
CROSS BORDER FINANCIAL PLANNING USA

NAVIGATING TAX AND PLANNING COMPLEXITIES
FOR EXPATS AND DUAL CITIZENS





Los Angeles

Philadelphia

U.K.

AGENDA



U.S. Tax Obligations for citizens living overseas



Residency rules, tax treaties, and double taxation traps



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How to support clients moving to (or from) high-tax or treaty countries

U.S. Tax Obligations for citizens living overseas

FBAR and Form 8938

Who must file an FBAR: A United States person that has a financial interest in or signature authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year.

FinCEN Form 114 is the form used to make the report.

A U.S. person includes a citizen, resident, corporation, partnership, limited liability company, trust and estate.

Form 8938 is not the same as the FBAR. It is used to report a wide range of foreign financial assets, Examples include bank and brokerage accounts, pensions, and partnerships. Directly held real estate is not included.

Form 8938 filing thresholds:

Filing Status	US Residents	Foreign Residents
Single	\$50,000 on Dec 31 st or \$75,000 at any time	\$200,000 on Dec 31 st or \$300,000 at any time
MFJ	\$100,000 on Dec 31 st or \$150,000 at any time	\$400,000 on Dec 31 st or \$600,000 at any time
MFS	\$50,000 on Dec 31 st or \$75,000 at any time	\$200,000 on Dec 31 st or \$300,000 at any time

FATCA (Foreign Account Compliance Act)

FATCA requires foreign financial institutions to directly report to the IRS on assets held by Americans or U.S. persons.

Form 8938 was created as a result of FATCA, which was enacted in 2010 in response to the Swiss offshore banking scandal.

FATCA reports assets in foreign financial institutions to the IRS. FBAR reports assets in foreign financial institutions to the Financial Crimes Enforcement Network of the U.S. Treasury, or FinCEN.

FATCA has caused many foreign financial institutions to refuse to work with American clients.

Residency rules, tax treaties, and double taxation traps

Tax treaties and double taxation traps

Less than 1/3 of the 195 countries recognized by member states of the United Nations have a double taxation treaty (DTA) with the United States.

DTA's aim to reduce or prevent double taxation, but the effectiveness varies between treaty. Even the most comprehensive treaties still have cases of double taxation.

Different countries have different tax years. The US runs calendar year, Australia runs from July to June, India runs from April to March, and the UK runs from April to April.

Whilst some countries like the US allow married couples to file taxes jointly, many like the UK require individuals to file a separate return. In France, "quotient familial" results in families with more children dividing their household income between more people.

Residency rules, tax treaties, and double taxation traps

Substantial presence test - Considered a US tax resident

- 31 days during the current year, and
- 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year.

Coordinating the different tax years and filing statuses is key to optimizing tax efficiency and avoiding double taxation. Excess foreign credits can be carried forward 10 years, but only back 1 year. For countries that do not have a calendar tax year, making tax payments before the due date so that you bank the tax credit in the correct US tax year can be advantageous.

Foreign investments and US investments

US investments

PFIC similarities overseas

- UK reporting fund status
- Gains treated as income – as high as 45%
- No capital gains allowance
- Unable to offset capital losses against gains

529 Plans

There are institutions abroad that are eligible from a US tax perspective. However, many countries will not recognize a 529 plan's tax status, and it can be subject to local taxes, such as income tax, capital gains tax, and wealth tax.

Employer stock

Moving countries between the grant date and vesting date can result in tax being owed in two countries. Whether it's Incentive Stock Options, Non-qualified stock options, Restricted Stock Units or Restricted Stock Awards, the risk of double taxation increases when moving countries because each country may tax the grant, vest, exercise and sale differently. The different tax triggers and dates can mean that someone residing in a country with a DTA is still taxed twice.

Foreign investments

Passive foreign investment company (PFIC)

Foreign mutual funds and ETFs are typical examples.

Often taxed punitively and will depend on whether the client and their tax advisor elect to use the excess distribution method, mark-to-market, or qualified electing fund.

Difficult to obtain the tax reporting information if held for multiple years.

If held within certain qualifying accounts such as some foreign retirement accounts, the PFIC may not need to be filed.

Retirement accounts

Retirement accounts

An American expat can contribute to an IRA if they have earned income that is not excluded by the foreign earned income exclusion and foreign housing exclusion.

Contributing to an IRA might make more sense if they reside in a low or no tax jurisdiction.

Requesting the correct treaty withholding tax on distributions can save a non-US person from having to file a US tax return.

Retirement accounts are often taxed differently elsewhere.
Example: Client with connections to the US and Australia

Australian Superannuation

- Distributions typically taxed more favorably by Australia than the US.
- Depending on how much the member contributed, it might be treated by the IRS as an employee benefits trust or a foreign grantor trust.
- That then impacts tax on the income and growth, as well as PFIC reporting

Roth IRA

- Distributions typically taxed more favorably by the US than Australia. No tax to the IRS on distributions, but the ATO may tax growth and income.
- An Australian living in the US who hasn't ruled out returning to Australia should carefully assess whether a Roth will be beneficial.

