Tax Considerations when Purchasing American Real Estate

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1. Introduction

Many Canadians, especially those in their retirement years, own vacation or second properties in the United States of America (**"US"**). While ownership of such property can provide a welcome reprieve from cold Canadian Winters, prior to purchase it is important to consider potential tax implications and to give thought to how to best structure the purchase. Specifically, potential buyers should contemplate the applicability of US tax, including whether or not the taxpayer will be deemed a US resident, the application of income taxes if the property is rented, estate taxes, probate rules and gift taxes. This paper provides an overview of relevant tax considerations when a Canadian resident is purchasing US real estate and makes a case for using a trust to hold the property in certain circumstances and when the purchaser seeks to minimize both income taxes on capital gains and estate taxes while avoiding probate.

2. Applicability of US Taxes

An understanding of when and how US tax applies to an individual, trust, partnership and corporation gives context to the applicability of US tax for a non-US resident alien purchaser of US real estate.

2.1 US Taxation of Citizens & Resident Aliens

Section 1 of the US *Internal Revenue Code*[1] (the **"Code"**) is explained by section 1.1-1 of the Federal Tax Regulations[2] (the **"Regulations"**) as applying an income tax to every individual (citizen or resident alien) other than a non-resident alien subject to taxes

under Code sections 871(a) (Tax on non-resident alien individuals) and 877 (a restriction on expatriation to avoid tax). Regulation section 1.1-1(b) states that all US citizens are liable to the income taxes under the Code regardless of residence and the geographical source of the income as are US resident alien individuals. Additionally, section 1.1-1(c) of the Regulations states that every person born or naturalized in the United States and subject to its jurisdiction is a citizen.[3] Generally speaking, every person born or naturalized in the US and subject to its jurisdiction, or a person born outside the US who is not naturalized but whose parent was a US citizen at the time of the individual's birth is a citizen and is subject to taxes under the Code.[4] Notably, once an individual is a US citizen he or she can only lose citizenship by performing an expatriating act with intent such as formally renouncing US citizenship or serving in a foreign military.[5]

2.2 US Taxation of Non-Resident Alien Individuals

Sections 871(a) of the Code places a 30% tax on income other than capital gains (and certain portfolio debt instruments) on the amount received from sources in the US by a non-resident alien individual on interest, dividends, rents, profits and income, amongst other sources. Section 871(b)(1) of the Code, however, states that a non-resident alien individual engaged in trade or business within the US is to be taxed at a graduated rate on income connected to it and section 871(d) allows a non-resident alien to elect to treat income from real estate as income connected with a US business. Such election means that the non-resident alien taxpayer would instead be taxed on net income at a graduated rate. This is significant for property owners that rent their property and incur

significant property related expenses as the tax owing on a net basis could be significantly less than 30% of gross revenues.

2.3 US Taxation of Foreign Corporations

Section 882 of the Code states that a foreign corporation is subject to US corporate tax on income effectively connected with trade or business in the US. In calculating taxable income, only gross income connected with US trade or business is included. Likewise, deductions and credits are only applicable when connected to the US trade or business. Deductions can only be claimed if a tax return is filed. Similar to individual taxpayers, section 882(d) of the Code allows for a corporation to elect to treat real estate income as income connected with a US business.

2.4 US Taxation of Foreign Partnerships

While partnership legislation varies by State, the *Uniform Partnership Act*, a model statute advanced by the National Conference of Commissioners on Uniform State Laws, defines 'Partnership' as "an association of two or more persons to carry on as co-owners a business for profit…."[6] Section 761 of the Code, however, defines a partnership as any unincorporated organization carrying on a business, financial operation, or venture which is not, within the meaning of the title, a corporation, a trust or an estate. For US Federal income tax purposes a partnership is a flow-through entity. This means that a partnership's income is taxed in the hands of the partners rather than at the partnership level. Generally speaking a partnership calculates its taxable income in the same way an individual does, except that certain items like capital gains and losses are separately

stated and certain individual deductions are not permitted.[7] Each partner accounts for his or her distributive share of the partnership's income, gain, loss, credit or deduction retaining the character as if it was realized directly by the partnership[8] and a partner accounts for partnership items in a tax year where a partnership's year end has fallen in the partner's tax year.[9] Consequently, a foreign partner of a foreign partnership engaged in trade or business within the US has his or her share taxed in the same manner as an individual.

