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U.S. ESTATE AND GIFT TAX RULES FOR NON-RESIDENT ALIENS

The U.S. estate and gift tax rules are technical and not obvious. Only assets that are deemed to be “U.S. situs property” are subject to the estate tax. However, certain U.S. situs property that is subject to the estate tax is not subject to the gift tax.

U.S. SITUS PROPERTY: PROPERTY SUBJECT TO THE ESTATE TAX

1. Real Property All real property located in the U.S., including condominium apartments, is subject to the estate tax.
2. Tangible Personal Property Art, jewelry, gold coins, cash in a safe deposit box, furniture, and other tangible property located in the U.S. are subject to the estate tax. Works of art on loan or exhibition, however, may be exempt from the estate tax if special conditions are met.
3. U.S. Equities Shares of stock in U.S. companies, whether publicly traded or privately held (including shares of stock in a co-operative apartment corporation), and regardless of the location of the share certificates, are subject to the estate tax. Shares in a U.S. registered investment fund (“RIC”), including mutual funds, are U.S. situs property subject to the estate tax.
4. Non Bank Deposits Cash accounts with U.S. brokerage firms are not considered bank deposits and are subject to the estate tax.

NON U.S. SITUS PROPERTY: PROPERTY NOT SUBJECT TO THE ESTATE TAX

1. Real Property Real property located outside the U.S. is not subject to the estate tax.
2. Tangible Personal Property Tangible personal property located outside the United States is not subject to the estate tax.

3. Stock in Foreign Corporations Shares in foreign corporations, whether publicly traded or privately held, are not subject to the U.S. estate tax regardless of the location of the share certificates.
4. Insurance Proceeds Amounts receivable as insurance on a decedent's life are not subject to the estate tax.
5. Certain Debt Obligations Bonds of U.S. companies, U.S. government, and U.S. government agencies are exempt from estate tax.
6. Bank Accounts Generally, cash on deposit with a U.S. bank or insurance company (not with a brokerage firm) is not subject to the estate tax.

GIFT TAX

Foreigners are subject to gift tax only on gifts of U.S. situs real estate and tangible personal property located in the United States. There is no gift tax on a gift of cash if the gift is by check or by wire transfer. Also, there is no gift tax on the gift of securities of a U.S. company, even though such assets may be subject to estate tax.

There is no limit on the amount that a foreigner may gift to an U.S. taxpayer, whether or not such gift is subject to the estate tax, but there may be a reporting requirement if the recipient of the gift is a U.S. taxpayer.

This memorandum is an overview of the basic estate and gift tax rules. If a client has a specific estate or gift tax question, he should consult with his tax advisors.

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