

Overlooking Foreign Assets Can Be Detrimental To An Estate Plan

When working with an estate planning advisor, it's critical to disclose all your assets. Importantly, any foreign assets you might have must be included.

Often, people assume that these assets aren't relevant to their "U.S." estate plans, so they're not worth mentioning. However, your advisor can help structure ownership of any foreign assets according to the laws of the United States and the country where they're located. Here are some questions to consider if you own foreign assets.

Can I Avoid Being Taxed Twice?

If you're a U.S. citizen, you're subject to federal gift and estate taxes on all your worldwide assets, regardless of where you live or where your assets are located. So, if you own assets in other countries, there's a risk of double taxation if the assets are subject to estate, inheritance or other death taxes in those countries. You may be entitled to a foreign death tax credit against your U.S. gift or estate tax liability — particularly in countries that have tax treaties with the United States — but in some cases those credits aren't available.

Keep in mind that you're considered a U.S. citizen if:

- 1) You were born here, even if your parents have never been U.S. citizens and regardless of where you currently reside, unless you've renounced your citizenship, or
- 2) You were born outside the United States but at least one of your parents was a U.S. citizen at the time.

Even if you're not a U.S. citizen, you may be subject to U.S. gift and estate taxes on your worldwide assets if you're domiciled in the United States. Domicile is a somewhat subjective concept — essentially it means you reside in a place with an intent to stay indefinitely and to always return when you're away. Once the United States becomes your domicile, its

gift and estate taxes apply to your assets outside the United States, even if you leave the country, unless you take steps to change your domicile.

Now that the federal gift and estate tax exemption is \$12.92 million for 2023, you may not be concerned about U.S. gift and estate taxes. But remember, the exemption amount is scheduled to revert to its pre-2018 levels of \$5 million (indexed for inflation) as of the beginning of 2026.

Even if your estate is well within the current exemption amount, it's a good idea to plan for a potential estate tax bill down the road. Further, for married couples, the rules are different – and potentially a lot more complex – if one spouse is neither a U.S. citizen nor considered a resident for estate tax purposes.

Are Separate Wills Required?

To ensure that your foreign assets are distributed according to your wishes, your will must be drafted and executed in a manner that will be accepted in the United States as well as in the country or countries where the assets are located. Often, it's possible to prepare a single will that meets the requirements of each jurisdiction, but it may be preferable to have separate wills for foreign assets. One advantage of doing so is that separate wills, written in the foreign country's language (if not English) can help streamline the probate process.

If you prepare two or more wills, it's important to work with local counsel in each foreign jurisdiction to ensure that the wills meet each country's requirements. And it's critical for your U.S. and foreign advisors to coordinate their efforts to ensure that one will doesn't nullify the others.

Will My Nationality Affect My Plan?

If you're a foreign citizen living in the United States, estate planning can be complicated. One source of confusion is the difference between residency and domicile. If you're a U.S. resident – which is based on the amount of time you spend in the United States – you're subject to U.S.

income taxes on your worldwide income. But resident aliens aren't subject to U.S. gift and estate taxes unless they're domiciled in the United States. You can be a resident without being a domiciliary, although residency is a factor in determining domicile.

If you're not a U.S. citizen or domiciliary — that is, if you're a resident alien who's not domiciled in the United States, or you're a nonresident alien — then U.S. gift and estate taxes will not reach your assets outside the United States. However, you'll be subject to those taxes on assets that are "situated" in the United States, including real estate and certain investments in U.S. businesses. And unlike the \$12.92 million (for 2023) allowed to U.S. citizens and domiciliaries, the estate tax exemption amount is a paltry \$60,000.

Disclose And Plan For Specific Assets

The bottom line: If you own foreign assets, disclose and account for them in your estate plan. Your advisor can help you structure ownership of these assets in accordance with the laws of the United States and the country where they're located.

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