T & E PLANNING TIDBITS FROM CANADA AND FRANCE

CANADA: ISSUE SPOT

FRANCE: USUFRUCT AND LIFE INSURANCE

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Outline

I. Canada
   1. Introduction
   2. Cross Border Estate Planning
   3. Inbound Investment From Canada

II. France
   1. Usufruct 101
   2. French Life Insurance

I-Canada

I-1.INTRODUCTION

Canadian Tax—Basic Objectives

- Canadian Death Tax v. U.S. Estate Tax
- Exceptions—Canadian Income Tax
  - No capital gains on sale of primary residence—(1 year or more)
  - R.R.S.P (401K)--T.F.S.A.
  - Testamentary Trusts (Separate Taxpayer)
  - Capital Gains—Income. (1/2 The Highest Bracket)
  - Capital Dividend Account (Next Slide)
- Third Party Settlors/Grantors (Canada v. U.S.)
- Special Quebec Rules (Code Civile)
  - Conjoint
  - Independent Trustee

Canadian Tax—Basic Objectives & Issues

- Insurance/Capital Dividend Account--Private Corporations
- 21 Year Rule—Testamentary Trust
  - Some Exceptions

I-2. CROSS BORDER ESTATE PLANNING

CANADIAN/AMERICAN FAMILY

Treaty

- **Article XXIXB**
  - **Credit:** Canadian residents receive credit against Canadian capital gains tax for U.S. estate/state tax imposed on U.S. situs property. (Paragraph 6)
  - **Unified Credit:** Canadian residents receive credit based on total amount of estate tax payable x U.S. situs assets/Worldwide estate. (Paragraph (b)(2)
  - **Gift Tax:** No credit available. Canada—Generally, Capital Gains Tax.
  - **Marital Deduction/Spousal Trust:** Marital deduction granted to Canadian residents so long as same requirements are met for U.S. tax purposes. (Paragraph 3). Must forego QDOT.

Cross Border Estate Planning (Cont'd)

- **Spousal Credit (Canada)**: Automatic in Canada unless election is made otherwise
  - Spousal Trust Used As "Dead Hand" Control Technique=Marital Trust.
  - Tax Paid When Assets Distributed From Spousal Trust Based On FMV at Death of Second Spouse.
  - No 21 Year Rule

Structures

- **<u>ULCs</u>**
  - Why transparent?
    - Classification Rules—Not Per Se Corporation—No Single Owner Has Limited Liability (Also an eligible corporation)
    - Dividends paid to <u>U.S. resident</u> will not be eligible for reduced Canadian withholding tax rate. (25% instead of 5% to 15%)
  - FTCs are available (not available with QEF election).
  - Cost (Inelastic Supply)

Red Flags

- **RRSPs/T.F.S.A:** R.R.S.P. taxed at highest rate.
- Canadian Mutual Funds (P.F.I.C.s)
- Net Investment Income Tax
  - No tax credit

- P.F.I.C./C.F.C
  - Solutions? (ULCs/QEF Elections)
  - Expatriation?

Insurance—Canadian tax exempt policies will generally not meet U.S. standards

Distribution From Non-U.S. Trusts—U.S. Beneficiaries

If distribution is in excess of DNI, U.S. beneficiaries will be subject to the throwback rule

