Death & Taxes – When Life’s Two Certainties Collide
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“It appears to be some sort of tax cut promise.”
INTRODUCTION

• Death and taxes are two certainties that have been with us just about from the beginning of civilization

• No other tax event in Canada has as many rules, elections and complex considerations as death
TODAY’S TOPICS

• Income in year of death
• Special assets
• Charitable donations
• Insurance
• Foreign assets
• Special rules and elections
• Post-mortem tax planning
• Taxation of estates (including 2014 changes)
• Estate planning issues/opportunities
• U.S. tax issues
BASIC PRINCIPLES

• No estate tax – unlike the United States
• No succession/inheritance taxes – unlike the UK and many civil law countries
• Canadian tax law treats death as a final accounting – taxing income and gains, granting deductions and recognizing losses
  – Deemed realization system
  – Assume all deferred income and all gains/losses are realized
INCOME IN YEAR OF DEATH

Three Components

1. Income earned up until the time of death
2. Income deemed to be realized as a consequence of death
3. Income from the deemed disposition of assets
INCOME IN YEAR OF DEATH (Cont’d)

• Taxation period runs from Jan 1 of the year of death to the date of death
  – Income will be included in the terminal return of the deceased only if recognized by that time
  – Normally there are 4 basic ways in which income can be recognized:
    • When received (on a cash basis)
    • When received or receivable (but not merely accrued)
    • When computed on an accrual basis
    • When allocated for tax purposes
All of these approaches are potentially relevant, depending on the nature of the income of the deceased taxpayer.

Special rules at death:
- Certain periodic income is included – thus income in year of death can arise on an accrual basis – normally this would only be taxed on receipt.
- Certain income may be treated as a “right or thing” – if so elected this income is reportable on a separate tax return – the “rights or things return”.
- Certain income is deemed to arise in certain circumstances – e.g. realization of RRSP/RRIF.
- Certain income arises due to deemed disposition of assets – e.g. capital gains.
INCOME IN YEAR OF DEATH (Cont’d)

**Periodic Income**

- Certain periodic income (e.g. interest, royalties, annuities and remuneration from an office) must be reported on an accrual basis up to the date of death.
- CRA takes the position that an amount payable on a periodic basis that was not paid before death is deemed to have accrued in equally daily amounts – IT-210R2.
- Section 70(1)(a) not entirely clear and so you need to carefully consider whether the income is reportable in the deceased’s terminal return or not.
  - Even if it is not reportable as income to the deceased taxpayer, it is usually taxable in someone’s hand (with very rare exceptions).
INCOME IN YEAR OF DEATH (Cont’d)

Rights or Things

– Term itself is not defined in the ITA
  • Generally does not include:
    – Interest in a life insurance policy
    – Eligible capital property
    – Land inventory of a business
    – Canadian resource property
    – Capital property
INCOME IN YEAR OF DEATH (Cont’d)

• Essentially a right or thing is an amount of income that has not been realized at date of death but to which the taxpayer had a right at death
  – Not periodic and therefore not reported as accrued income

• Election to report such income on a separate Rights & Things tax return
  – Allows deceased taxpayer to claim certain deductions and credits a second time (e.g. basic personal exemption)
  – Taxes rights and things income at graduated rates
INCOME DEEMED TO ARISE

• Most common deemed income:
  – Income and capital gains from deemed disposition of property; and
  – Income from deemed realization of registered plans – e.g. RRSPs, RRIFs
DEEMED REALIZATION OF REGISTERED PLANS

RRSPs

• Any payments received from an RRSP in year of death reported in the usual way

• Any balance in the RRSP at date of death may also be taxable in the terminal return
  – Deemed cashing out in the moment before death

• Special Rules available for “refund of premiums”
  – Amounts paid out of RRSP as a consequence of death to a spouse, child or grandchild

• Exception – roll over to spouse’s RRSP
DEEMED REALIZATION OF REGISTERED PLANS (Cont’d)

**RRIFs**

- Similar rules to RRSPs
- Balance remaining at death only taxable in the hands of the deceased taxpayer if he/she is the last “annuitant” of the plan
TAX FREE SAVINGS ACCOUNTS

• While the taxpayer (the “holder”) is alive, the account is tax free
• On death (i.e. no holder remaining) the account becomes taxable
  – Exemption-end time: 1 year from date of death to the end of following calendar year
  – TSFA is exempt during the exemption-end time
  – Amounts withdrawn by beneficiary of TSFA are taxable as income to the extent that distribution exceeds value of date of death
DEEMED DISPOSITION OF ASSETS

