BRUNTON'S
U.S. Taxletter
FOR CANADIANS

Covering U.S. Aspects of U.S. Citizens or U.S. Residents with Canadian Income or Assets, and Canadians with U.S. Income or Assets

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ADMINISTRATIVE/LEGISLATIVE/ JUDICIAL UPDATE

Estate Tax Chaos

We mentioned in our US "International Tax Alert" in early January that the US estate tax "lapsed" as of January 1, 2010, but is scheduled to reappear January 1, 2011. However many tax commentators expect legislation during 2010 that will reinstate the estate tax retroactive to January 1, 2010.

As a part the chaos, the IRS has verbally indicated it will not issue "Transfer Certificates" for the estates of nonresident aliens dying during 2010. This could possibly mean the proceeds of the sale of their real estate during 2010 will not be released until the final IRS Estate Tax Closing Document is issued, which often takes a year or longer.

The US federal gift tax did not lapse and therefore continues in effect.

As part of the elimination of the estate tax for 2010, subject to exceptions, the prior "step-up" in cost base is also eliminated for 2010. This may also change retroactively. We will update subscribers to our "International Tax Alert" on any developments. (Please see "International Tax Alert" on our website).

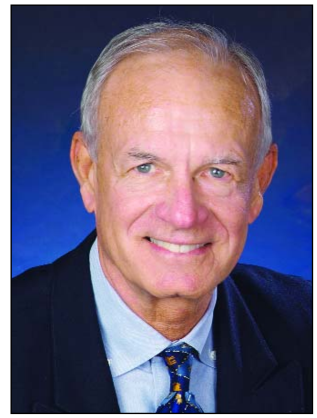
(Please see the article "***A TSUNAMI OF TRUSTS WASHES ASHORE INTO THE US***").

IRS Issues More Guidance on FBAR Reporting

Please see the article "***CURRENT RULES FOR REPORTING FOREIGN ACCOUNTS***".

Telecommuting Constitutes Nexus

The New Jersey Tax Court held that a Delaware Corporation with its office in Maryland was subject to New Jersey corporation tax because it employed an individual resident in New Jersey, who simply telecommunicated with the offices in Maryland from her residence in New Jersey. The Corporation did not otherwise exploit New Jersey's markets by hiring additional employees in New Jersey or even soliciting customers in New Jersey. (Telebright Corporation v. Director Division of Taxation, New Jersey Tax Court Number 011066).



RICHARD BRUNTON HOLDS A MASTERS DEGREE IN TAXATION/ACCOUNTING, IN WHICH HIS PRIMARY INTEREST HAS BEEN INTERNATIONAL TAXATION. HE HAS BEEN A RESIDENT OF FLORIDA FOR THE PAST 39 YEARS.

IRS Plans for Joint Tax Audits with Other Countries

The IRS announced in December, 2009, that it was working on a system to conduct joint tax audits under tax treaties with some of the country's tax treaty partners. On April 16, 2010, it announced it would be determine its first joint audit by September 30, 2010. Among the countries most likely to be selected for the first joint audit will be Canada, Australia, Japan or the United Kingdom.

IRS Clarifies Definition of "Omission of Gross Income"

Substantial penalties can apply for "omission of gross income" on an income tax return. Omitting gross income can also extend from 3 to 6 years the "normal" period

*ADDRESSES ONLY U.S. FEDERAL ISSUES -- STATE AND LOCAL ISSUES MAY ALSO APPLY.
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in which the IRS has the right to question your tax return. In most cases the definition of "omitted income" is obvious, such as when interest or dividend income is simply not disclosed on the tax return.

However the IRS has now issued temporary regulations indicating that the overstatement of your cost base on an asset which you sell will also be considered as "omitted income". (TD 9466).

Estate Executor Liable for Unpaid Estate Tax

An Executor was held personally liable for the decedent's unpaid estate tax to the extent he distributed all the assets of the estate before all the estate tax was paid. Further, even though the executor filed for personal bankruptcy, his responsibility for the estate tax debt was not discharged as part of the bankruptcy proceeding. (D. Carroll, DC Alabama, 2009). (Note that in accordance with Reg. §20.2002-1, executors are personally liable for unpaid estate tax, to the extent assets of the estate are distributed to beneficiaries or creditors).

New IRS Form for "Covered Gifts and Bequests"

US citizens, and US residents (including green card holders living in Canada), who receive certain gifts or bequests from certain former green card holders or from certain former US citizens are required to report them to the US Internal Revenue Service.

The IRS announced it will issue a new form (Form 708) which will be used by taxpayers to report "covered gifts or bequests" received from "covered expatriates" and pay the required tax. The reporting requirement, and related US tax, is effective for transfers received by US citizens and US residents from "covered expatriates" who expatriated after June 16, 2008. The IRS has assured it will provide a reasonable period of time between the date of issuance of the form and the date at which the first return must be filed and the tax paid. (Ann. 2009-57).

Some Canadian Flight Attendants May be Subject to US Income Tax

US wage withholding tax may apply to Canadian resident flight attendants who are nonresident aliens of the United States, if they perform services for air carriers while in the United States. There are two main exceptions for Canadians:

1) a) The individual is present in the US for 90 days or less during the year, and

b) The pro rata portion of the compensation does not exceed $3000, and

c) The work is performed for a foreign airline not engaged in business within US, or a domestic airline for which the services are performed for an office or place of business in Canada.

2) The "included-excluded" rule of Code Section 3402 applies. (See the Summer, 2009, Taxletter. (See TAM 201014051)

More Sales Tax Tightening

Louisiana has ruled that any payment for online receipt or access to data, information, materials, media, or other form of communications that are convertible to readable, viewable, or usable form by browsers or software installed on either mobile hardware or system hardware located in Louisiana is subject to sales, use, or lease tax. (Louisiana Department of revenue, Revenue Ruling No. 19-001).

IRS Provides Guidance On How To Obtain Refunds In Unusual Situations

In Chief Counsel Advice (CCA) 201012033 the IRS has provided guidance on how tax refund checks are to be obtained and addressed in the following circumstances:

1) The taxpayers filed a joint return and they are now divorced,

2) The taxpayers filed a joint return and one of the spouses is now deceased,

3) The taxpayers filed a joint return and both spouses are now deceased,

4) The taxpayer filed individually, and is now deceased.

Danger Grows for State Sales tax

We previously described some individual States that had enacted the so-called "Amazon Law" for State sales tax. It appears to be contagious. The law refers to a trend by which individual States are passing laws to collect sales tax on sales in their State from out-of-state vendors, even when the out-of-state vendor has no "physical presence" in the State to which the product is shipped.

In general the State into which the product is shipped will consider they have the

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right to claim sales tax from the out-of-state seller, if the sale is generated by a certain type agreement the out-of-state seller has with an affiliate resident in the State to which the product is shipped.

