

---

RIPP

---

GROSSMAN

---

FITTE

---

## *Inbound Estate Planning for the Globally Mobile*

Presented by Lauren Fitte

Dallas Estate Planning Council  
March 5, 2026

3420 EXECUTIVE CENTER DRIVE, SUITE G-100 | AUSTIN, TEXAS 78731 | *phone* 512.368.3335 | RGFLLP.COM

1

## Biography and Contact Information

---

**Ripp Grossman & Fitte LLP** ("RGF") delivers highly-personalized wealth preservation, tax, closely-held entity planning advice, and estate planning services to the high-net-worth community in the United States and abroad. Distinguished by a superb team of legal, tax, and insurance professionals, RGF offers a comprehensive array of private client strategies at the highest level of quality.

**Lauren Fitte's** practice focuses on the design, implementation, and administration of domestic and international estate and business plans and the associated federal income, estate, and gift tax implications applicable to multi-jurisdictional clients. Lauren's inbound practice includes trust, entity, gift planning, and estate planning for non-U.S. families with beneficiaries and investments in the U.S., inheritance planning, asset protection, tax compliance matters, and pre-immigration planning. She also has many years of experience advising fiduciaries, settlors, and beneficiaries with regard to the establishment, administration, and tax reporting issues relating to offshore trusts and their investments. In addition to her niche international trust and estate practice, Lauren's practice also includes sophisticated domestic estate planning, probate, and estate administration matters. Lauren is board certified in Estate Planning and Probate Law (Texas Board of Legal Specialization).

**Lauren Fitte**  
**Partner**  
512.375.3288 *direct*  
[lfitte@rgfllp.com](mailto:lfitte@rgfllp.com)

| R | G | F |

INTERNATIONAL ESTATE PLANNING

2

2

1

## How Does International Estate Planning Impact Your Practice?

- As of the 2011 Census, 21% of married households in the U.S. had at least one spouse born in another country.
- Many estate planning attorneys assume that clients with foreign citizenship or U.S. clients with foreign assets need to be referred to an attorney with international estate planning expertise.
- While certain issues require international expertise, many clients have relatively simple planning considerations.
- For clients with foreign assets, coordination with local counsel is key.

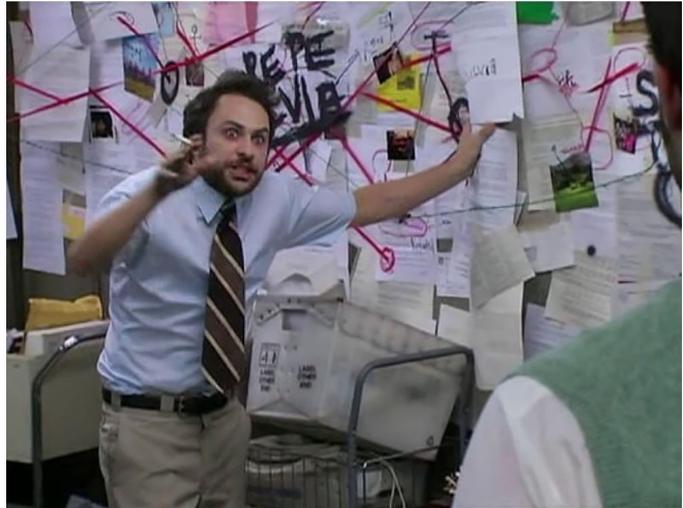
## STEP: Society of Trust & Estate Practitioners

The screenshot shows the STEP Directory website. At the top left is the STEP logo with the tagline "ADVISING FAMILIES ACROSS GENERATIONS". To the right of the logo is a search bar with a magnifying glass icon, and buttons for "Contact Us", "Search Directory", and "Log in". Below the header is a navigation menu with links for "Join", "Study", "Membership", "Knowledge Hub", "Events", "Communities", "Employers & Jobs Board", and "About Us". The main content area features the heading "STEP Directory" and the text "Search for STEP members, firms, branches or jurisdictions". Below this are four large buttons with icons and labels: "Members" (with a person icon), "Firms" (with a building icon), "Branches" (with a building icon), and "Jurisdictions" (with a globe icon). The background of the main content area features a network diagram with nodes and connecting lines, and several circular icons representing people and organizations.

