KEATS CONNELLY

ENRICHING YOUR CROSS-BORDER LIFESTYLE

Providing a wide range of Cross-Border Financial Planning Services to clients with interests in both Canada and the United States

Offices located in Phoenix, Arizona and Boynton Beach, Florida

www.keatsconnelly.com

Types of ownership

- **Individual Names** (JTWROS, CPWROS, CP, etc.)
  - Joint Tenancy and Community Property are easy but potentially subject to US estate tax and probate (talked about later)
  - Tenancy by the Entirety is preferred in FL
  - **Use beneficiary deeds** (aka Transfer on Death) in AR, AZ, CO, KS, MO, NV, NM, OH and WI

Canadian Corporation

- Avoids US estate tax
- Subject to double taxation (Corp. and Individual)
- Taxed as ordinary income - does not receive special tax treatment
- Fair market rent should be paid to the corporation
- No deferral of tax due to Foreign Accrual Property Income (FAPI) laws in Canada
- **Do not use**

Canadian Inter Vivos Trust

– Commonly suggested for Canadians

– Avoids US estate tax

– Subject to 21 year rule

– Can create a situation where tax is due, but there is no cash to pay the tax

– Can cause double taxation due to timing differences

– **Do not use**

US Living Trusts

- Generally not needed for non-residents, probate can be avoided in those 9 states where beneficiary deeds is allowed
- Expense outweighs the benefit in most cases

Cross Border Revocable Living Trust™

- For expensive personal residences (>$750k)
- Avoids probate
- Protection from creditors
- Developed by a cross-border attorney

Limited Liability Company (LLC)

– Not recognized in Canada
– Subject to double taxation
– **Do not use**

Limited Liability Partnership (LLP)

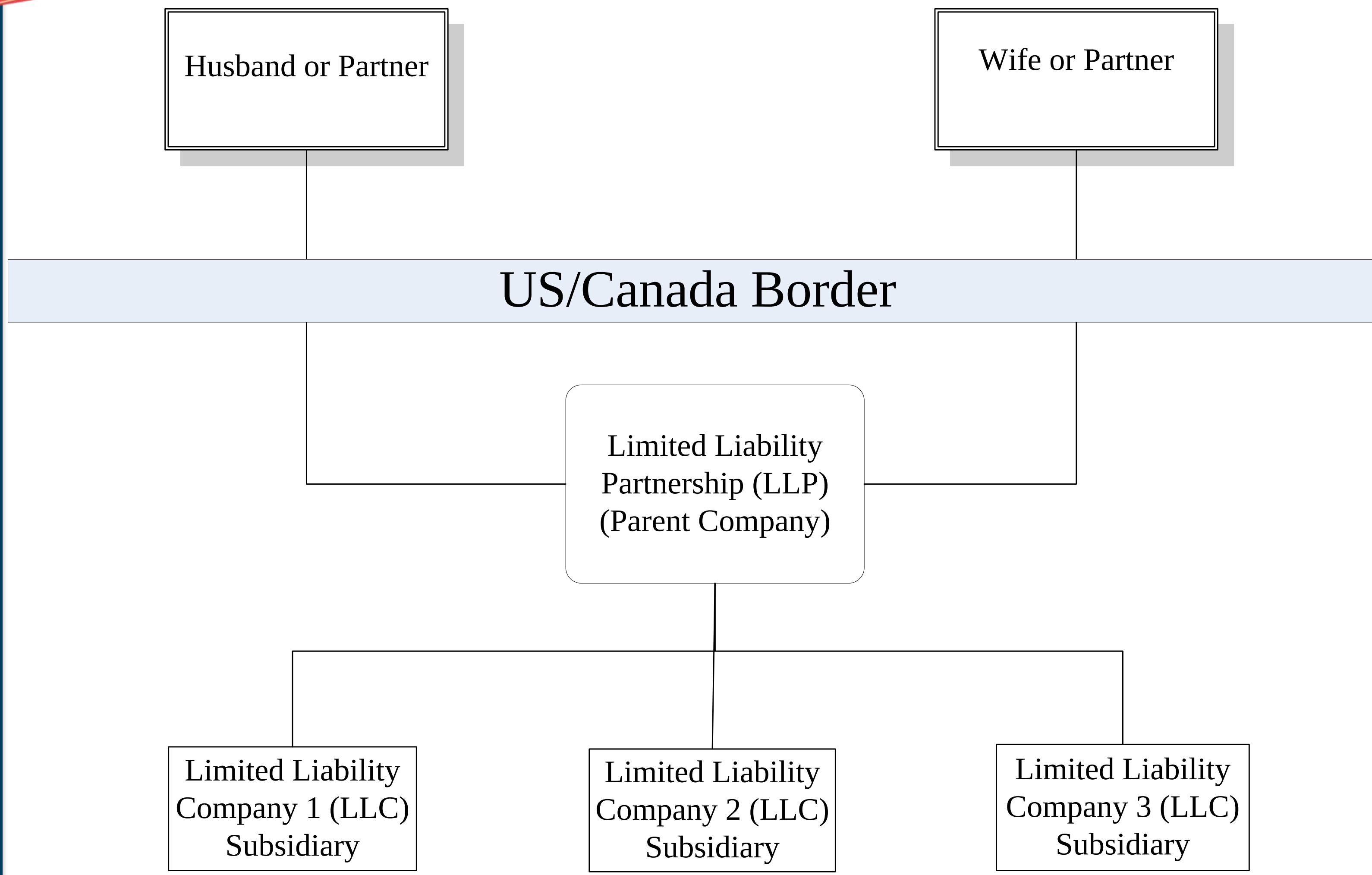
– Allows for the limited liability
– Recognized in Canada
– Use when property will be used for business purposes, e.g. rental or flipping
– Use LLLP if other than couples are the partners

