MORE TAXING TIMES FOR NRIS IN THE US

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mumbai (BY AJAY RAVAL) NRIs in America, the beginning of 2011 will mean more tax burden. The estate duty, better known as 'death tax', has been re-introduced.

It will be levied on the passing away of a tax payer, whether a citizen or not. The rate - a whopping 35 per cent - will be charged on the estate before any distribution among heirs.

Nishith Desai, international tax planning expert, explains, "The estate duty is applicable to all such persons who own assets in the US. The threshold for exemption, however, varies with the residential status of the person."

While a US citizen receives a higher exemption amount, a holder of the 'green card' - meaning, someone with a residence and work permit - receives a low exemption amount.

The exclusion amount has been set at $5 million for 2011 and 2012 for US citizens. If an individual dies over the next two years, the gross estate value in excess of this amount will be taxed.

Also, if he/she is utilising the annual Reserve Bank of India-limit of $200,000 for investing abroad, any asset created in the US in excess of $60,000 will attract the estate duty, according to a paper released by Nishith Desai & Associates.

The 'gross estate' of the deceased is computed after considering the fair market value (FMV) of all 'global' movable and immovable assets, including cash and securities, real estate, insurance, art collections, cars, etc.

One has limited options for escaping or minimising the tax burden. Giving up citizenship status is surely not one of these.

"US law makes provision for it in the form of 'exit tax'. So, if an individual gives up his/her citizenship status, it is assumed that you have sold all your assets at FMV and are taxed at the rate of capital gains on such assets," says Suresh Surana, founder, RSM Astute Consulting Group.

However, there is a way out. With a little planning and an equitable distribution of assets, one can reduce the burden.

Marital deduction

American law only permits the inheritor to claim deductions to the extent of liabilities, if any, against assets included. However, if you are married, you can take advantage of 'marital deductions'. On the event of death, if you are survived by a spouse, any property passed on to him/her will not be treated as 'inheritance'. It would, hence, be kept out of the purview of the calculation of 'gross estate'.

Gift away

Gifts worth up to $1 million in a lifetime or $13,000 per year made by an individual are exempted from gift tax. However, any amount above

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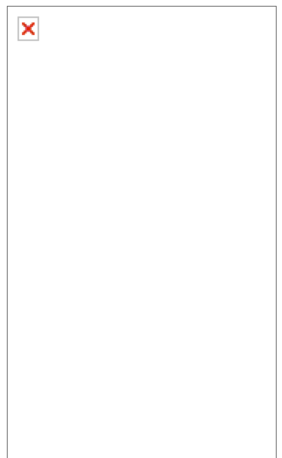

this would, subject to circumstances, be considered a 'gift in contemplation of death'. It would then be taxable in the hands of the inheritor. He/she would have to pay an inheritance tax on the gift which is on par with the estate duty.

Go the trust way

Set up a private trust, whose beneficiaries are your heirs. The trust, in turn, sets up a company, which creates and holds all the assets. "The logic is that a company does not die. It enjoys perpetual existence and, hence, will not be liable for paying estate duty," says Desai.

However, the process of setting up a trust is not simple. Aseem Chawla, partner and head-tax practice, Amarchand Mangaldas, says, "The administration and maintenance of the trust is expensive. Also, it is a time-consuming process, as filing requirements in the US are onerous."

There are other issues as well. Anil Harish, partner, D M Harish and Co Advocates, also rings out a word of caution, "Setting up trusts is complicated, as there may be numerous taxes involved, differing on the nature of the trust being set-up. One must study the liabilities pertaining to income tax, gift tax, wealth tax, stamp duty, etc."

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