September 2026

Understanding Pre-Immigration Planning Trusts: How Non-Resident Aliens Can Minimize U.S. Transfer Taxes Before Establishing Residency

What Foreign Nationals Need to Know Before Becoming U.S. Residents and How a Pre-Immigration Trust Can Protect Non-U.S. Assets

For foreign nationals planning to establish U.S. residency, the window of time before that transition occurs represents a critical and often underutilized planning opportunity. Once a person becomes a U.S. resident for transfer tax purposes, their worldwide assets become subject to U.S. gift, estate, and generation-skipping taxes. A pre-immigration planning trust, established and funded before that threshold is crossed, can shield significant non-U.S. wealth from those taxes permanently.

The strategy is time-sensitive by nature. The trust must be properly structured and funded while the grantor is still a non-resident alien, which means coordination between international tax counsel, estate planning attorneys, and the trust administrator is essential and must begin well in advance of the planned immigration date.

Understanding how pre-immigration planning trusts work, when they are most effective, and what the key structural and timing requirements are is essential for advisors, attorneys, and families navigating this transition.

What Is a Pre-Immigration Planning Trust?

A pre-immigration planning trust is an irrevocable trust established by a non-resident alien before becoming a U.S. resident for transfer tax purposes. The grantor funds the trust with non-U.S. assets, which, when properly structured, fall outside the reach of U.S. gift and estate taxes. At the time of funding, the grantor is not yet subject to U.S. transfer tax rules, meaning the transfer into the trust is not treated as a taxable gift under U.S. law.

Once established, the trust holds and administers those non-U.S. assets for the benefit of designated beneficiaries, typically family members. Because the assets were transferred before the grantor became a U.S. person for transfer tax purposes, they remain outside the U.S. transfer tax system for the life of the trust, regardless of the grantor's subsequent residency status.

For the structure to achieve its intended result, the grantor cannot retain an interest in the trust assets or create conditions that render the gift incomplete. The transfer must be a genuine, irrevocable transfer out of the grantor's estate at the time of funding.

Core Features of a Pre-Immigration Planning Trust

Irrevocable trust established and funded before the grantor becomes a U.S. resident for transfer tax purposes. Funded with non-U.S. assets that are not yet subject to U.S. gift or estate tax. Grantor cannot be a beneficiary or retain any interest that would make the gift incomplete. Non-U.S. assets transferred to the trust are generally not subject to U.S. gift, estate, or generation-skipping taxes. Trust continues to hold and administer assets for beneficiaries after the grantor establishes U.S. residency. Timing is critical: the trust must be properly funded before the grantor crosses the transfer tax residency threshold.

Why Pre-Immigration Planning Trusts Are Used

The core purpose of the pre-immigration planning trust is to protect accumulated non-U.S. wealth from U.S. transfer taxes before those taxes become applicable. For many foreign nationals, a significant portion of their wealth was accumulated entirely outside the United States. Without advance planning, that wealth becomes subject to U.S. gift and estate taxes the moment the grantor becomes a U.S. person for transfer tax purposes, potentially at rates as high as 40 percent.

By establishing and funding an irrevocable trust before that threshold is crossed, the grantor effectively removes those assets from the U.S. transfer tax system permanently. The trust can hold and invest those assets for the long-term benefit of family members, and any appreciation that occurs after funding also remains outside the U.S. transfer tax base.

This planning is especially valuable for families with substantial non-U.S. business interests, real estate, investment portfolios, or other assets that would otherwise become exposed to U.S. transfer taxes upon the grantor's transition to U.S. residency. The savings over time, particularly when assets continue to appreciate and are intended to pass to future generations, can be significant.

Common Use Cases

Foreign nationals with substantial non-U.S. assets planning to relocate to the United States for work, family, or lifestyle reasons. Business owners holding significant non-U.S. company interests who anticipate establishing U.S. residency. Families seeking to transfer non-U.S. assets to minor children or future generations before U.S. transfer taxes become applicable. Individuals on the path to U.S. citizenship or green card status who want to preserve generational wealth outside the U.S. transfer tax system. International families with existing structures, such as trusts or family holding companies in other jurisdictions, that may need to be restructured or supplemented before U.S. residency is established.

Advantages of the Pre-Immigration Planning Trust Structure

The primary advantage is straightforward: assets transferred into a properly structured pre-immigration trust before the grantor becomes a U.S. resident are generally not subject to U.S. gift tax at the time of transfer, and they remain outside the U.S. estate tax system at the grantor's death. Any appreciation on those assets after funding also passes to beneficiaries free of U.S. transfer tax, which can represent substantial value for families with long investment horizons.

The trust also provides a structured vehicle for transferring non-U.S. assets to minor children or other family members without triggering U.S. gift tax concerns, addressing a planning gap that frequently arises when foreign citizens want to make gifts of non-U.S. assets before establishing residency.

For families with complex international structures, the pre-immigration trust can serve as an anchor for a broader reorganization of existing holdings, creating a clean and durable framework for managing and transferring wealth across generations in a tax-efficient manner.

