

Chapter 4: U.S. Expatriates — Select International Tax Issues for Individuals

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Note. Corrections were made to this workbook through January of 2023. No subsequent modifications were made. For terms used in this chapter, see the **Acronyms and Abbreviations** section following the index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

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About the Author

Marshall J. Heap, PhD, EA, served as a Tax Content Development and Instruction Specialist at the University of Illinois Tax School from 2017 to 2020. An EA since 1984, Marshall is an ex-Senior Manager of PriceWaterhouseCoopers and has seven years of recent experience as an approved IRS continuing education provider. Marshall's academic background is in Computing and associated fields with degrees from the following UK Universities: The Open University (BSc), London, Birkbeck College (MSc), and Reading (PhD).

Other chapter contributors and reviewers are listed at the front of this volume.

INTRODUCTION

U.S. citizens and permanent residents on assignment outside of the United States risk **double taxation** (i.e., by both the United States and a foreign country). The goals of this chapter are to:

1. Address tax and social security issues affecting U.S. individuals on work assignment in foreign countries (assignees) and
2. Explore tax savings strategies including those that eliminate double taxation.

This chapter focuses on individual tax matters. International tax issues affecting corporations, partnerships, trusts, and other entities are beyond the scope of this chapter.

U.S. TAX RETURNS¹

U.S. citizens and resident aliens must file U.S. federal income tax returns reporting their worldwide income, regardless of the country in which they live. In contrast, citizens of other countries are usually taxed based on residency.² Because of this, U.S. taxpayers have concerns about being subject to double taxation if their income is also taxed by foreign countries or jurisdictions.

RESIDENT ALIEN DEFINED

A resident alien is an individual who is not a citizen of the United States who:³

1. Meets the green card test,
2. Meets the substantial presence test, or
3. Makes the first-year election.

Individuals meeting the **green card test** are those that have been lawfully admitted for permanent residence in the United States (i.e., by U.S. Citizenship and Immigration Services (USCIS)).⁴

¹ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

² Treas. Reg. §1.1-1(a); IRC §61.

³ 8 USC §1101(a)(3); IRC §7701(b)(1)(A).

⁴ *Green Card*. USCIS. [www.uscis.gov/green-card] Accessed on Dec. 8, 2021.

Under the **substantial presence test**, a taxpayer is considered to be a U.S. resident subject to U.S. federal tax rules if that individual is present in the United States on at least 183 days (using special counting rules) during the 3-year period that includes the current year.⁵ The **first-year election** is used by an alien who takes up residence in the United States too late in the tax year to meet the substantial presence test and who does not otherwise qualify as a U.S. resident. Under such circumstances, this individual may elect to be treated as a resident for the part of the tax year for which the election is made.⁶

Note. For detailed information on the substantial presence test and first-year election, see the 2019 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 6: Special Taxpayers. This can be found at [uofi.tax/arc \[taxschool.illinois.edu/taxbookarchive\]](https://taxschool.illinois.edu/taxbookarchive).

In practice, resident aliens with green cards are those who potentially have a continuing U.S. tax filing obligation if they are on assignment abroad, whereas the substantial presence test and first-year election apply specifically to individuals coming to live in the United States. When these individuals leave the United States, they are no longer residents of the United States unless they obtain a green card. Consequently, they must file Form 1040-C, *U.S. Departing Alien Income Tax Return*, to:⁷

- Report income received or expected to be received for the entire tax year, and
- Pay the expected tax liability on that income if they are required to do so.

Individuals who lose their green card (for whatever reason) or relinquish their U.S. citizenship must file Form 8854, *Initial and Annual Expatriation Statement*, and may be subject to the **expatriation tax** (both described later in the Expatriation Tax section.)⁸

USCIS and Tax Treaty Issues⁹

Green card holders file U.S. returns reporting worldwide income for as long as they hold their green card. They can voluntarily abandon their permanent residence status by filing Form I-407, *Record of Abandonment of Lawful Permanent Resident Status*, with USCIS.¹⁰ Green card holders planning an absence from the United States of more than one year should apply for a reentry permit on Form I-131, *Application for Travel Document*. A resident alien's green card is revoked if USCIS determines abandonment of permanent residence status has occurred.¹¹

A green card holder can be considered a tax resident of another country as well as the United States. As discussed later, there are strategies to avoid double taxation in this situation. However, if the United States has a tax treaty with the country in question containing a residence **tie-breaker clause**, the green card holder may be able to claim tax residency in that country as a U.S. nonresident under this provision. However, it could result in a constructive surrender of their green card. U.S. citizens cannot avail themselves of treaty residency tie-breaker rules because tax treaties typically contain a **savings clause** under which the United States reserves the right to tax its citizens notwithstanding the treaty (see the Tax Treaties section for more on this topic).

⁵ Treas. Reg. §301.7701(b)-1(c).

⁶ IRC §7701(b)(4).

⁷ Instructions for Form 1040-C (2021).

⁸ Ibid.

⁹ 8 USC §1101(a)(20); IRC §7701(b). *Don't Forget "Closer Connection" and "Tie-Breaker" Exceptions for U.S. Tax Residency*. 2021. Blais Halpert Tax Partners LLP. [www.blaistaxlaw.com/bhttp-blog/2019/2/26/dont-forget-closer-connection-and-tie-breaker-exceptions-for-us-tax-residency] Accessed on Dec. 8, 2021.

¹⁰ *Instructions for Record of Abandonment of Lawful Permanent Resident Status*. Jul. 20, 2021. USCIS. [www.uscis.gov/sites/default/files/document/forms/i-407instr.pdf] Accessed on May 6, 2022.

¹¹ See instructions for Form I-131.



Practitioner Planning Tip

Tax practitioners should discuss these issues with their green card holder clients and advise them to seek competent immigration counsel regarding actions that could result in green card revocations.

STATE TAX RETURNS

Assignees should **not** assume that they do not need to file state tax returns during the period of their assignment. States imposing an income tax may permit assignees to break residency, but the assignee could have nonresident state tax filing obligations due to a rental property located there for example, or sale of real estate located in that state.

Some states, however, make it hard to break residency if residency and/or domicile has not been established elsewhere. For example, under North Carolina state law, “A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State.”¹²



Practitioner Planning Tip

A practitioner should annually discuss what property, business, or connections a taxpayer has within any state to determine if the taxpayer has a filing requirement.

FOREIGN TAX RETURNS

As stated earlier, most other countries tax their **residents** rather than their **citizens** on worldwide income.¹³ Normally, a tax resident is a person who spends more than half of the year in that country. This is the standard in most European countries.¹⁴ “Your Europe”, an official website of the European Union (EU), provides links to specific country tax authorities in the EU providing tax rules including definitions of tax residency.¹⁵ However, tax residency determinations in certain countries can be more complicated. The United Kingdom (U.K.) is a good example of this when a person is a resident if they meet an “automatic test” while not meeting any of the “automatic overseas tests”.¹⁶

By contrast, nonresidents are usually only taxed on income sourced within the country in question.

¹² G.S. § 105-153.3. Definitions (15) Resident.

¹³ *How Countries Define Their Income Tax Borders*. Pomerleau, Kyle. Jun. 1, 2015. Tax Foundation. [taxfoundation.org/how-countries-define-their-income-tax-borders-0/] Accessed on Dec. 9, 2021.

¹⁴ *Income taxes abroad*. Your Europe. [europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/index_en.htm] Accessed on Dec. 9, 2021.

¹⁵ *Ibid*.

¹⁶ *RDR3: Statutory Residence Test (SRT) notes*. Jan. 22, 2020. Gov.UK. [www.gov.uk/government/publications/rdr3-statutory-residence-test-srt/guidance-note-for-statutory-residence-test-srt-rdr3] Accessed on Apr. 13, 2022.

 **Practitioner Planning Tip**

It is a good idea for tax practitioners with expatriate clients to familiarize themselves with the tax residency rules of the destination country. It is also advisable to obtain copies of foreign tax returns and/or tax assessments translated as necessary to determine the taxpayer's tax liabilities and tax residency status.

TAX PLANNING FOCUS

Usually, tax planning focuses on the country where the U.S. assignee has the highest tax rate. Consequently, assignees to low-tax or zero-tax countries usually focus on U.S. tax savings; in contrast, U.S. assignees to high-tax countries often end up with little or no U.S. tax to pay (discussed later.) Therefore, they are looking for host-country tax savings. Because of language and cultural considerations, the assignees often feel more comfortable asking their U.S. tax advisor for this information.

 **Practitioner Planning Tip**

The U.S. tax professional with such clients is well-advised to be aware of important host-country tax planning strategies and to be in communication with the foreign country tax preparer.

U.S. TAX SAVINGS OPPORTUNITIES

FOREIGN EARNED INCOME EXCLUSION¹⁷

IRC §911 allows U.S. taxpayers to exclude foreign earned income (FEI) and foreign housing costs from their taxable income subject to certain limitations. The tax savings from these exclusions is calculated using the taxpayer's **lowest** tax brackets, the result of which can be significantly less than the tax savings calculated using their **highest** tax brackets.¹⁸

Example 1. Joan and Tom are married. In 2021, Joan earned \$15,000 in excludable income while working overseas. Their joint taxable income after the exclusion was \$122,000.

Their tax is calculated on the Foreign Earned Income Tax Worksheet for Form 1040, *U.S. Individual Income Tax Return*, as shown on the following page.¹⁹

¹⁷ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.


¹⁸ IRC §911(f).

¹⁹ Instructions for Form 1040.

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For Example 1

Foreign Earned Income Tax Worksheet—Line 16

Keep for Your Records 



If Form 1040 or 1040-SR, line 15, is zero, don't complete this worksheet.

1. Enter the amount from Form 1040 or 1040-SR, line 15	1.	122,000
2a. Enter the amount from your (and your spouse's, if filing jointly) Form 2555, lines 45 and 50	2a.	15,000
b. Enter the total amount of any itemized deductions or exclusions you couldn't claim because they are related to excluded income	b.	0
c. Subtract line 2b from line 2a. If zero or less, enter -0-	c.	15,000
3. Add lines 1 and 2c	3.	137,000
4. Figure the tax on the amount on line 3. Use the Tax Table, Tax Computation Worksheet, Qualified Dividends and Capital Gain Tax Worksheet*, Schedule D Tax Worksheet*, or Form 8615, whichever applies. See the instructions for Form 1040 or 1040-SR, line 16, to see which tax computation method applies. (Don't use a second Foreign Earned Income Tax Worksheet to figure the tax on this line.)	4.	21,637
5. Figure the tax on the amount on line 2c. If the amount on line 2c is less than \$100,000, use the Tax Table to figure this tax. If the amount on line 2c is \$100,000 or more, use the Tax Computation Worksheet	5.	1,503
6. Subtract line 5 from line 4. Enter the result. If zero or less, enter -0-. Also include this amount on the entry space on Form 1040 or 1040-SR, line 16	6.	20,134

* Enter the amount from line 3 above on line 1 of the Qualified Dividends and Capital Gain Tax Worksheet or Schedule D Tax Worksheet if you use either of those worksheets to figure the tax on line 4 above. Complete the rest of that worksheet through line 4 (line 10 if you use the Schedule D Tax Worksheet). Next, you must determine if you have a capital gain excess. To find out if you have a capital gain excess, subtract Form 1040 or 1040-SR, line 15, from line 4 of your Qualified Dividends and Capital Gain Tax Worksheet (line 10 of your Schedule D Tax Worksheet). If the result is more than zero, that amount is your capital gain excess.

If you don't have a capital gain excess, complete the rest of either of those worksheets according to the worksheet's instructions. Then, complete lines 5 and 6 above.

If you have a capital gain excess, complete a second Qualified Dividends and Capital Gain Tax Worksheet or Schedule D Tax Worksheet (whichever applies) as instructed above but in its entirety and with the following additional modifications. Then, complete lines 5 and 6 above. These modifications are to be made only for purposes of filling out the Foreign Earned Income Tax Worksheet above.

1. Reduce (but not below zero) the amount you would otherwise enter on line 3 of your Qualified Dividends and Capital Gain Tax Worksheet or line 9 of your Schedule D Tax Worksheet by your capital gain excess.
2. Reduce (but not below zero) the amount you would otherwise enter on line 2 of your Qualified Dividends and Capital Gain Tax Worksheet or line 6 of your Schedule D Tax Worksheet by any of your capital gain excess not used in (1) above.
3. Reduce (but not below zero) the amount on your Schedule D (Form 1040), line 18, by your capital gain excess.
4. Include your capital gain excess as a loss on line 16 of your Unrecaptured Section 1250 Gain Worksheet in the Instructions for Schedule D (Form 1040).

Qualifying Taxpayers

To qualify for the FEI exclusion, a taxpayer must meet the following three requirements.²⁰

1. Their tax home must be in a foreign country.
2. They must have foreign earned income.
3. They must be one of the following.
 - a. A **U.S. citizen** who is a **bona fide resident** of a foreign country or countries for an uninterrupted period that includes an entire tax year.
 - b. A **U.S. resident alien** who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a **bona fide resident** of a foreign country or countries for an uninterrupted period that includes an entire tax year.²¹
 - c. A **U.S. citizen or a resident alien** who is **physically present** in a foreign country or countries for at least 330 full days during **any** period of 12 consecutive months.

²⁰ IRC §911(d).

²¹ Foreign Earned Income Exclusion - Bona Fide Residence Test. Oct. 26, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/foreign-earned-income-exclusion-bona-fide-residence-test] Accessed on May 12, 2022.

Tax Home. For these purposes, the Code uses the same rules that apply for deducting travel expenses while away from home to determine if a taxpayer's home is in a foreign country.²² If the foreign assignment is **expected to last for one year or less, it is temporary** unless facts and circumstances indicate otherwise. If, however, the foreign assignment is **expected to last for more than one year, it is indefinite**, which results in a shift of the taxpayer's tax home to their foreign assignment.²³



Practitioner Planning Tip

It is recommended that the taxpayer's employer provide the taxpayer with an assignment letter that clearly states the expected duration of the foreign assignment.

There is an exception to the requirement that the taxpayer's home be in a foreign country.²⁴ This exception applies to U.S. citizens or residents supporting the U.S. Armed Forces and serving in an area designated as a combat zone under IRC §112. Such combat support personnel are considered to have a foreign tax home even if they have a U.S. abode.

For the purposes of §911, a foreign country is Antarctica and any territory not governed by the United States,²⁵ so it excludes Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa.²⁶

Bona Fide Residence.²⁷ Bona fide residence is determined by the taxpayer's intentions, the purposes of any trips, and the nature and length of their stay abroad. This is a facts and circumstances test. The primary factors the IRS uses to make the determination are covered by the questions in part II of Form 2555, *Foreign Earned Income*, shown on the following page. However, the Code prohibits taxpayers from claiming bona fide residence in a foreign country when they have also submitted a statement to the authorities of that country asserting that they are not residents of that country and are not subject to income tax on the income earned in that country.

²² IRC §911(d)(3), referring to IRC §162(a)(2).

²³ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

²⁴ IRC § 911(d)(3).

²⁵ Treas. Reg. §1.911-2(h).

²⁶ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

²⁷ *Ibid.*

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Part II Taxpayers Qualifying Under Bona Fide Residence Test

Note: Only U.S. citizens and resident aliens who are citizens or nationals of U.S. treaty countries can use this test. See instructions.

10 Date bona fide residence began ▶ _____, and ended ▶ _____

11 Kind of living quarters in foreign country ▶ a Purchased house b Rented house or apartment c Rented room
d Quarters furnished by employer

12a Did any of your family live with you abroad during any part of the tax year? Yes No

b If "Yes," who and for what period? ▶ _____

13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you aren't a resident of that country? See instructions Yes No

b Are you required to pay income tax to the country where you claim bona fide residence? See instructions . Yes No

If you answered "Yes" to 13a and "No" to 13b, you don't qualify as a bona fide resident. Don't complete the rest of this part.

14 If you were present in the United States or its possessions during the tax year, complete columns (a)–(d) below. **Don't** include the income from column (d) in Part IV, but report it on Form 1040 or 1040-SR.

(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)	(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)

15a List any contractual terms or other conditions relating to the length of your employment abroad. ▶ _____

b Enter the type of visa under which you entered the foreign country. ▶ _____

c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation . Yes No

d Did you maintain a home in the United States while living abroad? Yes No

e If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you. ▶ _____

For Paperwork Reduction Act Notice, see the Instructions for Forms 1040 and 1040-SR. Cat. No. 11900P Form **2555** (2021)

Observation. Taxpayers typically meet the bona fide residence test if they are on foreign assignment for more than one year and are tax residents in the host country.

Physical Presence Test. Taxpayers who have not established bona fide residence in a foreign country may nonetheless qualify if they were physically present in a foreign country for 330 full days during a period of 12 consecutive months that includes the tax year.

To count as a qualifying day for the physical presence test, the taxpayer must be **abroad** for the entire 24-hour period.²⁸ For this purpose, **abroad** does not include time spent on or over international waters.

Example 2. Wendy leaves the United States on July 15 to start a 2-year assignment in Belgium. She arrives in Belgium at 8:00 a.m. on July 16. Wendy's first qualifying day is July 17.

A taxpayer is free to select a favorable choice of 12 consecutive months, even if the months do not correspond to a single tax year. The following example illustrates this.

²⁸ Treas. Reg. §1.911-2 consistently and repeatedly refers to "330 full days [Emphasis added]".

Example 3. Dan, a U.S. citizen, was on assignment in Saudi Arabia from August 1, 2020, until July 31, 2022. Dan spent the entire months of July and August 2021 in the United States on vacation; this was his only presence in the United States during his foreign assignment. Dan appears only to have 303 qualifying days in 2021 (365 days – 62 days in the United States).

However, Dan was present in Saudi Arabia for over 330 days from August 1, 2020, through July 31, 2021, and also from August 1, 2021, through July 31, 2022. In both 365 consecutive day periods Dan has 31 U.S. days and 334 qualifying foreign days. Therefore, Dan meets the physical presence test for both the 2021 and 2022 tax years.

