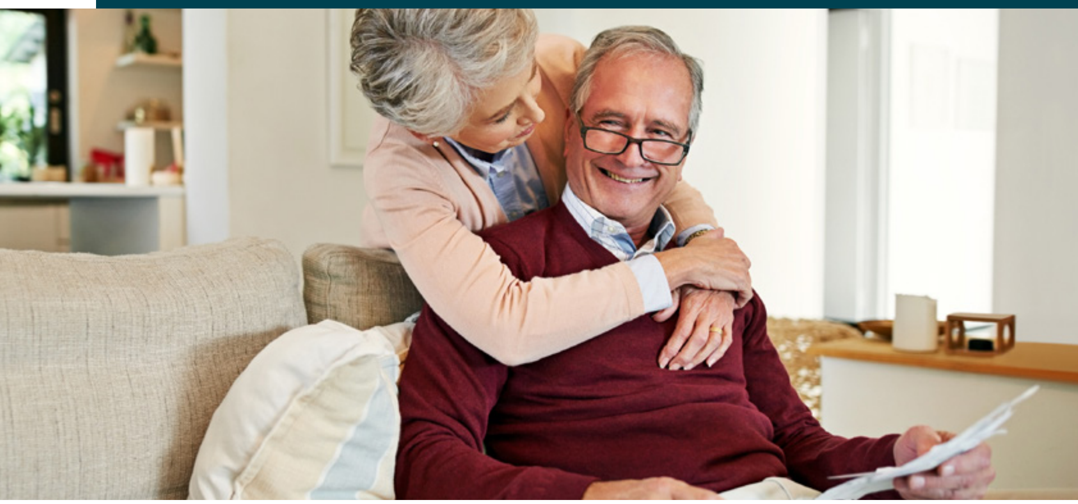
Planning Matters



Leith Wheeler INVESTMENT COUNSEL LTD.

Quiet Money®

Contributing Writers:
Beth Webel, CA, Partner, PwC
Nadja Ibrahim, LLB, LLM, Partner, PwC
Jon Palfrey, CFA, Senior Vice President, Portfolio Manager, Leith Wheeler

Editor:
Mike Wallberg, CFA
Vice President,
Marketing & Communications

Visit our new website, **LeithWheeler.com**, to download previous Newsletters and read our latest Insights.

WINTER **2018** EDITION

Introduction

In managing our clients' wealth at Leith Wheeler over the past 36 years, we've worked with many families as they have developed intergenerational tax and estate plans. Our role is to ensure that our clients own their assets in the manner that will meet their long-term objectives, on an after-tax basis. As part of this process, we work alongside qualified tax professionals to provide information and advice so clients can make the right decisions. When there are legislative changes like the recent overhaul on U.S. estate taxes, it is important to review the implications for our clients. PwC has written an insightful piece on the changes below, and while the thresholds have changed, the net impact remains the same if Canadian individuals and families own their U.S. assets in a "Canadian" manner:

Use a Canadian mutual or pooled fund to own U.S. securities

Canadian holders of U.S. securities can manage their exposure to U.S. estate taxes by taking care in how the securities are held. Direct ownership of stocks and bonds may attract U.S. estate taxes upon death, while a Canadian-domiciled fund that owns U.S. securities effectively turns U.S. assets into Canadian assets for estate taxation purposes.

Avoid "death":

Not in the literal sense of course, but in respect of designating the "owner" of any assets that may be subject to tax. In practical terms, this can mean holding "U.S.

assets" (U.S. securities or real estate) inside of a Canadian corporation to ensure that upon your death, and subject to succession planning within the corporation, no U.S. estate taxes are triggered.

We are pleased in this edition to welcome insights from PwC tax partners, Beth Webel, CA and Nadja Ibrahim, LLB, LLM. The following piece, first published in PwC's *Tax Insights* focuses on how the U.S. estate tax changes will impact Canadian holders of U.S. assets.

PwC Tax Insights: U.S. Estate Tax Exposure for Canadians (2018 Edition)

January 29, 2018

In brief

Canadian residents (who are not U.S. citizens) may be subject to U.S. estate tax if they die owning certain U.S. assets, such as shares of U.S. corporations, U.S. real estate and U.S. business assets.

U.S. tax reform: *On December 22, 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act (TCJA). The changes include doubling the federal estate and gift tax exemption amounts from $5.6 million to $11.2 million[1] for 2018 (to be indexed annually). The increase is effective for 2018 through 2025. Unless permanent legislation is enacted, the exemption will return to the pre-2018 regime in 2026.*

All amounts in this *Tax Insights* are in U.S. dollars.

In detail

If your U.S. assets are $60,000 or less

If the value of your U.S. assets are $60,000 or less, you are not subject to U.S. estate tax and your estate does not need to file a U.S. estate tax return.

