Estate Planning Treaties

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Mark Merric, JD, MT, CPA In addition to being an attorney, Mark Merric holds a Masters of Taxation and he is a Certified Public Accountant, as well as an Adjunct Professor at the University of Colorado–Denver Masters of Taxation, and a lecturer/ speaker at Fudan University China, ranked in the top three Chinese Universities. He has also been an adjunct professor at the University of Denver's, Law School Graduate Tax Program for 20 years. He has been quoted in Forbes, Investor's News, On the Street, the Denver Business Journal, Oil and Gas Investor, and the Sioux Falls Business Journal. Mr. Merric is an international speaker presenting at over 600 seminars, and he has published over 80 national articles. Mr. Merric is the manager of the Law Firm of Mark Merric, LLC and a manager for the Alliance of International Legal Counselor, LLC. Prior to practicing as an attorney, Mark Merric developed a strong business background working for a Final Four Accounting Firm and Fortune 500 Company. He is honored to have spoken multiple times at the following distinguished estate planning seminars:

- Regis Campfield's Notre Dame Tax and Estate Planning Institute;
- Lonnie McGee's Southern California Tax and Estate Planning Forum; and the
- Chicago Bar Association.

He is also a co-author of the following three treatises:

- The Asset Protection Planning Guide: A State-of-the-Art Approach to Integrated Estate Planning, Commerce Clearing House (CCH) treatise, first edition;
- Asset Protection Strategies, American Bar Association (two chapters); and
- Asset Protection Strategies Volume II, American Bar Association published Apr. 2005 (MM responsible for 1/5 of the text).

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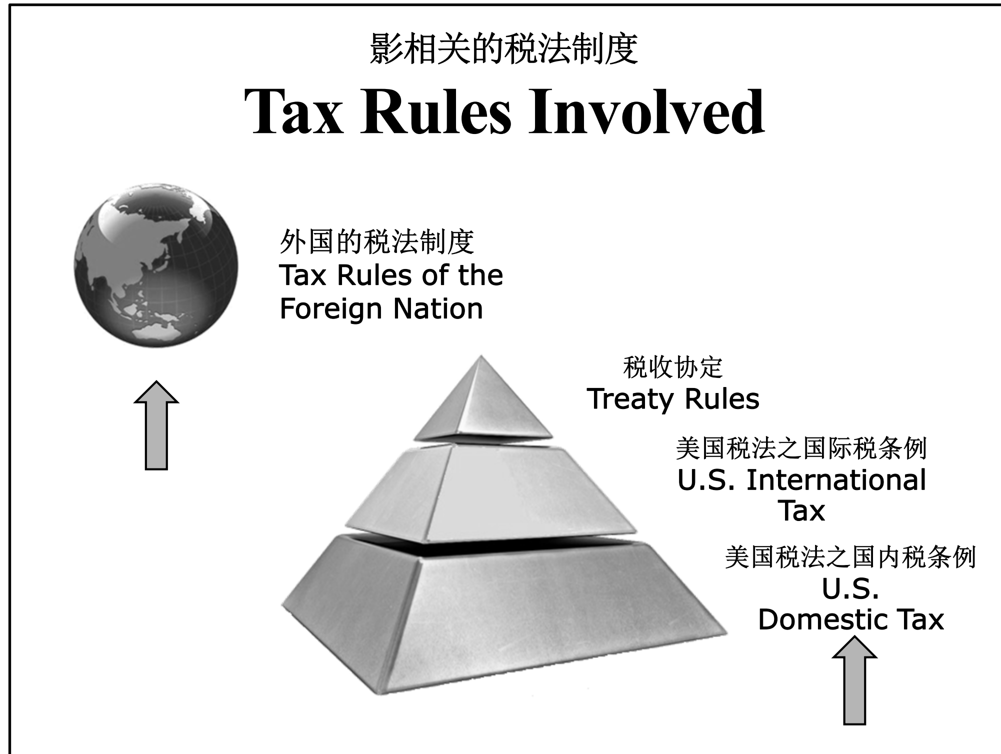

A. Overview

1. Pyramid of International Tax Planning

With international taxation, there are four parts to the pyramid of tax planning. First, there is the U.S. domestic or estate planning rule. From this we then look to see if the rule is modified by the international provisions of the tax code. For estate tax we look to IRC §§ 2100's for gift tax we look to IRC §§ 2600. After this, we check to see if the U.S. has an estate tax treaty with the foreign nation. When reviewing the treaty, we are hoping that we might find a better rule than the rule under the IRC for a particular item as applied to our client. Finally, the fourth step in the analysis is how does the other nation treat the transaction.

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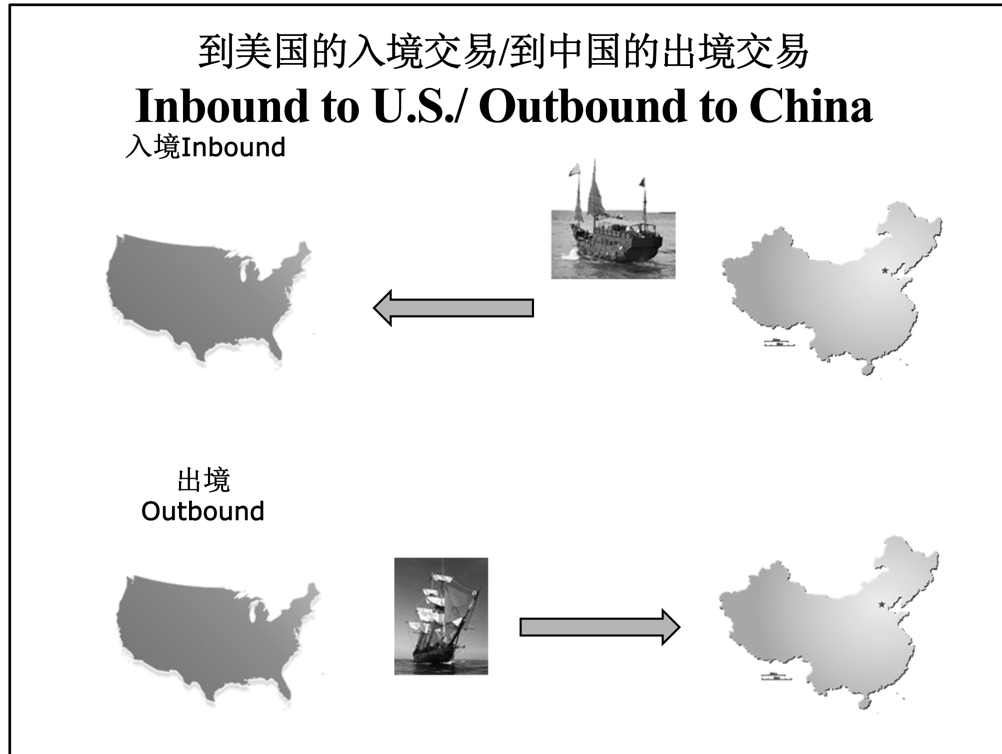

2. Inbound and Outbound Planning

The first step in an international transaction is to classify the party involved. Here, we are referring to an foreign individual based on domicile. As the individual is foreign and such individual owns property in the U.S., this is an inbound transaction.

