UHY VICTOR

2023

CANADA/U.S. SURVIVAL GUIDE

Cross Border Tax Issues

The UHY Victor Canada US Tax Team (CUTT) is dedicated to keeping track of the latest tax changes and interpretations in both the US and Canada. The team works hard to provide clients with tax-effective solutions that comply with these changes. This guide, which was created by the CUTT, covers the latest developments in tax law that affect businesses, individuals, and estates in the US and Canada. This information is current as of January 1, 2023.

The UHY Victor CUTT is a group of 15 experienced tax and accounting professionals who are skilled at helping their clients navigate cross-border tax and corporate issues. The team has contributed greatly to the creation of this guide and is happy to assist anyone who needs help with cross-border issues between the US and Canada.

Please to contact us if you require assistance with cross-border issues between the US and Canada.

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RECENT CHANGES

Some recent key changes are as follows:

PERSONAL

- The exemption for US estate taxes increased to $12,920,000
- The U.S. Personal Income tax rate is from 10% to 37%
- The standard deduction increased to $13,850 for single filers and to $27,700 for married couples filing jointly.
- The alternative minimum tax exemptions have increased to $81,300 and begin to phase out at $578,150 for single filers and $126,500 for married couples filing jointly and begin to phase out at $1,156,300

CORPORATE

- The US federal corporate tax rate remains at 21%.
- The US federal corporate alternative minimum tax is 15%

INTERNATIONAL

- The recent introduction of a territorial tax system allows for US Corporations to receive dividends tax-free from controlled foreign corporations.
- GILTI and BEAT taxes continue to restrict off-shore tax-reduction plans.

RECENT CHANGES

(CONTINUED)

GILTI

The US GILTI (global intangible low-taxed income) tax relates to the earnings of CFC's (controlled foreign corporations). GILTI regulations are relevant to Canadian corporations owned by American taxpayers. GILTI applies to almost all active income that is not already taxed under Subpart F, despite its title's reference to "Intangible."

GILTI can significantly reduce the Canadian tax benefits of retaining profits in a Canadian corporation. GILTI requires US shareholders of a CFC to include their proportionate share of the GILTI income generated by the CFC on their 1040 (form 5471), and is independent of the amounts distributed to the US shareholder during the year.

The GILTI inclusion is the sum of the shareholder's proportionate share of the CFC's gross income minus certain deductions, such as income allocated to subpart F income.

In general, the GILTI income inclusion includes the net active income of the CFC.

In 2020, the US Treasury Department introduced a tax exemption for GILTI. Under this exemption, income that meets the qualifications of the high tax exception will not be included in the net tested income of controlled foreign corporations (CFCs).

To benefit of this high tax exception, the CFC's income must have been subject to an effective tax rate imposed by a foreign country that exceeds 90% of the US corporate tax rate of 21%, which comes to 18.9%.

RECENT CHANGES

(CONTINUED)

GILTI (CONTINUED)

The 2020 Final Regulations, which went into effect for foreign companies' tax years starting on or after July 23, 2020, also allows US taxpayers the opportunity to apply these regulations to tax years beginning after December 31, 2017, and before July 23, 2020, if certain requirements are met. It is important to note that the US shareholder must claim the high-tax exemption for both GILTI and sub-part “F” income for the CFC.

Another alternative for GILTI planning is to make a section 962 election, but it is important to keep in mind that this may not eliminate GILTI if Canadian taxes are low.

Additionally, the inclusion of GILTI could also result in additional taxes for Canadian shareholders. For example, in a corporate structure where a Canadian parent company controls a US subsidiary ("US Sub") that wholly owns a CFC ("Foreign Sub."), the active income generated by Foreign Sub would be considered as tested income for GILTI purposes and would result in a GILTI inclusion in the taxable income of the “US Sub” for US tax purposes. However, from a Canadian tax perspective, this active income would be excluded from the FAPI and included in the exempt surplus of “Foreign Sub”.

The GILTI tax exemption presents challenges for American owners of CFC's. It is crucial for US shareholders to understand how GILTI affects their US personal income taxes, and explore options to minimize the tax impact of GILTI inclusions.

RECENT CHANGES

(CONTINUED)

BEPS

The Base Erosion and Profit Shifting (BEPS) project, developed by the Organization for Economic Cooperation and Development (OECD), has set international standards to prevent tax avoidance and improve tax cooperation between countries.

The CUTT closely monitors developments pertaining to the Base Erosion and Profit-Sharing ("BEPS") initiative. BEPS is an Organization for Economic Cooperation and Development (OECD) project aimed at setting new international standards for many issues, including:

- Realigning tax laws to avoid international income shifting, double taxation, and tax evasion
- International corporate taxation
- Transfer pricing
- Bilateral tax treaties and policy shopping
- Preferential regimes and transparency

These standards include updates to international tax rules, recommendations for tax treaties, and policies that are intended to be implemented uniformly across the globe.

In 2019, Canada ratified legislation to implement the BEPS project, and the Multilateral Instrument (MLI) came into force on December 1, 2019. The MLI is an agreement that modifies existing tax treaties between countries to implement the BEPS minimum standards. It only applies to tax treaties between two countries if both jurisdictions have ratified and put the MLI into force.

This is a significant development for businesses operating in multiple countries, as it aims to prevent tax avoidance and improve tax cooperation between countries. It's important for businesses to be aware of the changes and understand how they may affect their operations and tax obligations. The BEPS project and MLI are crucial steps toward ensuring a fair and efficient international tax system.

RECENT CHANGES

(CONTINUED)

A COUNTRY-BY-COUNTRY REPORTING

Companies with annual revenues in excess of USD $850 million are required to report on country-by-country basis information on their profit, loss, and accumulated income.

OECD COMMON REPORTING STANDARD & FINANCIAL INFORMATION EXCHANGE

The automatic exchange of information is a new international standard of tax cooperation that has been set out in the OECD/G20 Common Reporting Standard (CRS). 131 jurisdictions, including Canada, have committed to implementing this standard.

