美国税收居民认定规则

一、个人

一般来说，根据美国国内收入法典（Internal Revenue Code），所有美国公民和美国居民都被视为美国税收居民。

对非美国公民（外籍个人）而言，需依据“绿卡标准”或者“实际停留天数标准”来判定是否为外籍个人税收居民。美国居民标准通常基于公历年度计算。

绿卡标准　根据美国移民法，如果外籍个人在一个公历年度内的任何时间里是美国的合法永久居民（Lawful Permanent Resident LPR），该个人即满足了绿卡标准。上述“合法永久居民”是指，由美国公民与移民服务局（USCIS）（或者该组织前身）特许以移民身份永久居住在美国的个人。一般来说，当个人拿到 USCIS 发放的外国人注册卡（即“绿卡”）时，便取得了美国的永久居住权。除非存在下文讨论的双重税收居民身份的特殊规定情况，只要个人的合法永久居民身份未被 USCIS 撤销或依法判定已经放弃，该个人将一直被视为美国税收居民。绿卡过期并不一定代表美国税收居民身份的终结。

实际停留天数标准　如果外籍个人在美国停留的时间同时满足以下两个条件，则被视为满足本标准：

1. 本公历年度内在美停留不少于 31 天；

2. 根据以下计算公式，本公历年度和过去两个公历年度加起来的三年内在美停留不少于 183 天:

a. 本年度在美停留的全部天数，加上

b. 前一年度在美停留天数的三分之一，加上

c. 再前一年度在美停留天数的六分之一。

一般来说，个人在一天中的任何时间出现在美国境内都视为其当天在美停留。但是，在某些特定情况下，个人在美停留时间不计算在实际停留天数内。相关信息可以查阅美国国内收入局 519 号刊物——外籍个人税务指南（http://www.irs.gov/pub/irs-pdf/p519.pdf）。

第一年选择（First-Year Choice Election） 外籍个人若在前一公历年度被视为非美国居民、但在随后一年满足实际停留天数标准并被视为美国税收居民，那么其可以自主选择在前一年度的一段时间内成为美国税收居民。相关信息可以查阅美国国内收入局 519 号刊物——外籍个人税务指南。

双重税收居民 一些绿卡持有者和外籍居民个人有可能同时是与美国签有税收协定的辖区的税收居民。如果此类“双重税收居民”根据税收协定的“加比规则”（tie-breaker rule）判定为缔约对方税收居民，他们可以选择在整个或部分纳税年度内作为非居民外籍个人计算其在美国的应纳税额，但前提是必须事先就此事通知美国税务当局，否则他们将继续作为美国税收居民计算应纳税额。

在美国签署的众多双边税收协定下，美国公民不会自动成为协定居民。双边税收协定针对美国公民在其他国家申请协定待遇还规定了额外要求。美国公民和其他外籍居民个人可以通过提交美国国内收入局 8802 表格，向美国国内收入局申请美国税收居民身份证明。相关信息可参见美国税收居民身份申请与指南（http://www.irs.gov/pub/irs-pdf/i8802.pdf）。美国税收居民身份证明在绝大多数情况下只用于美国纳税人向协定缔约方申请享受税收协定待遇，因此，开具税收居民身份证明时应考虑特定协定条款可能对美国税收居民身份产生的影响。

相关税收规定包括:

美国国内收入法典第 7701(b)章节

财政部法规§§301.7701(b)-1(b)与(c)章节；301.7701(b)-3章节；301.7701(b)-4(c)(3)章节;301.7701(b)-7章节。

二、实体

公司　一般来说，依据美国联邦、各州或者哥伦比亚特区法律建立或组织的公司视为国内公司（domestic corporation）。一家公司不会因为管理机构所在地位于美国境内而被视为国内公司。但是，根据相关法律（如国内收入法典 269B, 953(d), 1504(d)与 7874 章节）的特定条款（有

