

U.S. ESTATE AND GIFT TAXATION FOR FOREIGN NATIONALS

Reference Guide



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Reference Guide for U.S. Estate and Gift Taxation for Foreign Nationals¹

	Resident Alien (RA)	Non-Resident Alien (NRA)
Definition of resident alien/non-resident alien status²	An RA is someone who: <ul style="list-style-type: none"> ■ Is not a U.S. citizen, and ■ Has domicile (permanent home) in the U.S. 	An NRA is someone who: <ul style="list-style-type: none"> ■ Is not a U.S. citizen, and ■ Has domicile (permanent home) somewhere other than in the U.S.
Assets subject to U.S. gift taxes	All worldwide assets	Generally, all assets located in the U.S. <ul style="list-style-type: none"> ■ Examples of properties subject to U.S. gift taxes: <ul style="list-style-type: none"> ■ Real property located in the U.S. ■ Tangible personal property (e.g., cash) located in the U.S.³ ■ Intangible properties, even if they are located in the U.S., generally are not subject to U.S. gift taxes.⁴ Examples of intangible properties: <ul style="list-style-type: none"> ■ Stock of a U.S. corporation ■ Interest in a U.S. partnership
Lifetime gift tax exemption amount	2015: \$5.43 million, same amount available to U.S. citizens ^{5,6}	\$0, no exemption amount available ⁶
Annual gift tax exclusion amount	<ul style="list-style-type: none"> ■ \$14,000 (for 2015)⁷ ■ \$147,000 for gifts to a foreign national spouse (for 2015)⁸ 	<ul style="list-style-type: none"> ■ \$14,000 (for 2015)⁷ ■ \$147,000 for gifts to a foreign national spouse (for 2015)⁸
Availability of gift splitting	Available if spouse is a U.S. resident or citizen	Not available
Applicable gift tax rates	Same as those for U.S. citizens	Same as those for U.S. citizens
Assets subject to U.S. estate taxes	All worldwide assets	<ul style="list-style-type: none"> ■ Properties (including most intangible properties) deemed to be located in the U.S. ■ The following assets are generally not subject to U.S. estate taxes even if they are located in the U.S.: <ul style="list-style-type: none"> ■ Death benefits from a U.S. life insurance policy on an NRA insured, even if the NRA owned the policy ■ Deposits in a U.S. bank (e.g., CDs)⁹ ■ Registered U.S. government bonds and Treasury notes issued after July 18, 1984¹⁰
Lifetime estate tax exemption	RA exemption amount is equal to that available for U.S. citizens 2015: \$5.43 million ⁵	Approximately \$60,000 (equal to a credit amount of \$13,000) ¹¹
Applicable estate tax rates	Same as those for U.S. citizens	Same as those for U.S. citizens
Availability of unlimited marital deduction	<ul style="list-style-type: none"> ■ Available for transfers to U.S. citizen spouses only ■ Not available for transfers to a foreign national spouse unless assets are transferred to a qualified domestic trust (QDOT)¹² 	<ul style="list-style-type: none"> ■ Available for transfers to U.S. citizen spouses only ■ Not available for transfers to a foreign national spouse unless assets are transferred to a qualified domestic trust (QDOT)¹²

- ¹ Please note that this chart reflects general treatment based on U.S. federal estate, gift and income tax laws. A valid estate tax treaty between the U.S. and the nation of which the individual is a citizen may modify or completely alter the rules set forth in this chart. Current estate tax treaty countries include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, Norway, Switzerland, South Africa, and the United Kingdom.
- ² A person is a U.S. resident for gift and estate tax purposes if, at the time of his or her death, he or she is domiciled in the U.S. A person's domicile is determined by examining the intent of the person. If a person lives in the U.S., even for a brief period, and has "no definite present intention" of leaving, he or she will be deemed to have acquired a domicile in the U.S. Treas. Reg. § 25.2501-1(b).
- ³ IRC § 2501(a); U.S. Treas. Reg. § 25.2511-1(b).
- ⁴ Id. § 2501(a)(2).
- ⁵ Rev. Proc. 2014-61, Sec. 3.33.
- ⁶ Id. § 2505(a).
- ⁷ Rev. Proc. 2014-61, Sec. 3.35(1).
- ⁸ Rev. Proc. 2014-61, Sec. 3.35(2).
- ⁹ IRC § 2105(b).
- ¹⁰ This exemption does not apply to U.S. Treasury instruments that have a maturity of not more than one year. See IRC §§ 871(h) and 163(f)(2).
- ¹¹ IRC § 2102(b)(1).
- ¹² Id. § 2056(d)(2). Please note that a QDOT only delays, and does not avoid, estate taxes. Estate taxes will be due on any distributions other than of income, due to hardship, or at the death of the surviving spouse.

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