The CRS requires financial institutions to take steps to identify certain accounts held by, or for the benefit of, non-residents or dual residents and to report such accounts to the Canada Revenue Agency (CRA). The information would then be available for sharing with the jurisdiction in which the account holder resides for tax purposes under the provisions and safeguards of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or the relevant bilateral tax treaty.

Canada and the US have already taken steps to improve tax cooperation by signing an intergovernmental information exchange agreement in relation to the Foreign Account Tax Compliance Act (FATCA) in 2014. Financial information has been regularly exchanged between the two countries since 2016. This sets a precedent for the successful implementation of the CRS and the automatic exchange of information between countries.

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TRANSFER PRICING

In 2019, the Canada Revenue Agency (CRA) cancelled Information Circular 87-2R (IC), a primary policy document that guides how the CRA applied transfer pricing laws.

The CRA announced the IC was inconsistent with its administrative policies and did not reflect updates to the Organisation for Economic Co-operation and Development ("OECD") Guidelines. Due to the OECD Base Erosion and Profit Shifting (BEPS) project, many sections of the guidelines have been and are being amended.

In line with new developments in BEPS and the OECD in terms of transfer pricing, both the IRS and the CRA are increasing their scrutiny of cross-border transactions between related parties.

As a result, small and medium-sized businesses are experiencing an increase in transfer pricing audits.

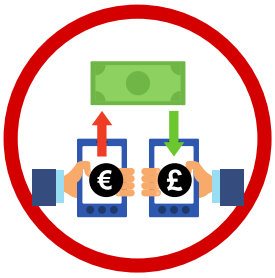
Our methodology is to group pricing transactions into the following general areas:

- Intangible payments (such as royalty, licensing, or franchising fees).
- Management and administration fees.
- Intercompany loans.
- Sale of products.

Our experience is that the IRS and CRA focus primarily on the first three areas when conducting transfer pricing audits.

TRANSFER PRICING

(CONTINUED)



The CRA applies the OECD guidelines and requires companies to establish transfer pricing agreements that are consistent with the OECD transfer pricing guidelines. These agreements must provide economic support for the terms of arm's length and provide complete and accurate descriptions of the transactions. However, the CRA has not adjusted its requirements to include OECD transfer pricing guidelines to include the treatment of cash boxes affecting outbound financing of foreign subsidiaries of Canadian multinationals, and BEPS's proposed simplified approach to low-cost services.

OECD Action 13 has been implemented and requires companies with annual consolidated revenues exceeding €750 million to maintain:

- **Country by Country Reporting**
  Key information on all group members of the multinational
- **Master File**
  Key information about the Multinationals Group's Global Operations
- **Local File**
  Information and support on the local countries inter-company transactions

FOREIGN ASSET REPORTING

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR)

US persons meeting the criteria listed below must file an FBAR annually with the US Department of Treasury using FinCen Report 114. The FBAR has the same filing deadline as individual income tax returns (although they are not filed together). Accordingly, the FBAR filing deadline for an individual's 2022 taxation year is April 15, 2023, with an automatic six-month extension to October 15, 2023.

US persons are required to file an FBAR if:

- The US person had either a financial interest in or signature authority over at least one financial account located outside the US.
- The aggregated value of all foreign financial accounts exceeded $10,000 USD at any time during the calendar year to be reported.

The following are considered US persons:

- US citizens
- US residents
- Green cardholders
- Individuals electing non-resident status under a tax treaty
- Entities, which include: Corporations, Partnerships, Limited Liability Corporations, Trusts, or Estates formed under the laws of the US

The FBAR must be filed electronically. Failure to properly file the form may be subject to significant penalties.

FOREIGN ASSET REPORTING

(CONTINUED)

FATCA INTERGOVERN-MENTAL AGREEMENT (IGA)

In 2015, Canada and the US began to exchange financial and tax information. The agreement requires Canadian institutions to report financial information on accounts held by US residents and US citizens (including US citizens who are residents or Canadian citizens) to the CRA, which then transfers that information to the IRS.

In addition, the IRS provides the CRA with increased information on certain accounts of Canadian residents held at US financial institutions. Several exemptions are listed in the agreement.

For example, the following are exempt from FATCA and are not reportable:

- Registered Retirement Savings Plans (RRSP)
- Registered Retirement Income Funds (RRIF)
- Registered Disability Savings Plans (RDSP)
- Registered Education Savings Plans (RESP)
- Tax-Free Savings Accounts (TFSA)

Smaller deposit-taking institutions, such as credit unions with assets of less than $175 million, are exempt from this obligation.

Americans who are Canadian residents and do not comply with their US tax requirements should be aware that Canadian financial institutions report information about their investments to the IRS. The same applies to Canadians with US tax filing requirements.

It was reported that the CRA sent over 900,000 records from banks and financial institutions to the IRS in 2019. The CRA has refused to inform Canadians when information concerning their financial accounts have been shared.

FOREIGN ASSET REPORTING

(CONTINUED)

FORM 8938

In addition to filing the FBAR to the Department of Treasury, Form 8938 must also be included in the US personal tax return submitted to the IRS if financial account thresholds, higher than the FBAR, are met.

An individual who holds any interest in a specified foreign financial asset (SFFA) during the taxable year is required to file Form 8938. A specified foreign financial asset includes:

- A financial account maintained by a foreign financial institution
- Any stock or security issued by a foreign person
- A financial instrument or contract that has a foreign issuer or counterpart
- An interest in any foreign entity where such instrument is held for investment

Gold held in a safe deposit box, artwork, interests in a social security account, social insurance or other similar programs, and personally owned real estate do not constitute specified foreign financial assets.

However, gold held by a custodian, interests in foreign trusts, foreign estates, foreign pension plans, and foreign deferred compensation plans do constitute a specified foreign financial asset.

