

U.S. Immigration & Tax Compliance

Are you a U.S. citizen?

Do you hold or have you ever held a Green Card?

Did you know that if you answered yes to either of these questions and you currently live full time in Germany, you are required to file a U.S. tax return **each and every** year to the Internal Revenue Service? U.S. citizens and lawful permanent residents (Green Card holders) residing outside of the United States still retain the status of a U.S. taxpayer and, as such, an obligation to file a U.S. tax return. For the purposes of the U.S. Tax Code, citizens of the United States and lawful permanent residents (Green Card holders) are treated equally as far as their tax liability and requirement to file. This also applies to individuals who hold dual citizenship, if at least one of their citizenships is U.S. citizenship. Despite having dual citizenship, those holding *inter alia* U.S. citizenship must bear in mind they are required to comply with U.S. tax law.

Am I considered a U.S. taxpayer?

Many U.S. citizens and Green Card holders are unaware of their status as a U.S. taxpayer; however, this does not alter their obligation to file. In the extreme example, an individual born outside of the U.S. who has never even visited the country may still be a U.S. citizen by virtue of his parents' U.S. citizenship. It is more likely that a U.S. citizen or Green Card holder is aware of his citizenship or residency but unaware that he is still obliged to file a U.S. tax return while living outside the United States.

Even more common is the plight of the Green Card holder, who is unaware that the U.S. imposes tax on Green Card holders who no longer reside in the U.S. but have not formally surrendered their Green Card or renounced his Green Card status to U.S. officials. In other words, although you may no longer consider yourself entitled to Green Card status because your status has expired or is invalid for some other reason, you are still subject to U.S. tax under the U.S. Tax Code.

Can the IRS find me?

In the past, U.S. citizens and Green Card holders could feel fairly secure in their belief that the IRS lacked the resources and time to locate U.S. taxpayers residing outside of the U.S. when those persons had little connection to the U.S. This has changed significantly, and U.S. citizens and Green Card holders should take heed. In 2000, the IRS began to set up procedures requiring overseas banks transacting in U.S. securities on behalf of non-U.S. citizens to guarantee that no holder of such securities was in fact a U.S. taxpayer or the overseas bank would be held liable and fined.

In October 2008, the IRS issued several new proposals that they hope to enact by the end of 2009. The proposals would go as far as to require overseas banks to allow IRS auditors to search accounts for U.S. citizens and require citizens to provide their identity to the

IRS. It is unlikely that such a far-reaching proposal will be accepted; however, it is safe to say that by 2010 it will be very difficult for a U.S. taxpayer – citizen or Green Card holder – to hold an undeclared account somewhere, since the bank accepting that client takes the risk of fines and penalties imposed by the IRS.

What is required under the law?

In general, U.S. citizens and Green Card holders are required to file U.S. tax returns and to pay taxes on their worldwide taxable income, regardless of whether they reside inside or outside the United States. This income can include rental income or interest on properties held inside or outside the U.S. It can also include bank accounts with a balance of over 10,000 USD. Securities and debt obligations of U.S. companies and some foreign companies are also considered taxable.

As you may know, a taxpayer need not file a tax return if his gross income is below certain minimum amounts and more importantly there are provisions of the U.S. Tax Code together with tax treaties that can help reduce or eliminate tax liability. That being said, you cannot take advantage of these provisions or treaties without filing a tax return. Moreover, Green Card holders would do well to consult with a professional to determine their use of such provisions as claiming certain exemptions on a U.S. tax return that are based on establishing residency abroad may be inconsistent with other claims of residence in the U.S.

Can my immigration status be affected?

The failure to comply with U.S. tax laws can create significant immigration problems. Mistakes made on one's tax returns can certainly be costly and may lead to immigration complications for Green Card holders. However, failure to file at all if you have an obligation to do so can be even worse. Be sure that you understand your status as a U.S. taxpayer and discuss with a professional your desires in terms of future use of a Green Card or achieving U.S. citizenship. These goals can determine whether the use of exemptions, deductions or tax treaties is appropriate for your situation. Misstatements, even when unintended, can be detrimental to your current Green Card status under the immigration laws as well as your future application for U.S. citizenship.

How can I correct a past missed filing?

Fortunately, past unintentional mistakes made with regard to missed filings or failure to file a return can be easily remedied. The IRS has a program called Voluntary Disclosure, which provides a smooth integration into the U.S. tax system. Moreover, the IRS allows persons who have not timely filed but who would owe no federal income tax after taking into account certain Code provisions, may elect the exclusions by attaching a particular form to their late-filed return without penalty. It is important to note, however, that a voluntary disclosure will not automatically guarantee immunity from prosecution. That being said, it is widely believed that by making a voluntary disclosure, prosecution may *not* be pursued.

If you have any questions or require specific advice on any matter discussed in this publication, please contact one of the lawyers listed below:

Dr. Christoph Rückel
Partner, Atlanta
T: +1 404 885 5320
christoph.rueckel@bridgehouselaw.us

Oliver Bolthausen, LL.M.
Partner, Munich
T: +49 89 20 60 299 60
oliver.bolthausen@bridgehouselaw.de

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