

# Tax Implications of Having a Non-US Spouse on Cross Border Estate Planning

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If you have a spouse who is not a citizen of the US, then you should be aware of the US estate tax law that may put a significant tax bill on your cross-border estate planning. For example, if you are a citizen of the US, but married to a wife who is a citizen of Canada, then the estate tax implications will be very different from having a wife who is a citizen of the US.

Since most people would like to leave the bulk of their estate to the spouse upon death, usually, the property is handed over without any further income tax implications under the "[unlimited marital deduction](#)" provision of the United States Federal Estate and Gift Tax Law. Under this provision, no estate tax is imposed on the transferred property by the IRS. Also, when both are a citizen of the US, there are no gift taxes on inter-spousal gifts.

However, when one of them is a non-citizen of the US, the IRS has different rules. Any lifetime gifts between spouses, where one of them is a non-citizen, are subjected to tax, at the rate of up to 40%. This rule will still hold true if the non-citizen spouse becomes a green card holder and become a resident of the US. From the IRS point of view, since the non-citizen spouse often has modest social ties in the US, they can move to their home country upon receiving the estate of their other half to avoid US gift and estate taxes.

Moreover, while there is a lifetime exemption of US\$ 5,250,000 without the availability of the marital deduction provision for the non-citizen spouse, once they die, the exempted estate tax will again become subject to the US estate taxes. This is because the IRS only allows US\$ 60,000 worth of lifetime exemption for the non-citizen spouse as they are not considered "[domiciled](#)" in the US.

However, couples in this situation can take some measures to reduce the (up to) 40% estate tax. The first option would be to that the non-citizen wife becomes a US citizen before the death of the husband. The second option is to establish a particular kind of trust known as a [Qualified Domestic Trust](#) (QDOT), which enables the surviving non-citizen wife to defer the estate tax until her death. The surviving spouse will be paid a predefined annual income from the QDOT which will buy her some time to become a US citizen. A further benefit of establishing a QDOT is that it helps meet the test of a [spousal trust](#) under the Canadian Income Tax Act.

There is another third option which requires certain prerequisites. If those prerequisites are met, the couple may take advantage of the US-Canada tax treaty which has a particular clause for marital credit. However, if the marital credit option is picked, the couple cannot enjoy the benefits of the QDOT deferral.