2.5 US Taxation of Foreign Trusts

Though determining what constitutes a trust for US tax purposes is not necessarily a simple task, generally speaking an arrangement will be viewed as a trust when property is vested in trustees responsible for the protection and conservation of such property for beneficiaries that are not associates in a joint enterprise of a business for profit and therefore cannot share in responsibility.[10] Notably, merely organizing an entity as a trust will not necessarily result in taxation as a trust when its true character is more properly classified as a business.[11] The Code has different categories for taxing trusts depending on whether the trust is considered to be a grantor trust. A grantor trust is defined in sections 673 through 679 of the Code and includes where the grantor retainers power over the trust like the power to amend or revoke or to direct or prevent distributions to beneficiaries. A trust that has a grantor that is not a US person has more limited rules and will generally only be considered a grantor trust where it is revocable by the grantor or the grantor (or the grantor's spouse) can make distributions during the grantor's

lifetime.[12] The income and gains of a grantor trust will generally be taxed directly to the grantor.[13]

A trust that is not a grantor trust, on the other hand, is generally taxed like an individual with some modifications.[14] This means that a US resident trust will be taxed like a US resident individual and a non-resident trust will be taxed like a non-resident US individual.[15] When taxed, a domestic trust can deduct distributions of distributable net income to beneficiaries and the character of the distribution will be retained by and be taxed in the hands of the beneficiary. Capital gains, however, generally will not constitute distributable net income and will be taxed in the trust.[16] A foreign trust, however, is required to include ordinary income as well as capital gains in its distributable net income.[17] Ordinary income is taxed to the beneficiary at his or her graduated rate while the long-term capital gain portion will be taxed at a different rate.[18]

Pursuant to the *1996 Small Business Act*,[19] an objective test is used to determine whether a trust is foreign or domestic (and therefore taxed as a US trust). It is considered domestic if a US Court is able to exercise primary supervision over its administration and all or substantially all trust decisions are made by US persons. All trusts that do not meet these court and control tests are foreign trusts.[20] There are additional rules that apply only to foreign trusts, the most notable of which is the “throwback” rule, which states that if a foreign trust does not distribute its distributable net income for a given year the amount is classified as “undistributed net income.” In future tax years any distributions in excess of the distributable net income of the current year will be counted against the undistributed

net income, if any, on a first-in, first-out basis. Only when distributable net income and undistributed net income are exhausted will distributions be considered to come from non-taxable trust capital.[21] This rule acts as an incentive for foreign trusts not to accumulate undistributed net income (or at least not to distribute it) as doing so can strip the character of the income and result in the recipient paying tax on the income at a higher rate. Additional provisions relating to foreign trusts include section 684 of the Code which makes the transfer of an asset from a US taxpayer to a foreign trust a taxable exchange of property except in certain circumstances, section 643(i) anti-abuse provisions pertaining to loans made by foreign trusts and section 643(h) provisions on distributions through intermediaries.[22]

Clearly there is some complexity in how US citizen and non-citizen individuals, foreign corporations, partnerships and trusts are taxed in the US and the impact of the residency and citizenship of related individuals. Broadly speaking, when a non-US citizen is holding assets in or conducting business through an entity connected to the US there are three areas of consideration: the US tax implications, the Canadian tax implications and the application of the Canada/US tax treaty to allocate taxes payable in order to prevent double taxation. We will now review the applicability of the Canada/US tax treaty to tax liability for a Canadian owning real estate in the US.

3. Canada/US Tax Treaty

Canadian residents are taxed on their worldwide income by the government of Canada.[23] Additionally, Canadian residents carrying on a trade or business in the US are

also taxed on their US connected income by the US government. This would have the consequence of double taxation of income for Canadian residents operating a trade or business in the US (or *vice versa*) were it not for the Canada-United States Convention with Respect to Taxes on Income and on Capital signed on September 26, 1980 and most recently updated on July 29, 1997 (the **"Treaty"**). Article XXIV of the Treaty lays out foreign tax credit rules in instances where both the US and Canada claim a right to tax the same income (e.g. US connected business income of a Canadian resident), including the treatment of types of income, occupations, businesses, withholding taxes and determination of residence. By relying on the treaty, a taxpayer can receive a tax credit to prevent double taxation. The Article generally ensures that taxpayers are taxed in their country of permanent residence unless there is a "permanent establishment" in the other country. A permanent establishment can include a permanent residence or having an agent with authority to bind.[24] Article VI of the Treaty 'Income from Real Property' states that income (including rental income) from real estate may be taxed in the jurisdiction in which it is situated. Article VII of the Treaty 'Business Profits' states that only the profits attributable to a permanent establishment may be taxed in the jurisdiction of the permanent establishment. Likewise, Article XIII 'Gains' and Article XXIII 'Capital' state that gains derived from, and capital represented by, real estate, may be taxed in the jurisdiction in which it is located. Article XXIV 'Elimination of Double Taxation, allows, generally speaking, for the provision of a tax credit in one jurisdiction where, in accordance with the Treaty, tax on the same income, has been paid in the other jurisdiction.

