New U.S. Tax Act: Relief or Further Headaches?

Philip Marcovici, Teresa Lewis, Marnin J. Michaels, Victoria A. Dalmas *and* ***Christine Hsieh-Kammerlander***
Baker & McKenzie, Zurich

On June 7, 2001, President Bush signed into law the Economic Growth and Tax Relief Reconciliation Act of 2001. Although it primarily benefits U.S. citizens and residents, this new act contains dramatic changes affecting, among other things, the U.S. Estate, Gift and Generation Skipping Transfer Tax. While these changes are quite significant for U.S. citizens, they are *equally* significant for non-U.S. persons who invest in the United States or have U.S. family members. Notably, for many non-U.S. families that have U.S. citizens or residents in the younger generations, the new rules can have very negative tax results in the absence of careful advanced planning. Existing "inbound" grantor trusts will need special attention, as will a variety of other holding structures commonly employed by international families. We elaborate, in short order, upon the most significant changes.

In this article, we will focus our attention on four areas, by discussing: an overview of the changes; a summary of the effect of the changes on non-U.S. persons; the effect of the changes on trusts and banks operating in the offshore world; and, the sunset provisions. In order to discuss the new Act in context, we begin with a brief summary of the current law.

I. The Current Law

A. The Estate and Gift Tax

The U.S. imposes a tax upon transfers of property during life (by gift) or at death (by bequest or devise). This tax is commonly known as the estate and gift tax. United States citizens and domiciliaries are subject to this tax on transfers of property wherever located throughout the world. Each U.S. citizen and domiciliary is granted an "applicable exclusion amount" or credit amount which exempts in 2001 U.S.$675,000 worth of property from the U.S. estate and gift tax. United States estate and gift tax rates are very high and reach a tax rate of 55 percent on transfers above U.S.$3,000,000. United States citizens and domiciliaries are able to take advantage of certain deductions. These deductions include: the deduction for assets passing to a qualified charity; and, the deduction for assets passing to a surviving spouse. This second deduction does not apply where the spouse of a donor is not a citizen of the United States unless a special trust is formed. However, gifts of up to U.S.$100,000 to a foreign spouse can be made free of gift tax annually. This tax-free gift is currently indexed for inflation and in 2001 is U.S.$106,000.

Persons who are neither U.S. citizens nor residents for estate tax purposes ("non-U.S. domiciliaries") are subject to U.S. estate and gift tax on transfers of U.S.-*situs* property. U.S.-*situs* property is generally limited to U.S. real estate, stock of U.S. corporations (for estate tax purposes only, not U.S. gift tax), mutual funds (including money market funds) organised in corporate form if incorporated in the U.S., certain types of debts of U.S. obligors (for estate tax purposes only, not U.S. gift tax purposes), and tangible personal property located in the United States. This leaves broad categories of property that are not subject to U.S. estate and gift tax, such as foreign stocks, foreign bonds, foreign real estate, U.S. bank accounts and U.S. publicly traded bonds.

In the case of a non-U.S. domiciliary, the U.S. estate and gift tax can be eliminated by holding assets, which would otherwise be considered U.S.-*situs*, through a foreign corporation or through certain non-U.S. partnership structures. In the case of non-U.S. domiciliaries, the available credit is limited depending, in part, on whether a treaty between the United States and the individual's country of residence applies.

The question of domicile is not determined, for U.S. purposes, on the same basis as the question of residence for income tax purposes. The U.S. tax regulations provide that a person's domicile is one's permanent home (*i.e.,* the place where an individual resides with no definite present intention of leaving). The IRS and the courts have further refined this definition by breaking down its requirements into a three-prong test:

- an individual must have an intent to make the U.S. the place of his permanent home;
- the individual must be physically present in the U.S. at a time when he holds an intent to remain permanently in the United States; and
- the individual must have the ability to make an informed and intelligent decision as to his domicile.

For most non-U.S. citizen taxpayers, the critical issue is whether the individual intends to make the United States his permanent home.

