

Estate Planning Council of North Texas
March 20, 2024

Death And Taxes Across Borders: A multinational estate tax case study

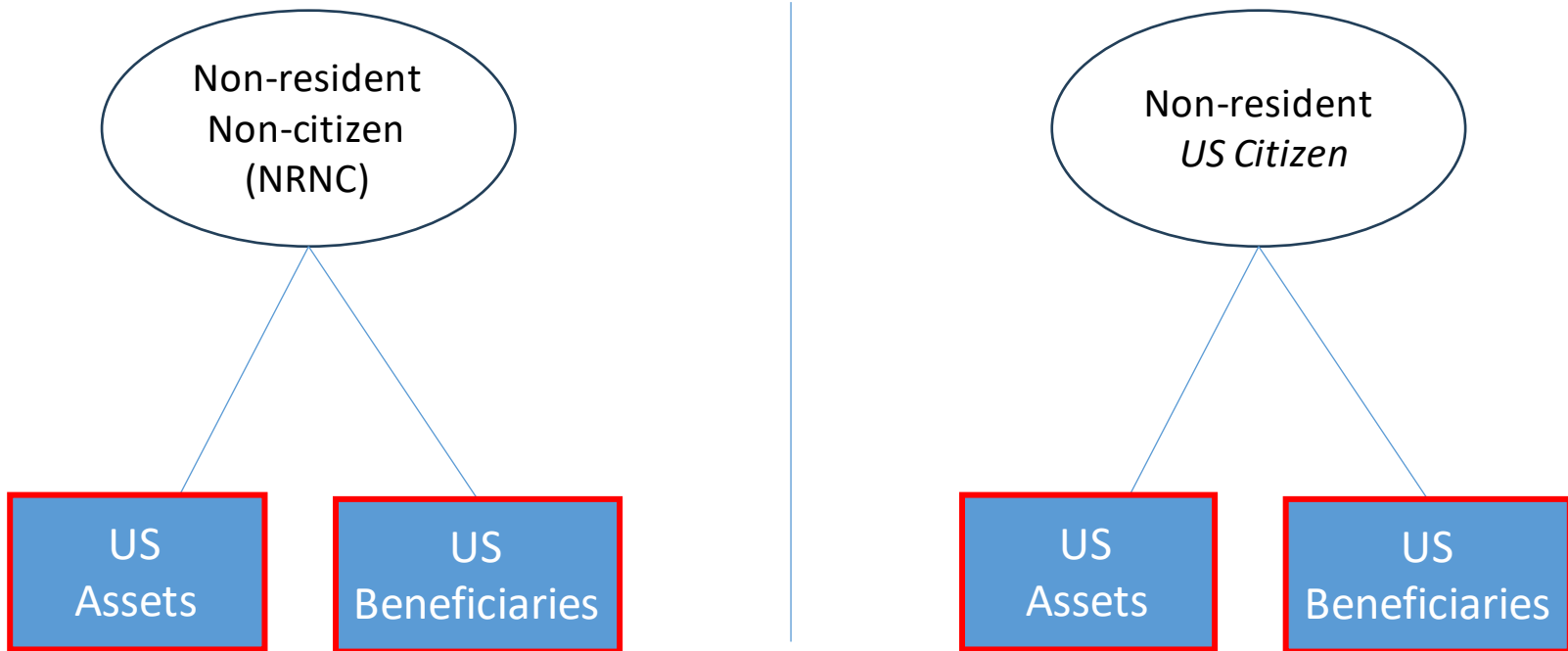
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Introduction

