AMERICAN BAR ASSOCIATION
Real Property, Trust and Estate Law Section

A GUIDE TO INTERNATIONAL ESTATE PLANNING

Design, Administration, and Compliance

THIRD EDITION

Carolyn A. Reers and Suzanne L. Shier, Editors

Real Property, Trust and Estate Law 2025–26 Media/Books Products Committee

Carolyn P. Vinson, *Editor-in-Chief*
Candace M. Cunningham, *Editor-in-Chief Emeritus*
Phyllis M. Rubinstein, *Editor-in-Chief Emeritus*
Aen Walker Webster, *Editor-in-Chief Emeritus*

Real Property
Marcia Charney, *Managing Editor*
Ryan Almy, *Editor*
Joshua Crowfoot, *Editor*
Jason Hirata, *Editor*
Thomas D. Kearns, *Editor*

Trust and Estate
Elizabeth Lindsay-Ochoa, *Managing Editor*
Brian Balduzzi, *Editor*
Zisl Edelson, *Editor*
Carly Doshi, *Editor*
Chelsea Rubio, *Editor*
Sandra Sheets, *Editor*
Nancy E. Shurtz, *Editor*
Aen Walker Webster, *Editor*

Cover design by Andrew Alcala

The materials contained herein represent the opinions of the authors and/or the editors and should not be construed to be the views or opinions of the law firms or companies that such persons are in partnership with, associated with, or employed by, nor of the American Bar Association or the Section of Real Property, Trust & Estate Law, unless adopted pursuant to the bylaws of the Association.

Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book is intended for educational and informational purposes only.

© 2026 American Bar Association. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher. For permission, complete the request form at www.americanbar.org/reprint or email ABA Publishing at copyright@americanbar.org.

Printed in the United States of America.

30 29 28 27 26 5 4 3 2 1

ISBN 978-1-63905-767-2

A catalog record for this book is available from the Library of Congress.

Discounts are available for books ordered in bulk. Special consideration is given to state bars, CLE programs, and other bar-related organizations. Inquire at Book Publishing, ABA Publishing, American Bar Association, 321 N. Clark Street, Chicago, Illinois 60654-7598.

www.shopABA.org

Contents

Introduction xxxiii

PART I OVERVIEW: FAMILIES, TAX, CHOICE OF LAW, AND ETHICS

Chapter 1 International Families and Family Wealth 3
I. Introduction 3
II. Trends 3
III. Backdrop: Three Generations 4
IV. Scope of the Cohort 4
V. Global Mobility 5
A. Where Are They Coming From? 5
B. Where Are They Going? 6
VI. Evolving Investment Strategies 6
A. Risk Appetite and the Search for Stability 7
B. Investment Migration 8
VII. Reporting on a Global Level 8
VIII. The Great Wealth Transfer 9
IX. Family Offices 10
X. Importance of Family Governance and Communication 11
A. Preparing Heirs to Become Responsible Stewards of Wealth 11
B. Purpose-Driven Investing and Philanthropy 12
XI. Family Structure 12
XII. Conclusion 13

Chapter 2 International Tax Regimes 15
I. Introduction 15
II. Income Taxation of Capital and Wealth 15
A. General Principles 15
B. Capital Gains Taxation 15
C. Taxation of Investment Income 16
D. International Coordination and Information Exchange 16
III. Gift Taxation 16
A. Jurisdictions with Gift Taxes 16
B. Jurisdictions Without Gift Taxes 17
C. Gift Tax Treaties 17
IV. Estate and Inheritance Taxation 17
A. Estate Tax Versus Inheritance Tax Systems 17
B. Countries Without Estate or Inheritance Taxes 19
V. Generation-Skipping Transfer Taxation 19
A. Purpose and Structure 19
B. Rates and Exemptions 19

ree57672_00_B0_fm_i-xxxvi.indd 3 7/6/26 10:55 AM

VI. Net Wealth Taxation 2
A. Current Wealth Tax Jurisdictions 0
B. Historical Trends 2
C. Administrative Challenges 0
D. Policy Debates and Proposals 2
VII. Cross-Cutting Issues in Cross-Border Wealth Transfer Taxation 0
A. Testamentary Freedom and Forced Heirship Considerations 2
B. Tax Treaties and Coordination 0
C. Tax Residence and Domicile 2
D. Exit Taxation and Expatriation 0
E. Information Reporting and Enforcement 2
F. Planning Considerations 1
VIII. Policy Objectives and Reform Considerations 2
IX. Conclusion 1
2
1

Chapter 3 Planning for Families with International Wealth 25
I. Introduction 25
II. Establishing the Attorney-Client Relationship in International Matters 25
A. The Initial Client Engagement—Understanding the Complete Context 25
B. Defining the Scope of the Representation Through the Engagement Letter 26
C. Coordinating with Foreign Legal Counsel 27
III. Understanding the Client's Family Structure and Dynamics 28
A. Mapping Family Relationships Across Borders 28
B. Planning for Non-U.S. Citizen Spouses 28
C. Special Considerations for Children in International Families 29
IV. Client Goals—Balancing Tax and Non-Tax Objectives 29
A. Asset Protection as a Primary Objective 29
B. Privacy and Confidentiality Objectives 30
C. Family Business Succession and Governance 30
V. Comprehensive Balance Sheet Analysis 30
A. Asset Identification and Classification 31
B. Liability Documentation and Management 31
VI. Core Tax Planning Strategies for International Wealth Transfer
A. Gift Tax Planning: U.S. Citizen or U.S. Domiciliary Versus Non-U.S. Citizen Nondomiciliary Donors 3
B. Estate Tax Planning—Contrasting Regimes 1
C. Pre-Immigration Planning 3
D. Foreign Grantor Trusts 2
E. Generation-Skipping Transfer Tax Considerations 3
F. Expatriation and Exit Tax 2
VII. International Information Reporting Obligations 3
A. Form 3520—Foreign Trust and Gift Reporting 3
B. Form 3520-A—Annual Information Return of Foreign Trust 3
C. Form 5471—Controlled Foreign Corporation Reporting 3
D. Form 8621—Passive Foreign Investment Company Reporting 3
E. FinCEN Form 114 (FBAR) 3
4
3
4
3
4
3
4
3
4
3
4

VIII. International Estate Administration: Practical Procedures 3
A. Ancillary Probate 4
B. Practical Challenges in International Administration 3
IX. Conclusion 4
3
5
Chapter 4 Fundamental Choice and Conflict of Laws Concepts 37
I. Introduction 37
II. Core Concepts 38
A. Introduction 38
B. Renvoi 38
C. Types of Property 39
D. Determining Affiliations 41
E. Trusts 44
F. Estates 45
III. Uniform Law Commission: Uniform Conflicts of Law in Trusts and Estates Act 46
IV. Hague Conference on Private International Law 46
A. Introduction 46
B. 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 46
C. 1985 Hague Convention on the Law Applicable to Trusts and on Their Recognition 47
D. 1989 Hague Convention on the Law Applicable to Succession to the Estate of Deceased Persons 49
V. Brussels IV 49
VI. Judicial Precedent 49
A. In re Pfizer's Estate 51
B. First National Bank of Chicago v. Ettlinger 51
C. Estate of Wright 51
D. Estate of Renard 51
E. In re Will of Meyer 51
VII. Planning and Administration Practice Considerations 52
A. Special Considerations Regarding Wills 52
B. Trusts 52
VIII. Conclusion 53
3
Chapter 5 Ethics in International Estate Planning 63
I. Introduction 63
II. Sources of Rules 64
A. Domestic and Foreign Professional Responsibility and Disciplinary Rules 64
B. Additional Resources 66
III. Attorney-Client Relationship 66
A. Competence 66
B. Scope of Representation 67
C. Withdrawing from Representation 68
IV. Unauthorized Practice of Law 69
A. Relevant Rules 71
B. Penalties 73
C. Solutions

V. Advertising in Foreign Jurisdictions 79
A. Advertisement of Expertise 79
B. Advertising in Foreign Jurisdictions 80
VI. Avoiding Providing Assistance to Criminal and Fraudulent Activities 81
A. Ethical Restrictions 81
B. The Withdrawal Solution 82
C. Legal Restrictions, the Gatekeeper Initiative, and Voluntary Due Diligence Procedure 82

PART II FAMILY SUCCESSION: EDUCATING, ENGAGING, AND EMPOWERING INTERNATIONAL FAMILIES 95

Chapter 6 Cultural Competencies in International Planning 95
I. Introduction 95
II. Understanding Cultural Frameworks 96
A. Individualist Cultures 96
B. Honor Cultures 96
C. Collectivist Cultures 97
III. Types of International Families 97
A. Globally Dispersed Families 97
B. U.S. Families Going Abroad 98
C. Overseas Families with a U.S. Nexus 98
IV. Reimagining Life Events Through a Cultural Lens 98
A. Marriage and Prenuptial Agreements 99
B. Divorce and Remarriage 100
C. Birth and Child-Rearing 101
D. Death and Inheritance 102
E. Philanthropy and Giving 103
V. Developing Cultural Competencies as an Advisor 104
VI. Conclusion

