

# Tax Information for Employees of the Swiss Embassy & Consulate

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# Disclosure

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This presentation has been prepared by Embassy Tax Services LLC.

The information in this presentation is current as of October 2016 and is intended to be of a general nature. The presentation is not intended to address the facts or situation pertaining to any particular individual. It should not be viewed as legal, tax or investment advice. If advice is needed please consult with a professional tax advisor.

# Agenda

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- Categories of employees
- Exemptions from US Tax
- Taxation of US Citizens and Residents
- Taxation of A-2 Visa Holders
- Tax Treaty
- 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

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## 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

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## Income Tax

- US-Swiss Tax Treaty, Article 19
- US Law – Internal Revenue Code Section 893

## Social Security Tax

- US-Swiss Agreement

# Tax Treaty Exemption

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

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

For state income tax purposes, tax treaty benefits are recognized by Virginia, New York and Washington DC. Maryland does not recognize tax treaty exemptions.

# US Law – Internal Revenue Code Section 893

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Section 893 of the Internal Revenue Code may provide an exemption from US income taxes to employees of the Swiss Government in the US who are not US citizens or LPR/Green Card holders.

In order to claim an exemption under section 893 individuals need either:

- 1) Certification from the US State Department that the Swiss Government grants an equivalent exemption to employees of the US Government performing services in Switzerland.
- 2) To show that equivalent exemption exists for employees of the US Government performing services in Switzerland.

# Exemption from Income Taxes

Classification of Employee	Tax Treaty	US Law Section 893
US Citizen	Taxable [Article 19]	Taxable
LPR/Green Card	Taxable [Article 19]	Taxable
A-2 Visa Holder	Exempt [Article 19]	May be exempt. Need to show equivalent exemption or US State Department certification.



# 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/Swiss citizen, or Green Card holder, no SE tax due to US.
- Make Estimated Tax payments on Form 1040ES

### Must Not ✗

- Report wages 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

# LPR Green Card Holders

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- In general, Green Card holders employed at the Swiss Embassy/Consulate 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 on wages received from the Swiss Government.
- No exemption under Section 893 of the Internal Revenue Code is allowed for green card holders.

# A-2 Visa Holders

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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-Swiss Income Tax Treaty
- An exemption under Section 893 of the Internal Revenue Code may also apply if equivalent exemption or US State Department certification can be shown.

# Employee Business Expenses

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- 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

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## 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

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## Self-Employment Tax

- For Social Security tax purposes only, US citizens working at the Swiss Embassy/Consulate and UN Mission are taxed as if they were self-employed. For all other purposes they are considered employees.
- Dual Swiss/US citizens are covered by the Swiss 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 2016 and 2017 the SE tax rate is 15.3%
- A portion of self-employment taxes may be deducted on Form 1040, Line 27

# Estimated Tax Payments

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## 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 the current year tax or 100% of the 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 <sup>st</sup> Quarter	April 18, 2016	April 18, 2016	April 18, 2016	May 1, 2016
2 <sup>nd</sup> Quarter	June 15, 2016	June 15, 2016	June 15, 2016	June 15, 2016
3 <sup>rd</sup> Quarter	Sept 15, 2016	Sept 15, 2016	Sept 15, 2016	Sept 15, 2016
4 <sup>th</sup> Quarter	Jan 17, 2017	Jan 17, 2017	Jan 17, 2017	Jan 17, 2017



# Joint Filing Election with Nonresident Spouse

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- 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 election can be revoked, but once revoked cannot be made again

# Foreign Bank Account Reporting

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## 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
- Form 114 is not an IRS form; it is filed directly with the US Treasury. Do not include with your tax return.
- Form is required whether or not a tax return is filed
- Filing deadline is April 15<sup>th</sup> of each year and can 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)

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## 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

### **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)

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## 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

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# Questions?