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Steps Foreign Persons Can Take to Avoid Unnecessary U.S. Estate Tax

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A recent *CNBC report* suggests that several billion dollars of estate tax due from the estates of foreign decedents on investments in U.S. stock and real estate goes uncollected by the IRS every year. The report noted a large discrepancy between the amount of foreign investment in these assets and the number of estate tax returns filed by foreign individuals reporting such assets. To avoid liability for unpaid taxes, U.S. banks, brokerages, and other custodians must obtain certification from the IRS that a foreign account holder has complied with U.S. tax laws before transferring the proceeds of the account at the account holder's death. However, according to the *CNBC* report, foreign banks have assisted their clients in keeping the IRS from learning about generational transfers of wealth through tactics such as holding stock in the financial institution's name, so that U.S. brokerages are not aware of the ultimate owners' identities. ***The report speculates that these techniques for avoiding detection by the IRS could be the next target in the IRS's efforts to combat offshore tax evasion.***

Foreign individuals who own, among other things, U.S. stock or U.S. real estate — so-called "U.S. situs assets" — at their deaths are subject to U.S. estate tax on those assets. Unlike U.S. residents and citizens who are exempted from U.S. estate tax on over $5 million of assets ($5.43 million in 2015, and $5.45 million in 2016), foreign individuals are exempt from U.S. estate tax on only their first $60,000 of U.S. situs assets, unless they benefit from an estate tax treaty.

U.S. estate tax on these assets, however, can be legitimately avoided through prudent estate planning. Stock in a foreign corporation, unlike U.S. stock, is not considered a U.S. situs asset for estate tax purposes even if the corporation owns U.S. assets, and thus can serve as an effective estate tax blocker for U.S. situs assets owned by foreign individuals. Care must be taken to ensure that the corporation is respected for U.S. tax purposes and for income producing assets, the U.S. income tax consequences must be considered. Alternatively, if a foreign individual would like to transfer wealth to family members prior to his or her death, a trust may be a more suitable option and result in less income tax than a corporation. An added benefit of both structures is that they can avoid the cumbersome administrative and reporting requirements involved in transferring assets upon the death of the foreign owner.

Caplin & Drysdale's Private Client Group has considerable experience assisting foreign individuals with U.S. estate tax planning, including the creation of corporate and trust structures that can be used to block the imposition of U.S. estate tax. The firm also assists individuals in navigating IRS reporting requirements after the death of a foreign individual owning U.S. assets (whether through a U.S. bank or brokerage or otherwise), pre-immigration tax planning, and other issues that arise when foreign individuals own U.S. situs assets. Please contact one of the attorneys below for assistance.

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Having celebrated our 50th Anniversary in 2014, Caplin & Drysdale continues to be a leading provider of tax, tax controversy, and litigation legal services to corporations, individuals, and nonprofits throughout the United States and around the world. We are also privileged to serve as legal advisors to accounting firms, financial institutions, law firms, and other professional services organizations.

The firm's reputation over the years has earned us the trust and respect of clients, industry peers, and government agencies. Moreover, clients rely on our broad knowledge of the law and our keen insights into their business concerns and personal interests. Our lawyers' strong tactical and problem-solving skills—combined with substantial experience handling a variety of complex, high stakes, matters in a boutique environment—make us one the nation's most distinctive law firms.

With offices in New York City and Washington, D.C., Caplin & Drysdale's core practice areas include:

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