Serving the global client.

Agent guide

This material is designed for New York Life agent internal training use only. This material may not be distributed to the general public. Neither New York Life Insurance Company nor its agents are in the business of providing tax, legal, or accounting advice. Please remind your clients to consult their own tax, legal, and/or accounting professionals regarding their particular situations before making any decisions.

For Internal Training Use

NEW YORK LIFE

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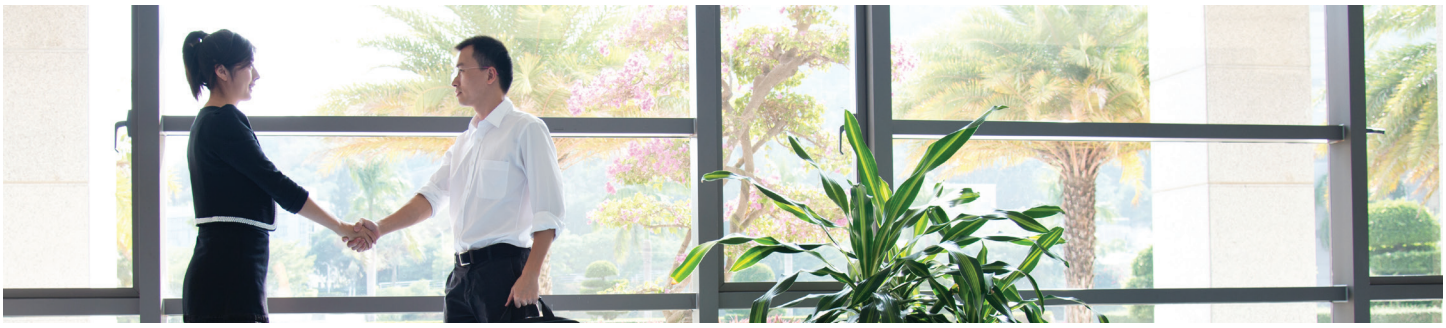
Overview



The objective of individuals and families seeking to maintain and transfer wealth from one generation to another not only applies to U.S. residents, but also includes residents worldwide.

According to a Boston Consulting Group study, global financial wealth grew approximately 8% in 2014 to $156 trillion and is expected to grow at an approximate compounded growth rate of 6% over the next five years to reach $210 trillion by 2019.[1]

As such, wealthy foreign national households that have significant assets located in the United States, and a significant connection to the United States, may have a need for life insurance, estate planning, or other financial planning needs. New York Life's financial strength, strong brand, and the guarantees[2] of our life insurance products can be an attractive choice for some of these households.

This guide was created to help agents determine whether a prospective foreign national client is eligible to purchase New York Life products.

This guide also outlines the procedures established by New York Life Insurance Company, its subsidiaries, and its affiliates for the solicitation, selling, underwriting, and servicing of New York Life policies that insure the lives of foreign nationals.

Furthermore, this guide contains a brief outline of some common issues and planning strategies for foreign nationals. For more information, please contact your assigned Advanced Planning Consultant.

[1] Brent Beardsley et al., "Global Wealth 2015: Winning the Growth Game," Boston Consulting Group. http://img-stg.bcg.com/BCG-Global-Wealth-2015_tcm9-76658.pdf.

[2] Guarantees are based on the claims-paying ability of the issuer.

Agent acknowledgment

New York Life agents engaged in the offer, sale, or solicitation of New York Life products to foreign nationals are required to comply with the guidelines herein. Additionally, New York Life agents agree to follow and acknowledge all New York Life policies and procedures, including, but not limited to the following:

1. New York Life agent understands and acknowledges that New York Life is an unlicensed, non-admitted foreign insurer in the foreign nationals' countries or jurisdictions of residence.
2. New York Life agent understands and acknowledges that it is his/her responsibility to abide by all U.S. and foreign laws and regulations, including foreign laws concerning permissible activities in a foreign national's country or jurisdiction of residence.
3. New York Life agent understands and acknowledges that foreign laws relating to the purchase of insurance products from a foreign or non-admitted insurer may be very restrictive and may even apply beyond the legal borders of such country or jurisdiction.
4. New York Life agent understands and acknowledges that solicitation of New York Life products in any foreign national's country or jurisdiction of residence (other than the U.S.), whether in person, by mail, by telephone, or online, constitutes a violation of law and these guidelines.

For additional information, please refer to **Agent Registered Representative Handbook.**

Definitions

Foreign National — Non-U.S. citizen whose primary residence is in another country for more than 90 days of the year applying for insurance coverage in the U.S.

Foreign Resident — U.S. citizen living in a country other than the U.S. or its territories for more than 90 days of the year. (NOTE: Under Florida law, a person is deemed a foreign resident if he/she is absent from the U.S. for more than 180 consecutive days and has established a residence in a foreign country.)

Juvenile Born in the U.S. to Foreign National or Recent Immigrant —Applications on juveniles, children less than 18 years of age, born to foreign nationals or recent immigrants, present special challenges and will generally be underwritten under the same guidelines as coverage on the parents.

Foreign Travel — For U.S. citizens residing in the U.S., and non-U.S. citizens residing in the U.S., this is defined as future travel outside of the U.S. and Canada for up to 90 days in the 12 months after the application date.

Resident Alien

a) Permanent U.S. Resident: Non-U.S. citizen, with a green card, EB-5 visa, EAC, "H" or "L" visa who has lived in the U.S. for at least one year for issue ages below 60 and at least two years for issue ages 60 and above, and is not a foreign traveler, but is a domiciliary of the United States. If the Proposed Insured does not meet the definition of Permanent U.S. Resident, the Proposed Insured will be treated as a Foreign National based on the Foreign Nationals, Foreign Residence and Foreign Travel list.

b) Temporary U.S. Resident: Non-U.S. citizen with a temporary visa who has lived in the U.S. for at least 1 year for issue ages below 60 and at least 2 years for issue ages 60 and above.

c) Recent Immigrant: A resident alien with a permanent or temporary visa who has lived in the United States for less than two years.

d) Undocumented Resident: Non-U.S. citizen living in the U.S. with intent to remain in the U.S. permanently, but without a visa or other legal work status (e.g., Employment Authorization Document, or EAD card).

New York Life Insurance Company

Foreign travel & residence underwriting guide

A. General

This section of this guide has been developed to assist a New York Life agent with the underwriting process of a foreign national insured. As with the general New York Life underwriting rules, these underwriting rules are subject to change; therefore, this guide will be updated, as necessary.

