



Secretariat

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INFORMATION CIRCULAR

To: Members of the staff

From: Under-Secretary-General for Administration and Management

Subject: STAFF MEMBERS WHO ARE NOT UNITED STATES NATIONALS BUT  
RECEIVE INVESTMENT INCOME FROM UNITED STATES SOURCES

1. Pursuant to recent tax legislation, all institutions in the United States of America that pay out interest or dividends are required to ascertain from the recipient of such payments his or her "taxpayer identification number" (on the basis of which an information report is sent to the Internal Revenue Service concerning the payment) or a signed statement that the recipient is tax exempt. In the absence of such information or statement, the payer institution is obliged to withhold a certain percentage of the payment ("backup withholding" - for which the recipient can receive a credit, and possibly a refund, by filing an appropriate tax return); payment to a non-exempt recipient without a tax number subjects the payer institution to a substantial fine, for which it may and generally will require reimbursement from the payee.
2. The purpose of these requirements is to ensure payment of whatever tax is due from the recipients, whether citizens or aliens, residents or non-residents, of any interest or dividends from United States sources.
3. Generally speaking, any individual, whether resident or non-resident, who receives interest or dividends from a United States payer is subject to United States income taxation thereon. The only significant exception is interest paid to a non-resident alien on deposits in banks, credit unions or other savings institutions, which is, solely for this purpose, considered to be income from non-United States sources. Only in respect of such income is it appropriate for a non-resident alien to inform a payer that he or she is exempt.
4. Resident aliens as well as non-resident aliens who receive any type of income from United States sources other than interest on deposits who do not already have a taxpayer identification number should obtain such a number by applying to the IRS

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on Form No. SS-5, lest they become subject to the penalties referred to in paragraph 1. This number has become a necessary incident to investing in United States securities; it has, by itself, no bearing on a person's international, residence or tax status under United States law, and applying for and using it does not imply any subjection to United States law. Diplomatic status (enjoyed by assistant secretaries-general and higher officials) does not exempt a person from these provisions.

Who is a non-resident alien?

5. Whether or not a particular alien is a non-resident for tax purposes depends, in principle, mainly on whether he or she intends and is able to stay in the United States indefinitely (but not necessarily permanently) and on where he or she maintains his or her domicile. The determination of residence for tax purposes is thus made, in the first instance, by the taxpayer (who may need to take into account his or her tax status under his or her national law), but, ultimately, is determined by the Internal Revenue Service (subject to a possible review by the competent courts). Since the basic factor of intention cannot be ascertained unambiguously, the Internal Revenue Service necessarily relies on a number of objective indicia from which the subjective intention can be judged. These include:

(a) Type of visa. It is important to stress that, while holders of a G-4 visa are nominally presumed to be non-residents for tax purposes (as they are definitely for immigration purposes), that presumption can be overridden by a number of the factors mentioned below, such as a lengthy period (i.e., several years) spent in the United States; on the other hand, a holder of an immigrant visa ("green card") is almost certainly a resident for tax purposes;

(b) Length of residence;

(c) Type of United Nations appointment, since a permanent contract suggests the likelihood that the holder may have a right to stay in the United States until he or she reaches the retirement age;

(d) Family ties in and outside the United States, and, in particular, the nationality of spouse and children;

(e) Home ownership, in the United States or abroad;

(f) Other indication of social, professional and cultural ties (e.g., type of schooling for children);

(g) Location of the bulk of investments and other property;

(h) Position taken in filing previous tax returns (e.g., whether a normal 1040 form was filed (perhaps jointly with a spouse), indicating a claim of resident status, or the 1040NR form, indicating a claim of non-resident status..

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While a person who for some years maintains a non-resident tax status is likely over the years to acquire, consciously or not, resident tax status, mere passage of time alone does not necessarily result in such a change. However, once an alien has become a resident of the United States for tax purposes, he or she cannot lose that status without leaving the country and actually establishing a residence somewhere else (which, in practice, is likely to require some years of foreign residence).

6. Since, as appears from the above, an alien may have some choice as to whether he or she is to opt for treatment as a resident or as a non-resident for tax purposes, the principal tax features of the two types of status are outlined below, in order to assist persons in deciding how to choose:

(a) A resident alien

- (i) Is taxed by the United States on all worldwide income, except for income from an intergovernmental organization;
- (ii) Is taxed at the same graduated rates and is entitled to the same deductions and exemptions as a United States citizen;
- (iii) Has significant tax advantages regarding capital gains tax on the sale of a principal residence.

(b) A non-resident alien

- (i) Is taxed by the United States only on income from United States sources, which does not include income from intergovernmental organizations or interest on deposits (see para. 3 above);
- (ii) Generally is taxed at flat rates, without the benefit of all the deductions and exemptions allowed United States citizens and resident aliens;
- (iii) Is liable for capital gains tax on the full amount of capital gain on the sale of his or her principal residence.

Advice and assistance

7. The above information is given merely to alert the persons concerned of the possible need to respond to questions from payers of income from United States sources. It should not be understood as an authoritative statement of the requirements of the United States tax laws and regulations or of their interpretation.

8. Neither the Office of Legal Affairs nor any other United Nations office or official is qualified or authorized to assist staff members in complying with the legal requirements described herein. Such advice can only be received from the Internal Revenue Service itself, from qualified tax lawyers or accountants or from the source of the payment in question.

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