**Podcast Transcript**

# Estate and Tax Planning for Globally Mobile Clients: Pre-immigration Planning for Moving to the United States

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Lee: The United States has a complex tax system that can differ from that of one's home country. For that reason, there are many tax issues people should be aware of before moving to the United States, along with tax planning opportunities for them to consider before arriving. I'm Leeann Lee, and you're listening to BakerHosts.

On today's episode, we'll discuss tax planning for foreign nationals who are considering moving to the United States whether for work, family reasons, or pleasure. We're joined by a Private Wealth partner, George McCormick, who is located in our New York office. In his practice, George focuses on tax and estate planning for international clients with a connection to the United States. Welcome to the show, George.

McCormick: Hi Leeann, thanks for having me today.

Lee: So, to start us off, what are the main tax issues or consequences someone should know about before moving to the United States?

McCormick: I think there are two main principles to be aware of if you're a non-U.S. person planning a move or considering a move to the U.S. The first idea is that in the U.S., we have a federal income tax and also an estate and gift tax. So, the income tax applies like you would think it would on income, and the estate and gift tax applies on the gratuitous transfer of property. So, like a gift that someone makes during their lifetime or that they make at death.

The other very notable thing to be aware of if you're considering a move to the U.S., is that these taxes apply on a worldwide basis. So, if you are a U.S. taxpayer, you're subject to U.S. federal income tax on your worldwide income no matter where it is earned. Likewise, if you're a U.S. taxpayer for estate gift tax purposes, you're potentially subject to estate and gift tax on your transfers of property located anywhere in the world.

Lee: So, you broke down these taxes into two main categories, first, income tax and second, estate and gift tax. Could you discuss more about how the income tax is applied, to whom, and any tax breaks or benefits?

McCormick: Yes. So, the U.S. federal income tax applies for a U.S. taxpayer on all sorts of income. So, it applies to salary, wages, short-term capital gains, long-term capital gains, dividends, interests, royalties, and generally any sort of income that a person earns, again, on a worldwide basis. And we're talking about people who are U.S. residents.

A U.S. resident is generally one of three different types of people: a U.S. citizen, a U.S. permanent resident or green card holder, or a person who is deemed to be a resident under what we call the substantial presence test. And substantial presence test is a day count test of the number of days that a person is in the United States. And if a person is in the United States for 183 days or more in a year, they are deemed a U.S. resident. But you don't just look at the current year, you also look at one-third of the days from the preceding year and one-sixth of the days from the year before that. And when you add up those days under that formula and the number equals or exceeds 182 days, then the person is deemed to be a resident for that year. Generally speaking, if a person is not in the U.S. for more than 122 days a year, generally they won't be deemed to be a U.S. resident. So, that is an important number to look at for a person who is visiting the U.S. each year.

For tax breaks and benefits, the U.S. tax code, if you take the code and you stack it with all the regulations, it is all over six feet tall. So, as you can imagine, there are a lot of breaks and benefits. But for a person who is considering moving to the U.S., I'll mention a few different things. First of all, that we have income tax treaties with various countries generally trying to avoid the double taxation of income. So, if a person lives in the United States but they earn income in another country, the U.S. has treaties with certain countries trying to avoid being double taxed on that. And in other countries they're referred to as double tax treaties or double tax agreements. In the U.S. we call them income tax treaties.

Sometimes a treaty doesn't apply, whether because there is no treaty with a country or because just under the treaty it may not apply in a given situation. And so, then we fall back under this idea of what we call foreign tax credits. So, there it is a similar principle that if a person is a resident in one country but they earn income in a different country, and they're taxed in that second country, the goal or the hope is that you get a credit under the foreign tax credit system in the first country to try to avoid double taxation.

Lee: So, with that in mind, what steps can someone take to minimize their tax exposure before moving here?

McCormick: Generally, I would tell people to try to simplify their assets and their income. The main reason I would say to do that is because, in addition to income tax reporting for your income from all over the world, in the U.S. we also have certain tax information forms that are required to report foreign assets and particular foreign financial assets. And there are potentially steep penalties imposed when those forms are not reported timely or accurately. So, to avoid unintentionally missing a form, I tell clients to just try to simplify their financial affairs before moving to the U.S. It is also because certain types of assets held overseas can be taxed in a punitive way or negatively. So, I again, I try to tell clients to try to simplify what they own before they move to the U.S.

