

Employee international assignment frequently asked questions

Congratulations! You are off to another country to boost your career. We know that this is an exciting time for you, and you will undoubtedly have questions regarding your U.S. income tax treatment during your time abroad. While specific queries regarding individual situations should be addressed independently, following is a list of the most common questions on the minds of future U.S. expatriates as they embark on international assignments.

PRE-ASSIGNMENT CONSIDERATIONS

1. Is there a quick checklist of recommended to-do items that I should have before I begin my assignment?

Schedule your tax orientation meetings with your U.S. and non-U.S. tax advisors to understand both home and host country tax implications, understand what documents will be required from you, determine applicable timelines, and identify planning opportunities.

Review your state residency position and determine if there are any steps you need to take to break state residency upon departure.

Make sure you understand your employer's tax equalization policy and the items of income that are and are not covered, as well as both your obligations and those of your employer under the agreement.

Establish easy access to your tax information and ensure there is a plan to receive your tax documents from third parties if they will continue to be mailed to you in the United States.

2. If I want to sell my U.S. home before assignment, what tax-related issues I should be considering?

There are numerous factors to consider before selling your home. These initial questions will help you navigate the conversation with the company to determine whether maintaining or selling your U.S. home would be the best option:

- If your home has appreciated in value and the sale will result in a taxable gain, will your employer provide any assistance to cover the tax cost related to the gain?
- If you sell your home in a depressed real estate market, will your employer provide any protection against loss on the sale of the home?
- Are you planning to return to the same area?
- If you can't sell your home, will you rent the property? Further, how will rental income be taxed and who will be responsible for the home and host country taxes on the rental?
- If prices rise dramatically while you are abroad, will you be able to re-enter the real estate market upon repatriation?

You will need to confirm with your employees whether they will offer any assistance related to your home sale or if they will equalize any tax that may be due as a result of the home sale. Because most international assignments are temporary, many employers take the position that it is a personal decision to sell a home and will expect assignees to return to their previous primary homes at the end of their assignment.

3. Should I buy a home in my assignment location?

Purchasing a property in a foreign country could create tax complications when it comes time to sell the property.

First, there is the potential for a gain on the sale of the property, and you may not qualify for the gain on sale exclusion under U.S. rules due to the temporary nature of your ownership and occupancy of the property.

Secondly, if you incurred a loss on the sale of the property, the loss is disallowed, as it is loss on sale of personal property. If there is a debt obligation attached to the property, there may also be an exchange rate gain/loss due to retirement of foreign indebtedness upon sale of the property and that may not be deductible either.

COMPENSATION CHANGES

1. Will my expatriate compensation be significantly different from my current compensation?

While you are on assignment, the employer may pay for allowances such as cost of living allowances, foreign housing, relocation reimbursements, home-leave trips and other potential allowances or reimbursements on your behalf to keep your spending power neutral while on assignment.

The company also may agree to provide tax reimbursement assistance in connection with your assignment income. Payments or benefits in kind provided by the company on your behalf are generally considered taxable income and are required to be included on your Form W-2. As such, assignees usually see an inflation in their taxable income reported on Form W-2 when they are on assignment.

2. Will I be moved to a new payroll?

It depends. Your payroll may vary due to the company's policies as well as your country combination. If you continue to be paid via U.S. payroll during assignment, you will receive a Form W-2 as you normally would for compensation paid by the company on your behalf during the tax year. If you are moved to a foreign country payroll during the year, you may only receive Form W-2 for the portion of the year you were paid via U.S. payroll and you may also receive a foreign earning statement related to income earned overseas.

There may also be a "mirror" or shadow payroll (i.e., reporting but no compensation delivery) in either location to ensure the employer's reporting and withholding requirements are met. You should confirm with your employer the compensation methodology, as well as the delivery mechanism during your assignment.

3. How will my pension and retirement benefits be affected?

Generally, if you remain on U.S. payroll and are on a temporary assignment, you are still able to participate in the U.S. benefits of your employer, such as pension, 401(k) and pretax medical plans. Any contributions will be treated the same as if you were working in the United States as long as the contributions qualify under IRS rules for any tax-deferred benefits.