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Foreign Tax Credit Under § 2014

- Code Section Division
  - Domestic 2000's
  - Foreign Modification 2100's
  - Domestic 2500's
  - Foreign Modification 2600's

- IRC § 2103 defines gross estate under IRC § 2031, but limited to property situated in U.S.
- IRC § 2102 – names two credits – prior taxable gifts; unified credit

3. <u>IRC § 2014 – Foreign Tax Credit</u>

IRC § 2014 provides a foreign tax credit against U.S. estates for tax paid to a foreign person. By reviewing the organization of the estate and gift tax code, one can determine generally when the IRC § 2014 foreign tax credit applies. The domestic IRC estate and gift provisions are found in the 2000's and 2500's. Conversely, the nonresident alien (foreign) provisions are found in 2100's and 2600's. As IRC § 2014 is within the domestic estate provisions, it is implying that this foreign tax credit is used in outbound estate tax planning.

This implication is confirmed when one reads the IRC international estate planning provisions. IRC § 2103 defines the gross estate as determined under IRC § 2031. However, IRC § 2103 limits the taxation to the "gross estate . . . situated in the U.S." Nontreaty credits for a nonresident alien are limited to a credit for prior taxable gifts and the unified credit (i.e. $13,000). This is confirmed by reviewing Form 706-NA and its instructions. Please note that the instructions add a credit for the Canadian marital deduction, which is treaty based.

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Significant Double Tax Issues

国际 Nation	遗产税和赠予税 Estate & Gift Tax	税率 Note
加拿大 Canada	在过世时征收所得税 Income Tax at Death	增值的50% 50% Gain
日本 Japan	Yes	55%
南韩 South Korea	Yes	50%
法国 France	Yes	45%
英国 United Kingdom	Yes	40%
美国 United States	Yes	40%
Most Industrial Nations	Yes	15% - 34%

- Most foreign countries do not have an estate tax FTC
- First step is to check estate tax treaties
- Second step is design structure so no or minimal U.S. estate tax

4. Industrial Nations Estate & Gift Tax Rates

As of the year 2019, the above chart depicts the industrial nations with the 5 highest estate tax. It also depicts Canada. However, Canada has moved to an income tax on the gain within the property. Other industrial nations, generally have an estate tax between 15% to 32%. Key industrial nations that to not have an estate tax are Australia, China, Israel, Mexico, Norway, and Sweden.

The next key point to note is when foreign nations imposes an estate tax, most nations do not have the equivalent of an IRC § 2104 foreign estate tax credit. Rather, with countries that have an estate tax treaty, there is a foreign tax credit contained within most of these treaties. So the first step in estate planning for the nonresident alien is to check the U.S. estate planning treaties. Second is to design the structure so no or minimal U.S. estate tax.

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Estate Tax Treaties						
Older						
1	Ireland	**Situs**	1949		X	
2	South Africa		1947	Protocol 1950	X	
3	Switzerland		1951		X	
4	Finland		1952		X	
5	Australia		1953		X	
6	Japan		1954		X	X
7	Italy		1955		X	
8	Greece		1950	Protocol 1964	X	
More Modern						
9	Netherlands	**Domicile**	1969		X	*
10	United Kingdom		1978		X	X
11	Austria		1982		X	X**
12	Denmark		1983		X	X
13	Germany		1980	Protocol 1998	X	X
14	France		1978	Protocol 2004	X	X
15	Canada	**Revoked But**	1961	**In the Income Tax Treaty**		
	Belgium		1954 Estate Tax Convention - Abandoned			
	Sweeden		1983 Estate, Inheritance, Gift - Terminated			
	* Some authors take the position that Art. 2(2) by mentioning transfer taxes, may well include gift taxes					
	** Australia repealed its gift tax; making the gift tax provisions irrelevant					

5. Estate Tax Treaties

I have broken the estate tax treaties into three separate groups:

(1) Situs based treaties, which are the older treaties;
(2) Domicile based treaties, which are the relatively newer treaties; and
(3) The Canadian treaty that gives a credit against Canada's income tax.

The first group are the older estate tax treaties that span from 1949 through a protocol signed 1964. Situs based treaties follow the IRC situs of asset approach to estate taxation. However, as with all treaties, the treaty may give the foreign individual a more favorable tax result. With situs treaties, only Japan has any provision for gift taxes. This means with all other situs treaty countries, the planner uses the code based principals for planning. For discussion purposes, we will use the Ireland treaty.

Domicile treaties provide treaty tiebreaker methods for determining the home nation of the taxpayer. The home nation has exclusive taxation except for items such as real estate in the other treaty nation or a place of business referred to as a permanent establishment. For discussion purposes, this outline will review the United Kingdom estate and gift tax treaty.

In 1972, Canada repealed its estate tax, and then taxed the appreciation of a decedent's assets at time of death under their income tax system. The 1995 U.S. Canada protocol modified the income tax treaty to address this issue.

Also, the U.S. no longer has estate tax treaties with Belgium and Sweden, as both of these countries no longer have an estate tax.

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Types of Property

- **Real Property - Immovable**

  Touch it, but cannot (or cannot easily move it)

- **Personal Property - Movable**

  Touch it and move it

- certificate represents a right

- **Intangible Property**

  Represents a value of something you cannot touch

  Defined definitely through out the tax code

  Very broad definition – for estate & gift planning

6. Types of Property

Before we discuss the situs of other assets, let's look at a layperson's definition of the types of property. This is going to be done at a 30,000 foot view in very general terms. In our analysis, there is primarily three types of property: real property; personal property; and intangible property. The earlier tax treaties use the terms immovable property and moveable property to refer to real and personal property respectively. In 1949 when the Ireland estate tax treaty was ratified, intangible property was not nearly as prevalent as it is today, but there were some commonly recognized types of intangibles such as patents, trademarks, copyrights, as well as goodwill.

For a very broad layperson's definition of real property, I would define it that you can touch it, but its hard to move. In the case of land, obviously, you cannot move it. However, if it is a smaller house, many times these can actually be moved although it is relatively expensive to move the house. Therefore, buildings stay in the real property category. Then you get the group of property that might be in the middle of being immovable or moveable, sometimes defined as "fixtures." For example, the plumbing you could remove from the building, but it would destroy parts of function of the building, so it retains its character as a "fixture" and is part of the building. But what about the water heater? In general if the personal property (which was the original classification of the water heater) becomes a component of the building it is classified as a fixture. Anyway, we will leave the fine details to the property attorneys as we just need some general guidelines for purposes of this outline.

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Personal property you can touch and move with reasonable effort. Conversely, intangible property is something you cannot touch. Since the late 1940's, there has been an evolution regarding situs on tangible property such as stock certificates and bond certificates where the certificates are tangible property, but they represent intangible rights.

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Situs Based Treaties

- Home Country based - Domicile, Citizen, or Residence (DCR)
  - Non-situs Country
- Assign the primary taxation based on situs
- Two different Tax Credits
  - General Credit - If non-situs (home) country also taxes the property based on domicile, citizenship, or residence
    - must provide a foreign tax credit
  - Apportioned Credit – both countries tax the property based on DCM – apportioned credit

B. Situs Based Treaty

This outline focuses on the most common situation with nonresident alien that own U.S. property. In this situation, there is what I call a "home country." This is the foreign country that is imposing an estate tax based on domicile, citizenship, or residency (DCR). The home country is the non-situs country for purposes of our analysis.

