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Revealed – Lucrative Tax Loss Strategies

For years, I had a second career as a "pop-tax" writer. From a literary standpoint, it's a far cry from the long-winded tomes that we tax drones usually write. It's a world of catch words – some would even say "purple prose" – where tax strategies aren't "discussed" they're "revealed". Taxes aren't deferred or reduced – they're "slashed". Why spend hours quantifying the benefits when you can simply describe them as "lucrative"?

I bring this up because I have been through a number of articles on year-end tax planning – a topic which brings back memories of my aforementioned second career. While the usual "tax loss selling" is referred to, one particular opportunity may bear some additional emphasis: the possibility of generating currency losses by year-end – particularly for investments denominated in U.S. dollars. As most readers are aware, capital gains and losses are calculated in Canadian dollars. This means that, from a tax standpoint, the currency losses can be – err – lucrative. An investment which was bought just five years ago, if flat in terms of U.S. dollars, could yield a tax loss based on about 40% of its value, and about 15% if purchased a year or so ago.

So how do you take advantage of this once-in-a-lifetime opportunity to slash your taxes? (Sorry – old habits.) Where the investments are liquid, the realization of foreign currency losses can be a fairly simple matter. Paragraph 13 of IT-95R will be relevant:

> Foreign currency funds on deposit are not considered to be disposed of until they are converted into another currency or are used to purchase a negotiable instrument or some other asset, i.e. foreign funds on deposit may be moved from one form of deposit to another as long as such funds can continue to be viewed as "on deposit". Term deposits, guaranteed investment certificates and other similar deposits which are in fact not negotiable, are considered funds on deposit. Transactions in which foreign currency funds are invested in negotiable instruments such as notes, bonds, mortgages, debentures, U.S. government

Inside

treasury bills and notes and U.S. commercial paper, will require a foreign exchange gain or loss calculation at the time the foreign currency funds are used to purchase these investments and as well, each time such investments mature or are otherwise disposed of, whether or not the funds are rolled over into like securities.

As can be seen, triggering a foreign currency loss on liquid assets may be a matter of "tweaking" the holding, e.g., converting from a U.S. dollar term deposit to a U.S. T-Bill or commercial paper.

In other cases, it may make sense to trigger a disposition to a family member or corporation. If so, regard must be had to the various stop-loss rules. Where individuals are concerned, the superficial loss rules may apply, whereas corporations, trusts and partnerships will usually be governed by the stop-loss rules in subsections 40(3.3) and (3.4). In general, the stop-loss rules will not apply where the transfer is to a non-affiliated person. For example, a controlled corporation, spouse or a spouse's controlled corporation will be affiliated, whereas children or parents, or corporations controlled by them, will not.

While I am on the subject, I should also mention that the stop-loss rules can kayo (sorry, disallow) a tax loss if you or an affiliated person buy an identical investment in the period within 30 days before or after the sale, and the person continues to hold it at the end of the period. For years, it used to be the case that the superficial loss rules would not apply if the individual taxpayer's RRSP were to reacquire the same investment. As some readers will be aware, however, a heads-up release (from Deloitte) a few weeks ago pointed out that the 2004 Budget changes that extended the affiliation rules to trusts block out this manoeuvre. It is therefore advisable to wait a 30-day period before you or your RRSP reacquires the property or to have a non-affiliated person, such as a parent or child, acquire the property, if this is to be done within the 30-day period.

If a U.S. vacation property is personally held, losses will probably not be available because the real estate will be personal-use property.[1] The foregoing may not apply to U.S. investment properties, e.g., a condominium in a rental pool which is only occasionally used for personal use. Of course, the disposition of U.S. real estate may require some planning and is potentially subject to U.S. taxation (and U.S. tax advice); however, in view of the sub-prime crisis, the property might be down in terms of U.S. dollars as well. Similar opportunities may apply in respect of investments in other regions of the world, if valued in U.S. currency.

