OWNERSHIP OF A U.S. COMMERCIAL PROPERTY

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CIRCULAR 230

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OVERVIEW

- Planning for Ownership of US rental real estate by Canadian residents includes, acquisition, ownership and sale issues
- An important consequence of such cross-border ownership is the potential exposure of the Canadian resident owner to US and Canadian tax on income, tax on sale and potential tax on death in both countries
- Potential for double tax and mismatching of tax credits

CANADIAN TAX ON FOREIGN INCOME

- Canadian residents (individuals and corporations) taxed on worldwide income
- Can offset Canadian tax with foreign tax paid
- Canadian residents can also be taxed on income earned indirectly (FAPI rules). Timing affected by active vs passive distinction
- Personal tax rates in Ontario are 46.41% (Alberta 39%)
- Corporate tax rates in Ontario on passive rental income 48.7% (RDTOH treatment) and 33% on active income (Alberta rates are 44.7% and 29%)
- Capital gains tax rates are one half of regular rates

US TAX ON REAL ESTATE

- Canadian residents taxed on US business income and may be taxed on "effectively connected income"
- Income from US real property subject to a 30% withholding tax, not reduced by the treaty
- US personal tax rates are 35% (income over $357,000)
- US corporate tax rates average about 34%
- Capital gains tax rates for individuals is 15% (Corporations is 35%)
- Florida has no personal tax but has a corporate tax of 5.5% (Arizona is 4.54% and 6.97%)(Georgia is 6% and 6%)
- FIRPTA applies to sale of US real estate

US TAX cont'd

- Is activity a US trade or business? Level of activity.
- Non US business income subject to withholding tax of 30% on gross rental income
- Consider electing under IRC to treat US income as "effectively connected income" and filing a US return
- FIRPTA applies to sale by foreign person of US real estate, sale of US corporation that principally owns US real estate and sale of partnership that holds US real property
- Withholding by purchaser of 10% of purchase price. Withholding can be 35% if Corporation or US partnership
- No FIRPTA if sale by a US Corporation, but distributions to Canadian shareholders may be subject to withholding tax
- US estate tax if owned by an individual

US ESTATE TAX

- The US imposes estate tax on deceased US citizens and resident aliens calculated on their worldwide assets, as well as on non-resident aliens on their assets situation in the US (US-situs assets).
- US real estate owned by a Canadian constitutes a US-situs asset, and is thus subject to US estate tax on death notwithstanding that the owner is neither a citizen nor a resident of the US
- A Canadian who dies owning US real estate would be subject to capital gains tax in Canada, and potentially estate tax in the US as well.
- There can also be state-level estate taxes in certain states

CANADA vs US

- In Canada, the death of an individual triggers a deemed disposition of the assets of the deceased, and results in capital gains tax only on the accrued gains on such assets.
- In the US, the estate tax is imposed on the entire market value of the assets in the estate at the time of death, and so it is usually higher than the Canadian capital gains tax.
  - There are certain exemptions to the US estate tax, as will be discussed
- Even with foreign tax credit relief, the deceased Canadian resident may owe significant US estate tax.

US ESTATE TAX CALCULATION

- The amount of the US estate tax is calculated in two stages:
  - First, the value of the "taxable estate" (equal to the fair market value of the property at the tine of death, minus certain deductions, such as funeral expenses, debts, marital deduction, etc.) is multiplied by a marginal tax rate, which for 2009 ranges from 18% to as high as 45% for properties worth over $1,500,000.
  - Second, the amount thus determined is reduced by an estate tax credit called the "unified credit", and a tax credit for any state or foreign estate taxes paid.

US ESTATE TAX CALCULATION

- The unified credit is different for US citizens and domiciled residents on the one hand, and non-resident aliens on the other.
- For 2009, the unified credit for US citizens and residents is an amount sufficient to shelter the first $3,500,000 of assets in the taxable estate.
- So a US citizen or domiciled resident whose taxable estate is smaller than $3,500,000 would owe no US estate tax.
- Depending on the country, the amount of the unified credit for non-resident aliens can be significantly lower than the amount available to US citizens and domiciled residents.
- In the absence of a tax treaty, the unified tax credit against a non-resident's estate tax for 2009 is only $13,000, which is sufficiently to shelter the estate tax on $60,000 of taxable estate assets.