Real estate held in a trust or other entity is not reportable by the individual. However, an interest in a foreign trust or foreign entity is reportable on separate tax returns, which are then identified as filed on the FATCA form. Additional stock issued by a foreign corporation is a specified foreign financial asset.

The filing thresholds for Form 8938 in 2023 are:

WHILE LIVING IN THE US:	VALUE OF FOREIGN ASSETS AT THE END OF THE YEAR	VALUE OF FOREIGN ASSETS AT ANY TIME IN THE YEAR
Unmarried	**$ 50,000**	**$ 75,000**
Married and filing jointly	**$ 100,000**	**$ 150,000**
Married filing separately	**$ 50,000**	**$ 75,000**
WHILE LIVING ABOAD:		
Unmarried	**$ 200,000**	**$ 300,000**
Married and filing jointly	**$ 400,000**	**$ 600,000**
Married filing separately	**$ 200,000**	**$ 300,000**

FOREIGN ASSET REPORTING

(CONTINUED)

T1135

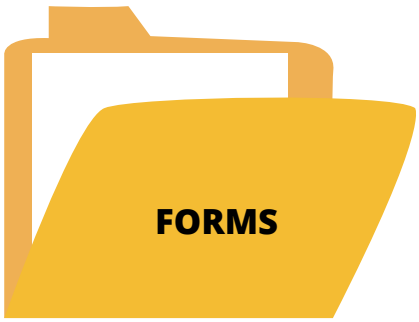
Taxpayers who own specified foreign property with a cost of more than CAD 100,000 at any point during the year must file form T1135.

The CRA has simplified procedures for taxpayers who hold specified foreign property with a total cost base of more than $100,000 and less than $250,000 at any time in the tax year.

Taxpayers who have more than $250,000 of specified foreign property must continue using the current detailed reporting method.

The foreign property specified includes funds (such as cash) held in a financial account outside Canada, shares of non-resident corporations (including those held in Canadian brokerage accounts), debts owed by non-residents (such as bonds issued by non-resident corporations and governments), interests in non-resident trusts, a real estate outside Canada and other property outside Canada.

Form T1135 is due by the deadline for filing the taxpayer's income tax return for the year. The basic penalty for missing or incomplete forms is $25 per day or $100, whichever is greater, up to a maximum of $2,500. There are harsher penalties for taxpayers who knowingly fail to file the T1135 or make false statements.



IRS STREAMLINED FILING PROCEDURES

PURPOSE

In 2012, the IRS created the Streamlined Filing Compliance Procedures to give US taxpayers (including individual taxpayers and their derivatives) who had not reported and paid taxes on foreign financial assets an option for:

- A streamlined procedure for filing amended or delinquent returns.
- Terms for resolving their tax and penalty obligations.

The taxpayers must demonstrate that the lack of reporting and payment of taxes was not a result of deliberate actions on their part. Non-deliberate conduct refers to accidental, unintentional actions resulting from a good-faith misunderstanding of legal requirements.

Returns filed through these procedures may be chosen for examination through regular audit selection processes for any US tax returns. Additionally, they may be subject to verification processes, in which their accuracy and completeness will be verified through information received from banks, financial advisors, and other sources.

If an individual is worried that their actions were deliberate, they should consider participating in the Offshore Voluntary Disclosure Program.

After an individual has finished the streamlined filing compliance procedures, they will be required to abide by US law for all future years and file returns according to standard filing procedures.

IRS STREAMLINED FILING PROCEDURES

(CONTINUED)

ELIGIBILTY

To be eligible for the program:

- The taxpayer must certify that previous compliance failures were due to non-willful conduct.
- If the IRS has initiated a civil examination of a taxpayer's return for any taxable year, regardless of whether the examination relates to undisclosed foreign assets, the taxpayer will not be eligible to use the streamlined procedures.
- Taxpayers who want to participate in the program need to have a valid Taxpayer Identification Number (TIN) or Social Security Number.
- Taxpayers eligible to use streamlined procedures who have previously filed delinquent or amended returns must pay previous penalty assessments.

IRS STREAMLINED FILING PROCEDURES

(CONTINUED)

STREAMLINED FOREIGN OFFSHORE PROCEDURES (NOT RESIDING IN US)

To qualify for the Streamlined Foreign Offshore Procedures, US taxpayers (individuals or estates of individuals) must meet the following requirements:

- Meet the Streamlined non-residency requirement.
- If joint filing, both spouses must meet the non-residency requirement.

The procedures for eligible US taxpayers are to:

- File amended tax returns and all required information returns for each of the last 3 years for which the due date of the US tax return has expired or the original 1040s.
- File any delinquent FBARs for each of the last 6 years for which the FBAR due dates have passed.
- File form 14653 with the reason for non-filling.

The full amount of the tax and interest due in connection with these filings must be remitted with the tax returns.

IRS STREAMLINED FILING PROCEDURES

(CONTINUED)

STREAMLINED FOREIGN DOMESTIC OFFSHORE PROCEDURES
(RESIDING IN US)

For US taxpayers who do not qualify for the non-residency criteria (individuals or derivatives), the procedures include:

- File amended tax returns and all required information returns for each of the most recent 3 years for which the US tax return due date has passed.
- File any delinquent FBARs for each of the last 6 years for which the FBAR due dates have passed.
- Pay a "Title 26 Different Offshore penalty," which corresponds to 5% of the highest aggregate balance/value of the taxpayer's foreign financial assets, which are subject to the penalty in the years in the covered tax return period and the covered FBAR period.
- No penalties, limit look back period.

Submission of the full amount of tax, interest and miscellaneous offshore penalty that is due in connection with these filings with the amended tax returns.

The IRS issued guidance in 2021 for individuals using the Streamlined Filing Compliance Procedures to come into compliance for non-US corporations.

These taxpayers are generally required to remedy their compliance for the most recent three years for which the US tax return due date (or properly applied for extended due date) has passed.

