Wealth Management

U.S. tax considerations for non-resident individuals

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Deutsche Bank



The United States is an appealing venue for wealthy foreigners who may wish to live or invest here. Because such U.S. connections entail tax implications, it is important to understand how U.S. income and transfer taxes may apply to these individuals, and what planning opportunities may exist for them.

An overview of U.S. taxes

U.S. income taxes

U.S. income tax rates are graduated, and reach a maximum of 37%; long-term capital gains and qualified dividends benefit from preferential rates, the highest of which is 20%. U.S. citizens and income tax "residents" (or "persons") are generally subject to U.S. income tax on their worldwide income; non-resident aliens (NRAs) are only subject to U.S. income tax on their U.S.-source income (see below).

U.S. transfer taxes

Three U.S. transfer taxes can apply to gratuitous transfers of property: the gift tax applies to lifetime transfers, the estate tax applies to transfers at death, and the generation-skipping transfer tax (GST) can apply to transfers subject to estate or gift tax, to people such as grandchildren (or to trusts for them). U.S. citizens and non-citizens who are U.S. "residents" (or "domiciliaries"), are typically subject to transfer taxes on their worldwide assets, at a top rate of 40%. In 2026, such individuals can protect $15,000,000 from estate and gift taxes and GST ($30,000,000 if their spouse is also a U.S. citizen or U.S. domiciliary).

NRAs, however, are only subject to estate and gift taxes on U.S.-situs property, to which GST may also apply. Like U.S. citizens and residents, NRAs may make annual exclusion gifts ($19,000 per individual or $194,000 to non-citizen spouses, of U.S.-situs property); unless an estate or a gift tax treaty provides otherwise however, NRAs have no lifetime gift tax exclusion, only a $60,000 estate tax exclusion, and the same $15,000,000 GST exemption as U.S. citizens and residents (the GST only applies to the transfer of the NRA's U.S.-situs assets that would also be subject to either U.S. estate or gift tax).

Thus, given the disparate tax treatment for residents and non-residents, it is important to understand what distinguishes a resident (or domiciliary) from a non-resident (or non-domiciliary), and when income or transfer taxes may apply to the NRA.



Income tax residency

If an individual is a U.S. income tax resident (or U.S. "person"), the individual's worldwide income is subject to U.S. income tax; if the individual is an NRA, only the individual's U.S.-source income is subject to U.S. income tax.

Individuals who meet any of the following criteria are considered U.S. tax residents (those who do not are considered NRAs):

1

U.S. citizens

U.S. citizens are U.S. tax residents, even if they do not spend time in the United States.

2

Green card holder

U.S. green card holders are "permanent residents" of the United States and are U.S tax residents, regardless of whether they spend time in the U.S.

3

The "substantial presence" test

Foreign individuals are considered U.S. tax residents if they meet the "substantial presence" test, and are physically present in the U.S. on at least:

- 31 days during the current calendar year, and
- 183 days (or more) during the three-year period that includes the current year and the two preceding calendar years.

The days are weighted as follows:

- All of the days in the current year
- 1/3 of the days in the first preceding year
- 1/6 of the days in the second preceding year

4

Election

Individuals who do not meet the substantial presence test the first year they move to the U.S. can nevertheless elect to be taxed as a resident in that initial year.

Additional information on the "substantial presence" test

Exceptions. The substantial presence test does not apply in certain circumstances, including to: 1) specified visa holders (e.g., students on an "F" visa); 2) individuals who are unable to leave the U.S. for medical reasons that arose during their stay in the U.S. (if they came to the U.S. for medical treatment, however, they must count these days); 3) individuals who are in the U.S. for fewer than 183 days in the current year and can establish a "closer connection" to another taxing jurisdiction (this is a facts-and-circumstance test).

Trap for the unwary. The substantial presence test can be a trap for the unwary, and is easily overlooked by foreign individuals. It is therefore important for such individuals to carefully track the time spent in and out of the U.S., and to be able to document it.

