

MANAGEMENT OF INVESTMENT ASSET BASIS FOR ARRIVING AND DEPARTING ALIENS - - TIME TO REEXAMINE THE ASSUMPTION THAT THE U.S. IS THE “HIGH TAX” JURISDICTION?

Christopher S. Armstrong

Law Offices of Christopher S. Armstrong,

A Professional Corporation

Two Embarcadero Center, Suite 1650

San Francisco, CA 94111

Telephone: (415) 788-5010

Facsimile: (415) 788-5013

Email: chris@rmstrnglaw.com

Website: www.rmstrnglaw.com

I. THE IMPACT OF A “CARRYOVER” SYSTEM

A. No “Fresh Start” On Arrival.

Absent effective advance planning, an alien who becomes resident in the United States for federal income tax purposes brings with him his historic basis in whatever assets he owns and is subject to income tax on the whole or any part of pre-arrival gain which is “realized and recognized” during his U.S. residence. In other words, there is no “fresh start” basis accorded a new resident upon arrival simply by reason of acquisition of residence.

B. No Exit Tax on Departure.

1. General Rule; PFIC Exception. Consistent with its policy of no “fresh start” basis upon arrival, the United States does not impose an “exit tax” upon the act of departure except in the limited instances in which the departing alien owns the shares of a passive foreign investment company (“PFIC”) whose shares are deemed sold at the moment of termination of residency. *See* Prop. Reg. § 1.1291-3(b) and further discussion, *infra*.

2. *Limited Continuing Post Departure Liability.* The departing alien who has acquired the status of “lawful permanent resident” (i.e., “green card holder”) and has possessed such status for all or parts of 8 out of 15 years as determined at the moment of departure is subject to continuing liability for U.S. federal income tax on U.S. source income for a period of ten (10) years following the termination of his residency. *See* IRC § 877 which was modified in 1996 to close certain “loopholes” and to cover the departing long term resident as well as the renouncing citizen. The typical migrant executive intending a temporary stay in the United States would not acquire an immigrant visa which is a necessary prerequisite to becoming a long term resident, and in consequence the much publicized provisions of IRC § 877 governing “expatriation” would be irrelevant to him. *Cf.* IRC § 877(e).

3. *Limits on “Round Trip” Planning.* The absence of a meaningful exit tax might tempt some persons to plan for the avoidance of tax on investment asset gain by creating a short break in U.S. residence during which time dispositions are effected and gains realized. Such a strategy will work with regard to non-U.S. situs assets, but not U.S. situs assets disposed of during the break period, if the alien has been resident in the United States for at least 3 years prior to departing, and if he resumes residence in the United States before the close of the third calendar year beginning after the termination date of the initial residency period. *See* Treas. Reg. § 301.7701(b)-5 (imposing IRC § 877 expatriation tax rules in respect of the temporary absence without regard to whether tax avoidance motivated the brief absence).

C. A Survey of Current Rates Imposed Upon Capital Profits.

1. *Federal Rates Max at 15%.* The taxation of “capital” is one of the most hotly debated aspects of U.S. fiscal policy with the rules changing with each shift in the control of the Presidency and of the House and Senate Committees responsible for tax legislation. Changes in the taxation of long term capital gains realized with respect to most species of investment property and of dividends paid in respect of common stock and true preferred stock effected by the Jobs and Growth Tax Relief Reconciliation Act

of 2003 have brought the maximum federal rate down to 15% as from January 1, 2003 in respect of dividends and May 6, 2003 in respect of capital gains realized. Ironically, U.S. residents now pay a substantially lower rate of federal tax on U.S. source dividends than non-resident aliens (save for those who are eligible for, and are prepared to claim, reduced treaty rates).

2. *Don't Forget "State" Tax.* Because the U.S. is a federal system, a pre-arrival analysis of potential exposure to tax on post-arrival dispositions should take into account state level taxes. At present, nine states impose no taxes on capital gains and eight states impose no taxes on dividend income, but fiscal policy runs the gamut among the fifty separate states and the District of Columbia with some states such as California taxing capital gains at a rate of 9.3% and actively considering the possibility of a rate as high as 11% which is non-deductible for the purpose of calculating federal tax if the taxpayer is subject to "alternative minimum tax".

II. PRE-ARRIVAL BASIS MANAGEMENT

A. What Type of Tax Regime Are You Departing?

1. *Is Acceleration the Right Choice?.* Given the current capital friendly tax policy in the United States, acceleration of recognition before becoming a U.S. resident is no longer necessarily the right choice. The trend of many high tax jurisdictions outside of the United States to impose general or limited exit taxes on their own departing residents may, however, foreclose for some the decision whether or not to accelerate as it will happen automatically.

