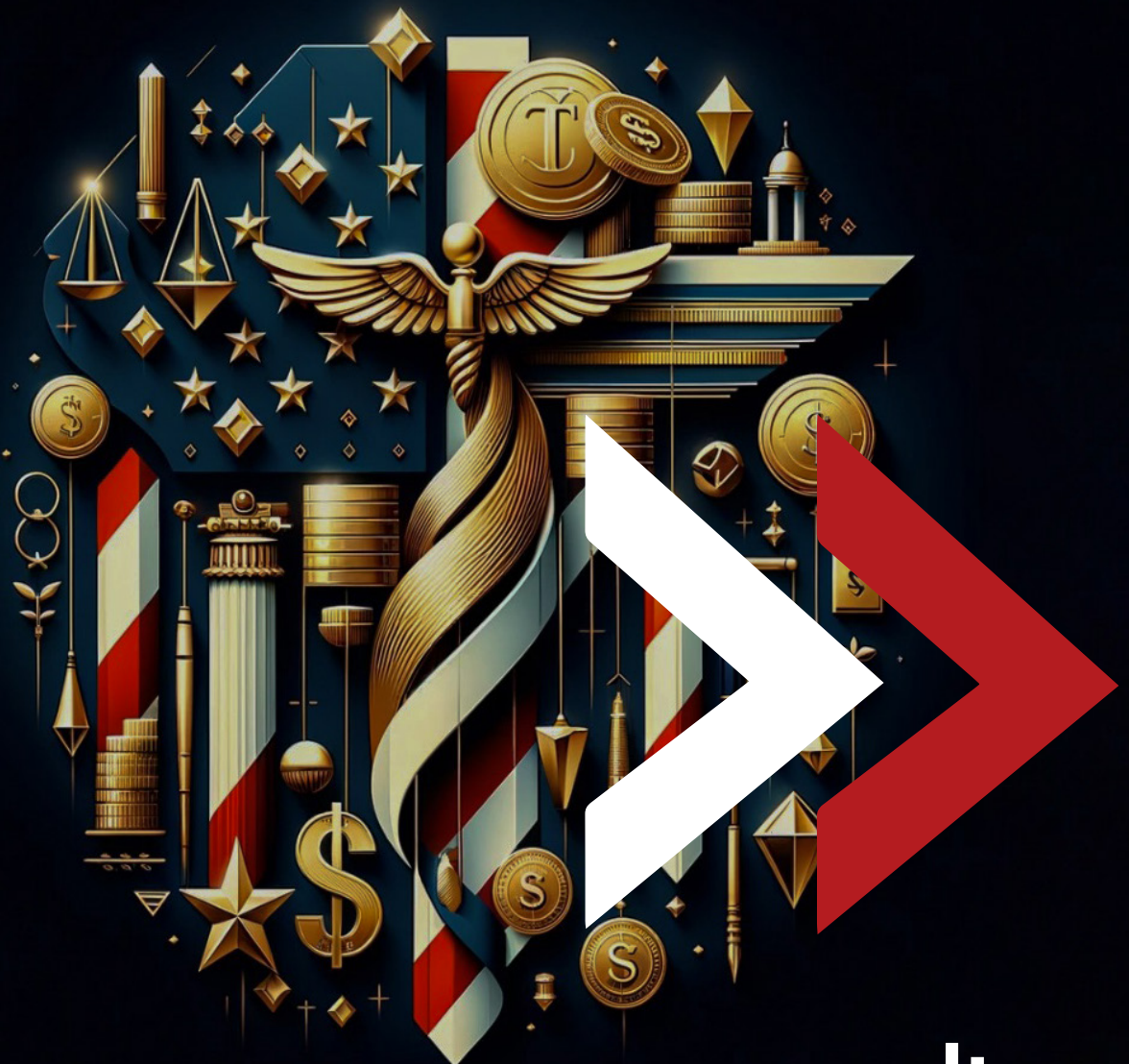


# THE ACCIDENTAL US TAXPAYER

HOW MANY NON-  
AMERICAN HNW FAANG  
INVESTORS ARE  
GUARANTEED TO LOSE  
UP TO 40%



# SUMMARY

- *The Nasdaq 100 is making all-time highs – led in part by the usual team of FAANG stocks – Facebook, Apple, Amazon, Netflix, and Google (but do not forget the rest, and apologies to Bill Gates!).*

