

U.S. ESTATE TAX ALERT - TAX ON ASSETS AT DEATH

I. What Is the U.S. Estate Tax?

The U.S. estate tax is a federal tax imposed on the transfer of a person's assets at death. It is based on the fair market value of everything the person owned or controlled at the time of death, minus allowable deductions. The estate, not the beneficiaries, is responsible for paying the tax.

II. Who Is Subject to the U.S. Estate Tax?

The estate tax applies differently depending on whether the individual was:

- A U.S. citizen
- A non-citizen who was domiciled in the United States
- A non-citizen who was not domiciled in the United States

III. U.S. Citizens

U.S. citizens are subject to U.S. estate tax on their worldwide assets, regardless of where they live or where the assets are located.

Key points:

- Worldwide assets are included
- Very large lifetime exclusion applies
- Unlimited marital deduction for transfers to a U.S. citizen spouse

- Estate tax rates are graduated, up to 40%

IV. Persons Domiciled in the United States (but Not Citizens)

A person who is not a U.S. citizen but is considered domiciled in the United States is treated almost the same as a U.S. citizen for estate tax purposes.

Key points:

- Worldwide assets are subject to U.S. estate tax
- Same estate tax exclusion as U.S. citizens
- Unlimited marital deduction does NOT apply unless the spouse is a U.S. citizen or assets pass through a Qualified Domestic Trust (QDOT)
- Estate tax rates are the same as for U.S. citizens

V. Persons Not Domiciled in the United States (Nonresident Aliens)

Individuals who are not U.S. citizens and not domiciled in the United States are subject to U.S. estate tax only on certain U.S.-situated assets.

Key points:

- Only U.S.-situated assets are taxed
- Very small estate tax exclusion applies
- No unlimited marital deduction unless special planning applies
- Estate tax rates still go up to 40%

VI. Estate Tax Exclusions and Rates

For deaths occurring in 2025 and 2026:

- U.S. citizens and U.S.-domiciled individuals have a very high estate tax exclusion (over \$13 million per person, indexed for inflation).
- Non-domiciled individuals have an exclusion of only \$60,000.

Estate tax rates are graduated and reach a maximum of 40%.

VII. When the Estate Tax Applies – and When It Does Not

The estate tax applies when the value of the taxable estate exceeds the applicable exclusion amount.

It generally does NOT apply when:

- The estate value is below the exclusion
- Assets pass to a U.S. citizen spouse
- Assets pass to qualified charities
- Proper planning eliminates or defers the tax

VIII. What Is Domicile for Estate Tax Purposes?

Domicile is not the same as citizenship or residency for income tax purposes.

A person is domiciled in the United States if:

- They live in the U.S., and
- They intend to remain in the U.S. indefinitely

Factors considered include:

- Length of U.S. presence
- Location of family and social ties
- Ownership of U.S. homes
- Immigration status
- Statements of intent

IX. Importance of Planning

Estate tax exposure can often be reduced or eliminated with proper planning, including:

- Lifetime gifting strategies

- Use of trusts and holding companies
- Marital planning (including QDOTs)
- Entity and ownership structuring

Because the rules differ dramatically based on citizenship and domicile, advance planning is critical.

X. Conclusion

We are Business and Tax Attorneys and we strive to provide our clients the highest quality of legal and tax representation in the complex area of tax law.

This alert has provided only general information and specific factual scenarios may change any conclusions that would apply.

We strongly recommend you consult a corporate and tax attorney regarding your particular case. Should you need additional information it will be our pleasure to assist you.

Sincerely,

Ruben Flores, Attorney & CPA