**U.S. Clients with Foreign Assets?**

**Foreign Clients with U.S. Assets?**

**= Web of Complex Multi-Jurisdictional Tax Implications**



# ESTATE PLANNING FOR U.S. CLIENTS WITH MULTI-JURISDICTIONAL ASSETS

## Testamentary & Probate Avoidance Options

- Texas Will + Situs Will
- Foreign Holding Company
- Revocable Trust
- Irrevocable Trusts, Foundations, Fideicomisos
- Usufructs
- Forced Heirship Workaround

## Situs Wills

Client owns non-U.S. real property, bank assets, and retirement/pension-style accounts. Local counsel advises that probate in the foreign jurisdiction will be simpler with a situs Will

- Determine scope of TX will and foreign will
  - U.K. Will governs property situated in U.K.; TX Will governs all property situated outside of U.K.
- Ensure two Wills do not revoke each other
- Take care to execute both Wills according to execution formalities (*e.g., locate a notary public at local embassy if executing self-proving affidavit outside of the U.S.*)

## Foreign Holding Company

Client asks if a Texas Will can dispose of worldwide assets, including non-U.S. real property, bank assets, and retirement/pension-style accounts.

- Drop foreign properties into a holding company to avoid probate in the local jurisdiction. Consider US holding company (TX LLC) versus foreign holding company.
- For foreign entities, consider its default classification for US income tax purposes and for foreign companies, file a Form 8832 to elect DRE treatment and avoid classification as a foreign corporation for US income tax purposes.
- If the client owns only interests in a holding company, will it be necessary to probate the Texas Will in the foreign jurisdiction? If so, what is the process? Will foreign banks accept Texas Letters Testamentary or will they require an ancillary probate? Consult with local counsel to determine if a situs Will would be simpler or if there are ways to avoid probate in the foreign jurisdiction.

## Revocable Trust

Client owns non-U.S. real property, bank assets, and retirement/pension-style accounts. Confirm negative tax implications in foreign jurisdiction of currently funding a Texas revocable trust.

- It is sometimes inadvisable to use a revocable trust to consolidate assets located in a civil law country.
- Civil law countries may not recognize trusts as legal persons.
- Even certain common law countries may treat funding a revocable trust as a taxable transfer.
- Beware of local tax implications of naming non-U.S. trustees or beneficiaries.
  - Determine whether bequest to non-U.S. beneficiary would be better left outright

## Irrevocable Trusts, Foundations, & Fideicomisos

Client owns non-U.S. real property, bank assets, and retirement/pension-style accounts. Confirm negative tax implications in foreign jurisdiction of lifetime or testamentary transfers to an irrevocable trust, statutory foundation, or fideicomiso.

- Consider lifetime gift to an irrevocable trust, foundation, or fideicomiso.
- Consider testamentary bequest to an existing irrevocable trust at death.
- Look at exercising powers of appointment over existing structures to coordinate with U.S. estate plan

## Usufructs

Client owns non-U.S. real property in a civil law jurisdiction. Consider availability of a usufruct under local law.

- Similar to a life estate, a usufruct allows one party—the usufructuary—to retain the right to use and enjoy income or benefits of property while transferring “naked title” to a successor, now referred to as the owner. At the death of the usufructuary, full title reverts to the owner, e.g., the naked titleholder.
- Gift of naked title with retention of the usufruct interest will cause a current taxable gift plus inclusion in the U.S. estate of the retained interest
- 100% basis adjustment at usufructuary’s death

## Forced Heirship – Brussels IV

- For clients with assets in the European Union, a European Succession Regulation known as *Brussels IV*, permits individuals (regardless of their nationality) to designate the law of their nationality as the governing law for the succession of their assets located within EU member states.
- Designating the law of your nationality can be advantageous in avoiding forced heirship regimes.
- By invoking a valid choice-of-law clause in their will, U.S. individuals can elect to have state law govern the disposition of foreign assets.
- Absent a choice-of-law clause, the default rule under Brussels IV is that the law of the decedent's "habitual residence" at the time of death governs succession—unless the decedent had a manifestly closer connection to another jurisdiction.