As with the sale of any of New York Life's portfolio of insurance products, there are specific underwriting guidelines prior to the sale of a life insurance policy to a foreign national. Not all New York Life life products are available to foreign nationals, nor are all foreign nationals eligible to purchase New York Life life products.

Please note, these guidelines may not cover every circumstance. New York Life agents with questions relating to foreign underwriting, foreign travel, foreign residence, or visa status policies, and New York Life agents whose clients reside in countries not listed within this guide, should contact their underwriters.

B. Solicitation guidelines for sales to foreign nationals

All solicitation and communication (including marketing materials) concerning the solicitation and sale of New York Life products, including all telephone, facsimile, email, or other electronic communication to a foreign national must take place in the U.S. Solicitation and communications include, but are not limited to, delivery of marketing materials or letters soliciting the purchase of any and all New York Life products, meeting with clients or potential clients to discuss any and all New York Life products, and other similar prospecting activities.

- **Additionally, all applicants/owners of New York Life- issued policies on foreign nationals shall have a U.S. address, all premiums shall be paid in U.S. dollars from a U.S. bank, and policies shall be delivered to applicants or owners in the U.S.**
- **Further, no referrals may be obtained from a source in a foreign jurisdiction.**

Application completion and signature

All eligible non-U.S. citizens applying for coverage must produce a valid green card or visa at the time of application.

All applications must be completed, signed, and witnessed in the U.S.

In the application, the address of the primary insured should be the foreign residence address. The application question related to travel or residency outside the U.S. should indicate that the primary insured resides outside the U.S.

A Foreign National Legal & Tax Disclosure form will be required with the submission of the life application to alert the policy owners and proposed insured of potential legal and tax consequences.

Policies on foreign nationals residing in Argentina and Brazil must be owned by a permanent U.S. resident or U.S. entity (LLC or trusts are acceptable).

Agent acknowledgment of proper solicitation

The agent must acknowledge in Section M of the application that he/she adhered to the relevant solicitation rules throughout the sales process.

Connection to the U.S.

The agent must verify, during the underwriting process, that the proposed insured has the required connections to the U.S.

U.S. bank account

The agent must verify that the applicant holds a U.S. bank account. All premiums must be paid out of a U.S. bank account.

Ongoing service

These solicitation guidelines do not prohibit agents from providing ongoing service to existing New York Life policyholders.

Agents are prohibited from engaging, or attempting to engage, in the offer, sale, or solicitation of insurance until all contracting, licensing, appointment, and qualification requirements are fulfilled.

For additional information, please refer to **Agent Registered Representative Handbook.**

C. Foreign travel

Foreign travel is defined as travel for up to 90 days to a country outside the United States and Canada, for the purpose of either business or vacation.

As permitted by state law, New York Life considers foreign travel as a risk in its underwriting of life insurance. New York Life only considers a prospective client's future travel plans during the 12-month period following the date of the application. New York Life will not offer coverage if the country to which a proposed insured plans to travel is experiencing one or more of the following conditions:

1. There is an ongoing armed conflict involving:
   a. The military of a sovereign nation foreign to the area of conflict.
   b. A civil war officially recognized or involving the peacekeeping forces of an international organization, including NATO and the United Nations.
2. The World Health Organization, or similar nationally or internationally recognized health organization, has issued an Epidemic and Pandemic Alert and Response.
3. The United States has withdrawn or is withdrawing its nationals, diplomats, or their families due to security reasons.

See the Foreign Resident/National and Foreign Travel Chart for countries to which a proposed insured's residence and travel may be considered in the underwriting process.

New York Life reserves the right to impose foreign travel underwriting restrictions for conditions that may not be covered above.

These guidelines apply in states that have not otherwise enacted more restrictive guidelines. At present, 14 states—California, Colorado, Connecticut, Florida,[3] Georgia, Illinois, Maryland, Massachusetts, Missouri, New Jersey, New York, Oklahoma, Tennessee, and Washington—have enacted legislation or implemented guidelines regarding underwriting and future foreign travel. The company will continue to apply each jurisdiction's directions in determining guidelines. More restrictive rules will be applied where mandated by particular state jurisdictions.

[3] For Florida cases, we cannot underwrite based on foreign residence unless proposed insured resides in a foreign country for 180 or more consecutive days.

D. Foreign nationals and foreign residents

For both U.S. citizens and noncitizens, all of the solicitations and all parts of the application, including exams, must be completed in the U.S., and the delivery must be made in the U.S.

Country categories

- **Category I**–Preferred classes available at underwriter's discretion, no maximum rating class.
- **Category II**–Preferred II is best class available, maximum Class 6.
- **Category III**–Nonsmoker is best class available, maximum Class 4.

- **Category IV**–Foreign residents and foreign nationals are not eligible for coverage.

The following guidelines are for both U.S. citizens (including U.S. territories such as Puerto Rico, the U.S. Virgin Islands and Guam) and non-U.S. citizens residing in an acceptable foreign country (Categories I through III).

- The coverage amounts are determined by the country of residence.
- Except for residents of Canada and Mexico, no term products or riders (other than a onetime Dividend Option Term Rider) are available.
- No waiver of premium (WP) or accidental death benefit (ADB) for non-U.S. citizens.
- Maximum issue age 65. For clients, issue ages 66 to 70, will be considered only within an informal application for $2,000,000 or more with verified net worth of $3,000,000.
- If proposed insured satisfies general cash with application requirements, agents may collect premiums with the application, in turn putting a Temporary Coverage Agreement (TCA) into effect provided that:

–All New York Life TCA rules are met.

–The premium funds can be documented as originating from a U.S. institution.

–Any refund of premium will follow current New York Life procedures.

- Current health questions on the application Part 1 must be answered "No." If any of the health questions are answered "Yes," you must consult with an underwriter.
- A U.S. Telephone Interview Report (TIR) is required for face amounts of $500,000 and above. The TIR must be completed while the proposed insured is in the U.S.
- Must have a connection with the U.S.
- Residents of Canada and Mexico may purchase term products and riders.
  - –For residents of Canada, term products and riders are available up to $25 million, and if qualified, a preferred rating is available.
  - –For residents of Mexico, term products and riders are available up to a face amount of $2 million.

The following are considered acceptable connections in the U.S.:

A Proposed Insured must meet both ties to the U.S. and the financial eligibility requirements.