With a situs based treaty, we are referring to the situs country being the non-home country. In our examples, this is the U.S. If the non-situs country also taxes the property being taxed in the situs country, then the non-situs country must provide a foreign tax credit based on the estate taxes imposed by the situs country. I refer to this credit as a "general credit," some authors refer to this credit as a "primary credit."

But what happens if both countries assert home country status, meaning both tax world-wide assets based on DCR. In this cased there is an apportioned credit based on the fair market value of the property. I refer to this credit as an "apportioned credit." Some authors refer to this as a "secondary credit."

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Example

Grace O'Malley (1530-1603)

- Purchases a vacation home in Boston
- She forms a U.S. corporation, "Come and Get Me, Inc." that exports English goods to the U.S.
  - She capitalized Come and Get Me, Inc. with
    - Note payable to Grace - $ 100,000
    - Stock $ 100,000
  - Licensed her methods of operation to Ching Shih (郑氏)
- Born in 1530 she dies domiciled in Ireland in 1603
- Corp $ 700,000
- Vacation Home $ 250,000
- Note Receivable - $ 50,000
- Mortgage 250,000
- Royalty value from Ching Shih - $ 3 million

In order to illustrate the Irish situs based treaty, I will use an example of Grace O'Malley. She was born in Ireland and 1530 and died in 1603. She was in the honorable profession of being a pirate on the high seas. The following facts are fictitious and have problems with time lines, however, they make the example more interesting.

In order to escape the wrath of the United Kingdom, she came to Boston and purchased a vacation home for $250,000. (With a true time line, this is impossible, because Boston did not exist in the 1500's). Anyway, her U.S. advisor said to take out a recourse mortgage on the property, so that it would be worthless for estate purposes. From the first seminar, we learned that mortgages are not offset against the property (unless the mortgage is nonrecourse). At the same time, under the laws of Delaware, she formed the "Catch Me if You Can, Inc." corporation. She capitalized the corporation with $200,000 of which $100,000 was allocated to stock and $100,000 as a note payable to Grace. As she was quite a successful pirate, other pirates wished to learn her trade secrets. Therefore, she individually licensed her methods of operations under a royalty agreement to Ching Shih (郑氏). Again, ignore the historical time line as the pirate Ching Shih lived from 1775-1844).

At the time of Grace's death in 1603, her vacation home in the U.S. was still worth $250,000 and the outstanding mortgage was still $250,000. The value of Grace's U.S. corp. was now $700,000, including goodwill. The promissory note payable to Grace from her corporation had outstanding principal of $50,000. The royalty agreement with Ching Shih was worth $3 million, as she (Ching Shih) was a much more successful pirate than Grace having over 300 ships and 20,000 to 40,000 pirates under her command.

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Ireland 1949 Treaty

"WHEREAS a convention between the United States of America and Ireland for the avoidance of double taxation"

- Definitions of situs
- How is foreign tax credit computed

Article II

- **Definitions:**

  The terms "territory" when used in relation to one or the other Contracting Party means the United States or Ireland, as the context requires.

  - Territory means the nation involved
  - Contracting party and other – refer to the two nations

As an example of a situs based treaty, we will use Ireland, which is the earliest U.S. estate tax treaty still in effect.

1. Purpose

The Ireland treaty specifically states that its purpose is to avoid double taxation. Realize the Ireland treaty was the first U.S. estate tax treaty and was nations had implemented foreign tax credits into their domestic tax code. (Please remember, most foreign nations still do not have foreign tax credits in their tax code.) Therefore, we would expect to find two things in this tax treaty: (1) definitions of situs; and (2) a foreign tax credit computation.

2. Definitions

In the definitions, the estate tax treaty uses the terms "territory" and "contracting party." "Territory" means nation and "Contracting Party" and "Other Contracting Party" is referring to the two nations. In simplistic terms, to read a treaty, you usually need to substitute the names of the countries into the treaty to understand the meaning.

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Article III

- **Domicile:**

  whether a decedent [Nonresident] was domiciled in any part of the territory of one of the Contracting Parties [Ireland] at the time of his death shall be determined in accordance with the law in force in that territory.

  - One nation asserts DCR - General Credit
  - What if both laws conclude decedent is domiciled in that state? Apportionment Credit

- **Situs:**

  (a) [Real Property] Immovable property shall be deemed to be situated at the place where such property is located;

3. Article III

Article III of the Irish-U.S. estate tax treaty addresses both domicile and situs. Unfortunately, the definition of domicile is not really that helpful. It provides no test for domicile. Rather, it leaves this issue to the laws of each nation.

The normal or general result when a foreign individual owns U.S. assets is that the foreign nation imposes an estate tax based on domicile, citizenship, or residence and the U.S. imposes an estate tax based on situs. Under a situs treaty, the home foreign nation must give what this outline refers to as a "general foreign tax credit" for the U.S. tax paid.

However, what happens if both nations conclude the decedent is domiciled in their nations? If both nations tax an estate on world-wide assets this would result in double taxation. Naturally, this same result could happen with any non-treaty country. Situs treaties generally provide a second credit for this situation, which in these outlines is referred to as an "apportionment credit."

The next part of Article III addresses situs by defining the situs of most types of property. The terms "immovable property" and "moveable property" are used rather than "real and personal" property.

a. Immovable Property

Naturally, the situs of real estate is in the nation where it is located (i.e. situated).

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Article III

(b) [Personal Property] Tangible movable property

(other than such property for which specific provision is hereinafter made)

and bank or currency notes,
other forms of currency recognised as legal tender in the place of issue,

negotiable bills of exchange and negotiable promissory notes

shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death

b. Moveable Property – Personal Property

Working backwards in the above slide, personal property is sited by what I refer to as the under the bed rule, which means where it is located. Why I use the term "under the bed" is that for valuable assets, such asset would typically be hidden at the owner's residence – under the bed or somewhere else. Please note that this where located rule is different than siting assets to a person's residence (which is used many times in the international income tax context). Rather, this means where the tangible property is located, regardless of whether it is at the foreign person's residence or Aspen vacation home.

The Irish treaty basically states that tangible personal property, including cash, and negotiable promissory notes are sited where located – which usually will be under the client's bed or in a safety deposit box.

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Article III

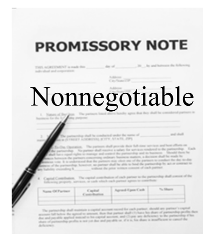
(c) Debts, secured or unsecured,

➢ This is an asset

other than the forms of indebtedness for which specific provision is made herein,

shall be deemed to be situated at the place where the decedent was domiciled at the time of death;

➢ Negotiable promissory notes – covered above – under the bed rule



c. Debts, Secured, or Unsecured

When first reading the above provision of the U.S.-Irish Estate Tax Treaty, many practitioners on first blush may conclude that these are debts of the decedent. Actually, this is referring to referring to almost all amounts owed to the debtor that is not a negotiable promissory note that was previously discussed. The most common items would be accounts receivable and a nonnegotiable promissory note. For a note to be nonnegotiable, the note itself must specifically state it is nonnegotiable.