Chapter 7 Engaging the Next Generation 105
I. Introduction 105
II. Understanding the Next Generation 105
A. Changing Attitudes Toward Wealth 106
B. Individual Identity Within the Family 106
C. Generational Dynamics and Expectations 106
III. Communication and Trust: The Cornerstones of Succession 107
A. The Role of Communication in Succession 107
B. Building Trust Through Transparency 107
IV. Educating for a Stewardship Mentality 108
A. Financial and Legal Literacy and Governance Education 108
B. Leadership and Personal Development 108
V. Structuring for Governance: Practical Suggestions 110
A. Family Charter 110
B. Family Council 112

VI. Conflict and Exit Mechanisms 11
VII. Case Studies: Engagement in Practice 5
A. Case Study 1: Early Involvement Through Philanthropy 11
B. Case Study 2: Rigid Structures Leading to Disengagement 6
C. Case Study 3: Adaptive Governance and Education 11
VIII. Conclusion 6
11
6
11
6
11
7

PART III PROPERTY OWNERSHIP AND INTERESTS

Chapter 8 Considerations in U.S. Property Ownership 121
I. Introduction 121
II. Individual Ownership 121
III. Multi-Owner and Split Forms of Ownership 122
A. Co-Ownership Arrangements 122
B. Community Property 124
C. Usufruct 126
D. Life Estates 126
IV. Contracts/Beneficiary Designations 126
A. Transfer on Death Instruments 127
B. Payable on Death Accounts 127
C. Life Insurance 128
D. Retirement Accounts 128
V. Conclusion 129

Chapter 9 Trusts in International Estate Planning 131
I. Introduction 131
II. What Is a Trust? 131
A. Core Concepts and Definitions 131
B. Life Cycle of a Revocable Trust 132
C. Why Use a Trust? 133
D. Types of Trusts 133
III. Trustees and Trust Administration 134
A. Types of Trustees 134
B. Division of Authority 135
C. Fiduciary Duties 135
D. Trust Flexibility 137
IV. Recognition of Trusts Under Law 138
A. State Fiduciary Law 138
B. Common Law Jurisdictions 138
C. Civil Law Jurisdictions 139
D. U.S. Tax Law 140
V. Conclusion

PART IV MARRIAGE

Chapter 10 International Aspects of Matrimonial Property Rights 143
I. Introduction 143
II. Mutability Versus Partial Mutability Versus Immutability 144
III. Scission Between Real Property and Personal Property 150
IV. Renvoi 151
V. The Law-Determining Affiliation 155
VI. The Border Territory Between Matrimonial Property and Succession to Property at Death 15
VII. Intertemporal Conflicts 7
VIII. Immediate and Secondary Questions; Characterization 15
IX. International Treaties and Conventions 8
A. The Hague Convention of July 17, 1905 15
B. The March 14, 1978, Hague Convention on the Law Applicable to Matrimonial Property Regimes 9 16
C. The EU Regulation 2016/1103 16 0 1
X. The Restatements and the State of Flux with Respect to the Rules in the United States 16 0 3 171
XI. The Interaction of Religion-Based Matrimonial Property Rules and the Rules of Private International Law 17
A. Islam 4
B. India 17
C. Israel 5
17
7
17
8

PART V TAXES

Chapter 11 Citizenship, Residence, and Domicile 183
I. Introduction 183
II. Citizenship 183
A. How to Obtain U.S. Citizenship? 183
III. Residency for Individuals 185
A. Who Is a U.S. Resident? 185
B. Income Tax Consequence of Being a U.S. Resident 189
IV. Domicile 189
A. What Is the Relevance of Having a U.S. Domicile? 189
B. What Is Domicile? 189
C. How to Obtain a U.S. Domicile? 189
D. Facts and Circumstances 190
E. Rebutting the IRS 191
F. Miscellaneous Domicile Issues 192

Chapter 12 Tax Penalties and Remediating Noncompliance 193
I. Introduction 193
II. Penalties 193
A. Late Filing 193
B. Late Payment 194
C. International Information Returns 194

D. Accuracy-Related Penalties 19
E. Challenging Penalties 6
III. Remediating Noncompliance 19
A. Delinquent FBAR Submission Procedures 9
B. Delinquent International Information Return Submission Procedures 20
C. Streamlined Foreign Offshore Procedures 2
D. Streamlined Domestic Offshore Procedures 20
3
20
3
20
4
20
5

PART VI U.S. TAXES ON THE TRANSFER OF WEALTH 209

Chapter 13 U.S. Gift, Estate, GST Tax on U.S. Persons 209
I. Introduction 209
II. Bases of Transfer Taxation of U.S. Persons 209
A. Gift Tax 209
B. Estate Tax 210
III. Overview of the Estate and Gift Tax Lifetime Exclusion and the Unified Credit 210
A. Background 210
B. Estate and Gift Tax Rate 211
C. Function of the Unified Credit 211
D. Note on Historical Estates and Gifts 212
E. Note on State Estate Tax 212
212
IV. Gift Tax 212
A. Introduction 212
B. Definition of Gift 213
C. Completed Gifts 214
D. Powers of Appointment 214
E. Transfers Involving Married Couples 216
F. Valuation of Gifts 216
G. Exclusions from the Gift Tax 218
H. Gift Tax Deductions and Credits 221
I. Computation of and Liability for Gift Tax 221
J. Gift Tax Treaties 221
K. Gifts (or Bequests) Received from Foreign Persons 222
V. Estate Tax 222
A. Introduction 222
B. Inclusion in the Gross Estate 225
C. Exclusion from Gross Estate 226
D. Deductions 228
E. Credits 229
F. Estate Tax Return and Computation of Estate Tax 231
G. Payment of Estate Tax 231
H. Portability 231
231
I. Estate Tax Treaties 231
VI. Generation-Skipping Transfer Tax 232
A. Skip Person 232
B. Types of Generation-Skipping Transfers
C. Exemption

Chapter 14 U.S. Gift, Estate, GST Tax on Non-U.S. Persons 233
I. Introduction 233
II. Estate Tax 233
A. Situs of Various Classes of Assets 234
B. Rates of Tax and Exclusion Amounts for NCND 237
C. Deductions Available to NCND's Estates 237
D. Reporting Issues for Executors of NCND Decedents' Estates 239
III. Gift Tax 239
A. Determining If a Gift Is Subject to Gift Tax 240
B. Rate of Tax 240
C. Annual Exclusion 240
D. Unified Credit Against Gift Tax 240
E. Marital Deduction 241
F. Gift Splitting by Spouses for Gifts to Third Parties 242
G. Charitable Deduction 242
IV. Generation-Skipping Transfers 242

Chapter 15 Planning for Transfers to Noncitizen Spouses 243
I. Introduction 243
A. Background 243
II. Disallowance of Federal Estate Tax Marital Deduction 244
A. General Rule 244
B. Treatment of Jointly Held Property (with Right of Survivorship) at Death 245
C. Allowance of Marital Deduction When Surviving Spouse Becomes a U.S. Citizen 247
III. Qualification as a QDOT 247
A. In General 248
B. Marital Deduction Requirements 248
C. Statutory Requirements 248
D. Security Requirements for Collection of the QDOT Tax 248
E. Miscellaneous QDOT Issues 249
IV. When Is Qualification as a QDOT Determined?—Provisions for Reformation 250
A. General Rules 250
B. Limitations and Uses of Reformation Provisions 253
V. Transfers by the Surviving Spouse of Outright Bequests and Nonprobate Property to a QDOT 256
A. Statutory Provisions 256
B. Regulatory Provisions Governing Transfers of Property to a QDOT 256
C. Who May Make the Transfer 256
D. When Must the Transfer to the QDOT Be Made? 256
E. Irrevocable Assignment of Property to a QDOT 257
F. Special Rules for Transferable Annuities 257
G. Special Provisions Governing Assignments and Transfers 257
H. Protective Assignments of Property to a QDOT 257
I. Nontransferable Property 258
J. Effect of Transfer of Assignment on Other Tax Provisions 258
VI. Special Rules for Nonassignable Annuities and Other Arrangements 258
A. Background 258
B. Final Regulations Governing "Nonassignable Annuities or Other Payments" 259
270
271
271

