

***United States Estate and Gift Tax -  
An Overview for Foreigners Investing in the United States***

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## Index

Introduction .....	i
How To Use This Guide .....	ii
Conditions 1 to 5 .....	1
Answers 1 to 8 .....	6
Definitions .....	21
Citizen .....	21
Domicile .....	21
Generation-Skipping Tax .....	21
Gift .....	22
Intangible Property .....	22
Property Located in the U.S. ....	22
Qualified Domestic Trust .....	23
Real Property .....	24
Spouse .....	24
Tangible Property .....	24
Taxable Gifts .....	24
Uniform Transfer Tax Rates .....	25
U.S. ....	25
U.S. Corporation .....	25
Treaties .....	26
Australia .....	27
Austria .....	28
Canada .....	29
Denmark .....	30
Finland .....	31
France .....	32
Germany .....	33
Greece .....	34
Ireland .....	35
Italy .....	36
Japan .....	37
Netherlands .....	38
Norway .....	39
South Africa .....	40
Switzerland .....	41
United Kingdom .....	42
End Notes .....	43

## **Introduction**

This guidebook summarizes the exposure to U.S. estate and gift taxes that an international person may have upon the transfer of his or her assets by way of gift or bequest. The following people will find this information helpful in understanding the U.S. estate and gift tax laws that affect them:

### **Non-U.S. Citizens residing outside of the U.S. who own:**

- Real (immovable) property or personal (movable) property that is located in the U.S.,
- Shares in a **U.S. Corporation**,
- A debt instrument from a U.S. person, **U.S. Corporation**, legal entity, or government;

### **Non-U.S. Citizens domiciled in the U.S.; and**

### **All U.S. Citizens.**

The content of this guide has been organized as a series of conditions that lead the reader to an explanation of some of the U.S. estate and gift tax laws that apply directly to his or her circumstances. The guide provides a summary of certain applicable tax laws. Because of the complexity of these laws, each person should consult a qualified tax and estate planning professional regarding his or her particular situation.

The authors thank Mr. Keith Rabenold, Mr. David J. Bross, Mr. Michael J. Stegman, Ms. Ruth I. Rounding, Ms. H. Drewry Gores and Ms. Sondra M. Choto, whose assistance over the years in the completion of this guide continues to be greatly appreciated.

## **How To Use This Guide**

This guidebook is divided into four major sections:

Conditions

Answers

Definitions

Treaties

Begin with page one of the **Conditions** and choose the response that corresponds to your situation in the **Answers** section. You will either be directed to an additional question or to an answer to your specific circumstances.

Additional information is provided for highlighted terms in the **Definitions** and **Treaties** sections.

**We understand the footnotes are often overlooked; however, we encourage all readers to review the footnotes, and FOOTNOTE 86 in particular.**

**Condition 1:**

**Are you a U.S. Citizen?**

*Yes – go to page 2.*

*No – go to page 3.*

**Condition 2:  
I am a U.S. Citizen.**

And my **Spouse** is a U.S. **Citizen**  
***Go to answer 1, page 6.***

But my **Spouse** is not a U.S. **Citizen**  
***Go to answer 2, page 8.***

And I am not married  
***Go to answer 3, page 10.***

**Condition 3:  
I am not a U.S. Citizen.**

And I am **Domiciled** in the U.S.

***Go to page 4.***

And I am not **Domiciled** in the U.S.

***Go to page 5.***

**Condition 4:**  
**I am not a U.S. Citizen,**  
**but I am a Domicile of the U.S.**

And my **Spouse** is a U.S. **Citizen**  
***Go to answer 4, page 12.***

And my **Spouse** is not a U.S. **Citizen**  
***Go to answer 5, page 14.***

And I am not married  
***Go to answer 6, page 16.***

**Condition 5:**  
**I am not a U.S. Citizen and**  
**I am not Domiciled in the U.S.**

And I do not own **Property Located in the U.S.:**  
*Your property should not currently be subject to U.S.*  
*estate or gift tax laws.*

And I own **Property Located in the U.S.** the value of which is over \$60,000:  
***Go to answer 7, page 18.***

And I own **Property Located in the U.S.** but its value is less than \$60,000:  
***Go to answer 8, page 20.***

As a general rule, you may be considered as owning **Property Located in the U.S.** if you own shares in a **U.S. Corporation** or U.S. real property. You may also own **Property Located in the U.S.** if you have any benefit from or control over any **Property Located in the U.S.**

Relief from a **Treaty** may be available if you are residing in a treaty country.

## Answer 1

### ***Both my Spouse and I are U.S. Citizens.***

As a U.S. **Citizen**, regardless of your place of residence, your worldwide assets are subject to U.S. transfer taxes.<sup>1</sup> This means that **Gifts** you make during your life and transfers of assets at your death are subject to U.S. estate and gift tax laws. Whether or not you will actually owe a tax on these **Gifts** or transfers depends upon many factors, but you should start with the premise that the transfer of assets anywhere in the world during life or death will be taxable by the U.S. government.

### **Gift Tax Implications**

You can make unlimited **Gifts** to your **Spouse** without reporting the **Gifts** to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>2</sup>

Other than gifts to your **Spouse**, you can make **Gifts** of \$15,000 per person per year directly to any number of persons without a reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>3</sup>

All **Gifts** (other than to your **Spouse**) in excess of \$15,000 per person per year and **Gifts** which are made to most trusts or other legal entities will be **Taxable Gifts** and:

- You must file a gift tax return with the U.S. government by April 15 of the following year.
- Gift tax as determined by the **Uniform Transfer Tax Rates** will be due when all **Taxable Gifts** made during your life exceed \$11,700,000.<sup>4, 86</sup>

## Estate Tax Implications

At your death the U.S. government will impose a tax upon all your assets (wherever situated in the world) to include:

- Proceeds of insurance policies on your life which you own or have owned within three years of death<sup>6</sup>
- Retirement benefits<sup>7</sup>
- Personal property in your name<sup>7</sup>
- Investments in your name or in joint name with another to the extent that you contributed to their purchase<sup>8</sup>
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase<sup>7</sup>
- Assets which you have transferred to another but retained an interest<sup>9</sup>

No transfers to your **Spouse** are taxed.<sup>10</sup>

A tax determined by the **Uniform Transfer Tax Rates** is imposed on the total value of all assets transferred at death, other than transfers to your **Spouse**, a qualified charity, and all **Taxable Gifts** made during your life.<sup>11</sup> The U.S. government will impose a tax upon your estate if the total of the **Taxable Gifts** made during life to which gift tax exemption was applied and the net taxable estate exceed \$11,700,000.<sup>12, 86</sup> State death taxes may also be payable.

