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What is the process when a non-resident sells their real property?

Purchaser Requirements

1. The purchaser is required to withhold 25% (or 50% in the case of depreciable property) of the total purchase price. This is to protect the purchaser, since in the case the vendor does not pay their taxes, the purchaser will be liable to pay and remit said amount to the CRA.

   In practice, the holdback is usually held by the lawyer for the vendor, but is an obligation imposed by the purchaser's lawyer until the Certificate of Compliance, also known as the **clearance certificate**, is received.

Non-resident Vendor Requirements

1. When a non-resident vendor sells Canadian property, they have an obligation to inform the Canada Revenue Agency (CRA) about the disposition either before, or within 10 days after the sale. <u>The penalty for late filing is $25 per day to a maximum of $2,500, even if no taxes are owing.</u> If the property is jointly held, then multiple penalties will apply.

   This is done by filing a Certificate of Compliance (T2062 and T2062A), which is also referred to as a **clearance certificate**. The forms require that various pieces of information be attached to them as part of the submission to the CRA. These would include the Purchase/Sales Agreement relating to the original purchase and to the current sale, copies of previously filed Canadian tax returns (Section 216 Returns for rental property), etc. just to mention a few.

   If the CRA then issues a **clearance certificate** which is provided to the purchaser, *tax is withheld on the gain and on any recapture instead of on the gross selling price*. Therefore, from the vendor's perspective, it is best to get the **clearance certificate** before the sale completion date, to reduce the withheld amount from 25% of the sale price to 25% of the net gain.

2. The CRA will request payment or acceptable security to cover the resulting taxes payable. Since the holdback is generally held by the vendor's lawyer, they will make the appropriate payment to the CRA.

3. Once the CRA has received this amount, it will issue a Certificate of Compliance. Our experience is that the CRA is currently taking around 3 months to process the forms and issue the Certificate of Compliance.

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4. Upon receipt of a copy of the Certificate of Compliance, the purchaser can release the remaining amount withheld to the vendor. In practice, the lawyer for the vendor will release the remaining amounts withheld to the vendor.

5. After the end of the calendar year, the non-resident vendor is required to file a Canadian tax return under Section 115 to report the sale. By filing a tax return reporting the net gain, you will be entitled to a partial refund of the amount of taxes withheld by the CRA. In effect, the process forces you to comply with your tax obligations; otherwise, you'll be donating a significant sum to the Canadian government.

NOTE: If the purchaser does not receive the Certificate of Compliance or a "comfort letter" from the CRA, they are required to remit the amount withheld from Step 1 to the CRA within 30 days after the end of the month in which the property was purchased. Failure to remit the withholdings to the CRA by the due date may result in a penalty to the PURCHASER equal to 3%, 5%, 7%, 10% or 20% of the amount that was required to be remitted.