RBC Dominion Securities

THE ADVISOR

February 10th, 2009

U.S. Estate Tax for Canadians

Estimating the Exposure and Strategies to Minimize or Eliminate the Tax

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The United States has the world's largest equity market. As a result, you may have invested directly in shares of U.S. corporations. You also may have purchased U.S. real estate for a vacation home, or for a source of income as a rental property. At the time of making these purchases, you may not have known of the onerous U.S. estate tax that the U.S. government could levy on your estate because of owning these investments and certain other U.S. property upon your death.

This article discusses the U.S. Estate Tax that may be levied on the estates of deceased high net worth individuals who are non-US citizens, non-US green card holders or non-U.S domiciliaries. It will also discuss various strategies to reduce your exposure to U.S. Estate Tax, as well as a handy U.S. Estate Tax calculator that can estimate your current exposure to U.S. Estate Tax. Although certain U.S. states may also levy a U.S. Estate Tax, this article will discuss only federal U.S Estate Tax. Also, any reference to Canadian tax refers to Canadian tax at the federal level only and does not reflect provincial tax legislation. You should always speak to a professional cross-border tax accountant to discuss which strategies discussed here would be effective for your own specific circumstances.

The information in this article does not address U.S. Estate tax or planning for U.S. citizens, U.S. green card holders and resident aliens of the U.S. (U.S. domiciliary). For a discussion regarding U.S. Estate tax and planning for U.S. citizens in Canada please ask for our article titled, "Tax and Estate Planning for U.S. Citizens in Canada".

Background to Changes in U.S. Estate Tax

There was a time before changes were made to the Canada-U.S. Income Tax Convention (referred to as the "Treaty"), when many high net worth individuals holding U.S. situs assets upon their death were subject to substantial U.S. Estate Tax liabilities. However, with changes made to the Treaty it became possible to reduce or even eliminate U.S. Estate Tax levied, and allow a tax reduction on a deceased's final Canadian income tax return.

In addition, due to sweeping U.S. tax law changes enacted in 2001, the previous top U.S. Estate Tax rate of 55% has been gradually decreasing until 2009 to 45%.

Figure 1 attached lists the highest U.S. Tax rates over the last few years. During the same time, the U.S. Estate Tax exemption amount and the unified credit amount have been gradually increasing. For 2009 the exemption increased to $3,500,000 U.S. and the unified credit increased to $1,455,800 U.S. (see Figure 2 attached).

Without any further legislative action, there will be no U.S. Estate Tax for those passing away in 2010, and as strange as it may seem, all U.S. Estate Tax laws in existence before the 2001 tax law changes will then be reintroduced after 2010. With large year-to-year differences in the U.S. Estate Tax law over the next three years, (2009-2011) high net worth individuals may face large variations in their exposure to U.S Estate Tax.

There is speculation surrounding whether Congress will actually allow the U.S. Estate Tax to be nil in 2010 and then return to 2001 rates for 2011. Many policymakers and lobbyists on all sides of the issue believe that Congress will likely act in 2009 to modify U.S. Estate Tax for 2010 and onward. There are various ideas being considered including lowering the exemption but applying a progressive rate system for the exemption, raising the exemption amounts, or even maintaining the exemption and rates at the 2009 level. You should consider your potential exposure to U.S. Estate Tax based on current tax rates, and possible changes in U.S. Estate Tax law in the future.

Determining which assets may be subject to U.S. Estate Tax

To determine your liability to U.S. Estate Tax, you must identify your U.S. "situs" assets (i.e. assets located or deemed to be located in the United States) and subtract any related liabilities. These liabilities may need to be prorated based on the ratio of U.S. assets as a percentage of worldwide assets.

