TOP 10 QUESTIONS for Canadian Real Estate Investors

At VSH CPAs we have served cross-border and international clients for more than 20 years with their strategy and compliance. This whitepaper focuses on the top 10 considerations to make for 2018 forward. We work with hundreds of investors on both sides of the border seeking to leverage their investments.

We are here for you as a resource, please do not hesitate to reach out with any questions.

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Ten Questions Canadians Should Ask Before Buying U.S. Real Estate

1) Who should own the property and how should it be titled? U.S. Real estate may be owned individually or through a partnership, corporation, trust, or combination of entities. In addition, property is often titled jointly with rights of survivorship or tenants in common. A number of factors, some of which are outlined in questions 2-10, come into play in determining how property should be owned and titled. Experienced cross-border attorneys and accountants can provide assistance in determining the ownership structure for your situation. For various reasons, we generally do not recommend Canadians own real estate through U.S. LLCs, LLLPs, LLPs or revocable trusts.

2) How can I protect my property from creditors and lawsuits? Proper insurance coverage is essential to protecting your assets. In addition, certain legal structures provide an additional layer of liability protection. Determining the level of liability protection needed is based partly on the property's value, use of the property, and your amount of personal assets. We recommend obtaining advice from your insurance agent and lawyer to make sure you are covered.

3) Am I purchasing the property for vacation, rental, or development? Knowing how you plan to use the property helps determine the ownership structure, how much liability protection is needed, and what tax filings are required.

4) Will the property be subject to U.S. federal and state income taxes? Property held personally and used solely for personal use will be subject to income tax on disposition. Rental and development real estate is treated as a trade or business and will be subject to annual income tax and filing requirements. In addition, depending on the locality, other taxes such as excise or capital taxes may apply. Generally, personal use real property may be rented up to 14 days per calendar year without triggering federal income tax implications.
Income tax rates vary between 10% – 50% depending on the amount of taxable income, how the property is owned, how long it is owned for, and the property's location. Forty-three states and many localities impose an income tax on individuals. Forty-six states have a corporate income tax. All localities have some kind of tax on real property, assets, or earnings.

5) What are my tax filing requirements? The tax structure and real property activity determines the filing requirements. Depending on your situation, income tax returns are due annually, 2½, 3½, or 5 ½ months following year end. Annual tax returns should be filed for all entities and individuals renting or developing property and also when the property is sold. There is a filing obligation even when expenses exceed income. Not filing risks losing the ability to use the deductions. In addition, a timely filed tax return is important to make certain tax elections that allow the property owner to avoid being taxed on gross income.

6) Will I be subject to U.S. estate tax after I pass away? U.S. estate tax (death tax) is based on the fair market value of assets less certain secured liabilities at the time of death. Non-U.S. persons are liable for U.S. estate tax on property located in the U.S. under the Canada-U.S. income tax treaty, non- U.S. persons are entitled to a prorated exemption based on the ratio of U.S. / worldwide assets multiplied by the amount that is allowed to U.S. persons. Currently a U.S. citizen can shelter up to $11.18 Million of assets from estate tax. Starting in 2018 certain ownership structures limit exposure to U.S. estate tax. Federal estate tax rates vary from 18% to 40%. Many states also have their own estate tax. This U.S. estate tax exemption is scheduled to sunset in 2021 when it is slated to revert back to 5 million. Each situation is different and anyone holding U.S. real estate should be aware of and plan for U.S. estate tax.F

7) Can I provide services in the U.S. related to my real estate investment? A non-U.S. person should consult an immigration attorney regarding what work they can perform in the U.S. Although there may not be restrictions on purchasing U.S. real estate, a U.S. visa may be required to perform certain services
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8) How will I pay for the property? Where the funds are coming from (i.e. separate or joint accounts, a related entity, borrowed funds, etc.), has various tax implications. When borrowing funds, it is beneficial for U.S. tax purposes to borrow from a U.S. lender. Generally there is no U.S. interest deduction when a non-U.S. individual borrows funds collateralized by Canadian real estate even if the funds are used to purchase the U.S. property. Various factors, including your U.S. credit history and down payment amount, will affect your ability to borrow funds from a U.S. lender. Before you locate a property to purchase, financing should be in place to ensure you don't miss a great opportunity.

9) What kind of records should I keep? All records related to property purchases, improvements, and sales should be retained for at least seven years following the U.S. filing deadline for the year of sale, assuming all income tax returns were timely filed. Supporting documents for income and business expenses should also be kept for three years following the deadline of the related income tax return. Supporting documents include Forms 1099 and 1042, bank deposit slips, receipt books, cash register tapes, invoices, and credit card slips. For more information, see http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Recordkeeping.

10) What are my future plans in the U.S.? Most of us don't have a crystal ball and don't know what the future brings us, but the extent you do know your future plans can really help in planning. Some structures offer more flexibility than others, and some are more conducive to becoming a U.S. resident. You may start with a vacation property in Arizona and end up with ten rentals in five states. If this happens, your U.S. real estate structure may need to be updated to meet your changing needs.
This list of questions is not meant to be inclusive. Conducting due diligence and finding the right professionals will help maximize your investing opportunities.
VSH is a dynamic and responsive full-service CPA firm located in the Barkley District of Bellingham. We look to proactively contribute ideas that cultivate the business success of our clients.

Clarity from your trusted International Advisors

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