些是可选的，有些是非自愿的），某些外国公司可视为国内公司。

国内公司无论是否为其他国家税收居民，都被视作美国税收居民。如果某公司既是美国税收居民，又是协定缔约方税收居民，即所谓“双重税收居民”，那么可以根据税收协定中的“加比规则”来判定该公司是哪个辖区的税收居民。协定税收居民身份的认定不会对该公司的美国国内公司身份产生影响。

“打勾规则”（check-the-box regulations）- 打勾规则列举了必须被认定为“实质性公司”（per se corporation）的国内商业实体。从美国联邦税收的角度来讲，实质性公司在任何时间都应被视为公司，且不能更改（财政部法规 301.7701-2(b)章节）。此类公司包括依据联邦或各州法律成立的实体或公司、保险公司，以及在美国和其他辖区均注册的实体，且其外国注册实体已列入外国实体“实质性公司”列表或国内实体“实质性公司”列表。不在“实质性公司”列表上的国内商业实体（例如有限责任公司等），如果有两个或以上的所有者，即视为合伙企业；如果只有一个所有者，则视为“穿透体”（disregarded entity）。合伙企业与穿透体都被视为税收透明体，下文会具体阐述。根据财政部法规§ 301.7701-3(c)章节的规定，在特定条件下，这些商业实体可以将其类型由公司变更为税收透明体（反之亦然），这个选

择过程称为“勾选”。关于有限责任公司的相关税收信息可参见美国国内收入局刊物 3402 号（http://www.irs.gov/pub/irs-pdf/p3402.pdf）。某一实体无论选择作为税收透明体或是取消已有的税收透明体身份，该实体和/或者其所有者将被视作发生了特定交易，相关内容在财政部法规§301.7701-3 章节中有详细介绍。

不在“实质性公司”列表上、但仍被视为公司的实体，包括但不限于：国内收入法典 7704 章节规定的在公开市场交易的合伙企业（有部分例外）、国内收入法典 501(c)章节规定的（以公司或信托形式成立的）慈善组织或免税组织、国内收入法典 851 章节规定的受监管的投资公司（Regulated Investment Company）、国内收入法典 856 章节规定的（以公司、信托或协会形式成立的）不动产投资信托（Real Estate Investment Trust）、国内收入法典 860D 章节规定的不动产抵押投资导管公司（Real Estate Mortgage Investment Conduit）。

合伙企业　通常来说，依据美国联邦、各州或者哥伦比亚特区法律创立或组织的合伙企业，应视为国内合伙企业。除了在公开市场上交易的合伙企业以外，合伙企业都属于税收透明体。因此，合伙企业的税收居民身份与其取得的所得是否需要在美国缴税无关。税收由合伙人负担，每个合伙人根据分配到的收入及其税收居民身份（例如非居民外籍个人、美国公民、外国公司或国内公司等）承担相应的纳税义务。

同样，因为穿透体也是税收透明体，穿透体的税收居民身份与其取得的所得是否需要在美国缴税无关，税收由穿透体的所有者负担，在所有者所在州缴纳。

信托　国内收入法典 7701(a)(30)(E)与 7701(a)(31)章节规定了信托是否属于国内实体的具体情形，主要取决于美国国内法院是否能够对该信托的管理行使主要监督权，还取决于有关该信托的所有重大决定是否由一个或多个美国人控制。

一家信托既有可能是税收透明体，也可能是应纳税实体，这主要是根据信托文件的条款来确定的。根据国内收入法典第 671-679 章节的规定，“委托人信托”（Grantor Trust）不是应纳税实体，因此不是税收居民。根据国内收入法典 671-678 章节的规定，如果委托人保留了对信托的某种法定权力，或者拥有一项或多项特定权力能够控制全部或部分信托，则该信托将被视为由委托人（一般指向信托贡献财产的人）所有。根据国内收入法典 679 章节的规定，对于委托人是美国人的外国信托，如果信托受益人是美国人，则该信托被视为税收透明体。如果“委托人信托”的所有者将信托的全部收入、扣除以及抵扣项目作为其自身发生的项目，那么该所有者的税收居民身份将决定信托是否应作为美国税收居民就其取得的所得缴税。