VII. Taxation of QDOTs 27
A. Taxable Events 7
B. Amount Subject to Tax 27
C. Amount of Tax 7
D. Distributions Exempt from Tax 27
E. Administrative Provisions 7
F. Cessation of Imposition of the QDOT Estate Tax: The Surviving Spouse Becomes a United States Citizen 27 8 28
VIII. Death of the Noncitizen Surviving Spouse 28 8
A. Credit for Federal Estate Tax Paid 28 1
B. Allowance of Certain Tax Benefits 28 9
C. Double Taxation 28 4
D. Use of Spouse's Unified Credit and Federal Estate Tax Brackets 9
E. Generation-Skipping Transfer Tax 29
IX. Federal Gift Tax on Transfers to Noncitizen Spouses 1
A. Limitation on the Marital Deduction for Gifts to Noncitizen Spouses 29
B. Federal Gift Tax Effects of Creation and Termination of Joint Tenancies 3 29
X. Effect of Changes in the Federal Gift and Estate Tax Marital Deduction on Existing United States Tax Treaties 3 30 29
A. Existing U.S. Transfer Tax Treaties 1 4
B. OBRA 1989 Treaty Provisions 30 29
XI. Effective Date Provisions 1 5
A. Effective Dates of Statutory Provisions 30 29
B. Effective Date Provisions for Final Regulations 1 5
C. Effective Dates of Gift Tax Provisions 30 29
XII. Planning for the Marital Deduction for Noncitizen Spouses 3 6 30
A. Lifetime Planning 3
B. Planning for a Noncitizen Surviving Spouse After the First Spouse's Death 30 4

Chapter 16 Estate and Gift Tax Treaties and International Conventions 319 30
I. Introduction 3 319
II. Post–World War II U.S. Estate Tax Situs Treaties 319 30
A. United States–Italy Treaty 3 320
B. United States–Switzerland Treaty 321 30
C. United States–Japan Treaty 3 322
III. 1966 and 1982 OECD Estate Tax Domicile Models 323 31
A. Background 323 2
B. OECD Framework 324
IV. Post–1966 U.S. Estate Tax Domicile Treaties 326
A. United States–France Treaty 326
B. U.S–Germany Treaty 1998 Protocol 331
C. Selected Issues Under the Treaties 332
V. United States–Canada Income Tax Treaty 336
A. Situs Framework 337
B. Prorated Unified Credit 337
C. Marital Bequests 337
D. Credits to Avoid Double Taxation at Death 338
E. Modest Estates 338

VI. Conventions 338
A. Convention of the Conflicts of Laws Relating to the Form of Testamentary Dispositions (October 5, 1961) 338
B. Convention Concerning the International Administration of the Estates of Deceased Persons (October 2, 1973) 339
C. Convention on the Law Applicable to Trusts and on Their Recognition (July 1, 1985) 339
D. Convention on the Law Applicable to Succession to the Estates of Deceased Persons (August 1, 1989) 33
VII. Conclusion 9
34
0

PART VII U.S. TAX ON INCOME

Chapter 17 Current Rules for the United States Income Taxation of Individuals 343
I. Introduction 343
II. Taxation of U.S. Citizens and Residents 343
A. U.S. Citizens with Foreign Income 343
B. Estates of U.S. Persons with Foreign Assets 344
C. Planning Recommendations 344
III. Taxation of Non-U.S. Citizens and Non-U.S. Residents 344
A. Income Connected with the Conduct of a Trade or Business 345
B. Income Not Connected with a U.S. Trade or Business 347
C. U.S. Income Taxation of Dispositions by Nonresident Aliens of U.S.-Situs Real Property 34
D. Ownership of U.S. Investments by Nonresident Aliens 8
E. Estates of Nonresident Aliens with U.S. Assets 34
F. Planning Recommendations 9
IV. Taxation of Foreign Visitors in the United States 35
A. Income Tax Treatment When a Nonresident Alien Is Deemed a U.S. Resident 1 35 351
V. Returns Required to Be Filed by Nonresident Aliens or Persons Related to Nonresident Aliens 1 35 39
A. Nonresident Alien Income Tax and FIRPTA Returns 1
B. Exception for Adequate Withholding 35
C. Code § 7701(b) Information Return 1
D. Income Tax Return Requirements of Estates of Nonresident Alien with U.S. Assets 35 2 35
VI. Income Tax Treaty Impact 4 35 3 35

Chapter 18 U.S. Income Taxation of Foreign Trusts and Trusts with Non-U.S. Grantors 4 355
I. Introduction 355
II. Working Definition and Classification of a Trust 356
A. Whether an Arrangement Is a Trust 356
B. Classification of a Trust as Foreign or Domestic 356
III. United States Person or Non-U.S. Grantor of a Trust 359
A. Status of Grantor 359
B. Gratuitous Transfer 359

C. Funding Through Intermediaries 36
D. Accommodation Grantors 0
E. Code § 678 Withdrawal Power 36
F. Trusts and Entities as Grantors 0
G. Change of Grantor Under Code § 672(f)(5) 36
H. Immigration of a Nonresident Alien Grantor 0
I. Expatriation of a U.S. Owner 36
J. Dual Resident Taxpayers 0
K. Death of Grantor 36
IV. Creation of a Foreign Trust and Creation of a Trust by a Non-U.S. Person 1
A. Creation of a Foreign Trust by a United States Person 36
B. Creation of a Trust by a Non-U.S. Person 1
V. Taxation of Foreign Grantor Trusts with U.S. Beneficiaries 36
A. Determination of U.S. Beneficiaries 2
B. Trusts That Become Foreign Trusts 36
C. Federal Tax Compliance for Foreign Grantor Trusts 2
VI. Taxation of Foreign Nongrantor Trusts 36
A. Generally 2
B. U.S. Income of Foreign Nongrantor Trusts 36
C. Federal Tax Compliance for Foreign Nongrantor Trusts 3
VII. Taxation of U.S. Beneficiaries of Foreign Nongrantor Trusts 36
A. Generally 3
B. Core Concepts 36
C. Current Year Distributions 4
D. Distributions of Accumulated Income and the Throwback Rules 36
E. Calculation of the Throwback Tax 5
F. Calculating Interest Charge on the Tax 36
G. Loans to U.S. Beneficiaries from Foreign Trusts 5
H. Distributions Through Intermediaries 36
VIII. The Use of Entities as Trust Substitutes 6
A. Purported Gifts Generally 36
B. Definition of a Purported Gift of Bequest 7
C. Treatment of Purported Gifts from Foreign Entities 36
D. IRS Discretion 7
36
7

Chapter 19 Foreign Business Entities in International Estate Planning 391
I. Introduction 37 391
II. Foreign Business Entities and Classification 0 392
A. General Principles 37 392
B. Check-the-Box Elections 1 394
C. Compliance for Check-the-Box Elections 37 398
D. Foreign Business Entities and Classification Conclusion 1 400
III. CFC Regime and PFIC Regime 37 400
A. Definition of CFCs and PFICs 1 401
B. Attribution Principles for CFCs and PFICs 37 403
C. General U.S. Income Tax Consequences of CFCs and PFICs 2 407
IV. Conclusion 37 411
5
37
8
38
1
38
3
38
4
38
8

Chapter 20 Income Tax Treaties 413
I. Introduction 413
II. Tax Treaties in General 413
III. Constitutional Authority, Legal Status, and the Treaty Making Process 414
IV. Interpreting Treaties 415
A. In General 415
B. Interpretation by U.S. Courts of Tax Treaties 415
C. Application of Local Law 417
V. Qualification for Treaty Benefits 417
A. General 417
B. Residence 418
C. Limitation on Benefits 421
D. Other Limitations 424
E. Saving Clause 425
VI. Treaty Benefits for Specified Categories of Income 426
A. General 426
B. Permanent Establishment and Business Profits 426
C. Provisions Relevant to Nonbusiness, FDAP Income 430
D. Employment/Services Income 432
E. Miscellaneous 433
F. Other Income 433
VII. General Treaty Benefits and Administrative Provisions 434
A. Relief from Double Taxation 434
B. Nondiscrimination 435
C. Administrative Provisions 436
VIII. Procedural Requirements for Claiming Treaty Benefits 437
A. Individuals 437
B. Business Entities 438
C. Reporting Treaty-Based Return Positions to the IRS 438
D. Late Filings, Penalties, and Related Matters: Aroestev.UnitedStates 439
IX. Conclusion 440

PART VIII PLANNING FOR DISABILITY

Chapter 21 Advance Health Care Directives 443
I. Introduction 443
II. Health Care Decision-Making 443
III. Standard Advance Health Directive Documents 444
A. Health Care Power of Attorney 444
B. Living Will 444
C. Advance Health Care Directive 444
D. Health Insurance Portability and Accountability Act Release 444
E. Physician's Order for Life Sustaining Treatment / Medical Orders for Life Sustaining Treatment 44
IV. Formalities of Execution 4
V. Reciprocity 44
A. United States 5
B. International 44
5
44
5
44
5

VI. Drafting Considerations 446
A. Agent Selection 446
B. Agent Authority 446
C. Health Care Preferences 446
D. Organ Donation and Treatment of Remains 446
E. Duplicate Originals and Accessibility 446
F. Review 446
VII. Revocation 446
VIII. Conclusion 446

