Pre-Immigration Planning Considerations for the HNW Client – Think Before You Leap

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Article I: Introduction

America may be the "land of the free" and the "home of the brave", but it can also be the "accident waiting to happen" for those who do not take advice before they arrive on its shores. This article sets forth the basic planning considerations applicable to foreigners coming to the United States, so that they can understand the potential ramifications, make informed decisions, and then take advantage of all the country has to offer with their eyes wide open – making acceptable tradeoffs with respect to the consequences.

Article II: Residency and its Consequences

An individual's status as a resident, citizen or non-resident alien ("NRA") of the U.S. can have vastly differing consequences for U.S. tax purposes. The concept of U.S. residency for Federal income tax purposes is different from that for Federal gift and estate tax purposes. This is because residence for income tax purposes is determined by reference to one's residency while residence for estate and gift tax purposes is determined with reference to one's domicile. Consequently, an individual can be a tax resident for income tax purposes but not for estate and gift tax purposes and *vice versa*.

Below is a discussion of the facts giving rise to each type of residency and its tax consequences.

(a) Income Tax

The U.S. taxes the worldwide income of its citizens and residents. Individuals will be subject to U.S. income tax, which can be as high as 39.6 per cent (plus, where applicable, state and local income taxes), on their worldwide income in any given year that they are U.S. residents. For these purposes, individuals are U.S. residents if they meet either the "green card test" or the "substantial presence test".

(i) Green Card Test

Individuals who hold a permanent resident card (a "green card") will be considered residents of the U.S. for income tax purposes and, as a result, their worldwide income will be subject to U.S. income tax.

Possession of a green card is the only relevant fact under this test. Many green card holders who have not resided in the U.S. assume that not spending time in the U.S. is sufficient to escape U.S. taxation. This is a common misconception. For income tax purposes, a green card will be deemed to remain in effect until (1) it is surrendered by the individual, (2) it is revoked by the immigration authorities, or (3) upon a judicial determination of abandonment under immigration laws. Absent one of these three circumstances, green card holders will remain subject to U.S. income tax on their worldwide income.

(ii) Substantial Presence Test

Individuals satisfy the substantial presence test if they are present in the U.S. for a period of 183 days or more in any given year. If the individual is not physically present in the U.S. for 183 days or more in any given year, but is present in a given year for at least 31 days and the individual's presence in that year and the two preceding years equals a weighted aggregate of 183 days or more, then the individual is also deemed a resident for that year and is subject to U.S. income tax for such year. An individual will be subject to U.S. income tax on the first day of the year in which the individual meets the 183 days' test.

For purposes of this calculation (1) each day in the first preceding year counts as only 1/3 of a day and each day in the second preceding year counts as only 1/6 of a day, and (2) partial days in the U.S., such as travel days, count as full days.

By way of example, the following calculation will apply to an individual who has spent 10 days in the U.S. during Year 1, 40 days during Year 2 and 25 days during Year 3:

Year 1 – 1/6 x 10 = 1.66 days.

Year 2 – 1/3 x 40 = 13.33 days.

Year 3 – 25 days.

Total Day Count = 1.66 + 13.33 + 25 = 39.99.

Days Left = 183 – 40 = 142.

Thus, the individual can return to the U.S. in Year 3 and remain for up to 141 days without becoming a U.S. resident for income tax purposes. If the individual returns to the U.S. in Year 3 and stays for more than 141 days, the individual's residency starting date will be the first day during Year 3 in which the individual entered the U.S. As a general rule of thumb, as long as one does not spend more than 122 days in the U.S. in any given year, one will not meet the substantial presence test.

a) Closer Connection Exceptions

There is an exception to the substantial presence test if an individual was present in the U.S. for fewer than 183 days in a given year and if one can establish that one has a home in a foreign country and a closer connection to that foreign country than to the U.S.

