

# *The* **Estate Analyst**<sup>®</sup>

March, 2005

---

## “Should I Move My Estate?”

People hate taxes. In some ways, it becomes an obsession, an irrational *idée fixe* that drives some people to spend more money on legal arrangements to avoid taxes than the amount of tax avoided. Now, even in the waning days of the federal estate tax, individuals who prepare to shuffle off this mortal coil remain extremely vigilant about taxes diminishing the legacies and bequests they leave behind.

Maybe it is simply human nature. Perhaps it springs directly from our genetic imprint like some

prime directive—survive, be fruitful and multiply, and pay as little tax as is legally possible. So, if necessary, people will pack everything up and move someplace where the grass is greener, the sky is bluer, and the tax burdens are more tolerable. But where in the world should they go?

### *The New Map*

“Would I pay lower taxes if I lived somewhere else?”<sup>1</sup> The question of whether to move to a friendly

---

***Presented With Our Compliments***

tax venue is not new, but the answers are changing even as you read this article. In fact, the entire map of estate planning, both at home and abroad, is being transformed before our eyes.

But determining the friendliest tax location is not that simple or everyone would have already moved there. For starters, there are several planning categories. There are domestic assets and foreign assets. There are liquid assets and real property. There are American citizens, resident aliens, and non-resident aliens. And competing with transfer taxes are taxes on income, property, and capital gains.

Let's go spanning the globe to identify some of the variables that affect the choice of venues for estates among the nations of the world and the 50 states.

**Disclaimer:** A comprehensive, up-to-the minute survey of tax rules for all 50 states and every county would be nice...at least for the five minutes that it remained up to date. However, our purpose here is to get a general idea of what's out there. Therefore, we have gathered all the facts and charts at our disposal. While most of the information remains relatively current, the reader is advised to confirm current tax rules for particular venues of interest.

Where in the world should we begin? It may as well be in Japan, which is currently home to the highest death tax rate on earth. Let's roll back the clock.

## *Japan, for Example*

Prior to 2001, America's top estate tax rates of 55% (or 60% including the 5% surtax on certain large estates) made the estate tax the biggest direct threat to many domestic estates. Although not as high as the top Japanese rate, the United States had one of the highest estate tax burdens in the world. And the largest economic powers all imposed substantial death tax burdens.

From a Japanese perspective, an international comparison of transfer tax burdens (in 1999) had looked like the chart shown here.

Today, Japan continues to have the highest death tax rate in the world, 70%. However, that top rate does not tell the entire story.

Japan's tax rates are graduated, starting at 10% for smaller estates and increasing to 50% for transfers to family members. An extra 20% tax is imposed on transfers to non-family members. Thus, the 70% rate applies to a relatively small percentage of estates, i.e., transfers to non-family members of estates in excess of \$2 billion yen, which is currently about \$19.1 million U.S. currency.

Japan's tax burden must also be viewed in terms of its threshold amount and minimum rate. Thus, for a spouse and three children, Japan's threshold was higher than that of France while Japan's minimum tax rate of 10% was lower than that of the United Kingdom, which imposes a flat rate of 40%.

Note also the other distinction between transfer tax systems. Many nations also have special death tax exemptions for transfers of certain assets such as family homes or transfers to family members.

In addition, not all death taxes are alike. Japan, France, and Germany, applying the approach taken in many civil law nations, impose an inheritance tax on the recipient, i.e., the legatee, as opposed to an estate tax that is levied against the bequests. Note also that among nations taxing legatees, Japan and Spain are unusual in that the tax is based on the domicile of the recipient rather than the transferor.<sup>2</sup>

### **International Taxes (Before U.S. Repeal, 1999)**

	<b>JAPAN</b>	<b>U.S.</b>	<b>U.K.</b>	<b>GERMANY</b>	<b>FRANCE</b>
<b>Tax Method</b>	On Legatee	On Bequest	On Bequest	On Legatee	On Legatee
<b>Tax Threshold (for Spouse and 3 Children)</b>	90 million yen	153.4 million yen	88.7 million yen	160.8 million yen	36 million yen
<b>Minimum Tax Rate</b>	10%	37% (18%)	40%	7%	5%
<b>Maximum Tax Rate</b>	70%	55% + 5%	40%	30%	40%
<b>Number of Brackets</b>	9	17	1	7	7