 TPIR ISSN 0309-7900

B. The Generation Skipping Transfer Tax

In addition to the estate and gift transfer taxes, the United States imposes a "generation skipping transfer tax ("GST tax") on gifts that skip a generation (*e.g.,* a grandparent makes a gift to a grandchild or other "skip person"). Although a detailed explanation of the application of the GST Tax is beyond the scope of this article, we note that under guidance published by the U.S. tax authorities, it has been confirmed that the GST Tax does not apply to a transfer of non-U.S. assets from a non-U.S. person (*i.e.,* non-domiciliary) to a U.S. citizen or resident, even where such a transfer "skips" a generation. However, transfers of U.S.-*situs* assets by non-U.S. persons to a skip person are subject to GST Tax, although lifetime transfers of $10,000 or less per donee are not subject to the GST Tax. In addition, there is a GST exemption of $1,000,000 for cumulative lifetime and death transfers to skip persons (currently inflation indexed at US$1,060,000), so whether a transfer is actually subject to the GST Tax depends on whether and to what extent the donor/decedent's GST exemption is applied against the particular transfer.

C. Income Tax Related Issues

Currently, the tax basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death (*i.e.,* a so-called "stepped-up" basis). Stated alternatively, if a non-U.S. citizen and domiciliary buys shares of IBM for U.S.$10 and dies holding the shares when they are worth U.S.$100 and leaves them to a U.S. person and the U.S. person sells the shares when they are worth U.S.$100, then there will be no capital gains tax as the assets are "stepped-up" to fair market value on the date of death or the alternate valuation date.

II. An Overview of the Changes

The changes in this Act can be divided into five segments:

- estate tax changes;
- generation skipping transfer tax changes;
- gift tax changes;
- basis step-up issues; and
- new reporting requirements.

A. Estate Tax Changes

1. Exemption increase and rate reduction

As briefly discussed above, the U.S. estate tax is an extremely expensive tax. In order to provide some relief for estates of U.S. citizen and domiciliary decedents dying after 2001, the applicable exemption from the federal wealth transfer tax increases, in a graduated fashion from the current U.S.$675,000 to U.S.$3,500,000 in 2009. In the same years, the maximum marginal estate tax rate is reduced from a current rate of 55 percent to 45 percent in 2009. The changes are as follows:

Year	Exemption	Highest Marginal Rate
2001	U.S.$675,000	55%
2002	U.S.$1,000,000	50%
2003	U.S.$1,000,000	49%
2004	U.S.$1,500,000	48%
2005	U.S.$1,500,000	47%
2006	U.S.$2,000,000	46%
2007	U.S.$2,000,000	45%
2008	U.S.$2,000,000	45%
2009	U.S.$3,500,000	45%
2010	Repealed	Repealed
2011	U.S.$1,000,000	55%

In addition, in 2002, the 5 percent surtax will be repealed on large estates. This surtax was imposed on cumulative taxable transfers between U.S.$10 million and U.S.$17,184,000, with the effect of phasing out the benefit of the graduated rates.

It should be noted that this increased exemption does not apply to non-U.S. citizens and domiciliaries as their exemption effectively excludes only U.S.$60,000 worth of U.S.-situs assets. Non-U.S.citizens and domiciliaries do, however, get to take advantage of the reduction in the estate tax rates. (Emphasis added).

In 2010, the U.S. estate tax will be repealed *but only for that year.* This relates to the "sunset provisions" contained in this Act which are elaborated upon below. However, in the absence of legislation to the contrary prior to 2011, the highest marginal tax rate will return to 55 percent and the exemption for U.S. citizens and domiciliaries will return to U.S.$1,000,000. Non-U.S. persons retain an exemption of U.S.$60,000 if Congress does not vote to extend the estate tax repeal. (Emphasis added).

To summarise, the U.S. estate tax has only a one-year repeal in 2010, with a nine-year gradual phase-out.

2. Qualified domestic trust

As discussed above, the U.S. permits a deduction from the U.S. estate tax owing for property transferred to a U.S. citizen spouse. One exception to this rule is that property left for the benefit of a non-U.S. citizen spouse in a properly structured trust known as a "Qualified Domestic Trust" is permitted to take advantage of this deduction. The benefit of this Qualified Domestic Trust is that it allows the tax owed on assets for the benefit of a non-U.S. citizen spouse to be deferred until the death of the second spouse.

Notwithstanding "repeal" of the U.S. estate tax in 2010, the U.S. estate tax will continue to be imposed on any distribution prior to January 1, 2021 from a Qualified Domestic Trust.

3. Qualified family-owned business interests deduction repealed

In addition to the three most common estate deductions (deductions for expenses of a decedent; deductions for gifts to qualified charities; and the marital deduction), there is a deduction available in certain limited circumstances for "Qualified Family-Owned Businesses" of U.S. citizens and residents. As part of this Act, in 2004, the qualified family-owned business interests deduction will be repealed.

