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Taxation of mobile employees working in the United States (inbound)

People and Organisation

Taxation of mobile employees working in the United States Folio

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Additional Country Folios can be located at the following website:
Global Mobility Country Guides

Introduction: International assignees working in the United States

This Folio was prepared by PricewaterhouseCoopers[1] to provide international assignees planning to work in the United States with a general background of US tax laws and other relevant issues. It reflects tax law and practice as of August 2016.

This Folio traces a US assignment through seven steps. These steps address the specific issues individuals should address prior to arriving in the United States, during the US assignment and subsequent to the assignment. Familiarity with these issues should help to make any US assignment easier and more enjoyable.

This Folio is not intended to be a comprehensive and exhaustive study of US tax laws, but should be used as a guide to prepare for an assignment in the United States. Any decisions regarding an assignment should be made only after obtaining professional advice. This Folio should provide the preliminary information necessary to define the issues relevant for each situation.

Further information can be obtained from any PwC office.

PwC provides industry-focused assurance, tax and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 161,000 people in 154 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

The growing need for companies to expand globally has greatly increased the necessity for companies to transfer personnel between countries. As both the cost of such transfers and the need to encourage the mobility of executives increase, timely global tax and social security planning become even more important.

PwC has assembled a team of Global Mobility Services (GMS) specialists from its worldwide network of offices and firms to provide comprehensive service to executives as they move throughout the world.

Among others, the following topics are not covered in this Folio:

1. Planning tax-effective remuneration strategies, including dual or multiple employments, pre- and post-assignment planning, stock options and other potentially tax- efficient benefits;
2. Refining social security costs and benefits;
3. The proper structuring of US and non-US assignment policies;
4. Corporate tax implications.

This Folio is part of a series of Folios on international assignees working in various countries and provides an introductory guide to clients. Further advice can be sought from any of the GMS contacts listed at the end of the Folio.

[1] "PricewaterhouseCoopers" or 'PwC' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

Step 1:
Understanding basic principles

1. As a general rule, all non-US citizens (i.e., foreign nationals) who live, work or invest in the United States should be concerned that the US federal government will tax some or all of their income. The scope of US taxation for non-US citizens depends on each individual's status as a 'resident alien' or 'nonresident alien' for US purposes, as discussed further in paragraphs 10-20.

2. The US federal government taxes foreign nationals who are considered resident aliens in broadly the same way that it taxes US citizens. In other words, a foreign national who is a US tax resident can generally expect to pay income tax in the United States on all worldwide taxable income whether or not the income is derived, earned or paid from the United States. Nonresident aliens are expected to pay income tax on only income that is 'sourced' in the United States or otherwise effectively connected with a US business. The Internal Revenue Service (IRS) administers all US federal income tax law.

3. A foreign national may potentially be subject to US federal estate tax should he or she die while owning US- situs assets/US property or while domiciled in the United States. Similarly, such individuals could be subject to US federal gift tax if 1) they make gifts of US-situs assets/US property, or 2) are considered US domiciled and they make gifts of property located anywhere in the world (see the discussion in Step 7).

4. In addition to the federal requirements, each state within the United States has different tax laws. Most of the 50 states impose some personal income tax, though few states impose income tax at rates which exceed 10 percent. Because state income taxes are generally deductible for federal income tax purposes, the net cost of paying state taxes is often only about two-thirds of the statutory state tax rate, depending on the applicable federal income tax rate and whether the taxpayer is subject to the Alternative Minimum Tax (the AMT is a US federal income tax that is calculated in a manner similar to the regular federal income tax, but with a number of special adjustments).

5. The United States also imposes federal Social Security and Medicare (collectively known as 'FICA') taxes on remuneration paid to individuals working in the United States. In some cases, foreign nationals who work outside the United States are also subject to US FICA tax. For 2015 and 2016, the Social Security tax rate of 6.2 percent is assessed on the first $118,500 of FICA compensation and there is no limit on salary that is assessed at the Medicare tax rate of 1.45 percent. Also, there is an additional 0.9% Medicare tax on earned individual income of more than $200,000 ($250,000 for married couples filing jointly). A detailed tax computation is illustrated in Appendix B. An equal, matching tax is imposed on the individual's employer for FICA taxes, with the exception of the additional 0.9% (see paragraphs 65-68). A comparable tax is imposed on individuals who are self-

employed (equal to the employee and employer portions, known as 'self-employment tax').

6. A net investment income tax (NIIT), also known as the Unearned Income Medicare Contribution, applies at a rate of 3.8% to the net investment income of certain individuals, estates, and trusts that have MAGI** above defined statutory thresholds. These thresholds include $250,000 for married filing jointly, $125,000 for married filing separately, $200,000 for single and head of household, and $250,000 for a qualifying widower with a dependent child. Net investment income generally includes, but is not limited to, interest, dividends, capital gains, rental and royalty income, non-qualified annuities, and income from businesses that are passive activities to the taxpayer.

***For NIIT purposes, the term "modified adjusted gross income" or MAGI means adjusted gross income increased by the excess of (i) the amount excluded from gross income under Code Section 911(a)(1), over*

(ii) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under Code Section 911(d)(6) with respect to the amounts described in (i).

The tax year

7. The United States tax year for individual taxpayers generally is the same as the calendar year (January 1 through December 31).

Methods of calculating tax

8. US federal income taxes are calculated by aggregating all income less statutory exclusions and deductions, as further discussed in Step 2. Such taxes may be offset by various types of credits where available. Most states also calculate their personal tax liabilities on the same basis, often with rules that are substantially the same as the federal rules. Both federal and state income tax laws have various filing options based on marital status and on certain other factors.

Married couples

9. Under the federal income tax law, it is often possible for a married couple to aggregate their income and deductions by filing a 'joint' return. A lower amount of tax usually results when compared with the otherwise applicable 'married filing separate' rates. Many states also have a joint return filing status for married couples, though often without a more favorable tax rate structure. For US federal estate and gift tax purposes, tax is imposed on each spouse's ownership in the asset that is transferred.

Determination of resident alien or nonresident alien status

10. Prior to embarking on an assignment to the United States, individuals should become familiar with the criteria for classification as a resident or nonresident and the implications of this status for US income tax purposes. This designation will determine whether such individuals will be taxed on worldwide income (resident) or on only US source income and income effectively connected with a US trade or business (nonresident).

    The US residency status of foreign nationals is generally determined based on a series of objective tests, one of which measures the amount of time the individual spends in the United States. There are, however, certain exceptions and elections that can (in certain circumstances) change the residency determination for an individual. Further, an individual's status as either a resident or nonresident alien may change during the course of an assignment (possibly more than once), or even within the same calendar year.

Green card holders - resident aliens

11. In general, foreign nationals who hold US permanent residence immigrant visas (commonly referred to as 'green cards') are automatically classified as resident aliens, with certain exceptions sometimes available under treaty. For those who do not meet the substantial presence test (discussed below), resident alien status is generally deemed to commence on the earlier of the first day in the US after obtaining the green card or on January 1 of the year following the year the green card is obtained. Resident alien status generally continues until the green card is formally relinquished. Thus, individuals who hold green cards but leave the US to live abroad indefinitely or permanently will generally continue to be classified and taxed as resident aliens at least until the green card is formally relinquished (expiration is not relevant for tax purposes). Complex rules also apply to individuals who relinquish their green cards if they held the green card in at least eight of the 15 years prior to relinquishment. Professional tax advice should always be sought prior to obtaining or relinquishing a green card.

Residence status

12. In contrast with the tax rules for immigrant aliens, foreign nationals who hold nonimmigrant visas may be classified as either resident aliens or nonresident aliens, based on their particular facts. Most nonimmigrant aliens determine their US tax status on the basis of the 'Substantial Presence Test' of US law, which counts the number of days the individual has spent in the United States during the current calendar year and the previous two calendar years. In the following discussion, any part-day is counted as a full day, and a day is counted whether the individual's purpose in visiting the United States is business or pleasure. For purposes of the following discussion, special categories described in paragraph 16 are ignored.

Substantial Presence Test

13. As a general rule, an individual physically present in the United States for at least 183 days in the current year will be classified as a resident alien. However, individuals present in the United States for fewer than 183 days may still be resident aliens if they meet the 'look- back' rules of the Substantial Presence Test. Under these rules, an individual, present in the United States for at least 31 days in the current year, will be considered a resident alien if the sum of the following equation equals or exceeds 183 days:

    – number of days in the United States in the current year, plus

- one-third of the days in the United States in the first preceding calendar year, plus
- one-sixth of the days in the United States in the second preceding calendar year.

Example of the Substantial Presence Test

14. An example of the Substantial Presence Test follows. Assume an individual moves to the United States during the current year and his or her total US days for this year are 170. Assume that last year he or she was present in the US 30 days, and was present in the US 18 days the year before last.

Substantial Presence Test calculation	Example 1	Example 2
Days in current year	170	169
Days in first preceding year x 1/3 (30 x 1/3)	10	10
Days in second preceding year x 1/6 (18 x 1/6)	3	3
Total calculated days	183	182

Because the total is at least 183, the individual would generally be considered a resident alien for at least a portion of the current year.

However, if the number of days in the current year were only 169 (Example 2), the individual would not be considered a resident alien for the year under the Substantial Presence Test because the total days in the US would add up to only 182.

Exceptions to the Substantial Presence Test

15. There are several important exceptions to the Substantial Presence Test. An individual who meets the look-back test but is present in the United States for less than 183 days during the current year may still qualify as a nonresident alien if he or she can establish a 'closer connection' to his or her home country. To meet this exception, the individual must have a tax home in a foreign country as well as having closer ties to that country than to the US for the entire year. The term 'tax home' generally relates to the location of an individual's primary place of employment, while the term 'closer connection' looks to a number of factors, which includes where the individual maintains his or her principal residence and personal belongings and where his or her principal economic and personal connections lie. An individual who does not work will generally be deemed to have his or her tax home follow him/her wherever physically present. The applicable tax regulations require that eligible individuals file a statement with the IRS to claim this exception.

Exempt days under the Substantial Presence Test

16. For certain categories of nonimmigrant aliens, days of presence are exempt when calculating the Substantial Presence Test, either indefinitely or for a period of several years. These include ***(but are not limited to)*** the following individuals:
    - Individuals on 'F' or 'J' visas (certain students, teachers or trainees):
        - The period of exemption for F-visa holders is generally the first five calendar years of US presence under the visa (though may extend beyond if certain requirements are met);
        - For J-visa holders the period of exemption is typically the first two calendar years, or four years if all of the J-visa holder's salary is paid/borne by a foreign employer.
    - Individuals on 'M' or 'Q' visas (certain nonacademic students and cultural exchange visitors);
    - Employees of foreign governments and international

organizations working in the United States;

- Certain individuals with medical problems that arise while in the United States and that prevent them from leaving the country, provided that they file timely statements with the IRS explaining their situation in full (together with a statement from their physician);
- Mexican and Canadian residents who commute to work in the United States provided they are present in the United States on at least 75 percent of their workdays for the year.

