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Are you a U.S. person living in Canada?

Your U.S. status defines your tax obligations and filing requirements under the U.S. tax system

The United States (U.S.) has many tax regimes, including the U.S. income tax system and the U.S. transfer tax system. The transfer tax system consists of U.S. gift, estate and generation skipping tax.

The U.S. is one of the few countries in the world that levies tax on your worldwide income or worldwide estate based upon citizenship and residency status. The term 'U.S. person' embodies both of these concepts. The determination of your U.S. status is further complicated by the fact that the two systems define a U.S. person differently.

An individual who is considered to be a U.S. person for U.S. income tax purposes or U.S. transfer tax purposes, regardless of where you are living, has filing requirements under U.S. tax law; so, it is particularly relevant to determine your U.S. status, irrespective of the fact that you are living in Canada (and possibly also a citizen of

Canada) and meeting your Canadian income tax filing requirements.

This article provides some general information to consider in determining your U.S. status as a U.S. person for U.S. income tax and U.S. transfer tax purposes, only.

Are you a U.S. person?

A U.S. person for U.S. income tax purposes is either a U.S. citizen or a U.S. resident alien (resident alien is the concept of residency from a U.S. income tax perspective).

A U.S. person for U.S. transfer tax purposes is either a U.S. citizen or a U.S. domiciliary (domicile is the concept of residency from a U.S. transfer tax perspective). If you became a U.S. citizen only because of your connection with a U.S. possession (e.g. Puerto Rico or Guam), but do not live in the U.S., then you are considered a non-resident and not a citizen of the U.S. for U.S. transfer tax purposes.



If at the time of your birth, your parents were married to each other and were both U.S. citizens, then provided at least one of them had resided at some time in the U.S. before you were born, you too are a U.S. citizen.

Are you a U.S. citizen?

1. Where were you born?

If you were born in the U.S., or certain other territories of the U.S., and subject to the jurisdiction of the U.S., you are a U.S. citizen by birth.

A child of certain diplomats born in the U.S. would not be a U.S. citizen by birth because they are not subject to the jurisdiction of the U.S.

2. If you were born outside the U.S., do you have a U.S. citizen parent?

If you were born outside of the U.S. to a U.S. citizen parent or parents (including an adoptive parent), the law in effect at the time of your birth determines whether you are a U.S. citizen at birth. The other considerations for determining whether you are a U.S. citizen at birth include whether both or only one of your parents were U.S. citizens, whether your parents were married when you were born and the duration of your U.S. citizen parent's presence in the U.S. before your birth. Generally, at least one of your parents must have been a U.S. citizen when you were born and must have resided or been physical present in the U.S. for certain durations prior to your birth. For example, if you were born after November 13, 1986 and only one of your parents is a U.S. citizen, the U.S. citizen parent must have been physically present in the U.S. for at least 5 years prior to your birth (2 of those 5 years must be after their 14th birthday). If at the time of your birth, your parents were married to each other and were both U.S. citizens, then provided at least one of them had resided at some time in the U.S. before you were born, you too are a U.S. citizen.

