Globalization

The increasingly borderless world. Globalization is unstoppable.

Today, with companies and businesses expanding their footprints, workforces, and talent, and investment capital becoming more mobile, globalization is unstoppable. The world we live in is increasingly borderless. It is no longer uncommon to see cross-nationality marriages, members of the same family living in different countries, or individuals living in one country but working in another. Moreover, the changes wrought by the 2017 Tax Act significantly altered the international tax landscape. As a result, understanding how to manage global tax obligations effectively is becoming increasingly important for many individuals and families.
Globalization

Globalization in action

Global migration

• Globally, there were 258 million international migrants in 2017.2
• Between 1990 and 2017, the number of international migrants worldwide rose by more than 105 million, or 69 percent. Much of this growth occurred between 2005 and 2017, when some 5.6 million migrants were added annually, compared to an average of 2.5 million from 1990 to 2005.2
• In the United States, more than 1.1 million persons obtained permanent resident status in 2017.3
• There were 181.1 million nonimmigrant entries in the United States in 2017.3
  – More than 3.9 million were temporary workers and their families,
  – More than 970,000 were intracompany transferees,
  – More than 490,000 were treaty traders and investors,
  – More than 8.4 million were temporary visitors for business.4
• In 2017, more than 5,000 people renounced their US permanent resident status by giving up their green cards.5

Globalization in action

Direct investment and activities of multinational enterprises
In 2018, the US direct investment abroad position, or cumulative level of investment, decreased $62.3 billion to $5.95 trillion at the end of 2018, from $6.01 trillion at the end of 2017. The foreign direct investment in the US position increased $319.1 billion to $4.34 trillion at the end of 2018, from $4.03 trillion at the end of 2017.6

Source: US Bureau of Economic Analysis

Globalization

Globalization in action

Effects of the 2017 Tax Act on US direct investment abroad

The 2017 Tax Act generally eliminated taxes on dividends, or repatriated earnings, to US multinationals from their foreign affiliates. Dividends of $776.5 billion in 2018 exceeded earnings for the year, which led to negative reinvestment of earnings, decreasing the investment position for the first time since 1982.

By country, nearly half of the dividends in 2018 were repatriated from affiliates in Bermuda ($231.0 billion) and the Netherlands ($138.8 billion).  

### US direct investment abroad: Dividends by country of affiliate: 2017–2018

<table>
<thead>
<tr>
<th>Country</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bermuda</td>
<td>$155.1B</td>
<td>$776.5B</td>
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<tr>
<td>Netherlands</td>
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<tr>
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<td>Switzerland</td>
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<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK Islands, Caribbean*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
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</tr>
</tbody>
</table>

* Includes British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands

Source: US Bureau of Economic Analysis

Globalization

What’s new?

Under prior law, the federal tax on unremitted earnings of certain foreign corporations was generally deferred until the earnings were repatriated. The international tax landscape has changed dramatically as a result of the 2017 Tax Act. These new rules triggered an initial tax on untaxed earnings of certain foreign corporations (the “transition tax”) and imposed an annual tax on global intangible low-taxed income (GILTI) of controlled foreign corporations (CFCs). Additionally, the 2017 Tax Act expanded passive foreign investment company (PFIC) rules and the CFC rules for ownership of a foreign corporation, which may result in additional and more complex reporting.

Expanded CFC rules

The 2017 Tax Act included changes to the definitions of “US shareholder” and “controlled foreign corporation” that impact not only GILTI and transition tax, but also traditional Subpart F inclusion rules. Previously, a US shareholder was defined as a US person who owns directly, indirectly, or constructively, 10 percent of the voting power of the stock in a foreign corporation. The 2017 Tax Act modified this definition such that a US person who owns directly, indirectly, or constructively, 10 percent or more of total value of the stock of a foreign corporation is now also a US shareholder. Additionally, the previous version of the constructive ownership rules prevented a US person from being attributed stock owned by a non-US person. In general, the new law removes this restriction and allows for “downward attribution” from a foreign person to a related US person. Note, however, that the new rule does not apply in the case of stock owned by a nonresident alien spouse; such stock is still not attributed to a US person. Under current law, many foreign corporations that were not previously CFCs may now be CFCs. Consequently, US persons should reevaluate whether they are now US shareholders of a CFC and therefore subject to additional US income and reporting requirements.