Waiver of Time Requirements.²⁹ There are two instances when the minimum time requirements for meeting the bona fide residence or physical presence tests can be waived. These are curtailment of the foreign assignment due to either:

- War, civil unrest, or similar adverse conditions in that country;³⁰ or
- COVID-19 (for 2019 and 2020 only).³¹

Each year, the IRS publishes an Internal Revenue Bulletin with a list of the only foreign countries for which the minimum time requirements are waived for the prior year and the effective dates. Taxpayers must be able to show that they reasonably could have expected to meet the minimum time requirements if not for the adverse conditions. Furthermore, they must have been qualified on or before the beginning date of the waiver except for the time requirements. Although the waiver of time counts for purposes of the residency tests, only the days of actual residence or presence within the foreign country count when calculating the maximum exclusion.

Filing Extensions. U.S. taxpayers automatically qualify for a 2-month extension to file their return and pay their federal income tax if they are:³²

- Living and working outside the United States and Puerto Rico, or
- In military or naval service on duty outside the United States and Puerto Rico.

Taxpayers who use this automatic extension must attach a statement to their return explaining which of the two situations apply.³³ If they are unable to file their returns within this 2-month period, they have the option to request an additional four months by filing Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*. Taxpayers who file Form 4868 by the original due date of the return do not need to attach a statement.

In addition to the 6-month extension, taxpayers who are out of the country can request a discretionary 2-month additional extension by sending the IRS a letter explaining reasons more time is needed. The address for where to send the request is published in IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

Taxpayers who are out of the country and **anticipate** meeting one of the presence tests but who have not met the test before the due date of the return may file Form 2350, *Application for Extension of Time To File U.S. Income Tax Return* to request a unique extended due date. Generally, this extended due date is 30 days after the date the taxpayer expects to meet either the bona fide residence test or the physical presence test. For example, a taxpayer who arrives on foreign assignment July 1, 2021, and expects to meet the bona fide residence test on December 31, 2022, can request an extension of time to file their **2021** return until **January 30, 2023**.

²⁹ *Exceptions to the Bona Fide Residence and the Physical Presence Tests*. Sep. 15, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/exceptions-to-the-bona-fide-residence-and-the-physical-presence-tests] Accessed on May 20, 2022.

³⁰ IRC §911(d)(4).

³¹ Rev. Proc. 2020-27, 2020-20 IRB 803.

³² IRC §6072(c).

³³ IRS Pub. 54. *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

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Election³⁴

The FEI exclusion is elective. Therefore, a qualified individual must separately elect to exclude FEI under §911(a)(1) and the housing cost amount under §911(a)(2). The amount of the FEI exclusion and foreign housing cost elections are addressed later.

FEI exclusion elections are made on Form 2555, or on a comparable form. Each election must be filed with one of the following.

- An income tax return
- An amended return for the first year the election is to be effective
- A late return before the IRS discovers the election omission (the late return should include a statement at the top of the first page of the Form 1040: “Filed Pursuant to Section 1.911-7(a)(2)(i)(D)”)

Once made, the election applies to all subsequent years unless revoked. The FEI exclusion and foreign housing exclusion elections are made and revoked separately. A revocation is made by filing a statement to that effect with the tax return, or with an amended return for the first tax year the revocation is effective. A revocation once made also applies to subsequent years **except** if the taxpayer **re-elects** the FEI exclusion:

- With IRS consent, or
- Not before the sixth tax year following the year of revocation.

FEI³⁵

FEI is **earned** income from sources within a foreign country that is earned during a period when a person qualifies for the FEI exclusion. Earned income is from sources within a foreign country if it is attributable to services performed by an individual in a foreign country or countries. The place of receipt of such earned income is immaterial for this purpose.

The following sources of income do **not** constitute FEI.

- Income excluded under IRC §119 (meals or lodging furnished for the convenience of the employer)
- Pensions and annuities (including social security benefits)
- Compensation of U.S. government employees (including military personnel)
- Certain beneficiary income
- Certain deferred compensation
- Income from a business attributable to capital investment

³⁴ IRC §911(e) and Treas. Reg. §1.911-7.

³⁵ Treas. Reg. §1.911-3.

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Exclusion and Deduction Amounts

Maximum FEI Exclusion. The maximum amount of FEI a taxpayer can exclude (exclusion limitation) is \$108,700 for 2021³⁶ and \$112,000 for 2022.³⁷ This amount is prorated for taxpayers who do not qualify for the exclusion for the entire year using the following formula.³⁸

$$\text{Prorated maximum amount} = \text{Annual maximum amount} \times \frac{\text{Qualifying days during year}}{\text{Total days in year}}$$

The number of qualifying days during the year is the number of days the taxpayer meets the tax home requirement **and** either the bona fide residence or the physical presence tests (discussed previously).

FEI Attribution Rules.³⁹ Only FEI that was earned during the year can be excluded using that year's exclusion limitation. However, FEI received that was earned in the **preceding** year is also excludable to the extent it does not exceed the **unused** FEI exclusion limitation for the preceding year.

Example 4. Carolyn qualifies for and elects the FEI exclusion for 2021 and 2022. In 2021, Carolyn has FEI consisting only of a \$100,000 salary, which she fully excludes. In 2022, in addition to her salary of \$105,000, Carolyn receives a 2021 performance bonus of \$20,000. On her 2022 return, Carolyn has an FEI exclusion of **\$113,700**, calculated as follows.

- **Lesser** of \$105,000 salary and 2022 exclusion limitation of \$112,000 = \$105,000, **plus**
- **Lesser** of \$20,000 bonus and **unused** 2021 exclusion limitation of \$8,700 (\$108,700 – \$100,000)

Foreign Housing Exclusion (FHE) and Foreign Housing Deduction (FHD).⁴⁰ Taxpayers may also be allowed an exclusion or deduction for foreign housing expenses that exceed the base amount applicable for the year. FHE is only available to taxpayers who work for an employer. FHD is available only to self-employed taxpayers. In both cases, the amount of qualified foreign housing expenses used in the calculation of the deduction or exclusion is limited based on the country and the amount of the taxpayer's FEI.

Foreign housing expenses must be reasonable, and not lavish or extravagant. Furthermore, such expenses must be paid or incurred in the year on behalf of the taxpayer, spouse, or dependents who live with the taxpayer. Qualified foreign housing expenses include the following.⁴¹

- Rent
- Fair rental value of employer-provided housing
- Utilities **except** telephone charges
- Real and personal property insurance
- Occupancy taxes
- Nonrefundable fees to secure a leasehold
- Furniture and accessory rentals
- Household repairs
- Residential parking costs

³⁶ IRS Notice 2021-18, 2021-11 IRB 911.

³⁷ IRC §911(b)(2)(D)(i); Rev. Proc. 2021-45, 2021-31 IRB 170.

³⁸ Treas. Reg. §1.911-3(d)(2)(i).

³⁹ Treas. Reg. §1.911-3(e).

⁴⁰ IRC §911(c); Treas. Reg. §1.911-4.

⁴¹ Treas. Reg. §1.911-4(b)(1).

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Expenses incurred for domestic labor or for the purchase of property or the cost of improvements that increase the value of the property or prolong the property's life do **not** qualify.⁴²

The maximum amount of housing expenses that may be used to calculate the **FHE** is based on the location of the taxpayer's foreign tax home. The instructions for Form 2555 list the maximums by location. For locations not on the list, the cap is equal to 30% of the annual maximum exclusion for FEI prorated daily. For 2021 and 2022, the maximum amount of expenses that may be included in the calculation is \$32,610 (or \$89.35 per day) and \$33,600 (or \$92.06 per day). There is no maximum for calculation of the **FHD** available to self-employed taxpayers.

The nonexcludable/nondeductible base amount of housing expenses is equal to 16% of the annual maximum exclusion for FEI. For 2021 and 2022, the base is \$17,392 and \$17,920.

Example 5. Eldon is an employee of WRGeniuses, Inc. In 2021, while on indefinite assignment in Buenos Aires, Argentina, he spent \$100,000 on qualified housing expenses. The maximum amount of expenses that he can claim is \$56,500 for the year for that location according to the chart in the instructions for Form 2555. In addition, he may only exclude the costs that are in excess of the base amount of \$17,392 for the year. Thus, his maximum exclusion is \$39,108 for 2021 (\$56,500 – \$17,392).

Example 6. Use the same facts as **Example 5**, except Eldon is self-employed. He is not subject to a cap on the maximum amount of housing expenses (assuming the accommodations are not lavish or extravagant). Thus, his maximum deduction is \$82,608 (\$100,000 – \$17,392).

After the amount of allowable housing expenses is determined, the exclusion/deduction is limited to the amount of the taxpayer's FEI not already excluded.⁴³

Note. See the 2019 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 6: Special Taxpayers, for more information on the FHE, including a detailed example. This can be found at uofi.tax/arc [taxschool.illinois.edu/taxbookarchive].

Disallowance of Deductions and Credits.⁴⁴ A deduction or credit that is allocable to FEI excluded from gross income under §911(a) is **disallowed**. Some deductions are directly allocable to FEI (e.g., self-employment (SE) expenses) whereas other deductions are not related to a class of income (e.g., medical expenses, charitable contributions, and real estate tax or mortgage interest on a personal residence). Treas. Reg. §1.861-8 provides detailed rules for allocating deductions to excluded FEI.

The requirement to allocate foreign tax credits (FTCs) to excluded FEI can have a major tax impact. This allocation (referred to as the **FTC scale down**) is calculated by applying the following formula to foreign taxes paid or accrued on FEI.⁴⁵

$$\text{Amount of tax allocable to excluded income} = \frac{\text{Foreign taxes paid or accrued on foreign earned income received or accrued during the tax year}}{\left(\frac{\text{FEI excluded} - \text{Deductible expenses attributable to FEI}}{\text{Total FEI} - \text{Deductible expenses attributable to FEI}} \right)}$$

⁴² Treas. Regs. §§1.911-4(b)(2)(i) and (ii); *Foreign Housing Exclusion or Deduction*. Sep. 15, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/foreign-housing-exclusion-or-deduction] Accessed on Mar. 22, 2022.

⁴³ IRC §911(d)(6).

⁴⁴ Treas. Reg. §1.911-6.

⁴⁵ See instructions for Form 1116.

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Note. On a joint return where each spouse's compensation is subject to foreign tax but only one spouse has elected the FEI exclusion, the preceding formula should only be applied to the foreign tax and FEI of the electing spouse.⁴⁶ Not all tax preparation software makes this distinction.

Caution. Tax practitioners should not assume that the FEI exclusion is going to be of benefit to the client.

For assignees in high tax countries, there is often no tax benefit from electing the FEI exclusion because the U.S. taxes attributable to foreign sources would be fully offset with FTC. Additionally, use of the FEI exclusion may result in disallowance of FTCs that could have been utilized by the taxpayer in a carryback or carryover year.

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Example 7. Joe, a single U.S. taxpayer who claims the standard deduction, qualifies for the FEI exclusion for all of 2021. Joe's sole income is his FEI of \$221,250, upon which he had foreign income tax withholding of \$65,000. Because Joe only has foreign source income, his FTC limitation equals his U.S. tax liability (FTC is discussed in detail in a later section). Joe's U.S. tax preparer calculates Joe's 2021 federal income tax liability both with and without the FEI exclusion and comes up with the following results.

With FEI Exclusion	Without FEI Exclusion
$\$221,250 - \$12,550$ (standard deduction) = $\$208,700$ taxable income	$\$221,250 - \$12,550$ (standard deduction) = $\$208,700$ taxable income
Tax on $\$208,700 = \$47,841$	Tax on $\$208,700 = \$47,841$ (before FTC)
Tax on $\$108,700$ FEI exclusion = $\$20,168$	FTC limitation = $\\$47,841$
Tax before FTC = $\\$27,673$ ($\$47,841 - \$20,168$)	Available FTC = $\\$65,000$
FTC limitation = $\\$27,673$	FTC = $\$47,841$ (lesser of $\$47,841$ and $\$65,000$)
FTC scale down = $\$108,700$ FEI exclusion \div $\$221,250$ FEI \times $\$65,000$ foreign tax = $\$31,934$	Net tax = $\$0$ ($\$47,841 - \$47,841$)
Available FTC = $\\$33,066$ ($\$65,000 - \$31,934$ scale down)	Excess FTC = $\\$17,159$ ($\$65,000 - \$47,841$)
FTC = $\$27,673$ (lesser of $\$27,673$ and $\$33,066$)	
Net tax = $\$0$ ($\$27,673 - \$27,673$)	
Excess FTC = $\\$5,393$ ($\$33,066 - \$27,673$)	

Both options yield zero federal income tax for 2021. However, the excess FTC without the FEI exclusion is $\$11,766$ greater ($\$17,159 - \$5,393$). The FTC carryback/carryover rules are discussed in detail later in the following section.

⁴⁶ Treas. Regs. §§1.911-5(a)(1) and (2).



Practitioner Planning Tip

Tax practitioners considering revoking an FEI exclusion election should first discuss this with the taxpayer in case there is a near term possibility they could be reassigned to a low- or zero-tax country where this exclusion could be crucial to reducing their overall tax burden.

Alternative Minimum Tax (AMT).⁴⁷ The FEI exclusion, FHE, and FHD are allowable in determining alternative minimum taxable income.

Observation. Even though an amount of FEI or foreign housing may be excluded from income, tax brackets and rates are applied to the remaining U.S. income subject to taxation as though the foreign income or housing items were not excluded. Commonly referred to as “income stacking,”⁴⁸ this rule is designed to apply the same U.S. tax rates to taxpayers working abroad as taxpayers living and working in the United States.

CLAIMING THE FOREIGN TAX DEDUCTION OR CREDIT⁴⁹

Each year taxpayers can choose to take either a **deduction** or a **credit** for foreign taxes. Generally, this choice pertains to **all** the taxpayer’s foreign **income** taxes. However, the taxes only qualify for a deduction and **not** a credit, if the taxpayer did any of the following.

- Paid the tax to a country that provides support for acts of international terrorism, or the United States does not have diplomatic relations with the country, or the United States does not recognize its government, and the government is not otherwise eligible to purchase defense articles or services under the Arms Export Control Act.
- Paid withholding tax on dividends from a foreign corporation’s stock that the taxpayer did not hold for the required period.
- Paid withholding tax on income or gain (other than dividends) from property the taxpayer did not hold for the required period.
- Paid withholding tax on income or gain to the extent the taxpayer had to make related payments on positions in substantially similar or related property.
- Participated in or cooperated with an international boycott.
- Paid taxes in connection with the purchase or sale of oil or gas.
- Paid or accrued taxes on income or gain associated with acquiring a covered asset (including certain acquisitions that result in a stepped-up basis).

To be eligible for a credit or deduction, a foreign tax must have been imposed by the authority of a foreign country. For an FTC, the foreign tax must have been assessed on income.⁵⁰

⁴⁷ IRC §55(b)(2); see instructions for Form 8801.

⁴⁸ IRC §911(f); the term “income stacking” was coined to describe the lifting of income to a higher tax bracket required by this subsection, and appears in IRS Notice 2007-16, 2007-08 IRB 536.

⁴⁹ IRS Pub. 514, *Foreign Tax Credit for Individuals*.

⁵⁰ IRC §164(b)(3); Treas. Reg. §901-2(a).

Note. Foreign personal property taxes do not qualify for the credit because they are **not** assessed on a taxpayer's income. Nevertheless, a taxpayer may be able to deduct them even if claiming the credit for foreign income taxes.

Paid or Accrued Basis

Generally, cash basis taxpayers can only deduct foreign taxes paid during the year. However, such taxpayers may be able to deduct accrued foreign income taxes on **trade or business income**.⁵¹

For credit purposes, cash basis taxpayers can either claim foreign income taxes on the **paid** or **accrued** basis. However, once the taxpayer chooses the accrued basis, it applies to all future years.⁵²

4

Foreign Tax Deduction⁵³

Foreign taxes are deducted on Schedule A (Form 1040), *Itemized Deductions*, line 6, Other taxes. They are **not subject** to the state and local tax limitation. During 2018 through 2025, taxpayers can deduct foreign income and personal property taxes whereas foreign **real property** taxes are **not** deductible.



Practitioner Planning Tip

Tax practitioners should choose between the foreign tax deduction and credit by calculating the taxpayer's liability in both ways. For example, taxpayers with a zero FTC limitation (defined later) would benefit from taking the deduction rather than the credit.

Foreign Tax Credit

Although foreign taxes assessed on income are usually deductible, the following foreign taxes are generally **not** eligible for the credit.

- Taxes on excluded income (e.g., under §911)
- Taxes for which a taxpayer can only take an itemized deduction (e.g., personal property taxes)
- Taxes on foreign mineral income
- Taxes from international boycott operations
- A portion of taxes on combined foreign oil and gas income
- Taxes of U.S. persons controlling foreign corporations and partnerships failing to file required information return
- Taxes related to a foreign tax splitting event
- Taxes disallowed under IRC §965(g)
- Taxes imposed by sanctioned countries⁵⁴ (e.g., Iran, North Korea, Sudan, Syria)⁵⁵

⁵¹ Treas. Reg. §1.164-1(a).

⁵² IRC §905(a).

⁵³ 2021 Instructions for Schedule A; IRC §164(b)(6).

⁵⁴ IRC §901(j).

⁵⁵ See *Sanctions Programs and Country Information*. U.S. Department of the Treasury. [home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information] Accessed on Apr. 20, 2022.

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A credit cannot be taken for foreign income taxes “to the extent that it is reasonably certain that the amount will be **refunded, rebated, abated, or forgiven** [emphasis added].”⁵⁶

Example 8. For 2022, Donna, a U.S. citizen, is on a foreign assignment claiming FTCs on the cash basis. Her foreign salary is subject to host country income tax withholding. Donna’s 2022 foreign tax return shows that she had \$50,000 foreign income tax withholding and is due a \$10,000 tax refund.

When preparing her 2022 U.S. return, Donna only considers \$40,000 of her \$50,000 foreign tax withholding for FTC purposes, as the \$10,000 difference is refundable.

Exchange Rates. U.S. taxpayers are generally required to use the U.S. dollar as their functional currency.⁵⁷ This means that foreign tax payments must be converted into U.S. dollars.

