

Globalization

“Globalization” may have seemed an abstract and distant term yesterday. 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. Understanding how to manage global tax obligations effectively has become increasingly important for many individuals and families.



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Global migration



Globally, there were **258 million** international migrants in 2017.¹



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 2005.¹



In the United States, more than **1.1 million** persons obtained permanent resident status in 2017.²

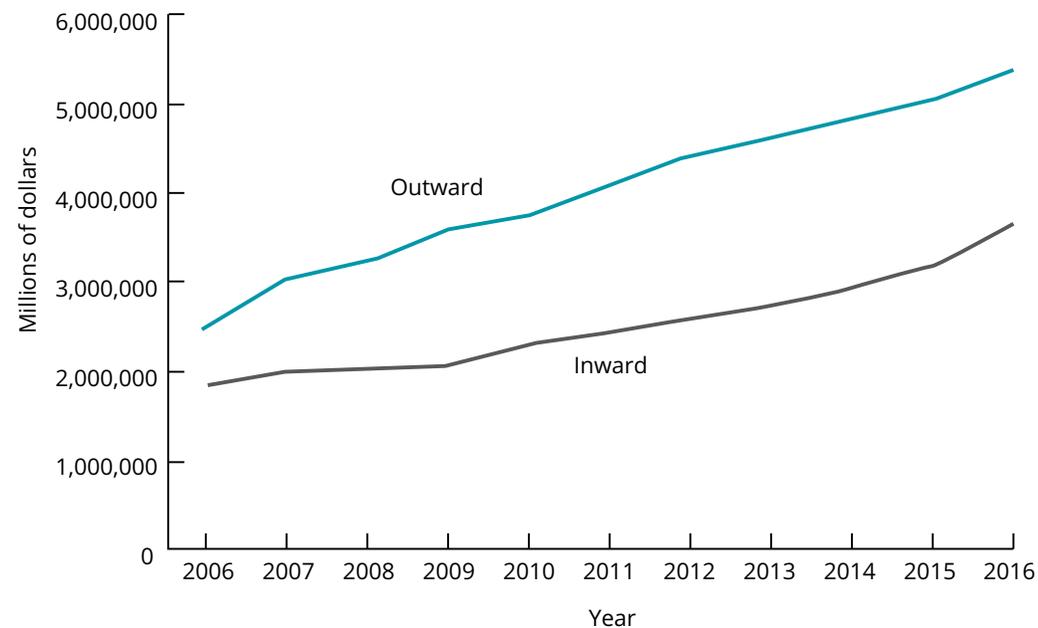


There were more than **181 million** non-immigrant entries in the United States in 2017.³

- More than 3.9 million were temporary workers and their families³
- 900,000+ were intracompany transferees³
- 470,000+ were treaty traders and investors³
- More than 8.4 million were temporary visitors for business³

Direct investment and activities of multinational enterprises

In 2016, the US direct investment position in all countries (outward) was \$5.3 billion, an increase of 5.6 percent from 2015. The direct investment position from all countries in the United States (inward) was \$3.7 billion, an increase of 12.8 percent from 2015.⁴



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¹ <http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport20157.pdf>

² https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_20157.pdf

³ US Department of Homeland Security

⁴ Bureau of Economic Analysis—US Department of Commerce

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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?



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Inbound considerations

If you are not a US citizen and you are moving to or investing in the US, how you are taxed is determined by your residency status.

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

- 31 days during the current year, and
- 183 days during the three-year period that 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 US in the current year
 - One-third of the days you were present in the first year before the current year
 - 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, trusts). The US has certain “anti-deferral” rules and some of

those 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. The 2017 Tax Act¹ has layered on additional complexities in this arena, some of which had immediate impact for tax year 2017, while additional changes were enacted prospectively.

Anyone who is not a US resident is referred to as a “nonresident alien.” As a nonresident alien you are generally taxed in the US 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 US and a foreign country.

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.



¹ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

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Cross-border income tax considerations

Most of the individual states in the US impose income tax. Some 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 taxed only on your income sourced from the state.

Once you have moved to or invested in the US, what happens back home? 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 US, will you be taxed twice? Does the domestic legislation in the US or in your home country provide relief for double taxation? Is there an income tax treaty between the US 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?

There are many issues to consider when you want to move to or invest in the US. Various actions that you take may affect the amount of taxes you pay in the US and your reporting obligations. Tax planning, therefore, is not only essential from a US tax perspective but also crucial in determining a tax-efficient global tax position.

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 US. US tax rules may also disadvantage some types of investments and entity structures. It is therefore important to consult with your tax advisor before you take action in order 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 their domestic legislation or have an income tax treaty with the US, which may also help reduce double taxation. However, the foreign country may tax your US investments differently, and there may still be situations in which you are taxed twice if appropriate planning has not been implemented.



