

Worldly Wealth

Cross-Border Estate Planning

JANUARY 2026

Michelle Graham | michelle.graham@gtlaw.com | 619-848-2535



Notable Faces

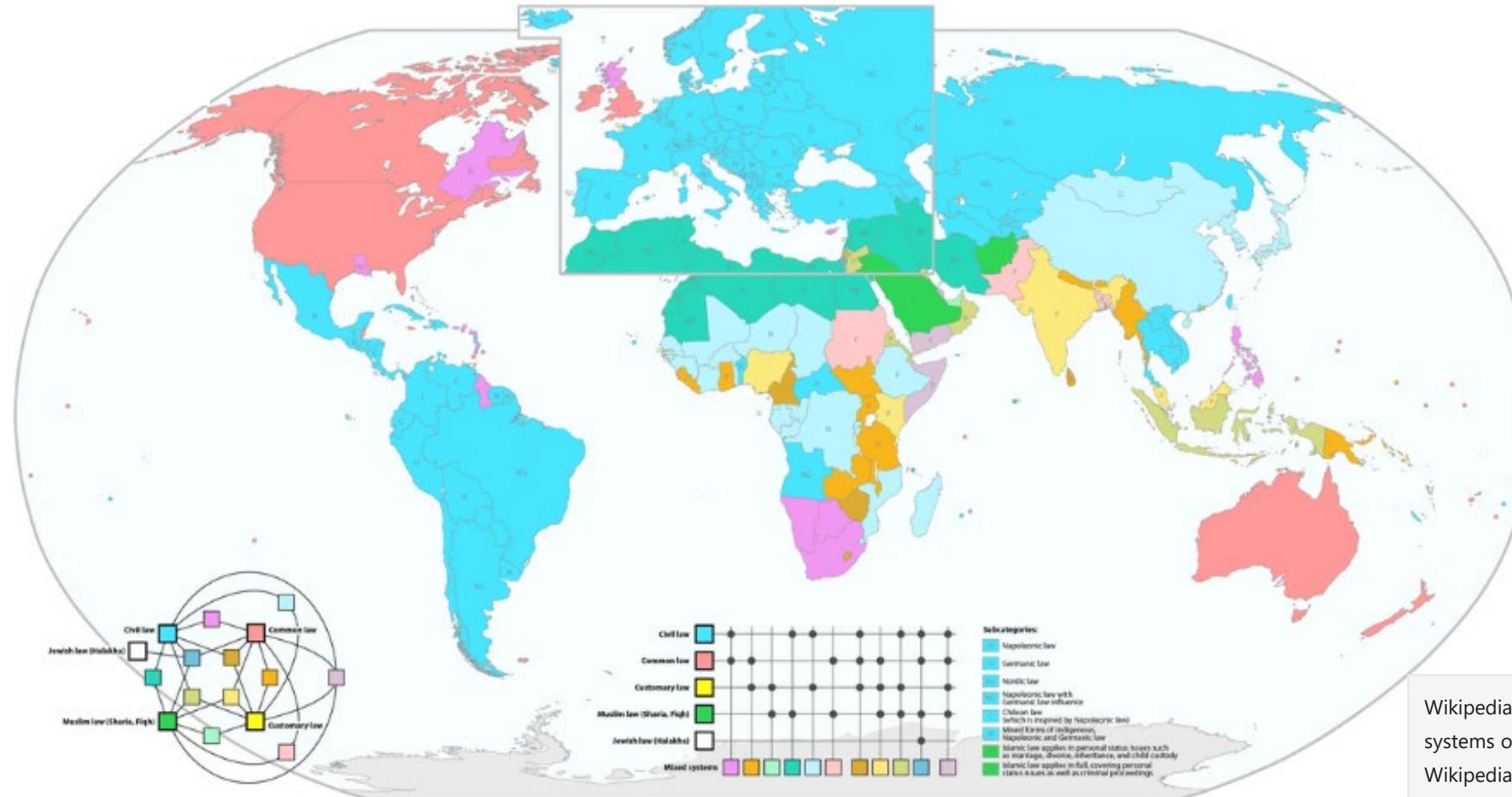


Tax and Estate Planning for U.S. Persons with Global Investments

- Considerations for different legal systems around the world
- Which law applies?
- What are the effects of foreign law applying?
- How should assets be held?
- Will your Will be recognized?
- What are the U.S. tax implications and reporting obligations associated with owning such foreign assets?