However, for taxpayers who own SFCs [note this includes “CFC’s”] and have a section 965(a) inclusion, they must include the tax year in which the transition tax inclusion occurred (generally 2017 and/or 2018) even if that tax year is not within the standard three-year lookback period.

This means that any submission to the Streamlined Filing Compliance Procedures involving SFCs with a section 965(a) inclusion in 2017 must include that tax year and all subsequent years.

WITHHOLDING TAXES

CANADIAN WITHHOLDINGS REGULATION 102

Many US companies that offer services in Canada deal with challenges due to Regulations 102 and 105.

According to the Canadian-US Tax Treaty, if a US employee is temporarily working in Canada and earns less than $10,000 based on a proration of his annual salary over his stay in Canada, he may be exempt from paying Canadian taxes.

However, despite the US employee's ultimate tax liability in Canada, Regulation 102 states that US employers must register for Canadian payroll accounts, withhold, and remit Canadian income tax to the government.

Canada provides two options to avoid the withholding and remittance of Canadian income taxes from US employees who render employment services in Canada:

Option 1: Non-Resident Employer Certification

- Must be resident in a country that maintains a tax treaty with Canada (such as the Canada-US Tax Treaty.
- Must have applied for and received certification from the Canada Revenue Agency under this program.
- Required to file a treaty-based tax return in Canada (no income tax obligation).

Employee Obligations

- Must be resident in a country that maintains a tax treaty with Canada (such as the Canada-US Tax Treaty).
- Must not be liable for income tax in Canada as a result of a tax treaty (i.e. they earn less than $10,000 of income attributable to Canada).
- They work less than 45 days in Canada within a calendar year or less than 90 days over the previous 12 months.
- Not required to file a Canadian tax return.

WITHHOLDING TAXES

(CONTINUED)

REGULATION 102

Option 2: **Regulation 102 Waiver**

- Applicable when a US employee is exempt from Canadian income tax under the Canada-US Tax Treaty (i.e. less than $10,000 of income).
- Must apply for this waiver from the Canadian government (and Québec if applicable) at least 30 days prior to commencement of employment services.
- The employee is still required to file a Canadian tax return in order to apply for a treaty exemption from Canadian taxes.

CANADIAN WITHHOLDINGS REGULATION 105

Regulation 105 imposes a 15% withholding tax on fees, commissions or other amounts earned by US individuals and corporations from services provided in Canada. If these services are provided in the province of Québec, they will be subject to an additional Québec withholding tax of 9%.

Often these withholding taxes can be recouped. The US entity must file a Canadian (and Québec) tax return at the end of the company's fiscal year and claim a refund to the extent that it is eligible for refunds under the Canada-US tax treaty.

To avoid the initial withholding and tax refund process, US service providers can request a reduction or waiver of their Canadian withholding requirement either 30 days before the start of services in Canada or 30 days before the first payment for these services is due.

This waiver is only available if there is no ultimate tax liability under the Canada-US Tax Treaty. A treaty-based Canadian tax return must still be filed to receive the exemption under the treaty.

WITHHOLDING TAXES

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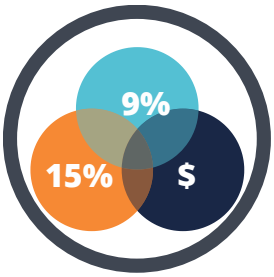


Regulation 105 requires US individuals and companies to pay a 15% tax on fees, commissions, or other earnings from services provided in Canada. Additionally, if these services are provided in the province of Québec, they will be subject to an additional 9% withholding tax.

By filing a Canadian and Québec tax return at the end of the company's fiscal year, US service providers can often recover these withholding taxes if they are eligible under the Canada-US tax treaty.

CANADIAN WITHHOLDINGS REGULATION 105

To avoid the initial withholding and refund process, US service providers can request a reduction or waiver of their Canadian withholding requirement either 30 days before the start of services in Canada or 30 days before the first payment for these services is due.

If they have no ultimate tax liability under the Canada-US Tax Treaty. A treaty-based Canadian tax return must still be filed to receive this exemption.

WITHHOLDING TAXES

(CONTINUED)

US WITHHOLDING REQUIREMENTS

US WITHHOLDING AGENTS

Entities in the US that pay non-residents must appoint a withholding agent, who is responsible for withholding, reporting, and submitting these payments to the IRS.

These taxes are typically reported using Forms 1042 and 1042-S and must be filed with the IRS by March 15th. Additionally, the withholding agent must deposit the withheld funds into a US bank.

REDUCTIONS AND EXEMPTIONS

The Canada-United States Tax Treaty serves as a beneficial agreement for taxpayers, as it significantly reduces the withholding rates on various forms of income.

To benefit from these reductions, individuals or entities can file an application with their respective withholding agent, who will then submit Form 8233 to the Internal Revenue Service.

Additionally, Form W-8BEN can be filed with a US financial institution or withholding agent to claim treaty-based exemptions or reduced withholding rates.

It is important to note that US taxable income earned through partnerships and LLCs with effectively connected income is subject to withholding, and in such cases, Forms 8805 and 8813 must be used to report the withholding tax.

On the other hand, interest income may be exempt from withholding tax under certain circumstances.

REAL ESTATE

NON-RESIDENTS WITH RENTAL PROPERTY IN CANADA

Non-residents who own Canadian real estate must:

- File annual Canadian income tax returns (and Québec, where applicable).
- Remit withholdings to the CRA on a monthly basis.
- Withhold at least 25% of the gross rental income. This can be reduced to 25% of the projected net income if an NR6 application is filed with the CRA in advance of the first rent payment of the year.

Non-residents selling Canadian real estate must:

- File annual Canadian income tax returns (and Québec, where applicable).
- Remit **withholdings of 25% (plus 12% in Québec)** on the gross sale proceeds within 10 days of the sale. These withholdings can be reduced if a clearance certificate is obtained in advance of the transaction closing.

