

# AGOSTINO & ASSOCIATES

## TAX UPDATE FOR EMPLOYEES OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

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Tax professionals preparing tax returns often confuse diplomatic immunity and the obligation to pay taxes. That confusion has probably caused the taxing authorities' increased scrutiny of diplomats' tax compliance. The goal of this article is to (1) briefly review the taxation of Foreign Governments (FG), International Organizations (IO), and their employees in the U.S.; (2) introduce tax professionals to the Department of State's Office of Foreign Missions (OFM) and the role it plays in tax administration; and (3) the options to address past non-compliance.

### THE IRS IS EXAMING THE TAX COMPLIANCE OF EMPLOYEES OF FGs AND IOs

There are 168 foreign embassies and 732 consulates in the United States (U.S.).<sup>2</sup> International organizations (intergovernmental organization) established by a treaty, the International Organizations Immunities Act or other instrument governed by international law (e.g., the United Nations, the World Health Organization and NATO) also operate in the U.S. The over 2,000 foreign missions in the United States "employ nearly 70,000 staff and close to 90% may have some degree of diplomatic or consular immunity."<sup>3</sup> The employees of those FGs and IOs often believe that their earnings are exempt from United States taxation or that their governments are paying the taxes on their earnings.<sup>4</sup> As a result, individuals working at foreign embassies, foreign consular offices, and some IOs have not been reporting their compensation or reporting it correctly.

Foreign embassies, foreign consular offices, and IOs operating in the U.S.: (a) do not withhold federal income and Social Security taxes from their employees' compensation, and (b) do not file information reports with the Internal Revenue Service (IRS). The lack of withholding and information reporting leads to an underpayment of U.S. income tax.

Against this background, the IRS and OFM have announced a campaign to examine the U.S. tax returns of the employees of FGs (including foreign embassies and consular offices) and IOs.<sup>5</sup>

## **THE GENERAL RULE—ABSENT A SPECIFIC EXEMPTION, INCOME EARNED BY AN EMPLOYEE OF AN FG OR IO WHILE RESIDING IN THE UNITED STATES IS TAXABLE**

Many employees of FGs and IOs working in the U.S., and their family members, *incorrectly* believe they are exempt from all U.S. tax. Unless a document listed below creates an exemption from U.S. tax, the income earned by employees of FGs and IOs is taxable.

1. the Vienna Convention on Consular Relations,<sup>6</sup>
2. the Vienna Convention on Diplomatic Relations,<sup>7</sup>
3. the U.S. Code (e.g., the Internal Revenue Code (the Code or I.R.C.), the Foreign Sovereign Immunities Act,<sup>8</sup> and the International Organizations Immunities Act<sup>9</sup>),
4. tax treaties (also called tax conventions),<sup>10</sup>
5. consular conventions,<sup>11</sup>
6. totalization agreements,<sup>12</sup>
7. executive agreements,<sup>13</sup>
8. IOs'<sup>14</sup> Articles of Agreement,<sup>15</sup> and
9. other documents with the effect of law.<sup>16</sup>

The Courts construe the exemptions created by these documents strictly. Even when an exemption for wages, fees and salary income is allowed, neither the IRS nor the Courts exclude from taxation U.S. source income (i.e., interest, dividends, rents, or royalties) not specifically excluded from the taxpayer's gross income.

## **THE SUBSTANTIAL PRESENCE TEST IN SECTION 7701(b) DOES NOT APPLY TO THE WAGES, FEES OR SALARY OF AN EMPLOYEE OF AN FG OR OF AN IO HOLDING AN A OR G VISA**

The immigration laws of the United States refer to aliens as immigrants, nonimmigrants, and undocumented aliens. The tax laws of the United States refer only to resident and nonresident aliens. The United States bases the taxation of aliens on their residency status. The residency rules are in Internal Revenue Code (I.R.C) § 7701(b).

An alien is a United States resident for tax purposes if he or she is substantially present in the United States. Under the substantial presence test, an alien's worldwide income may be subject to tax. Generally, an alien resident is subject to tax if he or she is present in the United States for 183 "weighted days" during the current and past two years.<sup>17</sup>

An employee of an FG or IO in the United States holding an “A” or “G” type visa is not a resident under the substantial presence test.<sup>18</sup> “A” and “G” type holders file Forms 1040NR as opposed to Forms 1040. OFM explains to these employees:

You must file a U.S. income tax return to report and pay tax on your U.S. income, which includes your foreign mission salary. In particular, you must file Form 1040NR (long form, with instructions) or Form 1040NR-EZ (short form, with instructions)....

Your income may be exempt from income tax under one of the following:

Section 893 of the Code, if you meet the stated conditions

- A bilateral consular convention, if you meet the terms of the treaty
- An income tax treaty, if you meet the terms of the treaty. See IRS Publication 901 (U.S. Tax Treaties), pp. 28-33.<sup>19</sup>

Note, some FG or IO employees decide to waive the benefits of Section 893 and file Form I-508, *Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities* (I-508 Waivers); these employees are U.S. persons for purposes of Section 7701(b) of the Code.

## **SECTION 893 EXCLUDES FROM INCOME TAXATION THE WAGES, FEES, OR SALARY OF AN EMPLOYEE OF AN FG OR OF AN IO**

Subject to certain conditions, Section 893(a) excludes from U.S. gross income the wages, fees, or salary<sup>20</sup> of an employee of an FG or of an IO (including a consular or other officer or a non-diplomatic representative) received as compensation for official services to such government or organization. The conditions are:

1. The employee is not a citizen of the U.S. (except for dual U.S.-Philippine citizens)<sup>21</sup> or a permanent resident of the U.S. (i.e., these employees hold an A<sup>22</sup> or G<sup>23</sup> type visa.<sup>24</sup> The income of domestic workers (with A-3 and G-5 visas) is not exempt under section 893, but is sometimes exempt under other provisions.<sup>25</sup>

2. In the case of an FG employee, the services are of a character similar to those performed by employees of the U.S. government in foreign countries.

3. In the case of an FG employee, the FG grants an equivalent exemption to employees of the U.S. government performing similar services in such foreign country.<sup>26</sup>

Section 893 provides: “[t]he Secretary of State shall certify to the Secretary of the Treasury” countries that satisfy the last two requirements.<sup>27</sup> Without the certification,<sup>28</sup> the taxpayer must establish a country's compliance with Section 893's requirements.<sup>29</sup>

A comprehensive list of certified countries is not publicly available, but interested taxpayers may inquire with the Department of State, OFM. The contact email is [OFMAssistants@state.gov](mailto:OFMAssistants@state.gov).

## **EMPLOYEES OF FGs AND IOs WHO BECOME PERMANENT RESIDENTS ARE SUBJECT TO UNITED STATES INCOME TAX AND UNITED STATES INTERNATIONAL INFORMATION REPORTING**

Section 893(a) does not explicitly bar employees that are permanent residents of the United States from exploiting Section 893's tax exemptions. That said, when read together, the relevant statutes eliminate the Section 893(a)'s income tax exemption for permanent residents.

1. An FG or IO employee must request an exemption before applying for permanent residency in the United States.<sup>30</sup>

2. Form I-508, *Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities*, waives certain diplomatic rights privileges, exemptions and immunities associated including any exemption from paying U.S. income taxes on the salaries paid to you by an FG or IO.<sup>31</sup>

3. The status of FG or IO employees who are permanent residents will be adjusted to that of "A" or "G" visa holders if they fail to execute Form I-508.

4. Unless he or she requests an exemption,<sup>32</sup> a U.S. permanent resident loses permanent residency status upon taking a position as an employee of an FG or IO.<sup>33</sup>

5. An employee of an FG or of an IO desiring to change his or her status from an A or G visa holder to U.S. permanent resident status waives (i.e., loses) the benefit of Sections 893.<sup>34</sup>

Filing Form I-508 does not affect any income tax exemption derived by an alien individual from an income tax treaty, consular agreement, or other international agreement when the application of the exemption does not turn on the internal revenue laws of the United States.<sup>35</sup> Thus, FG employees signing a Form I-508 waiver may still be exempt under treaties and IO employees may still be exempt.

Also noteworthy is that taxpayers' attempts to invalidate a validly executed waiver have failed. For example, in *Abrahamsen v. Commissioner*, the Tax Court refused to nullify a waiver, even though the taxpayer claimed the waiver "was difficult to understand and she did not appreciate the long-term effects of signing."<sup>36</sup>

## **EMPLOYEES OF AN FG OR IO WHO FILE JOINT TAX RETURNS WITH A U.S. CITIZEN OR RESIDENT SPOUSE LOSE THEIR EXCLUSION FROM INCOME TAX**

Married taxpayers often file a joint tax return. Section 6013(a)(1) provides: "no joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien."

In some cases, Section 6013(g)(1) allows a U.S. resident to file a joint return with a nonresident alien. In those cases, the "nonresident alien individual... shall be treated as a resident of the United States." An employee

of an FG or of an IO in the United States will be taxed as a U.S. resident<sup>37</sup> (i.e., lose the benefit of the Section 893 exclusion) if he or she files a joint income tax return with a citizen or resident of the United States.