U.S. SITUS ASSETS

Examples of property located or deemed to be located within the U.S. include (but not limited to) the following:

- U.S. real estate
- The assets of a trade or business conducted within the United States
- Shares in U.S. corporations, whether held in an account in Canada or outside Canada
- Bonds, debentures and other debt obligations issued by U.S. corporations and U.S. governments, unless they are specifically exempted under the portfolio interest exemption (Generally, a portfolio interest exemption means that these U.S. debt obligations were issued after July 18, 1984, and are not subject to U.S. non-resident withholding tax on interest payments).
- Tangible property situated within the U.S. (e.g. cars, art)
- U.S. pension plans (including IRAs and 401(k) plans)
- Deposits in a U.S. brokerage Account (U.S. bank deposits are not U.S. situs)
- Any of the above securities held in an RSP or RIF

- Any of the above securities held in discretionary managed accounts

Note that U.S. property held in a Canadian registered plan such as an RSP or RIF must be counted when determining your total U.S. situs assets for the purposes of U.S. Estate Tax. As well, discretionary managed accounts where the individual directly owns U.S. situs securities are still subject to U.S. Estate Tax, even though the buy and sell decisions are not made by the individual owner.

ASSETS NOT CONSIDERED U.S. SITUS

Examples of property with U.S. content that may not be considered U.S. situs and not subject to U.S. Estate Tax include:

- Shares of Canadian mutual fund corporations (i.e. capital class funds) that invest in the U.S. market (even if denominated in U.S. currency)
- Units of Canadian mutual fund trusts (including Exchange Traded Funds (ETF's) trading on the TSX) that invest in the U.S. market
- Canadian issued notes that are linked to a U.S. index
- American depository receipts (ADRs), which are exempt from U.S. Estate Tax because the underlying share is of a non-U.S. corporation
- U.S. bank deposits
- U.S. corporate and government bonds subject to the portfolio interest exemption
- Canadian issuer U.S. pay bonds — providing exposure to the U.S. dollar

U.S. Estate Tax thresholds

An easy test used to determine whether you would incur U.S. Estate Tax if you became deceased this year is to compare the value of your U.S. situs assets and worldwide estate to specific U.S. Estate Tax thresholds for that year.

First you must accumulate on a per individual basis (not per family or per couple basis) the following two numbers:

- The total value (in U.S. dollars) of your U.S. situs assets
- The gross value (in U.S. dollars) of your worldwide estate (including Canadian, U.S. and other worldwide assets and certain life insurance policies)

Note in accumulating the value of your worldwide estate you must include the value of the proceeds payable to beneficiaries of any life insurance policy you owned upon your death, if you had incidents of ownership on your policy. Having incidents of ownership includes the ability to change beneficiaries and borrow against the policy. These are common features found in many insurance policies.

Second, you compare these two numbers against the U.S. Estate Tax thresholds for the current year. For the year 2009, the two thresholds (both in U.S. dollars):

$60,000	If your U.S. situs assets are $60,000 US or less on death, then there would be no U.S. Estate Tax payable regardless of the value of your worldwide assets.
$3,500,000	(a) If your worldwide estate is $3.5 million US or less upon death, then there would be no U.S. Estate Tax payable regardless of the value of your US situs assets. (b) If your worldwide estate is greater than $3.5 million US upon death, and the value of your U.S. situs assets is greater than $60,000 US, then there may be a U.S. Estate Tax liability (but not necessarily so). A calculation will confirm whether a U.S. Estate Tax liability actually results. Ask your advisor at RBC® about using our U.S. Estate Tax calculator to estimate your liability, if any.

Calculating U.S. Estate Tax

U.S. estate tax is levied based on graduated tax rates in effect in the year of your death. Figure 1 attached lists the graduated U.S. Estate Tax rates for 2009. These rates are applied to the sum of the **fair market value (FMV)** of your U.S. situs assets less any related liabilities, which may need to be prorated based on the ratio of U.S. situs assets as a percentage of your worldwide assets. The result is a tentative U.S. Estate Tax liability.