• On death taxpayer is deemed to have disposed of all property immediately before death
• Recapture of any accruing capital gains and losses
  – Calculated on the fair market value of each asset immediately before death
  – Deemed disposition applies to:
    • Capital property (including depreciable property)
    • Eligible capital property (being eliminated?)
    • Resource properties and land inventory
    • Net Income Stabilization Account (NISA)
DEEMED DISPOSITION OF CAPITAL PROPERTY

• Every capital property of the deceased taxpayer (other than depreciable property) is deemed to have been disposed for proceeds equal to fair market value
  – Each property must therefore be valued to determine the accrued gain/loss

• Election for spousal rollover to spouse or qualifying spousal trust
  – Can be made on a property by property basis
DEEMED DISPOSITION OF CAPITAL PROPERTY (Cont’d)

• Special rules
  – Superficial loss rule that may otherwise deny a loss does not apply
  – 50% of capital losses not applied to capital gains (net of losses) in year of death added to unused net capital loss (if any) from other years
  – Any net capital loss remaining can be applied against any other income in year of death and the immediately preceding tax year (subject to reduction for any capital gains exemption claimed in any year)
  – Any balance remaining can be used in the ordinary way of net capital loss carryback
DEEMED DISPOSITION OF DEPRECIABLE PROPERTY

• Similar to deemed disposition of capital property
  – Deemed disposition may result in a capital gain
  – Also may result in recapture of income – generally equal to the depreciation claimed, unless deemed proceeds are less than capital cost of the property

• Where the FMV is less than the capital cost, taxpayer realizes a terminal loss that can be applied against any income in the year of death

• If the loss exceeds the income in the year of death, it becomes a non-capital loss
  – Can be carried back to the 3 preceding years
DEEMED DISPOSITION OF DEPRECIABLE PROPERTY (Cont’d)

• Estate/beneficiary acquires property at value equal to capital cost to the deceased and is deemed to have claimed depreciation equal to difference between capital cost and deemed FMV

  – If estate/beneficiary later sells for more than the deemed proceeds, recapture of income to the extent of the capital cost of the deceased
SPOUSAL ROLLOVER

Requirements

– Deceased taxpayer must be a Canadian resident immediately before death
– Property is distributed to spouse or spousal trust as a consequence of death
– Spouse must be resident in Canada immediately before death
– Property must vest indefeasibly in the spouse or spousal trust within 36 months of death
SPOUSAL TRUSTS

Requirements

– Trust must be created by taxpayer’s Will
– Trust must be resident in Canada immediately after property vests
– Spouse must receive all of the net income annually during his/her lifetime
– No one other than the spouse can receive or obtain the use of capital during his/her lifetime
FARMING AND FISHING PROPERTIES

• Special rules apply for qualifying farm property and fishing property to encourage such properties to remain in the family
  – Special rollover provisions at death for qualifying property passing to a child or spouse or a spousal trust
  – $800,000 lifetime capital gains exemption for sale of qualified farm or fishing property
  – Election for rollover not to apply – e.g. to take advantage of the lifetime exemption
TAXATION OF JOINTLY HELD PROPERTY

• Types of jointly held property
  – Joint ownership with right of survivorship
  – Tenancy-in-common

• CRA – ownership to be determined on case by case basis depending on the facts

• In order to determine tax consequences, you need to determine whether legal ownership also reflects beneficial ownership
  – If yes, it will be respected for tax purposes
  – If not, then surviving legal owner will have no interest for tax purposes
TAXATION OF JOINTLY HELD PROPERTY (Cont’d)

• Three ways that jointly-owned property can be treated on death:
  – True joint tenancy: partial disposition (of 50% interest) on death
  – Joint tenancy for convenience: disposition of entire property on death
  – Transfer of right of survivorship only: disposition of entire property on death

• See e.g. *Pecore v. Pecore* (SCC), *Sawdon Estate* (ONCA), *Bradford v. Lyell* (SKQB)
TAX TREATMENT OF SPECIAL ASSETS

• Principal residence
• Small Business corporations
• Cottage and vacation properties
• Personal use property
PRINCIPAL RESIDENCE