所谓的“简单信托”（“simple” trusts）也不是美国税收居民。根据国内收入法典 651-652 章节的规定，一般来说，“简单信托”应分配所有当期收入，并且没有应付、计提或用于慈善目的的款项。

根据国内收入法典 661-662 章节的规定，可以积累收入、且信托文件或其他相关文件不要求将当期所有净收益分配给受益人的信托被称为“复杂信托”或“酌处权信托”（“complex” or “discretionary” trust）。复杂信托通常被视为应纳税实体，如果该信托为美国国内信托，则视为美国税收居民。复杂信托应就其全球收入进行纳税申报，但可以扣除当年已分配给信托受益人的部分（以可分配净收入 Distributable Net Income, DNI 为限）。

根据国内收入法典 61(a)(15)章节的规定，对于简单信托和复杂信托而言，分配给受益人的收入不在信托层面征税，而是依据受益人的税收居民身份和国籍由受益人缴税。

养老金信托（特别是符合国内收入法典 401(a)章节规定条件的美国国内养老金信托）视为美国税收居民，但是符合有关条件的养老金信托一般无需缴税。

遗产　根据国内收入法典 641 章节的规定，美国国内遗产（domestic estate）与信托一样，都属于美国税收居民，在其存续期间需要就其全球收入缴税。通常情况下，遗产的存续期是有限的，因为遗产执行人必须在死者去世后的规定

期限内提交纳税申报表，也就有效终止了该遗产作为应税实体的存在。关于“国外遗产”（foreign estate），目前国内收入法典并没有一个简单的法律定义，因此在判定该遗产在税收上是否应作为“国外”遗产处理时，需要综合考虑各种因素，例如遗产所在地、遗产管理所在地、遗产代理人的国籍及居民身份等，死者和遗产继承人的国籍并非决定因素。

美国国内收入局 8802 表格用于纳税人向美国国内收入局申请自身的美国税收居民身份证明，如果申请人是税收透明体，则可证明其所有者为美国税收居民。美国税收居民身份证明在绝大多数情况下只用于美国纳税人向协定缔约方申请享受税收协定待遇，因此，开具税收居民身份证明时应考虑特定协定条款可能对美国税收居民身份产生的影响。

相关税收规定包括:

国内收入法典§§7701 (a)(1)-(5)、(30)和(31)章节

国内收入法典§§269B、953(d)、1504(d)和 7874 章节

财政部法规§§301.7701-1 至 5、301.7701-7 章节

三、不视为税收居民的实体

根据美国国内收入法典的规定，合伙企业（在公开市场上交易的合伙企业除外）、S 类公司（S corporation）、委托人信托、简单信托、共同信托基金（Common Trust Fund）都是税收透明体。一般来说，对于不属于“实质性公司”的美国国内商业实体，除非其自己选择了公司身份，否则将视为穿

透体（如果只有一个所有者）或者合伙企业（如果有多个所有者）处理。如果选择作为公司，该实体应按协定规定作为税收居民缴税。不属于“实质性企业实体”的外国公司也自动或选择成为穿透体或者合伙企业。不属于“实质性公司”的外国商业实体，可以作为或选择作为穿透体或合伙企业。穿透体和合伙企业都是税收透明体，无须负担或缴纳所得税，不论该透明体是否分配收入，其所有者均需根据现时情况分别考虑各自的收入分配份额，并且以所有者直接取得收入为假设来判定收入的特征及来源。如上所述，税收透明体可以是美国税收居民。

只要税收透明体收入所归属的个人是美国税收居民，那么该税收透明体从外国取得的收入可以享受相关协定待遇。

更多信息可以参见美国国内收入局 8802 表格以及美国居民身份证明申请与指南（http://www.irs.gov/pub/irs-pdf/i8802.pdf）。

四、联系方式

Deputy Commissioner (International)

Large Business and International Division

Internal Revenue Service

1111 Constitution Avenue, NW

Routing M4-365

Washington, DC 20224

Attn: TAIT (Treaty Assistance and Interpretation Team).