U.S. Estate Tax is much different from the Canadian "deemed disposition" tax upon death, where the tax is payable only on capital gains accrued at death on capital property (e.g. stocks, bonds, mutual funds, real estate, etc.). For this reason, even if a U.S. situs asset has lost value since you acquired it, you may still be exposed to U.S. Estate Tax on that asset!

TREATY RELIEF IN CALCULATING U.S. ESTATE TAX

In arriving at your net U.S. Estate Tax liability a non-refundable "unified credit" is available under the Treaty to reduce the tentative U.S Estate Tax. The unified credit for 2009 amounts to $1,455,800 US. However, you do not automatically deduct the whole unified credit amount. The non-refundable unified credit that can be deducted must be calculated by taking a ratio of the value of your U.S situs assets less related liabilities (prorated if required) over the value of your worldwide assets. This ratio is then multiplied by the unified credit limit for the year of death to determine how much of the unified credit you can deduct.

Non-refundable Unified Credit:

$$\frac{\text{U.S situs assets less liabilities (possibly prorated)}}{\text{Value of your worldwide assets}} \times \text{2009 unified credit}$$

The Treaty also allows a non-refundable marital credit to reduce the tentative U.S. Estate tax liability if you are leaving U.S. situs assets to a married Canadian surviving spouse (does not include same-sex spouse and may not include common law partners). This marital credit could potentially give you as much relief as the prorated unified credit. The marital credit you can deduct is limited to the lesser of the prorated unified credit discussed above, and the U.S. Estate Tax otherwise payable on the qualified property that is transferred to the spouse.

Non-Refundable Marital Credit:

Lesser of:

a) non-refundable prorated unified credit

b) tax otherwise payable on the qualified property transferred to the spouse

The ability to use this extra credit makes it prudent to provide the executor of the individual's estate some latitude in choosing which assets to transfer to a surviving spouse in order to minimize the U.S. Estate Tax.

For a numerical example illustrating a step by step calculation of U.S. Estate Tax, refer to the section, *Sample U.S. Estate Tax Calculation*, later in the article.

TREATY RELIEF ON CANADIAN TAX RETURN

Under the Treaty, any U.S. Estate Tax that is payable may be claimed on your final Canadian income tax return using the foreign tax credit mechanism. This means you may be able to reduce your Canadian tax liability attributable to the U.S. situs assets with a foreign tax credit for some or all of the U.S. Estate Tax liability paid. Since the foreign tax credit cannot exceed the Canadian income tax attributable to the U.S. property in the year of death it is necessary to have Canadian tax attributable to the U.S. property on your Canadian return. However, if there are no accrued capital gains or if assets with accrued capital gains are rolled tax free to your spouse, the estate may end up paying U.S. Estate Tax, but receive no offsetting foreign tax credit because there may be no tax owing on your final Canadian tax return attributable to the U.S. situs assets. This may also occur where your RSP or RIF containing U.S. property is rolled over to a spouse on a tax free basis. The foreign tax credit in effect limits the possibility of double taxation, but it does not limit the possibility of having to pay U.S. Estate Tax. In the discussion that follows, refer to the section titled, *Transfer U.S. Situs Assets to a Spouse at FMV at Death*, for a possible strategy.

Strategies to minimize U.S. Estate Tax

If you have determined that you currently have a U.S. Estate Tax liability based on the thresholds mentioned earlier and after confirmation using the U.S. Estate Tax calculator you should consider the following strategies to reduce your exposure to U.S. Estate Tax. These strategies are not an exhaustive list, but rather a general outline of the more common techniques that are available. Your specific circumstances will determine the benefit of one strategy over another.

Be sure to speak with a cross-border tax professional to determine an effective strategy for your own circumstances.

