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## MEMORANDUM

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**RE:     U.S. ESTATE TAX (NON-RESIDENT ALIENS)**

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A non-resident alien is subject to U.S. estate tax on their taxable estate assets situated in the U.S. (IRC §2101(a), 2106(a)).

For U.S. estate tax, both stock of a U.S. corporation (IRC §2104) and U.S. real estate (Treas Reg §20.2104-1(a)91)) are “situated” in the U.S.

Non-resident aliens are entitled to:

1. Unlimited deduction for transfers to U.S. citizen spouses (IRC §2106(a)(3)).
2. A “\$60,000 unified credit”, which permits a non-resident alien to transfer only \$60,000 worth of property free of estate tax.
3. Deduct a portion of expenses, indebtedness, taxes and losses from their gross estates (IRC §2106(a)(1)), deduct certain charitable contributions from their gross estates (IRC §2106(a)(2)(A)), but only if they disclose their worldwide estate in their estate tax return (IRC §2106(b)).

A person who acquires property from a non-resident alien decedent will receive a “stepped-up” basis in the property (i.e., a basis equal to the fair market value of the property at the date of the decedent’s death) regardless of whether the property was includible in the non-resident alien’s gross estate for estate tax purposes (IRC §1014(b)).

### Generation Skipping Tax

Non-resident aliens are subject to the generation skipping tax but only on gifts subject to gift or estate tax (e.g., no gift tax on lifetime “skips” of intangible property).

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