

Tax Seminar for Americans Living Abroad

**Hosted by the
American-Hellenic Chamber of Commerce**

Tuesday, 10 March 2015

*The American School of Classical Studies
Athens, Greece*

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Topics to be covered

- ❖ **Taxation**
 - ❖ **Who has to file**
 - ❖ **Foreign Earned Income Exclusion**
 - ❖ **Foreign Housing Exclusion/Deduction**
 - ❖ **Foreign Tax Credits**
 - ❖ **Social Security**
 - ❖ **Unfiled tax returns**

Topics to be covered (continued)

- ❖ Foreign Bank Account Reports (FBAR)**
- ❖ Who has to file**
- ❖ Streamlined Foreign Offshore Procedures (June 18, 2014) – Unfiled FBAR's & tax returns**
- ❖ OVDP - Offshore Voluntary Disclosure Program (as of June 2014)**

Topics to be covered (continued)

- ❖ **Foreign Account Tax Compliance Act (FATCA) – Form 8938**
- ❖ **Who has to file**
- ❖ **Penalties**
- ❖ **Foreign Bank reporting of “U.S.” financial accounts to the Internal Revenue Service**

Taxation

Starting Point: US Citizenship Taxation

- ❖ **US citizens are subject to US tax on their worldwide income from all sources regardless of where they live**
- ❖ **Tax is levied as provided for under the Internal Revenue Code even if no income is from sources in the U.S.**

US Citizenship

- ❖ **Anyone born in the United States is a US citizen by birth**
- ❖ **Anyone born to US citizens outside the United States is a US citizen by birth**
- ❖ **Anyone born to a US citizen parent who can pass on his/her citizenship and registers the child's birth at a US Consulate is a US citizen by birth**
- ❖ **Anyone naturalized as a US citizen**

Taxation

Which U.S. citizens must file?

❖ Start with filing status

- **Single, under or over 65**
- **Head of household, under or over 65**
- **Married filing jointly, under or over 65 both spouses or one**
- **Married filing separately, any age**
- **Qualifying widow or widower, under or over 65 with a dependent child**

Qualifying Widow/er

- ❖ Taxpayer eligible to file a joint return for year in which his/her spouse died
- ❖ Spouse died during either of the two immediately preceding tax years
- ❖ Taxpayer has not remarried during the tax year
- ❖ Taxpayer has at least one dependent (son or daughter) who resides with him/her

Taxation – Who files

Status	Age	Gross Income
Single	under 65	\$10,150
	65 or older	\$11,700
Head of household	under 65	\$13,050
	65 or older	\$14,600
Married, filing jointly	under 65 (both spouses)	\$20,300
	65 or older (one spouse)	\$21,500
	65 or older (both spouses)	\$22,700
Married, filing separately	any age	\$3,950
Qualifying widow(er) with dependent child	under 65	\$16,350
	65 or older	\$17,550

Taxation – Who files – Gross Income

- ❖ **Exclude social security benefits unless**
 - ❖ **you are married filing a separate return and you lived with your spouse at any time during 2014; OR**
 - ❖ **one-half of your social security benefits plus your other gross income and tax-exempt interest exceeds \$25,000 (\$32,000 if married filing jointly)**

Taxation – Section 911 Foreign Earned Income Exclusion (FEIE)

- ❖ FEIE allows US citizens who are *bona fide* residents in a foreign country or who have a physical presence outside the US to exclude up to a set amount of their earned income from US tax

Taxation – FEIE

- ❖ *Bona fide* residence is a “facts and circumstances” test
- ❖ Generally, anyone who lives permanently outside the US, has set up a home, sends their children to local schools, etc. meets the test
- ❖ Being required to pay tax where one lives is also determinative

Taxation – FEIE

- ❖ **Physical presence test requires that the US citizen live outside the US for no less than 330 full days in any consecutive 12 month period**
- ❖ **It is an “all or nothing” test; 329 full days is not sufficient**
- ❖ **The days do not have to be in one tax year- counting can be tricky**

Taxation – FEIE

- ❖ **US citizens working in a foreign country for the US government or a US government agency cannot use the FEIE**

Taxation – FEIE

❖ **Maximum exclusion is set each year**

- **For 2011 it was \$92,900**
- **For 2012 it was \$95,100**
- **For 2013 it was \$97,600**
- **For 2014 it is \$99,200**
- **Value of the exclusion is always calculated in USD**

