

Ask the Expert – Tax, Legal & Estate Considerations for Owning a U.S. Property

Alain Forget, Shlomi (Steve) Levy, Jonah Spiegelman & Samantha Y.F. Wu

October 20, 2022



Today's Facilitator



ALAIN FORGET

Head of Business Development

Alain has been working for RBC for over 40 years, holding various business and sales leadership roles in Canada, the Caribbean and the U.S. He is passionate about helping Canadians purchase U.S. homes and works closely with consumers, real estate professionals and other strategic partners to provide education and opportunity to Canadian buyers in the U.S. Alain acts as spokesperson for the media and at real estate conferences as a subject matter expert. He is also a licensed real estate agent in Florida and holds a degree in Finance & Management.

Questions



- Please use the CHAT bar to submit your questions in writing during the live presentation.
- To register a question over the phone following the formal portion of our presentation:
 - Enter 1 followed by 4 on your phone.
 - If your question has already been asked, you can unregister your question by dialing 1 followed by 3.

Note, this webinar is being recorded, and the presentation will be made available on our virtual advice event landing page.

We're Here for You



We've donated \$150,000 USD to the American Red Cross to provide for the immediate basic needs of people displaced and impacted by the hurricane.

We've also launched a financial relief program to assist RBC Bank cross-border clients who were affected and need support. For more information, visit [rbcbank.com](https://www.rbcbank.com) or call 1-800-ROYAL-53



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AND LEGAL COUNSEL

OCTOBER 20, 2022

ESTATE AND TAX PLANNING CONSIDERATIONS IN BUYING U.S. REAL ESTATE

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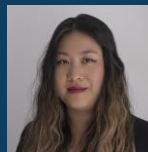
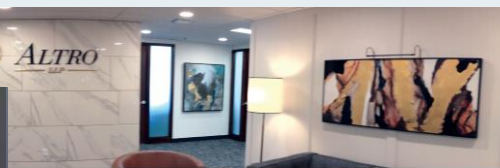
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Samantha Y.F. Wu
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Samantha Wu is a cross-border Canadian and US tax, estate planning, and real estate lawyer. She is licensed in Ontario and New York. Samantha's practice focuses on tax and estate planning for high net-worth individuals, families with assets and/or beneficiaries in both US and Canada, cross border real estate transactions, and U.S. probate and settlement of estate matters. She also has a full Ontario estate and tax planning practice, which includes advising on and implementing wills, trusts, powers of attorney, and the probate and tax considerations in Canadian estate planning.

Samantha received her law degree from the Benjamin N. Cardozo School of Law at Yeshiva University in New York City in 2010, and was admitted to the New York Bar in 2011. She practiced law in New York before returning to Canada in 2012, and was admitted as a member of the Law Society of Ontario in 2015. Samantha received her Bachelor of Arts degree in psychology from the University of British Columbia in 2007.

Samantha's areas of expertise include providing detailed, personalized tax and estate plan analysis for high-net worth clients which extensively discuss issues and planning considerations for multi-jurisdictional probate, incapacity issues, exposure to U.S. estate tax, planning for deemed-disposition at death in Canada, and implementation of complex wills and trusts. She also advises clients on buying and selling U.S. real estate, on the transactions themselves as well as advising on the cross-border tax consequences, withholding obligations under the Foreign Investment in Property Tax Act (FIRPTA), and income filing obligations. She handles transactions ranging from personal use condominiums to multi-million dollar luxury properties.



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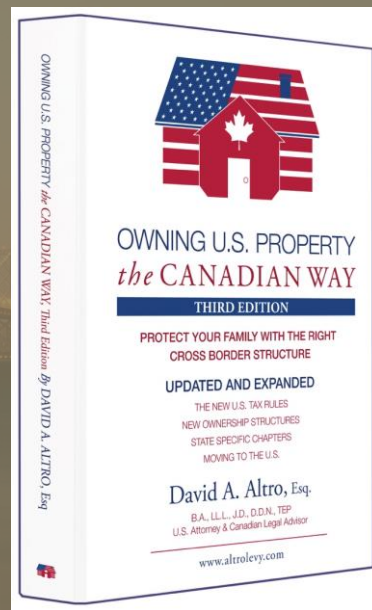
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- **Tax & Estate Planning for Canadians**
- **Corporate Tax Planning – Domestic and Cross Border;
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- **Tax Planning for American Residents Moving to Canada**
- **Probate and Settlement of Estates in Ontario, Quebec, and Florida**





Owning U.S. Property, the Canadian Way



Purchasing Real Estate in the U.S.

