ESTATE TAXATION FOR AMERICANS LIVING ABROAD

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INTRODUCTION – WHY IS ESTATE PLANNING IMPORTANT?

- U.S. citizens and residents living abroad should carefully plan their estate and succession plans, since both U.S. intestacy laws and U.S. tax laws may apply
- U.S. estate and gift tax law applies to both U.S. citizens and residents upon the transfer of assets by gift or bequest. (See definition of estate tax resident)
- U.S. estate and gift taxation may apply to non-resident spouse if there is U.S. situs property or in some cases, assets received in trust.

TAX OBLIGATIONS OF A U.S. CITIZENS/RESIDENTS

U.S. Citizen/Resident



INCOME TAX ON WORLDWIDE INCOME

ESTATE/GIFT TAX ON
WORLDWIDE
ASSETS

INTERNATIONAL FINANCIAL DISCLOSURES







DEATH OF A U.S. CITIZEN/RESIDENT

CONSEQUENCES UPON DEATH OF A U.S. CITIZEN/RESIDENT

PROBATE – JUDICIAL
PROCEDURES TO
DETERMINE VALIDITY OF
WILL AND DISTRIBUTE
ASSETS- APPLY STATE LAW
IF INTESTATE (PUBLIC
PROCESS)

TRUST ADMINISTRATION-ACCORDING TO TRUST TERMS MAY CONTINUE OR BE TERMINATED (PRIVATE PROCESS) ESTATE TAX ON FAIR MARKET OF ASSETS AT DATE OF DEATH (FORM 706)

INCOME TAX ON INCOME THRU DATE OF DEATH (FINAL 1040)

ESTATE PLANNING TOOLS – STRATEGIES & STRUCTURES TO PROTECT YOUR ASSETS & FAMILY

PLANNING TOOLS TO DEAL WITH ESTATE TAX



WILL

- Legal Document
- Provides for Disposition
- Provides for Administration
- Effective at Death
- Retain Control of Assets
- No Protection from Legal Contingencies/Risks
- Estate Tax Applies

TRUST

- Legal Document
- Provides for Disposition
- Provides for Administration
- Effective Immediately
- Limited Control of Assets
- May Protect from Legal Risks
- Estate Tax may be Avoided

LIFETIME GIFTS

- Doc.s not Required
- Actual Disposition
- Donee Administration
- Effective Immediately
- No Control of Assets
- Protection from Legal Risks
- No Estate Tax, but Gift Tax may Apply

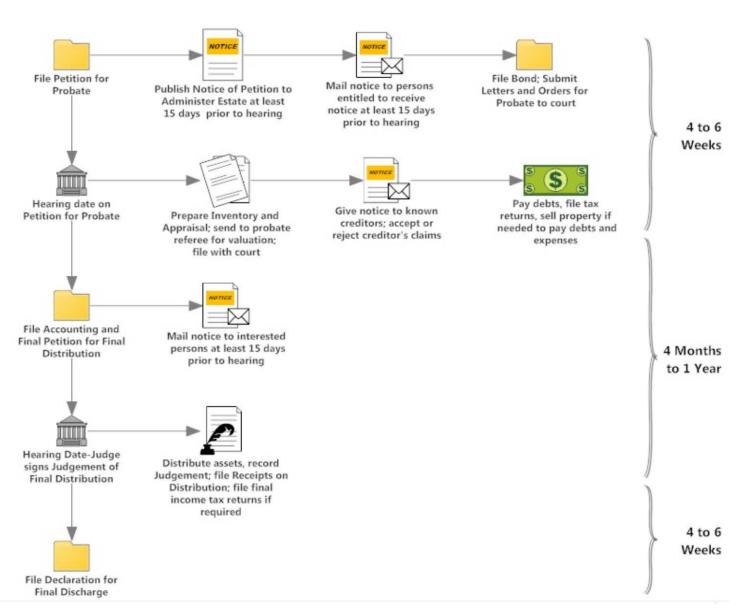
DO NOTHING (INTESTATE)