GIFT U.S. SITUS ASSETS PRIOR TO DEATH

For Canadian residents who are non-U.S. citizens, non-U.S. green card holders or non-U.S. domiciliaries, there is generally no U.S. Gift Tax when intangible property such as stocks, bonds and cash are transferred to another individual (although, you should be careful of making gifts of cash from U.S. based financial institutions). Of course, a gift of an appreciated property to anyone other than a spouse is a disposition at fair market value that will trigger unrealized capital gains that are taxable in Canada.

However, gifting real estate and other tangible personal property (e.g. automobiles, art, jewellery, etc.) located in the U.S. can trigger the U.S. Gift Tax for Canadian residents if the value of the gift exceeds certain minimum amounts. If the total value of all gifts to any individual is $13,000 US or less (2009 value) in a given year, these gifts will not attract U.S. Gift Tax. This threshold rises to $133, 000 US (2009 value) if the gift of tangible property is made to a spouse who is not a U.S. citizen. If you exceed these amounts you are subject to gift tax but will not able to use the $1,000,000 lifetime gift tax exclusion that is available only to U.S. citizen, U.S. green card holders or U.S. domiciliaries.

Since U.S. Estate Tax is determined using the value of U.S. situs assets and the worldwide estate on a per individual basis (not family or couple basis), these exemptions may allow for the “rebalancing” of U.S. situs assets between spouses and children in order to minimize U.S. Estate Taxes.

Note that using these exemptions may minimize or eliminate U.S. Gift Taxes, and any Canadian taxes on capital gains will be deferred on gifts made only to a spouse because of the ability to transfer assets to a spouse with no immediate tax implications. However, the Canadian spousal attribution rules will still apply on any investment income generated on the assets gifted to a spouse or minor children.

TRANSFER U.S. SITUS ASSETS TO SPOUSE AT FMV AT DEATH

Due to the ability to report U.S. Estate Tax paid on your final Canadian tax return to generate a foreign tax credit, it may be wise to allow your executor to elect to transfer certain appreciated U.S. situs assets (non-registered assets) to your surviving spouse at fair market value rather than automatically at cost. This election will serve to trigger U.S. source capital gains on your final Canadian income tax return. Your surviving spouse and the executor may also elect not to roll over all the assets in your RSP or RIF on a tax free basis. Instead, the fair value of a portion or all of your RSP/RIF assets at the date of death can be reported on your final Canadian tax return. Since you now have Canadian tax attributable to the capital gain or the RSP/RIF income reported on your final

Canadian tax return you may be able to reduce this tax by a foreign tax credit for U.S. Estate Tax paid. Furthermore, going forward the surviving spouse will now have a higher adjusted cost base on those U.S. situs assets (non-registered assets) received at fair market value (due to the election) resulting in a lower capital gain or higher capital loss when subsequently disposed. Also, your surviving spouse will receive the assets that would have otherwise rolled into their RSP/RIF. You should also consider the lost tax deferral of income earned in the RSP/RIF.

KEEP WORLDWIDE ESTATE UNDER $3.5 MILLION US

Provided your worldwide estate at death is $3.5 million US or less (for deaths in 2009), there is no U.S. Estate Tax, regardless of how much of this worldwide estate comprises of U.S. situs assets. As a result, consider rebalancing the ownership of worldwide assets between you and your spouse and/or other family members to minimize your worldwide estate at death. Also when planning to purchase a new asset, carefully choose who the owner of the new asset should be for purposes of the $3.5 million US worldwide estate exemption.

Creditor issues, U.S. Gift Tax and Canadian disposition and income attribution rules need to be considered carefully before transferring assets to other family members for U.S. Estate Tax purposes.

NON-RECOURSE FINANCING

If you hold a regular mortgage on U.S. real property at the time of death, only a fraction of the mortgage balance, equal to the ratio of U.S. situs assets to worldwide assets, can be used to reduce your taxable U.S. estate. However, if you use non-recourse financing (i.e. a mortgage that is collectable only against a specific property and not against any other assets of the individual) on U.S. real property, the taxable value of the U.S. estate is reduced by the full balance of the non-recourse financing.