美国纳税人识别号编码规则

一、纳税人识别号介绍

美国纳税人识别号包括个人使用的社会保险号（SSN）以及个人或实体使用的雇主身份号码（EIN）。另外，对于应该拥有美国纳税人识别号、但是没有取得或没有资格取得社会保险号的个人，将发放个人纳税人识别号（ITIN）。

纳税人必须在提交给向美国国内收入局的所有纳税申报表及其他文件上注明其纳税人识别号（即 SSN、EIN 或 ITIN）。当他人在提交给国内收入局的申报表或其他文件上需要使用该纳税人的纳税人识别号时，纳税人必须向他人提供其纳税人识别号。

社会保险号由美国社会保障总署（Social Security Administration）颁发，更多相关信息参见 http://www.ssa.gov/。

雇主身份号码由美国国内收入局发放给个体户、合伙企业、公司（包括有限责任公司）和其他税收实体，用于填写和提交纳税申报表。可以通过以下方法申请雇主身份号码：1）在线提交 SS-4 表格申请（http://www.irs.gov/pub/irs-pdf/fss4.pdf）；2）邮寄或传真 SS-4 表格。美国境外申请者可以拨打电话（267）941-1099（收费电话）进行咨询。更多信息，

可以参见国内收入局刊物 1635 号“了解你的雇主身份号码”（http://www.irs.gov/pub/irs-pdf/p1635.pdf）。

个人纳税人识别号由美国国内收入局发放给应该拥有纳税人识别号、但是没有从社会保障总署取得或没有资格获得社会保险号码的个人。个人纳税人识别号的发放与移民身份无关，因为美国居民个人和非居民外籍个人都可能需要申报纳税。除非特殊情况，个人必须填写有效的联邦所得税纳税申报表，才能取得个人纳税人识别号。个人可以通过填写 W-7 表，即个人纳税人识别号申请表（http://www.irs.gov/pub/irspdf/fw7.pdf）申请个人纳税人识别号。

二、纳税人识别号编码规则

社会保险号（SSN）的格式是：xxx-xx-xxxx。数字的前三位代表地理标识，中间两位代表申请人的申请顺序（无特别涵义），最后四位随机生成。

雇主身份号码（EIN）的格式是：xx-xxxxxxx。

个人纳税人识别号（ITIN）是以 9 开头的九位数，格式是：9xx-xx-xxxx。

三、如何找到纳税人识别号

美国纳税人识别号一般会在纳税申报表或者美国国内收入局的其他表格上找到，社会保险号在美国社会保障总署发放的社会保险卡上显示。在美国，纳税人识别号是需保密的私人身份信息。当纳税人识别号提供给美国国内收入局时，

将按照国内收入法典 6103 章节相关规定受到保护；在某些情况下，当纳税人识别号信息是由外国政府依据协定或协议提供给美国国内收入局时，国内收入法典 6105 章节以及相关双边税收协定、税收信息交换协议或者其他关于信息交换的双边协议中均包含保密条款。

四、有关国内网站

http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-TIN

五、联系方式

有关社会保险号的更多信息，可以参见美国社会保障总署网站 http://www.ssa.gov/agency/contact/。

有关雇主身份号码和个人纳税人识别号的更多信息，请注意以下说明:

美国主管当局不负责提供纳税人识别号信息。

纳税人如果有具体的个人或企业纳税账户问题，可以拨打电话或传真联系国际纳税人服务热线中心。该中心周一至周五（6：00-23：00 东部时间）对外服务。

电话：267-941-1000（收费电话）

传真：267-941-1055。

外国政府如果有美国纳税人识别号的问题，请登录美国国内收入局网站“美国税务局国际访问在线项目”（IRS 务 International Visitors Program online ，

http://www.irs.gov/Businesses/International-Businesses/Internal-Revenue-Service International-Visitors'-Program-(IVP)），或者联系协定协助与解释团队（TAIT），了解关于税收居民规则或者相互协助的问题，联系方式参见“美国税收居民认定规则”部分。

资料来源：

美国税收居民身份认定规则 Rules governing tax residence:

http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/United-States-Tax-Residency.pdf

美国纳税人识别号编码规则 TINs:

http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/United-States-TIN.pdf

United States - Information on residency for tax purposes

Section I - Criteria for Individuals to be considered a tax resident

As a general matter, under the U.S. Internal Revenue Code (Code), all U.S. citizens and U.S. residents are treated as U.S. tax residents.

