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Global gridwork: Basic concepts in international estate planning

For American clients with international ties — whether they be international citizenships, residences or simply international assets — the complexities of international estate planning can be daunting. However, advisors who are familiar with fundamental concepts are better equipped to help clients navigate these issues.

Domicile vs. residence

Domicile refers to a client's permanent legal home, where he or she intends to return even if living abroad. Residence, on the other hand, is where the client currently lives. Domicile plays a crucial role in determining which country's laws will govern a client's estate plan, so it is essential to establish and maintain clear documentation of domicile.

Coordination of local experts

Different countries have varying laws and regulations regarding estate planning, taxation and inheritance, and the interplay between

Abbie Pappas

those laws can be overwhelming. It is essential to work with a team of experts who specialize in international estate planning to ensure that a client's plan is compliant with the laws of each relevant jurisdiction. Attorneys, accountants and financial advisors should coordinate with their counterparts in other countries to create a comprehensive plan that protects the client's assets. These advisors can also assist clients in navigating relevant tax treaties, and taking advantage of applicable foreign tax credits and exemptions.

Estate and inheritance taxes

There are varying thresholds for triggering estate or inheritance taxes based on different jurisdictions, and varying rules regarding which assets are subject to estate taxes. In the U.S., a deceased citizen's worldwide estate is generally considered part of the gross estate for estate tax purposes, but this is not true in all countries. Understanding the rules and exemptions wherever a client holds assets, and consulting with competent local counsel as needed, is crucial to minimizing a client's estate tax liability.

Use of trusts

Trusts can be a valuable tool in international estate planning as they can help protect a client's assets from multiple tax jurisdictions, ensure beneficiaries receive their inheritances as intended, and provide for professional management of assets if a client becomes incapacitated. On one hand, establishing certain types of trusts under U.S. tax law, such as foreign grantor trusts or qualified domestic trusts, can help clients achieve their U.S. estate planning goals effectively. However, clients and advisors must also be wary that many jurisdictions do not respect trusts as entities in the same way that the U.S. tax system does. ◆

Abbie Pappas, Counsel, Ulmer & Berne LLP. Contact: 216.583.7230 or apappas@ulmer.com