



Tax Talk 2012 ©

US Tax Law Developments

In 2011 the US tax law news was that there were very few new tax laws passed. Many fiscal questions were left unanswered, the only thing we do know is what is on the books now, and that change will be coming soon. The US is also looking for revenues wherever they might be found, and it's possible that some decision makers stateside see citizens and Greencard-holders residing abroad as a base without a solid voting or protesting block. Do not hesitate to write to your representatives to let them know you are still their constituent.

FATCA and other Foreign Taxpayer Profanities

The Foreign Account Tax Compliance Act (FATCA) enacted in 2010 is going into effect for tax year ending 12/31/2011. This act requires all US RESIDENT taxpayers with more than \$50,000 at the end of the year or more than \$75,000 at any time during the year in « aggregate specified foreign financial assets » to report them on form 8938. If you are a FOREIGN RESIDENT the thresholds for filing the form are \$200,000 for the last day of the year and \$300,000 at any point in the year. These thresholds are for unmarried or married-filing-separately taxpayers, if you are married filing jointly, these thresholds are doubled.

If you are not required to file a tax return, you are not required to file form 8938. FATCA and form 8938 do not replace form TDF 90-22.1, Report of Foreign Bank and Financial Accounts whose filing threshold remains \$10,000 at any time in the year in total in foreign bank and financial accounts.

The details of what exactly is a « specified foreign financial asset » are quite technical, but in general, if it's not something the US already knows about, then it's probably included. Examples include Assurance Vies, French Trusts, shares in French SCIs, foreign pension and deferred compensation plans, bank accounts, and shares in foreign partnerships and corporations. Assets already included on the forms 3520 (trusts), 3520-A (trusts), 5471 (corporations), 8621 (PFICs), 8865 (partnerships), and 8891 (Canadian retirement plans), do not need to be included in the total value for the form 8938, but do need to be specified.

CSG/CRDS and the IRS

From tax year 2008 and forward, CSG and CRDS taxes have been treated by the IRS as non-creditable and non-deductible social contributions. The IRS made this decision somewhat on its own, as there were differentiating court cases, however no decisive case has passed in the taxpayer's favor. Since mid-2010 the Paris tax community has seen a significant increase in IRS examinations concerning foreign tax credits, form 2555 (§911 exclusion), and compensation. Please be advised that CSG and CRDS taxes are not foreign tax credits for US tax purposes. Additionally, all salaries should be declared at their gross or « brut » values translated into dollars

on US tax returns. If our firm prepared your returns for these years, these calculations were made in accordance with the IRS's rules with the information you supplied to us.

The average IRS auditor is often overburdened and not a specialist in foreign tax laws, which can result in errors. If you receive an examination notice or an assessment you do not understand or believe is incorrect, please let us know as soon as possible. Many of these examinations have resulted in no change from what was previously reported, but if a response to the examination notice is not submitted timely, the IRS can proceed to collections very rapidly.

Estate and Gift Taxes, same as prior year

In last year's tax talk, the big question on the US side was the Estate and Gift Tax regime. As explained in that issue, the extension of the Bush-era rates and exemptions were effective for both tax years 2011 and 2012. So just to repeat and give any inflation adjustments, for estates of those dying in and gifts made in 2011 and 2012, there is an exemption from the Estate and Gift Tax of \$5 million and \$5.12 million, respectively. Above those amounts, the estate and gift tax is a flat 35% rate. The annual gift tax exclusion (per giver per receiver) is \$13,000 for both years and please be reminded that the exclusion for gift and estate taxes is reduced by prior years' gifts.

For tax year 2013, the rates and exclusions revert back to the statutory amounts of a maximum 55% tax rate and maximum exclusion of \$1 million. There is considerable doubt that the statutory rates will not be repealed, changed, or some other patch applied, but this is the situation at present. Therefore, if you have considerable assets in the United States that you would like to transfer to your heirs and have not already planned how to do so, 2011 and 2012 are tax favorable years. Keep in mind that French Estate and Gift Taxes could be payable instead of or in addition to US taxes, so please consult with us before making any significant transfers.

Foreign Earned Income Exclusion

The Foreign Earned Income Exclusion has been inflation adjusted for the 2011 and 2012 income tax years to allow maximum exclusions of \$92,900 and \$95,100, respectively, of Earned Income for those who are considered tax residents of a foreign country under either the Bona Fide Residence Test or the Physical Presence Test.

Other General US Tax Information

The legislative changes made in 2010 continue to be effective for 2011, these include:

- No increase in rates at all income levels, with the maximum income tax rate remaining at 35% and maximum qualified dividends and capital gains rates of 15%.
- The itemized deduction and personal exemption phase-outs are repealed for 2011 and 2012.