



CESTNICK

TAX MATTERS

Leaving an inheritance to heirs in the U.S. requires special planning more than ever

SPECIAL TO THE GLOBE AND MAIL
PUBLISHED MARCH 27, 2025

Life has never been more complicated for those with close family members living on the other side of the U.S. border. With new [tensions](#) between Canada and the United States, and uncertainty around trade and the economic impact for Canadians, some people are wondering what all this means for family relationships, from travelling to see each other, to leaving inheritances to children or grandchildren south of the border.

For the time being, cross-border estate planning should remain business-as-usual for most folks. Today, I want to share some tips on what to consider if you have an heir living in the U.S.

The issues

My good friend Tom has a son, Jack, who's living in the U.S. and plans to stay there permanently. Jack is, of course, subject to income [tax](#) in the U.S., but he's also subject to U.S. estate tax since he's considered to be "domiciled" south of the border. Being domiciled in the U.S. involves not merely living there, but an intention to make the U.S. a permanent home – which Jack has done.

Tom's biggest concern is that Jack is due to inherit quite a bit of money from him. If Jack then dies and faces estate tax this will take a large bite out of the assets that Jack's kids (Tom's grandkids) will inherit one day.

Tom's accountant has done the math to show that, in the absence of planning, Tom's grandkids will one day inherit an estate that is 28.8 per cent less than what Tom is leaving to Jack. And the generation after that will be left with a little over half of what Tom leaves to Jack. If Jack inherits money from Tom and chooses to give away his assets during his lifetime to avoid the estate tax he could face the U.S. gift tax, or generation-skipping transfer tax (GSTT).

A U.S. person can make annual gifts of \$19,000 to each beneficiary in 2025 (the amount is indexed annually) without worrying about the gift or GSTT. There's also a lifetime exemption from U.S. gift tax, the GSTT, and estate taxes, of \$13.99-million in 2025. If Jack were to use up part of this exemption when making gifts to his own kids during his lifetime, it would reduce the exemption

available to reduce estate taxes when he dies.

The exemption is a sizable amount, so many Canadians don't give U.S. estate tax issues a thought. But be aware that the lifetime exemption is due to drop to about \$5.5-million after 2025 unless the U.S. government takes steps to maintain a higher amount. (As an aside, the rules are more complex for U.S. citizens living in Canada gifting or leaving assets to a Canadian spouse or children. So, speak to a tax pro about it.)

Given the changing nature of the exemption, many Canadians with heirs in the U.S. would be wise to think about planning to help future generations sidestep the U.S. estate, gift or GSTT taxes. This brings me to an idea.

The idea

Tom should consider leaving Jack's inheritance to him in a U.S. trust called a Dynasty Trust. These trusts are designed to prevent the erosion of inheritances across generations owing to the U.S. estate, gift and GSTT taxes. Since the assets held in a trust for Jack are not considered to be Jack's assets, he can avoid U.S. estate tax at the time of his death, and gift and GSTT while he's alive.

How does this work? Tom will leave instructions in his will to establish a trust for Jack, Jack's children (even those who aren't born yet), and any other U.S. beneficiaries he chooses. Or Tom could set up a trust for this purpose during his lifetime instead, transferring assets to the trust before he dies. This would allow him to avoid probate fees at the time of his death on the assets, but he'll no longer have control or use of the assets and could pay some tax when transferring assets to the trust. So, Tom has decided to set up this Dynasty Trust in his will.

The terms of a Dynasty Trust have to include certain restrictions so that the beneficiaries are not considered to control the assets (otherwise the U.S. taxes we're trying to avoid might apply). Beneficiaries can, however, request funds from the trustee for health, education, support and maintenance, within an "ascertainable standard." It may also be possible to give the beneficiary the power to compel the trustee to distribute the greater of \$5,000 or 5 per cent of the trust's assets annually.

There are other issues to decide if you're considering a Dynasty Trust (such as who should be the trustee), and I've simplified the discussion here – so speak to a U.S. lawyer to iron out details.

Tim Cestnick, FCPA, FCA, CPA(IL), CFP, TEP, is an author, and co-founder and CEO of Our Family Office Inc. He can be reached at tim@ourfamilyoffice.ca