Electing resident status

17. Resident alien status sometimes results in lower US tax than nonresident alien status, due (for example) to increased allowable deductions and credits and lower tax rates for certain married taxpayers. Certain nonresident aliens may elect resident alien status if specific requirements are met. To qualify for one such election, the individual must be in the United States for at least 31 continuous days during the year covered by the election and be classified as a resident alien using the Substantial Presence Test (see above) in the subsequent calendar year (in addition to certain other requirements). See below for related additional elections available for certain married taxpayers.

Dual status - first and last year

18. Once an alien individual is classified as a resident alien for a taxable year (either on the basis of the substantial presence test or by reason of an election), it must be determined when the residency period begins. During the period within the tax year but before establishing tax residency, an individual is considered a nonresident alien and taxed on only US source income and income effectively connected with a US trade or business. During the resident period, individuals are taxed on their worldwide income. If classified as a resident alien for part of the year and as a nonresident alien for the balance of the year, an individual's status is that of a 'dual-status' alien for the year.

    The residency start date for an individual who was a nonresident alien in the previous year is generally the first day of presence in the United States in the current year. It may be possible to disregard up to 10 days of presence when determining the residency start date if, on those days, the individual had a tax home in a foreign country and a closer connection to such foreign country than the United States. As the relevant rules can be complex, a specialist should be consulted to assist with planning trips into and out of the United States.

    In the year a resident alien moves out of the United States, similar rules apply. Generally, US residence terminates on the last day of the taxable year. However, an individual may terminate his or her US residency status on the last day of US presence if, after that date, he or she establishes a tax home in and a closer connection to another country for the remainder of the tax year. In determining this end date, up to 10 days of US presence may be excluded if certain requirements are met. In order for the 'early residence termination' exception to apply, the IRS requires that a statement be filed claiming the exception. The same election may apply to terminate residency during years in which a green card is formally relinquished.

    Again, as the relevant rules can be complex, a specialist should be consulted to assist with repatriation planning.

Joint election as resident alien for the entire year

19. Because the favorable joint return tax rates and limits for a married couple are available only if both spouses are

resident aliens for the entire year, the law permits certain married nonresident and dual status aliens to elect with their US citizen or resident spouse to be taxed as resident aliens for the entire year. This is usually done during the couple's first year in the United States, provided that at least one of them is a US citizen or a resident alien on the last day of the year under one of the rules mentioned above. An election to be taxed as a resident alien for the entire year is not available to single taxpayers. If the full-year residency election is made, all income for the year is taxable in the United States, though certain exclusions and/or a credit can usually be claimed for foreign taxes imposed on foreign income for the months prior to the move. Depending on circumstances, the election may automatically apply to future years until and unless revoked, or until both spouses become full year nonresidents of the US.

Tax treaty relief

20. The United States has income tax treaties with a number of foreign countries primarily for the purpose of eliminating double taxation. If there is a tax treaty in effect between the United States and an individual's home country, the provisions of the treaty may override the US resident alien rules. Under many of these treaties, for example, an individual classified as an income tax resident under the internal laws of both the United States and his or her home country, who can show that a 'permanent home' is available only in the home country (with certain other tests relevant if the individual has a permanent home available in one or both countries) may be classified as a nonresident alien for purposes of calculating US income tax if the taxpayer chooses to apply the treaty. The regulations require that a form be filed in order to claim nonresident alien status as the result of a tax treaty, and indicate that such status typically does not apply for purposes other than calculating income tax (for example, information reporting).

Step 2:
Understanding the US tax system

A. In general

21. As noted earlier, perhaps the most significant impact of taxation as a resident alien is that resident aliens are subject to US federal income tax on worldwide income in the same general manner as US citizens. Although generally, a resident alien is taxable on worldwide income and a nonresident alien is taxable on only US source income and income effectively connected with a US trade or business, a resident alien's US tax is sometimes lower than the tax on a nonresident alien with comparable income. This occurs in part because certain deductions can only be claimed by citizens and residents (i.e., not by nonresident aliens). Examples of these include, but are not limited to deductions for home mortgage interest expense and property taxes. In addition, personal exemptions for dependent family members, the often lower joint return tax rates for married US residents who file jointly and, in certain circumstances, a credit for foreign income taxes may all serve to further reduce the US tax liability of a US resident alien. In contrast, nonresident aliens are generally taxed on only US source income or income effectively connected with a US trade or business, but usually may claim only one personal exemption. Additionally, nonresident aliens may not file a joint return with their spouse if married (unless the election discussed earlier to be treated as a resident applies); thus, they do not get the benefit of the more beneficial joint rates and limitations.

22. US citizens and resident aliens are taxed at graduated rates varying from 10 percent to 39.6 percent for federal income tax purposes (2016 rates), plus the additional 3.8% tax on unearned income discussed earlier (see paragraph 6). These rates are applied to an individual's worldwide income, after reduction for all statutory exemptions and deductions allowed to the taxpayer.

    Depending upon filing status, US individual taxpayers are subject to four separate federal tax rate schedules. The filing statuses available include:

    – single

    – married filing a joint return

    – married filing a separate return

    – head of household.

23. In addition to the federal income tax, most states impose individual income taxes, as do a few local taxing authorities (cities and counties).

24. The discussion below examines the US taxation of various kinds of income a foreign national may have, assuming alternatively, that the individual is classified as a resident alien or as a nonresident alien. Note, however, that it is fairly unusual for a foreign national on a multi-year US assignment to be classified as a nonresident alien, except in the first and final years of an assignment.

B. Resident aliens

The taxation of employment income

25. Wages, salaries, and all other employee compensation of a resident alien are subject to federal income tax, regardless of where the services are

performed or where the employee is paid (with limited exceptions). Payments of bonuses and other compensation for past services, even if those services were rendered wholly outside the United States when the employee was a nonresident alien, are subject to US tax if the payee is a resident alien on the date of receipt. Therefore, it may be beneficial for compensation for non-US services performed before the foreign national becomes a resident alien to be paid prior to establishing US residency. One exception to this rule occurs if deferring receipt of the compensation until after the foreign national becomes US resident has the effect of avoiding foreign tax at a higher rate than would be imposed in the United States. If a payment is subject to US and foreign tax, a foreign tax credit may generally be claimed on the US and/or foreign return to mitigate the effect of double taxation.

26. Payments by an employer to an employee to cover part or all of the following types of expenses generally are taxable for US purposes (although some of these expenses may be deductible or excludible under the 'away-from-home' rules described in paragraphs 53-59):

– the cost of rental housing or fair rental value of corporate housing in the United States (including reimbursement for the cost of utilities)

– the so-called 'cost of living' allowances (COLAs) or differentials

– the cost of sending children to private school either in the United States or abroad

– the payment of home-leave expenses for the assignee, his or her spouse, or other persons

– the fair rental value of company cars and reimbursement of other locally-provided transportation (including car leases) if used for personal purposes.

In addition to the above, noncash compensation and fringe benefits received in connection with employment (such as contributions or accruals to a company-sponsored foreign pension plan, stock-option exercises, deferred compensation arrangements, and interest-free loans) should be examined carefully to determine to what extent they are subject to US tax. We recommend that individuals participating in non-US deferred compensation and pension plans consult with a specialist **before** beginning their US assignment.

27. Although employer-provided housing and transportation is typically taxable, in some cases the value may be deductible (subject to certain limitations) or excludible if the employee is on a temporary US assignment intended to be 12 months or less (see paragraphs 53-59). In addition, if the employee is required, as a condition of employment, to live in a home or an apartment that the company owns or leases in its own name, the rental value may be nontaxable to the employee, no matter how long the US assignment lasts. It should be noted that the requirements for this exemption to apply are strict and rarely apply.

Stock options

28. Foreign nationals who are granted stock options prior to their residency start date in the US may be subject to US tax at exercise on all or part of the realized income at such time. In most cases, when a foreign national who is a resident alien exercises an option to buy stock, the spread between the option price and the fair market value of the stock at the time of exercise is subject to US income tax. A portion of the spread may be treated as foreign-source (to the extent allocable to services rendered in the foreign country). As a

result, even though the full spread will be subject to tax in the US, a foreign tax credit may generally be claimed to reduce or eliminate the US tax (assuming foreign tax is paid on this income).

The stock purchased as a result of a stock-option exercise will generally have a US tax basis equal to its fair market value on the purchase (i.e., exercise) date. If the individual later sells the stock while still a resident alien, the capital gain or loss for US tax purposes will be determined with reference to the stock's value on the date of exercise.

29. To determine the extent to which the spread on an employment-related stock-option exercise represents services performed within the United States or abroad, the IRS generally looks at the period from the date the option was granted through the date the option is vested. For example, assume that an option was granted to an employee on January 1, 2011; that the employee moved from a foreign country to the United States on January 1, 2014; that the option vested on January 1, 2015; and that the employee exercised the option on January 1, 2016, while a resident alien. As a resident at the date of exercise, the entire spread will be reportable on the US return. However, under the IRS's typically preferred method of allocation, 25 percent of the spread would be US source income (i.e., two years of US services out of the five-year total between grant and vest) and the 75-percent balance would be foreign source income (though other methods of allocation may be available). The US tax on the foreign source piece may be offset by foreign tax credits, if available.

30. Individuals considering the exercise of stock options during or after a US assignment should also consider consulting with a tax advisor to ascertain whether the spread will be subject to tax in the home country and to optimize the timing of such exercise.

The taxation of self-employment income

31. Where an individual works for him/herself, that individual is generally deemed to have self-employment income. Self-employment income is taxed under US law in a manner similar to employment income. Thus, a self-employed resident alien is also taxed on worldwide income, including self-employment income earned abroad. However, a self-employed individual may often claim more liberal deductions for business expenses than an employee. It is also important to note that alien individuals may (subject to certain exceptions) be subject to 'self-employment tax' in the US on self-employment income earned while resident in the US. Self-employment tax is a social tax (Social Security and Medicare) for individuals who work for themselves. It is similar to the Social Security and Medicare taxes imposed on the pay of most US wage earners.