Chapter 22 Financial Powers of Attorney 449
I. Introduction 449
II. Report of Foreign Bank and Financial Accounts 449
III. Reciprocity 450
A. United States 450
B. International 450
IV. Formalities of Execution 450
V. Selecting an Agent 450
VI. Drafting Considerations 451
A. Durability 451
B. Springing Power 451
C. Authority of Coagents 452
D. Broad Powers 452
E. Express Powers 453
F. Multiple Powers of Attorney 453
G. Duplicate Originals 453
VII. Third-Party Reliance 453
VIII. Revocation 454
IX. Termination 454
X. Conclusion

PART IX PLANNING FOR WEALTH TRANSFER AND PRESERVATION

Chapter 23 Cross-Border Philanthropy: U.S. Federal Tax Considerations 457
I. Introduction 457
II. Income Tax Charitable Deduction Rules for U.S. Persons with International Philanthropic Goals 457
A. Rules Regarding Donee Organization If Income Tax Deduction Is Desired 457
B. Domestic Organization Requirement 457
C. Use of Funds Outside the United States 458
D. Earmarking and Conduit Restrictions 459
III. How Donee U.S. Charitable Organization Applies Donations for Charitable Purposes Outside U.S. 462
A. Donations to U.S. Public Charity or Private Foundation with Overseas Operations 462
B. Donations to U.S. Public Charity That Makes Grants to Non-U.S./Non-501(c)(3) Organization 462
C. Donations to U.S. Private Foundation That Makes Grants to Non-U.S./Non-501(c)(3) Organization 465

IV. Estate and Gift Tax Charitable Deduction Rules for U.S. Citizens and Domiciliaries with International Philanthropic Goals 470
A. Estate Tax Charitable Deduction 470
B. Gift Tax 470
C. The Caveat 470
D. Requirements for Foreign Charity If U.S. Person Donor Desires Estate Tax or Gift Tax Charitable Deduction 471
E. Gifts and Bequests Made Through Trusts 471
V. Limited Treaty Relief with Respect to Income Tax and Estate and Gift Tax Charitable Deductions 472
A. Impact of Income Tax Treaties 473
B. Impact of Estate and Gift Tax Treaties 473

Chapter 24 Wills in International Estate Planning 477
I. Introduction 477
II. Prevalent Mistakes 477
A. Accidental Revocation 477
B. "Pour Over" Wills (and Their Revocable Trusts) 478
III. "Situs" Wills: Reasons to Consider the Use of Multiple Wills 478
A. Elimination of Some Administration Expenses 479
B. Clearer Application of Relevant Law 479
C. Translations 479
D. Selection of Law 479
E. Requirements for Validity 480
F. Need of an Original Will by the Probate Court 480
G. Confidentiality—If Administration Is Confined to Certain Assets 480
H. Simpler Administration in Each Jurisdiction 480
IV. Choice of Law Issues 481
A. Capacity 481
B. Bequest to Witness 481
C. Revocation Effected by Marriage 481
D. Revocation Effected by Divorce 482
E. Bequests to Charities or Others 482
V. Property That Can Be Disposed of by Will 482
A. Marital Rights and Regimes 482
B. Forced Heirship 483
C. Other Restrictions 483
VI. Drafting Concerns 483
A. Nonrevocation Provision 483
B. Statement of Residency 483
C. Coordination of Beneficiaries 484
D. Allocation of Tax Liability 484
E. Responsibility for Tax Payment 484
F. Authority to Administer 484
G. Critical Definitions 484

VII. Formalities of Execution 48
A. Recognized Classifications of Wills 5
B. Validity of Formalities of Execution 48
VIII. Conclusion 5
48
5
48
Chapter 25 Letters of Wishes and Trust Protectors as Devices to Further the Settlor's Purposes 489
I. Introduction: A Central Tension—Trustees withBroadDiscretionary Powers and Settlors with Specific Wishes 489
II. Letters of Wishes 490
A. Specific Uses for a Letter of Wishes 490
B. Legally Binding Letter of Wishes 491
C. Morally Binding Letter of Wishes 491
D. Legally Significant Letter of Wishes 492
E. Practical Considerations: Disclosure and Enforceability 493
III. Trust Protectors 495
A. Defining the Role of the Protector and the Protector's Purpose 495
B. Powers of a Protector 497
C. Fiduciary Status and Liability of Protectors 499
D. Practical Considerations: Tax and the Trust Protector 503

Chapter 26 Asset Protection Trusts 505
I. Introduction 505
II. Benefits of Offshore Asset Protection Trusts 506
A. Creditor Protection 506
B. Estate Planning 507
C. Foreign Investment 508
D. Confidentiality 508
E. Avoidance of Forced Heirship 509
III. Jurisdictional Issues 509
A. Common Law Versus Civil Law 509
B. Effect of Retained Interests and Powers 510
C. Effect of Statute of Elizabeth 510
D. Funding the Trust 512
E. Protective Trust Clauses 513
516
IV. Selective Jurisdictional Review 516
A. The Bahamas 517
B. Bermuda 517
C. Cayman Islands 518
D. Cook Islands 519
E. Gibraltar 520
F. Jersey 520
G. United States 523
V. Legal Challenges to Offshore Asset Protection Trusts 528
VI. Ethical Considerations with Asset Protection Planning 529
VII. U.S. Income Tax Reporting 529
VIII. Conclusion

PART X ESTATE, TRUST, AND ENTITY SETTLEMENT AT DEATH

Chapter 27 International Estate Administration 533

I. Introduction 533
II. Common and Civil Law Jurisdictions Contrasted 533
A. Common Law Jurisdictions 533
B. Civil Law Jurisdictions 534
C. Convention Concerning International Administration of Estates of Deceased Persons 53
III. Matters Relating to Wills 5
A. In General 53
B. Validity of Wills 6
IV. Domiciliary Probate Versus Ancillary Probate 53
A. General Considerations 6
B. Coordinating with Foreign Proceedings 53
V. Probate and Jurisdictional Authority 6
A. Original Probate in Situs Jurisdiction 53
B. Effect of Res Judicata 8
VI. Postmortem Estate Planning Considerations Involving Estate Situs and Distributions to Beneficiaries 53
A. In General 8
B. Criteria for Distinguishing Between Domestic and Foreign Estates 54
C. Income Taxation of Estate Versus Distributions to Beneficiaries 53
D. Code § 645 Election 9
E. Distributions to Nonresident Alien Beneficiaries 54
F. Step-Up in Basis 53
G. Transfers of Appreciated Property by United States Person to Foreign Estate or Trust 54
VII. Death of U.S. Citizen Abroad 54
A. Proof of Death and U.S. Citizenship 54
B. Transfer Certificate for Tax Clearance 6
VIII. Non-U.S. Persons—Post Death U.S. Tax Identification 54
A. Tax Identification 7
B. Securing an Internal Revenue Service Number 54
IX. Estate Tax Clearance for U.S. Assets 8
A. Personal Liability of Representative of Estate 54
B. Federal Tax Liens 8
C. Transfer Certificate 54
D. Do Not Forget State Taxes 8
E. Indemnification Agreements 54
X. Conclusion 8
54
9

Chapter 28 Trust and Entity Settlement at Death 541

I. Overview 541
II. Residence of Trust for Federal Income Tax Purposes 542
A. Court Test 542
B. Control Test 542
9
55
0
55
0
55
0

III. Foreign Grantor and Nongrantor Trust Status: Tax Considerations for U.S. Beneficiaries 55
A. Tax Treatment of Foreign Grantor Trusts 2
B. Establishing and Preserving Grantor Trust Status 55
C. Foreign Nongrantor Trust Status and Tax Considerations for U.S. Beneficiaries 3
IV. U.S. Estate Tax Considerations 55
V. Anti-Deferral Rules and Income Tax Planning 4
A. CFC Rules 56
B. PFIC Rules 0
C. "Checking the Box" to Unwind the Blocker Structure 56
VI. Looking Ahead: Protecting U.S. Beneficiaries from Estate Tax Exposure and Insuring GST Tax Exempt Status of Trust 2
A. Avoiding Estate Tax 56
B. Preserving the GST Tax Exempt Status 2
VII. Conclusion 56
0
56
0
4
56
0
5
57
0

PART XI IMMIGRATION, EMIGRATION, AND EXPATRIATION 57
1

Chapter 29 Pre-Immigration Planning 575
I. Introduction 575
II. Pre-Residency Planning for U.S. Transfer Taxes 575
A. Preliminary Considerations 575
B. Gifting: Outright Gifts, Use of Trusts, and Other Vehicles 576
C. Triaging Assets into Three Planning Buckets 577
D. Pre-Residency Estate Freeze 578
E. GST Tax Consideration 578
F. Charitable Gifts 579
III. Pre-Residency U.S. Income Tax Planning 579
A. General Planning Techniques 579
IV. Planning for Foreign Corporations 581
A. CFCs: Subpart F Income Versus Global Intangible Low-Taxed Income (Net CFC Tested Income) 58
B. PFICs 1
C. Pre-Residency Distributions by Foreign Corporations 58
D. Foreign Tax Credits for Exit Taxes in the Home Jurisdiction 2
V. Planning for Trusts 58
A. Planning for Grantors 2
B. Planning for Trust Beneficiaries 58
C. Use of Grantor Trusts 2
58
3

