

## U.S. Inheritance Tax Risks

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In the last few years the regulatory environment for international employees working for U.S. companies has become increasingly complex. **Most challenging are the U.S. inheritance taxes.**



Employees who receive assets from a U.S. company (such as shares and options) are exposed, **regardless of nationality and domicile.** Participation in **Long-Term Incentive Plans** exposes international employees to U.S. inheritance taxes.

Upon death, all accounts and assets based in the U.S. will be blocked and not released before completing IRS filings. Furthermore, all U.S. based assets in local custody are by law subject to the same tax scheme.

### Taxation of non-U.S. citizen/resident

One of the **most important aspects of how the U.S. taxation affects non-U.S. taxpayers is the tax free amount for estates.** Even though the same tax rates apply, a U.S. taxpayer currently enjoys a tax free amount of more than \$5 million, while a non-U.S. citizen/resident will only have \$60'000.

### Assets at risk

Contrary to common knowledge it is not only real estate and alike that is considered when inheritance taxes are applied. All of the below and more are at risk:

- **Shares & stock options in the U.S. corporations (place of incorporation)**
- **Pensions payable by U.S. corporations which own U.S.-situs assets**
- **Cash deposits held in a U.S. brokerage account**
- Debt and other obligations of U.S. corporations
- U.S. real property
- U.S. tangible personal property (e.g., artwork located in the U.S.)

## Tax rates

The rate begins with 18 percent for the first \$10,000 of adjusted taxable estate and continues to rise until it tops out at 40 percent for adjusted taxable estates of more than \$1'000,000.

Taxable amount	Estate/Inheritance tax
not over \$10'000	18% of such amount
\$10'000 - \$20'000	\$1'800 + <b>20%</b> of excess over \$10'000
\$20'000 - \$40'000	\$3'800 + <b>22%</b> of excess over \$20'000
\$40'000 - \$60'000	\$8'200 + <b>24%</b> of excess over \$40'000
\$60'000 - \$80'000	\$13'000 + <b>26%</b> of excess over \$80'000
\$80'000 - \$100'000	\$18'200 + <b>28%</b> of excess over \$80'000
\$100'000 - \$150'000	\$23'800 + <b>30%</b> of excess over \$100'000
\$150'000 - \$250'000	\$38'800 + <b>32%</b> of excess over \$150'000
\$250'000 - \$500'000	\$70'800 + <b>34%</b> of excess over \$250'000
\$500'000 - \$750'000	\$155'800 + <b>37%</b> of excess over \$500'000
\$750'000 - \$1000'000	\$248'300 + <b>39%</b> of excess over \$750'000
Over \$1'000'000	\$345'800 + <b>40%</b> of excess over \$1000'000

## Why companies take action

Attracting the best people is what gives the company a competitive advantage. This many times includes offering Long Term Incentive Plans. In this context, ignoring the U.S. inheritance tax risks would go against company values by leaving its international non- U.S. based employees vulnerable and exposed.

### a) Reputation risk

- ✓ Avoid “the morning after” events, similar to the recent Volkswagen scandal where the company knew about issues but did not take proper action to address them.
- ✓ Liability/Lawsuit from the estate: The employee could claim that the company acted out of negligence, as the international executive was not informed of the risks that were associated with owning U.S. based assets.

- ✓ Protecting employees' wellbeing and their participation in the company's success is in everybody's best interest. It is good corporate governance. Failing to do so will have a direct impact on the HR department's credibility.

b) **Loss of significant wealth** for employees and their families

- ✓ Current legislation is not sufficient to protect international employees against U.S. inheritance taxes.
- ✓ Assets and accounts are frozen and not available to the heirs until they complete the IRS administration process and filings.

### **U.S. - European situation**

While a minority of countries do have estate/inheritance tax treaties with the U.S.; most do not. In reality, even the existing treaties do not provide sufficient protection. What the estate can expect to achieve, after extensive and costly process, is a small tax credit.

**Residents of countries without any treaty are exposed to double taxation, first in the U.S. and later in the country of residence.**

### **Role of HR → Education!**

It is in the best interests of companies and corporate HR to take some time to educate their employees. In order to address this issue, any education initiative should as a minimum cover the following:

- ✓ Tax law (U.S. estate taxes)
- ✓ Jurisdiction
- ✓ Exposure for non-U.S. citizens

**The objective is to ensure that employees are informed; the company is protected from risk of lawsuits and maintains a strong corporate governance.**

## Upon request by Expateer:

### How can Swiss Expatriates on assignment to the US be affected by the US Inheritance Tax, if they are heirs?

In the scenario that the inheritance comes from a Swiss taxpayer who passed away and no U.S. based assets (no assets at risk) are involved: **No US inheritance tax risk for the Expat.** This is because the US inheritance/estate tax law actually applies to the estate of the deceased and not the heirs. However, as a US taxpayer the Swiss Expat living in the US would have to declare any assets they receive from a Swiss inheritance as income and **pay related income taxes.**

### What about if a Swiss Expat on assignment to the US passes away?

A Swiss Expat who officially lives, works and pay taxes in the US (filing IRS 1040) would be considered a US person / US taxpayer if he/she would pass away in the US.

Consequently **the worldwide estate of this employee would be subject to US estate/inheritance taxes (including assets in Switzerland: Real estate, bank accounts and portfolios and investments).**

The administrative burden in filing the US inheritance taxes is obvious and would need to be completed.

However, as the individual would be a **US taxpayer, this estate would also benefit from the tax free amount of more than USD 5 million.**