Legal Systems of the World



Wikipedia contributors. (n.d.). Legal systems of the world map [Map]. In Wikipedia. Retrieved January 6, 2026, from <https://commons.wikimedia.org/wiki/File:LegalSystemsOfTheWorldMap.png>

“Snapshot” of Common Law/Civil Law Systems – Basic Differences

Common Law	Civil Law
Recognition of trusts	No recognition of trusts
Freedom of testamentary disposition	Forced heirship in favor of children and blood relations
Estate vests in personal representative <ul style="list-style-type: none">• The identity of the executors is evidenced by Court Order, e.g., Letters Testamentary• PR/beneficiary is not liable for debts in excess of assets of the estate	Estate vests in heirs direct. <ul style="list-style-type: none">• Identity of heirs evidenced by notarial act• Heirs take the assets subject to liabilities
No matrimonial property regime	Matrimonial property regime protecting the rights of the spouse
Succession tax payable by the PRs out of the estate – an estate tax rather than an inheritance tax	Succession tax payable by the heir; rate dependant on blood relationship as well as value of assets received.

What Law Applies?



- Applicable law will affect judicial jurisdiction, characterization of property, disposition of property, recognition or enforcement of foreign judgments
- In the U.S., courts generally will uphold choice of law selection in testamentary document
- Does not mean the foreign country will accept that choice of law

What Law Applies if No Governing Law is Specified?

- Common Law
 - Law of jurisdiction of domicile governs disposition of personal property
 - Law of jurisdiction of situs governs real property
- Civil Law – law of person's country of nationality governs
- European Union – EU Succession Regulation 650/2012
 - Default rule – habitual residence at time of death
 - Election – nationality
- Hague Convention on the Law Applicable to Succession to the Estate of Deceased Persons (not yet entered into force)
 - Country where decedent was a habitual resident, if national of such country
 - Can also be governed by law in which deceased was habitual resident of 5 years or more
 - Otherwise, governing law will be the law of the country in which person is a national

Doctrine of Renvoi

-  Of French origin, meaning “send back” or “to return unopened”
-  Doctrine arises when conflicts of law rules of one jurisdiction refers matter to the law of another jurisdiction
-  Question is whether reference is to substantive law or choice of law rules
-  Generally, U.S. courts have interpreted “law” to mean only substantive law and thus no renvoi
-  Exception when real property involved. U.S. court likely to apply both substantive law and conflict of rule laws of country where property is located

How Should Title Be Taken?

Restrictions
on
Ownership?

