AN LCR CAPITAL PARTNERS WHITE PAPER

US TAX CONSIDERATIONS FOR GLOBAL FAMILIES

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The United States taxes worldwide income. Since all US residents and Green Card holders need to file tax returns in the country, US federal and state taxes are important to consider when looking at US residency. This paper gives an overview of issues that global families should consider as they seek to educate themselves when they work with professional tax partners.

Understanding the US Tax System

Who is required to file US federal taxes?

Simply put, all US citizens, Green Card holders, and US residents have an obligation to file US tax returns and pay all applicable taxes if their income is equal to or greater than what is called the "standard deduction." Certain individuals must file tax returns even if their income is lower than the standard deduction, regardless of whether they are residents or nonresidents according to the qualification tests outlined below.

How is federal tax residence established for non US citizens?

A tax resident (known as a "resident alien") is anyone who meets either the Green Card Test or the Substantial Presence Test for the calendar year.

The Green Card Test determines that an individual automatically becomes a resident for tax purposes if they become a lawful permanent resident at any time during the calendar year.

The Substantial Presence Test determines if an individual is considered a US resident specifically for tax purposes. To be considered a US tax resident, an individual must be physically present in the United States for at least:

1. 31 days during the current calendar year; and
2. 183 days during the three-year period that includes the current calendar year and the two calendar years immediately preceding the current calendar year. To determine whether you have been present for 183 days in this period, you should:
    - **For the current calendar year**: count all days of physical presence in the United States, and
    - **For the year immediately preceding the current calendar year**: 33% of the days physically present
    - **For the second year preceding the current calendar year**: 16.7% of the days physically present

If these numbers add up to 183 or more, then the individual is considered a resident for tax purposes. Some exclusions may be considered in terms of the days in the United States, as further explained in IRS Publication 519, U.S. Tax Guide for Aliens.

Students on temporary F-1 visas are considered "exempt individuals," meaning that the days they are in the United States on such F-1 visas do not count toward their Substantial Presence Test. In this case, they are required to fill out [Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition] and include it with their tax return.

It is also important to note that an expired Green Card does not exempt the individual from US taxes. Once someone becomes a lawful permanent resident, he or she is deemed to continue such status until it has been lawfully abandoned by the individual and requisite filings have been done with the IRS.

In the event that an individual meets the Green Card Test, but not the Substantial Presence Test for the year in which the Individual first receives the Green Card, the individual's residency start date for tax purposes would start on the first day present in the United States as a lawful permanent resident. Once the individual is considered a US resident during any part of the preceding calendar year and is also a US resident for any part of the current year, such individual will be considered a US resident at the beginning of the current year. Green Card holders who live overseas are required to file their taxes each year.

What Does Global Taxation Mean for US Citizens and Green Card Holders?

The United States taxes worldwide income

Global taxation means that all forms of income, regardless of foreign or domestic origin, are subject to US federal income tax. Taxable income includes:

- wages;
- expat benefits such as allowances for housing, education, transportation, cost-of-living adjustments, etc.;
- taxes reimbursed by any foreign jurisdiction;
- interest, dividends, and capital gains on investments;
- income from partnerships;
- rental income, net of deductions; and
- payments received from a foreign government pension.

Despite global taxation on all forms of income, your tax liability can be reduced by certain permissible deductions and applicable double taxation avoidance agreements (DTAAs).

Tax are imposed at the federal and state levels

Most states adopt a physical presence test to determine tax residency; an individual must be present in the state for at least 183 days in a year.

A few states (California, South Carolina, New Mexico, and Virginia in particular) have more complicated rules. These states tax worldwide income and consider an individual to be a state tax resident (even though the individual may be living overseas or outside the state), if that individual:

- owns property in the state;
- has a state driver's license or ID card;
- holds bank accounts or investment accounts in the state;
- is registered as a voter (absentee ballots are also considered);
- maintains a mailing address in the state, either through a relative's house or a post office box; or
- has a spouse or children living in the state.

