PRE-IMMIGRATION TAX PLANNING AFTER TRUMP'S TAX CUTS

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One Client at a Time"

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COURSE SUMMARY

If your client is a non-resident alien thinking about becoming a U.S. Resident, you need to consider Pre-Immigration Tax Planning to:

1. Minimize your client's U.S. Income Tax on worldwide income;
2. Reduce your client's exposure to U.S. Estate Taxes on Global Holdings; and
3. Protect your client's Global Assets.

Otherwise, your client may find him/herself in the unfortunate position of paying U.S. income taxes on worldwide income and possibly subjecting their entire global estate to U.S. taxation without the benefits, exemptions and exclusions available to U.S. citizens.

This course provides you with the tools to help your client plan ahead, reduce their tax exposure and protect their assets from potential creditors.

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"Anyone may arrange his affairs so that his taxes shall be as low as possible…"

JUDGE LEARNED HAND

PRE-IMMIGRATION TAX PLANNING AFTER TRUMP'S TAX CUTS

I. INTRODUCTION.

Thinking of moving to the United States? If so, you are well advised to arrange your affairs in a way as to minimize the tax consequences resulting from this life changing move.

Upon becoming a "resident" of the U.S. for tax purposes, the rules of the game change dramatically for you, and if not properly planned for, the tax consequences can be severe.

Here are the two tax systems that an individual considering spending more time in the United States should plan for: the federal income tax and the federal "wealth transfer" taxes—the estate tax, the gift tax, and the generation-skipping transfer tax. Although U.S. law provides tax rules for non-residents, a tax treaty may change those rules, such as reducing the rate of tax on certain types of income.

Because of the complexity involved, this is simply an introduction to the concepts involved in pre-immigration tax planning.

Federal Income Tax. The U.S. uses as a worldwide taxation system, which means that U.S. citizens and residents are subject to U.S. income tax on their worldwide income. This is dramatically different than most countries, which use a territorial system to impose income tax only on the income generated within that country's own borders. To offset potential double taxation, the U.S. allows taxpayers to use worldwide expenses to reduce worldwide income, and grants a foreign tax credit for foreign income taxes paid on income generated outside of the United States.

Because of the dramatic differences between worldwide taxation for U.S. purposes, and the territorial taxation system that a nonresident may be accustomed to, nonresidents must know how and when they will be treated as residents for U.S. tax purposes.

For income tax purposes, non-citizens are divided into two groups: residents and nonresidents. An income tax resident is a person who satisfies one of two tests: the legal permanent resident test and the substantial presence test.

- The legal permanent resident test (also known as the "green card test") is satisfied if a person is a lawful permanent resident of the United States (because they have been granted a "green card," and with it, the right to legally reside in the United States) at any point during the tax year.
- The substantial presence test, although more complicated, is satisfied if a person is present in the United States for at least 31 days during the calendar year, and for 183 or more total days during the current year and the previous two years (with only a fraction of each day from the prior two tax years being counted). A person who can demonstrate a closer connection to another country can qualify for an exemption to the substantial presence test. (This weighted formula is explained in detail below.)

Once determined to be a resident under either test, residents must file income tax returns to report and pay tax on their worldwide income.

Unlike citizens and residents, nonresidents are only subject to income tax on income derived from sources within the U.S. Instead of a single set of tax rules applicable to all income, the income derived by a nonresident is subject to four broad categories of taxation.

- *Effectively Connected Income ("ECI")* - Income from U.S. sources that is "effectively connected" with a U.S. trade or business is taxed at graduated rates on a net basis. Income is generally treated as effectively connected with a U.S. trade or business if the taxpayer is engaged in a business located in the U.S., and the "effectively connected" income is generated by that business.

- *Fixed, Determinable, Annual, or Periodical Income ("FDAP" Income)* - FDAP Income is generally defined as all income other than gains derived from the sale of real or personal property, and certain items excluded from gross income. But any FDAP Income that is not "effectively connected" with a U.S. trade or business (e.g., dividends, interest, and royalties) is taxed at a flat 30% rate. A significant drawback to being taxed at a flat rate is that a taxpayer is taxed on the gross amount received, and is not allowed deductions for the expenses of producing such income.

- *Sales of U.S. Real Property and the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA" Income)* - A nonresident's disposition of a U.S. real property interest is treated as effectively connected with a U.S. trade or business, and is

subject to mandatory tax withholding at 10% or 15% rates, depending on the taxpayer and date of disposition.

- *Income Not Subject to Income Tax* - A few types of income, such as interest generated by assets held in a bank account, escape income tax entirely.

One of the biggest changes for a nonresident considering immigration to the U.S. is the foreign asset reporting requirements. While nonresidents are not subject to these requirements, U.S. taxpayers (which includes U.S. residents for income tax purposes, as noted above) must disclose their ownership of certain foreign assets to the IRS. Here are just a few of the information returns that may need to be filed.

- FinCEN 114—Foreign Bank Account Report (the "FBAR")

- IRS Form 926—Return by a U.S. Transferor of Property to a Foreign Corporation

- IRS Form 3520—Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts

- IRS Form 3520-A—Annual Information Return of Foreign Trust With a U.S. Owner

- IRS Form 8621—Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

- IRS Form 8858—Information Return of U.S. Persons With Respect to Foreign Disregarded Entities

- IRS Form 8865—Return of U.S. Persons With Respect to Certain Foreign Partnerships

- IRS Form 8938—Statement of Foreign Financial Assets

These forms do not require the payment of any additional tax, but significant penalties can be imposed for failing to file them. Additionally, the failure to file these returns may allow the taxpayer's return to remain open to inspection by the IRS until the information returns have been filed. A potential immigrant must consider these additional reporting requirements that will be imposed after immigrating to the U.S, and thus becoming a "U.S. taxpayer".

Wealth Transfer Taxation. As with the income tax, U.S. citizens and residents are subject to worldwide taxation by the three wealth transfer taxes: the estate tax, the gift tax, and the generation-skipping transfer tax. Nonresidents are only subject to wealth transfer taxation on their U.S. situs assets. So, while these taxes are different from the income tax, the principle that nonresidents are taxed only on assets that are located in the U.S. is similar to the principal in income taxation that the U.S. only taxes income that is connected with the U.S.

Unlike the objective tests for income tax residence, the test for estate and gift tax residence is subjective, and is satisfied if a person is domiciled in the U.S. at the time of his or her death or transfer by gift, as applicable.

A person acquires U.S. domicile by residing in the U.S. for any period of time with no definite present intention of leaving. Absent that intention, a person will not acquire domicile for the purposes of wealth transfer taxation. As a result, the determination of residence for wealth transfer tax purposes requires a determination of an individual's state of mind at the requisite moment. Once determined to be a U.S. domiciliary under this subjective test, a U.S. domiciliary is required to file returns to report gifts or to have an estate tax return filed if upon death the person's estate is required to file a return.

Because this test is different than the residence test for the income tax, it is possible for an individual to be a resident for income tax purposes without being a resident/domiciliary for wealth transfer tax purposes, and vice versa.

Nonresidents (not domiciled in the U.S) are subject to wealth transfer taxation only on assets that are sitused in the U.S. For example, a nonresident will be subject to estate tax only on U.S. situs property owned at death, which includes U.S. real property and stock in U.S. corporations. Cash deposits in a U.S. bank, insurance on the life of a nonresident, or stock in a non-U.S. corporation are generally not treated as U.S. situs assets, though they could be subject to estate tax in a resident's estate.

Said nonresidents are entitled to only limited deductions and exemptions for estate tax purposes. The unlimited marital deduction for assets that pass to a surviving spouse is not available for transfers to spouses who are not U.S. citizens (unless they have a Qualified Domestic Trust). General expenses of administration, debts, taxes, funeral expenses, and losses of the worldwide estate are only deductible from the U.S. estate in the proportion that the U.S. estate bears to the worldwide estate. So, if a nonresident decedent has a worldwide gross estate valued at $1,000,000, of which the U.S. gross estate is valued at $100,000, only 10% of their debts, taxes, and funeral and administration expenses would be deductible, regardless of whether they are directly attributable to the administration of the U.S. estate. But to obtain these deductions, the nonresident's estate must disclosure the decedent's worldwide estate on the estate tax return. And

a nonresident is only allowed a $13,000 estate tax credit (effectively a $60,000 exemption amount), as opposed to the *approx*. $11M estate tax exclusion amount available for U.S. citizens in 2018. Because the exemption amount available to nonresident is so low, even nonresidents with few U.S. assets can face a significant estate tax burden, unless they have proper estate planning.

Like the estate tax, the gift tax only applies to a nonresident's gifts of U.S. situs real estate and tangible property, and not worldwide transfers. A nonresident's gifts of intangible property are not subject to U.S. gift tax. Intangible property, for this purpose, includes stock in U.S. corporations, interest in partnerships or LLCs, mutual funds, bank and brokerage accounts, fiduciary accounts, and life insurance policies, even if located in the U.S. A nonresident is also granted the same annual $15,000 exclusion per done (for 2018) exemption that is granted to U.S. citizens and residents on transfers of U.S. situs assets. But a nonresident is not granted the same *approx*. $11M lifetime exemption from gift tax that is granted to U.S. citizens and residents.

In addition to the estate tax and the gift tax, nonresidents are subject to the generation skipping transfer tax ("GST"). The GST serves as a backstop to the estate tax and the gift tax by taxing transfers that "skip" a generation (e.g., a gift from a grandparent to a grandchild) if the transfer is subject to either the estate tax or gift tax. A nonresident is granted an exemption from GST, but it is not clear among tax experts if the exemption amount is $1,000,000 or if it is *approx*. $11M, the amount granted to U.S. citizens and residents.