If a U.S. property is refinanced using a non-recourse mortgage, then not only can U.S. Estate Tax be minimized, but if the loan monies are used to purchase investments (stocks, bonds, mutual funds, etc.), then the interest on the non-recourse mortgage can potentially be tax-deductible for Canadian tax purposes.

Ask your advisor at RBC for our article titled, *Non-Recourse Mortgage to Reduce U.S. Estate Tax.* A cross-border tax professional may be able to advise you whether this would be an effective strategy based on your personal circumstances.

LIFE INSURANCE

Some Canadian residents use life insurance to pay for capital gains tax arising on their death due to Canadian deemed disposition rules. Similarly, one of the simplest methods to pay for potential U.S. Estate Tax is to maintain sufficient life insurance to cover this liability on death. However, this may be expensive depending on the age and health of the property holder.

Furthermore, although life insurance may be used to pay for the U.S. Estate Tax liability, ironically for the purposes of the U.S. Estate Tax thresholds and calculations, life insurance proceeds will generally form part of the deceased's worldwide estate if the deceased had incidents of ownership. This rule will serve to potentially increase the U.S. Estate Tax payable since the unified credit that can be claimed will be lower. Furthermore, the life insurance proceeds may push your worldwide estate over the $3.5 million US exemption, thus creating potential U.S. Estate Tax now on your U.S. situs assets. It may be possible to exclude life insurance proceeds from your worldwide estate. For example, if your spouse has little or no U.S. Estate Tax exposure, consider whether your spouse should own the life insurance policy on you. Instead of owning an insurance policy outright, another way to exclude the life insurance proceeds from your worldwide estate calculation is by having the policy held in a special irrevocable life insurance trust (ILIT). An ILIT is a trust that owns an insurance policy in such a way that the person whose life is insured does not have incidents of ownership. A cost benefit analysis should be done to ensure that the taxes saved using the ILIT are more than the cost to set it up and any annual fees. Also, in a properly set up ILIT, you will not have access to the cash surrender value or borrow against it. This may not be wise if you need the insurance for investment or retirement purposes. Furthermore, the ILIT will be considered an inter-vivos trust so any investment income earned on the proceeds paid into the ILIT after your death will be subject to the highest marginal tax rates in Canada unless the income is paid or payable to a beneficiary. Ask your advisor at RBC for our article titled, *U.S. Estate Tax Planning Using Life Insurance,* for additional information.

SELL U.S. SITUS ASSETS PRIOR TO DEATH

This is the easiest and least complicated of solutions; however, it is generally applicable only when you become seriously ill or just before your anticipated death. The reason why this strategy may not be appropriate is that the sale of assets can trigger a premature tax liability in Canada on the realized capital gain. However, if you have capital loss carryovers to offset these capital gains this strategy may be more appealing. Your advisor at RBC can also assist you with reviewing possible tax loss selling strategies where you may trigger capital losses to offset the capital gains incurred using this strategy.

LEAVE ASSETS IN A QUALIFIED DOMESTIC TRUST (QDOT)

An unlimited amount of property may be left to a U.S. citizen surviving spouse in order to defer all of the U.S. Estate Tax until the death of the surviving U.S. citizen spouse. This unlimited U.S. Estate Tax deferral does not apply if the surviving spouse is not a U.S. citizen. However, as discussed earlier, there is a marital tax credit that can serve to reduce the U.S. Estate Tax payable when U.S. situs assets are left to a married Canadian surviving spouse. The ability to defer U.S. Estate Tax is also possible if upon your death, U.S. situs assets are transferred to a trust for the benefit of your non-U.S. citizen surviving spouse. This trust is called a Qualifying Domestic Trust or QDOT. U.S. Estate Tax is

payable when U.S. assets are distributed from the QDOT (with some exceptions) or if there is any capital remaining in the QDOT upon the death of your surviving spouse. The U.S. Estate tax levied would be based on rates that existed in the year of your death as opposed to the rates in the year your surviving spouse dies. A QDOT does not avoid U.S. Estate tax, it only defers it. The trust must meet specific criteria in order to qualify for QDOT status; therefore professional advice is a must. A QDOT may also qualify as a spousal trust for Canadian tax purposes. Once again, a cross-border specialist should be consulted to ensure the trust is set up properly.