(Must meet one of these criteria):

- Verified active business ownership in the U.S.
- Verified active employment by a U.S. employer at an officer/executive level.
- Verified active property ownership in the U.S.
- Verified business investment in excess of $1 million in the U.S.

Financial eligibility requirements

- For clients, issue ages 66 to 70, will be considered only within an informal application for $2,000,000 or more with verified net worth of $3,000,000.
- For face amounts up to and including $1 million, must have verified U.S. assets of a minimum of $50,000.
- For face amounts over $1 million, must have verified U.S. assets of a minimum of $100,000.
- U.S. assets must have been held in the U.S. for at least 6 months prior to application.
- Traditional financial underwriting guidelines will apply (e.g., income multiples).
- Clients between issue ages 66 and 70 will be considered only with an informal application for a minimum face amount of $2 million with verified net worth of $3 million or greater.

Use of foreign assets to determine coverage

- Foreign assets used will be subject to verification. If foreign assets cannot be verified, those assets will not be used to determine coverage.
- Assets will be verified by an Enhanced Verification Team.
- All premiums must be paid from U.S. bank accounts.

Medical underwriting requirements

- We require meaningful Attending Physician Statement documents to be provided from an Attending Physician Statement vendor.
- Where meaningful Attending Physician Statement documents are not available, we will accept alternative documents from the U.S., including a comprehensive physical exam.
- For countries where laws prohibit delivery of medical documents, we will consider alternative documents from the U.S., including a comprehensive physical exam.

E. Underwriting tip

It is beneficial to have a cover letter submitted with the application on complex cases. The letter should include details regarding the following:

1. Purpose of insurance.

2. How the face amount was determined.

3. Connection to the U.S.

4. Visa type and current visa status.

Does the client live in the U.S.? If so, how long?

Occupation/ Duties/ Activities.

Own property in the U.S.? Provide full address.

Assets in the U.S.? Assets abroad?

Family in the U.S.? Any family members U.S. citizens?

Does the client travel abroad? Purpose and frequency of visits? Countries and cities visited?

How much time does the client spend in the U.S. each year?

Any other information deemed necessary to provide to the underwriter.

New York Life Insurance Company

Compliance guidelines

A. General

A financial underwriting review is required in all cases where foreign assets are used to establish net worth. The goal is to verify the existence and legality of foreign assets that are used to establish net worth. Please note that the guidelines herein may not address all situations. For further questions, agents should contact one of the following Home Office officers from the Corporate Compliance Department (CCD):

Corporate Compliance officers

Home Office

Anthony Masella
Corporate Vice President
(212) 576-4600

Home Office

David Sigler
Corporate Vice President
(212) 576-4271

B. Anti-money laundering due diligence review process

When applications are received, underwriting officers will consider if an enhanced anti-money laundering due diligence review may be necessary in addition to asset verification for financial underwriting purposes. This combined review is usually completed within 24 hours for domestic cases once all of the requirements have been received. The review of cases that take into account foreign assets will be completed within 10 days once all the requirements have been received. However, the use of an outside due diligence firm may require more time to be allotted to the completion of the review. The Corporate Compliance Department's (CCD's) reviews of prospective clients include but are not limited to (1) public records searches for information such as property ownership, vehicle registration, and licensing information for professionals such as attorneys and accountants, and (2) media and Internet searches to determine the individual's personal and professional prominence, as well as to verify when a onetime event such as a legal settlement is the source of funds. These reviews usually do not affect the timeliness of the underwriting process. Once CCD completes its review and all questions have been addressed, the application will continue with the normal underwriting process. However, if CCD has concerns regarding the client or the funds remitted, the processing of the application will be suspended, and the appropriate underwriting officer will contact the agent to obtain additional information. The processing of the suspended application will be resumed as soon as the additional information requested is received and reviewed by CCD, and the appropriate underwriting officer is notified by CCD that any concerns regarding the client and/or funds remitted have been satisfactorily addressed.

C. Documents CCD may need for the asset verification and anti-money laundering due diligence review

Client Identification

For identification, a copy of the client's passport, green card, or other government- or state-issued photo identification is required.

For any U.S.-based trust that will be involved in this transaction, a complete copy of the signed and dated trust is required.

Income and Assets

Cash and Securities—For any accounts held outside of the U.S., we require 12 months' worth of bank statements. For any U.S.-based accounts, a statement from the current calendar quarter as well as another from the same quarter in the previous year will be sufficient.

If the accounts in question have not been open for at least one year, and the funds were deposited from a separate bank account, we will require additional bank statements for the originating bank account.

- If the originating account is outside of the U.S., we will require six months' worth of bank statements from the date of deposit.
- If the originating account is within the U.S., a statement covering the date of deposit as well as another from the same quarter in the previous year will be required.

If the account in question was open for less than one year and the funds were deposited from a onetime event such as the sale of property, a legal settlement, etc., we will require legal supporting documentation related to the event (e.g., copy of the sales agreement or court-issued settlement).

Residential or Commercial Property—For U.S.-based property, provide the exact address. For any foreign-based property, documentation issued by a government office that lists the exact location of the property, the property owner's name, and the value is required.

Business Ownership—For U.S.-based businesses, please provide the exact business name and the legal address.

For any foreign-based business, legal documentation filed with a government office that names the client's role as well as the names of **all** controlling and beneficial parties must be provided. This may be found in the articles of incorporation or organization, operating agreement, or other legal equivalent.

If any bank account or property is held in the name of an entity, legal documentation must be provided that names the client's role as well as **all** controlling and beneficial parties' names. This may be in the form of a trust document, articles of incorporation, or other legal equivalent.

Note: Beneficial ownership must reflect an individual. If the beneficial owner is another entity, additional documentation is required for the second entity naming its controlling and beneficial owners. This needs to be done at all levels until full disclosure is made of all individuals.

Third-Party Attestation

All professional attestation of assets will only be considered once CCD is able to verify the professional's standing with the licensing body. Professional attestations must be on professional letterhead.

Professional attestations for U.S.-based assets must be provided from U.S.-based CPAs or attorneys.

Any foreign CPA or attorney used to attest to the value of assets will be considered on a case-by-case basis: Therefore, CCD reserves the right to reject these attestations. Due to the varying nature regarding licensing requirements, continuing education, and how members are regulated, all foreign CPA and attorney attestations must be accompanied with the supporting documentation listed previously under the **Income and Assets** section.

Foreign CPA or attorney attestation must include the license number, professional address, and the name and location of the licensing body.

