

A close-up, textured view of the American flag and the Irish flag. The American flag is on the right, showing the stars and stripes. The Irish flag is on the left, showing the green, white, and orange vertical stripes. The texture of the fabric is visible.

Matheson

Tax and estate planning for citizens of the United States of America who are resident in Ireland

Introduction

At Matheson, our dedicated Relocation Services offering looks after the legal and tax needs of private individuals and families relocating to Ireland.

In the context of US citizens who intend to become a resident in Ireland, there are a number of key issues in relation to personally held wealth and structured wealth (specifically wealth held through trust structures) identified below, that need further consideration where US citizens intend to become resident in Ireland. Ideally, US citizens should engage in careful planning prior to becoming Irish tax resident to ensure their wealth is held in a manner which is fit for purpose on both sides of the Atlantic.

Personally Held Wealth

Remittance Basis of Taxation – Income Tax and Capital Gains Tax

- The US is different from most other jurisdictions, in that citizenship is a connecting factor for tax purposes. In Ireland, tax is generally imposed based on the concepts of tax residence (determined by a statutory day count test) and domicile.
 - Irish resident persons who retain their domicile in a State of the US can avail of the remittance basis of taxation for Irish tax purposes in respect of non-Irish source income and gains. This means that such persons would generally only be subject to tax on non-Irish source income and gains, when they bring such income and gains into Ireland.
 - A specific taxation regime applies in Ireland to gains arising on regulated funds established in an EU, EEA, or, OECD jurisdiction with which Ireland has entered into a double taxation agreement. The latter includes the US. Under this regime, gains arising on certain US regulated funds (eg certain US mutual funds) are subject to income tax at a rate of 41% rather than capital gains tax at the current standard rate of 33%. Further, the remittance basis of taxation does not apply to these gains. The result being that Irish resident, but US domiciled, individuals may be subject to Irish tax at 41% on an arising basis on gains arising on certain US regulated fund investments.
- There are other specific US tax issues, including certain investment structures being characterized as Passive Foreign Investment Companies (“PFICs”), which have negative US tax implications. Accordingly, a review of investment portfolios, in conjunction with obtaining US tax advice, should be carried out, preferably pre-entry into Ireland.

Inheritance Tax and Gift Taxes

- There is a tax treaty between the US and Ireland in relation to federal estate tax in the US and inheritance tax in Ireland. It has important implications, including overriding Irish domestic inheritance tax rules in certain cases.
- Provided a US citizen who is resident in Ireland, remains domiciled in a State of the US, any assets held / situated outside of Ireland (cash held in non-Irish bank accounts, non-Irish securities, stocks and shares etc) will not be subject to Irish inheritance tax on their death, if they die Irish tax resident.
- Similarly if a US citizen who is Irish resident but non-Irish domiciled, receives an inheritance of non-Irish situate assets from a deceased individual domiciled in a State of the US, they should not be subject to Irish inheritance tax.
- If a US citizen is married to an Irish citizen, it is our understanding that the Irish citizen spouse will not benefit from the unlimited marital deduction in respect of federal estate tax on the death of the US citizen spouse, and to the extent that the worldwide estate exceeds the federal exemption threshold, federal estate tax may arise in respect of property received by the Irish citizen spouse.
- If US situate property passes to the Irish citizen spouse directly from the estate, it is our understanding that this property would suffer the decreased federal estate tax exemption of USD \$60,000 on the subsequent death of the Irish citizen spouse.
- The relevant tax treaty between the US and Ireland does not apply to gift tax in Ireland. However, provided the US citizen who is resident in Ireland, remains domiciled in a State of the US, they should only come within the charge to Irish gift tax in a tax year where they have spent the previous five consecutive years resident in Ireland for tax purposes.

Structured Wealth

Revocable Living Trusts

- US revocable living trusts are a common feature of domestic estate planning in the US. Although it is always necessary to consider the drafting and proper law of the trust, many US revocable living trusts are treated as transparent for Irish tax purposes during the lifetime of the settlor provided the settlor has capacity. This means that income and gains are taxed personally on the settlor, much like a nominee arrangement. Where the settlor is non-Irish tax resident and there are no Irish situate assets within the revocable living trust, no charge to Irish tax should arise. Where the settlor is Irish tax resident, the settlor should be able to avail of the remittance basis of taxation in respect of non-Irish source income and gains, subject to the specific exclusions identified above. The specific gift tax consequences identified in the context of Personally Held Wealth should equally apply.
- However, on death, in circumstances where the revocable living trust becomes irrevocable, it will be treated as a settlement for Irish tax purposes. Where the trustees of a revocable living trust are resident in Ireland, and the revocable living trust becomes irrevocable on the death of the settlor, the trust may be considered to be an Irish resident trust and the trustees may be subject to Irish income tax and capital gains tax on an arising basis. This should be borne in mind if a US citizen has a revocable living trust or is a trustee of a revocable living trust prior to becoming Irish tax resident.
- If the trust retains its status as a non-Irish resident trust after becoming irrevocable, specific Irish tax anti-avoidance provisions, which apply to offshore structures (ie non-Irish tax resident trust structures) and attribute income and gains to Irish resident persons, should be considered.
- Subject to the availability of limited defences, these anti-avoidance provisions may cause the income and gains of the trust to be taxed on an Irish resident beneficiary who receives value from the trust, or, on an Irish resident settlor of the trust, irrespective of whether they receive value from the trust.

Irrevocable Trusts

- All value received from irrevocable trusts which were established and fully funded pre-1 December 1999 by non-Irish domiciled individuals, and which do not have any Irish property, should fall outside the charge to Irish gift and inheritance tax.

Conclusion

- The fact that US citizens remain within the US tax net, whilst Irish tax resident, requires a coordinated approach to their estate plan.
- We are experienced in identifying international tax issues and collaborating with international advisers to deliver integrated results for our clients.
- Inevitably, advice should be sought as early as possible to consider the issues that might arise from a US and Irish perspective.



Matheson have acted for internationally mobile clients and their families for generations.

For such clients, the legal and tax expertise and the international experience of Matheson's Private Client Group are unique among professional services firms in Ireland.

Further details of which can be accessed at www.matheson.com/services/private-client

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