

# GIVING ISN'T A FOREIGN CONCEPT

A GUIDE TO U.S. ESTATE AND GIFT  
TAXATION FOR FOREIGN NATIONALS



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## DEFINITION OF RESIDENT ALIEN (RA) AND NONRESIDENT ALIEN (NRA) STATUS<sup>1</sup>

Resident Alien (RA)	Nonresident Alien (NRA)
<p>An RA is someone who:</p> <ul style="list-style-type: none"> <li>Is not a U.S. citizen</li> <li>Has domicile (permanent home) in the U.S.</li> </ul>	<p>An NRA is someone who:</p> <ul style="list-style-type: none"> <li>Is not a U.S. citizen</li> <li>Has domicile (permanent home) somewhere other than in the U.S.</li> </ul>

## ASSETS SUBJECT TO U.S. GIFT TAXES

Resident Alien (RA)	Nonresident Alien (NRA)
All worldwide assets	<p>Generally, all assets located in the U.S.</p> <p>Examples of properties subject to U.S. gift taxes:</p> <ol style="list-style-type: none"> <li>Real property located in the U.S.</li> <li>Tangible personal property (e.g., cash) located in the U.S.<sup>2</sup></li> </ol> <p>Intangible properties, even if they are located in the U.S., generally are not subject to U.S. gift taxes.<sup>3</sup> Examples of intangible properties:</p> <ul style="list-style-type: none"> <li>Stock of a U.S. corporation</li> <li>Interest in a U.S. partnership</li> </ul>

## LIFETIME GIFT TAX EXEMPTION AMOUNT

Resident Alien (RA)	Nonresident Alien (NRA)
2023: \$12.92 million (RA exemption amount is equal to that available for U.S. citizens.) <sup>4</sup>	\$0, no exemption amount available <sup>4</sup>

## ANNUAL GIFT TAX EXCLUSION AMOUNT

Resident Alien (RA)	Nonresident Alien (NRA)
<ul style="list-style-type: none"> <li>\$17,000 (for 2023)<sup>5</sup></li> <li>\$175,000 for gifts to a foreign national spouse (for 2023)<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>\$17,000 (for 2023)<sup>5</sup></li> <li>\$175,000 for gifts to a foreign national spouse (for 2023)<sup>6</sup></li> </ul>

## AVAILABILITY OF GIFT SPLITTING

Resident Alien (RA)	Nonresident Alien (NRA)
Available if spouse is a U.S. resident or citizen	Not available

APPLICABLE GIFT TAX RATES	
Resident Alien (RA)	Nonresident Alien (NRA)
Same as those for U.S. citizens	Same as those for U.S. citizens
ASSETS SUBJECT TO U.S. ESTATE TAXES	
Resident Alien (RA)	Nonresident Alien (NRA)
All worldwide assets	<ul style="list-style-type: none"> <li>▪ Properties (including most intangible properties) deemed to be located in the U.S.</li> <li>▪ The following assets are generally not subject to U.S. estate taxes even if they are located in the U.S.:                             <ol style="list-style-type: none"> <li>1. Death benefits from a U.S. life insurance policy on an NRA insured, even if the NRA owned the policy</li> <li>2. Deposits in a U.S. bank (e.g., CDs)<sup>7</sup></li> <li>3. Registered U.S. government bonds and Treasury notes issued after July 18, 1984<sup>8</sup></li> </ol> </li> </ul>
LIFETIME ESTATE TAX EXEMPTION	
Resident Alien (RA)	Nonresident Alien (NRA)
2023: \$12.92 million (RA exemption amount is equal to that available for U.S. citizens.) <sup>4</sup>	\$60,000 (equal to a credit amount of \$13,000) <sup>4</sup>
APPLICABLE ESTATE TAX RATES	
Resident Alien (RA)	Nonresident Alien (NRA)
Same as those for U.S. citizens	Same as those for U.S. citizens
AVAILABILITY OF UNLIMITED MARITAL DEDUCTION	
Resident Alien (RA)	Nonresident Alien (NRA)
<ul style="list-style-type: none"> <li>▪ Available for transfers to U.S. citizen spouses only</li> <li>▪ Not available for transfers to a foreign national spouse unless assets are transferred to a qualified domestic trust (QDOT)<sup>9</sup></li> </ul>	<ul style="list-style-type: none"> <li>▪ Available for transfers to U.S. citizen spouses only</li> <li>▪ Not available for transfers to a foreign national spouse unless assets are transferred to a qualified domestic trust (QDOT)<sup>9</sup></li> </ul>

# SOURCES CITED

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1. 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).
2. IRC § 2501(a); U.S. Treas. Reg. § 25.2511-1(b)
3. Id. § 2501(a)(2)
4. Rev. Proc. 2022-38, Sec. .41 and "Instructions for Form 706-NA," IRS, 2022
5. Rev. Proc. 2022-38, Sec. .43 (1)
6. Rev. Proc. 2022-38, Sec. .43 (2)
7. IRC § 2105(b)
8. 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).
9. 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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