4. State death tax credit: phase out, repeal and replacement as a deduction

Currently, the U.S. permits a credit for a certain amount of estate tax paid to a U.S. state. Beginning in 2002, the state death tax credit will be progressively reduced until its repeal in 2005. Beginning in 2005, the state death tax credit will be replaced by a deduction. The deduction will reduce a decedent's gross estate by the amount of any estate, inheritance, legacy or succession taxes actually paid to any state or the District of Columbia with respect to property included in the decedent's gross estate. The changes are as follows:

Year	Percentage of Reduction of State Death Tax Credit
2002	25%
2003	50%
2004	75%
2005	Replaced by a Deduction

While the state death tax credit is not available to non-U.S. persons, the state tax deduction will be available.

5. Qualified conservation easements

Under current law, a decedent's estate is eligible for an estate tax charitable deduction for a contribution of a qualified conservation easement provided that neither the decedent's estate nor the decedent's heirs received an income tax deduction for such easement. Beginning in 2001, the new law expands the availability of qualified conservation easements by repealing the distance requirements to national parks, wilderness areas and metropolitan areas of land that meet the definition of "land subject to a qualified conservation easement".

B. Generation Skipping Transfer Tax Changes

Effective January 1, 2002, the GST Tax exemption equals the exemption from wealth transfer taxes discussed above. Further, the maximum rate of the tax equals the rates discussed above. The GST Tax is scheduled to be repealed for the year 2010. In the absence of Congressional influence, the tax reverts to the 55 percent maximum rate in 2011 with an exemption of U.S.$1,000,000 indexed for inflation.

C. Gift Tax Changes

Effective January 1, 2002, the exemption from U.S. gift tax equals U.S.$1,000,000 and stay at that rate going forward. The highest gift tax rate, effective January 1, 2002, will be the highest estate tax rate until December 31, 2009. On January 1, 2010, the gift tax rate will equal the highest income tax rate, scheduled to be 35 percent.

D. Repeal of Basis Step-Up and Replacement with a Modified Carryover Basis

1. In general

Once the estate tax is repealed on January 1, 2010, the current "Basis Step-Up" at death that occurs in certain circumstances will be repealed and replaced with a modified carryover basis. Generally, the basis of assets received from a decedent will retain the basis held by the decedent instead of being stepped-up to fair market value at the date of death or the alternative valuation as is the current law. More specifically, the basis of assets received from a decedent will equal the lesser of:

- the adjusted basis of the property in the hands of the decedent; or
- the fair market value of the property on the date of the decedent's death.

2. Basis increase

Notwithstanding this general rule, a basis increase is allowed on certain assets that are received from a decedent:

- If the decedent was a U.S. citizen or income tax resident, a general aggregate basis increase of U.S.$1,300,000 ("General Basis Increase") is allowed.
- Further increases in basis are allowed for the amount of a decedent's unused capital losses, net operating losses and certain built-in losses ("Unused Losses Basis Increase").
- An additional U.S.$3,000,000 of aggregate basis increase for "outright transfer of property" and "qualified terminable interest property" transferred to the surviving spouse ("Spousal Property Basis Increase").
- If the decedent was a non-U.S. person, only an aggregate basis increase of U.S.$60,000 is allowed. Note, that in addition to the U.S.$60,000 limit, the estate of a non-U.S. person is not allowed the Unused Losses Basis Increase.

The basis increase is allocable on an asset-by-asset basis (*i.e.*, allocated to a share of stock or a block of stock). Basis increase, however, is limited to the fair market value of the assets on the date of the decedent's death. For property to be eligible for a basis increase, the property must be owned, or is treated as owned, by the decedent at the time of the decedent's death.

3. No basis increase allowed as to certain property

No basis increase is allowed as to certain property, which includes:

- Property that was acquired by a decedent by gift (other than from his or her spouse) during the three year period ending on the date of the decedent's death;
- Property that constitutes a right to receive income in respect of decedent;
- Stock or securities of a foreign personal holding company;

 TPIR ISSN 0309-7900

- Stock of an international sales corporation (or former domestic international sales corporation);
- Stock of a foreign investment company; and
- Stock of a passive foreign investment company (except for which a decedent shareholder had made a "qualified electing fund election").

