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FREE GUIDE · Estates

Two Systems, One File

What an executor faces when the deceased, the beneficiaries or the assets sit in more than one country, and the order the filings have to happen in.

Cross-border estates: two systems, one death, one file

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A cross-border estate is not one estate with a foreign complication. It is two tax systems applying different concepts to the same death, on different timetables, and the executor is personally exposed if distributions run ahead of the clearances.

Who this is for

- Executors and administrators of an estate with assets, beneficiaries or a deceased person in more than one country.
- Families with a Canadian parent holding US property, or a US person holding Canadian assets.
- Anyone planning their own estate across two jurisdictions and wanting to see what the executor will face.

The two systems tax different things

Canada does not levy an estate tax. What it does instead is treat the deceased as having disposed of capital property immediately before death at fair market value, so the accrued gains are taxed on a final return. Registered plans are generally brought into income unless a qualifying rollover applies. The tax is the deceased's, computed on the deceased's return.

The United States levies a transfer tax on the value of what passes at death, with the exposure depending on whether the deceased was a US citizen or domiciliary or a non-resident alien holding US-situs assets. For a non-resident, the reach is narrower but real, and the exemption available differs materially from that of a US person — with treaty relief available in some cases.

These are not alternatives; a single estate can face both. A Canadian resident who owned US real estate or US-situs securities can have a Canadian final return with deemed disposition and a US non-resident estate filing on the same assets, with a credit mechanism to prevent the same value being taxed twice. Our page onUS estate tax exposure for Canadianscovers this pairing.

The final returns, and the estate as a taxpayer afterwards

The deceased's final return covers the period to the date of death, and there may be optional additional returns for particular kinds of income which can reduce the overall tax by using more than one set of graduated rates. After death the estate itself becomes a taxpayer, filing its own returns for the period of administration.

In Canada an estate that meets the conditions can qualify for graduated rate treatment for a limited period after death, which is materially better than flat top-rate taxation and is lost if the conditions are not met. Getting that right is a first-year decision, and it interacts with what the will does and how quickly assets are distributed. Our page ongraduated rate estatescovers the conditions.

Clearance is what protects the executor

An executor who distributes before obtaining a clearance can be personally liable for tax the estate owed. Canada issues an estate clearance certificate confirming that amounts have been paid or secured; the United States has its own transfer certificate procedure for a non-resident's US-situs assets, which the custodian of those assets will generally require before releasing them.

Both take time. Both need the returns filed and assessed first. In a cross-border estate the two processes run in parallel with different information requirements, and beneficiaries who expect a distribution within months of the death need to be told early that this is the constraint. Our pages on theterminal return and clearance certificateandthe US transfer certificateset out each.

Where the beneficiaries are matters too

A non-resident beneficiary of a Canadian estate can bring withholding into the distribution, and a trust return reporting amounts allocated to non-residents. A Canadian beneficiary of a foreign estate or trust may have reporting obligations about the interest and about distributions received. A US beneficiary receiving from a foreign estate has separate reporting again.

The result is that the beneficiary map is part of the estate plan, not an administrative detail. Two children in two countries can produce two entirely different tax outcomes from an identical bequest, and the will can be drafted with that in mind if anyone thinks about it in advance.

What planning can do, and when

Before death, a great deal: the ownership structure for foreign real property, whether US-situs securities need to be held that way at all, the use of life insurance to fund a liquidity need, whether a rollover to a spouse is available and desirable, and whether the will works in both jurisdictions. Cross-border wills are their own discipline, because a document that is valid in one place can create problems in another.

After death, less, but not nothing: the optional returns, the graduated rate election, the order of realisations, and post-mortem planning to avoid the same value being taxed twice in a corporate estate. All of it is time-limited, which is why the first professional conversation should happen within weeks rather than months.

An executor's order of work

Distributions come last. Everything above them is what protects the executor personally.

1. **Inventory and value at the date of death** Every asset and liability, by country and by situs, with a date-of-death valuation. Situs matters because it determines which country's transfer tax reaches an asset.
2. **Establish the deceased's status** Residence and domicile at death, and citizenship. This decides which system applies what, and whether treaty relief is available.
3. **Map the beneficiaries** Where each beneficiary is resident, because that drives withholding on distributions and the reporting each of them faces.

4. **File the final and estate returns** The deceased's final return with the deemed disposition, any optional returns, the estate's own returns, and any foreign estate filing on foreign-situs assets.
5. **Apply for clearances in both systems** The estate clearance certificate and, where US-situs assets are held, the transfer certificate. Both require assessed returns and both take time.
6. **Distribute, and report the distributions** Only after clearance. Withholding where a beneficiary is non-resident, and the trust reporting that goes with allocations abroad.

Papers to gather

What an executor should assemble first:

- The will, any codicils, and any foreign will or trust deed.
- Death certificate and documents evidencing residence, domicile and citizenship.
- A full asset and liability inventory by country, with date-of-death valuations.
- Title documents for real property in every country, with original cost.
- Brokerage statements identifying the country of the issuer for each holding.
- Registered plan and pension documents, including beneficiary designations.
- Life insurance policies and their ownership.
- The deceased's last several years of returns in each country they filed in.

Where it goes wrong

- **Distributing before clearance** The executor can be personally liable for tax the estate owed. Beneficiary pressure is real and it is not a defence. Setting the expectation early is part of the job.
- **Missing the graduated rate window** Where an estate qualifies for graduated rate treatment for a limited period, the conditions have to be met from the start. It cannot be claimed retrospectively once the window closes.
- **Ignoring foreign-situs assets because they are small** A US transfer tax filing obligation can arise on holdings the family thinks of as minor, and the custodian will not release them without the certificate. Discovering that at distribution stage adds months.

Questions this raises

Does Canada have an estate or inheritance tax?

No. It taxes the deceased instead, by treating capital property as disposed of at fair market value immediately before death and taxing the accrued gains on a final return. Registered plans are generally brought into income unless a qualifying rollover applies.

Can a Canadian resident owe US estate tax?

Yes, where US-situs assets are held — US real estate is the clearest case, and certain US securities can also be caught. The exemption available to a non-resident differs from that of a US person, and treaty relief may be available.

How long does a cross-border estate take to distribute?

Longer than families expect, because clearance in each system requires returns to be filed and assessed first, and the two run on different timetables. Setting that expectation at the start prevents pressure to distribute early, which is where executors get hurt.

Is withholding taken on a distribution to a beneficiary abroad?

It can be, depending on what is being distributed and where the beneficiary is resident, and the estate may have reporting obligations about amounts allocated to non-residents. The beneficiary map should be established before distributions are planned.

What to do next

For an executor, the first deliverable is the inventory with situs and a filing map: which returns, in which countries, by when, and what has to be cleared before anything is paid out. For someone planning, the first deliverable is an exposure review on the assets they hold now.

We act for executors and for families planning ahead, at a fixed fee agreed before work starts. Seeestate administration across borders ,cross-border willsand theexecutor checklist.

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