The agreement might, for example, provide for a commission or other consideration if the affiliate refers potential customers to the out-of-state seller through a website link or otherwise. The rule generally applies to independent contractors as well as any other agents, representatives or, of course, employees. There is generally a sales volume threshold below which the rule does not apply.

Although the trend only began a few years ago this type of State legislation is now becoming quite common. See also "***Telecommuting Constitutes Nexus***".

US ESTATE TAX ON CANADIANS WITH CANADIAN MUTUAL FUNDS

Please see the comments at the outset above concerning "Estate Tax Chaos".

What are the US estate tax consequences for a Canadian (nonresident alien of the US) who dies while owning a Canadian mutual fund which is organized (formed) as a Canadian trust? Does it make any difference whether the mutual fund is owned directly, or is held in an RRSP or RRIF?

Although there is apparently no specific statutory authority on point with respect to the estate taxation of beneficiaries of trusts, the IRS generally takes the position that upon the death of an individual who is a beneficiary of a trust (or otherwise has an interest in a trust) the individual's estate will be subject to estate tax on the underlying value of his/her interest in the trust. (Please see Revenue Ruling 55-163 and the Winter/Spring, 2009 Taxletter). Generally, if a nonresident alien individual who is a beneficiary of a trust dies while the trust directly owns US stocks, the individual may be subject to US estate tax on those stocks.

If a Canadian (nonresident alien of the US) owns a Canadian mutual fund that is organized (formed) as a trust, and the trust owns US stocks, is the Canadian subject to US estate tax on the US stocks in the mutual fund?

First of all, the IRS has concluded that the result is the same regardless of whether the mutual fund is owned directly, or owned through an RRSP or RRIF. (Chief Counsel Advice "CCA" 201003013 and Revenue Ruling 82-193).

In CCA 201003013 the IRS also addressed whether US estate tax applied to a Canadian decedent who owned Canadian mutual funds which were organized as Canadian trusts and held US stocks. The IRS stated that the result depended upon whether the Canadian mutual funds (that were organized in Canada as trusts) were to be treated for US tax purposes as trusts or corporations.

As we summarized in prior Taxletters, if a typical Canadian publicly offered mutual fund is organized (formed) in Canada as a corporation, the mutual fund will normally constitute a "passive foreign investment company" (PFIC) for US income tax purposes. Less certain until now has been the US tax status of Canadian mutual funds that are organized in Canada as trusts.

IN CCA 201003013 the IRS concluded in this particular case "*based on the information provided, it appears that all the Canadian mutual fund funds held by the decedent's RRSP would be classified as corporations for US tax purposes*".

Thus, since the mutual funds were Canadian entities, and treated as Canadian corporations, neither the mutual funds themselves nor the underlying US stocks in the mutual funds were subject to US estate tax.

The IRS conclusion does not necessarily apply to all Canadian mutual funds that are organized as trusts. However for the standard type of Canadian mutual fund where the trustee/manager has the "power to vary" the investments, it is likely the decision has broad applicability to Canadians with Canadian mutual funds that are trusts. (Please the Fall, 2009, and Winter/Spring, 2009 Taxletters).

(Please see the related article "***IRS DECISION FOR US CITIZENS AND RESIDENTS OWNING CANADIAN MUTUAL FUNDS***".

Question - what is the US estate tax status of Canadian "Exchange Traded Funds" (ETFs)?

GUIDANCE FOR TREATY ELECTION FOR COST BASE INCREASE WHEN MOVING TO THE US

Readers are aware the 5th Protocol to the Canada/US tax treaty enables nonresident aliens moving to the US from Canada to elect

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for US income tax purposes to have a deemed disposition of certain property which is subject to Canadian departure tax. The election can have the effect of increasing the individual's US cost base of the asset for US purposes immediately before becoming a US resident and thus is intended to avoid double tax on property subject to the Canadian departure tax. (A separate result of the election exists for US citizens).

In Revenue Procedure (Rev-Proc) 2010-19 the IRS issued guidance with respect to making the election. The rules depend upon whether the taxpayer emigrated from Canada on or after March 29, 2010, ***or*** after September 17, 2000, and before March 29, 2010.

In general if, under Canada's deemed disposition rules, the individual is deemed to have disposed of multiple properties, the election for US purposes must be made with respect to all such properties. (Rev-Proc 2010-19, Section 4.05).

Further, if the individual is deemed under Canadian law to have disposed of multiple properties and there is no net gain for Canadian purposes, no election is available in the US with respect to any of the properties. (Rev-Proc 2010-19, Section 4.05).

Emigrations from Canada on or after March 29, 2010

The guidance for these individuals depends upon whether the particular property would, or would not have been taxable by the United States in any event.

*Emigrant **Does Not** Own Property that Would Have Been Taxable in the US*. In cases where the property involved is subject to Canadian departure tax but is not property that would have been taxable United States on a disposition, (e.g. shares of Canadian corporations) there will generally be no US income tax payable on the elected deemed disposition. The taxpayer will have a US tax cost base equal to the fair market value as of the date of the deemed disposition under Canada's deemed disposition rules.

The individual must make the election by reporting the deemed disposition on the individual's *timely filed* US federal income tax return for the individuals *first taxable year* ending after the individual's change of residence. The individual must attach IRS Form 8833 and also must attach documentation establishing the fair market value of the property as determined under Canada's deemed disposition rules, and confirming the gain was recognized and reported for Canadian tax purposes.

*Emigrant **Does** Own Property that Would have Been Taxable in the US*. In the case where the property involved would have been taxable in the US on a disposition, the taxpayer must recognize gain (and loss, if permitted) for US tax purposes in the year of the elected deemed disposition if he/she makes the treaty election. Examples of property that "would have been taxable in the US" include real property situated in the US, personal property forming part of the business property of a permanent establishment in the US, and property "with respect to which gained from a disposition would be taxable by the United States pursuant to paragraph 2 of Article XXIX of the treaty".

As above, the individual must make the election by reporting the deemed disposition on the individual's *timely filed* US federal income tax return for the individual’s *first taxable year* ending after the individual’s change of residence and must attach the documentation described above.

Emigrations from Canada after September 17, 2000 and before March 29, 2010, (Retroactive Elections)

No Property Taxable in the US. If there is no property that would have been taxable in the US and the individual complies with the requirements below, the individual will not be subject to tax on the deemed disposition. The election must be made by attaching IRS Form 8833 to the individual's first timely filed US income tax return filed after March 29, 2010, indicating on the form that, for US federal income tax purposes, the individual is electing pursuant to the treaty to take an adjusted basis in the property equal to the fair market value of the property as of the date of a deemed disposition under Canada's deemed disposition rules. The individual must also attach the documentation described above are under "***Emigrations from Canada on or after March 29, 2010***".

However if relevant property has already been sold in a prior year *after moving to the US*, the individual must file amended US federal income tax returns to make the election for any prior taxable years with respect to the which the statute of limitations on claiming a credit or refund is open and that are affected by the election (the year of disposition of the property).