The following are some of the facts and circumstances that will be looked to in determining whether an individual has maintained more significant contacts with a foreign country than with the U.S.:

(1) the location of the individual's permanent home;

(2) the location of the individual's family;

(3) the location of personal belongings, such as automobiles, furniture, clothing and jewellery owned by the individual and the individual's family;

(4) the location of social, political, cultural or religious organisations with which the individual has a relationship;

(5) the location where the individual conducts routine personal banking activities;

(6) the location where the individual conducts business activities (other than those that constitute the individual's tax home);

(7) the location of the jurisdiction in which the individual holds a driver's licence;

(8) the location of the jurisdiction in which the individual votes;

(9) the country of residence designated by the individual on forms and documents; and

(10) the types of official forms and documents filed by the individual.

It is important to note, however, that the closer connection exception will not apply to an individual who either has a pending application for a green card or who took steps to apply for status as a permanent resident.

Further exceptions to the substantial presence test apply to certain categories of individuals such as students, professional athletes in the U.S. to compete in a charitable sports event, foreign government-related individuals, teachers or trainees. Finally, certain income tax treaties can also provide exceptions and tie-breaking rules for individuals who are deemed residents of both the U.S. and a foreign country.

(b) Gift/Estate Tax

A person's worldwide gratuitous transfers of property during life will be subject to federal gift tax at rates as high as 40 per cent, and a person's worldwide assets will be subject to federal estate tax at death at rates as high as 40 per cent if that person is domiciled in the U.S. Domiciliary status is acquired when one lives in the U.S., even for a brief period, with no definite present intention of moving from the U.S. If one is not domiciled in the U.S., then only gifts and bequests of U.S. *situs* property will be subject to such tax (with the *situs* test being broader for estate tax purposes than for gift tax purposes).

Clearly, a person's intent is subjective. Consequently, there is no clear objective test for determining one's domicile. Instead, domicile is established by objective criteria and by facts and circumstances similar to those looked to when establishing a closer connection with another country, discussed above, including the location of the individual's residence, personal property, place of work, driver's licence, bank accounts, etc. Notably, having a green card gives rise to a rebuttable presumption of having a U.S. domicile.

It is therefore very important that NRAs keep their contacts in the U.S. to a minimum to avoid inadvertently giving rise to a U.S. domicile and thereby unintentionally subjecting themselves to onerous gift and estate taxes.

Article III: Pre-Immigration Planning Goals

Given the worldwide reach of the U.S. income and transfer taxes applicable to U.S. residents and domiciliaries respectively, the most effective tax planning can be achieved prior to an NRA's immigration to the U.S., since at that stage the NRA is neither subject to U.S. income tax nor U.S. transfer (i.e., estate and gift) tax on non-U.S. assets.

Below is a discussion of a number of steps that can be taken in advance to minimise the exposure of NRAs to taxes upon their move to the U.S. as well as a discussion of a few state-specific considerations that ought to be taken into account when deciding upon which state in the U.S. in which to reside.

(a) Minimising Income Taxation

(i) Stepping Up Basis

For U.S. income tax purposes, a business entity may elect to be treated either as a corporation, a partnership taxed to its owners directly or, in the case of a single-owner entity, as a disregarded entity. This entity classification election is made by filing IRS Form 8832 and is referred to as checking-the-box ("CTB") election.

On the date of the CTB election, a company electing to be treated as a partnership or disregarded entity will be deemed to have made a liquidating distribution of its underlying assets to its owners. As a result, the basis of the assets is stepped up (or down) in the hands of the entity's owners to the value of the assets on the date of the election.

Since gain realised on non-U.S. assets is not subject to U.S. income tax when realised by an NRA, the step-up in basis of the company should be tax neutral for U.S. tax purposes. This mechanism can reduce future realisation of capital gain after the NRA moves to the U.S. and becomes subject to U.S. income tax.

(ii) Accelerating Income Recognition

NRAs who use the cash receipt method of accounting can accelerate the recognition of income items, thereby enabling them to receive cash after becoming U.S. taxpayers without having to pay income taxes in the U.S. on such receipts.

