Art, Collectibles, and Tangible Personal Property in the Cross-Border Estate

An Adviser's Guide to the situs rule for tangible property and the transit doctrine; the estate and gift tax treaties, which for most of this readership's clients decide the question before the Code is reached; the works-of-art exemption of section 2105(c) and its New York and Minnesota analogues; the gift tax on objects located in the United States; ownership structures, storage and the logistics of location; valuation, appraisal and the Art Advisory Panel; the import, export and cultural-property regimes on both sides of the Atlantic; the Holocaust Expropriated Art Recovery Act as amended in April 2026; and the administration of a collection after the collector's death.

Every category of property in the estate of a nonresident alien has a situs rule, and for all but one the rule is a legal conclusion: shares of a domestic corporation are within the United States wherever the certificates are kept, a deposit with a domestic bank is outside it, and real property is where the land lies. For tangible personal property the rule is a question of fact. A painting, a piece of jewelry, a car or a case of wine is property within the United States if it is located here when the owner dies or when the gift is made, and it is outside the United States if it is not. That fact remains within the owner's control until the day on which it is tested.

The consequence is an asset class in which the federal estate tax result can depend on a shipping date, a loan agreement or the room in which an object is handed over; in which the treaties reach opposite results for a German and a French collector with identical apartments on the same Manhattan street; and in which the tax plan is subordinate to two bodies of law the tax adviser does not control: the export regimes of the countries the objects come from, and the law of title, which since April 13, 2026 exposes any work with a gap in its wartime provenance to a claim without an expiration date.

The mistake this article exists to prevent is the analysis that begins with the Code, treats the applicable treaty as a refinement and treats the object's location as a given. For a practice whose clients are domiciled in treaty countries the sequence must be reversed. Three things follow. First, the domestic situs rule for tangibles is simple and unforgiving, but it is displaced for German, British, Dutch, Austrian and Danish domiciliaries and confirmed for French, Swiss, Italian and Japanese ones, so the treaty pattern, not the Code, is the starting point of every file. Second, location remains decisive wherever the treaty permits situs taxation, and it is decisive everywhere for the state death taxes, which no treaty touches; and location is elective only while the owner is alive, competent and able to move the object lawfully. Third, an object that can be moved for tax purposes may not be movable at all: the German *Kulturgut-schutzgesetz*, the French *certificate*, the Italian *attestato* and the British *licence* decide whether a work may leave, and a restitution claim decides whether it may be sold.

This article proceeds in nine Parts: the situs rule and the transit doctrine (Part I); the treaties (Part II); the works-of-art exemption (Part III); the gift tax on tangibles (Part IV); structures, storage and the income tax (Part V); valuation and authentication (Part VI); import, export and cultural property (Part VII); provenance and the amended HEAR Act (Part VIII); and administration (Part IX), followed by practice points. Statuses, thresholds and figures are stated as of this writing in September 2026; confirming them against current law is part of any real engagement.

Summary.

1. Physical location at death or at the moment of the gift is the situs rule for tangible personal property. Art, jewelry, vehicles and wine located in the United States are U.S.-situs property of a nonresident, includible in the Form 706-NA estate above the $60,000 threshold and reached by the state death taxes as well. The transit doctrine rests on a 1949 appellate decision and a 1958 Tax Court decision, not on any regulation, and is a litigating position rather than a safe harbor.

2. The treaties decide first. Under the German, British, Dutch, Austrian and Danish conventions the tangibles of a non-citizen domiciliary are taxable only in the country of domicile, wherever located; under the French convention the United States may tax tangibles located here (Article 7); under the Swiss, Italian, Japanese and older situs-type conventions the United States taxes by location and grants a proportionate share of the credit that shelters $15,000,000 in 2026. Only seven conventions cover the gift tax. No convention binds the states.

3. Section 2105(c) deems a nonresident's work of art to be outside the United States if it was imported solely for exhibition, lent to a public gallery or museum and on exhibition or en route at death. It has no gift-tax counterpart. New York (Tax Law § 960(d)) and Minnesota have state analogues.

4. A nonresident's gift of tangible property located in the United States is taxable at rates of up to 40 percent with no lifetime exemption; the 2026 annual exclusion is $19,000 per donee and $194,000 for a spouse who is not a citizen. Domiciliaries of Germany, the United Kingdom, Austria and Denmark are protected by treaty; French domiciliaries are not; Connecticut levies its own gift tax on tangibles located there.

5. Structures behave as elsewhere: a foreign corporation converts the object into a foreign-situs share at an income tax cost, a partnership carries the usual uncertainty, and a revocable trust not only fails to help but, under section 2104(b), fixes United States situs for an object that was here when transferred. The free zones of Geneva, Luxembourg and Singapore are outside the base because they are outside the country; a Delaware facility is not.

6. Valuation is adversarial: fair market value in the retail market, a sworn expert appraisal where artistic items exceed $3,000 in aggregate, mandatory referral to Art Appraisal Services for any single item claimed at $50,000 or more, Panel review generally above $150,000, penalties of 20 or 40 percent for understatements, and a Statement of Value under Rev. Proc. 96-15 ($8,400 for up to three items) obtainable before the return is filed.

7. Movement is regulated at both ends. Original art enters the United States free of duty, but designated archaeological and ethnological material from thirty-four countries and anything stolen does not. Leaving Europe requires an EU licence outside the Union and national licences within it: Germany above EUR 300,000 for paintings more than 75 years old, France above EUR 300,000, Italy above EUR 50,000 since April 14, 2026, the United Kingdom above £180,000 for oil paintings; listed national treasures may be refused exit at any value.

8. Provenance: Public Law 119-82, signed April 13, 2026, removed the sunset of the Holocaust Expropriated Art Recovery Act, kept the six-year discovery rule, barred laches, adverse possession, prescription, act of state, comity, forum non conveniens and similar non-merits defenses for timely claims, and overrode the domestic-takings rule for claims against foreign states. Provenance research now precedes valuation, sale, loan and shipment.

Part I. The situs rule for tangible property and the transit doctrine

The gross estate of a nonresident who is not a citizen consists of that part of the worldwide gross estate which is situated in the United States at death.[1] The Code contains no general situs rule for tangible personal property; the regulations supply it. Property is situated in the United States if it is "tangible personal property located in the United States, except certain works of art on loan for exhibition," and it is situated outside the United States if it is tangible personal property located outside the United States.[2] The contents of a Manhattan apartment, the jewelry in a New York safe-deposit box, the car in a Miami garage and the wine in a Napa locker are therefore includible; the same objects in Paris or in a Geneva warehouse are not. The tax is computed on fair market value at the rates of section 2001(c), which reach 40 percent above $1,000,000, against a unified credit of $13,000, the equivalent of a $60,000 exemption, and a return on Form 706-NA is required when the U.S.-situs gross estate, increased by adjusted taxable gifts, exceeds $60,000.[3] Because the threshold is measured against gross value, a single painting of moderate value brings the estate into the filing regime and, with it, into the transfer certificate procedure, without which a custodian that releases the object does so at its own risk; the Service currently states a processing time of twelve to eighteen months from receipt of complete documentation for estates below the filing threshold.[4]

Two refinements complete the rule. First, section 2104(b) deems property that the decedent transferred during life in a manner described in sections 2035 through 2038, "by trust or otherwise," to be situated in the United States if it was so situated either at the time of the transfer or at the time of death.[5] A painting placed in a revocable trust while it hangs in New York and shipped to Geneva before death therefore remains in the United States estate; the object's location on the day of the transfer, not only on the day of death, is what the return must record. Second, the transit doctrine. In *Delaney v. Murchie* a Canadian citizen domiciled in the Bahamas died in Florida during a stop on her way home, carrying jewelry and personal effects; the First Circuit held that Congress had left the situs of chattels to "judicially developed concepts of situs" and that objects merely passing through the country were not situated in the United States, and the Tax Court later applied the same "abiding place" reasoning to bearer bonds.[6] No regulation, ruling or form instruction adopts the doctrine; the Form 706-NA instructions state an unqualified physical-location test; and the only statutory transit language is the "en route to or from exhibition" limb of section 2105(c). The doctrine is accordingly a litigating position, strongest for an object documented as passing

[1] I.R.C. § 2103.

[2] Treas. Reg. §§ 20.2104-1(a)(2), 20.2105-1(a)(2). The Instructions for Form 706-NA (Rev. Sept. 2025) restate the rule in the same terms, subject to treaty: "Real estate and tangible personal property are located in the United States if they are physically located there."