There may also be opportunities in the business milieu. For example, if advances to foreign affiliates are denominated in U.S. dollars, it might be possible to trigger a loss by a disposition of the advance to a non-affiliated person. Of course, the transferee would calculate its cost base based on the Canadian dollar exchange rate at the time of the transaction, perhaps leaving the transferee exposed to future gains.

Generally, capital losses must be claimed against capital gains in the year they are realized. A three-year carry-back is available on an elective basis. Capital losses can be carried forward indefinitely. If you are an individual or other calendar-year taxpayer, you have to act fast, as the deadline for 2007 tax losses is the end of this month, or earlier if a sale is governed by settlement rules applicable to securities.

Similar opportunities may apply to controlled foreign affiliates. If a controlled foreign affiliate may generate FAPI, the triggering of currency losses may be helpful.[2] In this case, FAPI losses which are not used in the current year can be carried back three years and carried forward seven years against FAPI of the particular affiliate.

– David Louis, B. Com., J.D., C.A., tax partner, Minden Gross LLP, a member of MERITAS Law Firms Worldwide.

Notes:

[1] If the property is held in a single-purpose corporation due to U.S. estate tax issues, a sale out of this corporation will vitiate Canadian grandfathered status.

[2] Interestingly, there is nothing in the FAPI rules that restrict the deduction of capital losses to capital gains. However only one-half of the capital loss is deductible.

TAX NOTES

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For CCH Canadian Limited

ROBERT SPENCELEY, Editor
(416) 224-2224, ext. 6279
e-mail: Robert.Spenceley@wolterskluwer.com

ROBIN MACKIE, Director of Editorial
Tax, Accounting and Financial Planning
(416) 228-6135
e-mail: Robin.Mackie@wolterskluwer.com

TR ISLAM, Marketing Manager
(416) 228-6166
e-mail: TR Islam@wolterskluwer.com

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CIRCULATION DEPT.
330–123 MAIN ST
TORONTO ON M5W 1A1
email circdept@publisher.com

Bill C-28 – *Budget and Economic Statement Implementation Act, 2007*

On November 21, 2007, Bill C-28, *Budget and Economic Statement Implementation Act, 2007*, was tabled in the House of Commons. It contains the remaining measures from the 2007 federal Budget that were released as draft legislation on October 2, 2007 (CCH SPECIAL REPORT 029H) – with some subsequent revisions; the changes that were released on July 4, 2007, concerning an amendment to subsection 221(1) and the addition of Regulations 204.1 and 229.1, relating to timely information for the preparation and issuance of T3 slips; and the proposals from the Economic Statement 2007 (CCH SPECIAL REPORT 030H). The full text of Bill C-28 is posted on CCH Tax PROTOS® and CCH's News Tracker.

Subscribers to the CANADA INCOME TAX GUIDE (print, CD, or on-line) will have received CCH SPECIAL REPORT No. 032H, which contains Department of Finance News Release Nos. 2007-087 and 2007-089, the full text of Bill C-28, and the consolidated Explanatory Notes. On November 21, 2007, the Department of Finance released Explanatory Notes that amend some of the Notes that were released on October 2, 2007. In SPECIAL REPORT 032H, CCH has consolidated the amendments released on November 21, 2007 with the Notes that were released on October 2, 2007, to create a complete set of Explanatory Notes. Additional copies of the SPECIAL REPORT may be ordered by calling the CCH Customer Satisfaction Hot-line at (416) 224-2248. Outside the Greater Toronto Area, call toll free at 1-800-268-4522.

Billionaires Agree: Repeal of Estate Tax Would Be "Dead Wrong"

They say money talks. If so, Warren Buffett should have enough to be heard. He is the second richest man in the U.S. with a net worth exceeding $57 billion. Because of that, and because he earned it all in the investment game over the years rather than being born to it, Buffett – who is giving most of his wealth to charity – has the clout to be listened to when he says that the federal government needs an estate tax. Buffett recently called on Congress to maintain the estate tax, saying that plans to repeal the levy would benefit only a handful of the richest American families and widen U.S. income disparity. Buffett told the Senate Finance Committee that advocates of repeal were "dead wrong". According to Buffett, "A meaningful estate tax is needed to prevent our democracy from becoming a dynastic plutocracy." Heirs to vast fortunes, he said, have already won the "ovarian lottery" and shouldn't be further rewarded by the tax system.

