

## **U.S. TAXES - ANSWERS TO TWO COMMONLY ASKED QUESTIONS FILING STATUS IF MARRIED TO A FOREIGN SPOUSE? NEED TO REPORT GOVERNMENT RETIREMENT PAYMENTS ON U.S. TAX RETURN?**

*by Olga Kocybik, CPA, and AWCD member*

*With her special thanks to Elaine Terlinden for her review, edit, and invaluable feedback on the contents of this article.*



The weather is slowly improving, and the busy tax season in the U.S. is over ... but not yet for U.S. expatriates. June 16<sup>th</sup> and June 30<sup>th</sup> are their main deadlines; and, even though usually no taxes are due, most have the requirement to file a U.S. income tax return, and the most talked about form - the Foreign Bank and Financial Accounts Report. See separate FBAR Q&A article.

Following our spring newsletter U.S. Tax new developments article, presentation at the FAWCO Brussels Conference, and the March 20 U.S. tax talk here, we now follow up with answers to two common questions.

### **Question 1: *I got married, and my spouse is a non-U.S. Person. How do I file my U.S. tax return now?***

First, a “U.S. Person” is someone who is a U.S. citizen including a dual citizen, or a lawful permanent resident alien (LPR) also known as a green card holder. The IRS calls non-U.S. Persons non-resident aliens (NRAs). In this article we will refer to a non-U.S. Person spouse as a “foreign spouse”. Generally, when filing their U.S. tax return, a married U.S. Person must choose their filing status - between filing as Married Filing Separately (MFS) or Married Filing Jointly (MFJ). Let’s take a look at each situation in more detail.

#### **Married Filing Separately**

If a U.S. citizen or a green card holder is married to a foreign spouse, usually the filing spouse will file a MFS return. In this case their spouse’s name will still be listed in the U.S. tax return, but the non-filing spouse’s income will not be reported. However, to reduce their tax liability on U.S. taxable income, if any, the filing spouse may also claim their non-filing spouse as a personal exemption assuming their spouse has no U.S. source income.

#### **Married Filing Jointly**

A MFJ U.S. income tax return normally may be filed only if both spouses are U.S. citizens or green card holders. However, U.S. Persons with foreign spouses have the option to make a Section 6013(g) election for their foreign spouse to be treated as a resident alien for U.S. tax purposes only.

The Section 6013(g) election can play a significant role in tax planning, and may result in a lower U.S. tax liability in the current tax year but perhaps a larger tax liability in future years or vice versa. If such an election is made, both spouses’ worldwide incomes will be reported and, depending on the nature and level of their income, may be U.S. taxable.

About Section 6013(g) elections, in addition that foreign spouses with higher incomes may then also be subject to the new 3.8% Net Investment Income Tax, it is important to remember:

- the election must be made (signed) by both spouses
- once such election is made and that year filing MFJ, it is binding until terminated by either spouse
- until the election is revoked or otherwise terminated - which is achieved by revocation, death, legal separation or divorce, or by the IRS for inadequate bookkeeping - for the foreign spouse this means they

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will also continue to be required to file a U.S. tax return (whether MFJ or MFS) as well as report their foreign/non-U.S. financial accounts

- a Section 6013(g) election can be made only once in a lifetime, i.e. once terminated, neither spouse will be able to make this election ever again (with the same or different spouse)

**Question 2: As a U.S. Person living in Germany and receiving U.S. social security benefits, and/or German social security retirement benefits, must I report them on my U.S. tax return, and are they taxable in the U.S.?**

Maybe, and no.

Pursuant to Article VIII of the Protocol Amending the Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation (2006), social security benefits are taxable by the country of the recipient's residence. Accordingly, as long as a U.S. Person lives in Germany neither their U.S. nor their German social security benefits are taxable by the U.S.

### **Reportable Social Security Benefit Payments - Government Retirement**

Those receiving such benefit payments will, however, need to determine whether they must file a U.S. tax return to report them. The minimum gross income requirements for filing a U.S. tax return (filing thresholds) are: For 2013, \$3,900 for MFS; \$20,000 for MFJ; \$10,000 if filing single; and, \$12,850 for those filing as head of household (other minimum income filing requirements apply to those self-employed if annual net earnings \$400 or more, and to those over 65). And, these filing threshold amounts exclude social security payments UNLESS (i) the benefit recipient's filing status is MFS and he/she lived with their spouse at any time during the tax year; or, (ii) for other benefit recipients if their "base amount" calculation is above the filing threshold limits for their filing status. If (i) or (ii) apply, some of the social security benefits - even though exempt from U.S. tax - may be includable in the filer's gross income used to determine if they have a filing requirement. To calculate this includable amount, Form 1040's Instructions include a Social Security Benefits Worksheet.

- The base amount(s) for reporting social security payments is different from the above-mentioned filing thresholds, and they are:
  - \$-0- for MFS if the spouses lived together at any time during the tax year
  - \$25,000 for those filing MFS if the spouses lived apart for all of the tax year
  - \$32,000 for MFJ
  - \$25,000 for those filing as single, head of household, or qualifying widow(er)

The base amount is calculated by (i) taking one-half of the total social security payments; (ii) adding to it any wages, interest, dividends, and any other taxable income including any taxable private pensions, as well as foreign earned income and housing exclusions; and, (iii) then comparing the result to the base amount for their filing status.

*In applying the provisions of this and any other tax article, it is important to understand the impact of applicable tax laws will vary between individual taxpayers. Please consult your tax adviser to determine how the tax laws discussed may affect your particular U.S. tax situation.*

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References:

[irs.gov/pub/irs-pdf/p17.pdf](http://irs.gov/pub/irs-pdf/p17.pdf)

[irs.gov/pub/irs-pdf/p915.pdf](http://irs.gov/pub/irs-pdf/p915.pdf)

[irs.gov/pub/irs-trty/germanprot06.pdf](http://irs.gov/pub/irs-trty/germanprot06.pdf)

<http://us.kpmg.com/microsite/tax/ies/tea/autumn2010/article1.asp>