If your U.S. assets exceed $60,000 and your worldwide estate exceeds $11.2 million

If the value of your worldwide assets exceeds $11.2 million, you may be required to pay U.S. estate tax based on the value of your U.S. assets. The tax rate starts at 18% and increases to 40% for U.S. assets exceeding $1 million.

Fortunately, Canada's tax treaty with the United States provides some relief for Canadians. It allows you to reduce your estate tax liability by claiming a tax credit equal to the greater of:

- $13,000
- $4,425,800[2] x the value of your U.S. assets ÷ value of your worldwide assets

For example, if your U.S. stock portfolio accounts for 10% of the value of your worldwide assets, you will be entitled to a credit of $442,580 ($4,425,800 x 10%).

U.S. estate tax rates and credits

The credits

For example, David, a Canadian resident (who is not a U.S. citizen), owns a U.S. stock portfolio worth $1.5 million. His entire estate is valued at $15 million.

As shown in the table, if David dies in 2018, his estate can claim a unified credit equal to $442,580 (10% of $4,425,800), reducing his estate tax liability to $103,220.

What if David dies in 2018?

U.S. estate tax before credits	**$545,800**
Less: Unified credit	**$442,580**
U.S. estate tax liability before marital credit	**$103,220**
Less: Marital credit	**$103,220**
U.S. estate tax liability after unified and marital credits	**Nil**

In addition to the unified credit, the tax treaty provides a marital credit if the U.S. assets pass to a spouse on death. The marital credit equals the lesser of the unified credit and the amount of the estate tax.

If David were to leave the U.S. stock portfolio to his wife Kylie, also a Canadian resident (who is not a U.S. citizen), his U.S. estate tax liability would be completely eliminated.

If your U.S. assets exceed $60,000 and your worldwide estate does not exceed $11.2 million

Because of the prorated unified credit provided under the tax treaty, you will not be subject to U.S. estate tax if the value of your worldwide estate does not exceed $11.2 million. However, your estate will be required to file a U.S. estate tax return to claim the treaty credits.

U.S. estate tax is often greater than Canadian tax

On death, a taxpayer will pay Canadian tax on any accrued gain on the U.S. asset and will also be subject to U.S. estate tax on the full value of the asset. Canada will allow a foreign tax credit for U.S. estate tax paid on the U.S. assets. In the end, an individual generally pays the higher of the two taxes.

Because Canadian capital gains rates are significantly lower than the top U.S. estate tax rate, the individual likely will pay tax at the U.S. estate tax rate.

In addition, the provinces and territories generally do not allow a foreign tax credit for U.S. estate tax paid. As a result, the deceased may be subject to some double taxation.

When do you have to file an estate tax return?

If your U.S. assets exceed $60,000, even if no U.S. estate tax is due, you may still be required to file a U.S. estate tax return along with a statement claiming the benefits provided under the tax treaty. In many instances, the transfer agents will not agree to the transfer of U.S. investments until the estate can provide proof of clearance from the Internal Revenue Service.

The filing deadline for a U.S. estate tax return is nine months after the date of death.

About the Authors:

Beth Webel is a Tax Services partner in the Oakville office of PwC Canada, specializing in tax planning related to estates and trusts, family business succession planning strategies, charitable giving strategies, U.S. estate tax, cross-border trust planning and rules surrounding marriage breakdown.

Nadja Ibrahim is the Private Company Service Leader for PwC Calgary. With more than 17 years of experience specializing in tax planning for private companies and their owners, she has extensive experience in the areas of Canada-U.S. cross border estate planning and issues facing owner manager corporations.

Jon Palfrey joined Leith Wheeler in 1996 and is now the head of Private Client and Foundations, and a member of the firm's Management Committee. Jon is a graduate of the University of British Columbia with a Bachelor of Commerce degree, a member of CFA Vancouver, and holds a Chartered Financial Analyst (CFA) designation. Additionally, Jon sits on and advises a number of boards in the non-profit community.

[1.] The American Taxpayer Relief Act of 2012 establishes an exemption amount of $5 million and indexes this amount for inflation annually. The Internal Revenue Service (IRS) announced that the indexed exemption amount is $5.6 million for 2018. The Tax Cuts and Jobs Act has doubled the original exemption amount from $5 million to $10 million, indexed to $11.2 million for 2018.
[2.] $4,425,800 is the U.S. estate tax on $11.2 million of assets.

LeithWheeler.com

Vancouver Office
Suite 1500 400 Burrard Street
Vancouver, British Columbia V6C 3A6
Tel: 604.683.3391
Fax: 604.683.0323

Calgary Office
Suite 570 1100 1st Street SE
Calgary, Alberta T2G 1B1
Tel: 403.648.4846
Fax: 403.648.4862

Toronto Office
Suite 1801 145 King Street W
Toronto, Ontario M5H 1J8
Tel: 416.646.8240
Fax: 416.646.8249

Leith Wheeler INVESTMENT COUNSEL LTD. | Quiet Money.®