## **THE UNITED STATES TAXES THE WORLDWIDE INCOME OF ITS CITIZENS WORKING FOR FGs OR IOs**

The exclusion provided by Section 893(a) does not exclude U.S. citizens working for an FG or IO. However, U.S. citizens working for an FG or an IO outside the United States may be eligible to exclude foreign earned income<sup>38</sup> from U.S. taxation.

Tax preparers should note that a foreign tax credit may be available if taxes are paid to FGs.<sup>39</sup>

## **ALTHOUGH U.S. CITIZENS WORKING FOR FGs AND IOs ARE CONSIDERED SELF-EMPLOYED, THEY MAY NOT CLAIM DEDUCTIONS FOR EXPENSES ON SCHEDULE C**

A U.S. citizen working in the United States for an FG or IO must report this compensation as wages on Form 1040 and pay self-employment tax on the compensation under the Self-Employment Contributions Act (SECA). They are, however, ineligible to take expenses on Schedule C<sup>40</sup> or deduct Simplified Employee Pension contributions.<sup>41</sup>

## **FGs AND IOs ARE GENERALLY EXEMPT FROM UNITED STATES INCOME TAXATION**

IOs do not include, and are exempt from tax on, income “from any... source within the United States.”<sup>42</sup>

FGs are exempt from tax on

1. income from investments in U.S. domestic securities,
2. financial instruments held in execution of government monetary or financial policy, and
3. interest on bank deposits in the U.S.<sup>43</sup>

FGs are not exempt from tax on income derived from:

1. commercial activities,
2. controlled commercial entities, or
3. dispositions of “interest in a controlled commercial entity.”<sup>44</sup>

Control is 50% or more ownership by voting interest or value, or any interest providing effective control.<sup>45</sup> Activities are commercial if they are “with a view towards the current or future production of income or gain,” even if not a trade or business under Section 864(b).<sup>46</sup> The following are not commercial:

1. investment in securities,
2. holding bank deposits,
3. net land leases without income production,
4. trading securities and commodities,
5. investments and loans made by a banking business,
6. cultural activities,
7. nonprofit activities not usually customarily carried on by private enterprise,
8. services like those performed by U.S. government (such as libraries, postal service, tolls, FAA activities, local transportation), and
9. purchasing.<sup>47</sup>

The courts have strictly construed the exclusion. In *Qantas Airways*, the Court found leases of excess commercial space by a commercial airline owned by the government of Australia to be a non-exempt commercial activity. Considering the facts and circumstances, the manner of the leasing was much like that conducted by commercial companies.<sup>48</sup>

### **THIS ARTICLE DOES NOT ADDRESS THE INCOME TAXES IMPOSED BY THE STATES**

“State income taxation is a matter of the law of each of the several states”. Thus, diplomatic exemptions may or may not apply.<sup>49</sup> State income tax is beyond the scope of this article. Some other state taxes are discussed in OTHER TAXES AND THE HELP AVAILABLE FROM THE OFM below, with New York laws discussed in some detail.

## **FGs AND IOs DO NOT WITHHOLD INCOME TAX FROM THEIR EMPLOYEES' SALARIES. THUS, THEIR EMPLOYEES MAY HAVE TO MAKE ESTIMATED PAYMENTS**

The IRS does not consider compensation for services performed as an employee of an FG to be wages for withholding purposes. Similarly, compensation for services performed as an employee or an officer of an IO is not seen as wages for purposes of withholding U.S. federal income tax. These exceptions from withholding tax apply regardless of the citizenship or residence of the employee and the place where the services are performed.

Stated simply FGs and IOs need not withhold income tax from their employees' salaries.<sup>50</sup> Indeed, employees of FGs and IOs may *not* request employer withholding.<sup>51</sup>

All the same, non-exempt FG and IO employees are responsible for their own income tax withholdings and may have to make estimated quarterly payments, using Form 1040-ES, *Estimated Tax for Individuals*.<sup>52</sup>

It is noteworthy, that in a recent seminar (i.e., the recommendation is not official guidance), employees of the IRS suggested that FGs and IOs may “voluntarily issue forms 1099 and gross up their U.S. citizen employees' income in order to cover both income and self-employment taxes.”<sup>53</sup>

## **FATCA WITHHOLDING RARELY APPLIES TO PAYMENTS MADE TO FGs AND IOs**

Payments to IOs are generally exempt from income tax withholding.<sup>54</sup> Tax-exempt (non-commercial activity) payments to FGs are similarly exempt from withholding.<sup>55</sup>

Under Chapter 4 of Subtitle A, the withholding agent paying a foreign financial institution not compliant with the Foreign Account Tax Compliance Act (FATCA) must normally withhold 30% of payments that are U.S. source income or proceeds from U.S. property.<sup>56</sup> That said, if the beneficial owner of such payments is an FG or IO, Chapter 4 requirements do not apply.<sup>57</sup>

To claim their exempt status, FGs and IOs use Form W-8EXP.<sup>58</sup> The Form declares that the FG or IO is not a U.S. person, allows them to claim they are the beneficial owner of income and to claim exemption from withholding.<sup>59</sup>

Withholding **is** required when:

1. FGs and IOs acquire U.S. real property from a foreign person.<sup>60</sup>

2. An FG receives a payment that is not tax-exempt (see above).
3. An FG is a partner in a U.S. partnership (here, the partnership must withhold tax on the FG partner's allocable share of U.S. effectively connected taxable income and secure a Form W-8EXP from the FG partner).<sup>61</sup>



## **FGs, IOs, AND THEIR NONRESIDENT EMPLOYEES DO NOT PAY EMPLOYMENT TAXES**

FGs and IOs “are exempted from Social Security and Medicare payments and withholding. Therefore, they do not withhold from employees nor pay the employer's share of those taxes.”<sup>62</sup> They are also exempt from unemployment tax.<sup>63</sup>

Nonresident aliens without green cards (i.e., holders of A or G visas) working for an FG or IO in the United States are not subject to employment tax (i.e., Federal Insurance Contribution Act (FICA), and Self-Employed (SECA) taxes).<sup>64</sup> As a result, they do not accumulate Social Security benefits.<sup>65</sup>

For employment tax purposes, the permanent resident employees of FGs and IOs are treated like nonresident aliens.<sup>66</sup> They are not subject to FICA or SECA<sup>67</sup> and do not accumulate Social Security benefits as to their FG or IO employment.<sup>68</sup>

## **U.S. CITIZEN EMPLOYEES OF FGs AND IOs MUST PAY EMPLOYMENT TAXES**

U.S. citizens working in the United States for an FG or IO report their compensation as wages on Form 1040 and pay self-employment tax on the compensation under SECA. These employees are treated as self-employed for employment tax purposes.<sup>69</sup> They pay both the employee's and employer's portion of withholdings under SECA and are eligible for Social Security benefits.

Congress created the self-employment fiction to withhold employment taxes from U.S. citizens because (a) U.S. citizens are eligible for Social Security benefits, and (b) the United States “could not impose the employer share of FICA”<sup>70</sup> on FGs and IOs. Courts have upheld the self-employed classification of U.S. citizen employees against constitutional challenges.<sup>71</sup>

The Courts have also rejected attempts to avoid self-employment taxes, by calling the payment something other than wages. For example, in *Braddock*, the Tax Court found that the taxpayer's base salary, overtime, dependency payment, transportation allowances, and payment of federal and Washington, D.C. income tax liabilities were subject to self-employment tax.<sup>72</sup> By contrast, a final lump-sum payment is subject to self-employment tax if it is intended as a severance payment, but not if it is a disability payment.<sup>73</sup>

Dual citizens with U.S. citizenship are generally treated as U.S. citizens (subject to SECA) but may be exempt from employment taxes under a totalization agreement.<sup>74</sup> For example, dual U.S. and Canadian citizens

working in the U.S. for the Canadian government are not exempt. Dual U.S. and Italian citizens working in the U.S. for the Italian government may pay into either the U.S. or Italian Social Security system.<sup>75</sup>

Totalization agreements between the U.S. and other countries may provide for combining coverage periods for Social Security benefit computation and benefit avoidance purposes.<sup>76</sup> Such agreements may also exempt otherwise non-exempt individuals from FICA and SECA.

### **U.S. CITIZENS EMPLOYEES OF FGs AND IOs WORKING OUTSIDE THE U.S. ARE NOT SELF-EMPLOYED**

U.S. citizens performing employee services for FGs outside the U.S. are not treated as self-employed.<sup>77</sup> Their foreign employment tax treatment may be affected by totalization agreements.

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# INFORMATION REPORTS AND SAILING PERMIT

## **AN EMPLOYEE OF AN FG OR OF AN IO HOLDING AN A OR G VISA IS NOT SUBJECT TO SECTION 7701(b)'S SUBSTANTIAL PRESENCE TEST AND IS NOT REQUIRED TO FILE THE REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR) AND SEVERAL OTHER INTERNATIONAL INFORMATION REPORTS**

The Report of Foreign Bank and Financial Accounts (FBAR), Financial Crimes Enforcement Network (FinCEN) Report 114, is required when a U.S. person (including statutory residents) has a financial interest in or signature authority over, one or more foreign financial accounts with an aggregate value greater than \$10,000 during the reporting period (calendar year).<sup>78</sup> If a report is required, certain records must also be kept.<sup>79</sup>

Foreigners spending substantial time in the U.S. may be defined as resident aliens under the substantial presence test in Section 7701(b)(3) of the Code. Diplomats residing at foreign embassies in the U.S. are rarely considered U.S. residents for FBAR purposes. Employees of FGs and IOs in the U.S. under an A or G type visa are not substantially present and need not file FBARs.

