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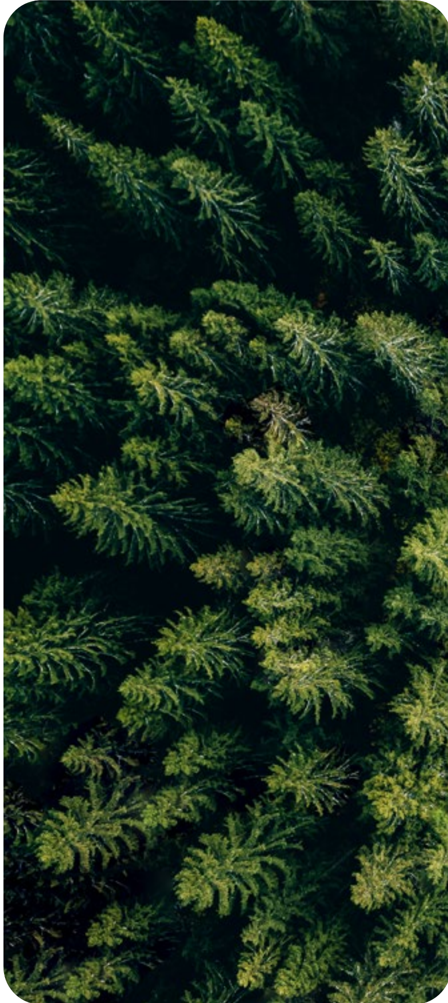
How your US connections may affect your wealth and legacy

A guide to wealth planning for global citizens with US connections



Contents

3
Foreword

5
The US immigration system

6
The US income tax system

8
The US transfer tax system

11
Planning considerations for your US connections

14
Closing thoughts

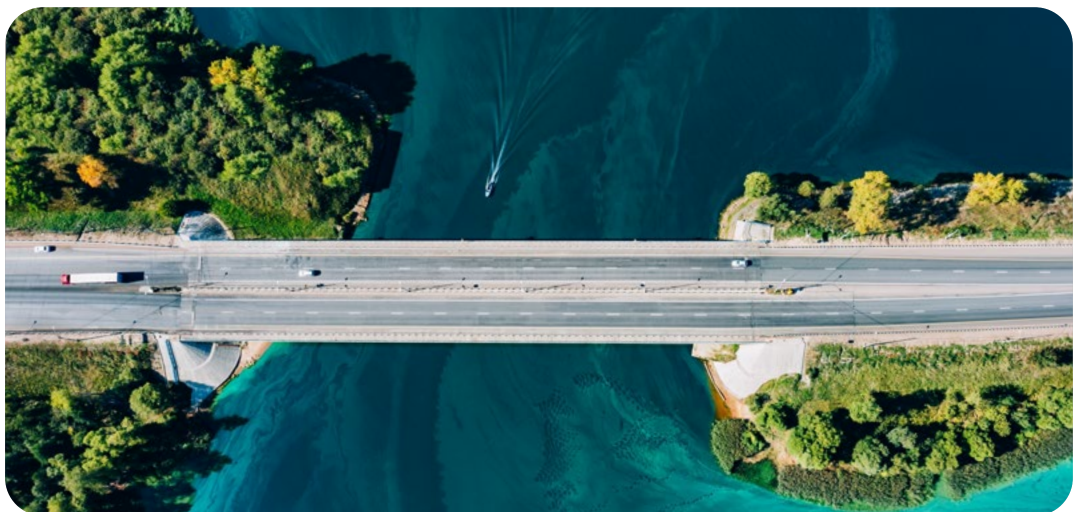
Foreword

The world's wealthiest individuals and families are becoming more globalized in their businesses and investments. Such global diversification can help generate wealth, but can also add complexities addressing multi-jurisdictional requirements. The same families are also becoming more international in their own residences, investments, and operations across multiple jurisdictions. At the same time, the tax and regulatory landscape is constantly changing.

Additional planning considerations may be needed when your assets and beneficiaries are located in multiple jurisdictions. This is especially true if you are a non-US person whose beneficiaries include US residents, green card holders, or citizens. The structuring you put in place will help determine your US beneficiaries' exposure to US taxes and reporting. Likewise, if you are a non-US person with US situs assets, especially real estate, thoughtful structuring is critical to manage tax exposure.

Our global expertise in wealth planning enables us to help create integrated wealth plans for families with US assets and beneficiaries. We collaborate with your independent legal and tax advisors to create strategies that address your family's unique circumstances.

The best opportunity to establish a lasting legacy is to define your priorities so we can assist in implementing a robust wealth plan.