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In other words, if the individual disposed of property prior to making the treaty election, the individual may make an election with retroactive effect by filing an amended tax return to reflect the adjusted basis of such property provided the statute of limitations is open for the year of disposition.

If the statute of limitation is closed with respect to the year of disposition of the property, then the individual is time-barred from making an election with respect to that property. However the individual can still make the election with respect to remaining property provided it is timely made - subject to the rules for multiple properties alluded to above. (Rev-Proc 2010-9 Section 4.04(5)).

If prior to March 29, 2010, an individual made an election under the treaty on his/her first timely filed income tax return filed after the date of the deemed disposition, the IRS will not challenge the election (and the individual is not required to make a new election) provided the individual has filed all US federal income tax returns and information returns consistent with the election. (Rev-Proc 2010-19, Section 4.04(6)).

*Emigrant **Does** Own Property Taxable in the US*. In this case, rules similar to those described above under "***Emigrations from Canada on or after March 29, 2010***" apply, and the individual would generally be subject to US tax on gain on elected US property.

DUE DATES FOR US FEDERAL CORPORATE INCOME TAX RETURNS

Foreign (non-US) Corporations

Corporations with no office or place of business in the US - the due date for the federal income tax return (IRS Form 1120-F) of a foreign corporation that has no office or place of business in the US is the 15th day of the 6th month after the end of the tax year. (Reg. 1.6072-2(b)).

The corporation can obtain a six months extension of the due date for filing the return (to the 12th month) by filing IRS Form 7004 provided the properly estimated tax liability has been paid by the original due date - i.e. paid by the 6th month. (Reg. 1.6081-3(a). Otherwise, penalties and interest run from the 6th month. (See also the Instructions to Form 1120-F).

Corporations with an office or place of business in the US - According to Reg. 1.6072-2(a) the due date for the US federal income tax return for a foreign corporation that has an office or place of business in the US is the 15th day of the 3rd month following the end of the year. However Reg. 1.6081-5(a)(3) grants an automatic 3 month extension to the 15th day of the 6th month if the corporation has an office or place of business in the US. To claim this 3 months extension, the corporation should attach to its tax return a statement showing that it is eligible for the extension (i.e. it is a foreign corporation with a US office).

This automatic 3 months extension of time to file (to the 6th month) applies to the payment of tax also. (Regulation 1.6081-5(a). Although there would be no penalty for late filing, or late paying, interest would still apply on any tax not paid by the original due date (the 3rd month). (See also the Instructions to Form 1120-F).

A different 6 months extension of the time to file and to pay (to the 9th month) can potentially be obtained by filing IRS Form 7004 by the original due date provided the properly estimated tax liability has been paid by the original due date - the 3rd month. (Reg. 1.6081-3 (a)).

Domestic Corporations

Tax returns for domestic corporations are due the 15th day of the third month. (Reg. 1.6072-2(a)).

Exception. For domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico, an automatic 3 months extension of the normal due date (the 15th day of the 3rd month) is provided to the 15th day of the 6th month. (Reg. 1.6081-5(a)(2)). Although there would be no penalty for late filing, or late paying, interest would apply on any tax not paid by the original due date (the 3rd month).

A different 6 months extension of the time to file and to pay (to the 9th month) can potentially be obtained by filing IRS Form 7004 by the original due date provided the properly estimated tax liability has been paid by the original due date - the 3rd month. (Reg. 1.6081-3 (a)).

Please refer to Exhibit 1.

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A TSUNAMI OF TRUSTS WASHES ASHORE INTO THE US

As many parts of the US real estate market decline in value and the Canadian dollar rises against its US counterpart, US real estate purchases have become attractive to many Canadians. For Canadians whose worldwide assets exceed the threshold amounts that provide estate tax protection under the Canada/US tax treaty, those individuals have sought other ways to avoid US estate tax. (Please see the comment at the outset under "***Estate Tax Chaos***").

Among other vehicles available for such individuals to potentially avoid the estate tax, many individuals have been advised to purchase their US real estate through a specially structured Canadian trust. In fact there appears to be a tidal wave of them into the US.

The use of a ***properly structured*** "irrevocable trust" to purchase US real estate will generally avoid estate tax on property in the

EXHIBIT 1

Due Dates For Filing US Federal Corporate Income Tax Returns

US (Domestic) Corporations

↓

Returns Are Due The 15th Day Of The 3rd Month After The End Of The Tax Year. (Reg.1.6072-2(a)) (1) (2)

Non-US Corporations

↓

Is There An Office Or Place Of Business In The US?

NO → Due Date Is 15th Day Of The 6th Month After The Year End. (Reg. 1.6072-2(b)) (5)

YES ↓

The Due Date Is The 15th Day Of The 3rd Month After The Year End. (Reg. 1.6072-2(a)) (3) (4)

Extensions

(1) For US (Domestic) Corporations Which Transact Their Business And Keep Their Books And Records Of Accounts Outside The US And Puerto Rico, An Automatic Extension Of The Normal Due Date (15th Day Of The 3rd Month) Is Granted To The 15th Day Of The 6th Month. (Reg. 1.6081-5(a)(2)). However, Interest But Not Penalties, Accrue From The 3rd Month.

Thus, This Rule Is Somewhat Parallel To That Applicable To US Citizens And Residents That Are Abroad On The Due Date Of Their US Income Tax Return.

(2) Filing IRS Form 7004 Provides A Different Automatic Six Month Extension To The 9th Month, Provided The Properly Estimated Tax Liability Has Been Paid By The Original Due Date. (The 3rd Month). (Reg. 1.6081-3(a)).

(3) However, An Automatic Extension Is Granted To The 15th Day Of The 6th Month If A Statement Is Attached To The Tax Return Showing That The Corporation Has A US Office, Etc. (Reg. 1.6081-5(a)(3)). But Interest Applies After The Original Due Date.

(4) For A Non-US Corporation With A US Office Or Place Of Business, Filing IRS Form 7004 Provides An Automatic Six Month Extension From The Original 3rd Month Provided The Properly Estimated Tax Liability Has Been Paid By The Original Due Date (3rd Month). (Reg. 1.6081-3(a)).

(5) For A Non-US Corporation Without A US Office Or Place Of Business, Filing IRS Form 7004 Provides An Automatic Six Month Extension From The Original 6th Month Provided The Properly Estimated Tax Liability Has Been Paid By The 6th Month Due Date. (Reg. 1.6081-3(a)). Otherwise Penalties And Interest Run From The Original Due Date. (See Also The Instructions To Form 1120-F.)

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trust on the death of a beneficiary or settlor of the trust. Further, the trust serves as a method of avoiding US probate on assets in the trust on the death of a beneficiary of the trust, and can also accomplish other useful family estate planning objectives.

However as we mentioned in other Taxletters there are various caveats to be aware of with respect to the use of such a trust.