• Special rules apply to encourage home ownership

• Generally one family unit (spouses and minor unmarried children) can have 1 principal residence in any given year
  – This has been the case since 1982
  – Prior to 1982, a couple could have 2 principal residences, provided that each spouse owned one of the properties
PRINCIPAL RESIDENCE (Cont’d)

• Gain on sale of a principal residence may be exempt from taxation
  – Where the property qualifies, the gain will be reduce by the number of years the property is designated as principal residence (plus 1 year) divided by the number of years the property is owned
  – The additional 1 year addresses the possibility that a taxpayer may sell one principal residence in a year and acquire another during that year
PRINCIPAL RESIDENCE (Cont’d)

• Requirements
  – Housing unit must be owned by the taxpayer
  – Ordinarily occupied by the taxpayer, his/her spouse, former spouse or children
  – Land cannot exceed 1 hectare unless it is necessary to the use and enjoyment of the housing unit
  – Taxpayer is a Canadian resident

• Note that there is no requirement that the housing unit be in Canada
PRINCIPAL RESIDENCE EXEMPTION (Cont’d)

• Where taxpayer only owns 1 residence and all conditions are met, all of the capital gain will be tax exempt
  – Form T2091 should be filed with the terminal return to show the designation of the residence as the principal residence – but CRA’s administrative policy is that this is not necessary where the gain is fully exempt
• Where more than 1 property meets the qualifications, care should be taken with the principal residence election
  – Remember
    • Election is annual
    • Spousal rollover available?
SMALL BUSINESS CORPORATION

• Special rules apply to encourage ownership in Canadian controlled private businesses
  – Lifetime capital gains exemption of up to $800,000 available for capital gains realized from the sale/deemed sale of a qualified small business corporation shares
  – “qualified small business corporation share” & “small business corporation” are defined terms under the ITA
  – Available only to individuals (and spousal trust)
SMALL BUSINESS CORPORATION (Cont’d)

• Ownership Test
  – 24 month holding period test
    • Shares must be held for 24 months immediately preceding disposition
    • During the 24 month period, the shares must not have been owned by an unrelated person
    • Corporation will need to be in existence for at least 24 months
      – Exception for an unincorporated business or partnership transferred to a corporation
SMALL BUSINESS CORPORATION (Cont’d)

• Conditions for a “small business corporation”
  – Must be a Canadian Controlled Private Corporation (“CCPC”)
    • No more than 50% of the voting rights owned by non-resident or public corporations in aggregate
  – All or substantially all of the FMV of the assets is derived from
    • Assets used principally in an active business carried on primarily in Canada by the corporation or related corporation
    • Shares or debt connected to the corporation
    • Or a combination of assets as above
• Certain rules apply to the individual that can limit the use of the exemption
  – Allowable business investment loss (ABIL)
    • Previous loss from a sale of shares or debt of a qualified small business corporation may be qualified as an ABIL, which is deductible against other income
    • If there is an ABIL, then the lifetime capital gains exemption available will be limited to the amount of the taxable capital gain in excess of the ABIL claimed after 1984
  – Alternative Minimum Tax (AMT)
    • The use of the lifetime capital gains exemption may trigger AMT
    • Special rule (s.127.55) AMT not applicable in year of death
COTTAGE AND VACATION PROPERTIES

• If the principal residence exemption has already been applied (e.g. to the family home), then there will be a deemed disposition at FMV resulting in recapture of capital gains

• Capital losses arising out of a deemed disposition of a cottage or vacation property will generally fall under the rules for personal use property unless the property was as income generating property
PERSONAL USE PROPERTY

• Capital loss from the disposition of a personal use property deemed to be Nil

• “Personal use property” defined to include any property that is used primarily for the use and enjoyment of the taxpayer or a related person
  • includes a debt owing to the taxpayer from the disposition of a personal use property

• Exception for “Listed Personal Property”:
  • Print, etching, drawing, painting sculpture or similar work of art
  • Jewellery
  • Rare folio, rare manuscript or rare book
  • Stamps
  • Coins
CHARITABLE DONATIONS

• Special rules apply to encourage taxpayers to make charitable donations
  – Tax credit for individuals making donations to qualified donees
  – Unlike most tax credits, only the first $200 is calculated at the lowest marginal rate
  – Anything above $200 is calculated at the top marginal rate
  – Limitation to 75% of net income, with an ability to carry excess credits forward for 5 years

