



## US Inbound Corner

### Land of the free and home of the ... 40% estate tax: Inbound estate and gift tax considerations

Various events (e.g., employment, business ventures, education, family transitions, and sudden windfalls) may present opportunities for US nonresidents to move to the United States on a temporary or permanent basis. Interestingly, the “temporary” or “permanent” intentions of the move can morph very quickly after moving to the United States. One could prefer the pace of life in the French countryside or fall in love with New York City during a temporary work assignment—never to return to their home country.

Being unprepared when it comes to the US estate and gift tax regimes may introduce unexpected tax consequences. Deloitte’s Private Wealth professionals advise executives, business owners, and wealthy families, who are considering a move to the United States, to increase knowledge, plan for global tax implications, and most importantly, avoid costly surprises.

One of the first steps to avoiding surprises is to understand the basics. Some definitions necessary to understand the estate and gift tax considerations for US inbound persons are presented on the next page.

### In this edition

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### US income tax resident:

- US citizen,
- Green card holder, or a
- Person meeting the substantial presence test.
  - To meet the substantial presence test for the calendar year, you must be physically present in the United States for at least:
    - 31 days during the current year, and
    - 183 days during the three-year period that include the current year and the two years immediately before that.
  - Certain facts and circumstances can override an individual's status as a US resident, so it is important to review your specific situation with an experienced adviser to determine if any exceptions are available.

• **US income tax nonresident (“nonresident alien”):** Any individual who is not a US resident. It is important to understand that residency for US income tax purposes is not the same as domiciliary for US estate and gift tax purposes.

• **US domiciliary:** Person residing in the United States who intends to live the remainder of their life in the United States. “Domicile” is a legal term and based on facts and circumstances specific to each individual. Factors considered by the IRS when determining domicile include statements of intention, length of stay in the United States, green card status, style of worldwide living, citizenship, locations of business interests, day-to-day club and religious affiliations, where someone is registered to vote, and locale of driver's license. A person can only have one domicile at any given point in time. However, because the concept of domicile is subjective, different taxing authorities may simultaneously assert that the same taxpayer is domiciled in their respective jurisdictions. The United States has estate and/or gift tax treaties with 17 countries to help define domicile and resolve dual taxation issues.

• **Non-US domiciliary:** An individual who is not a US domiciliary.

• **US situs tangible assets:** Real property, business assets, and tangible personal property located in the United States.

• **US situs intangible assets:** Most commonly, stock of US corporations, but this category is not limited to just stock.

The general rules applicable to US domiciliaries and non-US domiciliaries are:

- US domiciliaries are subject to the same US federal estate and gift tax rules as US citizens.
  - At death, estate tax (top rate of 40% in 2023) is imposed on the fair market value of worldwide assets.
    - \$13.61 million lifetime estate and gift tax exemption is available, per person, in 2024 (indexed annually).
    - \$18,000 annual gift tax exclusion is available, per donee per year, as of 2024.

- Non-US domiciliaries are subject to more limited application of US federal estate and gift tax rules, but they also receive lower exemptions.
  - At death, estate tax (same top rate of 40% in 2024) is imposed upon:
    - Fair market value (FMV) of US situs tangible and intangible assets.
    - In excess of \$60,000 exemption.
- During life, gift tax (same tax rates as for estate tax) is imposed on gifts of US situs tangible property. Gifts of intangibles, even if US situs, are not subject to US gift tax.
- No lifetime exemption is available for gifts of US situs assets.





**Key events that may bring a non-US person within the realm of US estate and gift taxation:**

- Significant liquidity events (e.g., sales of business interests, IPOs, corporate mergers).
  - Liquidity events giving rise to a large windfall offer opportunities for location changes, new investments, and estate and gift planning. A qualified US tax adviser with experience advising international clients on US estate and gift planning matters should be consulted during the initial planning discussions. Decisions and action steps need to be made timely to be effective.
- Personal life events including marriage and divorce, new children, and grandchildren.
  - Family dynamics such as additions of newborns, divorce, marriage, etc. play a significant role in planning and present key discussion points.
- Business succession planning.
  - Goals, valuations, and timing are critical factors in successfully planning a change in business ownership. For example, the next owner may have fresh ideas regarding business operations and want to bring a portion of the business to the United States. A trusted adviser should be consulted to help guide the steps of such a transition in an efficient and effective manner.

**Additional materials**

- [Taxation of foreign nationals by the United States—2022](#)
- [US estate and gift tax rules for resident and nonresident aliens](#)

**IRS Upping the Ante? Unleash the APA Advantage**

Learn how Advance Pricing Agreements can be your secret weapon against a multitude of inbound tax risks. We'll explore the latest IRS moves on transfer pricing enforcement, and how an APA can be your shield against unexpected tax surprises. **Don't miss out - [read the full story here!](#)**

### Upcoming Tax Events:

May 9	<a href="#">Global Employer Services and Multistate: Preparing for the future</a>
May 20-24	<a href="#">Deloitte Tax Accounting Conference</a> (Denver)



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