

# Couples with a noncitizen spouse play by different estate planning rules

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Many traditional estate planning strategies are based on the assumption that everyone involved is a U.S. citizen. However, if you or your spouse is a noncitizen, special rules apply that require additional planning.

## General rules

If you're a U.S. resident, but not a citizen, you're treated similarly to a U.S. citizen by the IRS. You're subject to federal gift and estate taxes on your worldwide assets, but you also enjoy the benefits of the \$5.45 million exemption and the \$14,000 annual exclusion.

Residency, however, 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.

You acquire 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 among others.

## No marital deduction for transfers to noncitizens

The unlimited marital deduction — which permits one spouse to transfer tax-free any amount of property to the other spouse during life or at death — isn't available for gifts or bequests to noncitizens, even if they're U.S. residents. However, there are three options for making tax-free transfers to a noncitizen spouse:

1. Use your \$5.45 million exemption (provided you're a U.S. citizen or resident).
2. Make annual exclusion gifts (currently, the limit for gifts to a noncitizen spouse is \$148,000).
3. 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.

Note that the marital deduction is available for transfers *from* a noncitizen spouse *to* a citizen spouse.

If you, your spouse or both of you aren't U.S. citizens, please contact us to minimize estate tax liability. There are further estate planning complications if either of you is a nonresident alien.

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