Premium Remittances

All premiums must be paid from a U.S. bank account.

If the payer will be any individual other than the insured or the policy owner, the name and relationship must be disclosed, and any questions must be clarified at the time of application.

If the payer will be any type of entity such as a trust, LLC, or corporation, the name and relationship must be established via legal supporting documentation at the time of application (e.g., trust document, articles of incorporation, operating agreement, etc.)

Who, what, how: An agent's desk reference for serving the global client

Who is your client? Is your client an individual, an entity, or a trust? Is your client foreign or domestic? The company is required to confirm the client's identity: driver's license, passport, corporate documents.

What funds or assets are used to pay the premiums? What assets contribute to your client's net worth? Are the assets held domestically or abroad? Underwriting must verify these assets: bank statements, brokerage statements, property deed, sales contract.

How did your client earn or acquire assets? Was it through employment, business ownership, an inheritance? Even if the money is in a U.S. bank, the company needs to know the source of these assets to verify how they were earned: tax documents, corporate documents, trust documents, pay stubs.

Financial underwriting foreign client verification requirements

Client identification verification—Who?

U.S. residents—if the client is:

1. **An individual**—provide the Social Security number.
2. **An entity**—provide TIN/EIN.
3. **A trust**—provide a copy of the trust.

Foreign residents—if the client is:

1. **An individual**—provide a copy of the unexpired passport and foreign ID number (e.g., cedula, PRC ID, etc.).
2. **An entity**—provide the formation documents.
3. **A trust**—provide trust document reflecting grantor and trustee.
4. **A foundation**—provide organization documents reflecting the foundation's donor.

Net worth verification—What?

Note: Funds for all premium payments must originate from a U.S. institution.

1. Provide a listing of the client's assets and where they are held—foreign and domestic.
2. Provide six months of bank statements.
3. Provide audited financials for a business.

Source of assets verification—How?

U.S. assets—if the money is earned from:

1. **Employment**—copies of W2 or tax statement and years of service.
2. **Business ownership**—business name, annual revenue, and percentage of ownership.

Foreign assets—If the money is earned from:

1. **Employment/income**—tax documents.
2. **Business ownership**—formation documents (certificate of incorporation, articles, share registry), percentage of ownership, annual revenue, and three years' audited financials, officers, directors.
3. **An inheritance**—provide the relationship, wealth creator's name and source of assets.
4. **Another individual**—provide the relationship, individual's name, and source of assets.

Documentation requirements for all underwriting categories

Client verification

Foreign residents
Individuals;
1. ID

For business:

1. Formation documents.
   If nonoperating, beneficial owner's source of assets.

Trust:

1. Trust document or trust deed.
2. Trustee's ID.
3. Grantor's name and source of assets.

Private foundations:

1. Formation documents.
2. Donor's name, source of assets, and passport.

Net worth verification

Foreign assets

1. Bank/brokerage statements.
2. Property deed.
3. Audited financials.
4. Legal settlement document.

Source of assets verification

Foreign sources
Employment/income:

- Tax documents.

Business ownership:

- Formation documents.

Gift/inheritance:

- Wealth creator's name, the relationship, and documented source of assets.

Another individual:

- Individual's name, the relationship, and documented source of assets.

Third-party verifiers

Third-party verifiers will be utilized when the company is unable to verify the client's foreign assets and foreign sources of assets.

Take note: Source of assets is how the client earned or acquired his/her net worth and the funds for the premium payment, e.g., client is an engineer at Google, earns $250,000 annually, and has a net worth of $1 million. He deposits his paycheck into a Chase checking account, which he will use for his premium payments. The client's source of assets is his employment at Google.

Select U.S. estate, gift, income, and other tax-planning considerations

The following discussion describes certain U.S. estate, gift, and income tax issues and considerations for individuals who are not citizens of the U.S., but may be subject to its tax laws. Such individuals may be subject to similar laws in other countries and may be entitled to the benefit of a tax treaty that impacts how U.S. tax laws apply to their particular circumstances. This discussion does not consider how these other laws or treaties may impact an individual in the circumstances discussed herein. In addition, this discussion is based upon New York Life's understanding of the present U.S. federal tax laws as they are currently interpreted by the Internal Revenue Service. We cannot predict the likelihood of continuation of any such laws or interpretations, which may change from time to time without notice, possibly with retroactive effect. In all cases, a tax advisor who is expert in these matters should be consulted to ensure that all appropriate tax issues and considerations are taken into account in connection with any planning the individual may consider.

A. Definitions for U.S. estate and gift tax purposes

Annual Exclusion Gift — U.S. citizens, residents, and nonresident aliens may gift up to $15,000 (2018) (indexed for inflation) annually to a donee. No limit is imposed on the number of donees.

Annual Exclusion Gift to Non-U.S. Citizen Spouse — Interspousal gifts to a non-U.S. citizen spouse would qualify for a special annual gift tax exclusion amount of $152,000 in 2018 (indexed for inflation) in lieu of the lost unlimited gift tax marital deduction. Gifts by a nonresident alien spouse to a non-U.S. citizen spouse would also qualify.

Citizen — A citizen is a person born or naturalized in the U.S. and subject to its jurisdiction. The estate tax is imposed on a citizen's taxable estate, which includes all assets wherever the property is situated in the world.

Domicile — The place that an individual has freely chosen as the center of his or her domestic and legal relations, the principal and permanent residence with no present intent of leaving. Once a domicile is acquired, it is presumed to continue until it is shown to have changed.

Dual-Status Alien — A person who is both a nonresident alien and a resident alien during the same year.

Nonresident Alien — A non-U.S. citizen who is not domiciled in the United States. Please note that domicile, not mere residence, determines whether assets, wherever situated, are subject to estate and gift taxes.

Irrevocable Life Insurance Trust (ILIT) — An irrevocable life insurance trust that is both the owner and beneficiary of one or more life insurance policies. Life insurance policies owned by a properly executed ILIT are generally not included in a decedent's estate for U.S. estate tax purposes.

Qualified Domestic Trust (QDOT) — This marital trust allows the deceased spouse's estate to obtain a deferral of U.S. estate taxes for transfers of property passing to a non-U.S. citizen spouse. It ensures that QDOT property is eventually subject to taxes prior to the non-U.S. citizen removing it from the United States. QDOTs must meet a host of requirements, such as having a U.S. citizen or domestic corporation as one of the trustees.

Resident Alien — A non-U.S. citizen who is domiciled in the United States for U.S. estate tax purposes. This is different than a resident alien for U.S. income tax purposes.