Besides the FBAR, the United States has several information reporting forms relating to foreign assets, including, but not limited to those below:

Form #	Name
3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3520-A	Annual Information Return of Foreign Trust with a U.S. Owner
5471	Return for U.S. citizens and residents who are officers, directors, or shareholders in certain foreign corporations
5472	Information Return of 25% Foreign-Owned U.S. Corporation of a Foreign Corporation Engaged in a U.S. Trade or Business.
926	Return by a U.S. Transferor of Property to a Foreign Corporation
8621	Return by a U.S. Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund
8832	Entity Classification Election

8858	Information Return of U.S. Persons with Respect to Foreign Disregarded Entities and Foreign Branches
8865	Return of U.S. Person With Respect to Certain Foreign Partnerships
8938	Statement of Specified Foreign Financial Assets
FinCen 114	Report of Foreign Bank and Financial Accounts

FG and IO employees considered U.S. persons may need to report a foreign retirement plan on one or more information reporting forms. The monetary thresholds that must be met before an individual must submit one of these forms differ depending on the form and, in some cases, the individual's status.

For example, the obligation to file Form 8938 depends on the filing status of the individual (because Form 8938 is attached to, and part of, a Form 1040 income tax return) and whether the individual resides in the United States or abroad. An unmarried individual living in the United States will have an obligation to file Form 8938 if her total specified foreign assets exceed \$50,000 on the last day of the tax year or \$75,000 at any point during the tax year, while a married individual filing jointly and living abroad must file only Form 8938 if his total specified foreign assets exceed \$400,000 on the last day of the tax year or \$600,000 during the tax year.

Form 3520 has different reporting triggers depending on the foreign asset. A U.S. person must file Form 3520 to report a foreign gift or distribution from a foreign estate that exceeds \$100,000. Form 3520 must also be filed by a U.S. person to report the creation of a foreign trust, ownership of a foreign trust, transfers of money or property to a foreign trust, or distributions from a foreign trust.

A survey of the international information reports, the penalties for failing to file the reports and the programs available to correct non-compliance is beyond the scope of this article.

### **EXEMPTION FROM DEPARTING ALIEN CLEARANCE**

A departing alien clearance, also known as a sailing permit, is a tax clearance certificate required of many departing aliens by the IRS.<sup>80</sup> Departing FG and IO representatives and employees rarely are required to obtain a sailing permit.<sup>81</sup> As to representatives with diplomatic passports, this exemption also applies to (i) "their household members and servants" and (ii) others compensated for official services to FGs and IOs if their income is excluded under Section 893, they have no U.S. source gross income, and they have not signed the waiver form.<sup>82</sup>

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# OTHER TAXES AND THE HELP AVAILABLE FROM THE OFM

In 1982, Congress passed the Foreign Missions Act, 22 United States Code (U.S.C.) §§ 4301-4316, which created OFM within United States Department of State. OFM has four primary missions:

1. The employment of reciprocity to ensure equitable treatment for U.S. diplomatic and consular missions abroad and their personnel through reciprocity.
2. Regulating the activities of foreign missions in the U.S. in a manner that will protect the foreign policy and national security interests of the U.S.
3. Protecting the U.S. public from abuses of privileges and immunities by members of the foreign missions.
4. The provision of service and assistance to the foreign mission community in the U.S. to assure privileges, benefits and services on a reciprocal basis.<sup>83</sup>

Tax exemption privileges for foreign diplomats, consular officers, and staff members often stem from two treaties: the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.

Also important to OFM's mission is that not all foreign missions and their personnel have a right to tax exemptions. These privileges depend on reciprocity and not all foreign countries grant such tax exemption to American Embassies and personnel.

Questions about the eligibility of diplomatic or consular officers for sales and use tax exemption should be directed to the Office of Foreign Missions by electronic mail at [OFMTaxCustoms@state.gov](mailto:OFMTaxCustoms@state.gov).

## **CUSTOMS, DUTIES, AND INTERNAL REVENUE IMPORTATION TAXES**

Goods imported into the U.S. are normally subject to customs, duties,<sup>84</sup> and other fees and taxes. Certain FG and IO-related items are admitted free of customs, duties, and internal revenue taxes "imposed upon or by reason of importation."<sup>85</sup> These include:

- (1) Diplomatic and consular bags, clearly marked as such and containing only "diplomatic documents and articles intended exclusively for official use,"<sup>86</sup>
- (2) Items brought from abroad for personal and household use upon the initial entry of alien FG and IO representatives and their "families, suites, and servants"<sup>87</sup> (the exemption is discretionary upon subsequent entries),<sup>88</sup> and
- (3) Property of FGs and IOs if the FG or IO receives "instruction from the United States Customs Service issued at the request of the Department of State."<sup>89</sup>

FG employees are granted exemptions (1) and (2) based on the reciprocity principle discussed above.<sup>90</sup>

### **AIRLINE TAXES**

Eligible individuals are exempt from some airline-related “taxes.” These include the U.S. Customs Fee, the U.S. Immigration and Naturalization Fee, and U.S. Animal and Plant Health Inspection Service.<sup>91</sup>

They are not exempt from U.S. Excise Tax, Travel Facilities Tax, U.S. Federal Segment Fee, Passenger Facility Charge, U.S. International Transportation Tax, and September 11th Security Fee.<sup>92</sup>

To receive the exemption, an eligible individual must present a diplomatic ID card and/or A-1, A-2, G-1, G-2, G-3, or G-4 visa when purchasing the ticket.<sup>93</sup>

### **GASOLINE TAX**

The Code imposes an excise tax of 18.3 cents per gallon on gasoline and 24.3 cents per gallon on diesel fuel.<sup>94</sup> States impose their own excise taxes, which can range from less than 10 to over 50 cents per gallon.<sup>95</sup> Reciprocity-based exemption from gasoline tax is available to qualified individuals.<sup>96</sup> It is granted through “tax-exempt oil company credit card accounts.”<sup>97</sup> An application must be made with one or more oil companies, and a request of exemption from Gasoline Taxes must be completed using the E-Government Program.<sup>98</sup> New York also requires the completion of Form FT-505.1, Government Entity Credit Card Refund or Credit Election.<sup>99</sup>

### **COMMUNICATIONS SERVICES TAX**

The Code imposes a tax on telecommunications services, including domestic phone calls.<sup>100</sup> IOs are exempt from communications services tax.<sup>101</sup>

### **SALES “AND OTHER SIMILARLY IMPOSED TAXES”**

Eligible diplomatic employees and their dependents are exempt from sales and similarly imposed taxes. An eligible individual must obtain a card from the State Department called a Department of State (DOS) Tax Exemption Card.<sup>102</sup>

Tax Exemption Cards must be used for purchases necessary to the mission’s operations and functions.<sup>103</sup> They can be issued only to a principal member or employee of the mission who holds an A or G series visa (a

diplomatic agent if G series).<sup>104</sup> The individual must not permanently reside in the U.S. for purposes of the Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations.

Personal cards must be “used solely for the benefit of the individual identified and pictured on the card.”<sup>105</sup> They can be issued only to diplomatic agents, members of the administrative and technical staff, consular officers, consular employees, and household members of the above.<sup>106</sup> To be eligible for cards, children must be aged 18-21 or, “if accredited as a justified student,” 18-23.<sup>107</sup> Children must be neither U.S. nationals nor permanent residents for purposes of the Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations.

States may impose other eligibility requirements. A table summarizing the state regulations is available on the DOS’s website. Some “states require foreign missions and their members to complete a streamlined sales tax agreement exemption certificate.”<sup>108</sup>

### **MOTOR VEHICLE TAX**

Most states, and some counties and municipalities, impose sales and use taxes on purchases of vehicles. Exemptions are available to FGs as determined by the “diplomatic or consular status or accreditation of the purchasing foreign mission or accredited mission member and their dependents.”<sup>109</sup>

The purchaser must instruct the dealer, before making the purchase, to obtain a Motor Vehicle Tax Exemption Letter.<sup>110</sup>

### **UTILITY TAX**

Many states and municipalities impose sales tax on utility services. The tax exemption is reciprocity-based and must be requested using the E-Government Program.<sup>111</sup> New York State also requires the submission of Form DTF-950.<sup>112</sup>

New York City is home to about 118 diplomatic missions.

New York provides exemptions in certain areas, such as property tax, workers' compensation, insurance contracts, and healthcare surcharges. Whether a federal statute or treaty requires a state tax or charge to be waived is often unclear, as these issues rarely are litigated.

FGs are exempt from New York Workers' Compensation coverage<sup>113</sup> and disability coverage.<sup>114</sup> That said, employees of FGs who themselves hire workers, must provide coverage.