Simply put, the general rule is that taxes related to real estate will normally be paid in the jurisdiction in which the real estate is located and, in the Case of a Canadian owning real estate in the US, the property owner will generally receive a Canadian tax credit under the Treaty to prevent double taxation of the income. Having reviewed how different entities are taxed under US tax law and the application of the Canada/US Treaty, we now turn our attention to US taxes that can apply to US real estate.

4. US Taxes to Consider Prior to Purchasing Real Estate

When purchasing US real estate there are a number of US taxes that a property owner can become liable to pay that should be considered. In this section we will provide an overview of US income tax and capital gains, US Federal estate tax, US State probate rules and the US Federal gift tax.

4.1 US Income Tax & Capital Gains

As discussed, a non-resident alien that owns income-generating property must pay a 30% withholding tax unless an election is made to treat the property as a business, in which case, if a tax return is filed, the graduated rate will apply to net income. Income tax paid on income from a US property can then generally receive a tax credit under the Canada/US Treaty against Canadian income tax otherwise owing. In the US individuals and corporations pay income tax on the net total of the taxpayer's capital gains. Short-term capital gains on property held for a year or less are taxed at the taxpayer's ordinary income while long-term capital gains are taxed at a lower rate.[25] In order to ensure that

such taxes are in fact paid, the US *Foreign Investment in Real Property Tax Act* of 1980, in addition to mandating the payment of tax on real estate capital gains, requires a withholding payment at the time of sale to cover income tax payable on the sale of foreign owned US real estate.

4.2 US Federal Estate Tax

At the time of writing the US estate tax exemption is $5.45 Million.[26] US non-resident alien's resident in Canada are permitted to claim this exemption in proportion to their US "situs" (the place to which property belongs for tax purposes) assets relative to the total value of their estate as a whole.[27] Similarly, non-resident aliens are only required to pay US estate tax on situs property, which includes US real estate but excludes shares of a foreign corporation. There is no statutory or regulatory authority nor is there decisive case law on whether or not a share in a partnership, or having a beneficial interest in a foreign trust (where the beneficiary does not control the trust), that holds US property will be considered to be US situs property. This creates uncertainty in the applicability of US estate tax where real estate is held with a foreign partnership or trust.[28] Additional uncertainty regarding applicable estate tax is created by the concept of constructive ownership. Constructive ownership asserts that estate tax applies not only to assets *owned* by the deceased taxpayer, but also other assets treated as owned for tax purposes. Specifically, this means that if a person retains control of and benefits from a property, the person is treated as the owner for estate tax purposes even if another entity is the owner on title, such as when elderly parents transfer the ownership of a house to their children prior to death but continue to live in it as if it where their own. A constructive

trust can be avoided if the ongoing use of the retained property does not constitute a retained benefit, such as the payment of rent at fair market value.[29] The exemption limit on the applicability of estate tax means that for some Canadian US real estate owners estate tax will not be a concern. For those with property holdings of significant value in proportion to their total estate, however, both the estate tax and uncertainty regarding partnership shares and beneficial trust ownership should be taken into account when purchasing US real estate.

4.3 US State Probate

Probate is the process by which the Court establishes the validity of a will. The probate process and tax vary by State. Probate can be avoided if title in the property is passed other than by will, such as via contract or through a properly structured trust (though the applicability of gift taxes must be considered). In the State of Florida, for example, Title XLII Estates and Trusts Chapter 731, Probate Code governs probate. While Florida does not have a probate tax (unlike the 15 other States that do),[30] Probate Code section 733.6171 'Compensation of attorney for the personal representative' outlines fees for estate administration as a percentage of the estate ranging from 1%-3% with larger estates paying a lower total percentage. In addition to administration fees there are also associated Court filing fees that must be paid and the probate process creates delay.