## ESTATE PLANNING FOR NON-U.S. CLIENTS WITH U.S. ASSETS OR HEIRS

## Testamentary & Probate Avoidance Options

For non-US resident clients, consider options for disposing of US property.

- Single Will
- Multiple Wills
- Holding Companies
- Revocable Trust
- Irrevocable Trusts, Foundations, Fideicomisos
- IRS Transfer Certificates

## Closing U.S. Financial Accounts

U.S. financial institutions typically require the appointment of a U.S. executor or evidence of a U.S. Transfer Certificate in order to close a U.S. account held in the name of a foreign individual. This can apply to both nonresident U.S. citizens as well as noncitizens who are resident of the U.S.

- Consider using a simple TX will to appoint a U.S. executor in case there are difficulties with ancillary probate using a foreign Will that does not name a U.S. personal representative.
- Using a TOD, POD, or other type of beneficiary designation will not necessarily avoid U.S. probate unless the financial institution will accept a U.S. Transfer Certificate.

## U.S. Transfer Certificate

For estates of nonresident noncitizens where no Form 706-NA is required, you must gather and submit information to the IRS to request a U.S. Transfer Certificate (clearance that no U.S. estate tax is owed).

1. Will plus English translations.
2. Copies of death tax returns in foreign countries.
3. Death certificate.
4. An affidavit signed by the personal representative, with the following items:
  - Decedent's date and country of birth.
  - Date of U.S. naturalization, if relevant.
  - A list of Decedent's U.S. assets and their DOD values.
  - Decedent's citizenship and residence at DOD.
  - Whether any of Decedent's U.S. bank accounts were used in connection with a U.S. trade or business.

## FIDUCIARY SELECTION

## Foreign Fiduciaries – Trustee Selection

A foreign trustee may cause a trust to be treated as a foreign trust.

Ask: does the trust meet the **court** and **control** test?

- IRC 7701(a)(30)(E) defines a **U.S. trust** as
  - any trust if—
    - A **court** within the United States is able to exercise primary supervision over the administration of the trust, **and**
    - One or more United States persons have authority to **control** all substantial decisions of the trust
- IRC 7701(a)(31)(B) defines a **foreign trust** as:
  - Any trust other than a U.S. trust (*as defined above*)

## Foreign Fiduciaries – Trustee Selection

A trust that fails the control test will be a foreign trust. One or more U.S. persons (*including domestic corporations*) must have authority to control all substantial decisions of the trust. Substantial decisions include:

- |   |   |
|---|---|
| (A) Whether and when to distribute income or corpus;                  | (G) Whether to sue on behalf of the trust or to defend suits against the trust; |
| (B) The amount of any distributions;                                  | (H) Whether to remove, add, or replace a trustee;                               |
| (C) The selection of a beneficiary;                                   | (I) Whether to appoint a successor trustee; and                                 |
| (D) Whether a receipt is allocable to income or principal;            | (J) Investment decisions.   |
| (E) Whether to terminate the trust;                                   |   |
| (F) Whether to compromise, arbitrate, or abandon claims of the trust; |   |

## Foreign Fiduciaries – Trustee Selection

### EXAMPLE 1. UNANIMOUS DECISION = FOREIGN TRUST

Trust is a testamentary trust with three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens, and *C* is a nonresident alien. No persons except the fiduciaries have authority to make any decisions of the trust. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because United States persons do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

### EXAMPLE 2. MAJORITY RULES = U.S. TRUST

Assume the same facts as in *Example 1*, except that the trust instrument provides that all substantial decisions of the trust are to be decided by a majority vote among the fiduciaries. The control test is satisfied because a majority of the fiduciaries are United States persons and therefore United States persons control all the substantial decisions of the trust.

## Foreign Fiduciaries – Executor Selection

A foreign executor does not cause an estate to become a foreign estate for income tax purposes

- IRC 7701(a)(30)(D) defines a **U.S. estate** as:
  - any estate (*other than a foreign estate as defined below*)
- IRC 7701(a)(31)(A) defines a **foreign estate** as:
  - an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A

## Foreign Fiduciaries – Summary

### Trustees:

- A testamentary trust will be treated as a foreign non-grantor trust for income tax purposes if it fails either the court test or the control test.
- The trustee's residency often determines whether the trust is treated as a U.S. or a foreign trust. Clients should be advised of the risk of naming a foreign trustee for testamentary trusts.