Transition Tax

The transition tax is imposed on a one-time deemed repatriation of accumulated post-1986 net earnings of the relevant foreign corporation. The transition tax applies to US shareholders owning 10 percent or more of a foreign corporation that is a CFC, or 10 percent owners of foreign corporations where at least one domestic corporate shareholder is a direct, indirect, or constructive owner. Generally, the transition tax applies to tax year 2017, but may apply to 2018 to the extent the taxpayer has an interest in a specified foreign corporation with a fiscal year-end. For the 2017 tax year, the effective transition tax rate (assuming a top marginal rate of 39.6 percent) for individuals, trusts and estates with respect to calendar-year corporations was 17.54 percent to the extent the foreign corporation’s accumulated earnings consisted of cash and cash equivalents and 9.05 percent for noncash assets. For the 2018 tax year, the effective transition tax rate (assuming a top marginal rate of 37 percent) for individuals, trusts and estates with respect to fiscal year-end corporations was 27.3 percent to the extent the foreign corporation’s accumulated earnings consisted of cash and cash equivalents and 14.1 percent for noncash assets. Taxpayers may elect to spread the payment of the tax over eight years. A special rule permits deferral of the payment of the transition tax liability for S corporation shareholders until a triggering event occurs.
Globalization

What’s new?

Global intangible low-taxed income (GILTI)

GILTI requires an annual computation and may cause a portion of a CFC’s earnings to be included in a US shareholder’s income tax return for tax year 2018 and thereafter. Application of the GILTI provisions can have adverse implications to individuals, trusts, and estates for several reasons including, but not limited to:

- The income inclusion will frequently be “phantom income” (a tax attribute not represented by a cash distribution);
- Unlike corporations, individuals, trusts, and estates cannot claim a deduction for 50 percent of their GILTI inclusion and underlying foreign tax credits to offset the US tax liability;
- The income inclusion does not qualify for the 20 percent qualified dividend tax rate; and
- Generally, noncorporate US taxpayers will pay a current tax on GILTI at a rate of up to 37 percent (or the highest marginal rate).

Taxpayers that are less than 10 percent US shareholders of a CFC are not subject to the GILTI provisions. There are certain elections available to mitigate the tax consequences of GILTI and the transition tax, as such, taxpayers should consult with their tax advisers to understand the implications of making such elections.

Other considerations

The changes to the international provisions as a result of the 2017 Tax Act have significantly increased the US reporting requirements for US persons with investments in foreign corporations. Compliance with such reporting will likely require additional analysis and taxpayers might now have more reportable entities than they did in the past. Along with the federal implications of GILTI and the transition tax, state tax implications and reporting should also be analyzed.

In addition to the various changes to the US law, taxpayers should consult with their local advisers on the changes to relevant non-US jurisdictions. The Economic Substance (Companies and Limited Partnerships) Act of 2018 is effective as of January 1, 2019, in many offshore jurisdictions; this legislation requires certain legal entities to establish sufficient economic substance and imposes additional reporting obligations on those entities.

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Globalization

Key questions to ask in a global context

If you and your family are thinking of joining the globalization trend and moving and/or investing internationally, consider these questions:

- How will you manage investment, legal, immigration, tax, and accounting issues?
- What types of investment vehicles should you consider?
- Should potential estate taxes or inheritance taxes affect the structuring of your international investments?
- What are some of the tax considerations for non-US families making US investments?
- What are the potential issues for US families making investments in foreign countries?
- What effect does family mobility have on investment planning and taxation?

- Do you understand how to comply with your US and foreign country tax obligations?
- Do you know what your overall tax position will be across the globe?
- How will the 2017 Tax Act have an impact on your global structure and cash flow?
- Are you considering selling or expanding your business or investing in new foreign investments?
- What are the considerations involved with moving your non-US business onshore?

The increasingly borderless world. Globalization is unstoppable.

Globalization in action

What’s new?

Key questions to ask in a global context

Cross-border income tax considerations

Estate and gift tax considerations

Thinking ahead
Globalization

Cross-border income tax considerations

Inbound considerations

If you are not a US citizen and you are moving to or investing in the United States, how you are taxed depends on your US tax residency status.

Obtaining a green card is one way to establish US tax residency. The other way is to meet the substantial presence test. The substantial presence test is defined as being physically present in the United States for at least:

- 31 days during the current year, and
- 183 days during the three-year period, which includes the current year and the two years immediately preceding the current year, by adding together the following:
  - All the days you were present in the United States in the current year,
  - One-third of the days you were present in the first year before the current year, and
  - One-sixth of the days you were present in the second year before the current year.