Taxation – FEIE

- ❖ **FEIE covers only “earned income”**
 - **Salary, wages, commissions, bonuses, professional fees, tips, consulting or self-employed earnings**
 - **Interest, dividends, capital gains, rents, etc. are not earned income**
 - **Pensions and annuities are not earned income**

Taxation – FEIE

- ❖ **US Social security is NOT earned income**
- ❖ **Greek social security is NOT earned income**
- ❖ **FEIE cannot be used to exclude US or Greek social security payments**

Taxation – FEIE

- ❖ **Both spouses can take FEIE if both work and meet the residence or physical presence tests**
- ❖ **Spouses DO NOT have to meet the same qualifying test**

Taxation – FEIE

- ❖ **FEIE automatically triggers Alternative Minimum Tax (AMT) calculation**
- ❖ **AMT is very complex; but generally speaking, AMT is calculated as if FEIE is NOT taken**

Taxation – FEIE

- ❖ FEIE must be claimed by filing Form 2555 or 2555EZ with Form 1040**
- ❖ Earnings above the FEIE limit are taxed at the taxpayer's marginal rate as if FEIE had NOT been used, i.e., usually beginning at 28%**

Taxation –Foreign Housing Exclusion (FHE)

- ❖ **To claim FHE, the taxpayer must meet the *bona fide* residence or physical presence test**
- ❖ **FHE covers rent, utilities, occupancy taxes, furniture rentals, etc. paid by an employer**
- ❖ **Must be reasonable based on job**

Taxation – FHE Calculation

- ❖ Start with base housing expense which equals 16% of the FEIE maximum exclusion
- ❖ $\$99,200 \text{ times } .16 = \$15,872 \text{ (2014)}$
- ❖ Subtract base housing expense from the amount of housing expenses paid to reach FHE exclusion

Taxation – FHE Calculation

- ❖ **Example: Employer pays housing expenses equal to \$35,000 in 2014**
- ❖ **$\$35,000 - \$15,872 = \$19,128$ FHE**
- ❖ **Maximum FHE is 30% of FEIE**
 $\$99,200 \text{ times } .3 = \$29,760$
- ❖ **IRS Notice 2014-29 lists cities for which the maximum is higher (e.g, Athens is \$42,200)**

Taxation –Foreign Housing Deduction (FHD)

- ❖ **FHD has same requirements as FHE**
- ❖ **FHD covers self-employed persons**
- ❖ **Excess over maximum may be carried forward one year**
- ❖ **Foreign tax credits are not allowed on FEIE, FHE or FHD**

Taxation –Foreign Tax Credits (FTC)

- ❖ Taxpayers may apply income taxes paid to a foreign government on income as credits to their US tax obligations
- ❖ VAT, business or real estate taxes or any other tax NOT levied on income is excluded
- ❖ “Solidarity tax” is a tax on income

Taxation – FTC

- ❖ Credits must be broken down into categories on Form 1116
 - Passive, General, Section 901(j), income re-sourced by treaty and lump sum distributions
- ❖ Form 1116 AMT must be filed with Form 1116
- ❖ AMT may reduce FTC

Taxation – FTC vs. FEIE

- ❖ **Use of FEIE eliminates certain tax benefits**
- ❖ **Use of FTC does not**
- ❖ **Phase out of certain tax benefits needs to be taken into account when deciding which approach to take**

Taxation – Social Security

❖ Social security benefits are NOT taxable if

- filing as an individual, “combined income” is less than \$25,000
- filing a joint return, “combined income” is less than \$32,000

Taxation – Social Security

- ❖ **Up to 50% of social security benefits are taxable if**
 - **filing as an individual with “combined income” of between \$25,000 and \$34,000**
 - **filing a joint return with “combined income” of between \$32,000 and \$44,000**

- ❖ **85% is taxable if “combined income” exceeds these maximum amounts**

Taxation – Social Security

- ❖ **85% of social security benefits are taxable if a married person files a separate return**
- ❖ **“Combined income” equals adjusted gross income + tax exempt interest + $\frac{1}{2}$ of social security benefits**

Taxation – Social Security Totalization Agreements

- ❖ **US and Greece (and many other countries) have entered into these agreements**
 - **to prevent people from having to contribute to two systems**
 - **to coordinate benefits between systems**
 - **to reduce chances that a person will not qualify for benefits in either country**

Taxation – Social Security Totalization Agreements

- ❖ **Taxpayers cannot choose which country's mandatory system they will participate in**
- ❖ **Agreements spell out the rules**