## Generation-Skipping Tax Implications

**Gifts** and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

## Foreign Assets

Assets which are taxable by other countries are in certain cases subject to **Treaties**. Absent such **Treaties**, the U.S. allows a foreign tax credit for foreign taxes paid on property situated in the particular foreign country as determined under U.S. law to which the foreign tax is paid.<sup>13</sup>

## Answer 2

### *I am a U.S. Citizen but my Spouse is not.*

As a U.S. **Citizen**, regardless of your place of residence, your worldwide assets are subject to U.S. transfer taxes.<sup>1</sup> This means that **Gifts** you make during your life and transfers of assets at your death are subject to U.S. estate and gift tax laws. Whether or not you will actually owe a tax on these **Gifts** or transfers depends upon many factors, but you should start with the premise that the transfer of assets anywhere in the world during life or at death will be taxable by the U.S. government.

### **Gift Tax Implications**

You can make **Gifts** to your **Spouse** up to \$159,000 in value per year without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>14</sup>

In addition to **Gifts** to your **Spouse**, you can make **Gifts** of \$15,000 per person per year directly to any number of persons without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>3</sup>

**Gifts** in excess of \$15,000 per person (or \$159,000 to your **Spouse**) per year and those made to most trusts or other legal entities will be **Taxable Gifts** and:

- You must file a gift tax return with the U.S. government by April 15 of the following year.
- Gift tax as determined by the **Uniform Transfer Tax Rates** will be due when all **Taxable Gifts** made during your life exceed \$11,700,000.<sup>4, 86</sup>

## Estate Tax Implications

At your death the U.S. government will impose a tax upon all your assets (wherever situated in the world) to include:

- Proceeds of insurance policies on your life which you own or have owned within three years of death<sup>6</sup>
- Retirement benefits<sup>7</sup>
- Personal property in your name<sup>7</sup>
- Investments in your name or in joint name with another to the extent that you contributed to their purchase<sup>8</sup>
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase<sup>7</sup>
- Assets which you have transferred to another but retained an interest<sup>9</sup>

Transfers at death to your **Spouse** will be fully taxed unless those transfers are to a **Qualified Domestic Trust**, established under the rigid guidelines set down by the Internal Revenue Service.<sup>15</sup>

A tax determined by the **Uniform Transfer Tax Rates** is imposed on the total value of all assets transferred at death, other than transfers to a **Qualified Domestic Trust**, a qualified charity, and all **Taxable Gifts** made during your life.<sup>11</sup> The U.S. government will impose a tax upon your estate if the total of the **Taxable Gifts** made during life to which gift tax exemption was applied and the net taxable estate exceed \$11,700,000.<sup>12, 86</sup> State death taxes may also be payable.

## Generation-Skipping Tax Implications

**Gifts** and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

## Foreign Assets

Assets which are taxable by other countries are in certain cases subject to **Treaties**. Absent such **Treaties**, the U.S. allows a foreign tax credit for foreign taxes paid on property situated in the particular foreign country as determined under U.S. law to which the foreign tax is paid.<sup>13</sup>

### Answer 3

#### *I am a U.S. Citizen and I have no Spouse.*

As a U.S. **Citizen**, regardless of your place of residence, your worldwide assets are subject to U.S. transfer taxes.<sup>1</sup> This means that **Gifts** you make during your life and transfers of assets at your death are subject to U.S. estate and gift tax laws. Whether or not you will actually owe a tax on these **Gifts** or transfers depends upon many factors, but you should start with the premise that the transfer of assets anywhere in the world during life or at death will be taxable by the U.S. government.

#### **Gift Tax Implications**

You can make **Gifts** of \$15,000 per person per year directly to any number of persons without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>3</sup>

**Gifts** in excess of \$15,000 per person per year and those made to most trusts or other legal entities will be **Taxable Gifts** and:

- You must file a gift tax return with the U.S. government by April 15 of the following year.
- Gift tax as determined by the **Uniform Transfer Tax Rates** will be due when all **Taxable Gifts** made during your life exceed \$11,700,000.<sup>4, 86</sup>

## Estate Tax Implications

At your death the U.S. government will impose a tax upon all your assets (wherever situated in the world) to include:

- Proceeds of insurance policies on your life which you own or have owned within three years of death <sup>6</sup>
- Retirement benefits <sup>7</sup>
- Personal property in your name <sup>7</sup>
- Investments in your name or in joint name with another to the extent that you contributed to their purchase <sup>8</sup>
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase <sup>7</sup>
- Assets which you have transferred to another but retained an interest <sup>9</sup>

A tax as determined by the **Uniform Transfer Tax Rates** is imposed on the total value of all assets transferred at death, other than transfers to a qualified charity, and all **Taxable Gifts** made during your life.<sup>11</sup> The U.S. government will impose a tax upon your estate if the total of the **Taxable Gifts** made during life to which gift tax exemption was applied and the net taxable estate exceed \$11,700,000.<sup>12, 86</sup> State death taxes may also be payable.

## Generation-Skipping Tax Implications

**Gifts** and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

## Foreign Assets

Assets which are taxable by other countries are in certain cases subject to **Treaties**. Absent such **Treaties**, the U.S. allows a foreign tax credit for foreign taxes paid on property situated in the particular foreign country as determined under U.S. law to which the foreign tax is paid.<sup>13</sup>

## Answer 4

***I am not a U.S. Citizen but my Spouse is a U.S. Citizen and I am currently Domiciled in the U.S.***

As a U.S. **Domicile**, your worldwide assets are subject to U.S. transfer taxes.<sup>1</sup> This means that **Gifts** you make during your life and transfers of assets at your death are subject to U.S. estate and gift tax laws. Whether or not you will actually owe a tax on these **Gifts** or transfers depends upon many factors, but you should start with the premise that the transfer of assets anywhere in the world during life or at death will be taxable by the U.S. government while you continue to be a U.S. **Domicile**.

### **Gift Tax Implications**

You can make unlimited **Gifts** to your **Spouse** without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>2</sup>

In addition to **Gifts** to your **Spouse**, you can make **Gifts** of \$15,000 per person per year directly to any number of persons without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>3</sup>

**Gifts** (other than to your **Spouse**) in excess of \$15,000 per person per year and those made to most trusts or other legal entities will be **Taxable Gifts** and:

- You must file a gift tax return with the U.S. government by April 15 of the following year.
- Gift tax as determined by the **Uniform Transfer Tax Rates** will be due when all **Taxable Gifts** made during your life exceed \$11,700,000 <sup>4, 86</sup>

## Estate Tax Implications

At your death the U.S. government will impose a tax upon all your assets (wherever situated in the world) to include:

- Proceeds of insurance policies on your life which you own or have owned within three years of death<sup>6</sup>
- Retirement benefits<sup>7</sup>
- Personal property in your name<sup>7</sup>
- Investments in your name or in joint name with another to the extent that you contributed to their purchase<sup>8</sup>
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase<sup>7</sup>
- Assets which you have transferred to another but retained an interest<sup>9</sup>

No transfers to your **Spouse** are subject to U.S. estate tax.<sup>10</sup>

A tax as determined by the **Uniform Transfer Tax Rates** is imposed on the total value of all assets transferred at death, other than transfers to your **Spouse** or a qualified charity, and all **Taxable Gifts** made during life.<sup>11</sup> The U.S. government will impose a tax upon your estate if the total of the **Taxable Gifts** made during life to which gift tax exemption was applied and the net taxable estate exceed \$11,700,000.<sup>12, 86</sup> State death taxes may also be payable.