Buffett noted that, over the last 20 years, tax reform has allowed the "super-rich" to get still richer. "Tax-law changes have benefited this group, including me, in a huge way" he said. "During that time the average American went exactly nowhere on the economic scale: He's been on a treadmill while the super-rich have been on a spaceship." Buffett urged the committee to keep the estate tax in some form and to use the $24 billion it raises to give a $1,000 tax rebate to low-income households. "We need to raise about 20% of GDP to fund the programs the American people want from the federal government", he said. "Further shifting this burden away from the super-rich is not the way to go." He said that, if he had his way, the tax code would be restructured to remove some of the burden from households earning less than $20,000 a year. Apparently, those households pay a 15.3% Social Security and Medicare tax, whereas money managers at hedge funds and private-equity firms pay a 15% rate on most capital gains, dividends, and profits they earn. "I can't imagine a tougher problem than living in the United States and having a $20,000 income and having $3,000 taken out of that," Buffett concluded.

Retaining the estate tax has become something of a *cause célèbre* among U.S. billionaires and Buffett has been joined by the likes of Bill Gates and George Soros. To one degree or another, they are likely to succeed.

The Republicans have been unable to secure the permanent repeal of the estate tax and, unless Congress takes positive action to make it permanent, the repeal, which is scheduled to take effect in 2010, will last only for a year. The tax is scheduled to return in 2011 with a top rate of 55% on estates worth more than $1 million. The rather bizzare result is that, whereas an individual who dies in 2010 will be subject to no estate tax exposure, an individual who lives only a few months more may be subject to the estate tax at its fullest. The idea has been floated that the Democrats might be amenable to a compromise that would see the estate tax retained, but with the top marginal rate significantly reduced and the exemption amount significantly increased. And so they might. Yet, with stagnant real incomes, crumbling national infrastructure, the ongoing costs of foreign wars, massive expenditures looming for entitlement programs such as Social Security and Medicare, and an already unprecedented federal deficit, cutting back on the estate tax in the manner envisioned by its critics (much less making its "repeal" permanent) seems less and less likely.

On the bright side, if the repeal proves to be temporary, and in 2011 we return to the *status quo ante*, or some more or less modestly modified version of it, at least socially conscious billionaires will be gratified. More mundanely, individuals with significant U.S. situs assets would be well advised that the "repeal" of the U.S. estate tax may prove to be short-lived.

Estate Tax Update

The Departing Canadian (Revised Edition, September 10, 2007)

A Canadian individual[1] who is transferred to the United States may be exposed to U.S. estate, gift, or generation-skipping transfer tax (collectively, "transfer taxes"). The exposure depends on whether the individual is regarded for transfer tax purposes as a U.S. resident or a non-resident alien. Criteria for determining residency for U.S. transfer taxes are different from those used for determining residency for U.S. income taxes. Key aspects of transfer taxes are discussed below, and are summarized in Table 3 on page 7. All dollar amounts are in U.S. currency.

U.S. Residents

An individual will be considered a U.S. resident for transfer tax purposes if he or she is **domiciled** in the United States. A person acquires domicile in the United States by:

- being physically present in the United States, however briefly; and
- forming the intent to reside in the United States permanently.

Domicile is a subjective test, because it depends on an individual's intent to remain in the United States. Courts and commentators have developed some objective criteria to help determine whether the intent necessary to establish domicile is present. These criteria include:

- duration of stay in the United States and frequency of travel outside of the United States;
- size, nature and location of residence in the United States, as compared to non-U.S. residences;
- location of family, friends, social and business ties;
- location of personal possessions, business interests, voter registration, automobile and driver's licence registration, bank and brokerage accounts, and club and religious memberships; and
- U.S. immigration status.

