

Tax Information for Employees of the German Embassy & Consulates

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Agenda

- Categories of employees
- Exemptions from US Tax
- Taxation of US Citizens and Residents
- Taxation of A-2 Visa Holders
- Tax Treaty & Consular Agreement
- Self-employment tax
- Deductions for unreimbursed employee business expenses
- SEP/IRA deductions & Self-Employed Health Insurance deductions
- Estimated Tax payments
- Joint filing election with nonresident alien spouse
- Foreign Bank Account Reporting (FBAR)
- Foreign Account Tax Compliance Act (FATCA)

Categories of Employees

Locally Engaged Staff

- US Citizens
- LPR/Green Card Holders
- A-2 Visa Holders “Permanently Resident In” the United States

Exemptions from tax in the US

Income Tax

- US-German Tax Treaty, Article 19
- US-German Consular Agreement, Article 19
- US Law – Internal Revenue Code Section 893

Social Security Tax

- US-German Totalization Agreement

Tax Treaty Exemption

Article 19 of the US-German Income Tax Treaty agreement provides an exemption to employees of the German Government in the US who are not citizens or residents of the US.

Article 19 does NOT provide tax exemptions to US citizens or US residents. (Green Card holders). They are subject to tax in the US on their income from the embassy or consulate.

Consular Agreement Exemption

Article 19 of the 1925 US-German Friendship, Commerce and Consular Rights Treaty provides an exemption from US tax to consular employees who are German citizens.

Article 19 does NOT provide tax exemptions to US citizens or residents who are not German citizens. They are subject to tax in the US on their income from the consulate.

US Law – Internal Revenue Code Section 893

Section 893 of the Internal Revenue Code provides an exemption from US income taxes to employees of the German Government in the US.

The exemption provided by Section 893 does not extend to US Citizens or LPR/Green Card holders employed at the German Embassy or Consulate.

Exemption from Income Taxes

Classification of Employee	Consular Agreement	Tax Treaty	US Law Section 893
US Citizen	Taxable unless dual US/German citizen [Article 19]	Taxable [Article 19]	Taxable unless dual US/Filipino citizen IRC 893(a)(1)
LPR/Green Card	Exempt if German citizen [Article 19]	Taxable [Article 19]	Taxable. IRC 893(b) certification does not cover green cardholders
A-2 Visa Holder	Exempt if German citizen [Article 19]	Exempt [Article 19]	Exempt

LPR Green Card Holders

- In general, Green Card holders employed at the German Embassy and UN Mission are subject to U.S. income taxes on the gross amount of their wages
- Green card holders are not subject to U.S. Social Security taxes.
- Under Article 19 of the US-German Consular Agreement, Green Card holders who are German citizens employed at consular locations are not subject to U.S. income taxes on their wages from the consulate.
- Generally, no exemption under Section 893 of the Internal Revenue Code is allowed for green card holders.

US Citizens and Residents

Form 1040

- US citizens and residents who are subject to tax:

Must ✓

- Report wages on Form 1040, Line 7
- Complete Schedule SE to pay into the US Social Security system as if they were self-employed. If dual US/German citizen or Green Card holder, no SE tax due to US.
- Make Estimated Tax payments on Form 1040ES

Must Not ✗

- Report wages on Schedule C
- Report wages as Other Income on Form 1040, Line 21
- Claim SEP/IRA deduction on Form 1040, Line 28
- Claim SE Health Insurance deduction on Form 1040, Line 29

A-2 Visa Holders

A-2 visa holders who are considered “permanently resident in” the US, are exempt from paying U.S. income taxes on wages from the embassy/consulate or UN Mission under:

- Article 19 of the US-German Income Tax Treaty
- Section 893 of the Internal Revenue Code

Employee Business Expenses

- US citizens and Green Card holders may have deductions for unreimbursed business expenses
- Ordinary and necessary, required by employer
- No employer reimbursement available
- Use Form 2106 to calculate the amount of unreimbursed employee business expense and claim deduction on Schedule A, Miscellaneous Itemized Deductions. Subject to 2% AGI limitation
- Do not use Schedule C to claim employee business expenses

Nondeductible items

Simplified Employee Pension (SEP/IRA) Retirement Accounts

- Available only to self-employed individuals
- Wage income does not qualify as self-employment income for a SEP/IRA account
- No deduction is allowed for a contribution to a SEP/IRA plan on Form 1040, Line 28. See IRS Revenue Ruling 73-38

Self-Employed Health Insurance Deductions

- Available only to self-employed individuals
- Employees receiving wage income do not qualify to claim a deduction for self-employed health insurance on Form 1040, Line 29

