Crossing the Border 1

An Introduction to Personal Cross-Border Financial Planning

The economic and tax environment of the United States and Canada has grown in breadth and complexity over the past few years and, with it, the need for comprehensive personal cross-border financial planning. The intent of such planning is to capitalize on the most satisfactory mix of savings plans, insurance coverage, investment vehicles, tax strategies, retirement plans and estate planning techniques available in each country. Applied to your own specific needs and goals, these cross-border planning opportunities can reap great financial rewards for you and your heirs.

Cross-border financial planning encompasses all the basic individual financial planning requirements of both Canada and the United States in the areas of net worth, cash flow, risk management, retirement goals, taxation, estate planning and investments. It analyzes each area according to your particular situation, and then weighs option against option, completes timely currency conversions, factors in your immigration status, examines applicable tax treaty rules, and develops a road map for you to follow to achieve your financial goals with maximum income, safety and tax savings.

One of the major difficulties inherent in cross-border financial planning is that the rules change depending on immigration status and in which direction the cross-border movement is going. For example, a winter visitor to the United States who marries a U.S. resident dramatically alters his or her financial planning options, and a new cross-border financial plan becomes necessary in order to take advantage of new opportunities and to avoid any costly mistakes. Figure 1.1 lists all the major immigration status options. All the important planning issues for each respective status category are discussed in detail in subsequent chapters of this book.

HOW LONG CAN YOU REMAIN IN THE UNITED STATES AS A VISITOR?

Few things cause more confusion and controversy among visitors to the United States than how long they can legally remain in that country without breaking any rules. The source of this confusion is primarily the fact that there are at least four sets of rules governed by various government agencies that deal with residency. These residency rules sometimes conflict, and adherence to one set of rules does not automatically mean compliance with the others. The four sets of rules that tell you how much time you can legally spend in the United States as a visitor are the following:

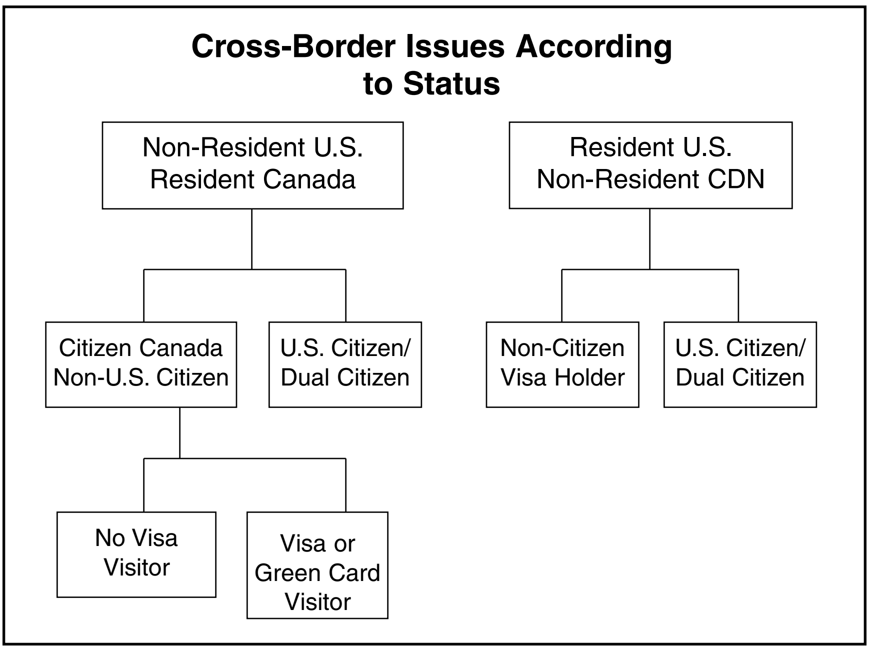

Figure 1.1

1. **The Immigration Rules.** Canadian visitors to the United States may enter the country without any actual visa being issued. However, in the post-9/11 World Trade Center/Pentagon terrorist attack era, this privilege may be changed or eliminated with current and pending rules from the new U.S. Department of Homeland Security. Review the next section of this chapter: Crossing the 49th Parallel Will No Longer Be Easy. Technically, Canadian visitors currently fall into the B-2 visitor category (or B-1 for those entering for business

purposes), allowing them to remain in the United States legally for up to six consecutive months. The B-1 business visitors can conduct business on behalf of their Canadian employers only and all compensation must come from the Canadian side of the border. Business visitors are likely to fall into one of the income-tax filing requirements discussed in Chapter 3, particularly if the U.S. entity for which they are working reimburses the Canadian company for services rendered and the business visitor expenses.