Issues to Consider:

- **Entering into a contractual relationship with the Seller**
– **do you need legal representation?**
- **The role of the Title Insurance Agency.**
- **The importance of the title search, the lien search, and the permit search.**
- **Funding the purchase – cash or mortgage, and related timeline considerations.**
- **Structuring the purchase – how will you take title?**
- **Understanding the closing costs.**

Planning Goals Considered in Structuring a Purchase

- **Short term holds – is it worth structuring?**

- **Long term holds – Probate & Incapacity**

Issues

- **Tax considerations – income tax, capital gains tax, and the U.S. Estate Tax on death.**

- **Liability concerns & creditor protection.**

Joint Tenancy – Is it Simple?

- **JTROS vs. Tenants in Common**
- **Probate on second spouse to die**
- **The role of beneficiary deeds (Lady Bird Deeds)**
- **Incapacity – foreign guardianship proceedings and the role of a Durable Power of Attorney**

Potential US estate tax on death of first spouse

- **Estate tax again on second spouse to die**



Trust Ownership – the Cross Border Trust

- **Resolves probate and incapacity exposures**

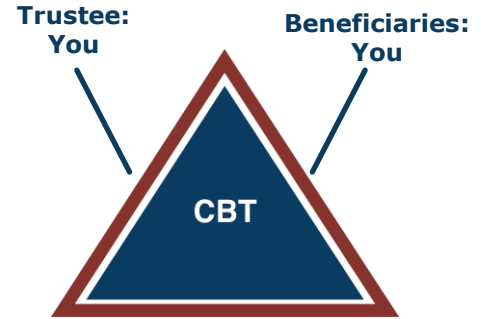
- **US capital gains and income tax**

Canada Revenue Agency capital gains and income tax

- **Foreign tax credits under the Canada-US Tax Treaty**

- **Controlling the distribution and protecting your children's inheritance.**

- **How is the CBT different from a standard U.S. revocable trust or a Florida land trust?**



US Estate Tax

In 2022, the lifetime exclusion amount is \$12.06 million USD, **BUT IT IS EXPECTED TO DROP** to \$5.5 million on January 1, 2026.

Estate Tax Rules As Applied to Canadians

1. Are your U.S. assets > \$60,000 U.S.?
2. Is the value of your worldwide estate > \$12,060,000?

U.S. Situs assets

- What is in?
- What is out?

Worldwide estate

- Everything counts!

Do Canadians get the \$12.06 million exemption?

What is the tax rate?

U.S. Gift Tax – A Relative of Estate Tax



Lifetime gift tax exemption

- **US Citizen**
- **NRA (Canadian)**
- **US Real-Estate**
- **Stocks of U.S. corporations**
- **What about cash?**



Subject to gift tax at 40% of the value of the gift over:

- **\$164K to spouse; or**
- **\$16k to others**



The Canadian attribution rules:

- **Canadian deemed disposition capital gains rules**



US AND CANADIAN ATTORNEYS & NOTARIES



Owning and Renting Your U.S. Home: What You Should Know

October 20, 2022

SPEAKER:

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ABOUT THE SPEAKER

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Shlomi Steve Levy is a Partner of Levy Salis LLP and is a member of the Quebec Bar, the Law Society of Ontario, the Society of Trust and Estate Practitioners, and the Canadian Bar Association. He was the co-founder of one of the leading cross border tax and estate planning law firms in Canada prior to founding Levy Salis LLP. His practice is dedicated to US and Canadian tax and estate planning for individuals and corporations, Canadians doing business in the United States, US real estate transactions for Canadians, Americans living in Canada, domestic and international trusts, international taxation, corporate law, and cryptocurrency transactions.



