



# 2013 CHANGES TO U.S. ESTATE TAX

## *Good news for Canadians*

by Michael W. Brooks

In January, the U.S. Congress and President Obama reached an agreement on certain tax provisions that should be viewed as generally favorable to our part-time residents from Canada who own U.S. property. As of the end of 2012, there had been some real concern north of the border that the U.S. estate tax exemption level might go as low as \$1,000,000 per person. But instead, the exemption level was renewed (supposedly permanently, but at least into the indefinite future) at the fairly generous \$5,000,000 per person level. Why is that good news for Canadians? Let's take a look.

- U.S. imposes its estate tax on U.S. assets of Canadians. Recall that the U.S. imposes

its estate tax on the value of U.S. property owned by a non-U.S. citizen (domiciliary), such as: 1) U.S. real estate; and (2) shares of stock of a U.S. corporation. So, if a Canadian with a U.S. house passes away, there really is a chance the Canadian's estate will owe a U.S. estate tax.

- But the U.S.-Canada Income Tax Treaty helps greatly. The U.S.-Canada Income Tax Treaty provides that if a Canadian does not own more assets in the world than the U.S. exemption level, the Canadian is not subject to the U.S. estate tax. So when the U.S. makes the U.S. exemption level 5,000,000 (again, supposedly forever), this means that the Canadian who dies with \$4,000,000 in worldwide assets and a \$1,000,000 La Quinta house owes \$0 estate tax! Things would have been quite

a bit different if the exemption level had been dropped to \$1,000,000 (as was rumored), and a lot more Canadians would have had U.S. estate tax concerns.

- Canadians who remain subject to the U.S. estate tax may consider house ownership via a Canadian irrevocable trust. For those very wealthy Canadians who are still subject to the U.S. estate tax (i.e., an individual with more than \$5,000,000 in worldwide assets and who also own a US house), consider putting the house in a Canadian irrevocable trust. Many cross-border attorneys in both countries view the Canadian irrevocable trust as the best vehicle to avoid the U.S. estate tax (without the significant drawbacks of other vehicles which avoid the U.S. estate tax, such as ownership via a Canadian corporation- which, for example, likely requires significantly more U.S. income tax on the sale of the house).

- Canadians who are not subject to the U.S. estate tax, consider house ownership via a U.S. revocable trust. For the 90%+ remaining Canadian owners of U.S. property, the U.S. revocable trust may be a very useful vehicle. In California, probate costs (court costs for attorneys to transfer a property to their beneficiaries) can run around three percent of the value of the house, and can even run higher in the international context. Plus, probate can take a long time - certainly over a year is very possible. But by putting the house in a U.S. trust, Canadians can transfer the U.S. house to their beneficiaries without the involvement of the California courts, and generally for a fraction of the time and cost.

*The information contained in this presentation is provided for informational purposes only, and should not be construed as legal advice on any subject matter. Michael W. Brooks and Sanger & Manes, LLP, expressly disclaim all liability in respect to actions taken or not taken based on any or all the contents of this article.*

Michael W. Brooks  
Attorney at Law  
Sanger & Manes, LLP  
400 S. Farrell Drive  
Suite B-102  
Palm Springs, CA 92262  
Tel: (760) 320-7421  
Fax: (760) 320-0351  
www.sangerlaw.com  
email: mbrooks@sangerlaw.com