Note. Taxpayers accounting for FTCs on the paid basis use the exchange rate applicable on date of payment.

Taxpayers using the accrual basis for FTCs generally must use the **average exchange rate for the tax year** to which the taxes relate if the following three conditions are met.

1. The foreign taxes are paid on or after the first day of the tax year to which they relate.
2. The foreign taxes are paid not later than 24 months after the close of the tax year to which they relate.
3. For tax years beginning after November 6, 2007, the foreign tax liability is not denominated in an inflationary currency (defined in the instructions for Form 1116, *Foreign Tax Credit*).⁵⁸

The exchange rate effective on the payment date should be used for all foreign taxes. However, affected taxpayers can elect to use payment date exchange rates for foreign taxes subject to the yearly average exchange rate. This election, available for tax years beginning after 2004, applies to the tax year made and all subsequent tax years unless revoked with IRS consent. A taxpayer makes the election by attaching a statement to the applicable tax return which should be filed by its due date (including extensions). Any accrued taxes that are unpaid must be converted into U.S. dollars using the exchange rate applicable on the last day of the tax year to which they relate.

Practitioner Planning Tip

Annual exchange rates are published on the IRS website at **uofi.tax/22a4x1** [www.irs.gov/individuals/international-taxpayers/yearly-average-currency-exchange-rates].

⁵⁶ Treas. Reg. §1.901-2(e)(2)(i). Treas. Reg. §§1.901-2(e)(2)(ii) and (iii) also limit the U.S. credit if a foreign credit is reasonably certain.

⁵⁷ IRC §985.

⁵⁸ Treas. Reg. §1.986(a)-1(a)(2)(iii).

Form 1116. Individual taxpayers claim the FTC by completing Form 1116, which is shown in the Appendix. This form should be submitted with their income tax return. A separate Form 1116 is required for each of the following seven income categories.

1. IRC §951A (global intangible low taxed income)
2. Foreign branch income
3. **Passive income** (includes dividends, interest, rents, royalties, annuities, and certain gains)
4. **General income** (includes employment and SE income)
5. IRC §901(j) (relating to FTCs from countries subject to U.S. sanctions, discussed earlier)
6. Treaty re-sourced income
7. Lump sum distributions

Note. The **passive** and **general** income categories are the most common types encountered.

Separate Forms 1116 for each category of income are also required for taxpayers subject to the AMT.⁵⁹ A taxpayer subject to the AMT with income from all seven categories would file **14** Forms 1116 with their return (seven for the regular tax and seven for the AMT).

FTC Limitation. A taxpayer's allowable FTC cannot exceed their actual foreign tax liability. The limitation is calculated as follows.

$$\text{FTC limitation} = \text{U.S. tax liability} \times \frac{\text{Taxable income from foreign sources}}{\text{Total taxable income from U.S. and foreign sources}}$$

A separate FTC limitation must be computed for each of the seven income categories. Determination of FTC limitations can be complicated, particularly for taxpayers with capital gains or overall foreign losses (where deductions exceed income for a specific income category). IRS Pub. 514, *Foreign Tax Credit for Individuals*, provides detailed information and examples.

The FTC is a nonrefundable credit. However, taxpayers whose foreign tax exceeds their respective FTC limitation(s) may be able to carry over or carry back unused credits (explained later).

Simplified Method. Taxpayers meeting certain conditions can claim the FTC on their return without completing Form 1116. Taxpayers electing the simplified method must meet **all** the following conditions.

- Their only foreign source gross income for the tax year is passive category income.
- Their foreign taxes for the tax year do not exceed \$300 (\$600 if married filing jointly).
- All gross foreign income and foreign taxes are reported on a payee statement (e.g., Form 1099-DIV, *Dividends and Distributions*, or 1099-INT, *Interest Income*).
- The taxpayer makes the election.

Note. For more discussion related to the interaction between the simplified method and reporting on Schedule K-3, *Partner's Share of Income, Deductions, Credits, etc. — International*, see the 2022 *University of Illinois Federal Tax Workbook*, Volume A, Chapter 1: New Developments and Volume B, Chapter 3: Partnership Basics.

⁵⁹ Instructions for Form 6251.

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Note. Taxpayers making this election cannot carry back or carry over any unused foreign tax to or from this tax year.

Carryover Rules.⁶⁰ Taxpayers with foreign taxes that exceed the FTC limitation are allowed a 1-year carryback and then a 10-year carryover of the unused foreign taxes. These carryover rules apply separately to each of the seven income categories.

Example 9. Ross has an excess passive income FTC of \$1,000 for **2022** (i.e., the passive foreign taxes paid or accrued exceeded the respective FTC limitation). In **2021**, Ross had \$0 foreign income. In **2023**, although Ross had no FTC, he had FTC limitations of \$1,700 for general income and \$0 for passive income.

Because Ross had \$0 foreign income in 2021, no FTC carryback is possible. Therefore, Ross must carry over his \$1,000 excess FTC from 2022 to 2023 and future years (i.e., Ross cannot utilize his 2022 general income FTC limitation because the \$1,000 passive excess FTC carryover from 2021 belongs to a different income category).

Example 10. Assume the same facts as **Example 9**, except that Ross has an unused 2021 passive income FTC limitation of \$100.

Ross's tax preparer recommends to Ross not to file a 2021 amended return to claim the \$100 tax refund for the passive income FTC carryback because the tax preparation fees would exceed the refund. If Ross accepts this recommendation, he must nevertheless reduce his \$1,000 FTC carryover from 2022 by \$100 (the amount of the FTC carryback to 2021). This is because the statutory FTC carryback rule is mandatory.

Form 1116, Schedules B and C. Taxpayers use Schedule B (Form 1116), *Foreign Tax Credit Carryover Reconciliation Schedule*, to reconcile their prior year foreign tax carryover with their current year foreign tax carryover, including any changes to their foreign tax carryovers since the filing of their prior year return.⁶¹ Schedule C (Form 1116), *Foreign Tax Redeterminations*, is used by taxpayers to notify the IRS of foreign tax redeterminations that occurred in the current year and relate to prior years.⁶²

10-Year Statute of Limitations.⁶³ Taxpayers with an overpayment of foreign tax have 10 years to file a claim for a U.S. tax refund. This statutory period begins the day after the regular due date for filing the return (without extensions) for the year in which the taxes were actually paid or accrued and applies to:

- Correcting math errors in calculating qualified foreign taxes,
- Reporting qualified foreign taxes not originally reported on the return, or
- Any other change in the amount of the FTC (including corrections to the FTC limitation).

The special 10-year period **also** applies to making or changing the taxpayer's choice of claiming the foreign tax deduction or credit.

Note. Some of the more important rules about FTCs have been addressed in this section. However, it is recommended that tax professionals consult IRS Pub. 514 to learn more about this topic.

⁶⁰ IRC §904(c).

⁶¹ Instructions to Schedule B (Form 1116).

⁶² See instructions to Schedule C (Form 1116).

⁶³ IRC §6511(d)(3).

TAX ELECTION FOR NONRESIDENT ALIEN SPOUSE⁶⁴

When a U.S. citizen or resident is married to a person who is a nonresident alien (NRA) at the close of the year, both spouses can make an election to treat the NRA spouse as a U.S. resident for the entire year. Once made, the election applies to that tax year and all subsequent years until terminated. However, it is suspended for any tax year when neither spouse is a citizen or resident of the United States.

Termination of the election **occurs upon the earliest** of the following events.

- If either spouse revokes the election, the first tax year for which the filing due date has not passed
- If either spouse dies, the first tax year following the year in which the spouse died (except if the surviving spouse is a U.S. citizen or resident alien and is entitled to the joint tax rates as a surviving spouse, the choice does not end until the close of the last year for which these joint rates may be used)
- The beginning of the tax year in which the spouses divorce or legally separate

Note. In any year that either spouse fails to keep adequate books, records, and other necessary information to calculate the correct income tax liability, or to provide adequate access to those records, the IRS can remove the choice to treat an NRA spouse as a resident.⁶⁵

Spouses making this election **must file jointly in the year in which the election is made** but may **choose** to file jointly or separately in subsequent years.⁶⁶

Observation. There are many benefits from filing jointly, which can potentially result in a significant reduction in the U.S. tax liability that would otherwise be payable by the other spouse. Examples of these tax benefits include the following.

- Increased standard deduction
- Lower tax rates as joint filers
- Higher income thresholds for certain tax credits (e.g., American opportunity and lifetime learning credits)⁶⁷
- Opportunity to use the foreign spouse's FTCs to offset U.S. taxes of the U.S. spouse

⁶⁴ IRC §6013(g).

⁶⁵ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

⁶⁶ Treas. Reg. §1.6013-6(c), Example 1.

⁶⁷ IRC §25A.

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Making the Election.⁶⁸ The taxpayers must attach a statement to their original joint return or amended return, signed by both spouses, that contains the following.

1. A declaration that one spouse was an NRA and the other spouse was a U.S. citizen or resident alien on the last day of the tax year and that both spouses choose to be treated as U.S. residents for the year.
2. The name, address, and social security number (SSN) or individual taxpayer identification number (ITIN) of each spouse. (If one spouse died, the name and address of the person making the election on behalf of the deceased spouse are included.)

Similarly, revocation of the election must be made by attaching an appropriate statement to a timely filed return.

Note. There is also a joint filing election that can be made for an NRA who is married to a U.S. citizen or resident and who becomes a U.S. resident by the end of the tax year.⁶⁹ In this case, both spouses elect to treat the former NRA spouse as a U.S. resident for U.S. tax purposes for the **entire** tax year. In practice, this election is more relevant to spouses living in the United States than for those living outside the United States.

SSNs AND ITINs FOR SPOUSES AND DEPENDENTS⁷⁰

Spouse

An NRA spouse who is treated as a U.S. resident must enter either an SSN or ITIN on their tax return. An SSN is obtained by completing Form SS-5, *Application for Social Security Card*. However, because the instructions to Form SS-5 require the applicant to provide evidence of U.S. immigration status, NRA spouses living overseas would usually not qualify for an SSN.

Individuals who are ineligible for an SSN can apply for an ITIN on Form W-7, *Application for IRS Individual Taxpayer Identification Number*. The application along with supporting documentation may be submitted along with the original tax return requiring the ITIN for taxpayer(s) living in the United States.⁷¹ Otherwise, Form W-7 and supporting documentation can be mailed to the IRS or consigned in person to an IRS employee or certified acceptance agent.⁷²

Dependents

Similar requirements exist for dependents. ITIN applications by or on behalf of dependents must also include documentation that establishes U.S. residency unless the applicant is from Canada, Mexico, or is a dependent of a person in the U.S. military who is stationed overseas.

Although the Tax Cuts and Jobs Act of 2017 (TCJA) suspends personal exemptions from 2018 through 2025,⁷³ taxpayers may nevertheless need to apply for or renew an existing ITIN for certain dependents (e.g., those qualifying for the credit for other dependents).⁷⁴

Note. More information on SSN and ITIN applications, including supporting documentation is provided in the 2019 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 6: Special Taxpayers. This can be found at uofi.tax/arc [taxschool.illinois.edu/taxbookarchive].

⁶⁸ Treas. Reg. §1.6013-6(a)(4).

⁶⁹ IRC §6013(h).

⁷⁰ *How do I apply for an ITIN?* Sep. 28, 2021. IRS. [www.irs.gov/individuals/how-do-i-apply-for-an-itin] Accessed on Dec. 17, 2021; Instructions for Form W-7; IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number*.

⁷¹ IRC §6109(i)(1).

⁷² *Ibid.*

⁷³ *TCJA*, PL 115-97, §11041.

⁷⁴ IRS Pub. 972, *Child Tax Credit and Credit for Other Dependents*.

U.S. CITIZENS OR RESIDENT ALIENS STUDYING ABROAD⁷⁵

U.S. taxpayers studying abroad are entitled to the same U.S. tax benefits as any other U.S. taxpayer residing abroad (e.g., the FEI exclusion, FTC, etc.). Also, certain grants, allowances, and other compensation received by U.S. students studying abroad may be tax-exempt under relevant tax treaties.

In addition, U.S. students attending foreign educational institutions may be able to claim the American opportunity credit and lifetime learning credit for **qualified** education and related expenses (e.g., tuition and fees) they paid during the tax year.⁷⁶ To qualify for these education tax credits, the overseas student must attend an **eligible** educational institution⁷⁷ defined as a college, university, vocational school, or other post-secondary educational institution eligible to participate in a student aid program administered by the U.S. Department of Education.⁷⁸ More than 400 foreign schools currently participate in U.S. Department of Education student aid programs.⁷⁹

Note. To claim an education tax credit, the student must obtain a Form 1098-T, *Tuition Statement*, from the eligible educational institution. If the student does not receive the form, they must request it from the educational institution and cooperate with the institution's efforts to gather information to prepare the form. If, despite these efforts, the student does not receive a Form 1098-T, the student must be able to demonstrate that they (or a dependent) were enrolled at an eligible educational institution (e.g., an institution included on the U.S. Department of Education's Federal School Code List)⁸⁰ and can substantiate the payment of qualified tuition and related expenses.⁸¹

FOREIGN ASSET REPORTING REQUIREMENTS

U.S. persons (e.g., citizens and residents) are subject to foreign asset reporting requirements. The most common of these requirements pertains to reporting foreign bank accounts and certain other foreign financial assets.

FOREIGN BANK ACCOUNT REPORT (FBAR)⁸²

A U.S. person with a financial interest in or signature authority over one or more foreign financial accounts must file an FBAR if the **aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year**. This obligation is satisfied by filing FinCEN Form 114, *Report of Foreign Bank and Financial Accounts*.⁸³ The annual FBAR filing due date is April 15 of the following year, although in practice, the Financial Crimes Enforcement Network (FinCEN) grants an automatic six-month filing extension until October 15.⁸⁴

⁷⁵ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

⁷⁶ IRC §25A.

⁷⁷ IRC §25A(f)(1).

⁷⁸ Treas. Reg. §1.25A-2(b).

⁷⁹ *Library — Federal School Code Lists*. 2022-2023. U.S. Dept. of Education. [ifap.ed.gov/ifap/fedSchoolCodeList.jsp] Accessed on Dec. 20, 2021.

⁸⁰ *Ibid.*

⁸¹ Instructions for Form 8863.

⁸² *Report Foreign Bank and Financial Accounts*. Financial Crimes Enforcement Network. [www.fincen.gov/report-foreign-bank-and-financial-accounts] Accessed on Jan. 11, 2022.

⁸³ Form is available at bsaeiling1.fincen.treas.gov/lc/content/xfaforms/profiles/htmldefault.html.

⁸⁴ *Report of Foreign Bank and Financial Accounts (FBAR) Due Date*. Mar. 6, 2019. Financial Crimes Enforcement Network. [www.fincen.gov/sites/default/files/shared/FBAR_Due_Date_20190306.pdf] Accessed on Jan. 11, 2022.

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FBARs must be filed electronically by the individual concerned or by their authorized representative (e.g., an attorney, CPA, or EA). Representatives must obtain authorization from their clients using Form 114a, *Record of Authorization to Electronically File FBARs*.⁸⁵

Penalties for Late Filing or Nonfiling

U.S. persons who fail to file FBARs when required **may** be subject to civil and/or criminal penalties.

Civil Penalties. Depending upon whether the failure was willful or nonwillful, the civil penalties for failure to file an FBAR are as follows.

- Nonwillful failure to file — a maximum penalty of \$10,000⁸⁶
- Willful failure to file — the greater of \$100,000 or 50% of the balance in the account at the time of the violation⁸⁷

The IRS takes the position that nonwillful penalties for late filing or nonfiling apply **per foreign account**. Consequently, a delinquent filer with 10 foreign bank accounts could be assessed penalties of up to \$100,000 by the IRS. The courts, however, have taken the view that this penalty should be assessed **per FBAR**. So, in the preceding example, the maximum penalty the IRS could assess would be \$10,000.⁸⁸

Criminal Penalties. Criminal penalties can consist of financial penalties of up to \$500,000 and/or imprisonment.⁸⁹

REPORTING OF SPECIFIED FOREIGN FINANCIAL ASSETS⁹⁰

U.S. persons with foreign bank accounts and/or other **specified foreign financial assets** may also be required to submit Form 8938, *Statement of Specified Foreign Financial Assets*, with their U.S. federal income tax return by the due date of their return (including extensions).

Note. Other domestic entities (e.g., certain closely held corporations or partnerships and certain trusts) may also have Form 8938 filing requirements.

Besides foreign bank accounts, **specified foreign financial assets** also include the following foreign financial assets held for investment but not in a foreign bank account.

- Stocks or securities issued by a non-U.S. person (including stocks or securities issued by a person organized under the laws of a U.S. possession)
- Any interest in a foreign entity
- Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person (including a financial contract issued by, or entered with, a counterparty that is a person organized under the laws of a U.S. possession)

Generally, financial accounts maintained by U.S. payers are **not** considered to be **specified foreign financial assets** for Form 8938 reporting purposes, even if the payers are U.S. branches of foreign banks or insurance companies.

⁸⁵ Form is available at www.fincen.gov/sites/default/files/shared/FBARE-FileAuth114aRecordSP.pdf.

⁸⁶ IRC §5321(a)(5)(B)(i).

⁸⁷ IRC §5321(a)(5)(C).

⁸⁸ *U.S. v. Boyd*, 991 F.3d 1077 (9th Cir. 2021); *U.S. v. Kaufman*, 3:18-CV-00787 (KAD) (D.Conn. Jan. 11, 2021); *U.S. v. Bittner*, 19 F.4th 734 (5th Cir. 2021).

⁸⁹ IRC §5322.

⁹⁰ Instructions for Form 8938.

