Certificates of Compliance
Non-Residents Disposing of Taxable Canadian Property
Background

- Under Section 116 of the Income Tax Act,
  - NR vendors disposing of certain taxable Canadian property (TCP) are required to notify the CRA either before they dispose of TCP or within 10 days of disposition.

- The CRA will issue a “Certificate of Compliance” to NR vendor once
  - required information is submitted and verified, and
  - receipt of appropriate payment of tax or security is remitted.

- A copy of Certificate of Compliance is sent to purchaser – protects purchaser from further tax liability.
Presentation Outline

- Explain key elements impacting the issuance of a Certificate of Compliance
- How NR vendors and/or their representatives can assist in expediting the process
- Discuss CRA initiatives designed to improve efficiencies in the S116 process
- Resources

Note: Discussion will be limited to “real” property for the interest of the target audience
Key Elements in the Process

- Vendor identification issues – ITN
- Administrative issues with T2062 forms
- Supporting Documentation
- Miscellaneous topics
Vendor Identification Issues - ITN

- A Certificate of Compliance requires an account number before the certificate can be issued. For example:
  - Social Insurance Number (SIN)
  - Business Number (BN)
  - Temporary Taxation Number (TTN)
  - Individual Tax Number (ITN)
  - Trust Number *

- If NR individual vendor does not have an account number, an ITN must be obtained

- T1261 - Application for a Canada Revenue Agency Individual Tax Number (ITN) for Non-Residents
Vendor Identification Issues - ITN

- Common oversights in T1261 applications
  - Supporting Documents
    - Document(s) are current
    - verify identity including name and date of birth
    - are original or certified or notarized copy
    - Include a photograph
  - General Instructions
    - Form T1261 should not be submitted if vendor already has a SIN, ITN or TTN.
    - Form must be signed by applicant
Vendor Identification Issues

Vendor identification is crucial to:

- Ensure the proper recording of
  - Notification by the NR
  - payment and/or security received allocated to NR

- Facilitate the processing of income tax returns reporting the disposition

- Ensure the correct information is entered on the Certificate of Compliance
Administrative Issues – T2062

Reporting Dispositions of TCP

- **T2062** - Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Taxable Canadian Property

- **T2062A** - Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Canadian Resource or Timber Resource Property, Canadian Real Property (Other than Capital Property), or Depreciable Canadian Property

- **T2062B** - Notice of Disposition of a Life Insurance Policy in Canada by a Non-Resident of Canada

- **T2062C** - Notification of an acquisition of treaty-protected property from a non-resident vendor
Administrative Issues – T2062

T2062 – Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Taxable Canadian Property

• Used to report the gain on the land and/or building

This is the most common form used when NR vendors are disposing of their real estate
T2062A – Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Canadian Resource or Timber Resource Property, Canadian Real Property (Other than Capital Property), or Depreciable Canadian Property

• Used to report the recapture of capital cost allowance (CCA) or terminal loss on a *depreciable* property
Administrative Issues – T2062

Rental Property

• Two notifications generally required:
  - T2062 for gain on the land and on the depreciable property
  - T2062A to report any recapture of CCA or terminal loss on the depreciable property

• A breakdown between land and building is required

• Two certificates will be issued
Administrative Issues – T2062

- Personal-use property (PUP)
  - One notification generally required for PUP (T2062)
  - No breakdown between land and building is required
  - One certificate will be issued
General Guidelines / Clarifications in order to Expedite the Process

• When more than one vendor involved a separate notification must be filed for each individual

• If the vendor was formerly a resident of Canada the “date of departure” should be provided on the notification

• Provide the complete address of the property including the postal code
Administrative Issues – T2062

- Provide answers to all questions on the form whether or not they apply

- Use the most recent version of applicable form

- Provide actual sales price (POD) - not the “net” after deducting outlays and expenses

- Provide the vendor’s non-Canadian address not just a Canadian “care of” address

- Ensure the notification form(s) is/are signed
Administrative Issues – T2062

- If using a cover letter
  - Use term “Certificate of Compliance”
  - Using the term “clearance certificate” = DELAYS

- Forward form to the Tax Services Office serving the area in which property located

- Ensure inclusion of all requested Supporting Documents from the Supporting Documents List
Supporting Documentation

- 40% of applications for certificates received without proper supporting documentation
- Certificates not issued without relevant supporting documentation
- Lack of documentation results in delays as taxpayer / representative contact is required
- “Supporting Documentation” checklist exists on each of the notification forms and should be consulted when deciding what is required
Supporting Documentation

Sale of land or buildings

- If selling land or building, include copies of:
  - the offer to purchase (proposed disposition);
  - the sales agreement (actual disposition);
  - the purchase agreement (when property was acquired);
  - the registered deeds on purchase; and
  - the registered deeds on sale
Supporting Documentation

Principal residence

- If the property is a principal residence, also include:
  - Form T2091(IND), Designation of a Property as a Principal Residence by an Individual (Other than a Personal Trust);
  - and
  - Form T2091(IND)-WS, Principal Residence Worksheet.

