

BREAKFAST FOR BUSINESS

“Home Sweet Home???”

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Presenters:

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AGENDA

- Principal Residence Exemption
- Real Property Matters in Estate Planning
- CRA and House Flips

Principal Residence Exemption – October 3, 2016

Current Rules

- Taxpayer (and spouse) must designate the property for each year the property is owned.
- “Principal Residence”: where the taxpayer (or spouse, common law partner or child of taxpayer) has “ordinarily inhabited”.
- Principal Residence Exemption: complete exemption of capital gain on “principal residence”.
- Exemption determined by formula:

$$\text{Capital Gain (A)} - \frac{\text{Capital Gain (A)} \times \text{Number of Years as PR + 1 Year (B)}}{\text{Number of Years owing property (C)}}$$

Principal Residence Exemption – October 3, 2016

Current Rules (cont'd)

- The formula adds one extra year to the principal residence years – this recognizes that a taxpayer may have 2 principal residences in a given year (B) (“One-plus rule”).
- A personal trust allowed to claim principal residence exemption: only trust is required to be resident, no corporate beneficiary allowed and trust must designate a “specified beneficiary” (a beneficiary (or spouse, child) who “ordinarily inhabited” the property).
- T2091 (for individuals) and T1079 (for trusts) required to be filed for the year in which the taxpayer sold the property. Administratively CRA waives this requirement if the exemption eliminates the gain.

Case Studies

- Husband and wife have 2 properties: One principal residence and one rental property. Husband is moving into rental property. Change in use. Tax on capital gain payable immediately because they claimed CCA on rental property: s. 45(4) of ITA.
- “Remainder Interest” gifted to children and mother kept “Life Interest” in property to save on probate. Deemed disposition of “remainder interest” at time of gift. Principal residence exemption may apply. Kids acquire remainder interest at FMV. When property is sold to third party, kids are deemed to have disposed of Remainder Interest and have to pay tax on the gain. Mother is deemed to have disposed of Life Interest. She can claim her principal residence exemption.

Principal Residence Exemption – October 3, 2016

Proposed Changes

- One-Plus Rule: Effective October 3, 2016, One-Plus Rule applies only if the taxpayer is a resident in Canada during the year in which the taxpayer acquires the property. An individual not resident in Canada in the year the individual acquires the residence will not be able to claim the exemption for that year. Applies to dispositions after October 3, 2016.
 - No exception for Canadian resident who emigrates from Canada after acquiring property
 - Individual who immigrates to Canada after acquiring property will not get One-Plus Rule
 - A non-resident with a Canadian spouse may be able to claim the One-Plus Rule

Principal Residence Exemption – October 3, 2016

Proposed Changes (cont'd)

- Exemption claimed by trusts: Principal residence exemption available to trust with a beneficiary (not just a spouse or child of beneficiary) who is a Canadian resident and that is:
 - An alter ego trust
 - A spousal or common law partner, joint/spousal trust
 - A qualified disability trust
 - A trust for minor children of a deceased parent

Principal Residence Exemption – October 3, 2016

Proposed Changes (cont'd)

- If the trust acquires property after October 3, 2016, the trust must provide the beneficiary with a right to the use and enjoyment of the property as a residence throughout the period in the year in which the trust owns the property.
 - No more exemption for discretionary trusts to protect overspending children
 - Henson trust will not be entitled to exemption
 - Proposed rules provide that trusts who are not listed in the previous slide and own property at the end of 2016, the trusts will be entitled to Principal Residence exemption up to FMV of property at the end of 2016. Future gains will not be exempt. Wind-up of trust? Remedial rules to allow roll out: 107(4.1) and 108(4)

Principal Residence Exemption – October 3, 2016

Proposed Changes (cont'd)

- **Limitation Period s.152(4):** no limitation period for CRA to reassess a taxpayer (except a REIT) if taxpayer does not report a disposition or real estate for the year in which disposition occurs. Rule applies to taxation years that end on or after October 3, 2016.
- Vendors will be required to report the sale of their principal residence commencing the 2016 taxation year and will be required to make the principal residence designation to claim the principal residence exemption.
- **Late-filed designation:** CRA will accept late filed designation but taxpayer will be subject to penalty (max of \$8,000).

