



U.S. Estate Taxes and Non-U.S. Citizens: What You Need to Know

Nonresident, non-U.S. citizens face a very real possibility of having their U.S.-based property taxed upon their passing. To understand how this is possible, it is first important to understand how U.S. estate and gift taxes work.

U.S. Estate and Gift Taxes for Nonresident, Non-U.S. Citizens

In general, U.S. law allows taxation of property that transfers from the estate of a deceased U.S. citizen or resident. This estate tax applies to all property owned by the deceased, including property that exists outside of the U.S.

For nonresident, non-U.S. citizens (nonresident aliens), the estate and gift tax applies at a minimum to property that exists within the U.S. This includes all tangible and intangible assets that physically exist within the U.S. (termed "U.S. situs assets") or is "effectively connected" with a trade or business in the U.S.¹ To learn which of your properties fall under the jurisdiction of the U.S. transfer tax, you must first determine your domicile.

Defining and Determining Domicile

According to the U.S. Treasury²:

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.

If you take apart each element of this definition, something seemingly straightforward begins to become quite complex. To determine if domicile exists, a court must review numerous facts, including the amount of travel, the total number of residences held by the nonresident alien, personal connections with individuals in the U.S., U.S. business interests, and much more.

In sum, just because you may live in the U.S. for a part of any given year does not mean you will automatically have "domicile" for the purpose of U.S. estate and transfer tax purposes.



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Brett practices in the areas of estate planning, trust administration, wills, tax planning and real estate.

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Transfer Taxes for Domiciled vs. Non-Domiciled Nonresident Aliens

Estate and gift transfer taxes vary based on whether you are a domiciliary or non-domiciliary of the U.S.

- **Nonresident aliens who are U.S. domiciliaries** face transfer taxes of up to 40 percent and receive an exemption of \$5 million. This exemption amount indexes for inflation. The tax rate and exemption applies to all of the nonresident's worldwide assets. As we sit, the current estate tax exemption is \$5,450,000.
- **Nonresident aliens who are non-U.S. domiciliaries** also face transfer taxes up to 40 percent but receive only a \$60,000 exemption for transfers upon passing. The tax rate and exemption applies to a limited type and amount of U.S. situs assets.

Additionally, tax treaties between the U.S. and more than 15 foreign countries can play a part in determining breaks in tax rates, domicile definitions, and additional deductions. A nonresident alien who is a domiciliary of one of the treaty nations may attain great benefits through these estate and gift tax treaties.

Learn If Your Property Will Be Subject to U.S. Estate Transfer Taxes

If you are a Canadian citizen or any other foreign citizen, and you hold U.S. situs assets, it is a good idea to speak with an experienced estate and tax attorney as soon as possible. Together, you can determine the best way to handle the transfer of your U.S. situs assets, such as what to do with jointly held assets and how to manage transfers to a non-U.S. citizen spouse.

ⁱ Taxation of Nonresident Aliens, IRS, <https://www.irs.gov/individuals/international-taxpayers/taxation-of-nonresident-aliens> (last accessed December 8, 2016)

ⁱⁱ 26 CFR § 20.0-1(b)(1), Legal Information Institute, <https://www.law.cornell.edu/cfr/text/26/20.0-1> (last accessed December 8, 2016)

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