

U.S. Estate Tax and High Net Worth Canadians

Determining if you have any liability



If the value of your worldwide assets exceeds US\$11.58 million and you hold more than US\$60,000 in property situated in the U.S. (“U.S. situs assets”) such as U.S. stocks or a U.S. vacation property, you may be liable for U.S. federal estate tax (the “U.S. estate tax”). This applies to Canadians even if they are not U.S. citizens, residents or green card holders.

The information within this article for determining U.S. estate tax liability:

- Assumes that the taxpayer is a Canadian resident who is not a U.S. citizen, resident or green card holder; and
- Reviews the impact of U.S. federal estate tax. Please note that certain states within the U.S. also have their own inheritance/estate tax, which is not discussed here.

What is U.S. estate tax?

U.S. estate tax is levied by the U.S. federal government on transfers of wealth between individuals at the time of death. For Canadians, U.S. estate tax applies only on U.S. situs assets owned at death if the value of the Canadian's U.S. situs assets and worldwide assets exceed certain thresholds. U.S. situs assets are generally assets that have a U.S. location or connection such as U.S. real estate property and stocks of U.S. corporations.

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The U.S. estate tax is levied on the fair market value of the property, unlike Canadian capital gains tax at death, which is levied on the growth in value of the property.

U.S. estate tax rates and exemptions

The U.S. estate tax is applied on a graduated basis with a maximum rate of 40%. U.S. citizens are entitled to a basic exclusion amount (adjusted annually for inflation) for federal estate and gift tax, which provides a unified credit against U.S. estate tax. Tax Reform legislation enacted at the end of 2017 temporarily doubled the basic exclusion amount and the corresponding unified credit. For 2020, the basic exclusion amount is US\$11.58 million (adjusted annually for inflation) which provides a unified credit of US\$4,577,800 (the amount of U.S. estate tax on assets with a fair market value of US\$11.58 million).

If new legislation is not enacted, the basic exclusion amount and the corresponding unified credit will revert to the amounts under prior law (US\$5 million adjusted for inflation for 2026).

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For Canadians, U.S. tax law only provides an exemption amount of US\$60,000, which provides a unified credit of US\$13,000. However, under the *Canada-U.S. Tax*

Convention (the *Treaty*), an enhanced unified credit is available. The enhanced unified credit under the *Treaty* is based on the basic exclusion amount for U.S. citizens, prorated by the value of the Canadian's U.S. situs assets and divided by the value of their worldwide estate at the time of death.

When are Canadians Subject to U.S. Estate Tax?

Generally, Canadians may be subject to U.S. estate tax if, at the time of their death:

- The value of their U.S. situs assets exceeds US\$60,000; and
- The value of their worldwide assets exceeds US\$11.58 million (for 2020, adjusted for inflation annually).

What assets are considered U.S. situs assets?

U.S. situs assets may include, but are not limited to the following:

- U.S. real estate (e.g., vacation home in Florida);
- Shares of U.S. corporations regardless of whether they are held in Canada or outside Canada. This also includes U.S. company shares held inside a registered retirement savings plan (RRSP), registered retirement income fund (RRIF), registered education savings plan (RESP), registered disability savings plan (RDSP) Locked-in Retirement Account (LIRA), Life Income Fund (LIF) or a tax-free savings account (TFSA);
- U.S. listed exchange-traded funds (ETFs);
- Tangible personal property located in the U.S. (e.g., cars, boats, jewelry, artwork);
- U.S. mutual funds acquired directly from the U.S.;
- U.S. pension plans and annuity amounts (including individual retirement accounts (IRAs) and 401(k) plans);
- Debt obligations issued by a U.S. person, corporation or government (unless exempt, as discussed below); and
- Deposits held in a U.S. brokerage account.

The following assets are generally not considered to be U.S. situs assets for U.S. estate tax purposes:

- Canadian mutual funds that invest in U.S. securities;
- Canadian exchange-traded funds (ETFs) that invest in U.S. securities;
- American depository receipts (ADRs);
- U.S. government and corporate bonds that qualify for the U.S. portfolio interest exemption (i.e., generally applies to bonds issued after July 18, 1984 that are not subject to U.S. non-resident withholding tax);
- U.S. bank deposits (excluding those held in a brokerage account), as long as they are not effectively connected with a U.S. trade or business; and
- Tangible personal property that is merely “in transit” in the U.S., for example, jewelry and other personal effects of a Canadian resident who dies while travelling through the U.S.

What assets are included in your worldwide estate?