Social security

Social security

Social security agreements, also known as totalization agreements, provide two key benefits:

- They aim to prevent social security taxes being paid twice.
- They help fill in benefit protection gaps where someone has worked in the US and another country but fails to minimum eligibility requirements in either country.

The US has totalization agreements with 30 countries.

A totalization agreement is not required to receive social security payments abroad, but residents and citizens of countries with an agreement generally face less restrictions when applying, including spouses and children claiming survivor benefits.

Repealing the windfall elimination provision (WEP) will help many expats who previously had their benefits reduced because they received foreign pensions.

Estate planning considerations for multi-jurisdictional families

Exit tax

US citizens and long-term residents meeting one of the following three criteria will be considered covered expatriates:

1. Their net worth is over \$2 million on the day they renounce.
2. Average annual net income tax liability for the five tax years preceding expatriation exceeds \$206,000 as of 2025.
3. Failing to comply with US tax obligations for all the previous five years.

The calculation assumes all property (real estate, cars, investment accounts) valued at fair market value, as if sold, and unrealized gains are taxed at CGT rates. There is an exemption for the first \$890,000 of gains, as of 2025.

A dual citizen with limited connection to the US and meeting very specific requirements may be exempt from the tax.

Trusts and wills

Many countries do not recognize US trusts in the same way that the US does, if they recognize them at all. Not only does this mean that an estate could end up in the wrong hands, but the benefits of tax planning could be completely lost.

Forced heirship rules are prevalent in many countries and can override a will.

Advice before leaving the US is key, as even a simple revocable living trust can be a very costly mistake once a client arrives in a new country.

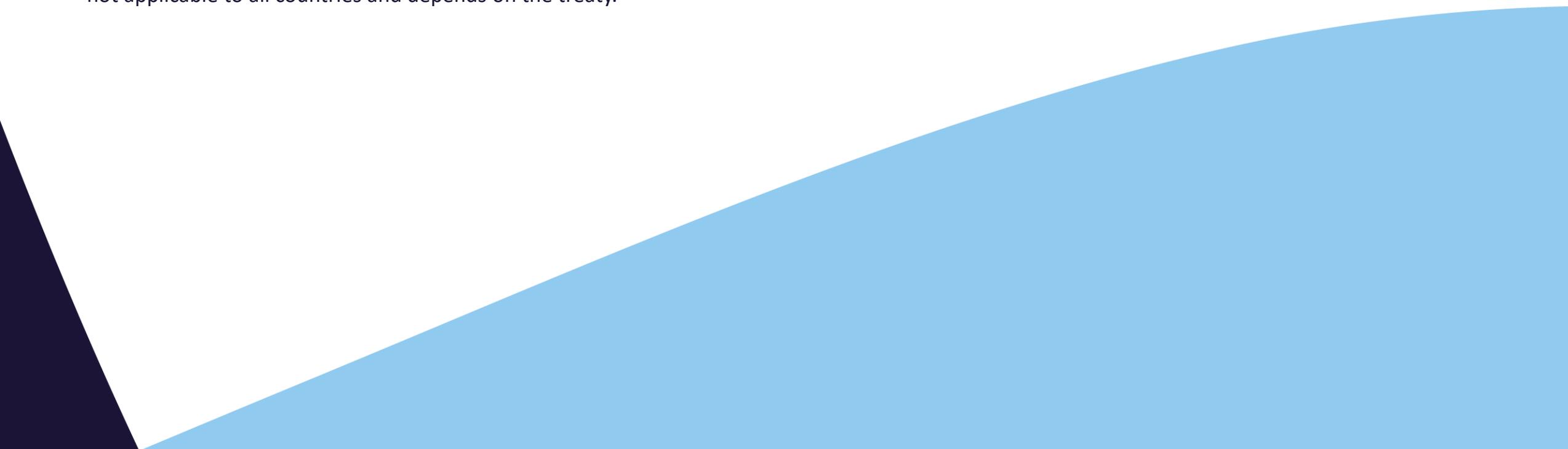
Estate planning considerations for multi-jurisdictional families

Estate tax

Countries that have no estate taxes might sound attractive, but they can still be less tax friendly than the US. For example, an estate that falls within the federal estate tax exemption and receives a step-up in cost basis could result in the beneficiaries paying less tax over time than those in a country without estate tax that have no step-up.

Keeping money in the US may not be the best outcome for a client who is subject to a form of tax in another country, such as an estate tax, inheritance tax, transfer tax or capital gains tax. There are often more planning opportunities to mitigate those taxes by investing in the country where the taxes are owed.

The lifetime exclusion can drop from \$13.99 million per person to \$60,000 for non-US residents who are not US citizens and hold US situs assets. This is not applicable to all countries and depends on the treaty.



