

***United States Estate and Gift Tax –
An Overview for the International Executive***

*Kohnen & Patton LLP
Cincinnati, Ohio
USA*

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*John L. Campbell
Attorney at Law
Kohnen & Patton LLP
PNC Center, Suite 800
201 East Fifth Street
Cincinnati, Ohio 45202
U.S.A.
Telephone: (513) 381-0656
Fax: (513) 381-5823
E-mail: jcampbell@kplaw.com
Web: <http://www.kplaw.com>*

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Introduction

This guidebook summarizes the U.S. Estate and Gift Taxes that an international executive may be required to pay upon the transfer of his or her assets by way of gift or at death. The following executives 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 estate or personal property located in the U.S.,
- Shares in a U.S. based company,
- A debt instrument from a U.S. person, company, legal entity, or government;

Non U.S. Citizens residing 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 executive should consult a qualified tax and estate planning professional regarding his or her particular situation.

CIRCULAR 230 DISCLOSURE: Pursuant to Regulations Governing Practice Before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

The author thanks Mr. Keith Rabenold, Mr. David Bross and Mrs. Sondra Choto, whose assistance in the completion of this guide is 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.

Some questions and answers will require additional information which can be found in the **Definitions** or **Treaties** sections.

Condition 1:

Are you a U.S. citizen?

Yes – go to page 2.

No – go to page 3.

For a definition of **citizen**, see definition 1, page 21.

**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.

For a definition of **spouse**, see definition 9, page 24.

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.

For a definition of **domicile**, see definition 2, page 21.

Condition 4:
I am not a U.S. citizen,
but I am a domicile of the U.S.

And my spouse is a citizen of the U.S.

Go to answer 4, page 12.

And my spouse is not a citizen of the U.S.

Go to answer 5, page 14.

And I am not married

Go to answer 6, page 16.

For a definition of **spouse**, see definition 9, page 24.

Condition 5:
I am not a U.S. citizen and
I am not domiciled in the U.S.

And I do not own property which is located in the U.S.:
Your property should not currently be subject to U.S.
Estate or Gift Tax laws.

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

And I own property which is 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 which is located in the U.S. if you own shares in a U.S. company or U.S. real estate. You may also own U.S. property if you have any benefit from or control over any property located in the U.S. (For an explanation of **property located in the U.S.** see definition 6, page 22.)

See also **Treaties** for particular treaty relief 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.¹ That is, gifts which you make during your life and transfers of assets at your death are subject to U.S. Gift and Estate 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.²

Other than gifts to your spouse, you can make gifts of \$12,000 per person per year directly to any number of persons without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.³

All gifts (other than gifts for your spouse) in excess of \$12,000 per person per year and gifts which are made to most trusts or other legal entities will be taxable and:

- You must file a gift tax return with the U.S. Government by April 15 of the following year.
- You may use a \$345,800 lifetime credit.⁴ No gift taxes will be due until all taxable gifts made during your life exceed \$1,000,000. (For an explanation of **uniform transfer tax rates** see definition 11, page 25.)

For an explanation of a **Gift** see definition 4, page 22.

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.⁶
- Retirement benefits⁷
- Personal property in your name.⁷
- Investments in your name or in joint name with another to the extent that you contributed to their purchase⁸
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase⁷
- Assets which you have transferred to another but retained an interest⁹

No transfers to your spouse are taxed.¹⁰

A tax 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 your life. (For an explanation of **uniform transfer tax rates** see definition 11, page 25.)¹¹ This tax is reduced by a credit of \$780,800 and by any gift taxes paid during life.¹² (State death taxes may also be payable depending upon the state of residence at death.)

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Foreign Assets

Assets which are taxable by other countries are in certain cases subject to Treaties (see **Treaties** section). The U.S. allows a foreign tax credit for foreign taxes paid on property which the U.S. deems to be situated in the particular foreign country to which the foreign tax is paid.¹³

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.¹ That is, gifts which you make during your life and transfers of assets at your death are subject to U.S. Gift and Estate 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 equal to \$120,000 in value each year tax free. Any additional gifts will be subject to U.S. gift taxation and reporting requirements.¹⁴

Other than gifts to your spouse, if any, you can make gifts of \$12,000 per person per year directly to any number of persons without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.³

All gifts (other than gifts to your spouse) in excess of \$12,000 per person per year and gifts which are made to most trusts or other legal entities will be taxable and:

- You must file a gift tax return with the U.S. Government by April 15 of the following year.
- You may use a \$345,800 lifetime credit.⁴ No gift taxes will be due until all taxable gifts exceed \$1,000,000. (For an explanation of **uniform transfer tax rates** see definition 11, page 25.)

