Morgan Stanley

US Pre-Immigration Planning

International

Wealth and Estate Planning Strategists
Family Office Resources

Non-US persons may decide or need to reside in the US for multiple reasons including, but not limited to, employment relocation, business ventures, retirement and education. When assessing immigration to the US, whether on a temporary or permanent basis, foreign persons must consider many aspects in addition to the cultural differences they may face. Immigration status, applicable taxes, securities regulations and the legal framework to which they may be subject during (and possibly after) their stay are all important issues that should not be overlooked.

Migratory Status

Foreigners can be present legally in the US mainly under two regimes: (a) a US Visa, a temporary permit to stay in the US during a certain time period, or (b) the permanent residency program (known as the “Green Card”). There are multiple types of visas depending on the purposes of the stay: employment, investments, student, business, diplomatic, family, extraordinary abilities, cultural and religion, among others.

Some visas allow a person to stay in the US for a specific period of time, after which they expire. Others are valid until the status of the holder changes, such as when his or her employment ends.

The Green Card, on the other hand, gives its holder an immigrant status allowing him or her to live, work and study in the US on a permanent basis. If the individual plans to remain outside of the US for a long period of time, but does not wish to lose the Green Card, then he or she may need to obtain a permit so that permanent residency is maintained during the absence.

The first step for potential immigrants is to understand the rules governing the Green Card or their visa such as number of continuous days to stay in the US, possibility to work or study, etc. Once they know the migratory legal framework to which they will be subject, the next step is to understand their tax and reporting obligations, if any.

Income Tax Status

The tax status of the person migrating to the US also depends on migratory status.

Green Card holders are considered residents for federal income tax purposes from the first date of entry into the US with the Green Card.

Persons staying in the US under a visa program (subject to certain exceptions for diplomats, students, and medical patients) will become tax residents for federal income tax purposes if they meet the substantial presence test. Individuals generally satisfy the substantial presence test if they are present in the US on at least 31 days during the current year, and 183 days or more during the 3-year period that includes the current year and the 2 immediately preceding years counting: (i) all the days you were present in the current year, (ii) 1/3 of the days you were present in the first year before the current year, and (iii) 1/6 of the days you were present in the second year before the current year.

Even if you meet the substantial presence test, an individual can still be treated as a nonresident alien

(a) when an individual spends less than 183 days in a given year in the US, maintains a “tax home” in a foreign country during the entire year, has a closer connection to that foreign country (i.e., more significant contacts with that country) than to the United States and had not taken steps towards, and did not have an application pending for, lawful permanent resident status, or

(b) where an individual is a dual-resident taxpayer and there is an income tax treaty that treats the individual as a resident of a foreign country. The individual may be subject to certain reporting requirements for the exception to apply even if the circumstances are met.

If an individual becomes tax resident under both the Green Card and substantial presence test, then generally the residency starting date is the earlier of the first day during the year the individual is present in the US under the substantial presence test or as a Green Card holder.

If a person without a Green Card does not meet the substantial presence test, that person may be subject to federal income taxes in the US as a foreign person. We refer to our paper on Taxation of Non-Resident Aliens. A person considered a resident for federal income tax purposes is subject to the rules and regulations of US citizens regarding tax reporting and payment obligations on their worldwide assets and income.

The federal income tax rate on ordinary income for individuals is 37% (plus a 0.9% Additional Medicare tax on earned income, where applicable) for income that exceeds $626,350 for singles or $751,600 for married couples filing jointly (for 2025). In some cases, an additional 3.8% tax applies to certain net investment income. The US Internal Revenue Code also includes reduced federal tax rates for individuals with certain types of income including long-term capital gains and qualified dividends earned by individuals.

In addition to the payment of federal income tax, taxpayers with non-US assets, or in receipt of income or gifts from outside the US, are subject to several reporting requirements including, but not limited to, FBAR 3520, FBAR 3520A, and Form 8938. Not complying with these regulations could subject the taxpayer to civil monetary penalties that could accumulate year-over-year, and, in some cases, criminal penalties as well. It is important for the persons coming to the US to get advice on the rules in advance to be well prepared.

A pre-immigration plan for federal income tax purposes may contemplate the sale of assets with a considerable amount of unrealized gains, the exercise of certain stock option plans, or restructuring or electing on the treatment of foreign entities for US federal income tax purposes depending on the specific circumstances of the individual. Special attention should be given to the Controlled Foreign Corporation (CFC) and Passive Foreign Investment Company (PFIC) rules, which may cause US residents to be subject to complex and adverse tax consequences in respect of certain foreign investments. Examples of PFICs are foreign investment vehicles generating passive income (i.e., foreign mutual funds and foreign investment companies). Holding these types of investments may increase taxation and create additional reporting obligations.

