

Estate Planning Strategies for International Clients

Estate planning for international clients requires a lawyer to coordinate U.S. law, the laws of any foreign jurisdiction where the client has property and international treaties to create an estate plan that minimizes the estate tax and is convenient for the client. Generally, it is best for the individual to become a citizen because then they are entitled to the unlimited marital deduction as well as the personal exemption from estate taxes (\$2 million in 2007). If they cannot become a citizen, they should become a resident of the United States so that they can receive the 2 million dollar personal exemption. The lawyer can then set up a Qualified Domestic Trust (QDT) which is similar to the unlimited marital deduction. The worst case scenario is if an individual is not a permanent resident because they only get a \$13,000 exemption from estate tax and they are not entitled to the unlimited marital deduction. Below is a brief description of a few tools that are useful for planning. Individuals should consult with an attorney in their state of residency or where their U.S. property is located.

Revocable Living Trust

A revocable living trust is an important estate planning tool for international clients. It allows the author of the trust (settlor) to appoint a trustee to manage their affairs in the event of incapacity or disability. The settlor will be the trustee during their lifetime so that they can maintain control over their assets. The alternative trustee will perform the functions that an executor would under a will arrangement-they will see that the property is properly distributed and all the taxes are paid.

A revocable trust allows the international client to avoid probate in the United States. This can be especially beneficial for clients that own property in multiple states. By owning property in multiple states they would have to go through probate in each state. Through the use of the revocable living trust probate can be avoided altogether (the property would still be subject to the estate tax of the state in which it is located).

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A revocable trust also offers privacy. A will is a public document that will be public record after it has taken effect. Any person that wants to look at it will have the opportunity. Salesmen can access it to analyze who has received a large inheritance. Nosy neighbors, ex-spouses, or relatives can take a look at the money they missed out on. Through the use of a revocable living trust this information stays confidential. The revocable trust would have to be coordinated with a trust in a foreign jurisdiction to complete the estate plan if the client has assets in a non-U.S. jurisdiction.

Qualified Domestic Trust

Markus is a citizen of the UK and his wife Sally is a citizen of the United States. They live in the United States where he is a successful artist and Sally is an executive for a leading car share organization. They have planned their estate so that when one spouse dies everything goes to the other spouse and at the surviving spouse's death everything is given to their children.

Sally, thanks to some generous stock options is worth 4 million dollars. If Sally died today her entire estate would be left to Markus. Since Markus is not a citizen he does not get the unlimited marital deduction. This means that at the current 45% tax rate 1.8 million dollars in estate tax would have to be paid at Sally's death. This is a very undesirable result.

The best way to handle this situation would be for Markus to become a United States citizen since he would then be entitled to the unlimited marital deduction. As long as Markus becomes a citizen by the time the estate tax return is filed he is entitled to the unlimited marital deduction. Sally would then set up a credit shelter trust that would put her personal exemption amount (2 million for 2007) into a credit shelter trust where the income from the trust would be available for Markus. The remaining 2 million would go to Markus and would not be subject to tax at Sally's death because of the unlimited marital deduction that Markus received by becoming a United States citizen.

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If Markus is not able to become a citizen or chooses not to become a citizen he should set up a qualified domestic trust (QDT). The QDT requires that the trustee be a United States citizen or a United States corporation. Generally, a United States corporation is chosen because of complex bonding requirements for individuals. Markus would be entitled to the income from this trust, however, he would have to pay estate tax on any distributions of the principal. The advantage is that Markus has control over when the estate tax is paid as oppose to all the tax being due when Sally dies. It is not as flexible as the unlimited marital deduction. At Markus' death the money in the QDT is taxed as if it were in Sally's estate and is not considered a part of Markus' estate.

Irrevocable Life Insurance Trust

Another alternative is an irrevocable life insurance trust (ILIT). This would remove the money from Sally's estate for estate tax purposes. Like the example above, the personal exemption amount (2 million in 2007) would be placed in the credit shelter trust. Then Sally would set up a 1 million dollar ILIT on her life with Markus and their children as beneficiaries. When she dies the estate pays the \$900,000 in estate tax (45% in 2007) on the 2 million that is not in the credit shelter trust and the ILIT money makes up for the estate tax money. Markus then has the 1.1 million left over after paying the estate tax and the income from the credit shelter trust to use. The 1 million from the ILIT would transfer to the children upon Markus' death and would not be part of Markus' estate for estate tax purposes.

Conclusion

It is very important for international clients to properly plan their estate. Millions of dollars can be saved through proper planning. It is important to talk to lawyers who understand cross-border estate planning strategies like we do.