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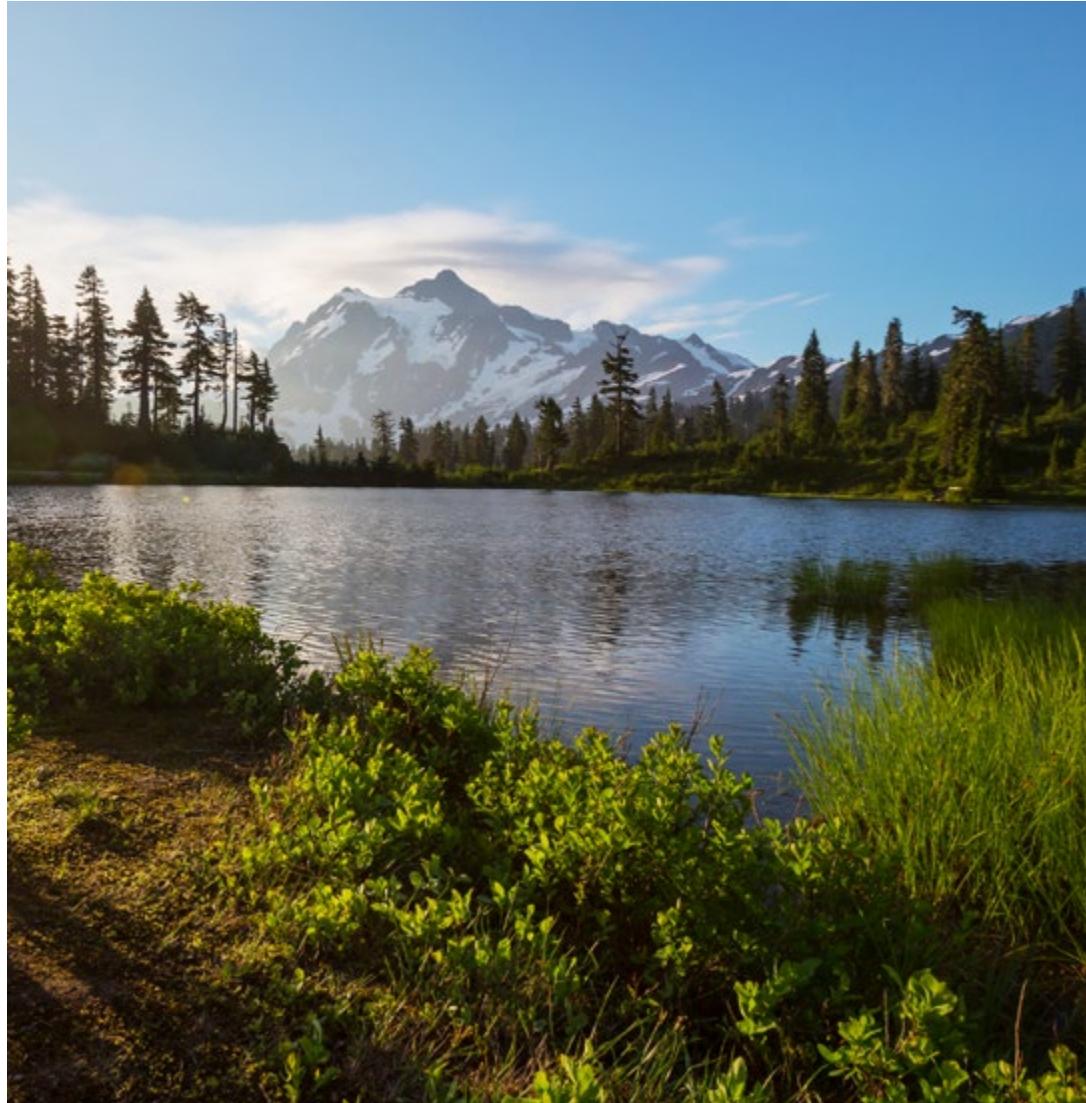
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If you are leaving the US and you do not hold a green card or US citizenship, you may cease being a US resident in the year of departure or the year after your departure if your later trips back to the US are minimal (that is, no longer meeting the 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 US, income and profits from the operation of a business in the US, 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 (e.g., 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 subsequently spend substantial time in the US (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 equally important to understand the state tax implications when you move out of the US.