Extensions to the six-month limit, primarily for medical reasons, may be granted by applying to the Bureau of Citizenship and Immigration Services (BCIS, formerly the INS). However, BCIS is taking so long to process these extensions currently that even if you applied for the extension the day you arrived in the United States, it already would have expired by the time it was granted. If you leave the United States and re-enter at any border crossing, including those between Mexico and the United States, the six-month clock starts over again with each re-entry.

This does not mean you can legally keep leaving the United States and re-entering every six months perpetually because you want to change from a casual visitor to a resident. You will be stopped from re-entering the country if it appears that you may have taken up permanent residency, and you may be asked to show proof that you have not done so. Proof that you have not become a U.S. resident can be whatever the immigration official at the border decides, but it will likely include one or more of such simple things as your last three months' utility bills, a provincial driver's licence, a recent Canadian tax return or a property tax notice or lease agreement. It is also extremely important not to have anything in your possession that indicates any U.S. residential connections such as U.S. driver's licences, business cards with U.S. addresses, U.S. credit cards, etc.

New rules that came into effect in April 1997 and that were heightened by the 9/11 attacks give low-level immigration officials at U.S. borders greater powers. They have the right to act as prosecutor, court reporter and judge in order to refuse entry to the United States for up to five years or more to those persons they feel are not telling them the truth about why they want to enter the United States. Hundreds of Canadians have been refused entry to the United States under these new rules without the right to appeal, as U.S. border agents, spurred by the new law, become more vigilant. With the new technology that is being implemented at border crossings (discussed later in this chapter), it is very likely that all immigration officials will know how, when, and where you crossed the border every single time you did so for the past several years, regardless of which direction you were going. Chapter 7 provides further direction for those Canadian visitors who wish to become green card holders, technically known as legal permanent residents of the United States. It also discusses other, less permanent visas.

2. **The Income Tax Rules.** Generally speaking, a person will be classified as a U.S. resident for tax purposes if he is regularly present in the country for more than four months each year under the "substantial presence test" detailed in Chapter 3. Note that the number of days present in the United States need not be consecutive. An individual can be deemed a resident of the United States for tax purposes, although he may not have any right to remain in the country under the immigration rules. Thus a person may become subject to income tax in the United States on his world income without having the right to remain legally within its borders for more than six months as a visitor. Consequently, it is much easier to become a resident of the United States for tax purposes, as noted in Chapter 3, than to become a permanent resident under immigration rules as explained in Chapter 7. It is also possible to be a resident for tax purposes of both Canada and the United States at the same time, with the Canada/U.S. Tax Treaty providing the tie-breaker rules to settle this issue. Article IV of the treaty has four separate rules or tests to determine residency. You need pass only one of these tests, as taken in the order listed, to past the residency test. If, after applying the four treaty tests, it is still unclear whether you are a resident of Canada or the U.S., a competent authority consisting of a panel of Canadian and U.S. tax officials make the final determination. Canadian Customs and Revenue Agency (CCRA) has a critical rule that states that once you are a treaty resident of the U.S., you are automatically considered a non-resident of Canada for tax purposes, and you could be forced to go through a Canadian tax exit with all its consequences. (See Chapter 8 for more details.)