In order for a non-U.S. citizen (alien individual) to be treated as a resident alien, he or she must satisfy either the "green card test" or the substantial presence test. The U.S. residence tests are generally applied on an annual calendar year basis.

Green Card Test – An alien individual will meet the green card test if the individual is a lawful permanent resident (LPR) of the United States, under U.S. immigration law, at any time during the calendar year. An individual is considered a LPR if such individual has been given the privilege by the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) of residing permanently in the United States as an immigrant. An individual will generally have this status if USCIS has issued an alien registration card, also known as a "green card" to the individual. Unless the special rule for dual residents discussed below applies, an individual will continue to be treated as a U.S. resident under this test unless his or her LPR status is taken away by USCIS or is administratively or judicially determined to have been abandoned. The mere expiration of the actual "green card" document is not sufficient to terminate residence for tax purposes.

Substantial Presence Test – An alien individual will meet the substantial presence test if the individual is physically present in the United States for at least:

1. 31 days during the current calendar year; and

2. 183 days during the 3-year period that includes the current calendar year, and the 2 calendar years immediately preceding counting:

    a. All days of physical presence in the United States during the current calendar year, and

    b. 1/3 of the days the individual was present in 1st preceding year; and

    c. 1/6 of the days the individual was present in 2nd preceding year.

Generally, an individual is treated as present in the United States on any day he or she is physically present in the country at any time during the day. However, there are exceptions where certain days of physical presence may not count for purposes of the test. For information on the specific exceptions, see IRS Publication 519, U.S. Tax Guide for Aliens (http://www.irs.gov/pub/irs-pdf/p519.pdf).

First-Year Choice Election – An alien individual who is classified as a nonresident of the United States for the entire calendar year immediately preceding his or her first calendar year as a U.S. resident under the substantial presence test may nevertheless be able to elect to be treated as a U.S. resident for part of the immediately preceding calendar year by making a special election. For information on the specific requirements of the First-Year Choice election, see IRS Publication 519.

Dual residents – Some green card holders and other resident aliens may also be residents of a foreign jurisdiction with which the United States has an income tax treaty. If such "dual residents" would be residents of the other country under a tie-breaker rule in the treaty, they may compute their U.S. tax liability for all or part of a tax year as if they were nonresident aliens provided they notify the U.S. tax authority that this is what they are doing. If they fail to notify the U.S. tax authority, they will continue to be treated as U.S. residents for purposes of computing their U.S. tax liability.

U.S. citizens are not automatically treaty residents under a number of U.S. tax treaties. The treaties provide additional requirements for those individuals to claim benefits as U.S. citizens from another country. U.S. citizens and other U.S. resident aliens may file IRS Form 8802, Application for United States Residency Certification, and Instructions (http://www.irs.gov/pub/irs-pdf/i8802.pdf), to obtain a letter from the U.S. Internal Revenue Service (IRS) certifying that the applicant is a U.S. resident. The certification of residence is used almost exclusively by U.S. taxpayers to demonstrate to another jurisdiction that they are eligible to obtain tax treaty benefits, and therefore, takes into account specific treaty rules that may affect whether a person is resident of the United States for purposes of that treaty.

Relevant Tax Provisions include the following:

Code section 7701(b)

Treas. Reg. §§ 301.7701(b)-1(b) & (c); 301.7701(b)-3; 301.7701(b)-4(c)(3); 301.7701(b)-7

Section II - Criteria for Entities to be considered a tax resident

Corporations – Generally a corporation is treated as a domestic corporation if it is created or organized under the laws of the United States, any State, or the District of Columbia. No other criteria related to place of management will cause a corporation to be domestic. There are, however, specific statutory provisions that treat certain foreign corporations as domestic. Some of these statutory provisions apply for all purposes of the Code, such as sections 269B, 953(d), 1504(d), and 7874 (some are elective and some involuntary).

