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## The Lights Are Off and Nobody's Home? You May Have to Pay for That - Vacancy Taxes Now in Force in Toronto and Ottawa in Addition to Federal Tax

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### Key Takeaways

- There is an obligation on **all** registered owners of Residential Units (including principal residences, tenanted properties, and exempted properties) in Toronto and Ottawa to submit a declaration of occupancy status in their respective jurisdiction by **February 2 in Toronto** (which was extended in a press conference by Mayor Tory to February 28 for 2023), and **March 16 in Ottawa** (with a late declaration deadline of April 30) of the following calendar year.
- A vacant Residential Unit (or one deemed to be vacant) will be subject to a tax of 1% of its assessed value on the most recent assessment roll. Failure to make a declaration or submission of a false declaration may lead to fines ranging from \$250 to \$10,000 in Toronto and \$500 to \$10,000 in Ottawa and having the Residential Unit deemed vacant and subject to the tax. Unpaid taxes form a priority lien on title that would bind future owners.
- The federal tax is payable by non-resident or non-Canadian owners of vacant or underused residential property but **affected owners**, including Canadian corporations, partners of a Canadian partnership, and trustees of a Canadian trust, must still file a return for the residential property by April 30 of the following calendar year even if exempt from paying the tax.

### Overview

With the demand for housing on the rise, increasing the supply of available residential units has become a priority at all levels of the Canadian government. Following in the City of Vancouver's footsteps, which introduced a [residential vacancy tax in 2017](#), the [City of Toronto](#) and the [City of Ottawa](#) have now also introduced a one percent yearly tax on the current assessed value of vacant (or deemed vacant) homes with the ultimate goal of reducing idle residential real estate and generating revenue to fund new housing initiatives. Mayor John Tory predicted [back in 2020](#) that the new regime would generate between \$55 and \$66 million per year in Toronto alone.

At the Federal level, the Government of Canada enacted the [Underused Housing Tax Act](#), S.C. 2022, c. 5,

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s. 10, which came into effect on January 1st of 2022 and the [Prohibition on the Purchase of Residential Property by Non-Canadians Act](#), S.C. 2022, c. 10, s. 235, the latter coming into force on January 1, 2023, and discussed in a prior [Cassels article here](#).

## VACANCY TAXES IN TORONTO AND OTTAWA

### When Did the Tax Come into Force and When are Filings Due?

Both municipal taxes apply retroactively to vacant “Residential Units” and came into force on January 1, 2022. Accordingly, properties which are vacant or deemed vacant in 2022 will be subject to the tax.

Filings for Toronto this year are due by February 2, 2023 (with a late declaration deadline of February 28, 2023) while filings for Ottawa are due by March 16, 2023 (with a late declaration deadline of April 30, 2023). Both filing portals can be found here: [Toronto Filing](#); [Ottawa Filing](#). Homeowners in Toronto may submit a [paper declaration](#) which must be completed in full and received by the City prior to the deadline.

### When is a “Residential Unit” Considered Vacant?

The City of Toronto's [By-law 97-2022](#) considers a Residential Unit (being a parcel of property, or portion of one, classified as a residential property on the most recently returned assessment roll and contains a dwelling unit with a dedicated washroom and kitchen) to be a “Vacant Unit” if for more than six months during the applicable taxation year: (i) it is not the Principal Residence (which is defined as a Residential Unit in which a person is ordinarily a resident) of the owner or any other occupant; or (ii) it is not occupied for residential purposes by one or more tenants cumulatively for at least six months in said year.

Furthermore, a Residential Unit is deemed vacant by the City of Toronto if: (i) an owner fails to make a declaration for each Residential Unit for which they are the registered legal owner; or (ii) fails to provide additional information or evidence upon demand by the City of Toronto.