These rules are complicated, and present many traps for the unwary. The increased amount of investment in the U.S. by foreign citizens looking for a safe haven for their investments (and their families) presents a number of potential pitfalls.

The tax planning needed to avoid these tax traps and pitfalls will take on a greater importance in the coming years as it becomes easier to transfer money and property and move to the United States.

II. RESIDENCY AND ITS CONSEQUENCES

Specifically, an individual's status as a resident, citizen or non-resident alien ("NRA") of the U.S. can have vastly differing consequences for U.S. tax purposes. The concept of U.S. residency for Federal income tax purposes is different from that for Federal gift and estate tax purposes. This is because residence for income tax purposes is determined by reference to one's residency while residence for estate and gift tax purposes is determined with reference to one's domicile. Consequently, an individual can be a tax resident for income tax purposes but not for estate and gift tax purposes and vice versa. Below is a discussion of the facts giving rise to each type of residency and its tax consequences.

(a) Income Tax

The U.S. taxes the worldwide income of its citizens and residents. Even after Trump's Tax Cuts, individuals will be subject to U.S. income tax, which can be as high as *approx.* 37 per cent (plus, where applicable, state and local income taxes), on their worldwide income in any given year that they are U.S. residents. For these purposes, individuals are U.S. residents if they meet either the "green card test" or the "substantial presence test".

(i) Green Card Test

Individuals who hold a permanent resident card (a "green card") will be considered residents of the U.S. for income tax purposes and, as a result, their worldwide income will be subject to U.S. income tax. (A common mistake is rushing into an EB-5 Visa process without pre-immigration tax planning, only to find that once you get the "green card" you are subject to tax on your worldwide income.)

Possession of a green card is the only relevant fact under this test. Many green card holders who have not resided in the U.S. assume that not spending time in the U.S. is sufficient to escape U.S. taxation. This is a common misconception. For income tax purposes, a green card will be deemed to remain in effect until (1) it is surrendered by the individual, (2) it is revoked by the immigration authorities, or (3) upon a judicial determination of abandonment under immigration laws. Absent one of these three circumstances, green card holders will remain subject

to U.S. income tax on their worldwide income. (Beware, the occurrence of any one of these 3 events may trigger an “Exit Tax”, as noted below.)

(ii) Substantial Presence Test

Even if you don’t have a green card, you may still be subject to tax worldwide if you are not careful. Individuals satisfy the substantial presence test if they are present in the U.S. for a period of 183 days or more in any given year. If the individual is not physically present in the U.S. for 183 days or more in any given year, but is present in a given year for at least 31 days and the individual’s presence in that year and the two preceding years equals a weighted aggregate of 183 days or more, then the individual is also deemed a resident for that year and is subject to U.S. income tax for such year. An individual will be subject to U.S. income tax on the first day of the year in which the individual meets the 183 days’ test.

For purposes of this calculation (1) each day in the first preceding year counts as only 1/3 of a day and each day in the second preceding year counts as only 1/6 of a day, and (2) partial days in the U.S., such as travel days, count as full days. Thus, counting days is a must for some world-class entrepreneurs.

By way of example, the following calculation will apply to an individual who has spent 10 days in the U.S. during Year 1, 40 days during Year 2 and 25 days during Year 3:

Year 1 – 1/6 x 10 = 1.66 days
Year 2 – 1/3 x 40 = 13.33 days
Year 3 – 25 days
Total Day Count = 1.66 + 13.33 + 25 = 39.99
Days Left = 183 – 40 = 142

Thus, the individual can return to the U.S. in Year 3 and remain for up to 141 days without becoming a U.S. resident for income tax purposes. If the individual returns to the U.S. in Year 3 and stays for more than 141 days, the individual’s residency starting date will be the first day during Year 3 in which the individual entered the U.S. As a general rule of thumb, as long as one does not spend more than 122 days in the U.S. in any given year, one will not meet the substantial presence test.

a) Closer Connection Exceptions

There is an exception to the substantial presence test if an individual was present in the U.S. for fewer than 183 days in a given year and if one can establish that one has a home in a foreign country and a closer connection to that foreign country than to the U.S.

The following are some of the facts and circumstances that will be looked to in determining whether an individual has maintained more significant contacts with a foreign country than with the U.S.:

(1) the location of the individual's permanent home;
(2) the location of the individual's family;
(3) the location of personal belongings, such as automobiles, furniture, clothing and jewelry owned by the individual and the individual's family;
(4) the location of social, political, cultural or religious organizations with which the individual has a relationship;
(5) the location where the individual conducts routine personal banking activities;
(6) the location where the individual conducts business activities (other than those that constitute the individual's tax home);
(7) the location of the jurisdiction in which the individual holds a driver's license;
(8) the location of the jurisdiction in which the individual votes;
(9) the country of residence designated by the individual on forms and documents; and
(10) the types of official forms and documents filed by the individual.

It is important to note, however, that the closer connection exception will not apply to an individual who either has a pending application for a green card or who took steps to apply for status as a permanent resident. (This means your EB-5 application, regardless of what you may have been lead to believe. This is the reason why you should have your pre-immigration tax planning completed before you even file your applications.)

Further exceptions to the substantial presence test apply to certain categories of individuals such as students, professional athletes in the U.S. to compete in a charitable sports event, foreign government related individuals, teachers or trainees. Finally, certain income tax treaties can also provide exceptions and tie-breaking rules for individuals who are deemed residents of both the U.S. and a foreign country.

(b). Gift/Estate Tax

A person's worldwide gratuitous transfers of property during life will be subject to federal gift tax at rates as high as 40 per cent, and a person's worldwide assets will be subject to federal estate tax at death at rates as high as 40 per cent if that person is domiciled in the U.S. Domiciliary status is acquired when one lives in the U.S., even for a brief period, with no definite present intention of moving from the U.S. If one is not domiciled in the U.S., then only gifts and bequests of U.S. situs property will be subject to such tax (with the situs test being broader for estate tax purposes than for gift tax purposes).

Clearly, a person's intent is subjective. Consequently, there is no clear objective test for determining one's domicile. Instead, domicile is established by objective criteria and by facts and circumstances similar to those looked to when establishing a closer connection with another country, discussed above, including the location of the individual's residence, personal property, place of work, driver's license, bank accounts, etc. Notably, having a green card gives rise to a rebuttable presumption of having a U.S. domicile.

It is therefore very important that NRAs keep their contacts in the U.S. to a minimum to avoid inadvertently giving rise to a U.S. domicile and thereby unintentionally subjecting themselves to onerous gift and estate taxes.

And if deemed to be domiciled in the U.S., you may find that you are not eligible for the Unlimited Marital Deduction previously mentioned if your spouse is not a U.S. citizen unless you have a Qualified Domestic Trust as part of your estate plan.

Note: the new Individual Exemption Amount of $11M, while it may apply to non U.S. citizens that are domiciled in the U.S., is not permanent (sunsets 2025). So the time to plan is now as "portability" exemption amount of *approx.* $22M (if married) may be an issue if your spouse is a non-citizen/non-domiciliary, as may well be the case for some.

III. PRE-IMMIGRATION PLANNING GOALS

Given the worldwide reach of the U.S. income and transfer taxes applicable to U.S. residents and those domiciled in the and U.S. domiciliary respectively, the most effective tax planning can be achieved prior to a non-resident alien's (NRA's) immigration to the U.S., since at that stage the NRA is neither subject to U.S. income tax nor U.S. transfer (i.e., estate and gift) tax on non-U.S. assets.

Below is a discussion of a number of steps that can be taken in advance to minimize the exposure of NRAs to taxes upon their move to the U.S. as well as a discussion of a few state-specific considerations that ought to be taken into account when deciding upon which state in the U.S. in which to reside.

(a) Minimizing Income Taxation

(i) Stepping Up Basis

For U.S. income tax purposes, a business entity may elect to be treated either as a corporation, a partnership taxed to its owners directly or, in the case of a single-owner entity, as a disregarded entity. This entity classification election is made by filing IRS Form 8832 and is referred to as checking-the-box ("CTB") election.

On the date of the CTB election, a company electing to be treated as a partnership or disregarded entity will be deemed to have made a liquidating distribution of its underlying assets to its owners. As a result, the basis of the assets is stepped up (or down) in the hands of the entity's owners to the value of the assets on the date of the election.

Since gain realized on non-U.S. assets is not subject to U.S. income tax when realized by an NRA, the step-up in basis of the company should be tax neutral for U.S. tax purposes. This mechanism can reduce future realization of capital gain after the NRA moves to the U.S. and becomes subject to U.S. income tax.

(ii) Accelerating Income Recognition

NRAs who use the cash receipt method of accounting can accelerate the recognition of income items, thereby enabling them to receive cash after becoming U.S. taxpayers without having to pay income taxes in the U.S. on such receipts. (Such may be the case instead of gifting assets to a pre-immigration planning Trust, the NRA makes a bona-fide sale to the Trust in exchange for a Promissory Note or Private Annuity). *See Case Study for more details.*

(iii) Staying Clear of the Anti-Deferral Regimes

NRAs would be well advised to carefully review their corporate holdings prior to immigrating to the U.S. to ensure that they will minimize their exposure to several U.S. anti-deferral regimes intended to discourage the deferral of income by U.S. taxpayers. Some of these issues can be resolved by making a CTB election with respect to the company, re-organizing the ownership structure to ensure that U.S. ownership and/or control will be kept to a minimum or restructuring the company's investments. Care should be taken since attribution and constructive ownership principles are applicable when determining ownership thresholds.