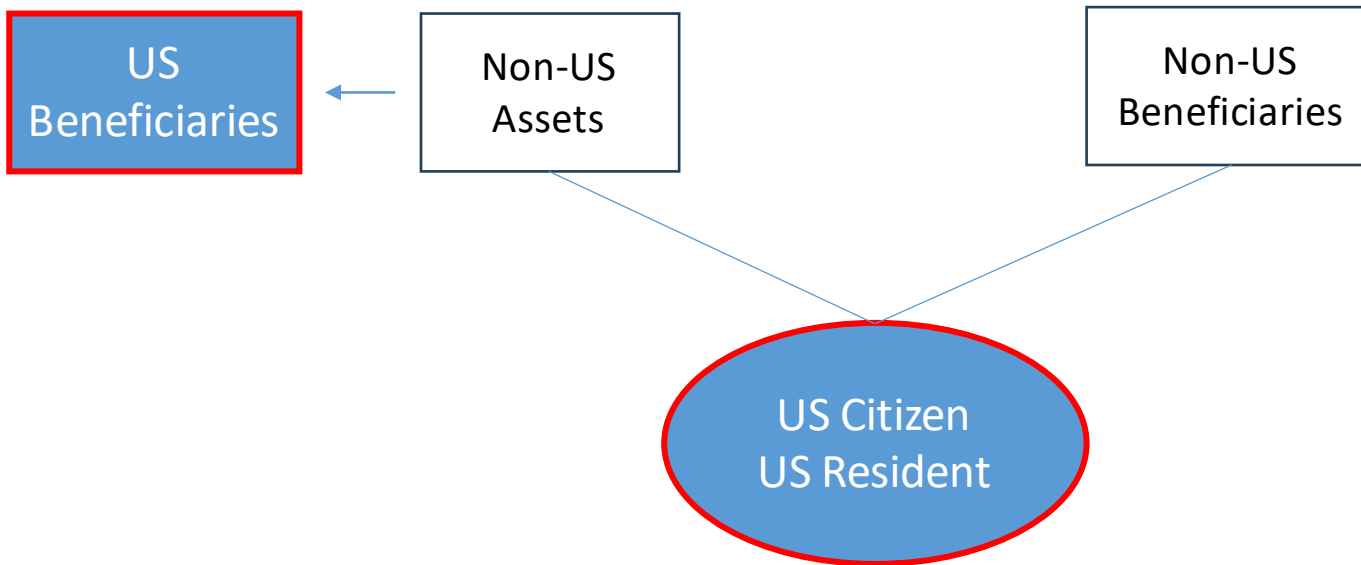
- **Globalization**
- **Jurisdictional Diversity**
- **Texas – Increasing Global Footprint**

Cross Border Probate – Inbound



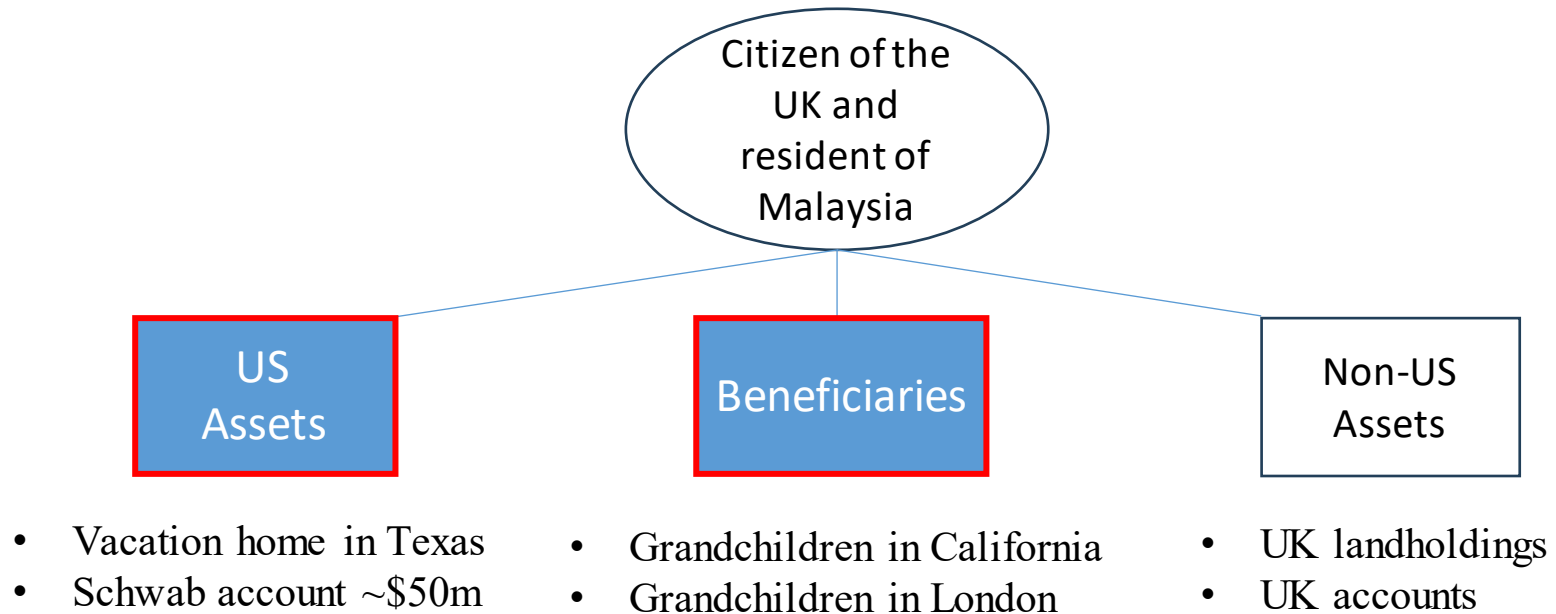
- US Estate Tax
- US Succession Issues
- Foreign Probate
- US Compliance Obligations

