US estate tax spells taxing times for NRIs

Wednesday, 29 December 2010

MUMBAI: If ever there is anything like a good year to die in, it is 2010 – but only if you are a millionaire US citizen. America's 'death tax', which was repealed in 2010, is set to be introduced in the new year.

Formally called the estate tax, it is levied on inheritance before it is passed on from one generation to the next. The tax was introduced in 1916 and has been in force ever since. The brief window in 2010 was the only exception, making it a freak year in which death carried a huge tax break.

Under new laws being passed by the Obama administration, the first $5 million in value of any individual's estate is tax-free, but all value above this figure is taxed at 35%. The tax will kick in from January 1. The reintroduction of the estate tax is forcing a rethink among wealthy Indian-origin American citizens.

When Jaydev Patel (name changed), a New York-based neurologist came to his native town Dharmaj, 90 km from Ahmedabad, this month, he carried an unusual cargo – paintings he had collected over two decades in the US. There are many such non-resident Indians (NRIs) who are shifting their movable wealth from the US to India to escape the net of the much-feared estate tax. It may not be of much help, though.

The estate tax is imposed on 'all global' movable and immovable estates of a deceased US citizen and collected from the estate's administrator before any distribution is made to his or her inheritor. Still, many have started shifting their movable properties back home in India where they are still part of the Hindu Undivided Family (HUF).

"All individuals who are tax residents of the US, who may or may not be staying in that country now, fall under the purview of the estate law," said Amitabh Singh, Tax Partner, Ernst & Young.

"US law agencies, under the fairness doctrine, impose an exit tax on individuals who intend to give up their citizenship to escape this exorbitant federal tax," said Amitabh Singh of Ernst & Young. "Until last year, the federal estate duty in the US was 45% on all estates over and above $3.5 million," said Nishith Desai, founder of research-based international law firm, Nishith Desai Associates. It has a branch in California. "In 2010, while the estate duty was done away with, there was apprehension that the Obama administration would reintroduce it at 55% with a low exemption of $1 million." The new estate tax is lower, but is still a cause for angst.

However, tax experts feel that there are ways to minimize estate duty. They suggest that NRIs could divest their properties in the US by gifting smaller quantities rather than giving all at one go — gift tax is exempt up to $1 million. This could reduce the amount of estate tax considerably. "There are several Indians in the US who would now naturally like to plan their taxes in the most efficient manner. They would be well-advised to disinvest their properties in the US by systematic gifting to their families in India, partnership firm or their children," said Aseem Chawla, Partner & Head of tax practice, Amarchand Mangaldas.

"There are many green card-holding doctors, chartered accountants, IT professionals and motel owners who will be affected by the regulations," said Krishnakant Vakharia, President, Vishva Gujarati Samaj, an umbrella body of non-resident Gujarati community. "We know that people are trying to find ways to get around this tax."

Most developed countries like the UK or France also have estate duty, in one form or another. "It is this state of affairs which warrants extensive legal and tax planning even on the part of Indian resident individuals before they take a plunge into making investments in the US," said Nishith Desai.