## Generation-Skipping Tax Implications

**Gifts** and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

## Foreign Assets

Assets which are taxable by other countries are in certain cases subject to **Treaties**. Absent such **Treaties**, the U.S. allows a foreign tax credit for foreign taxes paid on property situated in the particular foreign country as determined under U.S. law to which the foreign tax is paid.<sup>13</sup>

## Answer 5

***Neither my Spouse nor I are U.S. Citizens.  
However, I am Domiciled in the U.S.***

As a U.S. **Domicile**, your worldwide assets are subject to U.S. transfer taxes.<sup>1</sup> This means that **Gifts** you make during your life and transfers of assets at your death are subject to U.S. estate and gift tax laws. Whether or not you actually owe a tax on these **Gifts** or transfers depends upon many factors, but you should start with the premise that the transfer of assets anywhere in the world during life or at death will be taxable by the U.S. government while you continue to be a U.S. **Domicile**.

### **Gift Tax Implications**

You can make **Gifts** to your **Spouse** up to \$159,000 in value per year without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>14</sup>

In addition to **Gifts** to your **Spouse**, you can make **Gifts** of \$15,000 per person per year directly to any number of persons without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>3</sup>

**Gifts** in excess of \$15,000 per person (or \$159,000 to your **Spouse**) per year and those made to most trusts or other legal entities will be **Taxable Gifts** and:

- You must file a gift tax return with the U.S. government by April 15 of the following year.
- Gift tax as determined by the **Uniform Transfer Tax Rates** will be due when all **Taxable Gifts** made during your life exceed \$11,700,000<sup>4, 86</sup>

### **Expatriation**

If you have renounced U.S. citizenship or if you were a U.S. Green Card Holder, more onerous tax provisions may apply. You should immediately seek further advice regarding U.S. tax implications.

## Estate Tax Implications

At your death the U.S. government will impose a tax upon all your assets (wherever situated in the world) to include:

- Proceeds of insurance policies on your life which you own or have owned within three years of death<sup>6</sup>
- Retirement benefits<sup>7</sup>
- Personal property in your name<sup>7</sup>
- Investments in your name or in joint name with another to the extent that you contributed to their purchase<sup>8</sup>
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase<sup>7</sup>
- Assets which you have transferred to another but retained an interest<sup>9</sup>

Transfers at death to your **Spouse** will be fully taxed unless those transfers are to a **Qualified Domestic Trust**, established under the rigid guidelines set down by the Internal Revenue Service.<sup>15</sup>

A tax as determined by the **Uniform Transfer Tax Rates** is imposed on the total value of all assets transferred at death, other than transfers to a **Qualified Domestic Trust**, a qualified charity, and all **Taxable Gifts** made during your life.<sup>11</sup> The U.S. government will impose a tax upon your estate if the total of the **Taxable Gifts** made during life to which gift tax exemption was applied and the net taxable estate exceed \$11,700,000.<sup>12, 86</sup> State death taxes may also be payable.

## Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

## Foreign Assets

Assets which are taxable by other countries are in certain cases subject to **Treaties**. Absent such **Treaties**, the U.S. allows a foreign tax credit for foreign taxes paid on property situated in the particular foreign country as determined under U.S. law to which the foreign tax is paid.<sup>13</sup>

## Answer 6

### *I am not a U.S. Citizen, but I am Domiciled in the U.S. and I am not married.*

As a U.S. **Domicile**, your worldwide assets are subject to U.S. transfer taxes.<sup>1</sup> This means that **Gifts** which you make during your life and transfers of assets at your death are subject to U.S. estate and gift tax laws. Whether or not you actually owe a tax on these **Gifts** or transfers depends upon many factors, but you should start with the premise that the transfer of assets anywhere in the world during life or at death will be taxable by the U.S. government.

#### **Gift Tax Implications**

You can make **Gifts** of \$15,000 per person per year directly to any number of persons without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>3</sup>

**Gifts** in excess of \$15,000 per person per year and those made to most trusts or other legal entities will be **Taxable Gifts** and:

- You must file a gift tax return with the U.S. government by April 15 of the following year.
- Gift tax as determined by the **Uniform Transfer Tax Rates** will be due when all **Taxable Gifts** made during your life exceed \$11,700,000.<sup>4, 86</sup>

#### **Expatriation**

If you have renounced U.S. citizenship or if you were a U.S. Green Card Holder, more onerous tax provisions may apply. You should immediately seek further advice regarding U.S. tax implications.

## Estate Tax Implications

At your death the U.S. government will impose a tax upon all your assets (wherever situated in the world) to include:

- Proceeds of insurance policies on your life which you own or have owned within three years of death<sup>6</sup>
- Retirement benefits<sup>7</sup>
- Personal property in your name<sup>7</sup>
- Investments in your name or in joint name with another to the extent that you contributed to their purchase<sup>8</sup>
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase<sup>7</sup>
- Assets which you have transferred to another but retained an interest<sup>9</sup>

A tax as determined by the **Uniform Transfer Tax Rates** is imposed on the total value of all assets transferred at death, other than transfers to a qualified charity, and all **Taxable Gifts** made during your life.<sup>11</sup> The U.S. government will impose a tax upon your estate if the total of the **Taxable Gifts** made during life to which gift tax exemption was applied and the net taxable estate exceed \$11,700,000.<sup>12, 86</sup> State death taxes may also be payable.

## Generation-Skipping Tax Implications

**Gifts** and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

## Foreign Assets

Assets which are taxable by other countries are in certain cases subject to **Treaties**. Absent such **Treaties**, the U.S. allows a foreign tax credit for foreign taxes paid on property situated in the particular foreign country as determined by U.S. law, to which foreign tax is paid.<sup>13</sup>

**Answer 7**  
***I am not a U.S. Citizen.***  
***I am not Domiciled in the U.S. but I own***  
***property in the U.S. which has a value***  
***in excess of \$60,000.***

The U.S. government taxes certain transfers at death<sup>16</sup> made by persons who are neither U.S. **Citizens** nor U.S. **Domiciled**. The taxes are determined by the **Uniform Transfer Tax Rates** and are only levied against **Property Located in the U.S.**<sup>17</sup>

### **Gift Tax Implications**

You may owe gift tax<sup>18</sup> to the U.S. if during your life you make **Gifts** of **Real Property** or **Tangible Property** that is located in the U.S.<sup>19</sup> to:

- A trust which you neither control nor benefit from.
- A person (who is not your **Spouse**) if in any one year the value of all **Gifts** to that person exceeds \$15,000\*.<sup>3</sup>
- Your **Spouse** who is not a U.S. **Citizen** if in any one year the value of all **Gifts** to your **Spouse** exceeds \$159,000\*.<sup>14</sup>

\*Gifts under this amount can be made without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.