### Executors:

- Unlike a trust, an estate is treated as a foreign estate based on the character of the estate's income, not the executor's residency.
- Naming a foreign executor should not cause the estate to be treated as a foreign estate. Clients should be advised of the probate process and the executor's need to appoint a local resident agent.

## INCOME TAX RESIDENCY *vs.* TRANSFER TAX RESIDENCY

# Income Tax Residency

1. The Green Card Test
2. The Substantial Presence Test
  - Physically present in the U.S. for at least 31 days during the current year *and* at least 183 days for the three-year period ending on the last day of the current year using a weighted-average calculation
3. The First-Year Election
  - Physically present in the U.S. for 31 consecutive days during the current year *and* at least 75% of the days in the “testing period” of the current year *and* meets the substantial presence test for the succeeding year

# Substantial Presence Test

Physically present in the U.S. for at least 31 days during the current year *and* at least 183 days for the three-year period ending on the last day of the current year using a weighted-average calculation

2026: 120 days present x 1	=	120
2025: 120 days present x 1/3	=	40
2024: 120 days present x 1/6	=	20
Weighted Average Total:		180

180 days = not substantially present

## Transfer Tax Residency

- Unlike income tax residency, transfer tax residency depends on an individual's domicile.
- **"Domicile"**: *A person's fixed and permanent place of abode in which the person intends to remain indefinitely or to which the person intends to return.*
  - A person can have multiple residences, but only one domicile.
  - Domicile is a subjective inquiry, and courts look to a totality of circumstances.

**Non-domiciliaries have only a \$60,000 exemption from federal estate tax.**

## Treaty Considerations

- If a client is considered a tax resident of another country and that country is a treaty partner with the U.S., U.S. taxation may be reduced or eliminated.
- The U.S. has income tax treaties with over 60 countries.
- The U.S. has estate and/or gift tax treaties with only 15 countries: Australia, Austria, Canada\*, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, South Africa, Switzerland, and the United Kingdom.

\*For Canada, death tax issues are contained in a Protocol to the income tax treaty.

# BEQUEST TO NON-CITIZEN SPOUSE USING A QDOT

## What is a QDOT?

---

- The unlimited marital deduction is only available for transfers to surviving spouses who are U.S. citizens (absent treaty relief).
- If the survivor is a non-citizen, the unlimited marital deduction is available only for a transfer to a **Qualified Domestic Trust ("QDOT")** for the surviving spouse's benefit.
- A QDOT defers estate tax in the deceased spouse's estate. However, estate tax may be imposed on: (i) distributions of capital from the QDOT to the surviving spouse during life; and (ii) the value of the property remaining in the QDOT on the date of the surviving spouse's death.

## QDOT Qualifications

- A QDOT must:
  1. Have at least one trustee who is a U.S. citizen or domestic corporation; *and*
  2. Provide that no distribution (*other than a distribution of income*) may be made unless the U.S. trustee has the right to withhold estate tax.
- “Small QDOT” (<\$2,000,000) must contain provisions prohibiting trust from owning foreign real estate.
- “Large QDOTs” (>\$2,000,000) must meet security requirements:
  1. A U.S. bank must serve as trustee; *or*
  2. Trustee must furnish bond equal to 65% of FMV of trust assets; *or*
  3. Trustee must provide letter of credit equal to 65% of FMV of trust assets.

## QDOT Planning Considerations

- Marital Trust containing QDOT vs. “QDOT-able Disclaimer Trust.”
  - Planners may assume that a bequest to a non-citizen spouse must pass to a marital trust with QDOT language. However, creation of a marital trust may be impractical if the family’s circumstances and net worth do not otherwise call for a marital trust plan (*and especially if the surviving spouse acquires citizenship*).
  - Consider utilizing a “QDOT-able disclaimer trust.”

## QDOTs and Portability

- Non-citizen surviving spouse may elect portability on Form 706.
  - DSUE amount is subject to certain adjustments for non-citizen surviving spouses.
  - General DSUE ordering rule for two citizen spouses: Survivor uses DSUE on lifetime gifts before her own basic exclusion amount.
  - Reverse is true here: Non-citizen spouse cannot use DSUE to cover lifetime gifts while QDOT exists.
- If a bequest is left outright, surviving spouse may create and fund QDOT within 9 months of decedent's death.