The taxation of investment income

32. Investment income received by a resident alien (e.g., interest, dividends, capital gains and rental income) is subject to full US tax, whether it is from US or foreign sources. However, the US tax on foreign source investment income may be reduced or eliminated by a foreign tax credit to the extent that foreign taxes are imposed on such income. Because the relevant US foreign tax credit rules are extremely complex, professional advice should be sought. The fact that the income may receive advantageous tax treatment under foreign law is usually not relevant for US tax purposes. For example, interest earned on a bank account in the Channel Islands may escape UK taxation for certain individuals, but will be subject to US tax if the account holder is a US citizen or resident alien at the time earned.

Capital gains tax

33. Property held longer than one year generally is eligible for the 15 percent maximum capital gains rate (20 percent for individuals in the 39.6 percent tax bracket), and 0 percent if the individual is in the 15 percent or less tax bracket). There is also a 25 percent maximum tax rate applied to long-term capital gains attributable to certain depreciation claimed after May 6, 1997, and a 28% maximum rate on gains attributable to certain collectibles and small business stock.

34. Capital losses are generally deductible only against capital gains, but if capital losses exceed capital gains for the tax year, a maximum of $3,000 is available to offset other income ($1,500 for married filing separately). Any unused capital losses may be carried forward indefinitely to be used in subsequent years.

35. Even if an asset is sold that was acquired before becoming a resident alien, the gain is calculated based on the asset's historic cost using the US dollar exchange rate on the date it was acquired.

    For example, assume an asset was purchased in 2012 for 1,000 X currency (when 1 X currency was worth $1.25), and after the individual became a resident alien the asset was sold on May 1, 2016, for 10,000 X currency (on a date when X currency was worth $1.50). The taxpayer would be subject to US tax on the gain calculated in US dollars. The cost basis would be US $1,250 (at the 2012 exchange rate of one X currency equals $1.25), and the sales price would be $15,000 (using the May 1, 2016, exchange rate). Certain exceptions may apply.

    For assets acquired by inheritance, the tax basis (cost) would generally be the market value of the asset on the date of the decedent's death, while gifted assets would have a basis equal to the donor's basis.

36. If an individual holds assets with significant ‘built-in’ gains that are expected to be sold while a resident alien, he or she should consider taking action to ‘step up’ (increase) the US tax basis before becoming a resident alien.

    For example, while still a nonresident alien, the individual might consider selling the asset and then buying it back if desired, provided that this did not result in foreign income tax or resulted in a foreign tax lower than the US tax that would apply if recognized while a US resident.

Sale of principal residence

37. US tax may be charged if a resident alien sells a principal residence – regardless of where it is located. In general, under US law, an exclusion of up to $250,000 ($500,000 if married filing a joint return) is available if the home has been owned and used as the taxpayer's principal residence for at least two of the five years prior to sale. The exclusion can generally be claimed once every two years. Gains not covered by the exclusion are subject to tax.

    Special rules that apply where part of the gain is allocable to ‘nonqualified use’ may have unintended negative consequences for individuals with temporary absences from their home.

    If a taxpayer has a period of nonqualified use, the portion of gain related to such period cannot be excluded, and is taxed as a capital gain.

    Nonqualified use is any period after December 31, 2008, that the taxpayer does not occupy a residence as a principal residence. Exceptions to this general rule are as follows:

    – during the five-year qualification period ending on the date of sale, any period after the last day such property is used as a principal residence is

not treated as nonqualified use;

- any period (not to exceed an aggregate of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty is not treated as a nonqualified use;

- any period of temporary absence, not to exceed two years, due to change in place of employment, health conditions or unforeseen circumstances (as may be specified by the Secretary) is not treated as nonqualified use.

Although the nonqualified use provisions effectively target investment-driven residential real estate purchases and sales, it can have significant consequences for taxpayers who vacate their principal residence while temporarily away on an international assignment.

As noted above, the law contains a favorable exception to nonqualified use that allows for temporary absences of up to two years, and a further exception for periods of use following use by the taxpayer as a principal residence. However, if a taxpayer is absent for more than two years, and reoccupies the residence upon their return, the entire period of absence may be treated as nonqualified use.

Because a loan is treated separately from the underlying property, US tax will typically be charged on any gain realized on payment of principal (e.g., via refinancing or retirement) on a foreign currency denominated mortgage. This is true even if gain on the underlying property is excluded or if sale of such property results in a loss. Therefore, professional advice should be sought before refinancing a foreign currency loan or disposing of or renting out a property with a non-US dollar mortgage, and it may be beneficial to do so prior to establishment of a US tax home or tax residency.

38. The opportunity exists for an individual to qualify for a partial exclusion if the 'two-of-five-year' test has not been met. The exception to nonqualified use for any period that follows the last use as a principal residence, is consistent with the favorable treatment allowed for individuals failing to meet the ownership and use tests because of a change in place of employment, health, or unforeseen circumstances. Therefore, as long as the international assignee does not reoccupy the home prior to sale, a full or partial exclusion may be claimed.

39. However, where a principal residence has been depreciated, typically as a result of the rental of the property, the exclusion does not apply to the extent of any depreciation allowable after May 6, 1997. Instead, the gain attributable to such depreciation is taxed at a 25 percent rate as discussed above under the discussion of capital gains.

40. If a foreign home is rented out while an individual is on assignment in the US, it may cease to qualify for exclusion of gain for US tax purposes if the ownership and usage tests or the exclusion every two years tests mentioned above are not met (as well as taking into consideration nonqualified use). In such a case, any gain upon sale while the individual is a US resident will be subject to US tax (though such tax may be offset by foreign tax credits if available).

    In addition, if a principal residence in the United States is sold after terminating residency in the United States, the individual could be subject to US tax on the gain even if, on the sale date, he or she is a nonresident alien. However, the exclusion or a prorated exclusion may be available if the ownership and use tests are met. The sale of US real

property by a nonresident alien may be subject to a withholding tax of 15 percent of the sales price (this rate was previously 10% but increased to 15% in early 2016). This is the case even if the withholding exceeds the tax on the gain and even if the property is sold at a loss. Professional advice should be sought prior to the sale of US real property by a nonresident in order to potentially avoid such a withholding requirement.

Rental of principal residence

41. If a foreign national chooses to rent out his or her principal residence abroad while on assignment in the US, as a resident alien he or she will be taxed on the rental income, but will be entitled to deduct interest on any home mortgage, property taxes, agents' fees, the cost of maintenance and insurance, and other related expenses. In addition, while not an actual cash outlay, a deduction is permitted for depreciation on the home itself and on any furniture that is included in the rental. The result may be a tax loss, which may be deductible against salary and other income, subject to certain limitations. For a nonresident alien, the rental of a residence located outside of the US would not generally be taxable in the US, as it is not US source income or income effectively connected with a US trade or business.

Investments in foreign companies

42. Resident aliens who own stock in certain non-US corporations may be required to pay US income tax on their share of the undistributed profits of those companies. These rules may apply, for example, if a small group of US persons control a majority of the company stock, or if the company realizes a significant amount of passive income (such as dividends, interest and capital gains) or certain types of business income from dealing with either its shareholders or with other related companies. Because these rules are extremely complex, professional advice should be sought by individuals owning stock in any closely held foreign companies. These rules are known as the controlled foreign corporation (CFC, or Subpart F) rules.

43. Although stock may be owned in a foreign company that is not subject to the CFC rules, if the company has substantial passive income the US resident owner could be subject to a special interest charge in addition to a US capital gains tax when the stock in the company is sold or redeemed (certain exceptions and separate rules may apply if elections are made). The interest charge is intended to have the same effect as if US tax were paid in prior years before selling or redeeming the stock.

    These rules are applied under the passive foreign investment company (PFIC) provisions of US law. Again, because these rules are extremely complex, professional advice should be sought by foreign national individuals who own stock in non-US corporations.

44. Whether or not a foreign national is subject to the CFC or PFIC rules, if stock is owned in a foreign company he or she may need to file certain information returns with the IRS. If the individual acquires 10 percent or more of the stock of any foreign company, or if he or she becomes a resident alien while owning 10 percent or more of such stock, he or she is required to report the holding to the IRS on Form 5471. In addition, if a majority of the stock of a foreign company is controlled by a US resident, he or she is required to file annual statements about the company with the IRS on the same form. If stock is owned in a PFIC, annual statements are also required to be filed with the IRS.

Foreign trusts

45. Individuals who create or are the beneficiaries of a foreign trust should obtain advice on the US tax effects of the arrangement. US law contains provisions that are intended to discourage the use of certain foreign trusts by US citizens and residents.

    If either a US resident or his or her spouse is a beneficiary of a trust that was created by him or her, or if certain kinds of powers are held over the trust, the taxpayer will be taxed on the trust's income currently under the US grantor trust rules. If a direct or indirect gift was made to someone who formed the trust for the taxpayer's benefit, he or she will also be taxed on the current income under the grantor trust rules. Even if the grantor trust rules do not apply to the taxpayer, if the trust makes any distributions to him or her out of current income, such distributions will be taxed to the individual, and any distributions out of prior years' income will be taxed together with an annual interest charge. In addition, the distribution may be required to be reported to the IRS.

    An individual who becomes a resident alien and who created a foreign trust within the five years prior to establishing US residency, or who creates a foreign trust while a resident alien, will be taxed on the trust's current income (even though the trust is not otherwise a grantor trust under US law) to the extent that any US citizen or resident is a beneficiary of the trust.

Foreign bank accounts and financial assets

46. Although the United States has no foreign exchange controls, any 'United States person' who has a foreign financial account (or a signature of authority over such account) during the year may be required to file a report electronically (FinCEN *Report 114, Report of Foreign Bank and Financial Accounts*, also known as FBAR) by April 15 of the following year (for 2015 and earlier years, a June 30 due date applied). The new due date of April 15 will be effective starting with calendar year 2016 FinCEN form filings, and an automatic six-month extension will be available for the first time. The term 'United States person' includes citizens (including minor children) or residents of the United States. The form need not be filed if the value of all foreign financial accounts (including, but not limited to, bank and securities accounts) does not exceed $10,000 at any time during the year. The form is filed separately from the federal income tax return. Significant penalties may apply for failure to timely file the

form. In addition, if cash (or other bearer instruments) equal to or in excess of $10,000 is brought into or sent out of the United States at any time in the year, it must be reported to the US Customs Service.

