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U.S. Taxation of Employees of Foreign Governments & International Organizations





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U.S. Taxation of Employees of Foreign Governments & International Organizations




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June 13, 2019

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Objectives

- List the considerations in determining whether compensation from a foreign government or international organization is subject to U.S. tax
- Describe the effect of U.S. tax residency status and/or visa type on U.S. taxation
- Explain the exemption under Internal Revenue Code § 893
- Note the consequences of signing or not signing USCIS Form I-508



Compensation from Foreign Governments and International Organizations

- Generally, compensation for personal services performed for a foreign government or international organization in the United States is considered U.S. source, not foreign source income under the Internal Revenue Code.
- U.S. source compensation is subject to U.S. taxation unless specifically exempted under the Internal Revenue Code or under a treaty or other international agreement provision to which the United States is a signatory party (if one exists).

Employees of Foreign Governments and International Organizations

- An individual working in the U.S. for a foreign government or international organization may be a . . .
 - U.S. citizen
 - Dual citizen of the U.S. and another country
 - Foreign citizen with immigrant status (i.e., a lawful permanent resident, also referred to as a green card holder)
 - Foreign citizen with nonimmigrant "A" or "G" visa status



Exemption of Foreign Government Compensation from U.S. Tax

- Certain employees of foreign governments (including foreign political subdivisions) may be able to exempt their foreign government compensation from U.S. income tax if they satisfy the requirements of any one of the following:
 - Article 34 or 37 of the Vienna Convention on Diplomatic Relations;
 - Article 49 of the Vienna Convention on Consular Relations;



Exemption of Foreign Government Compensation from U.S. Tax (cont'd)

- An article in a bilateral consular convention, if one exists, between the United States and the foreign country;
- An article in a bilateral tax treaty, if one exists, between the United States and the foreign country; or
- Internal Revenue Code (IRC) § 893.



Exemption of International Organization Compensation from U.S. Tax

- Certain employees of international organizations may be able to exempt their compensation from U.S. income tax
 - Under a provision, if one exists, in the international agreement creating the international organization, or
 - By satisfying the requirements of IRC § 893.



U.S. Citizen Working in the U.S. for Foreign Gov't or Int'l Organization

- Foreign governments and international organizations are not required to report compensation or withhold income and employment taxes (social security and Medicare) with respect to their employees on Forms W-2, 1099 or 1042-S.
- Some foreign governments and international organizations, however, voluntarily issue Form 1099s or similar statements to their U.S. citizen employees indicating the amount of the employees' wages and any gross-ups.



Polling Question

A U.S. citizen working in the U.S. for a foreign government or international organization is ...

- a. Considered self-employed for purposes of self-employment tax only
- b. Considered self-employed for all purposes
- c. Neither a nor b



U.S. Citizen Working in the U.S. for Foreign Gov't or Int'l Organization (cont'd)

- Must report those earnings as wages
- Must pay self-employment tax on them under the Self-Employment Contributions Act
- Must report self-employment tax (Schedule SE)



U.S. Citizen Working in the U.S. for Foreign Gov't or Int'l Organization (cont'd)

- Is not self-employed for any other purpose
- May not claim deductions on Schedule C
- Is not qualified to establish or deduct contributions to a Simplified Employee Pension (SEP) Plan



U.S. Citizen Working Abroad for Foreign Gov't or Int'l Organization

- Must report those earnings as wages but is not required to pay self-employment tax on them.
- May be eligible to exclude foreign earned income if all of the requirements of IRC § 911 are met.

NOTE: If the individual performed services both within and outside the United States, see Rev. Rul. 67-153 which discusses the method for allocating income for such services.



Dual Citizen Working for Foreign Gov't or Int'l Organization

- Generally, the rules for a dual citizen of the United States and another country regarding the reporting of compensation income and the payment of self-employment taxes are the same as for a U.S. citizen.
- Exception: A dual U.S.– Philippine citizen may be able to exempt their foreign government or international organization compensation from U.S. tax if they satisfy the requirements of IRC § 893.