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Article III

(d) Shares or stock in a corporation ~~other than a municipal or governmental corporation (including shares or stock held by a nominee where the beneficial ownership is evidenced by scrip certificates or otherwise)~~ shall be deemed to be situated at the place in or under the laws of which such corporation was created or organized; ~~but, if such corporation was created or organized under the laws of the United Kingdom of Great Britain and Northern Ireland or under the laws of Northern Ireland, and if the shares or stock of such corporation when registered on a branch register of such corporation kept in Ireland are deemed under the laws of the United Kingdom or of Northern Ireland and of Ireland to be assets situated in Ireland, such shares or stock shall be deemed to be assets situated in Ireland;~~

- **138 word run on sentence**

d. Stock in a Corporation

Both the IRC and sometimes treaties are notorious for run on sentences. The above sentence is 138 words. When I come across such types of writing, my objective is to distill the general rule. So I cross out the words that have nothing to do with the general rule. I then rewrite the sentence with the general rule, followed by its exceptions. Please note that in the better developed and written areas of the IRC, this is the writing style – general rule, followed by exceptions.

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Article III

- **General Rule**

(d) Shares or stock in a corporation ~~other than a municipal or governmental corporation~~ shall be deemed to be situated at the place in or under the laws of which such corporation was created or organized;

- **Exception UK or Northern Ireland Stock = Ireland**

but, if such corporation was created or organized under the laws of the United Kingdom or Northern Ireland, and if the shares or stock of such corporation when registered on a branch register of such corporation kept in Ireland are deemed under the laws of the United Kingdom or of Northern Ireland and of Ireland to be assets situated in Ireland, such shares or stock shall be deemed to be assets situated in Ireland;

The rewritten general rule is the same as what is provided in the IRC – shares of stock are sited where the organization is formed. An exception follows for shares of stock in corporations organized under the United Kingdom or Northern Ireland. As this outline deals with inbound estate planning of a foreign person, stock in United Kingdom corporation or Northern Ireland corporations are already foreign situs, there is no need get involved with the exception.

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Article III

(e) Moneys payable under a policy of assurance or insurance on the life of the decedent shall be deemed to be situated at the place where the decedent was domiciled at the time of death;

~~(f) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration or documentation of the ship or aircraft;~~

(g) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;

➢ **Assumes a branch in U.S. – Entity valued on its own**

e. Life Insurance on the Life of the Decedent

The Irish Estate Tax Treaty sites the proceeds of life insurance on the decedent to place domiciled. In our example, we are assuming the foreign person is domiciled abroad in Ireland. Therefore, it is not taxed in the U.S. Remember IRC § 2104(a) sites proceed from U.S. life insurance as not within the U.S., meaning foreign situs.

f. Ships and Airplanes

Most of our clients do not have ships or airplanes. However, if they do, please note it is the place of registration that determines situs. For cruise ships, most of them are registered in Panama, Liberia, or Bahamas.

g. Goodwill

As previously discussed, goodwill is an intangible. For our example, the 1949 Irish Estate Tax Treaty is referring to an Irish individual opening a U.S. branch. For international income tax purposes, branches are create two ways. First, the Irish person opens a U.S. office in the name of the Irish business. For this to apply to an estate tax, the Irish business would need to be owned as a sole proprietorship, which is highly unlikely. The second, which is not as clear, the Irish person individually creates a U.S. 100% owned LLC, which is disregarded for U.S. tax purposes. In this case, the goodwill will be sited in the U.S. under the treaty. This is the same result that would happen if the Irish person had formed a U.S. partnership or U.S. corporation.

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Article III

(h) Patents, trademarks and designs shall be deemed to be situated at the place where they are registered;

(i) [Rights to use intellectual property] Copyright, franchises, and rights or licenses to use any copyrighted material, patent, trademark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable; place of use

(j) Rights or causes of action ex delicto surviving for the benefit of an estate of a decedent shall be deemed to be situated at the place where such rights or causes of action arose;

(k)Judgment debts shall be deemed to be situated at the place where the judgment is recorded:

h. Patents and Trademarks

Patents and trademarks are sited where they are registered. However, for some strange and unknows reason copyrights are not under this rule. As this is the U.S.'s oldest estate planning treaty, it really does not reflect how patents, trademarks, and copyrights (i.e. the Big Three Intellectual Property")are filed internationally. For a Big Three Intellectual Property Filing the filing is first done in one nation, usually where the filer is doing the most business. Later, within certain time constraints, there are subsequent filings in other nations. Therefore, the above language is typically interpreted as the place of first filing.

i. Rights to Use Intellectual Property

If the individual foreign person has entered any type of contract (e.g. royalty contract) for the use of the individual foreign person's intellectual property, it is sited where the property is used.

j. Right to Sue Someone

If the decedent has a cause of action against someone at time of death, it is sited where the cause of action arose.

k. Judgment Receivable

If the decedent owned an unpaid judgment at the time of death, it is sited where the judgment is recorded.

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Article IV - Deductions

(1) In determining the amount on which tax is to be computed, permitted deductions shall be allowed in accordance with the law in force in the territory in which the tax is imposed.

- **Remember – not allowed to net a mortgage under U.S. law**
- **Deductions – including debt are allocated**
  - Funeral expenses
  - Administrative expenses of estate
  - Debts – (e.g. mortgages)
  - Losses during administration

Not willing to disclose world wide assets?

- Standard unified credit
- Unified credit not integrated in other treaties

4. Article IV(1) - Deductions

Similar to most situs treaties, Article IV leaves the deductions to local law to compute. Please remember that U.S. law does not allow a recourse note to be offset against U.S. tax. Rather, it allows a proportionate deduction of the estate deductions of funeral expenses, administrative expenses, debts, and losses during the administration of the estate based on U.S. assets compared to world-wide assets.

The U.S.-Irish estate tax treaty does not integrate the "unified credit which is $13,000 (i.e. $60,000 applicable exclusion amount)." Australia, Finland, Greece, Italy, Japan, and Switzerland treaties result in an incredible amount of confusion to make the computations in this area. Conversely, Ireland allows a $13,000 standard unified credit.

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Grace's Non U.S. Assets

- Grace's Non-U.S. Assets

Ireland Residence	$ 1 M
Royalty – License Ching Shih	3 M
Jersey (Channel Islands) Trust	95 M

99 M

World-wide funeral, admin, debts, losses

Debt $ 550 + $ 250 U.S.	$ .7 M
Funeral & Admin	.3 M

Must document world-wide 1 M

Schedule B. Taxable Estate (Caution: You must document lines 2 and 4 for the deduction on line 5 to be allowed.)

Nontreaty computation

1	Gross estate in the United States (Schedule A total)	1	**1 M**
2	Gross estate outside the United States (see instructions)	2	**99 M**
3	Entire gross estate wherever located. Add amounts on lines 1 and 2	3	**100 M**
4	Amount of funeral expenses, administration expenses, decedent's debts, mortgages and liens, and losses during administration. Attach itemized schedule (see instructions)	4	**1 M**
5	Deduction for expenses, claims, etc. Divide line 1 by line 3 and multiply the result by line 4	5	**$ 10k**
6	Charitable deduction (attach Schedule O, Form 706) and marital deduction (attach Schedule M, Form 706, and computation)	6	
7	State death tax deduction (see instructions)	7	
8	Total deductions. Add lines 5, 6, and 7	8	
9	Taxable estate. Subtract line 8 from line 1. Enter here and on line 1 of Part II	9	

When computing the gross estate for this purpose, IRC situs rules are used, not the treaty rules. In computing the amount included in the world-wide gross estate, U.S. tax estate tax rules are used. In our example above, the Jersey Channel Islands trust is not included in Grace's estate under Irish law, but was included under U.S. law. This brings up the common sense question, will the decedent's estate even allow the U.S. practitioner access to this information. Second, will the decedent's estate even allow disclosure of the world-wide assets on the U.S. estate tax return. I would suggest that most larger foreign estates will not allow such disclosure. This being the case, the deduction would be completely disallowed. *Jandorf v. Commr.,* 9 TC 338 (1947).

