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# Mastering international estate planning across borders and taxes

**International estate planning involves navigating complex transfer tax, domicile and inheritance issues across multiple jurisdictions, making early collaboration with qualified foreign counsel essential for effective global planning.**

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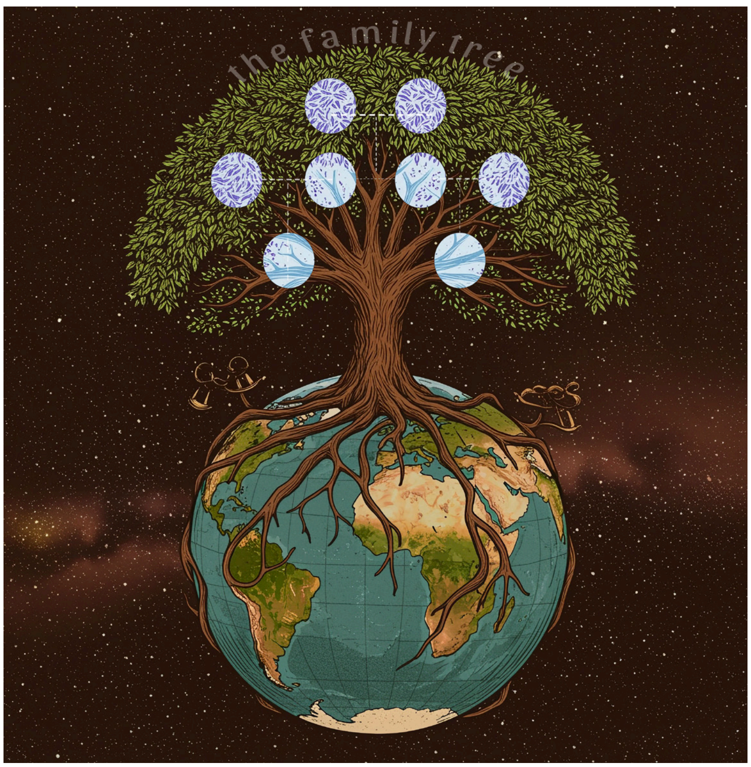

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International estate planning involves planning for individuals who have ties to more than one country. The complexities of planning vary depending on the countries involved, location of the assets and location of the beneficiaries. This article gives a very general overview of some of the more common transfer tax and estate planning issues. The most important takeaway is the importance of working at the beginning of the planning process with tax and legal counsel in the foreign jurisdiction where the client's property is located or where the beneficiary resides.

The term "transfer tax" includes U.S. estate, gift and generation skipping transfer (GST) taxes. Some states impose an additional estate tax or inheritance tax. Foreign jurisdictions can impose an inheritance tax and/or wealth tax. International estate planning can be compared to solving simultaneous equations where the variables are client objectives, beneficiary planning, choice of law, taxes, asset management and more. These simultaneous equations can be solved together with counsel in the foreign jurisdiction(s) to determine the optimal worldwide estate and gift planning strategy.

## U.S. citizens and U.S. residents

Generally, U.S. citizens and U.S. residents are subject to transfer tax on their worldwide assets. Non-U.S. persons, or non-resident aliens (NRAs), are subject to transfer tax only on U.S. situs property. Therefore, at the outset it is important to determine whether the client is a U.S. citizen or resident and whether the client or beneficiary is a citizen or resident of any other jurisdiction and where the client's assets are located.

For transfer tax purposes, the term "resident" refers to individuals who are domiciled in the U.S. An individual who is domiciled in the U.S. is subject to U.S. transfer taxes on a worldwide basis. Domicile is not the same as residence. Two factors must exist to have domicile: physical presence and intent. A person acquires U.S. domicile by living in the U.S. (presence), even for a brief period, with the intention to remain here indefinitely (intent).

Intent is determined based on facts and circumstances. Having a green card is one factor to consider whether the individual is domiciled in the U.S. Other factors include the duration of stay in the U.S. and other countries, frequency of travel between the countries, location of business and social contacts, size, cost and nature of home, location of expensive and cherished personal possessions, location of assets, reasons for residence in a particular location, declarations of residence or intent made in visa applications for reentry permits, wills, deeds of gift, trust instruments and oral statements.

The difference between "domicile" and "residence" can be confusing because for income tax purposes, an individual with a green card or who meets the substantial presence test (generally 183 days) is considered a U.S. resident.

It is also possible for an individual to be considered domiciled in multiple jurisdictions. Bilateral estate and gift tax treaties exist with certain countries that clarify which country has the right to impose a transfer tax on assets, thereby mitigating double taxation.

For example, suppose a U.S. citizen makes a gift of property located in a foreign jurisdiction. The U.S. citizen is likely to take advantage of the U.S. annual exclusion ($19,000 in 2025) or allocate all or part of the individual's lifetime exemption ($13,990,000 in 2025) and not pay any U.S. gift tax. However, that same transfer could cause the imposition of gift tax in the foreign jurisdiction that may be payable by the recipient of the gift. In order to minimize taxes (and unpleasant surprises), it is important to work with foreign counsel to determine the transfer and income tax consequences of gift transfers in the foreign jurisdiction.

