

WELCOME TO BELL SPAGNUOLO LEGAL OFFICES

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INFORMATION FOR NON-RESIDENT BUYERS AND SELLERS OF REAL ESTATE

There are certain legal and accounting issues that arise when a non resident of Canada acquires or sells property in Canada. These issues are set out below.

Non-Resident Purchases

The issues that arise from a non resident purchase are not from the purchase of the property, but rather from holding the property over a long period of time. There are no restrictions for a non resident purchase, nor are there tax implications. A non resident may purchase as many properties as they wish.

Tax issues may arise on the holding of property by non-residents. Non-residents of Canada are subject to tax on various kinds of income paid to them, including rental income. If you are a non resident and are renting property in Canada, a tax return must be filed each year.

Non-Resident Sales

While there are no issues when a non-resident acquires property, this is certainly not the case when a non-resident disposes of property.

The Income Tax Act of Canada provides that whenever a non-resident disposes of property, the non-resident is required to pay the appropriate amount of taxes on any gain. In order to satisfy the purchaser that the appropriate amount of taxes are being paid, the vendor must provide to the purchaser, on or before closing, a clearance certificate from Revenue Canada. This certificate is issued by the federal government and certifies that a certain amount of money is payable for the taxes. The amount owing is deducted from the sale proceeds and sent directly to the federal government by the vendor's lawyer.

The clearance certificate is issued pursuant to section 116 of the Income Tax Act and is usually required on the closing date. It may be applied for in advance of the closing by the vendor, but not until there has been a contract of purchase and sale entered into by the vendor, with all subjects being removed. The wait for the clearance certificate is usually around 6-8 weeks, so in a perfect world, there would be a 6-8 week lead-time between when the subjects are removed and the completion date.

Complications can arise if the certificate is not obtained prior to the closing date. In such a case, the purchaser is required to holdback from the sale proceeds a percentage of the selling price. This percentage is either 25% or 50%, depending on whether the property is non-depreciable property (a residence of the vendor) or depreciable property (the property has been rented). The transaction closes with the money remaining in a lawyer's trust account until the certificate is obtained. Once the certificate is obtained, the taxes are paid from the holdback and the vendor receives any amount left over.

Note that the holdback is based on the selling price, not the equity in the property. If there is financing on the property, the vendor may need to pay this financing from other sources.

Who is a Non-Resident?

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The term "resident" is not defined in the Income Tax Act, however, the courts have held "residence" to be a "matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question." The courts have held that an individual is "ordinarily resident" in Canada for tax purposes if Canada is the place where the individual, in the settled routine of his or her life, regularly, normally or customarily lives. In making a determination of residence status, all of the relevant facts in each case must be considered, including residential ties with Canada and length of time, object, intention and continuity with respect to stays in Canada and abroad.

Please remember that the Income Tax Act frequently changes, and there are often new cases dealing with the issues set out above. While we try to keep our website as current as possible, please do not rely on the above without talking to one of our lawyers. Should you require a referral to an accountant, we would be more than happy to provide such a referral.

The information you obtain at this site is not, nor is it intended to be, legal advice. You should consult a lawyer for individual advice regarding your own situation.

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