

One giant leap for mankind? Same sex couples

Neil Armstrong famously said, "One small step for [a] man, one giant leap for mankind"; a phrase which could aptly be repeated on 26th June 2013 when the US Supreme Court ruled in the case of United States v Windsor that section 3 of the Federal Defense of Marriage Act ("DOMA") was unconstitutional.

Prior to the judgment, US connected same-sex couples could not benefit from the Federal tax exemptions available to married heterosexual couples, even if they were legally married under US state or international law, because DOMA prevented the exemptions from applying to same-sex couples.

Following the judgment, the Internal Revenue Service issued Revenue Ruling 2013-17 (the "Ruling") which held that same-sex couples who were lawfully married in any jurisdiction will be treated as married for the purposes of administering all Federal laws, and so they will now benefit from US marital exemptions for Federal estate and gift tax and they will be able to file joint income tax returns.

However, the Ruling is not a panacea. First, it does not apply to same-sex couples in civil partnerships. Given that the UK only gave Royal Assent to the Marriage (Same Sex Couples) Act on 17th July 2013 (and given that this Act will not be fully brought into

force until some time in 2014), any US/UK same-sex couples who already have a civil partnership will not be able to benefit from the Ruling unless they take steps to marry either in a US state, or a foreign jurisdiction, which recognizes marriage for same-sex couples. Second, estate plans for same-sex couples with one non-US citizen spouse will still need to be considered carefully because the full marital deduction from Federal estate tax is only available to a non-US citizen spouse if the US citizen spouse leaves their assets in a "qualified domestic trust", or "QDOT". In addition, wealthy couples may also need to consider how to best utilise the annual gift exclusion for gifts to a non-US citizen spouse (currently US \$143,000).

So as we can see, the US government has made a giant leap forward in its treatment of married same-sex couples; they are now in the same position as heterosexual couples for US Federal tax purposes. However, where there is a non-US citizen spouse it remains fundamentally important to ensure that asset holding structures and estate planning documents are structured correctly to take account of rules in both the US and the UK and to minimize the potential for double taxation in the same generation. ■



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