

WEALTH STRATEGIES

Transfer Tax Basics For Noncitizens

WEALTH TRANSFER

Creating an estate strategy can be a relatively complex process in any situation, but the process becomes even more complex when it involves a noncitizen. The information that follows is intended as a general summary of the estate and gift tax rules for estates of non-citizen residents and nonresidents. Treaty agreements between the United States and the noncitizen's home country may alter or replace the general rules discussed in this article.

THE SIGNIFICANCE OF PROPERTY SITUS

If a noncitizen is a resident of the United States (U.S.), the U.S. transfer tax rules apply to his or her worldwide assets. In contrast, property of a nonresident is subject to the U.S. transfer tax rules only if it has a situs in the U.S. The application of the situs rules depends on the type of property transferred and whether the transfer is for gift or estate tax purposes. The situs rules are summarized in the charts below.

GENERAL OVERVIEW OF ESTATE AND GIFT SITUS RULES

TYPE OF PROPERTY	U.S. CITIZEN	U.S. RESIDENT	NON-RESIDENT ALIEN
GIFT TAX	Worldwide gifts subject to U.S. gift tax.	Worldwide gifts subject to U.S. gift tax.	Gifts of real and tangible personal U.S. situs property subject to U.S. gift tax. Gifts of intangible U.S. situs property (e.g., stocks, certain deposits, and life insurance) and gifts of non-U.S. situs property not subject to U.S. gift tax.
ESTATE TAX	Worldwide property owned by a decedent subject to U.S. estate tax.	Worldwide property owned by a decedent subject to U.S. estate tax.	U.S. situs property owned by decedent subject to U.S. estate tax.

GENERAL GIFT TAX SITUS GUIDELINES FOR NON-RESIDENT ALIENS BY TYPE OF PROPERTY

TYPE OF PROPERTY	INCLUDED IN THE TAXABLE ESTATE	NOT INCLUDED IN THE TAXABLE ESTATE (OR EXCEPTIONS TO THE RULE)
GENERAL RULE	Real and tangible personal property with situs in U.S. at time of transfer.	Property with no situs within the U.S., even if the gift is to a U.S. citizen or resident. All intangible personal property, regardless of its situs.
REAL PROPERTY	Real property (e.g., land, buildings, fixtures, and improvements) located in the U.S.	Real property outside the U.S.
TANGIBLE PERSONAL PROPERTY	Property physically in the U.S. NOTE: Cash/currency, whether in U.S. dollars or foreign currency, is treated as tangible property and will incur gift tax on gifts made within the U.S.	Property outside the U.S.



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GENERAL GIFT TAX SITUS GUIDELINES FOR NON-RESIDENT ALIENS BY TYPE OF PROPERTY (CONTINUED)

TYPE OF PROPERTY	INCLUDED IN THE TAXABLE ESTATE	NOT INCLUDED IN THE TAXABLE ESTATE (OR EXCEPTIONS TO THE RULE)
INTANGIBLE PERSONAL PROPERTY	None. NOTE: This is in contrast with estate tax where such property located in the U.S. is subject to estate tax.	Intangible personal property (e.g., stocks, mutual funds, bank, brokerage, and fiduciary accounts), even if located in the U.S.
LIFE INSURANCE	Gifts of cash by a non-resident alien to make premium payments are gifts of cash and subject to gift tax (unless limited to the annual gift tax exclusion).	Policy insuring a non-resident alien or another can be transferred without gift tax.