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Only U.S. persons whose specified foreign financial assets exceed the following reporting thresholds are required to file Form 8938.⁹¹

Tax Home Location	Filing Status	
	Single, Head of Household, Qualified Widow(er), or Married Filing Separately	Married Filing Jointly
United States	More than \$50,000 on the last day of the tax year, or More than \$75,000 at any time during the tax year	More than \$100,000 on the last day of the tax year, or More than \$150,000 at any time during the tax year
Abroad ^a	More than \$200,000 on the last day of the tax year, or More than \$300,000 at any time during the tax year	More than \$400,000 on the last day of the tax year, or More than \$600,000 at any time during the tax year

^a U.S. persons considered abroad are those qualifying for the FEI exclusion under either the bona fide residence or physical presence test (see earlier FEI exclusion section).

4

Penalties for Late Filing or Nonfiling

The penalty for failure to file a required Form 8938 by the due date of the return (including extensions) is \$10,000.

Additional penalties can be assessed for taxpayers who do not file a correct and complete Form 8938 within 90 days after the IRS mails a notice of the failure to file. These additional penalties are \$10,000 for each 30-day period (or part of a period) during which they continue to fail to file Form 8938 after the 90-day period has expired, subject to a maximum of \$50,000.

These failure-to-file penalties are applied to married taxpayers filing jointly as if each spouse were a single person. However, both spouses are joint and severally liable for these penalties.

OTHER FOREIGN ASSET REPORTING REQUIREMENTS

There are many other foreign asset reporting requirements of which U.S. citizens, residents, and other domestic entities (e.g., certain closely held corporations and partnerships and certain estates and trusts) should be aware. Because the types of interests and transactions covered by these forms vary widely and are subject to complex rules, the summary of reporting requirements below should not be considered definitive but rather a starting point for further research.

Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation

Purpose of Form:	Disclose certain transactions with foreign corporations
Who Must File:	U.S. citizen or resident, or a domestic corporation, trust, or estate
Due Date:	Filer's tax return due date
Penalties:	10% of the fair market value (FMV) of the property transferred, up to a maximum of \$100,000; 40% IRC §6662(j) penalty may also apply
Additional Resources:	IRC §6038B and regulations uofi.tax/22a4x2 [www.irs.gov/pub/irs-pdf/i926.pdf] uofi.tax/22a4x3 [www.irs.gov/individuals/international-taxpayers/form-926-filing-requirement-for-us-transferors-of-property-to-a-foreign-corporation]

⁹¹ Treas. Reg. §1.6038D-2(a).

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Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*

Purpose of Form:	Disclose reportable events with foreign trusts
Who Must File:	Responsible party
Due Date:	Filer's tax return due date
Penalties:	Greater of \$10,000, or 35% of the trust's asset value
Additional Resources:	IRC §6048 and regulations uofi.tax/22a4x4 [www.irs.gov/pub/irs-pdf/i3520.pdf]

Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*

Purpose of Form:	Disclose foreign trust ownership interest and trust activities
Who Must File:	Owner of foreign trust or U.S. agent
Due Date:	15th day of the third month after the end of the foreign trust's tax year
Penalties:	Greater of \$10,000 or 5% of the gross value of trust assets treated as owned by the U.S. owner
Additional Resources:	IRC §6048(b) and regulations uofi.tax/22a4x5 [www.irs.gov/pub/irs-pdf/i3520a.pdf]

Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*

Purpose of Form:	Provide financial reporting and disclose certain transactions or ownership interests
Who Must File:	U.S. persons who are officers, directors, or shareholders in certain foreign corporations
Due Date:	Filer's tax return due date (including extensions)
Penalties:	\$10,000, with additional penalties possible
Additional Resources:	IRC §6038 and regulations uofi.tax/22a4x6 [www.irs.gov/pub/irs-pdf/f5471.pdf]

Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*

Purpose of Form:	Disclose reportable transactions
Who Must File:	Reporting corporation
Due Date:	Filer's tax return due date (including extensions)
Penalties:	\$25,000, with additional penalties possible
Additional Resources:	IRC §§6038A, 6038C, and underlying regulations uofi.tax/22a4x7 [www.irs.gov/pub/irs-pdf/i5472.pdf]

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Form 8804, *Annual Return for Partnership Withholding Tax*

Purpose of Form:	Report a partnership's total liability for withholding of tax on foreign partners' share of effectively connected income for the partnership's tax year Transmittal form for Form(s) 8805, <i>Foreign Partner's Information Statement of Section 1446 Withholding Tax</i>
Who Must File:	Every partnership (other than a publicly traded partnership) with effectively connected gross income allocable to a foreign partner
Due Date:	On or before the 15th day of the 3rd month following the close of the partnership's tax year (including extensions)
Penalties:	5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax.
Additional Resources:	IRC §1446 and underlying regulations uofi.tax/22a4x8 [www.irs.gov/pub/irs-pdf/i8804.pdf]

Caution. This form must be extended separately from Form 1065, *U.S. Return of Partnership Income*.

Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*

Purpose of Form:	To show the amount of effectively connected taxable income and the total tax credit allocable to a foreign partner for the partnership's tax year
Who Must File:	Every partnership (other than a publicly traded partnership) that has effectively connected gross income allocable to a foreign partner
Due Date:	On or before the 15th day of the third month following the close of the partnership's tax year (including extensions)
Penalties:	See Form 8804
Additional Resources:	IRC §1446 and underlying regulations uofi.tax/22a4x9 [www.irs.gov/pub/irs-pdf/i8804.pdf]

Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*

Purpose of Form:	Disclose control of or transactions with foreign partnerships
Who Must File:	U.S. persons with interests in, or transacting with, foreign partnerships
Due Date:	Filer's tax return due date (including extensions)
Penalties:	\$10,000, with additional penalties possible
Additional Resources:	IRC §§6038, 6038B, 6046A, and underlying regulations uofi.tax/22a4x10 [www.irs.gov/pub/irs-pdf/i8865.pdf]

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Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*

Purpose of Form:	Disclose interests in passive foreign investment companies (PFICs)
Who Must File:	U.S. persons with PFIC interests, including a citizen or resident of the United States, a domestic partnership, a domestic corporation, and certain estates and trusts
Due Date:	Filer's tax return due date (including extensions)
Penalties:	Suspension of limitations period for return
Additional Resources:	IRC §§1291–1298 and regulations uofi.tax/22a4x11 [www.irs.gov/pub/irs-pdf/i8621.pdf]

COMPLIANCE OPTIONS FOR UNDISCLOSED FOREIGN ASSETS⁹²

The IRS has the following programs to address failures to comply with U.S. tax and information return obligations with respect to non-U.S. investments.

IRS Criminal Investigation Voluntary Disclosure Practice⁹³

Individuals who **willfully** fail to comply with tax or tax-related obligations may be able to resolve their non-compliance and limit their exposure to criminal prosecution by submitting a voluntary disclosure (i.e., using the voluntary disclosure practice (VDP)).

The VDP is only available to individuals not currently under scrutiny by criminal investigations (CI), who must:

- Provide a truthful, timely, and complete disclosure to CI through designated procedures,
- Cooperate with CI in determining their correct tax liability, and
- Make good faith arrangements with CI to pay in full any tax, interest, and any applicable penalties they owe.

Taxpayer completion of Form 14457, *Voluntary Disclosure Practice Preclearance Request and Application*, initiates the VDP procedure.

Streamlined Filing Compliance Procedures⁹⁴

The streamlined filing compliance procedures are available to taxpayers certifying that their failure to report foreign financial assets and pay all tax due in respect of those assets was **nonwillful**. These procedures are designed to provide such taxpayers with:

- A streamlined procedure for filing amended or delinquent returns,
- Terms for resolving their tax and penalty procedure for filing amended or delinquent returns, and
- Terms for resolving their tax and penalty obligations.

⁹² *Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets*. Aug. 4, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/options-available-for-us-taxpayers-with-undisclosed-foreign-financial-assets] Accessed on Jan. 13, 2022.

⁹³ *IRS Criminal Investigation Voluntary Disclosure Practice*. Aug. 9, 2021. IRS. [www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice] Accessed on Jan. 13, 2022.

⁹⁴ *Streamlined Filing Compliance Procedures*. Dec. 7, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures] Accessed on Jan. 13, 2022.

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There are separate streamlined procedures for non-U.S. residents (streamlined foreign offshore procedures) and U.S. residents (streamlined domestic offshore procedures).

Note. For additional information on the streamlined foreign offshore procedures and streamlined domestic offshore procedures programs, see the 2019 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 6: Special Taxpayers. This can be found at uofi.tax/arc [taxschool.illinois.edu/taxbookarchive].

Delinquent FBAR Submission⁹⁵

The IRS does **not** impose failure to file FBAR penalties for those who meet the following conditions.

- Income from the foreign financial accounts reported on the delinquent FBARs was properly reported on the taxpayer's U.S. tax returns, and associated taxes were paid.
- The IRS had not previously contacted the person regarding an income tax examination or a request for delinquent returns for the years for which the delinquent FBARs are submitted.

U.S. persons meeting these conditions should submit their delinquent FBARs following the stipulated delinquent FBAR submission procedure.

Delinquent International Information Return Submission⁹⁶

Taxpayers who are not under examination/investigation by the IRS or CI and file any delinquent information returns through normal filing procedures may nevertheless be subject to penalties. However, when appropriate, taxpayers may attach a reasonable cause statement to each delinquent information return that may reduce their penalty exposure.

Information returns filed with amended returns may be selected for audit.

TAX TREATIES⁹⁷

Broadly speaking, the purpose of a tax treaty “is to facilitate cross-border trade and investment by eliminating the tax impediments to these cross-border flows.”⁹⁸

The U.S. Supreme Court has ruled that tax treaties and U.S. law have equal footing, and this is also enshrined in the statute.⁹⁹ Therefore, a treaty can supersede an act of Congress or vice versa. However, if there is a conflict, the U.S. Supreme Court has indicated that the last in date order has precedence.¹⁰⁰

⁹⁵ *Delinquent FBAR Submission Procedures*. Sep. 1, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures] Accessed on Jan. 13, 2022.

⁹⁶ *Delinquent International Information Return Submission Procedures*. Sep. 15, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures] Accessed on Jan. 13, 2022.

⁹⁷ *United States Income Tax Treaties — A to Z*. Sep. 15, 2021. IRS. [www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z] Accessed on Jan. 3, 2022; *Model Tax Convention on Income and on Capital: Condensed Version 2017*. Dec. 12, 2017. OECD. [www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm] Accessed on Jan. 3, 2022.

⁹⁸ *An introduction to tax treaties*. Arnold, Brian J. Jun. 2020. United Nations. [www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-06/TT_Introduction_Eng.pdf] Accessed on Jan. 3, 2022.

⁹⁹ *Whitney v. Robertson*, 124 U.S. 190 (1888); IRC §7852(d)(1); *What Happens if H.R. 1 Conflicts with U.S. Tax Treaties?* Lunder, Erika K., Dec. 19, 2017. Congressional Research Service. [sgp.fas.org/crs/misc/LSB10047.pdf] Accessed on Jan. 5, 2022.

¹⁰⁰ *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616 (1870).

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As of September 15, 2021, the United States has tax treaties with 68 foreign countries. Under these treaties, foreign residents in the United States are taxed at a reduced rate or are exempt from U.S. taxes on certain items of U.S. source income. These reduced rates and exemptions vary between treaties. Likewise, U.S. residents or citizens are taxed at a reduced rate or are exempt from foreign taxes on certain foreign source income.

Note. Because the United States taxes its citizens and permanent residents on worldwide income, most of its tax treaties contain a “saving clause” that prevents a U.S. citizen or resident from utilizing tax treaty provisions to avoid U.S. taxation.

The Organization for Economic Cooperation and Development (OECD) has developed a model treaty that many countries (including the United States) have used in developing tax treaties with other countries.¹⁰¹ The structure of the OECD model treaty is summarized in Appendix B at the end of this chapter. This section focuses on some of the treaty articles that practitioners should be aware of when dealing with clients living and/or working in foreign countries (bolded in the list found in Appendix B).

PERSONS COVERED (ARTICLE 1)

Persons covered are residents of one or both contracting countries. However, as noted earlier, some of the United States’ treaties contain a **savings clause** whereby the United States can tax its citizens and residents as though the treaty did not exist. The United States–Italy treaty, for example, includes such a savings clause except that it does not apply to certain treaty articles (e.g., relief from double taxation, nondiscrimination, etc.).

Note. Although the United States bases many of its tax treaties on the OECD model treaty, there are often variations like the addition of a savings clause. Therefore, practitioners should not make assumptions and instead scrutinize each treaty carefully.

INTEREST INCOME (ARTICLE 11)

The OECD model treaty contains **revenue-sharing** provisions (e.g., as applied to interest income). For example, under the United States–Italy tax treaty, a U.S. citizen or resident who receives interest from Italian sources is subject to both U.S. tax and Italian tax on that income. The applicable Italian tax rate cannot exceed 10% **except** for U.S. taxpayers who are residents of Italy. Because this provision usually gives rise to double taxation, Article 23 (discussed later) provides relief in this situation.

INCOME FROM EMPLOYMENT (ARTICLE 15)

This is a key article for practitioners to consider as most international assignees’ income comes principally from their employment. Many treaties follow the OECD model treaty in holding employment income **exempt** from host country taxation if the assignee meets **all** the following conditions.

- They are present in the host country for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned.
- The assignee’s remuneration is paid by, or on behalf of, an employer who is **not** a resident of the host country.
- The assignee’s remuneration is **not** borne by a permanent establishment which the employer has in the host country.

¹⁰¹. *Model Tax Convention on Income and on Capital: Condensed Version 2017*. Dec. 18, 2017. OECD. [www.oecd-ilibrary.org/docserver/mtc_cond-2017-en.pdf] Accessed on Jun. 6, 2022.

Article 15 of the United States–Italy tax treaty is generally based on this OECD article except that the first condition applies the 183-day rule only to the fiscal year in question. This article is addressed later in the Foreign Tax Savings Opportunities section of the chapter.

Some treaties, however, differ somewhat from the OECD model. For example, Article XV of the United States–Canada treaty¹⁰² **exempts** employment income from host taxation if the assignee meets **either** of the following conditions.

- The assignee spends no more than 183 days in the host-country during the calendar year, works for a **non-host-country resident** employer, and receives compensation that is **not** borne by a permanent establishment that the employer has in the host-country.
- The assignee does not receive more than \$10,000 in the host country’s currency.

Example 11. John, a U.S. citizen, is sent by his employer, Timber Corp. (a U.S. corporation) to work in Canada. John remains on the U.S. payroll and receives U.S. \$10,000 for the services he performs during the seven months he is present in Canada in 2021. The \$10,000 in U.S. currency is equivalent to about \$12,500 in Canadian currency.

Because John is present in Canada for **more** than 183 days in 2021, he does **not** meet the first Article XV condition. Nor does John meet the second Article XV condition because his compensation exceeds Canadian \$10,000. Therefore, John’s U.S. \$10,000 compensation is fully taxable in Canada.

Observation. John, from the preceding example, may qualify for an FTC or deduction for the taxes paid to Canada when filing his U.S. return.

SE Income¹⁰³

Tax treaties generally have a provision that reflects the agreement between the contracting states on how SE income of a taxpayer is taxed, particularly when taxpayers provide cross-border SE services. Under the United States–Canada Income Tax Convention, SE income is generally considered business profit and may be taxed in the country of the taxpayer’s residency unless the taxpayer has a permanent establishment in the other country. If a permanent establishment exists in the other country, business profits attributable to that permanent establishment are taxed in the country in which the permanent establishment exists.

If the taxpayer engages in SE activity in both the United States and Canada with a permanent establishment in each country, business profits are attributed to each country based on the profits that each permanent establishment might be expected to make if it were a distinct and separate person engaged in the same or similar business activity. Only profits derived from the permanent establishment’s assets, risks assumed, or activities performed are considered attributable to that permanent establishment.

PENSIONS (ARTICLES 18 AND 19)

Article 18 of the OECD model tax treaty establishes the general principle that pensions are taxed only in the country of residence. Some tax treaties also include in this Article the tax treatment of annuities, alimony, and child support (e.g., the United States–Germany tax treaty).

Although the OECD model tax treaty is silent on the tax treatment of social security benefits, most tax treaties have provisions addressing this (e.g., Article 19 of the United States–Germany tax treaty).

¹⁰² *United States–Canada Income Tax Convention*. Aug. 16, 1984. IRS. [www.irs.gov/pub/irs-trty/canada.pdf] Accessed on Jan. 4, 2022.

¹⁰³ *Ibid*, Article XIV; IRS Pub. 597, *Information on the United States–Canada Income Tax Treaty*.

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Normally, social security benefits are only taxed in the country of residence. Therefore, foreign social security pensions received by U.S. citizens or permanent residents residing in the United States are taxable to the United States. In contrast, U.S. social security payments received by a U.S. taxpayer residing in a country with which the United States has a treaty are often only subject to host-country taxation (i.e., exempt from U.S. taxation.) Both these generalizations are true for tax treaties the U.S. has with Germany, Italy, and the U.K. but **not** for the Canadian Treaty where taxing jurisdiction rests solely with the country making the social security payment.

Another point to consider is the U.S. tax treatment of foreign social security payments received by a U.S. resident. Usually, these payments are fully taxable in the United States but occasionally they can be treated the same way as U.S. social security benefits when no more than 85% of this income is taxable¹⁰⁴ (e.g., United States–Germany Tax Treaty¹⁰⁵).

Practitioner Planning Tip

Practitioners with U.S.-based clients receiving foreign social security payments or with U.S. clients living abroad receiving foreign and/or U.S. social security benefits are strongly encouraged to review the applicable tax treaty to ensure the correct tax treatment of these payments.