Chapter 30 The Current State of Expatriation 585
I. Introduction and Background 585
II. Expatriation for Citizenship Law Purposes 586
A. Immigration Considerations Prior to Expatriation 586
B. Expatriation Process and Expatriate Definition 588
C. U.S. Citizenship 588
D. Loss of U.S. Citizenship 589

III. HEART Act Changes 590
A. Code § 877A: Mark-to-Market Tax 590
B. Code § 2801 Succession Tax 593
IV. Guidance Under the HEART Act: Notice 2009-85 594
A. Mark-to-Market Tax 594
B. Tax on Deferred Compensation 597
C. Specified Tax-Deferred Accounts 598
D. Interests in Nongrantor Trusts 599
E. Income Tax Filing and Reporting 599
V. Section 2801 Final Regulations 600
VI. Additional Expatriation Issues Requiring Guidance 607
VII. Conclusion 608

PART XII COMPLIANCE

Chapter 31 The Financial Action Task Force, the Gatekeeper Initiative, and the Risk-Based Approach to Client Due Diligence 607
I. Introduction 607
II. FATF and the FATF Recommendations 608
A. What Is Money Laundering? 609
B. Background of FATF 610
C. The FATF Recommendations 612
III. Background of Gatekeeper Initiative 614
IV. Risk-Based Approach and Development of Lawyer Guidance 615
V. Risk Categories 617
VI. Specific Risk-Based Guidance for Legal Professionals 618
VII. Application of Risk-Based Approach to Client Intake Process 624
VIII. Conclusion 630

Chapter 32 Corporate Transparency Act 631
I. Introduction to the Corporate Transparency Act 631
II. Passage of the Corporate Transparency Act of 2021 and Subsequent Events 632
A. Legal Challenges to the CTA 633
B. Change of Administration 633
III. CTA Interim Reporting Rule 633
A. Interim Reporting Rule Basics 633
B. Exemptions from the CTA 634
C. Who Are the Beneficial Owners of a Reporting Company? 635
D. Who Is a "Company Applicant"? 639
E. What Must Be Reported? 639
F. Keeping BOI Reports and Applications Up to Date 641
G. Trusts and Trustees 642
IV. Application of CTA to Trusts and Trustees 643
A. Introduction 643
B. Applying the Corporate Transparency Act to Trusts and Trustees 643

Chapter 33 Foreign Bank Account Reports 653
I. An Overviewof Foreign Bank AccountReports 653
II. Who Is Required to File an FBAR? 653
III. The FBAR Filing Requirements 654
IV. Consequences for Failure to File an FBAR 654
A. Fines 654
B. Remediation 655
V. FBAR Trends and Developments 656
A. Excessive Fines 656
B. Who May Be Fined 657
C. Who May Impose Fines 657
VI. Conclusion 658

Chapter 34 Foreign Account Tax Compliance Act 659
I. Introduction and Background 659
A. What Is the Foreign Account Tax Compliance Act? 659
B. Why Must Advisors and Family Offices Know About FATCA? 660
C. Practice Tip 660
II. Legislative Framework 660
A. FATCA Law and Regulations 660
B. Intergovernmental Agreements 661
C. Entities in Non-IGA Jurisdictions 661
D. Practice Tip 661
III. Determining an Entity's FATCA Status 662
A. Every Foreign Entity Has a FATCA Status—FFI Versus NFFE 662
B. Foreign Financial Institution 662
C. Non-Financial Foreign Entity 662
D. Practice Tip 663
IV. An Entity's FATCA Status Dictates Its Compliance Requirements 663
A. FFI Carries Out Its Own FATCA Due Diligence and Reporting
B. NFFE Provides FATCA Due Diligence Details to Reporting FFIs Who Handle Reporting 66
C. Practice Tip 3
V. Information Regarding FATCA Status Is Exchanged via IRS W-8 Forms 66
A. Form W-8BEN Is Used by a Foreign Individual 4
B. Form W-8BEN-E Is Used by a Foreign Corporation or Foreign Nongrantor Trust 66
C. Form W-8IMY Is Used by a Foreign Partnership or Foreign Grantor Trust 4
D. FATCA Status 66
E. Practice Tip 4
VI. Investment Entity FFI 66
A. Definition in the Regulations 5
B. Definition in the IGAs 66
C. A Note About the CRS 5
D. Practice Tip 66
VII. Reporting Under FATCA 6
A. Depository Institutions, Custodial Institutions, and Insurance Companies 66
B. Determining Financial Account Holders of Investment Entity FFIs 6
66
6
66
7
66
7
66
7

C. Form 8966 (FATCA Report) and Reporting Electronically 66
D. Awareness of How U.S. Client Is Being Reported Under FATCA 8
VIII. Conclusion and Resources 66
9
66
Chapter 35 The Common Reporting Standard 671
I. Introduction 671
II. What Is CRS? 671
III. What Is CRS's Purpose? 672
IV. CRS's Basic Architecture 673
A. Financial Institutions 673
B. Non-Financial Entities 675
C. Financial Accounts 676
V. Controlling Persons 679
VI. Due Diligence 680
VII. Registration 681
VIII. Reporting 681
IX. Conclusion 683

Chapter 36 International Compliance Considerations for the Individual Client 685
I. Introduction 685
II. Residency 686
A. Form 8833 686
B. Form 8840 687
C. Form 8843 687
D. Form 8854 688
III. Income Tax Reporting, Withholding Requirements 689
A. Withholding Requirements 689
IV. Foreign Entity Ownership 692
A. Foreign Entity Reporting 693
B. Transition Tax 700
C. Foreign Trust and Gift Reporting 701
D. Foreign Financial Assets 705
E. Foreign Owner Reporting 707
708
V. Transfer Tax Reporting 708
A. Form 709 709
B. Form 709-NA 709
C. Form 706 710
D. Form 706-NA 710
E. Transfer Certificates for Certain U.S.-Situs Assets of a Non-U.S. Decedent 711
F. Form 708

PART XIII COUNTRIES

Chapter 37 Australia 715
I. Introduction 715
II. Legal System and Principles of Inheritance and Succession 715
A. English Common Law Derivation; No Forced Heirship; Spousal Claims Available by Statute So That a Court May Make a Family Provision Order 715

B. No Marital Property Regime Although Contracts Can Be Entered Into, Particularly in Relation to Blended Families 716
C. Joint Titling of Assets: Australia Recognizes Both Joint Tenancies and Tenancies in Common 71
III. Residence and Domicile 6
A. Determination of Residence and Domicile 71
B. Implications for Taxation (General Principles Modified by Statute) 6
IV. Estate Planning 71
A. Wills 6
B. Trusts or Similar Arrangements (Including Provision for Retirement Income Known as Superannuation) 71
C. Entities (Corporations and Partnerships) 7
D. Charitable Organizations (Regulated at Both State and Federal Level) 71
V. Probate Administration of Decedent's Estates 7
A. Admission of Wills to Probate 71
B. Qualification and Appointment of Personal Representation 8
C. Spousal Claims and Shares 71
D. Creditors' Claims 8
VI. Gift and Inheritance Taxation 71
VII. Recognition and Taxation of Trusts 8
A. Basis in Local Law 71
B. Hague Convention Applies 8
C. Tax Authorities and Judicial Rulemaking (Administrative Authority) 71
D. Taxation of Trusts 8
E. Disclosure and Compliance 71
VIII. Other Issues to Be Considered During Estate Planning 8
IX. Application of Estate and Gift Tax Treaties 71
9
71
Chapter 38 Brazil 721
I. Introduction 721
II. Legal Systems and Principles of Inheritance and Succession 721
A. Marriages and Rights of Spouses 721
B. Marital Agreements 723
C. Scope of Marital Agreements, Typical Provisions and Enforceability 724
D. Property Ownership and Interests 725
III. Wills and Beneficiary Designations 726
A. Freedom of Testamentary Disposition and Forced Heirship 726
B. Intestacy 727
C. Types of Wills 727
D. Beneficiary Designations: Life Insurance and Pension Plans 728
IV. Estate and Trusts 729
A. Probate and Probate Avoidance 729
B. Administration of the Estate 729
C. Trusts and Foundations 730
V. Taxes 730
A. Brazilian Tax Reform 730
B. Types of Taxes 732
C. Taxation of Foreign Trusts

