



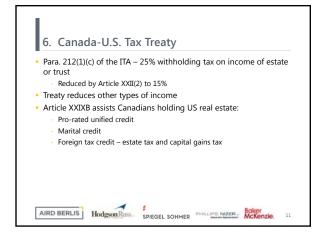
## Testamentary "Qualifying Spouse Trust"

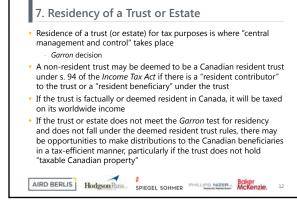
- Subs. 70(6) of the Income Tax Act
- Testator normally must be resident in Canada at time of death
   Canada-US Treaty exception Art. XXIX-B Para. 5
  - US resident testator and spouse deemed resident for purposes of subs. 70(6)
- Established by Will or otherwise on death of testator
- Property vests indefeasibly in the trust within 36 months of death
  Trust must be resident in Canada immediately after the property vests indefeasibly in the trust
  - Treaty exception apply to Competent Authority
- The spouse is entitled to all of the income during his or her lifetime
- Only the spouse is entitled to capital during his or her lifetime

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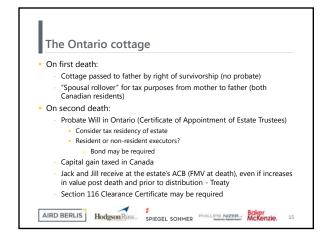


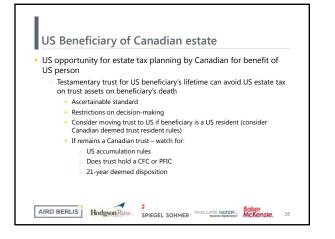














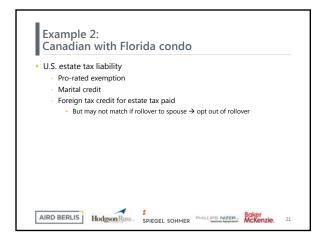


Americans Owning Canadian Real Estate				
Structure	Advantages	Disadvantages		
Direct Ownership	Single level of taxation	<ul> <li>Transfer of Ontario rival property to successive generation may generate Ontaria indivation and provide the one one-shot, on each problem required and estate administration tax payable</li> <li>Transfer of IC care property all generate IC property transfer tax ("TTT") and, if transferred upon death, probate feet a "Transfer of IC canonals (real) property generates Quadration I canodar of Quadrational (or Quadration and property) a disposition (or fearmed alignment) of Canadian require ta and reporting additations.</li> <li>Canadian reporting and tax additations upon disposition</li> </ul>		
Canadian Corporation	<ul> <li>Ability to transfer indirect ownership of Ontario real property to successive generations without AT or LTT</li> <li>Ability to transfer indirect ownership of BC real property to successive generations without PTT or probate fees (may change in the future for changes of "Greeign beneficial ownership" – for now monitoring if this is an issue)</li> </ul>	Veshy Canadian reporting and tax obligations for Canco Disposition (or determed disposition) or inheres of Canco Ia disposition of TCP, which attacts: <u>Canadian income tax and</u> <u>reporting obligations</u> May attract application of U.S. CFC or PRC rules		
USLLC	Ability to transfer indirect ownership of Obtaio real property to accessive generations without EAT or LTT EC - same as for a Canadian Corporation If more than 50K of assets of ULC are non-TCP, no Canadian taxation or reporting obligation upon disposition of membership interests	Yearly U.S. reporting and tax obligations for LLC and its members members If LLC lifes as a disception density, the Treaty will not apply and the membership interests of the LLC will be subject to Canadian taxation and, likely, US taxation, thus giving rise to double transition will be registered on title in Ontario/B (not Quebec)		



