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THE TAX LAWYER

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Downton Abbey Season 5, After Taxes

Downton Abbey is back. The Season 5 premiere returns us to beloved characters and a changing Britain in 1924. It is good for fans and good for PBS. This season, changing social mores and changing roles for women are especially featured. Lady Mary must deftly handle multiple suitors, Lady Edith must manage the heartstrings and risk of having her child close after being born out of wedlock, and Tom Branson, chauffeur turned Crawly family member, must deal with the affections of the outspoken local school teacher, Sarah Bunting.

Yet it is well to remember that Season 5—and the Downton estate in its entirety—might well have been broken up and sold last year in Season 4. It was no small worry and probably could have been an even more important theme than it was last year. Death duties after Mathew Crawley's passing (Americans call it estate tax) threatened to destroy Downton. The tax threat was not idle, and it did bring down many grand homes.

In England, death duties date to 1894 and they still are big enough to figure in the U.K. budget. In America, our IRS has collected tax on the transfer of property at death since 1916. Although the tax has been amended many times, one brief episode when it didn't apply at all was in 2010. A number of billionaires managed to die during 2010, in what was perhaps their last great market timing. But despite that one strange year, it's clear that the estate tax and the corollary gift tax imposed on transfers during life are not going away.

With great estates like Downton in the U.K., it was not uncommon for property to be sold to pay the tax. There was friction between Mary Crawley and Lord Grantham over whether to sell off portions of Downton. In England or the U.S. today, planning can often avoid estate taxes, even where estates exceed the free allowances.

Americans have it lucky. Under current U.K. rules, if the first spouse to die leaves everything to the survivor, the tax-free allowance is £650,000. The value over and above £650,000 is taxed at 40%. For unmarried individuals, the tax-free allowance is only £325,000. Current U.S. tax law is considerably more generous. For 2015, you can transfer \$5.43 million tax-free.

If you are married, your limit is double that. And if you are just giving assets to your spouse, the amount is unlimited, as long as the inheriting spouse is a U.S. citizen. In total, that means a married couple can transfer \$10.86 million to anyone tax-free. Even if the estate is much larger than that, there should be no tax at all until the second to die.

U.S. estate tax law has been mercurial, and for years that made planning tough. Indeed, a change in 2001 steadily increased the tax-free amount until the end of 2009. Then, due to a squabbling Congress, there was no estate tax at all in 2010. That was a good year to die, as a few billionaires cleverly proved. Then in 2011, the tax came back but exemption amounts were scheduled to expire at the end of 2012.

Surprisingly, though, over New Year's 2013, Congress made the \$5 million per person figure permanent, even indexing it for inflation and adding other favorable rules. Still, so many people rushed to make year-end gifts in 2012 that some people—particularly if they made large outright gifts to kids or grandkids—later tried to unwind gifts.

But suppose Downton were in the U.S. and worth much more, say \$20 million or \$50 million? U.S. farmers and small-business owners may worry that their loved ones may have to sell their family farm or business to pay taxes. However, there are several rules that can help. First, in some cases special valuation rules can lower the value used.

Moreover, once you settle on the estate tax figure, there are ways of stretching the payment of taxes out for 10 or even 15 years in some cases. There are various hurdles to be met to take advantage of such rules. However, if you play your cards right, it usually shouldn't be necessary to sell a family business or family farm to pay estate taxes.

Yet estate planning is notoriously difficult for many people to undertake. The financial affairs of many otherwise successful people are left in disarray. This can lead to extra taxes, lawyers' fees and family disharmony. As Downton teaches, the family and social issues can be plenty to deal with by themselves.

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