2. *Many Jurisdictions Impose Exit Taxes.* Although most countries in the world do not yet impose an exit tax, two-thirds of the countries in respect of which reports were submitted on the topic of "Tax Treatment of Transfer of Residence By Individuals" at the International Fiscal Association's 2002 Oslo Congress do presently treat emigration as a taxable event which will result in the deemed disposition of some or all of the properties belonging to the departing alien. *See De Broe, General Report, The*

Tax Treatment of Transfer of Residence by Individuals, § 2.3.1, *Cahiers* Vol. LXXXVIIIb (2002). Not surprisingly those jurisdictions which already have adopted “exit taxes” are high tax jurisdictions and are also jurisdictions likely to send executives to the United States.

3. *The Four Quadrants.* Most aliens departing for the United States will fall into one of the four following quadrants:

(1) Emigrating from a high tax jurisdiction which imposes a general exit tax with an option to defer until realization;

(2) Emigrating from a high tax jurisdiction which imposes a limited exit tax with an option to defer until realization;

(3) Emigrating from a high tax jurisdiction which imposes no exit tax;

(4) Emigrating from a low or no tax jurisdiction (which *a fortiori* would impose no exit tax).

Those aliens found in the fourth quadrant will benefit to a certainty from affirmative acts to accelerate recognition of gain in advance of becoming U.S. residents, but individuals found in the first two quadrants will potentially have a greater need to manage basis in advance of arrival in the United States than those in either the third or fourth quadrant. Numerous European jurisdictions now claim a continuing right to tax departed residents for three to five years and some such as Spain, Italy and Germany aim parts of their extended tax liability laws directly at persons who move to tax haven countries or low tax jurisdictions. Emigrants classified in the third quadrant should consider the possibility of an interim residence in a tax friendly jurisdiction subsequent to departure from their current place of residence and in advance of acquiring residence in the United States..

B. Why Is Basis Step-Up Highly Desirable (In Some Cases)?

1. *No Credit for the Exit Tax.* The arriving alien who has been subjected to an exit tax, but who has not taken affirmative steps to create a “realization event” for

U.S. basis step-up purposes faces the threat of double taxation if, after acquiring U.S. residence, he disposes of an asset in respect of which a tax has already been levied by his former place of residence on a deemed disposition basis. The United States does not regard an exit tax as an income tax, and (even if it did) the income generated by the disposition of an asset while an individual is still a non-resident alien will be characterized as a foreign source profit. *See* IRC § 865(a)(2). *See also, Vacovec, Beutler, United States Branch Report, § 1.2.2.3.2, The Tax Treatment of Transfer of Residence by Individuals, Cahiers Vol. LXXXVIIb (2002).*

2. *Looking to Treaties for Help With Deferred Taxes.* A limited exit tax which applies only to certain large shareholdings or to shareholdings within the jurisdiction from which an alien has emigrated can generate double taxation even where a deferral election is made by the departing alien. IRC § 865(a)(1) will source the income from the deferred disposition in the United States if realization occurs after acquisition of U.S. residence with resulting loss of qualification for a foreign tax credit under IRC § 901 as limited by IRC § 904 unless a bilateral treaty provision cedes primary taxing jurisdiction to the foreign jurisdiction in the event of a realization event and in consequence allows a credit in respect of the foreign tax. *Cf.* Protocol, U.S.-Australia Income Tax Treaty, Article 9 (amending Article 13 effective May 12, 2003) under which Australia, consistent with IRC § 865(a), cedes to the United States exclusive jurisdiction to tax profits realized by a U.S. resident who is a departed Australian in respect of property for which deferral has been elected in lieu of the Australian general exit tax.

3. *Prior Gifts Produce Multiple Carryovers of Basis.* The implications of carryover basis are particularly acute in respect of appreciated property which has been acquired by a resident alien pursuant to a living gift. It will be necessary in such circumstances to determine the basis of the donor family member in such asset. *See* IRC § 1015. The burden is on the taxpayer to prove basis. *See* Tax Court Rule 142(a) and *Vitale v. Commissioner*, T.C. Memo 1999-272. If basis cannot be proven to the

satisfaction of the IRS or a court, the result can be that a very substantial portion of the proceeds derived from a disposition is treated as taxable gain.