- Doc.s not Applicable
- Disposition-State Law
- Effective at Death
- Retain Control of Assets
- No Protection from Legal Risks
- Estate Tax Applies

PROBATE OF ESTATE – COMPLEXITIES AND PROCESS

- Probate is a legal and judicial process to determine, settle, and distribute the property of the deceased person (complicated and expensive). See Exhibit A.
- Probate law is based on local/state law and applies to persons domiciled in that state or property located in that state
- Foreign jurisdiction may or may not recognize that validity of other foreign wills for persons or property located in its country. The U.S. has signed treaties and agreements with several countries to mutually recognize their wills, known as UNIDROIT (The International Institute for the Unification of Private Law) See Exhibit B.
- Failure to properly probate the estate will cause problems in transfering assets to family, cause legal contingencies and additional taxes.

The Probate Process



10.2 Probate

The Uniform Probate Code provides a model of provisions that states consider when drafting their legislation. By way of example, the intestacy provision of the Uniform Probate Code has been adopted in full by certain states, modified by others and not adopted by others. The provisions of the Uniform Probate Code are briefly described below. US legal advice should be sought regarding the intestacy statutes of any particular state as many states do not follow these rules in their entirety:

- Jurisdictions:
 - Community property: one-half of the property belonging to the decedent passes to the surviving spouse as the intestate share.
 - 2. Separate property: share of the decedent's surviving spouse depends on the circumstances as follows:
 - a. No children or parent of decedent survives decedent: entire intestate estate
 - b. Spouse has same children as decedent: entire intestate estate
 - No descendants of decedent but a parent survives decedent: first US\$200,000 plus three-fourths of balance of intestate estate
 - Decedent's children are also those of spouse, but spouse has other children: first US\$150,000 plus half of balance of intestate estate
 - e. One or more of decedent's children are not those of spouse: first US\$100,000 plus half of balance of intestate estate
- Order of priority if no surviving spouse:
 - 1. To the decedent's descendants by representation
 - 2. If no surviving descendants, to the decedent's parents equally if both survive, or to the surviving parent
 - 3. If no surviving descendant or parent, to the descendants of the decedent's parents, or either of them, by representation
 - 4. If no surviving descendant, parent or descendant of a parent, one-half of the estate to the decedent's paternal grandparents equally if both survive, or to their descendants. The other half goes to the decedent's maternal grandparents in the same manner as the paternal grandparents. If there are no surviving grandparents or their descendants on either the maternal or paternal side, then the entire estate will pass to the decedent's relatives on the surviving side, in the same manner as the other half.

Recommendation – In order to reduce to avoid or reduce probate complexities it may be well to use:

- 1. Situs Wills Applies only to property in that jurisdiction upon death subject to probate.
- 2. International Will- A will prepared in accordance with the provisions of the UNIDROIT convention, if it qualifies it will be respected in foreign jurisdictions.
- 3. Revocable Trusts Trust established to administer and distribute assets, U.S. person retains control, not subject to probate, not excluded from U.S. estate tax
- 4. Irrevocable Trust Trust established to administer and distribute assets, U.S. person loses control, not subject to probate, excluded from U.S. estate tax

WILLS – DOMESTIC & INTERNATIONAL WILLS

- 1. Domestic U.S. Wills may be used to provide for the distribution of all domestic and international assets owned by the deceased, subject to local laws.
- 2. Risks Its posible that the foreign jurisdiction may not recognize the legal validity of the Will or simply the local laws of intestacy may override the Will.
- 3. International Wills An international Will prepared under the rules of UNIDROT (the international institute for the unification of private) Will be respected by the foreign jurisdiction regardless of the domicile of the decedent, if the Will satisfies strict convention requirements. The convention applies only to participating countries.

CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Adoption: Place: Washington Date: 26.10.1973

Entry into force: 09.02.1978 (Art. XI)

Contracting States: 21

Depositary: Government of the United States of America

Status Map NEW

State	Signature 🕏	R1 /	+	EIF \$	D \$
Australia	-	AS	10	.09. 2001.9 3.2015	-
Belgium	17.05.1974	RT	21	.04.12918310.1983	-
Bosnia-Herzegovina *	-	AS	15	.08.1 959.6 8.1994	-
Canada	-	AS	24	.01.1977 -	D: Art. XIV
Croatia *	-	AS	18	.05.1 199.6 5.1994	-
Cyprus	1 - 2	AS	19	.10.11998.104.1983	-
Ecuador	26.07.1974	RT	03	.04. 1097.9 0.1979	D
France	29.11.1974	RT	01	.06.10919.42.1994	-
Holy See	02.11.1973	-	-	-	2. 5 .
Iran	27.10.1973		-	-	-
Italy	-	AS	16	.05.1 99.1 1.1991	D: Arts. I, II, III
Laos	30.10.1973	-	-	-	-
Libya	-	AS	04	.08.10997.102.1978	-
Niger	-	AS	19	.05.10997.192.1978	-
Portugal	(-	AS	19	.11.10997.592.1978	-
Russian Federation	17.12.1974	- :	-	-	D: Art. XIII
Sierra Leone	27.10.1973	-	-	-	-
Slovenia	U.T.N.	AS	20	.08.12909.108.1992	, - ,
United Kingdom	10.10.1974		-	-	-
United States of America	27.10.1973	-	-	-	-

* Dates of notification of succession to the Convention by Bosnia-Herzegovina, Croatia and Slovenia. The former Socialist Federal Republic of Yugoslavia deposited an instrument of accession to the Convention on 9 August 1977.

Notes:

The Republic of China signed the Convention on October 27, 1973. Effective January 1, 1979, the United States recognized the People's Republic of China as the sole legal government of China.

The Czechoslovak Socialist Republic (Czechoslovakia) signed the Convention on December 30, 1974. On December 31, 1992, at midnight, Czechoslovakia ceased to exist and was succeeded by two separate and independent States, the Czech Republic and the Slovak Republic.

For an International Will to be effective, there is a list of requirements that must be met. For example, the Will must be for only one person (no joint Wills), and the Will must be in writing, but may be in any language. In addition, the Will must be witnessed and signed by two witnesses and an attorney (a notary is not sufficient), and all signatures must be at the end of the Will. If the Will is more than one page, each page must be numbered and must be signed on each page. And if the testator is unable to sign, the reason must be clearly noted in the Will.

In addition, a certificate must be attached to the end of the International Will, signed by an attorney, attesting that the requirements and procedures for drafting and execution have been satisfied. There are other formatting and signature concerns, but as to the actual content of the Will, the above generally satisfies the International Will requirements.

What is known as the Uniform International Will Act was enacted in Washington DC under the UNIDROIT convention. The greatest benefit to an International Will is knowing that when it is properly drafted it is valid in any jurisdiction that has signed or enacted the Uniform International Wills Act. To learn more about UNIDROIT, go here.

What countries have signed up for the International Will?

As of 21 January 2015, Australia, Belgium, Bosnia-Herzegovina, Canada, Cyprus, Ecuador, France, Iran, Italy, Laos, Libya, Niger, Portugal, Russia, Sierra Leone, Slovenia, United Kingdom, and the USA. And because in the USA estate succession laws are the domain of the local states, individual states also needed to enact the Washington Convention, of which at last count, 23 states and the District of Columbia have adopted the International Will. Go here for the current status of the country you are interested in.

More information about the Convention is available on the **UNIDROIT** website.

U.S. ESTATE & GIFT TAXATION OF:

- U.S. CITIZENS
- U.S. RESIDENTS
- NON-RESIDENTS

ESTATE & GIFT TAXATION IN THE U.S.