Example 1: Sam (a Canadian who is a nonresident alien of the United States) enters into a contract to purchase a US residence. He then forms and contributes $500,000 to a Canadian discretionary trust, of which Sam is one of the discretionary beneficiaries, and the trust immediately purchases the US residence. It is intended (and there is an understanding) that Sam and his family will use the residence in the trust indefinitely into the future. Several years later, while the property is still in the trust, Sam dies. Would the IRS levy US estate tax on Sam's estate even though the property was owned by the trust and not by Sam?

In a private letter ruling the IRS was specifically "*not ruling on whether a Trustee's discretion to distribute income and principal of the Trust to the Grantor of the Trust* (Sam, in our particular example) *combined with other facts (such as, but not limited to, an understanding or pre-existing arrangement between Grantor and Trustee regarding the exercise of its discretion) may cause inclusion of the Trust's assets in the Grantor's gross estate for federal estate tax purposes*". (PLR 200944002).

In other words, there is some possibility that if Sam is one of the discretionary beneficiaries, and he dies, his estate may still be subject to US estate tax on the real estate held in the trust. Therefore the lawyer drafting the Trust may specifically exclude Sam as a discretionary beneficiary of the Trust in the hope of ensuring there would be no estate tax on his death.

But then suppose the real estate is sold prior to Sam's death and the Trustee wishes to use his authority (perhaps at Sam's request) to distribute the sales proceeds to the beneficiaries of the trust (none of which is Sam!). Presumably Sam's wife (where applicable) is a discretionary beneficiary and will receive the funds (the sales proceeds of the real estate). Are there any US tax implications if she then transfers those funds back to Sam?

Example 2: The same letter ruling (PLR 200944002) suggests that the creation of a Trust with terms generally similar to the ones that would have been used in Sam's Trust in Example 1, will create a "completed gift" for US purposes at the time Sam contributes $500,000 to the Canadian trust even if Sam is only a discretionary beneficiary, or not a beneficiary at all. Therefore, many (perhaps most) US international tax commentators are concerned that:

1) ***If*** the contract to purchase the US property is entered into personally by Sam before creation of the irrevocable trust, and

2) The irrevocable trust is created immediately thereafter by Sam, and

3) The trust closes very shortly thereafter on the purchase of the residence,

then, if the IRS were to become aware of the sequence of events, there is a significant likelihood that Sam would be personally subject to US gift tax on the gift of $500,000 to the trust on the basis that the series of transactions was tantamount to a gift of the US real estate by Sam to the trust (since the arrangement was all preplanned).

Generally the US gift tax on a gift of $500,00 of US real estate to an irrevocable trust by a nonresident alien is about $140,000. The tax on a gift of $1 million is about $330,000. If the IRS ever became aware of the sequence of events in this example and successfully levied gift tax there would be additional interest and penalties accumulating. (Interest compounds daily).

CURRENT RULES FOR REPORTING FOREIGN ACCOUNTS.

Readers are aware that certain individuals, corporations, partnerships, trusts and estates must file IRS Form TD F 90-22.1 (Report on Foreign Accounts - "FBAR") annually or potentially suffer severe penalties. The FBAR is a report of the ownership of foreign (non-US) financial accounts.

In 2008 the IRS originally advised that the rules apply not only to US individuals and entities but also to certain non-US entities "in, and doing business in, the United States". That is how the statutory language actually reads in the relevant US legislation. Thus self-employed Canadians temporarily working in the United States might have been subject to the FBAR requirements, as well as Canadians investing in US partnerships, and Canadian corporations doing business in the United States.

Apparently as a result of the complaints and confusion of taxpayers (and tax advisors) over the new "foreign account" reporting rules, the IRS issued a number of Announcements and Notices.

First, on June 22, 2009, the IRS issued Announcement 2009-51 temporarily suspending the requirements for the 2008 FBAR (due June 30, 2009) for persons who are not "United States persons". A "United States person" is a US citizen or resident of the United States, or a domestic (US) partnership, domestic corporation, or domestic estate or trust.

Next, on August 31, 2009, the IRS issued Notice 2009-62 in which the IRS advised that *US persons* were being given an extended due date until June 30, 2010, to file FBAR reports for 2008 and earlier years for situations where the US person had signature authority over a foreign financial account but no "interest" in the account, and also for ownership of a "co-mingled fund" (including a non-US mutual fund).

Then, on March 15, 2010, the IRS issued Announcement 2010-16 that applies to non-US persons and suspends the FBAR requirement for the 2009 calendar year (i.e. the FBAR due date on June 30, 2010) for non-US persons.

Simultaneously, on March 15, 2010, the IRS issued Notice 2010-23 that applies to US persons. First, the Notice suspends from June 30, 2010, to June 30, 2011, the portion of the FBAR report for accounts over which a US person had signature authority but no financial interest in the account. The extension applies for calendar year 2009 and earlier years.

Second, Notice 2010-23 states that, with respect to "commingled funds" a US person ***will be required to file the FBAR for mutual funds for 2009 and prior years***. Thus, a US person who owns a non-US mutual fund must file the FBAR for the mutual fund for 2009 and prior years regardless of whether the mutual fund is owned through a brokerage account or directly with the mutual fund company.

Bottom Line as at April, 2010

US persons must file the FBAR for 2009 and prior years for foreign financial accounts including foreign mutual funds that are held either through a brokerage firm or directly with the mutual fund company, but not (yet) for situations where the US person had signature authority over a foreign financial account but no "interest" in the account.

Non-US persons are not required to file FBAR until the IRS issues guidance subsequent subject to March 15, 2010. (None has yet been issued as we go to press in April, 2010).

Meanwhile, in February 2010, the "Financial Crimes Enforcement Network" (FINCEN) has proposed Bank Secrecy Act amendments containing proposals to adjust the FBAR rules.

REMINDER OF SOME TAX TREATY CHANGE EFFECTIVE DATES FOR 2009 AND 2010 TAX RETURNS

Readers are aware the 5th Protocol to the Canada-US tax treaty made significant changes that have various different effective dates. Exhibit 2 sets out some of these effective dates.

Prior to the general effective date of the 5th Protocol itself, certain "construction sites" did not constitute a permanent establishment (PE). However - can that provision now be potentially overridden in cases where the new PE rules for "services" applies?

Also please see the article "***REMINDER OF NEW CROSS-BORDER PENSION RULES***".

IRS DECISION FOR US CITIZENS & RESIDENTS OWNING CANADIAN MUTUAL FUNDS

In several prior Taxletters we described the significant US tax compliance burden to which US citizens and residents are exposed if they own Canadian (or other non-US) mutual funds. (Please see, for example, the Fall, 2009, Taxletter).

If a typical Canadian publicly offered mutual fund is organized (formed) in Canada as a corporation, the mutual fund will normally constitute a "passive foreign investment company" (PFIC) for US income tax purposes. As we summarized before, investments in PFICs generally have very severe negative US tax consequences for US citizens and US

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residents and consideration should be given to avoiding them.

