

US/UK Cross-Border Estate Planning Checklist:

1. Determine domicile under 1978 treaty.
2. Determine the state of domicile – n.b., treaty only determines domicile for purposes of the federal tax.
3. Separate wills? Not necessarily, but consider the state of domicile or situs. Will probate of a foreign will be an issue? Note differing perpetuities issues, particularly for real property.
4. Determine lifetime gifts – taxable gifts since 1976 use up US exemption; gifts within 7 years for IHT.
5. Separate estate into (typically) 3 boxes: (1) Exempt from both taxes (the lesser of the NRB and US exemption) – discretionary trust, (2) exempt in one country by virtue of exemption but requiring marital relief in the other jurisdiction (for the US citizen client domiciled in the UK this will mean the amount between the NRB and US exemption) – typically a marital trust that is not elected to qualify for US marital deduction, and (3) the amount that must qualify for marital relief in both – outright to the surviving spouse or in a life interest trust that qualifies for both US and UK.
6. Consider what to do with partially-exempt assets (such as Business Property).
7. Consider the residence or US nationality of any trust beneficiaries.
8. QDOT required if estate exceeds US threshold and surviving spouse is not a US citizen.
9. If so, consider whether a QDOT settled by the surviving spouse may confer income tax advantages on US citizen or resident remainder beneficiaries.
10. Ensure any charitable dispositions qualify in both US and UK.
11. Generation-skipping transfer tax – try not to waste \$5.43 exemption on dispositions that will be reduced by IHT over time.
12. Consider whether expected inheritances from US parents (or others) can be kept out of IHT regime.
13. Income tax planning – foreign or US estate? (Some factors may be hard to control.)
14. IRC section 645 election to treat revocable trust as part of the estate or not.
15. State death taxes – and n.b., HMRC may share domicile declaration in will with state tax authorities.
16. Consider future residence of minor children – for tax and guardianship purposes.