- The U.S. imposes an estate tax on the transfer of assets by U.S. citizens and residents estate at death, subject to a exclusión amount. See Exhibit C
- Unified Lifetime Exclusion/Exemption amount of \$11.4 million in 2019.
- For U.S. Citizens/Residents the gross estate is the fair market value of the decedents worldwide assets at date of death
- For Non-Residents taxable estate includes only assets with "U.S. Situs" which are subject to U.S. estate tax

DEFINITION OF RESIDENCY

- The definition of resident for estate tax purposes is different than for income tax purposes, the following are income tax residents:
 - 1. Citizenship
 - 2. Green Card
 - 3. Days present in the U.S. (> 183 days)
- For estate tax purposes residency is based on the concept of "domicile" which depends on subjective factors:
 - 1. Intent
 - 2. Personal Ties
 - 3. Business Ties
 - 4. Social Ties
 - 5. Others

ESTATE TAX ON NON RESIDENTS

- Non-Residents are also subject to the estate tax on assets that have a "U.S. Situs" at date of death domicile does not matter.
- Non-Residents have a much lower exemption amount of \$60,000
- U.S. Situs property means property located in the U.S. and includes:
 - 1. Real Property located in the U.S.
 - 2. Stock or bonds issued by a U.S. Corporation
 - 3. Pensión plans and annuities of/by U.S. persons
 - 4. Companies formed in the U.S.
- U.S. Situs property does not include:
 - 1. U.S. bank accounts
 - 2. Life insurance on the life of a non-resident
 - 3. Stocks and bonds of non-U.S. corporations
 - 4. Pensions and annuities payable by non-U.S. persons
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U.S. GIFT TAX

- U.S. Citizents and Residents are subject to a gift tax for transfers of tangible and intangible property.
 - 1. Annual exclusión of \$15,000
 - 2. Unified lifetime exclusión (same as estate tax) of 11.4 million
 - 3. Transfers to a U.S. citizen spouse are not taxable (unlimited marital deduction)
 - 4. Transfers to a non-U.S. citizen spouse have a limited marital deduction of \$152,000 (2018)
- Non-Residents are subject to gift tax on transfers of real property and tangible property located in the U.S.
 - 1. Annual exclusión of \$15,000
 - 2. No lifetime exemption
 - 3. Transfers of intangible property, including shares in the U.S. or foreign corporations are exempt

ESTATE TAX COMPONENTS – THE DEVIL IS IN THE DETAILS...

ESTATE TAX FORMULA

	e Tax Deductions (Admin expenses, etc, but non-residents may to prorate percentage)	-	\$XXX
3. Dona charit	tions to qualifying charities (Non-Residents only to U.S. ties)	-	\$XXX
4. Marit	cal deductions for bequests to U.S. spouse (For Non-Residents		ΦVVV

Gross Estate (Value of all taxable assets and lifetime taxable gifts)

5. Lifetime exemption amount/credit (U.S. citizen/resident = \$11.4

million per person, Non-Resident = \$60,000 per person)

spouse only if a QDOT trust)

\$XXX

\$XXX

\$XXX

= Taxable Estate

GROSS ESTATE FOR U.S. TAX PURPOSES

- For U.S. citizens and residents the gross estate includes the fair market value of worldwide assets at date of death (alternative valuation date election available) Exhibit D.
- Important Rule It also includes all assets that decedent controlled, had power over or retained an interest:
 - 1. Powers to alter, amend, terminate of affect enjoyment of the property
 - 2. Powers to designate who shall enjoy or possess property or income
 - 3. Jointly owned or community property
 - 4. Life insurance if you retained incidents of ownership
 - 5. Annuities and employee death benefits
 - 6. General Powers of appointment
 - The above rules also apply to a Non-resident that has U.S. Situs property

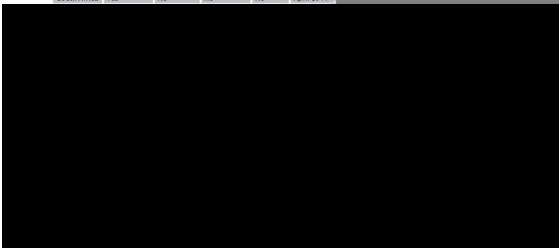
ESTATE TAX DEDUCTIONS & EXEMPTIONS FROM THE GROSS ESTATE

- Administrative expenses, debts, taxes and lossses
- Donations to qualifying charitable organizations
- Marital deductions for bequests to U.S. spouses
- Exemption amount for U.S. citizens and residents of \$11.4 million per person
- Exemption amount for Non-Residents of \$60,000 USD per person
- Important exemption amount subject to portability election, this allows the surviving spouse to use the unused exemption amount of the deceased spouse.