Once you become a US resident, you will be subject to US tax on your worldwide income in the same way as a US citizen. You may still have significant economic ties in your home country; for example, bank accounts, investments, stock holdings in companies, pensions, and trusts. The United States has certain “anti-deferral” rules and some of your investments, although they may be tax favorable in a foreign jurisdiction, could give rise to adverse US tax consequences. You will also need to be aware of the various US information-reporting obligations that may apply, as failure to fulfill these obligations could result in significant penalties. As discussed above, the 2017 Tax Act has layered on additional complexities in this arena. It is important to note that although you are treated as a US tax resident, you may continue to be a tax resident in your home country (that is, you may be a “dual resident” taxpayer) and/or you may be required to continue filing a tax return in your home country.

Anyone who is not a US tax resident is referred to as a “nonresident alien.” As a nonresident alien you are generally taxed in the United States only on income from US sources. In some circumstances, even if you meet the substantial presence test, you may be treated as a nonresident alien due to the application of certain exceptions or by application of an income tax treaty between the United States and a foreign country.

Most of the individual states in the United States impose income tax. Some US cities and localities also impose income tax. Given that states have varying definitions of residency, tax rules, and tax rates, it is important to understand the tax rules for the state you are moving to or investing in. Generally, if you are a tax resident in a state, you are taxed in that state on your worldwide income. If you are a nonresident, you are generally only taxed on your income sourced from the state.

When moving to or investing in the United States, you will also want to consider the impact in your home country:

- What is your residency status in your home country?
- Will you need to continue paying tax or filing tax returns there?
- If you are required to pay tax in both your home country and the United States, will you be taxed twice?
- Does the domestic legislation in the United States or in your home country provide relief for double taxation?
- Is there an income tax treaty between the United States and your home country?
- Does the state you are moving to or investing in give you the benefit of the tax treaty at the state level?
Globalization

Cross-border income tax considerations

There are many issues to consider when you want to move to or invest in the United States. Various actions that you take may affect the amount of taxes you pay in the United States and your reporting obligations. Tax planning, therefore, is not only essential from a US tax perspective but also in determining a tax-efficient global tax position. It is important to seek qualified tax advisers who can help you navigate the rules and requirements in both the United States and your home jurisdiction.

Outbound considerations

If you are a US citizen or a green card holder, you are subject to US tax on your worldwide income regardless of where you live. Your US filing and reporting obligations do not stop when you move to a foreign country. On the contrary, they tend to become more complex.

If you establish a business or make investments in a foreign country, you may have additional information-reporting obligations in the United States. US tax rules may also affect some types of investments and entity structures. If you are considering buying or selling a business in the United States or overseas, there are various considerations, such as the impact on valuation, cash flow, business structure, and whether the buyer/seller would have additional reporting obligations. It is therefore important to consult with your tax adviser before you take action to understand the potential tax consequences and possible tax-efficient alternatives.

You may establish residency and be subject to tax in a foreign country. The foreign country may provide relief for double taxation in its domestic legislation or may have an income tax treaty with the United States, which may also help reduce double taxation. However, the foreign country may tax your US investments differently than the United States will, and there may still be situations in which you are taxed twice if appropriate planning has not been implemented.

If you are leaving the United States and you do not hold a green card or US citizenship, you may cease being a US resident in the year of departure or the year after your departure if your later trips back to the United States are minimal (that is, no longer meeting the substantial presence test). You may still have US filing obligations after you become a nonresident alien if you receive US effectively connected income (ECI)—that is, income arising from the activities of or assets used in a US trade or business. Examples of ECI include compensation for personal services performed in the United States, income and profits from the operation of a trade or business in the United States, and income from the disposition of US real property. Certain other types of income may be subject to US income tax, but the tax may be satisfied by withholding (for example, dividends from a US corporation).

Surrendering your green card will cause you to be considered a nonresident alien for US income tax purposes. If you spend substantial time in the United States after surrendering your green card, you may again become a US resident under the substantial presence test. Upon surrendering your green card, you will need to consider whether you are subject to the US expatriation tax or “exit tax.”

As mentioned earlier, states have varying rules, and it is important to understand the state tax implications when you move out of the United States, including how and when you may become a nonresident in your former resident state.
Globalization

Estate and gift tax considerations

Whether and how your assets are subject to US estate and gift taxation depends on your domicile status.