FEDERAL INCOME TAX BRACKETS 2022

Marginal Tax Rate	Income (Single Tax Filer)	Income (Married, Filing Separately)	Income (Married, Filing Jointly)	Income (Head of Household)
10%	Up to $10,275	Up to $10,275	Up to $20,550	Up to $14,650
12%	$10,276 – $41,775	$10,276 – $41,775	$20,551 – $83,550	$14,651 – $55,900
22%	$41,776 – $89,075	$41,776 – $89,075	$83,551 – $178,150	$55,901 – $89,050
24%	$89,076 – $170,050	$89,076 – $170,050	$178,151 – $340,100	$89,051 – $170,050
32%	$170,051 – $215,950	$170,051 – $215,950	$340,101 – $431,900	$170,051 – $215,950
35%	$215,951 – $539,900	$215,951 – $323,925	$431,901 – $647,850	$215,951 – $539,900
37%	$539,901 and above	$323,926 and above	$647,851 and above	$539,902 and above

Source: Internal Revenue Service

Filing Is Required When Living Abroad, but There Are Deductions to Consider

Federal tax deductions for US persons when living abroad

There are two broad categories of deductions: foreign earned income exclusion and foreign tax credit.

The foreign earned income exclusion (FEIE) is exactly as it sounds, in that it excludes a certain amount of an individual's foreign earned income from taxable income. If you are a US citizen or a resident alien of the United States and you live abroad, you are taxed on your worldwide income. However, you may qualify to exclude your foreign earnings from income up to an amount that is adjusted annually for inflation. For tax year 2022, the FEIE is $112,000. In addition, you can exclude or deduct certain foreign housing amounts. Pensions, dividends, capital gains, US earned income, interest, etc. do not count toward the FEIE amount.

Personal service income

The foreign tax credit allows individuals to reduce their tax liability through taxes already paid to a foreign country. This tax credit can be claimed only on the portion of taxable income that was not excluded through the FEIE.

Depending on the tax rates in the foreign country, it may be more beneficial to use the foreign tax credit than to combine it with the FEIE.

Personal service income (PSI) is income that is mainly a reward for an individual's personal efforts or skills. All wages and any other compensation for services performed in the United States are generally considered to be from sources in the United States. The location where the personal services were performed generally determines the source of the personal service income, regardless of where the contract was made, the place of payment, or the residence of the payer.

However, under certain circumstances, payment for personal services performed in the United States is not considered income from sources within the United States. For example, personal services performed by an independent nonresident alien contractor are specifically exempted by a tax treaty. For more examples, see the section Pay for Personal Services Performed in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

If the income is for personal services performed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services performed in the United States. In most cases, you make this allocation on a time basis. That is, US source income is the amount that results from multiplying the total amount of pay by the fraction of days in which services were performed in the United States. This fraction is determined by dividing the number of days that services are performed in the United States by the total number of days of service for which the compensation is paid.

Double taxation avoidance agreements

US citizens and Green Card holders who live in countries with double taxation avoidance agreements (DTAAs) are protected from paying double tax on certain sources of income. A list of all countries with a DTAA can be found at the IRS website.

Each specific DTAA should outline the tax rates or exemptions for the following types of income:

- interest;
- dividends;
- pensions and annuities;
- Social Security;
- royalties;
- remittances or allowances for students; and
- personal service income.

Inheritance, Estate, and Gift Taxes

Inheritance tax

There is no *federal* inheritance tax in the United States. This means that individuals do not pay federal tax on wealth when they receive it. However, there are six US states that charge a state inheritance tax: Iowa, Kentucky, Maryland, Nebraska, New Jersey, and Pennsylvania. This means that if you receive an inheritance from a deceased person that lived in one of these six states, regardless of where in the United States or overseas you live, you would need to file a state tax inheritance form within a specified timeframe. Each of these six states has its own laws regarding who is liable for paying these taxes, until what age, and at what percentage.

In most cases, you won't have to pay any taxes on an inheritance received from a non-US citizen living abroad.

The IRS does not impose taxes on foreign inheritance or gifts if the recipient is a US citizen or resident alien. However, you may need to pay taxes on your inheritance depending on your state's tax laws.

US taxpayers who receive inheritance or gifts exceeding $100,000 must fill out Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts. Form 3520's purpose is to be an informational return that is included with your personal income tax returns.