1) *Controlled Foreign Corporations ("CFCs")*

A foreign corporation will be treated as a CFC if over 50 per cent (by vote or value) of its stock is owned by U.S. shareholders. For these purposes, a U.S. shareholder is a U.S. person who owns at least 10 per cent of the total combined voting power of all classes of stock in the CFC.

U.S. persons who meet the definition of a U.S. shareholder will have to include in their income their pro rata share of the CFC's "Subpart F" income regardless of actual distributions. This income includes, among others, insurance income and foreign base company income ("FBCI"). FBCI includes, among other types of income, dividends, interest, royalties, rent and gains from the sale or exchange of certain types of property and certain related persons' sales or services income. In addition, some of the gain upon the sale of CFC shares may be taxed as ordinary income.

2) *Passive Foreign Investment Companies ("PFICs")*

A foreign corporation is a PFIC if either 75 per cent or more of its gross income for the taxable year is passive income or at least 50 per cent of the corporation's assets are held for the production of passive income.

Gain realized upon the disposition of PFIC stock by a U.S. owner will be taxed as ordinary income tax rates instead of the more favorable capital gains rates. Distributions will not qualify for the reduced capital gains rates that apply to qualifying dividends. Moreover, an interest charge will be applied to both the income tax imposed on such gain as well as on "excess" distributions from the PFIC to the U.S. owner.

Generally, if upon purchasing an interest in a company, the U.S. owners of the shares would qualify as "U.S. shareholders" of a CFC, they will not also be subject to the PFIC tax regime, even if the company would also qualify as a PFIC.

(iv) Staying Clear of the Five-Year "Trap"

NRAs who create foreign trusts that have (or may have) a U.S. beneficiary will be subject to U.S. income tax on that foreign trust's income if the NRAs themselves becomes U.S. taxpayers within five years of transferring property to the trust. For these purposes, income accruing in the foreign trust before the NRAs' U.S. residency date will not be subject to U.S. income tax unless it is U.S. source income.

Thus an NRA who intends on immigrating to the U.S. would be well advised, where possible (and in the real world it may not be possible), to create and fund such foreign trusts at least five years before becoming a U.S. person in order to avoid being taxed on trust income regardless of distributions. (See discussion below on the infamous five-year rule.)

(b) Minimizing Exposure to Transfer Taxation

(i) Offshore Trust

Even if the five-year waiting period, discussed above, cannot be observed, there are still significant transfer tax advantages to contributing foreign property to a trust prior to immigrating to the U.S.

The creation of an irrevocable foreign trust prior to moving to the U.S. and its funding with some, but not all, of an NRA's foreign assets can be an effective tool in protecting such assets from exposure to U.S. transfer taxation after the NRA's immigration to the U.S. As long as certain precautions are observed, the NRA's non-U.S. assets that are in the trust will not be subject to any U.S. estate tax and the trust's income may also be exempt from state and local taxes, depending on local law, (as well as potential creditors), discussed further below. See Case Study.

(ii) Accelerating Gifts

To the extent that the NRA intends on making lifetime gifts, it is advisable to make such gifts prior to becoming a U.S. domiciliary. This is because NRAs are subject to U.S. gift tax only on gratuitous lifetime transfers of U.S. situs property (including U.S. real estate and tangible property located in the U.S. such as cars, art, jewelry and furnishings); not intangible assets, as noted above.

Notably, shares of a U.S. corporation are not considered U.S. situs property for gift tax purposes but are considered U.S. situs property for estate tax purposes. Thus, to the extent NRAs who own U.S. shares and who intend on immigrating to the U.S. are contemplating making gifts prior to their move, they should consider making gifts of their U.S. shares. Such gifts will achieve two tax-saving goals. The gifts will be free of U.S. gift tax and will also serve to reduce the NRAs' U.S. estate for estate tax purposes.

(c) State-Related Considerations

Careful consideration should also be given to the choice of state within the U.S. in which an individual intends to reside. States can differ significantly from one another on a variety of local issues. Below is a brief discussion of a few of the issues that should be taken into account.

(i) State Taxes

State taxation is an important consideration which can have significant financial consequences to a client's choice of residence. Some states, such as Florida, impose no state income tax, while others, such as New York, have very high rates of both state and (most notably in New York City) local income taxes. The only state that imposes state gift taxes is Connecticut. Where state estate taxes are concerned, certain states, such as Pennsylvania and New Jersey, have an independent inheritance tax, some states impose their own estate tax, others impose a state estate tax that is calculated with reference to the Federal estate tax and others still impose no state estate tax at all. States also differ in the manner that they tax trusts. Thus, some states will tax trusts on the basis of who created them while others will tax trusts on the basis of where the beneficiaries and/or trustees are located.

(ii) Property Laws

In community property states, married persons are considered to own their property and income jointly, regardless of title. There are nine states which impose a community property regime. These are: Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. In addition, Wisconsin has a partial statutory community property scheme. Alaska's statutory community property regime is elective. Puerto Rico allows property to be owned as community property as well. Florida is not a community property State.

(iii) Creditor Protection

There are a number of states that have passed laws enabling grantors, under certain circumstances, to create trusts of which they are beneficiaries but whose creditors cannot reach the trust assets. Delaware is one of the leading jurisdictions with a well-developed law. Other such jurisdictions include Alaska, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah and Wyoming. Florida has favorable asset protection statutory provisions which merit a closer look when deciding which state to move to.

(iv) Rule Against Perpetuities

States also differ in their applicable Rule Against Perpetuities (essentially dictating the maximum length of time that a trust can last). Some states, including California, Delaware and Florida, allow trusts to last in perpetuity (or in near perpetuity), while other states either follow the common law rule against perpetuities (21 years after the death of a life in being) or the Uniform Statutory Rule Against Perpetuities (vesting of interest within 90 years of creation).

(v) Marriage Rights

Since the Windsor United States Supreme Court decision in 2013 an increasing number of states have recognized same-sex marriage. However, there are still a number of states that do not recognize the validity of such a marriage and have passed legislation to prohibit it. Such legislation is actively being challenged and the status of marriage rights in such states is very much in flux.

Same sex marriage has been legally recognized in Florida since January 6, 2015.

IV. POST-IMMIGRATION REPORTING OBLIGATIONS

U.S. taxpayers are subject to a number of reporting obligations in connection with their interests in non-U.S. assets. Below is a description of a number of common reporting requirements, their filing deadlines and the potential consequences of non-compliance of which a new resident should be aware.

(a) FBAR

A Report of Foreign Bank and Financial Accounts ("FBAR") has to be filed by U.S. taxpayers who have a financial interest in or signature authority over any financial account in a foreign country, if the aggregate value of these accounts exceeds $10,000 at any time during the calendar year. This includes signatory authority over, but no financial interest in, foreign accounts of their employer or a closely related entity.

A trust beneficiary (considered an indirect holder of financial interests) is required to file an FBAR with respect to the trust's foreign financial accounts if the beneficiary either has a "present" beneficial interest in more than 50 per cent of the assets of the trust or receives more than 50 per cent of the trust's income. A beneficiary of a discretionary trust does not have a reporting obligation solely on account of the beneficiary's discretionary beneficial interest.

There are significant civil penalties and possible criminal penalties for failure to file an FBAR, even if no tax is otherwise due. The civil penalty for willfully failing to file an FBAR for any year can be as high as the greater of $100,000 or 50 per cent of the total balance of the foreign account for such year. This penalty may apply for every annual violation, and for every taxpayer who failed to disclose an account. Willfully failing to file an FBAR also subjects a person to a prison term of up to 10 years and criminal penalties of up to $500,000.

An FBAR is to be filed for any year by June 30 of the following year and must actually be received by the IRS by this date.

(b) Form 3520

On Form 3520 U.S. income taxpayers report transactions with foreign trusts and receipt of foreign gifts of over $100,000, if received from NRAs or foreign estates.

A U.S. beneficiary who receives direct or indirect distributions from a foreign trust of income or corpus must file Form 3520 with the IRS. This Form provides the IRS with information regarding the name of the trust, the aggregate amount of distributions received from the trust, and such other information as the IRS may require.

In the case of foreign non-grantor trusts, such "additional information" is included in a Foreign Non-Grantor Trust Beneficiary Statement, which is issued by the trustees of such trust. If no Foreign Non-Grantor Trust Beneficiary Statement is included with the 3520, the IRS will be able to assume that the beneficiary received income from the Trust accumulated from a prior year which will be subject to extra interest and which will lose the benefit of differential rates between capital gains and ordinary income.

If a U.S. beneficiary does not report distributions from a foreign trust as required, such beneficiary will be subject to a penalty equal to the greater of $10,000 and 35 per cent of the reportable amount. Continued failure to report can result in additional penalties, not to exceed the reportable amount.

Failure to report foreign gifts results in a penalty equal to 5 per cent of the amount of such foreign gifts applied for each month for which the failure to report continues, not to exceed 25 per cent.

Form 3520 is due on the date that one's income tax return is due, including extensions.

(c) Form 3520-A

Form 3520-A is the annual information return for a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries and any U.S. person who is treated as an owner of any portion of the foreign trust.