3. **The Estate Tax Rules.** What estate tax is and how it applies to non-residents is covered in detail in Chapter 4 and in Chapter 8 for U.S. residents. Unlike income tax and immigration, there is no clear set of rules of residency for estate taxes. Residency is based on a series of facts and circumstances. Some of the factors that determine residency or "domicile" for estate tax purposes are the relative size and nature

of your permanent homes in Canada and the United States; the amount of time spent in each country; your immigration status in the United States; written declarations on such documents as wills or tax returns; the locations of your significant assets and important papers, and your personal, family and business connections. Generally, Canadians who are clearly visitors to the United States, have no U.S. green cards and whose intent is to routinely return to Canada each year could not be considered to have given up domicile in Canada, and would not be subject to American estate tax on their worldwide assets. Court cases in which the IRS has challenged a Canadian winter visitor's estate by attempting to tax worldwide assets of the deceased have failed. The IRS was unsuccessful in those cases, because the deceased must have shown a clear intent to give up one domicile for another. A 2003 U.S. Internal Revenue Service (IRS) ruling stated that a Canadian living in the U.S. on an L-1 visa (see Chapter 7 for details on how an L-1 visa works) could be considered domiciled in the U.S. for estate-tax purposes, even though the L-1 visa would expire after a maximum of seven years and the Canadian would have had to move back to Canada.This ruling appears to be a liberal extension of these domicile rules in a similar manner to the income tax rules that may determine you to be a resident of the U.S. for income tax purposes, without any legal immigration status to allow you to stay in the U.S. Visitors to the United States may still be subject to the non-resident estate tax on their U.S.-located assets. This will be explained in greater detail in Chapter 4.

4. **The Provincial Medicare Rules.** These sets of rules are unique because they act in direct opposition to the tax and immigration residency rules by stipulating that you cannot be away from your home province for longer than a specified period of time. To remain eligible for provincial medicare, most Canadian provinces require that you must be present in the province for a minimum of six months a year and have a permanent residence available to you there. In 1999 Ontario added a thirty-day grace period, allowing someone to be out of the province for 212 days a year without affecting his or her Ontario Health Insurance Plan (OHIP) coverage. Newfoundland allows its residents to stay out of province for up to eight months in twelve before they lose coverage. Your medicare coverage depends on the amount of time you spend out of province, which includes the time you spend in other provinces as well as out of the country. In most provinces, once you've lost provincial medicare, you have to wait three months as a returning resident to reinstate your coverage.

(Alberta has no waiting period for coverage to start for returning residents.) For those moving to the United States, your provincial medicare coverage generally ceases within thirty days of your leaving Canada, and in some provinces it ceases at the end of the month in which you leave. Check with your local medicare office and plan accordingly so you don't have any gaps in your coverage.

We are often asked, "How does a particular government department responsible for enforcing any of the above rules know how much time you are spending out of your province and where you are spending your time?"

The fact of the matter is they do not always necessarily know, or need to know. Instead, they pass the burden of proof on to you by asking you to declare, under penalty of perjury, that the facts you present regarding your travel itinerary are true. As discussed below, you should also remember that we live in a computer age in which information is easily stored and retrieved. This information is being shared by various government agencies and government-owned corporations more and more.

CROSSING THE 49TH PARALLEL WILL NO LONGER BE EASY

The time when Canadians and Americans could be confident of crossing the Canada-U.S. border with a wave and a smile or by producing a simple, valid driver's licence are numbered. Under the U.S. Patriot Act, all persons crossing the border, whether leaving or entering the U.S., soon will be required to have an ID with a biometric identifier. These biometric identifiers may be fingerprint scans, retina or iris scans, or even face-recognition scans. This system is called US VISIT (United States Visitor and Immigration Status Indicator Technology). Experimentation is ongoing as to which biometric identifiers will provide the most security at the least cost without severely impeding those crossing the border. Visitors to the U.S. who arrive at a border entry point with no biometric IDs can expect to be photographed, fingerprinted or eye scanned and given a temporary ID card before they are allowed to enter. This act is scheduled to become effective in 2004 on a limited basis at major border entry points and at all entry points by the end of 2005.

Considering that Canadians annually make more than 20 million same-day trips to the U.S., this program, as one might surmise, is massive, technologically complicated and extremely expensive. Many of the biometric standards have yet to be worked out by the U.N. agency that sets travel standards so that the biometric identifiers can be incorporated into passports. Canada and the U.S. are working out programs for frequent border-crossers under similar rules to current Nexus programs, by which frequent travelers complete special forms, go through background checks and pay an annual fee to go through fast lanes or lines at the border by swiping ID cards and doing a fingerprint or retina scan at a kiosk, without needing even to talk to a border agent. The billions of dollars of imports and exports that go over the Canada-U.S. border daily are also targeted by a program called FAST (Free and Secure Trade) as a way of expediting the passage of pre-cleared commercial trucks to ensure the border remains secure but open for business.