4.4 US Federal Gift Tax

Unlike Canada, the US taxes gifts. Gift taxes are addressed in sections 2501 and 102 of the Code. The gift tax differs from the income tax, though section 102 of the Code excludes income from non-employment gifts and inheritance from the definition of "income," exempting such gifts from income tax. The US Supreme Court case of *Commissioner v. Duberstein*[31] found that a "gift in the statutory sense… proceeds from a 'detached and disinterested generosity…out of affection, respect, admiration, charity, or like impulses… and in this regard the most critical consideration is the transferor's intention."[32] The IRS defines a gift as "Any transfer to an individual, either directly or indirectly, where full consideration (measured in money or money's worth) is not received in return."[33] When a taxable gift is made in the form of real estate (or other tangible or intangible property), the tax is usually levied on the party making the gift, subject to an annual gift tax exclusion of $14,000. Additionally, when property is transferred for below market value, making it a gift in part, the difference between the fair market value and the amount paid is considered to be the dollar value of the gift. The gift tax differs from the estate tax in that the gift tax applies when a gift is made during the donor's life, whereas the estate tax applies when a gift is made after the donor's death. As discussed above, provisions have been made to prevent the circumvention of the estate tax by way of gift by the taxpayer prior to death. Notably, the gift tax uses a different domicile-based test to determine who is a non-resident alien. This means that one could be a non-resident alien for the gift tax but not the income tax or *vice versa*. This test is important because non-resident aliens do not pay gift tax on property that is not in the United States, nor on intangible property such as shares in US corporations or

US partnership interests. For tangible property located in the US, however, the gift tax applies to non-resident aliens subject to the same annual exemption granted to citizens.[34]

With an understanding of the different taxes that can apply we can now focus on structuring the purchase of US real estate to minimize tax exposure.

5. Structuring US Property Ownership

When structuring the ownership of US real estate for a Canadian resident, the particulars of the individual and his or her family situation must be considered including the family make-up of the buyer, the plans for the use and disposition of the property, the buyer's current and expected place of residence/domicile, the cost of the property and its expected capital appreciation, among other issues. The principal considerations in structuring the purchase are reducing income tax on capital gains and estate tax liability. A lower US tax rate on capital gains by individuals favours individual ownership, either directly or through a flow-through entity like a partnership or trust, while estate tax considerations generally favour ownership through a foreign corporation which can take advantage of the statutory rule on the situs of shares of foreign corporations (though CRA policy no longer makes this beneficial for Canadians as will be discussed). Consequently, the first step in structuring a purchase of US real estate is to assess the final exposure to estate tax if the owner were to own the property individually after applicable US and Treaty exemptions, also taking into account expected future capital appreciation.[35]

When exposure to US estate tax *is not* material, estate tax avoidance is not relevant and the property is best held in a way that taxes capital gains at the individual rate such as holding the property as an individual, tenants in common, through a partnership with the partners entitled to substantially all of the partnership gains or losses or through a trust with individual beneficiaries entitled to substantially all of the gains or losses.[36] When exposure to US estate tax *is* material, a structure that seeks to reduce estate tax should be considered. This can include holding the property as an individual or as tenants in common (multiple parties with fractional ownership) using non-recourse debt if available, or using a properly structured partnership or trust. Joint tenancy (where full ownership transfers to the last surviving tenant) and the use of a corporation should in most circumstances be avoided.

While individual ownership is simple and makes the taxpayer eligible for the lower individual income tax rate on the capital gains, it does not avoid probate or estate tax. Co-ownership can split the estate tax exposure among multiple people, allowing for multiple US tax and Treaty exemptions, though it is important to avoid taxable gifts if all co-owners are not paying for their proportionate share in the property themselves. Co-ownership also avoids probate if title is held jointly with a right of survivorship. Such an arrangement can have the unintended consequence of triggering US estate twice (when each joint tenant dies) and should therefore generally be avoided for non-resident aliens. For both individual ownership and co-ownership, non-recourse debt (a mortgage with creditor recourse only against the secured property) can be used to reduce estate taxes because recourse debt is deductible in part when calculating estate assets for non-resident

aliens.[37] Since the US real estate collapse in 2008 non-recourse debt may be harder to come by than it used to be, however.