It is the responsibility of the U.S. owner of the foreign trust to ensure that it files Form 3520-A and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries.

If a foreign trust (1) fails to timely file a Form 3520-A, (2) does not furnish the information required, or (3) furnishes incorrect information, its U.S. owners will be subject to an initial penalty equal to the greater of $10,000 and 5 per cent of the gross value of the portion of the trust's assets treated as owned by them at the close of the relevant tax year. Continued failure to report can result in both additional penalties and criminal penalties. Note, however, that if the taxpayers can demonstrate that the failure to comply was due to reasonable cause, and not willful neglect, penalties will not be imposed. <u>The fact that a foreign country would impose penalties for disclosing the required information does not constitute reasonable cause. Similarly, a foreign fiduciary's reluctance to comply or provisions in the trust instrument preventing disclosure of required information do not give rise to reasonable cause.</u>

Form 3520-A is due by the 15th day of the third month after the end of the trust's tax year. An extension of time to file an income tax return will not provide an extension of time to file Form 3520-A. Instead, a separate extension request (Form 7004) must be filed in order to request an extension of time to file Form 3520-A.

(d) Form 8938

U.S. "owners" who, during any taxable year, hold an interest in "specified foreign financial assets" having an aggregate value above a certain threshold must attach Form 8938 to their income tax return for such year.

The term "specified foreign financial assets" includes foreign accounts held at financial institutions and, to the extent not held in an account at a financial institution, foreign-issued stock or securities, interests in a financial instrument or contract held for investment with a foreign issuer or counterparty and interests in other foreign entities. It does not include non-producing real estate held directly.

Generally, the threshold amount for unmarried individuals and married taxpayers filing separate returns is an aggregate fair market value of interests in specified foreign financial assets exceeding either $50,000 on the last day of the taxable year or $75,000 at any time during the taxable year. If an individual does not have to file a U.S. income tax return for the tax year, the individual does not have to file Form 8938 even if the value of the specified foreign financial assets exceeds the reporting threshold.

A beneficial interest in a foreign trust or a foreign estate is not a specified foreign financial asset unless the individual knows or has reason to know of the interest based on readily accessible information. Receipt of a distribution from a foreign trust or foreign estate is deemed for this purpose to be actual knowledge of the interest.

Special rules apply for reporting the maximum value of a taxpayer's interest in a foreign trust. If a taxpayer is a beneficiary of a foreign trust, the maximum value of the taxpayer's interest in the trust is the sum of the fair market value, determined as of the last day of the taxable year, of all of the distributions from the foreign trust to the taxpayer, during the taxable year, plus the value as of the last day of the taxable year of the taxpayer's right as a beneficiary to receive mandatory distributions from the foreign trust.

The penalty for failure to file Form 8938 is $10,000, with an additional penalty of up to $50,000 for continued failure to file after IRS notification. In addition, any underpayment of tax related to an undisclosed specified foreign financial asset may be subject to a 40 per cent penalty.

Form 8938 is also due on the date that one's income tax return is due, including extensions.

(e) Other Forms

There are additional reporting requirements that are required upon contributions to foreign entities and to report the ownership of foreign entities (including, but not limited to, special CFC and PFIC ownership reporting).

V. CHANGE OF MIND

Even after immigrating to the U.S. and becoming subject to its tax system, individuals can change their mind and decide to end their residence and/or domicile status in the U.S. (And even if the person does not change their minds, but fail to be physically present in the US for a prolonged period of time, a person may find their green card revoked and subject to an "Exit Tax".)

Below is a brief discussion of a number of potential issues that could be relevant to such a decision depending on the length of residence in the U.S. and the individual's status during such residence.

(a) Expatriation and the "Eight-Year" Threshold

Individuals who terminate their long-term permanent residency status (a green card held for at least eight (8) of the 15 tax years preceding expatriation) after June 17, 2008, and who are "covered expatriates", are treated like citizens who give up their citizenship and are subject to a mark-to-market exit tax on their worldwide property, and certain gifts and bequests that they make after expatriating will also be subject to taxes. It is therefore of crucial importance for green card holders who are considering giving up their green card to do so effectively before holding the green card for eight (8) years in order to avoid being subject to the onerous expatriation rules, discussed below.

For purposes of determining the eight-year period, any portion of a tax year is considered a full year. By way of example, if an individual obtained a green card on December 1, 2008, and relinquishes the green card on January 1, 2015, the individual will have held the green card for a portion of eight tax years and will therefore be considered a long-term resident. It should be noted that there may or may not be re-immigration consequences to surrendering one's green card after eight years.

Notably, residence in the U.S. under any other immigration status, such as a work visa, does not count towards establishing one's long-term resident status for purposes of the expatriation rules.

Moreover, in order to no longer be considered a domiciliary of the U.S. it is not enough to relinquish one's green card. One must also establish a domicile elsewhere.

(i) Covered Expatriate

Status as a covered expatriate is determined based on an income test, a net worth test or a compliance test. Subject to a number of limited exceptions, an individual who meets any one of these tests will be a covered expatriate.

1) *Income Test*

An expatriate having an average annual net income tax, for the five-year period preceding the expatriation date, that is greater than an inflation-adjusted amount (currently $162,000 for 2017) will be a covered expatriate.

2) *Net Worth Test*

An expatriate whose net worth upon expatriation is $2 million or more will be a covered expatriate. *(Expatriation Tax Planning Some suggest utilizing gifts to non-citizen spouses to reduce the estate and fully utilize the annual exclusion for gifts to non-citizen spouses, which is $199,000 for 2017 and if you need to gift more then use your $11M exemption to avoid gifts tax. But be careful as planning is required regardless of whether these gifts are outright or in Trust.)*

3) *Compliance Test*

Expatriates who do not certify on Form 8854 that they have complied with all U.S. Federal tax obligations for the five years preceding the date of expatriation, will be covered expatriates.

(ii) Exit Tax

The net unrealized gain in a covered expatriate's property will be subject to an exit tax as if the covered expatriate had sold his or her worldwide property for fair market value on the day before terminating his or her residency. The expatriate's worldwide property includes any portion of a trust for which a covered expatriate is treated as the owner for U.S. tax purposes. Note, however, that the net gain on the deemed sale is recognized only to the extent it exceeds $699,000, as adjusted for inflation or nearly $1.4M of gain combined.

For the purposes of determining the unrealized gain, property held by covered expatriates on the date they first became U.S. residents is treated as having a

basis of no less than fair market value on that date. An election can be made to defer the tax on assets not actually sold until their sale or their owner's death, subject to an interest charge and the posting of security as collateral.

(iii) <u>Post-Expatriation Gifts and Bequests</u>

Property given or bequeathed by a covered expatriate (a "covered gift"), after expatriation, to a U.S. person will be subject to tax. This includes distributions from a foreign trust attributable to a covered gift. There is no time limit on the application of this rule. The tax is payable by the U.S. recipient and is applied at the highest estate tax or gift tax rate. Note, however, that the tax is only imposed on a covered gift having a value in excess of the annual gift tax exclusion ($15,000 in 2018).

(b) Avoiding Unintended Deemed Realization

As discussed earlier, a foreign trust created within five (5) years of its grantor's immigration to the U.S. and that has (or may have) a U.S. beneficiary will be treated as a grantor trust once its grantor becomes a U.S. taxpayer and the trust's income will be subject to U.S. income tax as if it was earned by the grantor personally, irrespective of actual distributions.

As such, the foreign trust's "grantor trust" status will end upon the earlier to occur of (1) the grantor's death, or (2) the grantor's ceasing to be a U.S. person. In either case, the termination of the foreign trust's "grantor trust" status may be deemed a "gain recognition" event causing the grantor to be treated as having sold all of the trust's assets and recognized gain either upon the grantor's death or upon the grantor's ceasing to be a U.S. person.

This unintended triggering of U.S. income taxation can be circumvented, however, by giving a domestic trust the right to withdraw the foreign trust's property. While the grantor is alive and a U.S. person, the trust's income will be taxed to the grantor. After the grantor's death or the grantor's ceasing to be a U.S. person, the domestic trust will step into the shoes of the grantor and will be treated as the owner of the foreign trust for U.S. income tax purposes. This planning technique is called "decanting" and requires careful planning.

VI. THE INFAMOUS "FIVE (5) YEAR" RULE

In almost every article or discussion about pre-immigration tax planning, inevitably some statement similar to the following is said: ". . . for a nonresident alien contemplating immigration to the United States, careful trust planning is required at least five (5) years prior to the time of the immigration."

Does this mean a non-resident alien who is contemplating moving to the U.S., on a temporary or permanent basis, must be aware of their future plans at least five years in advance. Must they make various transfers of assets, including completed gifts (if such are not costly in their home country) not knowing if they will indeed ever move or come to the U.S.?

Is it true, or even correct, to say that anyone who might consider moving to the U.S. must be able to plan their financial affairs five (5) years in advance to avoid harsh U.S. tax consequences and lose various levels of control over their assets?

Is there a difference for income taxes versus transfer taxes (estate, gift and GSTT)?

Why is this "5-year" statement so frequently made by investment advisors and many tax practitioners?

To be sure, I.R.C. Section 679(a)(4) and the 2001 Treasury Regulation Section 1.679-5 (Pre-Immigration Trusts) have caused much confusion. But here is the good news: you don't have to be a fortune teller, nor predict the future. This infamous "five (5) year" rule does not preclude you from planning ahead and proceeding with caution without the need for a crystal ball.