How to support clients moving to (or from) high-tax or treaty countries

Planning and restructuring

- The taxation, and therefore the pre- and post-planning, can be very different between US citizens, green card holders and temporary visa holders. It impacts decisions from which accounts to open and which investments to hold, to where to buy real estate and whether to setup a trust.
- Countries like the UK, Portugal, Australia and New Zealand, offer exemptions which can be time-limited, where foreign income is exempt from tax in those countries.
- Forward planning and retaining flexibility is key for cross-border clients. The benefits of these regimes can be missed entirely if money is not built up and held in the correct structure.
- Consider whether it make sense to exit from some accounts and investments e.g. if a Roth is going to be taxed in another country, should distributions be made before leaving the US.
- Does it make sense to continue holding lower yielding Muni bonds in a portfolio if the income is going to be taxed overseas.
- Real estate considerations: Mortgage interest relief is not always available on a primary residence in other countries, but they may have advantages in other areas such as unlimited relief on primary residence gains.
- An increasing number of countries are taxing foreign owners and landlords at higher rates. However, the same foreign investment property might be more tax efficient for a temporary visa holder to own compared to a US citizen, so the location of the property and the client's future residency need to be assessed.
- LLCs taxed as partnerships can create double taxation issues. A credit may not be offered for the US tax paid on the LLC's profits when taxing the distributions if the other country considers the US tax to have been paid by the LLC as a separate entity and not the individual member.

Case Study: Clients moving to the UK, a higher tax treaty country

New country means new problems and opportunities

Austin, a US citizen, married Pippa, a British citizen who had been living in the US on a green card for the past 8 years and recently became a dual US and UK citizen. They have decided to move to the UK and Austin will be transferring with his company. He expects to earn the equivalent of \$200,000 in the UK. Pippa was a partner in a US LLC and had already been considering selling her share to change careers. With the difficulty of operating her business across time zones and the issues of double taxation, she decided to leave the business and is considering her options for work in the UK. Most of Austin's investments in the US are held in a 401k worth \$500,000, and most of Pippa's are held in a taxable account worth \$1m.

- Neither have any intention of giving up their US citizenship so they do not need to calculate whether the exit tax applies to them. Had Pippa remained on her green card and surrendered it, the exit tax would need to be considered.
- From a US tax perspective, being married and filing jointly should help lower their tax bill while Pippa isn't working. However, in the UK you file individually, so this means Austin's earnings will cause him to lose all his c.\$17,000 UK tax free personal allowance, while Pippa's allowance could go unused.
- Exceptions apply, but in general you can contribute 60,000 GBP (c.\$81,000) per year with the potential to increase this substantially using carry forward of unused allowances from the previous three years. This can help reduce UK tax and reclaim lost personal allowance.
- US contribution limits will need to be considered when deducting UK pension contributions from US taxes. However, excess foreign tax credits may present an opportunity to build basis in the retirement account from a US tax perspective, while still claiming tax relief in the UK on the same contributions.
- Austin's 401k does not pose any immediate issues that he needs to deal with, but when he takes distributions in the future he may face administrative issues being a non-resident.
- Pippa's taxable account is invested in ETFs, mutual funds and directly held stocks. The majority of these are not UK-reporting and Pippa will therefore be subject to UK income tax on the gains rather than capital gains tax, and she will not be able to offset the capital losses against the gains treated as income.
- Austin and Pippa have always given money to US charities each year and intend to give to charities in both the US and UK. If they donate directly they will receive a tax deduction in the country where the charity is based, but by creating a charitable fund structured correctly, they can receive a tax deduction in both countries and create a more effective cross-border estate plan.

Case Study: Clients moving to the UK, a higher tax treaty country

Similar scenario with a very different outcome

In this scenario Pippa was living in the US on a visa for the first 6 years and then on a green card for the next 5 years. Pippa has not held the green card long enough to be subject to the exit tax, and she decides to surrender it when returning to the UK.

- Since Pippa does not need to file a US tax return and has been outside of the UK for more than 10 years, she has the potential to pay no income or capital gains tax on the non-UK reporting investments in either the UK or the US.
- Going forward, Pippa is in a better position to take advantage of the flexible and tax efficient Individual Savings Account (ISA). If Pippa was subject to US tax she may still want to consider saving into an ISA if her UK tax rate is higher than her US rate, but an ISA is not free from US tax and she would need to be careful to avoid PFICs.
- Pippa does not need to consider the different tax years when realizing gains and losses in the future, but if Austin has a taxable account then he will need to be mindful of this. Austin should consider paying the tax on realized gains before December 31st.
- While Austin and Pippa adjust to life in the UK they have decided to rent for the first couple of years, but they plan to buy a property as soon as they feel settled. How they finance and own this property will have different tax implications in the UK compared to the US.

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Questions