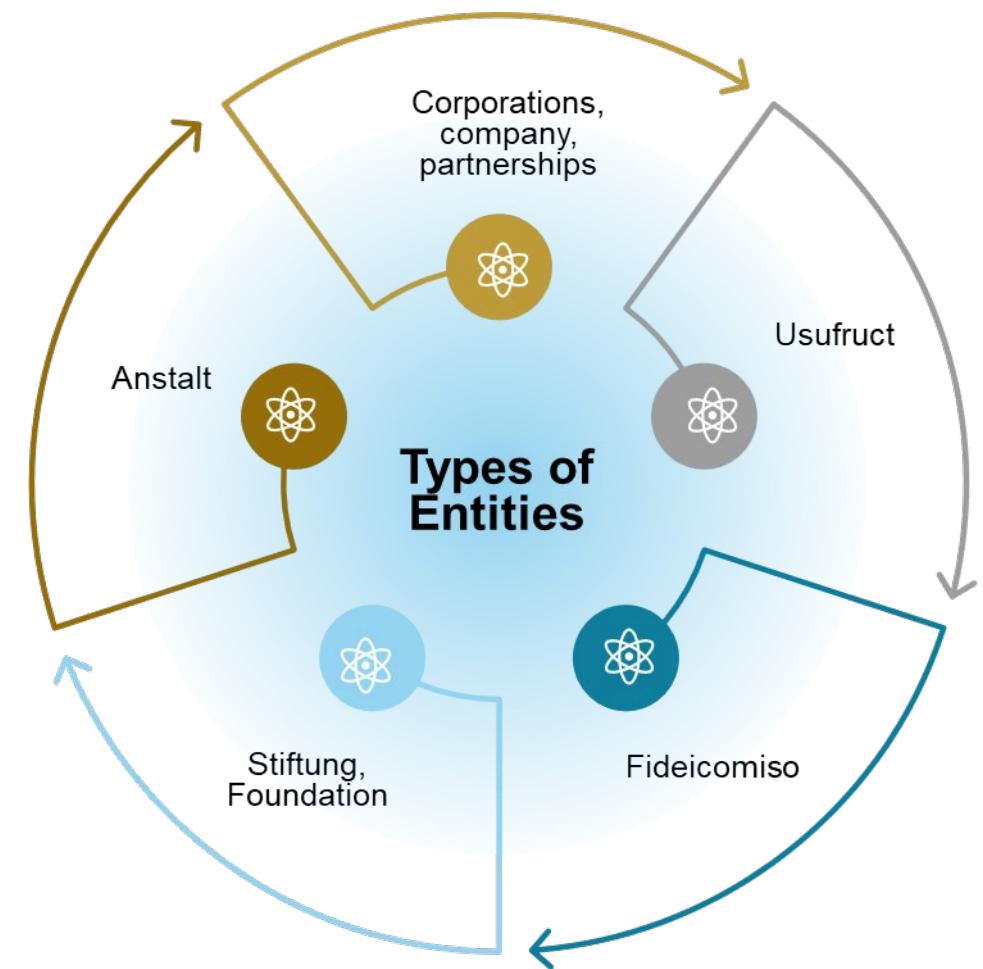
Individual
Name

Joint
Tenancy

Trusts

Entity Structures Other Than Trusts

- Default classification of eligible entities
- Check the box - entity classification election



Should one Will be used?



One Will?

- Believed to be simple and straightforward, arguably less expensive
- Need to confirm foreign country will accept Will as valid (Washington Convention; Hague Convention)
- Careful with pour over Will to Trust
- Complexity with multiple administrations: translations, need for multiple originals, disclosures of worldwide assets



Multiple Wills?

- Tailored to each jurisdiction; no issue of foreign country accepting
- No need for translations, disclosure of worldwide assets, or issue with need for multiple originals
- Careful for inadvertent revocation of previously signed Wills
- Requires coordination between/amongst countries



Will a Foreign Country Recognize a U.S. Will as Valid?

- If one Will, will the foreign country recognize U.S. will?
- Washington Convention establishes uniform law on formalities of an international will without invalidating or superseding laws of other countries.
 - Just under 15 countries have ratified convention; the U.S. is an original signatory
- Hague Convention Relation to the Form of Testamentary Dispositions of 1961
 - Purpose: recognize as valid, terms of the formalities of execution
 - If foreign country and state in which Will was drafted both adopted convention's choice of law rule, foreign country will likely accept Will as valid
 - About 40 countries have ratified; the U.S. has not ratified



Drafting Considerations

Describe	Describe assets to be disposed of under testamentary instrument
Watch	Watch for inadvertent revocation
Consider	Carefully consider boiler plate language
Consider	If one Will, carefully consider fiduciary roles
Watch	Watch and carefully consider pour over will
State	State choice of law
Consider	Consider tax apportionment and payment of debts, expenses and taxes clause

Trusts and Choices of Law

- Hague Convention on the Law Applicable to Trusts and on Their Recognition (1985)
 - Provides trust should be governed by law chosen
 - Will not prevent application of some mandatory laws, e.g., marital, creditor and succession rights
- Most U.S. courts respect law designated
- If trust silent, courts make determination based on law of jurisdiction with most significance related to trust.



