

Bayshore Offshore Update – Q1 2009

April 2009



Bayshore Bank & Trust

Bayshore Bank & Trust Corporation, through its chartered operations in Barbados, offers a variety of financial services specifically designed for high net worth individuals and corporations. As a member of the Bayshore Group of Companies, Bayshore Bank has been serving investors for over a quarter of a century through its diversified financial operations. Bayshore uses a global network of strategic alliances to source “best-in-class” investment programs. Bayshore provides a true turnkey wealth management relationship from private banking facilities and investment management services, to trustee and corporate services.

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Canadian Immigration Trusts: US Citizens and Green Card Holders Can Benefit

Although Canada may not offer potential U.S. immigrants year-round sunshine and miles of white sand beach, Canada’s business and individual immigration policies, combined with its political stability and strong economy, have made the country an attractive jurisdiction for the immigration of many U.S. high net worth individuals and families. However, along with these advantages comes the distinct disadvantage of residing in a country that imposes on its residents a very high rate of income tax. This high tax rate, coupled with Canada’s policy of taxing Canadian residents on their worldwide income, causes concern for many wealthy immigrants, even U.S. citizens who have grown accustomed to similar domestic taxation policies.

A properly structured discretionary trust, commonly referred to as an “immigration trust,” in a tax preferred offshore jurisdiction like Barbados, Cayman Islands, Turks & Caicos Islands, etc. can provide a significant overall tax savings for the wealthy immigrant and his or her family.

The provisions of the Income Tax Act (Canada) (the “Act”) have the potential to exempt from Canadian tax income or capital gains earned or realized outside of Canada by the immigration trust for the first five years of the immigrant’s residency in Canada. Essentially, Canada’s income tax legislation offers new immigrants to Canada a tax holiday for up to five years.

Canadian Residents

Canada imposes taxation on all of its residents, regardless of their citizenship. The determination of whether an individual is or is not a resident of Canada, for income tax purposes, is a question of fact. An individual will normally be deemed to be resident in the jurisdiction where his or her ties are the strongest. However, irrespective of such ties, if an individual resides in Canada for a period of, or periods the total of which is 183 days or more, the individual will be deemed to be a Canadian resident, for tax purposes.

The general rule for taxation purposes in Canada is that a Canadian individual, resident in Canada, is required to pay

Canadian Immigration Trusts: US Citizens and Green Card Holders Can Benefit (cont'd)

Canadian income taxes based on his or her worldwide income. Subject to a number of exceptions and allowances, the intricate legislation which comprises the Act is drafted in such a manner so as to ensure that a dollar earned by an individual in Canada will be subject to essentially the same tax treatment as a dollar earned in a foreign jurisdiction.

To prevent an individual from deferring the taxation of income earned either directly or indirectly as a beneficiary of a non-resident trust, the Act contains specific legislation which effectively taxes a resident of Canada on the undistributed passive income earned by a non-resident trust in which he or she is a beneficiary. These non-resident trust rules are contained in the Foreign Accrual Property Income rules, which were introduced into the Act with the tax reforms of 1972 and closely parallel and complement the rules pertaining to the taxation of foreign corporations and their shareholders.

Taxation of a Non-Resident Discretionary Trust (the "Trust")

A trust is not a separate legal entity; it is a legal relationship. For tax purposes, however, a trust is deemed to be an individual and, therefore, taxed as a person separate and apart from its trustee. In determining whether the Trust is taxable in Canada, it must be determined whether or not the Trust is resident in Canada for the purposes of the Act.

In determining the residence of a trust, the Common Law position is well established, in that a trust is deemed to be resident where the majority of the trustees are located (see *Thibodeau Family Trust v The Queen*, [1978] CTC 539). Provided the Trust is properly structured and, for Common Law purposes, is not resident in Canada (which is generally quite easily achieved), it must now be determined when and if the Trust's income will be subject to taxation in Canada. If a Canadian resident beneficiary does actually receive income from a non-resident trust, the income will be included as taxable income during the year in which the income was received (it is important to note that capital distributions received by a Canadian resident beneficiary are not taxable in Canada). If the income of the trust is not distributed to the Canadian resident beneficiary, such income (which would include the Trust's share of "foreign accrual property income") will only be taxable in Canada if the non-resident trust is resident in Canada in accordance with Canada's Income Tax Act. Generally speaking, a discretionary trust that would otherwise be non-resident will be deemed to be resident in Canada for tax purposes if the contributor of assets to the Trust is a resident of Canada or becomes a resident of Canada, subject to the following very attractive exemption.

