

Non Resident Aliens (NRAs)

A NRA is neither a tax resident of the United States nor a citizen of the United States. A tax resident of the United States is a Green Card holder or a person who either has been present in the U.S. over 183 days in a year or has been for at least 31 days of that year and the two prior years for an average of more than 121 days.

US Income Tax

NRAs are subject to US income tax only on U.S. source income, at a withholding rate of 30%. NRAs are also subject to income tax at the same graduated rates as U.S. persons on their income in connection with the conduct of a trade or business in the US

US source income includes dividends from U.S. corporations, interest on debts of U.S. obligors, except interest on "portfolio debt", rent on U.S. property, capital gains on U.S. real property, salaries paid by U.S. and non-U.S. entities for services performed by the recipient in the United States, royalties from U.S. companies, etc. Interest on U.S. bank accounts, including time deposits and certificates of deposit, is not U.S. source income.

Gift Tax

For US Gift Tax purposes, a person is deemed to be resident in the US if their primary residence is in the United States and, based on facts and circumstances, they have no present intent to leave.

Generally, gifts by NRAs to US persons are not subject to US gift tax. Gifts over US\$ 100,000 from foreign individuals must be reported in Form 3520. Gifts to US persons over US\$ 10,000 from foreign corporations must also be reported on Form 3520. However, NRAs are subject to US gift tax on gifts of US situs assets (e.g. tangible personal property such as cash and real estate) at rates up to 40%, with an annual exclusion of 15,000 USD.

US Estate Tax

For U.S. Estate Tax purposes, a person is deemed to be resident in the United States if their primary residence is in the United States and, based on facts and circumstances, they have no present intent to leave. Estates of NRAs are subject to U.S. estate tax only on U.S. situs assets. The tax is assessed at rates up to 40%, with only a US\$ 60,000 exemption, compared to an exemption of US\$ 12.92MM for US persons in 2023.

US Situs Assets

For purposes of U.S. estate tax, US Situs Assets include: real estate, tangible personal property located in the US; shares of stock of corporations incorporated in the US; debts of US obligors, except "portfolio debt"; cash deposits with US brokers, money market accounts with

US mutual funds and cash in US safe deposit boxes located in the US. However, cash in bank accounts maintained with US banks are not US situs property, including checking and savings accounts, time deposits and certificates of deposit.

Personal Investment Accounts

Personal or joint investment accounts held by NRAs with US institutions that hold portfolio investments, including cash and US securities, are subject to US estate tax, with a US\$ 60,000 exemption. For joint accounts, U.S. Estate tax applies and there is a presumption that the deceased owned 100% of the assets in the joint account.

FATCA Reporting

US banking and brokerage institutions report US source income payments made to personal accounts of NRAs on IRS form 1042-S, which may be exchanged with FATCA partner countries under applicable FATCA IGAs.

Foreign Corporations for US Situs Assets

US situs assets held by properly managed non-transparent foreign corporations, or partnerships that have "checked the box" to be treated as foreign corporations, are not subject to US Estate tax.

Estate Tax Treaties

The U.S. has estate tax treaties with a number of countries including Australia, Austria, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, Norway, South Africa, Sweden, Switzerland and the United Kingdom.

Estate Tax Filings

An NRAs estate must file a Federal Estate Tax Return if the gross estate exceeds \$60,000. When payment of the tax is made, the IRS will issue a "Transfer Certificate" authorizing the assets to be transferred.

Generation Skipping Tax (GST)

A transfer by an NRA will be subject to GST tax only if it is also subject to U.S. estate or gift tax, which will be the case only if it consists of US situs property.

Pre-Immigration Tax Planning

Planning possibilities include making gifts of assets, irrevocable discretionary trusts, life insurance, etc.

Notice

CISA is not a legal or tax advisor, and this memo is not offered as legal or tax advice. US tax attorneys should be consulted.