## THREE HYPOTHETICAL CLIENTS

# Couple 1

## **Both Non-Citizen Resident Spouses with Non-Taxable Estate**

- Both spouses are green-card holders and U.S. domiciliaries for transfer tax purposes
- Live and work in Texas, and all property located within Texas (*but may inherit property outside the U.S.*)
- Combined estate = ~\$5,000,000
- *Planning Considerations:*
  - QDOT-able Disclaimer Trust; or
  - Surviving spouse creates and funds QDOT after deceased spouse's death

# Couple 2

## **Citizen Married to Non-Citizen Non-Resident with Taxable Estate**

- Spouse A is a U.S. citizen
- Spouse B is a non-citizen and nonresident
- Spouse A's estate = ~\$25,000,000
- *Planning Considerations:*
  - QDOT Marital Trust *or* Disclaimer Trust
  - Consideration given to equalization of each spouse's estate
    - Super annual exclusion of \$194,000 per year for gifts to non-citizen spouse (indexed for inflation)

## Couple 3

### Unclear Long-Term Domicile

- Spouse A is a citizen Spain. No U.S. residence currently.
- Spouse B is a dual citizen of the U.S. and Spain.
- Time split between U.S. and Spain on a somewhat equal basis, and property owned in both countries.
- Combined estate = ~\$40,000,000
- *Planning Considerations:*
  - Spouse A will likely only have a \$60,000 exemption on U.S.-situs property.
  - Estate plan should be carefully coordinated with Spanish counsel by an attorney with international planning expertise.

## U.S. TRANSFER TAXATION OF NONRESIDENT ALIENS

## NRA Estate Taxation v. Gift Taxation

Nonresident aliens (“NRAs”) have only a \$60,000 exemption from federal estate tax, which is *not* indexed for inflation.

Subject to Estate Tax in NRA’s Estate	Subject to Gift Tax in Transfer by NRA
U.S.-Situs Real Property	U.S.-Situs Real Property
U.S.-Situs Tangible Personal Property, including physical currency	U.S.-Situs Tangible Personal Property, including physical currency
U.S.-Situs Intangible Personal Property	
Potentially Partnership and LLC interests	
Certain Retained Interests	

## Estate Taxation of Intangible Property

Included in NRA’s U.S. Estate	Not Included in NRA’s U.S. Estate
Funds held in U.S. brokerage account.	Funds held in a U.S. commercial bank custody account
Funds in bank or brokerage account that are used in a <b>U.S. trade or business</b> .	Savings accounts, checking accounts, or CDs with a U.S. bank if <b>not</b> used in a U.S. trade or business
Qualified retirement plans held in the U.S.	Funds deposited in a foreign branch of a U.S. bank
Stock in domestic corporations	Debt obligations and certain short-term OID obligations on a U.S. person that qualify for the portfolio interest exemption under Section 871(h)
Life insurance policies and annuities held by the decedent on the life of <i>another person</i> issued by a U.S. insurance company	Proceeds of a life insurance policy held by the decedent on the <i>decedent’s</i> life issued by a U.S. insurance company

# Estate Taxation of Partnerships and LLCs

- The situs of a partnership or LLC interest is subject to debate.
- **Aggregate Theory:** The place of organization of the partnership/LLC is irrelevant, and we look to the situs of the partnership's/LLC's property to determine the situs of the owner's interest.
- **Entity Theory:** The partnership/LLC is treated as an entity separate from its owners, and we look to (i) the location where the partnership/LLC conducts its business, or (ii) the residency of the partnership/LLC for income tax purposes to determine the situs of the owner's interest.

