

Tax Cuts and Jobs Act (TCJA) 2017

US Estate Tax reform – Non-US citizens/Non-US domiciliaries

The Issue?



The US Tax Cuts and Jobs Act which was signed into law on 22 December 2017 by President Donald Trump effectively doubled the existing lifetime Estate and Gift tax exclusion amount. Prior to the tax reform, an individual's lifetime Estate and Gift tax exclusion was \$5.49 million (2017 tax year), with the new exclusion amount from 1 January 2018 increasing to \$11.2 million including inflation adjustment.

Whilst on first glance it would appear that US transfer tax system has in effect been repealed for virtually all but the wealthiest of taxpayers, it should be noted that the increased exclusion amounts do not apply to all individuals.

Who does it affect?



All US citizens are potentially subject to US Estate and Gift taxes on transfers of assets owned worldwide. Additionally, citizens of other countries who are 'domiciled' in the US are also subject to US transfer taxes on their worldwide assets. To the extent that any Estate or Gift tax is payable (i.e. they have made gifts or hold assets on death that are in excess of the exclusion amount) the rate of the charge is at 40%.

However where an individual is neither a US citizen nor has a US 'domicile' for Estate and Gift tax purposes, the exclusion amount is usually limited to \$60,000. There was no increase to this amount in the Tax Cuts and Jobs Act and it is not indexed for inflation. An individual owning US real estate for example would be subject to Estate tax at a rate of up to 40% on the value of the real estate and any other US situs assets in excess of \$60,000 on death.

Although countries, such as the UK, have an estate tax treaty with the US which may provide some relief in the event of double taxation, in the case of real estate the primary taxing right will normally be given to the jurisdiction where the property is located.

Furthermore some US States impose their own transfer tax regimes running parallel to federal Estate Tax, often creating an unanticipated tax burden imposed on the decedent taxpayer's estate on death.

Opportunities?



Individuals who are neither US citizens nor US domiciles for Estate and Gift tax purposes should continue to plan for US transfer taxes on their US assets. Given the limited \$60,000 Estate tax exclusion amount available to these individuals, they should consider how the ownership of US situated assets including but not limited to real estate and US stocks should be arranged.

Particular care should also be given to individuals who are married to non-US citizen spouses or who have complex family situations, to make sure their estate plans and Wills are reviewed in light of the recent reforms. Ordinarily the Estate tax marital deduction allows US citizens to make unlimited transfers to a US citizen spouse. However where a transfer is made to non-US citizen/non-US domiciliary spouse their estate will only qualify for the marital deduction if the bequest takes the form of a specific type of trust called a 'qualified domestic trust' (QDOT). Appropriate planning is thus required to ensure the deferral of the Estate tax until the spouse's death.

To discuss any of the above points further please contact any of the following:

Malcolm Collings

Direct: +44 (0) 20 7804 0388

Email: malcolm.j.collings@pwc.com

Rachel Bentley

Direct: +44 (0) 20 7804 1164

Email: rachel.bentley@pwc.com

Julian Nelberg

Direct: +44 (0) 20 7212 2350

Email: julian.nelberg@pwc.com

Paul Lloyds

Direct: +44 (0) 20 7213 3284

Email: paul.f.lloyds@pwc.com