METHODS FOR ELIMINATING DOUBLE TAXATION (ARTICLES 23A AND 23B)

Because U.S. citizens and permanent residents are taxed on their worldwide income, double taxation can result when they become residents in another country. OECD Treaty Articles 23A and 23B provide relief either by allowing a deduction or a credit for the foreign income taxes paid when determining the taxpayer's U.S. income tax liability, essentially mirroring the U.S. statute.¹⁰⁶

Despite these provisions, U.S. taxpayers can still be doubly taxed. For example, this occurs with **U.S.-sourced** portfolio income subject to foreign country taxation. In this situation, the U.S. taxpayer has a \$0 passive income FTC limitation and, therefore, cannot utilize the foreign taxes paid or accrued on their U.S.-sourced portfolio income to offset the related U.S. tax. Recognizing this conundrum, some treaties allow this income to be re-sourced as foreign. According to an IRS analysis, there are 29 countries with which the United States has tax treaties that include such income re-sourcing provisions.¹⁰⁷

Note. The IRS instructions to Form 1116 state that the **treaty re-sourced income** category “does not apply to income that is re-sourced by reason of the relief from double taxation rules in any U.S. income tax treaty that is **solely applicable** to U.S. citizens who are **residents** of the foreign treaty country.”¹⁰⁸ For example, U.S. dividends/interest re-sourced as foreign by a treaty for the previously stated reason belongs in the Form 1116 **passive income** category.

¹⁰⁴. IRC §86.

¹⁰⁵. Convention For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, Ger.–U.S., art. 19, ¶ 2, Aug. 29, 1989, TIAS 91-821.

¹⁰⁶. IRC §§164 and 901.

¹⁰⁷. *Foreign Tax Credit — Special Issues*. Sep. 15, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/foreign-tax-credit-special-issues] Accessed on Jan. 5, 2022.

¹⁰⁸. See IRC §§865(h), 904(d)(6), and 904(h)(10) and respective Treas. Regs. and Treas. Reg. § 1.904-4(k).

NONDISCRIMINATION (ARTICLE 24)

One of the purposes of the **nondiscrimination** clause contained in the OECD model tax treaty is to ensure that nationals from each country who are parties to the tax treaty are subject to **equitable** taxation requirements, particularly related to residence (i.e., a treaty country cannot impose **more burdensome** requirements on citizens of the other country who are residents of the treaty country than it imposes on its own citizens in the same circumstances). For example, U.S. permanent residents who are citizens or nationals of a country with which the United States has a treaty containing a **nondiscrimination** clause, have the same right as U.S. citizens to claim the FEI exclusion using the bona fide residence test (discussed earlier).¹⁰⁹ Otherwise, if those U.S. permanent residents were subject to more burdensome U.S. taxation than would be applicable to a U.S. citizen in the same circumstances, the United States would be in violation of its treaty obligation.

Most of the United States's tax treaties contain a nondiscrimination clause (e.g., treaties with Canada, Germany, Italy, U.K.).

MUTUAL AGREEMENT PROCEDURE (ARTICLE 25)

While tax treaties are intended to be comprehensive taxwise, there may be instances when the actions of one or both parties to the treaty are not in accordance with the provisions of the treaty. Consequently, the OECD model treaty contains a **mutual agreement procedure** to address such situations whereby each party to the treaty establishes a competent authority from whom taxpayers can seek redress.

Generally, applications for U.S. competent authority consideration are made under Rev. Proc. 2015-40 except for the United States–Canada treaty when Rev. Proc. 98-21 can also apply.¹¹⁰

EXCHANGE OF INFORMATION (ARTICLE 26)

Another treaty article in the OECD model tax treaty concerns the provision permitting the competent authorities of the parties to the treaty to exchange information between themselves to:

- Carry out the provisions of the treaty, or
- Administer or enforce domestic tax laws, provided this does not result in actions contrary to the purpose of the treaty.

Note. Specific instances of information exchange directly impacting a client rarely occur. However, tax practitioners should inform their clients of the existence of these provisions when appropriate.

SOCIAL SECURITY AGREEMENTS¹¹¹

Bilateral international social security agreements coordinate the social security programs from the United States and other countries. Bilateral international social security agreements have two principal objectives.

1. They eliminate dual social security taxation that occurs when a worker from one country working in another country is required to pay social security taxes to both countries on the same earnings.
2. If necessary, they allow workers to **totalize** their social security contribution records in both countries so that they meet the **minimum eligibility** requirements to qualify for a country's social security retirement benefit.

¹⁰⁹ IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

¹¹⁰ *Competent Authority Assistance*. Aug. 31, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/competent-authority-assistance] Accessed on Jan. 5, 2022.

¹¹¹ *U.S. International Social Security Agreements*. SSA. [www.ssa.gov/international/agreements_overview.html] Accessed on Jan. 6, 2022.

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Because of the second stated objective, such international social security agreements are often referred to as **totalization agreements (TAs)**.

Since 1978, the United States has stipulated bilateral TAs with 30 countries. The first agreement was with Italy (which differs from the other agreements, as explained later). The latest agreement with Iceland was enacted on March 1, 2019.

ELIMINATION OF DUAL SOCIAL SECURITY TAXATION

Generally, the United States' TAs specify that an employed worker's social security coverage is determined using a "territoriality" rule. If otherwise covered by both the United States and a foreign social security system, the employee contributes only to the social security system of the country in which they are working.

While the general rule is based on territoriality, there is an **exception** for temporarily detached workers.

Detached-Worker Rule

All the TAs (except for Italy) include an exception to the **territoriality** rule applicable to workers on a **temporary** assignment. Under this detached-worker exception, an employee sent by their employer on a temporary assignment to another country is only subject to the social security regime of their country of origin. Generally, U.S. TAs define as **temporary** assignments that are expected to last **five years** or less (e.g., Australia, France, Japan, etc.). U.S. workers to whom these rules apply include both U.S. citizens and permanent residents.

Example 12. Elena, a U.S. permanent resident, is sent on a 5-year temporary work assignment to Japan. Elena's temporary assignment satisfies the **detached-worker rule** because it does not exceed five years in duration. Therefore, Elena is covered under the U.S. social security system throughout her 5-year assignment and exempted from Japanese social security coverage during the same period.

The detached-worker rule can also apply when the employee works for a branch office or affiliate of a U.S. employer in a foreign country. Employers can enter into agreements, provided by IRC §3121(l), with the IRS to make U.S. employees subject to U.S. social security law, instead of the equivalent laws of the country in which they work. These agreements must be in place for an employee to continue with social security when they transfer to a foreign affiliate of their employer.

To prevent the host country from subjecting a detached worker to their social security regime, the worker must present a **certificate of coverage** (explained later) verifying that the worker is covered by their home country's social security system.

Self-Employed Individuals

Like employees, **most** TAs require self-employed U.S. citizens and residents working in a foreign country to pay social security contributions only to their country of residence – like the **territoriality rule** for employees (see TAs for Brazil, Poland, Switzerland, U.K.).

However, some TAs have a detached-worker rule for self-employed workers temporarily working in the foreign countries, as shown in the following table.

Country	Detachment Period
Belgium	≤ 5 years
France	≤ 2 years
Germany	≤ 5 years
Japan	≤ 5 years

Certificate of Coverage

Workers potentially subject to dual social security coverage must obtain a **certificate of coverage** from the country that continues to cover them. This certificate must then be provided to the social security authority of the other country to obtain an exemption from coverage in that other country. Employers usually make the request for the certificate on behalf of their employees, while self-employed workers request their own certificate.

A U.S. employee who receives a certificate of coverage in the foreign system should provide the certificate to their U.S. employer, who should then exempt the worker's earnings from U.S. social security tax withholdings. This certificate can then be provided to the IRS if needed (e.g., in the event of a payroll audit).

Self-Employed Individuals. Self-employed U.S. citizens or residents must attach a copy of the foreign certificate to their U.S. tax return each year to document their exemption from SE taxes (limited to the period of the certificate's validity).¹¹²

Example 13. Raymond, a self-employed U.S. citizen and resident, operated mainly in Canada where he worked as an independent contractor for Forestry Preservation Inc. (FPI), a Canadian company.¹¹³

Raymond reported his SE income and expenses on Form 1040, Schedule C, *Profit or Loss from Business*. Conversely, he was treated as an employee by FPI, which withheld Canadian income and social security taxes from his compensation.

Raymond received a deficiency notice from the IRS for SE tax on his income for the tax year. Under the United States–Canada TA, a self-employed person otherwise subject to SE taxes in both countries is subject to SE taxes only in the country in which they reside.¹¹⁴ Unfortunately, this TA rule was not properly applied to Raymond's income by FPI and the Canada Revenue Agency resulting in double social security coverage.

Raymond attempted to recover the Canadian social security tax withholdings but was unable to do so because he had failed to obtain a certificate of coverage from the United States when it was required.

Application. An application for a U.S. certificate of coverage can be made:¹¹⁵

- Online at [opts.ssa.gov/s](https://www.ssa.gov/opts),
- By fax to 410-966-1861, or
- By mail to:
Social Security Administration
Office of Earnings and International Operations
P.O. Box 17741
Baltimore, Maryland 21235-7741

The information to be furnished can vary between TAs. Typically, the following information must be provided.

- The employer's name and address in the United States and the other country
- The worker's full name, place and date of birth, citizenship, and U.S., and foreign SSNs
- The place and date of hiring, and the beginning and ending dates of the assignment in the foreign country
- When appropriate, whether U.S. social security coverage has been arranged for employees of the foreign affiliate under §3121(l)
- Country of residence and the nature of their SE income for self-employed workers

¹¹² Rev. Proc. 84-54, 1984-28 IRB 11.

¹¹³ Example based on *R.L. Rusten v. Comm'r*, TC Summ. Op. 2008-16 (Feb. 19, 2008).

¹¹⁴ *Totalization Agreement with Canada*. Jan. 2004. SSA. [www.ssa.gov/international/Agreement_Pamphlets/canada.html] Accessed on Feb. 2, 2022.

¹¹⁵ *Certificate of Coverage*. SSA. [[opts.ssa.gov/s](https://www.ssa.gov/opts)] Accessed on Jan. 11, 2022.

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Applications for foreign country certificates of coverage should be made in accordance with the requirements of the specific TA.

TOTALIZATION

Workers who have a minimum amount of coverage (e.g., six calendar quarters for the United States) but do not have sufficient coverage under a foreign country's social security system, can combine coverage they have in the other TA country to meet specified insurance status requirements for claiming retirement benefits (e.g., 40 calendar quarters for the United States). In such a case, the worker receives a partial benefit based on the social security contributions they paid.

Note. For more information on social security coverage, see the 2022 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 1: Elder Issues.

Example 14. Cathy has eight quarters of U.S. social security contributions and 10 years of U.K. national insurance (social security) contributions. Cathy is not entitled to U.S. social security retirement benefits based on her U.S. contributions alone. However, when totalizing her two years of U.S. contributions with her 10 years of U.K. contributions, Cathy exceeds the 40-quarter threshold for claiming U.S. social security retirement benefit, although her benefit is based solely on her U.S. contributions.

An application for benefits under any United States TA is made on Form SSA-2490-BK, *Application for Benefits under a U.S. International Social Security Agreement*. The form in either paper or electronic form is only available in Social Security Administration field offices and U.S. foreign service posts.¹¹⁶

FOREIGN TAX SAVINGS OPPORTUNITIES

Many European countries have income tax rates that exceed U.S. federal income tax rates. The following table shows the 2021 national tax rates for two European countries. It does not include regional or local tax rates, which can also apply (e.g., in Italy). Unlike the United States, European country tax rates are usually the same regardless of filing status.

Country	Taxable Income (in Foreign Currency)		Marginal Tax Rate
	Over	But Not Over	
Italy (Euros) ¹¹⁷	0	15,000	23%
	15,000	28,000	27%
	28,000	55,000	38%
	55,000	75,000	41%
	75,000	No limit	43%
Poland (Zlotys) ¹¹⁸	0	120,000	≤17%
	120,000	No limit	32%

¹¹⁶ *Program Operations Manual System (POMS)*. GN 01702.110. SSA. [secure.ssa.gov/poms.nsf/lnx/0201702110] Accessed on Jan. 11, 2022.

¹¹⁷ *International Tax — Italy Highlights 2021*. Jan. 2021. Deloitte. [www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-italyhighlights-2021.pdf] Accessed on May 26, 2022.

¹¹⁸ *Individual — Taxes on Personal Income*. Feb. 18, 2022. PriceWaterhouseCoopers. [taxsummaries.pwc.com/poland/individual/taxes-on-personal-income] Accessed Apr. 28, 2022.

The following cases illustrate the importance of a U.S. tax preparer being aware of applicable foreign laws and regulations, as well as international practices.

ITALY

Article 15 (Dependent Personal Services) of the United States–Italy tax treaty¹¹⁹ is based on Article 15 of the OECD model tax convention.¹²⁰ As discussed previously, the purpose of this article is to **exempt** from host-country taxation, assignees who:

1. Spend no more than 183 days in the host country during the calendar year,
2. Work for a non-host-country resident employer, and
3. Have compensation not borne by a permanent establishment that the employer has in the host-country.

Note. An important consideration before the subsequent illustrative example is that employees of an Italian company are subject to Italian tax withholdings whereas assignees to Italy on an overseas payroll are typically not subject to Italian tax withholding and instead pay their taxes when they file their tax return in the subsequent year.

Example 15. Mark Ballard and Sandy Smith, both single U.S. citizens, are employed by Turin Corp., a U.S. company that has a wholly owned subsidiary in Italy (Torino S.r.l.). Both Mark and Sandy start a 3-year assignment in Italy on July 2, 2021, until June 30, 2024. In 2021 they are present for 183 days in Italy.

Mark and Sandy each earn \$200,000 annually from their employment which is their sole source of income. They both claim the standard deduction. For 2021, \$100,000 of their salary was earned in Italy and was their only foreign source income. A key difference between Mark and Sandy is that Mark remains on the U.S. company's payroll throughout his assignment to Italy whereas Sandy switches to the Italian subsidiary's payroll from July 2, 2021. Mark's compensation is borne by Turin Corp. throughout his Italian assignment. For the purposes of this example, social security taxes are not considered.

U.S. federal and Italian income taxes are shown in the next table. For the sake of simplicity, an exchange rate of €1= \$1.12 has been used for both 2021 and 2022, and the tax rates are assumed to be the same for both years.¹²¹ For 2021, the U.S. FTC limitation is assumed to be 50% of the U.S. tax liability.

¹¹⁹ *Convention Between the Government of the United States of America and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion*. 1999. U.S. Treasury. [www.treasury.gov/resource-center/tax-policy/treaties/Documents/italy.pdf] Accessed on Dec. 6, 2021.

¹²⁰ *Articles of the Model Convention with Respect to Taxes on Income and Capital*. Nov. 21, 2021. OECD. [www.oecd.org/ctp/treaties/articles-model-tax-convention-2017.pdf] Accessed on Dec. 6, 2021.

¹²¹ Although this example assumes that 2022 Italian tax rates remained unchanged from 2021, in fact significant changes in tax brackets took place that are beyond the scope of this chapter.

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Year	Gross U.S. Tax before FTC		Italian Tax	
2021	Taxable income	\$200,000	Assumed taxable income ($\$100,000 \div 1.12$)	€89,286
	Less standard deduction	(12,550)	Tax calculated using previous table rates:	
	Taxable income	\$187,450	1st bracket ($\text{€}15,000 \times 23\%$)	€ 3,450
	Tax due (per tables)	\$ 40,811	2nd bracket ($(\text{€}28,000 - \text{€}15,000) \times 27\%$)	3,510
		$\times 50\%$	3rd bracket ($(\text{€}55,000 - \text{€}28,000) \times 38\%$)	10,260
	FTC limitation	\$ 20,406	4th bracket ($(\text{€}75,000 - \text{€}55,000) \times 41\%$)	8,200
			5th bracket ($(\text{€}89,286 - \text{€}75,000) \times 43\%$)	6,143
			€31,563	
		Conversion to U.S. dollars	$\times 1.12$	
			\$35,351	
2022	Taxable income	\$200,000	Assumed taxable income ($\$200,000 \div 1.12$)	€178,571
	Less standard deduction	(12,950)	Tax calculated using previous table rates:	
	Taxable income	\$187,050	1st bracket ($\text{€}15,000 \times 23\%$)	€ 3,450
	Tax due (per tables)	\$ 40,088	2nd bracket ($(\text{€}28,000 - \text{€}15,000) \times 27\%$)	3,510
		$\times 100\%$	3rd bracket ($(\text{€}55,000 - \text{€}28,000) \times 38\%$)	10,260
	FTC limitation	\$40,088	4th bracket ($(\text{€}75,000 - \text{€}55,000) \times 41\%$)	8,200
			5th bracket ($(\text{€}178,571 - \text{€}75,000) \times 43\%$)	44,536
			€69,956	
		Conversion to U.S. dollars	$\times 1.12$	
			\$78,351	

The following six questions arise.

1. For 2021, is Mark exempt from Italian income tax under Article 15 of the United States–Italy tax treaty?
2. For 2021, is Sandy exempt from Italian income tax under Article 15 of the United States–Italy tax treaty?
3. Do either Mark or Sandy have FTC carryforwards?
4. What should Mark’s U.S. tax preparer do when Mark’s 2022 Italian tax liability is established?
5. How should Mark and Sandy account for their FTCs (cash or accrued basis)?
6. Should either Mark or Sandy claim the FEI exclusion?

Discussion

1. Yes, because Mark meets the three requirements of Article 15 of the treaty.
2. No, Sandy is subject to Italian income tax in 2021 because she works for an Italian employer. Consequently, Mark’s 2021 taxes are **\$40,811** (\$40,811 United States + \$0 Italy) whereas Sandy’s are **\$55,756** (\$20,405 U.S. tax (\$40,811 tax – \$20,406 FTC limitation) + \$35,351 Italian tax). Unfortunately, because Italian income tax rates are high, Sandy cannot offset her entire 2021 Italian tax liability against her 2021 U.S. tax liability.
3. As discussed in the earlier FTC section, excess foreign taxes must first be carried back to the immediately preceding year. This does not help Sandy with her 2021 excess FTC of \$14,945 (\$35,351 Italian income tax – \$20,406 FTC limitation) unless she had a 2020 FTC limitation greater than zero.

Mark’s \$20,406 FTC limitation for 2021 was unused on his 2021 U.S. tax return because he had \$0 2021 Italian tax liability.

