

Planning From Abroad: Inbound Planning Strategies

1. Introduction

- Increased mobility of executives
- Proliferation of foreign students in US

2. Determination of US Tax Residence and Domicile

a. Income Tax Residence

- Green Card Test
- Substantial Presence Test

b. Transfer Tax Residence: Domicile

- Subjective Test
- Physical presence in US + intention to remain indefinitely

c. Consequences of US Residence/Domicile

- Subject to US income tax on all income
- Subject to US gift/estate tax on all asset transfers, wherever located (but also eligible for \$5.34 M exemption)

3. Pre-Immigration Considerations

a. Income Tax

- Seek to avoid US residence altogether
- Determine plan for entry – immigration status and residence start date
- Green card starts clock with respect to expatriation rules
- Review and re-structure investments
- Realize gains to reset cost basis prior to arrival in US
- Accelerate income prior to arrival in US
- Advise client regarding compliance relating to non-US investments
- Consider “drop off” trust, but beware of possible grantor trust status under IRC §679

b. Gift/Estate Tax

- Assess degree of flexibility regarding domicile
- Analyze benefits/detriments of US domicile
- Analysis depends on size and location of assets
- Consider “drop off” trust – remove assets from estate on tax-free basis

\* Always need to consider possible foreign income and transfer tax consequences associated with pre-immigration planning; coordinate with local counsel!

4. Inbound planning by foreign families for US persons

a. Outright gifts

- Direct gifts
- Gifts via foreign grantor trusts

b. Gifts in trust

- Trust will be GST exempt so long as no US gift/estate tax on funding
- Can be US trust ...
- OR foreign trust (but beware of throwback tax rules)