A Canadian individual who becomes domiciled in the United States will be subject to U.S. estate and gift tax as follows:

- **Estate tax:** on the value of worldwide assets owned at the time of death. The individual is entitled to a lifetime estate tax exemption of $2 million, so U.S. estate tax is payable only if the individual's estate is valued at more than $2 million.
- **Gift tax:** on gifts of any property exceeding $12,000 (the "exclusion amount") per recipient per year. This increases to $125,000 if the gift is made to a non-U.S. citizen spouse. In addition, the individual is entitled to a lifetime gift tax exemption of $1 million. However, using the lifetime gift tax exemption reduces the estate tax exemption by a corresponding amount.

Caution for Temporary Transfers

An individual who is transferred to the U.S. on a temporary work assignment may not be viewed as domiciled in the U.S. for U.S. transfer tax purposes since the individual will not have the intent to permanently reside in the U.S. However, if the individual has cut sufficient ties with Canada, he or she will be viewed as a resident of the U.S. (and a non-resident of Canada) for income tax purposes under the residency rules in the Canada-U.S. Tax Treaty ("the Treaty"). This could have significant implications in respect of individuals who die owning U.S. assets while on temporary work assignment in the U.S. because, for U.S. transfer tax purposes, an individual on a temporary work assignment in the U.S. who ceases Canadian income tax residency will not qualify for certain estate tax Treaty benefits, such as the enhanced unified credit. Conversely, an individual who retains his or her Canadian residency status while on a temporary U.S. work assignment is entitled to take advantage of Treaty benefits such as the enhanced unified credit (see discussion under "Unified Credit", below).

Non-Resident Aliens

An individual who does not become domiciled in the United States will continue to be considered a nonresident alien for U.S. transfer tax purposes. As such, the individual will be subject to U.S. estate and gift tax as if the individual were still a Canadian resident, as follows:

- **Estate tax:** on the value of "U.S. situs" property owned at the time of death. U.S. situs property includes such things as U.S. real estate, U.S. business assets, shares and options of U.S. corporations and certain debt obligations of U.S. persons.
- **Gift tax:** on gifts of U.S. real estate or tangible personal property (e.g., furniture, jewelry, cash) located in the United States, exceeding $12,000 per recipient per year.

Rates and Exemptions

The U.S. estate and gift tax rates, exemptions, and corresponding credits are illustrated in Table 1. The estate tax is scheduled to be repealed entirely in 2010; however, in 2011, the U.S. will return to 2001 estate tax rates unless new legislation is enacted before that time.

Special Transfer Tax Deductions, Credits and Exemptions

Unified Credit

As indicated above, for 2007, U.S. residents (and citizens) are entitled to a U.S. estate tax unified credit of $780,800, which essentially exempts $2 million of property from estate tax.

Non-resident aliens are entitled to a U.S. estate tax unified credit of $13,000, which exempts $60,000 of property from estate tax. However, the Treaty allows a Canadian resident to claim an "enhanced unified credit"that may be

greater than the $13,000 credit allowed under U.S. domestic law. The enhanced unified credit is calculated as:

$$\text{U.S. estate tax unified credit } (\$780{,}800 \text{ in } 2007) \times \frac{\text{Value of U.S. situs assets}}{\text{Value of worldwide assets}}$$

Consider the following example: Mr. Brown is a non-resident alien who resides in Canada. He owns a Florida condominium worth $500,000. The gross value of Mr. Brown's worldwide estate at the time of his death in 2007 is $2 million. Because his U.S. assets constitute 25% of his worldwide estate, he will be entitled to claim a unified credit of $195,200 (25% of $780,800) on his U.S. estate tax return. (This level of unified credit translates into an exemption amount of about $606,000). The gross estate tax arising on Mr. Brown's condominium will be $155,800. In the end, Mr. Brown's estate will not pay any estate tax, because his unified credit of $195,200 will be sufficient to eliminate his estate tax liability of $155,800.