[3] I.R.C. §§ 2101(b), 2001(c), 2102(b)(1), 6018(a)(2), (3); Instructions for Form 706-NA (Rev. Sept. 2025).

[4] Treas. Reg. § 20.6325-1; IRS, "Transfer certificate filing requirements for the estates of nonresidents not citizens of the United States" (updated May 5, 2026).

[5] I.R.C. § 2104(b); Treas. Reg. § 20.2104-1(b). The Instructions for Form 706-NA give the example of tangible property located in the United States when transferred to a revocable trust and moved abroad before death: it remains property located in the United States.

[6] *Delaney v. Murchie*, 177 F.2d 444 (1st Cir. 1949); *Pulvermann v. Commissioner*, 30 T.C. 231 (1958).

through to a foreign destination and weakest for an object stored, exhibited or offered for sale in the United States. The conventions with France, Italy, Japan, Finland, Ireland and South Africa, by contrast, deem tangible property in transit to be situated at its destination, and Washington State's regulations exclude tangible property "present for a purpose other than transiting the state."[7]

Part II. The tax treaties

Fifteen estate, inheritance and gift tax conventions are in force: with Australia, Austria, Canada (through Article XXIX B of the income tax convention), Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, South Africa, Switzerland and the United Kingdom; seven of them, those with Australia, Austria, Denmark, France, Germany, Japan and the United Kingdom, also cover the gift tax.[8] For tangible property they fall into three patterns.

The domicile-based conventions with Germany, the United Kingdom, the Netherlands, Austria and Denmark allocate taxing rights by the decedent's or donor's domicile and carve out only real property and the business property of a permanent establishment for the situs state. Tangible personal property falls into the residual article, and a non-citizen domiciliary's art located in the United States is taxable only in the country of domicile: Germany's Article 9 ("Property which forms part of the estate of or of a gift made by a person domiciled in a Contracting State, wherever situated, and not dealt with in Article 5, 6, 7, or 8 shall ... be taxable only in that State"), the United Kingdom's Article 5(1)(a), the Netherlands' Article 8, Austria's Article 7 and Denmark's Article 8.[9] The German convention protects the domiciliary's estate and lifetime gifts alike, and its tie-breaker deems a German citizen who has lived in the United States for not more than ten years to remain German-domiciled; the British convention deems a British national who has been resident in the United States for fewer than seven of the preceding ten taxable years to remain domiciled in the United Kingdom.[10] Three caveats limit the exemption. Each of these conventions preserves United States taxation of its own citizens, so a United States citizen domiciled in Munich or London is taxed on worldwide property with a credit, not exempted.[11] The British convention contains a subject-to-tax clause under which property taxable only in

[7] U.S.-France estate and gift tax convention art. 7(1); U.S.-Italy estate tax convention art. III(1)(b); U.S.-Japan estate and gift tax convention art. III(1)(b); U.S.-Finland estate tax convention art. III(2)(b); U.S.-Ireland estate tax convention art. III(2)(b); U.S.-South Africa estate tax convention art. III(2)(b); Wash. Admin. Code § 458-57-125(3)(b).

[8] IRS, "Estate & gift tax treaties (international)" (reviewed Sept. 8, 2026); Instructions for Form 706-NA (Rev. Sept. 2025); Instructions for Form 709-NA (2025).

[9] Convention between the United States of America and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on estates, inheritances, and gifts, signed at Bonn Dec. 3, 1980, in force June 27, 1986, as amended by the Protocol signed Dec. 14, 1998, in force Dec. 14, 2000, art. 9; Convention between the United States and the United Kingdom for the avoidance of double taxation with respect to taxes on estates of deceased persons and on gifts, signed at London Oct. 19, 1978, art. 5(1)(a); Convention between the United States and the Netherlands with respect to taxes on estates of deceased persons, signed July 15, 1969, in force Feb. 3, 1971, art. 8; Convention between the United States and Austria with respect to taxes on estates, inheritances, gifts and generation-skipping transfers, signed June 21, 1982, in force July 1, 1983, art. 7(1); Convention between the United States and Denmark with respect to taxes on estates, inheritances, gifts and certain other transfers, signed Apr. 27, 1983, art. 8.

[10] Germany convention arts. 1, 4(3) (as amended 1998); U.K. convention art. 4(2).

[11] Germany convention art. 11(1)(a); U.K. convention art. 5(1)(b) (the domicile rule "shall not apply if at the time of the death or transfer the decedent or transferor was a national of that other State"); Netherlands convention art. 9; Austria convention art. 9(1); Denmark convention art. 1(3).

one state, on which tax "though chargeable is not paid," may be taxed by the other, and its application to a lifetime gift that is a potentially exempt transfer for inheritance tax purposes is unresolved.[12] And Austria has levied no inheritance or gift tax since August 1, 2008, so its convention, which remains in force and contains no subject-to-tax clause, produces no tax in either country on an Austrian domiciliary's art in New York, a result to be confirmed rather than assumed.[13] The Netherlands convention covers only the estate tax, so a Dutch domiciliary's lifetime gift of art located in the United States is taxed under the Code.

The French convention is the outlier among the modern treaties. Article 7(1) provides that tangible movable property other than currency may be taxed by a Contracting State if it is situated in that State, and deems property in transit to be situated at its destination; only the personal-use tangibles of an individual covered by the short-stay rule of Article 4(3) are reserved to the domicile state.[14] A French-domiciled collector's paintings in a Manhattan apartment are therefore within the federal estate and gift tax alike, and the relief is computational. The estate of a French domiciliary receives a unified credit equal to the greater of the $13,000 credit and the proportion of the credit allowed to a citizen (the credit that shelters $15,000,000 in 2026) that the U.S.-situs gross estate bears to the worldwide gross estate; property passing to a spouse who is not a citizen and taxable under Articles 5, 6 or 7 enters the taxable base only to the extent its value exceeds 50 percent of the property the United States may tax; and the executor may elect a treaty marital deduction up to the applicable exclusion amount in place of a qualified domestic trust.[15] France taxes the worldwide estate and credits the United States tax on the property the United States may tax.[16]

The situs-type conventions with Switzerland, Italy, Japan, Australia, Finland, Greece, Ireland and South Africa do not displace the domestic situs rule. Under the Italian and Japanese conventions tangible property is situated where it is located at death or, if in transit, at the place of destination; the Swiss convention has no situs article at all and leaves the Code's rule intact.[17] The relief is the

[12] U.K. convention art. 5(5). The United Kingdom replaced domicile with a long-term residence test for inheritance tax from April 6, 2025; the convention continues to allocate by domicile and treats as domiciled in the United Kingdom a person "treated as so domiciled for the purposes of a tax which is the subject of this Convention" (art. 4(1)(b)), a point to be confirmed with British counsel in every file.

[13] Austria convention arts. 2, 7; the Austrian Constitutional Court's decisions of Mar. 7 and June 15, 2007 took effect on July 31, 2008.

[14] Convention between the United States and France for the avoidance of double taxation with respect to taxes on estates, inheritances and gifts, signed at Washington Nov. 24, 1978, in force Oct. 1, 1980, as amended by the Protocol signed Dec. 8, 2004, in force Dec. 21, 2006, art. 7(1), (2). Article 6 of the convention concerns the business property of a permanent establishment and is not the article governing tangibles; Article 8 reserves currency and intangibles to the country of domicile or citizenship.

[15] France convention art. 12(3) (Protocol art. VII), art. 11(2), art. 11(3) (Protocol art. VI); I.R.C. § 2102(b)(3)(A); I.R.C. § 2010(c)(3)(A), as amended by Pub. L. No. 119-21, § 70106 (basic exclusion amount of $15,000,000 for decedents dying and gifts made after Dec. 31, 2025).

[16] France convention art. 12(2)(a).