D. CFCs 73
E. Taxation of Holding Structures 3
VI. Looking Forward—Brazilian Reform of the Civil Code 73
3
73

Chapter 39 Canada 735
I. Legal System and Principles of Inheritance and Succession in Canada 735
A. Spousal and Dependent Rights and Obligations 735
B. Enforceability of Domestic Contracts 738
C. Joint Ownership of Assets 741
D. Variation of Wills, Testamentary Capacity, Undue Influence 744
II. Residence and Domicile 747
A. Determination of Residence and Domicile 747
B. Implications for Taxation 747
III. Estate Planning 748
A. Wills: Types of Wills and Formalities 748
B. Use of Trusts 752
C. Corporations and Partnerships 755
D. Charitable Organizations 756
IV. Probate Administration of Decedent's Estates 758
A. Ontario 758
B. British Columbia 760
V. Taxation at Death 760
A. Capital Gains Tax 760
B. Rates 763
C. Liability for Tax and Due Date for Payment of Tax 765
VI. Recognition and Taxation of Trusts 766
A. Trust Residency 766
B. Hague Convention 768
VII. The Canada–U.S. Tax Treaty 768
A. Estates 768
B. Charities 769

Chapter 40 People's Republic of China (PRC) 771
I. Introduction 771
II. Legal Systems Regarding Taxation and Reporting 771
A. Introduction to Personal Taxation in China 771
B. Domicile and Residency 771
C. Gift and Succession Taxation 772
D. Global Reporting 772
E. Entrepreneurs and Business Owners 773
F. China–U.S. Tax Treaty 774
III. Succession 774
A. General Rules 774
B. Cross-Border Succession 776
C. Digital Inheritance 778
D. Succession Planning for Nontraditional Families 778
IV. Wealth Management Trusts 779
A. Introduction 779

B. The Practice and Challenges of Civil Trusts 77
C. Categories of Wealth Management Service Trusts 9
D. Taxation of Trusts and Beneficiaries 78
E. Comparative Advantages and Challenges of Trust-Based Structures in China 780
781

Chapter 41 France 783
I. Introduction 783
II. Legal Systems and Principles of Inheritance and Succession 783
A. Forced Heirship and Spousal Claims 783
B. Marital Property Regimes and Contracts 784
C. Joint Titling of Assets 785
D. Free Disposition of Assets 785
III. Residence and Domicile 786
A. Residence Versus Domicile 786
B. Domestic Rules of Residence 786
IV. Estate Planning 786
A. Wills 786
B. Trusts or Similar Arrangements 787
C. Life Insurance Policies 787
D. Entities (Corporations and Partnerships) 787
E. Charitable Organizations 788
V. Probate Administration of Decedent's Estates 788
A. Wills, Probate, and the Role of the French Notary 789
B. Qualification and Appointment of Personal Representation 789
C. Creditors' Claims 790
VI. Gift and Inheritance Taxation 790
A. French Inheritance and Gift Tax 790
B. Exemptions and Deductions (Including Treatment of Spouses and Charities) 791
C. Rates 792
D. Liability for Tax and the Payment of Tax 792
VII. Recognition and Taxation of Trusts 792
A. Basis in Local Law 792
B. Hague Convention 793
C. French Tax Authorities and Judicial Rulemaking (Administrative Authority) 793
VIII. Other Issues to Be Considered During Estate Planning 793
A. Income Tax Basis Adjustment 793
B. Disclosure and Compliance 793
IX. Application of Estate and Gift Tax Treaties 794
A. Estate and Gift Tax Treaties Signed by France 794
B. Tiebreaker Provisions
C. Situs-Type or Domicile-Type

Chapter 42 Germany 795
I. Introduction 795
II. Legal Systems and Fundamental Principles of Inheritance Law 795
A. International Private Law 795
B. Universal Succession and Automatic Acquisition 795

C. Statutory Succession 79
D. Community of Heirs 6
E. Compulsory Portion Rights 79
F. Succession in Partnerships and Corporations 8
III. Estate Planning 79
A. Types of Wills 9
B. Content of the Will 80
IV. Probate Proceedings and Estate Administration 1
A. Involvement of the Probate Court 80
B. Proof of Inheritance to Third Parties 2
V. Inheritance Tax 80
A. Unlimited Tax Liability 2
B. Limited Tax Liability 80
C. Exemptions and Objective Tax Reliefs 5
D. Tax Rates 80
E. Notification Obligation 7
F. Double Taxation 80
VI. Foundations and Trusts 7
A. Foundations 80
B. Trusts 8
80

Chapter 43 Israel 813
I. Introduction 9 813
II. Legal System and Principles of Inheritance and Succession 813
A. Forced Heirship and Spousal Claims 814
B. Marital Property Regimes and Contracts 814
C. Joint Titling of Assets 815
D. Free Disposition of Assets 815
III. Residence and Domicile 815
A. Determination of Residence and Domicile 816
B. Implications for Gift and Inheritance Taxation 816
IV. Estate Planning 816
A. Wills 816
B. Trusts or Similar Arrangements 817
C. Entities 818
D. Charitable Organizations 818
V. Probate Administration of Decedent's Estates 818
A. Admission of Wills to Probate 819
B. Qualification and Appointment of Personal Representation 820
C. Spousal Claims and Shares 820
D. Family Claims and Share 820
E. Creditors' Claims 820
VI. Recognition and Taxation of Trusts 820
A. Basis in Local Law and Types of Trusts 822
B. New Immigrants Benefits and Trusts 823
C. Hague Convention 823
D. Tax Authorities and Judicial Rulemaking (Administrative Authority)

VII. Other Issues to Be Considered During Estate Planning 82
A. Income Tax 3
B. Wealth Tax 82
C. Planning for Incapacity 3
D. Disclosure and Compliance 82
E. Trust Registries 3
82
3

Chapter 44 India 825
I. Introduction 82
II. Principles of Inheritance and Succession 825
A. Laws as Applicable to Hindus 4
B. Overview of Muslim Personal Law 826
C. Indian Succession Act, 1925 82
III. Testamentary Succession in India 826
A. Laws Governing the Execution of an Indian Will 4
B. Probate and Letters of Administration 829
C. Forced Heirship Rule Applicable to the Muslim and Goan Testators 830
IV. Indian Taxes and Duties 830
A. General Overview of the Income Tax Act, 1961 830
B. Residency Under Indian Tax Laws 832
C. Taxation of Income of Nonresidents 833
D. Double Taxation Avoidance Agreements 834
E. General Anti-Avoidance Rules in India 834
F. Estate Duty, Gift Tax, and Wealth Tax Regimes 835
V. Exchange Control in India 836
A. General Overview 837
B. Determination of "Residence" Under FEMA 838
C. Remittances and Repatriation 838
VI. Estate Planning in India 838
A. An Overview of Trusts in India 839
B. Parties to a Private Trust in India 840
C. Taxation of Trusts in India 841
VII. Conclusion 842
843
845
847

Chapter 45 Italy 849
I. Introduction 849
II. Basic Principles of Italian Family and Succession Law 849
A. The Heirs of the Estate and the "Legatees" (Legati) 849
B. Forced Heirship 850
C. Matrimonial Property Regimes and Prenuptial Agreements 852
III. Estate Planning 853
A. Italian and Foreign Wills 853
B. Inheritance and Family Agreements 854
C. Usufruct 854
D. The Use of Structures 855
IV. Estate Administration 856
A. The Testamentary Executors (Esecutore Testamentario) 856
B. Rights to Claim Shares of the Estate 856

V. Inheritance and Gift Taxation in Italy 85
A. Residence for the Purposes of Inheritance and Gift Taxation 7
B. Situs for the Purposes of Inheritance and Gift Taxation 85
C. Determination of Value 7
D. Applicable Rates and Thresholds 85
E. Exempt Transfers and Gifts 8
F. Liability and Payment of Inheritance and Gift Tax 85
G. Inheritance and Gift Tax Treatment of Trusts 8
VI. Wealth Taxes 85
A. Wealth Taxes on Non-Italian Real Estate Property, on Financial Investments Held Abroad and on Crypto Assets Held Abroad 9
B. Local Wealth Tax on Real Estate 85
VII. Mortgage and Cadastral Taxes on Transfer of Italian Real Estate 86
VIII. Double Taxation Treaties on Inheritance (and Gift) Tax 1
A. Applicable Tax Treaties 3
B. Tiebreaker Provisions 86
C. Situs and Domicile Provisions 86
IX. Special Provisions Related to Individuals Who Become Resident of Italy and Opt for Special Tax Regimes 2
3
86
865
3
86

Chapter 46 Japan 867
I. Introduction 4
II. Legal System and Principles of Inheritance 867
A. General Rules of Inheritance 867
B. Forced Heirship (Iryubun) 867
C. Marital Property 869
D. Governing Law Regarding Inheritance 870
III. Estate Planning 871
A. Wills 871
B. Trusts 871
C. Charitable and Other Organizations 873
IV. Inheritance/Gift Tax 874
A. Basic Framework 875
B. Scope of Taxable Assets 875
C. Domicile (Jusho) 875
D. Calculation Methods 877
V. Taxation of Trusts 877
A. General Rules 880
B. Uncertainty of Japanese Tax Treatment for Foreign Trusts 880
VI. Exit Tax 880
VII. Other Matters to Be Noted for Japanese-Related Estate Planning 881
A. Adoption 882
B. Same-Sex Marriage 882
C. Survivors' Pension 883
VIII. Conclusion 883
884