# Gift Taxation

- Whereas NRAs are subject to U.S. estate tax on a broad range of U.S.-situs assets, they are subject to gift taxation only on U.S.-situs real and tangible personal property
  - Physical currency is considered tangible personal property, and clients should be cautioned about making transfers that could be construed as cash gifts, including wires from U.S. bank accounts
- Gifts of intangible U.S.-situs property are **not** subject to U.S. gift tax:
  - Stock in a domestic corporation
  - Debt obligations, including bank deposits, issued by a U.S. borrower
  - IRS will not rule on whether partnership interests should be treated as intangible property for gift tax purposes

## Gift Tax Exclusions

- NRAs can make tax-free transfers of U.S.-situs real property and tangible personal property up to the applicable annual exclusion amount of \$10,000, indexed for inflation (*\$19,000 for 2026*)
- Gifts to a non-citizen spouse are limited to a “super annual exclusion” amount of \$100,000 per year, indexed for inflation (*\$194,000 for 2026*)
  - Taxation depends entirely on the *citizenship* of the *donee* spouse
- Spousal gift-splitting is not available if one spouse is a **non-resident** (*unless a gift tax treaty applies*)

## GST Taxation of NRAs

- GST tax will not apply to gifts or bequests made by NRAs to skip persons if the gift or bequest is not subject to U.S. gift or estate tax. Therefore, transfers of non-U.S. property from an NRA to a U.S. person will not incur GST tax.
- NRAs are allowed a \$1,000,000 GST tax exemption on GST taxable transfers. The Treasury Regulations set the GST tax exemption at \$1,000,000 for both residents and nonresidents in 1995; since then, the exemption amount was increased for residents, but the Regulations for nonresidents have not been amended.
- Commentators have noted that the Treasury presumably intended for the GST tax exemption for NRAs to track the exemption for residents. Therefore, it's likely that the IRS would recognize a \$10,000,000 GST tax exemption, indexed for inflation (*\$15,000,000 for 2026*).

# U.S. ESTATE & INCOME TAX PLANNING FOR NRAS

## Direct or Pass-Through Ownership



- **Pros**

- **No double taxation**
- **US-source capital gains from investment income not subject to income tax**
- **Basis adjustment at death**

- **Cons**

- **U.S. estate inclusion**
- **30% withholding on FDAP income (subject to treaty relief)**
- **Disposition of US real property interest will be ECI per FIRPTA**

# Ownership Through Foreign Corporation



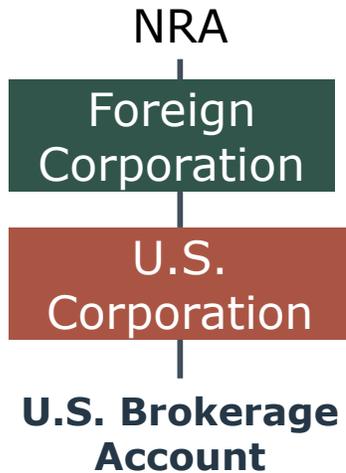
- **Pros**
  - U.S. estate tax “blocker”
  - Transfers of corporate shares not subject to U.S. gift tax
  - Sale of shares not subject to U.S. income tax
  - Dividends from FC to NRA are generally exempt from U.S. withholding if not ECI
- **Cons**
  - Branch profits tax
  - Disposition of US real property interest will be ECI per FIRPTA
  - No basis adjustment for assets under FC

# Ownership Through U.S. Corporation



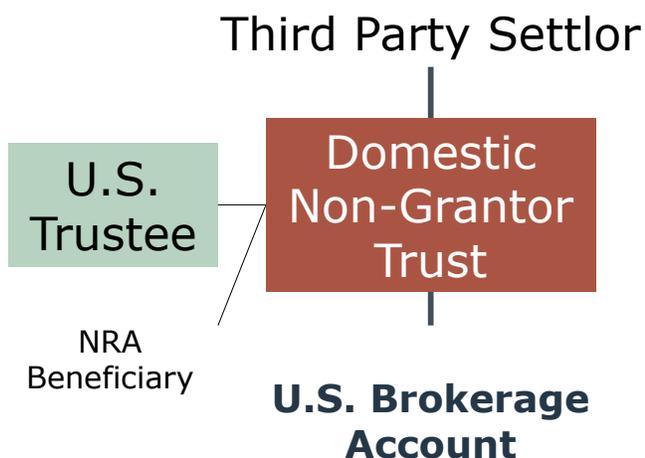
- **Pros**
  - Transfers of corporate shares not subject to U.S. gift tax *(if not USRPHC)*
  - No branch profits tax
  - Corporate earnings are taxed at a flat rate *(currently lower than individual marginal rates)*
- **Cons**
  - Included in U.S. estate
  - No basis adjustment for assets under Corporation
  - Double taxation