An alternative to individual ownership to avoid US probate and estate tax is the use of a corporation. In the past this was a common way for Canadians to hold US real estate while avoiding US probate and estate taxes. In 2005, however, the Canada Revenue Agency (**"CRA"**) ended its policy of not assessing a taxable benefit on "single purpose corporations" used for the sole purpose of holding US real estate. The change of policy means that personal use of US property held through a corporation will, for new structures, be a taxable benefit equal to the fair market rent on the property. This has ended the use of corporations for holding US property for personal use by Canadian residents to reduce tax liability in most instances.[38]

A partnership is another versatile option. Due to its flow-through nature it can allow for both the individual rates on US capital gains while avoiding probate and US estate taxes. Additionally, US partnership tax law permits a partnership to elect to be treated as a US corporation for tax purposes. This could allow the entity to treated as corporation in the US and a partnership in Canada, thus avoiding the issue of Canadian taxable corporate benefits. Also, unlike a trust, partnerships do not have the Canadian deemed disposition of trust assets for tax purposes every 21 years. Despite these favourable considerations, there are issues with using a partnership to hold US real estate. The rules relating to the US taxation of a foreign partnership are very complicated and some aspects of using a foreign partnership to hold US real estate have not been

decisively decided by IRS policy. This can be expected to create additional cost and uncertainty. Also, because a partnership only exists where there is a business for profit, where the property is primarily for personal use an intended partnership may not in fact exist. For these reasons the average buyer of US real estate will likely choose not to use a Canadian partnership.[39] Like a partnership, a trust can also be used to hold US real estate when estate tax exposure is material without some of the issues with partnerships. Since the loss of the single purpose corporation in 2005 a trust is in many instances the most versatile and effective tool to reduce US tax exposure.

6. Holding US Property in a Trust

A trust is fairly simple to setup and maintain and, as a flow through entity, it can allow for the individual rate of taxation for capital gains while avoiding probate and estate taxes. If there is no reportable income a tax return is not required in either Canada or the US. An ideal structure using a trust to acquire US property is to have one spouse settle the trust with the funds required to purchase the property by gift or loan and gift. The other spouse and perhaps other family members are the beneficiaries. The settler is neither a beneficiary nor a trustee and an independent trustee that is neither a beneficiary nor related to the settler or a beneficiary is used. The beneficiary spouse then has the right to occupy the property during his or her lifetime and the settler spouse has the right to occupy the property during the beneficiary's lifetime. If the beneficiary dies, the settler must pay fair market value rent to occupy the property in order to maintain favourable US tax treatment.[40] This is so because Rev. Rul. 70-155, citing *Estate of Gutchess v. Commissioner*[41] confirms that if a donor transfers a residence to a spouse, the donor's

retained possession cannot be inferred from the couple's co-occupying the property.[42] When the buyer's situation and the particulars of a transaction are suitable, a trust can be a superior option for buying US real estate while minimizing potential tax exposure.

7. Conclusion

When buying US real estate Canadians are wise to consider potential US tax consequences including income tax on rental property, income tax on capital gains, probate fees and estate taxes. Complicating matters, the US tax rules that apply to the structure used to purchase the real estate and the application of the US/Canada tax treaty must also be considered. While there are a variety of structures that can be used to hold US real estate and the most suitable will always depend on the particulars of the buyer and his or her situation, since the loss of the single purpose corporation in 2005 due to change in CRA policy, a simple and versatile structure that can minimize capital gains tax while avoiding probate and estate tax is the trust — a structure that buyers concerned about estate tax liability on their US property should consider prior to purchase.

8. End Notes

[1] *Internal Revenue Code*

[2] Treasury Regulations (26 C.F.R.)

[3] David G. Roberts, "Structuring Ownership of US Vacation Property," 2008 Prairie Provinces Tax Conference, (Toronto: Canadian Tax Foundation, 2008), 7:1-30. Page 2.

[4] *Ibid*. Page 2.

[5] *Ibid*. Page 2.

[6] National Conference of Commissioners on Uniform State Laws. Uniform Partnership Act (1997), Section 101(6). February 4, 1997. <http://users.wfu.edu/palmitar/ICBCorporations-Companion/Conexus/UniformActs/RUPA1997.pdf> Accessed September 2, 2016.