You can make unlimited **Gifts** to your **Spouse** who is a U.S. **Citizen** without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>2</sup>

You may make unlimited **Gifts** of **Intangible Property** to any person without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.

### **Estate Tax Implications**

At the time of death your legal representative must:

- Determine the value of all of your **Property Located in the U.S.**
- Subtract from the value of these assets the value of all assets which are transferred to your **Spouse** if he or she is a U.S. **Citizen** or, if not, the value of all assets transferred to a **Qualified Domestic Trust** for your **Spouse's** benefit.<sup>15</sup>

- Determine the tax on the value of your assets located in the U.S. (as reduced by the value of assets transferred to your U.S. Citizen **Spouse** or a **Qualified Domestic Trust**) by using the **Uniform Transfer Tax Rate** and subtracting \$13,000 from the tax due;<sup>20</sup>
- If any estate tax is due, prepare and file an estate tax return and pay the tax due within nine months of your death.<sup>21</sup>

If any U.S. estate tax is due, in order to transfer **Real Property** or certain **Intangible Property**, such as shares of a **U.S. Corporation**, from your estate to the beneficiaries of your estate, your legal representative must first obtain a transfer certificate from the Internal Revenue Service.<sup>22</sup>

To obtain a transfer certificate, if necessary, your legal representative must pay the U.S. estate tax due or provide such security as is required.<sup>22</sup>

### **Generation-Skipping Tax Implications**

**Gifts** and transfers at death to grandchildren or their descendants and spouses may be subject to a **Generation-Skipping Tax**.<sup>5</sup>

### **Treaties**

If you are a **Citizen** of or reside in any of the sixteen countries with which the U.S. maintains an estate tax treaty, your personal situation may differ.

### **Expatriation**

If you have renounced U.S. citizenship or if you were a U.S. Green Card Holder, more onerous tax provisions may apply. You should immediately seek further advice regarding U.S. tax implications.

## Answer 8

*I am not a U.S. Citizen and I am not Domiciled in the U.S. but I own property located in the U.S. The value of this property is less than \$60,000.*

### **Gift Tax Implications**

You may owe gift tax<sup>18</sup> to the U.S. if during your life you make **Gifts** of **Real Property** or **Tangible Property** that is located in the U.S.<sup>19</sup> to:

- A trust which you neither control nor benefit from.
- A person (who is not your **Spouse**) if in any one year the value of all **Gifts** to that person exceeds \$15,000\*.<sup>3</sup>
- Your **Spouse** who is not a U.S. **Citizen** if in any one year the value of all **Gifts** to your **Spouse** exceeds \$159,000\*.<sup>14</sup>

\*Gifts under this amount can be made without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.

You can make unlimited **Gifts** to your **Spouse** who is a U.S. **Citizen** without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.<sup>2</sup>

You may make unlimited **Gifts** of **Intangible Property** to any person without a gift tax reporting requirement to the Internal Revenue Service and without any U.S. transfer tax implications.

### **Estate Tax Implications**

You will not owe any U.S. estate tax on **Property Located in the U.S.** if at the time of your death the value of the **Taxable Gifts** of **Property Located in the U.S.** made during your life combined with the appraised value of **Property Located in the U.S.** (including **Intangible Property** that is located in the U.S.) at the time of your death does not exceed \$60,000.<sup>24</sup>

### **Expatriation**

If you have renounced U.S. citizenship or if you were a U.S. Green Card Holder, more onerous tax provisions may apply. You should immediately seek further advice regarding U.S. tax implications.

## Definitions

1. **Citizen** – a person born or naturalized in the U.S. is a citizen of the U.S. A child born in the U.S. of non-citizen parents is a U.S. citizen even though he or she has not lived in the U.S. since birth. A child born outside the U.S., one of whose parents was a U.S. citizen at that time, may be a U.S. citizen depending upon many factors to include the year of birth. The laws have changed during the last sixty years. A person who has renounced U.S. citizenship or ceased being a permanent U.S. resident (Green Card Holder) may still be taxed as a U.S. citizen for U.S. tax purposes under certain circumstances.

Note that certain U.S. citizens residing in U.S. possessions (not States) are treated as though they are neither U.S. citizens nor U.S. Domiciled.

2. **Domicile** – is that place where a person has his or her domicile. A person acquires a domicile in a place by living there, even for a brief time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile affect such a change unless accompanied by actual removal.

The issue of domicile must be determined based upon the facts and circumstances. It is, however, not to be confused with the concept of “residence” used for income tax purposes, which requires only the presence in the U.S. for a stated period and does not require an intention to remain permanently. To be a domiciliary for estate tax purposes the taxpayer must move to the U.S. with the intention to remain permanently. As a general rule, a person who has a U.S. permanent residence visa (Green Card) may be considered as having a U.S. domicile.

3. **Generation-Skipping Tax** – Property transferred by a U.S. Citizen or Domiciliary, or U.S. property transferred by a non-citizen non-domicile, will be subject to the generation-skipping tax if made directly or indirectly to the donor’s grandchildren or further descendants.<sup>5</sup> This tax is in addition to the estate or gift tax imposed. The rate is 40%.<sup>25</sup> Two current exemptions from this tax are:

- a) each donor who is a U.S. Citizen or Domiciliary may transfer up to \$11,700,000 before incurring a generation-skipping tax liability; and<sup>26, 86</sup>
- b) a direct Gift to a grandchild or further descendant is not a gift subject to the generation-skipping tax if the intervening family members are deceased.<sup>27</sup>

There are certain exemptions applicable to transfers from Trusts which were funded and irrevocable prior to October 22, 1986 and to estates where the will was executed before this date and the person died before January 1, 1987.<sup>28</sup>

Transfers of property by a non-U.S. Citizen who does not reside in the U.S. will be subject to generation-skipping tax to the extent that the transfer is subject to U.S. estate or gift tax.<sup>29</sup>

**4. Gift** – is a voluntary transfer of property by one individual (the donor) during his or her life, to another individual, trust or entity (the donee). The amount of the gift is the difference between the value of the property transferred and the value of any goods or services exchanged by the donee. In order to be a gift, the transfer from the donor to the donee must be complete. That is, the donor must part with possession and control leaving no power to change the disposition.

**5. Intangible Property** –includes:

- shares or units of ownership issued by a company incorporated or organized under the laws of the U.S.
- debt obligation of a U.S. person or U.S. Corporation, the U.S., any State or political subdivision.