HYPOTHETICAL - NON-RESIDENT FUNDING OF FOREIGN TRUST

To illustrate how the law works, let us use an example as follows: Mr. X (**"Mr. X"**) is a citizen of a foreign (**"Country Y"**) Country Y who is contemplating immigrating to and taking up residence in the United States (**"U.S."**) during 2018 or 2019. He does not know if he wants to stay and live in the U.S. temporarily or permanently as he has family in Panama, Nicaragua, Mexico, Canada, Spain and the United States. He has homes in more than one country and often times rents an apartment temporarily in one of the countries outside of Country Y.

Mr. X currently owns a majority interest in several Panamanian corporations, as well as other assets, all being situated outside the U.S. Mr. X wants to know whether as part any pre-immigration tax planning considerations he might be able to reduce his exposure to U.S. estate or gift taxes that would otherwise apply upon his death if he becomes a U.S. domicile. This is particularly important since under the laws of Country Y there is currently no type of estate, inheritance or other "death" tax.

Mr. X has received conflicting advice that any assets (the **"Assets"**) transferred to a foreign trust (the **"Pre-Immigration Trust"**) prior to becoming a U.S. resident should not be subject to estate tax because the Pre-Immigration Trust? This Pre-Immigration Trust will be just such a trust referred to in the regulations - Section 1.679-5 (Pre-Immigration Trusts). Will Mr. X be treated as the owner of these Assets for U.S. transfer tax purposes (estate, gift and GSTT)? If the Pre-Immigration Trust is funded within five (5) years of his move to the U.S.

APPLICATION OF U.S. RULES TO FOREIGN TRUST AND FOREIGN SETTLOR?

Before we discuss in any detail Section 679, we can ask the question whether the Internal Revenue Code and its provisions can even apply to a foreign trust, such as a Pre-Immigration Trust contemplated by the regulations. How can U.S. statutory law apply to a foreign trust with a foreign settlor even if there are no U.S. beneficiaries? What if the foreign trust is not subject to the jurisdiction of any United States court as contemplated by Treasury Regulation Section 301.7701-7(a)(1) and (c)? What if the foreign trust does not have a single U.S. person (let alone a U.S. trustee) with any "substantial decision" powers as identified in Treasury Regulation Section 301.7701-7(d)(1)(ii)?

Therefore, the initial question is whether U.S. tax laws can even govern the potential U.S. taxation to the trust or possible future U.S. beneficiaries or the settlor who may become a U.S. person but not necessarily a beneficiary? According to the IRS and U.S. federal courts, "United States tax concepts apply to determine the tax consequences of events [for U.S. Tax purposes] even if those events occur outside of the United States and even if those events result from activities conducted by foreign persons."

Moreover, U.S. tax principles control over foreign tax principles or characterization absent express congressional intent to the contrary. Indeed, the IRS has taken the position that U.S. tax principles govern notwithstanding the existence of a conflict with foreign tax treatment or policies.

Consequently, any future U.S. tax consequences associated with the Pre-Immigration Trust will be governed by U.S. tax laws (to the extent they are relevant in determining the U.S. tax consequences to its U.S. assets or any future U.S. beneficiaries), <u>even though the trust will be formed outside the U.S. by a nonresident alien, under foreign law.</u>

SECTION 679(A)(4) AND ITS APPLICATION TO PRE-IMMIGRATION TRUSTS

What about Section 679(a)(4) which raises the concern that despite the transfer to the Pre-Immigration Trust, Mr. X will continue to be treated as the owner of the Assets for estate and transfer tax purposes?

Section 679(a)(4), in conjunction with Section 679(a)(1), provides that where a nonresident alien individual becomes a U.S. resident within five (5) years of transferring property to a foreign trust, the individual is treated at least for income tax purposes, as the owner of the property so transferred if the trust has one or more U.S. beneficiaries. This is consistent with the statute that provides that the portion transferred to the foreign trust by the non-resident alien, shall be treated "as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer." See section 679(a)(4).

SUBTITLE A VERSUS SUBTITLE B

Does Section 679(a)(4) (an income tax provision) apply only for income tax purposes under Subtitle A, or can it also be construed as also applying to the estate, gift tax or generation skipping transfer provisions and calculations under Subtitle B (thus resulting in Mr. X ownership of the Assets for estate tax purposes which would give rise to adverse and unexpected estate tax consequences upon Mr. X death assuming he will eventually become a permanent domicile in the U.S.)?

Based on the legislative history, with which the IRS is in accord, Section 679 only applies for purposes of income taxes. It has no relevance for purposes of the estate, gift tax or generation skipping transfer provisions and calculations under Subtitle B. Thus, it is incorrect that transferring assets to a foreign trust prior to coming to the U.S. within five (5) years, will necessarily cause the trust assets to be subject to U.S. estate taxes.

The key to any pre-immigration trust transfers is therefore not Section 679, but rather the various provisions set forth in Subtitle B, including the application of Sections 2031 through 2044. *SEE CASE STUDY BELOW for further discussion.*

Mr. X will indeed be able to make certain types of transfers of Assets without taxation (assuming they are not tangible assets situated in the United States) to the Pre-Immigration Trust, which would allow him the flexibility to move to the U.S. within five (5) years of making such transfer. If he does move to the U.S. on some type of temporary or permanent basis within five (5) years from funding the Pre-Immigration Trust, then he will be treated as the grantor of the trust assets for U.S. **income** tax purposes under Section 679(a)(4). (But this Section 679(a)(4) may not be applicable if the Pre-Immigration Trust falls within the provisions of Section 678.) (SEE CASE STUDY.)

This, being treated as the Grantor for income tax purposes under Section 679(a)(4) may seem like a bad result for the taxpayer. Actually, this is probably of no real consequence, unless (i) he has no right to the income from the assets held in the Pre-Immigration Trust from which to pay his U.S. income taxes, or (ii) he will be staying in the U.S. only on a temporary basis and eventually leaving elsewhere.
If Mr. X moves to the U.S. on a permanent basis, he will probably have a better U.S. income tax result due to the application of Section 679(a)(4) as opposed to the possible application of the U.S. "throwback" tax on accumulated income in a foreign trust.

Thus, if Mr. X decides to immigrate to the U.S., he can actually pay less U.S. income tax by avoiding the application of the "throwback" tax by application of Section 679(a)(4). This is because accumulation distributions from foreign trusts are subject to a special tax, referred to as the "throwback" tax, as well as an accompanying interest charge thereon, which together are designed to approximate the U.S. tax burden a U.S. Person would have borne had the foreign trust distributed all its income in the year in which such income was earned, instead of accumulating it and distributing it in a later year.

The amount of the throwback tax is taxed as ordinary income at the U.S. person's marginal U.S. tax rates, and then the interest charge is calculated thereon. The application of the throwback tax and interest charge gives rise to potentially draconian U.S. tax consequences for any U.S. beneficiary.

For example, assume the following hypothetical facts, which all go into a series of complex calculations to determine the amount of the throwback tax and interest charge: (1) the Trust is formed in 2005 and funded with US$200,000 cash; (2) the Trust generated income of US$20,000 each year from 2005 through 2025 (20 years), meaning that, as of December 31, 2025, the trust will have US$600,000 in assets, and (3) the U.S. person's average U.S. taxable income for 2023 through 2025 was US$270,000, and he was subject to a marginal tax rate of 35 percent; and (4) the applicable interest rate on underpayment of tax was six percent.

Based on these hypothetical facts, on the US$600,000 distribution to the U.S. beneficiary, he would be subject to a throwback tax of approximately US$140,000, together with an interest charge thereon of approximately US$284,000, for a total U.S. tax bill of approximately US$420,000. That means, without even considering California state taxes, the U.S. beneficiary would net approximately only US$176,000 on her total distribution of US$600,000 (of which US$200,000 was not even accumulated income but rather principle).

The application of Section 679(a)(4) will necessarily avoid this type of draconian result to Mr. X if the Pre-Immigration Trust accumulates income since he will be taxable annually on the income from it (once and if he becomes a U.S. Person) regardless of whether any distributions are actually made.

ESTATE TAX RULES

Returning to tax consequences of the Pre-Immigration Trust we should now look to whether Mr. X will (a) make the gratuitous transfer of some or all of the Assets to the Pre-Immigration Trust and whether that will be complete and effective for gift and estate tax purposes prior to Mr. X becoming a U.S. resident, and (b) have no interest in the Assets held by the Pre-Immigration Trust, or control over the Pre-Immigration Trust, which would require him to include the Assets, or a portion thereof, in his gross estate under the estate tax provisions of Subtitle B of the Code (i.e., the Pre-Immigration Trust must be treated as the owner with of the Assets for estate tax purposes).

Generally, the U.S. estate tax is imposed on the taxable estates of all U.S. citizens and domiciled residents. Sections 2031 through 2044 define the gross estate and describe the property interests held by the decedent at death that are includible in the decedent's gross estate (also is a U.S. citizen and thus subject to U.S. estate tax. Briefly, the following property interests must be included in the U.S. decedent's gross estate:

- Property, or an interest therein, transferred by the decedent within three (3) years of death;
- Property, or an interest therein, transferred by the decedent with a retained life estate;
- Property, or an interest therein, transferred by the decedent where the transfer does not take effect until the death of the decedent;
- Property, or an interest therein, transferred by the decedent subject to a revocation power; and
- Property, or an interest therein, subject to a general power of appointment held by the decedent.