Less certain until now has been the US tax status of Canadian mutual funds that are organized in Canada as trusts. If the US tax law were to treat these entities as "trusts" for US tax purposes the owners would be subject to annual onerous filings of IRS Form 3520- and 3520-A (one for each mutual fund). On the other hand if the US tax law were to treat these entities as corporations the Canadian mutual funds would be considered PFICs for US purposes and subject to the same negative US tax implications as described above for PFICs.

EXHIBIT 2

Tax Treaty Changes For 2009 And 2010 Under The 5th Protocol To The Canadian-US Tax Treaty

	Detail	Effective Date
Withholding At Source On Interest Payments To Non-Arm's Length Recipients (1)	4% Withholding 0% Withholding	January 1, 2009 January 1, 2010
The Prospect Of Creating A "Permanent Establishment" Through Provision Of Services In The Other Country (2)		January 1, 2010
Deductions For "Qualifying Retirement Plans" ("QRAs") (3)		January 1, 2009
Fiscally Transparent Entities And Eligibility For Benefits - Paragraph 6		January 1, 2009
Fiscally Transparent Entities And Non-Eligibility For Benefits - Paragraph 7		January 1, 2010
US Branch Profits Tax On Canadian Corporations Operating Through A US LLC That Has Not Made A "Check-The-Box Election". (4)		January 1, 2010

(1) Withholding On Arm's Length Payments Was Eliminated January 1, 2008.

(2) Either One Of The Following Scenarios Can Cause The Taxpayer To Have A "Permanent Establishment" In The Other Country –
A) The Services Are Performed In The Other Country By An Individual Present In The Other Country For 183 Days Or More In Any 12 Month Period And During That Period More Than 50% Of The Gross Active Business Revenue Of The Enterprise Is Derived From The Other Country By That Individual, Or
B) The Services Are Provided In The Other Country For 183 Days Or More In Any 12 Month Period With Respect To The Same Or Connected Project For Customers Who Are Either Residents Of The Other Country Or Who Maintain A Permanent Establishment In The Other Country And The Services Are Provided With Respect To That Permanent Establishment.

(3) Generally, If The Plan Is A "QRP", A Tax Deduction is Available In Both Canada And The US If:
A) A Taxpayer Who Is On A Short Term Assignment To The Other Country Makes A Contribution To A Pension Is His/Her Home Country, Or
B) A Taxpayer Who Lives In One Country And Commutes To Work In The Other Country, Or
C) A US Citizen (But Perhaps Not A Greencard Holder) Living In Canada, Makes A Contribution To A Canadian QRP.

(4) Apparently Paragraph 7(b) Can Result In A Canadian Corporation Being Denied Treaty Benefits If It Operates Through A US LLC That Has Not Made A US "Check-The-Box" Election.

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In a recent Letter Ruling the IRS decided that certain Canadian mutual funds that were organized as trusts were to be treated as corporations for US tax purposes. (CCA 201003013). Individual Letter Rulings cannot be used as precedents and only apply to the particular taxpayer to which the ruling is addressed. Nonetheless, the ruling follows the thought process we have laid out in prior Taxletters. Hence it appears that, in general, there is a good likelihood the IRS will consider Canadian mutual funds organized as trusts to be PFICs for US tax purposes. An exception could apply in cases where the investments within the mutual fund are fixed - i.e. where the trustee or manager of the fund does not have the power to vary the investments.

Question - what is the US income tax status of Canadian "Exchange Traded Funds" (ETFs)?

Please see also the article "***US ESTATE TAX ON CANADIANS WITH CANADIAN MUTUAL FUNDS***".

REMINDER OF NEW CROSS-BORDER PENSION RULES

In the Winter/Spring 2009, Taxletter we summarized some of the new pension rules implemented under the 5th Protocol to the tax treaty. In the case of "Qualifying Retirement Plans" (QRPs) a deduction is generally available in one country for contributions to a pension plan in the other country. However many limits and exceptions apply. See Articles XVIII(8) through (14) of the Treaty.

Individuals Temporarily Working In The Other Country And Commuters

Generally, individuals resident in one country and temporarily working in the other country, are able to deduct, or exclude from income, in both countries, the contributions to QRPs in their home country.

Generally, commuters are able to deduct, or exclude from income in both countries the contributions to QRPs in the country where they work.

US Citizens Resident And Working In Canada

US citizens that are resident in Canada and working in Canada are able to deduct, or exclude from income, in both countries the contributions to QRPs in Canada.

What is a "Qualifying Retirement Plan" (QRP)?

Article XVIII(15) simply defines a QRP as a "trust, company, organization or other arrangement:

a) That is a resident of that State, generally exempt from income taxation in that State and operated primarily to provide pension or retirement benefits;

b) That is not an individual arrangement in respect of which the individual's employer has no involvement; and

c) Which the competent authority of the other contracting State agrees generally corresponds to a pension or retirement plan established in and recognized for tax purposes by that other State".

Canadian QRPs. It appears that Canadian plans such as registered pension plans, group RRSPs, deferred profit sharing plans, and RRIFs that are funded from a QRP will be considered QRPs. This apparently excludes Canadian RRSPs, Retirement Compensation Arrangements (RCAs), and RRIFs that are funded by an individual rather than from a group.

Certain plans, including certain RRSPs that are established pursuant to legislation introduced after September 21, 2007, may qualify as QRPs.

United States QRPs. It appears that a QRP includes most common US tax-sheltered retirement plans including 401(k) plans. However IRAs (traditional IRAs and Roth IRAs) are not QRPs, although certain IRAs that are established pursuant to legislation introduced after September 21, 2007, may qualify.

As entirely separate matters:

1) Traditional IRAs are considered to be pensions under the treaty and therefore earnings inside the plan can be deferred for Canadian tax purposes until the time of distribution from the plan,

2) As long as no contributions are made to a Roth IRA while a resident of Canada the individual can make an election to defer current taxation on income earned inside a Roth IRA, and the withdrawal of funds from a Roth IRA will generally be tax-free in Canada under Article XVIII(1)). However if contributions are made to a Roth IRA by an individual who is a resident of Canada, the portion of the

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contributions made while a resident of Canada will not be considered to be made to a "pension plan" for purposes of the treaty and therefore there will be no deferral available in Canada on current earnings on that portion of the plan.

INVESTING IN US RENTAL PROPERTIES THROUGH US PARTNERSHIPS AND LLC'S

In some cases, Canadians have considered investing in US rental real estate through an investment in a US limited partnership (an LP or an LLLP) which in turn has purchased its US rental property through a United States "Limited Liability Company" (LLC). If several rental properties are owned, a separate LLC may have been formed for each property. Thus the US LP or LLLP would wholly own a series of LLC's, each of which would own one property. The LP or LLLP itself would not own any property directly or have any other income or loss, other than income flowing through from the LLCs.