[17] Convention between the United States and Italy for the avoidance of double taxation with respect to taxes on estates and inheritances, signed Mar. 30, 1955, art. III(1)(b); Convention between the United States and Japan for the avoidance of double taxation with respect to taxes on estates, inheritances, and gifts, signed Apr. 16, 1954, art. III(1)(b); Convention between the United States and Switzerland for the avoidance of double taxation with respect to taxes on estates and inheritances, signed July 9, 1951, in force Sept. 17, 1952, arts. III, IV.

proportional specific exemption, which the United States grants as a unified credit in the ratio that the U.S.-situs gross estate bears to the worldwide gross estate under the conventions with Australia, Canada, Finland, France, Germany, Greece, Italy, Japan and Switzerland; the Irish and South African conventions grant no proportional exemption.[18] Of this group only Japan and Australia cover the gift tax. Canada's Article XXIX B grants the pro rata credit and a marital credit, and exempts everything except United States real property and permanent-establishment property where the Canadian resident's worldwide gross estate does not exceed $1,200,000; it does not address gifts.[19]

Two procedural points close the Part. A return position that relies on a convention must be disclosed, on the Form 706-NA by statement and on the Form 709-NA with Form 8833, and property the convention exempts is excluded from the numerator of the pro rata credit.[20] And the conventions cover only the federal estate and gift taxes. New York taxes the transfer of a nonresident's real and tangible personal property having an actual situs in the state, above a basic exclusion of $7,350,000 for 2026 that disappears entirely once the taxable estate exceeds 105 percent of that amount; Washington reaches tangible property located in the state above $3,000,000 at rates of up to 20 percent for deaths on or after July 1, 2026 (35 percent for deaths between July 1, 2025 and June 30, 2026); Massachusetts, Oregon, Illinois, Minnesota, Connecticut, Pennsylvania and New Jersey, among others, apply the same real-and-tangible rule to non-domiciliaries; and Connecticut and Minnesota look through pass-through entities that hold such property.[21] A German domiciliary's art in New York can thus be free of federal tax under Article 9 and still taxable by New York, and the German credit for taxes of United States political subdivisions operates only within the cases of Article 11(3), which do not include tangibles; the point belongs to German counsel.[22]

[18] I.R.C. § 2102(b)(3)(A); Instructions for Form 706-NA (Rev. Sept. 2025) (listing the nine treaties to which § 2102(b)(3)(A) applies); Switzerland convention art. III; Italy convention art. IV; Japan convention art. IV; Ireland convention art. IV(2); South Africa convention art. IV(2).

[19] Convention between the United States and Canada with respect to taxes on income and on capital, signed Sept. 26, 1980, art. XXIX B, paras. 2, 3, 8 (added by the Protocol signed Mar. 17, 1995); S. Exec. Rep. No. 104-9 (1995).

[20] I.R.C. § 6114; Treas. Reg. § 301.6114-1; Instructions for Form 706-NA (Rev. Sept. 2025); Instructions for Form 709-NA (2025); I.R.C. § 2102(b)(3)(A), second sentence.

[21] Germany convention art. 2(1)(a) ("the Federal estate tax and the Federal gift tax"); U.K. convention art. 2(1)(a); N.Y. Tax Law §§ 951-a(c), 952(c), 960(a); N.Y. Dep't of Taxation & Finance, basic exclusion amount for dates of death in 2026 ($7,350,000); Wash. Rev. Code §§ 83.100.020(1)(a), 83.100.040 (as amended by ch. 209, Laws of 2026); Wash. Admin. Code § 458-57-125(3); Mass. Gen. Laws ch. 65C, § 2A(b); Or. Rev. Stat. § 118.010(2)(b); 35 Ill. Comp. Stat. 405/5(a)(2); Minn. Stat. § 291.005, subd. 1(8); Conn. Gen. Stat. § 12-391(e)(2); 72 Pa. Stat. § 9116(b)(2).

[22] Germany convention art. 11(3), (4). The unilateral credit of § 21 ErbStG for a German-resident decedent is confined to foreign property within the meaning of § 121 BewG, which does not list tangible movables.

Convention	Pattern	U.S. estate tax on a non-citizen domiciliary's art located in the United States	Relief	Gift tax covered; gift of art located in the United States
Germany (1980; Protocol 1998)	Domicile-based; residual Article 9	No, unless permanent-establishment or partnership property (Articles 6, 8)	Exemption; pro rata unified credit (Article 10(5)); 50 percent marital exclusion (Article 10(4)); treaty marital deduction (Article 10(6))	Yes; U.S. gift tax barred for a German domiciliary
United Kingdom (1978)	Domicile-based; Article 5(1)(a)	No, unless a U.S. national (Article 5(1)(b)), permanent-establishment property, or the subject-to-tax clause applies (Article 5(5))	Exemption; no pro rata credit; marital rules of Article 8	Yes; barred, subject to Articles 5(1)(b) and 5(5)
Netherlands (1969)	Domicile-based; Article 8	No, unless permanent-establishment property or a U.S. citizen (Article 9)	Exemption; $30,000 small-estate rule (Article 10(2))	No; the Code applies to gifts
Austria (1982)	Domicile-based; Article 7	No, unless permanent-establishment property or a U.S. citizen (Article 9(1))	Exemption; Austria has levied no inheritance or gift tax since Aug. 1, 2008	Yes; barred
Denmark (1983)	Domicile-based; Article 8	No, unless permanent-establishment property or a U.S. citizen or domiciliary (Article 1(3))	Exemption	Yes; barred
France (1978; Protocol 2004)	Domicile-based with situs taxation of tangibles (Article 7)	Yes; property in transit deemed at its destination; personal-use property of Article 4(3) individuals excepted	Pro rata unified credit (Article 12(3)); 50 percent marital exclusion (Article 11(2)); marital deduction election (Article 11(3)); French credit (Article 12(2))	Yes, but the U.S. may tax; France credits
Switzerland (1951)	No situs article; the Code's rule applies	Yes	Proportional exemption (Article III), applied as a pro rata credit	No; the Code applies
Italy (1955)	Situs-based; Article III(1)(b); transit deemed at destination	Yes	Proportional exemption (Article IV)	No; the Code applies
Japan (1954)	Situs-based; Article III(1)(b); transit deemed at destination	Yes	Proportional exemption (Article IV); credit (Article V)	Yes; the U.S. may tax by situs; Japan credits
Australia (1953)	Situs-based	Yes	Proportional exemption, applied as a pro rata credit	Yes (separate gift tax convention); the U.S. may tax
Finland (1952); Greece (1950)	Situs-based	Yes (Greece has no transit rule)	Proportional exemption	No; the Code applies

Convention	Pattern	U.S. estate tax on a non-citizen domiciliary's art located in the United States	Relief	Gift tax covered; gift of art located in the United States
Ireland (1949); South Africa (1947)	Situs-based	Yes	No proportional exemption; credit only	No; the Code applies
Canada (Article XXIX B, 1995)	Income tax convention; no situs override	Yes, unless the worldwide gross estate does not exceed $1,200,000 (paragraph 8)	Pro rata unified credit (paragraph 2); marital credit (paragraph 3)	No; the Code applies
No convention (for example Belgium, Spain, Luxembourg, Monaco)	Code	Yes	$13,000 credit only	The Code applies

Table 1. Treatment of a non-citizen treaty domiciliary's tangible personal property located in the United States, as of September 2026. "Treaty domiciliary" means a person domiciled in the partner country under the convention's own definitions; every convention preserves United States taxation of United States citizens.

Part III. The works-of-art exemption

Section 2105(c) provides that works of art owned by a nonresident who is not a citizen "shall not be deemed property within the United States" if they are (1) imported into the United States solely for exhibition purposes, (2) loaned for such purposes to a public gallery or museum no part of whose net earnings inures to the benefit of any private stockholder or individual, and (3) at the time of the owner's death on exhibition, or en route to or from exhibition, in such a gallery or museum.[23] All three elements are tested at death, and each is narrowly drawn. "Imported ... solely for exhibition purposes" is a statement about the purpose of the importation, so a work bought in New York, or brought in for private use and lent later, does not fit the text; a dealer's showroom, an art-fair booth or a private exhibition space that fails the public-gallery and no-inurement tests does not qualify; and a loan that has ended, or a work that has returned to the owner's residence, is outside the third element. The exemption is therefore a reason to document museum loans with the import purpose stated on the customs entry, the loan agreement executed before the work arrives and the exhibition or transit status verifiable on any date. It is the only situs exemption available to a domiciliary of a non-treaty or situs-treaty country for an object in the United States, and it remains available under every convention, since none restricts a domestic exemption.[24]

Three related rules complete the picture. The exemption is an estate tax rule only: the gift tax regulations ask whether tangible property is "physically situated" in the United States at the time of the transfer and contain no exception for loaned art, so the lifetime gift of a painting while it hangs in an American museum is a gift of property situated in the

[23] I.R.C. § 2105(c); Treas. Reg. § 20.2105-1(b).