If you are transferred to a non-U.S. payroll, you may not be able to contribute to U.S. employer-sponsored plans such as 401(k) and employer pension. An alternative is to contribute to your traditional IRA or Roth IRA since they are your personal accounts and set up outside of your U.S. employer. However, please note if you use the foreign earned income exclusion (FEIE) to exclude part of your earned income for the year, it may affect your ability to contribute to a Roth IRA.

While you are on foreign payroll, it is possible that you will have to contribute, or have an option to contribute, to a foreign retirement saving schemes. If you plan to contribute to these plans, please consult with your financial advisor. It may be a tax-triggering event in both home and host countries when you transfer the funds to the United States at the end of assignment, and earnings and accretions in the accounts may not grow tax-deferred for U.S. purposes. In some cases, it may even not be possible to withdraw from a foreign retirement scheme prior to retirement.

TAX RETURN FILINGS

1. Why do I have to file a U.S. return if I am working abroad?

The United States taxes its citizens, lawful permanent residents and resident aliens on a worldwide income basis, regardless of where the income is earned, by whom the income is paid or how long they have been living abroad. As long as you are a U.S. citizen or resident for tax purposes, your income is subject to U.S. tax and you are required to file a U.S. income tax return. In addition, you may be required to file tax returns in the country of your assignment.

2. I always file by April 15. Does my return have to be extended?

U.S. income tax returns for international assignees usually require additional time to gather complete information from multiple parties in order to accurately complete the returns. For example, assignees must meet certain presence or residence tests outside the United States to qualify for FEIE, which include a requirement that the assignees live and work overseas for a particular number of days in the current and following tax year, if necessary. Additionally, foreign tax jurisdictions have different filing deadlines. In many cases, it is necessary for the foreign tax return to be completed before the U.S. tax return can be finalized for Foreign Tax Credit (FTC) purposes.

U.S. citizens and residents who are on assignment outside of the United States on April 15 are allowed an automatic two-month extension to June 15. An additional six months extension to Oct. 15 is allowed if Form 4868 is filed by the original due date. If you are still outside of the United States on assignment on Oct. 15 and additional time is required to file the return, another discretionary two-month extension to Dec. 15 may be obtained upon written request to the IRS. A special extension to Jan. 30 of the following year allows enough time for the assignees to qualify for the presence or residence tests for FEIE purposes, if needed.

3. Do I need to track my travel?

Yes, it is important that you track your travel both domestically and internationally. States and foreign jurisdictions have different taxable income thresholds that trigger a tax return filing requirement. These thresholds can be based on the number of days spent working in a current state/country or the amount of earned income and ratably allocated to your work days in that specific state/country. In addition, your travel details are also important in determining whether you meet the presence or residence tests for FEIE purposes.

4. I heard there are additional reporting requirements related to non-U.S. financial accounts and assets. What are those reporting requirements and why do I need to report?

In addition to tax filings, the United States has numerous information reporting requirements related to financial accounts and/or assets located outside the United States. Some of the forms are included with the tax returns, and some are filed separately. There is no tax due with this information reporting, but generally worldwide income from any non-U.S. assets needs to be reported. The penalties for noncompliance can range from a flat amount per unreported foreign account to a percentage of the value of the unreported foreign account. Therefore, it is imperative that any non-U.S. accounts or assets are accurately and timely reported. These filings may include:

- Report of Foreign Bank and Financial Accounts (FinCEN Form 114), commonly referred to as the FBAR, is required to be filed if you have a financial interest or signature authority over foreign financial accounts, if the aggregate maximum value of the account(s) exceeds \$10,000 in U.S. dollars at any time during the calendar year. This form is required to be filed electronically with the federal government and must be filed separately from your income tax return.
- Statement of Specified Foreign Financial Assets (Form 8938), usually referred to as the FATCA form, must be filed if you have financial interest in foreign financial accounts and/or assets if the aggregate maximum value of the account(s) exceeds certain thresholds. Its scope is broader than the FBAR and it is filed in addition to the FBAR, if the thresholds are met. This form is filed with the tax return.
- Information Return by a Shareholder of a Passive Foreign Investment Company (PFIC) or Qualified Electing Fund (Form 8621), is required to be filed if you own non-U.S. assets that qualify as PFICs (e.g., a non-U.S. mutual fund). Many funds within common non-U.S. pensions would be considered PFICs; however, there are additional factors and elections that can mitigate this reporting burden. PFIC interests must be reported separately on Form 8621, which is attached to the tax return.

- Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts (Form 3520 and 3520-A) are required to be filed if the individual owns an interest in a foreign trust and/or holds certain foreign pensions. Many non-U.S. retirement or pension plans are considered to be legally structured as trusts and thus may require additional disclosure to the IRS. There are narrow exceptions to this requirement; however, this reporting burden can be reduced if certain criteria are met.
- Regarding ownership of other foreign entities, such as corporations and partnerships, depending on your level of ownership, an interest in a non-U.S. corporation or partnership would have to be disclosed along with the activity in the entity.

5. How will I make sure I have correctly prepared a U.S. tax return and/or foreign tax return?

Your employer typically will engage the services of an international accounting firm to prepare and file your home and host country tax returns during your assignment. As mentioned above, the services may continue to be provided after you repatriate. If this service is not available to you, it is recommended that you engage with a reputable tax professional who is well versed in the complexities of international tax.

DATE	FORM DUE
Jan. 31	Form W-2, if applicable, is issued.
Mar. 15	Form 3520-A is due.
Apr. 15	Individual income tax return due date, along with Form 8938, Form 8621, Form 5471, Form 3520 (extension available). FinCEN Form 114 (FBAR) is also due on this date with an automatic extension to Oct. 15 each year.
Jun. 15	Tax returns are due for U.S. citizens or residents residing outside the United States on April 15.
Oct. 15	Extended due date for individuals who timely filed Form 4868 (extension request) by April 15.
Jan. 30 of the following year	Extended due date for individuals qualifying for the Foreign Earned Income Exclusion under the bona fide residence test

FEDERAL TAX IMPLICATIONS

1. If U.S. tax jurisdiction is based on citizenship and residency, does it mean international assignees will incur double taxation? If so, what are the remedies to mitigate double taxation?

If you are also subject to tax in a foreign jurisdiction on the same income because of your international assignment, the Internal Revenue Code allows ways to mitigate double taxation by utilizing the FEIE and the FTC rules. In particular:

- The FEIE allows an exclusion from U.S. taxable income up to \$104,100 (for 2018) of income earned from foreign sources. This threshold is updated annually for inflation. Additionally, there is a foreign housing exclusion that may also allow for an additional excluded amount based on housing expenses (subject to a base amount). If you are expected to qualify for this exclusion, there is an exemption from withholding of U.S. federal income tax purposes if wages you earn abroad are expected to qualify. You can submit a new Form W-4 and/or Form 673 to notify your employer of your expected qualification and to elect a reduced withholding. FICA and potential state taxes will still apply.
- The FTC allows a dollar-to-dollar reduction of your U.S. tax liability on foreign sourced income by the amount of the foreign taxes paid on the same foreign-sourced income. However, any foreign taxes related to excluded income are not available for FTC. Additionally, you are limited to the amount of tax you actually paid, or the amount of U.S. tax that is due on the same income. This limitation can create a situation in which there is either a residual U.S. tax liability (where the amount of foreign taxes paid was less than the U.S. tax due) or you have excess foreign tax credits that can't be utilized in the current year but that may be carried back or forward to be potentially utilized in other years. Foreign tax credits cannot be claimed on income from U.S. sources, unless the income is re-sourced under treaty. There is also an exemption from actual federal income tax withholding if you are also subject to mandatory foreign withholding.