**6. Property Located in the U.S.**

The following constitutes property located in the U.S. for purposes of U.S. estate tax:<sup>30</sup>

- Shares of a U.S. Corporation.
- Debt obligations of a U.S. person or U.S. Corporation, partnership or unincorporated association of the U.S. Government or any State, or political subdivision thereof. This would include accounts payable, bonds, debentures, notes or written or oral promises.
- All real estate within the U.S.
- All Tangible Property to include any of the following which are located in the U.S.: automobiles, currency, clothing, household furniture, jewelry, works of art (other than those which are in the U.S. solely for exhibition).
- The assets in a trust, which assets are located in the U.S., will be U.S. property owned by you if you have (or have had within three years of death) the following “retained powers”: (1) a general power of appointment over the property; (2) power to change the trust; (3) retained interest in the assets of a trust funded by you.
- Any income accumulated in a U.S. trust to which you have a right would be U.S. property to the extent the income was itself U.S. property.

- Assets in non-U.S. trusts over which you have retained powers will be U.S. assets in the proportion that U.S. assets were used to initially fund the trust, regardless of whether there are U.S. assets in the trust at the time of death.
- Partnership interests may be U.S. property to the extent the partnership owns U.S. assets or does business in the U.S.

The following assets are specifically excluded from U.S. property and will not be taxed as U.S. property when transferred by a non-resident non-citizen:<sup>31</sup>

- Bank deposits in U.S. banks (unless it is a business account) to include checking and savings accounts and certificates of deposit.
- Portfolio debt obligations, being bonds, notes or debentures, which:
  1. are not issued by a corporation or partnership that you or your relatives have a 10% or greater interest in, and
  2. are either in bearer form (with arrangements that U.S. citizens and residents are prevented from owning and its interest is paid outside the U.S.) or are in registered form.
- Life insurance proceeds payable on your life.
- Works of art on loan for exhibit.

## **7. Qualified Domestic Trust**

With respect to transfers from estates of persons dying after November 10, 1988, the marital deduction is denied for property passing to a surviving Spouse who is not a U.S. Citizen unless the property passes to the non-Citizen Spouse through a qualified domestic trust.<sup>32</sup> In order to be a qualified domestic trust the terms of the trust must provide that:

- at least one of the trustees be a U.S. Citizen or a domestic corporation, and<sup>33</sup>
- all distributions (other than an income distribution) made from the trust are subject to the U.S. trustee's right to withhold estate taxes imposed on the distribution, and<sup>34</sup>
- if the value of trust assets at the death of the first Spouse
  - exceeds \$2 million, then at least one trustee of the trust must be a bank or trust company incorporated and doing business under the laws of the U.S. and a State thereof (to include the District of Columbia) or the trustee must furnish a bond or security to the Internal Revenue Service in an amount equal to 65% of the fair market value of the trust at the date of death of the first Spouse<sup>35</sup> or
  - is less than \$2 million, the trust can voluntarily comply with the requirements established for larger trusts, or in the alternative, the trust document must provide that no more than 35% of the fair market value of the trust assets (as determined annually) will be invested in real property located outside of the U.S.<sup>35</sup>

In general, a transfer tax is due on all distributions from the trust (other than distributions of income or other distributions on account of hardship in response to an immediate and heavy financial need relating to the non-Citizen Spouse's health, maintenance or support where other funds are not available) during the surviving Spouse's life.<sup>36</sup>

A transfer tax is due on the fair market value of the trust assets at the time of the non-citizen Spouse's death or when the trust ceases to qualify as a qualified domestic trust.<sup>36</sup>

The rate of the tax is determined by reference to the actual size of the estate of the first Spouse to die.<sup>37</sup>

**8. Real Property** – generally means a fee simple interest in real estate to include any buildings, improvements and fixtures, growing crops or standing timber on the land.

**9. Spouse** – one's husband, wife, or partner as determined by the law of the country or state in which the taxpayer was domiciled at the time of the transfer.

**10. Tangible Property** – includes any of the following that are situated in the U.S.:

- automobiles.
- currency.
- household furniture.
- jewelry.
- works of art (works of art located in the U.S. solely for exhibition are not considered U.S. tangible property for U.S. estate tax purposes).

**11. Taxable Gifts** – In 2011 and thereafter, all gifts (other than Gifts to a U.S. Citizen Spouse) in excess of \$159,000 (in 2021) to your non-citizen Spouse or of \$15,000 (in 2021) per person per year and all Gifts which are made to most trusts or other legal entities.

**12. Uniform Transfer Tax Rates** <sup>38</sup>

<b>If the amount is:</b>	<b>The tentative tax is:</b>
Not over \$10,000	18% of such amount
\$10,000 - \$20,000	\$1,800 plus 20% of the excess of such amount over \$10,000
\$20,000 - \$40,000	\$3,800 plus 22% of the excess of such amount over \$20,000
\$40,000 - \$60,000	\$8,200 plus 24% of the excess of such amount over \$40,000
\$60,000 - \$80,000	\$13,000 plus 26% of the excess of such amount over \$60,000
\$80,000 - \$100,000	\$18,200 plus 28% of the excess of such amount over \$80,000
\$100,000 - \$150,000	\$23,800 plus 30% of the excess of such amount over \$100,000
\$150,000 - \$250,000	\$38,800 plus 32% of the excess of such amount over \$150,000
\$250,000 - \$500,000	\$70,800 plus 34% of the excess of such amount over \$250,000
\$500,000 - \$750,000	\$155,800 plus 37% of the excess of such amount over \$500,000
\$750,000 - \$1,000,000	\$248,300 plus 39% of the excess of such amount over \$750,000
Over \$1,000,000	\$345,800 plus 40% of the excess of such amount over \$1,000,000

**13. U.S.** – for the purpose of Domicile, this includes only the 50 states in the United States of America and the District of Columbia.<sup>39</sup>

**14. U.S. Corporation** – a corporation (including an association, joint-stock company, or an insurance company) created or organized in the U.S. or under the law of the U.S. or of any State of the U.S.<sup>85</sup>

## TREATIES

The following is a summary specifically focusing on how the gift and estate tax treaties that the U.S. entered into with the countries listed below may apply to persons who are citizens, domiciliaries or residents of any of the countries listed below who are not U.S. citizens and do not live in the U.S.

Australia  
Austria  
Canada  
Denmark  
Finland  
France  
Germany  
Greece  
Ireland  
Italy  
Japan  
Netherlands  
Norway  
South Africa  
Switzerland  
United Kingdom

In most instances, the transfer tax imposed by the U.S. will reduce the gift or estate tax, if any, imposed by each of these treaty countries. The treaties vary as to definitions of domicile and residence and you should seek further advice in the U.S. and in the other applicable countries regarding tax implications.

**Expatriation.** If you have renounced U.S. citizenship or your U.S. Green Card, these treaties may apply differently to you. You should immediately seek further advice regarding U.S. tax implications.

