FORTUNE STRATEGIES™

Understanding the Estate Planning and Financial Planning Issues of the Non-Citizen Spouse

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For the family that meets the description "US citizen married to a US citizen" the estate tax rules are fairly straight-forward. The rules consist of these basic points:

Each spouse has a $5,250,000* personal exemption for gift and/or estate tax purposes. Upon on the death of the first spouse, the deceased spouse can transfer his personal exemption amount to a credit shelter trust and can also transfer an unlimited amount of additional wealth to his/her surviving spouse with no transfer taxes. This is called "the unlimited marital deduction." All taxes through this method of planning are deferred to the death of the second spouse.

- The unlimited marital deduction amount can be given out-right or through a marital trust.
- The surviving spouse is entitled to all the income and principal distributions according to the terms of the trust.
- The remaining balance of the unlimited marital gift will be included in the surviving spouse's estate.

Upon the death of the second spouse, his/her estate will include her share of the assets plus the remaining assets of the unlimited marital deduction trust and will be subject to a 40% estate tax to the extent they exceed his/her personal exemption amount of $5,250,000.

US Citizen Married to a Non-Citizen:

- The basic rules change if you are a US citizen married to a non-citizen.
- Let's consider different scenarios and look at how the rules apply:

A US citizen married to a resident alien non-citizen: The basic rules include: Each spouse has a $5,250,000 personal exemption for gift and/or estate tax purposes. This benefit also applies to the resident alien spouse. However, should that spouse's status change to a non-resident alien that benefit would be lost to them The personal exemption for non-resident aliens is limited to $60,000.

*Indexed for inflation: $5,340,000 in 2014

Our mission at Fortune Strategies is to assist our US and foreign national clients in the following areas:

- *Understanding the USA transfer tax and income tax issues that impact them and their investments and investment returns.*
- *Selecting the right team of advisors (attorney, accountant, financial planner, insurance broker, bankers and portfolio managers).*
- *Presenting various options and solutions in the estate planning; insurance; and investment arena with their long-term benefits and costs.*
- *Assisting in selecting the solution that best fits the clients' unique situation.*
- *Assisting in the implantation of the estate planning, insurance and/or investment based solution as well as the on-going maintenance of the solution.*

If the US citizen spouse were the first spouse to die, they cannot utilize the "unlimited marital deduction rules." The US taxing authority will not defer taxes to the second death, because the non-citizen spouse could leave the US and take the assets with him/her.In order to defer taxes to the second death, the citizen spouse must create a US domestic trust with a US trustee to receive assets upon their death. This trust is called a QDOT trust.

The QDOT trust will qualify for the unlimited deduction if the appropriate terms are used.

- The trust is for the benefit of the surviving spouse while he/she is alive.
- The surviving spouse must be entitled to all the income from the trust.
- Principal distributions of any kind from the QDOT to the surviving spouse will be subject to the US estate tax.
- If the trust terminates or ceases to qualify as a QDOT (example: non-US citizen becomes trustee), the entire value will be subject to estate taxes. The only exception is that if the non-citizen spouse becomes a citizen.

Case Study:
Mr. and Mrs. R live in a community property state in the US; Mr. R is a US citizen and his wife is a non-citizen residing in the US (resident alien). They have an estate worth $15,000,000; all US assets and also community property assets. The following will show the effect of the US estate tax rules on the first death and then again on the second death.

First Death (US citizen)

Share Of Community Property	$7,500,000
Exempt Amount To Credit Shelter Trust	$5,250,000
QDOT Trust (Qualifying For Marital Deduction)	$2,250,000
Amount Of Taxes Due In Excess Of Amount Protected By Exemption +Deferred To 2nd Spouse	0

Fortune Strategies is a firm specializing in the life insurance industry with over 45 years of service. We represent all the well-rated carriers both in the US and off-shore.

We are not married to any one concept; any carrier or financial institution; or any product choice. Our job is to look for the right insurance carrier and product to meet the client's needs. We present the client the best options based on their financial needs and their medical health and assist them in making the most appropriate choice to meet their and their family's financial situation.

