

FAQ for U.S. Estate and Gift Tax 美国遗产税与赠予税常见问题

1. What is the IRS form W8 BEN? 什么是 W8 BEN ?

Form W-8 BEN is used to determine death tax for Deceased Non Residents with respect to their US situated assets.

表格 W-8 BEN 是用于确定非美国居民在美国资产的遗产税。

2. What is death tax for Non Resident Aliens? 什么是遗产税 ?

Deceased Non Residents who are not American Citizen are subjects to US estate taxation with respect to their US situated assets.

作为非美国居民，死后需要对其属于美国的资产在美上缴的税务，就叫做遗产税。

3. What is the residency test for Income tax? 什么是所得税居民测试 ?

For **income tax purpose**, the residency depends on the **Substantial presence test** as below:

针对所得税的居民身份取决于以下实质居住测试：

Resident: You must be physically present in the United States (U.S.) on at least
必须满足以下两个测试才能被认定为居民：

- 1) 31 days during the current year, and 本年内居住满 **31 天**，且
- 2) 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
过去 3 年内（包括本年和前两年）居住天数按照满足以下三个条件的天数之和加总达到 **183 天**

- All the days you were present in the current year, and 本年出现在美国的天数；
- 1/3 of the days you were present in the first year before the current year, and 去年出现在美国的天数的三分之一；以及
- 1/6 of the days you were present in the second year before the current year, and 前年出现在美国的天数的六分之一。

NRA: Otherwise, you will be considered as nonresident alien (NRA).

否则的话您属于外国居民，也就是我们常说的 NRA。

4. What is the residency test for Gift and Estate tax? 什么是赠予税和遗产税的居民测试 ?

The substantial presence test we discussed above is for income tax purposes. However, residency for gift and estate tax purposes is defined as the person's domicile. Domicile means being physically present in the U.S. and intending to remain in the U.S. permanently.

我们上面所探讨的实质居住测试是针对所得税的，但是赠予税和遗产税中所定义的居民测试是取决于一个人的定居身份（Domicile）。

To determine whether you are a US domiciliary, the following factors are considered:

以下这些因素是考虑一个人是否会被定义为有意图永久居住：

- Statement of intent (in visa applications, tax returns, will, etc.) 意图说明（签证，税单，遗产等）
- Location of property 资产所在地
- Length of US residence 居美时长
- Green card status 绿卡情况
- Style of living in the US and abroad 生活特征
- Ties to former country 与先前国家的联系
- Country of citizenship 公民身份
- Location of business interests 客户所在地
- Places where club and church affiliations, voting registration, and driver licenses are maintained 俱乐部和教会，投票权，以及驾照所在地等

TIP: Consult with a tax professional regarding your US domicile status.

建议：最好和专业税务师咨询来确认您的定居身份。

Given the differences between income tax residency and gift tax residency, a person can be subject to one, none or both.

由于所得税的居民测试和赠予遗产税的居住测试有所不同，您可能需承担两项税负之一，两项皆无，或两项皆有。

5. How much exclusion you have for gift and estate tax? 您可以享用多少赠与税和遗产税的税收优惠？

If you are considered a non-US domiciliary, you only need to pay on U.S. situs assets, will discuss later in #4. 只需对在美资产赋税，在美资产具体定义请见问题 4。

- Annual gift tax exclusion: **\$15,000** for single
- Life time basic exclusion amount (BEA): **\$60,000** for single

如果您属于外国居民，您可以使用每人年度礼品税免税额（2019 年为 15,000 美元/单身）以及终身免税额（2019 年为 60,000 美元/单身）

6. What is considered a taxable gift or estate? 什么样的赠予资产是要交税的呢？

A non-US domiciliary is subject to gift and estate tax only on U.S. situs property. By saying U.S. situs property, gift tax and estate tax defines it differently.

