

If you're a non-U.S. citizen, the estate planning rules are different

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Traditional estate planning strategies generally are based on the assumption that all family members involved are U.S. citizens. However, if you or your spouse is a noncitizen, special rules apply that may require additional planning.

Defining “residency” and “domicile”

If you're a U.S. resident, but not a citizen, you're treated similarly to a U.S. citizen by the Internal Revenue Code. You're subject to federal gift and estate taxes on your worldwide assets, but you also enjoy the benefits of the \$11.58 million (for 2020) gift and estate tax exemption and the \$15,000 annual gift tax exclusion. You can double the annual exclusion to \$30,000 through gift-splitting with your spouse, so long as your spouse is a U.S. citizen or resident. (Special rules apply to the marital deduction, however, as will be discussed below.)

Residency is a complicated subject. IRS regulations define a U.S. resident for federal estate tax purposes as someone who had his or her *domicile* in the United States at the time of death. One acquires a domicile in a place by living there, even briefly, with a present intention of making that place a permanent home.

Whether you have your domicile in the United States depends on an analysis of several factors, including the relative time you spend in the United States and abroad, the locations and relative values of your residences and business interests, visa status, community ties, and the location of family members.

What if you're a “nonresident alien”?

If you're a nonresident alien — that is, if you're neither a U.S. citizen nor a U.S. resident — there's good news and bad news regarding federal estate tax law. The good news is that you're subject to U.S. gift and estate taxes only on property that's “situated” in the United States. Also, you can take advantage of the \$15,000 annual exclusion (although you can't split gifts with your spouse).

The bad news is that your estate tax exemption drops from \$11.58 million to a miniscule \$60,000, so substantial U.S. property holdings can result in a big estate tax bill. Taxable property includes U.S. real estate as well as tangible personal property — such as cars, boats and artwork — located in the United States.

Options for making tax-free transfers

The unlimited marital deduction isn't available for gifts or bequests to noncitizens. However, there are certain options for making tax-free transfers to a noncitizen spouse. For example, you can use the transferor's \$11.58 million exemption (provided the transferor is a U.S. citizen or resident). You can also make annual exclusion gifts. (For 2020, the limit for gifts to a noncitizen spouse is \$157,000.) And last, you can bequeath assets to a qualified domestic trust, which contains provisions designed to ensure that the assets are ultimately taxed as part of the recipient's estate.

Consider your rights

Understanding federal estate tax laws can be complicated — even more so if you, your spouse or both are noncitizens.

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