Limited Liability Partnership (LLP)

- General Partnership where all partners have the same rights and liabilities
- Partners of a general partnership have "joint and several liability"
- By filing a form with the Secretary of State*, the partners can apply for (and obtain) limited liability, <u>plus</u> annual filing
- Must respect the form of the entity to maintain limited liability
- Limited liability means that assets outside of the LLP are generally not at risk

*Combined Certificate of LP & Qualification to Do Business As Limited Liability Partnership

Investing in Multiple Properties



US Estate Tax
General Rule

- $60,000 exemption for non-resident aliens (NRAs), per person
- Unlimited marital deduction is not allowed for non-citizens
- US taxable estate is net of US debt ONLY if the debt is non-recourse!
- **Note** - Most debt will not reduce US estate (RBC Bank offers a nonrecourse mortgage)

US/Canada Treaty allows for pro-rata estate tax credit

- Equal to the tax ($1,750,000) on the Applicable Exclusion Amount ($5,000,000 in 2011), multiplied by the fraction of US assets to worldwide assets, but not to exceed the amount of US tax

- Taxpayer is required to report worldwide assets

- If married, spouse gets double the exclusion amount in lieu of the martial deduction

The Canada – US Treaty

Dealing with the Double Estate Tax

A single person with a US$2,000,000 Worldwide Estate, with a US$350,000 Winter Home Purchased for US$250,000

Exemption Available	= $350,000/$2,000,000 x $5,000,000 = $875,000
Taxable US Estate	= $350,000 – $875,000 = $0
US Estate Tax Due	= $0
Capital Gains Tax Due to CRA	= $24,000 ($350,000-$250,000 = $100,000 gain)
Total Due to US and Canada	= $24,000

Dealing with the Double Estate Tax

A married couple with a US$2,000,000 Worldwide Estate, with a US$350,000 Winter Home Purchased for US$250,000