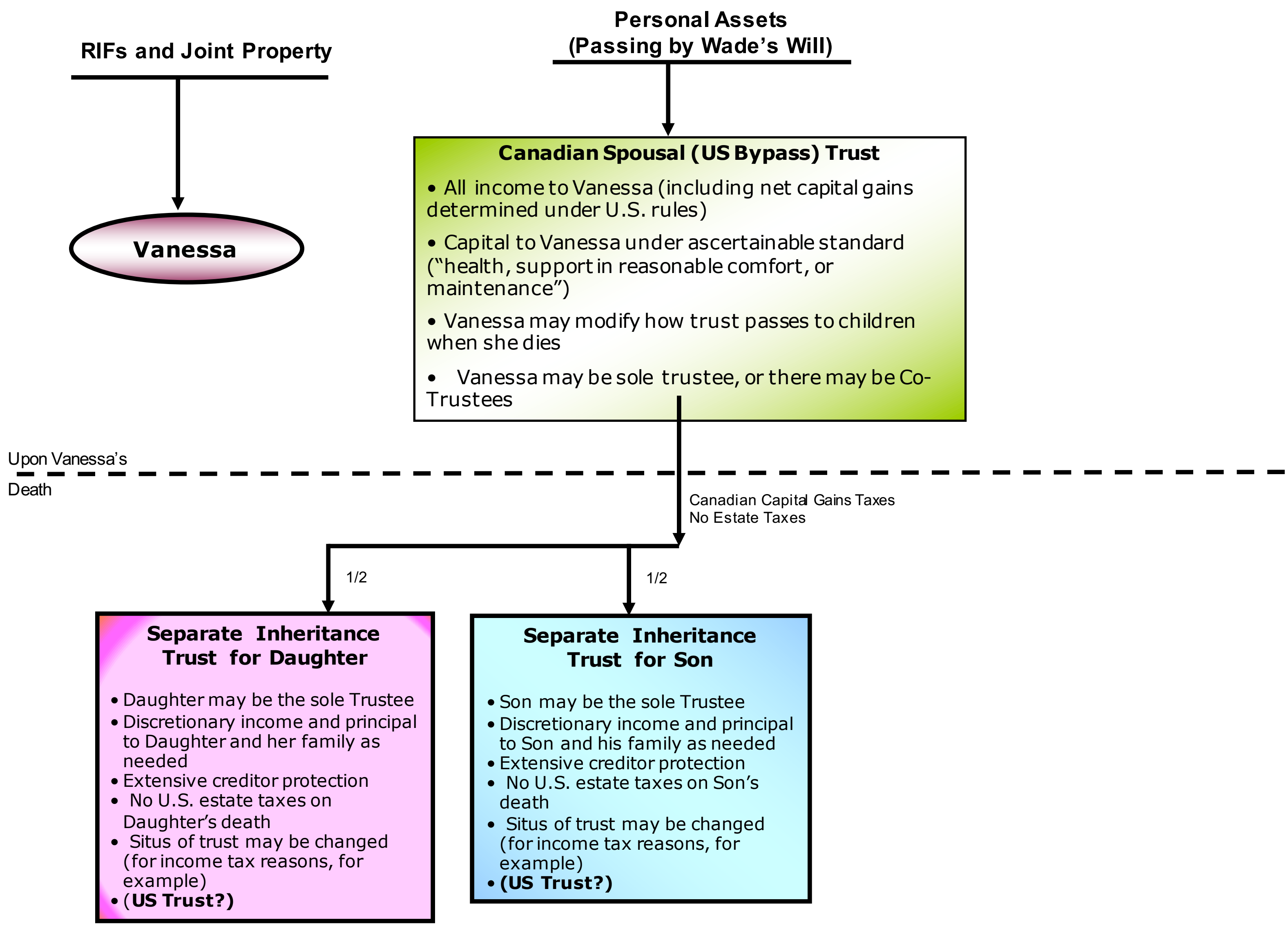
- Taxed at ordinary tax rates
- Beneficiary treated as receiving income in the year in which it was earned by the trust.
- Interest charge on the deferral.

Solutions?

- Distribution every year
- Estate (CDA)

Wade Wilson [Cdn] and Vanessa [US]

Estate Plan Design Assuming Wade Dies First



I-3.INBOUND INVESTMENT FROM CANADA

NON RESIDENT, NON CITIZENS

Structures

1. LLCs, LLPs, LLLPs (Different For Outbound Investment—No Treaty Benefits—Double Taxation)
2. Canadian Corporations—Shareholder Benefit Rule
3. Trust (21 Year Rule)
    - Bank Account
    - EIN Number
    - Attribution (Next slide)
    - Canadian Trusts (No HEMS Clause)
4. LPs

Attribution

- Attribution applies to **property income**, not to business income earned from business assets.
- If **Minor Child→** Income attributed, capital gains belong to minor.
- A related minor, for purposes of the attribution rules, is a child who is under 18 years old and does not deal with the individual at arm's length, or is a niece or nephew of the individual.
- If **Spouse→** Both income and capital gain are attributed back to spouse who made transfer.
  - Secondary Income Belongs To Transferee (Dividend income used to purchase additional property).
- The attribution rules do not apply to loans where interest is charged at a rate at least equivalent to the specified rate of interest. (1-2%).