Domiciliaries
Determining domicile for US estate and gift tax purposes is different than determining US income tax residence status (discussed above). You are considered to be domiciled in the United States for estate and gift tax purposes if you live in the United States and have no present intention of leaving. Thus, you may be a resident for income tax purposes, but not US domiciled for estate and gift tax purposes.

Facts and circumstances test
To determine whether you are a US domiciliary, the following factors are considered:

• Statement of intent (for example, in visa applications, tax returns, or a will)
• Length of US residence
• Green card status
• Style of living in the United States and abroad
• Ties to former country
• Country of citizenship
• Location of business interests
• Places where club and church affiliations, voting registration, and driver’s licenses are maintained

For details on how US estate and gift tax applies to you as a US domiciliary, please refer to the Wealth Transfer Planning chapter of the Guide.

It is possible that two or more countries will consider you a domiciliary and/or that certain assets may be subject to estate or gift tax in more than one country.

As of March 22, 2019, the United States has entered into estate and/or gift tax treaties with 16 jurisdictions. Tax treaties may define domicile, resolve issues of dual domicile, reduce or eliminate double taxation, and provide additional deductions and other tax relief.

Countries with which the US currently has gift and/or estate tax treaties

- Australia
- Austria
- Canada*
- Denmark
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Japan
- Netherlands
- Norway
- South Africa
- Switzerland
- United Kingdom

* Through the income tax treaty
Globalization

Estate and gift tax considerations

Non-US domiciliaries
You are considered a non-US domiciliary for estate and gift tax purposes if you are not considered a domiciliary under the facts and circumstances test described above.

As a non-US domiciliary, you are taxed only on the value of your US situs tangible and intangible assets owned at death, and on the value of your US situs tangible assets gifted during your lifetime, with a maximum tax rate of 40 percent. An exemption of $60,000 is available, but only for transfers at death. US situs tangible assets generally include real and tangible personal property located in the United States and business assets located in the United States; US situs intangible assets include stock of US corporations. The definition of US situs assets may be modified by an applicable estate and/or gift tax treaty.

US citizens with noncitizen spouses
There are additional estate and gift tax considerations when only one spouse is a US citizen.

An unlimited amount can be gifted tax-free to a spouse who is a US citizen, whereas gifts to a noncitizen spouse are taxable to the extent they exceed an annual exclusion amount ($155,000 for 2019, indexed annually). US citizens and domiciliaries can also "gift split," allowing married donors to exclude up to $30,000 per donee per year (for 2019, indexed annually). Gift splitting is not permitted if either spouse is a non-US domiciliary.

When both spouses are US citizens, an unlimited amount of assets can pass between them without being subject to US estate tax. An election can also be made on a timely filed estate tax return to pass any remaining exemption amount to the surviving spouse for use in addition to his or her own exemption. If your surviving spouse is not a US citizen, the marital deduction is generally not allowed. However, a deferral of US estate tax for assets passing to a noncitizen surviving spouse may be obtained if the US property passes through a qualified domestic trust. Some estate and gift tax treaties also allow for some form of a marital deduction in cases where such a deduction would not normally be available.

As a non-US domiciliary, you are taxed only on the value of your US situs tangible and intangible assets owned at death, and on the value of your US situs tangible assets gifted during your lifetime, with a maximum tax rate of 40 percent.
Globalization

Thinking ahead

As companies and individuals are increasingly globally mobile, more and more people will be affected by multinational tax rules. Individuals and families moving and/or investing internationally need to have a clear understanding of the potential tax implications. Taxpayers with existing international assets and investments need to reevaluate their positions in light of the 2017 Tax Act, which for many will result in additional and more complex reporting. Before deciding on a path forward, it is important to seek professional tax advice in order to understand how your US tax obligations interact with foreign country tax obligations and what your global tax position will look like.

How Deloitte can help

With nearly 44,000 tax professionals in 169 countries, Deloitte has been discreetly serving high net worth individuals, families, and their enterprises for more than 100 years. As a trusted adviser to many of the world’s most affluent families, family offices, and private trust companies, we bring significant experience and integrated service capabilities to our clients. We provide a global network of resources and a world-class level of knowledge and experience tailored to each family’s unique and personal circumstances.

Americas
18,480

EMEA
16,280

Asia-Pacific
9,680