4. Once Mark's U.S. tax preparer knows Mark's 2022 Italian tax liability (assumed to be \$78,351 in this example), they can see that only \$40,088 is utilized on Mark's 2022 U.S. tax return as this is the amount of Mark's 2022 FTC limitation. Therefore, \$20,406 of the \$38,263 excess FTC (\$78,351 Italian income tax – \$40,088 FTC limitation), equal to Mark's 2021 FTC limitation, gets carried back to 2021. Mark files an amended 2021 U.S. tax return to recover the resulting U.S. tax overpayment. Consequently, Mark's 2021 overall tax liability diminishes further to **\$20,405** (\$40,811 original tax – \$20,406 FTC carryback from 2022).
5. Because Sandy is on the Italian company payroll, she is subject to Italian tax withholding. Therefore, it makes sense for her to account for foreign taxes on her U.S. tax return on the **paid** basis. Mark, however, waits to pay his 2022 Italian income taxes until 2023, so to facilitate the FTC carryback to 2021, Mark must use the **accrued** basis to account for Italian income taxes on his 2022 U.S. tax return.
6. Claiming the FEI exclusion does not provide any tax benefit to Mark or Sandy because their Italian taxes exceed their available FTC limitations. In other words, the U.S. tax on their foreign income is already fully offset by FTC, and the FEI cannot reduce the foreign portion of their U.S. tax below that.

Note. Some practitioners may be wondering why they would not suggest their corporate clients keep their proposed assignees on the U.S. payroll. The answer is that the U.S. company may not be able to justify retaining the assignment cost on the U.S. company's books. Also, if the Italian subsidiary was subject to a payroll audit, and the presence of the U.S. employee working in the Italian subsidiary's facilities was discovered, the auditor may decide that the U.S. employee should go on the Italian payroll subject to Italian tax withholdings. Therefore, it is up to the corporate client to carefully weigh these issues when structuring the assignment from a payroll perspective.

STATUS OF FORCES AGREEMENTS¹²²

Various countries have established Status of Forces Agreements (SOFAs) with the U.S. government. These international agreements are separate from tax treaties. They regulate fiscal and other treatment of **covered personnel**, which includes military personnel, their spouses, and dependents, as well as **military contractors** and their spouses and dependents. Generally, covered personnel cannot be solely citizens of the country in which they are stationed. According to the U.S. Department of State's website, the United States currently has 48 SOFA agreements with countries worldwide.¹²³ A particularly important agreement is the North Atlantic Treaty Organization (NATO) agreement, whose membership currently includes the United States and 29 European countries.¹²⁴ Host country taxation is addressed in Article X of this agreement. Pursuant to this article, periods that covered personnel are present in the host country are not considered when determining tax residence or domicile in that country. Furthermore, their salaries and other compensation paid in connection with their duties is **exempt** from host-country taxation.

Similarly, Article 20 of the United States–Poland SOFA provides an exemption from Polish taxation of compensation paid to covered personnel unless they are solely Polish citizens.

¹²² *Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces*. Oct. 14, 2009. North Atlantic Treaty Organization. [www.nato.int/cps/en/natohq/official_texts_17265.htm] Accessed on Dec. 7, 2021; *Defense Cooperation Agreement Between the United States of America and Poland*. Nov. 13, 2020. U.S. Department of State. [www.state.gov/wp-content/uploads/2021/01/20-1113-Poland-EDCA.pdf] Accessed on Dec. 7, 2021.

¹²³ *Status of Forces Agreement*. U.S. Department of State. [www.state.gov/subjects/status-of-forces-agreement/] Accessed on Dec. 7, 2021.

¹²⁴ *NATO MEMBER COUNTRIES*. Aug. 31, 2020. North Atlantic Treaty Organization. [www.nato.int/cps/en/natohq/nato_countries.htm] Accessed on Dec. 7, 2021.

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Example 16. Assume the same facts as **Example 15**, except that Mark is a military contractor on a 3-year assignment to Poland starting January 1, 2021.

Because Mark is a U.S. citizen (i.e., not solely a Polish citizen), his income from his employment in Poland should be exempt from Polish taxation under the United States–Poland SOFA. Assuming Mark establishes a foreign tax home and meets the physical presence test, he should be able to claim the FEI exclusion. Mark cannot utilize the §911 **bona fide residence** test because his assignment in Poland is not considered residence for Polish tax purposes.

Therefore, Marks’s 2021 U.S. tax is \$20,702 (\$40,811 – \$20,109 U.S. tax on the maximum FEI of \$108,700). This is also Mark’s total tax burden for 2021.

Foreign tax return preparers are not always familiar with SOFAs. FTC cannot be claimed for foreign taxes that are refundable. Therefore, Mark’s U.S. return preparer should recommend that Mark have his foreign tax preparer file for a refund referring to Article 20 of the United States–Poland SOFA.

SOFAs can be controversial. For example, German tax authority initiatives exist to tax the pay of military personnel and contractors stationed in Germany despite the existence of SOFAs forbidding such treatment.¹²⁵

In the previous example, if Mark had been assigned to Germany and charged tax by the German tax authorities on his income, his U.S. tax preparer could consider filing the U.S. return claiming FTC for the German income taxes. They should disclose the position properly or request a private letter ruling, given the uncertain resolution of this controversy.¹²⁶

Practitioner Planning Tip

The preceding examples show the importance of being aware of international tax rules and regulations that can reduce a U.S. taxpayer’s overall tax burden and/or impact determination of the taxpayer’s U.S. tax liability. Additionally, U.S. tax preparers should communicate with their foreign counterparts to establish that these and other appropriate host-country tax savings opportunities have been taken.

¹²⁵ *Blinken, unaware of Germany’s tax penalties on US military personnel, says he will get involved.* Vandiver, John. Sep. 9, 2021. Stars and Stripes. [www.stripes.com/theaters/europe/2021-09-09/blinken-germany-military-sofa-taxes-2816253.html] Accessed on Dec. 7, 2021.

¹²⁶ *Code Revenue Procedures Regulations Letter Rulings.* Nov. 4, 2021. IRS. [www.irs.gov/faqs/irs-procedures/code-revenue-procedures-regulations-letter-rulings/code-revenue-procedures-regulations-letter-rulings] Accessed on Dec. 7, 2021

EXPATRIATION TAX¹²⁷

The **expatriation tax** provisions apply to:

1. U.S. citizens who have renounced their citizenship, and
2. Long-term lawful permanent residents¹²⁸ who have ended their U.S. resident status for federal tax purposes.

This section discusses the rules applicable to **covered** individuals expatriating after June 16, 2008. Practitioners with clients expatriating before this date should see the cited resources for the applicable rules.

COVERED EXPATRIATES

A U.S. citizen or long-term resident (LTR) who meets **any** of the following conditions is a **covered expatriate** for purposes of the **expatriation tax**.

1. Their average annual net income tax for the five years ending before the date of expatriation or termination of residency is more than a specified amount that is adjusted for inflation (\$165,000 for 2018, \$168,000 for 2019, \$171,000 for 2020, \$172,000 for 2021,¹²⁹ and \$178,000 for 2022¹³⁰).
2. Their net worth is \$2 million or more on the date of their expatriation or termination of residency.
3. They fail to certify on Form 8854 that they complied with all U.S. federal tax obligations for the five years preceding the date of their expatriation or termination of residency.

U.S. Citizens

A citizen is treated as relinquishing their U.S. citizenship on the **earliest** of the following dates.¹³¹

- The date the individual renounces their U.S. nationality before a diplomatic or consular officer of the United States, provided the renunciation is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the U.S. Department of State
- The date the individual furnishes to the U.S. Department of State a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an act of expatriation,¹³² provided the voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the U.S. Department of State
- The date the U.S. Department of State issues to the individual a certificate of loss of nationality
- The date a U.S. court cancels a naturalized citizen's certificate of naturalization

¹²⁷ *Expatriation Tax*. Jul. 22, 2021. IRS. [www.irs.gov/individuals/international-taxpayers/expatriation-tax] Accessed on Jan. 19, 2022; IRC §§877 and 877A.

¹²⁸ As defined by IRC §7701(b)(6).

¹²⁹ Rev. Proc. 2020-45, 2020-46 IRB 1016.

¹³⁰ Rev. Proc. 2021-45, 2021-31 IRB 170.

¹³¹ 8 USC §1481(a); 22 CFR §50.50(b).

¹³² Specified in paragraph (1), (2), (3), or (4) of §349(a) of the Immigration and Nationality Act (8 USC §1481(a)(1)-(4)).

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Long-Term Residents

An LTR is a person (other than a U.S. citizen) who is a lawful permanent resident of the United States for at least eight tax years during the 15 tax years ending with the tax year when the LTR ceased being a lawful permanent resident.

An LTR ceases being a lawful permanent resident if:

- Their immigrant status has been revoked or has been administratively or judicially determined to have been abandoned, **or**
- They start being treated as a resident of a foreign country under a tax treaty between the United States and that country, do not waive the benefits of the treaty applicable to residents of the foreign country, and notify the IRS of such treatment on Forms 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, and 8854.

DEEMED SALE RULE¹³³

The expatriation tax is determined under a mark-to-market regime whereby all property of a covered expatriate is deemed sold for its FMV on the day before the expatriation date. Gains from the deemed sale are considered for the tax year of the deemed sale, **notwithstanding** any other provisions of the Code. By contrast, losses from the deemed sale are considered only to the extent otherwise provided in the Code, except that the IRC §1091 wash sale rules do not apply.

Exclusion Amount

The amount resulting from the deemed sale rule is included in the taxpayer's income but only to the extent that this amount exceeds the **exclusion amount** for the tax year in question. The exclusion amount is annually adjusted for inflation. For calendar year 2022, the exclusion amount is \$767,000.¹³⁴ Therefore, only the deemed sale amount exceeding the exclusion amount is included in income.

Example 17. Julie is a **covered expatriate** who relinquishes her U.S. citizenship on June 30, 2022. Julie's net deemed sale amount is \$700,000. Because this is less than the \$767,000 exclusion amount, Julie's expatriation tax amount is \$0.

The amount of any gain or loss subsequently realized (i.e., pursuant to the disposition of the property) must be adjusted for gain/loss determined under the IRC §877A mark-to-market regime, without regard to the exclusion amount.

Taxpayers may elect to defer payment of tax attributable to property deemed sold.¹³⁵

FORM 8854

Covered expatriates must file an **initial** expatriation statement for the year they expatriate using Form 8854 (see Appendix). Part I of the form is used to provide general information regarding the filer including citizenship/residency status and date of expatriation. Expatriation information is provided on part II of the form and includes the following.

- Tax liabilities for the preceding five tax years
- A balance sheet showing the FMV and adjusted basis of the taxpayer's assets and liabilities on the expatriation date
- Deferred compensation information
- Deferred taxes attributable to property deemed sold

^{133.} See IRS Notice 2009-85, 2009-45 IRB 598 for more information on the mark-to-market regime.

^{134.} Rev. Proc. 2021-45, 2021-48 IRB 764.

^{135.} IRC §877A(b).

An **annual** expatriation statement is filed by taxpayers who expatriated in a **previous** tax year and:

- Deferred the payment of tax,
- Have an item of eligible deferred compensation, or
- Are a beneficiary of a nongrantor trust.

This annual expatriation statement is made by completing parts I and III of Form 8854.

Generally, taxpayers with a Form 8854 filing requirement should attach the form to their tax return and file by their tax return due date (including extensions). A copy of Form 8854, marked “Copy,” should also be sent to:

Internal Revenue Service
3651 S IH35
MS 4301AUSC
Austin, TX 78741

Penalties

A \$10,000 penalty may be imposed for failure to file Form 8854 when required.

MILITARY PERSONNEL¹³⁶

For U.S. tax purposes, military pay is generally taxed as compensation,¹³⁷ and other allowances and benefits may or may not be includable in income.¹³⁸ By contrast, such remuneration is usually **exempt** from foreign country taxation (see the earlier discussion of SOFA agreements).

COMBAT PAY

Pay earned by a service member while on duty in a combat zone¹³⁹ or qualified hazardous duty area¹⁴⁰ may be excluded from income. Those service members below the grade of commissioned officer can fully exclude such pay for each month or partial month of active duty in the combat zone or qualified hazardous duty area.¹⁴¹ The excludable amount for commissioned officers, however, is limited to the maximum enlisted amount.¹⁴² This amount is the sum of:¹⁴³

- The highest rate of basic monthly pay at the highest pay grade for any enlisted member, and
- Any amount of hostile fire or imminent danger pay that the officer is entitled to for the month.

A commissioned warrant officer is not considered a commissioned officer under this rule.¹⁴⁴

Note. See IRS Pub. 3, *Armed Forces' Tax Guide*, for more information on the combat pay exclusion, including a current list of combat zones, how a combat zone is designated, and when service outside such a zone may still qualify as combat zone service.

¹³⁶ IRS Pub. 3, *Armed Forces' Tax Guide*.

¹³⁷ IRC §61(a).

¹³⁸ IRC §134.

¹³⁹ IRC §112.

¹⁴⁰ *Tax Relief to Operation Joint Endeavor Participants Act*, PL 104-117, §1(a).

¹⁴¹ IRC §112(a); Treas. Reg. §§1.112-1(a)(1)(i) and (b)(3).

¹⁴² IRC §112(b).

¹⁴³ IRC §112(c)(5).

¹⁴⁴ IRC §112(c)(1); Treas. Reg. §1.112-1(a)(3).

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QUALIFIED MILITARY BENEFITS

Military personnel receive numerous benefits or allowances in connection with housing or living expenses that may be excludable from gross income.¹⁴⁵ Examples of excludable benefits or payments shown in IRS Pub. 3 include the following.

- Basic allowances for housing or subsistence
- Overseas housing allowance
- Dislocation allowance
- Move-in housing
- Allowances for moving or storage of household or personal items
- Temporary lodging allowance

APPENDIX A: IRS FORMS

This appendix includes the following IRS forms referred to in the chapter.

- Form 1116, *Foreign Tax Credit (Individual, Estate, or Trust)*
- Form 1116, Schedule B, *Foreign Tax Credit Carryover Reconciliation Schedule*
- Form 1116, Schedule C, *Foreign Tax Redeterminations*
- Form 2555, *Foreign Earned Income*
- Form 8854, *Initial and Annual Expatriation Statement*
- Form 8938, *Statement of Specified Foreign Financial Assets*

¹⁴⁵. IRC §134.

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Form 1116

Form **1116**
Department of the Treasury
Internal Revenue Service (99)

Foreign Tax Credit

(Individual, Estate, or Trust)
▶ Attach to Form 1040, 1040-SR, 1040-NR, 1041, or 990-T.
▶ Go to www.irs.gov/Form1116 for instructions and the latest information.

OMB No. 1545-0121

2021
Attachment
Sequence No. 19

Name _____ Identifying number as shown on page 1 of your tax return _____

Use a separate Form 1116 for each category of income listed below. See *Categories of Income* in the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

- a** Section 951A category income **c** Passive category income **e** Section 901(j) income **g** Lump-sum distributions
b Foreign branch category income **d** General category income **f** Certain income re-sourced by treaty

h Resident of (name of country) ▶ _____

Note: If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to more than one foreign country or U.S. possession, use a separate column and line for each country or possession.

Part I Taxable Income or Loss From Sources Outside the United States (for category checked above)

i	Enter the name of the foreign country or U.S. possession ▶	Foreign Country or U.S. Possession			Total (Add cols. A, B, and C.)
		A	B	C	
1a	Gross income from sources within country shown above and of the type checked above (see instructions): _____				1a
b	Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is \$250,000 or more, and you used an alternative basis to determine its source. See instructions . . . ▶ <input type="checkbox"/>				
Deductions and losses (Caution: See instructions.):					
2	Expenses definitely related to the income on line 1a (attach statement)				
3	Pro rata share of other deductions not definitely related:				
a	Certain itemized deductions or standard deduction (see instructions)				
b	Other deductions (attach statement)				
c	Add lines 3a and 3b				
d	Gross foreign source income (see instructions)				
e	Gross income from all sources (see instructions)				
f	Divide line 3d by line 3e (see instructions)				
g	Multiply line 3c by line 3f				
4	Pro rata share of interest expense (see instructions):				
a	Home mortgage interest (use the Worksheet for Home Mortgage Interest in the instructions)				
b	Other interest expense				
5	Losses from foreign sources				
6	Add lines 2, 3g, 4a, 4b, and 5				6
7	Subtract line 6 from line 1a. Enter the result here and on line 15, page 2 ▶				7

Part II Foreign Taxes Paid or Accrued (see instructions)

Country	Credit is claimed for taxes (you must check one) (j) <input type="checkbox"/> Paid (k) <input type="checkbox"/> Accrued	Foreign taxes paid or accrued							
		In foreign currency				In U.S. dollars			
		Taxes withheld at source on:			(p) Other foreign taxes paid or accrued	Taxes withheld at source on:			(t) Other foreign taxes paid or accrued
	(l) Date paid or accrued	(m) Dividends	(n) Rents and royalties	(o) Interest	(q) Dividends	(r) Rents and royalties	(s) Interest		
A									
B									
C									
8	Add lines A through C, column (u). Enter the total here and on line 9, page 2 ▶								8

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 11440U

Form 1116 (2021)

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Form 1116 (Continued)

Form 1116 (2021)

Page **2**

Part III Figuring the Credit

9	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I	9			
10	Enter the sum of any carryover of foreign taxes (from Schedule B, line 3, column (xiv)) plus any carrybacks to the current tax year (If your income was section 951A category income (box a above Part I), leave line 10 blank.)	10			
11	Add lines 9 and 10	11			
12	Reduction in foreign taxes (see instructions)	12	()	
13	Taxes reclassified under high tax kickout (see instructions)	13			
14	Combine lines 11, 12, and 13. This is the total amount of foreign taxes available for credit	14			
15	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I. See instructions	15			
16	Adjustments to line 15 (see instructions)	16			
17	Combine the amounts on lines 15 and 16. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 18 through 24. However, if you are filing more than one Form 1116, you must complete line 20.)	17			
18	Individuals: Enter the amount from line 15 of your Form 1040, 1040-SR, or 1040-NR. Estates and trusts: Enter your taxable income without the deduction for your exemption	18			
19	Caution: If you figured your tax using the lower rates on qualified dividends or capital gains, see instructions. Divide line 17 by line 18. If line 17 is more than line 18, enter "1"	19			
20	Individuals: Enter the total of Form 1040, 1040-SR, or 1040-NR, line 16, and Schedule 2 (Form 1040), line 2. Estates and trusts: Enter the amount from Form 1041, Schedule G, line 1a; or the total of Form 990-T, Part II, lines 2, 3, 4, and 6. Foreign estates and trusts should enter the amount from Form 1040-NR, line 16 Caution: If you are completing line 20 for separate category g (lump-sum distributions), or, if you file Form 8978, Partner's Additional Reporting Year Tax, see instructions.	20			
21	Multiply line 20 by line 19 (maximum amount of credit)	21			
22	Increase in limitation (section 960(c))	22			
23	Add lines 21 and 22	23			
24	Enter the smaller of line 14 or line 23. If this is the only Form 1116 you are filing, skip lines 25 through 32 and enter this amount on line 33. Otherwise, complete the appropriate line in Part IV. See instructions ▶	24			

Part IV Summary of Credits From Separate Parts III (see instructions)

25	Credit for taxes on section 951A category income	25			
26	Credit for taxes on foreign branch category income	26			
27	Credit for taxes on passive category income	27			
28	Credit for taxes on general category income	28			
29	Credit for taxes on section 901(j) income	29			
30	Credit for taxes on certain income re-sourced by treaty	30			
31	Credit for taxes on lump-sum distributions	31			
32	Add lines 25 through 31	32			
33	Enter the smaller of line 20 or line 32	33			
34	Reduction of credit for international boycott operations. See instructions for line 12	34			
35	Subtract line 34 from line 33. This is your foreign tax credit . Enter here and on Schedule 3 (Form 1040), line 1; Form 1041, Schedule G, line 2a; or Form 990-T, Part III, line 1a ▶	35			

Form **1116** (2021)

Form 1116, Schedule B

SCHEDULE B (Form 1116)

(December 2021)

Department of the Treasury
Internal Revenue Service

Foreign Tax Carryover Reconciliation Schedule

OMB No. 1545-0121

For calendar year 20____, or other tax year beginning _____, 20____, and ending _____, 20____.