The potential benefits (See "***Caveats*** below) of this structure are:

1) To limit liability so that litigation involving one property would not lead to claims against any other properties or against any limited partners, and

2) Since a wholly owned LLC is treated as a disregarded entity for US income tax purposes (unless a special election is made) the LLC is not subject to US tax or even filing a federal tax return, and it's income (or loss) is automatically passed up to the LP or LLLP for ***US*** income tax purposes and from there to the partners themselves (*for **US** income tax purposes*) thus resulting in only one level of tax in the US. Only the partner of the LP or LLLP is subject to any US tax on the underlying income or gain that occurs in each of the LLCs.

Therefore, in the normal course of **US** income tax preparation the partner in the LP or LLLP would simply take the US tax reporting information document from the LP or LLLP (referred to as a "K-1" in the US) and report that information on his/her ***US*** income tax return.

Caveat

However, since Canada presently treats a United States LLC has a corporation for Canadian income tax purposes, this structure does not necessarily have the same tax result in Canada on a Canadian income tax return, as it has in the US on the US income tax return.

For example, a Canadian resident may not be able to simply report the information on the K-1 directly on a his/her Canadian income tax return. It is likely necessary for the Canadian partner to "look through" the partnership to determine the actual income of the partnership on the basis that the LLC is a corporation, not a "disregarded entity". This could result, for example, in income that is reported on a K-1 not actually being in taxable in Canada.

Conversely it could result in a loss on a K-1 not being deductible in Canada. Also, a payment from the LLC to the LP or LLLP could be treated as a dividend to the Canadian resident for Canadian income tax purposes even if the payment to the LP or LLLP is not passed on to the Canadian partner. Other complications could also arise.

An exception could apply to all of this if the LLC is subject to the "foreign accrual property income" rules under the Canadian Income Tax Act. Please consult your Canadian tax advisor before taking any action.

CANADIANS & "SHORT SALES" OF US REAL ESTATE (THE "FIRPTA RULES")

Many readers have become aware of the term "short sale" as it relates to the sale of US real estate. Normally when a real estate's owner/borrower cannot, or decides not, to continue to make mortgage payments to the lender this would eventually lead to foreclosure by the lender. However in view of the time and expense of the foreclosure process the two parties may agree to place the property on the market for sale, with the requirement that both parties must agree to any proposed sales contract. This arrangement is referred to as a "short sale".

Of course when the owner/borrow is a nonresident alien the normal "FIRPTA" US withholding tax rules apply. These rules generally require 10% of "the amount realized" on the transaction to be withheld at source at the time of the transaction and remitted to the IRS as a prepayment of whatever US income tax (capital gains tax) the owner/ borrower may owe.

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However in many (most) "short sales" the amount of debt on the property exceeds the value of the property and therefore exceeds the selling price of the property. This may lead to two particular US issues for a nonresident alien:

1) The nonresident alien may be subject to *US* tax on "cancellation of debt" (COD) income in the amount of any debt forgiven by the lender, (please see the Fall, 2009, issue of the Taxletter), and

2) There may be surprises under the FIRPTA withholding rules.

The FIRPTA rules for sales by nonresident aliens require withholding at 10% of the "**amount realized**" on the sale, unless an exception applies. In most normal transactions the "amount realized" is the selling price. However the regulations specifically define the "amount realized" as the sum of:

1) The cash paid or to be paid, *plus*

2) The fair market value of other property transferred or to be transferred, *plus*

3) The outstanding amount of any liability assumed by the transferee or to which the real estate is subject immediately before and after the transfer.

In the case of short sales (unlike the case of foreclosures and "deeds in lieu of foreclosure" as described in the Fall, 2007, Taxletter) the law is unclear as to the definition of "amount realized" on the short sale. Therefore the buyer (the person with the withholding obligation, and the closing agent (who has a contingent liability for the withholding) appear to be in an uncertain position as to what the correct withholding should be. Is the "amount realized" 10% of the selling price or is it 10% of the selling price plus 10% of the amount of debt in excess of the selling price?

Example: Walter, a nonresident alien of the United States living in Canada, is the owner/borrower of a US home he is now selling for $500,000 through a "short sale". However there is a mortgage of $600,000 on the home. Is the correct "FIRPTA" withholding $50,000 (10% of the selling price of 500,000), or $60,000 (10% of the selling price plus 10% of the debt in excess of the selling price. Apparently at the moment there is no clear guidance from the Internal Revenue Service.

The correct result may depend in part on whether the lender forgives the excess debt, ($100,000 in this case) or pursues the deficiency of $100,000 with the owner/borrower. If the deficiency is forgiven, it appears the forgiven amount may be "cancellation of debt" (COD) income and therefore part of the "amount realized" and subject to 10% withholding. The result may be even more uncertain if the lender intends to pursue the deficiency.

Of course if all three parties are willing to defer closing for a few months, a Withholding Certificate Application (IRS Form 8288-B) can be submitted to the IRS, setting out all the facts, and letting the IRS decide the correct amount of withholding.

DEDUCTING CROSS-BORDER RELATED PARTY PAYMENTS

If an expense is to be claimed on a US tax return for certain payments to a Canadian related party, strict US rules apply with respect to when the expense can be deducted on the US income tax return. (Please see Exhibit 3).

For example, suppose a Canadian parent corporation that is not engaged in business in the US charges a management fee to its US subsidiary for expenses incurred in Canada that are applicable to the US business. Generally, the US subsidiary cannot deduct the payment, regardless of the subsidiary's method of accounting, until it is actually paid by the subsidiary. (Code Section 267(a)(3)(A), Reg. 1.267(a)-3(b)(1)).

Example 1: Canadian parent X Co charges its US subsidiary Y Co a management fee of $50,000. Assume X Co is not engaged in business in the US and has no other connection with the US. In this case, Y Co cannot deduct the expense of the management fee, regardless of its method of accounting, until it actually pays the management fee.

"Exception"

A possible "exception" applies to the foregoing rule. An exception may apply if the Canadian parent is considered to be engaged in business in the US and the expense payment is considered to be income effectively connected with the Canadian corporation's US business. In this case the US subsidiary Y may be able to deduct the expense at the time it is considered income by X Co. (Reg. 1.267(a)-3(c)(1)).