Another step they can take is to potentially make certain tax selections from a U.S. perspective where you can treat companies and other assets as liquidating. Again, if the asset is liquidated and it goes away, it simplifies their affairs.

I would also recommend to a client considering a move to the U.S. to try to accelerate the recognition of income while they're outside of the U.S., because before they become a U.S. taxpayer, they're not subject to U.S. tax on their foreign income. So, consider accelerating the recognition of income before they move to the U.S. Conversely, consider postponing expenses that could be business deductions until you move to the U.S., so that you can take advantage of those expenses once you become a U.S. taxpayer.

Lee: Now switching gears, you also mentioned estate and gift tax. To whom does that apply and how?

McCormick: So, the U.S. federal estate and gift tax, like I mentioned earlier, applies to gratuitous transfers of gifts during lifetime or at death. It can apply to non-U.S. citizens and non-residents in certain situations, but I want to focus today on people who are U.S. citizens and U.S. residents. And again, that applies on their transfer of worldwide assets. So, maybe they're an American that lives overseas, or maybe they're an American that lives in the U.S. but has assets abroad. The estate and gift tax can apply on the transfer of those assets. The highest rate of tax is 40%, but to offset that there is a lifetime unified credit as we call it or exemption. So, a person can make gifts during their lifetime to use this exemption amount to avoid tax, and if they have remaining exemption amount when they pass away, that can offset tax that is due on gifts that they make at death. And currently that exemption is $13.61 million.

Now, when I've been talking about taxation of transfer of worldwide assets it applies to U.S. citizens and residents, and it is very notable to keep in mind that resident for state and gift tax purposes is different than for income tax purposes. So, for income tax purposes I mentioned three objective criteria: citizenship, permanent residency, or day count in the U.S. But residency for estate and gift tax purposes is based on domicile, and domicile is defined as a person being physically present somewhere with the intent to permanently remain. So, it is what is their mindset about where they intend to permanently reside. But what happens is that often this issue comes up after a person has passed away, and for example, there is a estate tax audit. To determine domicile, what we practically end up doing is looking at various factors in their life that show where they had intent to remain. So, where did they own homes? Where did they spend their time physically? Where do they have assets, earn income, where were their social ties like clubs? Where do they vote? Where do they attend church? Other factors can even be looked at that are more personal, like where did the family dog reside? And so, you look at all these factors together to help determine where a person was domiciled.

Lee: What sort of planning opportunities are available to someone who has not yet moved to the United States?

McCormick: Well, before a person becomes a U.S. resident, when they're only subject to U.S. estate and gift taxes on U.S. situs assets, I tell them to consider making gifts for their family members or friends or other people they want to benefit before they become a U.S. resident. Because once they become a U.S. resident, they have this lifetime exemption, again, currently $13.61 million. But before they become a U.S. resident, they can gift an unlimited amount of non-U.S. situs assets. And a very valuable tool to consider in that situation is a trust because in the U.S., again, we have an estate and gift tax. And if that person is moving to the U.S., then the odds are that their family members are moving to the U.S. as well. And so, if they make gifts into a trust, the assets while in trust can be protected from estate and gift tax for not only the person making the gift but also their family members.

Lee: This has been a great conversation. Just one final question for you. With so many issues to consider before someone moves to the United States, what are the main points you would like them to take away from our conversation?

McCormick: Well, I'd like to reiterate that they should be aware that we have the federal income tax and estate and gift tax and that those apply on a worldwide basis. They should also be aware of the fact that many states in the U.S. oppose their own income tax and potentially estate tax, and so do many other cities or counties or localities.

I would also tell a client considering a move to the U.S. that really the goal of what I've been talking about today and how I help clients is trying to obviously minimize the tax impact of moving to the U.S. But we can't just look at U.S. taxes alone because some of the things I've talked about are potentially earning income before they become a U.S. person and making gifts before they become a U.S. person. But of course, we don't want to unintentionally trigger tax in the country where they reside before the U.S. or where they have assets.

So, they should seek out U.S. tax advice and legal advice before moving to the U.S. But they should also be working with a local lawyer or tax advisor, and then a person like me who is helping on the U.S. side should work with that person so that plan works to achieve an overall plan of minimizing tax.

Lee: Thank you, George.

McCormick: Thank you, Leeann.

Lee: If you have any questions for George, his contact information is in the show notes. As always, thanks for listening to BakerHosts.