For an explanation of **Gift** see definition 4, page 22.

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 death⁶
- Retirement benefits⁷
- Personal property in your name⁷
- Investments in your name or in joint name with another to the extent that you contributed to their purchase⁸
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase⁷
- Assets which you have transferred to another but retained an interest⁹

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.¹⁵ (For definition of **qualified domestic trusts** see definition 7, page 23.)

A tax is imposed on the total value of all assets transferred at death, other than transfers to a Qualified Domestic Trust or a qualified charity, and all taxable gifts made during your life.¹¹ (For **uniform transfer tax rates** see definition 11, page 25.) This tax is reduced by a credit of \$780,800 and by any gift taxes paid during life.¹² (State death taxes may also be payable depending upon the state of residence at death.)

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Foreign Assets

Assets which are taxable by other countries are in certain cases subject to Treaties (see **Treaties** section). The U.S. allows a foreign tax credit for foreign taxes paid on property which the U.S. deems to be situated in the particular foreign country to which the foreign tax is paid.¹³

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.¹ That is, gifts which you make during your life and transfers of assets at your death are subject to U.S. Gift and Estate 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 \$12,000 per person per year directly to any number of persons without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.³

All gifts in excess of \$12,000 per person per year and gifts which are made to most trusts or other legal entities will be taxable and:

- You must file a gift tax return with the U.S. Government by April 15 of the following year.
- You may use a \$345,800 lifetime credit.⁴ No gift taxes will be due until all taxable gifts exceed \$1,000,000. (For an explanation of **uniform transfer tax rates** see definition 11, page 25.)

For an explanation of **Gift** see definition 4, page 22.

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 ⁶
- Retirement benefits ⁷
- Personal property in your name ⁷
- Investments in your name or in joint name with another to the extent that you contributed to their purchase ⁸
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase ⁷
- Assets which you have transferred to another but retained an interest ⁹

A tax 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.¹¹ (For **uniform transfer tax rates** see definition 11, page 25.) This tax is reduced by a credit of \$780,800 and by any gift taxes paid during life.¹² (State death taxes may also be payable depending upon the state of residence at death.)

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Foreign Assets

Assets which are taxable by other countries are in certain cases subject to Treaties (see **Treaties** section). The U.S. allows a foreign tax credit for foreign taxes paid on property which the U.S. deems to be situated in the particular foreign country to which the foreign tax is paid.¹³

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.¹ That is, gifts which you make during your life and transfers of assets at your death are subject to U.S. Gift and Estate 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 unlimited gifts to your spouse without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.²

Other than gifts to your spouse, you can make gifts of \$12,000 per person per year directly to any number of persons without any U.S. transfer tax implications.³

All gifts in excess of \$12,000 per person (other than your spouse) per year and gifts which are made to most trusts or other legal entities will be taxable and:

- You will be required to file a gift tax return with the U.S. Government by April 15 of the following year.
- You may use a \$345,800 lifetime credit.⁴ No gift taxes will be due until all taxable gifts exceed \$1,000,000. (For **uniform transfer tax rates** see definition 11, page 25.)

For an explanation of **Gift** see definition 4, page 22.

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 death⁶
- Retirement benefits⁷
- Personal Property in your name⁷
- Investments in your name or in joint name with another to the extent that you contributed to their purchase⁸
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase⁷
- Assets which you have transferred to another but retained an interest⁹

No transfers to your spouse are taxed.¹⁰

A tax 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.¹¹ (For **uniform transfer tax rates** see definition 11, page 25.) This tax is reduced by a credit of \$780,800 and by any gift taxes paid during life.¹² (State death taxes may also be payable depending upon the state of residence at death.)

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Foreign Assets

Assets which are taxable by other countries are in certain cases subject to Treaties (see **Treaties** section). The U.S. allows a foreign tax credit for foreign taxes paid on property which the U.S. deems to be situated in the particular foreign country which levies the foreign tax.¹³

Answer 5

***Neither my wife 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.¹ That is, gifts which you make during your life and transfers of assets at your death are subject to U.S. Gift and Estate 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 to your spouse equal to \$120,000 in value each year tax free. Any additional gifts to your spouse will be subject to U.S. gift taxation and reporting requirements.¹⁴

Other than gifts to your spouse (if any), you can make gifts of \$12,000 per person per year directly to any number of persons without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.³

All gifts in excess of \$120,000 to your wife or \$12,000 to any other person per year and gifts which are made to most trusts or other legal entities will be taxable and:

- You must file a gift tax return with the U.S. Government by April 15 of the following year.
- You may use a \$345,800 lifetime credit.⁴ No gift taxes will be due until all taxable gifts exceed \$1,000,000. (For **uniform transfer tax rates** see definition 11, page 25.)