• Special relief for capital gains tax
  – No capital gain will be recognized for
    • donation of publically traded securities
    • donation of ecological gifts
• In year of death, there are special exceptions
  – The 75% limit is waived and donations made in year of death can give rise to a tax credit that can be applied to 100% of net income in the terminal return
  – No carry forward of excess donation credit (although see next slide)
CHARITABLE DONATIONS (Cont’d)

• 2014 Budget changes (for deaths after 2015)
  – Donations made in a will no longer deemed to be made by individual in year of death; now deemed to have been made by estate
  – Increased flexibility: tax credit can be allocated to estate in year of donation, estate in previous year, or the last two taxation years of the individual
LIFE INSURANCE

• Complex and specialized subject
• Where corporately owned life insurance is involved, qualified professional advice is essential
• Two basic types of life insurance
  – Permanent Insurance
  – Term Insurance
Life Insurance proceeds on death

- Insurance proceeds payable on death under an exempt policy are received tax free, regardless of the recipient
  - Where the recipient is an individual or an estate, no need to report receipt for tax purposes
  - Where the recipient is a corporation, the matter is more complicated
Corporate owned life insurance

- While the proceeds are tax free, extracting the funds from the corporation requires certain steps to be taken
  - For a Canadian private corporation, the proceeds, less the ACB of the policy, are added to the capital dividend account
    - Can be paid out as tax free dividends to a Canadian resident shareholder (e.g. the estate)
LIFE INSURANCE (CON’T)

• Prior to paying out capital dividends
  – Need to calculate the capital dividend account, properly declare the dividend and file the proper election with CRA
  – Where there is a capital loss as a result of the disposition of the shares on which the capital dividend was declared, the capital loss may be reduced
    • Pay attention to the "Stop Loss Rules"
    • Note: Pre- April 27, 1995 policies are grandfathered
FOREIGN ASSETS

• Foreign assets raise special issues for estate administration as well as tax implications

• Laws of the foreign jurisdiction may create conflict between the terms of the Will
  – e.g. Real property and forced heirship rules in civil law jurisdictions
FOREIGN ASSETS (CON’T)

Foreign tax issues

- Most jurisdictions do not tax deceased non-residents, unless real property is involved (Exception: U.S.A.)
  - Where real property is involved, foreign jurisdiction can apply tax
    - Inheritance tax
    - Succession duties
FOREIGN ASSETS (CON’T)

Canadian income tax issues

• Where a foreign jurisdiction has levied taxes, there may be a foreign tax credit available in Canada
  – Need to determine the nature of the foreign tax
    • If it is an income tax, a foreign tax credit applies
      – Subject to certain limitations
    • If it is not an income tax, no foreign tax credit applies (except US estate tax)
SPECIAL RULES AND ELECTIONS

- Spousal rollover
- Election for spousal rollover not to apply
- Capital losses
- Special elective tax returns
- Acquisition of control
SPOUSAL ROLLOVER

• Property left to a spouse or to a qualifying spousal trust is deemed to have been disposed of by the deceased taxpayer at cost

• The spouse or spousal trust is deemed to have acquired the property at cost

• Defers capital gains tax until the spouse or spousal trust disposes or is deemed to dispose of the property
ELECTION OUT OF ROLLOVER

• There may be circumstances that make it tax advantageous to elect out of the rollover
  – Where there are significant capital losses
  – Lifetime capital gains exemption still available
  – Excess charitable donation credits

• Election can be made on a property by property basis
CAPITAL LOSSES

• Superficial loss rule does not apply
• Net capital losses (net of capital gains) can be applied to all income in the terminal return
• Any excess remaining can be applied to all income in the prior year return
• If any excess remains after that, it can be applied in the usual manner
  – applied against capital gains for the two further years
CAPITAL LOSSES (Cont’d)

• CAUTION: Where the capital gains exemption has been claimed (except in year of death) the amount of net capital loss deductible against other income is reduced by the amount of the capital gains exemption claimed

• Does not apply to non-capital losses
SPECIAL ELECTIVE RETURNS

Three additional personal income tax returns can be filed in the year of death

1. Rights or Things return

2. Income of a proprietor from a business or of a partner from a partnership
   – only where income is reported in the year of death with respect to 2 fiscal periods of the business or partnership

3. Income from a testamentary trust
   – only where income is reported in the year of death with respect to 2 fiscal periods of the testamentary trust (not applicable after 2015 re Budget 2014 changes)
SPECIAL ELECTIVE RETURNS (Cont’d)

