U.S. Income Taxation Reporting for Foreign Students, Scholars and Teachers

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Are You Resident or Nonresident?

Residence for tax purposes not Immigration.

Tax Residence
U.S. Tax Residence

Resident Alien
Lawful Permanent Resident (Green Card Holder)
Substantially Present in the U.S.
   More than 183 days
Substantial Presence Test - 3 year look-back

Nonresident Alien
Less than 183 Days under Substantial Presence Test
Exempt Individuals – don’t count US days of presence

Dual-Status Taxpayers
   Part-year resident alien and part-year nonresident alien
U.S. Tax Residence

• **Substantial Presence Test**
  At least 31 days in the current year (2016), and

  A total of 183 days in the US during the 3-year period that includes 2014, 2015 and 2016 by counting:

  All days in current year (2016)
  1/3 days in prior year (2015)
  1/6 days in 2nd prior year (2014)

• **Exceptions to Substantial Presence Test**
  Exempt Individuals
  Medical Visitors
  Days in Transit
Exempt Individuals

Exempt from counting days of US presence, not exempt from tax.

Students
- F, J, M or Q visas
- Exempt for 5 Calendar Years
- Closer Connection Extension
  - No intent to stay beyond graduation/practical training

Teachers and Researchers
- J or Q Visas
- Exempt for 2 out of the 6 preceding years
- 3 - 4 years if all wages paid by foreign employer
- No de minimus presence.
Exceptions to U.S. Residency

Closer Connection Exception
- Substantial presence but less than 183 days in current year
- Closer Connection Extension (Students)

Treaty Tie-Breaker
- Resident in both countries
- Fact balancing test: domicile, principal residence, closer contact, citizenship

Excluded days of US Presence
- U.S. Travel Days – in transit
- Canada and Mexico commuters
- Medical visit
U.S. Tax Reporting

• Nonresident Aliens
  U.S. Source Income
  U.S. Travel Days

• Resident Aliens
  Worldwide Income
  Foreign Bank Accts.
  Foreign Financial Assets
  Gifts from Foreign Sources
  Foreign Inheritance
  Foreign Business Entities
  Foreign Pension Accounts
Nonresident Alien

- Filing status Single or Married Separate

- Bank interest and capital gains are generally excluded from U.S. tax.

- Capital Gain Tax for certain Nonresident Aliens in the U.S. for more than 183 days in the current year.

- Graduated Tax Rates - Wages, non-qualified fellowships/scholarship and business income taxed at graduated rates.

- Flat Tax Rates - Passive income (dividends, rents, royalties, etc.) unless connected with a U.S. trade or business.

- Tax treaties may exempt certain income and/or reduce the rate of tax.
Resident Alien

- Subject to U.S. income tax in the same manner as U.S. citizens.

- Required to report worldwide income.

- Foreign Tax Credits available for foreign taxes paid on foreign-source income.

- Filing status: Single, Married Filing Joint, Married Filing Separate, Head of Household.

- **Strict requirements for reporting offshore income, financial assets and certain activities.**

- Certain Nonresident Aliens can elect Resident Alien status.
Dual Status

• Transition between Nonresident Alien and Resident Alien status.

• Year of arrival or departure
  – Residency start date
  – Termination date

• Change of Visa Status
  – J1/F1 to H1B

• Expiration of Exempt Status

• Acquisition of Lawful Permanent Residence (Greencard)
Taxable Income

Wages

• Sourced where the services are performed, not where the payor is located.

• Exception for nonresident alien students paid by Foreign Employer

Business/Self-Employed Income

Fellowships and Scholarships

• Qualified vs. Nonqualified

• Foreign Source if paid by Foreign Government or Organization

Other Income

• Interest, dividends, rents, royalties, capital gains, etc.
Taxable Income

Qualified Scholarship
• Tax exempt for qualified tuition and expenses
  – Candidate for degree at educational institution.
  – Tuition, fees, books and equipment for courses.

Nonqualified Fellowships/Scholarships
• Taxable
  – Room and Board (maintenance)
  – Travel
  – Cash
Tax Treaty Benefits

• Generally for Nonresident Aliens only

• Exception for certain Resident Alien Teachers and Students

• Relevant Treaty Articles
  – Residency
  – Students and Teachers
  – Compensation for Services
  – Pension and Social Security
  – Savings Clause
U.S. Tax Forms

Nonresident Aliens
- Form 1040NR or 1040NR-EZ, Income Tax return
- Form 8843, Statement for Exempt Individuals
- Form 8833, Treaty Based Return Position Disclosure

Resident Aliens
- Form 1040, Income Tax Return
- Form 8833, Treaty Based Return Position Disclosure
- Offshore Asset/Income Disclosures
  - FBAR
  - Reporting Forms: 8938, 5471, 8865, 3520

Dual Status
- Form 1040 and 1040NR
- Some or all of the other above-referenced forms
Offshore Disclosure Forms

- **FBAR** (FinCen Form 114) - Foreign Bank Account Report
  - Required if offshore cumulative account balances exceed $10,000
  - Report institution, account number and maximum balance
  - Penalty up to $10,000 per account for non-willful failure to comply
  - Penalty up to $100,000 or 50% of account balance for willful failure
  - Form e-filed separate from tax return but same due date (April 15th)

- **Form 8938** – Foreign Financial Assets
  - Filed with tax return
  - Higher filing threshold than FBAR ($50,000 and up depending on domicile and marital status). See instructions
  - Financial assets include bank accounts, investment accounts, retirement accounts, company shares, interests in partnerships and trusts, financial contracts (i.e. foreign promissory notes), etc.
Offshore Disclosure Forms

• **Forms 3520 and/or 3520-A**
  – Reports foreign trust ownership and trust activity
  – Gifts over $100,000

• **Form 5471** – Foreign Corporations
  – Required each year if “controlled” – over 50% ownership
  – Required for each year with a 10% or more stock transaction
  – See instructions

• **Form 8621** – Passive Foreign Investment Companies (PFIC)
  – Foreign mutual funds

• **Failure to file offshore disclosure forms can result in serious penalties and leaves the audit statute of limitations open.**
Correcting Mistakes or Prior Non-Compliance

- Amended Tax Returns

- IRS Offshore Voluntary Disclosure Program
  8 years amended tax returns and FBARs. 27.5% Penalty

- Streamlined Procedure for Non-Willful Noncompliance
  3 years amended tax returns, 6 years FBARs. 5% Penalty.
  Certification of Non-Willfulness

- Silent Disclosure

- Do Nothing
Other Tax Considerations

State income taxes
- State residency rules may differ from federal
- States generally follow treaties, but not all (California).
- May or may not allow foreign tax credits
- Multistate taxation
  50 independent jurisdictions
  Local city, county taxes
Other Tax Considerations

Health Care Certification
• Form 1095

U.S. Estate Taxes
• $5.3m exclusion for US citizens
• $60k exclusion for non-citizens

U.S. born children
• Tax filing obligation even if not in the U.S.

U.S. citizen spouse
• Tax filing obligation even if not in the U.S.
Common Tax Filing Mistakes

• Failing to file a tax return
• Filing the wrong tax return
• Filing using the wrong marital status
• Failing to include worldwide income
• Incorrectly claiming treaty benefits
• Failing to file proper foreign asset disclosure forms