For an explanation of a **Gift** see definition 4, page 22.

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 death⁶
- Retirement benefits⁷
- Personal Property in your name⁷
- Investments in your name or in joint name with another to the extent that you contributed to their purchase⁸
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase⁷
- Assets which you have transferred to another but retained an interest⁹

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.¹⁵ (For an explanation of **qualified domestic trusts** see definition 7, page 23.)

A tax is imposed on the total value of all assets transferred at death, other than transfers to a Qualified Domestic Trust or a qualified charity, and all taxable gifts made during life.¹¹ (For **uniform transfer tax rates** see definition 11, page 25.) This tax is reduced by a credit of \$780,800 and by any gift taxes paid during life.¹² (State death taxes may also be payable depending upon the state of residence at death.)

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Foreign Assets

Assets which are taxable by other countries are in certain cases subject to Treaties (see **Treaties** section). Absent such Treaties, the U.S. allows a foreign tax credit for foreign taxes paid on property which the U.S. deems to be situated in the particular foreign country which levies the foreign tax.¹³

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.¹ That is, gifts which you make during your life and transfers of assets at your death are subject to U.S. Gift and Estate 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 \$12,000 per person per year directly to any number of persons without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.³

All gifts in excess of \$12,000 per person per year and gifts which are made to most trusts or other legal entities will be taxable and:

- You must file a gift tax return with the U.S. Government by April 15 of the following year.
- You may use a \$345,800 lifetime credit.⁴ No gift taxes will be due until all taxable gifts exceed \$1,000,000. (For **uniform transfer tax rates** see definition 11, page 25.)

For an explanation of a **Gift** see definition 4, page 22.

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 death⁶
- Retirement benefits⁷
- Personal Property in your name⁷
- Investments in your name or in joint name with another to the extent that you contributed to their purchase⁸
- Real estate in your name or in joint name with another to the extent that you contributed to the purchase⁷
- Assets which you have transferred to another but retained an interest⁹

A tax 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 life.¹¹ (For **uniform transfer tax rates** see definition 11, page 25.) This tax is reduced by a credit of \$780,800 and by any gift taxes paid during life.¹² (State death taxes may also be payable depending upon the state of residence at death.)

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Foreign Assets

Assets which are taxable by other countries are in certain cases subject to Treaties (see **Treaties** section). Absent such Treaties, the U.S. allows a foreign tax credit for foreign taxes paid on property which the U.S. deems to be situated in the particular foreign country which levies the foreign tax.¹³

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 death¹⁶ made by persons who are neither citizens of nor domiciled in the U.S. The taxes are only levied against U.S. property.¹⁷ (For an explanation of **property which is located in the U.S.** see definition 6, page 22; for **uniform transfer tax rates** see definition 11, page 25.)

Gift Tax Implications

You may owe gift tax¹⁸ to the U.S. if during your life you make gifts of real property or tangible property located in the U.S.¹⁹ to:

- Any person (other than your spouse) if in any one year the value of all gifts to one person exceeds \$12,000.
- A trust which you neither control nor benefit from.

(For an explanation of **real property** see definition 8, page 24; for an explanation of **tangible property** see definition 10, page 24.)

If you are married but your spouse is not a U.S. citizen, you may owe U.S. gift tax on gifts to your spouse of real property or tangible property located in the U.S. if the total value of all gifts given in any calendar year exceeds \$120,000.

If you are married to a U.S. citizen, you may make unlimited gifts to your spouse without reporting the gifts to the Internal Revenue Service and without any U.S. transfer tax implications.²

Estate Tax Implications

At the time of death your legal representative must:

- **Determine the value of all of your property which is located in the U.S. See definition 6, page 22.**
- 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.¹⁵ (For an explanation of **qualified domestic trusts** see definition 7, page 23.)

- 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 (for **uniform transfer tax rate** see definition 11, page 25) and subtracting \$13,000 from the tax due;²⁰
- If any estate tax is due, prepare and file an estate tax return and pay the tax due within nine months of your death.²¹

If any estate tax is due to the U.S., in order to transfer real property or certain intangible property such as shares of U.S. corporations from your estate to the beneficiaries of your estate, your legal representative must first obtain a transfer certificate from the U.S. Internal Revenue Service.²² (For an explanation of **real property** see definition 8, page 24 and for an explanation of **intangible property** see definition 5, page 22.)

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.²²

Generation-Skipping Tax Implications

Gifts and transfers at death to grandchildren or their descendants and spouses may be subject to a Generation-Skipping Tax.⁵ (For an explanation of **generation-skipping tax** see definition 3, page 21.)