The global reputation of the US as the ‘land of opportunity’ – to fulfill ambitions and seek success – has prevailed for centuries.

With its world-renowned universities and hubs of thriving industry, such as New York and Silicon Valley, the attractiveness of the US as a place to study, live, invest, and do business continues to grow. Meanwhile, political and economic uncertainty around the globe is increasing the appeal of the US as a relative safe haven.

Connections to the US can yield meaningful benefits, but it is important to understand and quantify the tax implications as a result of those connections. People often begin building ties with the US without fully realizing that even somewhat limited contacts may subject them to US taxes. Individuals who neither reside in, nor are citizens of, the US may be liable for US taxes, depending on the nature of their US connections.

The US tax system is complex and broad-reaching. It is imperative to consult with your independent tax and legal advisors to analyze and understand your particular situation, including both your short- and long-term goals. An effective wealth plan is one that will preserve your assets and legacy for the future, with you defining the meaning of that legacy.

All global citizens with US connections should be familiar with three key US legal systems:

- Immigration,
- Income tax, and
- Transfer tax.

Your circumstances and plans for the future must be examined separately, but concurrently, through the lens of each of these US legal systems.

This guide will provide an introduction to these US legal systems, and explore common strategies for holding and passing on wealth in a tax-efficient manner.

Information throughout reflects current rules under the Internal Revenue Code, Treasury Regulations, and other guidance promulgated by the United States Department of the Treasury. Information is current as of January 2025 and is subject to change.

The US immigration system

Understanding your immigration status is an integral first step to engaging with the US.

To reside legally in the US, you must be either a US citizen, a resident alien with a permanent resident card (green card), or a visa holder.

Non-US individuals who wish to move to the US will often gain entry to the country by first applying for a visa. Determining your eligibility and the most appropriate path for you should be done in consultation with an immigration attorney.

For example, to be eligible for an immigrant visa, most non-US individuals must be sponsored by a US citizen relative or a US employer.

Alternatively, individuals may also come into the US through an investment visa. There are certain investment minimums, and the rules stipulate the investment must create a specified amount of full-time job opportunities.

Unlike a visa, a green card entitles an individual to permanently reside in the US and is not subject to any time limit or sponsor requirements. Many non-US people apply for a green card once they have had their immigrant visas approved.

Almost everyone born in the US becomes a US citizen at birth, regardless of the nationality or residency status of their parents. Anyone born outside the US to at least one US citizen parent who meets certain requirements, including residency in some cases, is considered a US citizen at birth, regardless of time spent in the US. In addition, it is important to note that individuals can be 'accidental' US citizens even without ever having lived in the US. This is a common source of confusion and concern for those who learn later in life they may, in fact, be a US citizen or their children are US citizens. Furthermore, lack of a US social security number or US passport is not evidence of lack of US citizenship. An individual may be a US citizen at birth even if they have never had a tax ID or passport issued by the US.

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The US income tax system

Immigration status and the amount of time spent in the US are the key drivers in determining your exposure to US income tax.

For US citizens and most green card holders, the US taxes worldwide income, regardless of where the individual resides. Therefore, a US citizen living permanently in the UK with businesses in China, Australia, and India would be liable for US income taxes, subject to certain tax treaties, on income generated by all of those ventures no matter where the income is earned.

However, the reach of the US income tax system goes beyond its residents and borders. The US taxes all persons and entities on income derived from US sources, which includes interest, dividends from US securities, and rent or capital gains from US real estate.

Substancial presence test

Nonresident aliens can also be subject to US income tax on their worldwide income if they are deemed to have a 'substantial presence' in the US. For these purposes, a substantial presence is calculated by looking at the number of days spent in the US, taking into consideration the current year and the two preceding years using the following calculation:

All the days present in the US in the current calendar year
+ 1/3 of the days present in the US in the year prior
+ 1/6 of the days present in the US in the second prior year

If an individual is present in the US for at least 183 days using this rolling day count calculation (and at least 31 days during the current year), then they will be deemed substantially present in the US and subsequently considered a US income tax resident with exposure to US income tax on their worldwide income.

As a result of the multi-year formula, an individual who is present in the US for fewer than 121 days year after year will remain below the 183 day threshold.[1]

[1] Exceptions include spending less than 24 hours in the US while in transit between two foreign points, and regular commuters from Canada and Mexico.

When calculating the number of days present in the US, it is important to note that any time spent in the US on a given day is generally counted as a full day. For example, if an individual leaves the US at 12:05 am, that 5-minute period is still counted as one day in most instances.

