

**U.S. ESTATE TAX RULES AFFECTING
NON-RESIDENT ALIENS (NRA'S) AND
THE APPLICATIONS OF LIFE INSURANCE**

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General U.S. Estate Tax Rules for NRA's

1. Federal Estate Tax is levied on U.S. "situs property".

Rules for determining U.S. situs property:

- Cash is U.S. situs property; Cash in a U.S. bank account is not.
- A cross-owned annuity or life insurance policy is U.S. situs property; An annuity owned by the annuitant or a life insurance policy owned by the insured is not.
- Stock in a U. S. corporation is; Stock in a non-U.S. company is not.

General U.S. Estate Tax Rules for NRA's

- Bonds of a U. S. corporation are; Bonds of a non-U.S. company are not.
- Municipal and state bonds are; U.S. Treasury bonds are not.
- Art and other tangible property located in the U. S. is U.S. situs property.
- Real estate owned by an NRA is U. S. situs property; Real estate owned by a foreign corporation whose stock is owned by an NRA is not.

General U.S. Estate Tax Rules for NRA's

- 2.** Exclusion amount is the tax on only the first \$60,000 of taxable assets.
- 3.** Marital Deduction is not available unless surviving spouse is U.S. citizen.
 - Alternative is to use Qualified Domestic Trust to defer estate tax to death of surviving spouse
- 4.** Mortgage and other debt is only deductible as a percentage of worldwide assets.
- 5.** Charitable deduction is only deductible as a percentage of worldwide assets.

Application of U.S. Gift Tax rules to NRA's

- 1. Gifts of real and tangible property located in the U.S. are subject to U.S. gift taxes.**
- 2. Gifts of intangible property, whether considered "U.S. situs property" or not, are not subject to U.S. gift tax regime.**

Examples:

- Stocks and bonds of U.S. corporations can be gifted by an NRA and the transfer would not be subject to gift tax.**
- Similarly, life insurance and annuity policies can be gifted free of gift tax.**

A SUMMARY OF ESTATE AND GIFT TAX RULES FOR 2009 BY DECEDENT AND SURVIVOR

DECEDENT/ SURVIVING SPOUSE	DECEDENT'S UNIFIED CREDIT EQUIVALENCY EXEMPTION	ESTATE TAX MARITAL DEDUCTION	DECEDENT'S INTEREST IN PROPERTY HELD AS TENANTS BY THE ENTIRETY*	ANNUAL MARITAL GIFT TAX EXCLUSION	AVAILABILITY OF GIFT- SPLITTING TO A THIRD PARTY
U.S. Citizen/ U.S. Citizen	\$3,500,000	Unlimited	50%	Unlimited	Available
U.S. Citizen/ Resident FN	\$3,500,000	Only with a QDOT	100%	\$133,000	Available
U.S. Citizen/ Non-Resident FN	\$3,500,000	Only with a QDOT	100%	\$133,000	Not Available
Resident FN/ U.S. Citizen	\$3,500,000	Unlimited	100%	Unlimited	Available
Resident FN/ Resident FN	\$3,500,000	Only with a QDOT	100%	\$133,000	Available
Resident FN/ Non-Resident FN	\$3,500,000	Only with a QDOT	100%	\$133,000	Not Available
Non-Resident FN/ U.S. Citizen	\$60,000	Unlimited	100%	Unlimited	Not Available
Non-Resident FN/ Resident FN	\$60,000	Only with a QDOT	100%	\$133,000	Not Available
Non-Resident FN/ Non-Resident FN	\$60,000	Only with a QDOT	100%	\$133,000	Not Available

* Unless consideration can be substantiated for the spouse's portion.

Estate Planning and Life Insurance

1. Keep family in same financial circumstances:

- Prevent liquidation of assets and financial hardship (Downsizing).
- Create harmony/Avoid fights among heirs.
- Equalize transfer of assets among heirs in order to pass a particular asset (Business, Real Estate, Art) to one particular heir.
- Provide flexibility in cases of multiple marriages.
- Avoid financial problems due to delays of the probate process.
- Provide liquidity.

Estate Planning and Life Insurance

2. Inheritance Leverage:

- Pass on substantially increased family assets for future generations.

3. Estate Taxes Provision:

- Pay estate taxes, CPA, attorney and other estate settlement fees.

4. Perpetual Legacy:

- Create multi-generational assets.

5. Asset Protection:

- Cash values and proceeds may be protected against the claims of creditors.

Estate Planning and Life Insurance

6. Safety Net:

- Create a secure asset allowing insured to take more risks with his business ventures.

7. Business Continuation:

- Agreement among business owners (Buy & Sell Agreement) that can guarantee a source of funds for the purchase of the business interest upon the death of an owner and provide heirs with immediate cash.
- Create a fair price.
- Ensure succession and continuation of the company.

Estate Planning and Life Insurance

7. Business Continuation: (Continued)

- **Avoid court battle that may force companies into bankruptcy.**
- **Surviving owners avoid the problem of “accepting” the deceased owner’s widow/er or children into the business.**
- **Address issues that can arise with control of a family business or other major asset where forced heirship rules apply.**

Estate Planning and Life Insurance

8. Life Insurance as an asset class:

- Tax deferred accumulation.
- Tax deferred withdrawals.
- Multiple investment options.
- Supplemental retirement income.

9. Life Settlements:

- Insured may sell his/her policy into the market during lifetime.

Estate Planning and Life Insurance

10. Debt payment:

- Person/Company pays interest on the note and the insurance pays the principal.

11. Key Person:

- Ensures the company operation in the event of death of a key person (that causes reduction in the company operational rhythm or that demands high cost for replacement and training).

Estate Planning and Life Insurance

12. Estate Planning Strategies for Collectors of Art, Antiques and Collectibles:

- Provide liquidity to avoid forced sale that could cause loss of up to 70% of value of collections.
- Provide liquidity to allow heirs to sell “efficiently”.
- Fund a museum to hold/display a client’s gift.

Estate Planning and Life Insurance

13. Charitable Donation:

- The insured can create a permanent memorial for himself and his family via life insurance payable to a favored charity.
- Proceeds can be earmarked for such uses as the construction of a school, hospital, museum, etc.
- Proceeds can endow a scholarship or professorship in the name of the donor/insured.

Estate Planning and Life Insurance

14. Executive Benefit Programs:

- Life insurance is purchased by employer on the life of the executive/director.
- Used to fund supplemental retirement programs.
- Death proceeds can be split between company and heirs.