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TEMPORARY U.S. ASSIGNMENTS: U.S. TAX MATTERS THAT YOU SHOULD KNOW BEFORE YOU ACCEPT

MARC J. STROHL

This article provides a comprehensive checklist of information for foreign national persons to consider prior to accepting an assignment inside the United States (U.S.).[1] It is not designed to teach technical competence required to perform self-compliance but it will provide the information to determine if a U.S. tax preparer knows all that he should to provide technically competent professional services.

U.S. tax residency 101

The U.S. (and the Philippines), unlike all other countries worldwide, does not use a separate, distinct, or unique tax definition of "tax residency" to define a U.S. resident alien, preferring instead to piggyback U.S. immigration law concepts. Therefore, U.S. persons— U.S. citizens and legal permanent residents (green card holders)[2]—are always defined as U.S. resident aliens, the one additional exception also being any non-U.S. persons meeting the substantial presence test (SPT), who are also defined as U.S. resident aliens.

MARC J. STROHL, CPA, is a Principal at Protax Consulting Services Inc. in New York (mstrohl@protaxconsulting.com; www.protaxconsulting.com).

Taxation in those "other places"

"Tax residency" in all other countries worldwide outside the U.S. is determined by a variety of facts-and-circumstance tests or features unique to each country's tax system—e.g., permanence and purpose of stay, personal property, social ties, spouse and dependents, dwelling. In some cases, establishing tax ties in another country becomes part of those tests or features. Some countries permit taxpayers who move from that country to become tax nonresidents on departure. Such tax nonresidents of those former countries are taxed only on income earned or sourced from those former countries. Tax residence is re-established if and when the taxpayer returns to that country.

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Consequences of filing as a U.S. nonresident alien/becoming a U.S. resident alien

All U.S. resident aliens are subject to U.S. tax on their worldwide income regardless of where the income is earned, type of currency, or where the income is deposited. All U.S. nonresident aliens are taxed in the U.S., only on their U.S.-source income. The source of the income depends on the type of income. A basic taxation premise is that the country of income source maintains the first right of taxation related to that income. However,

income tax treaties usually seek to have such income taxed in the country of residence (and not the source country) to avoid a double filing compliance obligation.

State tax issues

For U.S. state tax purposes, the requirements can be quite different and vary from state to state. Typically, there are state-specific facts-and-circumstances domicile tests in addition to statutory resident tests, the main purpose of which is to catch individuals claiming a foreign state as their state of domicile. These statutory resident tests are usually conjoined with a 183-days-of-presence rule and a "permanent place of abode" pretext, the latter of which is state specific, subjective, vague, or all of these. Also, some states could deem taxpayers to be continuing tax residents even while away on foreign assignments if the ultimate intention is to return to the state after the termination of the foreign assignment (basic domicile definition) absent any domicile presumptive breakage tests.

The SPT—To be or not to be a U.S. resident alien

Under Section 7701(b)(3), individuals meet the SPT if they have at least 31 days of U.S. presence in the current year *and* when the following sums to 183 days or greater: 100% of the physical days of U.S. presence in the current year + 1/3 of the days of U.S. presence in the preceding year + 1/6 of the days of U.S. presence in the second preceding year. To summarize SPT determination, look at the presence in the U.S. consisting of all days in the current year and fractions of days in the two-year look-back period.

For purposes of the SPT, partial days count as full days and while partial days are added, any remaining partial days are rounded neither up nor down but dropped.[3] The SPT must continue to be met on an annual U.S. calendar tax period basis for an individual to continue to be considered a continuing U.S. resident alien year after year. As below under the "Starting Date" discussion, under Section 7701(b)(2)(C)(ii), up to ten de minimis days may be excluded from U.S. presence for determination of the SPT.

Ways out of U.S. tax residency—Beating the system

Under Section 7701(b)(3)(B), the fractional two-year look-back period is effectively negated when an individual meets the SPT to become a U.S. resident alien having less than 183 days in the current year but is in excess of the requirements using the fractional two-year look-back rule in the preceding and second preceding tax years. In such cases, these individuals will be able to file IRS Form 8840 (Closer Connection Exception Statement for Aliens), claiming a "tax home" and "closer connection" to a foreign country and remain U.S. nonresident aliens.

Such U.S. domestic relief, the "closer connection exception," is not available when the SPT is met based on days of U.S. presence in the current year alone. In such cases, the U.S. resident alien needs to seek relief under an income tax treaty between the U.S. and the alien's other country of residence (typically under OECD Model Article IV—Residence), generally referred to as the "treaty tiebreaker" Article (see below).

