

Armstrong

— Financial Services —

Tuesday, January 17th, 2023

Attn: Memorandum

Re: Estates of non US residents

Estates of non-residents

For U.S. estate tax purposes, non-residents are taxed on the fair market value of their U.S. “situs” property. U.S. situs property is basically property situated in the U.S. and includes, for example:

- real property and tangible personal property situated in the U.S. at death;
- U.S. securities, including those held in a brokerage account in Canada or outside Canada;
- certain U.S. debt obligations and U.S. mutual funds, including money market funds;
- interests in certain trusts including RRSPs, RRIFs, RESPs, or TFSAs, if the assets held by that trust have a U.S. situs;
- interests in U.S. qualified retirement plans or annuities, including different types of IRA accounts and 401(k) plans; and
- any business-related assets owned by a sole proprietor and used in a U.S. business activity that is included in the sole proprietor’s gross estate. For example, these assets might include land, machinery and equipment, patents, accounts receivable, and goodwill.

There are several types of property that are exceptions to the U.S. situs rules for estate tax purposes. Some of these exceptions include U.S. bank deposits (not effectively connected with a trade or business in the U.S.), U.S. Treasury securities, **and the proceeds of life insurance on the life of the decedent.** (U.S. Code § 2105 states “... the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.”)

Fortunately, the Canada - U.S. Income Tax Convention (“the Treaty”) provides Canadians some relief from U.S. estate tax. The Treaty allows Canadian residents to benefit from the same exemption amount that U.S. residents can claim. However, Canadian residents must remember that the exemption is prorated based on the ratio of the value of U.S. situs assets compared with the value of the estate as a whole based on global assets.

NB: If a Canadian corporation holds the U.S. property, it should be excluded from the shareholder’s U.S. situs assets on death.