FGs are exempt from New York State tax on taxable insurance contracts bought from providers not licensed in New York State.<sup>115</sup>

New York State Healthcare Reform Act surcharges<sup>116</sup> are not imposed on self-insured foreign diplomatic missions covered by the Vienna Convention. In addition, such surcharges are not imposed on payments made by foreign diplomatic agents to designated service providers.<sup>117</sup>

FGs are generally exempt from New York City property tax.<sup>118</sup> To be eligible for the exemption, FGs must notify, and obtain approval from, the U.S. DOS, OFM, before purchasing and selling properties. In addition, the New York City Department of Finance should be notified (approval is not required). Unless the FG is listed as the property owner in Automated City Register Information System (ACRIS), proof of ownership must be supplied.

A New York State counsel concluded that FGs are liable for property tax liens existing before the purchase by FGs.<sup>119</sup>

The Supreme Court upheld New York City property tax liens against the portion of mission premises housing employees with rank lower than "‘ambassador or minister plenipotentiary’ to the United Nations."<sup>120</sup> The Foreign Sovereign Immunities Act immovable property exception did not immunize the missions from the liens. The dissent argued that comity principles require resolution of such conflicts through diplomatic channels, rather than the courts.

## UNDERSTAND THE APPLICABLE LAWS

Employees of FGs and IOs who are neither U.S. citizens nor green card holders should first look at the tax exemption provisions under the multilateral Vienna Convention on Diplomatic Relations, the multilateral Vienna Convention on Consular Relations, or a bilateral consular agreement between the United States and the foreign country (if one exists) to evaluate whether an item of income qualifies for exemption from U.S. income tax.



Some treaties<sup>121</sup> provide that payments made by an FG for services rendered to it, not in connection with a business, are not taxable by the U.S. unless the recipient is a U.S. citizen or resident.<sup>122</sup> The U.S. uses this language in tax treaties with about 25 countries, with some treaties substituting “trade or business” or “commercial or industrial activities” for “business,” “U.S. national” for “U.S. citizen,” and/or “labor or personal services” for “services.”<sup>123</sup>

FGs may request private letter rulings as to their U.S. tax liability. The IRS rarely issues guidance to FGs on non-U.S. laws’ effects on U.S. tax liability and treaties’ effects on non-U.S. tax liability.<sup>124</sup> More important, the IRS rarely issues ruling or determination letters regarding exclusion of IOs’ and FGs’ U.S. source income under Section 892, IO and FG employee income exclusion under Section 893, or whether an individual’s income from services to an IO or FG are exempt from tax or withholding under a treaty under Section 894.<sup>125</sup>

## EMPLOYEES OF FGs AND IOs SHOULD EVALUATE THE IRS OPTIONS FOR ADDRESSING PRIOR NON-COMPLIANCE

Readers should note the IRS explanation of its campaign relating to individuals employed by FGs and IOs:

In some cases, individuals working at foreign embassies, foreign consular offices, and various international organizations may not be reporting compensation or may be reporting it incorrectly. Foreign embassies, foreign consular offices and international organizations operating in the U.S. are not required to withhold federal income and social security taxes from their employees' compensation nor are they required to file information reports with the Internal Revenue Service.

***This lack of withholding and reporting results in unreported income, erroneous deductions and credits, and failure to pay income and Social Security taxes.*** Because this is a fluid population, there may be a lack of knowledge regarding tax obligations. This campaign will focus on outreach and education by partnering with the Department of State's Office of Foreign Missions to inform employees of foreign embassies, consular offices and international organizations. ***The IRS will also address noncompliance in this area by issuing soft letters and conducting examinations*** (emphasis added).

IRS examination could lead to (a) criminal penalties of fines and imprisonment, and (b) civil penalties and additions to tax.<sup>126</sup>

The Large Business and International Division (LBI) campaign, the implementation of FATCA, and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations of employees for FGs and IOs in the United States.

Because the circumstances of taxpayers with non-U.S. investments vary widely, the IRS offers the following options for addressing previous failures to comply with U.S. tax and information return obligations:

The Voluntary Disclosure Practice<sup>127</sup>

Streamlined Filing Compliance Procedures<sup>128</sup>

Delinquent FBAR submission procedures<sup>129</sup>

Delinquent international information return submission procedures<sup>130</sup>

Amended Returns<sup>131</sup>

The IRS encourages taxpayers to consult with their tax or legal advisors in determining which option is the most appropriate for them.

## CONCLUSION

Tax professional preparing tax returns frequently confuse diplomatic immunity and the obligation to pay taxes. Many individuals working at foreign embassies, foreign consular offices, and IOs have been reporting compensation incorrectly. As explained above,

1. Taxpayers employed by a foreign mission and holding an "A" or "G" visa, are nonresidents for U.S. tax purposes. These taxpayers must file Form 1040NR (long form, with instructions) or Form 1040NR-EZ (short form, with instructions).

2. FG and IO employees with green cards are taxed like U.S. residents, but, unlike citizens, are not subject to SECA. These employees must file a U.S. income tax returns to report and pay tax on their worldwide income, which includes their foreign mission salary.

3. Bilateral consular convention and income tax treaties can override these general rules.

If after reviewing this article, you are confused as to whether a return was filed correctly, you encouraged taxpayers to consult with their tax or legal advisors with experience in these matters. Also feel free to contact the attorneys at Agostino & Associates at [FAgostino@AgostinoLaw.com](mailto:FAgostino@AgostinoLaw.com).

**\*Automated City Register Information System (ACRIS)** An online system that allows users to search property records and view document images for Manhattan, Queens, Bronx and Brooklyn from 1966 to the present.

<https://www1.nyc.gov/site/finance/taxes/acris.page>

**Amended Return (e.g., Form 1040X)** A tax return that corrects a prior error or omission.

**Articles of Agreement** The founding document of an international organization.

**Business** A continuous and regular activity with income or profit as its primary purpose.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#B>

**The Code (also Tax Code, Internal Revenue Code, I.R.C.)** Title 26 of the United States Code.

**Code of Federal Regulations (C.F.R.)** The codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

<https://www.govinfo.gov/app/collection/cfr>

**Commercial activity** An activity ordinarily conducted by the taxpayer or by other persons with a view towards the current or future production of income or gain. But an exception may still apply to classify it as a non-commercial activity. Treas. Reg. § 1.892-4T (b), (c).

**Constitutional challenge** An allegation by a litigant that a law violates the Constitution.

**Consular convention** A bilateral treaty concerning consular affairs.

**Consular immunity** Immunity of officers of consulates under the Vienna Convention on Consular Relations. It applies to official acts (functional immunity) in respect of both criminal and civil matters, and the protected individuals' personal inviolability is limited.

[https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm\\_v5\\_Web.pdf](https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf)

**Consulate** Consulates provide the same services and carry out the same official functions as the Embassy. They generally follow the policy of their country's embassy in the same foreign country and regularly consult the embassy.

<https://diplomacy.state.gov/diplomacy/what-is-a-u-s-consulate/>

**Controlled Commercial Entity** An entity engaged in commercial activities controlled (at least 50% or, if less, effectively controlled). Treas. Reg. § 1.892-5T.

**Convention** Another term for a treaty (e.g., U.S. bilateral tax conventions). Some apply the term ‘convention’ only to treaties between multiple nations that begin with an international meeting (e.g., Vienna Convention on Consular Relations).

**Delinquent FBAR Submission Procedures** an IRS program which allows taxpayers who previously were not contacted or examined by the IRS and who reported, and paid tax on, their foreign account income, may file late FBARs without penalties.

**Departing alien clearance/sailing permit** Aliens who leave the United States, unless exempt, must obtain a certificate of compliance with their U.S. tax obligations. <https://www.irs.gov/individuals/international-taxpayers/departing-alien-clearance-sailing-permit>

**DOS** The Secretary of State is the President’s chief foreign affairs advisor. The Secretary carries out the President’s foreign policies through the State Department and the Foreign Service of the United States. Negotiations with foreign leaders, including treaties, advice on appointing U.S. and accepting foreign diplomats, and protecting U.S. interests abroad are among the areas of responsibility. <https://www.state.gov/duties-of-the-secretary-of-state/>

**Diplomatic immunity** Immunity applicable to embassy staff under the Vienna Convention on Diplomatic Relations. Not all staff members enjoy the same level of immunity. Ambassadors and other officers enjoy full immunity from criminal prosecution and very substantial immunity from civil lawsuits. [https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm\\_v5\\_Web.pdf](https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf).

**Earned Income** Includes wages, salaries, tips, includible in gross income, and net earnings from self-employment earnings. <https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#E>

**Embassy** The headquarters for government representatives serving in a foreign country. It is usually in the capital city. <https://diplomacy.state.gov/diplomacy/what-is-a-u-s-embassy/>

**Employee** Works for an employer. Employers can control when, where, and how the employee performs the work. <https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#E>. However, for withholding purposes, U.S. citizens working for FGs and IOs are considered self-employed and not employees (governed by SECA rather than FICA).