Source: Japan's Tax Bureau, Ministry of Finance website  
<http://www.mof.go.jp/english/zei/report2/zc001f06.htm>

Taxing estates (rather than heirs) is the approach taken in common-law jurisdictions such as the United States and the United Kingdom. A number of American states impose their own separate death taxes, including inheritance taxes.

The previous chart has already changed dramatically. By 2010, if all goes to plan, the United States will literally be “off the chart” with no threshold, no brackets, and no tax.

### ***Is Repeal Contagious?***

In repealing the estate tax, the United States is joining a number of nations that have already done so. In 2001, Italy repealed its inheritance tax, which had a top rate of 27%, to discourage residents from moving their capital abroad. Canada and Australia abolished their inheritance taxes in the 1980s. Pakistan repealed its estate tax in 1979 and India followed suit in 1985.

Note that a nation without a national estate tax may have a variety of locally imposed death taxes as well as capital gains on appreciated property at the time of death. That carry-over basis approach was adopted in Canada simultaneously with the elimination of the estate tax.

There are numerous nations which are relatively attractive tax venues that have small inheritance taxes, such as Singapore with an inheritance tax of 10%.

Some locations have a longer history as tax havens. For example, the Bahamas have no income tax, corporate tax, capital gains tax, estate tax, or probate fees. Instead, it relies upon tourism and banking for revenues. Another long-time haven for wealth, Switzerland, also has no inheritance tax.

Where do we fit in? One study of death tax rates by the American Council for Capital Formation (ACCF) concluded that 71% of nations have a death tax averaging 21.6%.

This prompted the Chatterbox column of *Slate* to correlate estate tax rates with life expectancies. The columnist discovered that low inheritance tax rates correlate with low life expectancies while higher top estate tax rates, such as the 70% rate that applies in Japan, correlate to higher life expectancies. The Japanese life expectancy is about 80 years

However, the columnist conceded that Korea, with a 45% top rate, had a lower life expectancy

than other nations while Australia, which has no estate tax, has a life expectancy as high as Japan. Of course, any conclusions depend on which nations you include in the study.<sup>3</sup>

### ***The Rest of the Map***

There is a whole world of approaches to transfer taxation and the top estate tax rate is only one measure of tax liability. There are other considerations such as income taxation, property taxes, and succession rules.

France has a top estate tax rate of 30% but is notable for its strict succession laws. These rules dictate who will inherit property regardless of what the owner would prefer. France is about to adopt new laws to ease the inheritance tax burden on children inheriting a family home from their parents.

Britain not only imposes a tax of about 40% on residents, it also applies this tax to expatriates who have long since departed its shores. It determines a citizen’s domicile not by current residence but by paternal bloodline. If your father was a British subject, then you are liable for inheritance tax.

Mexico has no estate or inheritance tax but transfers of property, whether by sale, gift, or

---

### **Top Death Tax Rates Worldwide**

---

Argentina	0	Denmark	15%
Australia	0	Hong Kong	15%
Bahamas	0	Finland	16%
Canada	0	Norway	20%
China	0	Portugal	24%
Indonesia	0	Greece	25%
India	0	Netherlands	27%
Israel	0	Belgium	28.5%
Italy	0	Sweden	30%
Mexico	0	Germany	30%
New Zealand	0	Spain	34%
Pakistan	0	France	40%
Panama	0	U. K.	40%
Brazil	6%	Korea	45%
Switzerland	6%	US*	47%
Poland	7%	Taiwan	50%
Austria	15%	Japan	70%

\* The United States is phasing out its estate tax by 2010. *Caveat:* Figures are not guaranteed to reflect any recently enacted legislation. Reprinted from, Moshman, *The Expatriate’s Estate*, *The Estate Analyst* (Feb., 2003).

inheritance, are subject to a tax of about 2% as well as a capital gains tax. Mexico also imposes a federal property tax of 1.8%.