(iii) Staying Clear of the Anti-Deferral Regimes

NRAs would be well advised to carefully review their corporate holdings prior to immigrating to the U.S. to ensure that they will minimise their exposure to several U.S. anti-deferral regimes intended to discourage the deferral of income by U.S. taxpayers. Some of these issues can be resolved by making a CTB election with respect to the company, re-organising the ownership structure to ensure that U.S. ownership and/or control will be kept to a minimum or restructuring the company's investments. Care should be taken since attribution and constructive ownership principles are applicable when determining ownership thresholds.

1) Controlled Foreign Corporations ("CFCs")

A foreign corporation will be treated as a CFC if over 50 per cent (by vote or value) of its stock is owned by U.S. shareholders. For these purposes, a U.S. shareholder is a U.S. person who owns at least 10 per cent of the total combined voting power of all classes of stock in the CFC.

U.S. persons who meet the definition of a U.S. shareholder will have to include in their income their *pro rata* share of the CFC's "Subpart F" income regardless of actual distributions. This income includes, among others, insurance income and foreign base company income ("FBCI"). FBCI includes, among other types of income, dividends, interest, royalties, rent and gains from the sale or exchange of certain types of property and certain related persons' sales or services income. In addition, some of the gain upon the sale of CFC shares may be taxed as ordinary income.

2) Passive Foreign Investment Companies ("PFICs")

A foreign corporation is a PFIC if either 75 per cent or more of its gross income for the taxable year is passive income <u>*or*</u> at least 50 per cent of the corporation's assets are held for the production of passive income.

Gain realised upon the disposition of PFIC stock by a U.S. owner will be taxed at ordinary income tax rates instead of the more favourable capital gains rates. Distributions will not qualify for the reduced capital gains rates that apply to qualifying dividends. Moreover, an interest charge will be applied to both the income tax imposed on such gain as well as on "excess" distributions from the PFIC to the U.S. owner.

Generally, if upon purchasing an interest in a company, the U.S. owners of the shares would qualify as "U.S. shareholders" of a CFC, they will not also be subject to the PFIC tax regime, even if the company would also qualify as a PFIC.

(iv) Staying Clear of the Five-Year "Trap"

NRAs who create foreign trusts that have (or may have) a U.S. beneficiary will be subject to U.S. income tax on that foreign trust's income if the NRAs themselves becomes U.S. taxpayers within five years of transferring property to the trust. For these purposes, income accruing in the foreign trust before the NRAs' U.S. residency date will not be subject to U.S. income tax unless it is U.S. source income.

Thus an NRA who intends on immigrating to the U.S. would be well advised, where possible (and in the real world it may not be possible), to create and fund such foreign trusts at least five years before becoming a U.S. person in order to avoid being taxed on trust income regardless of distributions.

(b) <u>Minimising Exposure to Transfer Taxation</u>

(i) Offshore Trust

Even if the five-year waiting period, discussed above, cannot be observed, there are still significant transfer tax advantages to contributing foreign property to a trust prior to immigrating to the U.S.

The creation of an irrevocable foreign trust prior to moving to the U.S. and its funding with some, but not all, of an NRA's foreign assets can be an effective tool in protecting such assets from exposure to U.S. transfer taxation after the NRA's immigration to the U.S. As long as certain precautions are observed, the NRA's non-U.S. assets that are in the trust will not be subject to any U.S. estate tax and the trust's income may also be exempt from state and local taxes, depending on local law, discussed further below.

(ii) Accelerating Gifts

To the extent that the NRA intends on making lifetime gifts, it is advisable to make such gifts prior to becoming a U.S. domiciliary. This is because NRAs are subject to U.S. gift tax only on gratuitous lifetime transfers of U.S. *situs* property (including U.S. real estate and tangible property located in the U.S. such as cars, art, jewellery and furnishings).

Notably, shares of a U.S. corporation are not considered U.S. *situs* property for gift tax purposes but are considered U.S. *situs* property for estate tax purposes. Thus, to the extent NRAs who own U.S. shares and who intend on immigrating to the U.S. are contemplating making gifts prior to their move, they should consider making gifts of their U.S. shares. Such gifts will achieve two tax-saving goals. The gifts will be free of U.S. gift tax and will also serve to reduce the NRAs' U.S. estate for estate tax purposes.