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Example

- Royalty value from Ching Shih - $ 3 million
  - Individually licensed to Ching Shih – so situs is place of use - Ireland
- Note Receivable from U.S. Corp. - $ 50,000
  - Place of location – or under the bed rule - Ireland

➢ U.S. Corp FMV incl goodwill		700,000
➢ Vacation Home		250,000
➢ Mortgage	~~250,000~~	-----------
➢ Taxable Estate		950,000

With our Grace O'Malley the royalty being received by Grace was individually licensed to Ching Shih. Therefore, it will not be included in her U.S. estate. However, it was most likely in Grace's Irish estate. The remaining balance of $50,000 on the note receivable from her U.S. corporation, Come and Get Me, Inc., is not included in her U.S. estate due to the treaty rule – that it is sited where it is located, which was under Grace's bed in Ireland. Please note, the portfolio interest exclusion for estate planning is not available to Grace, because she owns a 10% or greater interest in Come and Get Me, Inc. No deductions are taken as Grace's estate as well as most foreign clients are unwilling to disclosed world-wide assets.

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U.S. Estate Tax Return

Part II	Tax Computation		
1	Taxable estate from Schedule B, line 9	1	$ 950,000
2	Total taxable gifts of tangible or intangible property located in the U.S., transferred (directly or indirectly) by the decedent after December 31, 1976, and not included in the gross estate (see section 2511)	2	
3	Total. Add lines 1 and 2	3	950,000
4	Tentative tax on the amount on line 3 (see instructions)	4	326,300
5	Tentative tax on the amount on line 2 (see instructions)	5	
6	Gross estate tax. Subtract line 5 from line 4	6	326,300
7	Unified credit. Enter smaller of line 6 amount or maximum allowed (see instructions)	7	(13,000)
8	Balance. Subtract line 7 from line 6	8	313,300
9	Other credits (see instructions) — 9		
10	Credit for tax on prior transfers. Attach Schedule Q, Form 706 — 10		
11	Total. Add lines 9 and 10	11	
12	Net estate tax. Subtract line 11 from line 8	12	313,300

The $950,000 becomes the taxable estate. Under IRC § 2001(c), the estate tax is computed to be $326,300. Remember from a taxable estate of $750,000 to $1 million, the estate tax rate is 39%. From this, the unified credit of $13,000 is deducted, leaving an amount owing of $313,300.

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Article IV

(2) Where tax is imposed by one Contracting Party [United States] on the death of a person who at the time of his death was not domiciled in any part of the territory of that Contracting Party [United States] but was domiciled in some part of the territory [Home State] of the other Contracting Party [Ireland], no account shall be taken in determining the amount or rate of such tax of property situated outside the former territory [United States]: provided that this paragraph shall not apply as respects tax imposed—
(a) In the United States in the case of a United States citizen dying domiciled in any part of Ireland; or
(b) In Ireland in the case of property passing under a disposition governed by the law of Ireland.

- Prevents U.S. from taxing world-wide assets

A provision similar to this is found in most treaties. It merely prevents that what most practitioners would assume as the obvious, the U.S. or nondomicile country cannot tax the world-wide assets of a foreign individual.

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Article V

➢General estate tax credit – Situs U.S.

(1) Where one Contracting Party [Ireland] imposes tax by reason of a decedent's being domiciled in some part of its territory or being its national, that Party [Ireland] shall allow against so much of its tax (as otherwise computed) as is attributable to property situated in the territory of the other Contracting Party [United States], a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the territory of such other Party [Ireland] as is attributable to such property as is mentioned in paragraph (2) of this Article.

➢Credit limited to lesser of:

U.S. estate tax or Irish Estate Tax on Property

5. Article V – Foreign Tax Credits

Article V provides for two foreign tax credits. The first credit is referred in this outline as the "general credit." This is what applies to most of our foreign individual clients on an inbound transaction. This where Ireland is the home nation and taxes Grace based on her DCR most likely on world-wide assets, and the U.S. taxes based on situs. The second credit is the apportionment credit, which deals with the situation where both countries are taxing (most likely world-wide) based on DCR.

a. General Credit

The general credit is limited to the lesser of the U.S. estate tax or the Irish estate tax on the property. At this point, the U.S. practitioner is delighted to know that we are only dealing with inbound transactions in this outline. These computations that tend to become incredibly complex are done by the Irish practitioner. For our purposes, we need to know that this credit will be the lower of the U.S. estate tax, which in our example was $313,300 in our example, or the Irish estate tax.

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Aritcle V

➢ **Both nations claim domicile – Apportioned Credit**

(2) Where each [both] Contracting Party[ies] imposes tax by reason of a decedent's being domiciled in some part of its territory [nation], each Party shall allow against so much of its tax (as otherwise computed) as is attributable to property which is situated, or is deemed under paragraph (2) of Article III to be situated,

(a) in the territory of both Parties, or
(b) outside both territories,

➢ **Property in a third nation**

a credit which bears the same proportion to the amount of its tax so attributable or to the amount of the other Party's tax attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

b. Apportionment Credit

When both countries claim taxation based on DCR, there is no question that there is double taxation. Therefore, both the U.S. and Ireland must each give an apportioned credit based on the total tax of both countries.

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Apportionment Credit

- Martha Farley
- Moves back to Ireland
- $ 1 million in U.S. assets
- Both nations claim domicile
- Ireland 20% of $ 200,000
- U.S. 30% of $ 300,000
- Total tax = $500,000

2/5 or $ 200k =	80,000	3/5 or $ 300k =	$120,000
Ireland	$ 120,000	U.S.	$ 180,000

Total $ 300,000

The Farleys (John Vidal and Martha Farley) were originally sent to the Province of North Carolina as convicts in 1725. For simplistic purposes, assume in our new example assume Martha Farley's only assets were those in North Carolina. [On a side note, Martha Farley probably wasn't a pirate. However, she was with her husband John Vidal (1727) who was a minor pirate that appears to have only made one pirate raid before he was caught. John was found guilty and Martha was found innocent.] Assume Martha planned to always return to Ireland and briefly made it before she passed away. Both Ireland and the U.S. determined that she was subject to tax in both nations on her world-wide assets. Further, assume that her only assets where those in the U.S. totaling $1 million and Ireland imposed a 20% tax on these and the U.S. imposed a 30% tax (The Irish estate tax rate is actually 33%, however using 20% makes it easier to see the numbers.) Therefore, the Irish estate tax was $200,000 and the U.S. estate tax was $300,000. When double taxed, the total estate tax is $500,000. The U.S. must give an apportioned foreign tax credit for 3/5 or 60% of its tax of $300,000, which is $120,000. Ireland must give an apportioned foreign tax credit for 40% of its tax or $80,000. After credits, Ireland receives estate tax in the amount of $120,000 and the U.S. receives $180,000. The total amount of estate tax paid is the higher of the two taxes, which would be the U.S. amount of $300,000.

