax liability results. They may sign if you give them some type of security (such as a letter of credit). Alternatively, you might be able to entice a relative or friend in Canada to sign the form. The professional property agent can still continue to manage the property for you.

I WOULD LIKE TO SELL MY CANADIAN PROPERTY. IS MY CAPITAL GAIN TAXABLE?

Yes. A non-resident vendor should file Form T2062 before, or within 10 days of, the disposition and remit a 33 per cent withholding tax on the difference between gross proceeds and adjusted cost base. A clearance certificate is then issued by Revenue Canada. If a clearance certificate is not obtained, the purchaser is liable for a 33 per cent withholding tax on gross proceeds. You should file a Canadian income tax return by the following 30 April to report the capital gain. A partial refund of the withholding tax can usually be obtained. ♦

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