4. Executor allocates the basis increase

If the amount of basis increase is less than the fair market value of the eligible assets, the executor will determine which assets and to what extent each asset will receive a basis increase. Given that in most cases involving a decedent located outside of the United States, the custodian of the assets (such as a bank) will be considered to be the "executor" (discussed in more detail below), potential litigation can be avoided by having all of the beneficiaries sign an agreement as to the eligible basis increase allocation to each of the eligible assets.

5. Planning

The basis step-up loss is a major issue for non-U.S. persons who are leaving assets to U.S. persons.

> Example 1. Mr. A, an Austrian, bought 10,000 shares of Novartis for U.S.$10/share. He wants to leave his assets to his U.S. citizen son. Mr. A died when the value of the shares were worth U.S.$100/share. Under current law, Mr. A could leave the shares to the U.S. citizen son with no U.S. tax or reporting obligations to Mr. A or his estate. Mr. A's son would, however, have to report (but not pay tax on) his receipt of the assets. When Mr. A's U.S. citizen son sells the shares, under current law his basis would be U.S.$100/share, meaning that there would be no taxable gain. Under the new law, Mr. A's estate will have a reporting obligation (discussed below) and the U.S. citizen child's basis in the Novartis shares will be U.S.$10/share. If the U.S. citizen child sells the Novartis shares upon receipt, he will pay capital gains tax on the U.S.$900,000 gain.

In order to reduce the capital gains tax exposure of U.S. beneficiaries of foreign estates, consideration should be given to "refreshing the basis" of the assets owned by the foreign family member involved during such individual's lifetime. The consequences of "refreshing the basis" in the foreign person's home country will, however, need to be considered.

E. New Reporting Requirements

On January 1, 2010, when the modified carryover basis rules become effective, certain transfers at death and by gift must be reported. We will discuss each of these transfers in more detail below.

1. Certain transfers reported at death

Certain transfers must be reported on death by a decedent's estate, namely, "Large Transfers" and "Three-Year Transfers". These new reporting requirements are applicable to both the estates of U.S. citizen or resident decedents and non-U.S. person decedents, with some variations.

2. Large transfers

Transfers at death of non-cash property are considered to be "Large Transfers" if a:

- U.S. citizen or resident decedent transfers property with a fair market value in excess of U.S.$1,300,000.
- Non-U.S. person decedent transfers property with a fair market value in excess of US$60,000. For this decedent, this applies only to property that is:
  - U.S. tangible property; or
  - any asset (U.S. *situs* or non-U.S. *situs*) received by a U.S. person from a decedent.

3. Three-year transfers

"Three-Year Transfers" apply to appreciated property received by a decedent within three years of death where the filing of a U.S. gift tax return was required. Where the decedent is a non-U.S. person, this applies only to property that is:

- U.S. tangible property; or
- any asset (U.S. *situs* or non-U.S. *situs*) received by a U.S. person from a decedent.

4. The U.S. information return

A U.S. Information Return must be filed with the IRS regarding Large Transfers and Three-Year Transfers. In addition, a Beneficiary Statement must be provided to the property recipient.

5. Executor responsible for U.S. reporting

Generally, the executor is responsible for filing a U.S. Information Return with the IRS for transfers at death that qualify as Large Transfers or Three-Year Transfers. In addition, generally, the executor is also responsible for providing the property recipient with a Beneficiary Statement. The term "executor" is defined such that if there is no executor or administrator appointed, qualified and acting in the United States, then the obligation falls on those in actual or constructive possession of the property of the decedent. This means, in many instances, foreign banks will be "executors", a potential problem, particularly where bank secrecy rules apply.

The U.S. Information Return is due when the taxpayer would have ordinarily been required to file his income tax return if he was then living. The Beneficiary Statement must be provided to the property recipient no later than 30 days after the due date of the U.S. Information Return.

6. Penalties apply for failure to file

Penalties apply for failure to meet the filing requirements discussed above:

- U.S.$10,000 if the U.S. Information Return as to Large Transfers is not filed with the IRS by the due date plus extensions;
- U.S.$500 if the U.S. Information Return as to Three-Year Transfers is not filed with the IRS by the due date plus extensions;
- U.S.$50 if the Beneficiary Statement was not provided to the property recipient by the due date;
- Reasonable cause exception for the U.S.$10,000, U.S.$500 and U.S.$50 penalties; and
- If intentional disregard for filing, *5 percent of the fair market value of the property* for which reporting was re-

quired, determined at the date of the decedent's death.