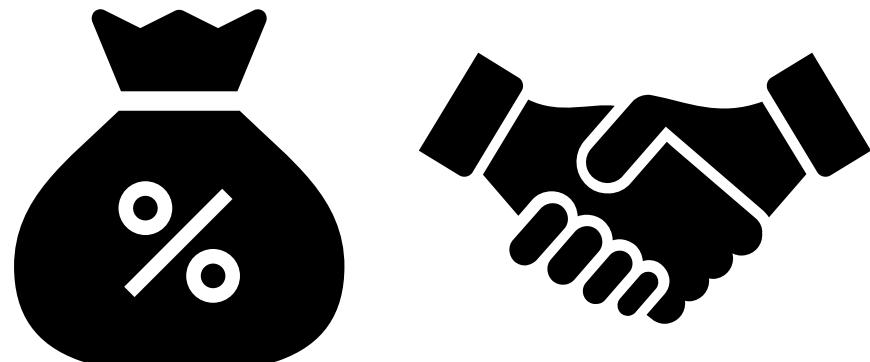
Trusts Continued

- Even if trusts are recognized, use of trust may have unintended consequences
- In Canada, there is a deemed disposition every 21 years
- In the UK, there may be a tax on funding the trust (even if a revocable trust), a tax every 10 years, and an exit charge
- In some civil law countries with an inheritance tax, a trust is treated as an “unrelated party” and will be subject to higher inheritance tax and smaller exemption



Taxes and Tax Treaties

- If U.S. person, subject to U.S. income tax on worldwide income and estate tax on worldwide assets
- A number of civil law countries have inheritance taxes
- Other taxes that may apply:
 - Asset based tax or wealth tax
 - Acquisition taxes
 - Tax on transfers to trust, even if revocable trust
- Tax treaties
 - 16 gift and/or estate tax treaties in force
 - Treaties vary, with some limiting assets that can be taxed and others offering enhanced deductions and exemptions

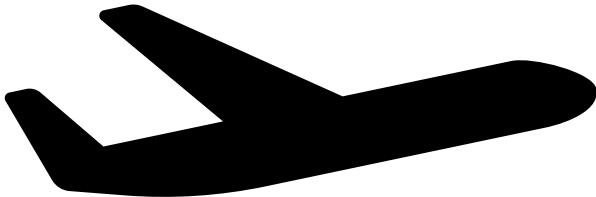


Informational Tax Reporting

- If U.S. person owns foreign assets, must always consider whether there will be additional U.S. reporting obligations
- Common forms that may need to be filed
 - 8938, Statement of Specified Foreign Financial Assets
 - 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations
 - 8621, Information Return for a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund
 - 8858, Information Return of a U.S. Person With Respect to Foreign Disregarded Entities
 - 8865, Return of U.S. Person with Respect to Certain Foreign Partnerships
 - Fin CEN Report 114, Report Foreign Bank and Financial Account
 - Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
 - Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner



Expatriation



- Expatriate (Living Abroad) refers to a U.S. citizen who resides outside the United States but retains U.S. citizenship.
 - Still subject to U.S. tax obligations (citizenship-based taxation)
 - Maintains rights and responsibilities as a U.S. citizen (e.g., voting, passport)
 - Often moves for work, lifestyle, or family reasons
- Expatriating or Renouncing U.S. Citizenship refers to the formal, legal process of giving up U.S. citizenship.
 - Requires an in-person appointment at a U.S. embassy/consulate
 - Subject to exit tax if $\geq 2M$ in assets or net income tax exceeds threshold (\$211k in 2026) are met, along inheritance tax for gifts or bequests from a covered expatriate
 - Permanent loss of U.S. rights (cannot vote, hold U.S. passport)
 - May impact ability to travel or work in the U.S. in the future.

Michelle Graham

Michelle Graham focuses her practice on estate planning and tax planning strategies for domestic and international clients. She advises U.S. and non-U.S. individuals on tax planning matters, including strategies to minimize global taxation and IRS compliance regarding foreign reporting.

Michelle works with non-U.S. individuals investing in the United States and U.S. individuals residing abroad on their U.S. tax filings and global estate planning. Her cross-border experience spans Latin America, Asia, Europe, Australia, Canada, and the Middle East. She also assists migrating clients, including corporate executives moving between states or internationally, and those retiring or acquiring second homes in California.

In addition, Michelle advises on complex planning issues for family businesses, including structuring and implementing intra-family sales, buy-sell agreements, and family business succession planning.

Michelle has been recognized by *Chambers High Net Worth Guide* in the area of Private Wealth Law – Southern California since 2020.

Education

Southern Methodist University, B.S.

University of San Diego School of Law, J.D.

University of San Diego, LL.M. in Taxation

University of San Diego, M.A.



Michelle Graham
Shareholder | San Diego

Michelle.graham@gtlaw.com
+1 619 848-2535