International estate planning/planning for global families

By: Akane R. Suzuki and Walter Q. Impert

Despite threats of trade wars, the world is getting smaller, flatter, and more interconnected. In Washington State, our historic ties to other Pacific Rim countries grow stronger each year as more global families make this area their home. Once they're here, it's important that they complete their estate planning, including (at the very least) wills, powers of attorney, and health care directives. This article highlights some of the special considerations facing global families.

Those who have not yet arrived in Washington should consider pre-immigration estate planning. Such planning generally focuses on ordering a family's legal and financial affairs to maximize asset protection and minimize tax, before family members obtain permanent resident status (commonly known as a Green Card) or physically arrive in the United States. For example, families might consider realizing capital gains tax in a lower tax jurisdiction before arriving in the United States and becoming subject to U.S. income tax. Or, for asset protection and transfer tax purposes, assets transferred to beneficiaries or to a trust for beneficiaries *before* the global family moves to the United States will (if done properly) gain creditor protection and avoid Washington State and federal estate tax on future transfers.

Some global families may desire to own a second home or investment property in Washington, but not become tax residents. They should know that Washington State imposes an estate tax on Washington real estate owned by non-resident families. The exemption is $2.193 million, but the computation of the tax may not be straight-forward for nonresidents. Similarly, federal gift and estate tax applies to assets considered located in the United States, including real estate. Unlike U.S. citizens and residents who have an $11.4 million lifetime gift and estate tax exclusion, non-U.S. residents have a mere $60,000 exclusion from the federal estate tax. In some cases, this exclusion is increased by an estate and gift tax treaty. In other words, absent an applicable tax treaty, the value of any Washington real estate held by a non-U.S. resident over $60,000 will be subject to estate tax, at a maximum federal estate tax rate of 40 percent (and for higher value property, a maximum combined federal and Washington estate tax rate of 52 percent). The estate tax can be avoided entirely - or at least decreased - by purchasing the property in a trust or foreign corporation or by structuring the loan properly. If the tax cannot be avoided, the family may purchase sufficient life insurance to cover the tax. Again, more options are available if estate planning is contemplated before a global family acquires U.S. real estate.

If one or both of the spouses are non-U.S. citizens, they should be careful about transfers between them. The "marital deduction," which eliminates any gift or estate tax on spousal transfers regardless of the amount, does not apply if the transferee spouse is not a U.S. citizen, even if he or she has a Green Card. Thus, titling assets in the spouses' joint names can result in inadvertent gifts if contributions are unequal. At death, if the surviving spouse is a non-U.S. citizen, the excess above the estate tax exclusion will trigger tax due at the death of the first spouse. The estate tax can be deferred by putting the assets into a trust with special restrictions, called the qualified domestic trust (QDOT). That said, whether the QDOT is the appropriate choice depends on each family and their situation. Seeking legal advice is recommended.

Those leaving the United States should know about the expatriation tax. U.S. citizens need not worry about this unless they are renouncing citizenship. However, long-term permanent residents who are leaving the United States can face this tax upon relinquishing their Green Cards, if they meet a certain income tax or net worth threshold. The expatriation tax imposes immediate income tax upon expatriation and a special estate and gift tax later if the expatriating person gifts or bequeaths assets to U.S. beneficiaries. People who obtain Green Cards through work often decide to return to their home country after retirement. Without tailored legal and tax advice, they may face unpleasant tax surprises.

Finally, it is important for anyone who owns assets outside of the United States to understand their tax and reporting obligations. In many cases, ownership of foreign bank accounts and other foreign assets must be reported to the Internal Revenue Service regardless of whether they produce income. Failure to report can lead to substantial financial penalties or even criminal liability. Fortunately, in some cases, taxpayers whose failure to report is non-willful can remedy their delinquent reporting with no or minimal penalties through a streamlined procedure.

Though global families face some unique challenges in their estate planning, there are many capable estate and tax lawyers who can help global families navigate the myriad of state and federal rules.

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