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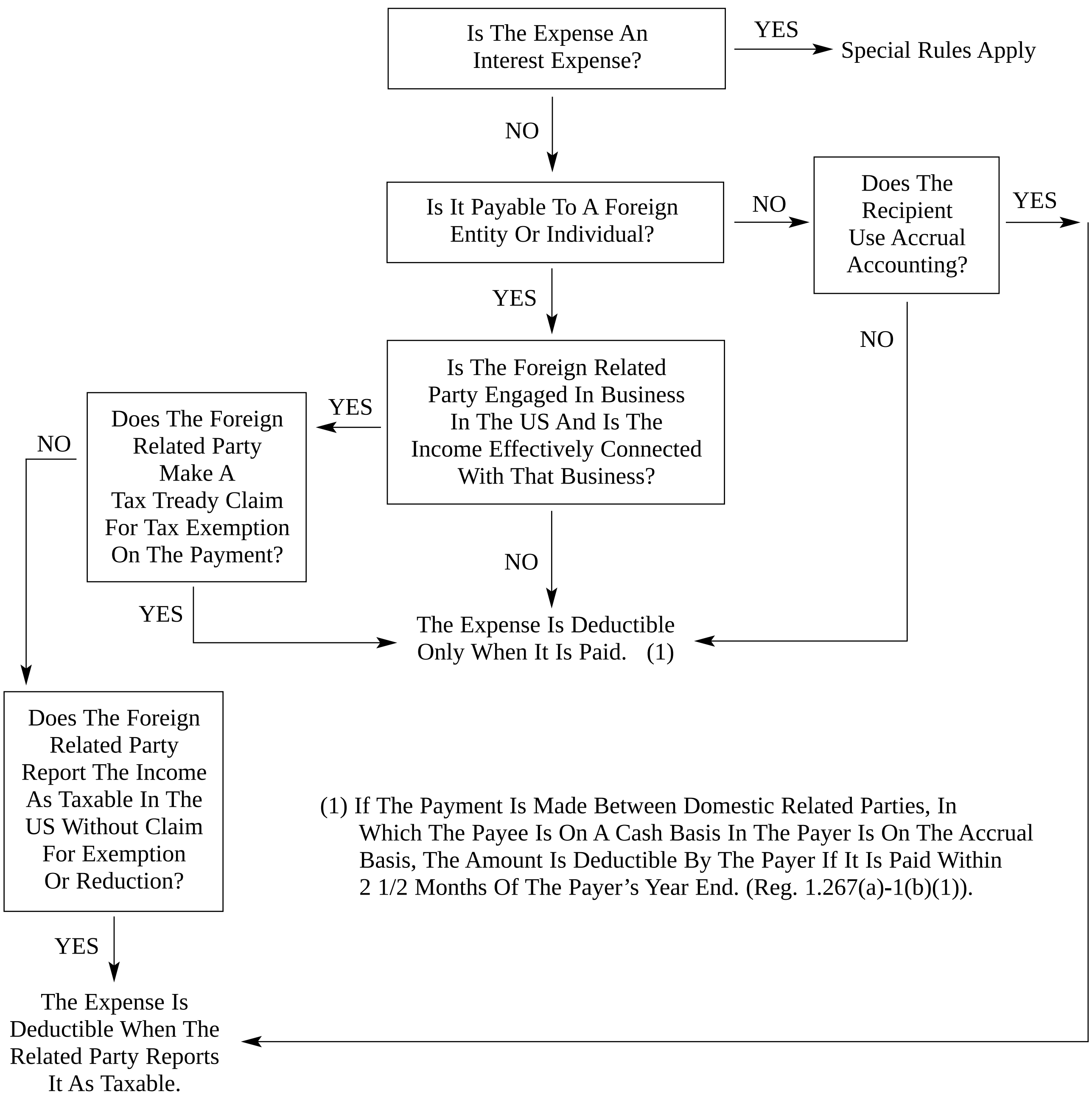
Example 2: The facts are the same as Example 1, except that the Canadian parent X Co is treated as being engaged in business in the US, files a US income tax return, and reports the management fee of $50,000 as taxable income. In this case, the US subsidiary Y Co that is on the accrual basis of accounting <u>can deduct</u> the management fee expense at the time it is considered income by the Canadian parent X Co <u>even if it has not yet been paid</u>.

Exception to the "Exception"

The "exception" described above does not apply if the Canadian parent X Co is exempt from US tax on the management fee. (Reg. 1.267(a)-3(c)(2)). Such an exemption might

<u>EXHIBIT 3</u>

Deducting Certain Expenses Incurred By US Corporations That Are Payable To Certain Related Parties



(1) If The Payment Is Made Between Domestic Related Parties, In Which The Payee Is On A Cash Basis In The Payer Is On The Accrual Basis, The Amount Is Deductible By The Payer If It Is Paid Within 2 1/2 Months Of The Payer's Year End. (Reg. 1.267(a)-1(b)(1)).

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arise under the tax treaty because the parent does not have a "permanent establishment" in the US.

Example 3: The facts are the same as Example 1, except that the Canadian parent X Co is engaged in business in the US and the management fee is effectively connected with that business. However in this example assume X Co files its US income tax return and claims an exemption from US tax on the $50,000 management fee on the basis it does not have a "permanent establishment" in the US. As a result of this claim, the US subsidiary cannot deduct the $50,000 management fee until it is actually paid.

Separate rules apply in all cases when interest payments are involved, (See §163(j)), and in the case of "Pass-Thru" entities (See §267(e), "Controlled Foreign and Corporations" (CFCs) and Passive Foreign Investment Companies (PFICs). (See §267(a)(3)(B)).

The Payment is not Cross-Border

If an expense incurred by a US corporation is payable to a related US corporation or US individual, rather than a foreign corporation or individual, then slightly relaxed rules apply.

If the US payee is on the cash basis of accounting for the tax year in which the payer's tax year ends, and the US payer is on the accrual basis of accounting, the amount is not deductible by the payer unless it is paid (or otherwise taken into income by the payee) within 2 ½ months after the end of the tax year of the US payer. (Reg. 1.267(a)-1(b)(1)).

If both the US payer and the US payee are on the accrual basis of accounting the expense can be deducted by the payer when it is treated as income by the recipient. Thus if both use "accrual" accounting, and have the same "tax year" the paying corporation can deduct the expense immediately, even if it has not yet been paid. (Code Section 267 (a)(2)).

CONVERTING AN LLC TO A CORPORATION

LLCs (Limited Liability Companies) are very popular in the US because they provide some liability protection while enabling the owner(s) of the entity to pay income taxes at one level only - the owner level. The LLC does not pay tax, unless it makes a special election.

Absent a special election, an LLC is considered a "disregarded entity" for US income tax purposes if it has one owner, and it is taxed like a partnership if it has more than one owner ("member").

Because LLCs are so popular for US residents, they are often (inadvertently?) recommended to Canadians when Canadians are making a US investment, or starting a business in the US. Unfortunately, however, at the moment it appears Canada treats LLCs differently for tax purposes than the US. Generally Canada considers the LLC to be a non-Canadian corporation and therefore subject to Canadian income tax as such. Because of this there is an opportunity for mismatching of cross-border tax liabilities and tax credits when a Canadian owns a US LLC.

If an investment or business is inadvertently acquired or begun using an LLC, and it is later determined it would be preferable to have a US corporation, (or partnership) the LLC can be converted to a corporation (or partnership). There are usually at least three considerations in making this conversion:

1) The impact of the State Statute under which the LLC was created,

2) The US income tax impact of the conversion, and

3) The Canadian income tax impact of the conversion.

It is normally quite simple under State Statutes to convert an LLC to a corporation. However occasionally there may be US and Canadian income tax ramifications. Please consult your Canadian tax advisor before taking any action.