Therefore, individuals may be classified as U.S. resident aliens if they meet the above SPT. If they fail the SPT, they are classified automatically as U.S. nonresident aliens.

However in limited circumstances, an individual's physical days of U.S. presence may be excluded for purposes of determining the SPT, in cases where they were:

1. *Exempt individuals.* Under Section 7701(b)(3)(D) as defined by Section 7701(b)(5)(A-D); a student in the U.S. on an F, M, J, or Q visa; a trainee or a teacher in the U.S. on a J or Q visa or others on an M or Q visa; a professional athlete; or an individual with a medical condition.
2. *Others.* Under Section 7701(b)(7), regular commuters who work in the U.S. from Canada or Mexico when in transit in the U.S. between other points for less than 24 hours; days in the U.S. as a crew member of a foreign vessel; and all employees of international organizations or foreign governments.

Some exempt individuals need to complete IRS Form 8843 (Statement for Exempt Individuals and Individuals With a Medical Condition)

[1] For similar analysis of U.S. persons considering assignments outside the U.S., see Strohl, "U.S. Persons and Foreign Assignments: U.S. Tax Matters That You Should Know Before You Accept," 28 JOIT xx (xx 2017).

[2] See Strohl, "Green Card Checklist," 28 JOIT 56 (February 2017).

[3] For example, if 2016 is the current year, SPT = 100% of 2016 U.S. days + 1/3 of 2015 U.S. days + 1/6 of 2014 U.S. days. SPT = 183 + 230/3 + 310/6 or 183 + 76.6667 + 51.6667. The 76.6667 and 51.6667 are partial days and are added to the 183 for a total of 311.3334 but the .3334 is dropped.

and attach it to their annual U.S. tax return, either Form 1040NR (U.S. Nonresident Alien Income Tax Return) or 1040 (U.S. Individual Income Tax Return). In this effort, the U.S. Citizenship and Immigration Services form(s) I-20 for F visa holders and DS2019 for J visa holders will be critical to complete Form 8843.

There are exceptions to the exempt individual rules above for J and F visa holders, where either of the following applies:

1. Under Section 7701(b)(5)(E)(i): A teacher or trainee on a J or Q visa was exempt as a teacher, trainee, or student for any part of two of the last six prior calendar years. In that case, in the current year, days of presence cannot be excluded unless all four of the following apply as a teacher or trainee in the current year: (a) the individual was exempt as a teacher, trainee, or student for any part of three or fewer of the prior six calendar years; (b) a foreign employer paid all current-year compensation; (c) the individual was present in the U.S. as a teacher or trainee in any of the six prior years; and (d) a foreign employer paid all compensation during each of those prior six years that the individual was present in the U.S. as a teacher or trainee.
2. Under Section 7701(b)(5)(E)(ii): A student on an F or J or M or Q visa was exempt as a teacher, trainee, or student for any part of more than five calendar years cannot exclude days of presence unless he establishes that he did not intend to reside permanently in the U.S.

The facts and circumstances to be considered in determining if an individual has demonstrated an intent to reside permanently in the U.S. include but are not limited to whether the individual has (1) maintained a closer connection to a foreign country than to the U.S.; and (2) taken affirmative steps to change his status from nonimmigrant to lawful permanent resident (green card holder).[4] Also, income from personal services performed as a U.S. nonresident alien temporarily in the U.S. for a period or periods of not more than 90 days, when the compensation is for such services performed for a foreign employer and is not more than $3,000, is exempt from U.S. taxation.

Residency starting date

For persons who were not U.S. resident aliens at all during the prior tax year and who meet either the above SPT or green card test, their first day of presence (making them U.S. resident aliens) will be counted starting:

- For the SPT, the first day that they enter the U.S. in the year in which they meet the SPT, excluding under Section 7701(b)(C)(ii) up to ten de minimis days of prior presence.
- For the green card test, the first time that they land on U.S. soil with a valid green card.

When an individual's visa status changes from exempt to nonexempt, assuming that the individual meets the SPT, his first day of U.S. residence should be considered the actual date that the new nonexempt visa takes effect per U.S. Citizenship and Immigration Services (U.S.C.I.S.) notification of approval.