4. *Is There an Easy “Fix” ... Proceed with Caution.* Various strategies are frequently suggested for avoiding the tax liabilities implicit in arrival with carryover basis assets, but several of these strategies either (a) lack substance and may later be construed as fraud or (b) raise perils greater than the disease they seek to cure or (c) involve the purchase at a material price of products for which the arriving alien does not otherwise have need and which may entail a loss of investment flexibility. An example of (a) would be a putative gift to the “trusted friend” which is nothing more than a disguised custodial arrangement. An example of (b) would be a true gift to a lineal relative who graciously accepts the gift and thereafter acts in a manner not anticipated by the donor or who becomes a victim of creditors or a disgruntled spouse or who dies and leaves his estate to persons other than the donor. An example of (c) is life insurance which so long as it is IRC § 7702 compliant does produce certain income tax advantages, but purchasers of American-style life insurance need to understand that, unlike the European product with which they might be familiar, U.S. life insurance in order to be IRC § 7702 compliant must be “mortality driven” which means that the purchaser of the policy must pay for a death benefit which, depending upon his circumstances, might be either expensive or unnecessary.

C. Methods Available to Accelerate Recognition and Mitigate U.S. Tax Costs.

1. *Actual Sale . . . Avoid Shams.* An actual sale of an asset in advance of residence acquisition is the most obvious method for stepping up basis, but the sale must be real. Attempts by real estate developers to squeeze profit out of undeveloped land at capital gains rates by first selling the land to a controlled corporation which would thereafter undertake subdivision, site preparation and retail sale have been reconstrued by the Internal Revenue Service as tax-free reorganizations subject to IRC § 351. *See Harbour Properties, Inc. v. Commissioner*, T.C. Memo 1973-134; and Bittker and

Eustice, *Federal Income Taxation Of Corporations And Shareholders*, ¶3.14[1] (7th Edition 2000). *See also*, *Higgins v. Smith*, 308 U.S. 473 (1940) (sham transaction between shareholder and his controlled corporation to create a tax loss sale disregarded).

2. *Purposefully Defective IRC § 351 Exchange*. A purposefully defective “IRC § 351 exchange” whereunder appreciated property is exchanged for shares of stock and “boot” (or just “boot”, a term which includes non-qualified preferred stock) will create a recognition event and step up the basis both of the property received by the corporation and of the shares received by the contributing shareholder in exchange. *See* Bittker and Eustice, *supra*, ¶3.14[2]. If lack of control by the transferring parties is the premise upon which recognition treatment is sought, the shares attributable to non-transferring parties should be beneficially owned by such parties and not part of a prearrangement which will result in control reverting to the transferring party. *See* Bittker and Eustice, *supra*, ¶3.09[2] (“Litigation abounds over the requirement that the transferors control the transferee corporation immediately after the exchange.”) In all events, an exit strategy from such corporation will have to be thought out in advance given the potential for the corporation’s becoming either a CFC or a PFIC upon the transferor’s acquisition of U.S. residence.

3. *“Check-the-Box” to Effect Deemed Liquidation*. A “check-the-box” election in respect of a foreign corporation not on the list of *per se* corporations for “check-the-box” purposes, if properly made and timely submitted, can effect a liquidation and a contemporaneous step-up in the basis of the assets of the corporation which post-election is treated as belonging either to a partnership, if it has multiple members, or to a disregarded entity for federal income tax purposes if it has but a single member. *See* Treas. Reg. § 301.7701-3(g)(1)(ii). Such election for federal tax purposes, if it has no impact on the treatment of the foreign corporation under its own home country laws, makes this approach particularly useful in respect of both (a) holdings of corporate stock that will be subject to the imposition of an exit tax by the jurisdiction from which the alien is departing and (b) holdings of corporate stock that will not be subject to either an

exit tax or a deferred tax by the jurisdiction from which the alien is departing but which would be subject to a high tax by such jurisdiction if an actual disposition were to occur in advance of loss of residence status. It is also a means to avoid the consequences of PFIC status if the corporation is closely held and its income or assets are predominately “passive”.