11. Estate tax treaties

The following table provides details on the US estate tax, gift tax, and combined estate and gift tax treaties currently in effect.

Country	Separate Separate estate and gift tax treaty treaty treaty Combined estate and gift tax treaty		Signed	Transfers made on or after	Comments			
Australia	No	Yes	No	No	May 1953	14 December 1953		PR-UC***
Australia	Yes	No	No	No	May 1953	7 January 1954	Old*	PR-UC
Austria	No	No	Yes	No	June 1982	1 July 1954	New*	
Canada	No	No	No	1995 Protocol	March 1995	9 November 1995**	Estate tax only	PR-UC
Denmark	No	No	Yes	No	April 1983	7 November 1984	New	
Finland	Yes	No	No	No	March 1952	18 December 1952	Old	PR-UC
France	No	No	Yes	No	November 1978	1 October 1980	New	PR-UC (Protocol)
Germany	No	No	Yes	No	December 1980	1 January 1979	New	PR-UC (Protocol)
Greece	Yes	No	No	No	February 1950	30 December 1953	Old	PR-UC
Ireland	Yes	No	No	No	September 1949	20 December 1951	Old	
Italy	Yes	No	No	No	March 1955	26 October 1956	Old	PR-UC
Japan	No	No	Yes	No	April 1954	1 April 1955	Old	PR-UC
Netherlands	Yes	No	No	No	July 1969	3 February 1971	New	
Norway	Yes	No	No	No	June 1949	11 December 1951	Old	PR-UC
South Africa	Yes	No	No	No	April 1947	15 11 1050	014	

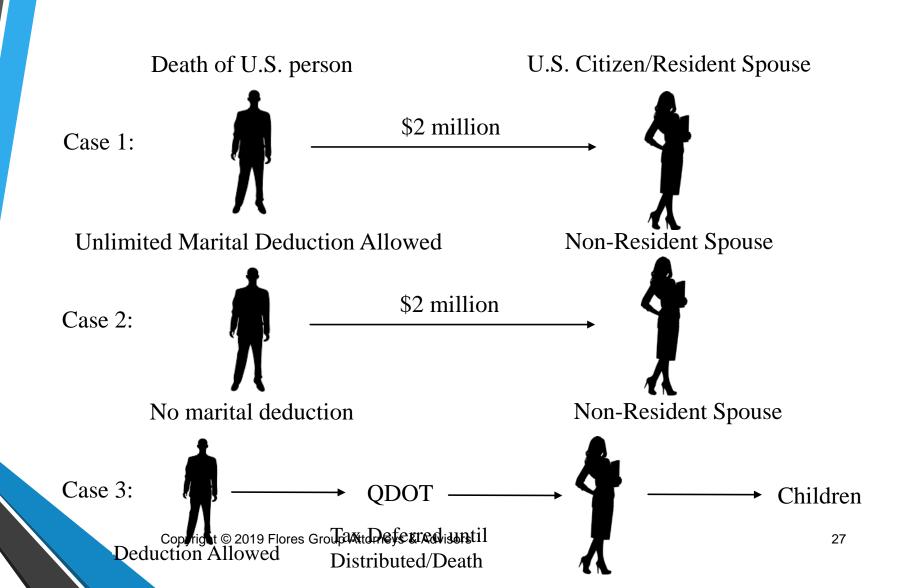


BEQUESTS & GIFTS TO NON-RESIDENT SPOUSE – IS THIS AN EASY WAY TO REDUCE THE TAXABLE ESTATE?