**Employment Tax** FICA, FUTA, SECA, and any similar state-imposed taxes. (FUTA is federal unemployment insurance paid by employers for their employees, but not paid by self-employed individuals.) Another frequently used term is payroll tax, which sometimes means employment tax and sometimes employment tax combined with income tax withholding.

**Estimated quarterly payments** Individuals, including sole proprietors, partners, and S corporation shareholders, generally have to make estimated tax payments if they expect to owe Federal income tax of at least \$1,000.

<https://www.irs.gov/businesses/small-businesses-self-employed/estimated-taxes>

<https://www.irs.gov/pub/irs-pdf/f1040es.pdf>

**Examination** An IRS audit is a review/examination of an organization's or individual's accounts and financial information to ensure information is reported correctly according to the tax laws and to verify the reported tax is correct.

<https://www.irs.gov/businesses/small-businesses-self-employed/irs-audits>

**Executive agreement** International agreement brought into force with respect to the United States on a constitutional basis other than with the advice and consent of the Senate (generally by the President of the United States).

<https://2009-2017.state.gov/s/l/treaty/fags/70133.htm>

**Foreign Affairs Manual (FAM)** A source for organization structures, policies, and procedures that govern the operations of the State Department, the Foreign Service and sometimes other federal agencies.

<https://fam.state.gov/fam/09FAM/09FAM040203.html>

**FBAR (Report of Foreign Bank and Financial Accounts, Form FinCen 114)** A report of foreign financial accounts that must be filed by U.S. persons meeting certain criteria. U.S. persons are U.S. citizens (including minor children) and residents; entities, including but not limited to, corporations, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

**Federal Insurance Contribution Act (FICA) tax** A collective name for Social Security and Medicare taxes.

**File** (an income tax return or an information return) To mail or otherwise transmit to an IRS service center the taxpayer's information, in specified format, about income and tax liability.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp>

**Filing status** Determines the rate at which income is taxed. The five filing statuses are: single, married filing a joint return, married filing a separate return, head of household, and qualifying widow(er) with dependent child.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#F>

**Financial Crimes Enforcement Network (FinCen)** A bureau of the U.S. Department of the Treasury. The Director of FinCEN is appointed by the Secretary of the Treasury and reports to the Treasury Under Secretary for Terrorism and Financial Intelligence. FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security. <https://www.fincen.gov/what-we-do>

**Foreign Account Tax Compliance Act (FATCA)** Generally requires that foreign financial Institutions and certain other non-financial foreign entities report on the foreign assets held by their U.S. account holders or be subject to withholding on withholdable payments. <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>

**Foreign government** (*also FG in this article*) An integral part (a governing body) or controlled entity of a foreign sovereign. A controlled entity cannot benefit private individuals, except as part of a governmental program administered in accordance with government functions. A partnership composed of sovereigns of different foreign countries does not qualify. Treas. Reg. § 1.892-2T.

**Foreign person** A nonresident alien individual, foreign corporation, foreign partnership, foreign trust, foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a qualified intermediary. Usually the U.S. branch of a foreign corporation or partnership is treated as a foreign person.

<https://www.irs.gov/individuals/international-taxpayers/foreign-persons#:~:text=A%20foreign%20person%20includes%20a,branch%20is%20a%20qualified%20intermediary.>

**Foreign Sovereign Immunities Act** Limits the role of the Executive branch in suits against foreign governments and governmental entities by precluding the DOS from making decisions on state immunity. Codifies the restrictive theory of immunity, incorporating criteria, which the courts had developed in applying the theory, while codifying and applying international law. Prescribes the means of service for suits against a foreign state or agency and instrumentality in Section.

<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-asst/Service-of-Process/Foreign-Sovereign-Immunities-Act.html>

**Gasoline excise tax** An excise tax paid by consumers when they purchase gasoline. The tax covers the manufacture, sale, and use of gasoline.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#G>

**Gross income** Money, goods, services, and property a person receives that must be reported on a tax return. Includes unemployment compensation and certain scholarships. It does not include welfare benefits and nontaxable Social Security benefits.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp>

**I-508 Waiver** A form used to waive certain diplomatic rights privileges, exemptions, and immunities (including from paying U.S. income taxes on the salaries paid by foreign governments or international organizations).

<https://www.uscis.gov/i-508>

**Income taxes** Taxes on income, both earned (salaries, wages, tips, commissions) and unearned (interest, dividends). Income taxes can be levied on both individuals (personal income taxes) and businesses (business and corporate income taxes).

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#I>

**Internal Revenue Service (IRS)** The federal agency that collects income taxes in the United States.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#I>

**International Organization (also IO in this article)** A public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act. I.R.C. § 7701(a)(18).

**International Organizations Immunities Act** Provides international organizations the same immunity enjoyed by foreign governments (unless waived by agreement). 22 U.S.C. § 288a(b).

**Married Filing Joint filing status** You are married and both you and your spouse agree to file a joint return. (On a joint return, you report your combined income and deduct your combined allowable expenses.)

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#I>

**New York State Healthcare Reform Act** Governs hospital reimbursement methodologies. Targets funding for health care initiatives. Requires third-party payors and providers of health care services to participate in the funding of these initiatives through the submission of authorized surcharges and assessments.

<https://www.health.ny.gov/regulations/hcra>

**Nonresident Alien** Neither a U.S. citizen nor a resident alien. Nonresident aliens are not taxed by the U.S. on their non-U.S. income. I.R.C. § 7701(b).

**Office of Foreign Missions (OFM)** within the Department of State. “In 1982, Congress passed the Foreign Missions Act, 22 U.S.C. §§ 4301-4316, which created” OFM. “The purpose of OFM [as relevant here] is to serve the foreign diplomatic and consular communities stationed in the United States, and to control their activities.”

<https://www.state.gov/about-us-diplomatic-tax-exemptions/>

**Reciprocity** A principle whereby certain tax exemptions to employees of a foreign government are provided only if similar exemptions are provided to U.S. government employees working in the foreign country.



**Resident alien** A U.S. permanent resident (“green card” holder) or an individual meeting the substantial presence test or an individual making a first-year election. I.R.C. § 7701(b).

**Sales and use tax** Sales taxes are imposed by states and localities based on the volume of sale and are collected from merchants. Use taxes, based on the use of a product within a state, are reported and paid by consumers (frequently use taxes are substitutes for sales taxes when no sales tax is imposed on an out-of-state purchase).

**Schedule C** A Form attached to an income tax return that reports profits and losses of a sole proprietorship.

**Self-employed** Usually, this means an individual carrying on his or her own trade or business. I.R.C. § 1402(a). However, U.S. citizen employees of foreign governments and international organizations are treated as self-employed for SECA purposes.

**Self-employment (SECA) tax** Similar to FICA, but paid by the self-employed. The self-employment tax rate is 15.3 percent of self-employment profit. The self-employment tax is calculated on Schedule SE—Self-Employment Tax. The self-employment tax is reported on Form 1040, *U.S. Individual Income Tax Return*.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#/>

**Simplified Employee Pension (SEP)** allows business owners to contribute to their own and their employees’ retirement accounts substantially more than traditional Individual Retirement Accounts (IRAs) allow. Despite being considered self-employed for SECA purposes, U.S. citizens who are employees of foreign governments are employees for all other purposes, thus ineligible to contribute to their own SEP.

**Streamlined Filing Compliance Procedures** a simplified and generally less costly version of Voluntary Disclosure that the IRS offers from time to time to taxpayers whose non-compliance was non-willful. As non-willfulness is a requirement and there is no formal closing agreement, the program does not protect willfully non-compliant taxpayers from criminal prosecution.

<https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures>

**Strict Construction** Interpretation of a legal text narrowly according to its literal meaning and original intent.

**Substantial Presence Test** An individual is a U.S. resident alien for this year’s tax purposes after spending at least 31 days in the U.S. this year and at least 183 combined weighted days in the past 3 years (this year’s days are counted in full, last year’s days as 1/3 days and the days in the year before that as 1/6 days). I.R.C. § 7701(b)(3).

**Tax Exemption** A part of a person's income on which no tax is imposed.

<https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#/>

**Totalization Agreement (U.S. International Social Security Agreements)** U.S. bilateral agreements with foreign countries that eliminate dual Social Security taxation and help fill gaps in benefit protection for workers who have divided their careers between the United States and another country.

[https://www.ssa.gov/international/agreements\\_overview.html](https://www.ssa.gov/international/agreements_overview.html)

**Treasury Regulations (Treas. Reg.)** Regulations that interpret the Internal Revenue Code are compiled under Title 26 of the Code of Federal Regulations. These regulations are generally issued by the United States Department of the Treasury.

**Treaty** An international agreement into which the President of the United States enters “with the Advice and Consent of the Senate,” to include at least “two-thirds of the Senators present.” U.S. Const. art. II, § 2, cl. 2. Self-executing treaties become enforceable immediately after ratification. Other treaties require implementing legislation to become effective.

**United States Code (U.S. Code or U.S.C.)** is the codification by subject matter of the general and permanent laws of the United States.