Behind the scenes of the new Patriot Act will be many immigration agents with very advanced computer systems that will attempt to identify every individual against known data from airline and ship manifests to weed out potential terrorists before they arrive at a U.S. entry point. Visitors in general will be pre-profiled as to their potential security threat, so border personnel can focus on those travelers who score high in the risk-profile score. Where you might fit into this profile system will be kept secret, but you can greatly lower your risk profile and help expedite your border crossings if you do such things as join a Nexus program, travel on a valid passport, pay for airline tickets well in advance with a well-established credit card, travel with other people with an equally low profile, and if traveling across the border by car, ensure your auto registration matches yourself and your place of residence. Another issue to watch for, particularly in light of Canada's much more liberal marijuana laws, is having a clean criminal record, as criminal data bases are now integrated into the profiling system. Minor marijuana convictions that are misdemeanors in Canada may be considered felonies by U.S. authorities and therefore bar you from entering the U.S. and/or obtaining a green card.

Even though the Patriot Act has set implementation deadlines, this system will likely take longer and cost more than expected to put in place. The bottom line is that once it is in place, cross-border travel will never be the same. It may, however, be more secure.

WHERE TO LIVE OR WINTER IN THE UNITED STATES

The nature of cross-border financial planning will often be determined by which U.S. state you choose to reside or vacation in. This guide is not meant to provide you with a visitor's bureau brochure about which Sunbelt state is the best, but it examines some of the major tax implications of the most popular Sunbelt states: Arizona, California and Florida. In Appendix B, we will provide tax rates and other technical data on these and another popular state, Hawaii. The reasons that Arizona, California and Florida are popular with Canadians can be summarized in a collection of comments from long-time residents or visitors to one or more of the three states:

ARIZONA

- Offers the most sunshine of almost any populated area in North America. Expect clear skies nearly 85% of the time, and an annual rainfall of 6 inches (15 cm) in the desert southwest. Winter daytime temperatures range from 65° to 85°F (18° to 30°C) in the Phoenix and Tucson areas.
- Great for people with arthritis because of the dry climate. Not so good for allergy sufferers, since something is always in bloom.
- Golfers' paradise. There are more than 200 golf courses in the Phoenix area alone that are open 365 days a year.
- Geographically diverse state from the Grand Canyon to mountain high country to Sonoran desert. There is decent snow skiing in northern parts of the state during winter, and plenty of year-round water sports on the numerous man-made reservoirs and lakes. Arizona has the most boats per capita of any state in the U.S.
- Arizona has a relatively kind tax regime. In a 2003, very in-depth national survey of all fifty states, completed by *Bloomberg Wealth Manager* magazine, Arizona scored an A- , considering all forms of taxes combined, including state income, sales and property taxes. Arizona is a very tax-friendly state to Canadians, and if you take into consideration this fact and the special tax credits for Canadian taxes paid, Arizona would likely have been rated A+ on the Bloomberg survey had the survey included Canadian issues.
- The most frequently mentioned drawback about Arizona is that if you choose to stay in the Phoenix area during the summer, you can face average daily high temperatures of over 100°F (38°C). However, popular retirement communities like Prescott in the central part of the state offer four distinct seasons (although snow is rare) and an ambience not unlike that of a small town in New England.

- Arizona has one of the lowest unemployment rates in the country with plenty of opportunity for permanent or part-time employment in all areas of the economy.