If a US person (whether a US citizen or resident alien) receives an inheritance from a non-US person, the IRS generally doesn't impose any taxes on the recipient or the estate of the deceased. The only exception to this is if the assets left in the inheritance are "US situs" (as defined below) exceeding $60,000 in value.

A US situs asset is real and tangible property—typically real estate—located within the United States. US situs assets also include:

- shares of US publicly traded companies;
- shares of US private companies;
- cash accounts with US brokerage firms;
- tangible personal property located in the United States with some degree of permanence; and
- certain debts owed by a US debtor.

Estate tax

Federal estate taxes are applied only to estates that are valued at more than a certain amount. In tax year 2022, the lifetime gift and estate tax exclusion amount was raised to $12.06 million.

In tax year 2022, the lifetime gift and estate tax exclusion amount was raised to US $12.06 million.

This exclusion amount is temporary, applying only until tax year 2025. Current tax laws, unless updated by Congress, would cause the exclusion to revert back to $5.49 million (adjusted for inflation) after 2025.

Some states do apply estate taxes in addition to the federal tax, although the thresholds and tax percentages vary by state. These states are Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington.

Gifts from overseas

In general, a foreign gift or bequest in any amount received by a US person (whether a citizen or a resident alien) from a person other than a US person (a foreign person) that the recipient treats as a gift or bequest can be excluded from gross income. A foreign gift does not include amounts paid for qualified tuition or medical payments made on behalf of the US person.

Foreign persons include nonresident alien individuals or foreign corporations, partnerships, or estates as well as domestic trusts that are treated as owned by a foreign person.

You are required to report the receipt of foreign gifts or bequests only if the applicable thresholds apply. These are generally excluded from gross income and therefore not taxed.

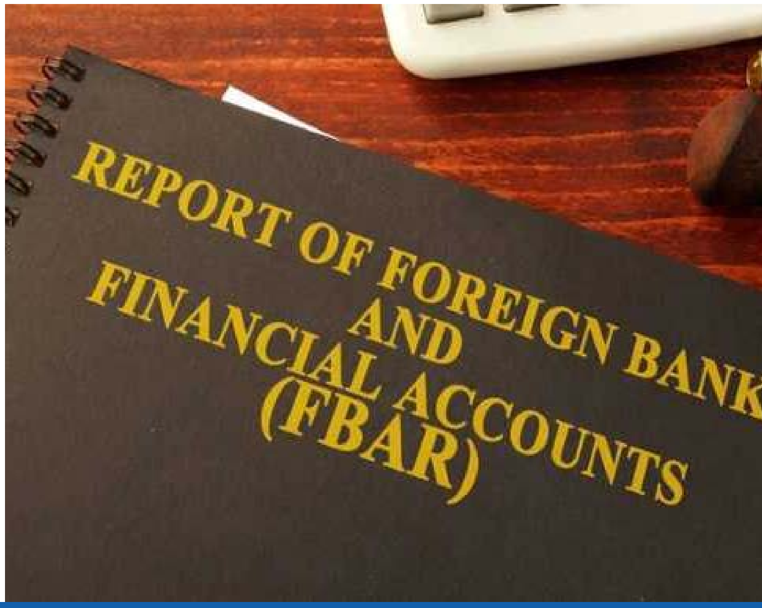
For purposes of determining the reporting thresholds, you must aggregate gifts received from related parties.

- Gifts or bequests from a nonresident alien or foreign estate, must be reported only if the aggregate amount received from that nonresident alien or foreign estate exceeds $100,000 during the taxable year. If the gifts or bequests exceed $100,000, you must separately identify each gift in excess of $5,000.

- Gifts from foreign corporations or foreign partnerships must be reported only if the aggregate amount received from all entities exceeds $17,399 (in tax year 2022).

Additional Filings for Foreign Assets

All US persons must file a Foreign Bank Account Report (FBAR) if they hold a financial interest or signatory authority in a foreign bank/financial accounts and the aggregate value of all the foreign financial accounts exceeds $10,000 at any point during the year. You're allowed an automatic extension to October 15 if you fail to meet the FBAR annual due date of April 15. You don't need to request an extension to file the FBAR. Penalties may be incurred if it is not filed.