Provided the individual that has transferred funds to the Trust (i.e. the Settlor) has not resided in Canada for a period totaling 60 months, the Act does not deem the Trust to be resident in Canada for statutory purposes, thereby permitting the Trust to completely avoid the imposition of Canadian income taxes until such time as the Settlor has resided in Canada for 60 months.

Five-Year Tax Holiday

Assuming the settlor of the trust (the person contributing the property to the non-resident trust) has not resided in Canada for a total period of 60 months, the establishment of an immigration trust will allow for a tax holiday. In the situation where the settlor never immigrates to Canada but merely establishes a non-resident trust for the benefit of his or her children or any relations, or alternatively does immigrate to Canada, but stays for a period totaling less than 60 months, then the tax exemption could continue indefinitely. Accordingly, on their way to Canada, many immigrants will "drop off" their money and other income producing assets (i.e. shares of a company) in a preferred offshore tax jurisdiction and will not be required to pay Canadian income tax on any income or gains realized, resulting in substantial tax savings.

U.S. Taxation

Foreign trusts to which a U.S. taxpayer has transferred property are treated as "grantor" trusts for U.S. taxation purposes as long as the trust has at least one U.S. beneficiary. The income the trust earns is taxable to the grantor under the grantor trust rules. Grantor trusts are not recognized as separate taxable entities, because under the terms of the trust, the grantor retains one or more powers and remains the owner of the trust income. In such a case, the trust income is taxed to the grantor, whether or not the income is distributed to another party.

Conclusion

Although an immigration trust is more advantageous for a non-U.S. citizen/green card holder immigrating to Canada, an immigration trust can still be a very effective tax minimization tool for U.S. citizens/green card holders immigrating to Canada if their effective U.S. tax rate is less than their effective Canadian tax rate, which will generally be the case.

Until Canada's tax rates drop to a level on par with or lower than corresponding U.S. income tax rates, the use of an immigration trust should be included on any U.S. citizen's Canadian immigration checklist. With tax holidays like this in Canada ... who needs beaches?

Barbados Real Estate Expertise

For many overseas investors, real estate is often one of the first and most significant assets that they will purchase offshore. We understand the important role that real estate can play in our clients' lives and the attractiveness of owning a "dream home" in a beautiful jurisdiction such as Barbados.

Bayshore has established a relationship with West Coast Villas Sotheby International to assist our clients with their real estate needs in Barbados and throughout the Caribbean. Whether it is purchasing, renting or property management, the team at West Coast Villas has the experience and resources to help. Voted the Best Caribbean Realtor in 2008, the combination of local knowledge and an international network makes the West Coast team a great asset for our clients.

For further information check out their webpage at www.westcoastvillas.com or contact Richard Young, Managing Director, at (246) 432-5050.

Invest Barbados Launches New Magazine

On April 1, 2008, the Prime Minister of Barbados, the Hon. David Thompson, hosted a reception at Ilaro Court to celebrate the launch of the new Barbados International Finance & Business Magazine. Wayne Kirton, CEO of Invest Barbados, and the Prime Minister both spoke of Barbados' commitment to international business and the imperative of remaining a leading jurisdiction for international business.

The magazine can be downloaded by clicking [here](#).

Barbados Remains 3rd in Canadian FDI

Statistics Canada has release its statistics on Canada's foreign direct investment by jurisdiction. Barbados' FDI rose by \$13 billion to \$45 billion at year end of 2008. Barbados is the third largest recipient of Canadian FDI, receiving more than double the investment of Bermuda which ranks fourth. The UK, ranked second, only has \$54 billion of FDI. Not surprisingly, the United States remains the recipient at \$311 billion.

Barbados on OECD Whitelist

Following the G20 summit agreement earlier this month, Barbados has been placed on a list of jurisdictions that have substantially implemented the internationally agreed tax standards along with the UK, Canada, the USA and many of the member states of the European Union.

Barbados was one of only two caribbean jurisdictions to achieve this distinction (US Virgin Islands was the other) and reflects its longstanding commitment to sound regulation and compliance.

To view the full OECD list click [here](#).

Useful Links



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Our personal favourite, The Barbados Tourism Encyclopedia

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