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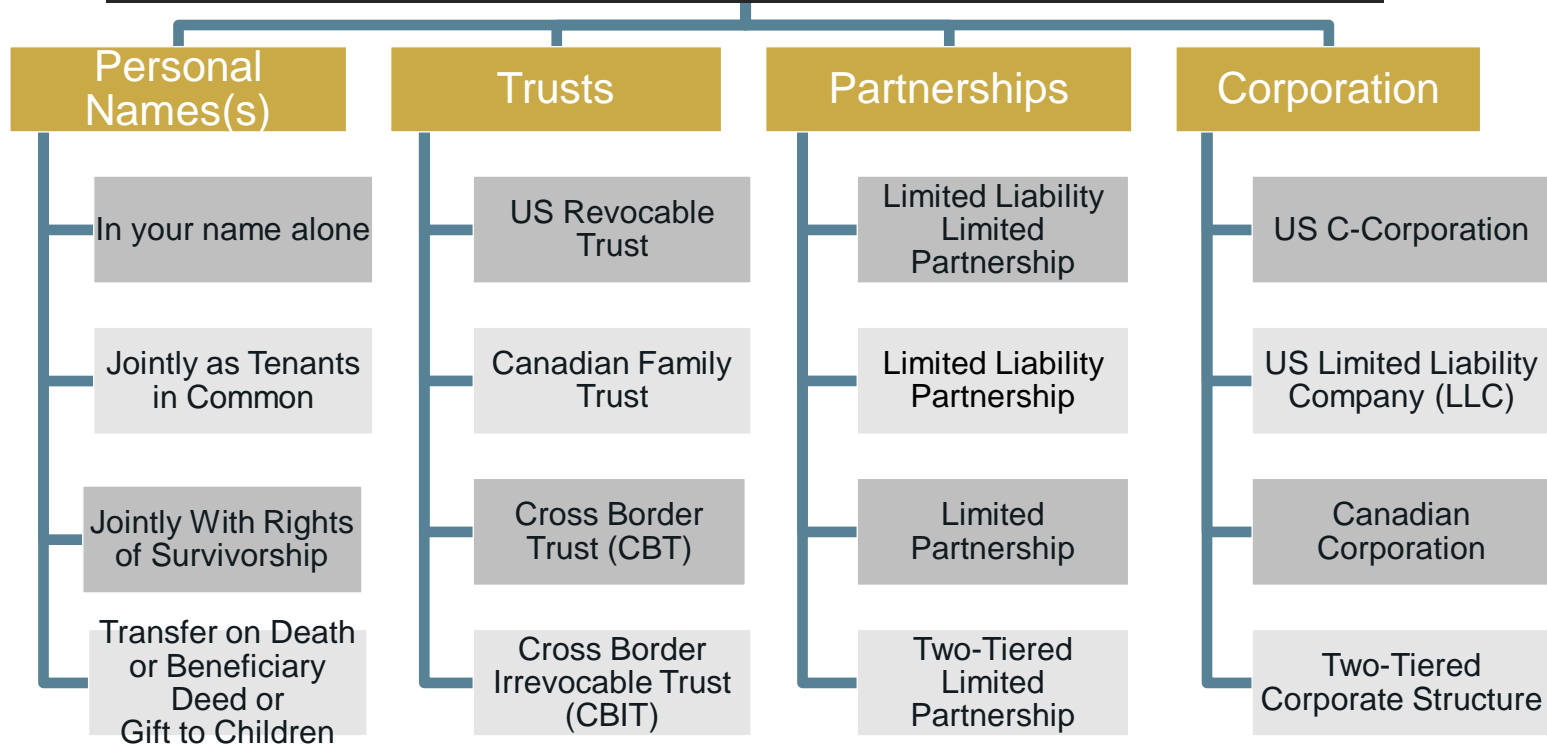
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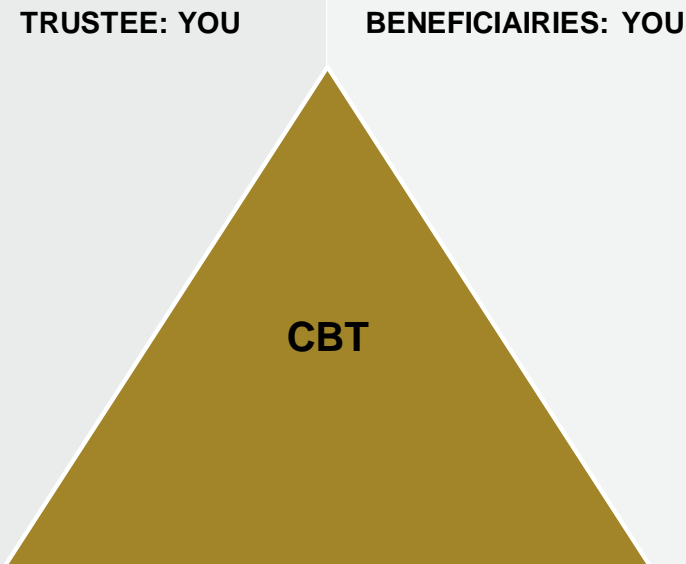
CANADIANS OWNING US REAL ESTATE

CHOOSING AN OWNERSHIP STRUCTURE



CROSS BORDER TRUST (“CBT”)

- Avoids probate & incapacity issues
- Protects inheritance from divorcing spouses/creditors
- Preserves foreign tax credits (on sale/death)
- Reduces and defers US estate tax (QDOT & discounting)



CORPORATIONS

- Avoids probate & incapacity issues
- Avoids US Estate Tax
- Provides creditor protection
- Shareholder benefit rule
- LLC – **DOUBLE TAXATION PROBLEM**



**U.S.
CORP.
100%**

**CND
CORP.
100%**





US PROPERTY FOR BOTH VACATION AND RENTAL PURPOSES

- **Ownership issues**
 - Liability arising from personal ownership: insufficiency of liability insurance
 - Several of the issues arising from ownership such as probate, incapacity, creditor protection
 - Beneficiary
- **US and Canadian tax reporting and tax treatment on income and capital gains**
- **Ownership structures**

CANADIANS RENTING US REAL ESTATE

US AND CANADIAN
TAX COMPLIANCE
ON RENTAL INCOME

**TREATED AS FIXED,
DETERMINABLE, ANNUAL OR
PERIODIC (FDAP) INCOME**

- Subject to 30% withholding

**AVOID 30% WITHHOLDING BY
MAKING ECI ELECTION**

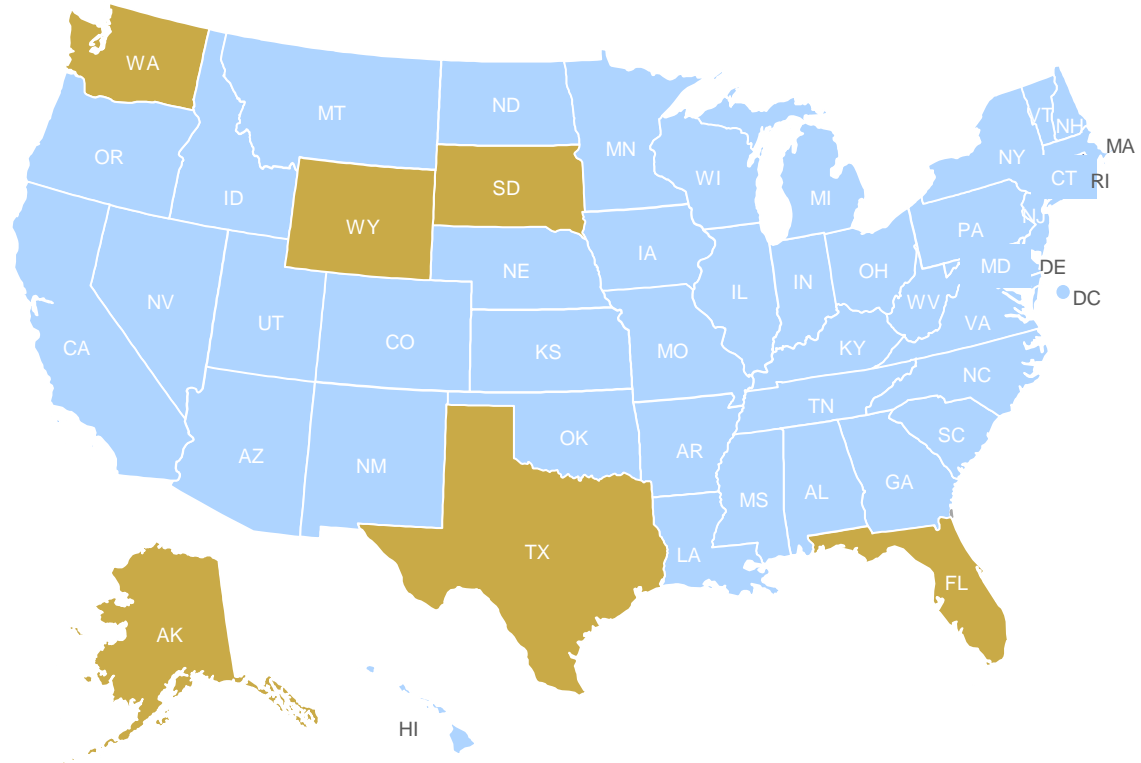
- Treat rental income as “effectively connected income” by filing W8-BEN ECI
- File a US tax return (Form 1040NR) and pay tax at US income tax rates



US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME

SUBJECT TO STATE INCOME TAX

- Several States do not levy income tax on individuals: Florida, Texas, Washington, Wyoming, South Dakota, and Alaska



US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME



**MUST DECLARE
INCOME AND PAY
TAX IN CANADA**

Canada-US Tax Treaty:
can claim Foreign
Tax Credits in
Canada for US tax



FILE FORM T-1135

- Must declare ownership of US rental real estate with a cost in excess of \$100,000 CAD



**PERSONAL USE OF
US REAL ESTATE
OWNED BY A
CORPORATION:**

- Taxable benefit under the shareholders' benefit rule

US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME



DEPRECIATION IS AUTOMATICALLY RECAPTURED
ON THE SALE OF US RENTAL REAL ESTATE

Depreciation is mandatory



DEPRECIATION IS MANDATORY IN THE UNITED
STATES!

- 27.5 year formula

US AND CANADIAN TAXATION OF US RENTAL INCOME



Must file US tax return (Form 1040NR) to report the sale



Requires an Individual Tax Identification Number (ITIN)



Rate depends whether the sale is by an individual, a corporation, a partnership, etc.