## Foreign Parent Corporation / U.S. Subsidiary Corporation



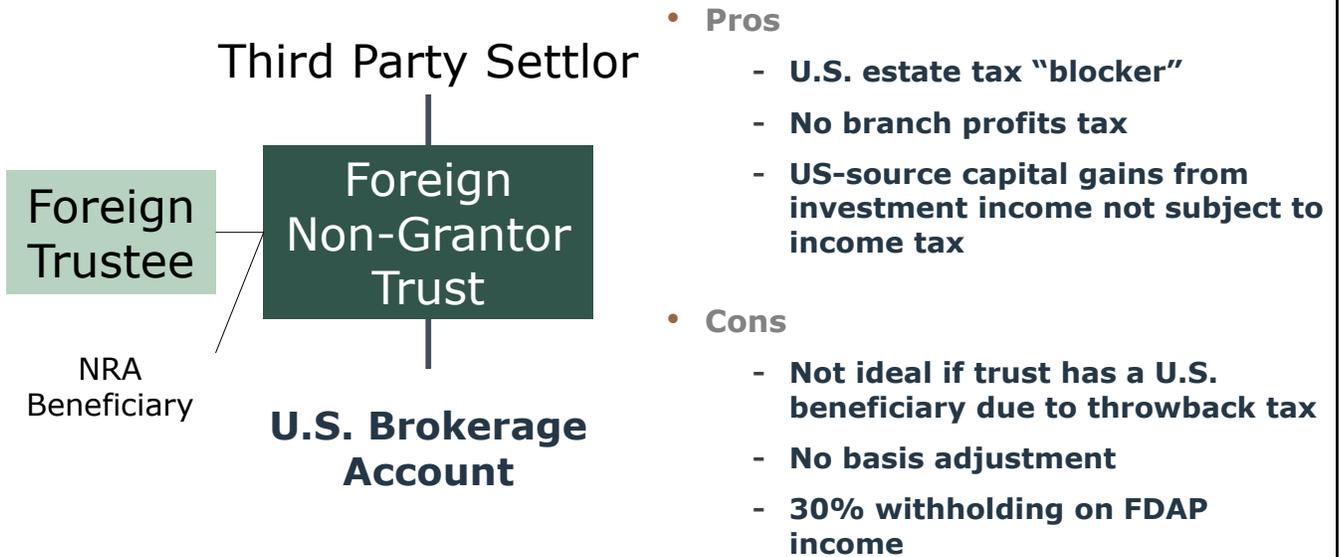
- **Pros**
  - **U.S. estate tax “blocker”**
  - **Transfers of corporate shares not subject to U.S. gift tax**
  - **No branch profits tax**
  - **Corporate earnings are taxed at a flat rate** *(currently lower than individual marginal rates)*
- **Cons**
  - **No basis adjustment**
  - **U.S. corporation subject to U.S. income tax, so not ideal for ownership of non-U.S. assets**
  - **Double taxation** *(when dividend is paid)*

## Domestic Non-Grantor Trust as Blocker



- **Pros**
  - **U.S. estate tax “blocker”**
  - **No branch profits tax**
  - **Ability to manage income taxation by distributing DNI to NRA beneficiary and investing in a way that avoids U.S. taxation in the hands of NRA beneficiary**
- **Cons**
  - **No basis adjustment**
  - **Compressed trust income tax bracket**
  - **U.S. trust subject to U.S. income tax, so not ideal for ownership of non-U.S. assets**

# Foreign Non-Grantor Trust as Blocker



- **Pros**

- **U.S. estate tax “blocker”**
- **No branch profits tax**
- **US-source capital gains from investment income not subject to income tax**

- **Cons**

- **Not ideal if trust has a U.S. beneficiary due to throwback tax**
- **No basis adjustment**
- **30% withholding on FDAP income**

| RIPP | GROSSMAN | FITTE |

**Lauren Fitte**  
 lfitte@rgfillp.com  
 512.375.3288