Cross Border Probate – Outbound



- Foreign Transfer Taxes
- Foreign Succession Issues

Case Study – Charles



US Estate Tax – *Key Concepts*

- **Exemption for NRNCs**
- **Domicile**
- **US Situs Assets**
- **Treaty Exceptions**

\$13.61 million exemption for USCs

[Example real estate listing]

\$60,000 Exemption for NRNCs

[Example real estate listing]

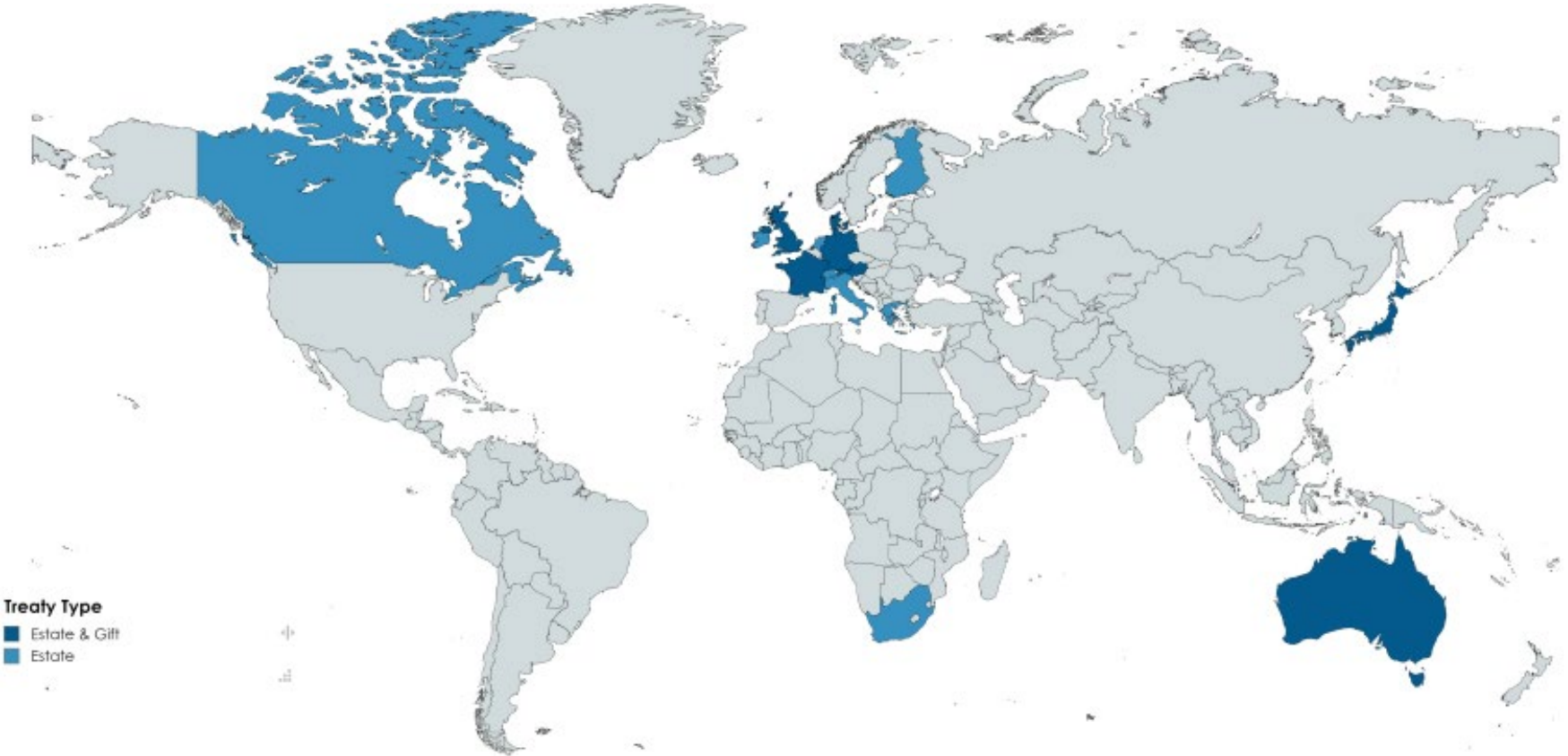
Domicile

- **Not the same as residency!**
- **Taxpayer's intent is key**
- **Facts & circumstances**