BEQUESTS/TRANSFERS TO A NON-U.S. CITIZEN SPOUSE

- No marital deduction for bequest to a Non-U.S. Citizen spouse, thus it may be fully taxable
- Tax law allows you to set up a special trust (QDOT) for transfers to your spouse:
 - 1. Qualified domestic trust (QDOT) must have at least 1 U.S. trustee
 - 2. Trustee must withhold tax on distribution of principal and upon death of surviving spouse

EXAMPLE – TRANSFER TO SPOUSE



U.S. EXIT TAX – U.S. CITIZENS & RESIDENT THAT WANT TO RENOUCE CITIZENSHIP/RESIDENCY

EXIT TAX – U.S. CITIZENS & RESIDENTS

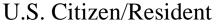
- The U.S. imposes an "exit tax" on U.S. citizens and longterm residents that expatriate from the U.S.
 - 1. Virtual sale of assets expatriates are treated as if they sold all their property at fair market value at date before expatriating
 - 2. Only gains exceding \$713,000 (2018) are taxed
 - 3. Long term resident is a Green Card holder for any part of 8 tax years during the last 15 years
 - 4. Only persons who have a 5 year average tax liability exceeding \$165,000 (2018) or a net worth exceeding \$2 million USD

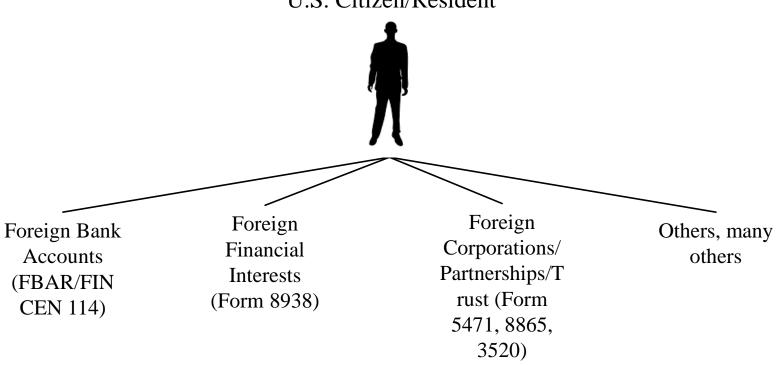
COMPLIANCE ISSUES – THE LONG ARM OF THE IRS REACHES THE GLOBE

TAX FILING & REQUIREMENTS

- Estate Tax Return
 - 1. Form 706 or 706-NA
 - 2. Due nine months after date of death
 - 3. Graduated tax rates on net taxable estate
 - 4. Failure to File Penalties
- Gift Tax Return
 - 1. Form 709
 - 2. File each calendar year
 - 3. Graduated tax rates on FMV of gift
 - 4. Failure to File penalties
- Final 1040 of Decedent Copyright © 2019 Flores Group Attorneys & Advisors

REQUIRED FINANCIAL DISCLOSURES





Important:

- 1. Failure to file causes civil penalty of \$10,000 \$25,000 per failure/month (in some cases up to 75% of value)
- 2. Failure to file may be considered criminal penalty if willful

FINAL RECOMMENDATIONS

- 1. Plan and update your estate plan-Determine the value and situs of your estate, and make decisions on the administration and distributions. PROCRASTINATION will cost you.
- 2. Update or prepare a US Will for US property and a Situs Will for foreign property, if you qualify an International Will may work.
- 3. Update or prepare a trust (revocable or irrevocable) to avoid probate and plan for the adminsitration and distribution of your property at death or held in trust, subject to conditions
- 4. Update or prepare "Powers of Attorney" usually two types:
 - a) Medical POA for medical and health issues
 - b) Financial Durable POA to allow your spouse/family to make medical and financial decisions if you are incapacitated

THANK YOU!

Mr. Rubén Flores, C.P.A. & Attorney

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