Treaties

If you are a citizen of or reside in any of the seventeen countries with which the U.S. maintains an estate tax treaty, your personal situation may differ. (See **Treaties**, page 26.)

Expatriation

If you have renounced U.S. citizenship within the last 10 years or if you were a U.S. green card holder for eight of 15 years and formally “returned” the green card to the U.S. within the past 10 years, more onerous tax provisions may apply than those set out above and you should immediately seek further advice regarding estate and gift tax implications.

Answer 8

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

Gift Tax Implications

You must pay a gift tax to the U.S. determined using the uniform transfer tax rates if you make gifts of real property or tangible property located in the U.S. to:

- Any person (other than a U.S. citizen spouse) in any one year, the value of which exceeds \$12,000 (gifts to a U.S. citizen spouse are not taxable);²³
- A trust or other legal entity;
- A non U.S. citizen spouse, if in any one year, the value of the gift exceeds \$120,000.¹⁴

(For an explanation of **uniform transfer tax rates** see definition 11, page 25; for **real property** see definition 8, page 24; and for **tangible property** see definition 10, page 24.)

You may make unlimited gifts of intangible property without incurring U.S. gift tax (for an explanation of **intangible property** see definition 5, page 22.)

Estate Tax Implications

You will not owe any U.S. estate tax on this property at your death if the appraised value at the time of your death does not exceed \$60,000, and you have not made taxable gifts during your life, the value of which, when added to your U.S. property, exceeds \$60,000.²⁴

Expatriation

If you have renounced U.S. citizenship within the last 10 years or if you were a U.S. green card holder for eight of 15 years and formally “returned” the green card to the U.S. within the past 10 years, more onerous tax provisions may apply than those set out above and you should immediately seek further advice regarding estate and gift 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 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 within the last ten (10) years 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 citizens of nor domiciled in the U.S.

2. **Domicile** – is that place where a person has his 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 domicile 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) will 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.⁵ This tax is in addition to the estate or gift tax imposed. The rate is 46% in 2006 and 45% in 2007 through 2009.²⁵ Two current exemptions from this tax are:

a) each donor may make up to \$2,000,000 in transfers prior to incurring a Generation-Skipping Tax liability; and²⁶

b) a direct gift to a grandchild or further descendant is not a generation-skipping gift subject to the tax if the intervening family members are deceased.²⁷

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, 1987.²⁸

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.²⁹

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 – would include:

- shares of stock issued by a U.S. company
- debt obligation of a U.S. person or corporation, the U.S., any state or political subdivision

6. Property Which is Located in the United States

The following constitutes property located in the U.S. for purposes of U.S. Estate Taxes.³⁰

- Shares of stock in a U.S. company
- Debt obligations of a U.S. person or 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:
 - (1) have a general power of appointment over the property;
 - (2) can change the trust;
 - (3) funded the trust and retained any interest in the trust assets; or
 - (4) 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.

Partnership interests may be U.S. property if the partnership does business in the U.S., was created and managed in the U.S. or owns U.S. assets.

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:³¹

- 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 are:
 1. not issued by a corporation or partnership that you or your relatives have a 10% or greater interest in, and
 2. which 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.³² 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 corporation³³
- all distributions (other than an income distribution) made from the Trust must be subject to the U.S. Trustee's right to withhold estate taxes imposed on the distribution³⁴
- The Trust must meet additional regulations established to insure collection of the tax, to include requirements that:
 1. If the value of Trust assets at the death of the first spouse exceed \$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 U.S. 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.³⁵

2. Trusts of less than \$2 million 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.³⁵

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.³⁶

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.³⁶

The rate of the tax is determined by reference to the actual size of the estate of the first spouse to die.³⁷

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 or wife. The law of the state in which the taxpayer was domiciled at the time of the transfer is controlling in determining to whom the person was legally married at the time.

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

- automobiles
- currency
- household furniture
- jewelry
- works of art (but 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. Uniform Transfer Tax Rates ³⁸

If the amount is:	The tentative tax is:
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
\$1,000,000 - \$1,250,000	\$345,800 plus 41% of the excess of such amount over \$1,000,000
\$1,250,000 - \$1,500,000	\$448,300 plus 43% of the excess of such amount over \$1,250,000
\$1,500,000 - \$2,000,000	\$555,800 plus 45% of the excess of such amount over \$1,500,000
\$2,000,000 and over	\$780,800 plus 46% of the excess of such amount over \$2,000,000 in 2006 and 45% of the excess in 2007 through 2009

12. United States – for the purpose of domicile includes only the 50 states and the District of Columbia. ³⁹

TREATIES

Persons residing in any of the following countries (who are neither U.S. citizens nor U.S. residents) and citizens or residents of these countries who are currently residing in the U.S. should review the general provisions applicable:

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

In most instances, the estate tax imposed at death by the U.S. will reduce the estate tax, if any, imposed by each of these treaty countries.