Definition of US Situs Assets

	Gift Tax	Estate Tax
US Real Property	✓	✓
Tangible Personal Property	✓ <i>(only if located in US)</i>	✓ <i>(only if located in US)</i>
Intangible Personal Property	×	✓ <i>(but only certain types)</i>

US Estate and Gift Tax Treaties



Case Study – Charles

US Assets

- Vacation home in Texas
- Schwab account ~\$50m

Issue #1: Payment of US Estate Tax

Considerations

Charles' Domicile

Situs of Assets

Estate/Gift Tax Treaty

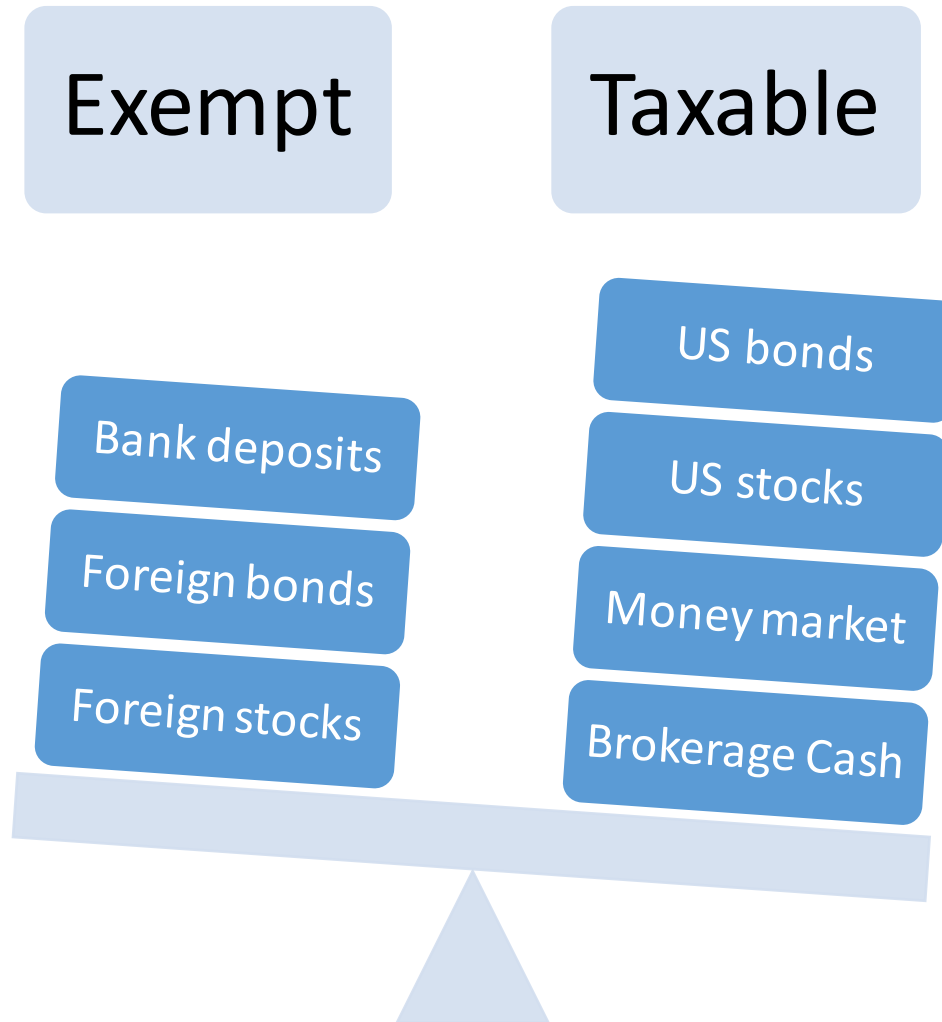
Practical Steps

Domicile

- **Charles did not spend significant time in the US**
- **Residency card in Malaysia**
- **Likely not domiciled in US**
- **Document the analysis!**

- **Foreign real estate & accounts – No**
- **Texas vacation home – Yes**
- **Schwab account – Maybe!**

Situs Analysis for US Brokerage Account



Treaty Strategy

- **Confirm Treaty Applicability**
- **Selection of Jurisdiction of Domicile**

Payment of US Taxes – *Possible Options*

- **Direct Payment to IRS**
- **Loan**
- **Distribution of Non-US Assets**
- **Form 4768 Extension - Issues**

Case Study – Charles

US
Assets

- Vacation home in Texas
- Schwab account ~\$50m

<u>Issue #2: Distribution of Assets</u>	<u>Considerations</u>
	Non-US Proceeding
	US Proceeding
	Transfer Certificate

Does a Non-US Person Need a US Will?