[24] See, e.g., U.K. convention art. 13 ("This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of either Contracting State.").

United States.[25] New York exempts from its nonresident estate tax works of art lent "to a public gallery located within the state of New York solely for exhibition purposes" and on exhibition or en route at death, without the federal importation requirement but with a New York-gallery requirement, and Minnesota deems a nonresident's qualified work of art on loan to a Minnesota organization exempt under section 501(c)(3) to be situated outside the state.[26] And a loan to an American non-profit institution can be protected against judicial seizure while the object is in the United States if, before importation, the State Department determines that the object is of cultural significance and that its exhibition is in the national interest and publishes notice in the Federal Register; for works lent by foreign states the corresponding immunity does not extend to Nazi-era claims.[27]

Part IV. The gift tax on tangible property located in the United States

The gift tax applies to a nonresident donor only for property situated in the United States, and the transfer of intangible property by a nonresident is excluded altogether; the exclusion leaves tangible property fully exposed.[28] Situs is tested at the moment of the transfer. The rates are those of section 2001(c), 18 percent on the first taxable dollar and 40 percent above $1,000,000, and no unified credit is allowed to a nonresident donor; the reliefs are the annual exclusion of $19,000 per donee for 2026, the annual exclusion of $194,000 for gifts to a spouse who is not a United States citizen, the unlimited marital deduction for gifts to a spouse who is a citizen, and the charitable deduction for gifts to domestic charitable corporations or for use within the United States.[29] The consequences are concrete. A Zurich collector who presents a painting to her United States-resident son while it hangs in the New York apartment has made a taxable gift of its full value less $19,000, because Switzerland has no gift tax convention with the United States; the same painting shipped to Zurich and handed over there is outside the United States gift tax entirely. Jewelry given at a wedding in Connecticut, a car signed over during a Florida winter and a watch collection divided among children in an Aspen house are each gifts of tangible property situated in the United States.

The treaty overlay follows the patterns of Part II. A German, British, Austrian or Danish domiciliary's gift of art located in the United States is taxable only in the country of domicile; a French domiciliary's gift of art located here is taxable by the United States under Article 7, with a French credit; a Japanese or Australian donor is taxed by situs under an older convention; and a Dutch, Swiss, Italian or Canadian donor has no treaty protection for gifts at all.[30] Two further points. Connecticut, alone among the states, imposes

[25] Treas. Reg. § 25.2511-3(b)(1); I.R.C. §§ 2501(a), 2511(a) and the regulations under them contain no counterpart to § 2105(c).

[26] N.Y. Tax Law § 960(d); Minn. Stat. § 291.005, subd. 1(8)(iii).

[27] 22 U.S.C. § 2459(a); 28 U.S.C. § 1605(h).

[28] I.R.C. §§ 2501(a)(1), (2), 2511(a); Treas. Reg. § 25.2511-3(a)(1), (b)(1) ("Real property and tangible personal property constitute property within the United States only if they are physically situated therein").

[29] I.R.C. §§ 2502(a), 2001(c), 2505(a), 2503(b), 2523(a), (i), 2522(b); Rev. Proc. 2025-32, § 4.42, 2025-45 I.R.B. 695. The return is Form 709-NA.

[30] Germany convention arts. 1(b), 9; U.K. convention arts. 2(1), 5(1)(a); Austria convention art. 7; Denmark convention art. 8; France convention art. 7(1); Japan convention art. III(1)(b); IRS, "Estate & gift tax treaties (international)" (the Netherlands, Switzerland and Italy conventions cover the estate tax only; Article XXIX B of the Canada convention concerns taxes imposed by reason of death).

a gift tax, and for a nonresident donor it reaches gifts of real and tangible personal property located in Connecticut, at 12 percent above an exemption of $15,000,000 for 2026.[31] And a gift is not the only lifetime transfer that matters: a transfer to a revocable trust is not a completed gift, but it is a transfer within section 2038, and section 2104(b) then fixes the object's situs by reference to its location at the time of the transfer as well as at death (Part I). A United States person who receives more than $100,000 in a year from a nonresident individual or foreign estate also has a reporting obligation of his own.[32]

The discipline is stated in one sentence: a significant gift of tangible property is made only after the object has left the United States, with the shipping documents, the customs export record and the delivery receipt retained, because the geography of the gift will be proved years later, if at all, by that file. The converse discipline governs objects that will stay: an object that is to remain in the United States and pass at death should be held in a form the convention or a structure protects, not gifted in place.

Situation	**Federal estate or gift tax result**	**Treaty modification**	**Watch for**
Painting in the collector's New York apartment at death	U.S.-situs tangible property; includible in the Form 706-NA estate	Germany, United Kingdom, Netherlands, Austria, Denmark: taxable only in the country of domicile. France, Switzerland, Italy, Japan: the U.S. taxes, with a pro rata credit	New York estate tax applies whatever the convention; contents, jewelry and vehicles count
Work on documented loan to a U.S. public museum (section 2105(c))	Deemed outside the United States	Available under every convention	Import purpose on the entry; loan agreement in place; exhibition or transit status at death; no gift-tax counterpart
Collection in a customs free zone in Geneva, Luxembourg or Singapore	Outside the U.S. base: location controls	None needed	EU import rules for the Luxembourg free zone since June 28, 2025; Swiss inventory rules; title and insurance questions
Art owned by a foreign corporation and hanging in the U.S. residence	Shares are foreign-situs intangibles, outside the estate	Not needed for the shares	Substance and formalities; personal-use frictions; Connecticut and Minnesota look through pass-through entities; no basis step-up in the corporation's assets
Painting handed to a child in the United States	Taxable gift of a nonresident; annual exclusion only, no unified credit	Barred for German, British, Austrian and Danish domiciliaries; permitted for French domiciliaries; no protection for Dutch, Swiss, Italian or Canadian donors	Move first, give second; Connecticut gift tax; Form 709-NA

[31] Conn. Gen. Stat. §§ 12-640, 12-642(a)(11), 12-643(3)(B); Conn. Dep't of Revenue Servs., estate and gift tax information for 2026.

[32] I.R.C. § 6039F; Instructions for Form 3520.

Situation	Federal estate or gift tax result	Treaty modification	Watch for
The same painting handed over in Zurich	Outside the U.S. gift tax	None needed	Shipping and customs export file; the donee's Form 3520 where a U.S. person receives more than $100,000 in a year
Object placed in a revocable trust while in the U.S., later moved abroad	U.S.-situs at death under section 2104(b)	Treaty patterns as above	Do not fund a revocable trust with tangibles located in the U.S. unless the convention exempts them
Work in transit through the United States at death	Litigating position under *Delaney v. Murchie*; no regulatory safe harbor	France, Italy, Japan, Finland, Ireland, South Africa: deemed situated at destination	Contemporaneous bills of lading and customs entries; storage, exhibition or offer for sale defeats the argument

Table 2. The object at death or at the gift: federal result, treaty modification and points of attention.

Part V. Structures, storage and the income tax

A foreign corporation that owns the collection converts objects located in the United States into shares of a foreign corporation, which are not property within the United States regardless of where the certificates are kept or the paintings hang.[33] The usual caveats apply with particular force to art. The corporation must own the works in substance, with title, insurance, invoices and loan agreements in its name; the collector's personal enjoyment of corporate-owned art in a private residence invites a retained-interest or sham analysis; Connecticut and Minnesota disregard pass-through entities for their death taxes; and the income tax cost is deferred rather than avoided, because the heirs take a fair-market-value basis in the shares while the corporation's basis in the art is unchanged, so that a later sale by the corporation, or its liquidation, realizes the built-in gain that section 1014 would have eliminated had the collector held the works directly.[34] A partnership interest carries the unresolved situs analysis that attends partnerships generally, and a revocable trust does nothing for a nonresident's United States tangibles and, under section 2104(b), can do harm. The domicile-based conventions make these structures unnecessary for federal purposes and leave them relevant for the state taxes; for French, Swiss, Italian and Japanese domiciliaries and for clients from non-treaty countries the structures remain the alternative to moving the object.

Location itself is the instrument unique to this asset class. There is no exit charge on shipping an object out of the United States; there is only the requirement that the owner be alive, competent and free of export constraints when it happens, and that the shipping file prove the date. A collection can be managed by location: the works in the United States residence are those whose exposure the estate can bear or whose treaty position is settled; the major works enter on section 2105(c) museum terms or not at all; storage is sited deliberately. The customs free zones in Geneva, Luxembourg and Singapore are outside the United States estate tax base because they are outside the United States, not because they are free zones. A foreign-trade zone or bonded warehouse in

[33] I.R.C. § 2104(a); Treas. Reg. § 20.2105-1(f).