Table 1

Year	Highest Estate and Gift Tax Rates	U.S. Residents (and Citizens) Estate Tax: *Unified Credit*	U.S. Residents (and Citizens) Estate Tax: Lifetime Exemption[1]	U.S. Residents (and Citizens) Gift Tax	Non-Resident Aliens Estate Tax: *Unified Credit*	Non-Resident Aliens Estate Tax: Lifetime Exemption	Non-Resident Aliens Gift Tax
2007	45%	*$780,800*	$2 million	$1 million[1]	*$13,000*[2]	$60,000[2]	$0
2008	45%	*$780,800*	$2 million	$1 million[1]	*$13,000*[2]	$60,000[2]	$0
2009	45%	*$1,455,800*	$3.5 million	$1 million[1]	*$13,000*[2]	$60,000[2]	$0
2010	Estate tax: 0% Gift tax: 35%	N/A (tax repealed)		$1 million[1]	N/A (tax repealed)		$0
2011 and later	55%	*$345,800*	$1 million	$1 million[1]	*$13,000*[2]	$60,000[2]	$0

1. Use of the lifetime gift tax exemption will decrease the estate tax exemption by a corresponding amount.
2. May be increased under the Treaty, as discussed above, under **Unified Credit**.

As discussed earlier, benefits under the Treaty, such as the enhanced unified credit, are available to an individual only if that individual is a resident of Canada (as determined under the Treaty residency rules). Therefore, in the above example, if Mr. Brown had been on assignment in the U.S. at the time of his death, and no longer considered to be a resident of Canada for income tax purposes, he would have been limited to the $13,000 unified credit. As a non-resident of Canada, he would not qualify for the enhanced unified credit under the Treaty.

Marital Transfers

U.S. Citizen Spouse

An unlimited marital deduction applies for both U.S. gift and estate tax purposes for gifts or bequests made to a U.S. citizen spouse. In other words, no gift tax is imposed on gifts made to a U.S. citizen spouse during his or her lifetime, and no estate tax is imposed on bequests made to a U.S. citizen spouse at death.

Non-U.S. Citizen Spouse

- **Gift Tax:** If the recipient spouse is not a U.S. citizen, the marital deduction is limited to $125,000 per year (for 2007, indexed annually for inflation). For example, in 2007, if a Canadian individual gifts a Florida home worth $500,000 to his or her non-U.S. citizen spouse, the individual will be subject to gift tax on a gift of $375,000 ($500,000 less $125,000).
- **Estate Tax:** If the recipient spouse is not a U.S. citizen, the marital deduction is not available unless the bequest is made to a special form of trust known as a Qualified Domestic Trust (QDT). For a trust to qualify as a QDT, the surviving spouse must receive the income from the trust at least annually, no person other than the surviving spouse can be a beneficiary during the spouse's lifetime, and at least one trustee must be a U.S. individual, U.S. bank or U.S. trust company. If the QDT is funded with more than $2,000,000, the trustees must file a bond or letter of credit with the IRS, unless at least one trustee is a U.S. bank or U.S. trust company. Estate tax is imposed at the earlier of the distribution of trust principal to the surviving spouse, or the death of the surviving spouse.

Marital Credit

If the marital deduction is not available, the Treaty provides a marital credit against estate tax when property is transferred to a surviving non-U.S. citizen spouse. For this credit to be available, certain conditions must be met, but it can be claimed even if the deceased and his or her spouse are both residing in the United States at the time of death (if at least one spouse is a citizen of Canada).

U.S. Estate Tax Example – Resident vs. Non-Resident Alien

In 2006, Mr. Brown, a Canadian citizen, was transferred from Canada to the U.S. by his employer. Mr. Brown dies in 2007, leaving all of his assets to his spouse who is not a U.S. citizen. At the time of his death, Mr. Brown's worldwide

estate is valued at $3.5 million, which includes a $1 million U.S. home.

If the assignment was temporary, and Mr. Brown intended to return to Canada at the end of his assignment, he likely would not be considered domiciled in the United States at his death. However, if Mr. Brown was transferred to the United States on a permanent assignment, and had no intention of returning to Canada, Mr. Brown may be considered domiciled in the U.S. at his death.