CANADIANS WITH RENTAL PROPERTY IN THE US

Real estate holders should be aware of the tax implications of the following activities:

- Disposition of US real property investment.
- US withholding on dispositions.
- Application of the Foreign Investment in Real Property Tax Act (“FIRPTA”).
- How to structure ownership of US vacation properties. Often the use of trusts and partnerships can achieve significant tax savings.
- Exposure to US Estate Tax.

REAL ESTATE

(CONTINUED)

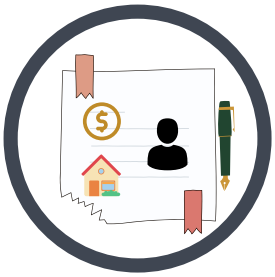
CANADIAN REALS ESATE INVESTORS

Canadian real estate investors must:

- File annual US tax returns. This applies to individuals, corporations, partnerships, LLCs, trusts, and estates.
- Apply a withholding tax on amounts realized on disposition or sale (FRIPTA):
- If the buyer acquires the US real property for use as a residence and the sale price does not exceed $300,000, there is an exemption from the withholding tax.
- If the amount realized exceeds $300,000 but is below $1,000,000, and the property will be used by the transferee as a residence, then the withholding rate is 10% on the full amount realized.
- If the amount realized exceeds $1,000,000, the withholding rate is 15% on the entire amount, regardless of the use by the transferee.

The 15% withholding applies to the ownership of US real property held directly by individuals, indirectly through partnerships, and the ownership of stock in a US real property holding corporation.

ESTATES AND TRUSTS



US ESTATE, GIFT, AND GENERATION-SKIPPING TAXES

A broad range of individuals must consider the impacts of the US Estate Tax. Subject to the various exemptions, this tax may apply to:

- All US citizens (residing in the US or abroad).
- Canadians who reside in the US (either via a green card or with established permanent residence).
- Canadians who own US real estate or tangible personal property located in the US.
- Canadian shareholders of US companies (including stock investments).

The following are the 2023 exemptions, which are subject to annual adjustment for inflation:

Federal Unified Estate & Gift Tax Life Time Exemption	$12,920,000
Federal Generation Skipping Transfer Tax Exemption	$12,920,000
Annual Gift Tax Exemption Per Donee	$17,000
Annual Gift To Non-resident Alien Spouse	$175,000

ESTATES AND TRUSTS

US ESTATE, GIFT, AND GENERATION-SKIPPING TAXES

The Federal Estate and Gift Tax rate (not subject to inflation adjustment) is 40%.

An individual can transfer up to **$12,920,000** during their life and at death. A married couple can transfer double that amount – up to **$25,840,000**. Transfers between spouses are generally exempt from taxation. A deceased spouse's unused exemption can be transferred to the surviving spouse and added to their exemption.

The tax cost basis of assets held by a decedent at death is generally adjusted to the values at the date of death.

It is very important to note that while exemptions exist from the US Estate and Gift Tax, similar exemptions do not apply to most states. Therefore, a person may not have a federal Estate Tax liability but may be subject to estate, inheritance, or gift taxes in the state of jurisdiction.

US residents who maintain trusts under Canadian jurisdiction, such as Canadian estates, may be required to file special information returns regarding the assets held in the trusts. These trusts may be subject to income taxation. Not filing required information returns can subject the trust to substantial penalties (See "Other US reporting issues").

Deemed Canadian Resident Trusts

A trust created outside Canada may be deemed to be a Canadian resident trust where:

- A Canadian resident makes a contribution to a foreign trust; or
- A Canadian resident is a beneficiary of a foreign trust and a "connected contributor" contributes assets to that trust.

E-COMMERCE

E-COMMERCE

When conducting e-commerce transactions, it's important to consider the sourcing of goods and services, as well as the location of the buyer. Furthermore, there's a possibility of creating a Permanent Establishment (PE) in a foreign country if you maintain a computer server in that jurisdiction. This could lead to the allocation of revenue to the PE based on the activities carried out by or for the PE. This is an important factor to consider, as it can have significant tax implications. To avoid unintended tax consequences, e-commerce transactions may require careful consideration of sourcing, location and the potential creation of a Permanent Establishment.

- Sales of inventory purchased are generally sourced where title transfers.
- Sales of intangibles are generally sourced to the seller's country or residence.

However, the CRA will also consider the jurisdiction of primary use.

- Income from the licensing of intangibles is ordinarily sourced based on use.
- Income from services is generally sourced where the services are performed, which generally means where personnel are employed and capital is expended.

E-COMMERCE

(CONTINUED)

ONLINE SERVICES

Sale Tax Changes Relating to the Digital Economy.

As of July 1, 2021, changes to sales tax regulations have been put in place that pertains to the digital economy.

These changes will affect three specific types of supplies, which are as follows:

1. Sale of cross-border digital products and services
2. Sales of goods through fulfillment warehouses
3. Sale of short-term accommodation via digital platforms

- Non-resident vendors without a physical presence in Canada selling digital products/services to Canadian consumers are obliged to register for GST/HST, and remit taxes on taxable sales made to Canadian consumers.
- The Canada Revenue Agency (CRA) launched an online portal for tax registration, filing and payment, for greater convenience.
- GST/HST collection and remittance are mandatory for business-to-consumer transactions. However, this obligation applies solely to consumer-facing sales and not to business-to-business transactions.
- A vendor registered as a non-resident is exempt from charging GST/HST if the buyer provides their GST/HST number.
- Under this new system, non-residents will not be eligible to claim input tax credits.
- Similar to all other businesses, the registration threshold will be $30,000.

E-commerce businesses in certain provinces, such as British Columbia, Saskatchewan, and Manitoba, may be required to collect Provincial Sales Tax. Exceptions apply to non-resident vendors who do not sell software or telecommunication services. Effective as of April 1, 2021, sellers of goods, software, and telecommunications services, both Canadian and foreign, must register to collect PST if their B.C. revenue exceeds $10,000.

