CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

Could high net worth Canadians with US situs assets be subject to US estate tax?

The USA has three types of taxes that may apply on transfers of property. They are gift tax, estate tax and generation skipping tax. This is aside from any capital gains taxes that may be triggered on a transfer. Let's consider federal estate taxes only.

Canadians who are not considered residents of the USA and who own US situs assets may be subject to US estate tax on those assets when they die. The executor/estate administrator must file a US estate tax return when the value of US property exceeds $60,000 USD even if there is no estate tax owed.

US tax reform law doubled the federal basic exclusion amount for tax years 2018-2025. The basic exclusion amount went from an inflation adjusted $5 million USD to $10 million USD. The exclusion amount is scheduled to drop in 2026 to the inflation adjusted limit in force before 2018. This temporary provision was passed as part of the 2017 Tax Cuts and Jobs Act.

The inflation adjusted basic exclusion amount for 2018 was initially set at $10.18 Million USD. It is scheduled to rise to $11.4 Million USD in 2019. US federal estate tax is calculated on a graduated basis ranging from 18-40%. The tax liability is calculated before the application of credits that may reduce or even eliminate it. The unified credit on $10.18 Million USD is $4,417,800 USD.[1]

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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He annually provides 100's of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As an accredited Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

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The Canada-US Treaty permits a Canadian who is not a US resident, domiciliary, US citizen, green card holder or commuter to take advantage of the US federal basic exclusion amounts.

Now you may be thinking. The basic exclusion amount is pretty high for each individual. My US situs assets are well below the threshold. Why should I worry?

Let's look at Steve.

Steve is a Canadian resident, divorced and is not one of the individuals that may be caught under the definitions I just mentioned. He has no children. Steve has done well in life.

Steve's Major Assets	Fair Market value
Canadian Private Company shares	$10 Million
Canadian home	$3 Million
Canadian investment including RRSPs	$5 Million
US situs assets including Florida home, publicly traded US stocks and US listed exchanges traded funds(ETFs)	$2 Million
Worldwide asset value	$20 Million

For Illustration purposes only

Note: All Figures in USD

Steve dies suddenly in 2018. What kind of a tax bill could his estate face?

Steve's worldwide estate is valued at $20 Million. He is eligible for a prorated amount of the federal basic exclusion amount. Specifically, the estate tax calculation will include the fraction of his US situs assets divided by his worldwide estate value or 10% of the basic exclusion amount.

The value of Steve's US situs assets is greater than $60,000 USD. Here is what Steve's estate could be facing in terms of a US federal estate tax bill.

	Fair Market value
Steve's US taxable estate value	$2,000,000
Interim US estate tax $345,000 + ($1,000,000 x 40%=$400,000)	$745,000 (a)
Prorated US estate tax unified credit* ($2 Million/$20 Million x $4,417,800)	$441,780 (b)
Net US federal estate tax (a-b)	$303,220

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*In 2018, the unified credit prorated is US $4,417,800

Note: All Figures in USD

Steve's executor/estate administrator may be able to claim a foreign tax credit on Steve's Canadian income tax return against some of the US estate tax to reduce any Canadian tax payable that is attributable to those same U.S. situs assets, in this case, realized capital gains on US appreciated assets. The credit would most likely be federal only.

Individuals who may find themselves in similar situations, having substantial wealth and owning US situs assets may benefit from engaging with accredited advisors versed in cross border tax and estate planning matters.

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[1] Basic exclusion amount and unified credit are subject to computation and inflation adjusted amounts announced by the IRS. https://www.irs.gov

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