February 16, 2010

Canada-U.S. Estate Planning for the Cross-Border Executive

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Agenda

- Canadian death tax regime
- US estate tax regime
- US citizens moving to Canada
- Canadians moving to US
Overview of Canadian Tax at Death

• Canadian resident subject to deemed disposition income tax at death

  - Resident = income tax resident
    • What province?

  - Citizenship is irrelevant

• No estate or inheritance tax in Canada!
Overview of Canadian Tax at Death

• Taxed on:
  - Capital gain on worldwide capital properties
  • Principal residence exemption for home
    - can fully exempt home from Canadian tax
  - Income on certain pension assets (RRSPs)
  - Life insurance proceeds are tax-exempt
Overview of Canadian Tax at Death

• Report on deceased’s final T1 return (terminal income tax return)
  - due later of:
    • April 30th of year following death; or,
    • 6 months after death
    • No extensions

• Tax is deferred if assets pass to a Canadian resident spouse or spousal trust
## Canadian Tax Rates by Province
### 2010 top rates for capital gains and ordinary income

(The rates apply to taxable incomes over $127,021)

<table>
<thead>
<tr>
<th>Province</th>
<th>Interest &amp; ordinary income</th>
<th>Capital gains</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal only</td>
<td>29.00%</td>
<td>14.50%</td>
</tr>
<tr>
<td>Alberta</td>
<td>39.00%</td>
<td>19.50%</td>
</tr>
<tr>
<td>British Columbia</td>
<td>43.70%</td>
<td>21.85%</td>
</tr>
<tr>
<td>Manitoba</td>
<td>46.40%</td>
<td>23.20%</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>43.30%</td>
<td>21.65%</td>
</tr>
<tr>
<td>Newfoundland and Labrador</td>
<td>44.50%</td>
<td>22.25%</td>
</tr>
<tr>
<td>Non-resident (1)</td>
<td>42.92%</td>
<td>21.46%</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>43.05%</td>
<td>21.53%</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>48.25%</td>
<td>24.13%</td>
</tr>
<tr>
<td>Nunavut</td>
<td>40.50%</td>
<td>20.25%</td>
</tr>
<tr>
<td>Ontario</td>
<td>46.41%</td>
<td>23.20%</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>47.37%</td>
<td>23.69%</td>
</tr>
<tr>
<td>Quebec</td>
<td>48.22%</td>
<td>24.11%</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>44.00%</td>
<td>22.00%</td>
</tr>
<tr>
<td>Yukon</td>
<td>42.40%</td>
<td>21.20%</td>
</tr>
</tbody>
</table>

(1) The non-resident rates apply to income taxable in Canada that is not earned in a province or territory. Non-resident individuals are subject to the provincial or territorial rates (in this table) on:
- employment income and business income earned in the respective province or territory; and
- income and capital gains on dispositions of real property located in a province or territory.

Different rates may apply to non-resident individuals in other circumstances.

Non-resident rates for interest and dividends apply only in limited circumstances. Generally, interest (other than most interest paid to arm's length non-residents) and dividends paid to non-residents are subject to Part XIII withholding tax.
# Canadian Probate/Estate Administration Tax

## Example Fees

<table>
<thead>
<tr>
<th>Province</th>
<th>Fee Schedule</th>
<th>Value = $500,000</th>
<th>Value = $2,000,000</th>
<th>Value = $5,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fee schedule</strong> (estates over $50,000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alberta</td>
<td>$200 to $400</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>British Columbia</td>
<td>$358 + 1.4% of portion &gt; $50,000</td>
<td>$6,658</td>
<td>$27,658</td>
<td>$69,658</td>
</tr>
<tr>
<td>Manitoba</td>
<td>$70 + 0.7% of portion &gt; $10,000</td>
<td>$3,500</td>
<td>$14,000</td>
<td>$35,000</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>0.5% of estate</td>
<td>$2,500</td>
<td>$10,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>Newfoundland and Labrador</td>
<td>$90 + 0.5% of portion &gt; $1,000</td>
<td>$2,585</td>
<td>$10,085</td>
<td>$25,085</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>$200 to $400</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>$876 + 1.479% of portion &gt; $100,000</td>
<td>$6,792</td>
<td>$28,977</td>
<td>$73,347</td>
</tr>
<tr>
<td>Nunavut</td>
<td>$200 to $400</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>$250 + 1.5% of potion &gt; $50,000</td>
<td>$7,000</td>
<td>$29,500</td>
<td>$74,500</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>$400 + 0.4% of portion &gt; $100,000</td>
<td>$2,000</td>
<td>$8,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>Quebec</td>
<td>Nominal Fee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>0.7% of estate</td>
<td>$3,500</td>
<td>$14,000</td>
<td>$35,000</td>
</tr>
<tr>
<td>Yukon</td>
<td>$140</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For some provinces and territories, different rates may apply for smaller estates (less than $50,000).