Lawful Permanent Resident Working for Foreign Gov't or Int'l Organization

- Must generally report earnings from a foreign government or international organization as wages.
- Is **not** subject to self-employment tax on those earnings, and may **not** voluntarily pay self-employment tax on them.
- Must make estimated tax payments quarterly using Form 1040ES if expect to have tax due at the end of the year.



Polling Question

A lawful permanent resident (green card holder) working in the United States for a foreign government or international organization must generally report their compensation as wages.

- a. True
- b. False



Nonimmigrant Alien A or G Visa Holders

- Under U.S. immigration law and Department of State rules, only those nonimmigrant aliens with A-1, A-2, G-1, G-2, or G-3 visa status are permitted to work at a foreign embassy, foreign consulate, miscellaneous foreign government office, or foreign government mission to an international organization in the United States.
- The only nonimmigrant aliens permitted to work at an international organization in the United States are those with G-4 visa status.



Nonimmigrant Alien A or G Visa Holders (cont'd)

- Under U.S. tax law, a nonimmigrant alien present in the United States in "A" or "G" visa status (with the exception of A-3 or G-5 status) is considered a "foreign government-related individual," a category of "exempt individual."
- An "exempt individual" is a person who is exempt from counting days of physical presence for purposes of determining U.S. resident status under the Substantial Presence Test, not someone who is exempt from U.S. income tax.



Nonimmigrant Alien A or G Visa Holders (cont'd)

- An "A" or "G" visa holder (with the exception of A-3 and G-5) is considered a nonresident for U.S. tax purposes regardless of the actual amount of time present in the United States.



A or G Visa Holder Working in the United States for a Foreign Government

- “A” and “G” visa holders (other than A-3 or G-5) may be able to exempt their foreign government compensation from U.S. income tax if they satisfy the requirements of any of the following:
 - Articles 34 or 37 of the multilateral Vienna Convention on Diplomatic Relations, Article 49 of the multilateral Vienna Convention on Consular Relations, or the applicable article of a bilateral consular convention, if one exists, between the United States and the foreign country, or



A or G Visa Holder Working in the United States for a Foreign Government (cont'd)

- The applicable article in a bilateral tax treaty, if one exists, between the United States and the foreign country, or
- IRC § 893.



G-4 Visa Holders Working for an International Organization

- “G-4” visa holders may be able to exempt their international organization compensation from U.S. income tax if they satisfy the requirements of either of the following:
 - An applicable provision, if one exists, in the international agreement (also known as the charter) creating the international organization, or
 - IRC § 893.



International Organization Employees

- To claim the exemption, an international organization employee must be able demonstrate that he or she meets the requirements of either the international organization agreement provision or IRC § 893, and must know:
 - The number of the Executive Order designating the organization as an international organization, and
 - The article number of the international organization agreement tax exemption provision, if one exists.



Caution When Interpreting Treaties and International Agreements

- Sometimes the tax exemption exclusion for U.S. citizens and permanent residents is not set forth within the actual provision of the agreement but in a U.S. Senate reservation. Accordingly, it is critical to review the international agreement and any reservations carefully to determine whether the individual is eligible.



Caution When Interpreting Treaties and International Agreements – Example

Example: Convention on Privileges and Immunities of the United Nations (T.I.A.S. 6900, 21 U.S.T. 1418)

“By its resolution of March 19, 1970, the Senate of the United States of America, two-thirds of the Senators present concurring, gave its advice and consent to the ratification of the Convention subject to the following reservations:

(1) Paragraph (b) of section 18 regarding immunity from taxation shall not apply with respect to United States nationals and aliens admitted for permanent residence.”



Internal Revenue Code § 893

- Applies only to wages, fees, or salary earned as a foreign government or international organization employee working in the United States. [Treas. Reg. § 1.893-1]
- IRC § 893 is not applicable to wages, fees, or salary earned by independent contractors. See Publication 1779, *Independent Contractor or Employee*.



Polling Question

IRC § 893 applies to both employees and independent contractors working in the U.S. for foreign governments and international organizations.