Individuals may also need to file Form 8938, *Statement of Specified Foreign Financial Assets,* in addition to the FBAR. The IRS promulgated this form in response to withholding rules and other enforcement measures under the Foreign Account Tax Compliance Act (FATCA). Individuals must report specified foreign financial assets (SFFAs) on Form 8938 if the person meets certain requirements and their interests in SFFAs exceed certain thresholds.

Individuals that must file Form 8938 include, for example, US citizens, as well as US residents for any part of the tax year. This includes those persons treated as a resident alien under the green card test or the substantial presence tests. However, dual residents that file Form 1040NR are excluded from filing Form 8938. Filing thresholds depend upon the total value of the SFFAs held either during the tax year or at the end of the tax year and also whether the individual lives in or outside of the US. They range from $50,000 to $600,000.

SFFAs include but are not limited to financial accounts maintained by a foreign financial institution. This could include a depositary account at a foreign bank or foreign mutual fund. SFFAs also include any interest in a foreign entity (e.g., capital or profits interest in a foreign partnership) as well as an interest in a foreign pension plan or foreign deferred compensation plan. The IRS promulgated regulations which provide greater detail on what constitutes a reportable SFFA. Some overlap exists between Form 8938 and FBAR reporting and thus individuals may need to report the same foreign asset on both forms.

Failure to file Form 8938 can result in a $10,000 penalty. A failure to comply that lasts more than 90 days after the date of an IRS notice of such failure will be subject to an additional penalty not to exceed $50,000.

Deductions allowed under US law

47. In calculating taxable income for US purposes, gross income of a resident alien (whether it is from employment, self-employment, investments or other sources) is first reduced by allowable deductions. Three categories of deductions allowed are: Adjustments, which generally are allowed without regard to income level; personal exemptions (personal allowances) for the taxpayer, spouse and dependents; and itemized deductions for specific purposes, which may be claimed if they are higher than the otherwise applicable standard deduction (which is a fixed dollar amount).

Adjustments

48. Typical adjustments are alimony payments, moving expenses not reimbursed by an employer, student loan interest payments, and certain other education expenses.

49. An additional deduction that may be allowable as an adjustment is a contribution to an IRA. An IRA is a private retirement fund that may be established by individuals who earn salary or self-employment income, and who meet certain tests. Those who qualify may deduct a maximum annual amount ($5,500 for 2016) by contributing to a regular IRA. To be eligible, the individual must have less than $118,000 of income in 2016 ($71,000 if single), or must not be a participant in a company-sponsored retirement plan that is tax-qualified and established under US law.

50. In addition, a nonworking spouse (or one with low

income) may deduct a separate contribution to an IRA by effectively 'borrowing' his or her spouse's compensation in order to qualify for the maximum contribution. The earnings of a regular IRA are tax-deferred until withdrawn.

Personal exemptions

51. Resident aliens may also claim personal exemption deductions for themselves, their spouses and dependents, if the spouses and/or dependents are also resident aliens or US citizens (or in certain circumstances, nonresident alien spouses). There are a few exceptions to the US residency requirements for dependents from Canada or Mexico. The deduction is equal to $4,050 per qualifying individual for 2016 ($4,000 for 2015). In tax year 2016, the exemption is subject to a phase-out that begins with adjusted gross income of $259,400 ($311,300 for married couples filing jointly). The exemption phases out completely at $381,900 ($433,800 for married couples filing a joint return).

Deductions

52. The most common itemized deductions are home mortgage interest, property taxes, state and local income taxes, charitable contributions and unreimbursed employee business expenses. Typically, itemized deductions (i.e., deductions other than adjustments and personal exemptions) are subject to a reduction equal to 3 percent of the taxpayer's adjusted gross income in excess of an amount ($259,400 for single filings, $311,300 for married persons filing a joint return, and $155,650 for married filing separately for 2016), subject to a maximum reduction of 80 percent of the total deductions. Note that certain types of itemized deductions, including unreimbursed employee business expenses, are only deductible to the extent they exceed 2 percent of the taxpayer's adjusted gross income. Similar restrictions apply to other, less common types of deductions.

    If the total amount of itemized deductions is relatively low, the standard deduction may be claimed instead. This is a fixed dollar amount that ranges from $6,300 to $12,600 for 2015 and 2016, based on the taxpayer's filing status (Appendix B). The standard deduction may not be claimed by a nonresident alien or by a dual-status individual (i.e., a foreign national who is a resident alien for only part of the year), except in limited circumstances where permitted via treaty. However, it may be claimed by a married couple making a full-year residency election (see paragraph 19).

Away-from-home deduction for living expenses

53. An important deduction that may be permitted is a deduction for the cost of some or all of living expenses if it can be shown that the taxpayer is temporarily away from his or her tax home in the pursuit of a trade or business. The concept of 'tax home' is different from the concept of 'resident alien.' Thus, an individual may be classified as a resident alien in the US, but still retain a tax home outside the US, or vice versa.

54. If, prior to moving to the United States, a taxpayer was living and working in a foreign country and expected to return to that country within one year, he or she will usually be considered to have retained a tax home there and will be permitted to deduct qualifying US living expenses (deduction may require that duplicate living costs be incurred in the home location). However, those who plan to stay in the United States for more than 12 months will usually be deemed to have a US tax home and thus generally will not be allowed to deduct US living costs for any part of the US assignment, even if the total length of the assignment is ultimately 12 months or less.

55. If the requirements necessary to deduct away-from-home expenses are met, the following

expenses may be deductible: Rental cost of a house or apartment in the United States (or hotel costs if the individual stays in a hotel while away from home), including certain utility costs; meals; laundry expenses; and expenses of commuting between the individual's US living quarters and the location of his or her US employer, including public transportation and a portion of automobile expenses.

Married individuals are only permitted to deduct living expenses for themselves. The living expenses for a spouse and dependents are not deductible.

56. Individuals who incur the expenses themselves may generally deduct them as itemized deductions on their federal income tax returns (see paragraph 52 for a limitation on certain types of itemized deductions). A portion may be nondeductible in this situation because of certain rules that limit the deduction of the expenses to the portion that exceeds 2 percent of adjusted gross income (i.e., income after adjustments but before other deductions). If an individual's employer reimburses him or her directly and treats the payments as reimbursed business expenses under an accountable plan, the reimbursement is not required to be reported on the employee's US wage statement (IRS Form W-2). If the employer does report reimbursements on the employee's Form W-2, they would be deductible as an itemized deduction on the individual's return, subject to possible limitation. Alternatively, the employer may choose to pay the employee a per diem allowance under an accountable plan that approximates the amount of the employee's US living expenses, which may exceed them in some cases. The allowance would not normally appear on the employee's Form W-2 and would not appear on his or her tax return.

57. If an employer reimburses an employee directly for living expenses and the reimbursement does not appear on his or her Form W-2, it should be noted that a potential penalty could be imposed if the IRS successfully challenges the claim that the reimbursement is nontaxable. If the IRS finds that there is not a reasonable basis for excluding the reimbursement, a penalty equal to 20 percent of the resulting increase in the individual's US tax could be imposed. This penalty is levied in addition to tax plus interest on the reimbursement.

58. Employers are required to report qualified moving expense reimbursements paid directly to the employee on Form W-2 (for 2015 and 2016, reporting is required in box 12 of Form W-2 with code P). Qualified moving expenses paid directly to third parties on behalf of employees and services that an employer furnishes in kind to an employee are not reported on Form W-2.

59. The extent to which moving expenses incurred as a result of moving to the United States are deductible for US tax purposes depends in part on whether the taxpayer is eligible to deduct US living expenses under the tax home rules described above. If the taxpayer's tax home remains in his or her home country, the costs of moving the individual and limited personal effects to the United States generally are deductible (or nontaxable if reimbursed directly by the employer under an accountable plan), as away-from-home expenses rather than as qualified moving expenses. The costs of moving such individual's spouse and children to the United States will not be deductible. Therefore, an employer's reimbursement of these costs is fully taxable to the employee.

Individuals who shift their tax homes to the US will not be eligible to deduct costs related to US living expenses at the location of their US tax homes.

However, they may be entitled to deduct not only their own moving expenses to the United States, but also those of other household members (e.g., spouse and children). This includes the cost of traveling and shipping household goods to the United States. In general, an individual will be eligible to deduct moving expenses if he or she is employed full time in the new work location during at least 39 weeks in the 12-month period following the move. Qualification also generally requires that the taxpayer's new place of work is at least 50 miles farther from his/her former residence than the former principal place of work, which is typically met when moving across international borders.

Employee business expenses

60. Some reimbursable business expenses are generally incurred during a US assignment, such as travel costs while on business trips and for business lunches and dinners. In most cases, the employer payment or reimbursement of these costs under an accountable plan is nontaxable. However, if expenses are reimbursed for certain personal-type expenses, such reimbursements are typically subject to US income taxes as well as to FICA.

Rates and filing status

61. Separate federal income tax rate schedules apply to single, married filing joint, married filing separate and head of household status taxpayers, respectively. These schedules are illustrated in Appendix A. Dual-status aliens (those who are resident aliens for only part of the year) who are married must use the married filing separate tax rates. However, the generally more beneficial married filing joint rates are available if a full- year residency election is in effect for the taxable year (see paragraph 19). An individual with at least one dependent may qualify to use the head of household rates if married to a nonresident alien spouse.

Credit for foreign income taxes

62. A resident alien who has foreign source taxable income may claim a foreign tax credit against US tax, to the extent of foreign income taxes that have been paid or accrued for the year (subject to certain limitations). In general, foreign tax credits may be claimed if a first-year joint return election is made, because foreign income for the months preceding the move will often be subject to both US and foreign tax.

State and local taxes

63. Most states and some local taxing authorities (cities and counties) also impose an income tax. Many base their tax on the taxable income shown on an individual's federal income tax return although some minor adjustments are usually made. Resident aliens who claim itemized deductions on their federal income tax returns may generally deduct state and local income taxes on the federal tax return for the year paid.

64. The fact that an individual may be classified as a resident alien for federal income tax purposes does not necessarily mean that he or she will be classified as a resident for state tax purposes (or vice-versa). State definitions of tax residence are different from those applicable for federal purposes. Depending on the facts, a nonresident classification for state and city tax purposes may result in higher or lower state and city taxes.

Social Security taxes

65. Compensation paid to resident and nonresident aliens who work as employees in the United States are subject to US Social Security and Medicare tax (also called FICA for the Federal Insurance Contributions Act) on remuneration from

employment unless exempt under a Social Security Totalization agreement (see paragraphs 66-68). The same is true of compensation paid to a resident alien for services performed outside the United States for an American employer. Employees are subject to the FICA tax at the rate of 7.65 percent on the first $118,500 of earnings for 2015 and 2016, plus an additional tax on earnings over the ceiling amount at the rate of 1.45 percent. The employer is obligated to pay an equal matching amount of FICA out of its own funds. See paragraph 5 for a description of an additional Medicare tax imposed on FICA compensation above certain thresholds. Note however, that the NIIT described in paragraph 6 is not part of FICA.