(c) <u>State-Related Considerations</u>

Careful consideration should also be given to the choice of state within the U.S. in which an individual intends to reside. States can differ significantly from one another on a variety of local issues. Below is a brief discussion of a few of the issues that should be taken into account.

(i) State Taxes

State taxation is an important consideration which can have significant financial consequences to a client's choice of residence. Some states, such as Florida, impose no state income tax, while others, such as New York, have very high rates of both state and (most notably in New York City) local income taxes. The only state that imposes state gift taxes is Connecticut. Where state estate taxes are concerned, certain states, such as Pennsylvania and New Jersey, have an independent inheritance tax, some states impose their own estate tax, others impose a state estate tax that is calculated with reference to the Federal estate tax and others still impose no state estate tax at all. States also differ in the manner that they tax trusts. Thus, some states will tax trusts on the basis of who created them while others will tax trusts on the basis of where the beneficiaries and/or trustees are located.

(ii) Property Laws

In community property states, married persons are considered to own their property and income jointly, regardless of title. There are nine states which impose a community property regime. These are: Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. In addition, Wisconsin has a partial statutory community property scheme. Alaska's statutory community property regime is elective. Puerto Rico allows property to be owned as community property as well.

(iii) Creditor Protection

There are a number of states that have passed laws enabling grantors, under certain circumstances, to create trusts of which they are beneficiaries but whose creditors cannot reach the trust assets. Delaware is one of the leading jurisdictions with a well-developed law. Other such jurisdictions include Alaska, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah and Wyoming.

(iv) Rule Against Perpetuities

States also differ in their applicable Rule Against Perpetuities (essentially dictating the maximum length of time that a trust can last). Some states, including California, Delaware and Florida, allow trusts to last in perpetuity (or in near perpetuity), while other states either follow the common law rule against perpetuities (21 years after the death of a life in being) or the Uniform Statutory Rule Against Perpetuities (vesting of interest within 90 years of creation).

(v) Marriage Rights

Since the *Windsor* United States Supreme Court decision in 2013 an increasing number of states have recognised same-sex marriage. However, there are still a number of states that do not recognise the validity of such a marriage and have passed legislation to prohibit it. Such legislation is actively being challenged and the status of marriage rights in such states is very much in flux.

Article IV: Post-Immigration Reporting of Which to be Mindful

U.S. taxpayers are subject to a number of reporting obligations in connection with their interests in non-U.S. assets. Below is a description of a number of common reporting requirements, their filing deadlines and the potential consequences of non-compliance of which a new resident should be aware.

(a) FBAR

A Report of Foreign Bank and Financial Accounts ("FBAR") has to be filed by U.S. taxpayers who have a financial interest in or signature authority over any financial account in a foreign country, if the aggregate value of these accounts exceeds $10,000 at any time during the calendar year.

A trust beneficiary (considered an indirect holder of financial interests) is required to file an FBAR with respect to the trust's foreign financial accounts if the beneficiary either has a "present" beneficial interest in more than 50 per cent of the assets of the trust or receives more than 50 per cent of the trust's income. A beneficiary of a discretionary trust does not have a reporting obligation solely on account of the beneficiary's discretionary beneficial interest.

There are significant civil penalties and possible criminal penalties for failure to file an FBAR, even if no tax is otherwise due. The civil penalty for wilfully failing to file an FBAR for any year can be as high as the greater of $100,000 or 50 per cent of the total balance of the foreign account for such year. This penalty may apply for every annual violation, and for every taxpayer who failed to disclose an account. Wilfully failing to file an FBAR also subjects a person to a prison term of up to 10 years and criminal penalties of up to $500,000.

An FBAR is to be filed for any year by June 30 of the following year and must actually be received by the IRS by this date.

(b) Form 3520

On Form 3520 U.S. income taxpayers report transactions with foreign trusts and receipt of foreign gifts of over $100,000, if received from NRAs or foreign estates.

A U.S. beneficiary who receives direct or indirect distributions from a foreign trust of income or *corpus* must file Form 3520 with the IRS. This Form provides the IRS with information regarding the name of the trust, the aggregate amount of distributions received from the trust, and such other information as the IRS may require.