The Foreign Account Tax Compliance Act (FATCA) requires US persons that have a financial interest in foreign assets to file Form 8938 along with their federal tax return. The thresholds for reporting are as follows:

- **For individuals living in the United States:**
  - if they are unmarried or married filing separately and if the assets' total value is greater than $50,000 on the last day of the tax year or exceeded $75,000 at any time during that year; or
  - if they are married filing jointly and if the assets' total value is greater than $100,000 on the last day of the tax year or exceeded $150,000 at any time during that year.

- **For individuals living abroad:**
  - If they are unmarried or married filing separately and if the assets' total value is greater than $200,000 on the last day of the tax year or exceeded $300,000 at any time during that year; or
  - if they are married filing jointly and if the assets' total value is greater than $400,000 on the last day of the tax year or exceeded $600,000 at any time during that year.

Abandoning Residency Status and Expatriation Tax

To abandon your resident status in the United States, you must file an application for abandonment (Form I–407, Abandonment of Lawful Permanent Resident Status) accompanied by the return of your Green Card to a US Immigration authority or a consular officer. It is important to note that doing so could result in an individual being liable for expatriation tax.

Any US citizen who relinquishes his or her citizenship, or any long-term resident who abandons his or her resident status, is subject to expatriation tax provisions. A Green Card holder would be considered a "long-term resident" if they have held the Green Card for eight of the last 15 years.

Only Green Card holders who have held their Green Cards for eight of the last 15 years would be subject to US exit tax provisions.

The expatriation, or exit, tax applies to anyone who:

1. expatriates with a net worth of $2 million or more on the date of expatriation or termination of residency;
2. cannot prove compliance with US tax laws for the previous five years on Form 8854 for the five years preceding the date of expatriation or termination of residency; or
3. has an average annual net income tax above a prespecified threshold for the previous five years ending before the date of expatriation or termination of residency. In 2022, this threshold is $178,000. This figure is adjusted annually in accordance with inflation.

For the purpose of calculating the expatriation tax, all property owned by the individual would be marked-to-market, meaning it would be deemed sold at fair market value just before expatriation. Furthermore, pensions, private retirement accounts, deferred compensation plans, and beneficial interests in trusts are also counted toward the expatriation tax calculation.

Optimizing Your Tax Liability

Tax credits and deductions

The IRS allows tax filers to reduce their taxable income through various eligible deductions or to reduce the amount of tax owed by applying certain tax credits.

Some of the deductions and tax credits that can be used to offset your tax liability are:

- health care
- education expenses and interest
- investments
- business expenses
- property taxes and mortgage interest
- children and dependent credits
- energy efficiency credits

We advise all global families to speak to an experienced tax professional to understand how best to optimize their tax liabilities using these and other options available to them.

Trust structures

For individuals who own assets outside the United States and are expecting to bequeath such assets to US residents/citizens, it may be useful to use trust structures for passing on such assets. Ring-fencing assets through a trust structure can mitigate the impact of US estate duty on such assets.

Compliance

Tax in any jurisdiction can be burdensome. Becoming a US Green Card holder adds complexities to understanding, filing, and paying your taxes, as foreign-earned income and foreign account reporting are required. Not complying with US tax regulations can have severe consequences, not only from a financial perspective, but also in terms of your residency status. It is important to consult a reputable US tax professional to gain clarity on the nuances of your case and to discuss tax structuring options for you and your family.

If you are considering an EB-5 application, it is advised that you start tax planning at the same time before you receive your Green Card(s):

- Pre-immigration tax planning can help to optimize the tax impact on your global assets
- Exit tax planning: Individuals considering giving up their Green Cards eventually will also need to be aware of the impact of exit taxes. Careful planning will be needed to avoid or minimize such taxes when giving up Green Cards.

Grant Thornton Bharat LLP's US tax compliance team can help individuals and families comply with their US tax obligations.

Please reach out to us for more information.

Additional Considerations for Indian Citizens

Foreign Exchange Controls

Foreign Exchange Management Act (FEMA) and LRS considerations

An Indian resident is permitted to invest in shares of both listed and unlisted overseas companies or debt instruments; investment in units of mutual funds, venture capital funds, unrated debt securities, and promissory notes are also permitted. No ratings or guidelines have been prescribed under LRS concerning the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence regarding the investments which he or she proposes to make.