[34] I.R.C. § 1014(a), (b)(1); Rev. Rul. 84-139, 1984-2 C.B. 168 (fair-market-value basis for property acquired from a nonresident alien decedent); Conn. Gen. Stat. § 12-391(e)(2)(B); Minn. Stat. § 291.005, subd. 1(8)(iv).

Delaware or New York is inside the base, because the Foreign-Trade Zones Act suspends customs duties and, at most, state ad valorem property taxes, and no federal authority treats zone property as situated outside the United States for transfer tax purposes.[35] The European free zones carry their own overlay: the Union's import regulation treats placement in a customs warehouse or free zone as an import, so that since June 28, 2025 an archaeological object more than 250 years old needs an import licence, and other listed categories more than 200 years old and worth EUR 18,000 or more per item need an importer statement, to enter the Luxembourg facility.[36]

The income tax follows the owner rather than the object. A nonresident's gain on the sale of art is generally foreign-source under section 865(a) and outside the United States income tax unless the seller has a United States tax home or the sale is attributable to a United States office, the seller is present in the United States for 183 days or more in the year, or the sale is effectively connected with a United States trade or business; the Foreign Investment in Real Property Tax Act does not apply, since art is not real property; and the estate of a nonresident is itself a foreign estate taxed on the same principles.[37] A United States person, including the heir who inherits the collection, pays tax on collectibles gain at a maximum rate of 28 percent plus, where applicable, the 3.8 percent net investment income tax, and can no longer defer gain through a like-kind exchange, which since 2018 is confined to real property.[38] Because property acquired from a decedent takes a fair-market-value basis whether or not it was subject to United States estate tax, a collection that passes at death from a treaty-protected nonresident to an American heir arrives with a stepped-up basis and no United States transfer tax; that is the strongest argument against lifetime gifts of appreciated works to United States persons, which carry over the donor's basis.[39]

Part VI. Valuation, appraisal and the Art Advisory Panel

Every figure on the return is fair market value, "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts," determined in the market in which the item is most commonly sold to the public, which for art is the retail market rather than the price a dealer would pay.[40] An estate whose household and personal effects include articles "having marked artistic or intrinsic value" of more than $3,000 in the aggregate must file the sworn appraisal of an expert with the return, together with the executor's declaration of the appraiser's disinterest and qualifications.[41] The Service has institutionalized its review. Any examined return that contains a taxpayer's appraisal of a single work of art

[35] 19 U.S.C. §§ 81c(a), 81o(e); I.R.C. § 7701(a)(9); Treas. Reg. § 20.2104-1(a)(2). Delaware's attraction for art storage is the absence of a sales or use tax (30 Del. C. ch. 29 imposes a gross receipts tax on sellers only), which does not displace the use tax of the state in which the object is later used: N.Y. Tax Law § 1110(a); Cal. Rev. & Tax. Code § 6201; Cal. Code Regs. tit. 18, § 1620(b)(3).

[36] Regulation (EU) 2019/880 of the European Parliament and of the Council of Apr. 17, 2019 on the introduction and the import of cultural goods, O.J. L 151, 7.6.2019, p. 1, arts. 1(2), 2, 3, 4, 5, 16 and Annex, Parts B and C.

[37] I.R.C. §§ 865(a), (e)(2), (g)(1), 871(a)(2), (b), 897(c)(1), 7701(a)(31), 641(b).

[38] I.R.C. §§ 1(h)(4), (5), 408(m)(2), 1411(a), (e)(1), 1031(a)(1); Pub. L. No. 115-97, § 13303.

[39] I.R.C. §§ 1014(a), (b)(1), 1015(a); Rev. Rul. 84-139, 1984-2 C.B. 168.

[40] Treas. Reg. §§ 20.2031-1(b), 25.2512-1.

[41] Treas. Reg. § 20.2031-6(b), (d).

claimed at $50,000 or more must be referred to Art Appraisal Services, whose staff appraisers review the valuation and present items, in current practice generally those claimed above $150,000, to the Art Advisory Panel, a body of up to twenty-five curators, scholars and dealers who review the claimed values without knowing the taxpayer or whether the value supports an estate or gift tax return or a charitable deduction; the Panel's recommendations are advisory, but after review by Art Appraisal Services they become the position of the Service.[42] In fiscal year 2023 the Panel reviewed 195 items with an aggregate claimed value of $795.5 million, accepted 53 percent of the claimed values and adjusted the rest, raising 29 valuations and lowering 63.[43] The penalty architecture backs the review: a value reported at 65 percent or less of the correct value carries a 20 percent accuracy-related penalty on the resulting underpayment where that underpayment exceeds $5,000, a value at 40 percent or less carries 40 percent, reasonable cause and good faith are a defense, and the appraiser faces a penalty of his own.[44]

The practice points are stable. The appraiser should be one whose independence survives examination: in *Estate of Kollsman* the Tax Court gave little weight to an appraisal by an auction-house specialist who was soliciting the consignment, and found values of $1,995,000 and $375,000 for two Old Master paintings reported at $500,000 and $100,000.[45] Comparables should be actual sales adjusted for date, condition and attribution, with the buyer's premium treated as part of the price a willing buyer pays, which is the Service's position and the prevailing appraisal practice under the retail-market rule.[46] Where an estate holds many works by one artist the blockage principle applies: the Tax Court reduced the aggregate of 425 David Smith sculptures from $4,284,000 to $2,700,000, applied blockage separately to each of six gifts of Calder gouaches, and discounted the O'Keeffe estate's works by 25 to 75 percent according to their market.[47] And for certainty, an estate or donor may obtain a Statement of Value from the Service for an item appraised at $50,000 or more, by a request filed after the death or gift and before the return that first reports the transfer, for a user fee of $8,400 for one to three items and $800 for each additional item; the Statement must be attached to the return whether or not the taxpayer agrees with it, requests received between July 16 and January 15 are ordinarily answered by the following June 30, and the taxpayer may rely on a Statement issued on accurately stated facts.[48]

Authentication is valuation's unstable element. A work's value rests on an attribution that is itself an expert opinion subject to revision: catalogues raisonnés close and reopen, several artists' foundations have dissolved their authentication boards under the pressure of litigation, and technical analysis re-ascribes pictures decades after purchase. The return should report the

[42] Internal Revenue Manual 4.48.2.2.1, 4.48.2.3(1), (2) (10-12-2023); IRM 8.18.1.1.7, 8.18.1.12 (05-28-2021); IRS, "Art appraisal services" (updated June 28, 2026).

[43] IRS, The Art Advisory Panel of the Commissioner of Internal Revenue, Annual Summary Report for Fiscal Year 2023, Pub. 5392 (Rev. 6-2024).

[44] I.R.C. §§ 6662(a), (g), (h), 6664(c)(1), 6695A.

[45] *Estate of Kollsman v. Commissioner*, T.C. Memo. 2017-40, aff'd, No. 18-70565 (9th Cir. June 21, 2019).

[46] Treas. Reg. § 20.2031-1(b) (value is the price at which the item "would be sold at retail").

[47] *Estate of Smith v. Commissioner*, 57 T.C. 650 (1972), aff'd on another issue, 510 F.2d 479 (2d Cir. 1975); *Calder v. Commissioner*, 85 T.C. 713 (1985); *Estate of O'Keeffe v. Commissioner*, T.C. Memo. 1992-210.

[48] Rev. Proc. 96-15, §§ 3.01, 7.01, 8.01, 11, 12.01, 13; Rev. Proc. 2026-1, App. A (user fee), as stated in IRS, "Art appraisal services" (June 28, 2026), and Publication 561 (Rev. Dec. 2025).

attribution a willing buyer would pay for, with the doubts disclosed; an undisclosed problem that the Panel discovers is a penalty case, a disclosed one is a valuation factor. Provenance belongs in the same file. After the April 2026 amendments to the HEAR Act (Part VIII), a gap between 1933 and 1945 in a work's European history is a legal exposure without an expiration date; it suppresses value, complicates insurance and can lead the auction houses to decline the consignment, and it should be researched and, where it exists, disclosed and priced on the return.