A Canadian’s worldwide estate is calculated under U.S. estate tax rules as the fair market value of all of the assets owned at death in Canada, the U.S. or elsewhere in the world. It includes property that passes outside of the estate by way of joint ownership or beneficiary designation. It also includes life insurance proceeds payable to the estate or to beneficiaries if the deceased had “incidents of ownership” over the policy.

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In general, “incidents of ownership” refers to the right of the insured or his/her estate to access the economic benefits of the policy and includes the power to change the beneficiary, to surrender or cancel the policy, to revoke

or assign the policy, to pledge the policy for a loan or to obtain from the insurer a loan against the surrender value of the policy.

For corporate owned life insurance policies, the proceeds payable on death may impact the value of the corporation for purposes of determining an individual’s worldwide estate.

Property held in trust for an individual that is considered to be a grantor trust under U.S. tax rules will also generally be included in this calculation. Grantor trusts may include alter ego trusts, joint partner trusts, RRSPs, RRIFs and TFSAAs.

Your liabilities and certain expenses, including funeral costs and administration expenses, may be deducted from the value of your worldwide estate. However, only a prorated portion may be deducted from your U.S. situs assets.

How is U.S. estate tax calculated?

Example:

Mrs. Winfrey, a widow, has the following assets:

- A non-registered investment portfolio worth US\$8.4 million with no U.S. securities;
- A home in Vancouver, B.C., worth US\$2 million;
- An RRSP worth US\$500,000, of which US\$350,000 is invested in shares of Microsoft and Google;
- A vacation property in Arizona worth US\$1.5 million where she stays for two months every year; and
- A bank account in the U.S. in which she has US\$100,000 for her personal use.

Step 1: Determine the U.S. estate tax liability before available credits are applied

Since Canadians are only subject to U.S. estate tax on their U.S. situs assets, the first step is to calculate the total value of Mrs. Winfrey’s U.S. situs assets — which in this example is US\$1.85 million, comprising the Microsoft and Google shares held inside her RRSP as well as her vacation property in Arizona. Her U.S. bank account is not considered a U.S. situs asset for purposes of U.S. estate tax.

Next, refer to the 2020 U.S. Estate Tax Rate Table (Table 1) to determine the U.S. estate tax liability on the US\$1.85 million of U.S. assets. The U.S. estate tax is calculated to be US\$685,800 (40% of US\$850,000 plus US\$345,800).

Step 2: Determine the prorated unified credit available to reduce the U.S. estate tax liability

Under the *Treaty*, Canadians who pass away are entitled to a unified credit of up to US\$4,577,800 (in 2020) which can be applied to reduce their U.S. estate tax owing.

The amount of US\$4,577,800 represents the amount of U.S. estate tax payable on assets with a fair market value of US\$11.58 million of U.S. situs assets. Therefore, Canadians who pass away in 2020 can own up to US\$11.58 million in worldwide assets before their estate is subject to U.S. estate tax.

Under the *Treaty*, the unified credit must be prorated to account for those assets that are not U.S. assets, and therefore not subject to U.S. estate tax.

The prorated unified credit = (U.S. situs assets/ worldwide assets) x US\$4,577,800.

The prorated unified credit for Mrs. Winfrey is calculated to be US\$677,514 (US\$1,850,000/ US\$12,500,000 x US\$4,577,800).

Step 3: Determine the net U.S. estate tax liability

Mrs. Winfrey's net U.S. estate tax liability can be calculated by subtracting her prorated unified credit from her U.S. estate tax liability before available credits as follows:

| | |
|--|------------------|
| U.S. estate tax liability before available credits | US\$685,800 |
| Less: prorated unified credit | US\$677,514 |
| Net U.S. estate tax liability | US\$8,286 |

Marital credit under the *Treaty*

In addition to the unified credit, the *Treaty* provides for a marital credit if U.S. assets pass to a non-U.S. citizen spouse on death. To qualify for the marital credit, the

spouse must have been legally married to the decedent (as defined by U.S. law). The marital credit is calculated after applying the unified credit. If there is a balance owing after deducting the prorated unified credit, the marital credit is equal to the lesser of the deceased's prorated unified credit and the amount of U.S. estate tax attributable to the qualified property transferred to the surviving spouse. The marital credit effectively doubles the prorated unified credit, and could result in significant tax savings.

There are a number of conditions that must be satisfied in order to qualify for the marital credit. For example, the executor or personal representative of the estate of the first spouse to die must elect to take the marital credit under the *Treaty* and waive any marital deduction that would otherwise be available under U.S. domestic law (such as through the use of a qualified domestic trust (QDOT)).

Table 2 (below) provides some examples of the amount of U.S. estate tax payable at varying levels of U.S. assets and worldwide assets, after taking into account the available prorated unified credit and marital credit under the *Treaty*.

