

The impact of US Federal Estate Tax (US FET) for Irish Investors



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At Davy, we build robust investment portfolios in line with your financial objectives and risk profile. The objective being to give you the best chance of meeting your overall financial goals.

Diversification is a key aspect in our portfolio construction, and we invest across different asset classes, geographies, sectors and best-in-class managers. The US has the largest stock market by capitalisation and as we invest globally, the US makes up the largest portion of the equity component in our portfolios. While there are several implementation options to suit different client circumstances, US investments held directly in a portfolio can lead to a US FET exposure. This insight explores US FET and what steps can be taken to mitigate the position.

What is US FET and when can it arise for an Irish investor?



US FET can arise in respect of the estate of a deceased Irish tax resident person who has no connection to the US where that person held US assets on their death. This includes many different types of assets including US real estate, cash deposits with US brokers, and, importantly, for many Irish investors, shares in US corporations and US registered Exchange Traded Funds (ETFs).

It is also important to note that the structure of the investment rather than the underlying exposure impacts on whether US FET arises. For example, if you hold an Irish-domiciled unit fund which is fully invested in US assets, you will not have an exposure to FET as your holdings are in the Irish fund, not directly in the US-based assets.

There will be a charge on the value of the US estate above the exempt amount of \$60,000. If US FET arises, the rates of FET start at 18% and then increases up to 40% for estates where there are US taxable assets worth more than \$1 million. Unlike the position in Ireland, a spousal exemption will not automatically come into play on such transfers, unless the recipient spouse is a US citizen.

It is also important to note that US FET can potentially arise in respect of US assets which are held in an Approved Retirement Fund (ARF) or PRSA on the death of the holder.

For US citizens or persons who are domiciled in the US, the position is very different. The entire estate (i.e. not just US assets) held by the deceased person on death will be subject to US FET. However, there is a very significant exemption of around \$12.9M (2023) for US individuals. In addition, there is an unlimited marital deduction if the surviving spouse is a US citizen. This means that the vast majority of estates of US individuals will not be subject to US FET.



What are the compliance obligations with the Internal Revenue Service (IRS)?

If a US FET liability arises then, the executor will be primarily responsible to settle any amount due, so it is therefore important for them to be aware of their obligations. They will also need to file the requisite forms with the IRS. Given there is greater information flow to the IRS through the Foreign Account Tax Compliance Act (FATCA) and related W-8 reporting, there is a greater likelihood that the IRS will be able to accurately identify the owner of a US asset.



What steps can be taken to mitigate the position?

While it's important to recognise the potential exposure to US FET, it is important to balance this against the most appropriate investment strategy to meet your financial objectives and circumstances.

It is important to bear in mind that avoiding US exposure for example could significantly inhibit your ability to build a suitable long-term portfolio. We have portfolio options which can reduce or eliminate entirely US FET but still give you exposure to the US.

However, where you wish to retain direct US exposure, there are still steps which may mitigate the position which are set out below.



Passing assets directly to children

While this may not be suitable in all cases, passing US assets directly to children (i.e. not passing directly to a surviving spouse) can be more efficient. Where both US FET and Capital Acquisitions Tax (CAT) arise on the same asset, a credit may be available for US FET paid against CAT. This can improve the position as it takes out one charge to US FET (i.e. when the surviving spouse would have otherwise inherited), and removes a potential exposure to double taxation. Your will would need to reflect this and may need to be altered to put this into effect.



Investing through different structures

Furthermore, exposure to US FET can be avoided where you are not considered to directly own the US assets. Investing through different structures such as certain corporate entities, partnerships or trusts can come into play here.



Use sole rather than joint account

Another area which needs to be carefully considered is joint accounts. When one of the holders of a joint account passes away, the assets pass to the survivor. If there are US assets, there is a risk that the full value of US assets can be subject to US FET within the estate of the first to die. It can therefore be preferable to hold US assets in single names. By holding the US investments in single names, the holder has flexibility in their will to direct where those assets should pass.



Next steps

If you currently hold US equities or other direct US investments or would like to discuss investing in them, **please contact your Davy Adviser**. Through our financial planning led approach, we can work with you to identify where there may be exposure to US FET and what the best course of action may be, working in tandem with your legal and tax advisers.

Davy is not a tax adviser and this note is for discussion purposes only to give an outline of the issues contained in it. We recommend that you obtain specific professional advice (including Irish and US legal and tax advice) suitable to your own individual circumstances, before making a decision.

WARNING: The value of your investments may go down as well as up. There is no guarantee that by putting a financial or investment plan in place, you will meet your objectives. You should speak to your advisor, in the context of your own personal circumstances, prior to making any financial or investment decision.

Note

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