The fact that an employer may not be resident or doing business in the United States (other than through the presence of its foreign national employee) does not relieve it from the obligation to withhold and to pay FICA (along with other payroll requirements, such as income tax withholding and reporting). Thus, foreign companies with no US office that pay employees working in the United States (even if in foreign currency and into a foreign bank account) are still technically required to establish a US payroll system and to pay, report and withhold FICA (again, except to the extent provided otherwise under a Totalization agreement). Employers may appoint a payroll agent for such purposes.

Certain exceptions to FICA may apply, for example compensation paid to nonresident aliens holding student and trainee visas.

66. Foreign nationals working in the United States may be required to pay Social Security and Medicare tax on the same salary to both the United States and to their home country. In response to this potential inequity, and to help individuals who work across borders during their careers qualify for benefits, the US government has entered into international social security Totalization agreements with a number of countries (for a complete list, see Appendix C). The aim of these agreements is to ensure that Social Security taxes are paid to only one country on the same earnings, and also that coverage periods in both countries are taken into consideration in determining retirement benefit eligibility.

67. Under many existing Totalization agreements, employees transferred to work in the United States for a period of up to five years are permitted to pay Social Security tax to their home country only and thereby may generally avoid paying US FICA. Additionally, those who participate in FICA for less than the 'normal' minimum period required (i.e., 40 quarters) may nonetheless qualify for benefits as a result of such agreements.

68. Self-employed resident aliens are subject to the US self-employment tax at rates that are comparable to the combined FICA rate on employees and employers. These taxes may also be avoided under a Totalization agreement.

C. Nonresident aliens

The taxation of employment income

69. Nonresident aliens are generally subject to US federal income tax on compensation only to the extent that it is for services rendered within the United States. This is true even in the case of an employee paid by a US company and in US dollars. The reason is because a nonresident alien is subject to US tax on income that is US sourced or effectively connected with a US trade or business, and compensation is US source income only if it is remuneration for services performed within the United States.

Exemptions under income tax treaties

70. Nonresident aliens working in the United States on short-term assignments who are considered residents of foreign countries that have income tax treaties with the United States may also be entitled to an exemption from US tax on some or all of their remuneration allocable to US services. As each treaty has different requirements, professional advice should be sought prior to any US assignment to determine whether treaty benefits can be claimed. Even where compensation is exempt under an income tax treaty, certain payroll requirements apply and nonresident aliens must file US federal income tax returns. States may not recognize exemptions provided under treaty at the federal level.

    Certain treaty exemptions may apply to self-employed foreign nationals who make business trips to the United States, such as professionals (lawyers, accountants and doctors), entertainers, athletes, and business consultants.

Directors' fees

71. It is quite common for a nonresident alien to receive directors' fees for attending meetings of the board of directors of a US company (or even a foreign company). As a general rule, the directors' fees are subject to US tax for meetings that occur in the US, which must be withheld at source by the company and then reported on a nonresident alien US tax return (Form 1040NR), which the director files at the end of the year. Opportunities may be available under a number of US tax treaties to avoid US tax, although the director is generally required to file Form 1040NR reporting the treaty exemption.

Students, trainees, and cultural exchange visitors

72. Compensation paid to a nonresident alien working in

the United States as a student, trainee, or cultural exchange visitor on an F, J, Q, or M visa may be exempt from US tax under a special provision of the 1961 Fulbright Act if all remuneration is paid/borne by a foreign employer. Compensation paid to nonresident aliens holding such visas is typically not subject to FICA, even if employed by a US employer. As discussed at paragraph 16, presence in the US by an F, J, Q, and M visa holder is typically exempt from the Substantial Presence Test, such that these individuals are typically considered nonresident aliens.

Foreign government and international organization employees

73. Non-US citizens who work as employees of a foreign government or of an international organization are generally exempt from US tax on their compensation. Compensation qualifying for exemption is not subject to federal payroll requirements (including FICA) and is not required to be reported on Form 1040 or 1040NR. They are likely to be taxed on other US source income, however, with certain exceptions.

Former US citizens and long-term permanent residents

74. Individuals who were previously US citizens or long-term permanent residents (green card holders) may be subject to special rules of taxation.

    More detailed information on this tax is available in paragraph 105.

Stock options

75. Foreign nationals who hold stock options and who exercise them at a point where they are nonresident aliens will generally be taxable on the spread only to the extent that it

represents compensation for services rendered within the United States (e.g., US workdays/business trips). Where the individual is resident of a country which has a bilateral treaty with the United States, that portion of the spread may be exempt from federal income tax, if facts and circumstances support.

Self-employed nonresident aliens (including partners)

76. A self-employed nonresident alien is generally only subject to federal income tax on compensation for self-employment services (including those performed as a partner in a partnership) for services rendered within the United States. If part or all of such compensation is from capital invested in the business (as distinguished from services income), more complex rules are applied to determine US tax on the nonresident alien's share of income from the business (including partnership profits). Nonresident aliens are generally not subject to 'self-employment tax' (the US social tax imposed on non-employment compensation), even on income for services performed in the United States.

Investment income

77. Nonresident aliens are generally taxable only on US source investment income, and with certain exceptions. US source investment income that is not effectively connected with a US trade or business is generally subject to US tax at a flat rate of 30 percent (without deductions), though a lower treaty rate may apply. In addition, certain types of interest income paid to nonresident aliens are exempt from US tax as the result of special US law provisions.

78. As a general rule, capital gains from the sale of assets are taxed to a nonresident alien only if they arise from the sale of US real property (such as the sale of a US home – refer to paragraph 37) or stock in US real property holding companies. Capital gains from securities and from other assets owned by a nonresident alien may also be taxed if the nonresident alien is physically present in the United States for 183 days or more in the year and if the gain is US source. Capital gains from securities and other assets are generally considered to be US source if, at the time of sale, the individual's tax home is located in the United States. However, because most alien individuals who spend 183 days or more in the United States will be classified as resident aliens under the Substantial Presence Test and will be taxable on their worldwide capital gains, this 183-day rule usually applies in only limited situations. As noted in paragraph 16 (Exempt days under the Substantial Presence Test), individuals who fall into this category include certain students, teachers, and trainees and employees of foreign governments and international organizations. If a nonresident alien is subject to US tax on a particular capital gain, the historical basis/exchange rate rule described in paragraph 35 typically applies.

Deductions allowed under US law

79. A nonresident alien may claim deductions for only certain limited types of expenses. These include expenses relating to the earning of US source salary or self-employment income, such as state and local income taxes, certain business expenses and contributions to an IRA. A nonresident alien may also deduct contributions to US charities (and certain foreign charities where permitted under treaty) and certain types of casualty losses. Only one

personal exemption deduction may be claimed in most cases.

80. The deduction for US living expenses may be claimed by a nonresident alien whose tax home is outside the United States, in the same manner as a resident alien (see paragraphs 53-58). Similarly, the tax exemption for housing that is provided as a condition of employment may be available in appropriate situations. A nonresident alien whose tax home shifts to the United States may claim a deduction for moving expenses for his or her spouse and children (subject to certain limitations in the law), in accordance with the general rules described in paragraph 59.

Rates and filing status

81. The same federal income tax rates apply to nonresident aliens as to resident aliens, except that certain types of US-source income which is not connected to employment (e.g., dividends paid by US companies and taxable gains other than from US property) may be taxed at a 30 percent flat rate without deductions (though, again, lower treaty rates may apply). A married nonresident alien must file using the married filing separate tax rates. The nonresident alien tax return is IRS Form 1040NR.

State and local taxes

82. Nonresident aliens may be subject to state and local income tax on their salaries and other business income, but the US source income that is typically subject to federal tax at the 30 percent gross tax rate (see above) may be exempt from state and local tax if considered nonresident for such purposes. Although an individual who is a nonresident alien for federal income tax purposes will often be classified as a nonresident for state income tax purposes as well, there may be situations where a nonresident alien could be classified as a resident under the laws of some states. We recommend that professional assistance be sought to determine the applicable state and local rules for all anticipated types of US income.

Social Security and Medicare taxes (FICA)

83. In general, a nonresident alien who works as an employee is subject to US Social Security and Medicare tax (FICA) on compensation allocable to days worked within the United States, regardless of who pays the employee's salary and where it is paid. Even those employed and paid by a foreign company with no US office are typically subject to FICA, which often requires the employing entity to establish a US payroll system and to pay, report and withhold FICA (as well as federal income tax) on the US workday portion of remuneration. The employer may appoint a payroll agent for these purposes. Remuneration for days worked in the US may be exempt from FICA if the individual remains subject to foreign social security tax under the terms of a Totalization agreement, based on certain visa type (e.g., F, J, M, or Q), and other limited exceptions.

Self-employed nonresident aliens are typically exempt from US Social Security tax (i.e., self-employment tax), except in very limited instances where provided under a Totalization agreement.

Though rare, it is possible for certain nonresident aliens to be subject to FICA on non-US source compensation if covered under a US certificate of coverage under a Totalization agreement.

Step 3:

What to do before you arrive in the United States

Individuals and employers sending people to the United States for work should seek the advice of US counsel on employment related matters like work permits, employment contracts, etc.

Time of payment of compensation or residency start and termination dates

84. The extent to which salary or bonuses for prior services (rendered outside the United States) or future services (to be rendered within the United States) may be subject to US or home country income tax should be considered by any individual planning an assignment to the US. With advanced planning, it may be possible to minimize or avoid US tax on certain types of compensation. For example, those who expect to receive a bonus for services performed abroad before moving to the United States and who arrange to receive it before becoming a resident alien will generally avoid US tax on this income.

Timing of resident alien tax status

85. As discussed in Step 1, the tax consequences of being classified as a resident or nonresident alien during a US assignment are quite different. Although many globally mobile employees who work in the US are classified as resident aliens at some point during their US assignments, during the year of the move such individuals may be able to plan their affairs to obtain the status that minimizes US taxes. For example, those who expect to be classified as nonresident aliens for the year but want to qualify as resident aliens may be able to adjust their travel schedules to meet the tests for electing residency (see paragraph 17) or make elections with spouses (see paragraph 19). Alternatively, those who expect to be classified as a resident alien for part or all of the year but wish to be nonresident for the entire year might plan to spend additional time outside the United States so as to fail the Substantial Presence Test.

