

# Nuts & Bolts of Cross Border Tax Issues

Central Arizona Estate Planning Council  
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Presented by:  
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Attorney at Law

## Overview

### What is an International Tax Practice?

Historically

Today (in some cases)

The Ideal International Tax Practice

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## Overview

### Canada & Mexico

Canadian RRSP's & RRIF's (Rev Proc 2014-55)

Mexican Retirement Plans

The Mexican Land Trust (Rev Rul 2013-14)

Estate Planning

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Overview

**Foreign Bank Account Report**

FBAR

Form 114

Criminal and Civil Sanctions

Surface Transportation Act of 2015 (new deadlines)

Overview

**Form 8938 (a/k/a the Super FBAR)**

Statement of Specified Foreign  
Financial Assets

Broader than an FBAR (generally)

Different Thresholds

Overview

**FATCA**

Foreign Account Tax Compliance Act (March 2010)

Mexican Inter Governmental Agreement (IGA)

Canadian Inter Governmental Agreement (IGA)

**FATCA**

**FACTA – continued**

**Uncompensated Use of Trust Property**

Loans are Distributions

U.S. Settlor Presumes U.S. Beneficiary

30% Withholding Tax for FFI's and NFFE's

**Form 8938- Stmt of Foreign Financial Assets**

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**Foreign Investment – United States**

- Direct investment
- Corporate investment
- Partnership/LLC investment
- Trust investment

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**Foreign Investment – United States**

**Direct Investment**

Amount invested            \$3,000,000

Anticipated gain            \$500,000

Estate tax exposure        \$1,121,800

Anticipated tax on LT gain    \$73,343

cover the risk with an insurance policy

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**Foreign Investment – United States**

Corporate Investment

Amount invested	\$3,000,000
Anticipated gain	\$500,000
Estate tax exposure	NONE
Anticipated tax on LT gain	\$170,000

Leonardo Braune Intercorp Group

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**Foreign Investment – United States**

Offshore Partnership/LLC

Amount invested	\$3,000,000
Anticipated gain	\$500,000
Estate tax exposure	???
Anticipated tax on LT gain	\$73,343

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**Foreign Investment – United States**

Investment With a Foreign Trust

Amount invested	\$3,000,000
Anticipated gain	\$500,000
Estate tax exposure	NONE
Anticipated tax on LT gain	\$99,035

Caution: U.S. beneficiaries require careful planning

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**Foreign Investment - United States**

**Don't Forget To Phone Home**

Mexican Tax Consequences

Canadian Tax Consequences

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**Moving to the U.S.**

**Residency for Income Tax Purposes**

- U.S. Citizen
- Permanent Resident Status  
a/k/a – The Green Card
- Substantial Presence Test  
a/k/a 183 day rule

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**Moving to the U.S.**

**Consequences of Residency for Income Tax Purposes**

- Worldwide Taxation
- Worldwide Reporting

**Requires U.S. Accounting Principles,  
Information on the Family Business,  
Bank Secrecy Act Issues**

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**Moving to the U.S.**

**Foreign Assets:**

- Moving to the U.S. with built in gains
- PFIC surcharges (foreign mutual funds etc)
- CFCs and imputed income (family businesses)
- Risk of double taxation

***This highlights the need for a U.S. friendly portfolio***

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**Moving to the U.S.**

**Residency for Gift & Estate Tax Purposes**

The concept of domicile

- Living in the United States with no present intent to leave
- The United States as your permanent home

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**Moving to the U.S.**

**Consequences of Residency for Gift & Estate Tax Purposes**

- Worldwide Taxation
- Worldwide Reporting

**This Includes Marital Deduction Issues And The Need For Foreign Valuations**

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**U.S. Estate Taxes & Foreign Nationals**

**The U.S. Transfer Tax System**

Gift Taxes

Estate Taxes

Generation Skipping Transfer Taxes

Treaty Modifications

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**U.S. Estate Taxes & Foreign Nationals**

**Gift Taxes**

**Rules for U.S. Citizens**

\$14,000 annual exemption – per donee

\$5,430,000 lifetime exemption

Marital deduction for U.S. citizen donee

Treaty Modifications

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**U.S. Estate Taxes & Foreign Nationals**