*Many high-net-worth investors today have made significant fortunes by sticking to a buy and hold strategy in the US tech sector with the new focus on AI and the stocks that will benefit from this new paradigm.*

*Whether this is sustainable is another tea leaf reading guess, but two things are for sure and do not need tea leaves:*

- 1. If you are a Non-Resident Alien for US tax purposes, it does not matter where you live, or where your investment account is, if you have more than \$60,000 of US stocks, when you pass away (whenever that may be) your estate will be liable for US estate taxes of between 18% and 40%.*
- 2. In the case of Executors or Administrators of estates, your non-US private bank or broker could be in deep trouble if they do not report you as the executor/administrator of the estate of the deceased and the US estate tax liability which is due.*

*Let me explain ...*

---

GET IN TOUCH

[View Mark Smallwood's LinkedIn Profile](#)

[Find out more about Hubbis](#)



## » The Non-Resident Alien

Firstly, what is a US Non-Resident Alien? Let's break it down as follows (in the context of the United States):

1. According to the Internal Revenue Service (IRS) an alien is "any individual who is not a US Citizen or US national".
2. In addition, according to the IRS, a "Non-Resident Alien", is an alien who has not passed the green card test or the substantial presence test.

In case you are wondering what a "US National" is, it does not cover green card holders, but covers a very small number of people who were for example born in the Philippines or American Samoa etc. at specified times. The principal difference being that they are able to have a US passport, but unable to vote in elections.

So, in laypersons terms, if you are not a US Citizen, or national, and do not have a green card and do not live in the United States, then you are most likely a "Non-Resident Alien".

So, what issues do Non-Resident Aliens have? Well, it boils down to some quite unpleasant discrimination when it comes down to US estate taxes.

## US Estates Taxes

The subject of US Estate Taxes is highly complex, but thankfully for this purpose it does not have to be and is very clear cut.

Firstly, in simple terms, if you are a US Citizen or Permanent Resident (green card holder), then you are liable to US estate taxes of up to 40% on your global assets. Simple. Given the generosity of the United States to its own Citizens, they provide a very attractive exemption for estate tax of (currently) \$12.92 million per person (note that this is due to halve on 31st December 2025 unless extended) – so a married couple could leave \$25.84 million between them without suffering estate taxes. Compare this to the UK where the inheritance tax threshold is a paltry £325,000 per person.

If you think the UK is bad at £325,000 – and you are a Non-Resident Alien – and you own US securities – then things are even worse.... for you.

For a Non-Resident Alien the US estate tax threshold drops from \$12.92 million to... \$60,000. That is not a typo - \$60,000. So why should this be a problem if you do not have any assets in the US and you are not a US Citizen or National?

## US Securities and US Estate Taxes

The IRS states very clearly the tax treatment of Non-Resident Aliens and in particular, in so far as US Estate taxes are concerned, they do not mince any words, which are worth repeating:

"Certain deceased non-residents who were not citizens of the United States are subject to U.S. estate taxation with respect to their U.S.-situated assets. For estate tax purposes, a citizen of a U.S. possession is not a U.S. citizen.

U.S.-situated assets that are subject to estate tax include, for example:

- » Real estate located in the U.S.,
- » Tangible personal property (excluding some art), and
- » **Stock of corporations organized in or under U.S. law, even if the non-resident held the certificates abroad or registered the certificates in the name of a nominee."**

You may not believe me, so here it is: <https://www.irs.gov/individuals/international-taxpayers/some-nonresidents-with-us-assets-must-file-estate-tax-returns>.

So to be quite clear, if you are a Non-Resident Alien, with \$1 million of US stocks, in an account outside

---

**« "The consequence of this situation for those clients who do not take action can be frightening. I always recall a well-known lawyer stating that the last thing a high-net-worth person should do is turn their beneficiaries (children) into criminals." »**

---

the US (say Singapore), and you have never been to the US, when you pass away, your estate will become a US tax payer, subject to US Estate Taxes, with a threshold of \$60,000, which means that \$940,000 will be subject to up to 40% US Estate Tax (\$376,000!). In my private banking days, I have seen Non-Resident Alien clients with \$50 million plus in US securities in their personal name in accounts in Singapore and Hong Kong... do the maths...