Domestic corporations are U.S. tax residents, regardless of whether they are also residents of a foreign jurisdiction. If a corporation is a dual resident of the United States and a treaty jurisdiction, a tax treaty may contain a so-called tie-breaker rule to determine the sole jurisdiction of the corporation for treaty purposes. The determination of its treaty residence will not affect its status as a domestic corporation.

Check-the-box regulations – The check-the-box regulations list certain domestic business entities that are considered "per se" corporations (per se corporations are always treated as corporations for U.S. federal tax purposes and cannot elect to be treated otherwise). Treas. Reg. §301.7701-2(b). They include domestic entities formed under a Federal or State statute that refers to the entity as incorporated or as a corporation, and insurance companies. It also includes any entity that is chartered in both the United States and a foreign jurisdiction, if the foreign chartered entity is on the list of foreign entities that are per se corporations or on the list of domestic entities that are per se corporations. Domestic business entities not on the list of per se corporations in Treas. Reg. §301.7701-2(b), such as limited liability companies, default into partnership status if they have two or more owners and into disregarded entity status if they have one owner. Both partnerships and disregarded entities are treated as fiscally transparent entities, as discussed further below. Within some limits, these business entities are eligible to elect to change their classification from corporate to fiscally transparent status (and vice versa) under Treas. Reg. §301.7701-3(c). This election is colloquially referred to as "checking the box." For further information on taxation of limited liability companies, see IRS Publication 3402 (http://www.irs.gov/pub/irs-pdf/p3402.pdf). If an entity elects into or out of fiscally transparent status, certain transactions are deemed to occur with respect to the entity and / or its owners that are discussed in detail in Treas. Reg. §301.7701-3.

Entities that are not on the list of per se corporations but that are also treated as corporations include, but are not limited to, a publicly traded partnership described in section 7704 of the Code (subject to certain exceptions), a charitable or other tax exempt organization (formed as a company or trust) under section 501(c) of the Code, a regulated investment company (RIC) as defined in section 851 of the Code, a real estate investment trust (formed as a corporation, trust or association) (REIT) as defined in section 856 of the Code, and a real estate mortgage investment conduit (REMIC) as defined in section 860D of the Code.

Partnerships – Generally a partnership is treated as a domestic partnership if it is created or organized under the laws of the United States, any State, or the District of Columbia. With the exception of publicly traded partnerships, an entity classified as a partnership is fiscally transparent. Thus, the residence of a partnership has no bearing on whether its income is subject to U.S. tax; rather, tax is imposed on each partner of a partnership in accordance with each partner's distributive share of partnership

income, and each partner's status as a nonresident or resident of the United States (e.g., as nonresident alien or U.S. citizen, as a foreign corporation or domestic corporation). Similarly, because disregarded entities are also fiscally transparent, the residence of the disregarded entity has no bearing on whether its income is subject to U.S. federal tax; rather, tax is imposed on the disregarded entity's sole owner in the state in which the owner is resident.

Trusts – Sections 7701(a)(30)(E) and 7701 (a)(31) of the Code and regulations thereunder collectively define whether a trust is domestic by reference to whether a court within the United States is able to exercise primary supervision over the administration of the trust, and whether one or more U.S. persons have the authority to control all substantial decisions of the trust.

A trust may be either fiscally transparent for U.S. tax purposes or taxable as an entity in its own right, depending primarily on the terms of the trust document. A "grantor trust" (described in sections 671 – 679 of the Code) is not a taxable entity, and thus not a tax resident. Rather it is treated as owned by the grantor (generally a person who has contributed property to the trust) if the grantor has retained certain statutory powers over the trust, or holds one or more specified powers to control the trust or portion of the trust. See sections 671-678 of the Code. Foreign trusts with U.S. grantors are fiscally transparent if the trust may benefit any U.S. person. See section 679 of the Code. In the case of a grantor trust, the owner takes into account all items of income, deductions, and credits of the trust as if they were his own, and the owner's residence status determines whether the trust's income will be taxed as the income of a resident in the United States.