Residency ending date

For persons obtaining U.S. resident alien status as a result of compliance with the SPT, U.S. residency continues until the tax year that compliance with the SPT stops. In the year of actual physical departure, an individual continuing to meet the SPT is presumed to continue to be a U.S. resident alien up to December 31 of that tax year, unless under Section 7701(b)(2)(B)(i), (ii), and (iii) he files a "closer connection" white paper statement claiming a "tax home" and "closer connection" to a foreign country at his actual physical date of departure. The filing is required to avoid continued U.S. residence and taxation on worldwide income. However, there is controversy whether such a white paper filing is required, or is a "closer connection" more a question of fact? Also, when joint taxpayers departing earlier choose to remain U.S. tax residents up to December 31 for tax minimization reasons, the IRS has the right to step in and terminate residency on that earlier departing date citing closer-connection status.

Certain nominal presence de minimis days excluded from residency start or ending date

Under Section 7701(b)(2)(c), subsections 7701(b)(2)(c)(i) and (ii) in conjunction allow for the disregarding of certain nominal presence. Up to ten de minimis days may be excluded from U.S. presence for the determination of the U.S. residency start and end dates under SPT, when the individual's tax home is in a foreign country and he maintains a closer connection to that foreign country than to the U.S.

Reg. 301.7701(b)-4(c)(1) says that days from more than one period of presence may be dis-

[4] *Id.*

regarded for purposes of determining an individual's residency starting date or termination date so long as the total is not more than ten days. Any days that occur in a period of consecutive days of presence may not be disregarded if all of the days that occur during that period cannot be excluded.

Consequences of filing as a U.S. nonresident alien—Forms, forms, forms

Nonresident aliens file U.S. income tax returns using Form 1040NR, which is five pages. Income effectively connected with a U.S. trade or business (ECI) is reported on page 1 and 2 and taxed at U.S. regular graduated tax rates. Non-effectively connected income is reported on page 4, Schedule NEC, at the flat rate tax of 30% or as reduced by treaty. Form 1040NR also contains an information page 5. ECI includes compensation income but excludes passive income.

U.S. nonresident alien filers cannot use the standard deduction or all the itemized deductions afforded to U.S. resident aliens, and they cannot file jointly if married. Also, claiming exemptions for dependents is much more difficult. Further, if foreign income is reported on a fiscal basis, it must first be converted to a calendar year (January 1-December 31) reporting period to be useful for U.S. reporting purposes (in the U.S., the calendar year is used as the tax reporting period).

Dual-status—Both resident alien and nonresident alien in a single tax year

When a foreign national in the U.S. has two statuses in a single tax year—for example, when he goes from nonresident to resident status (or vice versa) in the same U.S. tax calendar year, he is a dual-status filer. The tax return that dual status individuals file is based on their status on December 31 of the tax year. The tax return must clearly indicate on the top of the form "Dual-Status Return." However dual-status filers must also file a separate statement with their tax return covering the portion of the tax year for which they have the other status. Form 1040 or 1040NR may be used for statement reporting period purposes indicating on the top of the form "Dual-Status Statement." A white paper statement will also suffice for these purposes. The statement is purely presentational with the amounts covering only the statement period.

To add confusion, there remains another IRS acceptable way to present dual-status filers—to have all information for the resident period on Form 1040 and all information for the nonresident period on Form 1040NR, where the income tax is calculated on each form separately. However, this approach is used rarely. To prevent any errors, it is imperative that page 2 of the statement Form 1040 or 1040NR always be overridden to nil if the first method is used, to prevent the IRS from assessing tax in error.

If dual-status filers are married, they must file separately. They cannot use head-of-household filing status or the standard deduction. Certain itemized deductions during the nonresident period only are also not allowed.

Elections to be treated as a U.S. resident alien

First-year election. Under Section 7701(b)(4), an individual taxpayer who does not meet the SPT in the year of entry may elect to be treated as a U.S. resident alien from entry forward when (1) he is a U.S. nonresident alien in the prior tax year; (2) he is a U.S. resident alien under SPT in the following tax year; (3) during the arrival year, he is present in the U.S. for 31 consecutive days; and (4) from the first day of that 31 consecutive days to December 31 is present in the U.S. for at least 75% of the time (five days of absence from the U.S. can be ignored and treated as days present in the U.S.)

This election is not available to individuals, as above, whose days were either exempted or excludable under the SPT. The election to be treated as a U.S. resident alien from the date of entry forward may benefit taxpayers with mortgage interest or other itemized deductions not allowed as deductions to U.S. nonresident aliens, or if they have foreign losses, e.g., foreign rental losses. Also, in some cases it may facilitate breaking residence in their former country. Spouse and dependents must also qualify, so the election must be made individually for the entire family. There is an option to do one election, with all non-minor family members signing it.