U.S.-source income for income tax purposes

NRAs are usually subject to U.S. income tax on their U.S.-source income, which generally falls into the two categories detailed below.

1

Income "effectively connected" with a trade or business in the U.S.

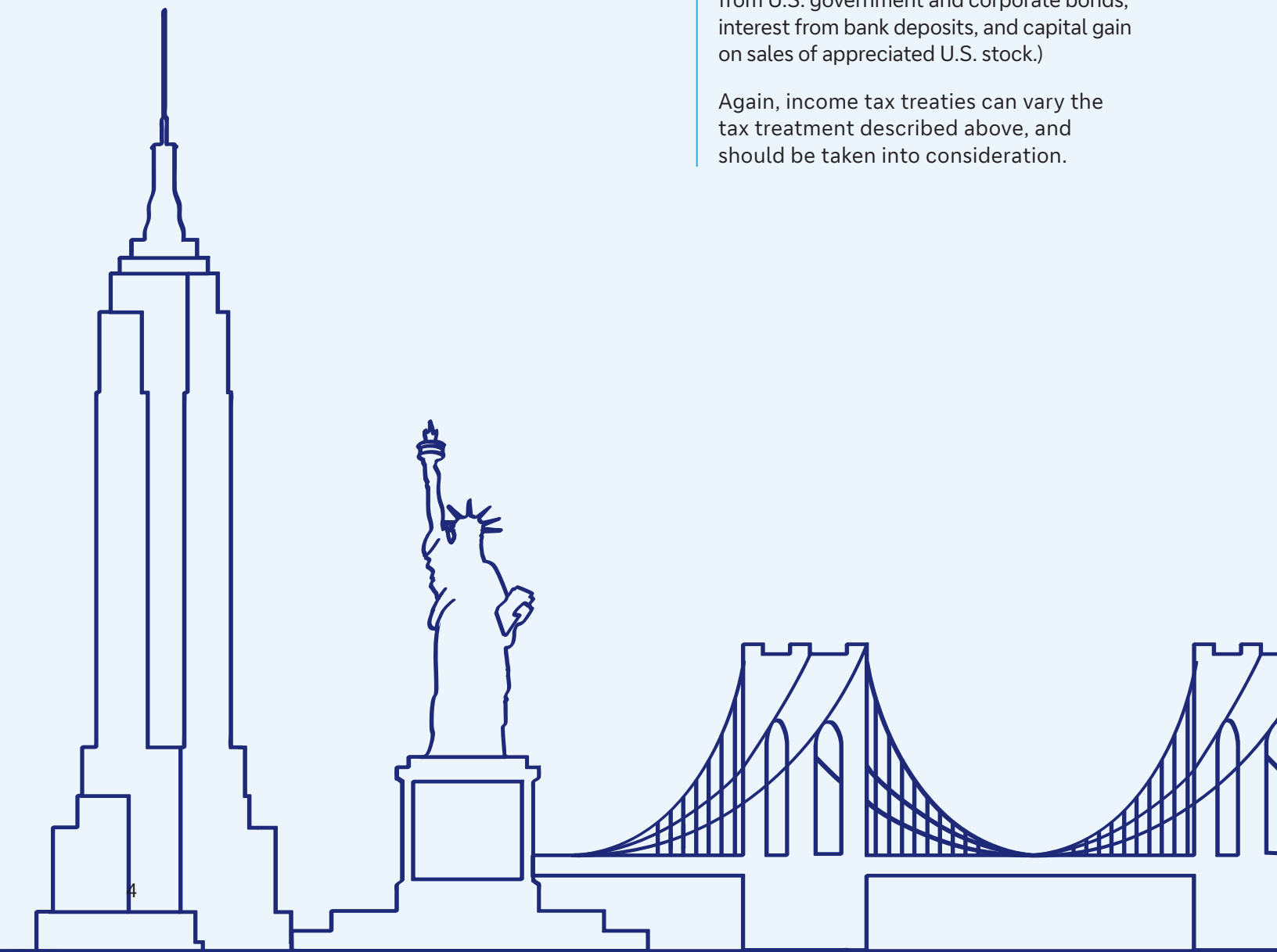
Such income could result, for example, from a U.S. trade or business the NRA owns or from rental real estate; it is taxed at the same graduated rates that apply to U.S. persons (up to 37%)

2

Income not effectively connected with a trade or business in the U.S.