CANADA-US TREATY

- Canadian residents can benefit from Article XXIX B of the *Canada-US Income Tax Conversion* (the "Treaty"), which entitles them to the same unified credit as US citizens on the proportion which their US assets constitute of their worldwide assets.
- Thus, a Canadian resident can reduce his or her estate tax liability by the greater of:
  - $13,000, and
  - $1,455,800 x value of US assets / value of worldwide assets

$$\$1{,}455{,}800 \times \frac{\text{value of US assets}}{\text{value of worldwide assets}}$$

- [$1,455,800 is the US estate tax on $3,500,000 of taxable estate assets]

EGTRRA and BEYOND

- *The Economic Growth and Tax Relief Reconciliation Act* adopted in 2001 ("EGTRRA") provides for a gradual elimination of US estate tax between 2001 and 2010. In 2010, the estate tax would be completely eliminated.
- However, EGTRRA provides that in 2011, the estate tax would return to the higher rates and lower exemptions (top marginal rate of 55% and unified tax credit of $345,800) that were in effect before EGTRRA.
- The conventional wisdom in the United States is that Congress will not permit the estate tax to be eliminated in 2010, but rather will provide for the continued application of the estate tax in 2010 and subsequent years, along lines not too dissimilar to the regime currently in effect.

VEHICLES TO HOLD US REAL ESTATE

- Corporation
- Partnership
- Hybrid Entity
- Trust
- Direct Ownership

- Unless otherwise indicated, we assume that the relevant ownership structure would be put into place for the initial acquisition of the property.

INDIVIDUAL OWNERSHIP

- Direct ownership by the individual is simple, and would entitle the owner to the lower US federal long-term capital gains rate that is available for individuals where the property is held for more than a year, in case the individual sells the US property prior to his or her death.
- Currently, the federal rate for long-term capital gain is 15%, but is scheduled to increase to 20% following the sunset of EGTRRA in 2011.
- Direct ownership does not provide any protection against US estate tax.
- Rental income subject to withholding tax unless election as “effectively connected income” made.
- Must file Canadian and US returns and claim FTC. Different calculation of income in each country.

RELIEVING MECHANISMS

- The following estate tax relieving mechanisms can be used where the US real estate is held directly by the individual:
  - Life Insurance
  - Ownership by Lower Net Worth Spouse
  - Ownership by Children
  - Use of a QDOT and Marital Credit
  - Non-recourse Mortgage
  - Tenancy in Common

NON-US CORPORATION

- The relevant US rules that define US-situs assets exclude shares of a foreign corporation for estate tax purposes
- Thus, if instead of owning US real estate directly, a Canadian resident owns such real estate through a Canadian corporation, no US estate tax should apply.
- US Filing requirements, with FTC available in Canada
- May be subject to US branch profits tax ($500,000 exemption)
- Possible US withholding tax on interest paid to Canadian lender
- Withholding tax of 30% on gross rental income unless “effectively connected”
- Canadian tax rate depends on whether the Specified Investment Business rules apply (treats income as passive)

US CORPORATION

- Usually a wholly owned sub of Canadian company
- FAPI rules could apply to income of US sub (more than 5 full time employees) which would be taxed in Canada, even if not distributed. FAPI applies to rental income and capital gains
- US withholding tax of 5% on dividends paid to Canco
- Better to be treated as active business in US (no FAPI, like kind exchange rules, exempt surplus)
- If owned directly by Canadian individual, then subject to estate tax, higher withholding rate on dividends (15%), and no exempt surplus
- What about losses?
- US thin capitalization rules may limit interest deduction and result in withholding tax if interest paid to Canadian lender
- No requirement to file Canadian return and no mismatching if active income
- US tax rates on rental income as high as 34% and capital gains 35% plus State tax
- Consider using separate US sub for each investment with one US holding company.

LIMITED LIABILITY COMPANY

- Fiscally transparent and not subject to direct US tax
- An LLC is not a resident of the US under the tax treaty
- Treated as a foreign affiliate in Canada and a s apartnership in the US
- Mismatching of income and tax credits, unless all of the LLC income is distributed in the same year. Allocation of profits under IRC and Dividend in Canada
- Individual ownership of LLC results in US filing requirement on undistributed income of LLC with no FTC. May also be subject to estate tax
- Consider having LLC owned by a US sub, which is owned by Canadian parent.

