

MATTERS OF INTEREST FOR SNOWBIRDS

'Tis the season !

The holidays are just around the corner and crowds are beginning to gather at your neighbourhood mall. It's also the season where Canada's lucky snowbirds are packing the sun-screen and the sandals, and starting to plan their annual couple of months of heat, sun and relaxation away from the cold realities of Canada ... all very well-deserved. Before you fire up the R.V. or head out to the airport, we thought we'd provide you with a few pointers ... from a tax perspective obviously, to ensure you don't find yourself faced with unpleasant surprises.

Potential Annual Filing Requirements in the U.S.

Canadian residents who winter in the U.S. could be subject to U.S. taxation on worldwide income if they exceed a specific number of days in the U.S. To determine whether this might apply to you, there is a sequence of questions you must address, which are as follows:

1. Were you present in the U.S. for at least 31 days in the current year? **If yes,**
2. Were you present in the U.S. for a total of 183 days or more during the current year and two previous years, counting all days of physical presence in current year plus 1/3 the number of days in preceding year plus 1/6 of days in the second preceding year? Travel days coming and going are considered as days present in the U.S. **If yes,**

You are considered a resident of the U.S. under the *substantial presence test*, and therefore are required to file personal income tax returns in the U.S.

A few exemptions apply. One possible exemption is available for those who meet the "closer connection test" under which IRS **Form 8840** (Closer Connection Exemption Statement for Aliens) needs to be filed annually (on or before June 15th) with the IRS. This form acknowledges that you met or exceeded the substantial presence test but due to the fact that you maintain a closer connection to a foreign country – being Canada, and will be paying tax in that foreign country, you will not be filing a U.S. income tax return.

Some of the factors in determining if you have a closer connection with another country (Canada) are the locations of:

- Your permanent home
- Your family
- Your personal belongings
- Your business activities

- Where you hold your driver's license
- Where you are entitled to vote

Filing of this form acknowledges that you are entering the U.S. each year as a temporary resident for pleasure, and that you have complied with the U.S. tax laws. It is possible that you could be asked to show a copy of this form when crossing the border into the U.S. the following year. Therefore, we recommend that you carry a copy with you when traveling.

Travel Insurance and Foreign Medical Expenses

Be aware that travel medical insurance and any medical expenses (which meet the CRA guidelines for eligible medical expenses) incurred when you are outside of Canada are considered qualifying medical expenses for Canadian income tax purposes. Ensure you include the premiums for your travel health insurance with your other eligible medical expenses when filing your personal income tax return.

Do You Own Property in the U.S.?

There are no annual Canadian tax implications from owning a personally-used property (home; cottage; condo; trailer; etc.) outside of Canada.

Selling your property

As a non-resident of the U.S. if you sell a U.S. property, 10% of the proceeds must be withheld and remitted to the IRS. You must then file a 1040NR (Non-Resident Individual Tax Return) reporting the sale and claiming the credit for the 10% withholding. Capital gains in the U.S. are taxed at 100% as opposed to 50% in Canada. If you hold the property for more than 12 months, any gains are taxed at a rate of 15%. If you hold the property less than 12 months you will be taxed at the local marginal tax rates, which are usually higher. Taxes paid in the U.S. as a result of the sale will be claimed as a Foreign Tax Credit when reporting the same transaction on our Canadian income tax return, hence avoiding double-taxation.

Upon death

Many Canadians are surprised to discover that their estate may be burdened with the obligation to pay U.S. federal and state estate tax upon their death. In fact, U.S. investments and property owned at the time of death of any individual may be subject to estate tax in the U.S. For individuals not domiciled in the U.S., an estate return must

be prepared if the date of death value of the gross estate located in the U.S. (U.S. situs assets) exceeds the filing limit of US\$60,000. Some examples of U.S. situs assets are:

- U.S. real property, including vacation properties;
- Tangible personal property located in the U.S.; and
- Shares and share options of a U.S. corporation, including shares of a U.S. corporation held within an RRSP or RRIF.

Since owning U.S. property may lead to U.S. federal and state estate tax obligations on your estate, or at the very least reporting requirements we recommend that you consult an income tax advisor should you feel that you could be liable for U.S. estate taxes.

Canadian Reporting Requirements on Foreign Assets

Don't forget that there is a filing requirement in Canada if a resident individual holds certain property outside Canada with a total cost amount of more than CAD\$100,000 at any time in the tax year. Foreign property includes items such as: funds in foreign bank accounts, land and buildings located outside Canada (excluding personal use property such as a vacation property), shares of non-resident corporations, and shares of Canadian corporations on deposit with a foreign broker, etc...

The form T1135, Foreign Income Verification Statement must be filed with CRA on or before the due date of your income tax return. Please note that there are substantial penalties for failing to complete and file this form by the due date.

In Summary

Included in the tasks you need to do prior to your departure, be sure to include a review of your situation to ensure you are compliant for tax purposes in Canada and in the U.S. Failure to do so could result in significant penalties and other costs, as well as pose issues upon border crossing either going into, or when leaving, the U.S.



**This 'n That at
Logan Katz**



The Partner's and Staff of Logan Katz would like to invite you to our "Celebrate the Holidays Breakfast Reception" on Thursday, December 17th, 2009. Details to follow or contact Michelle Gibbons at 613-228-8282 ext. 0.