Investment and personal assets

86. Based on the extent and complexity of a foreign national's investments and personal assets, it may be wise to do advance planning to minimize any US and home country tax on income or gains from those assets. For example, those who expect to sell their principal residence in their home country after adopting a US tax home or becoming resident aliens, in the absence of advance planning, could be subject to US tax on the gain (see paragraphs 37-41) and/or the retirement of a loan denominated in foreign currency. Similarly, those who expect to sell investment assets at a gain after becoming resident aliens may wish to arrange to step up the US tax basis of those assets before becoming resident aliens (see paragraph 36). It is also wise to take steps to minimize any exposure to US estate and gift taxes (see paragraphs 106-110).

Tax Identification Numbers

87. Once a visa is obtained that permits a foreign national to work in the United States, he or she should apply to the US Social Security Administration for a US Social Security number. The application is made on Form SS-5, and timing to obtain the number can vary. Foreign nationals working in the United States need Social Security numbers for US income tax purposes even if they are exempt from US Social Security tax. If the individual working in the US or any of the individual's accompanying family members are not entitled to a Social Security number, however, each may be advised to obtain an Individual Taxpayer Identification Number (ITIN). For example, an individual's spouse may need an ITIN if the couple elects to file a joint US tax return and any children require ITINs to be claimed as dependents on a tax return.

Pension plan coverage

88. If the company that is sending an individual to the United States maintains a private company-sponsored or foreign government-sponsored retirement plan in which the individual participates, the employee should ascertain whether he or she will continue to accrue additional retirement benefits with respect to years of service in the United States. Such individuals should also check on the potential US income tax implications of maintaining this type of coverage, because in many cases the employee and employer's contributions to the plan, as well as the individual's share of the fund's current investment income, will be subject to US tax (with certain exemptions available under treaty). Because of very strict US rules regarding deferred compensation plans, including foreign pension plans, consultation with a professional is recommended prior to embarking on a US assignment to ensure that any potential compliance issues (including information reporting) are understood with respect to non-US deferred compensation or pension arrangements.

89. Foreign nationals working in the United States should also inquire whether they will be eligible to participate in any US tax- qualified retirement plans during their US assignments and, if so, determine the US and home country tax aspects of this participation. For example, such employees may be asked if they wish to join the US company's 401(k) plan, which would permit them to contribute up to $18,000 of salary for 2015 and 2016 on a tax-deductible basis and to benefit from matching employer contributions and earnings on a tax-deferred basis. Tax and other issues can arise, particularly if the individual intends to withdraw his or her funds from the plan after moving back to his or her home country.

Entrance interview

90. Before moving to the United States, assignees should have both an exit interview with a tax professional in their home country and an entrance interview with a US tax professional. All US and home country tax issues relating to the assignee's income and assets should be covered in these interviews. Because such individuals could be classified as US resident aliens even before they move – for example if they spend more than 10 days in the United States prior to the assignment (see paragraph 18) – the US interview should take place before the assignee exceeds this 10-day period.

Additional matters

91. Prior to a move to the United States, assignees should obtain information about the following:

    a. **US bank account** – Begin the process of obtaining a US bank account (checking account) before moving to the United States. Many banks will require a US Social Security number before an account can be opened, but because a Social Security number may not be obtained until the assignee has remained in the United States for a few months, a substantial delay could occur. The assignee may wish to consult with a bank in his or her home country that has a retail branch in the United States if such a delay is anticipated.

    b. **Customs rules** – Review the US customs rules regarding the importation of personal effects into the United States.

    c. **Medical insurance** – The Affordable Care Act (aka 'Obamacare') imposes certain requirements on individuals and their employers regarding health insurance coverage. Depending on the particular circumstance, the assignee and his/her family may be required to comply with certain aspects of the Act. To avoid potential penalties, the employer and/or individual should take steps to ensure that the individual and his or her family have adequate medical insurance for the duration of the US assignment. These requirements do not apply to nonresident alien employees.

    d. **Driver's licenses** – Ascertain whether the state where the assignee will live requires all members of the family who drive to obtain new automobile driver's licenses. If so, driver's license applications should be filed as soon as they have moved to the United States. Additionally, an international driver's license should be considered prior to arriving in the US.

    e. **Wills** – Consult with an advisor to determine whether the assignee should prepare a US or foreign will covering US or foreign assets.

    f. **Insurance policies** – Review all home country insurance policies (home, auto, accident, life, medical, disability and others) to determine whether changes are advisable and whether new US policies should be obtained.

    g. **US credit card** – Consider obtaining a US credit card. If the assignee does not have a credit history in the United States, the financial institution issuing the credit card may require him or her to have a US guarantor, such as the US employer.

Step 4:
What to do when you arrive in the United States

Pre-departure considerations and US payroll withholding

92. Although the following recommendations ideally should be considered before moving to the United States, those steps that have not been adopted before the move should be taken immediately after the move. For example, every effort should be made to expedite obtaining a work visa and, as soon as it is obtained, to apply for a US Social Security number. As mentioned in paragraph 87, if any family member(s) is not entitled to a Social Security number but is required to file a return or is being claimed as an exemption on another's return, each will need to get an ITIN (though generally these are applied for with the filing of the first tax return). An entrance interview with a US tax professional should take place as soon as possible (prior to the move, ideally) and, to the extent possible, the necessary tax planning regarding compensation and assets should be implemented.

93. When a foreign national employee arrives in the US, the following payroll matters should be attended to:

    1. **IRS Form W-4 or Form 8233**– Every employee working in the US should generally complete Form W-4 and give it to his or her employer so that appropriate tax rates, sources of income, deductions and credits will be reflected in the individual's wage withholding. A US tax consultant can assist in completing these forms. Those expecting to qualify as nonresident aliens should indicate such status on Form W-4. Employees expecting US source compensation to qualify for exemption from US income tax under an income tax treaty should provide Form 8233 to the employer.

    2. **Possible nonresident state tax status** – If it appears that the employee may file as a nonresident for state and local tax purposes and that he or she will make business trips outside the state, the employee should notify the employer to arrange to reduce state and local wage reporting and withholding tax accordingly. Separate state-equivalent Forms W-4 may apply.

Estimated tax payments

94. Many foreign nationals on US assignment receive part or all of their salary from a foreign company that does not establish a US payroll system. As mentioned above, regardless of where pay is delivered, US tax is typically due on the salary and withholding is generally required. In addition, a foreign national may have outside investment income (from sources either in the United States or in a foreign country) that is subject to tax. Two ways

that such US tax on these types of income may be paid are:

1. If any part of the remuneration is paid through a US payroll system, an adjustment may be requested on Form W-4 to withhold additional tax to cover the estimated excess US tax due.

2. Alternatively, estimated tax payments may be required to be made on a quarterly basis, based on the assignee's income for the calendar quarter that it is taxable but not subject to withholding. The due dates for estimated tax payments are typically April 15, June 15, September 15, and January 15. For nonresident aliens without wages subject to withholding, however, installments are due in three payments due June 15, September 15, and January 17. Penalties may be imposed for failure to make estimated tax payments by the due dates. Because the estimated tax rules can be complex, a US tax consultant should be consulted on how to comply with the rules.

Failure to withhold may result in penalties for the employer.

Step 5:
What to do at the end of the year

Tax return

95. A US federal income tax return must generally be filed for the year only if the individual's gross income subject to US tax is at least $4,050 for the year (2016 amount; the threshold may be higher for those who are resident aliens for the entire year). Certain individuals are required to file returns regardless of the level of income or loss (including partners in most US partnerships). Resident aliens file Form 1040 and nonresident aliens file Form 1040NR. Dual-status aliens file a combined 1040/1040NR return in accordance with IRS instructions. Both forms are generally due on April 15. Most states also have an April 15 due date. An automatic extension to file the federal return until October 15 may be obtained if the taxpayer specifically requests it by the original due date. Extending the time to file does not extend the time to pay the tax due.

96. Nonresident aliens and dual-status aliens must generally file with the IRS in Austin, Texas or Charlotte, North Carolina. Resident aliens living in the United States are generally required to file at the IRS Center for the region in which they live (if not e-filing).

Payment of income taxes

97. If, by April 15, the assignee has not paid in enough tax for the prior year through wage withholding, overpayments applied from the prior year, and estimated tax payments in order to cover the total federal tax liability for the current year, the balance of tax is due no later than April 15. If tax was withheld from the individual's remuneration from employment, his or her employer should provide the assignee with a Form W-2 to be attached to his or her tax return as evidence of the withheld tax. When the return is filed, if too much tax has been paid in, the taxpayer will typically be entitled to a refund of the excess.

98. Individuals who have not paid enough tax (through wage withholding, prior year overpayments applied and/or estimated tax payments) prior to April 15 to cover their tax liability for the year may be subject to penalties for underpayment of estimated tax. If tax is owed for the year and it is not paid by April 15, more severe penalties as well as a statutory interest charge may apply. These may include a 5 percent per month late filing penalty (not to exceed 25 percent), and a 0.5 percent per month late payment penalty (also not to exceed 25 percent). An additional penalty of 20 percent may be imposed in the case of negligence or if a return is filed that takes an overly aggressive position on a particular issue. A fraud penalty of up to 75 percent may be imposed in extreme cases. Most penalties and interest are imposed as a percentage of the tax due.

99. Individuals who are resident aliens for part or all of the year may also be required to file certain information returns, for example those regarding foreign corporations in which they own 10 percent or more of the stock; interests in foreign financial assets; investments that they may own in a passive foreign investment company (PFIC); and any transfers that they may have made to a foreign trust in the past. If,

during the year in which an individual is in the United States, (s)he has an interest in one or more foreign financial accounts (including but not limited to bank and securities accounts) whose total value is $10,000 or more during the year, FinCEN Form 114 may be required to be filed with the US Treasury to provide information about those accounts (see paragraph 46). The form is filed separately from the federal income tax return. Penalties may be imposed for failure to file (or timely file) these forms.

100. A resident alien who, during the current tax year, receives either: (i) more than $100,000 from a nonresident alien or a foreign estate (including foreign persons related to that nonresident alien individual or foreign estate) that he/she treats as a gift or bequest; or (ii) more than $15,671 (2016 amount) from foreign corporations or foreign partnerships (including foreign persons related to such foreign corporations or foreign partnerships) that he/she treats as a gift must report receipt of such gift or bequest to the IRS on Form 3520. (See paragraphs 106 through 110).