The City of Ottawa's [By-law 2022-135](#) considers a Residential Unit (a property classified in the residential property tax class under the *Assessment Act* (Ontario), and each dwelling unit is included within the assessment) to be vacant if it has been unoccupied for more than the aggregate of 184 days during the previous calendar year, is not the Principal Residence of an occupier and it is not occupied for residential purposes by a tenant or sub-tenant under a tenancy or sub-lease agreement for a term of at least 30 consecutive days. Under Ottawa's by-law, a Principal Residence is defined as a residential property, as classified under the *Assessment Act* (Ontario), that is owned or rented, where the person is ordinarily resident and makes their home and conducts their daily affairs, including paying bills and receiving government documentation and where the person has no other property designated as such within any

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other jurisdiction. Ottawa's by-law also deems a Residential Unit as vacant if an owner: (i) fails to make a status declaration (advising the City of Ottawa whether the Residential Unit was vacant and whether it was subject to an exemption) by April 30<sup>th</sup> of the year in which the tax is imposed; (ii) submits a false status declaration; (iii) fails to provide information or fails to submit any evidence upon request by the City of Ottawa; or (iv) provides false information or submits false evidence to the City of Ottawa.

Accordingly, principal residences may be left unoccupied for periods of up to a total of six months in Toronto, or 184 days in the case of Ottawa, throughout the taxation year without being considered vacant and thus liable for the tax.

## Who is Considered an Owner and What do They Have to Do?

Under both municipal taxes, each "Owner" is required to declare the occupancy status for each Residential Unit they own on an annual basis (regardless of whether a unit is vacant or not, principal residences included), through their city's respective online declaration portal/form (see below). In Toronto, an Owner is defined as the registered legal owner of a Residential Unit though a personal representative can also submit the declaration on the owner's behalf. The Ottawa By-Law defines an owner as person(s)/corporation listed on the property tax roll as the registered owner of the property or their authorized agent.

Failing to declare or making a false declaration could lead to fines between \$250 and \$10,000 in Toronto and \$500 to \$10,000 in Ottawa, and the classification of the dwelling as vacant and being subsequently liable for the one percent vacancy tax.

## Calculating the Tax

A vacant Residential Unit (or one deemed vacant) in Toronto or Ottawa will be subject to a tax of one percent of the Current Value Assessment (CVA) payable by May 1 in Toronto and the third Thursday in June in Ottawa, corresponding with the final property tax bill. The CVA of the given Residential Unit will be reflected on the most recently returned assessment roll as of the respective payment dates. For example, if a property was considered vacant in 2022 and the CVA of a property is \$1,000,000, the owed tax amount would be \$10,000 payable in 2023.

In Toronto and Ottawa, interest will be applied to overdue tax amounts at a rate of 1.25 percent on the first day after default, and then monthly for every subsequent unpaid month for a total of 15 percent per annum.

## Exemptions

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Notwithstanding the somewhat general vacancy rules discussed above, there are some exemptions available to owners. If a dwelling was considered vacant under either by-law, but the vacancy was due to one of the following reasons, the homeowner will be exempt from paying the tax.

The following exemptions are applicable in both Toronto and Ottawa unless otherwise noted:

1. **The vacancy (more than six months in Toronto, or more than 184 days in Ottawa), was due to the death of an owner:** a copy of the death certificate serving as supporting documentation.
2. **The property underwent repairs or renovations that prevented occupation:** such repairs or renovations must be found to be for the normal use of the property, all required permits must be issued, and the City's Chief Building Official must agree that the given repair or renovation is without undue delay.
3. **The principal resident of the home was in the hospital or a long-term care facility:** a signed letter from the given health care facility serving as supporting documentation.
4. **The property was purchased in the applicable taxation year and legal ownership was transferred to an arm's length transferee:** a copy of the land transfer deed serving as supporting documentation.
5. **The property remained vacant solely because of a court order or court proceeding:** the relevant court order serving as supporting documentation.
6. **(Toronto Only) The property is required for occupation for employment purposes by its owner for at least six months while the owner has a principal residence outside of the Greater Toronto Area:** proof of residency reflecting a primary residence outside of the GTA and a signed employment letter or contract serving as supporting documentation.
7. **(Ottawa Only) The property was used as a Short-Term Cottage Rental as defined in the Short-Term Rental (By-law No. 2021-104) and:** the Owner has a host rental permit; and the unit was rented for more than 100 days with proof of revenue; and the property is located in one of the following rural zones: AG – Agricultural, RC – Rural Commercial, RR – Rural Residential, RU – Rural Countryside other than subzones AG4 to AG8, inclusive.