CALIFORNIA

- Plenty of sun and ocean. Temperatures vary considerably from the coast to the inland desert, with the coastal areas having less extreme temperature changes because of the moderating effect of the Pacific Ocean. The Palm Springs area has a climate almost identical to that of southern Arizona.
- Major man-made and natural tourist attractions abound, such as Disneyland, Hollywood and Big Sur.
- The ocean provides plenty of opportunity for sailing, fishing and whale watching.
- Geographically diverse state from the miles of spectacular coastlines to the mountains, farmland, vineyards and desert.
- The major drawback of this state is its population, which is greater than all of Canada's. In the past decade, it has seen more than its fair share of earthquakes, floods, mudslides and wildfires. California is also noted for its high cost of living and relatively high taxes.
- California scored only a D+ on the 2003 Bloomberg survey. It is also not very friendly taxwise to Canadians who have assets and income from Canada. Perhaps the recall-elected "Terminator" Governor of this state can improve this score.
- For those seeking employment in the computer industry, Silicon Valley, near San Francisco, although greatly diminished after the dot-com bust of the early 2000s, remains a great innovative computer technology centre.

FLORIDA

- Very mild climate with a minimal difference between winter and summer temperatures, 70° to 90°F (20° to 32°C) on average. Expect plenty of rain year-round, and high humidity during summer.
- Provides two surprisingly different coasts, the Atlantic and the Gulf. Each has miles of beautiful beaches, islands and keys and all the year-round water sports that go with them.

- Like California, major man-made tourist attractions such as Disney World, Universal Studios and Cape Kennedy are located there.
- Florida has no personal income tax but has a small intangible personal property tax. It rates an A- on the Bloomberg survey, the same as Arizona, and is just as Canadian tax friendly .
- It's easy to drive to Florida from Ontario, Quebec and the Maritimes.
- This state offers the most services for Canadians. It has several radio and TV stations broadcasting Canadian news in both French and English. In addition, it has a good distribution of Canadian dailies.
- The major complaint about Florida seems to be that it is getting too crowded — particularly on the Atlantic coast, and its hurricane season.

Nevada, Washington, New York and Hawaii, other popular states with Canadians, received scores of A+, A, D- and B+ respectively on the *Bloomberg Wealth Manager* magazine survey.

POPULAR CROSS-BORDER MISCONCEPTIONS

One of the primary purposes of this book is to dispel many of the popular misconceptions Canadians have about living, visiting and investing in the United States. Some of the more common misconceptions are:

- **You lose money changing Canadian dollars to U.S. dollars!** No, there is no loss in exchanging one currency for another, other than the commissions you pay as a transaction cost. You don't make a profit changing U.S. dollars to Canadian dollars either. See Chapter 2 for a more complete explanation of this popular misconception.
- **Canada has no estate or inheritance taxes!** Wrong — Canada's deemed disposition tax on death on RRSPs or RRIFs and appreciated property can be as high as 50%. Many provinces also levy significant probate or estate administration fees. For a combined husband and wife estate of less than $4,000,000, Canadian estate taxes are frequently much higher than those in the United States. Only about 1% of the population in either Canada or the U.S. would have estates greater than this amount. See Chapters 4 and 8 for further details on this tax.

- **The 1995 amendment to the Canada-U.S. Tax Treaty eliminates the U.S. non-resident estate taxes.** No, some Canadians are actually worse off under this new treaty, but many are unaffected by the new rules. These rules are much more complex than the old rules, so a new level of understanding is required to determine if you are any better off. See Chapter 4 for the real scoop.
- **RRSPs can be left alone if you move to the United States!** Leaving your RRSPs in Canada when you move to the United States can create many potentially costly tax problems, and you may miss opportunities to withdraw them at no or very low tax rates. Chapter 8 will discuss how to remove your RRSPs at very low or even no net income tax, once you have taken up residence in the United States.
- **Canadian exit tax is too high for you to leave Canada.** The CCRA does impose a deemed disposition tax when exiting Canada to go live in another country. However, this tax is not an additional tax; it is tax one would normally pay if the appreciated asset were sold. The CCRA allows you to defer any tax that might be due upon exit to the date the asset is actually sold. The CCRA may require collateral for this tax deferment but also requires that you pay no interest on any tax due, so you get the equivalent of a interest-free loan. In addition, as noted in Chapter 8 and Chapter 12, proper planning before you leave Canada can help you avoid this tax altogether.
- **You will earn lower rates of interest investing in the United States!** Canadian banks are paying slightly higher rates on term deposits and GICs once again. However, overall diversified investment portfolios earn about the same rate of return for a similar level of risk in both Canada and the United States. Chapters 6 and 10 provide further insight into this misconception.
- **Wills are all you need for a complete estate plan!** Wills are very necessary, but there are more effective estate planning vehicles, such as living trusts and living wills, that may provide for lower estate settlement costs and better estate management. See Chapters 4 and 8 for further explanation.
- **Investing in the United States means you must file U.S. tax returns!** No — there are a large number of investments you can put money into in the United States that are exempt from taxes and any filing or reporting requirements. Chapter 6 lists the investments that are exempt from U.S. taxes for non-residents.