Taxation – US-Greece Agreement

Working in Greece for a US employer

Sent to Greece; worked five years or less	US
Sent to Greece; worked more than five years	Greece

Hired in Greece	Greece
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<i>Working in Greece for a non-US employer</i>	Greece
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Working in Greece for the US government

US national	US
Greek national	Greece

Taxation – US-Greece Agreement

Working in the US for an employer in Greece

Sent to US; worked five years or less	Greece
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Sent to US; worked more than five years	US
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Hired in the US	US
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<i>Working in the US for a non-Greek employer</i>	US
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Working in the US for the Greek government

Greek national	Greece
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US national	US
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<i>Self-employed and living in the US</i>	US
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<i>Self-employed and living in Greece</i>	Greece
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Taxation – Unfiled US Tax Returns

- ❖ There is no statute of limitation on an unfiled tax return**
- ❖ There is a three year statute of limitations on a filed tax return**
- ❖ In limited situations the three year limit can be increased to six**
- ❖ Penalties are based on tax due with a minimum penalty of \$135**

Question Time & Coffee Break

Foreign Bank Account Report (FBAR)

- ❖ **FBAR was mandated by the Bank Secrecy Act of 1970 to address money laundering**
- ❖ **It is not a tax filing, but a report of defined financial accounts held outside the United States**
- ❖ **Enforcement was minimal until 2009**

FBAR – Who must file?

- ❖ **US citizens**
- ❖ **Permanent US residents**
- ❖ **Trusts**
- ❖ **Estates**
- ❖ **US domestic legal entities**

FBAR – Who must file (continued)?

- ❖ **The persons/entities listed on the prior slide IF they have financial accounts located outside the U.S. AND the TOTAL on deposit in all such accounts AT ANY TIME during a calendar year exceeds \$10,000 (8,820€ in 2014 per US Treasury office exchange rate)**

FBAR – Who must file (continued)?

- ❖ The FBAR filing requirement includes financial accounts over which a U.S. citizen has signature authority even if the person has no beneficial interest in the account (e.g., a bank account of a company for which the person works)**

FBAR – Who must file (continued)?

- ❖ The FBAR regulations make it clear that even if the U.S. person is not the owner of record, if the owner of record is that person's agent or the U.S. person can control the account directly or indirectly, the financial account is to be reported**

FBAR – What is an account?

❖ Foreign financial accounts include:

- Bank (savings, checking or deposit) and securities accounts**
- Accounts from which cash can be withdrawn regardless of its description**
- Mutual funds and other funds in which the US person has an equity interest**
- Bonds, stock, promissory notes are NOT accounts**

FBAR – Filing Requirements

- ❖ **Each US person must file his/her own FBAR**
 - **Married couples can file a joint FBAR if all reportable accounts are jointly owned**
- ❖ **FinCEN Form 114 must be received by the IRS on or before June 30th each year for the prior year**

FBAR – Dealing with unfiled FBAR’s

- ❖ **FBAR’s are required to be filed every year**
- ❖ **The statute of limitations on unfiled FBAR’s is six years from when it should have been filed, i.e., FBAR’s that should have been filed for 2007 are now statute barred**
- ❖ **Compliance should begin with the FBAR for calendar year 2008 or 2009**

FBAR – Penalties

- ❖ **Maximum penalty for “non-willful” failure to file is \$10,000 per account per year**
- ❖ **No penalty is owed if failure was not “willful”, taxpayer can establish “reasonable cause”, and each account is properly reported**

FBAR – Penalties

- ❖ **“Willful” means voluntary and intentional violation of a known legal duty**
- ❖ **Willfulness does not exist if a person had no knowledge of the FBAR filing requirement**
- ❖ **Burden of proof is on the IRS to prove “willfulness”**

FBAR – Penalties

- ❖ **Willfulness, if proved, can trigger significant civil and criminal sanctions**
- ❖ **Civil penalty can be the greater of \$100,000 or 50% of the high balance of each account for each year that an FBAR has not been filed**
- ❖ **Criminal penalties are harsher**

Streamlined Foreign Offshore Procedures (SFOP)

- ❖ **Adopted by IRS on June 18, 2014 to address non-willful tax and FBAR non-compliance**
- ❖ **Requires at least one year of residence outside the US during the last three years prior to filing**

SFOP

- ❖ **Eliminates all tax and FBAR penalties**
- ❖ **Requires only the payment of any tax due plus interest on the tax due**
- ❖ **SFOP offers amnesty to Americans living overseas who can demonstrate non-willfulness**

