



# Foreign Nationals Mean Business

IN TODAY'S GLOBAL economy, heading "home" or "to the office" may mean grabbing a passport and catching an international flight. Borders have become blurred—creating a growing market of affluent foreign nationals in the United States.<sup>1</sup> These individuals face unique estate planning challenges which translate into sales opportunities for life insurance professionals. Since targeting this market requires navigating the complexities of a global marketplace, it's critical that producers work with a carrier like Transamerica, which possesses the expertise and resources to help open the door to this lucrative opportunity.

## Foreign National Planning 101

When it comes to estate planning for foreign nationals, the key concepts to keep in mind are:

- Residency matters
- U.S. transfer tax can significantly erode the assets of foreign nationals
- The unlimited marital deduction is not allowed for foreign national surviving spouses

Working with a carrier that is experienced in this market can distinguish a producer from the competition. Transamerica's flexible approach to the foreign national market is informed by a deep understanding of the global marketplace. By working with Transamerica, producers can take advantage of this expertise, expand market reach and increase sales through broad product availability and competitive underwriting offers.

## Residency Matters

The first step in assessing a client's exposure to U.S. transfer taxes is to determine whether he or she can be classified as a Resident Alien (RA) or Non-resident Alien (NRA). The category into which a client falls hinges on the location of their domicile.

Under U.S. law, those with a U.S. domicile will be classified as RAs for U.S. gift and estate tax purposes. Those with a domicile located outside the U.S. will be classified as NRAs.<sup>2</sup>

RAs are generally taxed like U.S. citizens. Thus, all property transfers by gift or at death are subject to U.S. transfer taxes. In fact, RAs may be shocked to find out that they will be subject to U.S. transfer taxes on assets owned *worldwide*, not just those located within the United States.

NRAs, on the other hand, are generally only subject to U.S. estate and gift tax to the extent that they own property deemed to be located in the U.S.<sup>3</sup> However, the lifetime gift tax exemption of \$5 million in 2011–2012 is not available for taxable gifts made by an NRA. Instead, NRAs only have an estate tax credit of \$13,000 to offset this tax liability. The credit is not indexed for inflation and shelters only the first \$60,000 of an estate from taxes—compared to \$5 million for U.S. citizens and RAs in 2011–2012.

For example: Cesar Lopez, an NRA, passed away this year with a \$10 million U.S. estate. His estate will be subject to U.S. estate tax as follows:

Gross U.S. Assets	\$10,000,000
Tentative Federal Estate Tax	(\$3,480,800)
Less Credit	\$13,000
Net Estate Taxes	(\$3,467,800)
Net U.S. Assets	\$6,532,200

The result? **Net assets of Cesar's estate shrank by 35%!**

## Unlimited Marital Deduction and the Non-U.S. Citizen Surviving Spouse

Generally, a married couple can make unlimited gifts between spouses (during life or upon death), on a federal gift and estate tax-free basis. This tax advantage is known as the unlimited marital deduction.

### Only Transfers to a U.S. Citizen Spouse Will Qualify for the Deduction

Married couples consisting of at least one non-U.S. citizen may want to consider special planning if their estate is large enough to trigger an estate tax liability. Otherwise, upon the death of the first spouse, estate taxes may be due—in cash—within nine months.

	RA	NRA
Unlimited Marital Deduction	No	No
Gift Splitting	Yes	No
Annual Gift Tax Exclusion	Yes	Yes
\$5 M Estate Tax Exemption	Yes	No (limited to \$60,000)

## Life Insurance as a Solution

Life insurance can be a viable way to ease the economic problems created by U.S. transfer taxes when one or both spouses is not a U.S. citizen. Transamerica's portfolio of guaranteed products may be used for any of the following solutions.