4. *Installment Sale . . . Deemed Election “Out”*. In the case of real property, an installment sale may prove an efficient means to avoid U.S. taxes following residence acquisition in those cases where the alien cannot find a purchaser capable of paying the full purchase price in advance of seller’s acquisition of U.S. residence provided that the jurisdiction from which the alien is departing, or in which the real property is situated, does not impose a tax on capital gains or, if it does, permits deferred recognition in a manner analogous to IRC § 453. The Internal Revenue Service has ruled that an installment sale by a non-resident alien in advance of acquisition of U.S. residence will be deemed accompanied by an affirmative election not to have the deferral provisions of IRC § 453(a) apply with the result that the capital gains realized in respect of payments received as a resident are not subject to federal income tax. The interest portion of such payments would, however, be subject to tax at ordinary rates. *See IRS Private Letter Ruling 9412008* (December 20, 1993).

5. *Trust Distribution . . . Actual Election to Recognize*. A distribution of property in kind to a beneficiary by a non-grantor trust produces recognition of gain by such trust and a step-up in basis to fair market value for the beneficiary recipient if the trust makes an affirmative election to recognize gain on all distributions for the taxable year in which the distribution occurs. *See IRC § 643(e)*. A foreign trust does not become a United States resident for sourcing purposes by reason of making such election, and in consequence the election creates no federal tax liability for the trust. Because such a trust would not file either a Form 1041 or a Form 1040NR, the election would have to be made by filing an election statement with the IRS Philadelphia Service Center. *See Bissell, Aliens Who Invest in the United States Through a Low-Tax Jurisdiction*, 944 T.M. at

V.C.2.b(10) and Treas. Reg. § 301.9100-6T(h) (which does not speak to the circumstance of a foreign trust which wishes to make the election but which does not otherwise have an obligation to file). If a trust fails to make the election to recognize gain, a distribution of assets in kind will produce a carryover basis for the beneficiary.

6. *Tax Treaty Elections.* The Canada-United States Income Tax Treaty and, more recently, the Australia-United States Income Tax Treaty, in recognition of the Canadian and Australian policies of levying a general exit tax on departing aliens provide that an alien arriving from either such jurisdictions as a new United States resident may elect under treaty to be regarded as having made an actual disposition of the assets subject to exit tax in advance of acquiring U.S. residence and in consequence to have acquired a stepped-up basis for U.S. federal income tax purposes. The election under the Australia-U.S. Income Tax Treaty became available by protocol only as of May 12, 2003. The Canadian election which has been permitted since August 1984 is the subject of renegotiation. Provisions not yet made public, but which will have effect as from September 18, 2000, will reportedly broaden the scope of coverage for gains which are the subject of an exit tax.

D. The Special Problem of PFICs.

1. *Definition of a PFIC.* A PFIC is a foreign corporation 75% of whose gross income is passive or 50% of whose assets produce passive income. The percentage of the corporation's stock owned by U.S. persons is irrelevant except to the extent that substantial U.S. ownership may cause the corporation to be a controlled foreign corporation ("CFC") with respect to the newly arrived resident rather than a PFIC in which event the CFC provisions (which accelerate income recognition through the mechanism of deemed year end dividends) apply to the exclusion of the PFIC provisions. *See* IRC § 1297(e). PFIC status may result in a higher tax rate (than would otherwise apply) and material surcharges being imposed upon "excess distributions" received from the PFIC. *See* IRC § 1291(b) and (c). In addition, it will cause all gains derived from the disposition of PFIC stock to be taxed at the highest ordinary rates (now more than double

the long term capital gains rate) and to be subjected to a surcharge. *See* Prop. Reg. § 1.1291-3(a). Income derived from a disposition which is allocated to a “PrePFIC year” will escape surcharge but will nonetheless be taxed as ordinary income. *See* Prop. Reg. § 1.1291-2(e)(2).

2. *The Perils of PFIC Status for Migrants.* The implications of PFIC ownership for a migrant executive intending temporary residence in the United States can be devastating for the following reasons:

(1) Many newly arrived residents will be unaware of the PFIC rules and of the fact that they own the stock of a company which will become a PFIC on arrival;

(2) the option of a “QEF” election which will result in the resident alien being obliged to take into income each year his pro rata share of the earnings and profits of the PFIC regardless of whether they are distributed is unlikely to be timely filed by the resident alien and, even if he is aware of the election, it may be impractical for him to comply with its requirements; and

(3) when the alien departs the United States, he will be deemed to have disposed of his PFIC shares at fair market value on the last day of his residency and to have realized a gain equal to the difference between such fair market value and his historic basis.

