

U.S. TAXATION OF FOREIGNERS

INCLUDING STUDENTS, TEACHERS, RESEARCHERS AND TRAINEES

FOR BRIGHAM & WOMEN'S HOSPITAL
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U.S. Tax Resident vs. Non-Resident

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1. Residents

- a. Report worldwide income
- b. File form 1040, form 114 (FBAR) form 8938 (FATCA)

2. Non-Residents

- a. Report only U.S. source income
- b. File form 1040-NR
- c. Do not file form 114 or form 8938

U.S. Tax Residents

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1. U.S. Citizens
2. Green cardholder (lawful permanent resident)
3. Substantial presence test
 - a. > 30 days physically present in U.S., and
 - b. 183 day test met
 - i. 100% of current year days, plus
 - ii. 33% of prior year days, plus
 - iii. 16.66% of second preceding year

Tax Residents

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1. Substantial presence test – example for 2016
 - a. 2016 = 120 days = 120
 - b. 2015 = 90 days = 30
 - c. 2014 = 60 days = 10
 - d. Total days = 160 = Non-Resident

Differences Between Tax Resident and Non-Resident

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1. Resident

- a. + use of graduated tax brackets
- b. + benefit of standard or itemized deductions (\$6,300/12,600)
- c. + spousal and dependency exemptions
- d. + benefit of foreign tax credits
- e. - taxed on worldwide income
- f. - FBARs, FATCA, 5471, 3520, etc

2. Non-Resident

- a. + taxed on U.S. source income only
- b. + avoids Medicare tax on non-salary income
- c. + no FBARs, FATCA, 5471, 3520, etc
- d. - subject to tax on FDAP income on flat percentage (up to 30%, unless lower treaty rate)
- e. - no standard deduction, possibly no itemized deductions

Exceptions to Residency Rules

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1. Closer connection to a foreign country – statutory
 - a. Present in U.S. < 183 days
 - b. Foreign tax home
 - c. Closer connection to foreign country (see form 8840)
 - i. Usually not needed for students and researchers due to their 5 year and 2 year exception.
2. Tax treaty residency “tie-breaker” rules
 - a. Can be present in U.S. > 182 days
 - b. Closer connection to foreign country
 - i. Permanent home
 - ii. Personal and economic relations
 - iii. Habitual abode
 - iv. National
 - v. Competent authority

Exceptions to Residency Rules

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1. Exempt individual rules for students and researchers
 - a. Exempt from counting days, not exempt from U.S. tax
 - b. Students with F, M J or Q VISAs
 - i. 5 calendar years
 - c. Teacher / trainees with J or Q VISA
 - i. Max 2 of prior 6 calendar years
 - d. Must file form 8843
2. Election to treat non-resident spouse as resident (if first spouse is a resident)
 - a. Typically when spouse has no worldwide income
 - b. Allows other spouse to get lower graduated tax brackets
 - c. Will need to get tax identification number via form W-7 for spouse and children

U.S. Income Taxed to Non-Residents

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1. Salary, trade or business income earned in U.S.
2. Fixed, determinable, annual, or periodic U.S. income (FDAP)
3. Includes scholarships and grants, unless otherwise stated

Non-Resident Student Income

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1. Scholarships / fellowship grants

- a. Exempt if from foreign payor (foreign source)
- b. Potentially taxable if from U.S. payor (U.S. source)
- c. Exclusion for U.S. source payments (Sec. 117)
 - i. For qualified scholarship
 - ii. Attending an educational organization, and
 - iii. Date for a degree

2. Tax treaties

- a. Many say that foreign source payments are not taxable, which is meaningless benefit since already exempt
- b. Some exempt U.S. source payments
- c. Some exempt non-scholarship / grant payments

Non-Resident Student Income

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1. U.S. compensation income – generally taxable
2. Exception for foreign employer payments
 - a. Student – F VISA
 - b. Exchange visitor – J VISA
 - c. Cultural exchange visitor – Q VISA
3. Treaties for students and trainees
 - a. Exempt up to \$9,000 maximum per year



Non-Resident Student Income

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1. Savings income from U.S. accounts
 - a. Interest – exempt
 - b. Dividends – taxable
 - c. Capital gains (non real estate) – exempt

Other Foreign Nationals

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1. Foreign government employee
 - a. Exempt income
 - b. Need reciprocal agreement for U.S. government employees
2. Foreign guest lecturers exemption
 - a. Use tax treaty teacher provisions

Researchers

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1. Researchers treaty exemption
 - a. At an “education institution”
 - i. Colleges and universities
 - ii. N/A to on-the-job training
 - iii. N/A to NIH, generally, see treaty for exceptions
 - iv. Some allow for public research institutions
 - v. N/A to hospital, unless connected to a University
 - b. Generally a 2 year exemption
 - i. Some treaties have retroactive nullification if > 2 years
 - c. Graduate student tuition waivers – could be income
 - d. Reimbursements for moving, travel, living expenses

Social Security Taxes

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1. Exemption for foreign students, etc.
 - a. Student – F VISA
 - b. Exchange visitor – J VISA
 - c. Vocational student – M VISA
 - d. Cultural exchange visitor – Q VISA
2. Student FICA exemption
 - a. Applies to U.S. tax residents
 - b. May apply to graduate student teachers
 - c. N/A to full time employees
3. Not covered by income tax treaties
4. Covered by “Totalization Agreements”
 - a. Not ratified by Congress like treaties
 - b. Less agreements than treaties (23)
 - c. Typically when seconded by foreign employer
 - d. Maximum 5 year period
 - e. “Totalization” means combining both countries working credits