It is important to note that if a Residential Unit is deemed to be a vacant unit on account of a declaration not being filed and/or requested supporting documentation not being provided, then the foregoing exemptions do not apply and the tax would be payable.

## FEDERAL TAX REGIME: THE UNDERUSED HOUSING TAX ACT

At the Federal level, the [Underused Housing Tax Act](#), S.C. 2022, c. 5, s. 10 (the Act), which came into effect on January 1st of 2022, applies a one percent annual tax on vacant or underused residential property held primarily by non-resident and non-Canadian owners but can also include Canadian owners in certain circumstances.

## What Properties are Applicable and Who Has to File a Return?

The Act specifically targets residential property, which can generally be categorized as a detached or semi-detached house, containing no more than three dwelling units, a part of a building that is a semi-detached house, rowhouse, or residential condominium or similar premises intended to be a separately owned unit, or any other prescribed property by the minister. High-rise apartment buildings, mobile homes, quadruplexes, commercial cottages, hotels, and buildings with more than 50% retail or office use, are excluded, as further outlined [here](#).

Notably, in our enquiries with the Ministry with respect to mixed-use properties, they have indicated that the 50% residential threshold is calculated based on square footage (and not, for example, income) and only applicable in buildings or structures under the same parcel of land.

All owners of residential property who are not an “excluded owner” as of December 31 of the calendar year have to file a return for each owned property in Canada.

An excluded owner of a residential property in Canada has no obligation or liability under the Act. Excluded owners include (but are not limited to) the following:

1. an individual who is a citizen or permanent resident of Canada, unless you are an owner of the residential property as either of the following: (i) a trustee of a trust (except if you are the personal representative of a deceased individual, or (ii) a partner of a partnership;
2. an owner of the residential property as a trustee of any of the following trusts:
  - a mutual fund trust for Canadian income tax purposes
  - a real estate investment trust for Canadian income tax purposes
  - a specified investment flow-through (SIFT) trust for Canadian income tax purposes
3. a corporation that is incorporated under the laws of Canada or a province whose shares are listed on a Canadian stock exchange designated for Canadian income tax purposes; and/or
4. a registered charity for Canadian income tax purposes.

If you are not an excluded owner but are an owner of residential property in Canada on December 31, then the Canadian Revenue Agency (CRA) considers you an “affected owner” and you have to file an annual return. Affected owners include (but are not limited to) the following:

1. an individual who is not a Canadian citizen or permanent resident
2. an individual who is a Canadian citizen or permanent resident and who owns a residential property as a trustee of a trust (other than as a personal representative of a deceased individual);
3. any person, including Canadian citizens, that owns a residential property as a partner of a partnership;

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4. a foreign corporation that is incorporated outside Canada;
5. a Canadian corporation whose shares are not listed on a Canadian stock exchange designated for Canadian income tax purposes; and/or
6. a Canadian corporation without share capital.

## What Exemptions Exist for Affected Owners?

Owners that fall into one of the above affected categories may be eligible for [exemptions](#) from payment of tax under the Act. Notable exemptions include:

**1. Specified Canadian Partnerships, Trusts and Corporations:** the owner of the dwelling unit for the calendar year is: (i) solely a partner of a specified Canadian partnership for; (ii) solely a trustee of a specified Canadian trust; or (iii) a specified Canadian corporation.

a. A "specified Canadian partnership" is a partnership whose members are all, on December 31, any of the following: (i) excluded owners, (ii) individuals who are citizens or permanent residents of Canada and who would be excluded owners if they were not owners of the residential property as partners of a partnership, or (iii) specified Canadian corporations.

