Estate Planning for U.S. Transnational Residents

The world in which we live is becoming increasingly more global. Many families now have members residing in multiple countries around the world. Individuals are choosing to work outside of their home country due to increased work opportunities and higher compensation. Investors are also diversifying their holdings around the globe. Over time, these changes have given rise to a new category of planning; planning for the transnational resident.

Who is a "Transnational Resident?"

The general term "transnational resident" refers to individuals with ties to two or more nations. A transnational resident is a person who may reside in the U.S. and own assets in the U.S. as well as in other countries. This "transnational resident" may be classified as a U.S. citizen, resident alien or non-resident alien under U.S. Federal law.

Many transnational residents believe that assets owned outside of the United States will not be subject to U.S. Federal estate tax at their death; but U.S. estate tax laws are uniformly and strictly enforced and are likely to apply. This makes it important for transnational residents to review their situation with competent tax and legal advisors and determine the applicability of U.S. Federal estate tax to their foreign assets.

Who is Subject to the U.S. Federal Estate Tax System?

The U.S. Federal estate tax system recognizes three taxpayer classifications: citizens, resident aliens and nonresident aliens.

Citizens

A citizen is a person born or naturalized in the U.S. and is subject to its jurisdiction. The Federal estate tax is imposed on a citizen's taxable estate, which includes all assets wherever the property is situated in the world. I.R.C. section 2001; Treas. Reg. §20.2031-1[1]

Non-Citizens/Resident Aliens

A "resident alien" is a person *not* a citizen of the United States who is a lawful permanent resident[2] of the United States. The Federal estate tax is imposed on a resident alien's taxable estate, which like a U.S. citizen includes all assets *wherever the property is situated in the world.* Treas. Reg. §20.2031-1

Nonresident Aliens

A person not a citizen of the United States whose domicile was outside the United States at the time of death is referred to as a "nonresident alien." The

[1] Treas. Reg. § 20.2031-1 (a) Definition of gross estate. Except as otherwise provided in this paragraph the value of gross estate of a decedent who was a citizen or resident of the United States at the time of his death is the total value of the interests described in sections 2033 through 2044.

[2] This includes green card holders and individuals who satisfy the substantial presence test.

Federal estate tax is imposed on a nonresident alien's taxable estate, which includes only assets situated in the United States. I.R.C. Sec. 2103. [3]

What Special Estate Planning Strategies Apply to Transnational Residents?

Annual Exclusion Gifts

United States citizens, resident aliens and nonresident aliens may gift up to $19,000 in 2026 to a donee without imposition of a gift tax. *(See below for gifts to spouses.)* No limit is imposed on the number of donees. If the gift is not made to the donee outright (as for example, when made in trust), the gift might not qualify for the annual exclusion without proper planning.

Gift Splitting

A married couple may split gifts up to $38,000 in 2026 annually to a donee gift tax free using their gift tax annual exclusions. Gift splitting is available only *to* spouses who are citizens or resident aliens. Nonresident aliens do not qualify. In community property states gift splitting may not be necessary because a gift of community property is treated as though each spouse had made a gift of his or her one-half interest in the property. Each eligible spouse would independently qualify for the annual gift tax exclusion on the gift of community property without the need to split the gift.

Unlimited Gift Tax Marital Deduction

The unlimited gift tax marital deduction is available only on inter-spousal gifts to a U.S. citizen spouse, and not to a non-citizen spouse. Gifts by a resident alien or nonresident alien spouse to a U.S. citizen spouse would qualify for the gift tax marital deduction. If the gift is not made to the donee spouse outright (as for example, when made in trust), the gift might not qualify for the unlimited gift tax marital deduction without proper planning. Property passing to a noncitizen surviving spouse must be held in a Qualified Domestic Trust (QDOT) in order to qualify for the marital deduction.

Inter-Spousal Annual Gift Tax Exclusion

Inter-spousal gifts to a non-citizen spouse will qualify for a special gift tax annual exclusion amount of $194,000 in 2026, rather than the $19,000 annual exclusion. Gifts by a nonresident alien spouse to a non-citizen spouse also qualifies for the $190,000 exclusion.

Gift Tax Applicable Exemption Amount

U.S. citizens and resident aliens may claim a gift tax applicable exemption amount. The 2026 applicable exemption amount is $15,000,000. By contrast, nonresident aliens do not qualify for this gift tax applicable exemption amount, but rather a lower estate tax applicable exemption amount of $60,000.

[3] For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2103) which at the time of his death is situated in the United States.