

U.S. Individual Income Tax

U.S. Income Taxation of American Citizens or Green Card Holders Living Outside the U.S.

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Do you have a United States green card?

If you answer "yes" to either of the above questions, you will almost certainly have to file U.S. tax returns.



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In general, U.S. citizens and residents are subject to U.S. taxation on their worldwide income even when they are not living in the United States. Any person holding a U.S. passport is considered a U.S. citizen, and green card holders are always considered permanent U.S. residents. Regardless of where you live now, being a U.S. citizen or green card holder requires that you file an annual tax return with the Internal Revenue Service (IRS) if your income exceeds the minimum filing threshold which changes each year due to inflation adjustments.

For 2013, taxpayers under age 65 are required to file a U.S. income tax return if their gross income, disregarding the foreign earned income and housing costs exclusions as discussed below, exceeds the following amounts:

Type of Return Filed	Threshold (USD) 2013
Single	\$10,000
Joint Return	\$20,000
Head of Household	\$12,850
Married Filing Separate	\$3,900

These amounts are increased for taxpayers who are age 65 or older, and for taxpayers who are legally blind.

Even though a tax return may be required, certain U.S. citizens and green card holders living and working outside the U.S. may be eligible to exclude a certain amount of their foreign earned income from their U.S. taxable income in their tax return. If a person meets the requirements discussed below, they should be able to take advantage of the following:

- A foreign earned income exclusion of a fixed dollar amount; and
- A housing exclusion for excess housing costs.

Qualifying for Exclusions

In order to qualify for the exclusions, a U.S. citizen or green card holder working outside the U.S. must:

- a. Have a tax home in a non-U.S. country throughout the period of residence or physical presence, and
- b. Meet either the physical presence test or the bona fide resident test.

Tax Home

A tax home is a:

- a. Principle place of business or employment, and
- b. Must be located outside the U.S.

After it has been determined that the taxpayer’s tax home is not in the U.S., the taxpayer must meet either the physical presence test or the bona fide residence test to qualify for the exclusion.

Physical Presence Test

The physical presence test requires that a U.S. citizen or green card holder be physically present outside the U.S. for at least 330 days (approximately 11 months) during any period of 12 consecutive months. This test is purely objective and requires only counting qualified days. Intent to stay or return and the nature and purpose of the stay abroad are irrelevant.

The rule is simple but very precise. A qualifying day means a period of 24 consecutive hours beginning at midnight and ending the following midnight. If a taxpayer is in the U.S. for part of a day, the day will qualify unless the U.S. citizen or green card holder was only in transit and in the U.S. for less than 24 hours.

Because of the preciseness of the physical presence test, a careful record of dates and times of travel along with appropriate, documented support should be kept updated at all times.

Bona Fide Resident Test

To qualify under the bona fide resident test, an individual must generally be a U.S. citizen who has established a bona fide residence in a foreign country or countries for an uninterrupted period that includes an entire calendar year (January 1 – December 31). Green card holders can only qualify under the bona fide resident test if they hold a passport of a country that has a tax treaty with the U.S. The BVI does not currently have a tax treaty with the U.S.

Bona fide residency is determined on a case-by-case basis. The review of individual facts and circumstances includes the nature of the international assignment and the length of stay in the foreign country. Factors that might indicate that an assignee is a bona fide resident include:

- acquisition of a home or long-term lease in the foreign country;
- intent to become involved in the social life and culture of the foreign country; and
- the nature of any conditions or limitations concerning the employment agreement, as well as the type and term of the visa or residence permit.

Temporary visits such as vacations, holidays, and business trips to the U.S. will not interrupt foreign residency. Also, as a general rule, transfer from one foreign location to a different foreign location does not interrupt foreign residency.

Once an individual establishes a tax home and qualifies under either the bona fide resident or physical presence tests, he or she is allowed to elect either or both the annual foreign exclusions: the foreign earned income and housing costs exclusions.

Foreign Earned Income Exclusion

The foreign earned income exclusion amount is adjusted annually for inflation. For the 2013 tax year, the maximum foreign earned income exclusion is USD\$97,600 per qualifying person. The foreign earned income exclusion is limited to the actual foreign earned income minus the foreign housing exclusion.

Foreign earned income eligible for exclusions must be received as compensation for personal services performed in a foreign country during a qualifying period. The term “earned income” includes payments in cash or benefits-in-kind, including salaries, wages, bonuses, commissions, lodging, foreign incentive and cost-of-living allowances, tax reimbursements, home leave and educational reimbursements or allowances, and moving expense reimbursements. Earned income does not include income of a passive nature, such as interest, dividends, and annuity income.

It is the place where personal services are performed that determines whether the income is foreign; not the place where actual payment for the service is made.

Housing Exclusion or Deduction

In addition to the foreign earned income exclusion, qualified individuals may elect to exclude from income a “housing cost amount.” This excludible housing cost amount is the actual foreign housing expenses for the calendar year in excess of USD\$15,616 for 2013*, subject to a maximum of USD\$29,280 for 2013*. Therefore, the maximum housing cost exclusion is USD\$13,664 for 2013 (i.e. \$29,280 less \$15,616).

