



Going South for the Winter? Know Before You Go



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Citizen Abroad Tax Advisors

- ▶ Practicing in cross-border tax for 22 years
- ▶ Advisory for US people in Canada and Canadians relocating to the US
- ▶ Personal and Individual Tax

The Snowbird Agenda

- ▶ US Tax Residency
- ▶ Basic Reporting
- ▶ Taxation of Non-Residents
- ▶ US Income – FDAP (Passive income)
- ▶ US Income – Trade or Business
- ▶ US Income – Rental
- ▶ US Income – Sale of a Real Property
- ▶ Tips and Traps on Buy, Rental, Sale
- ▶ Estate Tax
- ▶ Moving Permanently to the US

US Tax Residency – Pure Math

- ▶ US Citizen or Greencard Holder
- ▶ Substantial Presence Test
 - 100% of current year days
 - 33.33% of prior year days
 - 16.67% of 2nd prior year days
 - > 183 days then US Resident
- ▶ Substantial Presence Test
 - Spending under 120 days per year, avoids US residency

US Resident? Really?

- ▶ Many Snowbirds are US tax residents
- ▶ Two Exceptions to residency
 - ▶ Under Closer Connection – Form 8840
 - ▶ If under 183 days in current year
 - ▶ Under US – Canada Tax Treaty Article IV – Form 8833
 - ▶ If over 183 days in current year
 - ▶ All other obligations exist

Taxation of Non-Resident Aliens

- ▶ NRAs are taxed on the following types of income
 - ▶ Fixed, Determinable, Annual or Periodic (FDAP) – think Passive
 - ▶ Trade or Business with Effectively Connected Income
 - ▶ Rental Income (FDAP or ECI)
 - ▶ Sale of Real Estate (deemed ECI)
- ▶ ECI requires filing of 1040NR (non-resident tax return)

US Income – FDAP (Passive)

- ▶ Interest
 - ▶ Dividends
 - ▶ Rents
 - ▶ Royalties
-
- ▶ Generally subject to withholding at 30% however Treaty reduces rates of taxation (10% interest (most is at zero however); 15% dividends; 10% royalties)

US Income – Trade or Business

- ▶ Income connected to a US Trade or Business is subject to US tax
- ▶ Canada – US tax treaty provides exemption for business profits in many cases
- ▶ Does immigration allow for “work” in the US?
- ▶ Form 1040NR filing required

US Income – US Rental Income

- ▶ Collecting rental income requires reporting of rental income to the IRS unless de minimus applies
- ▶ Form 1040NR required
- ▶ ITIN required, form W7
- ▶ Depreciation allowed or allowable
- ▶ Election to have rental income taxed as effectively connected income to be made with tax return

US Income – US Rental Income

- ▶ Vacation Rentals (short term)
- ▶ Under this rule, you don't pay tax on income you earn from the short-term rental, as long as you:
 - ▶ Rent the property for no more than 14 days during the year AND.
 - ▶ Use the vacation house yourself 14 days or more during the year or at least 10% of the total days you rent it to others

US Income – US Rental Income

Vacation Rentals

- ▶ Allocation of expenses on basis of rental days / days in the year or for certain expenses rental days / total days available for rent
- ▶ Expenses directly related to the rental can be claimed
- ▶ Depreciation allowed or allowable

US Income – US Rental Income

- ▶ Canadian reporting should be completed for the US rental income and expenses – Form T776
- ▶ Reporting of US real estate ownership on Form T1135 – Foreign Income Verification Statement if cost is over \$100,000 Cdn with other non Canadian assets
 - ▶ Note the property is not reported on Form T1135 if a personal use property
 - ▶ Note that all non-Canadian securities are also considered in this \$100,000 threshold

US Income – Sale of a US Property

- ▶ Foreign Investment in Real Property Tax Act (“FIRPTA”)
- ▶ 15% of Gross Proceeds on sale withheld and remitted to the IRS
- ▶ Overall tax on sale will be less in most cases
- ▶ Reported on Form 8288-A
- ▶ Exceptions to withholding:
 - ▶ Selling for under \$300,000 and the buyer intends to use the property as a residence
 - ▶ A waiver of tax withholding is provided by the IRS (Form 8288-B)
 - ▶ Occurs in non-recognition transaction

US Income – Sale of a US Property

- ▶ Protect yourself on purchase of property for FIRPTA purposes – ensure proper documents are obtained regarding residency of seller
- ▶ Keep records of purchase, improvements etc. – this can help with waiver (if required)
- ▶ Keep records of foreign exchange on buy and sell – the sale of a US property is reportable on your Canadian return too!

Estate Tax Considerations

- ▶ Canadians are subject to US Estate tax on US situs assets
- ▶ \$60,000 exemption
- ▶ US situs assets most commonly held
 - ▶ US securities
 - ▶ US real estate
 - ▶ US pensions
 - ▶ US assets held in RRSP, RESP, TFSA etc captured
- ▶ Note that US bank accounts, US tbills, Canadian mutual funds with US content – NOT US situs

Estate Tax Considerations

- ▶ Canada – US tax treaty allows Canadians to access the US Estate tax exemption amount (currently at \$11.2M*) on US situs assets
- ▶ Relying on exemption of \$11.2 M can be problematic – sunset and change in politics

(past 20 years it has ranged from 0 to 11.2M)

- ▶ Estate Return is required to access Treaty Credit – 706-NA must be filed timely and accompanied by proper valuation and documentation
- ▶ Probate is often planned around in US states; careful of the revocable trust for Canadians

Estate Tax Considerations

Ownership Considerations

- ▶ On US Real Property, joint tenancy with rights of survivorship should be avoided (100% inclusion)
- ▶ Consider non-recourse debt
- ▶ Consider insurance to cover US estate tax
- ▶ Other more complex options – partnership, trust, corporate ownership – depends on use and needs

Moving Permanently to the US?

- ▶ Departure tax
- ▶ Taxation of Canadian assets and income
- ▶ Rework wills; Executors
- ▶ Domicile in US = worldwide assets subject to Estate Tax
- ▶ Some states are more attractive than others (treaty states vs non-treaty states)
- ▶ Insurance

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