▶ See separate instructions.

▶ Attach to Form 1116.

▶ Go to www.irs.gov/Form1116 for instructions and the latest information.

Name _____

Identifying number as shown
on page 1 of your tax return _____

Use a separate Schedule B (Form 1116) for each applicable category of income listed below. See instructions. Check only one box on each schedule.

Check the box for the same separate category code as that shown on the Form 1116 to which this Schedule B is attached.

- a** Reserved for future use **c** Passive category income **e** Section 901(j) income **g** Lump-sum distributions
- b** Foreign branch category income **d** General category income **f** Certain income re-sourced by treaty
- h** If box e is checked, enter the country code for the sanctioned country. See instructions ▶
- i** If box f is checked, enter the country code for the treaty country. See instructions ▶

	(i) 10th Preceding Tax Year	(ii) 9th Preceding Tax Year	(iii) 8th Preceding Tax Year	(iv) 7th Preceding Tax Year	(v) 6th Preceding Tax Year	(vi) 5th Preceding Tax Year	(vii) Subtotal (add columns (i) through (vi))
1 Foreign tax carryover from the prior tax year (enter amounts from the appropriate columns of line 6 of the worksheet in the instructions)							
2 Adjustments to line 1 (enter description — see instructions):							
a Carryback adjustment (see instructions)							
b Adjustments for section 905(c) redeterminations (see instructions)							
c							
d							
e							
f							
g							
3 Adjusted foreign tax carryover from prior tax year (combine lines 1 and 2)							
4 Foreign tax carryover used in current tax year (enter as a negative number)							
5 Foreign tax carryover expired unused in current tax year (enter as a negative number)							
6 Foreign tax carryover generated in current tax year							
7 Actual or estimated amount of line 6 to be carried back to prior tax year (enter as a negative number)							
8 Foreign tax carryover to the following tax year. Combine lines 3 through 7.	-0-						

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 75186F

Schedule B (Form 1116) (12-2021)

2022 Workbook

Form 1116, Schedule B (Continued)

Page **2**

	(viii) Subtotal from page 1 (enter the amounts from column (vii) on page 1)	(ix) 4th Preceding Tax Year	(x) 3rd Preceding Tax Year	(xi) 2nd Preceding Tax Year	(xii) 1st Preceding Tax Year	(xiii) Current Tax Year	(xiv) Totals (add columns (viii) through (xiii))
Foreign Tax Carryover Reconciliation (continued)							
1 Foreign tax carryover from the prior tax year (enter amounts from the appropriate columns of line 6 of the worksheet in the instructions)							
2 Adjustments to line 1 (enter description — see instructions):							
a Carryback adjustment (see instructions)							
b Adjustments for section 905(c) redeterminations (see instructions)							
c							
d							
e							
f							
g							
3 Adjusted foreign tax carryover from prior tax year (combine lines 1 and 2). Include the column (xiv) total on the current year Form 1116, Part III, line 10.							
4 Foreign tax carryover used in current tax year (enter as a negative number)							
5 Foreign tax carryover expired unused in current tax year (enter as a negative number)							
6 Foreign tax carryover generated in current tax year							
7 Actual or estimated amount of line 6 to be carried back to prior tax year (enter as a negative number)							
8 Foreign tax carryover to the following tax year. Combine lines 3 through 7.							

Schedule B (Form 1116) (12-2021)

**SCHEDULE C
(Form 1116)**

(December 2021)

Department of the Treasury
Internal Revenue Service

Foreign Tax Redeterminations

For calendar year 20____, or other tax year beginning _____, 20____, and ending _____, 20____.

OMB No. 1545-0121

▶ See separate instructions.

▶ Go to www.irs.gov/Form1116 for instructions and the latest information.

Name _____

Identifying number as shown on page 1 of your tax return _____

Use a separate Schedule C (Form 1116) for each applicable category of income listed below. See instructions. Check only one box on each schedule.

- a** Section 951A category income **c** Passive category income **e** Section 901(j) income **g** Lump-sum distributions
- b** Foreign branch category income **d** General category income **f** Certain income re-sourced by treaty
- h** If box e is checked, enter the country code for the sanctioned country. See instructions ▶
- i** If box f is checked, enter the country code for the treaty country. See instructions ▶

Part I Increase in Amount of Foreign Taxes Accrued (see instructions)

Enter redetermined amounts by payor for each separate relation back year (starting with the most recent) followed by a subtotal for each relation back year.

1. U.S. Tax Year of Taxpayer to Which Tax Relates (relation back year) (MM/DD/YYYY)	2a. Name of Payor (see instructions)	2b. EIN or Reference ID Number of Payor	3. Country or U.S. Possession to Which Tax Is Paid (enter code—see instructions)	4. Date Additional Foreign Tax Was Paid (MM/DD/YYYY)	5. Foreign Tax Year to Which Tax Relates (MM/DD/YYYY)	6. Payor's Income Subject to Tax in the Foreign Jurisdiction (see instructions)	7. Additional Tax Accrued in Local Currency in Which the Tax Is Payable	8. Additional Tax Accrued in Functional Currency of Payor	9. Conversion Rate of Local Currency to U.S. Dollars	10. Additional Tax Accrued in U.S. Dollars (divide column 7 by column 9)	11. U.S. Dollar Tax of Payor Reported on Original/Amended Return	12. Revised Tax Accrued (add column 10 and column 11)	13. Check Box if Contested Tax (see instructions)
(1)													<input type="checkbox"/>
(2)													<input type="checkbox"/>
(3)													<input type="checkbox"/>
(1)													<input type="checkbox"/>
(2)													<input type="checkbox"/>
(3)													<input type="checkbox"/>
Subtotal by Relation Back Year of Taxpayer (add amounts in columns 10, 11, and 12) . . . ▶													<input type="checkbox"/>
(1)													<input type="checkbox"/>
(2)													<input type="checkbox"/>
(3)													<input type="checkbox"/>
Subtotal by Relation Back Year of Taxpayer (add amounts in columns 10, 11, and 12) . . . ▶													<input type="checkbox"/>

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 75187Q

Schedule C (Form 1116) (12-2021)

2022 Workbook

Form 1116, Schedule C (Continued)

Schedule C (Form 1116) (12-2021)

Page **2**

Part II Decrease in Amount of Foreign Taxes Paid or Accrued (see instructions)

Enter redetermined amounts by payor for each separate relation back year (starting with the most recent) followed by a subtotal for each relation back year.

1. U.S. Tax Year of Taxpayer to Which Tax Relates (relation back year) (MM/DD/YYYY)	2a. Name of Payor (see instructions)	2b. EIN or Reference ID Number of Payor	3. Country or U.S. Possession From Which Tax Was Refunded or Deemed Refunded (enter code—see instructions)	4. Date Foreign Tax Was Refunded or Deemed Refunded (MM/DD/YYYY) (see instructions)	5. Foreign Tax Year to Which Tax Relates (MM/DD/YYYY)
(1)					
(2)					
(3)					
(1)					
(2)					
(3)					
A					
B					
Subtotal by Relation Back Year of Taxpayer (add amounts in columns 10, 11, and 12) . . . ▲					
(1)					
(2)					
(3)					
A					
B					
Subtotal by Relation Back Year of Taxpayer (add amounts in columns 10, 11, and 12) . . . ▲					

Part III Change in Foreign Taxes Paid or Accrued

Enter the information below for the change to the total amount of foreign taxes paid or accrued and the foreign tax credits (FTCs) claimed for each relation back year.

1. Relation Back Year (MM/DD/YYYY)	2. Redetermined Foreign Taxes Paid or Accrued	3. Foreign Taxes Paid or Accrued per Original/Amended Return	4. Amount of FTC Claimed per Original/Amended Return	5. Amount of FTC Claimed After Redetermination
A				
B				

Part IV Change in U.S. Tax Liability

Enter the information below for the change in U.S. tax liability for each relation back year and other affected year (see instructions).

1. Relation Back Year or Affected Tax Year (MM/DD/YYYY)	2. Total Redetermined U.S. Tax Liability	3. Total U.S. Tax Liability per Original/Amended Return	4. Difference (subtract column 3 from column 2)
A			
B			

Schedule C (Form 1116) (12-2021)

2022 Workbook

Form 2555

Form **2555**
Department of the Treasury
Internal Revenue Service

Foreign Earned Income

▶ Attach to Form 1040 or 1040-SR.
▶ Go to www.irs.gov/Form2555 for instructions and the latest information.

OMB No. 1545-0074

2021
Attachment
Sequence No. **34**

For Use by U.S. Citizens and Resident Aliens Only

Name shown on Form 1040 or 1040-SR

Your social security number

Part I General Information

1 Your foreign address (including country)

2 Your occupation

3 Employer's name ▶

4a Employer's U.S. address ▶

b Employer's foreign address ▶

5 Employer is (check any that apply):
 a A foreign entity b A U.S. company c Self
 d A foreign affiliate of a U.S. company e Other (specify) ▶

6a If you previously filed Form 2555 or Form 2555-EZ, enter the last year you filed the form. ▶

b If you didn't previously file Form 2555 or Form 2555-EZ to claim either of the exclusions, check here and go to line 7.

c Have you ever revoked either of the exclusions? Yes No

d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective. ▶

7 Of what country are you a citizen/national? ▶

8a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See **Second foreign household** in the instructions Yes No

b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. ▶

9 List your tax home(s) during your tax year and date(s) established. ▶

Next, complete either Part II or Part III. If an item doesn't apply, enter "N/A." If you don't give the information asked for, any exclusion or deduction you claim may be disallowed.

Part II Taxpayers Qualifying Under Bona Fide Residence Test

Note: Only U.S. citizens and resident aliens who are citizens or nationals of U.S. treaty countries can use this test. See instructions.

10 Date bona fide residence began ▶, and ended ▶

11 Kind of living quarters in foreign country ▶
 a Purchased house b Rented house or apartment c Rented room
 d Quarters furnished by employer

12a Did any of your family live with you abroad during any part of the tax year? Yes No

b If "Yes," who and for what period? ▶

13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you aren't a resident of that country? See instructions Yes No

b Are you required to pay income tax to the country where you claim bona fide residence? See instructions Yes No

If you answered "Yes" to 13a and "No" to 13b, you don't qualify as a bona fide resident. Don't complete the rest of this part.

14 If you were present in the United States or its possessions during the tax year, complete columns (a)–(d) below. **Don't** include the income from column (d) in Part IV, but report it on Form 1040 or 1040-SR.

(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)	(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)

15a List any contractual terms or other conditions relating to the length of your employment abroad. ▶

b Enter the type of visa under which you entered the foreign country. ▶

c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation Yes No

d Did you maintain a home in the United States while living abroad? Yes No

e If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you. ▶

For Paperwork Reduction Act Notice, see the Instructions for Forms 1040 and 1040-SR.

Cat. No. 11900P

Form **2555** (2021)

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2022 Workbook

Form 2555 (Continued)

Form 2555 (2021)

Page **2**

Part III Taxpayers Qualifying Under Physical Presence Test

Note: U.S. citizens and all resident aliens can use this test. See instructions.

- 16** The physical presence test is based on the 12-month period from ► through ►
- 17** Enter your principal country of employment during your tax year. ►
- 18** If you traveled abroad during the 12-month period entered on line 16, complete columns (a)–(f) below. Exclude travel between foreign countries that didn't involve travel on or over international waters, or in or over the United States, for 24 hours or more. If you have no travel to report during the period, enter "Physically present in a foreign country or countries for the entire 12-month period." **Don't** include the income from column (f) below in Part IV, but report it on Form 1040 or 1040-SR.

(a) Name of country (including U.S.)	(b) Date arrived	(c) Date left	(d) Full days present in country	(e) Number of days in U.S. on business	(f) Income earned in U.S. on business (attach computation)

Part IV All Taxpayers

Note: Enter on lines 19 through 23 all income, including noncash income, you earned and actually or constructively received during your 2021 tax year for services you performed in a foreign country. If any of the foreign earned income received this tax year was earned in a prior tax year, or will be earned in a later tax year (such as a bonus), see the instructions. **Don't** include income from line 14, column (d), or line 18, column (f). Report amounts in U.S. dollars, using the exchange rates in effect when you actually or constructively received the income.

If you are a cash basis taxpayer, report on Form 1040 or 1040-SR all income you received in 2021, no matter when you performed the service.

2021 Foreign Earned Income		Amount (in U.S. dollars)
19	Total wages, salaries, bonuses, commissions, etc.	19
20	Allowable share of income for personal services performed (see instructions):	
a	In a business (including farming) or profession	20a
b	In a partnership. List partnership's name and address and type of income. ►	20b
21	Noncash income (market value of property or facilities furnished by employer—attach statement showing how it was determined):	
a	Home (lodging)	21a
b	Meals	21b
c	Car	21c
d	Other property or facilities. List type and amount. ►	21d
22	Allowances, reimbursements, or expenses paid on your behalf for services you performed:	
a	Cost of living and overseas differential	22a
b	Family	22b
c	Education	22c
d	Home leave	22d
e	Quarters	22e
f	For any other purpose. List type and amount. ►	22f
g	Add lines 22a through 22f	22g
23	Other foreign earned income. List type and amount. ►	23
24	Add lines 19 through 21d, line 22g, and line 23	24
25	Total amount of meals and lodging included on line 24 that is excludable (see instructions)	25
26	Subtract line 25 from line 24. Enter the result here and on line 27 on page 3. This is your 2021 foreign earned income	26

Form **2555** (2021)

2022 Workbook

Form 2555 (Continued)

Form 2555 (2021)

Page **3**

Part V All Taxpayers

27	Enter the amount from line 26	27	
	Are you claiming the housing exclusion or housing deduction?		
	<input type="checkbox"/> Yes. Complete Part VI.		
	<input type="checkbox"/> No. Go to Part VII.		

Part VI Taxpayers Claiming the Housing Exclusion and/or Deduction

28	Qualified housing expenses for the tax year (see instructions)	28	
29a	Enter location where housing expenses incurred. See instructions. ▶		
b	Enter limit on housing expenses. See instructions.	29b	
30	Enter the smaller of line 28 or line 29b	30	
31	Number of days in your qualifying period that fall within your 2021 tax year (see instructions)	31	days
32	Multiply \$47.65 by the number of days on line 31. If 365 is entered on line 31, enter \$17,392 here	32	
33	Subtract line 32 from line 30. If the result is zero or less, don't complete the rest of this part or any of Part IX	33	
34	Enter employer-provided amounts. See instructions	34	
35	Divide line 34 by line 27. Enter the result as a decimal (rounded to at least three places), but don't enter more than "1.000"	35	
36	Housing exclusion. Multiply line 33 by line 35. Enter the result but don't enter more than the amount on line 34. Also, complete Part VIII	36	

Note: The housing deduction is figured in Part IX. If you choose to claim the foreign earned income exclusion, complete Parts VII and VIII before Part IX.

Part VII Taxpayers Claiming the Foreign Earned Income Exclusion

37	Maximum foreign earned income exclusion. Enter \$108,700	37	
38	<ul style="list-style-type: none"> • If you completed Part VI, enter the number from line 31. • All others, enter the number of days in your qualifying period that fall within your 2021 tax year. See the instructions for line 31. } 38 days 		
39	<ul style="list-style-type: none"> • If line 38 and the number of days in your 2021 tax year (usually 365) are the same, enter "1.000." • Otherwise, divide line 38 by the number of days in your 2021 tax year and enter the result as a decimal (rounded to at least three places). } 	39	
40	Multiply line 37 by line 39	40	
41	Subtract line 36 from line 27	41	
42	Foreign earned income exclusion. Enter the smaller of line 40 or line 41. Also, complete Part VIII . . . ▶	42	

Part VIII Taxpayers Claiming the Housing Exclusion, Foreign Earned Income Exclusion, or Both

43	Add lines 36 and 42	43	
44	Deductions allowed in figuring your adjusted gross income (Form 1040 or 1040-SR, line 11) that are allocable to the excluded income. See instructions and attach computation	44	
45	Subtract line 44 from line 43. Enter the result here and in parentheses on Schedule 1 (Form 1040), line 8d. Complete the Foreign Earned Income Tax Worksheet in the Instructions for Forms 1040 and 1040-SR if you enter an amount on this line	45	

Part IX Taxpayers Claiming the Housing Deduction—Complete this part only if (a) line 33 is more than line 36, and (b) line 27 is more than line 43.

