

## **United States Estate Tax**

The US estate tax is applicable to US persons as well as non-residents of the US that own US property. For purposes of the US estate tax, US person includes a citizen or green-card holder resident in Canada under the Canada-US Tax Treaty.

A US person is subject to US estate tax on his or her worldwide gross estate. A non-resident is subject to US estate tax on only his or her US situs property. The most common examples of which are: US real estate, shares of US public corporations, debts owing from US persons and tangible property located in the US. US bank deposits are excluded. The level of the non-residents worldwide gross estate is important for determining the amount of the US estate tax exemption available.

Given the high rates of US estate tax and the fact that the tax applies to the gross value of an estate, as opposed to just any gain in value, it is important that an estate plan consider how to minimize US estate tax exposure. Where one or both spouses are US persons, planning to minimize US estate tax exposure becomes even more important.

Canada provides its residents with the ability to claim foreign tax credits (only federally) for US estate taxes paid federally and in a state. However, the quantum of the US estate tax can often far exceed the level of tax owing in Canada on the terminal return. This is made worse when assets such as shares of US public corporations are owned, since US estate tax is applicable but those gains are not US source gains for Canadian tax purposes.

When it comes to US real estate, exposure to US estate tax should be estimated before deciding on the appropriate holding vehicle. This exposure, taken together with the individual's expected holding period, will assist in choosing the appropriate ownership vehicle. The main choices are individual, partnership or trust ownership. The use of a single-purpose Canadian corporation is generally no longer effective after the Canada Revenue Agency announced in ITTN#31 that its administrative position of not applying a Section 15 shareholder benefit no longer applied.

To minimize US estate tax exposure, you should consider the use of spousal trusts, inter vivos gifts to reduce the value of ones estate, life insurance to fund the US estate tax liability, holding a non-recourse mortgage on US real estate and other available options.

The above is designed to help you identify possible instances of US estate tax exposure and to seek the appropriate professional advice.