LIMITED PARTNERSHIP

- US or Canadian LP can be considered
- Canadian partnerships may give estate tax protection and allows for rollovers on dissolution
- Each partner must file US returns if active income earned or “effectively connected income”
- Losses not trapped (flow through), subject to at risk rules in Canada and US passive loss rules
- US withholding tax of 35% on partnership income allocable to a non-resident, even if no distribution and 30% on gross rent if not carrying on active business or effectively connected.
- FTC available in Canada
- If limited partnership, the distributions cannot exceed ACB of partnership interest (capital gain in Canada)
- Consider tiered partnership.

PARTNERSHIP: CHECK THE BOX

- An important planning concern is whether the Canadian partnership should “check the box” to be treated as a corporation for US tax purposes.
- The IRS does not have a clear policy as to the situs of a partnership interest, such that if the partnership does not check the box, a possibility exists that the IRS could find the partnership interest to be situated where the partnership’s assets are located, namely in the US.
- The option of not checking the box has the advantage that the lower capital gains rate for individuals (currently 15%) would be available on the eventual sale of the property.

PARTNERSHIP: CHECK THE BOX … *cont'd*

- If the partnership checks the box, it will be considered a corporation for US tax purposes, such that upon death, the limited partner would be considered to own shares in a non-US corporation, which are clearly not US-situs.
- As a result, no US estate tax would apply to the interest in the partnership.
- The disadvantage is that the higher corporate capital gains rate (currently 35%) would apply if the partnership sells the property to a third party.

TRUST

- A Canadian discretionary *inter vivos* trust can be used as a vehicle for holding US real estate without incurring US estate tax.
- An advantage of holding US real estate through a Trust as compared to a “check the box” partnership or a corporation is that if the property is sold while being owned by the Trust, any gain would be taxed in the US at the lower capital gains tax rate, which for individuals is currently 15% compared to 35%.
- No branch tax, no thin cap rules
- Canadian tax rates as if individual (46.4% in Ontario) allow for provincial tax planning
- US withholding tax on income of US partnership allocated to Trust
- Losses trapped in the Trust

TRUST …. *cont'd*

- Consideration should be given to the "21 year rule" under Canadian tax law, whereby a deemed disposition occurs on the 21st birthday of a Trust.
- Such deemed disposition, and the potential resulting capital gains tax, can be avoided by winding-up the Trust prior to its 21st birthday and distributing the assets thereof on a rollout basis to Canadian resident.
- The beneficiaries to whom the US real property would be distributed would, however, be subject to US estate tax on death, provided the estate tax has not been repealed by that time.

CONCLUSION

- The future of the US estate tax regime is uncertain: no legislation yet passed to repeal the repeal of estate taxes in 2010
- Decision tree is complex and depends on active vs passive, anticipated losses, exposure to estate tax and capital gains tax rates
- It is still important to structure ownership of US real estate by Canadian residents in a way that minimizes tax exposure and avoids double tax or mismatching of tax credits.
- A careful examination of the individual circumstances of each case would determine the most appropriate and efficient ownership structure for each acquisition.

OWNERSHIP OF A U.S. VACATION PROPERTY

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OVERVIEW

- Ownership of US real estate by Canadian residents (i.e., not a US citizen or a domiciled alien in the US) is quite common.
- An important consequence of such cross-border ownership is the potential exposure of the Canadian resident owner to double tax – Canadian death tax and US estate tax on death.
- US federal estate tax is up to 45% on the value of the estate

ESTATE TAX

- The US imposes estate tax on deceased US citizens and resident aliens calculated on their worldwide assets, as well as on non-resident aliens on their assets situation in the US (US-situs assets).
- US real estate owned by a Canadian constitutes a US-situs asset, and is thus subject to US estate tax on death notwithstanding that the owner is neither a citizen nor a resident of the US
- A Canadian who dies owning US real estate would be subject to capital gains tax in Canada, and potentially estate tax in the US as well.
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CANADA vs US

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OWNERSHIP STRUCTURES

- There are several possible ownership structures that could be used by a Canadian individual:
  - Individual Ownership
  - Non-US Corporation
  - Trust
  - Partnership
- Unless otherwise indicated, we assume that the relevant ownership structure would be put into place for the initial acquisition of the property.
- Once the property has been acquired, a subsequent transfer of the property would raise gift tax or (if the transfer is for value) income tax issues:

INDIVIDUAL OWNERSHIP

- Direct ownership by the individual is simple, and would entitle the owner to the lower US federal long-term capital gains rate that is available for individuals where the property is held for more than a year, in case the individual sells the US property prior to his or her death.
- Currently, the federal rate for long-term capital gain is 15%, but is scheduled to increase to 20% following the sunset of EGTRRA in 2011.
- Direct ownership does not provide any protection against US estate tax.
  - Still, it is attractive if the value of the property is modest, such that most or all of the eventual estate tax would be sheltered by the Treaty credit amount
  - Due to the simplicity of this alternative, it may be attractive to some individuals even if it results in some US estate tax.