*Subject to State income tax

US AND CANADIAN TAXATION OF US RENTAL INCOME



CANADIANS

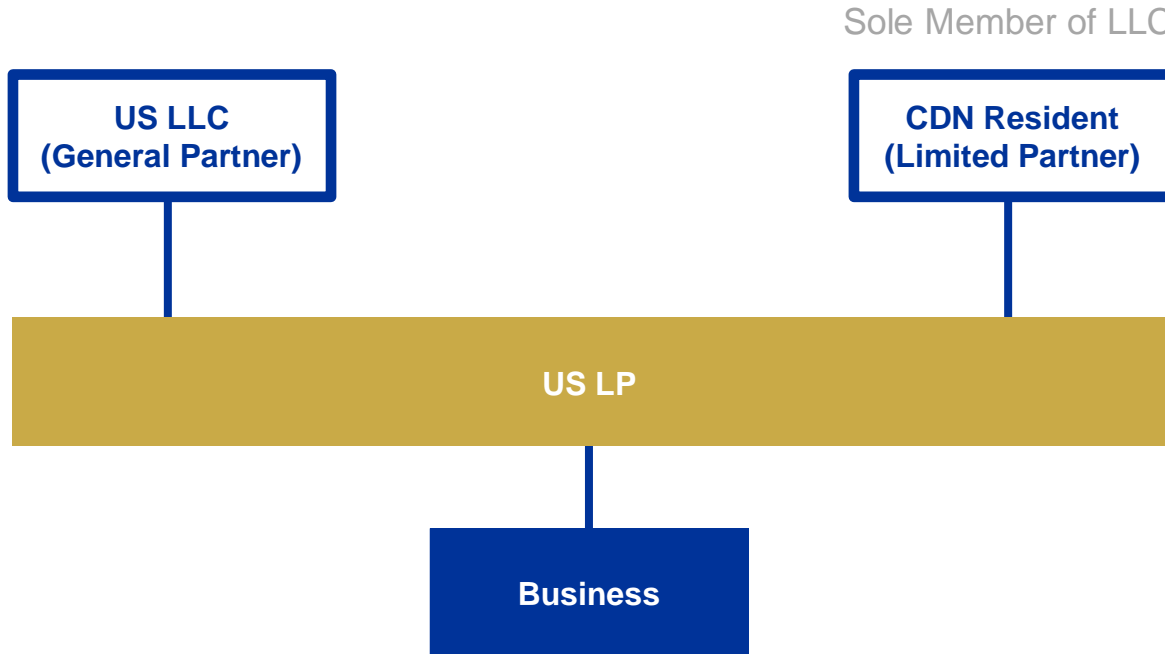
Must report US income on Canadian tax returns
& pay tax

Possible claim for tax credit paid in the US, unless
mismatch

Tax on currency exchange GAINS

FIRPTA withholding depending on the
ownership structure

CONVERSION OF LIMITED LIABILITY COMPANY (LLC) TO LIMITED PARTNERSHIP (LP)



US CAPITAL GAINS TAX SUMMARY BY OWNERSHIP STRUCTURE

TRUSTS	LIMITED PARTNERSHIP c	PERSONALLY	CORPORATIONS *(US OR CDN)	LLC – DOUBLE TAXATION
IRS – 15 to 20%*	IRS – 15 to 20%*	IRS – 15 to 20%*	IRS – 21%	IRS – 15 to 20%
			FL – 5,5%	CRA – 26%
			Total Tax Liability: 26,5%	Total Tax Liability: 41% to 46%*
*US Federal Rates			*+ Canadian Dividend Tax and US withholding considerations	

SELLING?



Closing Costs \$\$

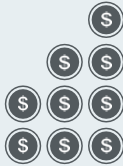


Capital Gains Tax: **US – CDN***

F.W.

FIRPTA Withholding

RENTING?



Income Tax: **US – CDN**



Depreciation



Liability

REFINANCING?



Capital Gains

F.W.

FIRPTA Withholding **0\$**



“Life Style”

* Tax on the exchange rate



US ESTATE TAX FOR CANADIANS

US ESTATE TAX FOR CANADIANS



Does it apply to Canadians
owning US assets?

Are your US assets >
\$60,000 USD?

Is the value of your
worldwide estate >
\$12,060,000 USD



Worldwide estate



US situs assets

What is in?

What is out?

Everything counts!

