

U.S. TAX RETURN FILINGS

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IRS News Release IR-2015-70 (April 10, 2015) contains helpful but not exhaustive information about the filing obligations of US citizens and resident aliens abroad. Taxpayers outside the United States can also find helpful information about US tax-filing obligations and related matters by visiting (1) the IRS page on YouTube; (2) the “International Taxpayers” page on irs.gov; and (3) TaxTrails.

Generally, US citizens and resident aliens whose tax homes and abodes are outside the United States and Puerto Rico must file form 1040 (“U.S. Individual Income Tax Return”) by Monday, June 15, 2015; a filing extension is generally available until October 15, 2015 on request. A resident alien is a person who is a lawful permanent resident (has a green card) or who spends sufficient time in the United States to meet the “substantial presence” residence test. US citizens and resident aliens are taxed on worldwide income, which must be reported on form 1040, but they must also make significant reports of foreign income and assets on a number of different forms.

In addition to form 1040, the US FBAR reporting requirements affect most of these US taxpayers. The FBAR is a US Treasury (not an IRS) form that reports certain foreign accounts (including a bank account and a brokerage or securities account). A US taxpayer who has foreign financial accounts that exceed in aggregate US\$10,000 at any time during 2014 must file form 114, “Report of Foreign Bank and Financial Accounts (FBAR),” by June 30, 2015. The FBAR must now be filed electronically.

The FBAR is not filed as part of form 1040 or with the IRS, but a US taxpayer should be aware that schedule B, part III, of form 1040 also requires disclosure of foreign financial accounts of any magnitude. Many US taxpayers abroad also must file form 8938 (“Statement of Specified Foreign Financial Assets”) by the form 1040’s due date if foreign asset values exceed thresholds.

The good news is that form 8891 (“U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans”), which reports Canadian retirement plan holdings, generally does not have to be filed with the IRS in respect of an RRSP or a RRIF for 2014 and subsequent years if the US taxpayer files a form 1040 for the year and reports annual distributions from the plan. However, there are exceptions to this new rule. And even if form 8891 does not have to be filed, forms

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114 and 8938 (referred to above) may still need to be filed to report retirement plan holdings.

A taxpayer should also be careful about making currency conversions in his or her US filings. For forms 114 and 8938, a December 31 exchange rate is required. But the automatic December 31 requirement does not apply to form 1040, whose instructions describe exchange rate requirements in more detail.

A US taxpayer may need to file form 3520 (“Annual Return To Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts”) or another form such as a form 5471 (“Information Return of U.S. Persons with Respect to Certain Foreign Corporations”), 8621 (“Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”), 8858 (“Information Return of U.S. Persons with Respect to Foreign Disregarded Entities”), or 8865 (“Return of U.S. Persons with Respect to Certain Foreign Partnerships”), which are generally due at the same time as the form 1040. The taxpayer may have significant IRS reporting obligations on these and other forms with respect to a distribution from a foreign trust; a gift or bequest received from a foreign taxpayer; and a holding in a foreign corporation, partnership, or disregarded entity.

Certain US citizens and resident aliens abroad may use the IRS “Free File” to prepare and electronically file their tax returns for free. (See the e-file link at irs.gov.) However, Free File is not available to a non-resident alien who must file form 1040NR (“U.S. Nonresident Alien Income Tax Return”). Publication 54 (“Tax Guide for U.S. Citizens and Resident Aliens Abroad”) is also available at irs.gov.

A non-resident alien (any individual who is not a US citizen or a US-resident alien) who has income from a US source may also need to file a return on April 15 (generally for US-source wages) or on June 15 (depending on the type of US income). Moreover, a person who considers himself or herself to be a non-resident alien—but who spends time in the United States—may be in fact a US resident. Under the Code, there are two primary ways to be a resident alien: by meeting the substantial presence test (or so-called days test) or by holding a green card. Even if a US-residence test is met under the Code, the individual may still be exempt from US taxation of worldwide income if one of two exceptions is met: (1) the closer-connection exception or (2) a treaty exemption. Form 8840 (“Closer Connection Exception Statement for Aliens”), on which a claim is made for a closer-connection exception to US income tax residence status, is due on June 15. However, the claim is not available to a taxpayer if he or she has spent 183 days or more in the United States in the 2014 calendar year; in that case, the taxpayer may still be eligible to make a treaty claim that he or she is a resident of the particular treaty country and is not a US resident. A treaty-based return requires significant disclosures to the IRS: a green-card holder must be especially careful because a claim of non-US residence may jeopardize his or her green-card status.