Spousal Lifetime Access Trust (SLAT) — A flexible variation of the ILIT, in which the spouse is designated as a beneficiary entitled to lifetime distributions, with certain limitations, from the trust.

B. Basic planning considerations

Advanced planning for nonresident alien clients presents unique challenges and opportunities. Thus, it is important to be knowledgeable of some of the most common tax issues faced.

Immigration Status

It is important to determine the citizenship, residence, and domicile of your client because an individual's immigration status, residence, and domicile greatly affects how he/she is subjected to U.S. gift, estate, and income taxation. Certain exemptions are only available to U.S. citizens and may be available to resident aliens and nonresident aliens if certain planning techniques are used.

U.S. Citizens

A U.S. citizen is a person born or naturalized in the U.S. and subject to its jurisdiction. By virtue of being a U.S. citizen, a person is subject to different taxation rules when it comes to gift, estate, and income taxation.

For 2018, U.S. citizens may take advantage of the Unified Tax Credit of $10,000,000, as adjusted for inflation ($11,180,000 expected in 2018) for gift, estate, and generation-skipping taxes (GSTs). Simply put, if a U.S. citizen passes away in 2018, his/her estate is generally subject to estate taxation only on the amount greater than the $10,000,000 credit (assuming no amount of the credit was used in prior years). Also, U.S. citizen spousal beneficiaries may take advantage of the unlimited marital deduction.

U.S. citizens, for income taxation purposes, are taxed on worldwide assets.

Resident Aliens

For U.S. estate, gift, and generation-skipping transfer (GST) tax purposes, a resident alien is a person who is not a U.S. citizen, but is a domiciliary of the U.S. A resident alien, like a U.S. citizen, may take advantage of the Unified Tax Credit of $10 million, as adjusted for inflation ($11,180,000 expected in 2018) for gift, estate, and GST taxes. However, the unlimited marital deduction is not available for resident alien spousal beneficiaries who are not U.S. citizens; thus, other planning techniques may be required. Like U.S. citizens, for income taxation purposes, resident aliens, as defined under U.S. income tax law, are taxed on worldwide assets. This definition is different than the definition of resident alien for U.S. estate, gift, and GST tax purposes.

Nonresident Aliens

For purposes of U.S. estate, gift, and GST taxes, a nonresident alien is a person who is neither a domiciliary nor a citizen of the U.S. Generally, nonresident aliens may neither take advantage of the Unified Tax Credit, nor have access to the unlimited marital deduction.

For estate and gift taxation purposes, nonresident aliens are taxed only on U.S. situsted (or deemed situsted) property.

C. Unified Tax Credit (UTC)

For 2018, the federal estate tax credit is "unified" with the gift tax and the generation-skipping transfer tax (GST) credits. Simply put, there is a singular "pool" of credit from which an individual can draw for estate, gift, and GST taxes.

Note: If elected, the surviving spouse can apply any unused portion of his/her deceased spouse's estate or gift tax credit. This does not apply to GST credits.

U.S. Citizens and Resident Aliens

- Unified Tax Credit is $10 million, as adjusted for inflation ($11,180,000 expected in 2018) for an individual; $20 million, as adjusted for inflation ($22,360,000 expected in 2018) for a married couple.
- Maximum estate tax rate is 40% on amounts in excess of $11,180,000.
- Credit may be received on foreign death taxes paid on foreign situsted property.

Nonresident Aliens

- Maximum $60,000 exemption unless decedent was a domiciliary of a treaty nation.
- Maximum estate tax rate is 40% on amounts in excess of $60,000.

The Unified Tax Credit does not affect the annual gift tax exclusion, currently indexed at $15,000 to an unlimited number of donees. For married couples who are U.S. citizens or resident aliens, this annual gift can be increased to $30,000 by "gift splitting."

Additionally, interspousal gifts to a non-U.S. citizen spouse qualify for the current annual gift tax exemption of $152,000 (indexed for inflation), in lieu of the unlimited marital deduction. From a planning prospective, this exemption amount may be used to fund a QDOT or a SLAT.

Note: Because the maximum exemption amount for nonresident aliens is $60,000, life insurance may be used as a source of funds to pay any tax liability.

D. Estate and gift taxes

As stated earlier, for 2018 , the federal estate tax credit is "unified" with the gift tax and the generation-skipping transfer tax (GST) credits. For U.S. citizens and resident aliens in general, the same credits, limits, exemptions, and tax rates apply. However, available deductions may be different.

Note: Deductions generally depend on the immigration status of the donee, rather than the donor.

U.S. Citizens

Generally, for U.S. citizen beneficiary/surviving spouses, the unlimited marital deduction is available. Subject to certain limitations, the unlimited marital deduction allows an individual to gift, bequeath, or pass (as defined by state statute) an unlimited amount of property to a U.S. citizen spouse, without gift or estate tax consequences.

Resident Aliens and Nonresident Aliens

Except under certain conditions, such as a properly structured and administered QDOT, the unlimited marital deduction is not available to resident alien and nonresident alien beneficiaries/ surviving spouses.

For a donee spouse who is a non-U.S. citizen (regardless of whether or not the donor spouse is a U.S. citizen or resident alien), the donor spouse may only give up to $152,000 per year (for 2018, indexed for inflation) to the donee spouse without gift tax consequences. These annual gifts must be either outright or in a trust that qualifies them as gifts of a present interest. They must also be in a form that would qualify for the marital deduction if the spouse were a U.S. citizen or resident alien. Any gifts in excess of this amount will be subject to gift taxes, although the UTC is available if the donor spouse is a U.S. citizen or resident alien.

E. Marital deduction

Generally, a marital deduction is a deduction for the entire value of gifts or at-death transfers made between spouses. Unfortunately, the marital deduction is only available if the donee/surviving spouse is a U.S. citizen, regardless of the status of the donor/decedent spouse.

A transfer must meet five basic requirements to qualify for the unlimited marital deduction for estate taxation purposes.

1. The deceased spouse must actually be survived by a surviving spouse.
2. The surviving spouse must be a U.S. citizen (unless an exception applies).
3. The deceased spouse's gross estate must include the property.
4. The interest must pass from the deceased spouse to the surviving spouse such as by will, through intestacy, or via a nonprobate transfer (i.e., named beneficiary on a life insurance policy).
5. The interest cannot be a nondeductible terminable interest (unless an exception applies).