AUSTRALIA

Residents of Australia who are not U.S. citizens and do not live in the U.S.:

1. will be taxed by the U.S. at the time of death on assets located in the U.S. to include:
 - Real estate
 - Tangible movable property
 - 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
 - Shares of U.S. corporations
 - Partnerships doing business 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.
 - Claims arising from the U.S.;⁴⁰
2. can reduce the applicable U.S. estate tax (but not the gift tax) by applying a pro rata share of the \$780,800.00 credit against tax. The share is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:
$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}}$$
3. will be taxed by the U.S. on gifts of tangible property or real estate located in the U.S. at the time of the gift. The tax may be reduced by a portion of the U.S. gift tax lifetime credit.⁴¹

Citizens of Australia 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

Residents of Austria who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. upon transfer by gift or at death only on the following assets located in the U.S.:

- Real estate, to include livestock and equipment and crops found thereon;⁴²
- Business property of a permanent U.S. establishment;⁴²
- Assets pertaining to a fixed base for the performance of professional services rendered in the U.S.⁴²
- The applicable tax may be reduced by exemptions, deductions and credits available under U.S. Estate and Gift Tax laws.⁴³

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.⁴⁴

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.⁴⁴

For the tax implications of a non-citizen “living in the U.S.” see answers 4, 5 and 6.

CANADA

1. Residents of Canada who are not U.S. citizens and are not domiciled in the U.S. will be taxed by the U.S. at the time of death on assets located in the U.S. to include:
 - Real property
 - Tangible personal property
 - Intangible personal property if it is issued by or enforceable against a resident of the U.S. or a domestic corporation or governmental unit
 - Shares of stock issued by a domestic corporation
 - Debt obligations, including bank deposits, the primary obligor of which is either a U.S. person or the United States, a State, or any political subdivision thereof, the District of Columbia, or any agency or instrumentality of any such government
 - Deposits with a branch in the U.S. of a foreign corporation, if the branch is engaged in the commercial banking business⁴⁵

2. If the entire worldwide estate does not exceed \$1.2 million, the U.S. estate tax would only apply to U.S. real property or U.S. business property of a permanent establishment or fixed base.⁴⁶ The applicable U.S. estate tax can be reduced by a pro-rata unified credit which is the greater of \$13,000 or the amount determined by the following calculation:
$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}$$

The credit is limited to the amount of U.S. estate tax imposed on the estate, and is reduced by the amount of any unified credit previously allowed against U.S. gift tax imposed on any gift by the decedent.⁴⁷

3. The U.S. estate tax applicable to a Canadian who is not a U.S. citizen but resides in the U.S. or Canada may be further reduced 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 credit allowable equals the lesser of: (1) the amount of the pro-rata unified credit 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.⁴⁸

4. A U.S. estate tax deduction is allowed for charitable bequests by a Canadian or U.S. exempt organization.⁴⁹

DENMARK

Residents of Denmark who are not U.S. citizens and who do not live in the U.S. will be taxed by the U.S. upon transfer by gift or at death only on the following assets located in the U.S.:

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

A citizen and resident of Denmark 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 seven years.⁵²

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.⁵²

A U.S. estate tax deduction is allowed for charitable bequests by a resident of Denmark to a qualifying Denmark or U.S. exempt organization.⁵³

For the tax implications associated with being a non-citizen “living in the U.S.” see answers 4, 5 and 6.

FINLAND

Residents of Finland who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. at the time of death only on assets located in the U.S. to include:

- Real estate
- Tangible movable property, bonds, promissory notes and other debts from U.S. individuals, U.S. governmental authorities or U.S. corporations
- Goodwill in U.S. corporations
- Patents, trademarks, designs registered in the U.S.
- Copyright franchise or license rights if exercisable in the U.S.⁵⁴

The applicable U.S. estate tax (but not the gift tax) can be reduced by applying a pro rata share of the \$780,800.00 credit against the tax. The share is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate}}^{55}$$

The U.S. will tax all gifts of tangible property or real estate located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not a domicile of the United States.

A citizen of Finland who is a domicile of 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. (See answers 4, 5 and 6.)