JTWROS OWNERSHIP OF PROPERTY

Holding property in joint tenancy with right of survivorship (JTWROS) with your spouse or another person may result in only a proportionate share of the total value of the property being part of the deceased's estate for U.S. Estate Tax purposes. However, in order for this strategy to work, it is important to be able to demonstrate that the surviving tenant(s) contributed to the purchase of the assets within the JTWROS account with their own funds. In practice this can be very difficult to do unless you are very diligent in keeping receipts and track of the source of contributions made by each spouse. Otherwise, the Internal Revenue Service (IRS) will assume the deceased contributed 100% towards the cost of the JTWROS property and would include the entire value in the deceased's estate.

HOLD U.S. SITUS ASSETS IN A CANADIAN HOLDING COMPANY

Just as shares of U.S. companies are defined as U.S. situs property, shares of non-U.S. companies are defined as not being such property.

Accordingly, the shares you hold in a bona fide Canadian corporation are generally not subject to U.S. Estate Tax. This means that you may use a Canadian company to hold your U.S. assets to insulate you from U.S. Estate Taxes. However, for this strategy to work, the corporation must be legal and created under relevant corporate laws. Unfortunately, there is a cost to this. Using a company involves additional tax filings and financial reporting expenses, as well as possible corporate capital tax liabilities. Furthermore, this strategy may result in the payment of a larger current tax liability than a strategy where the assets are held personally due to the integration of the Canadian holding company's tax situation and the shareholder's personal tax situation.

There are also those who suggest using a Canadian corporation to hold personal-use assets such as vacation property. In general terms, this is a very risky strategy because you may be challenged by both the Canada Revenue Agency (CRA) and the Internal Revenue Service (IRS) for tax purposes. The CRA may assert that the provision of such personal assets by the corporation represents a taxable benefit to you.

However, there is an exception by the CRA if an individual has set up a Canadian corporation for the sole purpose of holding U.S. vacation property for the use of the shareholder and his family on or before December 31, 2004. To take advantage of this administrative concession, you must fall squarely within the rules the CRA has laid down.

Note: For condominium purchases in the U.S., there are many condominium associations that will not allow ownership by a corporation.

A further complication with this strategy is that the IRS may view that the shareholder is really the owner of the building and not the corporation and therefore may try to impose U.S. Estate Tax on this asset. Accordingly, before proceeding with a decision to use a Canadian corporation in this manner, it is important that the full circumstances of your plan be reviewed by an appropriate U.S. tax advisor to determine whether it can achieve the desired objectives.

HOLD U.S. SITUS ASSETS IN A CANADIAN PARTNERSHIP

Although this strategy is complex, there are some experts that suggest holding U.S. situs assets in a Canadian partnership with a family member. In this case, it may be possible to elect to treat the Canadian partnership as a Canadian corporation for U.S. tax purposes, thereby potentially avoiding U.S. Estate Tax as previously mentioned. However, since the structure would be viewed as a partnership for Canadian tax purposes, some of the negative Canadian tax consequences associated with owning U.S. property inside a Canadian corporation may be avoided.

Due to the complexity of this strategy, it is imperative that you consult with a qualified tax advisor for more details.

HOLD U.S. SITUS ASSETS IN A CANADIAN TRUST

Again this is a complex strategy; however, there are some experts that suggest that a properly structured Canadian inter-vivos trust that purchases U.S. situs assets, including U.S. real estate, will not result in U.S. estate tax for the settlor or the beneficiaries for the U.S. situs assets held in the trust.