Specific rules (joint tenancy,
life insurance policies, etc.)

US ESTATE TAX FOR CANADIANS

If you hold U.S. assets, we recommend that you consult one of our cross border experts to discuss solutions and strategies for U.S. estate tax, probate and other cross-border tax and estate planning issues.

*In order to calculate your exposure, use the calculator below. Please note that the calculator reflects the changes to U.S. estate tax effective January 1, 2022. The calculator is updated annually to reflect annual adjustments to the exemption amount.

levysalis.com/calculators/

	\$100,000	\$1,000,000
	US Taxable Estate Value	Worldwide Taxable Estate Value
Year		2022
Estimated Taxable Amount		\$100,000
Estimated Tax Marginal Rate		30 %
Estimated Estate Tax Amount		\$23,800
Unified Credit Amount		\$476,980
Estimated Estate Tax		\$0

OUR PROCESS

```
graph LR; A[ANALYZE] --> B[RECOMMEND]; B --> C[IMPLEMENT];
```

The diagram consists of four main vertical sections. The first section on the left is dark grey and contains the text 'OUR PROCESS'. The subsequent three sections are yellow and olive green, each containing a stage of the process: 'ANALYZE', 'RECOMMEND', and 'IMPLEMENT'. These sections are connected by chevron shapes pointing to the right, indicating a sequential flow. The entire process flow is set against a background of horizontal stripes in light blue, white, and dark grey.

