

**UNITED STATES**

As per 1 January 2019

Click to download PDF: As per 1 January 2018 (<http://publicationsdrafts.ro/expat-tax-2014/wp-content/uploads/2018/01/USA.pdf>)**EXPATRIATE AND EMPLOYER TAX COMPLIANCE AND ADVISORY****Personal Income Tax Rates –  
Employment Income**

Ordinary income: progressive tax rates 0%-37%  
 Long-term capital gains and qualified dividends: 0%, 15% and 20%  
 Net Income Investment Tax (NIIT): additional tax that applies at a rate of 3.8% on net investment income of certain individuals that have income above the statutory threshold amount.

**Tax period**

Calendar

**Tax residency / Domicile according to  
domestic law**

U.S. citizens and lawful permanent residents (green card holder) are residents for U.S. tax purposes regardless of where they live. U.S. resident taxpayers are taxed on their worldwide income.  
 U.S. aliens (non-U.S. citizens) that are not lawful permanent residents are treated as resident for U.S. tax purposes if they meet the substantial presence test for the calendar year. To meet this test, an alien must be physically present in the U.S. on at least 31 days during the current calendar year, and a total of 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only 1/3 the number of days of presence in the first preceding year, and only 1/6 the number of days in the second preceding year. U.S. aliens who do not meet the substantial presence test are non-residents for tax purposes and are only taxed on their U.S. source income.  
 Residency rules for state and local tax purposes differ from state to state. Most states in the U.S. treat taxpayers as resident when they are domiciled in the state.

**Tax registration**

U.S. taxpayers are required to obtain a Taxpayer Identification Number (TIN).  
 Individual taxpayers generally have a Social Security Number (SSN). U.S. citizen and aliens authorized to work in the U.S. are eligible to apply for a SSN with the Social Security Administration (SSA) by filing Form SS-5.  
 Individual taxpayers who are not eligible to apply for an SSN but required to file a U.S. tax return must obtain an Individual Taxpayer Identification Number (ITIN) with the Internal Revenue Service (IRS) by filing Form W-7.

**Employment income definition**

Compensation for services, including fees, commissions, fringe benefits, and similar items. The term wages means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash with certain exceptions for combat zones, domestic service in a private home, for service not in course of the trade or business less than \$50/quarter, services for a foreign government, and others.

**Examples of tax exemption**

Interest on bonds used to finance government operations generally isn't taxable if the bond is issued by a state, the District of Columbia, a possession of the US, or any of their political subdivisions.  
 Reimbursement of employee business expenses under an accountable plan aren't wages and aren't subject to income, social security, Medicare, and FUTA taxes. An Accountable plan has three components: 1. Must have paid or incurred expenses while performing services as employee. 2. Must substantiate expenses within a reasonable period of time 3. Must return any amounts in excess of substantiated expenses within a reasonable period of time.  
 Note: Reimbursement of relocation or moving expenses are no longer exempt from tax.

**Specific expatriate concession**

U.S. citizens and lawful permanent resident (green card holder) living abroad are entitled to exclude up to \$104,100 of their foreign earned income (applicable amount for 2018) from their taxable income if they meet the following requirements: 1. Their tax home is in a foreign country 2. They were a bona fide resident of a foreign country for an uninterrupted period that includes an entire tax year or they were physically present in a foreign country for at least 330 full days during any period of 12 consecutive months. If qualified they can exclude up to \$104,100 (2018) of foreign earned income. Eligible taxpayers may also claim an exclusion or deduction for housing costs incurred while in a foreign country (subject to location).

**Income of board members**

Director Fees are not considered to be salary or wages. They are treated as ordinary income subject to US Federal Income Tax and self employment income tax. Nonresident alien directors who perform director services while in the US are subject to US Federal withholding tax of 30% on these fees.

**Tax returns**

US citizens or residents should file Form 1040 and its related schedules by 4/15 of the given year. If the taxpayer is not in the US, the deadline is 6/15. Nonresidents with a filing requirement should file Form 1040NR by 4/15 if you receive W-2 otherwise due date is 6/15. An extension of six months is available to 10/15 (12/15 if not in the US) if all information required to file is not available, however any tax due is required to be paid with the extension.

**Tax payments**

Estimated Tax payments are required to be paid using Form 1040-ES in four equal amounts on 4/15, 6/15, 9/15, and 1/15 of the following calendar year. Estimates should be paid if the taxpayer 1. Expects to owe at least \$1,000 in tax for 2018 after subtracting withholding and refundable credits and 2. Withholding and refundable credits will be less than the smaller of 90% of the tax shown on the 2018 return or 100% of the tax shown on the 2017 return (110% if 2017 was greater than \$150K MFJ/\$75K MFS). The 2017 return must cover all 12 months.

**TAX TREATIES****Employment income / income from board members**

The U.S. has tax treaties with a number of other countries. Information on those treaties is available here: <https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables> (<https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables>) and <https://www.irs.gov/forms-pubs/about-publication-901>. (<https://www.irs.gov/forms-pubs/about-publication-901>) Publication 901 provides information on common items covered by tax treaty.