Part VII. Import, export and cultural property

Entering the United States. Original paintings, drawings, prints, sculpture and collectors' pieces classified in Chapter 97 of the Harmonized Tariff Schedule enter free of duty, and headings 9701 through 9705 were carved out of the 2025 and 2026 tariff actions as "informational materials," a category the International Emergency Economic Powers Act places beyond the President's reach and which the temporary surcharge of February to July 2026 and the Section 301 duties in force since July 24, 2026 likewise exempted. Antiques of heading 9706, goods of Russian origin, which bear a 35 percent duty, and, according to trade reports, goods of Canadian origin under the measures in force since August 19, 2026, are not equally protected, and the tariff position of a shipment must be confirmed at the time of entry.[49] The substantive restrictions lie elsewhere. Under the Convention on Cultural Property Implementation Act the United States restricts the import of designated archaeological and ethnological material from the thirty-one countries with which it has bilateral agreements and from the three subject to emergency action (Afghanistan, Lebanon and Ukraine), and from Iraq and Syria under separate statutes, unless the source country certifies that the export was lawful; cultural property stolen from a museum or monument in a State Party may not be imported at all; and offending material is subject to seizure and forfeiture.[50] Independently, the National Stolen Property Act treats an object removed in violation of a foreign patrimony law that vests ownership in the state as stolen property, so that its transport, possession and sale in the United States are federal offenses, and merchandise introduced contrary to law is subject to customs forfeiture.[51] Antiquities, pre-Columbian material and anything with an excavation history therefore travel with specialist clearance or not at all.

Leaving Europe. This is where estate plans fail. An export licence is required for any cultural object listed in Annex I to Council Regulation (EC) No 116/2009 that leaves the

[49] Harmonized Tariff Schedule of the United States (2026), ch. 97; 50 U.S.C. § 1702(b)(3); Exec. Order No. 14257, § 3(b)(i), 90 Fed. Reg. 15,041 (Apr. 7, 2025); *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (Feb. 20, 2026) (IEEPA does not authorize the President to impose tariffs); Proclamation No. 11012, 91 Fed. Reg. 9339 (Feb. 25, 2026) (surcharge under 19 U.S.C. § 2132 from Feb. 24 to July 24, 2026, exempting informational materials); 91 Fed. Reg. 47,318 (July 28, 2026) (Section 301 actions effective July 24, 2026, exempting informational materials); Proclamation No. 10420, 87 Fed. Reg. 38,875 (June 30, 2022) (Russian-origin goods, HTSUS heading 9903.90.08); Proclamations Nos. 11046 to 11048, 91 Fed. Reg. 46,639, 46,653, 46,663 (July 23, 2026) (Canadian-origin goods under 19 U.S.C. § 1338).

[50] 19 U.S.C. §§ 2602, 2603, 2604, 2606, 2607, 2609; 19 C.F.R. § 12.104g (as amended through Aug. 26, 2026); Emergency Protection for Iraqi Cultural Antiquities Act of 2004, Pub. L. No. 108-429, tit. III; Protect and Preserve International Cultural Property Act, Pub. L. No. 114-151, § 3 (2016).

[51] 18 U.S.C. §§ 2314, 2315; *United States v. Schultz*, 333 F.3d 393 (2d Cir. 2003); *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977), and 593 F.2d 658 (5th Cir. 1979); 19 U.S.C. § 1595a(c); see also 19 U.S.C. §§ 2091-2095 (pre-Columbian monumental or architectural sculpture and murals).

customs territory of the Union above the age and value thresholds of the Annex: paintings more than 50 years old and worth EUR 150,000 or more, watercolours EUR 30,000, drawings and prints EUR 15,000, sculpture EUR 50,000, and archaeological objects more than 100 years old at any value. The licence is issued by the Member State in which the object was lawfully and definitively located, is valid throughout the Union, and may be refused where the object is protected as a national treasure.[52] The national regimes then go further, each in its own way.

Germany's Kulturgutschutzgesetz requires a licence not only for export to third countries at the EU thresholds but also for shipment to another Member State, at higher age and value thresholds: paintings more than 75 years old and worth EUR 300,000 or more, watercolours and sculpture EUR 100,000, drawings, prints and photographs EUR 50,000, and other antiques more than 100 years old EUR 100,000. Works owned by their creator are exempt, and so are objects demonstrably present in Germany only temporarily, for up to two years, a rule that matters to a foreign collector who lends or stores a work there.[53] Cultural property entered in a register of national cultural property, or held in a public collection, may not be exported without a federal licence, which is refused where the interests of German cultural heritage prevail, after which a statutory purchase procedure runs and a new application is barred for five years; works of living artists may be listed only with their consent; and unlicensed export is a criminal offense punishable by imprisonment of up to five years.[54]

France requires a certificate for the temporary or permanent export from its customs territory of any cultural object above its own thresholds, which since January 1, 2021 exceed the EU figures: paintings more than 50 years old and worth EUR 300,000 or more, watercolours EUR 50,000, drawings EUR 30,000, sculpture EUR 100,000, and other antiques EUR 100,000. The certificate is permanent for objects more than 100 years old and valid for twenty years, renewable, for younger ones; it may be refused only for a trésor national, and it must be granted for an object lawfully imported into France within the previous fifty years.[55] A refusal bars any new application for thirty months, during which the State may make a purchase offer at international market prices, with an expert valuation procedure if the owner declines; if no offer is made the certificate can no longer be refused, and if the owner rejects the State's offer the refusal is renewed without compensation.[56]

Italy prohibits the permanent export of notified cultural property and of works belonging to public and ecclesiastical bodies, and subjects to an attestato di libera circolazione the permanent export of any work of cultural interest by a deceased artist executed more than seventy years ago whose value exceeds EUR 50,000, a threshold raised from EUR 13,500 by Law No. 40 of March 17, 2026, in force since April 14, 2026 (the lower figure survives for books). Below the threshold, and for works of living artists or

[52] Council Regulation (EC) No 116/2009 of Dec. 18, 2008 on the export of cultural goods, O.J. L 39, 10.2.2009, p. 1, art. 2 and Annex I.

[53] Kulturgutschutzgesetz (KGSG) of July 31, 2016, BGBl. I S. 1914, as amended by the Act of July 17, 2025, BGBl. 2025 I Nr. 167, § 24(1), (2), (8).

[54] KGSG §§ 6, 7(1), 21, 22, 23(2), (6) to (8), 83(1), (2).

[55] Code du patrimoine arts. L111-1, L111-2, L111-4; Annexe 1 to arts. R111-1, R111-3, R111-13 and R111-17 (thresholds in force since Jan. 1, 2021 under décret n° 2020-1718 of Dec. 28, 2020). A painting worth EUR 200,000 therefore needs no French certificate but still needs the EU licence to leave the Union.

[56] Code du patrimoine arts. L111-6, L121-1.

executed within the last seventy years, a self-declaration to the export office is required, and the office may open a notification procedure within sixty days; the attestato is valid for five years, a denial opens the notification procedure, and during the decision period the Ministry may purchase the object compulsorily at the value the applicant declared, which makes under-declaration hazardous.[57]

The United Kingdom requires an individual licence, for export to any destination including the European Union, for objects more than fifty years old above the Open General Export Licence limits: £180,000 for a painting in oil or tempera, £65,000 for most other categories, £10,000 for photographs and for portraits of British historical figures, and nil for archaeological material from British soil and for documents and manuscripts. Where an expert adviser considers the Waverley criteria met, the Reviewing Committee may recommend deferral of the licence, typically for two to four months and then for up to six months more, so that a British institution can match the price under a binding option.[58] Switzerland has no general export licence for privately owned art; its Cultural Property Transfer Act restricts export mainly of objects entered in the federal or cantonal registers, and objects stored in the Geneva free ports remain on Swiss territory with customs duties and value added tax suspended.[59] The sequence follows: for an object in Europe, the question whether it may leave, and at what cost in time, precedes the sale plan, the consignment deadline and the distribution to heirs abroad, and it is asked while the collector can still decide what is kept where.