Personal use property (PUP)

- If selling other PUP, include:
  - a letter describing the use of the property for the ownership period; and
  - a list of adjustments to the adjusted cost base.
Supporting Documentation

Rental property

- If selling rental property, include:
  - capital cost allowance (CCA) schedules for all years;
  - copies of your Canadian income tax returns and notices of assessment for the last three years;
  - documents to support the allocation of the proceeds between land and building;
  - documents to support subsection 21(1) and (3) elections regarding capitalization of interest; and
  - a completed Form T2062A
Supporting Documentation

Sale of depreciable property (other than rental property)

- For this type of transaction, include copies of:
  - the sales agreement;
  - the capital cost allowance (CCA) schedules for all years;
  - documentation to support the cost amount; and
  - a completed Form T2062A.
Supporting Documentation

Fresh Start Rule – Exemptions under Canada-US Tax Convention

- For exemptions claimed under Article XIII, paragraph 9, include:
  - Proof that you were a continuous resident of US from September 26, 1980, to date of sale
  - Value of property on December 31, 1971 (for property acquired before January 1, 1972); and
  - A calculation of the exempt portion of the gain accrued to December 31, 1984; or
  - An appraisal report for the fair market value of the property on December 31, 1984.
Supporting Documentation

General Documentation

- Appraisal report or letter of opinion from an appraiser or agent to support FMV value for transactions between non-arm’s length parties

- List of improvements to property and receipts/invoices to support the additions

- Documents to support subsection 21(1) and (3) elections for capitalization of interest

- If “change in use” took place (from income-producing to personal use or vice versa) FMV at time change in use occurred (if no election made)
Miscellaneous Topics

- **Rental income**
  - Non-Residents required to pay 25% withholding tax on gross rental income from real property in Canada or as timber royalties earned in Canada

**Options**

- NR accepts 25% withholding as the final tax liability
- NR can file section 216 tax return to calculate tax on net income rather than gross income and use 25% withholding tax as credit against tax calculated
- NR can make an “Electing under Section 216”
  - NR files **NR6 - Undertaking to File an Income Tax Return by a Non-Resident Receiving Rent from Real Property or Receiving a Timber Royalty**
    - NR6 – Withholding tax is calculated based on proposed net rental income
    - NR must file a tax return to report rental income

**Resource:** [IT-393R2 - Election Re: Tax on Rents and Timber Royalties](#)
Miscellaneous Topics

- **Residency**
  - Section 116 applies when vendor is a non-resident or considered to be a non-resident under the Act.
  - If vendor is a resident of Canada before property disposed of, but will be non-resident when the property is finally disposed of, Section 116 will apply.
  - Purchaser’s country of residence is not relevant for S116 - may be either Canadian resident or non-resident.
  - Purchaser must take prudent measures to confirm vendor’s residence status (doubt = request certificate).
CRA Initiatives to Improve Efficiency

Pilot Project – Regional Intake Centre

- Established a Regional Intake Centre (RIC) in Kitchener/Waterloo (KW)
  - The RIC will
    - Collect all supporting documents
    - Conduct TP contact as required
    - Risk assessment
    - issue the Certificates of Compliance for low risk files

- Pilot includes ONLY the 4 GTA Tax Service Offices (TSOs) and London, KW and the Thunder Bay TSOs.
Resources

- Useful resources:
  - IC72-17 Procedures Concerning the Disposition of Taxable Canadian Property by Non-Residents of Canada – Section 116
  - IT-173 Capital Gains Derived in Canada by Residents of the United States
  - T4058 Non-Residents and Income Tax Guide
  - T4037 Capital gains Guide
Resources

For questions regarding s116 filing requirements please contact the International Tax Services Office

• 1(800) 267-5177.

Mailing address:

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QUESTIONS??

Questions regarding this presentation

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