Step 6:

What to do when you leave the United States

Residency status for the year

101. As soon as an assignee knows that he or she will be leaving the United States, his or her probable resident alien status for the year and likely foreign country tax status should be carefully examined so that informed departure decisions can be made. In many cases, an assignee will qualify as a resident alien for the portion of the year preceding a move from the US, and a nonresident alien for the remainder of the year (though full-year residency is also generally available). However, trips back to the United States that exceed 10 days in total or the failure to establish a tax home in, and a closer connection to, another country for the remainder of the year after the move may cause resident alien status to continue during part or all of the remainder of the year. Based on the particular facts, assignee foreign national individuals may wish to either prolong resident alien status or ensure that it is terminated after moving from the United States. Even where a taxpayer may qualify as a US resident under domestic law for all or part of a year, nonresident alien status may be available for purposes of calculating the income tax under the provisions of an income tax treaty.

102. Issues that may be affected depending upon an assignee's US resident or nonresident alien status for the year include the following:

    1. **Joint return rates** – If an individual is a nonresident alien for part of the year and is married, the married filing separate tax rates must be used instead of the more favorable joint return rates. If residency is not broken prior to year-end, married couples may file a full- year income tax return on a joint basis.

    2. **Sale of home** – A nonresident alien can generally exclude the gain from the sale of a principal residence from US taxation if ownership and use tests are met (refer to paragraphs 37-40) provided he or she is not subject to the anti-expatriation rules (refer to paragraph 105). However, even if the individual may qualify for the exclusion, he or she may still be subject to a 15 percent withholding tax on the gross sales price at the time of sale (though steps are available to limit or avoid such withholding). A US federal income tax return would then need to be filed to claim a refund for part or all of the 15 percent tax (if applicable).

    3. **Investment income** – Investment income earned outside the United States, including foreign source capital gains, will be taxable if realized while the taxpayer is a resident alien. Generally, non-US source investment income is exempt from US tax if realized while the individual is a nonresident alien. To the

extent possible, assignees may want to realize losses while they are resident aliens, but accelerate or defer the recognition of gains to periods when they are nonresident aliens and have a tax home outside of the United States.

Reporting departure from the United States

103. Foreign nationals and resident aliens leaving the United States permanently or for an extended period are required to show that they have met or will meet all federal tax requirements. This is done by obtaining a tax clearance document (known as a 'sailing permit' or 'departure permit') from the IRS. In the year a foreign national moves out of the United States, Form 1040C, *U.S. Departing Alien Income Tax Return, or Form 2063, U.S. Departing Alien Income Tax Statement and Annual Certificate of Compliance*, may be required to receive a sailing permit prior to departure. The completed Form 1040C or 2063 should be presented to the IRS district office, and all federal income tax up to that date may be required to be paid. It is important to note that neither Form 1040C nor Form 2063 are the final income tax return for the year. An actual tax return for the same year must still be filed after the end of the year, usually by April 15 of the following year.

Exit interview

104. As soon as a foreign national knows that he or she will be moving out of the United States, he or she should arrange for an exit interview with a US tax professional so that the taxpayer will be aware of any tax-saving opportunities and of any possible tax 'traps' (e.g., on the sale of a US home). Foreign nationals should also arrange for an entrance interview with a tax professional in the country to which they are moving.

Anti-expatriation rules

105. Under Code Section 877A rules, a US citizen who relinquishes his/her citizenship, or a long-term resident who terminates permanent residence status or claims foreign residence under a treaty may be subject to certain consequences if the individual meets any of three objective tests.

Individuals subject to the expatriation provisions: An individual is a long-term resident if he/she was a lawful permanent resident in at least eight out of the fifteen taxable years ending with the year in which permanent residency termination occurs (though years in which foreign residency is claimed under treaty the entire year are excluded). Expatriation tax consequences apply to any US citizen who relinquishes citizenship and any long-term resident who terminates US residency if the individual:

1. has an average annual net income tax liability for the five preceding years ending before the date of expatriation that exceeds $161,000 for 2016, adjusted annually for inflation);

2. has a net worth of $2 million or more on the date of expatriation or termination of residency;

   or

3. fails to certify under penalties of perjury that he or she has complied with all US federal tax obligations for the preceding five years or fails to submit such evidence of compliance as may be required.

Certain exceptions apply to individuals born with dual citizenship and those who relinquish US citizenship prior to age 18 1/2 (provided certain requirements are met).

Expatriating long-term residents and citizens who do not meet any of the three tests or who qualify for an exception must still file Form 8854 to notify the IRS of the expatriation.

Date of expatriation: Code Section 877A sets forth rules for establishing the date of expatriation. In the most common cases, this will be the date the individual swears or affirms their oath of renunciation of US citizenship in front of a consular officer, or files Form I-407 terminating permanent residence status. Long-term residents would also be treated as expatriating when utilizing residency 'tie- breaker' provisions of income tax treaties to be treated as US nonresident aliens despite their continued permanent residency status.

Consequences of expatriation

Mark-to-market tax imposed: The mark-to-market tax portion of these rules effectively subjects these individuals to tax on the net unrealized gains on their worldwide property as if such property were sold for the fair market value on the day before the expatriation date, to the extent such gains exceed an exemption amount. Gain from the deemed sale is taken into account at that time without regard to other tax code provisions; any loss from the deemed sale would generally be taken into account to the extent otherwise provided in the code. The value of property held when an individual first became a US resident will be taken into account for purposes of determining the gain, unless the individual makes an irrevocable election for basis to be calculated under general US tax principles. The deemed sale rule generally applies to all property interests held by the individual on the date of expatriation. Any net gain on the deemed sale is recognized to the extent it exceeds $693,000 (2016 threshold).

Deemed distributions, vesting: Special rules apply in the case of certain deferred compensation items, specified tax deferred accounts, and interests in nongrantor trusts. These items are not subject to the mark-to-market tax nor the exemption amount, but are typically considered deemed distributed with certain exceptions. For 'ineligible deferred compensation items,' an amount equal to the present value of the covered expatriate's accrued benefit is treated as having been received by the covered expatriate on the day before the expatriation date as a distribution under the plan and must be included on the covered expatriate's Form 1040. Similar rules apply for specified tax deferred accounts (e.g., IRAs) and certain trusts.

Alternately, Code Section 877A(d)(1)(A) does not require recognition of income at expatriation but instead mandates generally that the payor of an 'eligible deferred compensation item' deduct and withhold a tax equal to 30 percent of any taxable payment

to a covered expatriate with respect to such item.

Recipients of gifts and bequests from covered expatriates: A further implication of expatriation is that US citizen or resident recipients of gifts or bequests (whether US or foreign property) from a 'covered expatriate' are typically subject to tax at the highest estate or gift tax rate in effect in the year of such transfer.

The Code Section 877A provisions are complex, with planning opportunities available. The advice of a US tax professional should be sought before holding the green card in any part of eight tax years or, if later, before renouncing a green card, moving out of the United States, or determining whether to claim nonresidency under an income tax treaty.

Step 7:
Other matters requiring consideration

Estate and gift taxes

106. The United States imposes a federal estate tax on the fair market value of assets that an individual owns at death. In addition, a federal gift tax is imposed on most lifetime gifts, to prevent individuals from avoiding US transfer tax by giving away their assets prior to death. The federal tax rates are graduated and reach 40 percent (2016 rate). In addition, many states impose death taxes, although the rates are lower than the federal rates.

107. Just as the federal income tax rules distinguish between resident aliens and nonresident aliens, the estate and gift tax rules distinguish between resident noncitizens and nonresident noncitizens. The income tax definitions of resident alien and nonresident alien are not relevant in determining who is resident or nonresident for estate and gift tax purposes. Instead, the determination is based on where the foreign national is domiciled. Because the term 'domicile' is extremely subjective, it is often difficult to know whether a particular individual is resident or not for estate and gift tax purposes. Nevertheless, certain general rules appear to be followed by the IRS and by the courts. Individuals who have applied for or obtained green cards (i.e., US permanent-residence immigration visas) are often presumed to be domiciled in the United States.

108. Individuals who are domiciled in the United States are subject to federal estate and gift tax on their worldwide assets at rates of up to 40 percent (2016 rate). A lifetime exemption is allowed in 2016 for the first $5,450,000 of lifetime taxable gifts and bequests. Note that assets bequeathed to an individual's spouse are exempt from estate and gift tax but only if such spouse is a US citizen.

109. Non-US citizens who are not US-domiciled are subject to US federal estate and gift tax only on the transfer of US-situs assets, which include US real property, personal property located within the United States, stock in US companies (for estate tax only), debt obligations of US persons (subject to certain exceptions) and certain other assets.

110. Foreign nationals in the US should also be aware that if they receive large gifts from any non-US persons while classified as resident aliens, they may be required to report the gifts to the IRS. Although in most cases the person making the gift will not be subject to US gift tax or other US taxes as a result of making the gift, gifts from non-US persons valued at more than $100,000 must be reported to the IRS.

The United States federal estate and gift tax rules are complex with many aspects beyond the scope of this Folio. An estate and gift tax specialist should be consulted to assist with estate and gift tax planning.

Miscellaneous US taxes

111. In addition to federal and state income, estate and gift taxes, miscellaneous taxes are imposed, including taxes in the form of penalties for not having health insurance coverage under the Affordable Care Act. Other miscellaneous taxes may be imposed by states and municipalities. These include sales and excise taxes on retail purchases, and real and personal property taxes.

Health insurance taxes

112. Effective for tax years 2014 and later, US citizens and residents may be subject to taxes (in the form of penalties) if they do not have 'minimum essential coverage' under a health plan, or qualify for exemption from such coverage, for all months of the tax year. A further discussion of the health insurance mandate is beyond the scope of this Folio.

Sales taxes

113. Sales taxes are imposed by most states as well as by many municipalities and counties in the United States. Each state has its own tax rate and rules regarding which purchases are taxable and which are nontaxable. The intent of the sales tax is similar to that of a value-added tax in most European countries. However, the calculations and methods of collecting the tax at the point of sale are different.

Excise taxes

114. Both federal and state excise taxes are imposed on a variety of items, such as alcohol, cigarettes, auto fuel and certain luxury items.

Real property taxes

115. Property taxes are imposed in most states on the owner of both commercial and residential real property, based on the value of the property. The tax is usually imposed at the municipality or county level, and the tax rates vary widely depending on the fiscal needs of the taxing jurisdiction. Personal property taxes are also imposed in a number of states, but usually only on automobiles. A few states impose intangible property taxes on investment assets.