See Prop Reg § 1.1291-3(b)(2) which is intended to thwart the planning device known as an “offshore cash roll-up fund”. Commentators agree that IRC § 877(e)(3) (special basis adjustment for departing long term residents) does not avail to mitigate the deemed disposition tax imposed upon departure under the PFIC rules. In consequence, Prop. Reg. § 1.1291-3(b)(2) is widely characterized as a “trap”. *See e.g.*, Kuntz & Peroni, *U.S. International Taxation* ¶B2.08[3][c] (2001 Cum Supp No. 3); Vacovec, Beutler, *supra*, § 1.2.1.1.1. Because the deemed disposition tax imposed by the PFIC proposed regulations is the functional equivalent of a departure tax which has been rejected several

times by Congress as inappropriate even in the cases of departing long term residents and renouncing citizens, questions exist regarding the validity of the regulation; but to date no court determination has been made. *See Bissell, supra*, 944 T.M. at VIII.D.1.

III. BASIS MANAGEMENT DURING U.S. RESIDENCE AND PRIOR TO DEPARTURE

A. Freezing and Deferral Techniques.

1. *Freezing.* Several legitimate techniques exist for the lock-in of a profit without triggering gain recognition pending departure. One freeze technique (involving an equity swap in respect of the stock of a U.S. corporation valued at US\$1 million) is described in detail in legislative history explaining the intentions of IRC § 877(d)(3) which tolls the running of the statutory period for continuing liability for tax on U.S. source realized gains whenever there is a substantial diminution of the risks of ownership through the use of puts, calls, short sales or “any other transaction”. Because the anti-expatriation provisions of IRC § 877 do not apply either to departing non-immigrant visa holders or to departing immigrant visa holders whose residence while in possession of a green card has been of short duration, the provisions of IRC § 877(d) and its explanatory legislative history become a *de facto* roadmap for such persons for the avoidance of realization where there is a concern to lock in profits.

2. *Deferrals.* Deferral techniques include the several sorts of investment which are also available to persons having no intention of departing the United States. Low yield growth stocks and IRC § 7702 compliant life insurance are examples.

B. Lifetime Gifts of Appreciated Assets.

1. *Gifts of Low Basis Property.* If an alien has acquired domicile for gift tax purposes either contemporaneous with his acquisition of residence for income tax purposes or subsequent thereto, he becomes eligible to make aggregate donations of up to \$1 million worth of property (which may include low basis property) to *bona fide* objects of his bounty who may be non-resident aliens and in consequence not liable for U.S.

federal income tax in respect of a disposition of the gifted assets post-donation. If an alien has acquired income tax residence but not domicile for gift tax purposes, he may make gifts of low basis intangible personal property unlimited in amount and without regard to situs for the purpose of shifting the incidents of income taxation upon realization of gain to a *bona fide* donee who has a more favorable tax status.

2. *Limitations on the Applicable Credit Amount for Domiciliaries.* When Congress enacted legislation in 2001 calling for the ultimate repeal in 2010 of the federal estate tax, it purposefully preserved the federal gift tax and limited the applicable exclusion amount to US\$1 million notwithstanding that future increases in the applicable exclusion amount for gifts at death are scheduled to rise to \$1,500,000 in 2004, to \$2 million in 2006 and to \$3,500,000 in 2009. One of the reasons offered by Congress for preserving the gift tax was the fear that the income tax system would be abused if there were no excise tax on lifetime donative transfers, offering as one example gifts of appreciated assets from a U.S. person to a non-U.S. person. *See* Stephens, Maxfield, Lind and Calfee, *Federal Estate And Gift Taxation* ¶9.02, n.1 (7th Ed, 2002 Cum. Supp.).

C. Death While Resident.

1. *Who is a Domiciliary.* An alien resident in the United States for federal income tax purposes is not necessarily domiciled for gift and estate tax purposes. A finding of “domicile”, unlike a finding of “substantial presence” for income tax purposes, requires a determination of subjective intent. Aliens who are residing in the United States on non-immigrant visas which have definitive termination dates and who have remained in compliance with the terms of such visas should not be deemed domiciled in the United States for federal estate tax purposes absent exceptional circumstances. *But cf. The Estate of Jack v. United States*, 54 Fed. Cl. 590 (Ct. Cl. 2002)(IRS wins right to try to prove at trial that a non-immigrant alien had subjective intentions in advance of decease inconsistent with his temporary visa status). Several new bilateral estate tax treaties expressly preclude acquisition of domicile by individuals who remain domiciled in their former jurisdiction under its law, and who have been

income tax residents of the United States for less than 7 years. *See e.g.*, United Kingdom - United States Estate and Gift Tax Treaty, Article 4(2).