Noncitizen surviving spouses are not entitled to a marital deduction, unless the noncitizen surviving spouse becomes a U.S. citizen prior to the filing of the estate tax return or a properly created Qualified Domestic Trust (QDOT) is established for the benefit of the surviving non-U.S. citizen spouse.[4]

For transfers of property passing to a noncitizen spouse, use of a QDOT allows the deceased spouse's estate to obtain a deferral of estate taxes until the surviving spouse's death, similar to a marital deduction, but at the first decedent's estate tax rate. Additionally, a QDOT ensures that property will be subject to federal estate taxes by preventing the noncitizen surviving spouse from removing the property from the U.S.

Note: Unless an exception applies, the marital deduction does not apply to a gift of a "nondeductible terminable interest" in property. Generally, a "terminable interest" in property is an interest that terminates or fails on the lapse of time or on the occurrence or failure to occur of some contingency.

Qualified Domestic Trust (QDOT)

A U.S. citizen or resident alien is entitled to a 100% estate tax marital deduction for assets left to his or her surviving spouse, if the spouse is a U.S. citizen.

This applies also to an nonresident alien who leaves U.S.-sitused assets to the surviving U.S. citizen spouse. However, if the surviving spouse is not a U.S. citizen, the estate tax marital deduction is not available unless the deceased spouse leaves assets in a QDOT, or unless the surviving spouse creates a QDOT and adds the assets to it.

[4] The surviving spouse must have been a U.S. resident as of the date of death and remained so through the establishment of U.S. citizenship.

For the complete QDOT rules, please refer to the Advanced Planning Group's **Estate Planning for the Noncitizen** conceptual piece.

Marital Deduction Issues for Joint Property

U.S. Citizen Surviving Spouse

Generally, marital deduction issues appear when joint interests in property are created. Under ordinary circumstances, upon the death of a spouse, one-half of the value of property held jointly with the surviving U.S. citizen spouse is included in the deceased spouse's taxable estate, regardless of the contribution of the spouses; that is, it does not matter whether the survivor contributed none, all, or a portion of the funds. In all cases, 50 percent of the value of the jointly held property will be in the decedent's gross estate. However, the marital deduction will prevent the decedent's estate from owing estate taxes because of this inclusion.

For example, Husband (H) and Wife (W) hold joint title to their primary residence. H is an resident alien and W is a U.S. citizen. H dies when the home is valued at $200,000. Only $100,000 is included in H's taxable estate. However, if W elects use of the marital deduction, the $100,000 is not taxable.

Non-U.S. Citizen Surviving Spouse

For a decedent who is survived by a non-U.S. citizen spouse, his/her estate may be subject to estate taxes on the full fair-market value of the joint property. Upon the surviving non-U.S. citizen's death, he/she could claim a credit for estate taxes previously paid, but only if his/her estate is subject to U.S. estate taxes.

Additionally, for non-U.S. citizen surviving spouses, when joint interests are created, if the amount contributed by the noncitizen spouse is less than one-half of the fair market value of the personal property placed in joint tenancy, a taxable gift to the noncitizen spouse may be considered created at the outset.[5] The amount of the gift to the donee noncitizen spouse is dependent upon the value of the interest in property received, multiplied by the percentage of consideration the donee spouse provided toward the original purchase of the property.

For example, H, a U.S. citizen, and W, a noncitizen, purchased a primary residence. H provided all of the funds for the purchase of the home, which is titled jointly in both spouses' names. H dies. A taxable gift occurs. Why? Because W provided less than 50 percent of the funds and is a noncitizen, so the unlimited marital deduction is not available.

F. Taxable property for estate taxes

Legislation in the estate tax area is primarily concerned with transfers to non-U.S. citizens regardless of whether the transfer comes from a U.S. citizen or noncitizen.

Resident aliens, like U.S. citizens, are taxed on worldwide assets. However, nonresident aliens are taxed only on assets that are "sitused" or deemed sitused in the U.S. at death.

Property considered U.S.-sitused property generally includes, but is not limited to:

- Real property located in the U.S.
- Tangible personal property, such as art, jewelry, and furniture located in the U.S.
- Stock issued by a domestic corporation regardless of where it is located.
- Certain debt obligations.
- Certain bank deposits.
- Certain transfers with retained interests.

Notwithstanding the above rules, for nonresident aliens there are certain properties not considered "sitused" in the U.S., thus not subject to U.S. estate taxes at death.

Property not considered U.S. sitused property includes, but is not limited to:

- Life insurance death benefit if the decedent nonresident alien is the owner and insured.
- Deposits in a U.S. bank, if the deposits are not connected with a U.S. trade or business and were paid or credited to the decedent nonresident alien's account.
- A deposit with a foreign branch of a U.S. bank if the branch is engaged in the commercial banking business.
- Stock issued by a foreign corporation regardless of where it is located.

[5] There is an exemption for joint bank accounts and brokerage accounts, unless the noncitizen spouse withdraws more than he/she contributed. Treas. Reg. § 25.2511-1(h)(4).

Note: IRS Form 706 must be filed within nine months after the date of the decedent's death. If unable to file in a timely manner, a six-month automatic extension may be requested by filing Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

G. Ownership considerations for estate planning

Joint Ownership

It is not uncommon to find individuals who have decided to approach estate planning by putting their property in joint ownership, usually between spouses or their children. However, property held in joint tenancy may be problematic when the surviving spouse is a noncitizen.

Generally under the contribution rule, the entire value of a decedent's joint tenancy property is included in the decedent's taxable estate, minus any portion of the property that can be shown to have been contributed by the surviving joint tenant.

However, if a property is held under a qualified joint interest (e.g., tenants by the entirety, or joint tenants with rights of survivorship), and the surviving joint tenant is a U.S. citizen spouse, interest of the decedent spouse is excluded because of the unlimited marital deduction.

If the surviving spouse is not a U.S. citizen, no marital deduction is available, and the amount of the decedent's interest, minus any actual contribution by the surviving noncitizen spouse, is immediately subject to estate taxation unless it is transferred into a QDOT.

Community Property

In community property states, each spouse is generally presumed to own one-half of most property acquired during the course of marriage. There are currently nine states with community property statutes: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

Note: An individual can also own title to property individually. For example, property acquired prior to marriage and by gift or inheritance during marriage remains as separate property.