RELIEVING MECHANISMS

- The following relieving mechanisms can be used where the US real estate is held directly by the individual:
  - Life Insurance
  - Ownership by Lower Net Worth Spouse
  - Ownership by Children
  - Use of a QDOT and Marital Credit
  - Non-recourse Mortgage
  - Tenancy in Common

LIFE INSURANCE

- Purchasing life insurance does not reduce or eliminate US estate tax liability. However, life insurance provides an efficient funding mechanism for the US estate tax liability.

OWNERSHIP BY LOWER NET WORTH SPOUSE

- If the Canadian individual is married, it may be better if the property is owned by the spouse with the lower net worth, so as to maximize the amount of the credit available under the Treaty.
- Consider the potential application of the Canadian attribution rules, which provide that where property is transferred or lent by one spouse to the other, the income or capital gain from the property transferred or lent can be attributed back to the transferor.

OWNERSHIP BY CHILDREN

- If the property is purchased by the individual's children, then the property should not be includible in the individual's estate, as long as the individual's use of the property is limited to staying there as a guest of the children.
- The funds used to purchase the property may be provided by the individual as a gift.
- The transfer of funds should not be made in the US, however, as otherwise the IRS may take the position that it constitutes a transfer of tangible property located in the US (i.e. a US-situs asset) and is subject to US federal gift tax.

OWNERSHIP BY CHILDREN … *cont'd*

- Also, the gift should not be conditional on the purchase of the property.
- Occasional use of the house by the individual for vacations (even while the children are not using the house) should not be problematic if the visits are at the convenience and discretion of the children
  - but if the individual's use is regular or extensive, then the individual could be viewed as having <u>retained an implied right to use the property</u>, which could result in an estate tax inclusion.

QUALIFIED DOMESTIC TRUST ("QDOT")

- If the purchaser of the property is a married Canadian individual, measures may also be taken to defer payment of estate tax to the later of the two spouses' deaths.
- This can be achieved through the use of a QDOT under US law and a spousal trust under Canadian law.
- A US marital deduction would be available for the assets that on death go to the QDOT, provided the estate makes an election to this effect.
- It should be noted that capital distributions from the QDOT are generally subject to estate tax, unlike in Canada where capital distributions from qualifying spousal trusts can typically be made tax-free.

MARITAL CREDIT & UNIFIED CREDIT

- As an alternative to using a QDOT, it is also possible to for Canadians to defer a portion of the estate tax liability up to the amount of the unified credit available under the IRC or the Treaty until the death of the surviving spouse, by taking advantage of the marital deduction under the Treaty.
- This deferral is in addition to the unified credit otherwise available, essentially doubling the unified credit for married Canadians.

NON-RECOURSE MORTGAGE

- A non-recourse mortgage can be used in order to reduce the value of the US real property for estate tax purposes.
- If property is financed with non-recourse debt, only the value of the equity held by the decedent at the time of death, i.e. the value of the property less the mortgage, is included in the decedent's estate.

NON-RECOURSE MORTGAGE … *cont'd*

- It may be difficult to obtain this kind of financing, especially in the current credit environment, and most financial institutions would only grant a non-recourse mortgage for a fraction of the value of the property, which usually does not exceed 65%.
- A non-recourse loan can be contracted with a non-arm's length party, but one must be able to show that the loan was bona fide and under normal commercial terms. This involves charging interest, which may increase the taxable income of the recipient.
- A non-recourse mortgage cannot cover the entire value of the property, so if the remaining value exceeds the amount sheltered by the Treaty credit amount, estate tax would not be entirely eliminated.