**Gift Taxes:**

**Rules for NON U.S. Citizens**

Domicile issues apply

\$147,000 annual gift tax marital deduction  
per non-U.S. citizen donee spouse

Joint accounts can trigger gift tax issues

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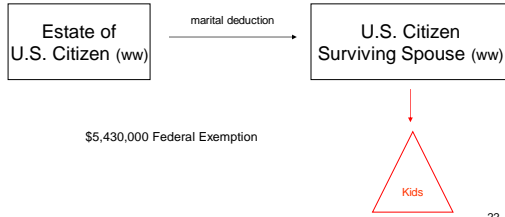
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### U.S. Estate Taxes & Foreign Nationals

#### Estate Taxes:

The U.S. system for U.S. citizens



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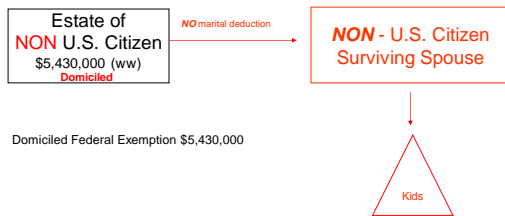
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### U.S. Estate Taxes & Foreign Nationals

#### Estate Taxes:

The U.S. system for **NON** U.S. citizens



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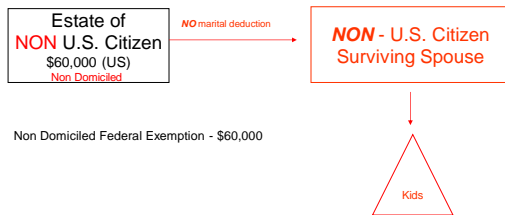
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### U.S. Estate Taxes & Foreign Nationals

#### Estate Taxes:

The U.S. system for **NON** U.S. citizens



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**U.S. Estate Taxes & Foreign Nationals**

*The Situs Rules*

Important For Non Residents

Estate Tax Situs v. Gift Tax Situs

*Discussion Point – Gift of Money*

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**U.S. Estate Taxes & Foreign Nationals**

**Estate Taxes:**

The QDOT

*The Qualified Domestic Trust*

Treaty Modification

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**U.S. Tax Treatment of Foreign Gifts & Inheritances**

**Foreign Gifts and Inheritances:**

Reporting obligations

v.

Tax liability

***There are opportunities for significant tax savings but the rules are complex and the penalties are harsh***

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**Special Issues**

- U.S Treatment of Foreign Prenuptial Agreements
- U.S. Treatment of Foreign Retirement Plans

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**Tax Consequences of a U.S. Green Card**

**The Green Card**

- U.S. income tax
- U.S. gift tax
- U.S. estate tax
- The risk of an “exit tax”

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**Tax Consequences of a U.S. Green Card**

**Relinquishment of The Green Card**

- IRC 877A – The Exit Tax
- Permanent Residence Status 8/15 years
- \$2,000,000 Net Worth
- Transfers Back to U.S. Residents (new proposed regs)

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**Foreign Tax Credits**

**Foreign Tax Credits**

**Sourcing Issues**

Interest Income

Dividend Income

Capital Gains/Loss

Exchange Gain/Loss

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**Brazil – United States**

**Foreign Tax Credits**

**Sourcing Issues**

**865(a) GENERAL RULE.**— Except as otherwise provided in this section, income from the sale of personal property—

**865(a)(1)** by a United States resident shall be sourced in the United States, or.....

*Intl Multi Food Corp. v. Comm’r*, 108 T.C. 579 (1997).

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**International Charitable Giving**

**Charitable Giving:**

Maximize your U.S. tax deduction

Treaties may help

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**Tax Treaties**

**The Need For Treaties**

Income Tax Treaty

Estate Tax Treaty

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**Tax Treaties**

**Income Tax Treaty**

Sale of stock or intangibles. Gain from the sale of stock in a foreign corporation or from the sale of intangibles described in IRC Sec. 865(d)(2) that is U.S. source income may be treated as foreign source income if the income would be treated as foreign source income under a U.S. treaty obligation and the taxpayer elects to apply the treaty source rule (IRC Sec. 865(h)(2)(A) and Treas. Reg. § 301.9100-8).

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**Current Developments**

**Voluntary Disclosure**

OVDP

Streamline

Reasonable Cause in the FAQ's

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