Death Of Surviving Spouse (Non-Citizen, Resident Alien)

Share Of Community Property	$7,500,000
QDOT Trust	$2,250,000
Total Estate Of Surviving Spouse	$9,750,000
Amount Covered By Personal Exemption	$5,250,000
Taxable Amount In Excess Of Exemption	$4,500,000
Taxes Due=$4,520,000 x.40% Or	$1,800,000

How would the numbers change if Mrs. R decides to return to her homeland following her husband's death? She would lose the benefit of the personal exemption of $5,250,000; non-resident aliens only have a $60,000 personal exemption. In this example, the $9,750,000 less $60,000 or $9,690,000 would be subject to a 40% estate tax ($3,876,000).

The Role of Life Insurance in the Estate Plan:
Life insurance is an effective tool to create the liquidity to pay the estate tax obligation for cents on the dollar. In addition, insurance may be an appropriate solution to a number of issues that can arise in the estate and financial planning process involving a non-citizen spouse.

Efficient & Economical Method of Creating Liquidity:
Most estates do not contain sufficient liquidity for the payment of estate taxes, because most people wisely keep their money employed in opportunities for better returns. There is an opportunity cost of keeping sufficient liquidity for such a purpose. Liquidation of assets to pay the taxes also has a cost. Taxes are due within nine months of the date of death and a fire-sale of assets to meet the dead line can result in not getting the best value for the property in addition to the fees and taxes due on sale. Borrowing the funds would be costly and problematic. For the relatively healthy client, insurance can usually create the liquidity for pennies on the dollar.

We assist the client in the process of establishing trusts and/or other entities necessary to own the insurance in order to avoid transfer taxes or to create asset protection.

We contact our clients yearly to review their plan and to assist in handling any annual maintenance issues dealing with the administration of insurance, the insurance trust or the client's investments.

Besides payment of taxes, there may be other need for liquidity to fund on-going needs of family members. Using life insurance to create the liquidity for payment of taxes and other family needs might be considered at three different levels:

1.) Death of the US Citizen Spouse: Owning a single life policy on the US citizen spouse to pay taxes should be considered for the following purposes.

Insurance in lieu of the QDOT trust utilizing the unlimited marital deduction: The non-citizen spouse may not want to live with the restrictions of the terms of the QDOT trust; the restrictions include the need for a US citizen trustee (individual or institution); and taxation on principal distributions. If we know in the planning process that the spouse will need the principal to maintain her/his standard of living then we might want to provide enough liquidity at the death of the US citizen spouse to pay the taxes on his share of the estate in excess of his personal exemption.

Recently during the process of planning, one of our US clients with a non-citizen spouse made the comment that in the event of his premature death, his wife would take their three small children and return to her homeland to be near her parents and siblings so that she would have assistance in raising the children. Instead of tying principal that she would need in a QDOT trust, we insured the US citizen husband for the amount of the taxes due.

We added a return of premium rider to the policy entitling the policy owner to 100% of the premiums back (year 15 and/or year 20) this adds flexibility if the need for insurance changes. If the non-citizen spouse becomes a US citizen, for example, the need would change because we would have the option of utilizing the unlimited marital deduction without employing a QDOT. The cost of the insurance is the opportunity cost on the premium committed.

Life insurance can be an effective tool for legacy enhancement.

Mr. S, a client, wanted to maximize the wealth he would leave his children. We showed Mr. S, a 58 year old non-smoker the following results of investing in a life insurance policy on his life in order to enhance his legacy wealth.