### Consequences

The consequence of this situation for those clients who do not take action can be frightening. I always recall a well-known lawyer stating that the last thing a high-net-worth person should do is turn their beneficiaries (children) into criminals. Let me explain.

If a HNW person who is a Non-Resident Alien has US securities in their personal name, then when they pass away, the disposition of those assets will in most cases either be undertaken by the Executor(s) of their Will or by a Court Appointed administrator (where the person dies intestate) under (typically in English Common Law jurisdictions) a Grant of Letters of Administration (normally a close relative).

The Executor(s) or Administrator(s) of the estate have personal liability and are required to and are liable to pay from the estate of the deceased all debts and liabilities (including taxes) before disbursing the balance of the estate to the beneficiaries.

Clearly, where the Executor(s) are a law firm, the law firm takes this liability.

So, for the HNW client who thinks they can ignore this problem – it cannot be ignored. The

lawyer Executor will be bound professionally to ensure the US estate taxes are paid, and the family Executor may be tempted to break the law by not paying the taxes and so criminalise themselves.

The consequences are further exacerbated from the point of view of the financial institution (FI) which acts as custodian of the US securities. The FI will be aware of the death of the account holder and will also be aware that if the value of the US securities in the account exceeds \$60,000, then the Executor/Administrator of the Estate will need to disclose and pay US estate taxes. Indeed, from the moment the account holder is deceased, the account holder/estate needs to be regarded as a US taxpayer.

This of course means that the compliance departments of non-US based banks and custodians need to be on top of this issue and ensure that they are obtaining FATCA returns from the Executors/Administrators or Trustees of the Estate. Some may even wish to see evidence that all US tax liabilities have been accounted for and paid by the estate before releasing the assets.

So, to summarise, turning a blind eye to this issue is not an option, and clients need qualified advice as to how to mitigate the liability, which is for most clients in Asia, easily achieved.

### Solving the Problem

Investors or clients who have this issue, need to speak to qualified tax advisors and lawyers or their wealth planners at their private banks and wealth managers. The solution for most involves placing a “blocker” between the individual and the US securities. This can include but not be limited to:

1. A properly structured corporate account (e.g., a BVI company, a Singapore Variable Capital Company etc.) creates a separation from the individual to the company. The company does not die – the company holds the US securities - there is no US estate tax.
2. A Private Placement Life Insurance – the individual enters into a life insurance contract with an insurance company – the insurance company holds the US securities, the insurance company does not die, and passes on assets to the beneficiaries of the life insurance policy on the death of the life assured with no US estate tax liability.
3. US equity exposure via managed or passive (ETF) funds can provide the exposure to US securities without the US estate tax issue. The danger here is that investors may make the mistake of investing in a US based ETF for example to gain exposure to a certain index or strategy, and this is of course a US security – so investors should be utilising ETFs and Managed Funds which are based in (for example) Ireland, Luxembourg, Singapore etc. rather than the US. These types of funds do not of course solve the problem where concentrated holdings in a small number of US securities is required.
4. For short term exposure, Structured Products, Swaps, Certificates For Difference, and so on, could be utilised – again the client does not directly own the underlying so there is no US estate tax liability – the problem is of course the cost of carry, so this is likely better suited to short term tactical trades.

---

## Summary

If you are standing in a tunnel, and two rails are running past you, and there is a light at the end of the tunnel that is getting bigger – then my suggestion is to get out of the way.

The issue with the US Estate Taxation of US securities held by Non-Resident Aliens is a “clear and present danger” and with the right advice can be easily resolved. The days of relying on lack of information exchange are long over and clients and their advisors should be taking remediation measures.

I have no doubt that all of the private banks in Asia have clients with very significant holdings of US securities and they need to take advice and have the account structured properly, ideally in conjunction with overall Estate and Succession planning advice.

This article is designed to spark awareness rather than provide specific solutions - hopefully the article will spark wealth managers and their clients to seek the necessary advice and solve what can be for many a significant potential liability with, in most cases, a simple solution.