Once an individual reaches the 183 day count,[2] he or she may be liable for US income tax on his or he worldwide income retroactive to the beginning of the calendar year.

Closer connection exception and treaty tiebreaker test

Even if a non-US individual meets the substantial presence test, but is present in the US for fewer than 183 days during the current year, he or she may still be treated as non-resident in the US, if he or she can prove a closer connection to another country. This is determined through a number of factors including:

- where the individual is permanently located,
- the location of his or her family or business, and
- where any social, political, and religious relationships are formed.

It can be very difficult to predict the outcome of an examination with respect to the closer connection or a treaty tiebreaker test. Therefore, it is not advisable to rely on the closer connection or tiebreaker test without proper independent tax and legal advice.

[2] Special rules apply to the first and last years of residency.

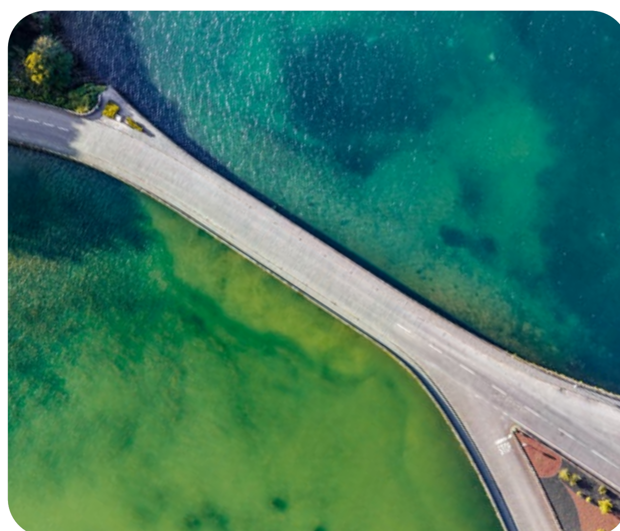
The US transfer tax system

An effective wealth plan can reduce your exposure to US transfer taxes that may erode your family's legacy across generations.

The US imposes three taxes on the transfer of assets:

- gift tax on assets transferred during life,
- estate tax on assets transferred at death, and
- generation-skipping transfer (GST) tax, which is an additional layer of tax on a transfer of assets that skips one or more generations (i.e., pass to unrelated persons who are at least 37 1/2 years younger than the transferor, or to related persons more than one generation younger than the transferor, such as a grandchild).

Each of these transfer taxes is currently levied at a maximum federal rate of 40% on the then fair market value of the transferred assets. Determining whether an individual's estate is liable to pay these taxes is based on whether he or she is either a US citizen or considered domiciled in the US for transfer tax purposes. It is important to note this is a different assessment than for US income tax, and therefore an individual can be deemed a US income tax resident and required to pay income tax on worldwide income, but not considered US domiciled and not subject to certain transfer taxes.



For US transfer tax purposes, an individual is considered domiciled in the US if he or she currently resides in the US and has the intention to remain in the US indefinitely.

Determination of domicile for transfer tax purposes is fact-specific. Some factors the Internal Revenue Service (IRS) may consider include:

- primary country of residence,
- where family members are based,
- where any businesses are based, and
- where an individual spends most of their time.

For US citizens, most green card holders, and all individuals who are considered domiciled in the US, the US will tax transfers regardless of where in the world they occur and irrespective of the assets that are transferred. These US transfer tax domiciliaries are also afforded certain transfer tax exemptions. In 2025, each US transfer tax domiciliary may exempt the first $13,990,000[3] transferred, either during life or at his/her passing, before he/she is subject to the US transfer taxes.

While the global assets of US domicilliaries are subject to US transfer taxes, non-US domiciled individuals are only subject to US transfer taxes on transfers of US-situs assets, with an estate tax exemption of only $60,000. (GST tax may also apply.)

US estate and gift tax treaties

Fortunately for some, relief may be provided though an estate and gift tax treaty between the US and the relevant country. There are, however, a limited number of treaties in place. As of January 2025, the US has estate tax treaties with many major European countries, Australia, Canada, Japan and South Africa. Note this list is not exhaustive and is subject to change.

Transferring assets to us family members

Although the initial transfer of non-US situs assets from a non-US domiciled individual to a US-domiciled individual is generally not subject to US transfer taxes, any subsequent transfers by US recipients may be subject to future US transfer taxes – both if the assets are gifted during life and/or received as an inheritance.

Without proper planning, US transfer taxes can quickly deplete a family's legacy, generation after generation.

A non-US grandmother spent over 50 years building a non-US business with a strong legacy.