The settlor would fund the trust with cash, which the trust would then use to purchase U.S. real estate for example. To be safe, some U.S. tax experts recommend that the settlor should not be a beneficiary, and neither the settlor nor the beneficiaries should be trustees. Since the structure is viewed as a trust for Canadian tax purposes, some of the negative Canadian tax consequences associated with owning U.S. property inside a Canadian corporation may be avoided.

Due to the complexity associated with this strategy, it is imperative that you consult with a qualified tax advisor for more details.

NEW RULES FOR CHARITABLE DONATIONS

When U.S. situs property, on which U.S. Estate Tax would otherwise be payable, is given or bequeathed to a U.S. charitable organization the bequest can be used to reduce the amount of U.S. situs property on which U.S. Estate Taxes are calculated. The U.S. charitable organization must be operated exclusively for religious, charitable, scientific, literary or educational purposes and your Will must contain specific provisions for the donation of the U.S. situs property. Prior to recent changes in the Treaty, you could have made a donation to either a U.S. or Canadian based charity to receive the deduction, however, now only donations to U.S. charitable organizations qualify.

ALTERNATIVE INVESTMENTS

You may want to review your portfolio and replace some of the U.S. situs assets with investments with U.S. content that may not be considered U.S. situs. Refer to an earlier section, *Assets Not Considered U.S. Situs,* for examples of possible investments.

Sample U.S. Estate Tax calculation

If a Canadian is subject to U.S. Estate Tax based on the thresholds mentioned earlier, then the amount of U.S. Estate Tax payable can be calculated based on the following steps (a numerical example is used for illustration):

STEP 1: DETERMINE THE TOTAL VALUE OF U.S. SITUS ASSETS AND THE WORLDWIDE ESTATE UPON DEATH IN U.S. DOLLARS.

Value of U.S. situs assets: $2,000,000 US
Value of worldwide estate: $8,000,000 US

Since the value of this Canadian resident's U.S. assets upon death are greater than $60,000 US, and their worldwide estate is greater than $3.5 million US, there could be a U.S. Estate Tax liability and a simple calculation will confirm this.

STEP 2: FROM FIGURE 1, LOOK UP THE U.S. ESTATE TAX PAYABLE ON THE VALUE OF THE U.S. SITUS ASSETS.

(Note that you do not use the value of the worldwide estate for initially determining the U.S. Estate Tax payable from the table.)

U.S. Estate Tax on $2,000,000 US from Figure 1: $780,800 US

STEP 3: DETERMINE THE RATIO OF U.S. SITUS ASSETS TO THE WORLDWIDE ESTATE.

Ratio of U.S. situs assets to worldwide estate
= $2,000,000 ÷ $8,000,000
= 25%

STEP 4: FROM FIGURE 2 DETERMINE THE PRORATED U.S. ESTATE TAX UNIFIED CREDIT AVAILABLE.

There is a non-refundable unified credit of $1,455,800 US (year 2009 value) available to reduce U.S. Estate Tax. However, for Canadians, this unified credit must be prorated based on the proportion of the fair market value of U.S. situs assets to the worldwide estate. Therefore, multiply the unified credit by the ratio calculated in Step 3.

Prorated U.S. Estate Tax unified credit:
= $1,455,800 US x 25%
= $363,950 US

STEP 5: SUBTRACT THE PRORATED UNIFIED CREDIT IN STEP 4 FROM THE U.S. ESTATE TAX FROM STEP 2.