<https://www.govinfo.gov/app/collection/uscode#:~:text=The%20United%20States%20Code%20is,was%20first%20published%20in%201926.>

**United States Source Income (Gross income from sources within the United States)** Generally, income from working in the United States and passive income from U.S. companies and properties. The rules are detailed, see I.R.C. § 861.

**Vienna Convention on Consular Relations** A multilateral treaty defining the framework for consular relations between countries.

<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/intl-treaties.html>

**Vienna Convention on Diplomatic Relations** A multilateral treaty defining the framework for diplomatic relations between countries.

### **Visa (A Visa, G Visa)**

An A-1 Visa is issued to foreign heads of state, cabinet members, highest court members, presiding officers of the legislature (the categories above only if temporarily on official business), diplomatic and consular officers, career couriers, and immediate family members of the above. 9 FAM 402.3-5(C).

An A-2 visa is issued to alien consular and diplomatic employees, students at the Inter-American Defense College, personnel of foreign non-NATO armed forces, aliens seeking to perform official duties for a foreign government for less than 90 days, officials acting as couriers, and immediate family members of the above. 9 FAM 402.3-5(D).

An A-3\* visa is issued to Attendants, Servants, and Personal Employees of Officials. 9 FAM 402.3-5(G).

A G-1 visa is issued to foreign government officials assigned for at least 90 days as members of their country's mission to an international organizations and their immediate family members. 9 FAM 402.3-7(B)a.(1).

A G-2 visa is issued to foreign government officials traveling for less than 90 days as members of their country's mission to an international organizations and their immediate family members. 9 FAM 402.3-7(B)a.(2).

A G-3 visa is issued to officials of non-recognized governments traveling to represent their government in an international organizations and their immediate family members. 9 FAM 402.3-7(B)a.(3).

A G-4 visa is issued to officers and employees of international organizations traveling on official business of the organization. 9 FAM 402.3-7(B)a.(4).

A G-5\* visa is issued to attendants and personal employees of persons in G-1 through G-4 nonimmigrant status. 9 FAM 402.3-7(B)a.(5).

\*Category A-3 and G-5 holders differ from other A and G visa holders because they are ineligible for some of the exceptions.

**Withholding** Money, for example, that employers withhold from employees paychecks. This money is deposited for the government. (It will be credited against the employees' tax liability when they file their returns.) Employers withhold money for federal income taxes, FICA/FUTA taxes and state and local income taxes in some states and localities. <https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#>

**Voluntary Disclosure** A program where taxpayers comply with their past tax obligations, on such terms and by such date as the program provides, in return for minimizing their criminal tax exposure and reducing the civil penalties on these past obligations. Both IRS and many state tax authorities offer such programs from time to time.

<https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice>

**Worldwide Taxation** The U.S. system of taxation whereby citizens and resident aliens are taxed on their worldwide income.

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<sup>1</sup> Frank Agostino is a principal of Agostino & Associates, Hackensack, NJ (A&A), Eugene Kirman is an attorney at A&A and Giovanna Vitale is a summer intern. The authors thank Philip Colasanto, Esq., Jeffrey Dirmann, Esq., and Andrew Lendrum, Esq., attorneys at A&A, for their comments.

<sup>2</sup> Embassy Worldwide, List of Diplomatic Missions in United States & American Diplomatic Missions abroad, <https://www.embassy-worldwide.com/country/united-states/> (last visited July 22, 2020).

<sup>3</sup> U.S. Dep't of State, About Us – Office of Foreign Missions, <https://www.state.gov/about-us-office-of-foreign-missions/> (last visited July 27, 2020).

<sup>4</sup> See IRS, Employees of Foreign Governments or International Organizations, <https://www.irs.gov/individuals/international-taxpayers/employees-of-foreign-governments-or-international-organizations> (last updated Jan. 15, 2020).

<sup>5</sup> IRS, Large Business and International Active Campaigns, Individuals Employed by Foreign Governments & International Organizations, <https://www.irs.gov/businesses/corporations/lbi-active-campaigns> (last updated July 21, 2020).

<sup>6</sup> Vienna Convention on Consular Relations Apr. 24, 1963, arts. 32, 39, 49, 50, 60, 62, 66, adopted Apr. 24, 1963, 21 U.S.T. 77, [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf).

<sup>7</sup> Vienna Convention on Diplomatic Relations, arts. 23, 28, 34, 36-37, adopted Apr. 18, 1961, 23 U.S.T. 3227, [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf). This convention applies to mission heads and “the members of the staff of the mission having diplomatic rank.” *Abrahamsen v. Commissioner*, 142 T.C. 405, 411-12 (2014) (quoting U.S.-Vienna, Apr. 18, 1961, art. 1, 23 U.S.T. 3227).

<sup>8</sup> 28 U.S.C. §§ 1602 *et seq.*

<sup>9</sup> 22 U.S.C. §§ 288 *et seq.*

<sup>10</sup> See United States Income Tax Treaties - A to Z, <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>; IRS Publication 901, U.S. Tax Treaties (2016), <https://www.irs.gov/pub/irs-pdf/p901.pdf>. U.S. bilateral tax treaties are also called conventions. They are self-executing treaties, entered into by the President “with the Advice and Consent of the Senate,” to include at least “two-thirds of the Senators present.” U.S. Const. art. II, § 2, cl. 2.

<sup>11</sup> See Bilateral Consular Conventions, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/intl-treaties/Bilateral-Consular-Conventions.html>. The consular convention with the U.K., 3 U.S.T. 3426, is an agreement between the U.S. and 32 other countries. The consular convention with the Confederated Independent States, 19 U.S.T. 5018, is an agreement between the U.S. and 12 other countries.

<sup>12</sup> U.S. Social Security Administration, International Programs, U.S. International Social Security Agreements, [https://www.ssa.gov/international/agreements\\_overview.html](https://www.ssa.gov/international/agreements_overview.html). Totalization agreements are congressional-executive agreements. 42 U.S.C. § 433(a); Brent W. Jackson and Scott Cash, *Social Security Totalization Agreements*, Social Security Bulletin, Nov. 2018, at 1, 5, <https://www.ssa.gov/policy/docs/ssb/v78n4/ssb-v78n4.pdf>.

*Ex ante* congressional-executive agreements have been compared to administrative regulations, but without the notice and comment process of the Administrative Procedure Act or statutorily prescribed judicial review. See Curtis Bradley *et al.*, *Executive Agreements*:

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*International Lawmaking Without Accountability?*, LAWFARE (January 9, 2019, 10:30 AM), <https://www.lawfareblog.com/executive-agreements-international-lawmaking-without-accountability>.

<sup>13</sup> Executive agreements generally have the same force as treaties. *See, e.g.*, *United States v. Belmont*, 301 U.S. 324 (1937).

<sup>14</sup> An IO is “a public international organization in which the United States participates under any treaty or under the authority of any Act of Congress authorizing . . . or making an appropriation for such participation, and which shall have been designated by the President.” *See* Treas. Reg. § 1.893-1(b)(1) (citing I.R.C. § 7701(a)(18) (citing 22 U.S.C. §§ 288-288f)). *See* List of Designated International Organizations, 9 FAM 402.3-7(M) (U). IOs’ employees receive special tax treatment to persuade IOs to “locate significant operations in the United States.” *Toll v. Moreno*, 458 U.S. 1, 16 (1982).

<sup>15</sup> The legal status of an IO’s Articles of Agreement is specified in the enabling statutes. *See, e.g.*, *International Monetary Fund and Bank for Reconstruction and Development*, 22 U.S.C. §§ 286 *et seq.*

<sup>16</sup> *See, e.g.*, *Harrison v. Commissioner*, 138 T.C. 340, 346 & 346 n. 10 (2012) (citing (1) the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces and (2) the parties’ stipulation that some U.S.-German treaties did not apply: Treaty of Friendship, Commerce and Navigation; Agreement Concerning Friendship, Commerce and Consular Rights, Treaty of Friendship, Commerce and Consular Rights).

<sup>17</sup> Treas. Reg. § 301.7701(b)-1(c).

<sup>18</sup> *See* I.R.C. §§ 7701(b)(5)(A)(i), (B). The most recent guidance is that along with other A and G visa holders, A-3 and G-5 domestic workers are also non-residents. *See* USOAS Circular Note No. 07-B, (Feb. 6, 2015), <https://2009-2017.state.gov/documents/organization/237532.pdf>; USUN Circular Note No. HC-35-15 (Apr. 17, 2015), <https://2009-2017.state.gov/documents/organization/241127.pdf>. The guidance is not explicit whether they are non-residents under 893 or one of the conventions, and this seems contrary to IRM pt. 21.8.1.12.2(2)e. (10-01-2013).

<sup>19</sup> U.S. Dep’t of State, *Income Tax*, <https://www.state.gov/income-tax/> (last visited July 18, 2020).

<sup>20</sup> Other income, such as lottery winnings, is not exempt. *Jombo v. Commissioner*, T.C. Memo. 2002-273, slip op. at \*11, *aff’d*, 398 F.3d 661 (D.C. Cir. 2005); Treas. Reg. § 1.893-1(a)(1), (3).

