
MEMORANDUM

RE: U.S. ESTATE & GIFT TAX TREATIES

Under U.S. Federal Estate & Gift Tax Laws, an alien is taxed as a U.S. Estate & Gift Tax Resident once he establishes a U.S. domicile. An alien acquires a U.S. domicile by living in the U.S. (for even a brief period of time) with the requisite intention to indefinitely remain (Treas Reg §20.0 – 1 (b)(1) Treas Reg §25.2501 – 1(b))

An alien, who establishes a U.S. domicile, is subject to:

1. A U.S. Gift tax on the donor's act of making the gift (transfer of asset) (IRC §2501(a))
2. A U.S. Estate tax on the transfer of their taxable estate (worldwide assets) (IRC §2001(a))

Since 1976, a unified tax rate is applied to assets transferred for both estate and gift tax (tax free gifts up to \$1M, tax free estate up to \$3.5M (2009), which includes gifts).

Top Tax Rate (2009): 45%

The United States has 18 estate & gift tax treaties (see below). To qualify for the treaty tax benefits, an alien must be domiciled in either the U.S. or a U.S. Treaty Country i.e., country of origin (or choice), at the time of his death or at the time of the gift.

The treaties contain special tax rules which may reduce the alien's U.S. Federal estate and gift tax liability. The treaties are designed to prevent double taxation on the transfer of the same asset (which is the subject of the estate or gift tax).

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