So-called "simple trusts" are also not tax residents. In general, a trust that is required to distribute all of its income currently, and that does not provide for amounts to be paid, set aside, or used for charitable purposes is considered a "simple trust". See sections 651-652 of the Code.

A trust that can accumulate income, and is not required by the terms of the trust document or other relevant documents, to distribute all of its net income to beneficiaries is referred to as a "complex" or "discretionary" trust. See sections 661-662 of the Code. A complex trust generally is considered a taxable entity, and is a tax resident if the trust is a domestic trust. It files a tax return reporting its worldwide income, but may deduct amounts earned in that year (limited to distributable net income or DNI) to the extent such amounts are distributed to trust beneficiaries in that year.

In the case of both simple and complex trusts, distributions of income to beneficiaries that are not taxed in the trust are income of the beneficiaries and are taxed in accordance with their residency and citizenship. Section 61(a)(15) of the Code.

Pension trusts, in particular section 401(a) of the Code qualified pension trusts, which must be domestic, are considered to be tax residents, although generally exempt from tax on their gross income if all relevant requirements of the Code are met.

Estates – A domestic estate is a tax resident, liable to tax on its worldwide income in the same manner as a trust, while it is in existence. Section 641 of the Code. Generally that period is limited in time, since the executor of a decedent's estate must file a tax return within a prescribed time following the death of the decedent, which effectively terminates the existence of an estate as a separate taxable entity. There is no simple statutory definition of the term "foreign estate," and a variety of factors have to be taken into account in determining whether an estate should be treated as "foreign" for this purpose. These include, among others, the situs of the estate assets, the location of the estate's domiciliary administration, and the nationality and residence of the domiciliary personal representative. Neither the nationality of the decedent nor that of the estate's beneficiaries is dispositive.

See also IRS Form 8802, Application for United States Residency Certification, and Instructions (http://www.irs.gov/pub/irs-pdf/f8802.pdf)). This application form is used to obtain a letter from the U.S. Internal Revenue Service (IRS) certifying that the applicant is itself a U.S. resident, or if the applicant is fiscally transparent, that one or more of its owners is a U.S. resident. The certification of residence is used almost exclusively by U.S. taxpayers to demonstrate to another jurisdiction that they are eligible to obtain tax treaty benefits, and therefore, takes into account specific treaty rules that may affect whether a person is resident of the United States for purposes of that treaty.

Relevant Tax Provisions include the following:
Code §§ 7701 (a)(1)-(5), (30) and (31). Code §§ 269B, 953(d), 1504(d), and 7874
Treas. Reg. §§ 301.7701-1 through -5, 301.7701-7

Section III - Entity types that are as a rule not considered tax residents

Partnerships (other than publicly traded partnerships), subchapter S corporations, grantor trusts, simple trusts, and common trust funds under section 584 of the Code are fiscally transparent entities for purposes of U.S. federal tax law. In general, a business entity that is domestic and not a per se corporation will default into either disregarded entity status (if one owner) or partnership (if more than one owner) unless it elects to be treated as a corporation. If it makes the election to be a corporation, it will be liable to tax as a resident for treaty purposes. A foreign business entity that is not a per se corporation (regulations list foreign per se corporations) may also default or elect to be treated as a disregarded entity or partnership. Disregarded entities and partnerships are fiscally transparent for U.S. tax purposes. For these purposes, fiscal transparency means that no income tax is imposed on or collected from the entity, and the owner or owners of the entity separately take(s) into account on a current basis

their share of such entity's income, whether or not distributed, and the character and source of the income to the owner are determined as if the income was realized directly by the owner or owners. As discussed above, a fiscally transparent or flow-through entity may be a U.S. tax resident.

An entity that is fiscally transparent for U.S. tax purposes should not be denied treaty benefits on income derived from a foreign country so long as the person who takes into account the income derived through the fiscally transparent entity is a U.S. tax resident.

See also IRS Form 8802, Application for United States Residency Certification, and the Instructions (http://www.irs.gov/pub/irs-pdf/i8802.pdf), as discussed in Section II, above.