Chapter 47 Mexico 885
I. Introduction 885
II. Language and Cultural Considerations 885

III. Estate Planning Tools 886
A. Wills and Types of Wills 886
B. Trusts or Similar Arrangements 886
C. Gift Agreements 886
D. Beneficial/Economic Ownership Versus Title Ownership 886
E. Entities 886
F. Charitable Organizations 886
IV. Marital Property Regimes and Marital Agreements 887
V. Legal Systems and Principles of Inheritance and Succession 887
A. The Notary Public 887
B. Forced Heirship 887
C. Probate Administration of Decedents' Estates 888
D. Joint Titling of Assets 888
E. Spousal and Other Family Claims 888
F. Creditors' Claims 888
VI. Mexican Tax Issues 889
A. Residence and Domicile 889
B. Income Tax 889
C. Gift and Inheritance Tax 889
VII. Recognition and Taxation of Trusts 889
A. Mexican Fideicomisos 889
B. Hague Convention 890
VIII. Other Estate Planning Considerations 892
A. Other Income Tax Considerations 892
B. The Possibility of an Estate Tax 892
C. Estate and Gift Tax Treaty 892

Chapter 48 Portugal 899
I. Introduction 899
II. Determining the Law of Succession in Portugal 899
III. Legal System and Principles of Portuguese Inheritance and Succession 900
A. Forced Heirship 900
B. Spousal Entitlement 901
C. Marital Property Regimes and Contracts 902
D. Joint Titling of Assets 903
E. Free Disposition of Assets 904
F. Legal Heirs Under Intestacy 905
IV. Residence 905
A. Determination of Residence 905
B. Implications for Taxation 907
V. Estate Planning 907
A. Wills 907
B. (Nonrecognition of) Trusts 908
C. Alternative Arrangements 910
D. Corporations and Partnerships 911
E. Charitable Organizations: Foundations 912
VI. Probate Administration of Decedent's Estates 912
A. Admission of Wills to Probate 912

B. Qualification and Appointment of Executor 913
C. Payment of Estate Creditors and Distribution to the Heirs 913
VII. Gift and Inheritance Taxation 914
A. Existence and Application 914
B. Individual Beneficiaries (Stamp Duty) 915
C. Entity Beneficiaries (Corporate Tax) 915
D. Tax Implications upon the Division of the Estate 915
VIII. Taxation of Foreign Trusts 916
IX. Application of Estate and Gift Tax Treaties 916

Chapter 49 Spain 919
I. Introduction 919
II. Introduction to the Spanish Civil Law System 919
A. Joint Ownership 920
B. Special Situation of Bare Ownership and Usufruct 920
C. Forced Heirship Rules and the Forced Heirs 920
D. Other Specific Cases Depending on Region 921
E. Overview of Administrative Procedures 921
III. Wills: Formalities and Enforceability of Foreign Wills 922
A. Need to Plan: Choice of Law of Succession 922
B. Wills 922
IV. Marital Property Regimes 923
A. Spanish Marital Property Regimes 923
B. Validity of Foreign Nuptial Agreements 923
V. Residence Permits 923
A. Work and Residence Permit for Qualified Workers 924
B. Student Residence Permit 924
C. Non-Lucrative Residence Permit 924
D. Digital Nomad Visa 924
E. Golden Visa 924
VI. Understanding Tax Residency Rules for Estate Planning Purposes 924
A. Personal Income Tax (PIT) 925
B. Special Consideration for Inheritance and Gift Tax Purposes 925
VII. Understanding the Distribution of Tax Sovereignty Among Different Spanish Regions 925
VIII. Taxation of Residents 926
A. The Inpatriate Regime 926
B. Taxation of U.S. Pension Schemes Under the Spanish Ordinary Tax Regime 926
C. Wealth Tax 926
D. Inheritance and Gift Tax 927
E. Exit Tax 927
IX. Taxation of Nonresidents 928
A. Wealth Tax 928
B. Inheritance and Gift Tax 928
C. U.S. Tax Residents Investing or Buying a Property in Spain 929
X. How the Spanish Administration Approaches Trusts 929

Chapter 50 Switzerland 933
I. Introduction 933
II. Legal System and Principles of Inheritance and Succession 933
A. Cross-Border Inheritance and Succession 933
B. Swiss Substantive Succession Law 936
C. Swiss Substantive Marital Property Law 938
D. Common Estate Planning Instruments 939
E. Domicile 940
III. Estate Planning 941
A. Wills and Inheritance Contracts 941
B. Trusts 942
C. Foundations and Fideicommissa 942
D. Entities 942
E. The Appointment of an Executor 942
IV. Administration of Estates 943
A. Opening of Testamentary Dispositions 943
B. Lis Pendens 943
V. Gift and Inheritance Taxation 943
A. Swiss Tax System 944
B. Tax Assessment and Tax Rates 945
C. Liability for Tax 945
VI. Trusts 945
A. Taxation of Trusts 946
B. Supervision of Trusts 947
VII. Application of Estate and Gift Tax Treaties

Chapter 51 United Kingdom 949
I. Introduction 949
II. Legal System and Principles of Inheritance and Succession 950
A. Common Law System 950
B. Joint Titling of Assets 950
C. Freehold and Leasehold Property 951
III. U.K. Tax Authorities and the English Courts 951
IV. Residence and Domicile 951
A. Determination of Residence 951
B. Domicile Under General Law 952
V. Residence and Taxation Rules from April 6, 2025, Forward 954
A. Residence-Based Rules for Inheritance Tax 954
B. Residence-Based Rules for Income Tax and Capital Gains Tax 954
C. Planning Opportunities for Those Relocating 955
VI. Inheritance Tax 956
A. Introduction to IHT 956
B. Rate of Tax and the Nil Rate Band 956
C. Excluded Property 957
D. Exemptions 957
E. Relief from IHT 958
F. Tax on Death 959
G. Gifts to Individuals 959

H. Relevant Property Trusts 960
I. Qualifying Interest in Possession Trusts 961
J. Gifts to Companies 961
K. Liability for Tax and the Due Date for Payment of IHT Tax 961
L. Traps for the Unwary 961

VII. Estate Planning 962
A. English Succession Law 962
B. EU Succession Regulation 963
C. Wills 963
D. Other Considerations Relating to Wills 964

VIII. Probate Administration of Deceased's Estate 965
A. Admission of Wills to Probate 965
B. Qualification and Appointment of Personal Representatives 965

IX. Trusts 966
A. Bare Trusts 966
B. Discretionary Trusts 966
C. Interest in Possession (or Life Interest) Trusts 966

X. Taxation of Trusts 967
A. Establishing the Tax Residence of Trusts for Income Tax and CGT 967
B. U.K. Resident Trusts 967
C. Non-U.K. Resident Trusts 968

XI. Other Relevant Structures 968
A. Family Investment Companies 968
B. Charitable Organizations 969

XII. Other Taxes and Charges to Be Considered During Estate Planning 969
A. CGT on Disposals 969
B. Stamp Duty Land Tax 970
C. Stamp Duty 970

XIII. Registers of Beneficial Ownership 971
A. Trust Registration Service 971
B. Register of Persons with Significant Control 973
C. Register of Overseas Entities

Index

Future updates will be available for download at http://ambar.org/GIEP3e

Introduction

Welcome to the third edition of *A Guide to International Estate Planning: Design, Administration, and Compliance* (formerly *Drafting, Compliance, and Administration*). This Guide is the product of the work of a community of practitioners from around the globe who generously contributed their expertise and time to creating a resource we anticipate you will find useful as you plan for international clients, administer international trusts, international entities, and cross-border estates, or collaborate with other professionals in doing so.

The third edition is built upon the foundation established by the authors and editors of the original edition in 2000 and the second edition in 2014. The third edition would not exist without their diligent efforts. We thank them for their contributions.

International estate planning and administration have evolved since the original edition and second edition of the Guide were published. The third edition provides a fresh look, adding new content, including chapters on the topics of cultural competencies in estate planning, engaging the next generation, tax penalties and remediation, planning for disability, cross-border philanthropy, common reporting standards, and succession and tax laws of select countries. The third edition also updates content on topics included in the second edition. Many of the contributors to the third edition also contributed to prior editions, and there are many new contributors. We have the benefit of generations of experience and fresh perspectives.

The Guide pertains primarily to U.S. federal and state law and also includes summaries of tax and succession laws of 15 select foreign jurisdictions that are commonly encountered by U.S. estate planning practitioners. It is organized topically, beginning with an overview and concluding with the foreign jurisdiction chapters, most of which also include a discussion of the treatment of trusts.

Part I is an overview of international families and family wealth by Ellen Kratzer of Fiduciary Trust Company and of international tax regimes and planning for families with international wealth by K. Eli Akhavan of Grant Herrmann Schwartz & Klinger LLP. Part I also includes a chapter on choice and conflict of law concepts by Stephanie Ross of Levenfeld Pearlstein, LLC, and a chapter on ethics in international estate planning by Amy Staehr of Long Reimer Winegar and Reetu Pepoff of The Northern Trust Company.