Gift and Estate Tax

US gift and estate tax applies differently depending on whether a US non-citizen resident is considered a “domiciliary” or not. Whether an individual is “domiciled” in the US depends on whether the resident lives in the US with no definite present intention of living elsewhere. Whether one is a US domiciliary is a facts and circumstances test. Factors which the IRS uses to determine a resident’s domicile include: the country where the individual pays income tax, votes, owns properties, has citizenship, has residence for a certain period of time, and has business and social ties to the community.

Domiciliaries and non-domiciliaries are treated very differently for gift and estate tax purposes. Domiciliaries are subject to federal gift and estate taxes on most gratuitous transfer of assets (both US situs and non-US situs) during their lifetime or at death, subject to an annual exclusion of $19,000 per donee and a lifetime exclusion of $13,990,000 million in 2025. Any transfer exceeding these limits may be subject to a gift or estate tax of up to 40%. There are some exceptions for gifts or bequests to a spouse who is a US citizen, transfers to trusts that are considered Qualified Domestic Trusts (QDOTs) for the benefit of a non-citizen surviving spouse, charitable giving, and direct payments of tuition and health care expenses. Non-domiciliaries, on the other hand, are only subject to federal gift and estate tax on the transfer of US situs assets. We refer to our paper on Taxation of Non-Resident Aliens to review the treatment of Gift and Estate Tax to a non-domiciliary.

Clients should plan to review their asset portfolios and estate plans with their legal and tax advisors to properly address their concerns in advance of moving to the US. It is important to consider these issues prior to applying for a Green Card, if possible. Depending on the strategy chosen by the individual and their legal and tax advisors, there may be some opportunities to separate some of the assets from the patrimony or estate of the individual through contributions to an irrevocable trust or through advance distributions to children. Also, some charitable donations may be deferred until a later time when it is more beneficial for the parties involved. Some individuals may prefer to create nexus or closeness to the US to be considered domiciliaries, while others may prefer to be hold strong ties to another country. The latter is a strategy that is frequently used by individuals with substantial foreign investments.

Family and Succession Provisions

Living in the US implies being subject to US laws and regulations, which could differ significantly from the laws of the individual’s own country. It is very important to compare and contrast the legal framework in relevant family topics such as marital and property regimes (private property, community property, separation of assets), validity and enforceability of pre or post-nuptial agreements, testamentary or intestate succession process and requirements, forced heirship rules, and age of legal capacity and emancipation among others to determine whether it would be necessary to make any changes or engage in further planning.

For example, (i) a difference in the requirements for a valid testament or will means that the existing will may not be enforceable in the other jurisdiction, and (ii) with limited exceptions, the US has no forced-heirship rules, but it has some co-ownership rights (such as joint tenancy with right of survivorship) that may change the way the family planned for succession in the former country of residency. Understanding the new legal system and its consequences will allow individuals to act accordingly.

Once the Stay in the US Is Over

Once the individual decides to or must move out of the US, there may be some work to do, not only in the US but in the country to which the person is migrating.

On the US side, the US generally imposes an exit tax on US citizens who relinquish their citizenship or long-term residents who terminate their long-term residency. The term “long-term resident” applies to a Green Card holder who stayed in the US at least 8 of the 15 tax years preceding expatriation (including the year of the expatriation). Long-term residency is terminated if the taxpayer (a) has his Green Card revoked (or administratively or judicially determined to have been abandoned), or (b) begins being treated as a resident of a foreign country under a tax treaty between the US and the foreign country, does not waive the benefits of the treaty, and notifies the IRS of the treatment on IRS Form 8833 and IRS Form 8854. Persons who were present in the US under a visa program are not subject to this regime. If applicable, the exit tax regime imposes a tax on the net unrealized gains in the expatriate’s property provided the gain exceeds $890,000 (2025). (Different tax rates may apply in the exit tax regime to retirement assets or distributions from trusts.) In addition to the exit tax, any gift or bequest to a US person from the expatriate in excess of the annual gift tax exclusion will generally be subject to tax at the highest federal gift or estate tax rate.

Conclusion

Thus, even though a green card provides many benefits, it is important to consider all of the potential long-term tax and reporting obligations before securing, or retaining, this immigration status.

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