In the case of foreign non-grantor trusts, such "additional information" is included in a Foreign Non-Grantor Trust Beneficiary Statement, which is issued by the trustees of such trust. If no Foreign Non-Grantor Trust Beneficiary Statement is included with the 3520, the IRS will be able to assume that the beneficiary received income from the Trust accumulated from a prior year which will be subject to extra interest and which will lose the benefit of differential rates between capital gains and ordinary income.

If a U.S. beneficiary does not report distributions from a foreign trust as required, such beneficiary will be subject to a penalty equal to the greater of $10,000 and 35 per cent of the reportable amount. Continued failure to report can result in additional penalties, not to exceed the reportable amount.

Failure to report foreign gifts results in a penalty equal to 5 per cent of the amount of such foreign gifts applied for each month for which the failure to report continues, not to exceed 25 per cent.

Form 3520 is due on the date that one's income tax return is due, including extensions.

(c) Form 3520-A

Form 3520-A is the annual information return for a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries and any U.S. person who is treated as an owner of any portion of the foreign trust.

It is the responsibility of the U.S. owner of the foreign trust to ensure that it files Form 3520-A and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries.

If a foreign trust (1) fails to timely file a Form 3520-A, (2) does not furnish the information required, or (3) furnishes incorrect information, its U.S. owners will be subject to an initial penalty equal to the greater of $10,000 and 5 per cent of the *gross* value of the portion of the trust's assets treated as owned by them at the close of the relevant tax year. Continued failure to report can result in both additional penalties and criminal penalties. Note, however, that if the taxpayers can demonstrate that the failure to comply was due to reasonable cause, and not wilful neglect, penalties will not be imposed. The fact that a foreign country would impose penalties for disclosing the required information does not constitute reasonable cause. Similarly, a foreign fiduciary's reluctance to comply or provisions in the trust instrument preventing disclosure of required information do not give rise to reasonable cause.

Form 3520-A is due by the 15th day of the third month after the end of the trust's tax year. An extension of time to file an income tax return will not provide an extension of time to file Form 3520-A. Instead, a separate extension request (Form 7004) must be filed in order to request an extension of time to file Form 3520-A.

(d) Form 8938

U.S. "owners" who, during any taxable year, hold an interest in "specified foreign financial assets" having an aggregate value above a certain threshold must attach Form 8938 to their income tax return for such year.

The term "specified foreign financial assets" includes foreign accounts held at financial institutions and, to the extent not held in an account at a financial institution, foreign-issued stock or securities, interests in a financial instrument or contract held for investment with a foreign issuer or counterparty and interests in other foreign entities. It does not include non-producing real estate held directly.

Generally, the threshold amount for unmarried individuals and married taxpayers filing separate returns is an aggregate fair market value of interests in specified foreign financial assets exceeding either $50,000 on the last day of the taxable year or $75,000 at any time during the taxable year. If an individual does not have to file a U.S. income tax return for the tax year, the individual does not have to file Form 8938 even if the value of the specified foreign financial assets exceeds the reporting threshold.

A beneficial interest in a foreign trust or a foreign estate is not a specified foreign financial asset unless the individual knows or has reason to know of the interest based on readily accessible information. Receipt of a distribution from a foreign trust or foreign estate is deemed for this purpose to be actual knowledge of the interest.

Special rules apply for reporting the maximum value of a taxpayer's interest in a foreign trust. If a taxpayer is a beneficiary of a foreign trust, the maximum value of the taxpayer's interest in the trust is the sum of the fair market value, determined as of the last day of the taxable year, of all of the distributions from the foreign trust to the taxpayer, during the taxable year, plus the value as of the last day of the taxable year of the taxpayer's right as a beneficiary to receive mandatory distributions from the foreign trust.

The penalty for failure to file Form 8938 is $10,000, with an additional penalty of up to $50,000 for continued failure to file after IRS notification. In addition, any underpayment of tax related to an undisclosed specified foreign financial asset may be subject to a 40 per cent penalty.