- **You can't be a citizen of Canada and the United States at the same time!** Wrong — dual citizenship is possible and has been for several years. Chapter 7 explains dual citizenship status.
- **You lose your CPP/QPP and OAS by moving to the United States!** No, you keep all these benefits, and in reality you will likely keep much more of your Canada Pension Plan/Quebec Pension Plan and Old Age Security after taxes once you have become a resident taxpayer of the United States. Chapter 8 provides the calculations to show you some of the tax savings available on CPP/QPP and OAS when a Canadian moves to the United States. You will not be subject to the OAS clawback if you are a U.S. resident, regardless of your income. You can also double dip and qualify to receive CPP/QPP, OAS and U.S. Social Security payments with good cross-border planning. See Chapter 11 for more details.
- **Medical insurance is too expensive in the United States!** Some U.S. health insurance is expensive; however, those under 65 can obtain very good coverage with high deductibles for less than $250 per month for up to a $2-million limit of coverage, depending on an absence of pre-existing conditions, age and other factors. Those over 65 are usually eligible for U.S. Medicare, at no or reasonable costs. Chapters 5 and 11 provide further details for those needing health insurance in the United States.
- **Investments in the United States are riskier than in Canada!** No, the same rules of prudent investing apply in both countries. Because there are more investment choices in the United States, there can be greater opportunity to choose an inappropriate investment. Howerver, this greater selection also allows prudent investors to find a greater number of safe investments in the United States at lower costs, which can actually help lower risk.

WHAT IS THE CANADA/UNITED STATES TAX TREATY?

One of the most important documents for the protection of a Canadian's financial assets in the United States is the Canada-U.S. Tax Treaty. Most Canadians, however, are completely unaware of its existence and the benefits that it gives them. Even though tax planning is an important part of cross-border planning, it is my experience that few financial advisors on either side of the Canada-U.S. border have ever cracked the cover of this treaty on behalf of their clients. They tend to focus instead on the tax rules of their own individual countries.

Canada and the United States signed their first full tax treaty in 1942, with amendments in 1950, 1956, 1966, 1980 and 1994. The most recent amendment was written in 1994 and 1995 and took effect in 1996. New treaty negotiations commenced in October 1998 to discuss unresolved issues in the 1996 amendment. Some minor amendments to the treaty were finalized in late 2000, but have yet to be ratified by both governments. The tax treaty is the most important business treaty for both Canada and the United States. Millions of Canadians and Americans are affected by this agreement, and as long as Canada and the United States continue as each other's major trading partner, its impact will only increase.

The Canada/U.S. Tax Treaty attempts to accomplish the same goals as any tax treaty — the prevention of tax measures that may discourage trade and investment, reaching a common ground on the taxation of non-residents to avoid double taxation on the same income, and to protect the domestic treasury. To a large extent the Canada/U.S. Tax Treaty has accomplished these goals, as long as one embarked on extensive cross-border planning. Changes in domestic tax rules in the area of non-resident estate tax in the United States, which took effect in 1988, prompted a new round of treaty negotiations that began in 1989 and concluded in 1994 with several technical corrections in 1995.

The two countries negotiated an estate tax article that was added to the existing treaty. For some people this will resolve the potentially high non-resident estate tax and/or capital gains tax that Canadians face if they hold U.S. real estate and stocks. The U.S. non-resident estate tax and the effects of the latest treaty are covered in greater detail in Chapter 4.

Up until 1996, Canadian winter visitors were able to use the Canada/U.S. Tax Treaty protection by default, without having to make any active filings or declarations. Current regulations now require that formal statements be filed with the Internal Revenue Service (IRS), forcing Canadians who spend four to six months in the United States to become more aware of the treaty and how it can help them if they do not wish to be taxed on their world income in both the United States and Canada. Chapter 3 has been designed to show you who must file returns or statements in the United States, and under what circumstances these returns must be filed.

