

2014-0550971E5 — BENEFICIAL OWNER, PRINCIPAL RESIDENCE

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Income Tax Act: [87](#)>~~#E7~~;+4.

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Determination of the beneficial owner.
 POSITION: Question of fact.
 REASONS: See below.

XXXXXXXXXX
 2014-055097
 K. Robinson

October 21, 2014

Dear XXXXXXXXXXXX:

Re: Beneficial ownership of a principal residence

This is in response to your email of October 15, 2014, requesting our comments with respect to ownership of property for purposes of the Income Tax Act ("Act").

Briefly, you indicate that for health reasons your client's parents placed legal title of their house in your client's name sometime in XXXXXXXXXXXX. However, the parents continued to reside in the house and pay all associated expenses. In XXXXXXXXXXXX, one of the parents passed away. The surviving parent continued to reside in the house until sometime in XXXXXXXXXXXX at which time the surviving parent was moved to an alternative location for medical reasons. The house remained vacant until it was sold in XXXXXXXXXXXX. You would like to know if the sale of the house will trigger income tax consequences for your client or the surviving parent.

Our Comments

This technical interpretation provides general comments about the provisions of the Act and related legislation. It does not confirm the income tax treatment of a particular situation but is intended to assist you in making that determination. The income tax treatment of transactions will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 70-6R5, "Advance Income Tax Rulings".

Under the Act, a capital gain accrued on a capital property is triggered when there is a disposition of that property. A taxpayer's principal residence is normally considered to be a capital property. If a property qualifies as a taxpayer's principal residence, an exemption can be claimed to reduce or eliminate any capital gain otherwise realized on the disposition of the property. One of the requirements for a property to qualify as a taxpayer's principal residence for a taxation year is that it must be "owned" by the taxpayer.

In common law jurisdictions, two forms of property ownership are recognized - legal and beneficial. Normally "legal ownership" exists when title is transferred to, recorded in, registered in or otherwise carried in the name of a person. Legal owners are generally entitled to enforce their ownership rights against all other persons. In contrast, the term "beneficial ownership" is used to describe the type of ownership of a person who is entitled to the use and benefit of the property whether or not that person has concurrent legal ownership.

The determination of whether beneficial ownership of the particular home in question remained with your client's parents or was transferred to your client is a mixed question of law/fact that can only be determined after a complete review of all the facts and circumstances applicable to a particular situation.

If the parents did retain beneficial ownership of the home, in order for a taxpayer to be able to designate a housing unit as a principal residence,

it will be necessary to satisfy the "ordinarily inhabited" requirement in paragraph (a) of the definition of principal residence in section 54 of the Act. If the surviving parent's stay at the alternative location could be regarded as being temporary with respect to a particular year, it is likely that the "ordinarily inhabited" requirement would be satisfied for that year. On the other hand, if the surviving parent was placed in the alternative location on a permanent basis, the "ordinarily inhabited" requirement would likely not be satisfied.

Form T2091 (IND) is the prescribed form to be used to designate a property as a principal residence. It is the Canada Revenue Agency's ("CRA") practice that the form need only be completed and filed with the taxpayer's income tax return in the year of disposition, where a taxable capital gain on the disposition of the property remains after using the principal residence exemption.

For more information on the principal residence exemption, please refer to Income Tax Folio S1-F3-C2: "Principal Residence", which can be viewed on the CRA's website.

We trust that these comments will be of assistance.

Yours truly,

Michael Cooke, C.P.A., C.A.
Manager
Business Income and Capital Transaction Section
Business and Employment Division
Income Tax Rulings
Directorate