TENANCY IN COMMON

- Tenancy in Common (i.e. undivided co-ownership) by the spouses, and possibly together with other family members, may also be helpful in reducing US estate tax, or eliminating it on a modestly value property.
- In determining the value for estate tax purposes, US courts and the IRS may (depending on the facts) allow a discount of up to 15% for the fact that a deceased person owned only a fractional interest in a property.
- The respective Wills of the spouses should provide that their tenancy in common interests would go to their children, such that the discount will also be available for the interest of the last spouse to die, and the children would inherit a cost base equal to the value at the date of death.

TENANCY IN COMMON … *cont'd*

- It is important that each of the co-owners contribute funds for the purchase of the property.
- If some of the family members do not possess sufficient funds, a parent may gift to them the necessary amounts.
- This should be done prior to the acquisition.
  - The transfer of funds should not be made in the US and the gift should not be conditional on purchasing the property.
- If the transfer of funds takes place outside the US and is not conditional, the gift likely would not be subject to US federal gift tax.

JOINT TENANCY

- Joint tenancy, the other form of undivided co-ownership often used in the common law portions of Canada, should be avoided as a means of holding US real estate.
- The right of survivorship associated with joint tenancy means that upon the death of one of the co-owners, the other co-owner becomes the sole owner of the property.
- The consequences of this for US estate tax purposes is that upon death of one of the co-owners, the estate tax would be calculated on the entire value of the property, unless the co-owners can prove to the IRS that they have contributed equal funds to acquire it.
- In addition, the property would be subject to estate tax a second time upon the death of the surviving co-owner.

NON-US CORPORATION

- The relevant US rules that define US-situs assets exclude shares of a foreign corporation.
- Thus, if instead of owning US real estate directly, a Canadian resident owns such real estate through a corporation, no US estate tax should apply.
  - There was always a concern that the IRS would look through these corporations.
- For this reason, before January 1, 2005, it was common for Canadian individuals to hold US real estate through single-purpose corporations (“SPC”).
- Prior to that date, the Canada Revenue Agency (the “CRA”) had an administrative policy that if certain conditions were met, the shareholders of SPC’s would not be assessed a taxable benefit in Canada for their personal use of the vacation properties owned by their corporations.

NON-US CORPORATION … *cont'd*

- In 2004, the CRA changed its administrative policy and started assessing taxable benefits where the shareholder of an SPC uses the real property rent-free for personal purposes.
- The use by Canadian residents of SPC's for holding US real estate has thus become impractical.
- There are additional disadvantages to using a corporation as a vehicle:
  - If the property is sold during the shareholder's lifetime, the corporate income tax rate on any long-term capital gain (currently 35% would be significantly higher than the individual rate (currently 15%).

TRUST

- A Canadian discretionary *inter vivos* trust can be used as a vehicle for holding US real estate without incurring US estate tax.
- A discretionary *inter vivos* trust (the "Trust") can be settled in favour of the spouse and descendants of the Canadian resident individual.
- The necessary funds to purchase the US property are gifted to the Trust.
- It is important to ensure that the US real estate would be <u>purchased directly by the Trust</u> rather than being transferred to it by the settlor, as a sale for value would be taxable if the property has appreciated, and a gift would be subject to US gift tax.

TRUST … *cont'd*

- The Canadian resident contributor of funds should not be a beneficiary of the Trust
  - An interest in the Trust, even if only a discretionary one, coupled with the use of the Trust property by the settlor/contributor, could be viewed as a "retained interest", and thus included in the US estate of the settlor/contributor.
- To avoid any risk that the settlor/contributor could be found to have retained control of the Trust assets, he <u>should not be a trustee</u> and should not have the power to appoint or replace the trustees (unless the power to appoint replacement trustees is limited to independent trustees).

TRUST …. *cont'd*

- The IRS has held that the rent-free use of the property by the settlor by virtue of being married to a beneficiary does not constitute a retained interest for estate tax purposes.
- No US estate tax would be payable on the Trust assets on the death of a beneficiary either, since such beneficiary cannot be considered to have retained an interest in such assets considering that he or she has never owned any of the trust assets.
- The Trust itself is also not subject to US estate tax.

TRUST …. *cont'd*

- For Canadian tax purposes, there should be no taxable benefit conferred on the beneficiaries of the Trust, since the CRA takes the position that:
  - no benefit should be assessed where personal use property is owned by a Trust, if the Trust owns the property principally for the personal use and enjoyment of the beneficiary or a person related thereto.
- An advantage of holding US real estate through a Trust as compared to a "check the box" partnership or a corporation is that if the property is sold while being owned by the Trust, any gain would be taxed in the US at the lower capital gains tax rate, which for individuals is currently 15% compared to 35%.

