

# U.S. TAXATION OF FOREIGNERS

INCLUDING STUDENTS, TEACHERS, RESEARCHERS  
AND TRAINEES

FOR BRIGHAM & WOMEN'S HOSPITAL  
JANUARY 14, 2016

PRESENTED BY: JAMES A. ERDEKIAN  
[JAEE@FDCPA.COM](mailto:JAEE@FDCPA.COM)  
617-456-2410



# U.S. Tax Resident vs. Non-Resident

2

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

3

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

4

1. Substantial presence test – example for 2015
  - a. 2015 = 120 days = 120
  - b. 2014 = 90 days = 30
  - c. 2013 = 60 days = 10
  - d. Total days = 160 = Non-Resident



# Differences Between Tax Resident and Non-Resident

5

## 1. Resident

- a. + use of graduated tax brackets
- b. + benefit of standard or itemized deductions
- 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

6

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 helpful to 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

7

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. 2 or more 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

8

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

9

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

10

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

11

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

# Other Foreign Nationals

12

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

# Other Foreign Nationals

13

1. Teachers and 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

14

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



# QUESTIONS/ANSWERS