When an LLC having more than one owner is converted to a corporation, normally one of three types of transactions is considered to occur for US income tax purposes:

Partnership Asset Transfer

The partnership's assets are considered transferred to a corporation and the corporation assumes the partnership's liabilities, in exchange for the corporation's stock, followed by the liquidation of the partnership, and the distribution of the corporation's stock to the partners.

Partner Assets Transfer

The partnership's assets and liabilities are distributed to the partners, followed by the

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partners' transfer of the assets to a corporation and the assumption by the corporation of the liabilities that had been assumed by the partners, in exchange for the corporation's stock.

Partnership Interests Transfer

The partners transfer their partnership interests to a corporation in exchange for the corporation's stock, followed by the termination of the partnership, in which case the partnership's assets and liabilities become assets and liabilities of the corporation.

Although there is often no US income tax liability associated with the transfer, there may be reporting requirements, and there may be a tax liability if, among other circumstances:

1) The LLC owns US real estate and there is a non-US owner, and/or

2) The liabilities assumed by the corporation exceed the cost base of the property transferred, in which case the excess is taxable gain.

Under the ***"Partnership Asset Transfer"*** method, the assumption by the corporation of the partnership's liabilities decreases the cost base of each partner's partnership interest.

Under the ***"Partner Assets Transfer"*** method, the corporation's assumption of the partnership's liabilities is treated as payment of money to the partners.

Under the ***"Partnership Interests Transfer"*** method the corporation's assumption of the liabilities of the partnership is treated as payment of money to the partners. The partners recognize gain to the extent their transferred share of partnership nonrecourse liabilities exceeds the cost base of the partnership interest.

The corporation's basis in the former assets of the LLC are generally the same as the basis in the hands of the LLC, except adjustments must be made when gain is recognized because of the liabilities that were transferred.

The partner's cost base in the stock received from the corporation will be equal to his/her cost base in the partnership interest, adjusted with respect to liabilities (if any) assumed by the corporation and gain recognized by the partner (if any) on the conversion.

Please see Revenue Ruling 84-111 and file IRS Form 8832 if you proceed.

THE GOOD, THE BAD, AND THE UGLY

By Robert S. Blumenfeld, Esq., (Tax Attorney)
tel. 954-384-4060

"If the IRS took 100 taxpayers at random and sent each one an incorrect Notice that they owed an extra $92.35 in tax, more than two thirds would probably just send in a check without investigating further". G. Guttman.

Suppose you have fallen behind in your IRS payments. At some point you'll receive a letter from the IRS which notifies you that you have 10 days to pay whatever is due and owing. Correspondence from the Internal Revenue Service must never be ignored. You must respond to this letter either with a check or an explanation, or the IRS will turn the case over to a Revenue Officer whose job it is to make certain that the liability is paid.

Your first action should be to determine whether or not the IRS has correctly computed the amount of tax you owe. The IRS can make mistakes, especially when it is filing a return on your behalf. Never assume that an IRS assessment notice is correct. It could be correct, but it's your job to confirm this.

Suppose the amount is correct but you can't pay it. The IRS then turns the case over to a "Revenue Officer". This is the collection arm of the Internal Revenue Service. This Revenue Officer will request a meeting with you to assess the situation. Assuming you cannot immediately pay the liability in full, the IRS has two potential procedures in place to address the situation.

If it appears you will be able to pay the tax liability over a period of two to three years, the Revenue Officer may suggest an **"Installment Agreement"**. You then supply the IRS with a Form 433A reviewing your assets, income, and expenses. This Form is signed under penalty of perjury so it must be complete and accurate. Based on this the IRS is authorized to permit you to pay the liability in monthly installments over a predetermined period of time. Interest and penalties continue to accrue during this period.

If you have never had a previous problem with the IRS and you are experiencing a temporary cash flow problem, the payments can be negotiated to a fairly low monthly amount that gives you the opportunity to get back on your feet while continuing to address IRS responsibilities.

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If you are a chronic offender, however, and have had several similar problems with the IRS, the Revenue Officer may not be quite so agreeable to a lower monthly amount. Additionally, if the IRS sees that you have equity in a number of assets, the Revenue Officer may require you (for example) to go to banks to try to obtain second mortgages to pay off the liability.

A second procedure designed to assist taxpayers is the "**Offer In Compromise**". Here, based on your financial situation, the Revenue Officer becomes convinced that you will never be able to pay the entire liability. Based on your assets and income, the IRS will ask you to make an offer to settle your liability for a certain percentage (based on the facts) of your actual liability. These "Offers in Compromise" are very difficult to obtain, and the taxpayer must be in dire fiscal straits to obtain this type of relief.

In order to assure the payment of the tax, the Revenue Officer has two weapons at his disposal. He can put a lien on your assets or levy against the assets. Many business people will do virtually anything to avoid liens and levies since they have a very harmful effect on one's credit In order to delay the imposition of a lien or levy, you can request a **"Due Process Hearing"**. First, you must complete a Form 12153 and send it to the appropriate address at the IRS. You are then granted a hearing generally within 30 days, at which you can raise all your defenses which can include an **"Installment Agreement"**, an **"Offer in Compromise"**, **"Innocent Spouse Relief"**, **"Dispute over the correct amount" of the tax**, or removal of penalties based on **reasonable cause**. When dealing with the IRS, time is always of the essence. Additionally, the Internal Revenue Service can deny you the hearing if it appears that your request is frivolous and you are only trying to delay collection or the issuing of a lien or levy.

Obviously the situation is significantly more complex than this, but each of us who has a problem with the IRS should at least understand his or her basic rights and responsibilities.

Robert Blumenfeld spent 32 years as a senior attorney with the Internal Revenue Service, most of it in Washington, DC. He can be reached at 954-384-4060 or rblumenf@aol.com.

IRS ISSUES "DIRTY DOZEN" TAX SCAM LIST

The IRS recently issued its "dirty dozen" tax scam list for 2010. The announcement (IR-2010-32 describes certain common schemes and urges taxpayers to avoid them. The following is a list of them:

Misuse of Trusts

Hiding Income Offshore

Phishing - a tactic used by scam artists to trick unsuspecting victims into revealing personal or financial information online.

Filing False or Misleading Forms

Return Preparer Fraud

Abuse of Charitable Organizations and Deductions

Abusive Retirement Plans

Disguised Corporate Ownership

Zero Wages - filing a phony "corrected" wage statement.

Frivolous Arguments

Fuel Tax Credit Scams

How to Report Suspected Tax Fraud Activity

Suspected tax fraud can be reported to the IRS using Form 3949-A, Information Referral. The completed form or a letter detailing the alleged fraudulent activity should be addressed to the Internal Revenue Service, Fresno, CA 93888. The identity of the person filing the report can be kept confidential. Whistleblowers also may provide allegations of fraud to the IRS and may be eligible for a reward by filing Form 211.