SFOP

- ❖ Requires the filing of three years of late returns (returns that should have already been filed) or
- ❖ Requires three years of amended returns if foreign source income was not reported on a return that has already been filed

SFOP

- ❖ **Requires the filing of six years of late FBAR's (FBAR's that should have already been filed)**
- ❖ **Requires filing a Certification (Form 14653) of non-willfulness and a Statement of Facts explaining the non-willfulness**

SFOP

- ❖ **IRS has refused to provide any guidance on the meaning of “non-willfulness”**
- ❖ **IRS officials have said that the most critical aspect of an SFOP submission is the taxpayer’s Statement of Facts explaining the basis of his or her non-willfulness**

SFOP

- ❖ **There is no stated filing deadline for SFOP submissions**
- ❖ **SFOP are a modification of normal IRS procedures for innocent non-compliant overseas Americans and a great improvement over the previous Streamlined Compliance Program**

SFOP

- ❖ **SFOP will not be available indefinitely**
- ❖ **IRS has offered no assurance so far that there will be any advance notice of termination of the procedures**

Quiet Disclosure

- ❖ **Taxpayer files FBAR's for 2008-2013 and tax returns (or amended returns) for 2011-2013 without advising the IRS**
- ❖ **After adoption of SFOP, quiet disclosure is no longer a good option for taxpayers with “reasonable cause”**

Offshore Voluntary Disclosure

- ❖ **IRS launched a Offshore Voluntary Disclosure Initiative (OVDI) in 2009 and another one in 2011**
- ❖ **OVDP (Offshore Voluntary Disclosure Program) replaced OVDI in January 2012**
- ❖ **OVDP open indefinitely**

OVDP

- ❖ **Participation in OVDP requires the taxpayer to concede that his/her non-filing was “willful”**
- ❖ **As of June 2014 OVDP FBAR penalties are capped at 50% of the highest balance of all offshore accounts not reported during the reporting period**

OVDP

- ❖ **OVDP is for tax criminals; not for people with reasonable cause**
- ❖ **But when SFOP is terminated, OVDP or quiet disclosure will be the only available options**
- ❖ **Question: Will “reasonable cause” be available as a defense after the SFOP is terminated?**

FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

- ❖ **FATCA enacted by U.S. Congress in 2010 to address tax evasion by U.S. citizens using foreign accounts**
- ❖ **Two fold approach: individual disclosure required on Form 8938 and foreign financial institutions required to disclose “U.S. accounts” to IRS**

FATCA – Form 8938

- ❖ **Who has to file?**
 - **U.S. citizens and permanent residents based on reporting thresholds**
- ❖ **Adds to, does not replace, FBAR filing requirement**
- ❖ **Form must be filed with U.S. tax return (Form 1040)**
- ❖ **Form first required with 2011 tax returns**

FATCA – Form 8938

❖ Filing status and residence governs filing thresholds

- **Filing Status = Single or Married filing separately living outside the U.S. (must meet the residence requirements that apply to FEIE)**

- **Total value of all “foreign financial assets” exceeds \$200,000 on last day of the year or \$300,000 at any time during the year**

FATCA – Form 8938

- ❖ **Filing Status = Married filing jointly living outside the U.S. (must meet the residence requirements that apply to FEIE)**
- **Total value of all “foreign financial assets” exceeds \$400,000 on last day of the year or \$600,000 at any time during the year**

FATCA – Foreign Financial Assets

- ❖ **Accounts at foreign financial institutions, defined broadly to include insurance companies, private equity funds and other investment entities and vehicles, not commonly thought of as financial institutions**
- ❖ **Bank accounts (all kinds)**

FATCA – Foreign Financial Assets

- ❖ **Stock in foreign companies held through a foreign financial institution**
- ❖ **Stock in private foreign companies**
- ❖ **Interests in foreign partnerships**
- ❖ **Foreign mutual funds**
- ❖ **Precious metals held indirectly through exchange traded funds**

FATCA – Foreign Financial Assets

❖ Do NOT include

- Personal property (e.g., artwork)
- Precious metals, jewelry owned directly
- Real estate held directly
- Social benefits (e.g., like social security) provided by foreign governments

FATCA – Form 8938

❖ Failure to File Penalties

- **\$10,000 penalty, plus**
 - **An additional \$10,000 penalty if Form 8938 not filed within 90 days of being notified of initial penalty**
 - **Incremental \$10,000 penalties accrue every 30 days to a maximum of \$50,000**
 - **Total could equal \$60,000 if all penalties are imposed**