E-COMMERCE

(CONTINUED)

ONLINE SERVICES

An e-commerce business providing services and goods in Québec may be required to collect and remit Québec Sales Tax (QST).

- Advertising services are typically procured where revenue-generating activities take place.
- Allocation of revenue is required when income-producing activities occur partly within and outside the US and should be based on facts and circumstances.
- Internet Service Providers (ISP) involve labour and equipment, which requires an allocation based on the place of performance rule, i.e. location of a server, routers, or other equipment.
- The determination of where income-producing activities occur for Application Service Providers (ASP) Software as a Service (SaaS) is based on facts and circumstances.
- Sourcing for digital products such as software, e-books, music, and videos may require the buyer's domain if the location is unknown.
- The location of the purchaser may be unknown, in which case sourcing may necessitate the use of the buyer's domain.

E-COMMERCE

(CONTINUED)

PERMANENT ESTABLISHMENT

The tax treaty concept of Permanent Establishment (PE) requires a physical location for business operations or servers. This is either where business operations are regularly conducted by employees or agents, or the location of a server.

- ISPs will source revenue from a PE if there is equipment and personnel present.
- Allocation within and without is based on the locations where the income-producing activities occur.
- Income from automated services is sourced based on where the income-producing activities occur.
- Income for automated web-based services, ASP, and SaaS is sourced based on primary and secondary income-producing activities.
- The location of a fully automated server generally creates a PE. However, profits may be allocated based on where substantial activities for the maintenance and operation of the Website occur.
- The US Supreme Court ruled in South Dakota vs Wayfair Inc. in 2018, which indicated that US states may require e-commerce businesses transacting with their residents to collect and remit state sales taxes.

U.S. EXPATRIATION

EXPATRIATES

Expatriates are Americans who relinquish their US citizenship or long-term permanent residents who surrender their green cards. . Despite the difficult process, more Americans are expatriating, with a record number doing so in 2020.

When expatriating, taxpayers must file an Exit Return and pay a capital gains tax on assets deemed sold at fair market value the day before expatriation, with a $744,000 inflation exclusion in 2021.

The tax attributable to the deemed sale of property may be extended until the due date of the return for the taxable year in which such property is disposed of, provided that an election to defer the tax is made. An irrevocable election to defer the tax may be made. However, adequate security must be provided. Generally, a bond or letter of credit is considered acceptable security interest. Interest will be charged on any deferral of tax.

Certain property deemed sold will not qualify for the election such as:

- Any deferred compensation payments
- Any specified tax-deferred accounts
- Any interest in non-grantor trusts

Special rules apply to US withholding on deferred compensation payments.

U.S. EXPATRIATION

(CONTINUED)

DATE OF EXPATRIATION

Only covered expatriates are subject to these deemed sale rules. A covered expatriate is a person whose:

- Average annual net income for the 5 tax years ending prior to the date of loss of US citizenship exceeds $162,000 (2017) or
- Has a net worth of $2 million or more at the time of expatriation.

An individual who is an expatriate and has an average annual net income tax of over $190,000 for the five tax years preceding their expatriation date is considered a 'covered expatriate,' an increase from $178,000 for the 2022 tax year ($139,000 in the base year 2008).

COVERED EXPATRIATES

A citizen shall be treated as relinquishing his or her US citizenship on the earliest date where:

- Renunciation of US nationality occurs before a diplomatic or consular officer of the US pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act.
- The US State Department furnishes a signed statement of voluntary relinquishment of US nationality.
- The US State Department issues a certificate of loss of nationality.
- A court of the US cancels a naturalized citizen's certificate of naturalization.

For the tax year 2023, the statutory exclusion amount for covered expatriates has been increased to $821,000, up from $767,000 for the tax year 2022.

U.S. EXPATRIATION

(CONTINUED)

EXCEPTIONS

Two exceptions to the exit-tax regime are:

- Individuals who were born with dual citizenship in Canada and the US, continue to be a citizen and tax resident of Canada as of the date of expatriation, and they have not been a US resident for more than 10 taxable years during the 15-year period ending with the taxable year of expatriation.
- US citizens who renounce their US citizenship before reaching the age of 18 1/2, provided that they were not a US resident for more than 10 taxable years before the renunciation.

Individuals thinking about leaving their home country to live in another should know that in 1996, the United States Congress passed a law (the Reed Amendment) that changed the rules for who is allowed to enter the country and who is not. According to the Reed Amendment, people who used to be citizens of the United States but gave up their citizenship to avoid paying taxes will not be allowed to enter the United States and will not be able to get a visa.

Long term residents of the US terminate their resident status by:

- Filing Form I-407, Abandonment of Lawful Permanent Resident Status with the US Citizenship and Immigration Services (USCIS) or a consular officer or
- Beginning to be treated as a resident of a foreign country under the residence tie-breaker rules in a treaty with the US, does not waive the benefits of the treaty, and notifies the secretary of such treatment on Form 8833 and Form 8854.

A long-term resident is defined as an individual who has held a green card for any portion of at least 8 of 15 years preceding expatriation. Even one day in a year is considered any portion of a year.