46	Subtract line 36 from line 33	46	
47	Subtract line 43 from line 27	47	
48	Enter the smaller of line 46 or line 47	48	
	Note: If line 47 is more than line 48 and you couldn't deduct all of your 2020 housing deduction because of the 2020 limit, use the Housing Deduction Carryover Worksheet in the instructions to figure the amount to enter on line 49. Otherwise, go to line 50.		
49	Housing deduction carryover from 2020 (from the Housing Deduction Carryover Worksheet in the instructions)	49	
50	Housing deduction. Add lines 48 and 49. Enter the total here and on Schedule 1 (Form 1040), line 24j. Complete the Foreign Earned Income Tax Worksheet in the Instructions for Forms 1040 and 1040-SR if you enter an amount on this line. ▶	50	

Form **2555** (2021)

4

2022 Workbook

Form 8854

Form **8854**

Initial and Annual Expatriation Statement

OMB No. 1545-0074

For calendar year 2021 or other tax year beginning _____, 2021, and ending _____, 20_____

▶ Go to www.irs.gov/Form8854 for instructions and the latest information.

▶ Please print or type.

2021

Attachment
Sequence No. **112**

Department of the Treasury
Internal Revenue Service

Name _____

Identifying number (see instructions) _____

Part I General Information. For all filers.

- 1 Mailing address and telephone number where you can be reached after expatriation _____
- 2 Address of principal foreign residence (if different from line 1) _____
- 3 Country of tax residence (if different from line 2) _____
- 4 Check the box that applies. See instructions.
 Initial expatriation statement for persons who expatriated in 2021. Complete Part II.
 Annual expatriation statement for persons who expatriated before 2021. Complete Part III.
- 5 Date of expatriation under section 877A(g)(3) for expatriating citizens and long-term residents. See instructions.
 Citizen _____
 Long-term resident _____
 Long-term resident with dual residency in a treaty country. Date commencing to be treated, for tax purposes, as a resident of the treaty country _____
- 6 List all countries (including the United States) of which you are a citizen (see instructions).
 - a Name of country _____
 - b Date you became a citizen of each country listed in line 6a (see instructions). _____
- 7 How you became a U.S. citizen By birth By naturalization
- 8 Date you became a U.S. lawful permanent resident _____

Part II Initial Expatriation Statement for Persons Who Expatriated in 2021

Section A Expatriation Information

- 1 Enter your U.S. income tax liability (after foreign tax credits) for the 5 tax years ending before the date of your expatriation.

1st Year	2nd Year	3rd Year	4th Year	5th Year
Before Expatriation	Before Expatriation	Before Expatriation	Before Expatriation	Before Expatriation
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
- 2 Enter your net worth on the date of your expatriation for tax purposes \$ _____
- 3 Did you become at birth a U.S. citizen and a citizen of another country, and do you continue to be a citizen of, and taxed as a resident of, that other country? Yes No
- 4 If you answered "Yes" to question 3, have you been a resident of the United States for not more than 10 of the last 15 tax years (including the year of your expatriation)? Yes No
- 5 Were you under age 18½ on the date you expatriated and have you been a U.S. resident for not more than 10 tax years? Yes No
- 6 Do you certify under penalties of perjury that you have complied with all of your tax obligations for the 5 preceding tax years? See instructions Yes No

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 24126N

Form **8854** (2021)

2022 Workbook

Form 8854 (Continued)

Form 8854 (2021)

Page **2**

Section B | **Balance Sheet**

List in U.S. dollars the fair market value and the U.S. adjusted basis of your assets and liabilities as of your expatriation date. For Lines 6 and 7, list in U.S. dollars the present value of your pensions and deferred compensation interests as of your expatriation date. For more details, see the instructions.

	(a) Fair market value (FMV)	(b) U.S. adjusted basis
Assets		
1 Cash, including bank deposits		
2 Marketable stock and securities issued by U.S. companies		
3 Marketable stock and securities issued by foreign companies		
4 Nonmarketable stock and securities issued by U.S. companies		
5 Nonmarketable stock and securities issued by foreign companies		
a Separately state stock issued by foreign companies that would be controlled foreign corporations if you were still a U.S. citizen or permanent resident. See instructions		
b Provide the name, address, and EIN, if any, of any such company		
6 Pensions or similar retirement arrangements (both U.S. and foreign). See instructions		
7 Deferred compensation (including stock options). See instructions		
8 Partnership interests. See instructions		
9 Assets held in trust. See instructions		
10 Beneficial interests in trusts not included in line 9. See instructions		
11 Intangibles used in the United States		
12 Intangibles used outside the United States		
13 Loans to U.S. persons		
14 Loans to foreign persons		
15 Real property located in the United States		
16 Real property located outside the United States		
17 Business property located in the United States		
18 Business property located outside the United States		
19 Other assets. See instructions		
20 Total assets. Add lines 1 through 5 and lines 6 through 19. Don't include amounts on line 5a in this total		
Liabilities		
21 Installment obligations	Amount	
22 Mortgages, etc.		
23 Other liabilities. See instructions		
24 Total liabilities. Add lines 21 through 23		
25 Net worth. Subtract line 24 from line 20, column (a)		

Form **8854** (2021)



2022 Workbook

Form 8854 (Continued)

Form 8854 (2021)

Page **3**

Section C | Property Owned on Date of Expatriation

Don't complete Section C if:

- Your average net income tax liability for the 5 tax years immediately before expatriation (see line 1 in Section A) wasn't more than \$172,000, your net worth on the date of your expatriation (see line 2 in Section A) was under \$2 million, and you checked "Yes" on line 6 in Section A;
- In Section A, you checked "Yes" on lines 3, 4, and 6; or
- In Section A, you checked "Yes" on lines 5 and 6.

1a Do you have any **eligible deferred compensation items**? Checking the "Yes" box is an irrevocable waiver of any right to claim any reduction in withholding for such eligible deferred compensation item under any treaty with the United States **Yes** **No**

b Do you have any **ineligible deferred compensation items**? If "Yes," you must include in income the present value of your account on the day before your expatriation date **Yes** **No**

c Do you have an interest in a **specified tax deferred accounts**? If "Yes," you must include in income the amount of your entire interest in the account on the day before your expatriation date **Yes** **No**

d Are you a beneficiary of a **nongrantor trust**? See instructions **Yes** **No**

Check this box to elect under section 877A(f)(4)(B) to be treated as having received the value of your entire interest in the trust (as determined for purposes of section 877A) as of the day before your expatriation date. Attach a copy of your valuation letter ruling issued by the IRS. See instructions.

2 Recognition of gain or loss on the deemed sale of mark-to-market property. **Caution: Don't include in column (a) any property described on line 1a, 1b, 1c, or 1d.**

Complete column (g) only if you are deferring tax on gain from any property listed in column (a).

(a) Description of property	(b) Fair market value on day before date of expatriation	(c) Cost or other basis*	(d) Gain or (loss). Subtract (c) from (b)	(e) Gain after allocation of the exclusion amount (see instructions)	(f) Form or Schedule on which gain or loss is reported	(g) Amount of tax deferred (attach computations)
3 Total. Add the amounts in column (d) and column (e)						
4 Total tax deferred. Add the amounts in column (g). Enter here and on Part II, Section D, line 5						

* You must identify as "(h)(2)" any property for which you are making the special basis election under section 877A(h)(2). This election is irrevocable. See the instructions for Part II, Section C, line 2, column (c).

Form **8854** (2021)

2022 Workbook

Form 8854 (Continued)

Form 8854 (2021)

Page **4**

Section D | Deferral of Tax

Election to defer tax. You can defer tax only if you have provided adequate security. Adequate security is described in the instructions.

- 1** Are you electing to defer tax under section 877A(b)?
 Checking the "Yes" box is an irrevocable waiver of any right under any treaty of the United States that would prevent assessment or collection of any tax imposed because of section 877A **Yes** **No**

If you checked the "Yes" box, continue to line 2. Otherwise, don't complete lines 2 through 5.

2 Enter the total tax you would have reported, absent the deferral election, on Form 1040 or 1040-SR, line 24, for the part of the year including the day before the expatriation date absent the deferral election	2	
3 Enter the total tax for the same part of the tax year determined without regard to the amounts attributable to section 877A(a). Attach computation	3	
4 Subtract line 3 from line 2. This is the amount of tax eligible for deferral	4	
5 Enter the total tax deferred from Part II, Section C, line 4, column (g)	5	
<ul style="list-style-type: none"> • If you are filing Form 1040 or 1040-SR, enter this amount in brackets to the left of the entry space for line 24. Identify as "EXP." • If you are filing Form 1040-NR, enter this amount in brackets to the left of the entry space for line 24. Identify as "EXP." 		

Part III | Annual Expatriation Statement for Persons Who Expatriated Before 2021

- If you made an election to defer the payment of tax, complete line 1.
- If you have an item of eligible deferred compensation, complete line 2.
- If you are a beneficiary of a nongrantor trust, complete line 3.

- 1** Complete columns (a), (b), and (c) for all property on which you deferred tax on a prior year Form 8854. Complete column (d) for any property you disposed of in 2021 and see the instructions for Part III.

(a) Description of property	(b) Amount of mark-to-market gain or (loss) reported on prior year Form 8854	(c) Amount of tax deferred on prior year Form 8854	(d) Date of disposition (if any)

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Form 8854 (Continued)

Form 8854 (2021)

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Part III Annual Expatriation Statement for Persons Who Expatriated Before 2021 (continued)

- 2** Did you receive any distributions of eligible deferred compensation items for 2021? **Yes** **No**
 If "Yes," enter the amount of distribution(s) and amount withheld at source, if any, below.

	Amount of distribution	Amount withheld at source, if any
1		
2		
3		

- 3** Did you receive any distributions from a nongrantor trust for 2021? **Yes** **No**
 If "Yes," enter the amount of distribution(s) and amount withheld at source, if any, below.

	Amount of distribution	Amount withheld at source, if any
1		
2		
3		

Sign Here	Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than filer) is based on all information of which preparer has any knowledge.			
	Your signature		Date	
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed PTIN
	Firm's name ▶			Firm's EIN ▶
	Firm's address ▶			Phone no.

Form **8854** (2021)

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Form 8938

Form **8938**
(Rev. November 2021)
Department of the Treasury
Internal Revenue Service

Statement of Specified Foreign Financial Assets

▶ Go to www.irs.gov/Form8938 for instructions and the latest information.
▶ Attach to your tax return.

OMB No. 1545-2195

Attachment
Sequence No. 938

For calendar year 20____ or tax year beginning _____, 20____, and ending _____, 20____

If you have attached additional statements, check here Number of additional statements _____

1 Name(s) shown on return _____ 2 Taxpayer identification number (TIN) _____

3 Type of filer
a Specified individual b Partnership c Corporation d Trust

4 If you checked box 3a, skip this line 4. If you checked box 3b or 3c, enter the name and TIN of the specified individual who closely holds the partnership or corporation. If you checked box 3d, enter the name and TIN of the specified person who is a current beneficiary of the trust. (See instructions for definitions and what to do if you have more than one specified individual or specified person to list.)

a Name _____ b TIN _____

Part I Foreign Deposit and Custodial Accounts Summary

5	Number of deposit accounts (reported in Part V)	▶	
6	Maximum value of all deposit accounts		\$
7	Number of custodial accounts (reported in Part V)	▶	
8	Maximum value of all custodial accounts		\$
9	Were any foreign deposit or custodial accounts closed during the tax year?		<input type="checkbox"/> Yes <input type="checkbox"/> No

Part II Other Foreign Assets Summary

10	Number of foreign assets (reported in Part VI)	▶	
11	Maximum value of all assets (reported in Part VI)		\$
12	Were any foreign assets acquired or sold during the tax year?		<input type="checkbox"/> Yes <input type="checkbox"/> No

Part III Summary of Tax Items Attributable to Specified Foreign Financial Assets (see instructions)

(a) Asset category	(b) Tax item	(c) Amount reported on form or schedule	Where reported	
			(d) Form and line	(e) Schedule and line
13 Foreign deposit and custodial accounts	a Interest	\$		
	b Dividends	\$		
	c Royalties	\$		
	d Other income	\$		
	e Gains (losses)	\$		
	f Deductions	\$		
	g Credits	\$		
14 Other foreign assets	a Interest	\$		
	b Dividends	\$		
	c Royalties	\$		
	d Other income	\$		
	e Gains (losses)	\$		
	f Deductions	\$		
	g Credits	\$		

Part IV Excepted Specified Foreign Financial Assets (see instructions)

If you reported specified foreign financial assets on one or more of the following forms, enter the number of such forms filed. You do not need to include these assets on Form 8938 for the tax year.

15 Number of Forms 3520 _____ 16 Number of Forms 3520-A _____ 17 Number of Forms 5471 _____
18 Number of Forms 8621 _____ 19 Number of Forms 8865 _____

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 37753A

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Part V Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary
(see instructions)

If you have more than one account to report in Part V, attach a separate statement for each additional account. See instructions.

20	Type of account	a <input type="checkbox"/> Deposit b <input type="checkbox"/> Custodial	21	Account number or other designation
22	Check all that apply	a <input type="checkbox"/> Account opened during tax year c <input type="checkbox"/> Account jointly owned with spouse	b <input type="checkbox"/> Account closed during tax year d <input type="checkbox"/> No tax item reported in Part III with respect to this asset	
23	Maximum value of account during tax year \$			
24	Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars? . . . <input type="checkbox"/> Yes <input type="checkbox"/> No			
25	If you answered "Yes" to line 24, complete all that apply.			
	(a) Foreign currency in which account is maintained	(b) Foreign currency exchange rate used to convert to U.S. dollars	(c) Source of exchange rate used if not from U.S. Treasury Department's Bureau of the Fiscal Service	
26a	Name of financial institution in which account is maintained		b Global Intermediary Identification Number (GIIN) (Optional)	
27	Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.			
28	City or town, state or province, country, and ZIP or foreign postal code			

Part VI Detailed Information for Each "Other Foreign Asset" Included in the Part II Summary (see instructions)

If you have more than one asset to report in Part VI, attach a separate statement for each additional asset. See instructions.

29	Description of asset	30	Identifying number or other designation
31	Complete all that apply. See instructions for reporting of multiple acquisition or disposition dates.		
	a Date asset acquired during tax year, if applicable		
	b Date asset disposed of during tax year, if applicable		
	c <input type="checkbox"/> Check if asset jointly owned with spouse d <input type="checkbox"/> Check if no tax item reported in Part III with respect to this asset		
32	Maximum value of asset during tax year (check box that applies)		
	a <input type="checkbox"/> \$0-\$50,000 b <input type="checkbox"/> \$50,001-\$100,000 c <input type="checkbox"/> \$100,001-\$150,000 d <input type="checkbox"/> \$150,001-\$200,000 e If more than \$200,000, list value \$		
33	Did you use a foreign currency exchange rate to convert the value of the asset into U.S. dollars? . . . <input type="checkbox"/> Yes <input type="checkbox"/> No		
34	If you answered "Yes" to line 33, complete all that apply.		
	(a) Foreign currency in which asset is denominated	(b) Foreign currency exchange rate used to convert to U.S. dollars	(c) Source of exchange rate used if not from U.S. Treasury Department's Bureau of the Fiscal Service
35	If asset reported on line 29 is stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.		
	a Name of foreign entity	b GIIN (Optional)	
	c Type of foreign entity (1) <input type="checkbox"/> Partnership (2) <input type="checkbox"/> Corporation (3) <input type="checkbox"/> Trust (4) <input type="checkbox"/> Estate		
	d Mailing address of foreign entity. Number, street, and room or suite no.		
	e City or town, state or province, country, and ZIP or foreign postal code		
36	If asset reported on line 29 is not stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.		
	Note: If this asset has more than one issuer or counterparty, attach a separate statement with the same information for each additional issuer or counterparty. See instructions.		
	a Name of issuer or counterparty		
	Check if information is for <input type="checkbox"/> Issuer <input type="checkbox"/> Counterparty		
	b Type of issuer or counterparty		
	(1) <input type="checkbox"/> Individual (2) <input type="checkbox"/> Partnership (3) <input type="checkbox"/> Corporation (4) <input type="checkbox"/> Trust (5) <input type="checkbox"/> Estate		
	c Check if issuer or counterparty is a <input type="checkbox"/> U.S. person <input type="checkbox"/> Foreign person		
	d Mailing address of issuer or counterparty. Number, street, and room or suite no.		
	e City or town, state or province, country, and ZIP or foreign postal code		

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APPENDIX B: OECD MODEL TREATY

This appendix contains a structural outline of the OECD model treaty.¹⁴⁶ Articles with titles in bold are those discussed in this chapter.

- I. Scope of the Convention
 1. **Persons covered**
 2. Taxes covered
- II. Definitions
 3. General definitions
 4. Resident
 5. Permanent establishment
- III. Taxation of Income
 6. Income from immovable property
 7. Business profits
 8. International shipping and air transport
 9. Associated enterprises
 10. Dividends
 11. **Interest**
 12. Royalties
 13. Capital gains
 14. [Deleted]
 15. **Income from employment**
 16. Directors' fees
 17. Entertainers and sportspersons
 18. **Pensions**
 19. **Government service**
 20. Students
 21. Other income
- IV. Taxation of Capital
 22. Capital

¹⁴⁶ *Model Tax Convention on Income and on Capital: Condensed Version 2017*. Dec. 12, 2017. OECD. [www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm] Accessed on Jan. 3, 2022.

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V. Methods for Elimination of Double Taxation

23A. Exemption method

23B. Credit method

VI. Special Provisions

24. Non-discrimination

25. Mutual agreement procedure

26. Exchange of information

27. Assistance in the collection of taxes

28. Members of diplomatic missions and consular posts

29. Entitlement to benefits

30. Territorial extension