II-France

II.1.France – Usufruct 101

- Definition: Division of ownership as follows:

II.1.France – Usufruct 101

- Definition (continued)

Usufruct

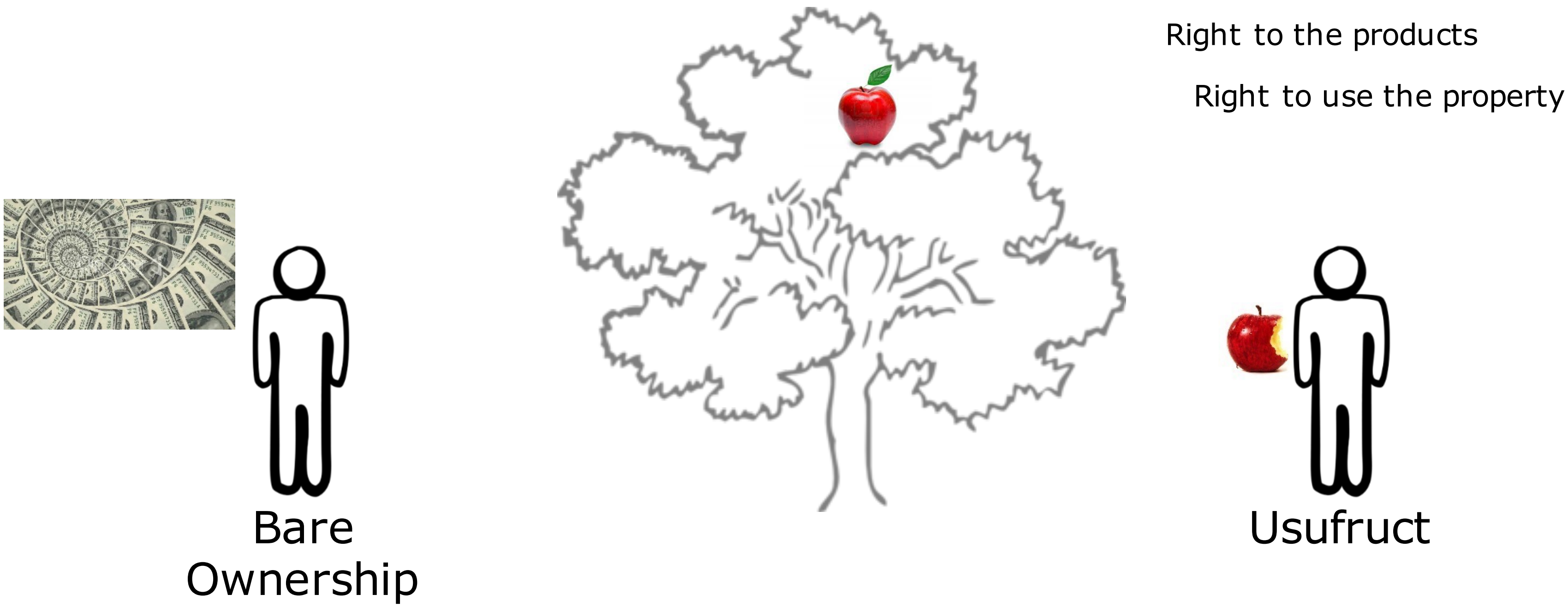
- Usus: the right to use the underlying property
- Fructus: the right to the products of the
  - underlying property

Bare Ownership

- Right to sell the property (while taking into account the rights of the usufruct holder)

II.1.France – Usufruct 101

- Definition (continued)



II.1.France – Usufruct 101(continued)

- Use for estate planning purposes in France
  - Common estate planning scenario:
    - Parents own property;
    - Parents gift the bare ownership of the property to their children;
    - Parents retain usufruct (i.e.: the right to use and the right to the products).