New CRA Income Tax Folio S1-F3-C2 “Principal Residence” (1 December 2016)

- Principal Residence for all years: Designation of Schedule 3 of T1 (address of property, acquisition date and proceeds of disposition)
- If principal residence exemption for part of the years: Form T2091 (IND)

REAL PROPERTY AND ESTATE PLANNING

- Administration of Estates
- Wills/Estate Planning
- Power of Attorney for Property

Real Property and Administration of Estates

- When do you need to Probate a Will?
- Can the Estate Trustee deal with the Real Property?
 - Dying with a Will
 - Dying without a Will
- Registry System vs Land Titles System (or Land Title Conversion Qualified)

Real Property and Administration of Estates

- Types of Ownership: (assuming Land Title System or LTCQ)
 - Joint Ownership with a Right of Survivorship
 - Between Spouses
 - Probate not required
 - Between Parent and Child
 - Not recommended
 - Probate may still be required
 - Tenants in Common
 - Probate is required

Real Property and Administration of Estates

- Placing the Property into Trust
 - Spousal Trust or Family Trust
 - In the names of the Trustee
- Mortgages on Real Property
 - Owned by the deceased at the time of death

Real Property and Estate Planning

- Multiple Wills:
 - “First Dealing” Exemption
 - Property in Other Jurisdictions
 - Property held by Corporation as bare trustee

Real Property and Estate Planning

- Declaration of Intentions/Declaration of Trust
 - Need to be very clear about intentions
 - Declaration of Intention creating a Resulting Trust, plus a hotchpot provision in Will
 - Declaration of Intention creating a Gift of Right of Survivorship
 - Document to be created at the time of transfer

Real Property and Power of Attorney for Property

- A party may grant a POA to another in order to authorize that party to act on his or her behalf with respect to land or an interest therein.
- Limited Power of Attorney vs General Power of Attorney
- Continuing Power of Attorney vs Springing Power of Attorney

Real Property and Power of Attorney for Property

- If an attorney wants to act under a POA, such POA needs to be registered with the Land Titles Office.
- Dealing with real estate under a POA is not “business as usual” (*Home Trust Co. v. Zivic*)

HOUSE FLIPS AND CRA

- Short-term Holds
- House Hoppers
- APS Assignors
- CRA Audit Project

House Flips and CRA

- Huge Recoveries for CRA
- Income Tax
- GST/HST Rebates

Real Property Characterization: Basic Principles

- Business Income
- Adventure in the Nature of Trade
- Profit vs Capital Gain
- Principle Residence Exemption
 - Must first be capital gain
 - Occupying is not enough

Real Property Characterization: Basic Principles

- Primary Intention
- Secondary Intention
 - CRA overreaching?
- Factors Considered

Condo/New Home Flips

- Buying pre-construction
- Purpose/Intention of Purchase?
- How to Prove Intent?
- Change in Circumstances?
- Upgrades?

Income Tax

- Principal Residence Exemption
- If denied, business income?
- Settle for capital gain?
- Penalties?

GST/HST and Flips

- Two main issues:
 - GST/HST Rebate
 - GST/HST on Transaction

GST/HST Rebate

- Primary place of residence
 - Not same as ITA
- Ownership requirements
- Intention
- Review of Cases for Guidance
- Consider renting

GST/HST on Assignments

- Principal Residence?
- Are you a “Builder”?
- Individual or Corporation
- If individual, is it a business or adventure?
- Assignee Beware: only one NHR application can be made

Tips on Dealing with Audit/Objections/Appeals

- Factors to support intention
- Questionable Audit Positions
- Penalties based Objections
- No PRE but avoid business income