<sup>21</sup> I.R.C. § 893(a). “[T]he United States wanted to provide benefits reciprocal to those the Philippines was extending to United States officers and employees on duty in the Philippines.” *Ying v. Commissioner*, 25 F.3d 84, 86 (2d Cir. 1994). However, Philippine citizens who are U.S. permanent residents (and not citizens) are treated like other U.S. permanent residents. *Id.*

<sup>22</sup> Diplomats and other FG officials traveling to the United States to engage solely in official duties or activities on behalf of their national government must obtain A-1 or A-2 visas before entering the United States.

<sup>23</sup> Diplomats, government officials, and employees who will work for IOs in the United States need G visas.

<sup>24</sup> *See* IRS, *U.S. Taxation of Employees of Foreign Governments & International Organizations*, <https://www.irsvideos.gov/Webinars/USTaxationOfEmployeesOfForeignGovernmentsInternationalOrganizations>.

<sup>25</sup> A-3 domestic workers’ FG salaries are exempt under the Vienna Convention on Diplomatic Relations if they work in D.C. for an embassy employee. Their FG salaries are not exempt in other situations (such as working for a consulate employee). Dep’t of State Circular Note No. 15-77 (Feb 2, 2015), <https://2009-2017.state.gov/documents/organization/237300.pdf>.

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At least for those working for the UN and Organization of American States, G-5 domestic workers' FG salaries are exempt if they work for a mission member with diplomatic privileges and immunities under the bilateral agreement between the U.S. and the IO. See USOAS Circular Note No. 07-B, (Feb. 6, 2015), <https://2009-2017.state.gov/documents/organization/237532.pdf>; USUN Circular Note No. HC-35-15 (Apr. 17, 2015), <https://2009-2017.state.gov/documents/organization/241127.pdf>.

<sup>26</sup> I.R.C. §§ 893(a)(2), (3).

<sup>27</sup> I.R.C. § 893(b).

<sup>28</sup> *Abdel-Fattah v. Commissioner*, 134 T.C. 190, 204 (2010) (stating that subsection (b) “does not purport to qualify the exemption or to take it away in any instance”). The IRS acquiesced in the decision. IRS AOD-2010-04, 2010 WL 4026734 (Oct. 15, 2010).

<sup>29</sup> See, e.g., *Harrison v. Commissioner*, 138 T.C. 340, 344 (2012).

<sup>30</sup> See 8 C.F.R. § 245.1(c)(3).

<sup>31</sup> See Form I-508, *Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities*, <https://www.uscis.gov/i-508>.

<sup>32</sup> See 8 U.S.C. § 1257(b).

<sup>33</sup> See also 8 U.S.C. §§ 1101(a)(15)(A), (G).

<sup>34</sup> Treas. Reg. §§ 1.893-1(a)(5), (b)(4).

<sup>35</sup> See Treas. Reg. § 1.893-1(c)(2).

<sup>36</sup> *Abrahamsen v. Commissioner*, 142 T.C. 405, 409-10 (2014).

<sup>37</sup> See, e.g., *Anderson v. Commissioner*, T.C. Memo. 1989-381 (citing I.R.C. §§ 6013(a)(1), (g), (h); Treas. Reg. §§ 1.6013-6(a)(4), 1.6013-7(a)(3)).

<sup>38</sup> See I.R.C. §§ 911.

<sup>39</sup> IRS Pub. 514 (2019), *Foreign Tax Credit for Individuals*, <https://www.irs.gov/publications/p514>.

<sup>40</sup> U.S. Dep't of State, *Income Tax*, <https://www.state.gov/income-tax/>.

<sup>41</sup> IRS, *Employees of a Foreign Government or International Organization - How to Report Compensation*, <https://www.irs.gov/individuals/international-taxpayers/employees-of-a-foreign-government-or-international-organization-how-to-report-compensation>. See *Rosenfeld v. Commissioner*, T.C. Memo. 2011-110, *aff'd*, 537 F.App'x 697 (9th Cir. 2013) (citing I.R.C. §§ 401(c), 404(a), (h), 408(a), (b), (k), 4979(e)(4); Treas. Reg. § 1.401-10(b)(2)).

<sup>42</sup> I.R.C. § 892(b).

<sup>43</sup> I.R.C. § 892(a)(1).

<sup>44</sup> I.R.C. § 892(a)(2)(A).

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<sup>45</sup> I.R.C. § 892(a)(2)(B). *See also*, Treas. Reg. § 1.892-5T.

<sup>46</sup> Treas. Reg. § 1.892-4T.

<sup>47</sup> *Id.*

<sup>48</sup> *Qantas Airways Limited v. United States*, No. 118-89T, 1997 WL 314403, at \*11 (Cl. Ct. Apr. 4, 1997). A prior decision by the Federal Circuit had determined it was permissible under the prior regulations to allow FG-owned entities to be treated as FGs, but only if they were not commercial. *See Qantas Airways Limited v. United States*, 62 F.3d 385 (Fed. Cir. 1995).

<sup>49</sup> The U.S. Dep't of State, Status of Persons Affected by Re-Definition of "Permanently Resident In" 3 (Nov. 1, 1991), <https://www.state.gov/wp-content/uploads/2019/05/Clarification-of-the-Permanently-Resident-in-Program.pdf>.

<sup>50</sup> I.R.C. § 3401(a)(5); Treas. Reg. § 31.3401(a)(5)-1(b).

<sup>51</sup> IRS Info. Letter, 2003-0200 (Sept. 30, 2003) (citing Treas. Reg. § 31.3401(a)-3(b)(2) as limiting I.R.C. § 3402(p)).

<sup>52</sup> *See* Treas. Reg. § 1.6153-1; IRS 2020 Form 1040-ES Estimated Tax for Individuals, <https://www.irs.gov/pub/irs-pdf/f1040es.pdf>.

<sup>53</sup> IRS, U.S. Taxation of Employees of Foreign Governments & International Organizations, <https://www.irsvideos.gov/Webinars/USTaxationOfEmployeesOfForeignGovernmentsInternationalOrganizations>.

<sup>54</sup> Treas. Reg. § 1.1441-8(d).

<sup>55</sup> Treas. Reg. § 1.1441-8(a).

<sup>56</sup> I.R.C. § 1471(a).

<sup>57</sup> I.R.C. §§ 1471(f)(1), (2).

<sup>58</sup> Treas. Reg. § 1.1441-8(b). IRS, Instructions for Form W-8EXP Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting, <https://www.irs.gov/pub/irs-pdf/iw8exp.pdf> (Jul. 2017).

<sup>59</sup> For withholding purposes, IOs need not sign a statement. The withholding agent may rely on their designation by the executive and facts showing the IO is the payment's beneficial owner. Treas. Reg. § 1.1441-8(d).

<sup>60</sup> Treas. Reg. § 1.1445-10T(b)(2).

<sup>61</sup> Treas. Reg. §§ 1.1446-1(a), (c)(2)(i), (c)(2)(ii)(G).

<sup>62</sup> *Diaz v. Commissioner*, T.C. Memo. 2012-280 n.2 (citing I.R.C. § 3121(b)(15)); *see also*, I.R.C. § 3121(b)(11).

<sup>63</sup> I.R.C. §§ 3306(c)(11), (12); Treas. Reg. §§ 31.3306(c)(11)-1, 31.3306(c)(16)-1.

<sup>64</sup> *See* I.R.C. § 1402(b).

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<sup>65</sup> See 42 U.S.C. §§ 402(a)(1), 414(a), 413(a)(2)(A)(ii).

<sup>66</sup> Employees of a Foreign Government or International Organization - How to Report Compensation, <https://www.irs.gov/individuals/international-taxpayers/employees-of-a-foreign-government-or-international-organization-how-to-report-compensation> (last updated Jan. 14, 2020).

<sup>67</sup> See I.R.C. § 1402(b).

<sup>68</sup> See 42 U.S.C. §§ 402(a)(1), 414(a), 413(a)(2)(A)(ii). The non-accumulation of benefits by resident aliens was upheld against a constitutional challenge. See *Letourneau v. Califano*, 453 F. Supp. 636, 638-39 (S.D.N.Y. 1978).

<sup>69</sup> See I.R.C. §§ 1402(c)(2)(C), 3121(b)(11), (15), (y); 42 U.S.C. §§ 411(c)(2)(C), 410(a)(11), (15), (r).

<sup>70</sup> *Braddock v. Commissioner*, 95 T.C. 639, 643 (1990); see also, *Letourneau*, 453 F. Supp. 636, 638 (S.D.N.Y. 1978).

<sup>71</sup> *Smart v. United States*, 222 F. Supp. 65 (S.D.N.Y. 1963), *aff'd*, 332 F.2d 283 (2d Cir. 1964).

<sup>72</sup> *Braddock*, 95 T.C. at 641, 645.

<sup>73</sup> See *Weaver v. Commissioner*, T.C. Summ. Op. 2012-52.

<sup>74</sup> See I.R.C. §§ 1401(c), 3101(c), 3111(c); 42 U.S.C. § 433. A totalization agreement “must be interpreted in light of its full text and the shared expectations of the contracting governments,” and the Tax Court committed a reversible error when it interpreted a totalization agreement between the United States and France using only American dictionaries. *Eshel v. Commissioner*, 831 F.3d 512, 522-23 (D.C. Cir. 2016).