## **AUSTRALIA**

If you are a domiciliary of Australia, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real (immovable) property located in the U.S.
- Tangible movable property located in the U.S.
- Debts of U.S. persons, corporations or other legal entities.
- Bonds, debentures or other debt securities issued by the U.S. Government, U.S. municipalities or corporations.
- U.S. bank accounts.
- U.S. life insurance policies.
- Partnerships doing business in the U.S.
- Ships and aircraft registered in the U.S.
- Goodwill in a U.S. business.
- Patents or trademarks registered in the U.S.
- Copyrights and licenses exercisable in the U.S.<sup>41</sup>

The treaty does not address the situs of property not included in this list. As such, the situs of property not included in this list (such as shares in a U.S. corporation) will be determined in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

A domiciliary or citizen of Australia who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. gift tax on gifts during life or estate tax on the U.S. property held at death by the following amount (reduced by any U.S. tax credit used in previous lifetime gifting, if applicable):

$$\$4,625,800^{86} \quad \times \quad \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{41}}$$

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Australia who is living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

## **AUSTRIA**

If you are a resident of Austria, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real property located in the U.S. to include livestock and equipment and crops found thereon.<sup>42</sup>
- Business property of a permanent U.S. establishment located in the U.S.<sup>42</sup>
- Assets pertaining to a fixed base for the performance of professional services rendered in the U.S.<sup>42</sup>

The applicable tax may be reduced by any related debts on such assets.<sup>43</sup>

A citizen and resident of Austria also residing in the U.S. (but not a citizen of the U.S.) will not be considered as “living in the U.S.” unless he or she has been residing in the U.S. for at least five of the preceding 10 years.<sup>44</sup>

A resident of both countries who is a citizen of neither will be considered as “living in the U.S.” if his or her only permanent home is in the U.S., or absent one permanent home, if his or her personal and economic relations are closest to the U.S., or if such relations cannot be determined, if his or her habitual abode is in the U.S.<sup>44</sup>

Note: A citizen of Austria who is living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

## **CANADA**

If you are a resident of Canada, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

If the entire worldwide estate does not exceed \$1.2 million, the U.S. estate tax will only apply to Real Property located in the U.S. or U.S. business property of a permanent establishment or fixed base.<sup>46</sup>

A resident of Canada who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the greater of \$13,000 or the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable)

$$\$4,625,800^{86} \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{47}}$$

The applicable U.S. estate tax may be further reduced by a limited marital exemption for certain transfers of qualifying property to a surviving spouse, if the surviving spouse meets certain requirements regarding residency and citizenship. The amount of this limited marital exemption is the lesser of: (1) the amount of the pro-rata exemption allowable above or under U.S. domestic law; and (2) the amount of the U.S. estate tax that would otherwise be imposed on the qualifying property transferred to the spouse.<sup>48</sup>

A resident of both countries who is a citizen of neither will be considered a U.S. resident if his or her only permanent home is in the U.S., or absent one permanent home, if his or her personal and economic relations are closest to the U.S., or if such relations cannot be determined, if his or her habitual abode is in the U.S.<sup>49</sup>

Note: A citizen of Canada who is living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. With the potential exception of the limited marital exemption, the tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **DENMARK**

If you are a resident of Denmark, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real property located in the U.S. to include livestock and equipment and crops found thereon.<sup>50</sup>
- Business property of a permanent U.S. establishment.<sup>51</sup>
- Assets pertaining to a fixed base for the performance of professional services rendered in the U.S.<sup>51</sup>

A U.S. estate tax deduction is allowed for charitable bequests to a qualifying Danish or U.S. exempt organization.<sup>53</sup>

A resident of both countries who is a citizen of Denmark will not be considered a U.S. domiciliary unless he or she has been residing in the U.S. for at least five of the preceding seven years.<sup>52</sup>

A resident of both countries who is a citizen of neither will be considered a U.S. domiciliary if his or her only permanent home is in the U.S., or absent one permanent home, if his or her personal and economic relations are closest to the U.S.<sup>52</sup>

Note: A citizen of Denmark who is living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

## **FINLAND**

If you are a resident of Finland, not a U.S. citizen, and do not live in the U.S. (or if you are a beneficiary of such a person's estate) the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real (immovable) property located in the U.S.
- Tangible movable property located in the U.S., bonds, promissory notes and other debts from U.S. individuals, U.S. governmental authorities or U.S. corporations.
- Shares in a U.S. corporation.
- Ships and aircraft registered in the U.S.
- Goodwill in a U.S. corporation.
- Patents, trademarks, designs registered in the U.S.
- Copyright franchise or license rights exercisable in the U.S.<sup>54</sup>

A resident of Finland who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{55}}$$

Residency, domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Finland who is living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **FRANCE**

If you are a domiciliary of France, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real (immovable) property located in the U.S. to include the value of any company as to which at least 50% of the assets consist of U.S. real estate;<sup>56</sup>
- Tangible movable property located in the U.S. other than currency<sup>57</sup>
- Business property of a permanent establishment;<sup>58</sup>
- Assets pertaining to a fixed base used for the performance of professional services rendered in the U.S.<sup>58</sup>

The applicable tax may be reduced by a portion of debts on such assets.<sup>59</sup> A U.S. gift and estate tax deduction is allowed for charitable gifts or bequests to qualifying French or U.S. exempt organizations.

A domiciliary of France who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the greater of \$13,000 or the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \quad \times \quad \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{60}}$$

Property subject to U.S. gift or estate tax passing to a non-U.S. citizen spouse will be subject to tax at 50% of the value of such property. Further, property subject to U.S. estate tax passing to a non-U.S. citizen spouse who is domiciled in either France or the U.S. may qualify for a marital deduction up to \$11,700,000.<sup>61, 86</sup>

A domiciliary of France who is residing in the U.S. but is not a U.S. citizen, and who has a clear intention to return to France in the future shall not be considered to be domiciled in the U.S. until he or she has resided in the U.S. for at least five of the preceding seven years. Further, if he or she resides in the U.S. because of an assignment of employment, or because he or she is married to a person assigned to the U.S. for employment, this period may be extended to seven of the preceding ten years under certain circumstances.

A domiciliary of both countries who is a citizen of neither will be domiciled in the U.S. if his or her only permanent home is in the U.S. or, absent one permanent home, if his or her personal and economic relations are closest to the U.S. or, if that cannot be determined, if his or her habitual abode is in the U.S. <sup>62</sup>

## GERMANY

If you are a domiciliary of Germany, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real (immovable) property located in the U.S. to include livestock, equipment and crops thereon<sup>63</sup>
- Business property of a permanent U.S. establishment or fixed assets used in a personal service business in the U.S.<sup>64</sup>
- Partnership assets which comprise U.S. real estate of a U.S. permanent establishment or personal service business.<sup>65</sup>

The applicable tax may be reduced by a portion of debts on such assets.

A U.S. gift and estate tax deduction is allowed for charitable bequests to a qualifying German or U.S. exempt organization as well as for qualifying pensions and annuities payable by certain German or U.S. organizations.