7. Certain transfers reported at the time of gift

A donor who is required to file a U.S. gift tax return must also send a Beneficiary Statement to the property recipient listed on the return. The Beneficiary Statement must be provided to the property recipient no later than 30 days after the U.S. gift tax return due date. Penalties apply for the failure to provide the Beneficiary Statement:

- U.S.$50 for failure to provide a Beneficiary Statement to the property recipient by the due date; and
- If intentional disregard for such, *5 percent of the fair market value of the property* for which reporting was required, determined at the time of the gift.

8. Example

The following example illustrates the operation of the filing obligations:

> Example 2. Mr. G, a German citizen and resident, died owning a fully diversified portfolio held with a Swiss Bank, Big Swiss. Mr. G has two children, one of whom has a U.S. green card (GC). If Mr. G leaves any assets valued at more than U.S.$60,000 on his death (*i.e.*, even non-U.S. *situs* assets) to GC, then an information return is due. Since Mr. G died in Germany, no "U.S. executor" was appointed. Therefore, Big Swiss is responsible for filing this information return. Since Big Swiss is governed by Swiss bank secrecy rules, it may only file the return with the consent of both children of Mr. G (the then owners of the account) . If such a waiver is not obtained the IRS may impose a penalty equal to 5 percent of the value of the assets subject to the information return.

This information return places a significant obligation on private banks. Since a good portion of the clientele that use private banks (Latin American and Asian families in particular) have some U.S. connections, it is quite likely that many foreign banks will be in a position where they will be "executors" for the purposes of these new information reporting obligations. Further, a bank secrecy waiver from the current accountholder does not permit a Swiss bank to file the U.S. return on behalf of the heirs since each heir is entitled to bank secrecy in his own right at the time the return is required to be filed. In addition, even if the accountholder and all of the heirs waive bank secrecy at the time the account is established, such waiver may be revoked at any time.

F. Gain Recognised on Certain Death Transfers to Non-U.S. Persons

Beginning in 2010, a transfer by a U.S. person's estate (*i.e.*, by a U.S. person at death) to a non-U.S. person will be treated as a sale or exchange for an amount equal to the fair market value of the transferred property. Gain must be recognised for any excess fair market value of property on the date of transfer over the U.S. transferor's adjusted basis.

G. The Sunset Provisions

Due to federal budget constraints, Congress was unable to make permanent changes due to certain procedural rules in the U.S. senate. As a compromise, Congress enacted changes that will "sunset" after December 31, 2010. Therefore, unless Congress extends these provisions with an additional legislative act, all of the changes mentioned above will be void *after December 31, 2010*, resulting in the 2001 tax rules springing back into place. While this makes tax planning difficult due to the uncertainty of the continuance of the new tax changes, it simply means that one must monitor any tax planning that is in place currently with an eye to the fact that the current law may expire.

III. Summary of the Effect of Changes on Non-U.S. Persons

The new Act forces planners to have a two pronged planning approach. Planning for non-U.S. persons with U.S. connections must be effectuated assuming the new law is effective after December 31, 2010 *and* assuming that the new law "sunsets" leaving the law as it currently stands in place. As the authors see it, estate planning falls into two categories:

- planning for families with non-U.S. connections, but that have U.S. assets; and
- planning for families with U.S. connections.

We briefly outline these possibilities below.

A. Planning for Families with Non-U.S. Connections, but with U.S. Assets

This example describes planning which has the same complexity as under the current law.

> Example 3. Mr. H, a Hong Kong citizen and resident, has three children, none of whom are U.S. citizens or income tax residents. Mr. H has an affinity for U.S. technology company shares and holds more than U.S.$20,000,000 in U.S. securities such a Qualcomm, Cisco, and Microsoft.
>
> Under current law, if Mr. H does no planning, then there will be a U.S. estate tax owing at Mr. H's death in excess of U.S.$11,000,000. Under the new Act, there will be a U.S. estate tax that can be as high as U.S.$11,000,000 in 2001, but reduced to U.S.$9,000,000 in 2009. In order to minimise this tax Mr. H should hold his U.S. investments through a non-U.S. "offshore" corporation. This ensures that there is no U.S. estate tax exposure on Mr. H's assets either between 2001 to 2009, or, after 2010 if the Act sunsets. If the Act does not sunset, then there are no adverse consequences of this planning. If this is the case, then there are also no reporting obligations with this planning and the non-U.S. children would have no capital gains tax exposure.