Exemption Available (per person)	= $350,000/$2,000,000 x $1,000,000 = $175,000
Taxable US Estate (combined)	= $350,000 – (2 * 175,000) = $0
US Estate Tax Due	= $0
Capital Gains Tax Due to CRA	= $24,000
Total Due to US and Canada	= $24,000

The Canada – US Treaty

Dealing with the Double Estate Tax

Person with US$7,000,000 worldwide estate,
with a US$350,000 winter home purchased for US$250,000

Exemption Available	= $350,000 / $7,000,000 x $5,000,000 = $250,000
Taxable US Estate	= $350,000 – $250,000 = $100,000
US Estate Tax Due	= $23,800
Capital Gains Tax Due to CRA	= $24,000 - $23,800 = $200
Total Due US and Canada	= $24,000

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FIRPTA

- Foreign Investment in Real Property Tax Act of 1980
  - If buyer purchases home for $300,000 or less AND intends to occupy the property, withholding is not required on the sales proceeds
  - Otherwise, FIRPTA requires 10% withholding on the gross proceeds
  - IF Form 8288B is filed, then 10% withholding on the "adjusted gain"

- W-7 – Application for IRS Individual Taxpayer Identification Number (ITIN) should be filed with 8288B

- **Canadians do not have the option of deferring taxes in a tax-free exchange or in an installment sale!**

Rental RE Owned by NRAs

- **Default** 30% withholding on GROSS rents
- Election can be made to withhold on the NET rents or by filing Form W-8ECI
- Depreciation must be taken – Canada does not require
- Will need to file Form 1040NR by June 15th
- Registration is required for residential rentals in Maricopa county

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US : A Canadian's Best Tax Haven

Take Your Money and Drive

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Who Might Consider US a Tax Haven?

- Large RRSP, RRIF, RCA, or Pension
- Highly Appreciated Business
- High Income Bracket
- Large Investment Portfolio
- Access to US Citizenship, Green Card, or Visa
- Access to US Social Security / Medicare

US : A Canadian's Best Tax Haven

- Media Perceptions – The Venerable IRS
- US Only Tax Haven You Can Drive To
- Reduce Income Tax to Levels of Traditional Tax Havens
- Canada-US Tax Treaty
- Medical Access – Double Dip
- Familiar Lifestyle
- Numerous Immigration Options
- No US Corporate Tax
- Tax Free Rollovers on Investment Real Estate

US - A Canadian's Best Tax Haven

The Tax Haven Increased Cost Side of:

- Investing
- Withholding Tax
- Estate Planning
- Major Medical Care
- Travel

The sum of all these hidden costs can easily be greater than any actual tax paid by living in the US where these costs are more easily controlled.

US - A Canadian's Best Tax Haven: Evidence

- Retired Canadian executive moved to US in 1994, current income C$747,000. Paid US tax of C$6,700 and used foreign tax credits of C$59,800. Estimated Ontario tax C$336,000 if he was still a Canadian resident, estimated Tax Haven Tax C$150,000 minimum.

- Retired Canadian businessman moved to US in 1996, current income C$521,000. Paid US tax of C$33,800 and used foreign tax credits of C$59,800. Estimated Ontario tax C$234,000, estimated Tax Haven Tax C$78,000. Still keeps large Canadian residence and spends five months a year with his family there.

US - A Canadian's Best Tax Haven: Evidence

- Canadian broker changed career and moved to US in 2002, income C$1,001,000. Paid US tax of C$26,600 and used foreign tax credits of C$283,300. Estimated Alberta tax C$380,000, estimated Tax Haven Tax C$135,000 minimum, but there would be no employment opportunities in most tax havens.

Questions

Resources

- The Border Guide: www.theborderguide.com
- Buying Real Estate in the US: The Concise Guide for Canadians: http://buyingrealestateintheus.ca
- KeatsConnelly Website: www.keatsconnelly.com
- The Border Guide Forum: http://forum.keatsconnelly.com
- KeatsConnelly E-Update Blog: http://eupdate.keatsconnelly.com

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Thank You!

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