	Two Will Approach
Pros	<ol style="list-style-type: none">1. Greater certainty regarding US probate
Cons	<ol style="list-style-type: none">1. Possibility of conflicting provisions2. Cost of preparation3. Negligible additional cost (ancillary probate vs. direct probate)

Case Study – Charles

US
Assets

- Vacation home in Texas
- Schwab account ~\$50m

<u>Issue #2: Distribution of Assets</u>	<u>Considerations</u>
	Non-US Proceeding
	US Proceeding
	Transfer Certificate

Transfer Certificates

Treas. Reg. § 20.6325-1(a)

“A transfer certificate is a certificate permitting the transfer of property of a nonresident decedent without liability...Corporations, transfer agents of domestic corporations, transfer agents of foreign corporations (except as to shares held in the name of a nonresident decedent not a citizen of the United States), banks, trust companies, or other custodians in actual or constructive possession of property, of such a decedent **can insure avoidance of liability for taxes and penalties only by demanding and receiving transfer certificates** before transfer of property of nonresident decedents.”

Process to Obtain a Transfer Certificate

	US Citizen - Nonresident	Non-Citizen - Nonresident
Estate Tax Return Required	<ol style="list-style-type: none"> 1. First 3 pages of Form 706 2. List of Decedent's US Assets (with values) 3. Proof of Death + Proof of Citizenship 	<ol style="list-style-type: none"> 1. Form 706-NA
No Estate Tax Return Required	<ol style="list-style-type: none"> 1. Proof of Death + Proof of Citizenship 2. Affidavit re: All Assets (with values) 3. Filed Estate Inventory 4. Relevant Tax Return (inheritance/income/wealth) 5. Decedent's Will <p><i>Statement to Explain Unavailable Documents</i></p>	<ol style="list-style-type: none"> 1. Decedent's Will 2. Death/Inheritance Tax Return 3. Death Certificate 4. Affidavit re: Decedent's: <ol style="list-style-type: none"> i. Date/Country of Birth ii. Naturalization Status (if any) iii. List of Decedent's US Assets (with values) iv. Citizenship/Residence at Death v. Accounts Used for US Trade/Business <p><i>Statement to Explain Unavailable Documents</i></p>

US Probate vs. Transfer Certificate

	US Probate	Transfer Certificate
Pros	<ol style="list-style-type: none">1. More control over timing2. Streamline probate (possibly)	<ol style="list-style-type: none">1. No jurisdictional uncertainty2. US income tax issues3. Relatively succinct procedure4. Enhanced privacy5. General creditors not notified
Cons	<ol style="list-style-type: none">1. US income tax issues2. Public US proceeding<ol style="list-style-type: none">i. Creditorsii. Privacy3. Additional legal filings4. Additional legal fees5. Uncertainty – ad litem/jurisdiction	<ol style="list-style-type: none">1. Lack of IRS transparency2. Less control over timing3. Not guaranteed assets will be distributed

Case Study – Charles



- Grandchildren in California

<u>US Beneficiaries of Non-US Estate</u>	<u>Considerations</u>
	US Compliance at Death
	Ongoing US Compliance
	Non-US Compliance

US Compliance Hit List for Heirs

- **Form 3520 Report of Foreign Gift/Inheritance**
- **FinCEN Form 114 Report of Foreign Bank Accounts (FBAR)**
- **Form 8938 Report of Foreign Financial Assets**
- **Other forms as applicable for underlying assets (e.g., foreign corporations, trusts, etc.)**

Pre-Death Planning Pointers– *Inbound*

- **US will**
- **US accounts**
- **Divest US assets**
- **Plan for Liquidity Issues**

Pre-Death Planning Pointers– *Outbound*

- **Non-US will**
- **Payment of Foreign Transfer Taxes**
- **Find Good Non-US Advisers**

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