

32nd Annual LLCs, LPs and Partnerships

Texans Doing Business in Mexico and Mexicans Doing Business in Texas

El Camino Fiscal De Mexico a Los Estados Unidos (The Tax Road From Mexico to the United States)

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PASO 1: PREPÁRESE PARA SU VIAJE (STEP 1: PREPARE FOR YOUR TRIP)

Step 1(a): Assemble Assets and Liabilities and Other Relevant Information and Create a Structure Chart with Situs of Assets

- * Identify all assets held directly and through U.S. and foreign entities and trusts.
- * Identify location of assets
- * Identify all owners of assets held directly
- * Determine all members of entities (U.S. and foreign) holding assets and beneficiaries of trusts
- * Determine situs of trust
- * Determine nationality and tax residency of grantor and beneficiaries of trusts.

Step 1(b): Determine the U.S. Tax Classification of All Individuals in the Ownership Structure (Even if Such Individuals Are Not Moving to the U.S.)

“Nonresident alien” - individual who is neither a U.S. citizen nor a U.S. resident.

“U.S. resident” - (1) lawful permanent resident of the U.S. (the “green card test”); or (2) such individual meets a “substantial presence test.”

“Substantial Presence Test” - An individual meets the “substantial presence test” if: (a) such individual is physically present in the U.S. for 31 days during the current calendar year; and (b) the sum of the following equals or exceeds 183 days: (i) the number of days that the nonresident alien is present in the U.S. during the current calendar year; plus (ii) 1/3 of the days in the first preceding calendar year; plus (iii) 1/6 of the days in the second preceding calendar year.

“Closer-Connection Exception” - An individual is not treated as meeting the substantial presence test (and, thus, may be treated as a nonresident alien) if the individual meets a “closer-connection” test. An individual meets the closer connection test if he meets all three of the following conditions: (1) the individual is present in the U.S. for less than 183 days during the current year; (2) the individual has a tax home in a foreign country during the current year; and (3) the individual has a closer connection to a foreign country than to the U.S. In addition to the closer-connection exception, other exceptions to the substantial presence test are provided for certain medical conditions, foreign-government related individual, teacher or trainee, and students.

Reference should also be made to the residency “tie-breaker” rules of Article 4 of the U.S./Mexico.

I.R.C. § 7701(b); Treas. Reg. § 301.7701(b)-1; Treas. Reg. § 301.7701(b)-2; Treas. Reg. 301.7701-3; *see, e.g., Lujan v. Comm’r*, 80 T.C.M. (CCH) 780 (2000) (alien met substantial presence test for both years in issue); U.S./Mexico Income Tax Treaty, Art. 4.

Step 1(c): Determine the Expected Date of Move from Mexico.

Step 1(d): Determine the Types of U.S. Visa (or, if applicable, greencard) Sought by the Individual

See Annex A

Step 1(e): Determine the Individual’s Plans to Return to Mexico in the Near Term

**PASO 2: SABER ANTES DE IR
(STEP 2: KNOW BEFORE YOU GO)**

Step 2(a) -- Review U.S. First Year Residency Starting Date and Reporting Rules

Special Residency Starting Date Rules

Treas. Reg. § 301.7701(b)-4(a).

* **Residency Begins on Individual's Residency Starting Date:** An alien individual who was not a U.S. resident during the preceding calendar year and who is a U.S. resident for the current year will begin to be a resident for tax purposes on the alien's residency starting date.

* **Residency Starting Date for Individual Satisfying the Substantial Presence Test.** The residency starting date for an alien who satisfies the substantial presence test is the first day during the calendar year on which the individual is present in the U.S.

* **Residency Starting Date for Individual Satisfying Greencard Test.** The residency starting date for an alien who satisfies the green card test is the first day during the calendar year in which the individual is physically present in the U.S. as a lawful permanent resident.

* **Residency Starting Date for Individual Satisfying both the Substantial Presence Test and the Greencard Test.** The residency starting date for an alien who satisfies both the substantial presence test and the green card test will be the earlier of the first day the individual is physically present in the United States as a lawful permanent resident of the U.S. or the first day during the year that the individual is present for purposes of the substantial presence test.

Other Special Residency Starting Date Rules. Treas. Reg. Sec. 301.7701(b)-4 contains other special rules for calculating the residency starting date.

Special First Year Residency Reporting Rules

Treas. Reg. § 1.871-13(a).

* **Dual Status Alien Reporting Periods:** An individual who is a nonresident alien at the beginning of the taxable year but a citizen or resident of the U.S. at the end of the taxable year, is taxable for such year as though his taxable year were comprised of two separate periods, one consisting of the time during which he is a citizen or resident of the U.S. and the other consisting of the time during which he is not a citizen or resident of the U.S.

* **Applicable Rules for Dual Status Aliens:** Thus, for example, the federal income tax liability of an alien individual for the taxable year in which he changes his residence will be computed under two different sets of rules, one relating to resident aliens for the period of residence and the other relating to nonresident aliens for the period of nonresidence.

Step 2(b): Review U.S. Estate Tax Rules Applicable to Resident and Nonresident Aliens.

General Rule Applicable to Nonresident Aliens for Purposes of U.S. Federal Estate and Gift Taxation. For U.S. federal estate and gift tax purposes, nonresident aliens are subject to U.S. federal estate and gift tax on their "property situated in the U.S."

I.R.C. §§ 2101(a), 2103, 2501(a)(1), 2511.

Residency for U.S. Estate and Gift Tax Purposes. The residency test for federal estate and gift tax purposes is different than the residency test for federal income tax purposes. For U.S. estate and gift tax purposes, a U.S. resident is an individual who was domiciled in the U.S. at the time of his death or gift, whichever is applicable. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of moving. Residence without the requisite present intention to remain indefinitely will not sufficiently constitute a domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal. An individual may be a "resident" for income tax purposes but not for estate and gift tax purposes.

Treas. Reg. § 20.0-1(b)(1); Treas. Reg. § 25.2501-1(b).

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