

# SPECIAL TAX REGIMES FOR INDIVIDUALS

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UNITED STATES

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# U.S.

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- Persons who are not U.S. residents face three types of tax exposure during stay in U.S.
  - Income tax on global income
  - Estate tax on U.S. situs assets, assuming they are not domiciled in the U.S.
  - Departure tax on gains, if a “covered expatriate”
  - Special 40% tax on gifts and bequests received by a U.S. person from a covered expatriate
- The U.S. has no special regimes for arriving immigrants

# U.S.

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- In order to limit U.S. income and estate taxes, an arriving person must implement one of the following plans:
  - Limit days
  - Enter under special visa
  - Rely on dual resident tiebreaker test
  - Rely on beneficence of parent based outside the U.S.

# U.S.

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- Two ways to limit days
  - Average days of presence in U.S. kept at 121 days over a three-year period so that total number of days is capped at 183 days, taking into account various weight given to:
    - Current year – 100%
    - Immediately preceding year – 33.33%
    - Second preceding year – 16.67%
  - Consider three-home tax plan, limiting time in three jurisdictions

# U.S.

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- Two ways to limit days
  - Limit number of days in the current year to 182 or fewer days plus have closer connection to foreign country
  - Factors looked at for closer connection include:
    - Principal permanent home – place where “good china” is located
    - Location of family
    - Location of auto
    - Registration of auto
    - Location of good furniture and art
    - Location of business
    - Location of driver’s license
    - Voter registration
    - Address on official documents
    - Form W-8BEN or W-9
    - Location of personal, financial, legal documents
    - Where income is principally sourced
    - National health plan

# U.S.

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- Special visa not considered a day of presence in the U.S.
  - Teacher or trainee present under J-1 visa
    - Two-year cap for each six-year period
  - Student present under F-1 visa
    - Five-year cap unless it is clear the individual plans to return home
- Student, teacher or trainee must avoid activity that is inconsistent with visa
- Form 8843, *Statement for Exempt Individuals and Individuals With a Medical Condition*, must be filed

# U.S.

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- Rely on standard tiebreaker test for dual residents under an income tax treaty
  - Permanent home
  - Center of vital interests
  - Habitual abode
  - Nationality
  - Mutual agreement of tax authorities
- This approach does not prevent the dual resident from the obligation to file F.B.A.R. forms

# U.S.

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- If present under a temporary visa – not a green card – and benefitting from revocable trust established and funded by parent, U.S. tax residence may exist, but distributions of funds from revocable trusts are treated as gifts that generally are not subject to income or gift tax
- **N.B.** – Parent must be of sound mind, capable of managing funds, and actually managing and approving disbursements. See *U.S. v. Harald Joachim Von Der Goltz*, in which the defendant's 104-year-old mother in Guatemala was the purported maker of a gift to a U.S. citizen
- For reporting purposes, the trust distributions must be reported as such on Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, but no income tax is due



# Important Notice

This presentation is not intended to be legal advice. Reading these materials does not create an attorney-client relationship. The outcome of each case stands on its own merits.