2. *Basis Step-Up for Non-Domiciliaries.* A non-domiciled alien decedent is subject to estate tax only in respect of his U.S. situs assets. Nonetheless all of a non-domiciled alien decedent's assets which pass under a will, pursuant to the terms of a revocable trust or pursuant to the laws of intestacy will be eligible for an income tax free step-up in basis to fair market value at the date of decease. *See* IRC § 1014(b) and Rev. Rul. 84-139, 1984-2 C.B. 168; *but cf.* IRC § 1022 (as in effect for decedents dying after 12/31/2009 which will severely circumscribe income tax free basis step-up in the event estate tax fully repeals).

3. *Basis Step-Up for Domiciliaries.* The estate of an alien who has died domiciled in the United States is entitled to step-up in basis for a wider variety of transfers under § 1014(b) but the step-up comes at the cost of a 48% (effective 1/1/2004) excise tax on the worldwide taxable estate in excess of \$1,500,000 (effective 1/1/2004).

D. Where Are You Going When You Depart the United States?

Most departing U.S. residents will be taking up new residence in a jurisdiction which either

(1) is a high tax jurisdiction but grants a fresh start basis (*viz.* Australia, Canada and Denmark and in respect to special categories of assets, Austria, the Netherlands and New Zealand); or

(2) a high tax jurisdiction which does not grant fresh start basis; or

(3) a low or no tax jurisdiction.

Clearly, the departing alien headed for a jurisdiction in category (1) or (3) will have no incentive to realize gain in advance of departure from the United States unless economic circumstance compel it and an effective freeze technique is not available or special U.S. tax concessions shelter the gain (*e.g.*, the limited exclusion of gain from the sale of a principal residence permitted by IRC § 121). By contrast, the departing alien who is

about to become resident in a country described by category (2) might benefit from a purposeful acceleration of recognition in respect of certain gains accrued both before and during his term of U.S. residence, particularly if he is resident in a political subdivision of the United States which does not impose its own income tax on capital profits (of which there are nine including Florida, Texas and Washington State).

Table of Contents

	Page
I. THE IMPACT OF A “CARRYOVER” SYSTEM	1
A. No “Fresh Start” On Arrival.....	1
B. No Exit Tax on Departure.	1
1. General Rule; PFIC Exception.....	1
2. Limited Continuing Post Departure Liability	2
3. Limits on “Round Trip” Planning	2
C. A Survey of Current Rates Imposed Upon Capital Profits.	2
1. Federal Rates Max at 15%	2
2. Don’t Forget “State” Tax	3
II. PRE-ARRIVAL BASIS MANAGEMENT	3
A. What Type of Tax Regime Are You Departing?	3
1. Is Acceleration the Right Choice?.....	3
2. Many Jurisdictions Impose Exit Taxes	3
3. The Four Quadrants.....	4
B. Why Is Basis Step-Up Highly Desirable (In Some Cases)?	4
1. No Credit for the Exit Tax	4
2. Looking to Treaties for Help With Deferred Taxes	5
3. Prior Gifts Produce Multiple Carryovers of Basis	5
4. Is There an Easy “Fix” ... Proceed with Caution	6
C. Methods Available to Accelerate Recognition and Mitigate <u>U.S.</u> Tax Costs.....	6
1. Actual Sale . . . Avoid Shams.....	6
2. Purposefully Defective IRC § 351 Exchange	7
3. “Check-the-Box” to Effect Deemed Liquidation.....	7
4. Installment Sale . . . Deemed Election “Out”.....	8
5. Trust Distribution . . . Actual Election to Recognize.....	8
6. Tax Treaty Elections	9
D. The Special Problem of PFICs.	9
1. Definition of a PFIC.....	9

2.	The Perils of PFIC Status for Migrants.....	10
III.	BASIS MANAGEMENT DURING U.S. RESIDENCE AND PRIOR TO DEPARTURE.....	11
A.	Freezing and Deferral Techniques.	11
1.	Freezing.....	11
2.	Deferrals.....	11
B.	Lifetime Gifts of Appreciated Assets.....	11
1.	Gifting Low Basis Property.....	11
2.	Limitations on the Applicable Credit Amount for Domiciliaries	12
C.	Death While Resident.....	12
1.	Who is a Domiciliary.....	12
2.	Basis Step-Up for Non-Domiciliaries.....	13
3.	Basis Step-Up for Domiciliaries.....	13
D.	Where Are You Going When You Depart the United States?.....	13

This article should not be construed as legal advice or opinion, since legal opinions are only given to clients in response to inquiries involving specific facts.