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US estate and gift tax  
rules for resident and  
nonresident aliens



# Content

Non-US citizens may be subject to US estate and gift taxation. If you fit into this category, do you understand the potential tax implications? This publication answers the questions we hear most often from non-US citizens who live, work, or own property in the United States.

Resident and nonresident aliens may be in the US indefinitely, for a long-term stay, or for a short-term assignment. Upon their death, however, their estates may face adverse US estate tax consequences without careful planning. Likewise, lifetime transfers by non-US citizens may be subject to US gift tax.

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# Residency and domicile considerations



Since 2013, US citizens and US domiciliaries have been subject to estate and gift taxation at a maximum tax rate of 40% with an exemption amount of \$5 million, indexed for inflation. The indexed exemption amount for 2016 is \$5,450,000. In contrast, non-US domiciliaries are subject to US estate and gift taxation with respect to certain types of US assets, also at a maximum tax rate of 40% but with an exemption of \$60,000, which is only available for transfers at death.

## Green card status

Obtaining a green card is one way to establish US residency. Having a green card may allow for easier travel into and out of the country and may allow you to remain in the US indefinitely. However, holding a green card subjects you to US income tax on your worldwide

income during the entire time that you hold the green card (even if you are living outside the US), and it is one factor considered when determining whether you are a US domiciliary. An individual who is considered domiciled in the US for estate and gift tax purposes is subject to US estate and gift tax on worldwide assets.

Surrendering your green card will cause you to be considered a nonresident alien for US income tax purposes. This status assignment is based upon the assumption that you do not spend substantial time in the US after surrendering your green card, in which case you may 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.”

## The substantial presence test

It is recommended that you retain records regarding your days inside and outside the US to support whether or not you meet the substantial presence test. The IRS defines substantial presence as being physically present in the United States on at least:

- 31 days during the current year, and
- 183 days during the 3-year period that includes the current year and the 2 years immediately preceding the current year, by adding together the following:
  - All the days you were present in the US in the current year, and
  - 1/3 of the days you were present in the US in the first year before the current year, and
  - 1/6 of the days you were present in the US in the second year before the current year.

# Residency and domicile considerations

## Qualifying as a US domiciliary

A person is considered to be domiciled in the US for estate and gift tax purposes if he or she lives in the US and has no present intention of leaving. Determining domicile for US estate and gift tax purposes is different than determining US income tax residence (see page 2). 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 licenses are maintained

A person is considered a non-US domiciliary for estate and gift tax purposes if he or she is not considered a domiciliary under the facts and circumstances test described above. It is possible that two or more countries will consider the same person a domiciliary, and/or that certain assets may be subject to estate or gift tax in more than one country.



Determining domicile for US estate and gift tax purposes is different than determining US income tax residence.



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### **TIP: Consult with a tax professional regarding your US domicile status.**

It is important to consult with an international estate planning professional to determine your potential US estate tax exposure, to eliminate or reduce double taxation, and to plan appropriately.

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# US estate and gift taxes

## Countries with estate and gift tax treaties



As of January 2016, 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

### To do...

Identify and quantify your worldwide assets and US situs tangible and intangible assets.



# US estate and gift taxes

## Estate tax facts



### Assets subject to US estate tax

US domiciliaries are taxed on the value of their worldwide assets at death in the same manner as US citizens. Non-US domiciliaries are taxed only on the value of their US “situs” assets. US situs assets generally include real and tangible personal property located in the US, business assets located in the US, and stock of US corporations. The definition of US situs assets may be modified by an applicable estate and gift tax treaty.

### Tax rates and credits

Estate and gift tax rates currently range from 18% - 40%. The rates are the same whether you are a US citizen, US domiciliary, or non-US domiciliary. Applicable credit amounts are available against gift tax and estate tax for US citizens and domiciliaries, equivalent to \$5,450,000 of value in 2016. An exemption of \$60,000 is available against the value of assets includable in the US taxable estate of an individual who was not US domiciled.

In addition to the Federal estate and gift tax, there may be additional state estate and gift taxes.

