U.S. Beneficiaries of Your Canadian Estate

If your estate plan includes a U.S. beneficiary, there are a few things to be aware of when preparing or updating your plan[1].

WHO IS A U.S. BENEFICIARY?

A U.S. beneficiary is an individual who is a U.S. citizen, green card holder (i.e. lawful permanent resident) or U.S. resident and who will be receiving assets from your estate. This includes U.S. citizens or green card holders resident in Canada.

WHY DOES IT MATTER?

A U.S. beneficiary is generally subject to U.S. income tax on their worldwide assets and there may be U.S. tax implications or information reporting requirements on receiving assets. If your estate continues as a trust or sets up a trust for your U.S. beneficiary, there may also be other U.S. tax considerations. Certain types of U.S. trusts may be considered in your estate plan to mitigate U.S. estate tax for your U.S. beneficiary and should be discussed with a cross-border tax advisor.

CANADIAN ASSETS THAT MAY BE PROBLEMATIC

Canadian Mutual Funds

These can be viewed as Passive Foreign Investment Company (PFIC) interests that are subject to a punitive U.S. anti-deferral tax regime. Absent any planning which may include making certain elections, your U.S. beneficiary may be subject to a high U.S. tax rate and potential interest charges.

Canadian Private Corporations

The Controlled Foreign Corporation (CFC) rules are another punitive U.S. anti-deferral tax regime that may apply to a U.S. beneficiary if a Canadian corporation may be viewed as being controlled by U.S. shareholders. The rules may result in taxation of the U.S. shareholder on income earned by the company in the year even where no distribution has been made. For a typical Canadian investment holding company, the PFIC rules may still apply even if the CFC rules do not.

$ TAX

Both the PFIC and CFC regimes include complex rules that look through a trust or estate to determine ownership and may impact your U.S. beneficiaries.

OTHER CONSIDERATIONS

Canadian Trusts

If you intend on setting up trusts as part of your estate planning, you may need to incorporate flexibility for your U.S. beneficiaries as they may be subject to special rules for non-U.S. trusts. Distributions to your U.S. beneficiaries may require additional compliance, otherwise a high U.S. tax rate and potential interest charges may apply.

Withholding Tax

The trust or estate may be required to withhold and remit withholding tax to Canada Revenue Agency (CRA) on distributions of income to a non-resident beneficiary.

Clearance Certificate

The trust or estate may need to obtain a clearance certificate from CRA before making a distribution to a non-resident beneficiary.

Speak to your TD Wealth Advisor or TD Senior Private Banker.

[1] This infographic is intended for Canadian residents who are not U.S. citizens, green card holders or U.S. residents.

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