Advantages

– Certain tax credits (e.g. basic personal exemption, spousal tax credit) can be deducted on each return, as well as on the terminal return

– Graduated rates apply to each return separately – allows for application of low personal brackets multiple times
SPECIAL ELECTIVE RETURNS (Cont’d)

Disadvantages

– If there are net capital losses to wipe out income in year of death, multiple returns will result in tax being paid if separate returns are filed

– If there are significant charitable donation credits, more tax may be payable if separate returns are filed
ACQUISITION OF CONTROL

• An estate is not related to the deceased taxpayer
• Without a special exception, there would be an acquisition of control by the estate on death and there could be a second acquisition of control if the shares are distributed *in specie* to a beneficiary
• Exception for shares acquired by an estate as a consequence of the death of the taxpayer
• Second exception for shares transferred by estate to beneficiary.
  – For this exception to apply, the beneficiary must have been related to the deceased taxpayer
POST-MORTEM TAX PLANNING

• Taking maximum advantage of all possible tax planning opportunities and avoiding double taxation
  – Allocation of assets
  – Capital losses to the estate
    • Loss carry back
    • Step up strategy
    • Pipeline strategy
ALLOCATION OF ASSETS

• If there are multiple beneficiaries and the Will allows for allocation of assets
  – Assets to be allocated to the spouse or qualifying spousal trust can be rolled over at cost
  – Assets for which the capital gains exemption can be claimed
    • Either elect out of rollover or allocate to non-spouse beneficiaries (e.g. children or a family trust under the Will)
  – Charitable donation credit
    • Elect out of rollover for certain assets or allocate to non-spouse beneficiaries
CAPITAL LOSSES OF THE ESTATE

• Capital losses realized in the 1st taxation year of the Estate can be carried back and claimed as capital losses of the deceased by special election

• Losses must be realized in the 1st taxation year of the Estate

• 1st year cannot be more than 365 days after the date of death

• Losses realized after this time cannot be carried back to the terminal return
PRIVATE CORPORATION SHARES

• Capital losses can be deliberately created by redeeming shares of a privately held company in the 1st year after death
  – Teresa Taxpayer dies owning private corporation shares (T Co.) with a FMV of $500,000 which she is deemed to have disposed
  – In the 1st year, her estate redeems the T Co. shares - the estate will have a deemed dividend and a capital loss of $500,000

• CAUTION: due to differing tax rates for dividends and capital gains, the Estate could end up paying significantly more tax than will be relieved by the loss carry back – a careful analysis should be undertaken before deciding on whether the trigger a loss carry back by redeeming shares
PRIVATE CORPORATION SHARES (Cont’d)

• If the corporation has sufficient RDTOH, significant tax savings can be achieved by a share redemption and loss carry back

• If the corporation has a Capital Dividend Account, then the deemed dividend on the redemption can be tax free but be careful to consider the rule that reduces a capital loss when a capital dividend has been paid
STEP UP STRATEGY

• Makes use of a provision that allows assets of a corporation to be re-valued within certain limits
• Applies only to non-depreciable capital property
• Steps involved are complex and the rules are technical and intricate.
• Unlike loss carry back, no time limit within which the strategy must be carried out
STEP UP STRATEGY (Cont`d)

• Basically:
  – the Estate incorporates a new company (Newco) to which it transfers the T Co. shares in exchange for a promissory note
  – T Co. is then either wound up or amalgamated with Newco
  – The non depreciable assets of T Co. are re-valued (i.e. stepped up)

• Can only be used where the Estate owns at least 90% of each class of shares of T Co. and generally cannot be used for any assets that have been subject to a butterfly reorganization
PIPELINE STRATEGY

• Used to extract funds from a corporation tax-free, making use of the high adjusted cost base

• Many different ways to carry out a Pipeline

• Cannot be used in combination with the capital loss strategy
  – Both rely on the stepped up adjusted cost base

• Can be used in combination with a step-up strategy
PIPELINE STRATEGY (Cont`d)

Most common structure

– Estate incorporates Newco and transfers the high ACB shares of T Co. to Newco in exchange for a promissory note
– T Co. pays Newco a dividend that allows Newco to pay off the promissory note
– Estate receives the payment on a tax free basis

Caution: CRA has recently commented that this strategy could result in the promissory note being deemed to be a dividend.
PIPELINE STRATEGY (Cont`d)

