

L I F E   I N S U R A N C E

# TAX PLANNING

F O R   F O R E I G N   N A T I O N A L S



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## Tax Considerations for Foreign Nationals

The continued globalization of the world's economies, more people are seeking to diversify their wealth and assets among various countries and even different currencies; such individuals are exposed to a range of income, gift, and estate tax planning issues. This is especially true for individuals with assets and investments in the United States. Below are some basic U.S. gift and estate tax rules applicable to Non-U.S. citizens/residents.

A foreign national's classification under the U.S. tax code as either a resident alien or non-resident alien determines what tax rules apply for gift and estate tax purposes. Different rules apply for income tax purposes.

### Residence vs. Domicile: What is the Difference

A person's residence means a location where he/she is or was living at a given point in time. A person can have multiple residence in different locations. While a person can only have one domicile for tax purposes, domicile is considered an individual's permanent home with the intention to remain indefinitely.

A Non-U.S. citizen or foreign resident's place of domicile makes a huge difference on what assets make up his/her estate and transfer tax liabilities.

Gift Tax – You are considered a U.S. resident if you are domiciled in the United States at the time of the gift transfer.

Estate Tax – You are considered a U.S. resident decedent if you are domiciled in the United States at the time of death.

The U.S. Treasury Regulation 20.0-1 (b) (1)

“A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.”

## Establishing Domicile

As a practical means of establishing domicile, various factors are considered:

1. Immigration and visa status
2. Time spent in the U.S and abroad
3. Location of business interests and bank accounts;
4. Location and ownership of home or other residence;
5. Location of family, relatives, and primary physician;
6. Declarations of intent for permanent residency;



## Are You a Resident Alien (Green Card)?

A Resident Alien is someone who has established a legal domicile in the U.S. Therefore, are treated as U.S. residents and are subject to several of the same income and transfer tax rules as U.S. citizens. Resident Aliens will generally meet one of the conditions below:

1. Have permanent legal residency status in U.S. (Green Card)
2. Reside a minimum of 31 days per year in the U.S. and having stayed a total of at least 183 days during the past three years (includes current year)<sup>1</sup>



## Special Planning for Resident Aliens

- Resident Aliens receive the full U.S. Estate Tax and Generation Skipping Transfer Tax (GSTT) exemption credits as U.S. citizens.
- All assets and property whether held in the United States or abroad are subject to U.S. estate and gift taxes. This may cause double taxation on of assets; both in the U.S. and country of citizenship.
- Resident aliens are taxed on their worldwide income; can qualify for the foreign earned income exclusion/ tax credit.
- Deceased person's citizenship does not affect marital deduction<sup>2</sup>; only the legal residency status of surviving spouse due to inherit is considered.
- Non-U.S. citizens cannot take advantage of the unlimited estate tax marital deduction . Non-U.S. married couples can use a qualified domestic trust (QDOT) to pass property has an exception to the unlimited estate tax marital deduction<sup>3</sup> rule.
- 100% interest of jointly held property is included in the Non U.S. citizen's estate, compared to only 50% for U.S. citizens.
- Estates are eligible to receive a credit for a foreign death tax due to another country.
- Gifts made to a non-citizen spouse are subject to a gift tax exclusion of \$152,000<sup>4</sup> for 2018.
- Resident aliens can make present interest gifts to anyone in the United States up to the annual gift tax exclusion, \$15,000 for 2018.
- Some countries may have tax treaties with the U.S., which may affect the estate tax on citizens of those countries.
- Life insurance owned by an irrevocable trust is not included in a resident alien's estate.

<sup>1</sup> IRS Substantial Presence test; certain exemptions apply

<sup>2</sup> IRC § 2523

<sup>3</sup> IRC § 2056A

<sup>4</sup> IRC § 2523 (i)(2)

## Are You a Non-Resident Alien?

Non-resident aliens have not established a U.S. domicile:

- Have a valid U.S. visa ( i.e. B1/B2)
- Do not hold legal permanent residency in the U.S. (No Green Card)
- Do not meet the IRS Substantial Presence Test

Generally only assets held in the United States or considered sited in the United States are subject to income, estate and gift taxes. Also the tax exemption limits are quite different compared to those applied to resident aliens.

## What is considered U.S. Situs Property<sup>5</sup>?

Non-Resident Aliens are only taxed on assets sited in the United States, which generally includes, but is not limited to:

1. Real Estate located in the United States
2. Tangible personal property held in the United States
3. Shares of stock in a U.S. company and mutual funds
4. Funds held in U.S. bank accounts for business
5. Cash deposits held in brokerage, money market mutual funds, and U.S. safe deposit boxes
6. Beneficial or Retained Interest in a Trust (includes foreign trusts)
7. Cash surrender value on a U.S. life insurance policy owned by a non-resident alien on the life of another person
8. Pension or employer benefit plan benefits paid by a U.S. employer

## Special Planning for Non-Resident Aliens

- Non-resident aliens estate tax exemption credit is \$60,000<sup>6</sup> (not indexed for inflation)
- Non-resident aliens are not subject to worldwide taxation of assets. Only assets considered U.S. situs property is subject to transfer taxes.
- Only income derived, earned or realized from a U.S. source is taxable.
- Only U.S. based real and tangible property is subject to gift tax; Intangible U.S. property is not.
- Life insurance owned by a non-resident alien on his/her own life is not considered U.S. Situs property .
- Funds held in a personal U.S. bank account or U.S. treasury debt obligations are not considered U.S. Situs property.<sup>7</sup>
- Non-resident aliens are available to use the annual gift exclusion limit, \$15,000 in 2018. No lifetime exemptions are available.
- Non-resident aliens are not eligible for the unlimited marital deduction.

The information outlined here only constitutes a summary of the tax rules that apply to resident and non-resident aliens. It is important that you consult with a licensed tax or legal advisor to help determine U.S tax status and the different tax rules applicable. For more information, please refer to IRS Publication 519.

<sup>5</sup> IRC § 2103-2105

<sup>6</sup> IRC § 2102 (b)(1)

<sup>7</sup> IRC § 2105(a),Tres. Reg § 20.2105-1(g)

# Death Benefit Is Tax Free

A life insurance policy on the life of and owned by a nonresident alien is not considered U.S. Situs property, therefore not subject to U.S. Taxation <sup>8</sup>



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