The Canada/U.S. Tax Treaty is one of the most important tools used in cross-border financial planning for two key reasons:

- The terms of the treaty take precedence over almost all the Canadian Income Tax Act (ITA) rules in Canada and the Internal Revenue Code (IRC) tax rules in the United States. It is an important trump card to play at appropriate times when doing cross-border planning.

- The terms of the treaty seldom change. The Canada/U.S. Tax Treaty has been amended only six times in its more than sixty-year history and can be relied on to a much greater degree for long-term planning than either the ITA or the American IRC. The ITA and IRC are subject to constant revision without notice and are affected by annual budgets, bipartisan politics and election campaigns.

Take a look at Figure 1.2 for an illustration of how the treaty is structured.

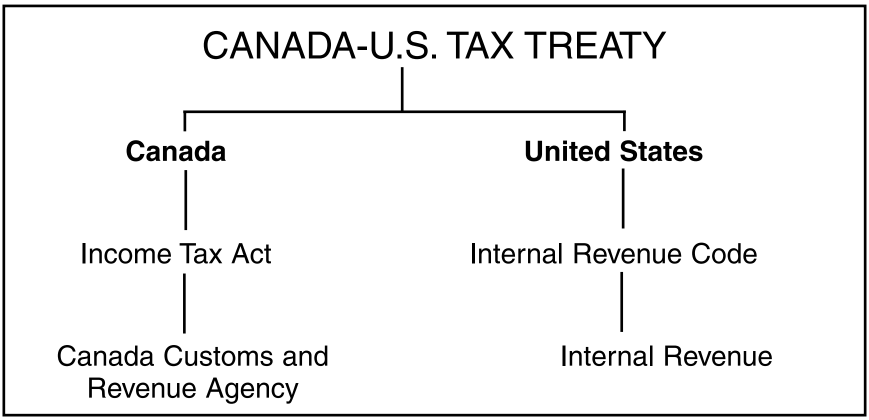

Figure 1.2

CROSS-BORDER Q&A

RULES GOVERNING U.S. RESIDENCE

I am a Canadian, female, 48 years old. I have been in Florida since September 2001 and intend staying here permanently if all problems can be solved. Unfortunately, I do not qualify for a green card. I do have a Social Security Number. I intend to cross the border every six months to fulfil Canadian legal requirements. My health insurance terminates as of March 26, 2004, and most American health insurance companies require you to be a permanent resident.

Problem 1: *Is health insurance possible to attain? If so, could you please recommend an insurer?*

Problem 2: *Am I considered a full-time resident?*

Problem 3: *My car has Ontario plates and registration. Am I better returning my car to Canada and buying one here or can I change the plates and registration here? What does it entail?*

Problem 4: *Do I need specific documents from Canada to obtain car insurance in Florida?*

Problem 5: *I would like to buy a house in Florida with a friend. What must I do to ensure my heirs have no problems?*

— Susan G., Kissimmee, Florida

Problem 1: This can be solved through the use of either a U.S. health insurance carrier who requires that you have only a U.S. address or using a non-U.S. insurance company such as Lloyd's of London or a Danish company called Danmark International Health Insurance.

Problem 2: This problem has a yes, a maybe and a precautionary answer depending on which perspective you are looking from. You would be a resident of the United States for tax purposes since you will be spending more than 183 days there. For insurance purposes, the answer is a maybe, because each company has its own definition of what constitutes a resident, but most require legal U.S. residence. For immigration purposes, you would likely be classed as an illegal alien since your intent is to live in the United States full-time without a green card or visa. Simply leaving the country for a short time every six months to renew your visitor status does not mean you are escaping the need for legal immigration status. When you leave the United States and attempt to re-enter as a visitor, the U.S. immigration official can simply refuse you entry for five years or more if he or she thinks you are living in the United States permanently without proper status. Because of the things you are trying to do, such as buying U.S. health insurance, a car and a house, you have all the makings of a resident, not a visitor, and effectively would have to mislead the immigration officials to gain entry as a visitor when you are in fact a resident. Purposely misleading an immigration official is considered more serious than being an illegal alien. You should speak to a good immigration attorney as soon as possible.