B. Planning for Families with U.S. Connections

Planning for families with U.S. connections has become significantly more complicated. On the one

 TPIR ISSN 0309-7900

hand, planning must assume that the new law comes into effect. On the other hand, planning must be effectuated to ensure that adequate planning is in place if a non-U.S. person with U.S. connections dies prior to January 1, 2009, or, after 2010, and the Act sunsets.

Example 4. Mr. S, a Swiss citizen, has three children, one of whom is a U.S. citizen. The other two are Swiss citizens and residents. Mr. S established, in 1999, a revocable "grantor" trust that allows his U.S. child to benefit from these assets on an income tax free basis in the United States. The trust consists of only non-U.S. investments. This trust, also, if properly structured, permits no U.S. estate tax exposures to Mr. S's estate or to the U.S. citizen child if Mr. S dies before 2010, or, after 2010, and the Act sunsets. It does not, however, provide for a step-up in basis under the new Act. Mr. S must commence a process of "stepping-up" the basis of the assets in the trust to minimise taxes after his death.

Example 5. Ms. U, a U.S. citizen, wishes to leave certain U.S. property interests to his sister, a non-U.S. citizen and resident. Absent advance planning, a significant estate or capital gains tax could be owing depending on when Ms. U passes away.

IV. Effect of the Changes on Trust Companies and Banks Operating in the Offshore World

There are two significant issues that we believe each non-U.S. bank and trust company must address. The first is education of the customer. The second relates to dealing with the new "modified basis" rules.

A. Education of the Customer

There has been significant discussion in the press on the "repeal" of the estate tax. Very little, however, has been discussed about how and when the estate tax is repealed, *if at all.* The result is significant mis-information. All non-U.S. banks and trust companies must make affirmative efforts to educate their clients that:

- the estate tax is not firmly repealed;
- if it is repealed, it is not a permanent repeal unless additional legislation occurs in 2009; and
- if the U.S. estate tax is repealed, the need for planning has become even more acute if there are U.S. connections by way of U.S. assets or family members being involved.

B. Dealing with the New Basis Rules

Assuming the new Act is not permitted to "sunset", then the new modified basis rules place significant burdens on non-U.S. banks and trust companies. In the first instance, all persons with U.S. connections will now wish to know the basis of their assets that they inherited, even if inherited from a non-U.S. person. The result is that all banks will now have to track basis. We understand that currently, most non-U.S. banks do not track basis.

Example 6. Ms. CH, a Swiss citizen and resident, has a mixed portfolio held with SMB, a small Swiss bank. Under Swiss tax law, a Swiss resident, as a general rule, is exempt from capital gains taxation on portfolio investments. As a result, SMB does not track basis. Ms. CH's daughter, BH, moves to the U.S. three years after Ms. CH's death. BH then sells shares in a Swiss company. As BH now takes over Ms. CH's original basis, BH requests the information from SMB. SMB does not keep this information. Furthermore, it has no obligations to keep records more than 10 years old. The result is that BH will be forced to record a basis of nil in the property since she cannot establish her basis. SMB will face this problem going forward and in order to avoid this issue must start tracking the purchase price of shares.

The other major issue relates to the new reporting requirements, which we discuss in detail above. The reporting requirements place foreign banks located in bank secrecy jurisdictions in a very difficult situation: either comply with the new Act and be in violation of local bank secrecy law, or, respect bank secrecy law and risk an intentional disregard penalty of 5 percent of the value of the assets on the date of the death of the decedent. Neither option is particularly pleasant.

V. Conclusion

While primarily benefiting U.S. citizens and residents, this new Act contains dramatic changes affecting, among other things, the U.S. Income, Estate, Gift and Generation Skipping Transfer Tax. While these changes are quite significant for U.S. citizens, they are equally significant for non-U.S. persons investing in the U.S. or who have U.S. family members. Notably, for many non-U.S. families which have U.S. citizens or residents in the younger generations, the new rules can have very negative tax results in the absence of careful advanced planning. In addition, these new rules place significant burdens on non-U.S. banks and trust companies. We hope this article, which briefly outlines these new rules and concerns for non-U.S. persons and financial institutions, provides you with guidance in making plans going forward.