Form 8938 is also due on the date that one's income tax return is due, including extensions.

(e) Other Forms

There are additional reporting requirements that are required upon contributions to foreign entities and to report the ownership of foreign entities (including, but not limited to, special CFC and PFIC ownership reporting).

Article V: Change of Mind

Even after immigrating to the U.S. and becoming subject to its tax system, individuals can change their mind and decide to end their residence and/or domicile status in the U.S. Below is a brief discussion of a number of potential issues that could be relevant to such a decision depending on the length of residence in the U.S. and the individual's status during such residence.

(a) Expatriation and the "Eight-Year" Threshold

Individuals who terminate their long-term permanent residency status (a green card held for at least eight of the 15 tax years preceding expatriation) after June 17, 2008, and who are "covered expatriates", are treated like citizens who give up their citizenship and are subject to a mark-to-market exit tax on their worldwide property, and certain gifts and bequests that they make after expatriating will also be subject to taxes.

It is therefore of crucial importance for green card holders who are considering giving up their green card to do so effectively before holding the green card for eight years in order to avoid being subject to the onerous expatriation rules, discussed below.

For purposes of determining the eight-year period, any portion of a tax year is considered a full year. By way of example, if an individual obtained a green card on December 1, 2008, and relinquishes the green card on January 1, 2015, the individual will have held the green card for a portion of eight tax years and will therefore be considered a long-term resident. It should be noted that there may or may not be re-immigration consequences to surrendering one's green card after eight years.

Notably, residence in the U.S. under any other immigration status, such as a work visa, does not count towards establishing one's long-term resident status for purposes of the expatriation rules.

Moreover, in order to no longer be considered a domiciliary of the U.S. it is not enough to relinquish one's green card. One must also establish a domicile elsewhere.

(i) Covered Expatriate

Status as a covered expatriate is determined based on an income test, a net worth test or a compliance test. Subject to a number of limited exceptions, an individual who meets any one of these tests will be a covered expatriate.

1) Income Test

An expatriate having an average annual net income tax, for the five-year period preceding the expatriation date, that is greater than an inflation-adjusted amount ($147,000 for 2011, $151,000 for 2012, $155,000 for 2013 and $157,000 for 2014) will be a covered expatriate.

2) Net Worth Test

An expatriate whose net worth upon expatriation is $2 million or more will be a covered expatriate.

3) Compliance Test

Expatriates who do not certify on Form 8854 that they have complied with all U.S. Federal tax obligations for the five years preceding the date of expatriation, will be covered expatriates.

(ii) Exit Tax

The net unrealised gain in a covered expatriate's property will be subject to an exit tax as if the covered expatriate had sold his or her worldwide property for fair market value on the day before terminating his or her residency. The expatriate's worldwide property includes any portion of a trust for which a covered expatriate is treated as the owner for U.S. tax purposes. Note, however, that the net gain on the deemed sale is recognised only to the extent it exceeds $600,000, as adjusted for inflation. For 2014, the exclusion amount is $680,000.

For the purposes of determining the unrealised gain, property held by covered expatriates on the date they first became U.S. residents is treated as having a basis of no less than fair market value on that date. An election can be made to defer the tax on assets not actually sold until their sale or their owner's death, subject to an interest charge and the posting of security as collateral.

(iii) Post-Expatriation Gifts and Bequests

Property given or bequeathed by a covered expatriate (a "covered gift"), after expatriation, to a U.S. person will be subject to tax. This includes distributions from a foreign trust attributable to a covered gift. There is no time limit on the application of this rule. The tax is payable by the U.S. recipient and is applied at the highest estate tax or gift tax rate. Note, however, that the tax is only imposed on a covered gift having a value in excess of the annual gift tax exclusion ($14,000 in 2014).

(b) Avoiding Unintended Deemed Realisation

As discussed earlier, a foreign trust created within five years of its grantor's immigration to the U.S. and that has (or may have) a U.S. beneficiary will be treated as a grantor trust once its grantor becomes a U.S. taxpayer and the trust's income will be subject to U.S. income tax as if it was earned by the grantor personally, irrespective of actual distributions.