## Marital property regime

A more common gift tax issue can arise out of the difference in marital property regimes between jurisdictions. The character of property as community or separate affects the nature of gifts during life or at death. Suppose a U.S. citizen is married to a non-U.S. citizen. Although gifts between U.S. citizen spouses are unlimited, gifts to a non-U.S. citizen spouse are limited to $190,000 (for 2025, indexed annually).

Community property can create tax issues in a foreign jurisdiction. In California, all property acquired by a married couple during marriage while domiciled in California is community property. Suppose one spouse earns $300,000 per year and the other spouse does not work outside the home. Under community property laws, both spouses are considered to have an equal interest in the $300,000. Each spouse is considered to have the right to half of $300,000, or $150,000. In such a case, the spouses need to consult with foreign counsel on the proper titling of bank accounts and any other account that will hold the earnings to avoid gift tax in the foreign jurisdiction.

But the marital property regime in the foreign jurisdiction may not recognize community property. If the non-earning spouse is considered a resident of such foreign jurisdiction (regardless of being a California domiciliary), that spouse could be subject to a gift tax on the $150,000 in the foreign jurisdiction.

In case of a transfer on death, the marital deduction is not available if the surviving spouse is not a U.S. citizen unless the property passes to the surviving spouse via a Qualified Domestic Trust.

**NRAs**

NRAs are subject to gift tax only on transfers of real and tangible personal property in the U.S. Tangible personal property includes cash, including checks drawn on a U.S. bank account. There is no lifetime exemption available for NRAs.

Intangibles, such as stock in U.S. corporations, are not subject to gift tax for NRAs. Seemingly clever attempts to convert real or tangible property to intangible property can run afoul of the step transaction doctrine. For instance, suppose an NRA owns U.S. real estate and wants to give it to a child tax free. Suppose further that the NRA gives money in a foreign bank account to the child and the child uses those funds to buy U.S. real estate. Or suppose U.S. real estate is transferred to a U.S. LLC and gifts of the LLC interests are made to the child. These transactions could be collapsed to a gift of U.S. real estate using the step transaction doctrine.

The rule changes for estate tax purposes. The U.S. estate tax is imposed on all U.S. situs property, including intangible property. Suppose the NRA holds intangible property, such as stock in U.S. corporations, and dies. The intangible property is subject to U.S. estate tax. For NRAs, the exemption available for transfers at death is $60,000.

An NRA who owns intangible property should consult with foreign and U.S. counsel to determine whether the intangible property should be gifted before the NRA becomes domiciled in the U.S.

Under the U.S. transfer tax system, a foreign death tax credit is available for taxes paid to the foreign jurisdiction. However, double taxation may not be totally eliminated.

**Choice of law**

The choice of law affects rules regarding the validity of will execution, construction of wills and statutory rights of family members. Civil law jurisdictions require a decedent to leave a certain amount of the estate to the decedent's spouse (elective share rights of spouses) and/or children (forced heirship rights). Most civil law jurisdictions do not have trust law or recognize trusts, so it may be difficult to administer a trust with property in a foreign jurisdiction. The tax treatment of trusts may be unpredictable and onerous. Therefore, it is important to consult with foreign counsel before transferring assets to a trust, even a revocable living trust and sometimes even of U.S. situs property, because the transfer into the trust could trigger transfer taxes or other capital gains taxes if the foreign jurisdiction considers the individual to be its resident.

If the individual holds assets in a foreign jurisdiction, counsel in the foreign jurisdiction can and should determine and prepare the proper documents of transfer. One consideration is to have a separate situs will instead of a single will. A U.S. situs will is designed to dispose of U.S. situs property and the foreign situs will for the foreign situs property. Counsel in the foreign jurisdiction can ensure that the foreign situs will meets the requirement for proper execution, address statutory rights of family members, plan for death taxes in the foreign jurisdiction and ensure that the designated personal representative will have the power to act under that foreign jurisdiction's law.

**Beneficiaries**

Beneficiaries can and do live in foreign jurisdictions on a temporary and permanent basis. Depending on their location, they could be subject to gift tax during the client's life or inheritance tax upon the client's death. Some jurisdictions look through trusts and consider the assets of trusts as part of the basis for transfer tax.

**Foreign trusts**

Extensive statutory and regulatory authority governs the taxation of and reporting requirements for foreign trusts. Designating a foreign relative or other individual as trustee or co-trustee could cause a trust to be classified as a foreign trust. This could happen if the successor trustee of a revocable trust is a foreign individual.

In general, a trust is considered foreign unless it meets the criteria for a domestic trust. It must meet the "court test" (a court within the U.S. must be able to exercise primary supervision over the administration of the trust) and the "control test" (one or more U.S. persons must have the authority to control all substantial decisions of the trust).

**Summary**

Every client and client's beneficiaries present unique facts and circumstances for citizenship, domicile, residence and assets, to name a few. The key to creating a successful international plan is to work with counsel in the foreign jurisdiction to determine the optimum planning strategies that will achieve the client's goals.

Resources for locating qualified foreign counsel exist on the website of The International Academy of Trust & Estate Law (www.tiaetl.org) and the International Fellows of the American College of Trust & Estate Counsel (www.actec.org).

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