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Marmer Penner Inc. Newsletter

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Abuse of the Principal Residence Exemption, Part 2 (CRA Finally Catching On?)

In an earlier edition (see Vol. 17, No. 1, January/February 2014), we wrote about an tax case, *Giguère* v. MNR and its implications to *Guidelines* income. As most readers know, there is no income tax payable on the sale of a home that qualifies as a "principal residence". The *Giguère* case dealt with a taxpayer who owned several properties that were owned for periods that ranged from three months to a year. In each case, the taxpayer attempted to claim the principal residence exemption and as such, no income tax was paid. Given the frequency of buying and selling (Ms. Giguère and her spouse sold seven homes in a six-year period), CRA successfully argued that the profits on these homes should be taxed as business income because it was the taxpayers' primary intention to sell the properties for a profit and not to live in them, which is typically required for a home to qualify as a principal residence.

Extending this analysis to matrimonial situations and *Guidelines* income determinations, we raised the issue whether frequent users of the principal residence exemption e.g. such as residential builders, who may also build a home for themselves, live in it for a short time in a rising real estate market, then flip it, might have *Guidelines* income attributed to them each time a home is sold (even though it may qualify under the principal residence exemption for personal tax purposes and therefore not impact Line 150 income).

It now appears that CRA will be looking at this issue more closely based on an investigation completed by the *Globe and Mail* and reported in an article this past weekend. The *Globe* article discusses the out-of-control rise in the Vancouver real estate market, which is (allegedly) being partially fuelled by foreign investors who are putting up money for residential real estate and either claiming the principal residence exemption themselves (although never living in the property) or having a Canadian resident and taxpayer hold the property in trust and claim the principal residence exemption when the property is sold. As most people who have sold a principal residence know, there is no actual reporting of the sale on their personal tax return nor is there any reporting of the conditions that must apply for the home to qualify. Accordingly, there is no "matching up" of sales of homes to a vendor's situation, and as such a proper assessment for qualification for the exemption is not done. According to the *Globe*, this has cost CRA millions in lost tax dollars. The investigation completed by the *Globe* highlights some of the abuses, and has caught the attention of BC Finance Minister Mike de Jong, who has called on CRA to deal with this issue. That non-residents claim the principal residence exemption at all is a separate sad story. Non-residents are not permitted to claim this exemption and CRA requires the real estate lawyer to inform CRA if the property is sold by a non-resident. So, if properly administered, there never should have been a tax leakage here in the first place.

At the very least, it appears that the political will now exists to look very closely at what is required to have a home qualify as a "principal residence" and whether there should be changes to how such "principal residences" are taxed and how the reporting of sales and circumstances should be monitored. Why that political will did not exist earlier is baffling. After all, non-residents can't vote!