The following table shows that if Mr. Brown is considered domiciled in the U.S., he will not owe any U.S. estate taxes after the applicable credits. However, if Mr. Brown transfers on a temporary assignment, and is not domiciled in the U.S. (but is a resident of the U.S. for income tax purposes under the Treaty), he will be subject to U.S. estate tax on his U.S. situs assets.

Table 2

		Mr. Brown's domicile	
		U.S.	Not U.S.
Assets subject to U.S. estate tax		$3,500,000	$1,000,000
Gross U.S. estate tax before credits		$1,455,800	$345,800
Less:	Unified credit	($780,800)	($13,000)
	Marital credit under treaty	($675,000)[1]	($13,000)
Net U.S. estate tax		$0	$319,800

1. Credit limited to U.S. estate tax owing.

This example illustrates that an individual who temporarily relocates to the U.S. should be cautious when considering purchasing U.S. assets because, on death, such assets will be subject to U.S. estate tax, and Treaty relief (via the enhanced unified credit) will not be available if the individual has ceased Canadian residency for Treaty purposes.

Generation-Skipping Transfer Tax

In addition to estate or gift tax, an additional transfer tax (computed at the same rates as gift and estate tax) may apply to "generation-skipping transfers". A generation-skipping transfer is a transfer that is:

- subject to either U.S. gift or estate tax; and
- made to a person who is two or more generations below the donor (e.g., a grandchild). Every donor is allowed a lifetime generation-skipping transfer tax exemption, which is $2 million for 2007, and is scheduled to increase at the same rate as the estate tax exemption.

Joint Tenants with Right of Survivorship

It is common in Canada for spouses to hold property as joint tenants with right of survivorship. However, joint ownership may cause unintended U.S. transfer tax consequences as follows:

- **Estate tax:** If a surviving spouse is not a U.S. citizen, 100% of jointly-owned property will be includable in the deceased's estate and subject to estate tax, unless:
  - the property is transferred by the surviving spouse to a QDT; or
  - the surviving spouse can prove that he or she contributed funds towards the purchase of the property.

  In some cases it may be best to sever the joint tenancy in order to pursue planning through the individual's will.
- **Gift tax:** For real property purchased after July 13, 1988, and certain bank and brokerage accounts, there may be a gift upon the termination of the joint property interest.

Insurance Proceeds

In Canada, insurance proceeds are received by the beneficiary tax free. However, insurance proceeds will affect a Canadian's U.S. estate tax as follows:

- **U.S. resident (domiciled in the U.S.) at the time of death:** The value of any insurance policies on the decedent's life that the decedent either owned, or possessed "incidents of ownership" will be included in the decedent's worldwide estate at death, and be subject to U.S. estate tax.
- **Non-resident alien (not domiciled in the U.S.) at the time of death:** The value of any insurance proceeds on the decedent's life are not considered U.S. situs property and are not subject to U.S. estate tax. However, the insurance will be included in the decedent's worldwide estate for purposes of determining the enhanced unified credit under the Treaty. Therefore, insurance proceeds could significantly reduce the enhanced unified and marital credits available to the deceased taxpayer.

To protect the insurance proceeds from U.S. estate tax, it may be beneficial to hold the insurance in an insurance trust.

Canadian Wills

Canadians who are transferred to the U.S. should ensure that their existing Canadian wills operate effectively from both Canadian and U.S. tax perspectives. To determine this, they may want to seek advice from U.S. legal counsel in the state in which they will be residing.

Planning Points for Temporary Transfers

An individual who is transferred to the U.S. on a temporary work assignment may want to consider the following planning points:

- **Life Insurance** – Term life insurance can fund the individual's current U.S. estate tax liability. This is a flexible planning option, considering the uncertainty surrounding the future of the U.S. estate tax regime beyond 2009. A cost-benefit analysis should be done, based on the individual's personal circumstances, and the indi-

vidual should consider the issues discussed above under "Insurance Proceeds".

