



Guiding you through life.

CLIENT PROFILE

NEEDS ANALYSIS

Advanced Markets

Non-Citizen Spouse

Planning For Your Loved Ones

CLIENT PROFILE

Status:	Client is married to a non-citizen spouse and has a family.
Concern:	Would like to maintain their economic position after death and minimize transfer taxes.

Situation

- Client wishes to make sure their family is provided for when they are gone.
- Clients with a non-citizen spouse do not have unlimited gifts during life or death. Upon death of the U.S. citizen spouse, they may face estate taxes. During life, they may face gift taxes if money is transferred from a U.S. citizen to a non-citizen.¹

Gather the Facts

- Is the client a citizen of the U.S.? Is the client a resident or nonresident of the U.S.?
- If the client is a nonresident alien does the individual own U.S. situs property?
- Do the clients own assets outside the U.S.?
- How are the assets currently titled?
- What income does the client want to replace? How long do they want to replace that income? Do they want to adjust for inflation?
- What is the citizenship of their children?
- A stay-at-home parent may not have actual income they need to replace, but they provide child care that would need to be paid for should something happen to them. What would the cost of care equal? How long would they need to provide the care?

- Many times people buy life insurance to take care of debt. Do the clients want to cover their debts? What are their debts? Are they joint debts?
- Does the client want to provide for college expenses for their children? What is the total cost they want to cover?
- Funerals can be expensive. How much will it cost?
- Does the citizen spouse have an estate tax problem? Currently an estate tax is assessed based on a \$5.12M lifetime exemption for 2012. In 2013, the exemption amount is set to revert back to \$1M. Do they want to cover the potential estate tax liability?
- Does the client have a gift tax problem? Currently a citizen spouse can give their lifetime exemption during life or to their non-citizen spouse they can give as part of an annual exclusion of \$139,000.²

Solution

- If there is a gap between what the clients need and what they have, this gap can be filled with life insurance.
- If there is an estate tax problem, a qualified domestic trust (QDOT) or life insurance in a Spousal Access Irrevocable Life Insurance Trust (ILIT) can help. In addition to providing for potential estate taxes, the non-citizen spouse could have access to trust assets during life. Distributions from the ILIT would not be subject to gift or estate tax limitations even through the resident alien is the primary beneficiary of the trust.
- Clients should create an estate plan with an attorney familiar with such matters. They should discuss: ownership issues, estate tax issues, gifting issues, health care proxies, letters of intent, trust planning, and titling issues.

Benefits of Life Insurance

- Replace income for surviving spouse and family.
- Pay off debt, such as a mortgage.
- Pay for education.
- Complete the funding of retirement for the surviving partner.
- If policy is owned by an Irrevocable Life Insurance Trust (ILIT), the proceeds generally will not be included in the taxable estate.
- Life insurance benefits generally will be received income tax free. There are few exceptions such as when a life insurance policy has been transferred for valuable consideration.
- Life insurance can avoid probate, can provide privacy and may not be subject to the claims of creditors, depending on the state.
- The cash value of life insurance policy grows tax-deferred and tax-free loans and withdrawals are permitted when structured properly.

Considerations

- Life insurance amount is calculated based on projection. The amount of life insurance protection they qualify for will be subject to medical and financial underwriting.
- Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws (including the generation-skipping tax). Failure to do so could result in adverse tax treatment of trust proceeds. In addition, a valid tax treaty between the U.S. and the country of citizenship for the non-citizen may modify or alter the rules.
- Loans and withdrawals will reduce the death benefit, cash surrender value, and may cause the policy to lapse. Lapse or surrender of a policy with a loan may cause the recognition of taxable income.
- Policies classified as modified endowment contracts may be subject to tax when a loan or withdrawal is made. A federal tax penalty of 10% may also apply if the loan or withdrawal is taken prior to age 59½. Cash value available for loans and withdrawals may be more or less than originally invested. Withdrawals are available in the 2nd policy year.

SUMMARY

- 1 Identify and meet with clients.
- 2 Ask the right questions and gather the facts.
- 3 Fact Finding tool: Use the Non-Citizen Spouse Fact Finder to determine the needs.
- 4 Using JH Solutions: A Non-Citizen Spouse Needs Analysis can be completed. This analysis will uncover the shortfall needed. The shortfall could then be covered by purchasing a life insurance policy.

For more information, please contact your local John Hancock representative or call the Advanced Markets group at 888-266-7498 option 3.

1. U.S. unlimited marital deduction is not available unless resident alien's estate passes to a QDOT [IRC 2056(d) (1) (A) & IRC 2056(d)(2) A)].
2. An annual exclusion gift tax is allowed for present interest gifts to a non-citizen spouse who would have qualified for the marital deduction if he/she were a US citizen. [Rev. Proc. 2011-52, Sec 3.31(2) and IRC 2523(i)2].

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