- a. True
- b. False



Internal Revenue Code § 893 (cont'd)

- IRC § 893 does **not** apply:
 - to an employee of a "controlled commercial entity" (an entity that is 50% or more owned by a foreign government engaged in commercial activity) within or outside the United States, or
 - if services are primarily in connection with a commercial activity of a foreign government within or outside the United States.



IRC § 893 Not Applicable to Employees of Political and Military Alliances

IRC § 893 does not apply to NATO employees because NATO is a political and military alliance, not an international organization within the meaning of IRC § 7701(a)(18).

- Wages of NATO employees may still qualify for tax exemption under the provisions of the NATO Status of Forces Agreement (TIAS 2846) and the NATO Headquarters Protocol Agreement (TIAS 2978).
- However, the NATO tax exemption provisions do not apply to U.S. citizens or green card holders. See Harrison v. Commissioner, 138 T.C. 340 (2012).



Requirements of IRC § 893 for Foreign Government Employees

- The employee is not a U.S. citizen, or if a U.S. citizen, is also a citizen of the Philippines;
- The services are of similar character to those performed by U.S. government employees in foreign countries (the *similar services requirement*);
- The foreign government grants an equivalent tax exemption to U.S. government employees performing similar services in its country (the *reciprocal exemption requirement*).



Requirements of IRC § 893 for International Organization Employees

- The employee is not a U.S. citizen, or if a U.S. citizen, is also a citizen of the Philippines;
- Note that in the case of an international organization employee the similar services and reciprocal exemption requirements do not apply.



Foreign Gov't Employee IRC § 893 Similar Services and Tax Reciprocity Requirements

- IRC § 893(b) requires the Secretary of State to certify to the Secretary of the Treasury those countries which meet the similar services and tax reciprocity requirements; however, the certification is not a prerequisite to claim the tax exemption.
- In cases where the State Department has issued a § 893(b) certification, the IRS will apply the certification to all tax years for which the facts and law are the same as those on which the certification was based.



Foreign Gov't Employee IRC § 893 Similar Services and Tax Reciprocity Requirements

- In cases where the State Department has not issued a § 893(b) certification or it is not applicable to the foreign government employee in question, the employee has the burden of proof to establish to the IRS that the similar services and tax reciprocity requirements have been met.



Interaction of Section 247 of the Immigration and Nationality Act and IRC § 893

- Foreign governments and international organizations are required to notify the State Department when they hire a lawful permanent resident or when an existing "A" or "G" visa holder employee changes their immigration status to lawful permanent resident.



Interaction of Section 247 of the Immigration and Nationality Act and IRC § 893 (cont'd)

- Under section 247 of the Immigration and Nationality Act (8 USC §1257), individuals who are lawful permanent residents at the time of their initial employment with a foreign government or international organization, or who subsequently acquire lawful permanent residence status while working, must sign the USCIS Form I-508 waiver.



Immigration Consequences of Not Signing USCIS Form I-508

- Failure to sign and file USCIS Form I-508 within 10 days of receiving notice from USCIS on Form I-509 will result in the employee's immigration status being adjusted by USCIS from lawful permanent resident (immigrant) status to "A" or "G" nonimmigrant visa status.
- For additional information concerning the immigration consequences of not signing and filing Form I-508, contact USCIS at 800-375-5283 or at www.uscis.gov.



Consequences of Signing USCIS Form I-508

- Signing Form I-508 allows the employee to retain their green card but will result in them losing all privileges and immunities associated with their occupational status under U.S. law, including any tax exemption applicable with respect to their foreign government or international organization compensation.
- Once a green card holder employee signs and files the USCIS Form I-508 waiver, they will no longer be eligible to claim the tax exemption under IRC § 893.



Polling Question

Signing USCIS Form I-508 disqualifies one from claiming the exemption under IRC § 893.

- a. True
- b. False



Consequences of Signing USCIS Form I-508 (cont'd)

- Compensation received by a green card holder employee prior to the date of signing the USCIS Form I-508 is eligible for exemption from tax under IRC § 893 provided the similar services and reciprocal exemption requirements of IRC § 893 are satisfied.
- Compensation received on or after the date of signing the Form I-508 is not eligible for exemption from tax under IRC § 893.