Appendix A:
Individual US federal income tax rates

Married filing jointly & surviving spouses - 2015

Over	Not over	Tax	% on excess
0	18,450	0.00	10.0%
18,450	74,900	1,845.00	15.0%
74,900	151,200	10,312.50	25.0%
151,200	230,450	29,387.50	28.0%
230,450	411,500	51,577.50	33.0%
411,500	464,850	111,324.00	35.0%
464,850		129,996.50	39.6%

Married filing jointly & surviving spouses - 2016

Over	Not over	Tax	% on excess
0	18,550	0.00	10.0%
18,550	75,300	1,855.00	15.0%
75,300	151,900	10,367.50	25.0%
151,900	231,450	29,517.50	28.0%
231,450	413,350	51,791.50	33.0%
413,350	466,950	111,818.50	35.0%
466,950		130,578.50	39.6%

Single - 2015

Over	Not over	Tax	% on excess
0	9,225	0.00	10.0%
9,225	37,450	922.50	15.0%
37,450	90,750	5,156.25	25.0%
90,750	189,300	18,481.25	28.0%
189,300	411,500	46,075.25	33.0%
411,500	413,200	119,401.25	35.0%
413,200		119,996.25	39.6%

Single - 2016

Over	Not over	Tax	% on excess
0	9,275	0.00	10.0%
9,275	37,650	927.50	15.0%
37,650	91,150	5,183.75	25.0%
91,150	190,150	18,558.75	28.0%
190,150	413,350	46,278.75	33.0%
413,350	415,050	119,934.75	35.0%
415,050		120,529.75	39.6%

Married filing separately - 2015

Over	Not over	Tax	% on excess
0	9,225	0.00	10.0%
9,225	37,450	922.50	15.0%
37,450	75,600	5,156.25	25.0%
75,600	115,225	14,693.75	28.0%
115,225	205,750	25,788.75	33.0%
205,750	232,425	55,662.00	35.0%
232,425		64,998.25	39.6%

Married filing separately - 2016

Over	Not over	Tax	% on excess
0	9, 275	0.00	10.0%
9, 275	37,650	927.50	15.0%
37,650	75,950	5,183.75	25.0%
75,950	115,725	14,758.75	28.0%
115,725	206,675	25,895.75	33.0%
206,675	233,475	55,909.25	35.0%
233,475		65,289.25	39.6%

Head of household - 2015

Over	Not over	Tax	% on excess
0	13,150	0.00	10.0%
13,150	50,200	1,315.00	15.0%
50,200	129,600	6,872.50	25.0%
129,600	209,850	26,722.50	28.0%
209,850	411,500	49,192.50	33.0%
411,500	439,000	115,737.00	35.0%
439,000		125,362.00	39.6%

Head of household - 2016

Over	Not over	Tax	% on excess
0	13,250	0.00	10.0%
13,250	50,400	1,325.00	15.0%
50,400	130,150	6,897.50	25.0%
130,150	210,800	26,835.00	28.0%
210,800	413,350	49,417.00	33.0%
413,350	441,000	116,258.50	35.0%
441,000		125,936.00	39.6%

Appendix B:
Individual key US federal rates and limits

FICA taxes	2015	2016
Social Security (SS) wage base	$118,500	$118,500
SS maximum - 6.2%	$7,347.00	$7,347.00
Medicare - 1.45%*	No ceiling	No ceiling

* See below, under 'Additional Medicare tax', for details on an increase in the Medicare tax that applies to wages and other compensation only in excess of an applicable threshold amount.

Additional Medicare Tax	2015		2016	
A 0.9% tax* is imposed on individual wages and other compensation in excess of the following threshold amounts:	Single	$200,000	Single	$200,000
	MFJ	$250,000	MFJ	$250,000
	MFS	$125,000	MFS	$125,000
	HOH	$200,000	HOH	$200,000

*The tax was imposed under the Patient Protection and Affordable Care Act of 2010.

Tax on net investment income	2015		2016	
A 3.8% tax is imposed on the lesser of net investment income or the excess of MAGI* over the following threshold amounts:	Single	$200,000	Single	$200,000
	MFJ	$250,000	MFJ	$250,000
	MFS	$125,000	MFS	$125,000
	HOH	$200,000	HOH	$200,000

*Modified adjusted gross income. The Unearned Income Medicare Contribution, otherwise known as the net investment income tax (NIIT), was imposed under the Patient Protection and Affordable Care Act of 2010.

Personal exemption (PE)	2015	2016
Personal exemption:	$4,000	$4,050

PE phase-out		2015		2016
The phase-out of personal exemptions begins when adjusted gross income (AGI) reaches:	Single	$258,250	Single	$259,400
	MFJ	$309,900	MFJ	$311,300
	MFS	$154,950	MFS	$155,650
	HOH	$284,050	HOH	$285,350

For 2015, the phase-out of personal exemption ends at $380,750 for single individuals, $432,400 for married persons filing jointly, $406,550 for heads of households, and $216,200 for married individuals filing separate returns. For 2016, the phase-out of personal exemption ends at $381,900 for single individuals, $433,800 for married persons filing jointly, $407,850 for heads of households, and $216,900 for married individuals filing separate returns.

Standard deduction	2015		2016	
Standard deduction:	Single	$6,300	Single	$6,300
	MFJ	$12,600	MFJ	$12,600
	MFS	$6,300	MFS	$6,300
	HOH	$9,250	HOH	$9,300

Itemized deductions	2015		2016	
The reduction of itemized (not standard) deductions by 3% of AGI in excess of the following amounts*:	Single	$258,250	Single	$259,400
	MFJ	$309,900	MFJ	$311,300
	MFS	$154,950	MFS	$155,650
	HOH	$284,050	HOH	$285,350

*A taxpayer may not lose more than 80% of his or her deductions as a result of the reduction in the itemized deduction amounts.

For tax years 2013 and later, new rules may affect medical expense deductions that are itemized on Form 1040, Schedule A. The new rules raise the threshold that unreimbursed medical and dental expenses must reach before a deduction is permitted from 7.5% to 10% of adjusted gross income. A temporary exemption applies for individuals age 65 and older until December 31, 2016. Beginning January 1, 2017, the 10% threshold will apply to all taxpayers, including those 65 and over by the end of the taxable year.

Standard mileage rates		2015		2016
Standard mileage rates:	business	$0.575	business	$0.54
	charitable	$0.14	charitable	$0.14
	medical & moving	$0.23	medical & moving	$0.19

Section 911	2015	2016
Annual exclusion:	$100,800	$101,300
Base housing amount:	$16,128	$16,208
Standard qualified housing expense limit*:	$30,240	$30,390

*Adjustments to the limitation are provided for certain countries with high housing costs. 2015 adjusted limitations are included in Notice 2015-33; 2016 adjusted limitations can be found in Notice 2016-21.

Alternative minimum tax	2015		2016	
Alternative minimum tax exemption amounts (subject to phase-out described in the table below):	Single	$53,600	Single	$53,900
	MFJ	$83,400	MFJ	$83,800
	MFS	$41,700	MFS	$41,900
	HOH	$53,600	HOH	$53,900

Alternative minimum tax phase-out		2015		2016
The phase-out of the AMT exemption amount begins when the alternative minimum taxable income exceeds the following amounts:	Single	$119,200	Single	$119,700
	MFJ	$158,900	MFJ	$159,700
	MFS	$79,450	MFS	$79,850
	HOH	$119,200	HOH	$119,700

Capital gains tax	2015	2016
Long term:	15%/20%*	15%/20%*
Lower income taxpayers:	0%	0%
Short term:	Ordinary rates	Ordinary rates

* The 20% capital gains rate applies only if a taxpayer's income tax rate falls in the 39.6% bracket. All other taxpayers continue to be subject to a maximum 15% capital gains rate. A 0% capital gains rate applies to taxpayers who are subject to income tax rates of 15% or less.

Qualified dividends	2015	2016
Qualified dividend rate:	15%/20%*	15%/20%*
Lower income taxpayers:	0%	0%
Nonqualified dividends:	Ordinary rates	Ordinary rates

* The 20% dividend rate applies only if a taxpayer's income tax rate falls in the 39.6% bracket. All other taxpayers continue to be subject to a maximum 15% dividend rate. A 0% dividend rate applies to taxpayers who are subject to income tax rates of 15% or less.

Child tax credit	2015	2016
Child tax credit:	$1,000	$1,000

The child tax credit is subject to phase-out for individuals with income over certain threshold amounts.

Supplemental withholding flat rates	2015	2016
Supplemental wages up to $1,000,000 (optional)*:	25%	25%
Supplemental wages greater than $1,000,000 (mandatory):	39.6%	39.6%

*In lieu of regular tax withholding rates.

Healthcare Shared Responsibility Payment

The Shared Responsibility Payment for individuals is generally the greater of:*

- Flat Dollar Amount (family maximum of $975 in 2015, $2,085 in 2016), or
- Percentage of Income above Filing Threshold (rate: 2% in 2015, 2.5% in 2016).

The maximum penalty is published each year by the IRS. For 2015, the maximum is $2,484 per year ($207 per month) for an individual and $12,240 per year ($1,020 per month) for a family with five or more members. It is important to note that there are various exemptions, rules, and thresholds that could impact what payment is owed.

Filing thresholds used to calculate Percentage Income Amount:
Single: $10,300
Head of household: $13,250
Married filing jointly: $20,600
Married filing separately: $4,000
Qualifying widow(er) with dependent child: $16,600

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*Under the Patient Protection and Affordable Care Act of 2010, individuals must either: (i) have qualifying health care coverage (i.e., minimum essential coverage) for every month of 2015, (ii) qualify for an exemption from this requirement (such as having a short gap in coverage, being offered only coverage that costs more than 8.05% of household income, or being a nonresident alien), or (iii) make a Shared Responsibility Payment with their individual income tax return.

Gift tax limits	2015	2016
Annual exclusion from total amount of taxable gifts*:	$14,000	$14,000
Annual exclusion for gifts to non-US citizen spouses*:	$147,000	$148,000

*This amount is per donor and per donee and refers to gifts that are not future interests in property.

Appendix C:
Totalization agreements

Countries with which the United States currently has Totalization agreements:

Australia	Germany	Portugal
Austria	Greece	Slovak Republic
Belgium	Ireland	South Korea
Canada	Italy	Spain
Chile	Japan	Sweden
Czech Republic	Luxembourg	Switzerland
Denmark	Netherlands	United Kingdom
Finland	Norway	
France	Poland	

Appendix D:
US contacts and offices

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Offices

A complete listing of PwC US offices can be found on pwc.com at the following weblink.

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