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Article V

(3) Where Ireland imposes duty on property passing under a disposition governed by its law, that Party [assume it means United States] shall allow a credit similar to that provided by paragraph (1) of this Article.

- **Does not apply to an inbound transaction**

The above does not apply to our inbound transaction.

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Article V

- **Tax to be Credited Determined After Deductions; Other Credits**

  (4) For the purposes of this Article, the amount of the tax of a Contracting Party attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of tax, otherwise than in respect of tax payable in the territory of the other Contracting Party; and if, in respect of property situated outside the territories of both Parties, a Contracting Party allows against its tax a credit for tax payable in the country where the property is situated, that credit shall be taken into account in ascertaining, for the purposes of paragraph (2) of this Article, the amount of the tax of that Party attributable to the property

Paragraph (4) states the amount of foreign tax credited is determined after deductions and credits in the U.S. It also brings the problem of a third country being involved and whether local law allowed a foreign tax credit for such property such as IRC § 2104.

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Article VI

(1) Any claim for a credit or for a refund of tax founded on the provisions of the present Convention shall be made within six years from the date of the death of the decedent in respect of whose estate the claim is made, or, in the case of a reversionary interest where payment of tax is deferred until on or after the date on which the interest falls into possession, within six years from the date.

6. Statute of Limitations

As many large estates take a bit of time to figure out, the treaty provides a six year period to file a claim for a refund.

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Table Comparison

	Internal Revenue Code	Treaty
Insurance on Life of Decedent	Foreign	Same
Personal Property	Where Located	Same
Negotiable Note Receivable	Portfolio Exempt or Taxable	Where Located
Stock Shares	Place of Organization	Same; except UK & Northern Ireland Stock
Patent & Trademark	Primary Registration	Where Registered
Copyright	Primary Registration	Where Used
Royalty Business Process	Place of Use	Where Used
Goodwill on a Branch	U.S. Branch	U.S. Branch

- **Mutual funds?**
- **Pick and Choose Treas. Reg. §301.6114-1**

7. Comparing the Irish Treaty Against the Domestic Code

When comparting the Irish treaty to the domestic code rules, two rules of situs are different. First, a negotiable note receivable under the Irish treaty has a more favorable rule when the portfolio interest exemption is not met under the code. Here, Grace O'Malley had a note receivable from her corporation of $50,000 that does not qualify for the portfolio exemption. Therefore, by merely keeping the promissory note offshore, she is able to exclude this property from her estate. The other is a copyright. While there is no precise IRC authority, most authors indicate that patent, trademarks, and copyrights are sited based on primary registration. Conversely, the Irish treaty cites a copyright where used. On a third note, there is no provision for mutual funds under the Irish treaty, most likely because these were not in use at the time.

The final question is that can you pick and chose treaty provisions. Generally, the answer should be yes. When reading the instructions to Form 706-NA, they refer you Treas. Reg. § 301.6114-1 regarding the disclosure of treaty return positions. It states that if a taxpayer takes a position that the treaty overrules a provision of the IRC such position must be disclosed. The language of this treasury regulation implies that a specific provision of a treaty may be utilized.

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Summary Situs Based

- Example was at 30,000 feet
  - Need to really understand the treaty involved
  - Generally, punt on deductions
    - Charitable deductions really complicated
  - If a third nation involved; also very complicated

Our example was at about 30,000 feet to get an overview of how a situs based treaty works. When dealing with any estate planning treaty, the practitioner must determine all of the nuances and opportunities of a specific treaty. With deductions, as many, if not most, foreign estates are unwilling to disclose world-wide assets, many times no deductions are taken on the U.S. estate tax return. If the estate is taking into account deductions and charitable deductions are involved, the computations become incredibly complex. The same is true if a third nation is involved in the computation.

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Domicile Based Treaties

- Generally, a simpler method to prevent double taxation
  - As long as both nations do not claim that the decedent is domiciled in such country
- Allocates primary taxing jurisdiction to one nation (Home Nation), except for certain assets
  - Real estate (Immovables)
  - Business property of a permanent establishment
  - Foreign tax credit for other nation situs assets

C. Domicile Based Treaty

Situs basis treaties have the complexity of determining the situs of each asset. Conversely domicile basis treaties, which is the newer form of estate tax treaty assign primary taxation to the country of DCR. (I refer to the country of primary taxation as the "Home Nation.") However, primary does not mean exclusive taxation. Rather, the treaties generally retain situs taxation for real estate and business property of a permanent establishment. Some treaties may also include situs taxation for a "fixed base" for the performance of independent personal services or for tangible personal property. As to the situs based items in a domicile based treaty, the treaty will provide a foreign tax credit to the domicile country.

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Example

- Citizen of U.S.
  - Owns homes in: U.S., U.K., France, Germany, Italy
    - Rented 4 homes abroad for 5 years
  - Family in U.S.; children in school in U.S.
  - Votes in U.S., primary doctors & dentists in U.S.

1. <u>Example</u>

Let's say that we have a client named Bill, who was unbelievably successful in software development. Bill is a citizen of the U.S., owns a home in the U.S. but rents homes on annual leases in France, Germany, Italy, and the United Kingdom. He has rented these homes abroad over the last five years. He spends about equal time at each one of these homes throughout the year. As Bill has an incredible net worth, coincidentally all four nations under their own law determine that Bill is domiciled in their respective nation.

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Primary Taxation

a. Usually, in this order of priority
   - Domicile as defined under each nation

- If both assert domicile (tie breaker rules)
   b. Permanent home
   c. Vital interests – facts & circumstances
      - Family
      - Personal Belongings
      - Banking
      - Voting
      - Driver's License
      - Doctors, Dentists

2. Tie Breaker Rules

A typical domicile based treaty allows each nation to determine whether the person is domiciled under his or her nation. Under the treaties, this brings us to the concept of tiebreakers. This is a set of steps to determine the primary taxing nation (i.e. the domicile of the person). This example will refer to the standard sequence in most domicile based treaties, realizing that treaties may vary the tiebreakers. In particular, when we review the United Kingdom this will be the case.

a. Permanent Home

The first is whether the person has a permanent home in one or more nation. The 1982 OECD Model Estate and Gift Tax Treaty Report defines a permanent home as "as the place where the individual owns or posses a home." The concept of possess a home means that it does not matter whether or not Bill owned or rented a home. Art. 4 Comment 20 of the Model Estate and Gift Tax. The concept of "permanent" means that it is not for a short period of time. Unfortunately, at this point it is uncertain what is long term, with many practitioners using a one year or greater period as a rule of thumb. In our example, the rented homes have been rented annually over the past five years. Therefore, as to Bill, the first tiebreaker test, a permanent home is not determinative.

