

The Inequity of U.S. Estate Tax Consequences for Noncitizen Spouses and Expatriates and the Impact of the Proposed Exit Tax

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The ATA Journal of Legal Tax Research (2007) 5 (1): 1-15.

<https://doi.org/10.2308/jltr.2007.5.1.1>

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In most cases, U.S. estate tax law permits assets passed to a spouse on death to be excluded from the tax net via the operation of the marital tax deduction. For individuals with noncitizen spouses, however, the law denies the marital deduction unless the assets are placed in a qualified domestic trust. The purpose of this arrangement is to prevent assets being lost to the estate tax system due to repatriation by the noncitizen spouse. The additional compliance costs imposed on noncitizen spouses regardless of whether they repatriate, stands in stark contrast to the regime faced by U.S. citizens who elect to relinquish their citizenship. The alternative tax system imposed on such former-citizens offers considerable scope for both legitimate and illegitimate tax minimization. This paper proposes a greater alignment of these divergent systems, in light of the proposed exit tax legislation, both of which are designed to achieve the same objective of ensuring that wealth generated in the U.S. does not escape the estate tax net.

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