**INTERNATIONAL SOCIAL SECURITY****Cross border employments**

The U.S. has entered into agreements, called Totalization Agreements, with several countries for the purpose of avoiding double taxation of income with respect to social security taxes. These agreements must be taken into account when determining whether any alien is subject to the U.S. Social Security/Medicare tax, or whether any U.S. citizen or resident alien is subject to the social security taxes of a foreign country. Generally the home country retains social security taxation rights if sent to work in the host country for five years or less.

**Exception under Art 16 of Reg. 883/2004**

Not applicable

**and Art 17 of Reg. 1408/71****Social Security Cost as % from gross salary and absolute amounts**

U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of either the employee or the employer.

The current tax rate for social security is 6.2% for the employer and 6.2% for the employee, or 12.4% total, with a wage base limit of \$128,400 (as applicable for 2018). The current rate for Medicare is 1.45% for the employer and 1.45% for the employee, or 2.9% total, without wage base limit. Additional Medicare Tax also applies to an individual's wages that exceed a threshold amount based on the taxpayer's filing status at a rate of 0.9%.

**IMMIGRATION**

<p>Mazars</p> <p><b>Work permit</b></p>	<p>U.S. aliens must be authorized to work in the U.S. Certain aliens who are temporarily in the U.S. may file Form I-765, Application for Employment Authorization, with the U.S. Citizenship and Immigration Services (USCIS) to request an Employment Authorization Document (EAD). Other aliens that are lawful permanent resident, a conditional resident, or a nonimmigrant authorized to be employed with a specific employer are authorized to work without filing this form.</p>
<p><b>Visa</b></p>	<p>U.S. aliens must generally obtain a visa if they want to visit the U.S. Citizens and nationals from the Visa Waiver Countries are allowed to enter the U.S. for tourism or business purposes for up to 90 days without obtaining a visa. U.S. aliens who want to travel to the United States for reasons other than business or pleasure must apply for a visa in the appropriate category. U.S. aliens must apply for a visa at a U.S. Embassy or Consulate in their country of citizenship or residence.</p>
<p><b>Residency permits / registration certificate</b></p>	<p>Foreign citizens who want to live permanently in the United States must obtain an immigrant visa, also known as "Green Card". Immigrants generally must be sponsored by a U.S. citizen or lawful permanent resident immediate relative(s), or prospective U.S. employer, and have an approved petition before applying for an immigrant visa. The sponsor begins the immigration process by filing a petition on the foreign citizen's behalf with U.S. Citizenship and Immigration Services (USCIS).</p>
<p><b>Driving license</b></p>	<p>People who drive in the U.S. must have a valid driving license. For short-term visitors, some states require an International Driving Permit (IDP) from foreign nationals, in addition to a valid license from the driver's own country. For residents, residency requirements for obtaining a U.S. driver's license are different in each state. If you are eligible to apply for a driver's license, you must get a driving license from the Department of Motor Vehicles (DMV) of the state where you live.</p>
<p><b>STOCK OPTION PLAN</b></p>	<p>Options at exercise: NQSO tax or ISO AMT tax applies to the difference between the FMV at exercise and the exercise price (FMV at grant). If discount provided at grant, income tax, plus 409A penalty of 20% and interest on the difference between the FMV at grant and the exercise price. ISO at sale: Assuming no disqualified disposition, difference between the FMV at sale and exercise price. RSU at grant (with 83(b) election): FMV of property received. RSU at vesting: If no 83(b) election, difference between FMV at vest and FMV at grant. RSU at sale: FMV at date of sale minus previously taxed income. 3</p>

## ARTICLE 15 OF THE OECD MODEL

<p><b>183 days</b></p>	<p>The US provides a multi-factor, substance over form test, as it did not adopt the economic employer approach. This test focuses on three factors: behavioral control; financial control; and the terms of the contract between the parties.</p> <p>As per the 2016 US Model Income Tax Convention employment income of nonresident individuals performing services in the US when the following three conditions are met: 1. The individual is present in the US for a period or periods not exceeding 183 days in any 12 month period that begins or ends during the relevant tax period: 2. The remuneration paid by, or on behalf of, an employer who is not a resident of the US; and 3. the remuneration is not borne a deductible expense by a permanent establishment that the employer has in the US.</p> <p>If the salary of an employee, employed in the US is paid by a foreign person, but a US corporation or permanent establishment reimburses the payor, than neither conditions 2 or 3 are considered to have been met.</p>
<p><b>Notion of employer</b></p>	<p>The US does not have the strict notion of employer.</p>

**Existence of a permanent establishment**

In general, U.S. income tax treaties define a U.S. permanent establishment to include a fixed place of business in the United States through which a foreign enterprise carries on its business. However, a foreign enterprise will not be deemed to have a U.S. permanent establishment if its activities in the United States are limited to certain activities that are generally those of a preparatory or auxiliary nature.

A foreign enterprise will also be considered to have a U.S. permanent establishment in respect of activities undertaken on its behalf by a dependent agent who has and habitually exercises in the United States an authority to conclude contracts that are binding on the foreign enterprise. A foreign enterprise will not be deemed to have a permanent establishment in the United States merely because it carries on business in the United States through a broker, general commission agent, or any other agent of an independent status, provided that such person is acting in the ordinary course of his business as an independent agent.

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