

FOREIGN NATIONALS IN THE US ARE NOW SUBJECT TO US INCOME TAXES

BY EVELYN FERNANDEZ, CPA, MST & MAY SUNG, MSA

If you are a foreign national that currently lives in the United States, you may now be subject to US income taxes on your worldwide income.

FOREIGN NATIONALS IN THE US: DO YOU HAVE A FEDERAL INCOME TAX FILING OBLIGATION?

Now that you moved to the US, whether on a temporary basis or permanent, you may need to consider whether you have a US income tax return filing requirement and pay taxes in the US. If you are a foreign national that currently lives in the United States, you may now be subject to US income taxes on your worldwide income. In the US, federal income taxes are not dependent on your immigration status, but your tax residency status. Not to

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be confused with your immigration status, if you have come to the United States without a US citizenship or green-card status, you may still be considered a US tax resident. The IRS determines tax residency based on the length of time you have been in the US. The method in which tax residency is determined is called a substantial presence test.

WHAT IS THE SUBSTANTIAL PRESENCE TEST?

The substantial presence test is a calculation the IRS uses to determine whether foreign nationals who have come to the US have an income tax filing obligation on their worldwide income. If the foreign national in the US has spent 31 days physically present in the US and a total of 183 days of a 3-year period, substantial presence has been met. The IRS counts the 183 days as follows:

- All days physically present in the current year
- 1/3 of all the days physically present in the prior year
- 1/6 of all the days physically present in the second year before the current year

Example: You were physically present in the US in 2022 for 120 days, 40 days in 2021, and 20 days in 2020. The IRS would only calculate the total days as follows: 120 days in 2022, 13.33 days in 2021, and 3.33 days in 2020 for a total of 136.66 days. This means the foreign national would not qualify for the substantial presence test and would not be taxed on their worldwide income. If the total number of days were to exceed 183, then substantial presence would be met, which would trigger a US income tax filing obligation.



WHAT ARE THE TAX CONSEQUENCES FOR TAX RESIDENTS AND NON-RESIDENTS?

If a foreign national does not meet the substantial presence test as presented in the example above, the foreign national may still need to report their US source income. The foreign national would need to file a 1040NR (nonresident) tax return and would be taxed only on US source income.

For a foreign national that has met the substantial presence test and becomes a US tax resident only during part of the year can file a dual status return. This means the foreign national will be filing both a 1040NR (nonresident tax return) which would only include US source income during the period in which they were not yet a tax resident in the US, and then a 1040 (US resident) tax return which would have to include worldwide income.

If a foreign national has met the substantial presence test the full year, then a 1040 would need to be filed and the foreign national's worldwide income would also need to be reported. This includes any non-US income (ie. rental income from foreign properties, non-US dividends, compensation/wages from a foreign employee, etc.). While this sounds very daunting, the IRS has various methods in place to alleviate any potential double taxation.

TAX TREATIES

The US has income tax treaties with over 60 countries. Within these treaties, include agreements on how certain income would be taxed in the US. The income is typically taxed at a reduced rate or fully exempt from being included as worldwide income on the US tax return. To exempt the foreign income from the US tax return, form 8833 would need to be included in the tax return. If the treaties do not cover a specific type of income, then that income would need to be reported on the tax return and that income would be taxed in the US.

FOREIGN TAX CREDITS

For foreign nationals that pay their taxes in their home country, the foreign national may be able to claim the

taxes paid in their home country on their US tax return to reduce the US tax liability. Foreign tax credits are however limited to the foreign national's US tax rate. Additionally, any foreign tax credits not used in the current year can be carried over to the next year.

TOTALIZATION AGREEMENTS

The US and certain nations have totalization agreements which exempt social taxes in one country if the foreign national is already paying taxes in their home country. The totalization agreement can be applied retrospectively.

This article is only a summary of the complexities of analyzing your US tax residency status. If you are a foreign national with potential taxable income in the US or if you need assistance in preparing your US tax return and analyzing your potential tax situation in the US, please contact our [International Tax](mailto:Evelyn.Fernandez@KROSTCPAs.com) Principal Evelyn.Fernandez@KROSTCPAs.com.

About the Author

**Evelyn Fernandez, CPA,
MST, Principal**

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Evelyn is a Tax Principal at KROST. She has been in the public accounting profession for over 15 years. Her areas of expertise include tax planning and compliance for high net worth individuals, international entities and individuals, multi-state taxation, partnerships, S corporations, trusts, nonprofit organizations, and entertainment businesses. » [Full Bio](#)



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