When she passed, her estate was divided equally among her three US-domiciled children and was not subject to US transfer taxes.

However, when the children pass, they plan to pass each of their shares to their children – further dividing the wealth and potentially incurring more transfer taxes which could erode the grandmother's legacy.

[3] Exemption amounts are indexed annually for inflation.

Assets generally considered us situs for estate and gift tax purposes

Assets	Estate Tax	Gift Tax
Cash	Yes, if deposits with US brokers, money market accounts, and cash in safe deposit boxes	Likely yes, if gift takes place in the US
Real estate	Yes, if located in the US	Yes, if located in the US
Tangible property (e.g. jewelry, antiques, art, etc.)	Yes, if located in the US at the time of death unless in transition	Yes, if gift takes place in the US
Shares of US corporations	Yes, irrespective of location of certificates	No
Life insurance proceeds	No, if insured is a non-resident alien (NRA), unless NRA owns a US policy on life of another (cash value subject to estate tax)	No
US mutual funds	Yes, irrespective of where held or whether or not publicly traded	No
US debt obligations	No, if "portfolio debt"	No
US partnership interests	Likely yes, unsettled under US tax law, but partnerships organized under US law, holding US property or conducting business in the US could trigger estate tax	Likely no, absent any specific structuring or series of transactions, which could be perceived as a pre-arranged plan to circumvent the situs rules, but unsettled under US law

Note certain assets, such as US securities, receive different treatment under the two transfer tax regimes.

Planning considerations for your US connections

Families should review their US connections and how these may impact their goals for the future. Establishing a dynamic wealth plan will be critical to help ensure your assets are passed on according to your wishes and in a tax-efficient manner.

Although each family's situation is unique, it is helpful to be familiar with common estate planning techniques that many global families with US connections have found effective. Among the two most common scenarios are non-US individuals owning US assets (including US real estate) and non-US individuals wishing to give assets through gift or inheritance to US individuals.

US assets, including US real estate

Given that non-US individuals can be subject to US income and transfer taxes on their US-situs assets, the way these assets are held can profoundly impact the tax liability – both during an individual's lifetime and also upon eventual transfer, whether through sale, gift, or inheritance.

To potentially mitigate US transfer tax exposure, many non-US individuals choose to own their US assets, such as shares in US companies or art, jewelry, or other personal property physically located in the US, through a Private Investment Company (PIC) created in a jurisdiction outside the US, rather than in their personal name.

While the PIC is the legal owner of the underlying assets, the owner of the PIC's shares retains the ultimate rights of ownership. With this structure in place, when the non-US individual passes away, he or she will own shares in a non-US corporation, rather than owning the US-situs assets directly. As a result, this may mitigate US estate tax exposure if the PIC is properly structured and corporate formalities are observed.

US real estate, while a US-situs asset, is subject to special rules that may require further planning beyond the PIC. In order to determine the most appropriate holding structure, you should take into consideration how the property will be used and for how long you anticipate owning the property.

Whether the property will be used personally, or held as an investment, or for business and whether it is a shortterm investment or for future generations to enjoy are all key structuring considerations.

Commonly, non-US individuals choose to hold their US real estate in one of the following ways:

- in their personal name,
- through a foreign corporation, such as a PIC, or
- through a US corporation or Limited Liability Company (LLC) owned by a PIC, or
- through a trust.

Below we have outlined the potential advantages and disadvantages of each of these structures.

Purchasing in personal name

Advantages

- No structure costs
- Upon sale of property, federal capital gains taxed at individual rate (20% for property held over 12 months. State taxes may also apply.)

Potential Drawbacks

- US estate taxes (up to 40%)
- US gift tax (40%), if transferred during owner's lifetime
- Subject to probate
- Personal liability exposure
- Foreign Investment in Real Property Tax Act (FIRPTA) applies (15% withholding)
- Lack of confidentiality in the public records
- Rental property may result in an annual personal US non-resident income tax filing requirement

Purchasing through a pic

Advantages

- No US estate tax
- No US gift tax (for gift of PIC shares)
- Limited liability
- No US capital gains tax on sale of PIC shares
- Privacy in the US
- Sale of property incurs US capital gains tax at corporate rate (21%)

Potential Drawbacks

- Potential estate proceedings in home jurisdiction or country where PIC is established
- FIRPTA applies (15% withholding)
- Branch profits tax may apply (additional 30%)
- Franchise tax may apply in certain US states
- Cost of the PIC formation and administration

Purchasing through a us LLC (electing corporate tax status) owned by a pic

Advantages

- No US estate tax
- No US gift tax
- No US capital gains tax on sale of PIC shares
- Privacy in the US
- FIRPTA does not apply
- No branch profits tax
- Limited liability
- Sales of property incurs capital gains tax at corporate rate (21%)

Potential Drawbacks

- Potential estate proceedings in home jurisdiction or country where PIC is established
- Franchise tax may apply in certain US states
- Cost of LLC and PIC formation and administration
- Possible withholding tax on dividends if not properlystructured and managed

The importance of a trust

A corporate structure (e.g., a PIC or PIC/LLC) may provide meaningful tax benefits, but does not, in itself constitute a comprehensive estate plan.