FRANCE

1. Residents of France who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. upon transfer by gift or at death only on the following assets located in the U.S.:
 - Real estate⁵⁶
 - Certain tangible personal property⁵⁷
 - Business property of a permanent establishment⁵⁸
 - Assets pertaining to a fixed base used for the performance of professional services rendered in the U.S.⁵⁸
2. The tax imposed by the U.S. on the transfer of an asset may be reduced by a portion of the debts associated with such assets.⁵⁹ Furthermore, the tax imposed may be reduced where the assets are transferred to a spouse.⁶⁰
3. A citizen and resident of France who is residing in the U.S., is not a citizen of the U.S. and has a clear intention to return to France in the future shall not be considered as “living in the U.S.” until he or she has resided in the U.S. for at least five of the preceding seven years.⁶¹
4. A citizen and resident of France who is not a citizen of the U.S. and who is residing in the U.S. because:
 - of an assignment of employment, or
 - he or she is married to a person assigned to the U.S. for employmentwill not be considered as “living in the U.S.” until he or she has resided in the U.S. for at least five of the preceding seven years or seven of the preceding 10 years if the business assignment has been extended.⁶¹
5. 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.⁶²

GERMANY

1. Residents of Germany who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. upon transfers by gift or at death on the following assets located in the U.S.:
 - Real estate to include livestock, equipment and crops thereon but reduced by any debts incurred in the acquisition, repair, or upkeep of the property;⁶³
 - Business property of a permanent U.S. establishment or fixed assets used in a personal service business in the U.S. reduced by any debts related to the business;⁶⁴
 - Partnership assets which comprise U.S. real estate of a U.S. permanent establishment or personal service business reduced by any debts relating to such partnership assets.⁶⁵
2. A citizen and resident of Germany residing in the U.S. but not a citizen of the U.S. will not be considered as “living in the U.S.” until he or she has been a resident of the U.S. for 10 years.⁶⁶
3. A domicile of Germany and the U.S. but not a citizen of either country will be considered as “living in the U.S.” if:
 - his or her permanent home is in the U.S.; or
 - he or she has no permanent home or has a permanent home in both countries but has economic relations which are closest with the U.S.⁶⁶
4. A citizen or domicile of Germany (other than a U.S. citizen), who was domiciled in Germany at the time of the decedent’s death, shall be allowed a Unified Credit against estate tax equal to the greater of: (1) \$13,000.00 or (2) a percentage of the applicable U.S. Unified Credit against estate tax of \$780,800 reduced by any previous credits used. The percentage of Unified Credit available is determined by the following calculation:
$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{67}$$
5. The U.S. will tax all assets transferred to a non-U.S. citizen spouse which exceed 50% of the value of the assets taxable in the U.S. This shall not apply if the decedent is a U.S. citizen domiciled in Germany.⁶⁷ A U.S. or German citizen residing in the U.S. or Germany may have a limited marital exemption for transfers to a non U.S. citizen spouse.⁶⁷

GREECE

Residents of Greece who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. at the time of death on the following assets:

- Real property located in the U.S. (reduced by the value of any mortgages on such property)
- Tangible property located in the U.S.
- Negotiable promissory notes from a U.S. person or legal entity
- Shares in U.S. corporations
- 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.⁶⁸

The applicable U.S. estate tax (but not the gift tax) can be reduced by applying a pro rata share of a \$780,800.00 credit available. The share is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{69}$$

The U.S. will tax all gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not a domicile of the U.S.

Citizens of Greece who are 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 in the world. This tax which the U.S. will impose on such transfers and the applicable exemption credits are those available for any non-citizen domiciled in the U.S. (See answers 4, 5 and 6.)

IRELAND

Residents of Ireland who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. at the time of death on the following assets:

- Real property located in the U.S. (reduced by the value of any mortgages on such property)
- Tangible property located in the U.S.
- Negotiable promissory notes from a U.S. person or legal entity
- Shares in U.S. corporations
- 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.⁷⁰

The U.S. will tax all gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not a domicile of the U.S.

Citizens of Ireland who are 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 in the world. This tax which the U.S. will impose 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.)

ITALY

Residents or citizens of Italy who are not U.S. citizens and do not live in the U.S. will be taxed at the time of death by the U.S. only on assets located in the U.S. to include:

- Real property in the U.S.
- Certain tangible 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 U.S. corporations
- 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.⁷¹

The applicable U.S. estate tax (but not the gift tax) can be reduced by applying a pro rata share of a \$780,800.00 credit against the tax. The share of this credit is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{72}$$

The U.S. will tax all gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not a domicile of the U.S.

Citizens of Italy who are 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 in the world. The tax which the U.S. will impose 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.)