The estate of a domiciliary of Germany, the decedent of which was not U.S. citizen and did not live in the U.S., can reduce the U.S. estate tax on the U.S. property held at death by the greater of \$13,000 or the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable)

$$\$4,625,800^{86} \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{67}}$$

Property subject to U.S. gift tax or estate tax passing to a spouse will be subject to such tax at 50% of the value of such property.

Property subject to U.S. estate tax passing to a non-U.S. citizen spouse who is domiciled in either Germany or the U.S. may qualify for a marital deduction up to \$11,700,000.<sup>67, 86</sup>

A domiciliary of both countries who is a citizen of neither will be domiciled in the U.S. if his or her only permanent home is in the U.S. or, absent one permanent home, if his or her personal and economic relations are closest to the U.S. or, if that cannot be determined, if his or her habitual abode is in the U.S.<sup>66</sup> A citizen and domiciliary of Germany who is not a U.S. citizen but is residing in the U.S. will not be considered a U.S. domiciliary if he or she has been a resident of the U.S. for less than 10 years.<sup>66</sup>

## **GREECE**

If you are a domiciliary of Greece, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real (immovable) property located in the U.S. reduced by the value of any mortgages on such property.
- Tangible movable property located in the U.S. including bank notes and bearer checks
- Ships and aircraft registered in the U.S.
- Negotiable promissory notes from a U.S. person or legal entity.
- Shares in a U.S. corporation.
- Goodwill of a business carried on in the U.S.
- Patents, trademarks and designs registered in the U.S.
- Copyrights licensed in the U.S.<sup>68</sup>

The treaty does not address U.S. estate tax on property not included in this list. As such, you will be taxed by the U.S. upon transfer by bequest on property not included in this list in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

A domiciliary or citizen of Greece who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \quad \times \quad \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{69}}$$

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Greece living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **IRELAND**

If you are a domiciliary of Ireland, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real (immovable) property located in the U.S. (reduced by the value of any mortgages on such property).
- Tangible movable property located in the U.S.
- Negotiable promissory notes from a U.S. person or legal entity.
- Shares in a U.S. corporation.
- Ships and aircraft registered in the U.S.
- Goodwill of a business carried on in the U.S.
- Patents, trademarks and designs registered in the U.S.
- Copyrights licensed in the U.S.
- Rights or causes of action arising in the U.S.<sup>70</sup>

The treaty does not address U.S. estate tax on property not included in this list. As such, you will be taxed by the U.S. upon transfer by bequest on property not included in this list in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Ireland living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## ITALY

If you are a domiciliary or citizen (national) of Italy, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real property located in the U.S.
- Tangible personal property located in the U.S.
- All debts (bonds, promissory notes and bills of exchange) from a U.S. person, government, corporation or other legal entity.
- Shares in a U.S. corporation.
- Ships and aircraft registered in the U.S.
- Goodwill of a business carried on in the U.S.
- Patents, trademarks and designs registered in the U.S.
- Copyrights licensed in the U.S.<sup>71</sup>

A domiciliary or citizen of Italy who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \quad \times \quad \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{72}}$$

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Italy living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **JAPAN**

If you are a domiciliary or citizen (national) of Japan, not a U.S. citizen, and do not live in the U.S. (or if you are a beneficiary of a transfer from such a person), the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real (immovable) property located in the U.S.
- Tangible movable property located in the U.S.
- Debts (including bonds and promissory notes) from U.S. persons, governments, corporations or other legal entities.
- Shares in a U.S. corporation.
- Ships and aircraft registered in the U.S.
- Goodwill in a U.S. corporation.
- Patents and trademarks registered in the U.S.
- Copyrights licensed or exercisable in the U.S.
- Mining or quarrying rights located in the U.S.
- Fishing rights exercisable in the U.S.<sup>73</sup>

The treaty does not address U.S. gift or estate tax on property not included in this list. As such, you will be taxed by the U.S. upon transfer by gift or bequest on property not included in this list in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

A domiciliary or citizen of Japan who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. gift tax on gifts or estate tax on the U.S. property held at death by the following amount (reduced by any previous U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \times \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{74}}$$

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Japan living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

## **NETHERLANDS**

If you are a domiciliary of the Netherlands, not U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real (immovable) property estate located in the U.S.
- Business property of a permanent establishment operated in the U.S.
- Fixed assets used in the performance of a professional service rendered in the U.S.<sup>75</sup>

If the value of the property located in the U.S. does not exceed \$30,000, such property will not be subject to U.S. estate tax.

A citizen and resident of the Netherlands who is not a citizen of the U.S. but is residing in the U.S. for business, professional, educational, training or tourism purposes and does not express a clear intention to remain in the U.S. will not be considered a U.S. domiciliary unless he or she has been a resident of the U.S. for at least seven of the preceding 10 years.<sup>76</sup>

A resident of both countries who is a citizen of neither will be considered a U.S. domiciliary if he has made the U.S. his permanent home for the five years preceding death. If he or she did not make a permanent home in either country, then if his or her personal relations are closest with the U.S.<sup>76</sup>

Note: A citizen of the Netherlands living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **NORWAY**

If you are a domiciliary or citizen of Norway, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real property located in the U.S.
- Tangible movable property located in the U.S.
- Debts, bonds, promissory notes and bills of exchange from a U.S. person, government, corporation or other legal entity.
- Shares in a U.S. corporation.
- Ships and aircraft registered in the U.S.
- Goodwill in a U.S. corporation.
- Patents, trademarks and designs registered in the U.S.
- Copyrights licensed in the U.S.<sup>77</sup>

A domiciliary or citizen of Norway who is not a U.S. citizen and does not live in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \quad \times \quad \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{78}}$$

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Norway living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **SOUTH AFRICA**

If you are a domiciliary of or ordinarily resident in South Africa, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by bequest of the following assets:

- Real (immovable) estate located in the U.S.
- Tangible movable property located in the U.S. to include currency, negotiable bills and negotiable promissory notes.
- Shares in a U.S. corporation.
- Ships and aircraft registered in the U.S.
- Goodwill in a U.S. corporation.
- Patents and trademarks and designs registered in the U.S.
- Copyrights and other licenses exercisable in the U.S.
- Rights or causes of action arising in the U.S.<sup>79</sup>

The treaty does not address U.S. estate tax on property not included in this list. As such, you will be taxed by the U.S. upon transfer by bequest on property not included in this list in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

Domicile and citizenship are determined in accordance with the law in force in each respective country; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of South Africa living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **SWITZERLAND**

If you are a domiciliary or citizen of Switzerland, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfer by bequest in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

A domiciliary or citizen of Switzerland who is not a U.S. citizen and is not domiciled in the U.S. can reduce the U.S. estate tax on the U.S. property held at death by the following amount (reduced by any U.S. tax credit used in lifetime gifting, if applicable):

$$\$4,625,800^{86} \quad \times \quad \frac{\text{Value of the estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}^{80}}$$

Domicile and citizenship are determined in accordance with the law in force in each respective country<sup>81</sup>; however, the treaty does not offer guidance if a person is considered to be domiciled in both countries.