STATE TAX IMPLICATIONS

1. Do I have continued state tax filing obligations during my assignment?

Potentially. State returns are generally a function of residency and domicile in that state, which depends on numerous factors, including the state you were residing in prior to your assignment, your ties to that state, where your family resides, where you are registered to vote and other factors. Many states tax individuals on the basis that they are domiciled in that state. In those cases, states commonly assert that an individual has not changed his or her domicile by an international assignment and should continue to be treated as resident in that state. However, some of these states provide exception to the domiciliary rules and so this issue should be reviewed carefully. However, if you are tax equalized and required to file a state tax return while on assignment, you may not bear all the tax costs if you are tax equalized at the state level. In this situation, the company will be responsible for the actual state taxes, while you are only responsible for "hypothetical" state income tax.

2. Can I break my state residency upon commencing an international assignment?

As mentioned above, an individual's state residency is based on specific circumstances and should be reviewed individually. In case of a U.S. expatriate, there are additional considerations when determining state residency and/or determining whether you have broken the state residency. For example, some domicile states focus on whether the individual intends to move out of state permanently or indefinitely, and whether he or she has taken steps to break state residency, such as relinquishing his or her driver's license or purchasing a new home elsewhere.

3. Are there any remedies to mitigate double taxation on the state level?

Similar to federal taxation, FEIE and FTC are common avenues to mitigate double taxation in some states. However, each state has a different interpretation regarding whether it will allow these benefits and needs to be reviewed separately.

SOCIAL TAX IMPLICATIONS

1. Will I have to pay social taxes in another country?

In general, U.S. Social Security and Medicare taxes do not apply to wages for services you performed as an employee outside of the United States, unless you are working for a U.S. employer or you are working for a foreign affiliate of a U.S. employer. Most U.S. persons who remain on the U.S. payroll are required to continue to contribute to FICA.

In the event you are subject to social taxes in both the United States and the host country, the United States has entered into bilateral social security (totalization) agreements in an effort to eliminate dual coverage and dual tax contributions to both countries. If you are temporarily sent to work in a different country (for five years or less) and your pay would otherwise be subject to social security taxes in both countries, you generally can contribute to and remain covered by only the home country (i.e., U.S. Social Security). In other words, if your secondment is five years or less and you are going to a country where the United States has a totalization agreement, you are only required to pay into U.S. Social Security. In order to utilize the totalization agreement, your employer must request a certificate of coverage from the Social Security Administration—Office of International Programs.

If you are going to a country where the United States does not have a totalization agreement and remain on U.S. payroll, you may be subject to double social tax. If this is the case, under tax equalization policy your employer may pay for your host country's social taxes as they generally would for income tax. Such payments made by the company are generally considered taxable income and included in your Form W-2. In order to ensure you do not bear the U.S. tax cost, the company may also gross up for U.S. taxes on these payments.

2. How will my Social Security benefits be affected?

The impact on your Social Security benefits depends on the country you are going to. If you are going to a country where the United States has a totalization agreement, one of the benefits of the agreement is to eliminate the dual contribution requirements and dual coverage in the home and host countries, as discussed above.

If you have accumulated periods of coverage under the social security systems of both the United States and another country, and where the period of coverage in either the United States or in the foreign country is not long enough to entitle you to social security benefits under the relevant country's benefits law, you may elect a pro rata, or totalized, benefit from the country in which you have not worked long enough to qualify for benefits. If you fail to qualify for benefits under the laws of both countries, you may elect a totalized benefit from both countries.

If you participate in a non-U.S. social security system for which there is no totalization agreement between the countries, your benefits would not be calculated on a totalized basis and would be determined under the domestic laws of each country.

TAX EQUALIZATION

1. What is a tax reimbursement policy, and how it will affect me?

Tax reimbursement is a policy adopted by an employer to help reduce or neutralize the tax burden related to your international assignment. There are two main types of tax reimbursement methodologies: tax equalization and tax protection.