What does it take to net Mr. S's children a $1.00 after estate taxes of 40%? The answer: $1.66

What does it take to net Mr. S's children $1.00 if there is no estate tax? The answer: $1.00. What does it take (in cost to life expectancy-age 85-to net his children $1.00 tax free from an insurance policy? The answer: .29 cents

- **In conjunction with a QDOT trust:** The QDOT trust may lack the flexibility to deal with the needs of the family. During the life of the surviving spouse, the trust can pay only the surviving spouse income. Income distributions cannot be made to children, grandchildren, or other family members (elderly parents) who may have a need for income. Principal distributions cannot be made to the spouse without taxation and principal distributions cannot be made to other family members. Additionally, the remainder of the QDOT will be included in the estate of the surviving spouse.

Creating an Irrevocable Life Insurance Trust (ILIT) with the US citizen as the granter and the insured creates the source of funds to create the flexibility we need to provide for the needs of various beneficiaries. The premiums would be paid through annual exclusion gifts and/or use of part of the personal exemption. The advantages of the insurance and the ILIT are that it provides for:

- Income to any named beneficiary

- Principal to spouse or any named beneficiary without taxation

- Remaining proceeds are not included in the estate of the surviving spouse; they are paid to the named beneficiary income and transfer tax free.

The funded ILIT and the QDOT in combination can help create the liquidity to fund the estate taxes at the second death through the funds that remain in the ILIT. Further, the combination of a funded ILIT in combination with the QDOT when compared to the QDOT alone leaves an enhanced legacy for the children.

2.) Death of the Non-Citizen Spouse: In our case study on Mr. and Mrs. R we showed that if Mrs. R was a resident alien that she would have a personal exemption of $5,250,000 resulting in an estate tax of $1,800,000 at her death (the second death). If Mrs. R returned to her homeland and became a non-resident alien, her personal exemption would be reduced to $60,000 and the estate tax at her death would be $3,876,000. If there is a possibility that the non-citizen spouse would return to his/her homeland than using insurance to fund the increased taxes would allow be a cost effective tool. Added flexibility, could be added through the use of a return of premium rider on the policy entitling 100% of the premium back (year 15 and/or year 20) if the need for the policy were to change (the non-citizen spouse decides in remain in the US or becomes a US citizen). The cost of providing the added flexibility through the insurance is the opportunity cost on the premium committed.

Armed with years of experience and a deep understanding of your culture, language and your very unique needs , Fortune Strategies can assist you to develop and execute investment strategies based on the background and needs of you and your family. Through a wide range of services and products from internationally based financial institutions, Fortune Strategies can help you meet your goals and fulfill your dreams for your objectives now and for generations to come.

The objectives of wealth preservation and wealth growth require more than just personal opinions. It takes ability based on skill through experience, to see and take advantage of real opportunities. Through the advice of Fortune Strategies, you have access to major markets, industries and companies around the world.

3.) Second-to-Die Policies: Insuring the liquidity for payment of taxes and other liquidity needs, is generally cheaper through a second-to-die policy than it is through single life policies on the lives of each spouse. In the planning process, when we are certain that we are designing an estate that will employ known personal exemption amounts for both spouses and deferral to second death through a QDOT qualifying for the unlimited marital deduction, then utilizing a second-to-die policy in an ILIT becomes the most economical means of providing liquidity for taxes which would be due at the death of the second.

Another advantage of insurance (that is the use of insurance in an ILIT) is that it is the simplest estate planning tool to create and maintain. Estate tax reduction strategies involve two aspects that most people want to avoid—added complexity and the loss of control over assets. With an ILIT funded by insurance, you are only committing giving up control over the amount of the premium which is gifted to fund the transaction.

Legacy Enhancement:

For the family, where there is more wealth than the first generation will consume during their lifetime, then we need to look at the portion of wealth in excess of generation one’s need as custodial wealth. Investing a portion of that custodial wealth or legacy wealth into a life insurance policy can substantially leverage the wealth for generation two. Here are some salient points to consider:

- Life insurance proceeds can be arranged to be free of transfer taxes and income taxes.

- Life insurance can be a guaranteed asset that is not correlated to the stock or real estate market.

- Life insurance can be used to assure a beneficiary of a specific or guaranteed amount of assets and/or income (or standard of living).

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