SECTION 679 AND INCOME TAX RULES

Generally, in general, under the grantor trust rules of Sections 671 through 677, the grantor of a domestic or foreign trust is treated as the owner of the assets held in the trust, and taxed on the income therefrom, if pursuant to the terms of the trust or otherwise:

- He retains a reversionary interest in either the corpus or the income that exceeds five percent of the value thereof;
- He retains the power to control the beneficial enjoyment of the trust corpus or trust income without the consent of an adverse party;
- He retains certain administrative powers over the trust;
- He retains the power to revoke the trust;
- The income of the trust can be used for his benefit.

The grantor's powers over, and interests held in, the trust assets that would cause the trust assets to be treated as owned by, and the trust income to be taxable to, the grantor (for income tax purposes) are similar and to some extent overlap with the powers and interests held by the grantor that would result in the trust assets being includible in the grantor's gross estate for estate tax purposes (i.e., reversion or

revocation powers, control of income or corpus or beneficial enjoyment thereof, etc.). Thus, generally speaking in the context of U.S. trusts, if a grantor of a foreign trust retains powers and interests which cause the trust to be treated as a grantor trust under the foregoing grantor trust rules (grantor has too much power over beneficial enjoyment of property), such powers and interests may also result in the assets of the trust, or portion thereof, being includible in the grantor's gross estate for estate tax purposes.

In addition to the grantor trust rules described above, Section 679, which was added by the Tax Reform Act of 1976 (the "1976 Act") and amended significantly by the Small Business Job Protection Act of 1996 (the "1996 Act"), treats the U.S. grantor of a foreign trust that has one or more U.S. beneficiaries as the owner of the trust's assets under the grantor trust rules. Consequently, the U.S. grantor, who under Section 679 is deemed to be the owner of the foreign trust's assets, is taxed on the trust's worldwide income. Section 679 applies in addition to the regular grantor trust rules of Sections 671 through 677.

Unlike the other grantor trust rules, however, Section 679 applies regardless of the terms of the foreign trust and regardless of any powers or interests the U.S. grantor or another person may have with respect to the foreign trust's income and corpus. In other words, the U.S. grantor is deemed the owner of the foreign trust's assets even where the grantor has no powers or interests therein whatsoever, and even where the foreign trust is irrevocable and administered by an independent trustee. Of course, in our example, Mr. X is not a U.S. person (but may become one).

Section 679(a)(4), which was added by the 1996 Act, extends Section 679 to transfers in trust by certain foreign individuals who thereafter become U.S. citizens or residents (such as might be the case with Mr. X). As originally enacted, Section 679 did not apply to a transferor who was not a U.S. citizen or resident at the time of the transfer, because Section 679(a) referred to the making of a transfer by a U.S. person.

Section 679(a)(4) provides that a nonresident individual, who becomes a resident of the U.S. within five (5) years after directly or indirectly transferring property to a foreign trust, will be treated under Section 679 (and the reporting requirements of Section 6048) as if he made the transfer on the residency starting date. Therefore, a foreign person who adopts U.S. residency within five (5) years after having created a foreign trust with a U.S. beneficiary will be treated as the owner of the assets originally transferred to the trust plus any undistributed income and appreciation in assets held by the trust and attributable to the original transfer. Accordingly, the grantor, upon becoming a U.S. resident, is taxed on the worldwide income of the trust. Again, this income tax treatment applies whether the foreign trust is irrevocable or whether the grantor has any powers or interests with respect to the assets held in trust.

In this scenario, Mr. X intends to transfer some or all of the Assets to the Pre-Immigration Trust while he is a nonresident. The Pre-Immigration Trust would necessarily be an irrevocable trust (for transfer tax purposes), and Mr. X should not have any powers or interests in the Pre-Immigration Trust that would not initially treat it as a grantor trust for income tax purposes (assuming it will eventually have a U.S. beneficiary and it is not revocable pursuant to Sections 672(f)). Accordingly, the Pre-Immigration Trust would not initially be a grantor trust under Section 672(f) (assuming Mr. X has a family member who is beneficiary of the trust who is a U.S. person). However, if he immigrates to the U.S. and becomes a U.S.

person within five (5) years of the transfer, Section 679(a)(4) would cause it to then become a grantor trust, for U.S. income tax purposes, by operation of this section.

Under Section 679(a)(4), Mr. X would be deemed to have transferred the Assets (and any undistributed income) to the Pre-Immigration Trust on the date he became a U.S. resident for purposes of Subtitle A. Thus, under Section 679(a)(1), Mr. X would be treated as the owner of the Assets held in the Pre-Immigration Trust and, consequently, he would be taxed on the worldwide income of the Pre-Immigration Trust whether distributed or not.

While it is clear that Mr. X would be treated as the owner of the Assets for income tax purposes by operation of Sections 679(a)(4) and 679(a)(1) if the Trust remained a foreign trust, there seems to be some uncertainty among certain commentators regarding whether Mr. X would also be treated as the owner of the Assets for estate tax purposes by operation of the same sections. If Section 679 does in fact apply to treat Mr. X as the owner of the Assets for estate tax purposes, there is a risk that such deemed ownership would trigger otherwise inapplicable estate tax provisions of Subtitle B of the Code thus requiring Mr. X to include the Assets in his gross estate.

On the other hand, if the deemed ownership rule of Section 679 only applies for income tax purposes under Subtitle A, the Assets would be includible in Mr. X estate only if they were otherwise includible under Sections 2031 through 2044 of Subtitle B. In this hypothetical, it is crucial that the Pre-Immigration Trust be irrevocable and Mr. X should not have any powers or interests causing inclusion of the Assets held in trust to be included under the provisions of Subtitle B (without consideration to the deemed ownership rule of Section 679 of Subtitle A), the Assets should not be includible in Mr. X's gross estate and, therefore, would not be subject to estate tax.

SECTION 679 DOES NOT APPLY FOR ESTATE TAX PURPOSES

Legislative History - 1976 Act. As noted above, Section 679 was added to the Code in 1976 in an attempt by Congress to eliminate the advantage, in terms of income tax-free accumulation, that foreign trusts had over domestic trusts. The concern was that if foreign trusts or their grantors are not subject to U.S. income taxes, the trust could invest indefinitely in offshore investments (in tax haven jurisdictions and U.S. investments of foreign persons not subject to U.S. income tax, e.g., "portfolio interest" debt, non-real estate capital gains, etc.) and defer paying income tax until distributions are made to U.S. beneficiaries. The conference reports of the House and Senate both discussed at length present law with regard to income taxation of foreign trusts, and the reasons why Section 679 should be enacted. The entire discussion addresses income tax issues only.

Regarding the application of then new Section 679 (and its deemed ownership rule) to the estate tax provisions of Subtitle B, the House Report provides, note that:

> "an inter vivos trust which is treated as owned by a U.S. person under this provision [Section 679] is not treated as owned by the estate of that person upon his death. These rules only apply for income tax purposes. Whether the corpus of the inter vivos trust is included in the estate of the U.S. person depends on the estate tax provisions of the Code. Such provisions, as well as the gift tax provisions of the Code, are unaffected by this amendment." *[Emphasis added.]*

Legislative History - 1996 Act. Section 679(a)(4) was added by the 1996 Act. Section 679(a)(4) did not broaden the scope of Section 679 beyond the income tax provisioning Subtitle A, it just enlarged the class of grantors subject to Section 679. Numerous tax authors of relevant tax articles sited herein below have commented that Congress was aware of foreign grantors who were avoiding the application of Section 679 by transferring assets to a foreign trust just prior to immigrating to the U.S. Thus, Section 679(a)(4) was added to stop this "perceived" abuse.

During 2000 the Treasury issued proposed regulations under Section 679, including proposed Regulation Section 1.679-5 which is the regulation corresponding to Section 679(a)(4) (the proposed regulation, which has since been issued in final form, is titled, "Pre-Immigration Trusts"). The preamble to the proposed regulation is consistent with the legislative history of the 1976 Act and provides, in pertinent, that:

> **"Section 679 applies only for income tax purposes. The estate and gift tax provisions of the Code determine whether a transfer to a foreign trust is subject to the federal gift tax, or whether the corpus of a foreign trust is included in the gross estate of the U.S. transferor."** ***[Emphasis added.]***

WHAT ABOUT THE OFTEN OVERLOOKED SECTION 678?

- What if Mr. X was not the actual Grantor of the Pre-Immigration Trust?
- What if Mr. X did not make transfers to the Pre-Immigration Trust in the form of gifts, but rather made a bona-fide sale of assets at fair market value to the Pre-Immigration Trust?
- What if the Pre-Immigration Trust was not only irrevocable, but discretionary?

Well, then we would have a new way of looking at Pre-Immigration Tax Planning. SEE CASE STUDY BELOW.

CASE STUDY:

PRE-IMMIGRATION TAX PLANNING MEMORANDUM
Section 678 Type Foreign Situs Irrevocable Discretionary Family Trust

INTRODUCTION

Mr. X has stated to us that you are planning on selling your business to relatives abroad and moving to the U.S. in the near future and are concerned about the infamous "five (5) year" rule and U.S. estate taxes and potential creditors.

This memorandum is intended to provide you with an overview of the U.S. Tax Regime of Non-Resident Aliens; the manner in which a Non-Resident may be deemed a U.S. Resident for U.S. Income Tax purposes; and provide a specific analysis of the rules applicable to U.S. Taxation related to Foreign Situs Irrevocable Discretionary Trust (the "Trust").