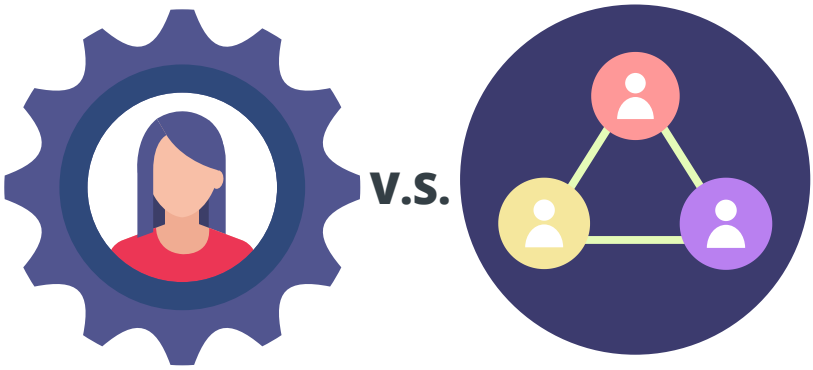
MISCELLANEOUS

PE FOR SERVICE PROVIDERS TO CANADA

As of January 1, 2010, the fifth protocol to the US-Canada Tax Treaty introduced a new definition of Permanent Establishment (Article V). Under this new definition, cross-border contractors are considered to have a permanent establishment in the other country if they meet either of the new criteria.:

The Single Individual Test (for Individuals):
Services are performed by an individual who is present in the other Contracting State for more than 183 days in a 12-month period and during this period more than 50% of the gross active revenues of the enterprise are generated from these services; or

The Enterprise Test (for Corporations):
Services are provided in the other Contracting State for more than 183 days in a 12-month period with respect to the same or connected project. These services are provided for customers who are either residents of or maintain a PE in the other State and the services are provided to the other PE.



MISCELLANEOUS

(CONTINUED)

US PASSIVE FOREIGN INVESTMENT CORPORATION ("PFIC") RULES

Increased PFIC information has to be reported by US shareholders annually on Form 8621.

A new de-minimis threshold amount was established relating to PFIC reporting. PFIC reporting is required if on the last day of the tax year either:

- The value of all PFIC stock owned directly or indirectly by the shareholder exceeds $25,000, or
- The shareholder only holds the PFIC stock indirectly and the value of the indirectly owned stock exceeds $5,000.

The IRS has provided regulations on determining indirect ownership and reporting requirements of PFICs. There are new anti-duplication rules so that stock is not counted twice when determining whether a person with an interest in a domestic corporation is an indirect owner of a PFIC that is held by that same domestic corporation.

There is also additional guidance on how PFIC shareholders should complete IRS Form 8621 and IRS Form 5471.

SECTION 383 US INTERCOMPANY DEBT-EQUITY RULES

The IRS issued final regulations on reclassifying certain inter-company debt instruments as equity for US tax purposes in 2018. Exemptions include the first $50 million in debt issued by a corporation for short-term debt or funding a controlled subsidiary's new investments.

Under Section 385, debt issued by a corporation to an affiliate is recharacterized as equity if it is issued:

- In connection with a distribution to shareholders, or
- An exchange for stock of an affiliate, or
- Certain exchanges for property in an asset reorganization.

MISCELLANEOUS

(CONTINUED)

SALES TAX IN CANADA

US entities are required to register for and charge Canadian sales taxes if they meet the definition of "carrying on business" in Canada.

2023 SALES TAX RATES	GST	PST	HST	TOTAL
Alberta	5%	-	-	5%
British Columbia	5%	7%	-	12%
Manitoba	5%	7%	-	12%
New Brunswick	-	-	15%	15%
Newfoundlad & Labrador	-	-	15%	15%
Northwest Territories	5%	-	-	5%
Nova Scotia	-	-	15%	15%
Nunavut	5%	-	-	5%
Ontario	-	-	13%	13%
Prince Edward Island	-	-	15%	15%
Québec	5%	9.975%	-	14.975%
Saskatchewan	5%	6%	-	11%
Yukon	5%	-	-	5%

MISCELLANEOUS

(CONTINUED)

ANTI-INVERSION GUIDANCE

In 2016, the IRS issued regulations affecting inversion transactions. The tax consequences of transferring a domestic entity to a foreign entity in an inversion transaction are based on the percentage of ownership of the foreign corporation by the owners of the domestic entity before the transaction.

If the percentage is at least 60% but less than 80%, special taxes are applied to the inverted entity. If the percentage of ownership is at least 80%, the foreign corporation is treated as a domestic corporation for tax purposes.

LEVERAGED PARTNERSHIPS

The IRS has implemented new rules to limit the use of leveraged partnerships as a tax-free structure to extract cash from a business. Previously, partners could receive tax-free cash distributions if it was financed by partnership debt. However, the new regulations may consider partnership liabilities as nonrecourse liabilities in certain circumstance.

OTHER US REPORTING ISSUES

FORM 5471 – Information Return of US Person with respect to certain foreign Corporations. Failure to file a complete and accurate Form is subject to a $10,000 civil penalty per filing**. Taxpayers need an EIN or unique ID number to identify the foreign corporation there are only 2 options to file information about the entity,**

FORM 5472 – Information of a 25% foreign-owned US Corporation or Foreign Corporation engaged in a US trade or business (such as US LLCs). Failure to file a complete and accurate Form is subject to a $25,000 civil penalty per filing.

FBAR– FinCen Report 114 (formerly TD F 90-22.1) – Information detailing foreign bank accounts and other foreign investments if the aggregate value of such accounts at any point in a calendar year exceeds $10,000. Failure to properly file the form may be subject to penalties, including a civil penalty of $10,000. Reasonable cause for failure to file may eliminate the penalty**. Willful failure to file may be subject to a civil monetary penalty equal to the greater of either $100,000 or 50% of the balance in the account.**

MISCELLANEOUS

(CONTINUED)

OTHER US REPORTING ISSUES (CONTINUED)

WITHHOLDING 1042, 1042-S – Failure to not file the form when due is 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax.

FORM 1120F – US Income Tax Return of a Foreign Corporation. Required of a foreign corporation that conducts business in the US, whether or not it is through a US office. Failure to file Form 1120F may result in the income of the foreign corporation to be taxed on a gross basis.

OTHER CANADIAN REPORTING ISSUES

T1135 – Foreign Property Reporting: Canadian taxpayers residing in Canada with foreign property worth over $100,000 at any point in a year must file a T1135 report with the CRA detailing information about the foreign property and its income. The report is due along with the taxpayer's annual income tax return. The maximum fine for not filing or incomplete filing is $25 per day or $100 (whichever is higher), up to a maximum of $2,500. Failing to file the T1135 knowingly or making false declarations incurs stricter penalties.