See Treas. Reg. § 1.893-1(a)(5) and (b)(4).



Consequences of Signing USCIS Form I-508 (cont'd)

- Signing USCIS Form I-508 has no effect on any tax exemption derived under an international agreement (e.g., tax treaty, consular agreement, international organization charter) that is not dependent on the provisions of the Internal Revenue Code.

See Treas. Reg. § 1.893-1(c).



**Effect of Signing USCIS Form I-508
EXAMPLE 1**

- Oscar is in the United States on an A-2 visa and works at a foreign consulate as an administrative/technical staff employee.
- Oscar recently applied for a green card (signed USCIS Form I-508).



**Effect of Signing USCIS Form I-508
EXAMPLE 1 (cont'd)**

- The bilateral consular agreement provides that "the official emoluments, salaries, wages or allowances received by a consular employee as compensation for his services at a consulate" are exempt from U.S. tax "unless he is a national of the receiving state and is not also a national of the sending state."
- Oscar's wages from the foreign government are exempt from U.S. tax.



**Effect of Signing USCIS Form I-508
EXAMPLE 2**

- Juliet is in the United States on a G-4 visa, and works for the World Bank.
- Juliet recently applied for and obtained a green card (lawful permanent resident status) and as part of the application process has signed USCIS Form I-508.



**Effect of Signing USCIS Form I-508
EXAMPLE 2 (cont'd)**

- Section 7, Section 9(b) of the Articles of Agreement of the World Bank provides that "salaries and emoluments paid by the Bank" to its employees who "are not local citizens . . . or local nationals" are exempt from taxation.
- Because Juliet is not a U.S. citizen or national, her UN wages are exempt from U.S. tax.



**Effect of Signing USCIS Form I-508
EXAMPLE 3**

- Sierra works for a foreign embassy in the U.S. as an administrative/technical staff employee.
- She has an A-2 visa and has never applied for a green card but is considered by the State Department to be a local hire (i.e., have "permanently resident-in" status for purposes of the Vienna Conventions).
- Sierra cannot find relief under the Vienna Conventions, nor under the applicable bilateral consular agreement.



**Effect of Signing USCIS Form I-508
EXAMPLE 3 (cont'd)**

- The foreign country for which she works does not have an income tax treaty with the U.S.
- If she can show that the similar services and tax reciprocity requirements were met, Sierra's wages are exempt from U.S. tax under IRC § 893.



Effect of Signing USCIS Form I-508 EXAMPLE 4

- Charlie is a lawful permanent resident (green card holder) who works in the U.S. for the United Nations (UN). When he began his employment with the UN, Charlie signed the USCIS Form I-508.
- Because he has signed USCIS Form I-508, Charlie's UN wages are not exempt from U.S. tax under IRC § 893.



Resources

- Publication 519, *Tax Guide for Aliens*
- Publication 901, *U.S. Tax Treaties*
- <https://www.irs.gov/Individuals/International-Taxpayers>



Resources

- <https://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>
- Taxpayer Assistance: 1-800-829-1040
- Taxpayer Assistance Outside the United States: 00-1-267-941-1000



Key Points

U.S. Taxation of Employees of Foreign Governments and International Organizations

- Generally, U.S. citizen employees of foreign governments and international organizations must report their earnings as wages and pay self-employment tax.
- Lawful permanent residents (green card holders) must generally report such earnings as wages but are not subject to self-employment tax on them.

Key Points

U.S. Taxation of Employees of Foreign Governments and International Organizations

- A nonimmigrant visa holder's foreign government or international organization compensation is subject to U.S. income tax unless the individual qualifies for an exemption under the terms of an applicable international agreement or IRC § 893.

Key Points

U.S. Taxation of Employees of Foreign Governments and International Organizations

- Signing Form I-508 (when applying for a green card) results in losing any tax exemption applicable with respect to foreign government or international organization compensation, but has no effect on any tax exemption derived under an international agreement.

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