Section IV - Contact point for further information

Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, NW
Routing M4-365
Washington, DC 20224
Attn: TAIT (Treaty Assistance and Interpretation Team)

United States - Information on Tax Identification Numbers

Section I – TIN Description

U.S. taxpayer identification numbers include a Social Security Number (SSN), which is issued to individuals, and an Employer Identification Number (EIN), which is issued to individuals or entities. In addition, an Individual Taxpayer Identification Number (ITIN) is issued to individuals who are required to have a U.S. taxpayer identification number but who do not have and are not eligible to obtain an SSN.

A taxpayer must provide the taxpayer identification number (SSN, EIN or ITIN) on all tax returns and other documents sent to the IRS. A taxpayer must also provide its identification number to other persons who use the identification number on any returns or documents that are sent to the IRS.

An SSN is issued to individuals by the Social Security Administration. Further information regarding the SSN may be found at: http://www.ssa.gov/ .

An EIN is issued by the IRS to sole proprietors, partnerships, corporations (including limited liability corporations), and other entities for tax filing and reporting purposes. Application for an EIN may be made by either: (1) submitting IRS Form SS-4, Application for Employer Identification Number (http://www.irs.gov/pub/irs-pdf/fss4.pdf) online; or (2) mailing or faxing the Form SS-4 as described in the form instructions. International applicants may call telephone number (267) 941-1099 (not a toll-free number). For more information about EINs, see IRS Publication 1635, Understanding Your EIN (http://www.irs.gov/pub/irs-pdf/p1635.pdf).

An ITIN is a tax processing number issued by the IRS to individuals who are required to have a U.S. taxpayer identification number but who do not have and are not eligible to obtain an SSN from the Social Security Administration. ITINs are issued regardless of immigration status because both resident and nonresident aliens may have a U.S. filing or reporting requirement under the Code. Individuals must have a filing requirement and file a valid federal income tax return to receive an ITIN, unless they meet an exception. Application for an ITIN may be made on IRS Form W-7, Application for IRS Individual Taxpayer Identification Number (http://www.irs.gov/pub/irs-pdf/fw7.pdf).

Section II – TIN Structure

An SSN is in the following format: xxx-xx-xxxx. The first three digits have geographical significance, the next two digits have no real significance and are issued sequentially, and the last four digits are random.

An EIN is in the following format: xx-xxxxxxx.

An ITIN is a nine-digit number that always begins with the number 9 and is in the following format: 9xx-xx-xxxx.

Section III – Where to find TINs?

The U.S. Taxpayer Identification Number may be found on a number of documents, including tax returns and forms filed with the IRS, and in the case of an SSN, on a social security card issued by the Social Security Administration. In the United States, TINs are generally considered confidential, private identity information. When provided to the IRS, TINs are protected from disclosure under section 6103 of the Code; and, in some cases, section 6105 of the Code in conjunction with confidentiality provisions of the relevant tax treaty, tax information exchange agreement, or other bilateral agreement for the exchange of information, when the information is provided to the IRS by a foreign government under such treaty or agreement..

Section IV – TIN information on the domestic website

http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-TIN

Section V – Contact point for further information

Regarding the SSN, contact the Social Security Administration as provided in its website: http://www.ssa.gov/agency/contact/ .

Regarding the EIN and ITIN, please see the following:

The U.S. competent authority is not generally involved in the provision of TINs.

Taxpayers with specific individual or business account questions should contact the International Taxpayer Service Call Center by phone or fax. The International Call Center is operational Monday through Friday, from 6:00 a.m. to 11:00 p.m. (Eastern Time):

Tel: 267-941-1000 (not toll-free)

Fax: 267-941-1055

Depending on the nature of their inquiry, foreign governments with questions about the United States' TINs may consult the IRS website, contact the IRS' International Visitors Program online via the website,

http://www.irs.gov/Businesses/International-Businesses/Internal-Revenue-ServiceInternational-Visitors'-Program-(IVP),
or for matters involving questions of residency or mutual assistance, contact the Treaty Assistance and Interpretation Team (TAIT), whose contact information is listed under “Residency,” above.