T1134 – Foreign Affiliate Reporting: Taxpayers are required to file an annual T1134 information return to report information regarding their foreign affiliates and controlled foreign affiliates. In very general terms, a foreign affiliate is a non-resident corporation in which the taxpayer and persons related to the taxpayer own at least 10% of ownership, with the taxpayer alone owning at least 1% of the non-resident corporation (ownership may be direct or indirect). These returns should be filed no later than 15 months after the taxpayer's tax year-end (due date to be reduced to 12 months in 2021 and 10 months after 2021). Assuming the taxpayer is not required to file more than 50 T1134 returns, the maximum late-filing penalty for T1134 returns is $2,500 per missing form.

T106 – Reporting Non-Arm's Length Transactions with Non-Residents: Taxpayers are required to report their transactions with non-arms length non-residents for each taxation year by filing a T106 information return if the combined annual amount of these transactions exceeds $1,000,000. Common reportable transactions include sales, purchases, borrowing, loan repayments, and indebtedness. These forms should be filed by the filing deadline for the taxpayer's income tax return for the year. Assuming the taxpayer is not required to file more than 50 T106 slips, the maximum late-filing penalty for T106 forms is $2,500 per missing form.

MISCELLANEOUS

(CONTINUED)

OTHER CANADIAN REPORTING ISSUES

T4A-NR – Payments to Non-Residents for Services Performed in Canada: Taxpayers who make payments during the calendar year to non-residents for services performed in Canada are required to file a T4A-NR information return with the CRA. A T4A-NR return reports both the gross payments made to non-residents and the withholding tax on these payments remitted to the CRA. The filing deadline for T4A-NR information returns is the last day of February of the following calendar year. The maximum penalty for late filing a T4A-NR information return varies from $1,000 - $7,500, depending on the number of T4A-NR slips required to be filed.

NR4 – Payments to Non-Resident Report: Canadian residents and non-residents conducting business in Canada must file an annual NR4 report to declare payments made to non-residents during the year. Common payments to be reported on an NR4 return include interest, dividends, rent, management fees, royalties, and licensing fees. An NR4 return reports both the gross payments made to the non-resident and any withholding tax remitted to the CRA concerning the payments. The filing deadline for NR4 returns is 90 days after the calendar year-end. The maximum penalty for late filing an NR4 return varies between $1,000 and $7,500 depending upon the number of NR4 slips required to be filed.

NR6 – Undertaking to Withhold on a Net Basis from Rental Income Paid to Non-Residents: The default Canadian income tax treatment for rents earned in Canada by non-residents is a 25% withholding tax on gross rents. Non-residents may elect to pay Canadian income tax on rental income on a net basis by filing an annual Section 216 election return with the CRA. To withhold on a net basis, non-residents (together with their Canadian resident agents) must annually file Form NR6 with the CRA. Form NR6 should be filed before the first rental payment of the year, and must be approved by the CRA before withholding on a net basis.

NR301 - Declaration for Benefits under a Tax Treaty for Individuals, Corporation, or Trust: Must be completed by entities benefiting from treaty-reduced withholding rates on dividends, interest, management fees, rents, and royalties paid to or for the benefit of non-residents.

MISCELLANEOUS

(CONTINUED)

OTHER CANADIAN REPORTING ISSUES

NR302 - Declaration for Benefits under a Tax Treaty for a Partnership: Must be completed by entities benefiting from treaty-reduced withholding rates on dividends, interest, management fees, rents, and royalties paid to or for the benefit of non-residents.

NR303 - Declaration for Benefits under a Tax Treaty for a Hybrid Entity: Must be completed by entities benefiting from treaty-reduced withholding rates on dividends, interest, management fees, rents, and royalties paid to or for the benefit of non-residents.

T2 SCHEDULE 91 & 97 – Treaty-Exempt Income Tax Return for Non-Resident Corporations: Non-resident corporations conducting business in Canada without a permanent establishment under a bilateral tax treaty must file an annual T2 corporate income tax return to claim exemption from Canadian tax under the treaty. The deadline for filing is 6 months after the corporation's fiscal year-end. Late filing incurs a maximum penalty of $2,500.

T5018 – Construction Industry Subcontractor Payment Reporting: Businesses in the construction industry must annually file a T5018 report with the CRA to disclose payments made to subcontractors during the year. Taxpayers may select either the calendar year or their fiscal year for reporting. Late-filing a T5018 incurs a maximum penalty ranging from $1,000 to $2,500, based on the number of T5018 slips required.

MISCELLANEOUS

(CONTINUED)

BACK-TO-BACK RULES

In 2014, Canada enacted regulations to stop intermediaries from using intermediaries to lower withholding taxes on interest payments to non-residents or evade thin capitalization rules.

In addition, Canada expanded the back-to-back rules and prevented the use of intermediaries to reduce withholding taxes by:

- Expanding the application to royalties, rents, and similar payments.
- Extending the application to structures with multiple intermediaries.
- Adding character substitution rules.

Canada has also extended the rules to outbound loans (in an attempt to avoid shareholder lending rules).

MISCELLANEOUS

(CONTINUED)

EXPANSION OF SUBSECTION 55 (2) ANTI-AVOIDANCE RULE

Typically, dividends paid between Canadian corporations are tax-exempt. However, Subsection 55(2) of the Income Tax Act includes an anti-avoidance rule which prohibits tax-free dividends if the intention is to reduce or avoid capital gains on the sale of shares of the paying corporation.

Subsection 55(2) now applies to tax-free intercorporate dividends when they were issued:

1. To reduce or avoid capital gains on the disposition of shares.
2. To reduce the fair market value of any share.
3. To increase the cost of property of the dividend recipient.

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