Married election. Under Sections 6013(g) and (h), there is an election for married persons to make them both full-year U.S. resident aliens. This election applies under either (1) Section 6013(g) for a full-year U.S. resident alien married to a December 31 U.S. nonresident alien (applies to year made and all subsequent tax years); or (2) Section 6013(h)

for two dual-status December 31 U.S. resident aliens (applies to first year only). This election to be treated as U.S. resident aliens for the full U.S. tax year may benefit taxpayers who can take advantage of the married-filing-joint tax rates, certain itemized deductions not allowed to married filing separate U.S. nonresident aliens, or if they have foreign losses, e.g., net rental losses.

Also, when this election would draw in to U.S. taxation foreign income, there is the possibility to use either (1) the foreign tax credit, or (2) a reverse Section 911 foreign earned income exclusion, to credit out dollar for dollar or exclude the foreign income taken into taxation under this election. If neither spouse is a December 31 U.S. resident alien, the first-year election may be used first if applicable, then the married election subsequently.

To suspend the Section 6013(g) election, it may be (1) revoked, provided that it is made by the extended due date of the tax year sought to be revoked, by white paper signed statement; (2) death of either spouse beginning with the first tax year following the year that the spouse died; (3) legal separation under decree of divorce beginning with the tax year in which the legal separation occurs; or (4) inadequate records, as ended by the IRS.

After residency ends

"No-lapse" rule. Under Section 7701(b)(2)(B)(iii), if after departing and terminating U.S. tax residency in one calendar tax year a nonresident alien returns to the U.S. and resumes U.S. tax residency at any time during the subsequent calendar tax year, the intervening period between nonresidency and residency is deemed to be a resident period. There are worldwide U.S. income taxation implications during this corresponding period.

Resumption of residency within three years. Not to be confused with the no-lapse rule, Section 7701(b)(10)(A) provides a special rule for a U.S. resident alien who, after having been a U.S. resident alien during three consecutive calendar years and then having ceased to be a resident alien, again becomes a U.S. resident alien before the close of the third calendar year beginning after the close of the first three calendar years. During this interim period, such individuals are still regarded as U.S. nonresident aliens but they are subject to the regime of U.S. resident aliens, that is, graduated tax rates on all income except that generally only U.S.-source income is taxed.

Forms. IRS Forms 1040-C (U.S. Departing Alien Tax Return) or shorter Form 2063 (U.S. Departing Alien Income Tax Statement) are used under certain conditions to obtain certificates of compliance (also called departure or "sailing" permits) for SPT non-excepted U.S. resident aliens who depart the U.S. permanently, to ensure that all of their U.S. tax is paid in full prior to or on departure from the U.S.

Theoretically, either of these forms should be brought to the IRS personally about 15 days, but no more than 30 days, prior to departure with copies of passports, visas, two years of past-filed tax returns, and the most current pay stub. These items are then presented to the IRS Field Assistant Area Director. On approval, the Director will issue the certificate of compliance (departure or sailing permit), which the departing alien should furnish on exiting the U.S. (by handing it to the officer at the border port of exit and getting a receipt), in addition to the payment all U.S. taxes paid to the extent owed.

The completion and presentation of Form 1040-C or 2063 does not, however, relieve the taxpayer from filing the final tax return. Any taxes paid at departure would be treated as a withholding tax or extension payment on the final Form 1040NR tax return to be filed after departure (on the regular due date). Theoretically, any alien that tries to leave the U.S. without a certificate of compliance (departure or sailing permit) may be subject to an income tax examination by an IRS employee at the point of departure. The departing aliens would then be required to complete income tax returns and statements and usually pay any taxes owed.

Certificates of compliance (departure or sailing permits), however, are rarely if ever obtained. Most persons leaving the U.S. are fully withheld at source and have refunds owed to them. Further, IRS agents are no longer posted at border crossings (they may have been decades ago, but not currently) and there is only a slight chance that U.S.C.I.S. or U.S. Customs would know that an alien is departing the U.S. permanently/for the last time. Based on years of practical experience regarding the preparation of Form 1040-C or 2063, these certificates are rarely if ever prepared, practically used, or presented at border points of crossing.