Community property has a preferred status with respect to the noncitizen surviving spouse because the noncitizen's half share is not affected by death. Community property laws operate normally even where a noncitizen spouse is involved: each spouse owns one-half of the couple's community property; one-half of the community property assets avoid estate taxation upon the death of the first spouse. Additionally, regardless of the order of deaths, the unified tax credits of both spouses apply automatically to reduce the estate tax.

Community property states allow the surviving noncitizen spouse to retain a larger portion of the spousal estate, thereby requiring less funds to be placed in a QDOT.

Additionally, community property, both the decedent's and surviving spouse's share thereof, receives a basis adjustment to the fair-market value.

Example: Husband (H) and Wife (W) own community property that has a cost basis of $100,000. H dies intestate and the fair-market value of the community property is $250,000. Half of the fair-market value of the community interest is includable in H's estate. However, W, a U.S. citizen, inherits H's share tax free (via the marital deduction), and soon thereafter, sells the community property for fair-market value. W pays no taxes on the capital gain. Why?

When H died, half of his fair-market value was includable in his estate. The new cost basis of H's half of the property is also $125,000. W, via the marital deduction, inherited H's half (sans transfer taxes) and also received the fair-market value as the basis of H's half. However, the new cost basis of W's half of the community property after the death of H is also $125,000.

Therefore, when W sold the property for $250,000, she realized no capital gain (and owed no taxes), because the new cost basis of the property was $250,000.

This will not be the result with other property (non-community) where a QDOT is used because the noncitizen's applicable unified tax credit cannot be used against the trust property.

H. Income taxes

Whether a non-U.S. citizen is subject to U.S. income taxes on worldwide income depends upon whether that person is a resident alien (unless, however, he/she is a dual-status alien). U.S. citizens and resident aliens (as defined in the income tax laws) are subject to taxes on worldwide income. However, a resident alien may be able to qualify for an exclusion of $103,900 (for 2018) for income earned abroad.

Resident alien status, for income tax purposes, is more objective than for transfer tax purposes and is met with either the "green card" test or the "substantial presence" test.

Green card test — A person is a resident for income tax purposes if he/she is a lawful permanent resident of the U.S. at any time during the current calendar year. Generally, a person has this status if the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued him/her an alien registration card, also commonly known as a "green card."

Substantial presence test — For income tax purposes, a person is considered to meet the substantial presence test for the current calendar year if he/she is physically present in the U.S. for at least 31 days during the current year and 183 days during the prior three years including the current year, counting: (1) all of the days that he/she was present in the current year; (2) one-third of the days present in the prior year; and (3) one-sixth of the days present two years ago.

Note: The substantial presence test may be rebutted if a person can demonstrate a "closer connection" to two (but not more than two) foreign countries.

Generally, the Closer Connection Exemption to the substantial presence test requires that the individual be present in the United States for fewer than 183 days in the current year; maintain a tax home in a foreign country during the current year; and have a closer connection during the current year to a single foreign country in which he/she maintains a tax home. Note: This exemption is unavailable if the individual has personally applied or taken other affirmative steps to change his/her status to that of a permanent resident.

A nonresident alien is taxed only on income "sourced within the United States."

Effect of tax treaties

The rules under the Internal Revenue Code determining U.S. residency may be overridden by an income tax treaty with a foreign country. If a person is treated as a resident of a foreign country under a tax treaty, that person may be treated as a nonresident alien for income tax purposes.

For a list of tax treaties, please refer to IRS Publication 901.

Note: A person can be considered a "resident" for income tax purposes but may not be considered domiciled in the U.S. for estate tax purposes.

I. Expatriation

There are newly enacted U.S. tax laws that cover U.S. citizens who renounce their citizenship, or noncitizens who renounce their permanent residence visa ("green card") after holding it for at least eight of the prior 15 years. The new laws impose a capital gains tax on all appreciation in the value of a covered expatriate's worldwide assets as of the day of expatriation. They also provide that gifts and bequests from a covered expatriate to a U.S. person are subject to a new transfer tax.

To be a "covered expatriate," the renouncing person must also meet one of the following three tests:

1. His/her average net income tax liability for the prior five years exceeds $165,000 (for 2018) (indexed each year for inflation).
2. His/her net worth is $2 million or more (including interests in trusts).
3. He/she failed to certify under penalty of perjury that he/she has complied with all federal tax obligations for the previous five years. (In other words, even though the expatriate did not meet either of the above income tax or net worth tests, he/she must still certify compliance with U.S. tax laws for the past five years or else be subject to the new taxes.)

Planning tip:

The three-year rule does not apply if the life insurance policy was purchased by the ILIT directly and the grantor never had any incidents of ownership.

There are exceptions for the following persons:

1. Persons who are dual citizens of the U.S. and another country from birth, are tax residents of that country at the date of expatriation, and have not been U.S. income tax residents for more than 10 of the past 15 years.
2. Persons who expatriate before age 18½ and have not been U.S. income tax residents under the substantial presence test for more than 10 taxable years.

J. Computation of tax

To compute the tax, the expatriate determines what would have been the capital gains tax if he/she had sold all worldwide assets for their fair market value the day before he/she expatriated.

Losses are taken into account, but the "wash sale" rules, which provide that a loss is not recognized in the case of a sale and purchase within 30 days, do not apply.

The first $711,000 (for 2018) of net appreciation (to be indexed annually for inflation) is exempt from the tax. In addition, the covered expatriate may elect to defer the tax on any asset until that asset is sold, or until the death of the covered expatriate, if sooner. A satisfactory security arrangement, such as posting a bond, must be attained with the IRS in the case of any such deferral. Interest accrues during the deferral period at the current underpayment rate.

For a person who moved into the U.S. and is now leaving and renouncing his/her citizenship or green card, the cost basis of assets owned on the date he/she first became a U.S. resident is their fair market value on that date for purposes of the expatriation tax.

Eligible deferred compensation items and tax-deferred retirement accounts are not subject to the immediate expatriation tax but are subject to their own special rules. They are subject to a withholding tax of 30% on distributions to the covered expatriate.[6]

Beneficial interests in trusts: Grantor trusts of which the covered expatriate is the grantor are subject to the mark-to-market tax.[7] For non-grantor trusts (both domestic and foreign) of which the covered expatriate was a beneficiary immediately before expatriation, the section imposes a withholding requirement on the trustee of 30% on the "taxable portion" of all distributions to the covered expatriate. The "taxable portion" of a distribution is the portion that would have been includable in gross income if the expatriate were still a U.S. person. In addition, if a non-grantor trust distributes appreciated assets to a covered expatriate beneficiary, the trust is taxed by the U.S. on the gain.