b. A "specified Canadian trust" is a trust whose beneficiaries that have a beneficial interest in a residential property are all, on December 31, excluded owners or specified Canadian corporations.

c. A "specified Canadian corporation" is a corporation that is incorporated or continued in Canada and that meets either of the following on December 31:

i. it is a corporation where more than 90% of either its equity shares or voting shares are owned or controlled, directly or indirectly, by: (i) an individual who is either a citizen or permanent resident of Canada, (ii) a corporation that is incorporated or continued under the laws of Canada or a province, or (iii) any combination of those individuals or corporations; or

ii. it is a corporation without share capital where both of the following conditions are met: (i) the chairpersons and other presiding officers are citizens or permanent residents of Canada, and (ii) more than 90% of its directors are citizens or permanent residents of Canada;

**2. Primary Residence:** the dwelling unit is the primary place of residence of the owner, the owner's spouse or common-law partner; or a child of the owner or the owner's spouse or common-law partner, who occupies the residential property for the purpose of authorized study at an institution designated to host international students;

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3. **Qualifying Occupancy:** the dwelling unit is occupied in periods of at least one month, for a total of a minimum of 180 days of the year by a party that deals with the owner at arm's length, a non-arm's length party who is given continuous occupancy under a written agreement that is not below fair market rent, the owner or owner's spouse or common law partner who is in Canada for the purpose of work with a Canadian work permit, or a spouse, child or parent of the owner who is a Canadian citizen or permanent resident;
4. **Construction and Renovation:** the dwelling is uninhabitable for a period of at least 120 consecutive days in the calendar year as a result of a renovation provided that this exemption was not granted in respect to the property for any of the nine prior calendar years;
5. **Death of Owner:** no tax is payable for the calendar year or following year where an owner of at least 25% of the property has died; and/or
6. **Acquisition Year:** no tax is payable for a calendar year if the owner first acquired the residential property during the year and did not own the same property at any time during the nine prior years.
7. Certain **vacation properties**, and **properties that are uninhabitable** for a period of 60 consecutive days or more.

## How to Calculate the Amount Owed?

Affected owners that do not fall under one of the above exemption categories must pay the tax calculated by multiplying the value of the residential property by the one percent tax rate, then by multiplying that result by their ownership percentage of the property.

The starting point for assessing the value of the residential property can either be determined by the property's taxable value or fair market value. For the former, the value is assessed as the greater of i) the tax assessed for the year and ii) the most recent sale price during the year. For the latter, the owner must make an election for the value of the property to be determined in a manner deemed appropriate by the Minister of National Revenue. Generally, this will require an appraisal, with a mandatory election being filed by April 30th of the following year.

## When is the Filing Due?

The tax return for a calendar year must be submitted and paid by April 30 of the following calendar year and if an owner owns two or more residential properties in Canada on December 31 of a year, they must file a separate Underused Housing Tax return for each property.

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Penalties for failing to pay and submit the required documentation on time is equal to the greater of a \$5,000 fine for individuals or \$10,000 for affected corporations and the amount that is the total of i) five percent of the tax payable by the person in respect of the residential property for the calendar year and ii) the product obtained when three percent of the tax owing is multiplied by the number of complete months from the due date of the required return that the balance remains outstanding.

## **IMPACT ON REAL ESTATE TRANSACTIONS AND PRACTICE TIPS**

Any unpaid vacancy tax can form a priority lien on the property which would bind any future owners or interest holders in the property. For this reason, we would recommend that in a purchase and sale transaction of applicable property, a purchaser require the vendor to deliver copies of the appropriate filings as part of the transaction closing steps. Further, a purchaser should have their lawyer obtain a written representation and warranty from the vendor that the subject property was not vacant in the year prior to the transaction, or that in the case that it was vacant, either the required tax was correctly paid or a valid exemption applied. Purchasers can also speak with their lawyers to discuss the option of obtaining title insurance coverage for vacancy taxes in order to cover losses stemming from the tax.

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*This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.*