Under a tax equalization policy, the philosophy is that you continue to bear approximately the same tax costs during your international assignment, as you would have had you stayed at home. During assignment, you pay a hypothetical tax on stay-at-home compensation such as salary, annual bonuses, performance-based incentives, personal income and other nonassignment-related income items. The employer is generally responsible to bear any host country taxes and any increased home country taxes as a result of your assignment.

Depending on the terms of your employer's policy or your assignment agreement, you may want to confirm the allowances being offered and which compensation components are tax equalized. Under the tax equalization approach, you will bear the same hypothetical tax (or stay-at-home tax) regardless of whether the actual worldwide taxes generated during your assignment are greater or less than the stay-at-home amount.

If your employer has adopted a tax protection policy, you would never bear more tax during the international assignment than would have arisen at the home location. In addition, if the actual worldwide taxes incurred during the assignment happen to be lower than the home country hypothetical tax, you would retain the difference, potentially receiving a windfall.

2. What is "hypothetical" tax?

Hypothetical tax is an estimate of your income taxes that you would have paid if you had not gone on the assignment. It can often be referred to as "stay-at-home" tax. The manner and mechanism, items of income included, and administration of hypothetical tax largely depend on your company's policy. However, there are generally two elements to hypothetical tax:

1. Hypothetical withholding tax is a pretax withholding throughout the year. You will receive credit for this hypothetical tax withholding on the annual reconciliation.
2. After your host and home country tax returns are complete, the final tax reconciliation is prepared to determine your final hypothetical tax liability (stay-at-home tax), which is your real tax cost under tax equalization. If your personally paid hypothetical and actual tax payments exceed your final hypothetical liability, you would receive a refund from your employer. If your final hypothetical liability exceeds your personally paid payments, you would be required to pay the shortfall to your employer.

Your estimated hypothetical tax is calculated based on your stay-at-home income, such as salary, bonus, incentive payments and personal income, and your marital status and family size. Generally, you would be held to a hypothetical tax for federal, state and local tax (based on the last jurisdiction of employment or residency) purposes. Social Security and Medicare taxes generally stay withheld on an actual basis, with the employer grossing up for any assignment-related benefits and allowances. Again, your employer's policy or agreement would dictate the compensation items and taxes on which you would be responsible for a hypothetical tax.

3. Will my employer pay all the foreign taxes that arise during my assignment?

Potentially. Depending on your employer's policy, the company would generally agree to hold you tax neutral to your home country, but there may be caps or items of income that are not included, such as foreign taxes on the gain on the sale of a residence, or perhaps your employer will equalize you on equity subject to certain limitations. Therefore, it's important to understand both the home and host country tax implications for both you and your employer prior to making financial decisions that may affect both countries, and understand who is responsible to pay the tax. To the extent the foreign taxes paid by the employer generate creditable foreign taxes on your individual income tax return, the benefit would be returned to the company via the final tax equalization settlement calculation.

4. Why can't I receive the benefits of the expatriate FEIE or FTC if I am tax equalized?

Although FEIE and FTC may be claimed on your actual tax return, your hypothetical tax obligation is determined as if you had remained in the United States. You would not have qualified for FEIE or FTC if you had not gone on assignment. Additionally, to the extent your employer is responsible for your foreign tax liability related to your assignment under the tax equalization policy, any benefit of foreign tax offsets should be returned to your employer. This is part of the mechanism to ensure you remain neutral and helps to reduce your employer's global tax cost as a result of your assignment.

5. How long will I be covered under the tax equalization policy after assignment?

Typical tax equalization policies include provisions for continued coverage after repatriation. This provision ensures the company can continue to tax equalize you on any assignment-related payment made after your assignment ends, such as repatriation relocation, foreign taxes, bonus, tax equalization repayment and the like. The continued coverage could be for one to two years after your assignment end date and could extend up to 10 years to recapture any tax benefits related to foreign tax credits.

The above information is for general discussion purposes only. Please reach out to your tax advisor for specific U.S. and foreign due dates and filing requirements based on your personal situation.

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