This typically refers to investment income, which is taxed at a flat 30% rate, unless a lower rate applies under an income tax treaty between the U.S. and the NRA's home country. (Note that certain portfolio-related income is not taxable, including interest from U.S. government and corporate bonds, interest from bank deposits, and capital gain on sales of appreciated U.S. stock.)

Again, income tax treaties can vary the tax treatment described above, and should be taken into consideration.



“Domicile” for transfer tax purposes

In general, U.S. domiciliaries are subject to transfer tax–estate and gift tax and GST–on their worldwide assets, whereas NRAs are only subject to transfer tax on their U.S.-situs property, which may be defined differently depending on whether the estate or gift tax is at issue. Unlike U.S. income tax residency, for which there are objective criteria, “domicile” for U.S. transfer tax purposes is subjective, and depends on an individual’s specific facts and circumstances, and the individual’s specific intent of making the U.S. his domicile. Stated differently, it is possible for an individual to be a U.S. income tax resident, but a non-U.S. domiciliary for transfer tax purposes.



Citizenship

U.S. citizens are considered U.S. domiciliaries for transfer tax purposes, regardless of whether they spend time in the U.S.

Various factors leading to domicile

Individuals become U.S. domiciliaries when they live in the U.S. and have no present intention of leaving—i.e., the U.S. is “home.” Once established, domicile is presumed to continue until it is otherwise established in another jurisdiction.

Factors that are considered in determining whether an individual is domiciled in the U.S. include the following:

- Time spent in the U.S. relative to other jurisdictions
- Location of the individual’s:
  - Family and close friends
  - Residences, along with their cost and size
  - Business, personal property and bank accounts
  - Membership clubs or other affiliations (e.g., church or synagogue, voter registration, driver’s license, etc.)
- Statement of intent regarding domicile (e.g., in visa applications, tax returns, will, etc.)
- Whether the individual has a green card (such individuals are usually, but not always, deemed to be U.S. domiciliaries)

U.S.-situs property for estate and gift tax purposes

Property that is considered U.S.-situs for estate tax purposes is not necessarily considered as such for gift tax purposes, and vice versa. For example, an NRA's lifetime gift of stock of a U.S. corporation is not subject to gift tax, yet if the NRA dies owning this stock, it will be subject to U.S. estate tax. The following summarizes some of these situs rules for NRAs.



Property subject to estate tax

- U.S. real estate (e.g., condos, land and commercial real estate)
- U.S. equities (stock in U.S. companies, publicly traded or privately held, including shares in a U.S. registered fund (RIC) and mutual funds, regardless of location of stock certificates and where account is managed)
- Tangible personal property in the U.S. (e.g., cash and jewelry in a safe deposit box, furniture and art, although art on exhibition or on loan may be exempt from the estate tax)
- Currency (e.g., bills) located in the U.S.
- Non-bank deposits (i.e., cash in brokerage accounts)
- U.S. state and municipal bonds

Property NOT subject to estate tax

- Non-U.S. real estate and tangible personal property located outside of U.S.
- Non-U.S. equities (regardless of location of stock certificates and even if account managed in U.S.)
- Cash deposits in a U.S. bank
- Retirement plans
- U.S. government and corporate debt (e.g., bonds)
- Life insurance death benefits



Property subject to gift tax

- U.S. real estate (e.g., condos, land and commercial real estate)
- Tangible personal property in the U.S. (e.g., cash and jewelry in a safe deposit box, furniture and art)
- Currency (e.g., bills) located in the U.S.
- Cash deposits in a U.S. bank
- Non-bank deposits (i.e., cash in brokerage accounts)