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b. Center of Vital Interests

This brings us to the second tiebreaker – center of vital interests. This test is a facts and circumstances test, generally with no weighting of the factors. The exception where one factor may have a little more weight is the location of the person's family. On an income tax issue dealing with a tax motived structure that was marketed in the early 2000's, a client asked that I obtain a private letter ruling whether such structure in fact actually worked. While our firm did not recommend this structure, the client sincerely wanted to know if it was feasible assuming all of the rules as the promoter stated them were followed. The agent at the Internal Revenue Service stated your client is asserting that they will move to the U.S. Virgin Islands. He then asked, are his spouse and children going to move and live there. The agent then replied that the school systems on the island were incredibly poor as well as citing several infrastructure issues, and that he doubted that few people would move their family there. His overall opinion was that the other factors probably did not matter if the family did not move and live on the island. On a side note, the Service decided to refuse to rule on the PLR, because they were going to issue a Revenue Ruling on this tax motivated structure. The Revenue Ruling in effect eliminated about 80% to 90% of the taxpayers who were using this tax motivated structure.

In our example, I would assume that Bill's children primarily live and are educated in the U.S. Also, Bill's spouse primarily resides in the U.S. Add this to the other factors that driver's license, voting, place of worship are in the U.S. would weight the domicile to the U.S. This should be the case even though personal items and bank accounts are in all of the respective nations.

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Primary Taxation

d. Habitual Place of Abode

e. Citizenship

- While most treaties put citizenship last, U.S.- U.K. uses citizenship instead of domicile at the top of the list

c. Habitual Place of Abode

Habitual place of abode is not well defined. However, the more probable definition is that is what nation did the decedent spend most of there time over the past few years. 1982 OECD Model Estate and Gift Tax Treaty Report Article 4 Comment 26.

d. Citizenship

The last tiebreaker in most treaties is citizenship. This is an objective easy factor to use, unless the decedent is a citizen of more than one nation. Please note, the U.S.-U.K. uses citizenship as the first tiebreaker, making it usually one of the easiest treaties to establish domicile for most clients.

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U.S.-U.K. - Summary of Treaty

1 The proposed treaty will alleviate double taxation on gifts and estates of U.S. citizens and domiciliaries and U.K. domiciliaries by permitting each asset held by an estate or each gift to be subject to primary tax jurisdiction in only one of the two countries.

3 This is accomplished in the treaty by allowing both countries to impose their tax but requiring one of the countries to allow a credit against its tax for the taxes paid to the other country.

2 However, the situs country is given a priority of taxation in the case of real property and business property (i.e., assets of a permanent establishment or a fixed base) which are located in that country.

D. US-UK Estate and Gift Tax Treaty

We will use the U.S.-U.K. Estate and Gift Tax treaty as an example. The summary of the treaty states that primary tax jurisdiction will be assigned to one of the two nations. However, the next sentence should probably have been the third sentence. So let's read the third sentence next. Paraphrased it states that for real estate and business property of a permanent establishment it is taxed by the situs country. Then, the second sentence above means to the extent of taxation of situs property in the non primary tax jurisdiction, the primary tax jurisdiction must give a foreign tax credit.

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The treaty provides that the domicile of an individual will be determined separately under the laws of each country.

If only one of the two countries treats the individual as a domiciliary under its domestic laws, then that is the country of domicile for purposes of the treaty.

However, if both countries treat the individual as a domiciliary under their domestic laws, then the treaty sets forth an extensive set of rules to select one of the two countries as the individual's domicile for purposes of establishing primary tax jurisdiction [Home Country] under the treaty . . .

- Permanent home; vital interests; abode; citizenship

The next part of the summary advises the reader that domicile is determined under each nation's laws. Unfortunately, this means that there is no uniform test for determining domicile. The third sentence brings up the issue of permanent home, center of vital interests, place of abode, and citizenship should both nations assert domicile.

Article 1. Estates and Gifts Covered

The proposed treaty will apply to any person who is subject to the U.S. gift or estate tax, including the tax on generation skipping transfers, or the U.K. capital transfer tax.

Thus, the proposed treaty will apply, in general, to estates of decedents who were domiciled in the United Kingdom at the time of their death and to estates that are subject to tax in the United States because the decedent was a citizen or domiciliary of the United States at the time of his death. The treaty will also apply to estates of decedents who had property situated in the United States or the United Kingdom at the time of their death.

1. Estates and Gifts Covered

Key language is found in the first sentence. Unlike situs treaties, most domicile treaties apply to both estate and gift tax. Further, the U.S.-U.K. treaty also applies to generation skipping transfer tax.

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Article 2. Taxes Covered

- Defines the U.S. Estate, Gift, and GSTT
- Defines the U.K. Capital Transfer Tax
- Does not apply to state and local estate and gift tax

Article 3. General Definitions

- "National" is U.S. citizen and
- "National" is U.K. citizen and colonies + noncitizen that has a right of abode in the U.K.

2. Definition of Types of Estate and Gift Taxes

Article 2 defines the U.S. estate, gift, and generation skipping transfer tax. It also describes the U.K capital transfer tax that applies to inter vivos gifts and estate taxes. The treaty notes that it does not apply U.S. state or local estate or gift taxes. Finally, it mentions that the treaty will apply to any substantially similar taxes on estates, inheritances, and gifts that either country may impose.

3. Definition - National

While Article 3 states that it is definitions, it really only provides one specific definition, and that is the word "national." Article 3 contains a definition of the term "national." U.S. nationals are defined as U.S. citizens. A U.K. national includes citizens of the U.K. and Colonies as well as anyone who had a right of abode in the U.K. at the time of death of the gift.

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Article 4. Fiscal Domicile

The concept of domicile is important under the proposed treaty because the country of domicile has, under the treaty, primary tax jurisdiction on all property other than the property subject to situs taxation.

The country of domicile is initially determined by the domestic laws of each country.

[Fiscal domicile means determined by the treaty]

However, in those situations where both countries would treat an individual as a domiciliary, the treaty sets forth rules for establishing the country of domicile for purposes of the taxes covered by this treaty.

Article 4 provides a better explanation that the summary regarding the issue of domicile. First, it brings up a new term "fiscal domicile," which means domicile as established by the treaty after applying the tiebreaking rules. So as stated in the summary, the country of domicile is the primary tax jurisdiction. To determine domicile, first use the laws of each nation. If that does not work, meaning that both nations have asserted domicile, then follow the treaty tiebreakers.

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Three Year Time Period – Cannot Change

The treaty also states that a U.S. citizen who was domiciled in the United States at any time within the preceding three years will also be considered a U.S. domiciliary.

The treaty provides that a person will be treated as a domiciliary . . . if:

1. He was domiciled in the United Kingdom within three years preceding the date of death or the date the gift was made;

2. He was resident in the United Kingdom in not less than seventeen of the twenty income tax years which end with the income tax year in which the person died or in which the gift was made; or

3. He became, and has remained, a domiciliary of the Channel Islands or the Isle of Man, and he was a United Kingdom domiciliary immediately prior to that.

Article 4 goes on to state that if an individual was domiciled in either country within the last three years, then such individual was domiciled in that nation. This rule does not prevent someone who was domiciled more than three years ago from being considered domiciled in such nation. Rather, it prevents someone in the last year or two of his or her life from moving to the other treaty nation, and then claiming that such person was not domiciled in the first country.

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Introduction to the Tiebreakers

To provide relief from double taxation where the individual is considered domiciled in both countries under the general rules described above, the proposed treaty provides a series of rules designed to establish a single country of domicile for the individual for purposes of the taxes covered by this treaty. The country so selected will then have the primary tax jurisdiction with respect to the worldwide estate of the decedent of with respect to his worldwide gifts, other than real property and assets of a permanent establishment of a fixed base situated in the other country. As described below,

1 these rules are based on the concept that primary tax jurisdiction should be exercised either by the country of nationality, if the dual domicile individual has not been resident in the other country for a substantial period of time prior to his death or the making of the gift, or by the country in which he has his most 2 significant contacts if that nationality test is not determinative.