Although Quebec does not levy probate fees, wills (other than notarial wills) must be authenticated by the Superior Court of Quebec. A nominal fee applies.
Overview of US Estate Tax Regime

• US citizen subject to Estate Tax at death
  • doesn’t matter where they live!

• Also applies to US domiciliaries
  • Present in US with intention to remain
    • Different than income tax residency
    • Most active green card holders in US
    • May exclude short-term US residents
Overview of US Estate Tax Regime

- US citizen subject to Estate Tax at death
  - taxed on:
    - FMV of worldwide estate at death
      - Reported on Form 706
      - Due 9 months after death (can be extended)
    - Tax is deferred if assets pass to US citizen spouse or QDOT (if spouse is not a US citizen)
US Estate Tax Regime in 2010 and Beyond??

• Congress didn’t act before end of 2009
• Temporary estate tax repeal period
  • 2010 – no estate tax and no generation skipping tax
  • 2010 – gift tax still applies
    • Top rate of 35%
  • 2011 – estate tax returns with
    • Top rate of 55%
    • Estate tax exemption of $1 million
US Estate Tax Regime in 2010 and Beyond??

- What will happen in 2010?
  - Most believe no permanent repeal
  - Possible legislation retroactive to January 1, 2010
  - New legislation effective 2011
    - What will it look like?
    - Best guess is same as 2009 regime
<table>
<thead>
<tr>
<th>Year (US$)</th>
<th>Exemption (US$)</th>
<th>Unified Credit (US$)</th>
<th>Highest Estate Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>$1.5 million</td>
<td>$555,800</td>
<td>48%</td>
</tr>
<tr>
<td>2005</td>
<td>$1.5 million</td>
<td>$555,800</td>
<td>47%</td>
</tr>
<tr>
<td>2006</td>
<td>$2 million</td>
<td>$780,800</td>
<td>46%</td>
</tr>
<tr>
<td>2007</td>
<td>$2 million</td>
<td>$780,800</td>
<td>45%</td>
</tr>
<tr>
<td>2008</td>
<td>$2 million</td>
<td>$780,800</td>
<td>45%</td>
</tr>
<tr>
<td><strong>2009</strong></td>
<td><strong>$3.5 million</strong></td>
<td><strong>$1,455,800</strong></td>
<td><strong>45%</strong></td>
</tr>
<tr>
<td>2010</td>
<td>Repeal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011 &amp; after</td>
<td>$1 million</td>
<td>$345,800</td>
<td>55%</td>
</tr>
</tbody>
</table>
Canada-US Tax Treaty

• Article XXIX-B provides limited relief:
  
  - Some foreign tax credit (“ftc”) relief if both Canadian income tax and US estate tax
  
  - Access to estate tax exemption for Canadians
  
  - Partial relief for testamentary transfers to spouse
US Citizens Moving to Canada

- US estate tax on worldwide assets

- Canadian tax at death if a Canadian income tax resident
  - No exceptions for “short-term” residents
  - Cost base adjusted on entry

- US estate tax and Canadian income tax deferred if assets pass to US citizen, Canadian resident spouse
US Citizens Moving to Canada

• What if US estate tax and Canadian income tax?

• Article XXIX-B of Treaty
  - US provides a ftc for Canadian tax paid on non-US assets
  - Canada provides a ftc for US estate tax paid on US assets
    • Provinces will not provide ftc
  - Extends to marital deduction (US) and spousal trust (CDN) arrangements
US Citizens Moving to Canada

• New will required?
  - Maybe NO if only a short-term Canadian resident
  - Probably YES if intends to remain in Canada
  - **Should check with local estate/trust lawyer**
    • Every province has different legislation
      - Probate, family law, estate administration
      - Quebec – civil law jurisdiction
    • Change of executors required?
      - Check requirements for non-resident executors
US Citizens Moving to Canada (Revocable Living Trusts)

• What if US revocable living trust?

  - Common in US

  - Often used as will replacement vehicle for US purposes
    • Probate
    • Privacy

  • NEED TO REVIEW TAX CONSEQUENCES!
US Citizens Moving to Canada (Revocable Living Trusts)

• What if US revocable living trust?