GENERAL ESTATE TAX SITUS GUIDELINES FOR NON-RESIDENT ALIENS BY TYPE OF PROPERTY

TYPE OF PROPERTY	INCLUDED IN THE TAXABLE ESTATE	NOT INCLUDED IN THE TAXABLE ESTATE (OR EXCEPTIONS TO THE RULE)
GENERAL RULE	Assets situated within the U.S. or titled therein must be fully disclosed on Form 706 NA.	Assets not situated within the U.S. generally do not have to be disclosed.
REAL PROPERTY	Real property (e.g., land, buildings, fixtures, and improvements) located in the U.S.	Real property owned by the foreign national if only temporarily visiting the U.S.
TANGIBLE PERSONAL PROPERTY	Property physically in the U.S. NOTE: Cash/currency is considered tangible property (although most forms of monetary instruments are not) and is taxable if in the U.S.	Tangible property in the possession of the foreign national if only temporarily visiting the U.S.
BANK, BROKERAGE & FIDUCIARY ACCOUNTS	Funds held by U.S. banks or other financial institutions if used in conjunction with a U.S. trade or business and funds are held in brokerage accounts. Deposits with domestic branches of foreign banks are also subject to this trade or business requirement.	Savings accounts, checking accounts, or certificates of deposit issued by a U.S. bank if not used in conjunction with a U.S. trade or business; funds held in a U.S. bank custody account; funds deposited in a foreign branch of a U.S. bank.
QUALIFIED RETIREMENT PLANS	Assets held by plan administrators representing work for a U.S. company.	Assets not situated within the U.S. generally do not have to be disclosed.
STOCKS	Shares issued by a U.S. corporation, regardless of situs.	Shares issued by a foreign corporation, regardless of situs.
LIFE INSURANCE	The value of a policy on the life of another person (i.e., the interpolated terminal reserve), issued by a U.S. licensed insurance company and owned by a decedent.	The proceeds from an insurance policy on the life of the non-resident, owned by the non-resident, regardless of the insurance company's country of origin.
ANNUITIES	The value of any annuity issued by a U.S. insurance company on the life of another.	Annuities where issued by foreign insurance companies.

Note: Many non-resident aliens will own certificates of deposit in the U.S. since they are an intangible asset and excluded from U.S. estate taxation.

Be careful if purchasing certificates of deposit through a brokerage firm. These instruments are generally tradeable on an exchange, not issued "directly" from a U.S. bank, and potentially estate taxable in the U.S.

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ESTATE & GIFT TAX DIFFERENCES

The transfer taxes are imposed on non-resident aliens far more harshly than on U.S. citizens and non-citizen residents. For example, non-resident aliens are entitled to an estate tax credit that exempts only the first \$60,000 of U.S. property from estate tax, while citizens and resident noncitizens are allowed an estate tax credit that exempts \$5,450,000 of property from transfer tax.¹ Some of the other differences are summarized in the chart below.

SUMMARY OF ESTATE AND GIFT TAX DIFFERENCES

Decedent/Surviving Spouse	Decedent's Estate Tax Applicable Exclusion Amount ¹	Estate Tax Marital Deduction	Decedent's Interest in Property Held Jointly with Spouse ²	Annual Marital Gift Tax Exclusion ³	Availability of Gift Splitting to a Third Party	Availability of Gift Tax Annual Exclusion
U.S. Citizen/U.S. Citizen	\$5,450,000	Unlimited	50%	Unlimited	Available	Available
U.S. Citizen/Resident Alien	\$5,450,000	Only with a QDOT	100%	\$148,000	Available	Available
U.S. Citizen/Non-resident Alien	\$5,450,000	Only with a QDOT	100%	\$148,000	Not Available	Available
Resident Alien/U.S. Citizen	\$5,450,000	Unlimited	50%	Unlimited	Available	Available
Resident Alien/Resident Alien	\$5,450,000	Only with a QDOT	100%	\$148,000	Available	Available
Resident Alien/Non-resident Alien	\$5,450,000	Only with a QDOT	100%	\$148,000	Not Available	Available
Non-resident Alien/U.S. Citizen	\$60,000	Unlimited	50%	Unlimited	Not Available	Available
Non-resident Alien/Resident Alien	\$60,000	Only with a QDOT	100%	\$148,000	Not Available	Available
Non-resident Alien/Non-resident Alien	\$60,000	Only with a QDOT	100%	\$148,000	Not Available	Available

Transfer tax strategies for noncitizens is a complex area and requires familiarity with many estate and gift tax rules. Legal and tax professionals experienced in working with international citizens should be consulted before implementing any strategies.

¹ Applicable for 2016 as indexed for inflation.

² Unless considerations can be substantiated for the noncitizen surviving spouse's portion.

³ Rates for 2016, amounts are indexed for inflation.

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