Taxation of US Citizen Employees

Self-Employment Tax

- For Social Security tax purposes only, US citizens working at the German Embassy/Consulate and UN Mission are taxed as if they were self-employed. For all other purposes they are considered employees.
- Dual German/US citizens are covered by the German Social Security system and are not subject to self-employment tax in the US
- Computation of self-employment tax is done on Schedule SE
- For 2013 the SE tax rate is 15.3%
- A portion of self-employment taxes may be deducted on Form 1040, Line 27

Estimated Tax Payments

Federal Estimated Tax Computation

Either

- 90% of the current year tax due
or
- 100% of the prior year tax
(110% if the AGI from Form 1040, Line 37 is greater than \$150,000)

State Estimated Tax Computation

- NY & Maryland - 90% of current year or 110% of prior year tax (110% if the prior year State adjusted gross income is greater than \$150,000)
- DC & Virginia - 90% of current year or 100% of prior year tax

Estimated Tax Payments

- Federal estimated tax payments are made on Form 1040ES
- Federal (IRS) due dates for the current year are:

Quarter	Federal (IRS) Due Dates	NY State Due Dates	DC/Maryland State Due Dates	Virginia State Due Dates
1 st Quarter	April 15, 2014	April 15, 2014	April 15, 2014	May 1, 2014
2 nd Quarter	June 16, 2014	June 16, 2014	June 16, 2014	June 16, 2014
3 rd Quarter	Sept 15, 2014	Sept 15, 2014	Sept 15, 2014	Sept 15, 2014
4 th Quarter	Jan 15, 2015	Jan 15, 2015	Jan 15, 2015	Jan 15, 2015

Joint Filing Election with Nonresident Spouse

- One-time election to file a joint tax return with a nonresident alien spouse
- Written election is required in year of election
- Nonresident alien spouse is required to report worldwide income
- If a joint filing election is made, the exemption from US tax for A-2 visa holders is not affected. The tax exemption is based on the US-German tax treaty and is not lost by the joint filing election.
- The election can be revoked, but once revoked cannot be made again

Foreign Bank Account Reporting

FinCEN Form 114

- Required of US citizens or residents with a financial interest in or signature authority over foreign financial accounts if the total value of the accounts exceeded \$10,000 at any time during the year
- FinCEN Form 114 is not an IRS form; it is filed electronically with the US Treasury. Do not include with your tax return or send by mail.
- Form is required whether or not a tax return is filed
- Filing deadline is June 30 of each year and cannot be extended
- Filing of Form 114 is required in addition to FATCA Form 8938 filing

Failure to file is risky – penalties are extreme

- Non-willful penalty is \$10,000 for failure to file
- Willful penalty is the greater of 50% of the account balance or \$100,000

Foreign Account Tax Compliance Act (FATCA)

Form 8938

- Required of US citizens or residents with an interest in Specified Foreign Financial Assets exceeding certain amounts
- Form 8938 is an IRS form and is required to be filed with your US tax return
- If a tax return is not required to be filed, no Form 8938 has to be filed
- Filing of FATCA Form 8938 is in addition to filing of FBAR Form 114 which replaces the old FBAR Form 90-22.1 starting in 2013

Failure to file is risky – penalties are extreme

- Penalty for failure to file starts at \$10,000 and continues up to \$50,000 for continuing failure to file after IRS notification
- Additional 40% penalty for failure to report income on tax return
- Statute of Limitations does not start until accurate Form 8938 is filed

Foreign Account Tax Compliance Act (FATCA)

Form 8938

- Specified Foreign Financial Assets include:
 - Bank and investment accounts
 - Direct ownership of foreign stock
 - Foreign retirement accounts
 - Foreign life insurance policies
 - Foreign partnership interests
 - Foreign estate and trust interests

- **When in doubt file Form 8938**

Foreign Account Tax Compliance Act (FATCA)

Form 8938

- Form 8938 must be filed when Specified Foreign Financial Assets exceed specified amounts
- File Form 8938 if Specified Foreign Financial Assets exceed either the Year-end Total or Highest Annual values in the table to the right

Filing Status / Location	Year-end Total (greater than)	Highest Annual (greater than)
Single in U.S.	\$50,000	\$75,000
Single Overseas	\$200,000	\$300,000
Joint in U.S.	\$100,000	\$150,000
Joint Overseas	\$400,000	\$600,000
Separate in U.S.	\$50,000	\$75,000
Separate Overseas	\$200,000	\$300,000

Questions?