



U.S. ESTATE TAX AND CROSS-BORDER BENEFITS FOR CANADIANS



By:

**Renea M. Glendinning, CPA
(Shareholder)**

**Kerkering, Barberio & Co.
Certified Public Accountants
1990 Main Street, Suite 801
Sarasota, FL 34236
and**

**6320 Venture Drive, Suite 203
Lakewood Ranch, FL 34202**

Phone:

(941) 365-4617

Email:

rglending@kbgrp.com

www.kbgrp.com

Dated:

February 7, 2011

About the Author:

Ms. Glendinning joined the firm in 1987 and has headed the International Tax Department since 1996. She has authored articles regarding various international tax issues and frequently gives presentations on U.S. income and estate taxation of foreign nationals doing business in the U.S.

A tax law was passed in December, 2010 which granted U.S. citizens and domiciliaries an exemption of \$5,000,000 with respect to U.S. estate tax. Persons subject to the U.S. estate tax on the value of their worldwide assets do not pay U.S. estate tax unless the value of those worldwide assets exceeds \$5,000,000. In addition, an unlimited amount can pass to the U.S. citizen surviving spouse without estate tax.

Individuals who are not domiciled in the U.S. can also be subject to U.S. estate tax. However, their estates are subject to estate tax on U.S. assets only, not worldwide assets. Instead of receiving the benefit of a \$5,000,000 exemption, they are entitled to an exemption of only \$60,000. Effective January 1, 2010, the U.S. estate tax rates start at 18% and increase to a maximum of 35% on property valued at \$500,000 and above. There is no automatic exemption for property passing to the spouse, unless the surviving spouse is a U.S. citizen, which is rarely the case.

While the U.S. is generally regarded as somewhat of a tax haven in terms of its income taxes, the estate tax on nondomiciliaries can be onerous. To illustrate the severity of the tax, property valued at \$500,000 would result in a U.S. estate tax of \$142,800. This is payable to the IRS no later than 9 months after date of death and, if not paid timely, is subject to penalties and interest, which would be added to the estate tax.

Canadian residents have significant advantages over residents of other countries due to the favorable provisions contained in the income tax treaty between the U.S. and Canada. They are allowed a pro-rata portion of the credit afforded to U.S. citizens and domiciliaries based upon the value of their U.S. assets to their worldwide assets. This credit is known as the "unified credit."

The following examples show how the U.S. estate tax is calculated on the estate of a Canadian resident. All values are stated in terms of U.S. dollars.

A Canadian resident dies owning U.S. real estate valued at \$500,000 and a worldwide estate valued at \$5,000,000. No estate tax is due, calculated as follows:

Value of U.S. Estate	\$500,000
Value of Worldwide Estate	\$5,000,000
Percentage of U.S. to Worldwide	10%
U. S. Estate Tax on \$5,000,000 (Unified Credit)	\$1,730,800
U.S. Estate Tax on \$500,000	\$155,800

CALCULATION OF U.S. ESTATE TAX

U.S. Estate Tax on U.S. Assets Valued at \$500,000	\$ 155,800
Maximum Unified Credit ($\$1,730,800 \times 10\% = \$173,080$, limited to the actual amount of estate tax of \$155,800)	<u>(155,800)</u>
U.S. Estate Tax Payable	<u>\$ -0-</u>

Even though the estate of a nondomiciliary does not get the advantage of the unlimited deduction for property passing to their spouse (unless the spouse is a U.S. citizen), the Canadian resident does receive a marital credit equal to the unified credit allowed under the pro-rata calculations.

A Canadian resident dies owning U.S. real estate valued at \$500,000 and a worldwide estate valued at \$10,000,000. The title to the U.S. real estate passes to the Canadian spouse. No estate tax is due, calculated as follows:

Value of U.S. Estate	\$500,000
Value of Worldwide Estate	\$10,000,000
Percentage of U.S. to Worldwide	5%
U. S. Estate Tax on \$5,000,000 (Unified Credit)	\$1,730,800
U.S. Estate Tax on \$500,000	\$ 155,800

CALCULATION OF U.S. ESTATE TAX

U.S. Estate Tax on U.S. Assets Valued at \$500,000	\$ 155,800
Maximum Unified Credit ($\$1,730,800 \times 5\%$)	(86,540)
Marital Credit ($\$86,540$ per above, limited to the actual amount of estate tax of \$69,260 after application of the unified credit)	<u>(69,260)</u>
U.S. Estate Tax Payable	<u>\$ -0-</u>

A Canadian resident who dies leaving his U.S. property to someone other than his Canadian spouse will not have any U.S. estate tax to pay if the value of his worldwide estate is \$5,000,000 or less. A Canadian resident who leaves his U.S. property to his Canadian spouse can have a worldwide estate valued at significantly more than \$5,000,000 and still not owe any U.S. estate tax.

The \$5,000,000 exemption is granted through December 31, 2012 and is subject to change effective January 1, 2013.

###

I would be happy to assist you with any of your questions. Please call 941-365-4617 or email me at rglending@kbgrp.com.