### Jointly owned property

If the surviving spouse is not a US citizen, in general, the portion of jointly owned property that is taxed in the estate of the first spouse to die is based upon who provided the “consideration” to purchase the property (i.e. whose assets were used to purchase the property). If the surviving spouse is a US citizen, then in general one-half the value of the jointly owned property will be included in the estate of the first spouse to die.

### Marital deduction

If the surviving spouse is a US citizen, there is an unlimited marital deduction — in other words, an unlimited amount of assets can pass to your spouse without being subject to US estate tax. An election can also be made on a timely-filed estate tax return to pass any exemption amount not utilized 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 non-US citizen 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.

# US estate and gift taxes

## Gift tax facts



US citizens and domiciliaries are subject to gift tax on all lifetime gifts, regardless of where the property is located. Non-US domiciliaries are subject to US gift tax only on transfers of tangible personal property located in the US and real property located in the US.

### Exclusions and credits

There is an annual exclusion from US gift tax for “present interest” gifts. In 2016, the annual exclusion amount is \$14,000 per donee per year

(indexed for inflation in \$1,000 increments). US citizens and domiciliaries can also “gift split,” allowing married donors to exclude up to \$28,000 per donee per year. Gift splitting is not permitted if either spouse is a non-US domiciliary. An unlimited amount can be gifted to a spouse who is a US citizen, whereas gifts to a non-US citizen spouse are offset by an increased annual exclusion. This annual exclusion for gifts to non-US citizen spouses is \$148,000 for 2016 (indexed annually).

An individual who owns intangible property should consult with an international estate planning professional to determine whether it would be advantageous to gift such property before becoming a US domiciliary.



# US estate and gift taxes

## Computing US estate and gift tax

Once any available annual exclusions or marital or other deductions are utilized, the available exemption will offset taxable gifts or bequests. As mentioned earlier, the exemption amount is \$5,450,000 in 2016 for US citizens and domiciliaries. Any part of the exemption used during

life will not be available as an exemption at the time of death. There is no exemption amount available for lifetime transfers by non-US domiciliaries, and the exemption amount for transfers at death by non-US domiciliaries is \$60,000.

### 2016 Federal estate and gift tax rates

Column A	Column B	Column C	Column D
Taxable amount over:	Taxable amount not over:	Tax on amount in column A	Rate of tax on excess over amount in Column A
----	\$10,000	----	18%
\$10,000	20,000	\$1,800	20%
20,000	40,000	3,800	22%
40,000	60,000	8,200	24%
60,000	80,000	13,000	26%
80,000	100,000	18,200	28%
100,000	150,000	23,800	30%
150,000	250,000	38,800	32%
250,000	500,000	70,800	34%
500,000	750,000	155,800	37%
750,000	1,000,000	248,300	39%
1,000,000	----	345,800	40%



The exemption amount is \$5,450,000 in 2016 for US citizens and domiciliaries.



# Generation-skipping transfer tax facts

Generation-skipping transfer tax (GST tax), if applicable, is imposed in addition to estate or gift taxes. It is imposed on US taxable gifts and bequests made to or for the benefit of persons who are two or more generations below that of the donor, such as a grandchild. It is also imposed on gifts made to donees who are not related to the donor and who are more than 37.5 years younger than the donor.

## Exclusions

In limited circumstances, a GST annual exclusion is available. In addition, there is a GST exemption which exempts \$5,450,000 (the same amount as the estate and gift tax exemption; indexed for inflation) of assets from GST tax.

## To do...

If you are considering making gifts or bequests to grandchildren or other "skip persons," consult an estate planning professional. GST issues are often complex, especially when gifts are made through trusts.



# Thinking ahead



Non-US citizens who live, work, or own property in the US need to have a clear understanding of the potential implications of the US estate and gift tax rules. As described in this article, residency and domicile choices can have major tax implications. An international estate planning professional should be consulted to help you determine any potential impact and develop an approach based on your specific circumstances.

As companies and individuals increasingly become globally mobile, more and more people will be affected by multinational tax rules. We hope the information provided here will help you start thinking about steps to take to confirm you are properly prepared for potential US estate and gift tax implications of a move to the US or the purchase of US property.



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