

THE END OF THE DEATH TAX?

By Leonard P. Bosschart

The repeal of the U.S. Federal estate and gift tax took a major step forward. Bill HR198 (the *Death Tax Repeal Act 2017*) was recently re-introduced in the Senate and the House of Representatives. An earlier version of the same legislation had been introduced in the Senate in April of 2015 but never became law. The Bill would apply to all gifts made, generation skipping transfers and the estates of persons dying after the enactment date of the Bill. The elimination would not apply retroactively.

Given that the Republican party holds majorities in both the Senate and the House, the Bill will likely be approved. While it is possible that the Republicans in the Senate might not be able to muster 60 votes to overcome a filibuster, under Congress' budget reconciliation process, Republicans could pass the tax measures under a budget reconciliation bill, which would only require a simple majority. Furthermore, in his "Contract with the American Voter", President Donald Trump pledged the elimination of the estate and gift tax, so the President would undoubtedly sign the Bill into law.

What Does This Mean for Canadians

From the point of view of cross border estate planning, whether for Canadians with US situs assets or children residing permanently in the United States or for families with dual citizens (or long term residents of the US), the repeal of the estate and gift tax would greatly simplify matters. For example, Canadians owing US real property would no longer need to use family trusts to avoid exposure to US Federal estate tax and could simply hold US real estate directly.

What to Watch For

It is possible that the estate and gift tax could be replaced with a capital gains tax as President Trump proposes in his Contract with the American Voter. Such a capital gains tax could have an impact on Canadians holding US real property but more than likely the US Canada Tax Treaty will provide relief from double taxation.



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