Structure	Advantages	Disadvantages
US S-Corp	Ability to transfer index: camerbig of Octator real apports to successive generations without EAT or TT II C - same (i.e. treated the same as a Canadian Corporation) CAN has subten to position that the <u>treats and the</u> same S - Corp. to Canadian real property should be exempt from Canadian taxtors A flow through their (length statistics or position and the same passed It A flow through the (length statistics or position and to same are passed A flow through the (length statistics or position and to same are passed It shareholders, who cannot normally be held liable for any fiscal obligations:	Yearly U.S. reporting and tax obligations for \$Corp Board meetings and shareholder meetings Shareholders multiple to the shareholder meetings and partnerships are generally excluded. However certain trusts, estates, and tax-exempt corporation are permitted to shareholder. Only one class of stock permitted
US C-Corp	Adily to intrader indirect ownership of Oxtoineral property to accessing mentions without SIX or UT     Gravitant of the strate at a Canadian Corporation)     Irrativ anglies to exempt any galaxies of these of a Corp that holds: Canadian real property from Canadian tatation Unlimited number of shareholders, institutional investors, corporations, partnerships and non-US shareholders permitted Profils are taken at the corporate rate at the	A stand-alone entity that is subject to separate taxation from its shareholders (so may give rise to double taxation to the extent integration is imperfect)     Yearly U.S. reporting and tax obligations for S-Corp Board meetings and shareholder meetings
ULC/LLC Structure	Ability to transfer indirect ownership of Ontario real property to successive generations without EAT or LTT     BC – same (b.c. treated the same as a Canadian Corporation)     If more than 50% of assets of LLC are non-TCP, no Canadian taxion or reporting obligation upon disposition of membership interests	Careful tax structuring required in order to ensure Treaty applies     Canadian/US tax/reporting obligations. Ongoing obligation to ensure that at least 50% of assets of LLC are not TCP (portfolio/US real RP)





Ownership Structure	Avoids US Estate Tax	Complexity	Other issues
Sole owner	No (1)	Low	Requires US State probate
Joint tenancy	No (1)	Low	Avoids US state probate on first death
Tenants in common	May minimize (1)	Low	Requires US state probate
Revocable trust	No (1)	Medium	Avoids US state probate
Canadian Corporation	Yes (*)	High	US federal tax rate on sale 21% + US state income tax in many US states; shareholder benefit; IRS look through if corporate form is disregarded; can avoid US state probate
Canadian Irrevocable Trust	Yes (*)	High	Settlor loses control; 21 year deemed disposition rule if not spousal trust; can avoid US state probate
Canadian Limited Partnership	Yes (*)	Highest	Does partnership meet business purpose test "Check the box" issues; can avoid US state probate
US LLC	No ( <sup>1</sup> )	Medium	Double tax, corporation for Canadian tax, flow thru entity for US tax (Form 5472); can avoid US state probate



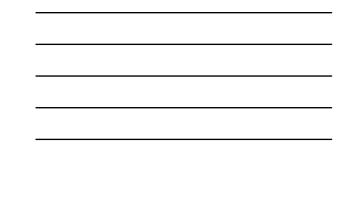
## Canadian trust to hold property

- Long-term solution; valuable property
- How it works
- Settlor transfer funds for purchase to the Canadian trust
- Spouse, children are trustees and beneficiaries
- Settlor can use the property with the permission of beneficiaries
  - But may need to pay rent, trust may have to file US and state income tax returns and withhold or pay US and state income tax
- Ascertainable standard
- 21-year deemed disposition for Canadian purposes
  - Independent trustee can encroach on all of the capital
- Beginning 2021 taxation year, must file Canadian T3 trust return even if no income

















## Donations by Canadians

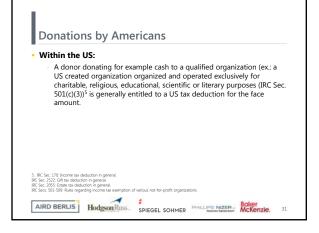
## To US charities:

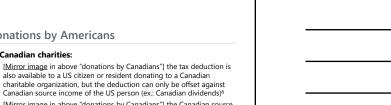
- The Canadian tax credit/deduction is also available to a Canadian resident donating to a US charitable organization, but the credit/deduction can only be offset against US source income of the Canadian (ex.: US dividends)<sup>2</sup>
- This US source income proviso does not apply if the donation is to a US college or university at which the donor or a member of the donor's family is or was enrolled<sup>3</sup>

 Andrés Xia paragrath 7 of the Canada-Lis Tau Convention. (Caution: readents: cannot claim this relief on their Quebec to return according to at nucley technical 2015 Quebec Court case. Installages Starfing which denied relief because Quebec is not a signatory to the Canada-Lis Tau Convention).
 Andrés Xia paragraph 7 of the Canada-Lis Tau Convention.

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[Mirror image in above "donations by Canadians"] the Canadian source income proviso does not apply if the donation is to a Canadian college or university at which the donor or a member of the donor's family is or was enrolled?

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Article XXI, paragraph 6 of the Canada-US Tax Convention
 Article XXI, paragraph 6 of the Canada-US Tax Convention

Donations by Americans

• To Canadian charities:





