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US estate and gift tax implications for covered expatriates

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Many are aware that the principal income tax consequences of expatriation are usually immediate – under the ‘mark-to-market' regime, a ‘covered expatriate' is generally deemed to sell all of his property, regardless of its location, on the day before he ceases to be taxable as a US resident. Generally, a covered expatriate is an individual with a net worth of $2m or more on the day of expatriation. However, unbeknownst to many clients, US estate and gift tax implications also will arise on the covered expatriate's gift or bequest of property to a US donee (i.e., a US citizen or resident). In a reversal of the normal gift and estate tax rules, the tax on covered gifts and bequests is assessed against the *donee* at the highest marginal estate or gift tax rate (currently 40 percent) at the time of the gift or bequest.

The IRS has yet to publish rules to implement these gift and estate tax implications. The IRS recently released proposed regulations on the implementation of the gift and estate tax consequences which will change this: once the form is released by the IRS, the tax will be reported and payable on Form 708 *United States Return of Tax for Gifts and Bequests from Covered Expatriates* . Notably, the tax applies to gifts and bequests received from covered expatriates on or after 17 June 2008 meaning that the tax may apply to individuals who have expatriated well before the release of the proposed and (yet to be released) final regulations. The tax also applies regardless of when the covered expatriation acquired the property (ie before or after expatriation) and regardless of the amount of time between the expatriation and gift or bequest. The proposed regulations also include special rules applicable to certain trusts, gifts or bequests to US spouses, and charities.