## ***The National Map***

Variations on tax rules from one state to another have created a brand new type of tax map.

**Income Tax Rates:** Within the United States, the states of Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington and Wyoming have been identified by Wikipedia, the online encyclopedia, as not imposing any income tax. For 2005, the highest state income tax rate is 11% and exists in Montana.

The highest overall rate is in New York City, where a city income tax of 5.82% combines with a state income tax of 7.7% to reach a top combined rate of 13.52%. Combined with the top federal rate of 35%, New York City has an overall rate of 48.52%. This is 1.39% higher than those states with just federal income tax at a top rate of 35%.

---

### **State Death Tax Thresholds**

---

Connecticut	\$1,000,000
Illinois	\$1,500,000
Kansas	\$ 850,000
Maine	\$ 850,000
Maryland	\$1,500,000
Massachusetts	\$ 850,000
Minnesota	\$ 850,000
Nebraska	\$1,000,000
New Jersey	\$ 675,000
New York	\$1,000,000
North Carolina	\$1,500,000
Ohio	\$3,100,000
Oregon	\$ 850,000
Rhode Island	\$ 675,000
Vermont	\$1,500,000
Virginia	\$1,500,000
Washington	\$ 850,000
Washington, D.C.	\$1,000,000
Wisconsin	\$ 675,000

Persons in these states should review state tax impact if their estates exceed the threshold amounts listed above. *Note:* Pennsylvania briefly decoupled and then retroactively “recoupled” its estate tax with federal law. *Caveat:* Chart reflects data from mid-2004. *Source:* CBPP.

**Death Taxes:** Several states have an inheritance tax: Connecticut (until 2006), Indiana, Iowa, Kentucky, Maryland, New Jersey, Pennsylvania, and Tennessee. (Unique state estate taxes are imposed in Mississippi, Nebraska, Ohio, and Oklahoma. )

Several states have “decoupled” from the federal tax code and continue to impose an estate tax to absorb the former state death tax credit: District of Columbia, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Vermont, Virginia, Washington, and Wisconsin. These states decoupled with different effect dates and exemption amounts as indicated in the chart below. *Note:* Alabama, Florida, and Nevada would require a constitutional amendment to decouple.

That leaves 25 states with no state death taxes. But individuals in the other states do have alternatives other than moving across state lines. For instance, lifetime gifts may be considered. *Note:* In states with an estate tax but no gift tax, there is a potential for deathbed gifts.<sup>4</sup>

## ***Welcome to the Jungle***

We are traveling down a time line in which a vortex of changes will occur just ahead, during 2010, 2011, or retroactively, at some point thereafter. As a result, planning to move an estate to a more amenable domestic or foreign location will have to be evaluated in the context of many factors, including the changes that remain just ahead.

---

### **TECHNICAL REFERENCES**

---

1. The American Jobs Creation Act (AJCA) of 2004 amends IRC §877's criteria for imposing expatriation tax on certain income. Effective for expatriation after June 3, 2004, objective criteria is to be used to impose tax on individuals with an average income tax liability of \$124,000 for the 5 prior years or a net worth of \$2,000,000 on the date of expatriation. Individuals will be subject to U.S. tax on their worldwide income for 10 years following expatriation in which they are present in the U.S. for more than 30 days, or 60 days if working for an unrelated employer.
2. Hauser, *Estate planning in and for civil law countries*, 138 T&E 13, p. 45 (Dec., 1999) and 139 T&E 1, p. 62 (Jan., 2000).
3. See, Plotz, *Death or taxes*, Slate, [www.slate.msn.com](http://www.slate.msn.com) (July 19, 1999).
4. See, Stetter, *Deathbed gifts: A savings opportunity for residents of decoupled states*, 31 *Estate Planning* 6 (June, 2004).