[7] Code s.703(a), 703(a)(2)(F). As cited in KPMG. Overview of Partnership Taxation: Contributions, Distributions, and General Principles. June 23, 2014. <https://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/taxnewsflash/Documents/partnership-taxation-june23-2014.pdf>. Accessed September 2, 2016. Pages 2-3.

[8] Code s.702. As cited in KPMG. Page 3.

[9] Code s.706. As cited in KPMG. Page 3.

[10] See: Morrissey v. Commissioner, 296 U.S. 344 (1935); Estate of Beddell Trust v. Commissioner, 86 T.C. 1207 (1986); Elm Street Realty Trust v. Commissioner, 76 T.C. 803 (1981), acq. 1981-2 C.B. 1. As cited in Michael G. Pfeifer. Foreign Trusts: Everything You Wanted to Know About the Taxation of Foreign Trusts But Were Afraid to Ask. October 29, 2008. <http://www.capdale.com/files/Publication/E2F35A71-A593-4550-B363-29B40644C06D/Presentation/PublicationAttachment/F2F7F1FA-E0A1-4545-AA50-013D3B246357/MICPEL_Paper%20_2_.pdf>. Accessed August 31, 2016. Page 3.

[11] Treasury Regulations s.301.7701-4(a). As cited in *Ibid*.

[12] Code s.672(f)(2). As cited in Pfeifer. *Supra*. Page 5.

[13] Code s.671. As cited in Pfeifer. *Supra*. Page 5.

[14] See Notice 97-34, 1997-1 C.B. 422. As cited in Pfeifer. *Supra*. Page 5.

[15] 872(a). As cited in Pfeifer. *Supra*. Page 5.

[16] Code s.872(a), 661(a), 662(b), 663(b), 643(a) and 643(a)(3). As cited in Pfeifer. *Supra*. Page 6.

[17] Code s.643(a)(6). As cited in Pfeifer. *Supra*. Page 6.

[18] *Ibid*.

[19] *Small Business Job Protection Act of 1996, H.R.3448*.

[20] Treasury Regulations s.7701(a)(30)(E). As cited in Pfeifer. *Supra*. Page 3.

[21] Code s.665(b), 666, 667. As cited in Pfeifer. *Supra*. Page 7.

[22] Pfeifer. *Supra*. Page 9.

[23] *Income Tax Act, RSC 1985, c 1 (5th Supp)*. Section 2(1).

[24] Canada-United States Convention with Respect to Taxes on Income and on Capital, Article XXIV. As cited in Serbinski Accounting Firms. “Elimination of Double Taxation” <http://www.serbinski.com/taxation-in-usa/double-taxation.shtml>. Accessed September 5, 2016.

[25] IRS. Topic 409 - Capital Gains and Losses. July 25, 2016. <https://www.irs.gov/taxtopics/tc409.html>. Accessed September 5, 2016.

[26] IRS. What's New - Estate and Gift Tax. March 23, 2016. <https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax>. Accessed September 5, 2016.

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[31] *Commissioner v. Duberstein* 363 U.S. 278 (1960).

[32] *Ibid*. at 285-86. As cited in J. Martin Burke & Friel, Micheal K. Understanding Federal Income Taxation, Fourth Edition. Lexis Nexis (New Providence, NJ: 2013). Page 48.

[33] IRS. "Frequently Asked Questions on Gift Taxes." May 12, 2016. <https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes#2>. Accessed September 5, 2016.

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[35] Roberts. *Supra*. Page 10.

[36] *Ibid*. Page 11.

[37] *Ibid*. Page 11-12.

[38] Tim Cestnick. "A snowbird's guide to the perils of owning U.S. real estate." The Globe and Mail. September 25, 2013. <http://www.theglobeandmail.com/globe-investor/personal-finance/taxes/a-snowbirds-guide-to-the-perils-of-real-estate/article14534720/>. Accessed September 5, 2016.

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[40] See Code section 2036(a)(1) as cited in Steven R. McLeod, "US Vacation Property Planning" (2010) vol. 18, no. 7 *Canadian Tax Highlights*, 10-11.

[41] *Estate of Gutchess v. Commissioner, 46 T.C. 554 (1966), acq. 1967-1 C.B. 2*. As cited in McLeod. *Supra*.

[42] Steven R. McLeod, "US Vacation Property Planning" (2010) vol. 18, no. 7 *Canadian Tax Highlights*, 10-11. As cited in McLeod. *Supra*.

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