Part II addresses the important subject of family succession and the education, engagement, and empowerment of family members in international families. International estate planning and administration requires attention to client's cultural perspectives and to the dynamics of their complex families. Nike Anani of Itura Capital discusses cultural competencies in international planning, essential to building strong client relationships. Sarah Cormack of Mills & Reeve addresses engaging the next generation with strategies to educate and engage family members in international wealth succession.

Part III discusses the various types of property ownership and interests for which the practitioner plans and which are subject to administration during the owner's lifetime and following death. Rebecca Wallenfelsz and Mackenzie Collins of Chapman & Cutler LLP address considerations in U.S. property ownership and Ruth Mattson of Nixon Peabody LLP and Julie Braverman Bruno of Rich May, P.C. explain the various types of trusts under the

ree57672_00_B0_fm_i-xxxvi.indd 33 7/6/26 10:55 AM

law of states of the United States. Property ownership and interests in other countries are discussed in the country-specific chapters.

Part IV focuses on marriage and the rights of spouses upon the death of a spouse. Joshua S. Rubenstein of Katten Muchin Rosenman LLP and Jeffrey A. Schoenblum of Vanderbilt School of Law provide an in-depth analysis of the complexities of marital property rights at death in the international context. Premarital agreements and the division of property in the United States are not addressed in this edition and are an important topic for a future edition; however, these issues are explored in several of the foreign jurisdiction chapters.

Parts V, VI, and VII address the vast subject of taxes—general concepts; income taxation; and gift, estate, and generation-skipping transfer taxation. Beginning with general tax concepts in Part V, Kevin Packman of Holland & Knight LLP provides an explanation of the concepts of citizenship, residence, and domicile as they pertain to U.S. federal taxation. Melissa Wiley of Kostelanetz LLP addresses the burdensome subject of tax penalties and tax penalty remediation.

Part VI tackles taxation in the United States on the transfer of wealth and includes discussions on the application of U.S. gift, estate, and generation-skipping transfer taxes to (1) U.S. persons by Claire Carrabba of Dungey Doughtery PLLC; (2) U.S property owned by non-U.S. persons by Joseph S. Trytten of Loeb & Loeb LLP; and (3) transfers to non-U.S. citizen spouses by Bailey Hammond of Levenfeld Pearlstein, LLC and Douglas L. Seigler of Venable LLP. Finally, estate and gift tax treaties and international conventions are described by Krystian Seebert of CaoLaw PC and Suzanne L. Shier of Levenfeld Pearlstein, LLC.

Part VII discusses U.S. income taxes, including current rules for U.S. income taxation of individuals by Max Biederman, Morgan Graff, and Toni Ann Kruse of McDermott Will & Schulte LLP; income taxation of foreign trusts and trusts with non-U.S. grantors by Brian Tsu of Higgs Fletcher Mack; income taxation of foreign business entities in the context of international estate planning by Nicholas J. Heuer of Katten Muchin Rosenman LLP; and income tax treaties by Jamihlia Johnson of Lawyerly LLP, and Genevieve Anne Tokic of Northwestern Pritzker School of Law.

Part VII is new to the third edition and explores the subject of disability. Stuart C. Bear and Ryan Prochaska of Chestnut Cambronne provide an overview of planning for health care and financial decision-making with advance health care directives and financial powers of attorney for U.S. clients with international assets and relationships.

Part IX focuses on planning for wealth transfer and preservation. Glenn Fox of Baker & McKenzie LLP and Martin Hall of Hall & Diana LLC have written a new chapter on U.S. federal tax considerations in cross-border philanthropy. Barbara Hauser discusses the use of single and multiple wills in international estate planning and Matthew Eaves and Cara Koss of Arnold & Porter and Anne J. O'Brien of Caplin & Drysdale address letters of wishes and trust protectors as devices to further a settlor's purpose in a trust. Finally, Gideon Rothschild provides an analysis of the use of trusts for asset protection purposes.

Part X is a guide to estate, trust, and entity settlement following death. Michelle Graham of Greenberg Traurig, LLP addresses probate and estate administration. The related but distinct subject of trust and entity settlement at death is discussed by Dina Kapur Sanna of Day Pitney LLP.

Part XI addresses mobility across borders in international estate planning. Eric Dorsch and Shiwei Wu of Kozusko Harris Duncan discuss pre-immigration tax planning for a person contemplating a move to the United States. For those exiting the United States, Jeffrey S. Levin of Squire Patton Boggs and Linda Rahal of Trow & Rahal, P.C. explain tax and certain non-tax matters related to expatriating from the United States.

ree57672_00_B0_fm_i-xxxvi.indd 34 7/6/26 10:55 AM

Part XII covers the ever-expanding subject of compliance. This Part includes a deep-dive into the work of the Financial Action Task Force (FATF), the Gatekeeper Initiative, and the risk-based approach to client due diligence by Kevin L. Shepherd of Venable LLP; the Corporate Transparency Act by Jocelyn M. Borowsky of Duane Morris LLP; foreign bank account reports by Reshma Shah, also of Duane Morris LLP; the Foreign Account Tax Compliance Act (FATCA) by Jennie Cherry of Kozusko Harris Duncan; common report- ing standards by Peter Cotorceanu of GATCA & Trusts Compliance Associates LLC; and international compliance considerations for individual clients by Darshan Chulani, Caryn Friedman, John Fusco, Marianne Kayan, Rusudan Shervashidze, Utena Yang, and Thomas Vurno of Ernst and Young.

To complement the primarily U.S.-focused discussion of the preceding Parts of the Guide, Part XIII is a country-by-country discussion of key legal and tax considerations in international estate planning, administration, and compliance for 15 select countries. Each country chapter addresses the legal systems and principles of inheritance and succession; residence and domicile; estate planning with wills, trusts, and similar arrangements; pro-bate administration of decedent's estates; gift and inheritance taxation and related income tax and compliance considerations; and the application of treaties. Countries and contribu-tors include Australia by Richard Neal of Teece Hodgson & Ward; Brazil by Humberto Sanches and Adriane Pacheco of Humberto Sanches Associados; Canada by Rachel Blu-menfeld of Aird & Berlis LLP and Amanda Stacey of Miller Thomson LLP; China by Fang-fei Ouyang of Merits and Tree and Monica Zhang of Latham & Watkins LLP; France by Jérôme Assouline and Stephanie Sebbagh of Sekri Valentin Zerrouk; Germany by Stefani Guerra and Florian Reiner of Ernst & Young Law GmbH Rechtsanwaltsgesellschaft Steuer-beratungsgesellschaft; Israel by Lyat Eyal of Aronson, Ronkin-Noor, Eyal; India by Bijal Ajinkya and Unnati Ghia of Khaitan & Co.; Italy by Nicola Saccardo of Charles Russell Speechlys LLP; Japan by Hitomi Sakai of City-Yuwa Partners and Akane Suzuki of Ever-bridge Law; Mexico by Luz Villeges-Banuelos of Chamberlain Hrdlicka Law; Portugal by Nuno Cunha Barnabé, Marta Costa, and Miguel Teixeira De Abreu of Abreu Advogados; Spain by Florentino Carreño and Silvia Niubó of Cuatrecasas Goncalves Pereira SLP; Swit-zerland by Marius Denoth and Kinga Weiss of Walter Wyss Ltd.; and the United Kingdom by Isobel Edwards and Piers Master of Charles Russell Speechlys LLP.

International estate planning requires creativity, collaboration, and coordination. Writ-ing, editing, and publishing a guide on international estate planning requires the same attributes. In addition to the remarkable legal contributors, Jessica Welzen of Levenfeld Pearlstein LLC dedicated countless hours to compiling and organizing the manuscript for this Guide and Jeffrey Salyards and his colleagues at the American Bar Association did the miraculous work of transforming the manuscript into the Guide as you see it. We extend our immense gratitude to all.

Carolyn A. Reers, Wiggin and Dana, LLP
Suzanne L. Shier, Levenfeld Pearlstein, LLC

BOOK ENDORSEMENTS

"Global mobility of people and capital is on the rise, but significant differences between jurisdictions and their legal systems remain. Carolyn Reers and Suzanne Shier have put together an invaluable resource that will allow advisors to private clients with foreign assets, foreign property, non-U.S. family members, and other international connections to provide effective and practical advice in this frequently changing environment."

— M. READ MOORE, PARTNER, MCDERMOTT WILL & SCHULTE LLP
PRESIDENT, INTERNATIONAL ACADEMY ESTATE AND TRUST LAW

"As families, assets, and beneficiaries increasingly span multiple jurisdictions, trusted guidance is more important than ever for wealth advisors. Carolyn Reers and Suzanne Shier have compiled a comprehensive and practical resource that helps professionals navigate the complexities of international estate planning with confidence."

— SUSAN D. SNYDER, PAST PRESIDENT AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL

SCAN FOR
MORE BOOK
INFORMATION