Income tax treaties

The U.S. and many other countries have negotiated income tax treaties based on preset interna-

tional models, one being the OECD Model Tax Convention. One purpose of the tax treaties is to avoid double taxation when the tax laws of two or more countries create a double-tax situation.

For U.S. nonresident and U.S. resident aliens alike, Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) may need to be completed. Special attention must be paid to the exceptions from reporting on Form 8833 in Reg. 301.6114-1(c), most notably dealing with individuals, in part including the reduction or modification of the taxation of income from dependent personal services; pensions, annuities, social security and other public pensions; income derived by artists, athletes, students, trainees or teachers; income of an individual resourced for purposes of applying the foreign tax credit; and when a Social Security or totalization agreement or a Diplomatic or Consular Agreement reduces or modifies the taxation of income derived by a taxpayer.

The following income tax treaty Articles related to individuals may provide relief:

- Article IV—Residence: where persons are tax resident if they are found to be tax resident of two or more countries under the domestic tax laws of the respective countries ("treaty tie-breaker rules").
- Article VI—Income from Real Property: typically real estate. Covers in part rental income or losses. Since source country maintains first right of taxation, the possibility of double taxation here is probable. Most income tax treaties under Article VI will not eliminate it so application of the catch-all Article XXIV (see below) is required.
- Article X—Dividends: to reduce the U.S. 30% flat tax or lower as per specific treaty country.
- Article XI—Interest: to reduce the U.S. 30% flat tax or lower as per specific treaty country.
- Article XIII—Gains: capital gains from the disposition of assets. To reduce the U.S. 30% flat tax or lower as per specific treaty country. In many cases, there is a catch-all provision that capital gains remain taxable *only* in the alienator's state of residence.
- Article XIV—Independent Personal Services: taxation of income from self-employed persons.
- Article XV—Dependent Personal Services: taxation of income of employees. In many treaties, if the compensation is paid and borne by a foreign employer and the employee is not physically present in the U.S. for more than 183 days, the compensation will be taxable only in the employee's state of residence. For foreign nationals in the U.S., taxation would not be in the U.S.
- Article XVI—Artistes and Athletes: taxation of income from such persons.
- Article XXII—Other Income: taxation of all other income not addressed elsewhere.
- Article XXIV—Elimination of Double Taxation: to invoke what is sometimes already incorporated into preexisting domestic tax law, the foreign tax credit. This Article is a catch-all that prevents double taxation with respect to income not addressed in the other Articles above.
- Article XXVII—Exchange of Information: an agreement in principle to allow the respective tax authorities of all treaty countries to share information to help avoid tax evasion and allow for the smooth application of domestic tax laws.

Other income tax matters

First right of taxation. A general tax presumption is that the country of income source retains the first right of taxation. However, treaties usually seek to have that income taxed in the country of residence and not the country of source to avoid a double filing compliance obligation.

LOB. The U.S. has included in most income treaties (generally under "Miscellaneous Rules") a provision to prevent U.S. citizens and green card holders from accessing treaty benefits—they file U.S. income tax returns as if the income tax treaty did not exist. This is typically referred to as a savings clause or limitation on benefits (LOB) clause.

Visa holders. F, J, or Q visa holders remaining as U.S. nonresident aliens will not include in their gross income for U.S. tax purposes compensation that a foreign employer pays to them.

Section 893 compensation. Under Section 893, the compensation that non-U.S. citizen employees receive from a foreign government or international organization for work performed in the U.S. will not be included in gross income and will be exempt from U.S. taxation.

Section 871(i) interest and dividends. Under Section 871(i)(2)(A), while a U.S. nonresident alien, interest income from U.S. bank deposits is exempt from U.S. taxation.

Rental income. Section 871(d) provides an election to treat income from real property as ECI, taxing

net rental income at graduated U.S. income tax rates versus subjecting the gross rental income to a 30% flat tax or lower as per specific treaty. The election for any tax year stays in effect until revoked.

TIN. Foreign national individuals who are not eligible to obtain a U.S. Social Security number (since they are not U.S. citizens or U.S. green card holders, or do not have valid U.S. work authorization) are able to obtain a U.S. Individual Tax Identification Number (ITIN) valid for U.S. tax purposes only. The procedure is to complete and submit a Form W-7 (Application for IRS Individual Taxpayer Identification Number) with the tax return to the special ITIN unit in Austin, Texas, for processing. Special exceptions permit no tax return filing with Form W-7.