Net U.S. Estate Tax payable before martial credit
= $780,800 US – $363,950 US
= $416,850 US

STOP HERE IF YOU ARE NOT MARRIED TO A CANADIAN SPOUSE (DOES NOT INCLUDE SAME SEX MARRIAGE OR MAY NOT INCLCUDE COMMON LAW PARTNERS)

STEP 6: IF YOU ARE LEAVING YOUR ASSETS TO A MARRIED CANADIAN SURVIVING SPOUSE YOU CAN DEDUCT AN ADDITIONAL NON REFUNDABLE TAX MARITAL CREDIT

Marital Credit:

= Lesser of:

a) the prorated credit calculated in Step 4, (i.e. $363,950 US) and

b) U.S. Estate Tax otherwise payable on U.S situs property transferred to a spouse. (i.e. $363,950 US if all U.S. situs property is transferred to a spouse)

= $363,950 US

STEP 7: SUBTRACT MARITAL CREDIT IN STEP 6 FROM THE U.S. ESTATE TAX FROM STEP 5.

Net U.S. Estate Tax Payable
=$416,850 US – $363,950 US
= $52,900 US

Under the Treaty, you may be able to offset your Canadian tax liability attributable to the U.S. situs assets with a foreign tax credit based on your U.S. estate tax liability.

U.S. Estate Tax return filing requirements

The U.S. Estate Tax return (IRS Form 706-NA) is only required upon the death of an individual holding more than $60,000 US of U.S. situs assets. If this threshold is exceeded, your executor or personal representative has the responsibility of filing the U.S. Estate Tax return even if the worldwide estate is less than $3.5 million US, and hence, no U.S. Estate Tax is payable. The U.S. Estate Tax return must be filed to the IRS within nine months after the date of death unless an extension of time is granted. Any U.S. Estate Tax payable must also be paid on or before nine months after death. Note that an extension to file the U.S. Estate Tax return does not extend the time for payment of any U.S. Estate Tax liability.

There are severe sanctions under the Internal Revenue Code of the U.S. should such a fiduciary knowingly avoid filing these returns. The estate could be subject to significant penalties and the fiduciary could face imprisonment. There are also substantial penalties for understating the value of assets. Accordingly, we recommend that you plan your affairs on the assumption that your executor will file an accurate return, should your estate have a U.S. Estate Tax liability.

U.S. Estate Tax calculator

Speak to your advisor at RBC about calculating your current U.S. Estate Tax liability, if any, using a handy U.S. estate tax calculator. You will need the value of your current U.S. situs assets and worldwide estate.

Figure 1: Highest U.S. Estate Tax rate

Year	Maximum rate
2007	45%
2008	45%
2009	45%
2010	Not applicable
2011	55%

Figure 2: U.S. Estate Tax unified credit (all amounts expressed in U.S. dollars)

Year	Exempt amount	Unified credit
2007	2,000,000	780,800
2008	2,000,000	780,800
2009	3,500,000	1,455,800
2010	Tax repealed	Not applicable
2011	1,000,000	345,800

Figure 3: U.S. Estate Tax rates for 2009 only (all amounts are expressed in U.S. dollars)

Column A: Taxable amount Over	Column B: Taxable amount not over	Column C: Tax on amount in Column A		Column D: Rate of tax on excess over amount in Column A
$0	$10,000	$0	Plus	18%
$10,000	$20,000	$1,800	Plus	20%
$20,000	$40,000	$3,800	Plus	22%
$40,000	$60,000	$8,200	Plus	24%
$60,000	$80,000	$13,000	Plus	26%
$80,000	$100,000	$18,200	Plus	28%
$100,000	$150,000	$23,800	Plus	30%
$150,000	$250,000	$38,800	Plus	32%
$250,000	$500,000	$70,800	Plus	34%
$500,000	$750,000	$155,800	Plus	37%
$750,000	$1,000,000	$248,300	Plus	39%
$1,000,000	$1,250,000	$345,800	Plus	41%
$1,250,000	$1,500,000	$448,300	Plus	43%
$1,500,000	$2,000,000	$555,800	Plus	45%
$2,000,000	$3,500,000	$780,800	Plus	45%
$3,500,000	–	$1,455,800	Plus	45%