外国居民只需要对美国境内资产交税，而赠予税和遗产税中对于美国境内资产的定义又有所不同。

- U.S. situs property under Gift tax: 讨论**赠予税**时需要交税的美国境内资产只包括：
Only real estate and tangible personal property. 美国房产和有形资产。
- U.S. situs property under Estate tax: 讨论**遗产税**时需要交税的美国境内资产包括：
U.S. real property, tangible property located within the U.S. and stock in U.S. corps.
美国房产，有形资产，以及持有的美国公司的股票。

Please see the differentiation as below: 具体区别可见下表：

| PROPERTY TYPE | GIFT TAX | | ESTATE TAX | |
|---|----------|-----|------------|----|
| | YES | NO | YES | NO |
| Tangible Personal Property in U.S. (e.g. jewelry) | X | | X | |
| Currency in U.S. Safe Deposit Box | X | | X | |
| Cash Deposits in a U.S. Bank | Possibly | | | X |
| U.S. Real Property | x | | X | |
| Non-U.S. Real Property | | X | | X |
| U.S. Stocks | | X | x | |
| Non-U.S. Stocks | | X | | X |
| U.S. Government and Corporate Bonds | | X | | X |
| U.S. States/Muni Bonds | | X | | X |
| U.S. Partnership/LLC Interest | Possibly | | Possibly | |
| Retirement Plans | | N/A | | X |
| Life Insurance Death Benefits | | X | | x |

7. What should you do to plan gift and estate tax? 有什么合理的赠予税和遗产税税务规划吗？

Yes. You may think about the direct ownership of U.S. situs property. Please consult a tax professional for tax plans in your specific situation.

有的。由于赠予税所要求交税的资产只有房产和有形资产，所以可以考虑如何将有形资产转为无形资产，从而避免赠予税。请咨询专业税务规划人员从而具体情况具体分析。

8. What tax rate you would subject to if exceed the BEA? 如果超出终身免税额，税率是多少？

| 2019 | |
|-------------------------|-----------|
| TAXABLE ESTATE 应税遗产金额 | RATE 适用税率 |
| \$0-\$10,000 | 18% |
| \$10,000 – \$20,000 | 20% |
| \$20,000 – \$40,000 | 22% |
| \$40,000 – \$60,000 | 24% |
| \$60,000 – \$80,000 | 26% |
| \$80,000 – \$100,000 | 28% |
| \$100,000 – \$150,000 | 30% |
| \$150,000 – \$250,000 | 32% |
| \$250,000 – \$500,000 | 34% |
| \$500,000 – \$750,000 | 37% |
| \$750,000 – \$1,000,000 | 39% |
| \$1,000,000+ | 40% |

Thinking ahead with MarcumBP...

Non-US citizens who live, work, or own property in the US need to have a clear understanding of the potential implications of the US estate and gift tax rules. As described in this article, residency and domicile choices can have major tax implications. An international estate planning professional should be consulted to help you determine any potential impact and develop an approach based on your specific circumstances.

在美国生活，工作或拥有房产的非美国公民需要对美国房地产和赠与税规则的潜在影响有一定地了解。如本文所述，居住身份的认定可能会产生重大的税务影响。我们建议您咨询国际税务规划专业人员，以帮助您提前了解任何潜在影响，并根据您的具体情况制定税务规划方法。

As companies and individuals increasingly become globally mobile, more and more people will be affected by multinational tax rules. We hope the information provided here will help you start thinking about steps to take to confirm you are properly prepared for potential US estate and gift tax implications of a move to the US or the purchase of US property. Thank you!

随着公司和个人的全球化发展，越来越多的人将受到跨国税收规则的影响。我们希望此处提供的信息可以帮助您考虑您是否已准备好应对移民美国或处理美国财产的过程中可能带来的美国遗产税和赠与税的影响。谢谢！

梁恩泽 Stanley Liang, CPA 执行董事 美国注册会计师

梁先生为各种不同行业的客户提供高质量的财务及税务筹划专业服务，包括为上市公司在中国的子公司以及计划在美国进行并购或 IPO 交易的中国公司提供会计、审计和咨询服务等。在加入麦楷博平前，梁先生曾分别担任一家饮料行业香港上市公司美国分公司财务总监职务、美国第五大会计师事务所纽约办公室高级分析师以及安永会计师事务所北京部高级审计师。

梁先生的专业知识领域涵盖金融、制造批发、医药、教育、房地产以及石油和天然气行业等。他为客户提供在美国的房地产投资信托基金、股票、固定收益和对冲基金等金融服务，亦为 401(k) 退休计划提供咨询，并确保客户符合美国政府的所有相关规定。



Stanley 
美国 纽约州



扫一扫上面的二维码图案，加我微信

Stanley (Enze) Liang CPA
Managing Director
Marcum Bernstein & Pinchuk LLP
7 Penn Plaza Suite 830
New York, NY 10001
D: (646) 442-4815
C: (718) 866-8185
F: (646) 349-5200
Stanley.liang@marcumbp.com