

# The Gazette

## **Avoid gift tax with cross-border trust**

Many issues have to be considered when buying or selling U.S. property

**PAUL DELEAN**

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Real estate in the United States, an underperforming mutual fund and income tax paid by installments were among the topics in the latest batch of reader questions. Here's what they wanted to know.

Q: "I own a home in Florida worth about \$200,000. Can I gift it equally to my three children? Can the deed make them joint tenants?"

A: David Altro, a Quebec notary and Florida attorney, says gifting it may not be the advisable course, since it will immediately trigger U.S. gift tax payable by you as the donor (presuming you are a Canadian citizen and resident). "A better proposal," he said, "would be to transfer title to a cross-border trust that you would own. No transfer or gift tax. Upon your death, your kids would inherit but without Florida probate, thereby avoiding the expense and delays of the probate procedures."

Q: "When my husband retires in the near future, we were considering buying a home in the U.S., where we could spend the winter months. What are the issues we need to consider? For instance, when paying for the home, are there any rules regarding transferring funds across the border? And what might the tax consequences be when selling the property?"

A: Transferring purchase money to the United States is not a problem, Altro said. Areas to look into before the decision, however, include U.S. estate tax, capital gains taxes, incapacity issues, Florida probate rules, and creditor and divorce-claims protection. Upon sale of the property, there will be a U.S. capital-gains tax on the net gain and Canadian capital-gains tax as well. "Good planning should result in a credit in Canada of the 15-per-cent U.S. tax against the Canada/Quebec rate of up to 24 per cent," he said.

Q: "I have investments in the RBC Canadian Short-Term Income Fund (formerly the Royal Mortgage Fund), both in an RRIF and an investment account. It was a good, conservative holding but the results for the last five years have been disappointing. My unit cost is \$10.72. What's the best way to go about selling an underperforming investment such as this?"

A: RBC Canadian Short-Term Income Fund shows an annual return for the five years ended March 31 of 3.2 per cent, which sounds puny, but actually is about average for the category. With interest rates low, short-term income funds - which make monthly payouts from mortgages and fixed-income investments - don't generate big numbers, although the return for the past 12 months, 4.79 per cent, doesn't look so bad in light of what's happened lately on equity markets. The good thing about selling it, if that's your choice, is that there are no deferred sales charges (since it's a no-load fund) and there'll be no capital gains owed, since it's trading now at roughly the same price you paid. Selling an underperforming investment is never easy, because it is an admission of failure, but professionals will tell you it's a necessary part of the investing discipline. Nobody's right all the time.

Q: "I'm 72, living on a pension, and recently received a statement from Revenu Québec saying I owed \$172 in interest because I did not pay my income taxes in (quarterly) instalments this year. I got a letter from them last year telling me to but I ignored it. I normally send them a cheque for about \$2,000 in April. I've never been asked to pay in instalments by the federal tax department. How can they get away with that?"

A: One of the irritants of living in a place with two distinct tax systems is that they each play by their own rules, and the taxpayer must adhere to both. In your case, the \$2,000 figure is key. Quebec has decided \$1,800 in net tax owing is the trigger for instalment payments. If you owed that much or more to the province for the 2006 and/or 2007 tax years, Revenu Québec probably will instruct you to start sending quarterly cheques. Daily interest is charged on every instalment not paid by the due date.

The Gazette welcomes reader questions on tax and investment matters. If you have a query you'd like addressed in this column, please send it to Paul Delean, Montreal Gazette Business Section, Suite 200, 1010 Ste. Catherine St. W., Montreal, Que., H3B 5L1, or by email to [pdelean@thegazette.canwest.com](mailto:pdelean@thegazette.canwest.com)

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