MacDonald Case

– Tax Court: big win for taxpayers and the pipeline strategy

– On appeal to Federal Court of Appeal: Tax Court decision reversed; big loss for taxpayers and the pipeline strategy

– Takeaway: Rules remain unclear. If you follow the CRA’s guidelines (don’t wind up corporation or pay off the promissory note in the first year; pay off gradually after that before winding up) you will PROBABLY be okay
TAXATION OF ESTATES

• Estates are separate taxpayers – income reported on a T3 Trust and Information tax return

• Prior to Budget 2014, estates were taxed on a graduated basis, like individuals (and unlike *inter-vivos* trusts)

• Budget 2014 introduced a number of changes for estates and testamentary trusts
TAXATION OF ESTATES (Cont’d)

• Budget 2014: big changes for estates and testamentary trusts
  – Subject to top-rate taxation, other than:
    • Estates (not testamentary trusts) in first 36 months
    • Testamentary trusts for disabled individuals
  – No exemption from installment rules
  – Must have calendar year-end
  – No basic exemption from Alternative Minimum Tax (other than estates in first 36 months)
  – All changes also apply to pre-existing estates and testamentary trusts, as well as grandfathered inter-vivos trusts
TESTAMENTARY TRUSTS

• Must be created under the Will (or by operation of law of intestacy)
• Testamentary status can be lost if a person other than the deceased transfers property to the trust
• Will can create multiple Testamentary Trusts
TESTAMENTARY TRUSTS (Cont’d)

• Every 21 years from date of death, Testamentary Trust is deemed to have disposed of its capital property at FMV on the 21st anniversary and to have reacquired the property at FMV the next day
  – Payment of capital gains tax on unrealized capital gains
  – Not applicable to Testamentary Spousal Trusts
TESTAMENTARY TRUSTS (Cont’d)

• 21 Year deemed disposition can be avoided by rolling out assets to the beneficiaries
  – Provided that this is permitted under the Will (e.g. encroachment power)
  – Canadian resident beneficiaries receive the assets at the Estate's ACB
  – Only applicable for Canadian resident beneficiaries
TESTAMENTARY TRUSTS (Cont’d)

• Distributions to non-resident beneficiaries
  – Income distributions subject to non-resident withholding tax
  – Capital distributions deemed to have occurred at FMV of time of distribution
  – Section 116 clearance certificates may be required
  – Tax Treaties may offer relief
ESTATE PLANNING

• Objectives of estate planning are considerably broader than just tax issues and often include
  – Family harmony
  – Orderly disposition or distribution of assets
  – Liquidity to pay debts, taxes and cash bequests
  – Provision for dependants
TAX OBJECTIVES OF ESTATE PLANNING

• Determining the amount of tax likely owing on death – e.g. Estate freeze
• Liquidity for the payment of the tax – e.g. life insurance to fund tax
• Tax deferral – e.g. spousal rollovers to spouse or spousal trust
• Tax reduction – e.g. charitable donations
• Income splitting – e.g. testamentary trusts
U.S. TAX ISSUES

• With greater mobility between Canada and the U.S., more and more Canadian family members have U.S. tax obligations
• U.S. taxes on the basis of citizenship (green card equivalent to citizenship for tax purposes)
• This means U.S. tax rules can have a significant impact on Estate Planning and Estate Administration
• Given the potentially serious tax consequences, it is important to determine if there are any family members or beneficiaries that have U.S. tax obligations (likely negligent not to ask)
• Essential to obtain good U.S. tax advice
U.S. TAX ISSUES (Cont’d)

U.S. Estate Tax

• 40% tax on value (not gain)
• Two ways that this can apply to Canadian residents on death:
  – American citizens resident in Canada (including dual citizens): entire estate
  – Canadian citizens owning U.S.-situs property (e.g. real property and U.S. domestic securities): only on U.S.-situs property
U.S. TAX ISSUES (Cont’d)

U.S. Estate Tax – U.S. Citizens in Canada

• Applied to worldwide assets
• Exemption for first US$5.34 million (indexed)
• Exemption increased on transfer to non-U.S. citizen spouse (if U.S. spouse pre-deceased, can use spouse’s $5.34M)
• Foreign tax credits available
U.S. Estate Tax – Canadians with U.S.-Situs Property

- Applied to value (not gain) of U.S.-situs property
- US$5.34 million exemption is pro-rated based on the ratio of U.S.-situs assets to worldwide assets
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