• US consequences
  - Disregarded for US income and estate tax purposes
  - Usually no US estate tax on 1st death
    • Credit shelter trust; and,
    • Marital deduction trust
US Citizens Moving to Canada (Revocable Living Trust)

• Canadian consequences
  - Canadian resident trust
    • Factual – because trustees move to Canada*
  - Not disregarded in Canada (a real trust)
    • Subject to 21 year rule in Canada
    • Subsection 75(2) will apply
    • Tax on transfer of assets to trust

*Will need to review residency if proposed NRT rules are reintroduced
US Citizens Moving to Canada (Revocable Living Trust)

• Possible double tax example
  - Not married, US citizen living in Ontario at death

• US estate tax on death BUT no Canadian income tax
  - Canadian income tax when assets are sold

• NO FTC RELIEF
  - Different taxpayer (trust v. deceased)
  - Taxes likely in different year (death v. year of sale)
  - Article XXIX-B doesn’t extend to this arrangement

MAY NEED TO UNWIND AND GET A NEW WILL
US Citizens Moving to Canada
(Revocable Living Trust)

• Canadian trust reporting requirements
  - T3 return if Canadian resident (factual or deemed)
    • Due 90 days after end of calendar year
    • Penalties for failure to file
    • More common situation
  - Form T1141/42 if not a factual Canadian resident
    • To report contributions and distributions from a non-resident trust
    • Penalties for failure to file
    • Less common situation
US Citizens Moving to Canada
(Irrevocable Life Insurance Trusts)

• What if US irrevocable life insurance trust ("ILIT")?
  - Common in US to hold significant life insurance
  - Often used to protect proceeds from US estate tax
  - Typically insured is not a trustee or beneficiary
US Citizens Moving to Canada (Irrevocable Life Insurance Trusts)

• What are Canadian consequences after insured moves to Canada?
  
  - Review trust residency
    • likely not a factual Canadian resident
      - If majority of trustees live outside of Canada

*Possibly deemed resident status
US Citizens Moving to Canada  
(Irrevocable Life Insurance Trusts)

• What are Canadian filing requirements?

• Assuming not a factual Canadian resident trust
  - Form T1141 (transfers to trust – includes contribution of premium payments)
  - Form T1142 (distributions from trust)

• If factual resident
  - Annual form T3 required
    • If income
      • On 21st anniversary
Canadians Moving to US

- Do you need a new will?
  - Consult with local estate/trust attorney
    - Consider state probate implications
    - Consider state family law implications (community property state?)
    - Consider need for asset protection
Canadians Moving to US

• Canadian taxation…

• If ceased Canadian income tax residency
  - No longer subject to worldwide tax at death
    • Departure tax at time of exit
  - Continue to be taxed on certain Canadian assets at death
    • Canadian real estate
    • RRSP’s
    • Pension assets
Canadians Moving to US

- What are US estate tax consequences
- Determine if domiciled
  - YES = worldwide assets exposed
  - NO = US situs assets exposed
Canadians Moving to US

• US estate taxation

• If domiciled... may need to revise will
  - No US rollover if spouse NOT a US citizen
  - US estate tax planning required
    • Quantify estate tax exposure
    • Change ownership of assets (before domiciled)
    • QDOT provisions (for marital deduction)
Canadians Moving to US

• US estate taxation

• If domiciled...exposed on worldwide assets
  - Evaluate life insurance
    • Likely subject to US estate tax
    • Consider whether it should be moved
      - Establish ILIT before domiciled
      - Can it be moved to Canadian family member
Canadians Moving to US

- US estate taxation

- **If domiciled...** exposed on worldwide assets
  - Evaluate trust interests
    - Assets of trust may be exposed if capital beneficiary moves to US
      - Amend trust
      - Unwind trust
  - Watch trust residency
    - Emigration if trustees move to US
Canadians Moving to US

• US gift taxation

• If domiciled…exposed on gifts
  - Annual exemption
    • $US13,000 gifts to any individual
    • $US134,000 gift to Canadian spouse

  - Gifts > annual exemption require gift tax return
Canadians Moving to US

• US estate taxation

• If NOT domiciled…exposed on US situs assets only
  - No treaty relief if US income tax resident
  - Taxed on assets > $US60,000
Canadians Moving to US

• US estate taxation

• If NOT domiciled…US assets include
  - US real estate
  - US stock portfolio
  - US stock options
  - US pension assets
Canadians Moving to US

• US estate taxation

• If NOT domiciled…plan to minimize US assets
  - Rent instead of buy
  - Keep investments outside of US
    • most US bonds and cash in US bank are exempt

• OPTION FOR TEMPORARY RESIDENTS OF US
  - Likely not an option if green card holder
What Should Companies Think About?

• Are transferees aware?
  - Departure materials

• Compliance
  - Beyond T1/1040
  - Trust and gift reporting

• Quantify additional estate taxes
  - Who pays?
  - Planning to minimize additional tax

• Immigration status
  - Impact on US estate tax exposure
Estate Tax Bulletins

#1 US Estate Tax for Canadians

#2 US Estate Tax Exposure for US Citizens Living in Canada

#3 The Departing Canadian

#4 Canadians Living in the US

Checkout our website at:

www.pwc.com/ca/en/estate-tax-update
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