We will prepare, but not finalize the Pre-Immigration Trust and implement the findings and recommendations in this memorandum once you have reviewed the same with your U.S. Certified Public Accountant and foreign law firm(s).

We have discussed the creation of a Foreign Situs Irrevocable Discretionary Trust (**"Trust"**) established by your relatives effective as of a certain date, who are Non-Resident Aliens, for the benefit of your children, who are, or may become U.S. Residents in the future, with you acting solely as Trust Protector. It is important that relatives have no expectations of receiving funds from you (or any repayment) for establishing the Trust, except as otherwise noted below and applicable Section 671 Regulations, or they may be deemed "straw persons" and you may be deemed the Grantor of the Trust for purposes of Section 679.

To be addressed is whether a Panamanian or other foreign situs Foundation could be used provided we amend its rules and regulations so that it becomes a Hybrid entity and deemed a trust for U.S. Taxation purposes, but we still await additional information from you regarding the prior formation documentation of the foundation or other Trusts or entities.

After the Trust is established effective as of a certain date, <u>you will transfer certain foreign assets to the Trust by way of sale at fair market value in exchange for a Private Annuity and you will elect out of the so-called Installment Sale Treatment in the effective year of the sale.</u>

At the time of the proposed sale to the Trust, you are/were a Non-Resident Alien and continued to maintain that status until all assets held by you and that you wish to transfer are in fact transferred to the

Trust. Any sale of assets to the Trust after you become a U.S. Resident may be subject to U.S. Taxation unless you clearly demonstrate your intent to transfer and full relinquishment of rights and interest therein beforehand.

As Trust Protector, together with a Foreign Trust Company, you will not have the power to name yourself as a Beneficiary of the Trust nor have any retained interest in the assets transferred to the Trust nor the Trust, and you will only be receiving funds from the Trust by way of the payments made to you pursuant to the Private Annuity Agreement.

Last but not least, at the time of the sale of assets to the Trust you will/were not be in bankruptcy or contemplating bankruptcy in the U.S. nor will you have any outstanding Judgments against you in the U.S. or had any Judgments reasonably foreseeable in the near future. You will of course consult with local foreign counsel as to the possible non U.S. tax consequences of the proposed sale of assets to the Trust as of the effective date of the Trust and ascertain that such sale would not render you insolvent at such time.

U.S. TAXATION OF NON-RESIDENT ALIENS

The rules governing United States taxation of non-resident aliens and most foreign corporations are set forth below for your benefit and information.

In summary, the United States taxes only:

1. the income from any source connected to the conduct of a United States trade or business; and

2. all United States source income regardless of business connection of these taxpayers.

Implementations of those rules, however, has become increasingly more complex.

The United State scheme of taxation of nonresident aliens and foreign corporations is more easily understood by your Certified Public Accountant(s) making the following inquiries:

1. Determine whether you, the individual, or any entity in which you have an ownership interest, meets the definition of nonresident alien or foreign corporation as of a specified date. (This is important because you frequently travel to the U.S. and may be deemed a U.S. resident for U.S. Federal Income Tax purposes and not even be aware of this.)

2. Determine whether the individual or corporation is engaged in a trade or business in the United State and has any "effectively connected" income from any source. (This is important because you or your companies may already be deemed engaged in a U.S. trade or business as a result of having exclusive agents throughout the U.S.)

3. Even if there is no United State trade or business, determine whether the individual has any United States source income that may be subject to U.S. Federal income taxation; and

4. Consult the separate taxation provisions for nonbusiness (United States source) income, which is subject to a flat tax of 30% without deductions for costs of deriving that income, and business income, which is subject to the graduated rate structure in place for domestic taxpayers after an allowance for certain deductions.

5. Confirm that the U.S. attribution rules do not apply to your relatives, that the sale is a bona-fide arm's length transaction at fair market value and that the relatives are not mere "intermediate transferors or nominee/disregarded grantors".

Of course, it is important to note that a tax treaty in effect between the United States and the country in which the foreign taxpayer resides may override these statutory rules.

As indicated above, the United States taxes the following two types of income of nonresident aliens:

1. Income from all sources effectively connected to a United States trade or business ("business income"); and

2. United States source income not connected with business.

The source of income rules, combined with the provisions for determining the connection of income to a United States trade or business, reflect judgments concerning the appropriate occasions to tax business transactions.

Business income is taxed at the graduated rates applied to domestic individual taxpayers (United States citizens and resident aliens), with an allowance for certain expenses incurred in producing the income.

United States source income not connected with the business is taxed at the flat rate of 30% without allowances for costs of producing that income.

Obligations under treaties between the United States and the country of residence of the foreign taxpayer may alter the following:

1. The source rules;

2. The instances in which income may be deemed connected to a United States trade or business;

3. The flat rate of tax imposed on U.S. source income not connected with a United States business.

The scheme of taxation for foreign corporations is identical to that for nonresident alien individuals. In addition, special rules govern the income, deductions and distributions of branch operations of foreign corporations.

There is an exception to the general rule of non-taxation of capital gains of foreign taxpayers (not engaged in a United States trade or business) for certain dispositions of United States real property interests. Gain or loss derived on a sale of a United States real property interest by a nonresident alien or foreign corporation is treated as effectively connected with a United States trade or business (even if the taxpayer is not engaged in a business). Consequently, unless a non-recognition provisions applies, those gains are taxed at the graduated rates applicable to the ordinary income (not capital gain) of domestic taxpayers. The gains and losses may also be combined with other United States real property income and deductions. Nonresident aliens may be subject to an alternative minimum tax on net real property gain.

In general, a United States real property interest includes:

1. Any interest in real property located in the United States or the Virgin Islands; and

2. Any equity (not debt) interest in any domestic corporation which is a United States Real Property Holding Corporation.

A corporation is a United States Real Property Holding Corporation if the fair market value of its United States real property interest is at least 50% of the combined fair market value of the corporation's United States real property interests, its real property located outside the United States, and its trade or business assets. A United States real property interest does not include a less-than-5% interest in stock of a corporation whose shares are regularly traded on an established securities market. Certain other interests are also exempted.

The United States tax due on disposition of a United States real property interest by a foreign taxpayer is frequently collected by the purchaser/transferee who is obligated under Section 1445 to withhold a tax of 15% of the amount realized by the foreign transferor. However, the foreign taxpayer may opt for filing a "reduced withholding" certificate with the IRS if the gain to be realized from the sale is anticipated to be less than said 15% withholding amount.

US RESIDENCY STATUS

A non- resident alien becomes a United States resident for U.S. income taxation only if and when the criteria of either the lawful permanent resident (green card) test or the substantial presence tests are satisfied as of a certain time.

Satisfaction of either result in United States resident classification, otherwise nonresident alien status typically continues.

A non-resident alien satisfies the green card test if a lawful permanent resident of the United States is obtained at any time during the calendar year. An individual is so classified if: (1) accorded the privilege of residing permanently in the United States under the immigration laws; and (2) that status has not been revoked (and has not been administratively or judicially determined to have been abandoned). Beware, there may be an "Exit Tax" upon such revocation and/or abandonment.

A non-resident alien may also be a resident due to the substantial presence test. This test is automatically satisfied if the alien is present in the United States for 183 days or more during the current calendar year.

The substantial presence test can also be satisfied if the alien spends less than 183 days in the United States during the current year. This occurs for those aliens "…who repeatedly spend significant amounts of time in the United States…"

Whether a non-resident alien, over a period of years, satisfied these criteria is determined by a formula, weighted toward the current taxable year. The criteria are deemed satisfied if application of the formula equals or exceeds 183 days. The formula equals the sum of: (1) days present during the current calendar year; (2) one-third of the days present during the preceding year; and (3) one-sixth of the days present during the second preceding year.

The substantial presence test is subject to a number of exceptions. The first arises where the individual is present in the United States for less than 183 days during the current year but application of the weighted formula (due to presence in the two preceding years) equals or exceeds 183 days. For this exception to apply, it must also be established that for the current year the alien has a (1) tax home in a foreign country; and (2) closer connection to that country than to the United States.

For this purpose, an individual's tax home is considered located at the individual's regular or principal (if more than one regular) place of business. If there is no regular or principal place of business, the tax home is the regular place of abode in a real and substantial sense.

Correspondingly, an individual is considered as having a closer connection to a foreign country than to the United Sates if more significant contacts are maintained with the foreign country than the United Sates. In determining whether more significant contacts have been maintained with a foreign country, the regulations provide that facts and circumstances to be considered include, but are not limited to, the following:

1. Location of an individual's permanent home;
2. Location of an individual's family;
3. Location of personal belongings, such as automobiles, furniture, clothing, and jewelry owned by an individual and family;
4. Location of social, political, cultural, or religious organizations with which an individual has current membership;
5. Location where an individual conducts routine personal banking activities;
6. Location where an individual conducts business activities (other than those that constitute the individual's tax home);
7. Jurisdiction in which an individual holds a driver's license;
8. Jurisdiction in which an individual votes;
9. Country of residence designated by an individual on forms and documents;
10. Types of official forms and documents filed by an individual, such as form 1078 (Certificate of Alien Claiming Residence in United States), Form W-8, or Form W-9.

US TAX CONSEQUENCES OF BECOMING A U.S. RESIDENT

We understand that as of the effective date of the trust you were not a U.S. resident.

Once a non-resident alien becomes a U.S. resident, he or she will become subject to worldwide U.S. income taxation.

If he or she is also domiciled in the U.S., then he or she will also be subject to the U.S. estate and gift tax on worldwide assets.