Note: A citizen of Switzerland living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

The treaty does not speak to U.S. gift tax. As such, you will be taxed by the U.S. upon transfer by gift in the same manner as a non-citizen not domiciled in the U.S. (see answer 7).

## **UNITED KINGDOM**

If you are a domiciliary of the United Kingdom, not a U.S. citizen, and do not live in the U.S., the treaty applies to you as follows:

You will be taxed by the U.S. upon transfers by gift or bequest of the following assets:

- Real (immovable) property located in the U.S. to include livestock, equipment and crops found thereon.<sup>82</sup>
- Business property of a permanent U.S. establishment.<sup>83</sup>
- Assets pertaining to a fixed base for performance of professional services rendered in the U.S.<sup>83</sup>

A domiciliary of the United Kingdom living in the U.S. but not a citizen of the U.S. will not be considered a U.S. domiciliary until he or she has been a resident of the U.S. in seven of the preceding 10 years.<sup>84</sup>

A domiciliary of both countries who is a citizen of neither country, or a citizen of both countries will be considered to be domiciled in the U.S. if his or her permanent home is in the U.S. or, absent one permanent home, if his or her economic relations are closest to the U.S. or, if that cannot be determined, if his or her habitual abode is in the U.S.<sup>84</sup>

Note: A citizen of the United Kingdom living permanently in the U.S. will be taxed by the U.S. on the transfer by gift or at death of any assets regardless of where they are located. The tax imposed by the U.S. on such transfers and the applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (see answers 4, 5 and 6).

## End Notes

1. International Revenue Code of 1986, as amended (“IRC”), §2001 and §2501.
2. IRC §2523.
3. IRC §2503(b).
4. IRC §2505 (as adjusted for inflation).
5. IRC §2601.
6. IRC §2042, §2035.
7. IRC §2031.
8. IRC §2040.
9. IRC §2031, §2033, §2036.
10. IRC §2056.
11. IRC §2001.
12. IRC §2010 (as adjusted for inflation).
13. IRC §2014.
14. IRC §2523(i) (as adjusted for inflation).
15. IRC §2056(d) and §2056A.
16. IRC §2101.
17. IRC §2103.
18. IRC §2501.
19. IRC §2511.
20. IRC §2102(b).
21. IRC §6075.
22. IRC §6324 and §6325 and Treasury Regulations §20.6325-1.
23. IRC §2503.
24. IRC §2102(b).
25. IRC §2641 and IRC §2001(b).
26. IRC §2631 (as adjusted for inflation).
27. IRC §2651(e).
28. 1986 Act, §1433(b)(2)(B) and TAMRA, §1014(h).
29. Treasury Regulations §26.2663-2.
30. IRC §2103, 2104 and Treasury Regulations 20.2104-1.
31. IRC §2105 and Treasury Regulations 20.2105-1.
32. IRC §2056(d)(2) and 2056A.
33. IRC §2056(A)(a)(1)(A).

34. IRC §2056A(a)(1)(B).
35. Proposed Regulation §20-2056A.
36. IRC §2056A(b)(1).
37. IRC §2056A(b)(2)(A).
38. IRC §2001(c)(1).
39. IRC §7701(a)(9).
40. U.S. – Australia Gift Tax Treaty, Articles III and IV.
41. U.S. – Australia Estate Tax Treaty, Articles III and IV.
42. U.S. – Austria Estate and Gift Tax Treaty, Articles 5 & 6.
43. *Id*, at Article 8.
44. *Id*, at Article 4.
45. Internal Revenue Code 2101 (1995); Treas. Reg. 20.2104-1 (1995).
46. Protocol Amending U.S. – Canada Convention on Taxes on Income and Capital, Issued by the Treasury Dept. 3/17/95, Art. 19, para 8.
47. *Id*, at para 2.
48. *Id*, at para. 3, 4.
49. U.S. – Canada Convention on Taxes on Income and Capital, Issued by the Treasury Dept. 3/17/95, Art. IV, para 2.
50. U.S. – Denmark Estate and Gift Tax Treaty, Article 5.
51. *Id*, at Article 6.
52. *Id*, at Article 4.
53. *Id*, at Article 9.
54. U.S. – Finland Estate Tax Treaty, Article III.
55. *Id*, at Article IV.
56. The Convention between the United States of America and the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritance, and Gifts signed at Washington, D.C. on November 24, 1978 as Amended December, 2004, Article 5.
57. *Id*, at Article 7.
58. *Id*, at Article 6.
59. *Id*, at Article 9.
60. *Id*, at Article 12.
61. *Id*, at Article 11.
62. *Id*, at Article 4.
63. 1980 Germany - United States Estate, Inheritance and Gift Tax Treaty with Protocol dated December 14, 1998, Article 5.
64. *Id*, at Article 6.

65. *Id*, at Article 8.
66. *Id*, at Article 4.
67. *Id*, at Article 10.
68. U.S. – Greece Estate Tax Treaty, Article IV.
69. *Id*, at Article V.
70. U.S. – Ireland Estate Tax Treaty, Article III.
71. U.S. – Italy Estate Tax Treaty, Article III.
72. *Id*, at Article V.
73. U.S. – Japan Estate and Gift Tax Treaty, Article III.
74. *Id*, at Article IV.
75. U.S. – Netherlands Estate Tax Treaty, Articles 6 and 7.
76. *Id*, at Article 4.
77. U.S. – Norway Estate Tax Treaty, Article III.
78. *Id*, at Article V.
79. U.S. – South Africa Estate Tax Treaty, Article III.
80. U.S.—Switzerland Estate Tax Treaty, Article III.
81. *Id*, at Article II.
82. U.S. – United Kingdom Estate Tax Treaty, Article 6.
83. *Id*, at Article 7.
84. *Id*, at Article 4.
85. IRC §7701(a)(3), (a)(4).
86. The unified credit against U.S. gift tax and U.S. estate tax in 2021 is \$4,625,800, which is the equivalent of making \$11,700,000 in taxable gifts and bequests. This unified credit is scheduled to revert at the end of 2025 to the levels that existed prior to the 2017 Tax Act. This will result in a unified credit amount of \$2,141,800 (adjusted for inflation), which is the equivalent of making \$5,490,000 (adjusted for inflation) in taxable gifts and bequests.

**KOHNEN & PATTON LLP**  
**Estate Planning and Administration**

The estate planning attorneys at Kohnen & Patton combine their knowledge of tax, property, business and trust law with their intuition, compassion and experience to help their clients formulate and attain their estate planning objectives. We offer experienced counsel in the creation of wealth-transfer plans, the preparation of wills and trusts, and succession planning for family businesses. We also have substantial experience representing and advising clients with respect to the administration of estates and trusts.

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