Article 4 then states if under the local laws of each nation, the individual is domiciled in both nations, then the treaty tiebreakers with be applied. The first treaty tiebreaker under the US-UK Estate and Gift Tax Treaty is nationality. From the definitions we discussed under Article 3, nationality generally means citizenship. Therefore, the US-UK Estate and Gift Tax Treaty moved the citizenship tiebreaker from the last on the list to the first on the list.

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Caveat – in Other Country < 7 years

Under the first of these rules, if the individual is a national of the United Kingdom and not the United States

and has been a resident of the United States for Federal income tax purposes in less than 7 years during the 10-year period ending with the year of death or the gift, he will be considered a United Kingdom domiciliary.

- UK citizen income tax resident of U.S. for 6 years = U.K.

Conversely, if the individual is a U.S. national only and has been resident in the United Kingdom for less than 7 of the 10 income tax years of assessment which end with the year of death or the gift, he will be considered a U.S. domiciliary.

- U.S. citizen income tax resident of U.K. for 6 ½ years = U.S.

There is a caveat to using citizenship as a tiebreaker. The individual cannot be in the other country and classified as a resident for income taxes for more than seven out of the last 10 years. Therefore, using Bill from our previous example, if he become a resident of the U.K. for a period of seven years, his citizenship would not result in U.S. taxation. Rather, the remaining tiebreakers would need to be analyzed. Please note that it is seven years as an income tax resident, not six and ½.

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Nonresident less than 7 of 10 years

It is contemplated that this rule will resolve the great majority of dual domicile situations. However, if a duel domicile problem still remains after application of these rules, the proposed treaty provides four additional rules to determine domicile. The rules (applied in the order presented) provide that the individual will be considered domiciled in the country (1) in which he had a permanent home available to him, (2) in which his personal and economic relations were the closest (center of vital interests), (3) in which he had a habitual abode, or (4) in which he was a national. In cases where an individual's domicile cannot be determined by these tests, then the competent authorities of the countries are to settle the question by mutual agreement.

The above four tie breaking tests were previously discussed. It appears that national (i.e. citizen) as a test for the second time. Using our example, it appears that this means that Bill failed the first national test as he was in the U.K. for seven years. If the permanent home, center of vital interests, principal place of abode do not solve the issue, then the treaty then reverts to citizenship.

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Article 5 – Taxing Rights

This article sets forth the general treaty rule that the country of domicile, as determined under the treaty, has the primary tax jurisdiction over the estates or gifts of its domiciliaries, other than the property specifically reserved for situs taxation.

The proposed treaty generally provides that property, other than real property and assets of a permanent establishment or a fixed base in the other country, may only be subject to tax in the country of domicile of the decedent or donor.

5. Article 5 – Taxing Rights

The first two sentences of Article 5 state the primary purpose of a domicile style treaty. Domicile determines which nation has primary taxation, except for generally real estate and a permanent establishment. Article 5 goes on to explain in detail how this works.

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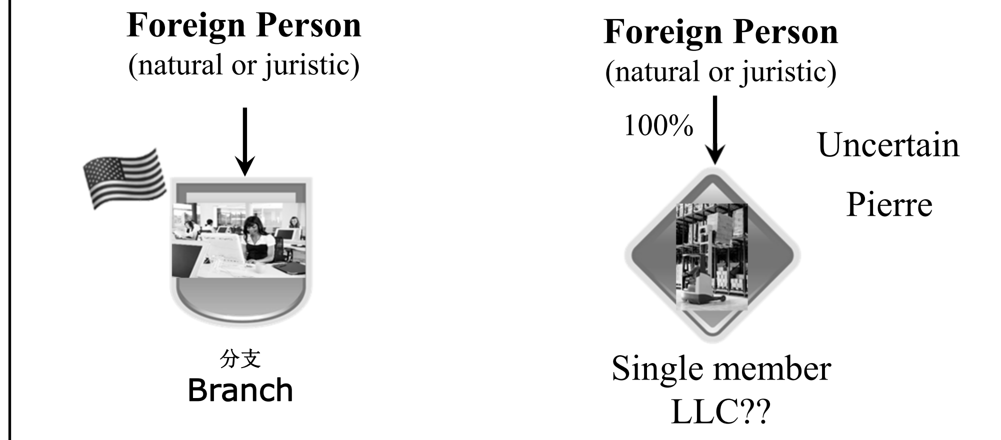

The term "permanent establishment" is an income tax treaty term that refers to when a foreign person (entity or individual) opens a branch operation in the U.S. In the above slide on the left, the foreign person opens a U.S. sales office. An income tax treaty requires a foreign person's business activities to rise to the level of a permanent establishment (e.g. sales office or manufacturing facility) before U.S. imposes an income tax. However, most foreign businesses do not operate in the U.S. as a branch. Rather, they form a U.S. entity. If it is a U.S. corporation, then we have already discussed the estate and gift tax issues of a foreign person owning U.S. stock. We have also discussed the estate and gift tax of a U.S. partnership interest. However, if is a single member U.S. LLC, which is disregarded for tax purposes, then for income tax purposes it is considered a branch. Does this mean that it is subject to U.S. estate tax if owned directly by the foreign individual? At this point, there appears to be no direct authority to answer this question.

As analogous authority supporting the position that the single member LLC should be treated as an entity, not a branch – permanent establishment is the gift tax case of *Pierre.* 133 T.C. 2 (2010)

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Other Articles

Article 6 – defines immovable property [Real Property]

Article 7 – Permanent Establishment

- Includes a deemed dependent agent
- Also includes, fixed base used for performance of independent service

Article 8 – Marital Deduction

- Allowed to the extent of a U.S. person
- with a non-citizen spouse
- Brings you back to a QDOT; or other Trusts

6. Article 6 – Immovable Property

Article 6 defines immovable property to include (1) property accessory to immoveable property; (2) livestock or equipment used in agriculture and forestry; (3) rights of real property under local law; (4) usufruct and immoveable property; (5) rights to variable or fixed payments to work mineral deposits and other natural resources.

7. Article 7 – Permanent Establishment

Except for deemed dependent agent, the permanent establishment was previously discussed in this outline. A deemed dependent agent is generally an employee that concludes contracts in the other nation. Most foreign companies that have employee sales agents in the U.S. selling do not give such employee the power to conclude contracts as to avoid this taxation issue.

8. Article 8 – Marital Deductions

The US-UK treaty allows a marital deduction as allowed under U.S. domestic law. However, U.S. domestic law does not allow an unlimited marital deduction to a noncitizen spouse. For inbound planning, this almost always brings the planning back to a QDOT or other planning.

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Article 9 Credits

General Credit

- One nation taxes on DCR
- Other nation taxes on situs

Reciprocal Credits

- If both nations tax

9. Article 9 – Credits

Similar to situs treaties, the domicile treaties provide a general credit for the taxes of the non primary taxation nation.

With domicile treaties, there is also a credit that I refer to as a reciprocal credit. This occurs when both nations tax on a world-wide basis.

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