Foreign tax credit under the *Treaty*

Under Canadian tax rules, Canadians are deemed to have disposed of all of their capital property immediately before death and must pay tax on any accrued gains on these properties. This includes any accrued gains on their U.S. situs assets.

Under the *Treaty*, the estate can claim a foreign tax credit on the deceased's final Canadian tax return to reduce the Canadian tax liability on U.S. situs assets. Canadian provinces and territories generally do not allow a foreign tax credit for U.S. estate tax paid. Accordingly, the deceased may be subject to some double taxation.

Filing requirements for U.S. estate tax

The executor or personal representative has the responsibility for filing a U.S. estate tax return on behalf of the estate. The executor or personal representative must file a U.S. estate tax return (Form 706-NA) if the deceased had at least US\$60,000 of U.S. situs assets at the time of death, regardless of whether an actual U.S. estate

tax liability exists or not. The return must be filed within 9 months from the date of death, unless an extension is granted. This can result in additional time, cost and complexity in settling a Canadian estate.

If the executor or personal representative fails to file a U.S. estate tax return when required to do so, the estate could be subject to significant penalties and the executor or personal representative could potentially face imprisonment. There are also substantial penalties for understating the value of U.S. and worldwide assets.

Table 1 — 2020 U.S. Estate Tax Rate Table (all amounts expressed in U.S. dollars)

| Column A | Column B | Column C | Column D |
|--------------------------|------------------------------|--------------------------------|--|
| Taxable amount over (\$) | Taxable amount not over (\$) | Tax on amount in Column A (\$) | Rate of tax on excess over amount in Column A but less than amount in Column B (%) |
| 0 | 10,000 | 0 | 18 |
| 10,000 | 20,000 | 1,800 | 20 |
| 20,000 | 40,000 | 3,800 | 22 |
| 40,000 | 60,000 | 8,200 | 24 |
| 60,000 | 80,000 | 13,000 | 26 |
| 80,000 | 100,000 | 18,200 | 28 |
| 100,000 | 150,000 | 23,800 | 30 |
| 150,000 | 250,000 | 38,800 | 32 |
| 250,000 | 500,000 | 70,800 | 34 |
| 500,000 | 750,000 | 155,800 | 37 |
| 750,000 | 1,000,000 | 248,300 | 39 |
| 1,000,000 | — | 345,800 | 40 |

Table 2 — U.S. Estate Tax Liability for 2020: Examples (all amounts expressed in U.S. dollars)

| Fair market value of U.S. Assets | Fair Market Value of Worldwide Assets | U.S. Estate Tax Liability | |
|----------------------------------|---------------------------------------|---------------------------|--|
| | | With Unified Credit | With Unified Credit and Martial Credit |
| 1,000,000 | 10,000,000 | — | — |
| | 12,000,000 | — | — |
| | 14,000,000 | 19,000 | — |
| | 16,000,000 | 59,500 | — |
| | 18,000,000 | 91,500 | — |
| | 20,000,000 | 117,000 | — |
| 1,500,000 | 10,000,000 | — | — |
| | 12,000,000 | — | — |
| | 14,000,000 | 55,500 | — |
| | 16,000,000 | 116,500 | — |
| | 18,000,000 | 164,500 | — |
| | 20,000,000 | 202,500 | — |

The estimates provided above are for illustration purposes only.

Conclusion

As every individual's situation is unique, you should obtain professional advice from a qualified tax advisor who specializes in cross-border taxation before acting on any of the information in this article.



This article provides a general overview of some of the U.S. and Canadian tax considerations for Canadian residents around certain types of U.S. retirement accounts. It does not address additional considerations applicable to persons who are U.S. citizens, green card holders or individuals who are otherwise treated as residents of the United States for U.S. tax purposes. The U.S. and Canadian tax rules are complex, and tax consequences can vary depending on your individual circumstances. Be sure to speak with your tax specialist before taking any action with respect to any retirement accounts. The information contained herein has been provided by TD Wealth and is for information purposes only. The information has been drawn from sources believed to be reliable. Graphs and charts are used for illustrative purposes only and do not reflect future values or future performance of any investment. The information does not provide financial, legal, tax or investment advice. Particular investment, tax, or trading strategies should be evaluated relative to each individual's objectives and risk tolerance. TD Wealth represents the products and services offered by TD Waterhouse Canada Inc., TD Waterhouse Private Investment Counsel Inc., TD Wealth Private Banking (offered by The Toronto-Dominion Bank) and TD Wealth Private Trust (offered by The Canada Trust Company). All trademarks are the property of their respective owners. © The TD logo and other trade-marks are the property of The Toronto-Dominion Bank.