JAPAN

Residents of Japan who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. if they receive by gift or as a transfer from an estate any of the following assets:

- Real property located in the U.S.
- Tangible property located in the U.S.
- Debts (including bonds and promissory notes) from U.S. persons, governments, corporations or other legal entities
- Shares in U.S. companies
- Goodwill in a U.S. business
- Patents and trademarks registered in the U.S.
- Copyrights licensed or exercisable in the U.S.⁷³

The applicable U.S. estate tax or gift tax can be reduced by a pro rata share of the \$780,800.00 credit against the tax. The share of this credit is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{74}$$

Citizens of Japan who are 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 in the world. The tax which the U.S. will impose 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

Residents of the Netherlands who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. at the time of death on the following assets located in the U.S.:

- Real estate
- 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.⁷⁵

The U.S. will tax gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not a domicile of the U.S.

A citizen and resident of the Netherlands who is not a citizen of the United States but is residing in the United States 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 as “living in the U.S.” unless he or she has been a resident of the U.S. for at least seven of the preceding 10 years.⁷⁹

A resident of both countries who is a citizen of neither will be considered as “living in the U.S.” if he has made the U.S. his permanent home for the five years preceding death or if his personal and economic relations are closest with the U.S.⁷⁶

For the tax implications of non-citizens “living in the U.S.” see answers 4, 5 and 6.

NORWAY

Residents of Norway who are not U.S. citizens and do not live in the U.S., and citizens of Norway residing in any country other than the U.S. will be taxed by the U.S. at the time of death only on assets located in the U.S. to include:

- Real property located in the U.S.
- Certain tangible 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 of stock in U.S. companies
- Goodwill in U.S. companies
- Patents, trademarks and designs registered in the U.S.
- Copyrights licensed in the U.S.⁷⁷

The applicable U.S. estate tax (but not the gift tax) can be reduced by a pro rata share of the \$780,800.00 credit against the tax. The share of this credit is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{78}$$

The U.S. will tax all gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not domiciled in the U.S.

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

SOUTH AFRICA

Residents of South Africa who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. at the time of death only on assets located in the U.S. to include:

- Real estate located in the U.S.
- Tangible movable property located in the U.S. to include currency, negotiable bills and negotiable promissory notes
- Shares of stock in a U.S. company
- Goodwill in a U.S. company
- 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.⁷⁹

The U.S. will tax all gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not domiciled in the U.S.

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

SWEDEN

Residents of Sweden who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. upon transfer by gift or at death only on the following assets located in the U.S.:

- Real estate located in the U.S. to include livestock and equipment contained therein reduced by a portion of the related debt;⁸⁰
- Business property of a permanent U.S. establishment reduced by a portion of the related debt;
- Assets pertaining to a fixed base for performance of professional services in the U.S.⁸¹

The U.S. will tax assets transferred by a resident of Sweden not a U.S. citizen to a surviving spouse (not a U.S. citizen) only to the extent that the assets passing to the surviving spouse exceed 50% of the value of the estate taxable by the U.S.⁸²

Citizens of Sweden who are not citizens of the U.S. but reside in the U.S. will be considered as “living in the U.S.” if they have been permanent residents of the U.S. for at least five of the preceding seven years.⁸³

Citizens of Sweden who are not citizens of the U.S. but have lived in the U.S. permanently for five of the preceding seven years will be considered as “living in the U.S.”⁸³

Residents of Sweden and the U.S. will be considered as “living in the U.S.” if they have a permanent home in the U.S.⁸³

A U.S. estate tax deduction is allowed for charitable bequests by a resident of Sweden to a qualifying Swedish organization which would be exempt in the U.S. if made to a similar organization or to a U.S. exempt organization.⁸³

For the tax implications of non-citizens “living in the U.S.” see answers 4, 5 and 6.

SWITZERLAND

Residents of Switzerland who are not U.S. citizens and do not live in the U.S. will be taxed by the U.S. at the time of death on assets located in the U.S. to include:

- Real property, livestock and equipment located thereon
- Certain tangible property
- Debts or obligations from the U.S. government, U.S. municipalities or corporations
- Negotiable promissory notes from a U.S. person or legal entity
- Shares of stock in a U.S. corporation
- Goodwill in 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.⁸⁴

The applicable U.S. estate tax (but not the gift tax) can be reduced by a pro rata share of the \$780,800.00 credit against tax. The share of this credit is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{84}$$

The U.S. will tax all gifts of tangible property or real property located in the U.S. at the time of the gift in the same manner as gifts made by any other non-citizen not domiciled in the U.S.

Citizens 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 in the world. The tax imposed by the U.S. and any applicable exemptions and credits are those available for any non-citizen domiciled in the U.S. (See answers 4, 5 and 6.)

