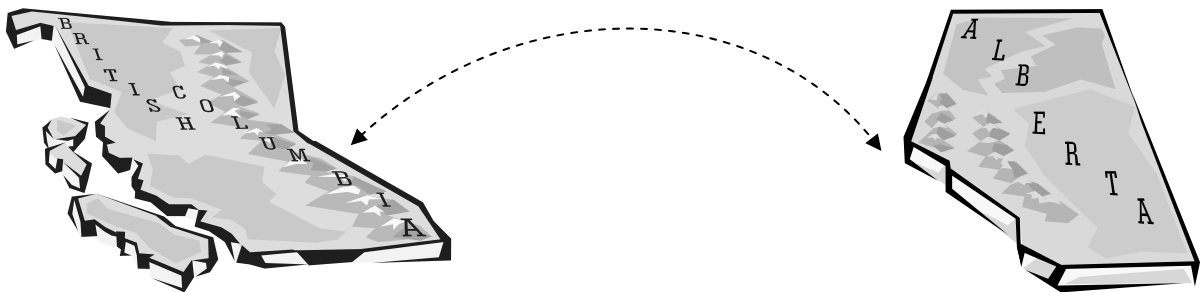


Cross Border Tax And Estate Issues For Alberta/British Columbia



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CROSS BORDER TAX AND ESTATE ISSUES FOR ALBERTA/BRITISH COLUMBIA

1. INTRODUCTION

British Columbia and Alberta share more than a common border. Residents of both jurisdictions often own property or have family in the other jurisdiction. Lawyers in British Columbia and Alberta involved in drafting wills and related documents or in advising clients on estate planning matters often need to consider the laws of the other jurisdiction to ensure that the planning is effective.

The common border also creates interesting tax planning opportunities.¹ The main beneficiaries of those planning opportunities have been residents of British Columbia planning to take advantage of the lower Alberta tax rates and probate fees.

This paper will discuss both of the above areas. First I will discuss the planning opportunities for reducing taxes and probate fees that are available for residents of British Columbia. Then I will review the different laws that apply to wills and other estate planning documents prepared in the two jurisdictions.²

2. INCOME TAX PLANNING

In many ways inter-provincial tax planning within Canada is similar to international tax planning. The objective is to have the income earned in a low tax jurisdiction. For tax planning within Canada, the jurisdiction of choice is usually Alberta because of its lower tax rates. In contrast to international tax planning however, until recently, Canada Revenue Agency (“CRA”) has not been very diligent in challenging inter-provincial tax planning. This lack of scrutiny is perhaps explained by the fact that the reduction of provincial taxes does not affect CRA’s tax revenues. However, recently we have seen CRA becoming much more aggressive in challenging inter-provincial tax plans. An example of CRA’s activity in this area is the increase that we have seen in CRA reviewing and challenging former residents of British Columbia who have started filing as tax residents of Alberta. Based on recent pronouncements by CRA, it is likely that we will see more assessments issued by CRA to prevent what it considers to be abusive inter-provincial planning.

1 All references in this paper to the “*Tax Act*” refer to the *Income Tax Act (Canada)* as amended

2 See paper called *Alberta-B.C. Some Cross-Border Issues* in Estate Planning and Administration Presented by Gail P. Black to the Wills and Trust Section Canadian Bar Association (Alberta-South) on November 12, 2003

(1) BASIC CONCEPTS

(a) COMPARISON OF BRITISH COLUMBIA/ALBERTA TAX RATES

The following is a summary of the top personal tax rates for British Columbia and Alberta for different types of income:

	<u>Alberta</u>	<u>British Columbia</u>
Dividends	24.58%	31.58%
Capital Gains	19.5%	21.85%
Salary and Interest etc.	39.0%	43.70%

As can be seen, the lower Alberta rates will result in tax savings on all types of income to the extent that the income can be shifted from British Columbia to Alberta. The difference in taxation is most dramatic for dividend income where the difference is 7.0%.

(b) ALLOCATIONS OF INCOME TO THE DIFFERENT PROVINCES UNDER THE TAX ACT

(i) SALARY AND INVESTMENT INCOME

Salary and investment income, such as interest, dividends and capital gains earned by an individual is taxed in the province in which the individual is resident on the last day of the calendar year. Thus, for these types of income it is irrelevant that the individual may have earned the income while residing in another province and it is also irrelevant that the source of the income may be in another province. The sole test is in which province was the individual resident on December 31st of the relevant year.

(ii) BUSINESS INCOME

Business income is taxed on the basis of a formula that allocates the income between the provinces. The formula looks at the gross revenue and salaries paid to employees in each province for the purpose of the allocation. For example, a partner of a law partnership operating in a number of provinces will have his or her income allocated amongst the provinces in which the partnership operates. The end result is that the partner will pay tax at a blended rate that takes into account the provincial tax rates in the provinces in which the partnership operates.