



# DON'T TAX YOURSELF

A Publication of Bowditch & Dewey's Estate, Financial & Tax Planning Group

## Estate Planning for a Non-U.S. Citizen Spouse

BY EILEEN Y. LEE BREGER • JUNE 22, 2018

There are special estate [tax planning](#) considerations when a non-U.S. citizen spouse is part of the picture. To be clear, a non-U.S. citizen spouse may be living in the U.S. and even hold a green card, but he or she does not have U.S. citizenship. The planning considerations are best illustrated with an example: husband is a U.S. citizen and wife is a permanent resident (a non-U.S. citizen).

### GIFTING

When gifting to his wife or transferring assets for planning purposes, the husband cannot take advantage of the unlimited gifting rule between married U.S. citizens. Instead, the husband is allowed a tax-free annual exclusion gift of \$152,000 (2018) to his wife.

### TRANSFERS AT DEATH

When the husband passes away, his estate is not entitled to the typical unlimited marital deduction against estate taxes on assets passing to his wife. Therefore, the husband's estate may be subject to an estate tax at his death if estate assets are in excess of his federal or Massachusetts estate tax exemption amount.

In order for such excess assets to qualify for the marital deduction, they have to be held in a "qualified domestic trust" or "QDOT" for short. A QDOT must have at least one U.S. citizen or domestic corporation as a trustee. If the assets held by the QDOT are below \$2 million, no more than 35% of assets can be held in non-U.S. real estate unless a bank or trust company is serving as a trustee. Similarly, if the QDOT holds more than \$2 million in assets, a bank or a trust company must be serving as a trustee, unless a non-corporate U.S. trustee can meet certain bond or letter of credit requirements.

Furthermore, the QDOT provisions must state that principal distributions give the U.S. trustee a right to withhold federal estate taxes on distributions to the wife. Thus, a QDOT allows the husband's estate to defer estate tax on assets passing to his wife.

Additionally, the QDOT prevents the wife from removing the assets from the U.S. and escaping estate taxes. If you or your spouse are a non-U.S. citizen, please contact Bowditch to discuss whether QDOT planning should be part of your [estate planning](#).