TRUST …. *cont'd*

- Consideration should be given to the "21 year rule" under Canadian tax law, whereby a deemed disposition occurs on the 21st birthday of a Trust.
- Such deemed disposition, and the potential resulting capital gains tax, can be avoided by winding-up the Trust prior to its 21st birthday and distributing the assets thereof on a rollout basis to Canadian resident.
- The beneficiaries to whom the US real property would be distributed would, however, be subject to US estate tax on death, provided the estate tax has not been repealed by that time.

TRUST …. *cont'd*

- The disadvantage of ownership through a Trust is that the Canadian resident must give up ownership and control of the property in favour of his or her spouse and children.
- As the settlor/contributor would not be a beneficiary of the Trust, he or she would depend on his or her spouse and descendants for being able to use the property.
- Also, where the spouse is not a beneficiary, the settlor would not be able to use the property in a manner that suggests the settlor retained an implied right to use it, or else the property will be includible in the settlor's estate.
- Careful consideration must therefore be given to the state of family relations.

TRUST …. *cont'd*

- To mitigate these concerns and to secure a limited legal right to use and enjoyment of the US property, the Canadian resident may wish to acquire, in his individual capacity, a small tenant in common (undivided ownership) interest in the property jointly with the Trust.
- The individual's tenant in common interest would be subject to US estate tax, but such tax would presumably be shielded by the Treaty credit amount, or if this is not the case, life insurance can be purchased to cover the US estate tax exposure.
- If the individual's use of the property is not disproportionate to this ownership, then the portion of the property that is owned by the Trust should not be includible in the individual's estate.

PARTNERSHIP

- A Canadian limited partnership can also be used to hold US real estate, with the individual as the limited partner and a corporation wholly owned by the individual as the general partner.
- The partnership interest in a non-US partnership should not constitute a US-situs asset, and would therefore not be subject to US estate tax.
  - The partnership cannot be engaged in a US trade or business, and must be formed in Canada to help keep an interest in it from being US-situs property
- The use of a partnership structure avoids shareholder benefit issues in Canada.

PARTNERSHIP: PROVINCIAL ISSUES

- Attention must be paid to meeting the requirements for the existence of a partnership under the law of the Canadian province where the partnership would be created.
- In the common law Canadian provinces, a partnership would only exist if the parties are carrying on business in common with a view to profit.

PARTNERSHIP: PROVINCIAL ISSUES…*cont'd*

- Holding personal use real estate may not be sufficient to meet the "for profit" requirement, as it can be argued that the purpose of the partnership is to provide one of the partners with the use of a vacation home rather than to invest in income-earning real estate.
- At the same time, it would be problematic for the partners to argue that the purpose of purchasing the property was to sell at a gain, as this could make the ownership of the property an adventure or concern in the nature of trade for Canadian tax purposes and trigger income treatment upon an eventual sale.
- To satisfy the "for profit" requirement, the partnership can acquire some marketable securities, for which it would be easy to assert that they are being held for the purpose of making a profit.

PARTNERSHIP: CHECK THE BOX

- An important planning concern is whether the partnership should "check the box" to be treated as a corporation for US tax purposes.
- The IRS does not have a clear policy as to the situs of a partnership interest, such that if the partnership does not check the box, a possibility exists that the IRS could find the partnership interest to be situated where the partnership's assets are located, namely in the US.
- The option of not checking the box has the advantage that the lower capital gains rate for individuals (currently 15%) would be available on the eventual sale of the property.

PARTNERSHIP: CHECK THE BOX … *cont'd*

- If the partnership checks the box, it will be considered a corporation for US tax purposes, such that upon death, the limited partner would be considered to own shares in a non-US corporation, which are clearly not US-situs.
- As a result, no US estate tax would apply to the interest in the partnership.
- The disadvantage is that the higher corporate capital gains rate (currently 35%) would apply if the partnership sells the property to a third party.

CONCLUSION

- The future of the US estate tax regime is uncertain: no legislation yet passed to repeal the repeal of estate taxes in 2010
  - Highly likely to occur before the end of the year, likely keeping the 2009 rates and exemptions
- It is still important to structure ownership of US real estate by Canadian residents in a way that minimizes estate tax exposure.
- A careful examination of the individual circumstances of each case would determine the most appropriate and efficient ownership structure for each acquisition.