

US Federal Estate Tax (FET)

US Federal Estate Tax implications can arise for Irish estates if they include US assets, or the deceased was a US citizen.

The US levies Federal Estate Tax on the worldwide assets of a deceased who was a US citizen, or held a US passport or green card on the date of death, and FET arises on the US assets of other Estates.

There is a very substantial FET tax free threshold for US citizens (US\$13,990,000 for individuals in 2025). For other persons (referred to as non-resident aliens) the tax free threshold is much lower (US\$60,000 in 2025).

In recent years an increasing number of Irish estates have had to deal with US Estate Tax simply because the deceased held US shares, either because they worked for a US company and received employee shares, or because a US company was regarded as a good investment. In many such cases the deceased would have been unaware of any US tax exposure.

If an Estate holds US assets advice should be sought as soon as possible as Federal Estate Tax is applied at the date of death and the pay and file deadlines arise early in the administration.

Unlike Ireland, the US does not allow spouse relief in all cases. If US assets pass from a US citizen to a spouse who is not a US citizen, relief will not be available. If both spouses are US citizens an exemption will apply.

Ireland US Double Taxation Agreement

Ireland and the United States have a Double Taxation Agreement ("DTA") which is one of the older agreements, having come into force on 20 December 1951.

The DTA covers inheritance tax (but does not apply to gift tax), and it covers US Federal Estate Tax. It does not apply to any estate tax that may be levied by individual States in the US.

Under the DTA the taxable status of an asset depends on its location (or situs). If an asset is located in Ireland it is primarily taxable in Ireland, and the US will give a credit for the Irish tax paid on that asset. If the asset is located in the United States then tax will be primarily payable in the US and the Irish Revenue will allow a credit for the US tax paid.

The DTA contains a specialised set of rules to determine the situs of assets, and the taxing rights of Ireland and the US (see the Revenue Situs Rules chart below). In general, assets such as real property and shares are taxable in the country in which the asset is located or where the company is incorporated. Assets such as bank accounts are taxable in the jurisdiction in which the deceased was domiciled at the date of death.

In most cases when Irish estates have an exposure to US Federal Estate Tax, the tax arises on shares in US companies. Under the DTA such shares are deemed to be located in the US, giving the US primary taxing rights in relation to these assets.

In practice the registrar of a US company is unlikely to release the shares held by the deceased to the personal representative of the Estate without being provided with IRS Form 706-NA and a Transfer Certificate. There is no set de minimus below which the registrar cannot request this form, and our experience is that Registrars of US companies will not release shares without prior clearance from the Inland Revenue Service ("IRS").

In some cases banks in the US will seek a tax clearance certificate from the IRS in regard to US bank accounts. Under the Ireland US Double Taxation Treaty for Inheritance tax, bank accounts are treated as being located in the State of domicile of the deceased (and this is reflected in the IRS Manual), so if the deceased was domiciled in Ireland the bank accounts are treated as an Irish asset.

Situs of Assets for CAT (inheritance tax) & FET Purposes

Class of Property	Situs for Convention
Immovable Property	Place it is located
Tangible moveable property including currency, negotiable bill of exchange, promissory notes	Place where located or if in transit, at the place of destination
Debts due to the deceased, secured or unsecured – includes bank accounts, mortgages, dividends, shares in Government or municipal corporations	Place of domicile of disponent
Shares or stock in a corporation except government or municipal	Place where or under the law of which the corporation was created
Policies of insurance and assurance on death	Place of domicile of disponent
Goodwill of business	Place where business carried on
Ships and aircraft and shares thereof	Place of registration
Patents, trademarks and designs	Place of registration
Copyright, franchises and rights of licences to use any copyrighted material, patent, trademark or design	Place where the rights are exercisable

Rights or causes of action ex delicto surviving for the benefit of an estate of a decedent

Place where such rights or causes of action arose

Judgment debt

Place where judgment is recorded

Under Article IV (2) of the US Ireland Double Taxation Agreement (1st Schedule Finance Act 1950), any non-Irish property inherited on the death of a person who is not domiciled in Ireland and is domiciled in a US State is exempt from Irish CAT.

Current Regime for US Federal Estate Tax

The current top rate of FET is 40%, with an estate exemption of US\$13,990,000 (in 2025) for US citizens and US\$60,000 for non-resident aliens.

The administration of US Estate Tax returns can be a relatively slow process with average return processing time measured in years rather than months.

US Tax Compliance

The US Federal Estate Tax return and tax are normally due within 9 months of the date of death of the deceased. If a return is filed late, and/or the tax liability is paid late, interest and penalties will be charged by the IRS. Taxpayers can apply for a 6-month “pay and file” extension but this extension must be applied for within 9 months of the date of death. This extension will prevent the estate from penalties, but interest will still be charged on the late payment of tax. If there are mitigating circumstances the IRS may consider some abatement of the interest and penalties.

FATCA

In 2012, Ireland entered into an information sharing agreement with the United States. The Intergovernmental Agreement is based on US legislation known as the “Foreign Account Tax Compliance Act” or “FATCA”.

The purpose of the Agreement is to enable the US government to identify US taxpayers who hold assets offshore. Once the offshore assets are identified, the IRS can crosscheck the tax returns for the individual to ascertain if US tax is being operated on income or gains arising from such assets.

From a federal estate tax perspective, there is no direct effect on the individuals who own the accounts but the IRS will be aware of the details of any relevant accounts.

Conclusion

It is worth noting that US Federal Estate Tax differs from Irish CAT due to the fact that it is a tax on estates rather than on beneficiaries.

Under the Irish CAT system the tax is payable by a beneficiary by reference to a valuation date which in many cases can arise over a year or more after the date of death.

In many cases the deadline for filing a US FET return will have passed by the time the Irish CAT return is filed, giving rise to an exposure to US interest and penalties. Estate practitioners should consider the US tax position when identifying the non-Irish assets in preparing the Form SA2 as part of the probate papers.

O’Hanlon Tax Limited provides a service of preparation and filing US Federal Estate Tax returns. For more information on this service please contact OHT.