

SUMMARY OF TAX OBLIGATIONS FOR RECEIVING RENT FROM REAL PROPERTY IN CANADA

Section 212 of the Income Tax Act requires that a withholding tax of 25% is to be deducted from the **GROSS** rental payment. This required withholding amount is to be remitted to the Receiver General for Canada by the 15th day of the month following the date of the payment of rental. The payor of rental to non-resident, usually the property agent of the non-resident, or in the absence of an agent, the tenant of the rental property is obliged to the above withholding requirement. There are three options for the Canadian payor or agent to choose from:

1. The Canadian payor or agent can deduct 25% of non-resident withholding tax from all **gross** rental payments and remits the amounts to a Non-Resident Account opened in their name with Canada Customs and Revenue Agency. At the end of the taxation year, a NR4 supplementary should be completed and sent to the tax department, showing the total amount of the gross rental payment and non-resident tax deducted. Under this option, no Canadian tax return is required to be filed.
2. Under the second option, the Canadian payor or agent still deduct 25 % non-resident withholding tax on the **gross** rental payments and remits the amounts to the Non-Resident Account opened with Canada Customs and Revenue Agency. But within two years from the end of the taxation year in which the rental income was received, the non-resident person can elect to file a **Section 216(1) Special Election Income Tax Return** to Canada Customs and Revenue Agency and request any refund if available. On this special return, only the Canadian rental income is reported, along with the related rental expenses. The non-resident person is then taxed under Part I of the Income Tax Act on the net amount after allowable expenses at the same incremental rates as are used for Canadian residents. NR4 supplementary and summary should also be filed in this option.
3. Under the third option, the Canadian payor or agent shall deduct the 25% withholding tax only on the **net** rental payments after allowable expenses. This is allowed under subsection 216(4) of the Income Tax Act whereby the non-resident and the Canadian payor/agent jointly file an NR6 undertaking to Canada Customs and Revenue Agency. In this

undertaking, the non-resident makes a disclosure on all rental income from Canadian properties (excluding capital cost allowance). Upon approval from the tax department, the Canadian payor or agent can start to remit withholding tax on net instead of gross rental receipts.

At the end of the taxation year, the agent acting on behalf of the non-resident is responsible to prepare the NR4 supplementary and summary to Canada Customs and Revenue Agency (same as the cases in the first and second options), and **within six months from the end of the taxation year, the non-resident must file a subsection 216(4) special election income tax return** to Canada Customs and Revenue Agency. Please note that under this option, the Canadian agent shall pay the full appropriate rate of tax on the gross rental income (less any amount remitted during the year), in case the non-resident fails to honor the commitment to file income tax return within six months from the end of the taxation year.

Please feel free to contact our office in Canada if you have any question about Canadian Tax.