This means that interest income from all your foreign bank accounts and investment accounts will be subject to U.S. income taxation, as well as any and all compensation earned and gains realized by you directly or indirectly.

Earnings from any foreign holding or operating company may also be subject to U.S. taxation even though not distributed under the deemed dividend distribution rules applicable to so-called controlled foreign corporations and foreign personal holding company rules.

In the case at hand, we are discussing the establishment of a foreign situs irrevocable discretionary trust by your relatives (the foreign grantor) effective as of a certain date for the benefit of your children (the beneficiaries) with you acting as trust protector.

The Foreign Grantor has no retained powers, dominion or control that would cause the Grantor to be treated as the owner of the property held in Trust.

Generally, a Grantor is taxed on income arising from property gratuitously transferred in Trust to the extent the Grantor is treated as the owner of the Trust. Section 671 of the Internal Revenue Code (IRC or Code); and Regulation Section 1.671-2(e)(i).

A person who creates a trust but makes no gratuitous transfer to the trust is not treated as the owner of any portion of the trust under Code Section 671 - 677 or 679. This includes a person who funds a trust with an amount that is directly reimbursed to such person within a reasonable period of time and who makes no other transfers to the trust that constitutes gratuitous transfer. Reg. Section 1.671-2(e). Though not treated as the owner, such person may nevertheless continue to be defined as a Trust Grantor for reporting purposed. Id. Such would the case with your Relatives under the proposed structure.

For purposes of taxing the Grantor, the Grantor typically must retain substantial dominion or control over the Trust. Reg. Section 1.671-2(b). Even so, Code Section 679 provides an exception resulting in income taxation despite complete relinquishment of dominion and control. Code Section 679(a). But even then, non-resident Grantors are generally taxed only on U.S. source, fixed and determinable income or income effectively connected with a U.S. trade or business. See also Code Section 871(a)(2).

In the case at hand, the Foreign Grantor will establish the Foreign Situs Irrevocable Discretionary Trust with only a nominal amount which will be reimbursed within a reasonable time. You will then sell only certain foreign assets to the Trust at fair-market value in exchange for a Private Annuity, opting out of the installment sales treatment at the time of sale. As such, the Trust will hold no assets generating U.S. source income. Thus, the Foreign Grantor should have no U.S. Income Tax exposure under Code Section 679, except as noted below.

At the time that Trust is created the only beneficiaries will be your children who at the effective date of the Trust were not U.S. residents. However, it is anticipated that said children after the effective date of the Trust, may become U.S. Residents in the near future.

The law is clear that if within five (5) years after a transfer of any property to a foreign trust created by a United States Grantor, beneficiaries become United States person, a United States beneficiary exists and Code Section 679 applies for that year. Code Section 679(c)(3). However, in the case at hand, even though we may have a change in residency status of your children, there does not exist the pre-requisite of a U.S. Grantor. As such, Code Section 679 should not be triggered at such time. But in the worst case scenario, the application of Section 679 may not bring about a material negative result as it will yield you from the "throw-back rules". Moreover, the sale to the Trust of the Promissory Note to be received from the sale of your business will be deemed a completed transaction prior to your move, electing out of the installment sale treatment, with no unrealized appreciation per se according to your CPA, in that the

Promissory Note will have the applicable Federal Rate of Interest and the imputed interest rate on the Private Annuity will be set forth and incorporated therein by applicable IRS tables.

The trust beneficiaries (your children) may become subject to taxation in the future, if and when they become U.S. residents, but only to the extent of income earned by the Trust, with possible interest on accumulation of income, if any. Code Section 668, but not on corpus or assets transferred to the Trust. Code Section 652 and 662. This is discussed below.

The Foreign Situs Irrevocable Discretionary Trust will most likely be classified as a Complex Trust for U.S. Income Tax purposes and the U.S. Trust Beneficiaries would only be taxed on 2 different tiers of distributions, if applicable.

Under the first tier, the U.S. beneficiaries must include in his or her income all amounts of Trust income required to be distributed currently under the terms of the Trust. Code Section 662(a)(2). However, as a Foreign Situs Irrevocable Discretionary Trust, no part of the Trust income will be required to be distributed currently to any U.S. beneficiary and thus would result in no U.S. income taxation to the U.S. beneficiaries under the first tier.

Under the second tier, there is inclusion for U.S. Income Tax purposes of other amounts properly paid, credited, or required to be distributed. Code Section 662(a)(2). Here again, the discretionary nature of the Foreign Situs Irrevocable Discretionary Trust will control and no amounts should be paid out pursuant to the provisions of the Trust. We will of course address these Complex Trust rules with your CPA and request his review.

Once we receive your financial information/documentation and discuss the nature of how your business holdings are structured abroad, we can determine whether any part of the Control Foreign Corporation rules, and other similar rules, will be applicable once your children become U.S. Residents. This may require some degree of restructuring to make sure you fall within the one exception provided under the Control Foreign Corporation rules for foreign corporations actually engaged in a trade or business in their jurisdiction of incorporation. We will address this issue in detail with your CPA once he receives your financial information and we have a complete and correct understanding of your existing corporate ownership structure. Here again, it is important to note that your children, a discretionary beneficiary(ies) of the Trust, are not deemed to have a “present” beneficial interest in the Trust and they may not even be subject to FBAR reporting obligations.

EXCLUSION OF TRUST ASSETS FROM GROSS ESTATE

Not only are the assets of the Trust excluded from your estate, but the Trust has been carefully drafted so that the beneficial interest of each Beneficiary and the powers granted to such Beneficiary will not cause inclusion of the trust assets in the Beneficiary's gross estate. The following conclusions are written from the standpoint of the Family Discretionary Trust, specifically.

1. Inasmuch as you are not the Grantor of the Trust, the several provisions in the Code relating to "retained powers" are inapplicable. Sections 671 – 677, and 679.

2. Because the assets are owned by and titled in the name of the Trust rather than in the name of the Beneficiary, the "interest" of a Beneficiary in the trust assets is not "beneficially owned" by the Beneficiary and hence is not includable in your estate under Code Section 2033.

3. Code Section 2035 expressly excludes from its application "any bona fide sale for an adequate and full consideration in money or money's worth." In the case of the proposed sale by you of certain assets to the Trust, the Trust will pay an amount equal to the fair market value of the assets transferred. The Trust payment will be in the form of a "private annuity:" that is, an unsecured promise by the Trust to pay the transferor a certain amount annually for the rest of your life. The amount will be calculated according to the tables published by the IRS.

4. Section 2036 similarly excludes from its application "a bona fide sale for an adequate and full consideration in money or money's worth." Accordingly, since the overall estate plan contemplates you making no other transfer to the trust unless by way of a bona fide sale for an adequate and full consideration in money or money's worth, Section 2036 is inapplicable.

5. Similarly, Section 2037 excludes from its application any transfer "in case of a bona fide sale for an adequate and full consideration in money or money's worth." Thus, Section 2037 is not applicable.

6. Similarly, Section 2038 excludes from its application any transfer "in case of a bona fide sale of an adequate and full consideration in money or money's worth." Thus, Section 2038 is not applicable.

7. Because each Beneficiary's power of appointment is specifically structured to avoid being classified as a "general" power of appointment, Code Section 2041 does not apply. The regulations of Section 2041 provide that a power to invade "which is limited by an ascertainable standard relating to the health, education, support, or maintenance of a decedent is…not general power of appointment. The individual power of a Beneficiary to withdraw trust principal is limited by language specifically authorized under these regulations and will thus not cause inclusion of the trust assets in the estate of the Beneficiary.

8. We do not envision the trust owning any life insurance on your life or the life of any Beneficiary; and in any event, all "incidents of ownership" over any such policy will be exercised only by a co-Trustee and not by you or the Beneficiary in any individual or fiduciary capacity. Accordingly, Section 2042 does not apply.

9. Inasmuch as each Beneficiary may be acting as co-Trustee under the Trust, their administrative powers, including their respective right to appoint additional and successor Trustees, as well as their right to remove any corporate Trustee, do not add to their authority with respect to the Trust assets. Thus none of these administrative powers will cause inclusion of the trust assets in the estate of Beneficiary. Such would also be the case if there be appointed Trust Protectors. The role of trust protector is a function that carries out enumerated administrative and strategic purposes generally not reserved to the trustee, settlor, or beneficiaries. There is no mandate that the trust protector actually "protect" the trust. The name itself could be anything and has no inherent meaning.

   To help interpret the intricacies of the trust protector's role, commentators look to the variety of statutory and case law that exists in the United States regarding "trust advisors," although there seems to be some question about how similar the roles of trust protectors and trust advisors are. Also, there is international common law jurisprudence that can be used for reference purposes, as the use of trust protectors is common practice in foreign jurisdictions.

   Notwithstanding the theoretical application of Section 679, specifically Section 1-169-1(c)(5) (Private Annuity), there would be no material adverse income tax consequences according to your CPA's calculations and projections as there is no "principal" purpose of income tax avoidance in this estate planning and asset protection plan.

Disclaimer: This presentation does not constitute a legal opinion and as such should not be relied upon without first consulting with a US tax attorney experienced in the field of pre-immigration tax planning. The materials presented herein constitute a compilation of research materials from numerous previously published articles, commentaries and presentations by respected authors on the topic, which are readily available on-line, and as such credit is given herein for their contributions to the field of pre-immigration tax planning.

Sources: American Bar Association - A Brief Introduction to Pre-Immigration Tax Planning, et., al.