Problem 3: There is nothing preventing you from selling your car in Ontario and buying a new one registered in Florida. However, there are numerous regulatory hoops you need to jump through in Florida to import a Canadian car into that jurisdiction.

Problem 4: This depends on which insurance company you talk to, but most will require that you provide proof of a clean driving record and a valid Florida driver's licence.

Problem 5: If you wish to keep your half of the house separate from your friend's in the event of your demise, it would likely be best to register the property as Joint Owner as Tenants in Common. This will allow you to transfer by will your share of the residence separately to your respective heirs. You should also have a valid Florida will. Before you go into a Tenants in Common situation, you need to seek some professional advice so that you understand it fully and weigh it against other alternatives.

U.S. RESIDENCY HAS MANY OBLIGATIONS REQUIRING CAREFUL FINANCIAL PLANNING

I am writing to you on behalf of my aunt who is a citizen and resident of Canada. For a number of years she was a United States resident with a green card that was reissued to her. Is she eligible to stay in the United States for more than six months? Six months only is required by Canada, but will having a green card entitle her to a longer stay?

— R.J., Glendale, Arizona

If your aunt has a current, valid green card, she is able to stay in the United States for as long as she likes. The green card confers legal permanent residence status. There are many U.S. tax obligations of green card holders that your aunt needs to get in compliance with if she wishes to keep the green card. A good cross-border financial planner will be able to review her situation and make appropriate recommendations on taxes, medical coverage, investment and estate planning. She does need professional help, as there are some complex issues to address.

SICK RELATIVE IS NOT ENOUGH TO JUSTIFY U.S. VISITS

I am a Canadian citizen living in Toronto, but for the past three years have spent some months with my sister here in Ormond Beach. Last year her husband passed away, and this year she has had a couple of bouts of illness which indicate that she should no longer live alone. She cannot afford a retirement centre. Three years ago we filed a petition for my immigration to the United States, but have been told that there is a ten- to fifteen-year wait for a visa to come through. I phoned BCIS recently and learned that their "six months in the United States" is six months per visit, so that theoretically I could go home *for a few days every six months and stay here indefinitely otherwise. Actually I am going home February 11 to 28. So technically, I could stay to the end of August.*

But the IRS is another matter. I worked in the United States for 26 years before returning to Canada to retire. Had I known then that I could get dual citizenship I would have done so. I now receive Social Security, income from small annuities from which 15% non-resident tax is deducted, and a little from an IRA. I also have U.S. Medicare Parts A and B. I file a T1 General in Canada and a 1040NR in the United States, which gives me a small refund. I have never filed a Closer Connection form, but will probably have to do so for this year. My Canadian income is limited to OAS and interest from about $120,000 in investments.

I talked with an IRS representative recently, and he suggested that I might be better off filing as a U.S. resident and staying on the six-month basis. But how does that affect my Canadian connections? Of course, OAS would be taxed, but Social Security would not. I won a condo in Canada and am buying a life-lease apartment there, so I do not want to stay here indefinitely. However, a few months more next year would be helpful. Can I do it without running afoul of the BCIS, IRS or Canadian authorities?

— F.R.B., Ormond Beach, Florida

Dealing first with the BCIS, you are technically correct that you can renew your six-month visitor's status by leaving the country and re-entering for another six months. However, every time you enter the United States, you must be prepared to justify why you are asking for a visitor status when in fact your intentions are other than those of a temporary visitor. Any entry to the United States when you tell the BCIS officials you are doing one thing and in fact are acting to the contrary is an illegal entry. Therefore, they can deny you entry if they have suspicions or evidence indicating otherwise.

With respect to the IRS, if you spend more than 183 days in a calendar year in the United States, you are considered a tax resident and are required to file a U.S. tax return on your world income. You then have to rely on the Canada-U.S. Tax Treaty to ensure you are not double-taxed on income sourced in one country but taxable by both countries.

There is some irony in the fact that complying with the IRS rules by filing required tax returns gives the BCIS clearly documented proof you are acting like a resident of the U.S. when you are not legally able to do so.