Canadians will still have to file U.S. estate tax returns even if Trump extends higher exemption amount

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PUBLISHED NOVEMBER 20, 2024

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There's tax relief available to Canadians who die owning U.S. assets but they have to file a U.S. estate tax return to get it.

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Canadians who die owning U.S. real estate or shares of U.S. corporations worth more than US$60,000 will have to file a U.S. estate tax return even if President-elect Donald Trump’s incoming administration extends legislation that doubled the U.S. estate tax exemption amount.

For 2024, the U.S. estate tax exemption amount for individuals is US$13.61-million, increasing to US$13.99-million in 2025. However, the amount will be effectively halved the following year to about US$7-million if no legislation is passed before the end of 2025.

“Only very rich Canadians will be faced with the prospect of paying U.S. estate tax – that’s how it is today and I predict it will continue to be like this after 2025,” says Kevyn Nightingale, leader of cross-border tax planning with Levy Salis LLP in Toronto. “But you still have to file [a U.S. estate tax return].”

When a Canadian who is not a U.S. citizen or green card holder dies owning more than US$60,000 in “U.S.-situs” property, they may have a U.S. estate tax liability for that property if the value of their worldwide estate is above the exemption amount in the year of death. The estate tax is imposed on a graduated rate basis, starting at 18 per cent and topping out at 40 per cent when the value of U.S. assets is above US$1-million.

However, even if the deceased Canadian’s worldwide estate is well below the estate tax exemption amount, their executor still needs to file a U.S. estate tax return on behalf of the estate. If they don’t, the executor may find it difficult to have ownership of the U.S. situs property transferred to them for the purposes of distributing the property (or the proceeds from its sale) to beneficiaries.

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“Custodians are going to require an [Internal Revenue Service] transfer certificate to release the assets,” says Terry Ritchie, vice-president and private wealth manager at Cardinal Point Capital Management ULC in Toronto. That process can take two years or more, he notes.

Among other assets, U.S.-situs property includes a home in the U.S., shares of a U.S. corporation – regardless of whether those shares are held in a U.S. or Canadian brokerage, or in a registered plan or non-registered account – and U.S.-based pension plans.

Canadian investment funds that invest in U.S. companies would not be considered U.S.-situs assets, nor would a personal bank account in the U.S.

As part of the U.S. Tax Cuts and Jobs Act (TCJA) passed in late 2017, during President-elect Trump's first term, the U.S. government increased the base U.S. estate tax exemption amount to US$10-million from US$5-million, indexed to inflation, effective from 2018 to 2025.

During his 2024 election campaign, Mr. Trump said he intended to make the TCJA estate tax changes permanent. With the Republicans in control of both houses of Congress, cross-border tax advisors expect Mr. Trump will follow through with the plan.

Under the tax treaty between Canada and the U.S., wealthy Canadian families have access to three types of credits – a share of a "unified credit" available to U.S. citizens, a marital tax credit and a foreign tax credit – to potentially reduce or eliminate any U.S. estate tax owing at death.

But to get that relief, the executor must file with the IRS an IRS Form 706-NA (which is the estate tax return for non-resident aliens), a copy of the deceased's will, and documentation showing the deceased's worldwide assets.

"It's a pain, but the executor will have to file a [U.S.] estate tax return to prove to the IRS that there's going to be a nil [U.S. estate tax] result," Mr. Ritchie says.

Canadians with U.S. situs assets may wish to consider taking steps to avoid leaving the executor of their estate with a U.S. estate tax filing obligation, if not an actual liability.

"There's a bit of a cost-benefit analysis," says Carol Sadler, founder and tax leader of accounting firm Achen Henderson LLP in Calgary.

A Canadian investor could choose to obtain exposure to U.S. equities through a Canadian mutual fund or exchange-traded fund rather than holding shares of U.S. corporations directly, Ms. Sadler says. “I hate to have tax matters tread on investment decisions, but it’s a good way to get below that US$60,000 [threshold].”

Another option would be to transfer U.S. shares to a Canadian investment holding company, Mr. Ritchie says. “When you die, the [holding] company doesn’t die, so, therefore, there’s no [U.S.] estate tax imposed on the underlying assets.”

Mr. Nightingale says a Canadian investment dealer might release shares of a U.S. corporation to an executor without asking for an IRS transfer clearance, even though the shares would be considered U.S. situs assets.

“The IRS may or may not find out about these shares that were owned by the estate. And frankly, on this kind of stuff, they’re not very good at finding out today – but don’t count on that being true tomorrow,” Mr. Nightingale says.

“But executors have the obligation to file a U.S. estate tax return and pay whatever tax owing, and if you don’t, you’re personally liable for it.”

Mr. Ritchie says Canadian investment dealers have become increasingly aware of the issue and, to protect themselves from claims, some dealers are asking executors for IRS transfer clearances.

“The liability to [the dealers] is greater if they don’t comply with these rules,” Mr. Ritchie says.

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