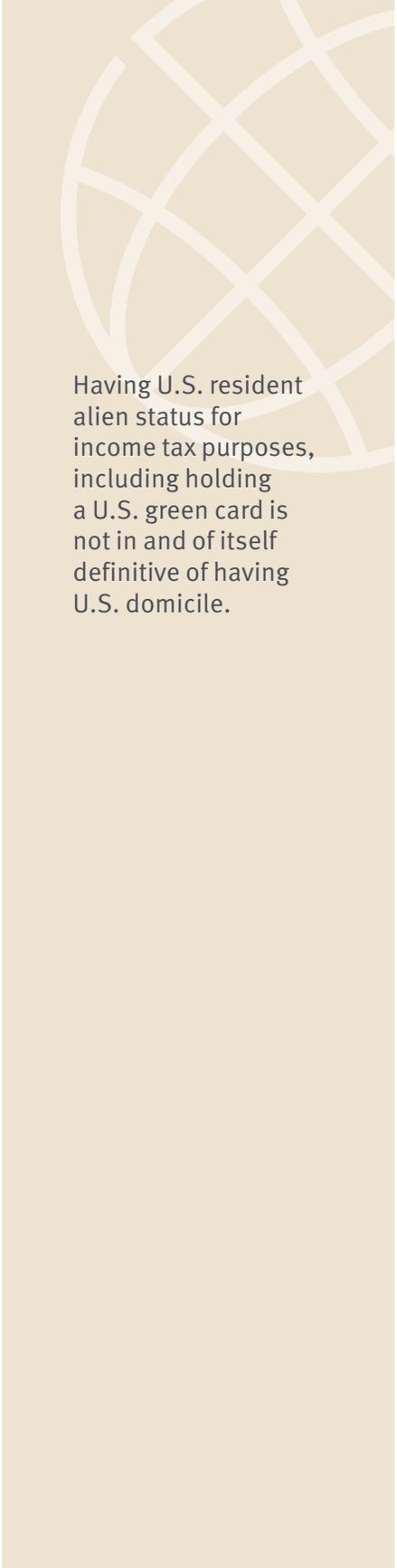
3. Did you become a U.S. citizen by naturalization?

If you chose to become a U.S. citizen through naturalization, but you no longer live in the U.S., you are still a U.S. citizen.

Are you a U.S. resident alien?

You are considered a U.S. resident alien for U.S. income tax purposes if you are not a U.S. citizen and you meet either the "green card test" or the "substantial presence test". The substantial presence test is a test based upon the number of days that you are physically present in the U.S. over a 3-year period that includes the current calendar year and the 2 immediately preceding calendar years, based upon a prescribed formula. This test is explained more fully in our article on determining U.S. residency for Canadians travelling and spending extended periods of time in the U.S.

The green card test applies to individuals who are lawful permanent residents of the U.S. If you have been given the privilege of residing permanently in the U.S. as an immigrant, according to U.S. immigration law, you would likely have been issued a 'green card' (officially known as the alien registration card). A green card is renewable every 10 years; however, even if not renewed and provided your residency status has not been taken away by a U.S. government action or abandoned by you through a formal administrative or judicial process and officially confirmed, you will continue to be a green card holder and considered a U.S. resident alien for U.S. income tax purposes.



Having U.S. resident alien status for income tax purposes, including holding a U.S. green card is not in and of itself definitive of having U.S. domicile.

Under the Canada-U.S. income tax treaty (Treaty), a U.S. resident alien who qualifies may elect not to be a U.S. resident alien for U.S. income tax purposes. To qualify, the U.S. resident alien must have closer ties to Canada based on the residency tie-breaker rules in the Treaty.

Are you a U.S. domiciliary?

You are considered a U.S. domiciliary for U.S. transfer tax purposes if you are not a U.S. citizen but it is your intention that the U.S. is your permanent home, indefinitely, and to where you intend to return whenever absent. Initially, to establish domicile you must be physically present in the U.S. with that intention. However, once established, U.S. domicile continues until a domicile is established in another country. Therefore, it is possible for you to be considered a U.S. domiciliary even if you are not currently residing in the U.S.

The determination of U.S. domicile can be complex. For example, having U.S. resident alien status for income tax purposes, including holding a U.S. green card is not in and of itself definitive of having U.S. domicile. Although, a green card does show

an intent to reside permanently in the U.S., you may not be considered domiciled in the U.S., if the facts demonstrate a foreign domicile. Through case law, several factors have been identified and taken into account in determining U.S. domicile. The U.S. will review the facts and circumstances in each case to determine your status.

For a better understanding of your obligations under the U.S. transfer tax system, please refer to our article on U.S. gift, estate and generation skipping tax. If you are uncertain of your status, you should seek advice from a qualified cross-border tax advisor and/or a qualified U.S. immigration lawyer.

This article may contain strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax, or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal, and/or insurance advisor before acting on any of the information in this article.

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