

International Buyers

Introduction.

In British Columbia foreign buyers are generally treated on an equal footing with local buyers in that there are no general restrictions on the purchase and sale of real estate by non-residents. However there are particular aspects of the Income Tax Act, the Excise Tax Act and the Property Purchase Tax Act that do apply to Foreign Buyers and with which they should be familiar.

Property Purchase Tax.

Firstly with respect to the Property Purchase Tax Act all purchases of real estate in British Columbia are subject to a tax payable at the time of purchase equal to 1 percent of the first \$200,000 of value and 2 percent on any portion over \$200,000. Thus the tax payable on a purchase of \$500,000 would be by example \$8,000. Unlike British Columbia residents foreign buyers are not entitled to the First Time Buyers exemption and the full tax is payable even if they are first time buyers.

Income Tax Act.

Secondly with respect to the Income Tax Act foreigners (i.e. non- residents under the Income Tax Act at the time of sale) should be aware that on sale of a rental, vacation or commercial property capital gains tax is payable. Until a special clearance certificate is obtained from the Canada Revenue Agency (“CCRA”) the selling lawyer or notary must withhold 25 percent of the gross sale proceeds. If time permits this clearance certificate can be obtained before completion but it is normally received after closing. Once a certificate is obtained then 25 percent of the gain portion only (gross proceeds less original cost) is remitted to CCRA and the balance of the funds heldback may be released to the seller. The non-resident seller then must file a Canadian Tax Return in the year of sale reporting the gain and paying tax on 50 percent of the gain at the graduated tax rates. By illustration a \$200,000 capital gain taxed at the highest marginal rate of 43.5 percent would result in approx \$43,500 in tax payable. In the return allowance is made for the deduction from the proceed of sale of closing expenses such as commission and legal fees and thus after filing a return a refund of funds initially paid on account of tax is often returned to the seller.

Withholding on Rental Income.

You should also be aware that any rental or other income received from the property as a non- resident is also subject to a withholding tax of 25 percent on the gross amount. It is possible to receive in advance from the CCRA approval to reduce the amount withheld on an ongoing basis based on an estimate of expenses. While this reduces the amount of withholding tax required you will then be required to file an annual tax return and pay income tax on the net income from the property at the graduated rates. Our property management department can handle the management aspects including the required remittances and elections.

Goods and Services Tax.

Thirdly foreign buyers should be aware that, unless exempt, real estate in general is subject to a 7 percent tax on purchase under the Excise Tax Act, commonly referred to as G.S.T. However this is not a matter of concern for most buyers as purchases of used residential housing (approximately 80 percent of all transactions) are exempt from G.S.T. under the Act and in these cases no tax is payable.

Commercial Properties.

Additional factors need to be considered with respect to the sale and purchase of commercial properties. By example generally G.S.T. will be applicable on the purchase (though this can be “flowed” through by election of the buyer and the seller) and on sale the recapture of depreciation effects taxes payable by the seller. Professional advice should be sought before acquiring or disposing of commercial real estate.

Summary.

Canada and British Columbia continue to treat non-residents fairly and equitably with respect to the purchase and sale of real estate. However we would recommend if you are purchasing real estate as a non resident of Canada that you consult with a lawyer or accountant with experience in this area.

Prepared as a general guide by Michael P. A. Holmes B.A. L.L.B. President Pemberton Holmes Ltd, October 2004 with assistance from Tim Jackson C.A. Trenholme, Jackson and Eade.