UNITED KINGDOM

Residents of the United Kingdom who are not citizens of the U.S. and do not live in the U.S. will be taxed by the U.S. upon transfers by gift or at death on the following assets located in the U.S.:

- Real estate located in the U.S. to include livestock, equipment and crops found thereon ⁸⁵
- Business property of a permanent U.S. establishment ⁸⁶
- Assets pertaining to a fixed base for performance of professional services rendered in the U.S. ⁸⁶

The applicable U.S. gift or estate tax can be reduced by applying a pro rata share of the \$780,800.00 credit against the tax. The share of the credit is based upon the percentage that the U.S. estate bears to the entire worldwide estate determined by the following calculation:

$$\$780,800 \times \frac{\text{Value of estate situated in the U.S.}}{\text{Value of entire gross worldwide estate.}}^{87}$$

A citizen and resident of the United Kingdom living in the U.S. but not a citizen of the U.S. will not be considered as “living in the U.S.” until he or she has been a resident of the U.S. in seven of the preceding 10 years. ⁸⁸

A citizen of the United Kingdom and the U.S. or a resident of the United Kingdom and the U.S. who is a citizen of neither country, will be considered as “living in the U.S.” if:

- his or her permanent home is in the U.S.;
- he or she has no permanent home, or has a permanent home in both countries, and his or her economic relations are closest with the U.S. ⁸⁸

For the tax implications of non-citizens “living in the U.S.” see answers 4, 5 and 6.

Notes

1. International Revenue Code of 1986, as amended (“IRC”), §2001 and §2501.
2. IRC §2523.
3. IRC §2503(b).
4. IRC §2505.
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.
13. IRC §2014.
14. IRC §2523(i).
15. IRC §2056(d) and §2056A.
16. IRC §2101.
17. IRC §2103.
18. IRC §2501.
19. IRC §2511.
20. IRC §2102(c).
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.
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 Estate Tax Treaty.
41. U.S. – Australia Gift Tax Treaty.
42. U.S. – Austria Estate and Gift Tax Treaty, Articles 5 & 6.
43. U.S. – Austria Estate and Gift Tax Treaty, Article 1.
44. U.S. – Austria Estate and Gift Tax Treaty, 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. *Id*, at para. 1.
50. U.S. – Denmark Estate and Gift Tax Treaty, Article 5.
51. U.S. – Denmark Estate and Gift Tax Treaty, Article 6
52. U.S. – Denmark Estate and Gift Tax Treaty, Article 4.
53. U.S. – Denmark Estate and Gift Tax Treaty, Article 9.
54. U.S. – Finland Estate Tax Treaty, Article III.
55. U.S. – Finland Estate Tax Treaty, Article IV.
56. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 5.
57. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 7.
58. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 6.
59. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 9.
60. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 11.
61. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 4.
62. U.S. – France Estate Inheritance and Gift Tax Treaty, Article 10.
63. U.S. – Germany Estate and Gift Tax Treaty, Article 5.
64. U.S. – Germany Estate and Gift Tax Treaty, Article 6.

65. U.S. – Germany Estate and Gift Tax Treaty, Article 9.
66. U.S. – Germany Estate and Gift Tax Treaty, Article 4.
67. U.S. – Germany Estate and Gift Tax Treaty, Article 10.
68. U.S. – Greece Estate Tax Treaty, Article IV.
69. U.S. – Greece Estate Tax Treaty, Article V.
70. U.S. – Ireland Estate Tax Treaty, Article III.
71. U.S. – Italy Estate Tax Treaty, Article III.
72. U.S. – Italy Estate Tax Treaty, Article V.
73. U.S. – Japan Estate and Gift Tax Treaty, Article III.
74. U.S. – Japan Estate and Gift Tax Treaty, Article V.
75. U.S. – Netherlands Estate Tax Treaty, Articles 6 and 7.
76. U.S. – Netherlands Estate Tax Treaty, Article 4.
77. U.S. – Norway Estate Tax Treaty, Article III.
78. U.S. – Norway Estate Tax Treaty, Article V.
79. U.S. – South Africa Estate Tax Treaty, Article III.
80. U.S. – Sweden Estate and Gift Tax Treaty, Article 5.
81. U.S. – Sweden Estate and Gift Tax Treaty, Article 6.
82. U.S. – Sweden Estate and Gift Tax Treaty, Article 8.
83. U.S. – Sweden Estate and Gift Tax Treaty, Article 4.
84. U.S. – Switzerland Estate Tax Treaty, Article IV.
85. U.S. – United Kingdom Estate Tax Treaty, Article 6.
86. U.S. – United Kingdom Estate Tax Treaty, Article 7.
87. U.S. – United Kingdom Estate Tax Treaty, Article 9.
88. U.S. – United Kingdom Estate Tax Treaty, Article 4.