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Asian investors shouldn't hurry to restructure US assets if estate tax is repealed, experts say
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A repeal of the US estate tax would be a welcome development for investors in Asia – particularly those with real estate holdings – though experts say that wealthy clients in the region should take a cautious approach to restructuring their American assets if the mooted changes see the light of day.

The new US administration, led by Donald Trump, has put forward proposals to lift the federal estate tax. Currently, directly held US real estate is subject to a 40% tax – beyond a US$60,000 exemption – upon the death of non-resident owners.

While the government is yet to add colour to such a proposal, the White House says it will provide further details on tax reforms after Labor Day in early September.

"Families in Asia have a lot of connections in different parts of the world nowadays and the US and UK are always among the top two," says Valerie Wu, a Singapore-based partner at law firm Pinsent Masons. "If there is indeed going to be an abolishment of the estate tax, I'm sure they will welcome it and they might have to review their existing structures to see if any changes need to be made."

However, Wu tells *Asian Private Banker* that clients will take a prudent approach to their planning.

"If it's abolished now during Trump's administration, one wonders whether it would be restored in the next administration. Some of these structures take a long time to set up, so they would not dismantle or make any changes without considering this very seriously and carefully. Succession plans take a while to implement."

Buzzacott partner Carlo Gray notes that in 2010, the estate tax effectively expired, though it was reinstated just a year later.

Gray adds that if rescinded once again, "it is unlikely that it will be repealed for long and we would therefore not advise clients residing in Asia to change their current US estate tax mitigation strategies".

He explains that to reduce exposure to estate taxes, clients can establish offshore companies and trusts to hold their US assets; leverage their US real estate to reduce exposure; arrange life assurance that meets the US estate tax liability on death; defer such liability until 'second death' using a qualified trust; and make bequests to US-registered charities.

Meanwhile, Wu notes that some states in the US are more favourable for wealth planning, "so it depends on where the family members are".

According to media reports, certain states, including California, plan to keep estate taxes in play regardless of federal tax reforms.

Windfall for real estate owners

A withdrawal of the estate tax would be of particular interest to the large number of wealthy Asian investors with real estate holdings in the US.

Data from the US' National Association of Realtors shows that Chinese and Indian citizens rank first and fifth, respectively, in terms of the top countries of foreign buyers of US real estate.

Between April 2016 and March 2017, Chinese individuals bought US$31.7 billion worth of real estate in the US.

Ian Burgess, private client services leader for EY Oceania and Asia Pacific, says that if passed, the tax changes "will certainly simplify the structuring of US investments by Asian HNWIs".

In particular, non-resident investors will no longer need to worry about the US estate tax when it comes to owning US real estate and other property subject to estate and gift taxes, Burgess tells *Asian Private Banker*.

"For this reason, often non-residents buy real estate through structures so that the US estate tax would not apply, however in that case, the income and capital gains taxes tend to be higher," Burgess explains.

As such, a repeal of the estate tax would make investment into US real estate "more attractive and simpler".

"However it is important to stress that there are very little details of the proposed reforms and a lot of water to go under the bridge before they are implemented. We won't know the form or details of the reforms until later in the year [post-Labor Day]," Burgess adds.

Repeal unlikely to receive sufficient support

Buzzacott partner Scott Barber says that unlike the recent healthcare debate in the US, there is likely to be more bipartisan support for tax reform "particularly around individual income and corporate taxes".

"That said, most Democrats and some Republicans will feel an estate tax repeal is a lower priority," he says, adding that many Democrats will feel that the current exemption available to citizens is "more than generous" (US$5.49 million per individual).