Key Benefits

Non-U.S. assets transferred before residency is established are generally not subject to U.S. gift or estate tax. Future appreciation on trust assets remains outside the U.S. transfer tax system. Provides a structured vehicle for gifts of non-U.S. assets to minor children or family members before U.S. transfer taxes apply. Can be coordinated with existing international structures to create a comprehensive and durable wealth transfer framework. South Dakota's trust framework offers an ideal administrative environment for long-term, multigenerational trust structures of this kind.

Risks and Structural Considerations

The most consequential risk in pre-immigration planning is timing. The trust must be established and funded before the grantor becomes a U.S. resident for transfer tax purposes, a threshold that is determined differently than U.S. income tax residency. Green card status or meeting the substantial presence test are the primary standards for income tax residency, but transfer tax residency is determined by a broader set of factors including the individual's visa status, the length and nature of their time in the United States, the location of their primary home and personal property, and their affiliations with local organizations. An individual can be a U.S. resident for income tax purposes while not yet being a U.S. domiciliary for transfer tax purposes, or vice versa. This distinction requires careful analysis by qualified international tax counsel before any planning is implemented.

A second consideration involves the nature of the assets being transferred. For transfer tax purposes, shares of U.S. company stock and debt obligations of U.S. persons are treated as U.S. assets even when held by a non-resident alien, meaning they do not benefit from the pre-immigration trust strategy in the same way that genuinely non-U.S. assets do. Careful asset-by-asset analysis is required to determine what belongs in the trust and what does not.

Third, if the non-resident alien is already a grantor or beneficiary of an existing trust, changes to that trust's structure may be advisable before U.S. residency is established. For example, a grantor who currently holds broad powers over trustee succession may be advised to amend the trust to require an independent corporate trustee as successor, ensuring the structure does not inadvertently create U.S. transfer tax exposure after the grantor becomes a U.S. person.

Finally, the grantor cannot retain any interest in the pre-immigration trust assets or retain conditions that leave the gift incomplete. The transfer must be irrevocable and unconditional at the time of funding. Any retained interest or power could cause the assets to be treated as still belonging to the grantor, negating the intended planning result.

Key Considerations

Timing is critical: the trust must be funded before the grantor crosses the U.S. transfer tax residency threshold, which is distinct from income tax residency. Transfer tax residency is determined by domicile, not by green card status or the substantial presence test alone. Shares of U.S. company stock and debts of U.S. persons are treated as U.S. assets even when held by non-resident aliens and must be analyzed separately. Existing trusts or structures in which the grantor has an interest may need to be reviewed and potentially restructured before residency is established. Grantor cannot be a beneficiary or retain any interest that makes the gift incomplete. Coordination among international tax counsel, estate planning attorneys, and the trust administrator is essential and should begin well before the planned immigration date.

The Role of Jurisdiction in Trust Planning

For pre-immigration trusts intended to hold and administer assets over a long time horizon, the state in which the trust is administered matters considerably. The trustee must be a U.S. person or entity for the trust to be treated as a U.S. domestic trust for tax purposes, and the choice of jurisdiction affects the trust's administrative flexibility, privacy protections, and long-term durability.

South Dakota is the leading trust jurisdiction in the United States for families engaged in sophisticated, multigenerational planning. Its absence of state income tax on trust assets, perpetual trust duration, advanced directed trust statute, and robust privacy laws make it a natural home for pre-immigration trusts that are designed to hold significant non-U.S. wealth across generations. South Dakota's trust framework is also well-suited to the kind of complex, multi-party coordination that pre-immigration planning requires, including directed trust structures that allow investment advisors located anywhere in the world to continue managing trust assets while Sterling serves as the independent corporate trustee.

For international families establishing a trust before U.S. immigration, South Dakota offers the legal infrastructure and administrative sophistication that the strategy demands.

Summary: Pre-Immigration Planning Trusts at a Glance

Feature	Details
Trust Type	Irrevocable trust funded with non-U.S. assets before the grantor establishes U.S. residency for transfer tax purposes
Tax Treatment	Non-U.S. assets transferred before residency threshold are generally not subject to U.S. gift, estate, or GST tax
Primary Objective	Protect non-U.S. wealth from U.S. transfer taxes before the grantor becomes subject to them
Grantor's Role	Cannot be a beneficiary or retain any interest that renders the gift incomplete
Ideal Candidate	Foreign nationals with significant non-U.S. assets planning to establish U.S. residency
Key Risk	Mistiming the transfer relative to the transfer tax residency threshold; retaining an incomplete gift interest

Learn More

Sterling Trustees works with advisors, attorneys, and internationally focused families to administer sophisticated trust structures designed to support long-term wealth preservation and transfer planning. As an independent South Dakota trust company focused exclusively on trust administration, we collaborate closely with advisory teams to implement and manage complex trusts with the precision, transparency, and responsiveness that clients expect.

To learn more about pre-immigration planning trusts and other estate planning strategies, contact us at info@sterlingtrustees.com or set up a call.

STERLING | TRUSTEES

THE POWER OF INDEPENDENT THINKING℠

Antony Joffe, Chairman | (605) 593-8950 | | sterlingtrustees.com