

2022 Fast Tax Facts for US Expatriates and Green Card Holders Living and Working Abroad

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If you are a US Citizen or green card holder you must file a US tax return every year unless your taxable income is below a certain threshold. Even if your income is below that threshold, you may still be required to file certain forms to report foreign assets, etc. Failure to file these forms can result in severe IRS penalties. If you do not itemize your health, tax, interest, charitable and miscellaneous deductions you get a standard deduction of \$12,950 if single or filing as married filing separately or \$25,900 if you file jointly with you spouse.

As a US expatriate living and working abroad 4/18/2023 your 2022 tax return is automatically extended until 6/15/23 but any taxes due must be paid by 4/18/23 to avoid penalties and interest. The return can be further extended until 10/15/2023 if the proper extension form is filed. An even further extension until December may be available if the proper letter is sent to the IRS.

- ◆ For 2022 if you are a qualified expatriate you get a foreign earned income exclusion (earnings from wages or self employment) of \$112,000 but this exclusion is only available if you file a tax return. You must qualify under one of two tests to take this exclusion: (1) bona fide resident test or (2) physical presence test. You can read more about how to qualify in IRS Publication 54. This exclusion only applies to income taxes and does not apply to US self employment tax (social security plus medicare). Your spouse who lives and works abroad with you will also be able to use this exclusion against any earned income they have abroad. You can lose this exclusion if you file your return more than 18 months late. The exclusion can only be claimed on filed tax return and does not apply if you fail to file a tax return
- ◆ If you receive a gift or inheritance of \$100,000 or more during 2022 from a nonresident individual or nonresident corporation you must file form 3520 to report that gift. If you fail to file that form you will incur substantial penalties and taxes.
- ◆ If your foreign earnings from wages or self employment exceed the foreign earned income exclusion you can claim a housing expense for the rent, utilities and maintenance you pay if those amounts that exceed a minimum non-deductible amount. There is a limit to the housing amount and in certain “high-cost” locations there is a higher amount of housing expense which can be considered. (For “high-cost” country limitations see Form 2555 instructions)
- ◆ You get credits against your US income tax obligation for foreign income taxes paid to a foreign country but you must file a US tax return to claim these credits. This avoids double taxation of the same income. Value added taxes paid to foreign countries are not eligible for this credit.
- ◆ If you own 10% or more of a Foreign corporation or Foreign partnership (LLC) you must file special IRS form 5471 or 8865 or incur substantial penalties which can be greater including criminal prosecution if the IRS discovers you have failed to file these forms.
- ◆ If you create a foreign trust or are a beneficiary of a foreign trust you may be obligated to file forms 3520 and /or 3520A each year to report those activities or be subject to severe penalties. Foreign foundations and nonprofits which indirectly benefit you may be foreign trusts in the eyes of the IRS.
- ◆ Your net self-employment income in a foreign country (earned as an independent contractor or in your own sole proprietorship) is subject to US self-employment tax (medicare and social security) of 15.3% which cannot be reduced or eliminated by the foreign earned income exclusion or foreign tax credits. The **one exception** is if you live in one of the very few countries that have a social security agreement with the US and you pay the equivalent of social security in that country.

- ◆ Forming the correct type of foreign corporation and making the proper US tax election (to cause the income and foreign taxes the foreign corporation pays to flow through to your personal US tax return) with the IRS for that corporation may save you significant income taxes and avoid later adverse tax consequences. You need to investigate this procedure before you actually form that foreign because it can be difficult to make that election later and only certain types of foreign business entities are eligible to make this election.
- ◆ If at any time during the tax year your combined highest balances in your foreign bank and financial accounts (when added together) ever equal or exceed \$10,000US you must file a FBAR form 114 with the IRS by October 15, 2023 for the 2022 calendar year or incur a penalty of \$10,000 or more including criminal prosecution. Foreign financial accounts often include accounts when you sign on for a foreign corporation, foreign partnerships foreign pension plans, stock brokerage accounts, and cash surrender value of foreign life insurance. This form does not go in with your personal income tax return and can only be filed separately on the web at: <http://bsaefiling.fincen.treas.gov/NoRegFBARFiler.html>
- ◆ The IRS gets lists of Americans applying or renewing for US passports or entering the country. They will compare these lists with those who are filing US income tax returns and take action against those who do not file US returns but are US residents or citizens.
- ◆ Often due to foreign tax credits and the foreign earned income tax expats living abroad who file all past year unfiled tax returns end up owing no or very little US taxes. The IRS has a special program which will help you catch up if you are in arrears which will reduce or possibly eliminate all potential penalties for failing to file the required foreign asset reporting forms. We can direct you to the best program for your situation, prepare the returns and forms and represent you before the IRS.
- ◆ Beginning in 2011 a new law went into effect which requires all US Citizens report all of their worldwidenancial assets with their personal tax return if in total the value of those assets exceed certain minimum amounts starting at \$50,000 Failure to file that form 8938 on time can result in a penalty of \$10,000. The form is complex and has different rules that apply to you if you live abroad or live in the US. This form is required in addition to the FBAR form 114.
- ◆ Certain types of income of foreign corporations are immediately taxable on the US shareholder's personal income tax return. This is called Subpart F income. The rules are complex and if you own a foreign corporation you need to determine if these rules apply to you when you file the required form 5471 for that corporation. For 2018 a new tax was enacted with the acronym of GILTI tax. This may or may not cause an owner of a Controlled Foreign Corporation (CFC) to owe taxes on the income it does not distribute to its owners. This GILTI tax applies to 10% or more owners of CFCs.
- ◆ If you own investments in a foreign corporation or own foreign mutual fund shares you may be required to file the IRS form 8621 for owning part of a Passive Foreign Investment Company (PFIC) or incur additional, taxes and penalties for your failure to do so. A PFIC is any foreign corporation that has more than 75% of its gross income from passive income or 50 percent or more of its assets produce or will produce passive income.

There are many more special tax laws too numerous to mention here that apply to expatriates, green card holders, nonresidents and US taxpayers with foreign assets, businesses, etc. Please consult with Kauffman Nelson LLP if you have other offshore tax planning or return filing questions.

Download your [2022 Expatriate Tax Questionnaire](#) at www.taxmeless.com. Send us your completed questionnaire and we will immediately provide you with a flat fee quote for preparing your return(s).

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