ANALYZE

RECOMMEND

IMPLEMENT



Q



A

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Selling U.S. Real Estate

Jonah Spiegelman – Boughton Law Corporation



SELLING U.S. REAL ESTATE

RBC Bank USA – A Virtual Advice Event Series

Oct 20, 2022

Boughton Law

Jonah Spiegelman

Boughton Law Corporation

Vancouver, British Columbia, Canada

Jonah is a cross-border tax and estate planning lawyer, focused on assisting clients with international tax issues, including US-Canada cross border matters and questions regarding residency and Treaty benefits.

Licensed to practice law in British Columbia as well as California, Jonah can advise on both sides of the border to suit client objectives by creating tax-efficient estate plans and investment structures.



SELLING U.S. REAL ESTATE

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US Tax on Sale

Things to remember about
your US real estate tax liabilities

**Treaty permits
US to tax
real estate gains**

**Long term gains
vs
Short term gains**

Withholding Tax on Sale

Some key takeaways of the
Foreign Investment in Real Property Tax Act (FIRPTA)

15%

of gross sale price
withheld at closing

10%

if sale price >\$1m
& property used as
residence

0%

If sale price >\$300,000
& property used as
residence

Optional

application for
reduced withholdings

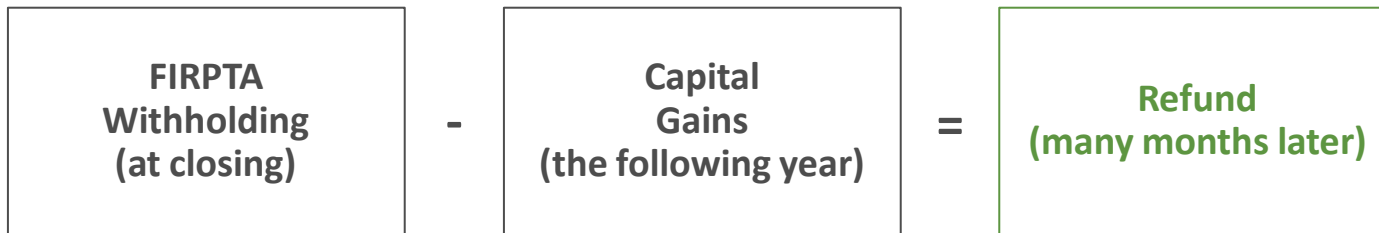
US Tax on Sale

Calculating the US capital gain

$$\begin{array}{ccccccccc} \boxed{\text{Sale Price}} & - & \boxed{\text{Purchase Price}} & - & \boxed{\text{Capital Improvements}} & - & \boxed{\text{Transaction Costs}} & = & \boxed{\text{Capital Gain}} \end{array}$$

US Tax on Sale

Timing Issues regarding US tax liabilities



Canadian Tax on Sale

What about
North of the border?

**Calculations
of gains are similar**

**Currency Exchange can be
the biggest difference**

**Canada must give credit
for US tax paid**

SELLING U.S. REAL ESTATE

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Closing Procedure

Getting the sale across the finish line

Escrow Office

Transaction handled
by independent
escrow office

Deed of Transfer

Seller signs
Deed of Transfer

Notary Public

Some states
(e.g. California, Hawaii)
require US Notary Public

Transaction Cost

Allocation can be
negotiated (states have
standard practices)

SELLING U.S. REAL ESTATE

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Selling U.S. Real Estate

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Cross-border Lifestyles - Everything You Need to Know from Banking with Perks to Buying U.S. Property

- October 25, 2022
- 1-2:30 p.m. ET

Register at rbcbank.com/vae

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