<sup>75</sup> Social Security Coverage for Employees of Foreign Governments and Instrumentalities of Foreign Governments Working in the United States, <https://www.ssa.gov/pubs/EN-05-10566.pdf>.

<sup>76</sup> 42 U.S.C. § 433; 20 C.F.R. §§ 404.1901 *et seq.*; U.S. International Social Security Agreements, [https://www.ssa.gov/international/agreements\\_overview.html](https://www.ssa.gov/international/agreements_overview.html) (last accessed July 22, 2020).

<sup>77</sup> See I.R.C. § 1402(c)(2)(C).

<sup>78</sup> BSA Electronic Filing Requirements for Report of Foreign Bank and Financial Accounts (FinCEN Form 114) 4 (Jan. 2017), <https://www.fincen.gov/sites/default/files/shared/FBAR%20Line%20Item%20Filing%20Instructions.pdf>; see also, 31 C.F.R. § 1010.350; 31 U.S.C. § 5314 (b).

<sup>79</sup> 31 U.S.C. § 5314(a).

<sup>80</sup> See I.R.C. § 6851(d); IRS, Departing Alien Clearance (Sailing Permit), <https://www.irs.gov/individuals/international-taxpayers/departing-alien-clearance-sailing-permit>.

<sup>81</sup> Treas. Reg. §§ 1.6851-2(a)(2)(i)(1), (b).

<sup>82</sup> Treas. Reg. § 1.6851-2(a)(2)(i)(2).



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<sup>83</sup> U.S. Dep't of State, Office of Foreign Missions, <https://www.state.gov/ofm> (last visited July 27, 2020).

<sup>84</sup> See U.S. Int'l Trade Comm'n, Harmonized Tariff Schedule (2020), <https://hts.usitc.gov/view/finalCopy?release=2020HTSARev11>.

<sup>85</sup> 19 C.F.R. § 148.81(d); *see also*, 22 U.S.C. § 288a(d).

<sup>86</sup> 19 C.F.R. § 148.83.

<sup>87</sup> 22 U.S.C. § 288b; 19 C.F.R. § 148.87.

<sup>88</sup> 19 C.F.R. § 148.85.

<sup>89</sup> 19 C.F.R. § 148.89.

<sup>90</sup> 19 C.F.R. § 148.81(a). *But see* 22 U.S.C. § 288f (IO-related exemptions do not depend on reciprocity).

<sup>91</sup> U.S. Dep't of State, Sales Tax Exemption, <https://www.state.gov/airline-tax-exemption>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> I.R.C. §§ 4081(a)(2)(A)(i), (iii). The tax is imposed on fuel removal from refinery or terminal, or upon entry into the U.S., or if not taxed under one of the above, upon sale. I.R.C. § 4081(a)(1).

<sup>95</sup> See Federation of Tax Administrators, State Motor Fuel Excise Tax Rates (Jan. 1, 2020), <https://www.taxadmin.org/assets/docs/Research/Rates/mf.pdf>.

<sup>96</sup> Rev. Rul. 89-8, 1989-1 C.B. 294; U.S. Dep't of State, Gasoline Tax Exemption, <https://www.state.gov/gasoline-tax-exemption>. *See also*, 20 CRR-NY 529.5(i).

<sup>97</sup> U.S. Dep't of State, Gasoline Tax Exemption, <https://www.state.gov/gasoline-tax-exemption>.

<sup>98</sup> *Id.*

<sup>99</sup> New York State Dep't of Tax'n and Finance, Government Entity Credit Card Refund or Credit Election, [https://www.tax.ny.gov/pdf/current\\_forms/misc/ft505\\_1.pdf](https://www.tax.ny.gov/pdf/current_forms/misc/ft505_1.pdf).

<sup>100</sup> I.R.C. § 4251.

<sup>101</sup> I.R.C. § 4253(c).

<sup>102</sup> U.S. Dep't of State, Sales Tax Exemption, <https://www.state.gov/sales-tax-exemption>. For more guidance on hotel stays, *see* U.S. Dep't of State, Note No. 13-619 (July 19, 2013), <https://www.state.gov/wp-content/uploads/2019/05/227886.pdf>.

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See Streamlined Tax Governing Board, Inc., State Information, <https://www.streamlinedsalestax.org/Shared-Pages/State-Detail> (as of March 24, 2020, the website lists as full members AR, GA, IN, IA, KS, KY, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, UT, VT, WA, WV, WI and WY; TN is the sole associate member, and the remaining states are non-members).

<sup>109</sup> U.S. Dep't of State, Vehicle Tax Exemption, <https://www.state.gov/vehicle-tax-exemption/>

<sup>110</sup> The letter may be obtained by phone or email. Sellers and lessors in MD, VA and DC may email OFMTaxCustoms@state.gov. Others may email the nearest regional office. Chicago: OFMCGCustomerService@state.gov, Houston: OFMHOCustomerService@state.gov, Los Angeles: OFMLACustomerService@state.gov, Miami: OFMMICustomerService@state.gov, New York: OFMNYCustomerService@state.gov, San Francisco: OFMSFCustomerService@state.gov.

<sup>111</sup> U.S. Dep't of State, Utility Tax Exemption, <https://www.state.gov/utility-tax-exemption>.

<sup>112</sup> Form DTF-950, Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel, [https://www.tax.ny.gov/pdf/current\\_forms/st/dtf950.pdf](https://www.tax.ny.gov/pdf/current_forms/st/dtf950.pdf).

<sup>113</sup> New York State Workers' Compensation Board, Workers' Compensation Coverage, Foreign Government Employees, <http://www.wcb.ny.gov/content/main/onthejob/CoverageSituations/foreignGovEmp.jsp>.

<sup>114</sup> New York State Workers' Compensation Board, Disability Benefits Coverage, Foreign Government Employees, <http://www.wcb.ny.gov/content/main/DisabilityBenefits/CoverageSituations/foreignGovEmp.jsp>.

<sup>115</sup> New York State Dep't of Taxation and Finance, Instructions for Form CT-33-D (August 2016), [https://www.tax.ny.gov/pdf/current\\_forms/ct/ct33dCpdf](https://www.tax.ny.gov/pdf/current_forms/ct/ct33dCpdf).

<sup>116</sup> New York Dep't of State, Questions and Answers - A Complete List, V. Out of State Payors, Q4, <https://www.health.ny.gov/regulations/hcra/questions/faq/allqa.htm>.

<sup>117</sup> *See id.*

<sup>118</sup> New York City Dep't of Finance, Domestic and Foreign Government Property Tax Exemptions, <https://www1.nyc.gov/site/finance/benefits/benefits-domestic-and-foreign-governments.page> (citing 22 U.S.C. § 4305).

<sup>119</sup> Foreign governments exemption (generally) (liability for tax liens)—Real Property Tax Law, § 418, 5 Op. Counsel SBEA No. 63 (N.Y. Bd. Equal. & Ass.), 1975 WL 21600 (Dec. 16, 1975).

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<sup>120</sup> Permanent Mission of India to the United Nations v. City of New York, 551 U.S. 193, 195-97, 202 (2007) (quoting N.Y. Real Prop. Tax Law Ann. § 418 and citing 28 U.S.C. § 1605(a)(4)).

<sup>121</sup> U.S. Tax Treaties, Publication 901 available at <https://www.irs.gov/pub/irs-pdf/p901.pdf>

<sup>122</sup> See, e.g., Convention Between the Government of the United States and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income art. 20, Sept. 9, 1994, <https://www.irs.gov/pub/irs-trty/sweden.pdf>.

<sup>123</sup> See IRS Pub. 901, U.S. Tax Treaties 27-33 (Sep. 2016), <https://www.irs.gov/pub/irs-pdf/p901.pdf>.

<sup>124</sup> Rev. Proc. 2020-1 sec. 6.07, IRB 2020–1 (citing Rev. Proc. 2015-40 sec. 13.02).

<sup>125</sup> Rev. Proc. 2020-7 sec. 4.01(7)-(9), IRB 2020–1.

<sup>126</sup> See I.R.M. Exhibit 9.5.13-1 (Jan. 6, 2009). This listing is not exhaustive. Other Code sections “imposing tax” are also, in effect, punitive. See, e.g., I.R.C. §§ 1461, 1463.

<sup>127</sup> IRS Criminal Investigation Voluntary Disclosure Practice, <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (last updated Nov. 25, 2019).

<sup>128</sup> IRS, Streamlined Filing Compliance Procedures, <https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures> (last updated Apr. 17, 2020).

<sup>129</sup> IRS, Delinquent FBAR Submission Procedures <https://www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures> (last updated May 29, 2020).

<sup>130</sup> IRS, Delinquent International Information Return Submission Procedures, <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures> (last updated July 20, 2020).

<sup>131</sup> IRS, Frequently Asked Questions and Answers, Amended Returns & Form 1040X, <https://www.irs.gov/faqs/irs-procedures/amended-returns-form-1040x/amended-returns-form-1040x> (last updated Jan. 3, 2020).