Category	EU licence: export outside the EU (Reg. 116/2009, Annex I)	Germany: export to another EU state (§ 24(2) KGSG)	France: certificate for any export (Annexe 1 to art. R111-1)	Italy: permanent export (art. 65 Codice, from Apr. 14, 2026)	United Kingdom: individual licence (OGEL limits)
Paintings	over 50 years; EUR 150,000	over 75 years; EUR 300,000	over 50 years; EUR 300,000	deceased artist, over 70 years; attestato above EUR 50,000	over 50 years; £180,000 (oil or tempera); £10,000 for portraits of British historical figures
Watercolours, gouaches, pastels	over 50 years; EUR 30,000	over 75 years; EUR 100,000	over 50 years; EUR 50,000	as paintings	£65,000
Drawings	over 50 years; EUR 15,000	over 75 years; EUR 50,000	over 50 years; EUR 30,000	as paintings	£65,000
Prints and lithographs	over 50 years; EUR 15,000	over 75 years; EUR 50,000	over 50 years; EUR 20,000	as paintings	£65,000

57 D.Lgs. 22 gennaio 2004, n. 42 (Codice dei beni culturali e del paesaggio), arts. 10, 13, 14, 65(1) to (4-ter), 68, 70, as amended by Legge 17 marzo 2026, n. 40, G.U. n. 74 of Mar. 30, 2026. Unlawful export is punishable under art. 518-undecies of the Codice penale by imprisonment of two to eight years.

58 Export Control Act 2002; Export of Objects of Cultural Interest (Control) Order 2003, S.I. 2003/2759, Sch. 1; Arts Council England, UK Open General Export Licence value limits (listed as current on Jan. 15, 2026); Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest, Annual Report 2024-25.

59 Bundesgesetz über den internationalen Kulturgütertransfer (KGTG) of June 20, 2003, SR 444.1, in force June 1, 2005, arts. 3 to 5; Swiss counsel should confirm the position for any specific object.

Category	EU licence: export outside the EU (Reg. 116/2009, Annex I)	Germany: export to another EU state (§ 24(2) KGSG)	France: certificate for any export (Annexe 1 to art. R111-1)	Italy: permanent export (art. 65 Codice, from Apr. 14, 2026)	United Kingdom: individual licence (OGEL limits)
Sculpture	over 50 years; EUR 50,000	over 75 years; EUR 100,000	over 50 years; EUR 100,000	as paintings	£65,000
Photographs	over 50 years; EUR 15,000	over 75 years; EUR 50,000	over 50 years; EUR 25,000	over 25 years; attestato at any value	over 50 years; £10,000
Archaeological objects	over 100 years; any value	over 100 years; any value	excavated or national antiquities: any value; other objects: EUR 3,000	any value	British finds: nil; others £65,000
Furniture and other antiques	over 100 years (listed types from 50 years); EUR 50,000	over 100 years; EUR 100,000	over 50 years; EUR 100,000	as paintings	£65,000
Works owned by the artist	excluded	excluded (§ 24(1) no. 2)	excluded	living artist: free exit with self-declaration	exempt when exported by the maker

Table 3. Licence thresholds for the export of art, as of September 2026. For objects in Germany, France and Italy the EU licence is required in addition for any export outside the Union. Listed national treasures (German § 6 KGSG property, French trésors nationaux, Italian notified property) are outside the thresholds and may be refused exit at any value.

Part VIII. Provenance and the amended HEAR Act

The Holocaust Expropriated Art Recovery Act of 2016 created a uniform federal limitations rule for civil claims to recover artwork or other property lost between January 1, 1933 and December 31, 1945 because of Nazi persecution: notwithstanding any other federal or state law or "any defense at law relating to the passage of time," such a claim may be commenced within six years after the claimant's actual discovery of the identity and location of the work and of the claimant's possessory interest in it.[60] The 2016 Act was to cease to have effect on January 1, 2027, and courts had continued to dismiss claims on laches, acquisitive prescription, act of state and comity grounds. The Holocaust Expropriated Art Recovery Act of 2025, passed by the Senate by unanimous consent on December 10, 2025 and by the House by voice vote on March 16, 2026, was signed on April 13, 2026 as Public Law 119-82.[61] It made four changes. The sunset was struck, so the discovery rule now applies to every covered claim pending on April 13, 2026, including on appeal, and to every claim filed thereafter, without an end date.[62] For any claim that is timely under the Act, "all defenses or substantive doctrines based on the passage of time, including laches, adverse possession, acquisitive prescription, and usucapion" may not be applied, nor may "all non-merits

[60] Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (Dec. 16, 2016), §§ 4, 5(a), codified at 22 U.S.C. § 1621 note.

[61] Pub. L. No. 119-82, 140 Stat. 752 (Apr. 13, 2026) (S. 1884, 119th Cong.); The White House, "Congressional Bills S. 1884 and S. 3971 Signed into Law" (Apr. 13, 2026).

[62] Pub. L. No. 119-82, § 2(a)(3)(A), (F), § 2(b).

discretionary bases for dismissal, including the act of state doctrine, international comity, forum non conveniens, prudential exhaustion, and similar doctrines unrelated to the merits."[63] A covered claim is deemed to be one in which rights in property taken in violation of international law are in issue for purposes of the expropriation exception to the Foreign Sovereign Immunities Act, "without regard to the nationality or citizenship of the alleged victim," which overrides the domestic-takings rule of *Federal Republic of Germany v. Philipp*; the commercial-nexus requirement of that exception, as construed in *Republic of Hungary v. Simon*, is untouched, so a claim against a foreign state or its museum still requires the property or its proceeds to be connected with commercial activity in the United States.[64] And process may now be served in any judicial district in which the defendant may be found, resides, has an agent or transacts business.[65] The six-year discovery rule, the covered period, and the exception for claims already barred before December 16, 2016 where the claimant knew the facts on or after January 1, 1999 and allowed six unbarred years to pass, are unchanged.[66] The Act creates no cause of action, so the claim remains one in replevin or conversion under state law, and it contains no good-faith-purchaser or choice-of-law rule; but a foreign prescription rule of the kind applied in *Cassirer* can no longer defeat a timely claim, whichever law governs title.

On the European side, the Washington Conference Principles of December 3, 1998, endorsed by forty-four governments, and the Best Practices adopted on March 5, 2024 remain non-binding; Germany has replaced its Advisory Commission with the Schiedsgerichtsbarkeit NS-Raubgut, an arbitration body seated in Berlin that began work on December 1, 2025 under an administrative agreement among the Federation, the Länder and the municipal associations, which a claimant may invoke unilaterally and whose awards are binding; and losses are registered in the Lost Art database maintained by the German Lost Art Foundation.[67]

For the estate practice the consequences are procedural. Provenance research is a standing element of collection administration: every European work with a gap between 1933 and 1945 is checked against the Lost Art database, the Art Loss Register, the resources of the Claims Conference and the World Jewish Restitution Organization, and the Getty Provenance Index before it is valued, insured, lent, sold or shipped, because a claim surfacing during administration clouds title, halts the sale and reopens the valuation. Purchases, distributions and consignments are documented with provenance representations and warranties sized to an

[63] 2016 Act § 5(f), as added by Pub. L. No. 119-82, § 2(a)(3)(G). The findings name *Zuckerman v. Metropolitan Museum of Art*, 928 F.3d 186 (2d Cir. 2019) (laches), *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 89 F.4th 1226 (9th Cir. 2024) (acquisitive prescription under Spanish law) and *Von Saher v. Norton Simon Museum of Art at Pasadena*, 897 F.3d 1141 (9th Cir. 2018) (act of state) as the decisions the amendment is meant to displace.

[64] 2016 Act § 5(b), as added by Pub. L. No. 119-82, § 2(a)(3)(D); 28 U.S.C. § 1605(a)(3); *Federal Republic of Germany v. Philipp*, 592 U.S. 169 (2021); *Republic of Hungary v. Simon*, 604 U.S. ___ (Feb. 21, 2025).

[65] 2016 Act § 5(g), as added by Pub. L. No. 119-82, § 2(a)(3)(G).

[66] 2016 Act §§ 4, 5(a), 5(h) (formerly § 5(e)).

[67] Washington Conference Principles on Nazi-Confiscated Art (Dec. 3, 1998); Best Practices for the Washington Conference Principles on Nazi-Confiscated Art (Mar. 5, 2024); Terezin Declaration (June 30, 2009); Die Beauftragte der Bundesregierung für Kultur und Medien, "Schiedsgerichtsbarkeit NS-Raubgut" (operational since Dec. 1, 2025); Deutsches Zentrum Kulturgutverluste, Lost Art database, lostart.de.

exposure that no longer expires. And disclosure pays twice: a documented restitution risk is a legitimate valuation factor on the return, while a concealed one is a penalty case and, in due course, a lawsuit the amended Act is designed to let proceed on the merits.