FATCA – Foreign Bank Disclosures

- ❖ **FATCA imposes a 30% tax on all U.S. transactions of foreign financial institutions (FFI) that do not agree to share account information**
- ❖ **The 30% tax effectively locks FFI's out of U.S. banking system**
- ❖ **Most FFI's are cooperating**

FATCA – Foreign Bank Disclosures

- ❖ **U.S. has developed two models for IGA's**
 - **Model 1: FFI's report accounts to their own governments which pass account information to the IRS**
 - **Model 2: FFI's report accounts directly to the IRS**

FATCA – Foreign Bank Disclosures

- ❖ **U.S. is negotiating FATCA Intergovernmental Agreements (IGA's)**
- ❖ **According to PwC as of 12/31/14, there were IGA's in force (or treated as in force) with 115 countries**
- ❖ **U.S. and Greece have a Model 1 IGA treated as in force as of November 30, 2014**

FATCA – Foreign Bank Disclosures

❖ How will an FFI know who is a U.S. person?

- FFI's must conduct due diligence (not well defined), but will generally gather and retain enough data about account holders to determine if the holder is a U.S. person**
- U.S. birthplace, passport, address, employer, etc. are indicators**

FATCA – Foreign Bank Disclosures

❖ What will be disclosed?

- **Under U.S.-Mexico IGA, Mexico will provide annually to the IRS**
 - **Name, address, US SSN/TIN of each U.S. person who is an account holder**
 - **Same information for entities controlled by U.S. persons**
 - **Account numbers**
 - **Name and identification of FFI's where accounts are held**

FATCA – Foreign Bank Disclosures

❖ U.S.-Mexico IGA (continued)

- Average monthly balance/value during the year
- Gross amount of interest paid on depository accounts
- Gross amounts credited or paid to non-depository accounts, including redemptions

FATCA – Key Implementation Dates

- ❖ Returns for tax year 2011 should have included Form 8938**
- ❖ July 1, 2014 – FFI's to implement new procedures to determine U.S. status of new accounts**
- ❖ March 31, 2015 – first FFI FATCA reports due**

FATCA – Key Implementation Dates

- ❖ December 31, 2014 – FFI's must document owners of pre-existing high value accounts (\$1 million or more)**
- ❖ December 31, 2015 – FFI's must review all pre-existing accounts with balances above \$50,000 to determine if any are U.S. accounts**

US Tax Compliance

- ❖ Provisions of the Internal Revenue Code (IRC) affect US citizens living outside the United States differently than those living in the US (*e.g.*, gifts from foreign persons or corporations, mutual funds, retirement savings, pension plan contributions, participation in corporations or partnerships, etc., etc., etc.)
- ❖ These create many traps for the unwary

US Tax Compliance – A word to the Wise

*In the land of the blind, the
one-eyed man is king*

**US tax compliance requires
more than plugging numbers
into a tax preparation program**

US Tax Compliance – Due Diligence Questions for Prospective Tax Preparers

- ❖ Do you have any formal US tax training, especially in regard to the taxation of US citizens living outside the US?**
- ❖ Can you serve as my power of attorney (on IRS Form 2848)?**
- ❖ Have you handled an IRS examination of a US tax return filed by a US citizen living outside the United States?**

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The screenshot shows a Windows desktop with a browser window displaying the Facebook page for "Taxation for US Citizens Living Abroad". The browser's address bar shows the URL "https://www.facebook.com/americanstaxedabroad". The Facebook page header includes the name "Taxation for US Citizens Living Abroad" and the profile picture of "Flott & Co. PC ATTORNEYS". The cover photo is a lighthouse at sunset. The page has 20 likes and a recent post from "Taxation for US Citizens Living Abroad" dated "Yesterday at 9:59am" with the text "Tax Filing & Financial Account Reporting Overview for US Citizens Living Abroad. This checklist will provide information regarding US tax obligations." The right sidebar shows a list of friends, including Kayla Ilene, Barbara Brown, Saadiha Alford, Monique Morris, MiaLissa Movinf..., Stephanie Paulet..., Moody Coleman, Shamira Baker, Jackie Tolbert, Leah Booker, Timothy Howard..., and Robert Hollingsworth. A "Sharing Screenshot" notification is visible in the bottom right corner of the browser window.



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