Property NOT subject to gift tax

- Non-U.S. real estate and tangible personal property outside of the U.S.
- U.S. equities (stock in U.S. companies, publicly traded or privately held, including shares in a U.S. registered fund (RIC) and mutual funds, regardless of location of stock certificates and where account is managed)
- Non-U.S. equities (regardless of location of stock certificates and even if account managed in U.S.)
- Retirement plans
- U.S. government and corporate debt (e.g., bonds)
- Life insurance death benefits
- U.S. state and municipal bonds

Tax transfer rules

U.S. domiciliaries

Estate tax exclusion	$15,000,000 per individual*
Top estate & gift tax rate	40%
Lifetime gift (tax exclusion)	$15,000,000 per individual*
GST exemption	$15,000,000 per individual*
Annual exclusion gift	$19,000 per donee*; $194,000* if donee is a non-U.S. citizen spouse
Gift-splitting between spouses	Yes, if both spouses are U.S. domiciliaries
Marital deduction for lifetime gifts to spouse	Unlimited if spouse is a U.S. citizen; none if spouse is NOT a U.S. citizen
Marital deduction for transfers at death to spouse	Unlimited if surviving spouse is a U.S. citizen; if not, only available if assets pass to a Qualified Domestic Trust
Gift tax exclusion for direct payments of tuition, medical expenses & health insurance premiums	Yes
Portability (use of deceased spouse's unused exclusion)	Yes, but special rules apply if surviving spouse is a U.S. domiciliary (but not a citizen)

NRAs (taxes only apply to U.S.-situs assets)

Estate tax exclusion	$60,000 per individual
Top estate & gift tax rate	40%
Lifetime gift tax exclusion	None
GST exemption	$15,000,000 per individual*
Annual exclusion gift	$19,000 per donee*; $194,000* if donee is a non-U.S. citizen spouse
Gift-splitting between spouses	No
Marital deduction for lifetime gifts to spouse	None for gifts to non-U.S. citizen spouse
Marital deduction for transfers at death to spouse	None if surviving spouse is NOT a U.S. citizen unless assets pass to a Qualified Domestic Trust
Gift tax exclusion for direct payments of tuition, medical expenses & health insurance premiums	Yes
Portability (use of deceased spouse's unused exclusion)	No

* Number annually indexed for inflation

Treaty considerations

As of March 2026, the U.S. has estate and/or gift tax treaties with 15 jurisdictions. In general, these treaties are designed to help mitigate double-taxation between the U.S. and the other taxing jurisdiction, and provide different "tie-breaking" rules to help address issues that may arise if the individual is dual-domiciled; the treaties may also provide additional deductions and some tax relief.

Planning opportunities

Foreign individuals who have family members living in the U.S. or U.S. investments, or who are planning to move to the U.S., have several planning options available to help mitigate some of the tax implications discussed above. The NRA can, for example, create for his or her U.S. beneficiaries a multi-generational trust in Delaware, with its favorable trust laws, without any U.S. estate or gift tax or GST consequences—a planning opportunity that is not available if the NRA became a U.S. "person" prior to setting up the trust. Similarly, if the NRA wishes to purchase U.S. real estate, it may be possible to help mitigate U.S. estate and gift tax and GST consequences by having an entity, such as a previously created trust, foreign or U.S. corporation or partnership, or a combination thereof, purchase the property instead. If the NRA intends to move to the U.S. and become a U.S. resident or domiciliary, certain pre-immigration tax planning opportunities also may be available prior to the NRA's move.

In summary

The rules regarding NRAs are complex and nuanced, and are affected by applicable U.S. income, gift or estate tax treaties. Yet by carefully weighing an individual's specific facts and circumstances, and consulting with the individual's tax and legal advisors to ensure compliance with the individual's home jurisdiction and U.S. laws, it is possible to successfully navigate the tax intricacies applicable to NRAs with U.S. connections.



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