II.1.France – Usufruct 101(continued)

- Use for estate planning purposes in France (continued)
  - Tax benefits during lifetime:
    - Gift tax is lowered; criteria: donor's age at time of gift:

Age of Usufruct Holder at Time of Gift	Usufruct Value at Time of Gift	Bare Ownership Value at Time of Gift
Up to:		
21 years	90%	10%
31 years	80%	20%
41 years	70%	30%
51 years	60%	40%
61 years	50%	50%
71 years	40%	60%
81 years	30%	70%
91 years	20%	80%
Over 91 years	10%	90%
Caveat for termed usufruct	23% of bare ownership per 10-year basis	

II.1.France – Usufruct 101(continued)

- Use for estate planning purposes in France (continued)
  - Tax benefits during lifetime:
    - Gift tax basis is then decreased depending on the relationship b/w donor and donee. General rules:

Relationship to Donor	Basis Reduction
Child/Parent	€100,000
Spouse or Civil Partner	€80,724
Brother or Sister	€15,932
Niece or Nephew	€7,967

      - Every 15 years per donee
      - Specific rules exist for gifts from great-grand-parents to great-grand-children, for gifts from grand-parents to grand children, for gifts to physically disabled individuals…

II.1.France – Usufruct 101(continued)

- Use for estate planning purposes in France (continued)
  - Tax benefits during lifetime:
    - Gift tax is then assessed using the following rates in case of a gift from parents to children (common estate planning scenario):

Gift Tax Basis Range	Tax Rate
Less then €8,072	5%
€8,072 – €12,109	10%
€12,109 – €15,932	15%
€15,932 – €552,324	20%
€552,324 - €902,838	30%
€902,838 – €1,805,677	40%
Over €1,805,677	45%

II.1.France – Usufruct 101(continued)

- Use for estate planning purposes in France (continued)
  - Wealth Tax Aspects: The usufruct holder is subject to Wealth tax on the full value of the property (absent an agreement to the contrary);
  - Tax Benefits at time of death:
    - The usufruct automatically goes to the bare-ownership holder who thus becomes the title holder of the underlying property;
    - No additional estate tax due.

II.1.France – Life Insurance

- General set-up of a French life insurance policy
  - Parent takes out a French life insurance policy on Parent's life, for Parent's benefit and for the benefit of Parent's spouse or children should Parent pass away during the term of the policy;
  - Generally, an important lump sum payment is made upfront;
  - This payment is then invested by the life insurance company;
    - Either directly, in which case the guaranteed pay-out to Parent is the value of the investments at the time of withdrawal/death; or
    - Indirectly, through the mechanism of "account units". The amount of account units is guaranteed to the Taxpayer, not their underlying value.

II.1.France – Life Insurance

- French Income Tax Treatment
  - The accumulated income is not subject to income tax throughout the life of the contract, absent an early withdrawal;
  - The accumulated income can be exempt from income tax upon withdrawal after a legally determined holding period (generally 6 or 8 years).

- French Social Charges:
  - Depending on the applicable regime, they are either withheld throughout the holding period on the generated income, or upon withdrawal;
  - They are charged at a 15.5% rate

II.1.France – Life Insurance

- French Wealth Tax Treatment
  - General rule: subject to wealth tax;
  - Note: different regimes exist.

- French Inheritance Tax Treatment
  - Technically speaking, life insurance policies are not part of the deceased's French estate;
  - However, French Tax Laws still apply (inheritance tax provisions and other taxes – importance of nature for Treaty purposes)

II.1.France – Life Insurance

- French Inheritance Tax Treatment (continued)
  - Different Regimes exist, based on the age of the subscriber, the date of subscription and the date of the premium payments
    - Article 757 B of the French Tax Code
      - Requirements:
        - Policies subscribed after November 20, 1991;
        - Insurance premiums paid after the deceased reached age 70;
        - If in excess of €30,500;
      - Subject to inheritance taxes;
      - Note: the premiums paid prior to age 70 can be subject to article 990 I of the French Tax Code.

II.1.France – Life Insurance

- French Inheritance Tax Treatment (continued)
  - Regime of Article 990 I of the French Tax Code
    - Applies to those amounts not subject to article 757 B (i.e.; premiums paid by the deceased prior to reaching age 70)
    - Applies only to premiums paid as of October 13, 1998 if:
      - The insurance policy was subscribed prior to November 20, 1991; or
      - The insurance policy was subscribed after November 20, 1991, so long as the insured was not at least 70 years old at the time of the premium payments
    - Applicable tax rate:
      - 20% if beneficiary's taxable share is less then €152,500;
      - 31.25% for that amount of the beneficiary's taxable share exceeding €152,500.

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