Part IX. Administering the collection

When the collector dies the collection is the estate's least liquid asset and, for a period, its most exposed, and the checklist follows the rules above. Immediately: nothing moves. Custody of every object is confirmed against the inventory, the owner's insurance is converted to estate coverage, and every shipment, loan return and family errand is frozen until the tax, title and export position of each object is known, because a relative who ships pictures home the week after the funeral can convert a museum-exempt work into estate property, make a taxable gift of estate assets, defeat the transit argument or commit an export offense in a single day. Early: one appraisal, to the strictest standard. The valuation for the Form 706-NA or the treaty-based return also serves the home-country inheritance tax return, the insurance schedule and any later sale; it is commissioned with the Art Advisory Panel in mind and, where a single object dominates the estate, supported by a Statement of Value. In the return: the transfer certificate is needed for property in institutional custody, and museums, storage warehouses and auction houses demand it as banks do; treaty positions are disclosed; and the pro rata credit is computed on the property the convention allows the United States to tax. In the disposition: export licences are sequenced before consignment deadlines and before any distribution to heirs abroad, and the handover of an object to an heir is itself planned by location, since the geography rules of Part IV govern the logistics of a bequest as well as of a gift. Where a work goes to charity, the estate of a nonresident deducts a bequest only to a domestic charitable corporation or for use within the United States, so a bequest of a painting located here to a European museum earns no federal deduction; a donor with United States income who gives a work to a museum obtains a fair-market-value deduction only if the museum's use is related to its exempt purpose, with recapture if the museum disposes of the work within three years; and for estate and gift tax purposes the work and its copyright are treated as separate properties, so a bequest of the object without the copyright is not a split interest.[68] The state overlay belongs to the same checklist: the state death taxes on tangibles located in the state, and the sales and use taxes that follow an object delivered in New York or first used in California, where a work bought abroad and brought into the state within ninety days of its purchase is presumed to have been purchased for use there.[69] Throughout, the shipping file is a legal file: bills of lading, customs entries and export licences, loan agreements and condition reports are the documents that will prove situs, transit, exhibition status and title years later, and they are kept with the care other estates reserve for deeds.

Part X. Practice points

1. **Inventory by location, not by owner.** The tangibles schedule states where every significant object is (country, building, custodian) and where it was on the date of

[68] I.R.C. §§ 2106(a)(2)(A), (E), 2522(b), 170(e)(1)(B)(i), 170(e)(7), 2055(e)(4), 2522(c)(3).

[69] N.Y. Tax Law §§ 1105(a), 1110(a), 1118(2); 20 N.Y.C.R.R. §§ 525.2(a)(3), 526.7(e)(2); Cal. Rev. & Tax. Code § 6201; Cal. Code Regs. tit. 18, § 1620(b)(3).

any lifetime transfer, because for this asset class location is the tax analysis.

2. **Read the convention before the Code.** Identify the client's treaty domicile and the pattern: domicile-based (Germany, United Kingdom, Netherlands, Austria, Denmark), French, situs-type, or none. The pattern decides whether location matters federally and whether a structure is needed at all; the state death taxes are analyzed separately in every case.
3. **Organize United States presence around section 2105(c).** Major works enter on documented museum terms (import for exhibition, loan to a public gallery, exhibition or transit status) or not at all; the residence carries what the estate can bear or the convention protects; the exemption does not cover gifts.
4. **Never gift tangibles located in the United States.** Move first, give second, keep the customs export file; check Connecticut; and do not fund a revocable trust with objects located here unless the convention exempts them.
5. **Site storage deliberately.** The Geneva, Luxembourg and Singapore free zones are outside the base; Delaware and every United States foreign-trade zone are inside it; transit is proved only by documents; under the French, Italian and Japanese conventions property in transit is deemed to be at its destination, and outside them the transit argument rests on case law alone.
6. **Appraise for the Panel, not for the family.** An independent appraiser, retail comparables including the buyer's premium, disclosed condition, attribution and provenance, blockage where one artist dominates, and a Statement of Value where one object dominates the return.
7. **Run provenance before value.** Database research for every European work with a 1933 to 1945 gap before it is valued, lent, sold or shipped; provenance warranties in every purchase, consignment and distribution.
8. **Clear the exits before planning the sale.** The EU, German, French, Italian and British thresholds and listing regimes decide whether and when an object may leave; licences are sequenced before consignment deadlines, and the Italian declared value is the price at which the Ministry may buy.
9. **Freeze movements at death.** No object travels until tax, title and export positions are confirmed; one shipment can create a gift, forfeit an exemption or break a cultural-property law.
10. **Treat the shipping file as the title file.** Bills of lading, customs entries, export licences, loan agreements and condition reports prove situs, transit, exhibition status and provenance; they are indexed, retained and produced with the return.

Conclusion

Tangible property is the asset class in which the situs rules of cross-border planning become questions of fact. The situs rule is a fact about location; the largest exemption in the field is earned by an import declaration and a loan agreement; the gift tax is triggered by handing an object to a relative in the wrong country; the conventions reach opposite results for two collectors in the same building according to whether they are domiciled in Munich or in Paris; and the plan's conclusions wait, in the end, on a licence issued in Berlin, Paris, Rome or London under rules that do not mention Form 706-NA. The discipline this demands is unusual for tax practice but can be stated in one sentence: know where every object is, decide under the applicable convention where it should be, document every movement as if it will be litigated, value every object as the Panel would, and research every provenance as a claimant now permanently can.

Contact

Art and tangible personal property answer to the simplest situs rule in the cross-border field and to the most demanding practice around it: the treaty patterns that decide whether location matters, the section 2105(c) museum-loan exemption, the gift tax on tangibles located in the United States, Art Advisory Panel review, the European export regimes and the restitution exposure the amended HEAR Act has made permanent. **Ashford International Law PC advises families, fiduciaries, and their advisers** across the whole map: treaty analysis and collection situs planning, museum-loan and storage structuring, gift and estate planning for tangibles, appraisal strategy and Statements of Value, provenance and cultural-property diligence, export sequencing with European counsel, and the administration and disposition of collections in cross-border estates, alongside the family's existing advisers or leading the U.S. side end to end.

The firm is led by attorney **Caroline Esche Ashford, PhD, JD**. A graduate of Columbia University Law School, she has 17 years of experience advising on international estate planning and the cross-border taxation and administration of estates and trusts, including estates with significant art and collectible holdings. Dr. Ashford is also licensed to practice law in Germany. She advises in French and German as well as English.

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This article is intended for general educational purposes for U.S. and foreign estate planners, fiduciaries, and their clients and does not constitute legal or tax advice, nor does it create an attorney-client relationship. The matters described, the situs of tangible personal property under I.R.C. §§ 2103 to 2105 and the regulations, including the works-of-art exemption of § 2105(c), the transfer rule of § 2104(b) and the judicial transit doctrine; the gift taxation of nonresidents' transfers of tangible property under §§ 2501 and 2511 and the 2026 figures of Rev. Proc. 2025-32; the estate and gift tax conventions with Australia, Austria, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, South Africa, Switzerland and the United Kingdom, which differ by country in their treatment of tangible property; the state death, gift, sales and use taxes of New York, Washington, Connecticut, Minnesota, California and other states; valuation and appraisal practice, the Art Appraisal Services and Art Advisory Panel procedures of the Internal Revenue Manual, the Statement of Value procedure of Rev. Proc. 96-15 and its user fees, blockage, and the accuracy-related penalties of §§ 6662 and 6695A; the income tax rules of §§ 1(h), 865, 871, 1014, 1015, 1031 and 1411; the charitable rules of §§ 170(e), 2055(e)(4), 2106(a)(2) and 2522; U.S. import restrictions under the Convention on Cultural Property Implementation Act, the National Stolen Property Act and the customs laws, and the tariff measures in force at the date of writing; the export-control and cultural-heritage regimes of the European Union, Germany, France, Italy, the United Kingdom and Switzerland; and the Holocaust Expropriated Art Recovery Act of 2016 as amended by Public Law 119-82, depend on the specific facts, objects, countries and states concerned and on the law in effect at the relevant time, and they change. Statuses, thresholds and figures are stated as of this writing in September 2026 and must be confirmed before any filing, movement or structuring decision. Nothing here is advice on any particular object, transaction or jurisdiction. Confirm every point with *qualified counsel, including cultural-property and customs specialists where indicated, and current law before acting.*

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