- **Ownership of U.S. Assets** – The individual should limit personal ownership of U.S. situs assets. For example, to the extent that it makes sense in the individual's personal circumstances, he or she may want to consider renting instead of purchasing a U.S. home.
- **Acquiring a U.S. Green Card** – The individual should consider the effect that acquiring a U.S. green card could have on his or her U.S. domicile status, because possession of a U.S. green card indicates an intention of permanent U.S. residence.
- **Will Planning** – The individual should have a current will that has been reviewed by U.S. and Canadian legal counsel to ensure that it operates effectively from the tax perspectives of both countries.

Permanent Transfers

If an individual's U.S. assignment changes from temporary to permanent in nature, the individual's domicile may also change because the individual is now intending to reside in the U.S. on a permanent basis. As a person with U.S. domicile, the individual will be subject to U.S. estate tax on worldwide assets and will receive the estate tax unified credit that a U.S. person receives. The individual should review the planning that has been implemented to ensure that it continues to make sense from a U.S. estate tax perspective, based on his or her domicile. In addition, it may be beneficial to undertake a gifting strategy before becoming domiciled in the U.S., to avoid the application of U.S. gift tax.

Conclusion

U.S. transfer tax implications may arise from an employment transfer to the United States. With proper planning, however, individuals and their families can minimize their exposure to these taxes, and preserve their wealth.

Table 3: U.S. Transfer Tax Summary for the Departing Canadian

		Canadian Domiciled in the U.S. (U.S. Resident)	Canadian Not Domiciled in the U.S. (Non-Resident Alien)[1]
Estate Tax		On worldwide estate	On U.S. situs property only
Gift Tax		On gifts of all property	On gifts of U.S. real estate or U.S. tangible personal property
Generation-Skipping Transfer Tax		On generation-skipping transfers that are subject to either gift tax or estate tax	
2007 Lifetime Exemption	**Estate tax**	$2,000,000	$60,000
	Gift tax	$1,000,000	$0
2007 Unified Credit	**Estate tax**	$780,800	$13,000
	Gift tax	$345,800	$0
2007 Enhanced Unified Credit (Treaty)		Not applicable	▪ $780,800 x U.S. situs assets/worldwide assets *(for Canadian residents)* ▪ Available only for individuals who are residents of Canada under the Treaty – if not resident in Canada, the credit is limited to $13,000
Marital Deduction		Transfer to U.S. citizen spouse: unlimited marital deduction for gift and estate tax Transfer to non-U.S. citizen spouse: $125,000 annual marital deduction for gift tax *(but no marital deduction for estate tax unless assets are left to a QDT)*	
Marital Credit (Treaty)		Can claim against estate tax for transfers to a non-U.S. citizen spouse *(if deceased's estate waives the right to claim a marital deduction and certain residency/citizenship conditions are met)*	
Property Owned by Joint Tenancy with Right of Survivorship	**Estate tax**	If surviving spouse is a U.S. citizen: 50% includable If surviving spouse is not a U.S. citizen: 100% includable *(unless the property is transferred by the surviving spouse to a QDT or the surviving spouse can prove that he or she contributed funds towards the purchase of the asset)*	
	Gift tax	Upon eventual sale *(if non-U.S. citizen spouse receives more proceeds than his or her actual ownership interest and no other exclusions apply)*	
Insurance Proceeds		Subject to U.S. estate tax	Not subject to U.S. estate tax *(but will be includable in the worldwide estate in determining the enhanced unified credit)*

1. Certain long-term residents of the United States may be subject to the U.S. expatriation transfer tax rules. A long-term resident of the United States is defined to be a lawful U.S. permanent resident (U.S. green card holder filing as a U.S. resident) in at least eight of the fifteen years ending with the taxable year of expatriation.

– PriceWaterHouseCoopers, reprinted with permission of PWC.

Notes:

[1] This Estate Tax Update assumes that the Canadian individual being transferred is not a U.S. citizen.

CCH™ a Wolters Kluwer business

CCH Canadian Limited
300-90 Sheppard Avenue East
Toronto ON M2N 6X1
416 224 2248 • 1 800 268 4522 tel
416 224 2243 • 1 800 461 4131 fax
www.cch.ca