Remittances under the LRS can be consolidated in respect of close family members, subject to individual family members complying with its terms and conditions.

Pooling of money by other family members is not permitted for capital account transactions, such as opening a bank account, making an investment, or purchasing property, if they are not the co-owners/co-partners of the overseas bank account or investment or property. Hence, pooling money is allowed provided that the property, investment, or bank account is jointly owned by the members pooling the money.

Gifting money overseas

The total amount of foreign exchange remitted as a gift during a financial year is subsumed within the cumulative limit of USD 250,000 for all permitted remittances under the LRS. Once a remittance is made for an amount up to USD 250,000 during the financial year, a resident individual would not be eligible to make any further remittances under the scheme, even if the proceeds of other investments or remittances have been brought back into India.

The resident should designate a branch of an Authorized Dealer through which all the remittances under the LRS will be made. Authorized Dealers (AD) are institutions, such as banks, that have the license from the RBI to sell and buy foreign currencies. The AD bank should have a banking relationship with the resident for a minimum period of one year prior to the remittance. ADs are required to satisfy themselves regarding the source of funds of such remittances. Form A-2 along with Permanent Account Number (PAN) has to be furnished by the resident stating the purpose of the remittance and declaring that the funds belong to him or her and will not be used for purposes prohibited under the LRS.

Remittances (including gifts, investments, etc.) from India exceeding INR 700,000 in a financial year under the LRS are subject to a Tax Collected at Source (TCS) at the rate of 5%.

Additional considerations when gifting in foreign currency overseas

An Indian resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

However, an Indian resident can gift an NRI (nonresident Indian) in Forex overseas, within the overall limit of USD 250,000.

A resident individual can also gift in rupees to an NRI or a PIO (person of Indian origin) who is a close relative of the resident individual. This gift can be made as a crossed check/electronic transfer and is credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c of the NRI or PIO. The gift should not exceed the overall limit of USD 250,000 per fiscal year.

Accounting and Reporting for Gifted Money

If an Indian resident receives a gift (other than from his or her close relatives), the income is taxable under the heading "other income" in the year of receipt. Gifts of foreign securities are also taxed on the same basis.

Residents have to regularly report their foreign assets (bank accounts, investments, etc.) in their income tax returns.

Nonresidents receiving a gift (other than from close relatives) may be taxed on receipt in India subject to any relaxation/benefit provided under the relevant double-tax treaty.

Agricultural land for Green Card holders and US citizens

An NRI or an OCI (overseas citizen of India) can acquire agricultural property in India only by way of inheritance from an Indian resident (relative) or a non-resident (relative – who had originally acquired it in accordance with exchange control law) or from a person resident in India. In other words, he or she cannot buy agricultural land or get it as a gift from anyone.

Cross-Border Collateralization of Assets in India

Only a limited window exists under Exchange Control law to collateralize assets in India for nonresidents. This is described below:

> Only an AD banker (which is an Indian correspondent of an overseas lender) is permitted to create a mortgage on an immovable property in India owned by an NRI or an OCI who is a director of a company outside India, for a loan availed by such company outside India from the said overseas lender subject to the following conditions:
>
> (a) The funds should be used by the borrowing company only for its core business purposes overseas; and
>
> (b) In case of invocation of charge the AD should sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.

Double Taxation Avoidance Agreement with India

A double tax avoidance agreement (DTAA) is essentially a bilateral agreement entered into between two countries. The basic objective is to promote and foster economic trade and investment between two countries by avoiding double taxation. India has one of the largest networks of tax treaties for the avoidance of double taxation and the prevention of tax evasion. It has signed DTAAs with over 85 countries under Section 90 of the Income Tax Act, 1961. India is also actively pursuing multilateral investment agreements that will over time replace DTAAs.

Although the India–US tax treaty does provide for tax credits on most income that is likely to be double-taxed, it is important to note that the treaty article on capital gains gives both countries the right to tax such income according to their respective domestic laws. In some cases, this may have the potential to create a double tax situation for some individuals. Those applying for US residency under the EB-5 route must ensure that they undertake appropriate tax planning in their home countries before obtaining Green Cards to appropriately optimize for future US taxes.

Please reach out to us for more information.

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