Tax Tip

Week of June 11, 2012

Section 116 Certificates

If an individual purchases taxable Canadian property from a non-resident, the purchaser may encounter a tax liability if the non-resident has not complied with the Canadian tax rules related to the sale. If a non-resident sells taxable Canadian property, they are required to obtain a clearance certificate from CRA. As the sale may result in a capital gain to the non-resident, unless it is protected by a tax treaty, CRA is concerned about collect the tax. The non-resident must obtain a section 116 certificate within ten days of completing the sale. The certificate confirms the non-resident vendor has either provided adequate security to fund the gain or has paid 25% of the gain to CRA.

The problem arises, if a non-resident is making a sale, but has not obtained the certificate from CRA. In such cases, the Canadian purchaser is subject to a penalty of 25% of the purchase price.

When purchasing Canadian property from a non-resident, it is important to ensure the purchaser has fulfilled his compliance obligations with CRA or else the purchaser can incur an unexpected tax liability.