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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 discussed in the previous section. You are considered to be domiciled in the US for estate and gift tax purposes if you live in the US 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:

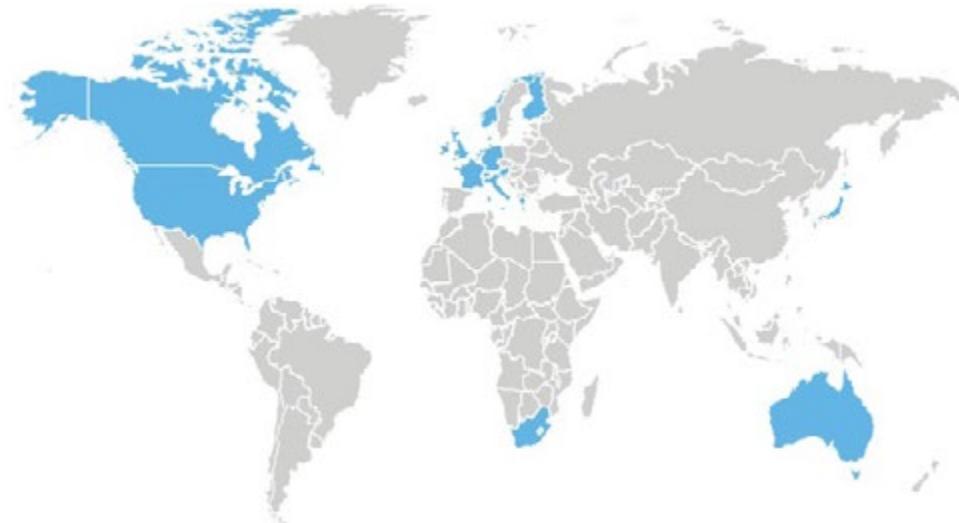
- Statement of intent (in visa applications, tax returns, will, etc.)
- Length of US residence
- Green card status
- Style of living in the US and abroad
- Ties to former country
- Country of citizenship
- Location of business interests
- Places where club and church affiliations, voting registration, 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" section of first installment of this 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 January 2018, the US 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 whom 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

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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 on the previous page.

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 US and business assets located in the US; 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 to a spouse who is a US citizen, whereas gifts to a noncitizen spouse are offset by an increased annual exclusion (\$152,000 for 2018, indexed annually). US citizens and domiciliaries can also “gift split,” allowing married donors to exclude up to \$30,000 per donee per year (for 2018, 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 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.



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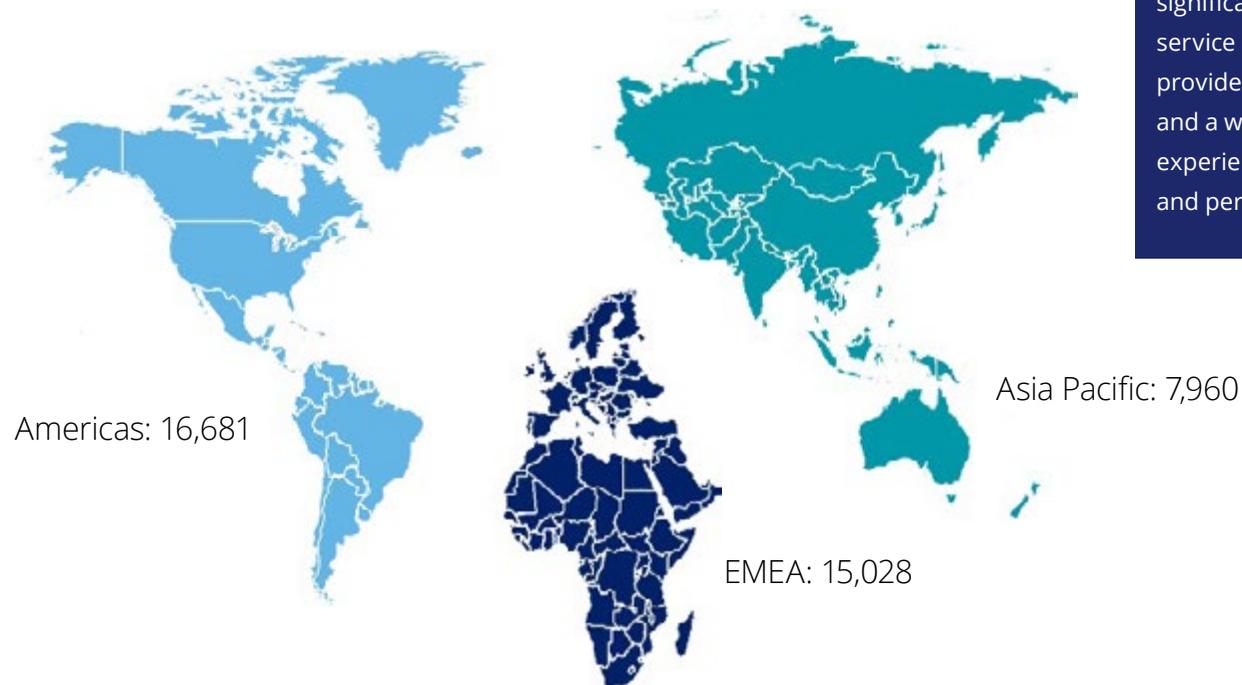
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As companies and individuals are increasingly globally mobile, more and more people will be affected by multinational tax rules. Individuals and families moving and/or investing internationally need to have a clear understanding of the potential tax implications. Before taking action, 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.



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