On 11/29/12, effective starting 1/1/13, IRS IR-2012-98 made permanent interim changes released on 6/22/12, in IR-2012-62, regarding ITIN application rules that were modified temporarily to protect and strengthen the integrity of the ITIN process. Thus, the IRS ITIN unit now accepts only original documentation (U.S. notarized copies are no longer acceptable) or copies certified by the issuing agency or American Citizen Services (Consular Services, U.S. Embassy) or the Consulate for certification or authentication services. ITINs now expire after five years but are renewable thereafter. Also, IR-2012-98 also reintroduced the option of Certifying Acceptance Agents (CAAs) (rules strengthened effective 7/1/10). Many U.S. locally situated domestic IRS Taxpayer Assistant Centers (TACs) are able to verify and certify documentation and Form W-7, obviating the need to send original documentation.

Also grandfathered under IR-2012-98 were the IR-2012-62 provisions allowing spouses and dependents of U.S. military personnel and nonresident aliens applying for ITINs only for purposes of claiming treaty benefits using Form W-7 boxes a (nonresident alien required to get an ITIN to claim tax treaty benefit) and h (Other) (not when accompanied by a U.S. tax returns) to remain under the pre-6/22/12 rules.

Section 121—exclusion of gain from sale of principal residence. Under Section 121, in the five-year window prior to sale of a principal residence, the taxpayer must have (1) owned and (2) used or lived in the home for at least two years = 24 months = 730 days for both spouses to qualify for the $250,000 per spouse gain exclusion. The two years for the "own and use" test do not have to be the same two years within the five years prior to sale. Temporary absences, even if rented out, count as periods of use. This exclusion may be used only once every two years.

If taxpayers do not have the two years for both tests, they will not qualify for the exclusion unless they have one of three "primary reasons"—change in location of employment, health, or unforeseen circumstances. For each of the three primary reasons, the taxpayer would look at (1) specific primary reason "safe harbors," or (2) individual facts and circumstances for each of the primary reasons, including factors such as close in time, owned and used at time of specific primary reason, primary reason not reasonably foreseeable, and material change in impairment of financial ability to maintain use during ownership.[5]

Safe harbors for a change in location of employment (where employment includes new or continuing employment or self-employment) include when the change occurred during the period of ownership and use of the main home and the new place of employment is at least 50 miles farther from the home sold than was the former place of employment. Thus, a U.S. nonresident alien who moves to the U.S. and continues to maintain his foreign main home, subsequently renting it out and selling it years after expatriating to the U.S., will still qualify under the "change in location of employment" primary reason.

Obviously the handicap for U.S. nonresidents is that although they usually meet the two-year test of ownership they do not meet the test on use. If the home is not their "main home" or principal residence or they do not meet the above tests and they have held it for more than one year, the gain would be taxed at the long-term capital gain rate (0%, 15%, or 20% depending on income bracket).

Nonqualified use. In the calculation of the gain from the sale or exchange of the principal residence, the pro-rata portion of the gain attributable to nonqualified use in tax years 2009 or later, when neither spouse used the property as a main home, with certain exceptions, will not be excludable under the above rules. An

[5] Reg. 1.121-3.

exception to this rule, however, is any portion of the five-year period ending on the date of the sale or exchange after the last date that either spouse used the property as their main home. In practicality, this means that if there is any rental use during the five-year window prior to sale, that use is not considered nonqualified use and the gain would not have to be pro-rata apportioned between qualified and nonqualified use.

The sale of principal residence exclusion under Section 121 and other above information also apply to U.S. nonresident aliens and non-U.S. located principal residences and "main homes." Once (and perhaps still currently) there was a misconception that Section 121 did not apply to nonresident aliens.

Social Security and FICA

Nonresident aliens filing Form 1040NR with a Schedule C (Profit or Loss From Business) are exempt from U.S. self-employment FICA tax on their net income from that business. F, J, or Q visa holders remaining as U.S. nonresident aliens are exempt from FICA payroll taxes. All other foreign nationals present in the U.S. on any other type work visa are subject to U.S. FICA taxes. If the country of nationality or former residence has negotiated a Social Security or totalization agreement with the U.S. (where the individual is currently either employed or self-employed), there may be an opportunity to obtain a retroactive certificate of coverage to ensure that he continues to pay into his home country's social security system for a specified maximum number of years to ensure that he receives full benefit for his social security contributions on earnings in the U.S.[6] ■

[6] See www.ssa.gov/international to determine if such an agreement exists in particular circumstances.