An individual will still be subject to potentially long and expensive estate proceedings whether he or she holds a US asset in a personal name, a PIC, or in an LLC. Probate is a public process that can draw unwelcome scrutiny of the decedent's estate and of surviving family members during an already difficult time. It can also heighten the chance for family conflicts and heirship contests.

Combining any of these corporate structures with a trust may potentially offer additional protection over an individual's wealth and provide certainty that wealth will be passed on as intended. The trust would own the PIC shares and provide the necessary framework to address ownership and succession after the grantor's passing. It can own the shares for generations of beneficiaries and provide uninterrupted management of the shares at the passing of the grantor and each generation.

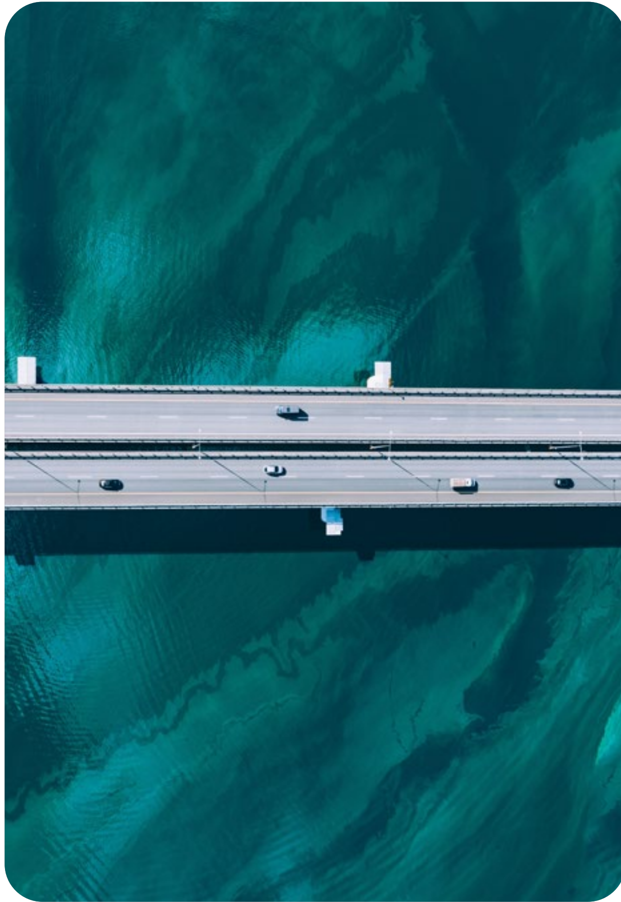
US family members

Just as ownership of US-situs assets requires careful thought and planning, having US family members or other US individuals that you would like to benefit demands careful attention as well.

Holding US-situs assets in an offshore trust or a PIC structure for the benefit of US family members can complicate their tax situation with additional income tax rules and onerous reporting requirements that carry substantial penalties for non-compliance. Furthermore, US transfer taxes can deplete family wealth if not carefully planned.

Though each wealth plan will be customized to a family's unique needs and desires, the use of irrevocable US trusts to benefit US individuals is a common technique that may be very effective at limiting US transfer tax exposure.

By planning ahead, individuals may potentially reduce their exposure to US taxes and simplify reporting for their US family members.



Closing thoughts

This US connected guide has been created to help you understand the three main US legal systems impacting global families and how they may affect your wealth and legacy. However, this is only intended to be an introduction to the issues, and has not fully considered your personal circumstances, nor any applicable local tax rules or tax treaties. We encourage you to seek the appropriate independent legal and tax advice in the relevant jurisdictions regarding the appropriate strategy to achieve your objectives.

Our global expertise in wealth planning enables us to help implement integrated wealth plans for families with multinational assets and family members. We can help address the complex planning situations involved in the transition of wealth to US beneficiaries and planning for US situs assets.

For more information about how we can work with you, please contact your Wealth Planner or Private Banker.

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