New transfer tax: New IRC Section 2801 imposes a special transfer tax on all covered gifts and bequests from a covered expatriate (made during the rest of his or her life after expatriation and at death) to a U.S. citizen or resident. The U.S. recipient is liable for payment of the taxes, at a rate equal to the highest estate tax rate under IRC Section 2001 or, if higher, the highest gift tax rate under IRC Section 2502(a) (currently both are 40%). The amount of the annual gift tax exclusion under IRC Section 2503 (b) (currently $15,000) is exempt, and gifts and bequests that are subject to U.S. estate taxes, or that pass to a surviving spouse or a charity, are not covered gifts. (If the spouse is not a U.S. citizen, the bequests must pass to a QDOT, and gifts will qualify for the exception only up to $152,000 per year [indexed for inflation].) The tax is payable by the recipient.

There is no unified $11,180,000 gift tax exemption or estate tax exemption, but there is still a marital deduction and credit for foreign taxes paid. Covered gifts or bequests to U.S. trusts are taxed in the same manner as gifts to U.S. persons. If covered gifts or bequests are made to a foreign trust, then distributions of income or principal from that trust to a U.S. person are taxed as covered gifts to that person.

[6] There is a distinction between eligible and ineligible deferred compensation. Qualified and nonqualified accounts are only considered eligible if the payer is a U.S. person or non-U.S. person who elects to be treated as a U.S. person for purposes of withholding and if the expatriate notifies the payer of his/her expatriate status, and irrevocably waives a claim of withholding reduction under a tax treaty.

[7] IRC § 877A; A mark-to-market tax is a tax on the "deemed sale" of generally all of an expatriate's assets, the day before expatriation. In other words, an expatriate is generally taxed on any theoretical realized gain on all of his/her assets, as if he/she actually sold them on the day before his/her expatriation.

Other planning considerations

A. Life insurance planning considerations

Single life

Life insurance planning for single life policies for resident aliens is the same as that for a U.S. citizen: If the policy owner is also the insured, then the death benefit proceeds are included in the taxable estate.

Typically, life insurance policies are transferred to an irrevocable life insurance trust (ILIT) in order to be kept free from federal estate taxes. The trust corpus will generally not be includable in the estate of the grantor if the grantor does not retain certain incidents of ownership. Additionally, an ILIT could shield the trust assets from future, unknown creditors of the grantor.

A life insurance policy gifted into an ILIT is generally subject to the three-year rule: The proceeds of the life insurance generally are includable in the grantor's gross estate if the policy is gifted into the ILIT within three years of the grantor's death.

However, this rule does not apply to nonresident aliens. The death benefit proceeds on the life of a nonresident alien are not subject to U.S. estate taxes upon the death of the owner/insured nonresident alien. Thus, for a nonresident alien, a life insurance policy, particularly a cash value life insurance policy, may be a more attractive investment alternative compared to U.S. real estate or U.S. equities, which are included in the taxable estate.

Survivorship policies

Life insurance planning for survivorship policies is more complex compared to single life policies. The caveat for survivorship policies is "ownership," and death benefits will be treated accordingly.

For example: X and Y are lawfully married spouses. X is a resident alien. Y is a nonresident alien. X and Y purchase a survivorship policy.

Scenario 1: X is the sole owner of the policy. If X is the surviving spouse, the proceeds of the policy will be includable in his/her estate (and subject to estate taxes) at his/her death.

Scenario 2: X and Y jointly own the policy until the first death. If X or Y is the surviving spouse and a QDOT is not used, the surviving spouse will have to use his/her applicable unified credit to shelter the cash value (the cash value should be minimal) and the proceeds of the policy will be includable in the surviving spouse's estate (and subject to estate taxation) at his/her death.

Scenario 3: X and Y use an ILIT to own the policy. The estate tax can be avoided at both deaths by giving the surviving spouse no interest beyond a life estate. This method maximizes the wealth transferred to the next generation.

B. Planning considerations for nonresident aliens who are planning to move to the U.S.

If a nonresident alien is planning to become a U.S. resident in the near future, he or she should consider, with his/her tax and legal advisors, taking the following steps before becoming a U.S. resident for income or estate tax purposes:

1. Make gifts to non-U.S. persons

The nonresident alien should make irrevocable gifts to non-U.S. persons either outright, or in the form of a trust that is not permitted to have any U.S. beneficiaries and that will not otherwise be considered to be a U.S. grantor trust. This will avoid U.S. income taxes on future income earned by the gifted assets, and will also avoid later U.S. gift and estate taxes on the transfer of those assets.

2. Make gifts to U.S. persons

The nonresident alien should make irrevocable gifts to U.S. persons and to long-term trusts for U.S. beneficiaries. Although the pre-immigrant can use either a U.S. or a foreign trust, a U.S. trust may be preferable if the U.S. beneficiaries anticipate receiving distributions. These gifts in trust will avoid later gift, estate, and GST taxes. A foreign trust that is created or funded by the nonresident alien will be a grantor trust if the nonresident alien becomes a U.S. resident within five years after creating it, and so will not avoid U.S. income taxes on the income that the gifts generate.

3. Create irrevocable discretionary trusts

The nonresident alien should consider transferring a portion of his/her assets to an irrevocable discretionary trust of which the nonresident alien and other family members are permissible discretionary beneficiaries. If the transfer is properly structured and administered in a jurisdiction (either U.S. or foreign) that protects such a trust from the claims of creditors, the assets should not be subject to U.S. estate taxes on the nonresident alien's death. If properly structured, the trust will become a grantor trust for U.S. income tax purposes, and its income will be subject to U.S. income taxes.

4. Sell appreciated assets

The nonresident alien should not bring appreciated assets into the United States, since he/she may realize capital gains on the later sale of the assets. The pre-immigrant should sell appreciated marketable securities before entering the U.S., and reinvest the proceeds. The nonresident aliens should also sell or otherwise dispose of appreciated residences and closely held securities, possibly to other family members.

5. Dispose of foreign corporations

The nonresident aliens should try to dispose of all interests in foreign corporations that are closely held by U.S. persons or that have primarily passive income.

6. Make gifts between married couples

If a married nonresident alien couple become U.S. residents but not U.S. citizens, any gifts made between them in excess of $152,000 (indexed for inflation) per year will be subject to gift taxes. Therefore, any gifts that will be made between the spouses should be made before they enter the U.S. with non-U.S. assets.

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