*these amounts are calculated as 16 and 32 percent respectively of the foreign earned income exclusion for the current year.

Filing a U.S. Tax Return

A common misunderstanding of U.S. citizens and green card holders living outside the U.S. is that they do not need to file U.S. income tax returns if their earned income is less than the foreign earned income and housing exclusions

discussed above. This is not true. U.S. citizens and green card holders living in the BVI must file a tax return and make an affirmative election regarding the exclusions even if their earned income is less than the exclusion amount.

Each taxpayer who files, or is claimed as a dependent on, a U.S. tax return will need a social security number (SSN) or individual taxpayer identification number (ITIN).

Foreign Bank and Financial Account Reporting

Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the FBAR), must be filed by U.S. citizens and green card holders who have a financial interest in, or signature authority over, any non-U.S. bank, securities, or other financial accounts, both business and personal, that exceed USD\$10,000 in aggregate value at any time during the calendar year.

The FBAR form reports the general details of each foreign financial account and its highest balance in U.S. dollars during the taxable year.

Timeline for Reporting

Due Date	Filing
April 15 th	U.S. individual income tax return filing deadline.
June 15 th	Automatic two-month extension deadline for a U.S. individual income tax return being filed by a taxpayer living abroad on April 15 th .
June 30 th	Department of Treasury must receive your FBAR filing by this date.
October 15 th	Final deadline to file U.S. individual income tax return if a Form 4868, Application of Automatic Extension of Time to File U.S. Individual Income Tax Return, was filed for the tax year.

Streamlined Filing Compliance Procedure

The streamlined filing procedure is designed for U.S. taxpayers living abroad who have failed to timely file U.S. federal income tax returns or FBAR forms, but have recently become aware of their filing obligations and now seek to come into compliance with the law.

The procedure is now available for non-resident U.S. taxpayers who have resided outside of the U.S. since January 1, 2009 and who have not filed a U.S. tax return during the same period. It is designed for taxpayers that

present a low compliance risk. Low risk will be predicated on simple returns with little or no U.S. tax due. Absent any high risk factors, if the submitted returns and application show less than USD\$1,500 in tax due in each of the years, they will be treated as low risk and processed in a streamlined manner.

Taxpayers utilizing this procedure will be required to file delinquent tax returns, with required informational returns, for the past three years and to file delinquent FBARs for the past six years. Payment for the tax and interest, if applicable, must be remitted along with the delinquent returns.

For those taxpayers presenting low compliance risk, the IRS is unlikely to assert penalties or pursue follow up actions.

2012 Offshore Voluntary Disclosure Program

The objective of the 2012 Offshore Voluntary Disclosure Program (2012 OVDP) is to bring eligible taxpayers with unreported income or assets into compliance with U.S. tax laws.

The program generally offers a uniform and reduced penalty structure in exchange for taxpayers voluntarily coming into compliance with U.S. tax laws before the IRS is aware of their prior tax indiscretions.

After being accepted into the 2012 OVDP, a taxpayer is required to submit an accurate and complete voluntary disclosure of the eight most recent calendar years for which the filing deadline has already passed. Along with the tax filings and any taxes due, the taxpayer can be subject to an accuracy-related penalty, failure to file penalty, failure to pay penalty, and an offshore penalty.

The 2012 OVDP does not have a stated expiration date but can be terminated by the IRS at any time.

Foreign Account Tax Compliance Act

The Foreign Account Tax Compliance Act (commonly known as FATCA) is United States legislation aimed at reducing tax evasion by U.S. citizens. FATCA introduces a new reporting regime which compels certain foreign entities to disclose U.S. persons with offshore accounts. This disclosure is aided by imposing a withholding tax of 30% on U.S. source withholdable payments paid to a foreign financial institution and certain other foreign entities that fail to comply with FATCA.

In order to overcome some of the legal and implementation problems that foreign entities face with FATCA, certain foreign governments have entered into Agreements with the U.S. Treasury. These International Governmental Agreements (IGAs) set out a government-to-government framework for implementing FATCA. The Government of the Virgin Islands intends to enter into an IGA with the U.S..

FATCA will give the IRS a new mechanism to collect information on U.S. citizens and green card holders that are not properly filing U.S. income tax returns and reporting their foreign bank and securities accounts.

With the IRS having more information available to assist them with identifying individuals with undisclosed accounts, it is imperative that U.S. citizens and green card holders ensure that they are properly complying with all of the U.S. tax return and FBAR filing requirement in order to minimize their exposure to IRS penalties.

Summary

U.S. citizens and green card holders living in the BVI will generally have an annual U.S. tax return filing requirement. Also, other factors may result in individuals living in the BVI to have a U.S. tax return filing requirement such as significant time spent in the U.S. The advice in this document is general in nature and you should consult a tax advisor for advice related to your specific situation.

Related Links

www.bvi.gov.vg

www.finance.gov.vg

www.irs.gov

www.irs.gov/pub/irs-pdf/p54.pdf

www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/Documents/USTAA_2013.pdf

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