As such, the foreign trust's "grantor trust" status will end upon the earlier to occur of (1) the grantor's death, or (2) the grantor's ceasing to be a U.S. person. In either case, the termination of the foreign trust's "grantor trust" status may be deemed a "gain recognition" event causing the grantor to be treated as having sold all of the trust's assets and recognised gain either upon the grantor's death or upon the grantor's ceasing to be a U.S. person.

This unintended triggering of U.S. income taxation can be circumvented, however, by giving a domestic trust the right to withdraw the foreign trust's property. While the grantor is alive and a U.S. person, the trust's income will be taxed to the grantor. After the grantor's death or the grantor's ceasing to be a U.S. person, the domestic trust will step into the shoes of the grantor and will be treated as the owner of the foreign trust for U.S. income tax purposes.

Article VI: Conclusion

Taxes, important as they are, should not be the tail that wags the dog. It is perfectly acceptable for individuals to make decisions based upon quality of life, comfort, desire, proximity to children, and all sorts of other personal considerations, and sometimes paying taxes is the cost of success and of leading one's life as one wishes. But many times taxes can be mitigated, sometimes substantially, through careful advance planning that has minimal, or at least acceptable, impact upon one's life and intentions. What is in all events ill-advised to do, however, is to put one's head in the sand and ignore these considerations when coming to the U.S., as in an age of global information exchange, it will come back to haunt you. It is open hunting season on ostriches.

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Shelly Meerovitch concentrates her practice in trusts and estates law, representing a wide variety of local, national and international high-net-worth clients, including professionals, entrepreneurs and artists. With extensive experience in international estate planning, Shelly works with foreign individuals and families to create tax-effective structures for investment and wealth transfers that minimise their tax exposure. She is highly knowledgeable on the creation of offshore trusts, U.S. transfer taxation planning, high-level estate planning, expatriation and pre-immigration tax planning. Shelly also advises individuals and fiduciaries on the Foreign Account Tax Compliance Act (FATCA) as well as offshore voluntary disclosure programmes.

In addition, Shelly advises clients with unique intellectual property interests in matters of sophisticated estate and tax planning and the administration of complex estates and trusts. She also counsels clients with regard to charitable giving, the formation of private foundations, obtaining tax-exempt status and the rules related to tax-exempt organisations.

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Joshua S. Rubenstein is national head of Katten Muchin Rosenman's Trusts and Estates practice. He is also a member of the firm's Executive Committee, Board of Directors, Compensation Committee and Diversity Committee.

Josh advises businesses and private individuals, including high-net-worth individuals, senior executives, professionals, entrepreneurs, artists and others with unique intellectual property interests. He handles a wide variety of private matters for these clients on a local, national and international level, including personal and estate planning, the administration of estates and trusts, and contested Surrogate's Court and tax proceedings. He has counselled clients in trust and estates matters for more than 30 years, building relationships with those who value and rely upon his advice.

He focuses on creating sophisticated, yet uncomplicated, solutions for clients. Josh finds unforeseen problems and uses an interdisciplinary approach to resolve those problems, bringing in members of teams that deal with taxes, real estate or corporate and other transactional areas of the law, as necessary. Josh is a former adjunct professor at Brooklyn Law School and is a frequent lecturer and author.

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Katten is a full-service law firm with more than 600 attorneys in locations across the United States and in London and Shanghai. Clients seeking sophisticated, high-value legal services turn to us for counsel locally, nationally and internationally. Katten's Trusts and Estates team counsels high-net-worth individuals, families, family offices, banks, trust companies, wealth management advisors and non-profit entities of all sizes. Our individual clients include entrepreneurs, corporate executives, hedge fund managers, philanthropists, real estate investors and developers, accountants, medical professionals, artists, collectors, authors, composers and musicians. We represent clients privately and before taxing and regulatory authorities, including the Internal Revenue Service (IRS), attorneys general and consumer protection agencies. Our attorneys also establish and maintain charitable structures, such as private foundations, charitable lead trusts and charitable remainder trusts.