### Overcoming Limits on the Unlimited Estate Tax Marital Deduction

While the unlimited marital deduction is not allowed for gifts upon death to a non-U.S. citizen spouse, lifetime gifts to a non-citizen spouse in the amount of the Super-Annual Exclusion (currently \$136,000) are gift tax-free and can be used to buy life insurance on the life of the U.S. citizen spouse to offset the increased estate tax on the estate of the decedent non-citizen spouse due to the lack of the unlimited marital estate tax deduction. In addition, insurance proceeds will be received U.S. income tax-free.

### NRA's Can Own Policies Outright Without Negative Federal Estate Tax Consequences

Life insurance offers NRA clients a unique, simple and cost-effective solution to problems posed by U.S. federal estate taxes: an NRA can own a life insurance policy on his own life without subjecting the death benefit to U.S. federal estate taxes. In other words, while an NRA has the option of establishing an irrevocable life insurance trust to own the policy, such a trust is not necessary in order to shelter the death benefit from federal estate taxes.

<sup>1</sup> All solicitation and communication (including marketing materials) concerning the sale of the life insurance products, including all telephone, fax, or other electronic or delivered correspondence to a foreign national must take place in the U.S. For details, refer to "Growing Your Business Through the Foreign National Market, Guide to Foreign National Underwriting and Support (OLA 1871).

<sup>2</sup> Some countries have estate tax treaties with the U.S. which may take precedence over U.S. law in defining residence and tax consequences for individuals covered by those treaties. Other countries may offer tax deductions or credits to offset the double taxation.

<sup>3</sup> Generally, only an NRA's assets that are considered located in the U.S. will be subject to federal estate tax, including most intangible property, such as stock in a U.S. corporation and interest in a U.S. partnership. However, only an NRA's real or tangible property which is deemed located in the U.S. will be subject to U.S. gift tax. Gifts of intangible property—even if deemed located in the U.S.—will not be subject to gift tax.

This material was not intended or written to be used, and cannot be used, to avoid penalties imposed under the Internal Revenue Code. This material was written to support the promotion or marketing of the products, services, and/or concepts addressed in this material. Anyone to whom this material is promoted, marketed, or recommended should consult with and rely solely on their own independent advisors regarding their particular situation and the concepts presented here.

Transamerica Life Insurance Company ("Transamerica") and its representatives do not give tax or legal advice. This material is provided for informational purposes only and should not be construed as tax or legal advice. Clients and other interested parties must be urged to consult with and rely solely upon their own independent advisors regarding their particular situation and the concepts presented here.

Discussions of the various planning strategies and issues are based on our understanding of the applicable federal tax laws in effect at the time of presentation. However, tax laws are subject to interpretation and change, and there is no guarantee that the relevant tax authorities will accept Transamerica's interpretations. Additionally, this material does not consider the impact of applicable state or foreign laws and regulations upon clients and prospects. Clients should consult with and rely on their own legal and/or tax advisor to determine the consequences, if any, of owning or receiving proceeds from a Transamerica policy.

Although care is taken in preparing this material and presenting it accurately, Transamerica disclaims any express or implied warranty as to the accuracy of any material contained herein and any liability with respect to it. This information is current as of July 2011.

For example, an NRA who owns \$10 million in U.S.-based assets may buy an individually owned policy for \$5 million and, unlike a U.S. citizen, the value of his taxable estate will not increase to \$15 million. Instead, the NRA's U.S. estate will remain at \$10 million.

## The Transamerica Advantage

Transamerica possesses unrivaled expertise and resources in the foreign national market, including a dedicated international underwriting team which is fluent in various languages and well versed in large case underwriting. In addition, Transamerica offers:

- A broad portfolio of products, including TransTerm®
- No minimum face amount limitations on guaranteed products
- Competitive short-term foreign travel guidelines
- Advanced marketing expertise

For more information on steps to take to avoid planning pitfalls and expedite cases, contact your Transamerica representative or call 1-866-545-9058, option 1.

From *The Source*, a newsletter from Transamerica Insurance & Investment Group.



Transamerica Life Insurance Company

an AEGON company