April 3, 2015

To: U.S. Senate Committee on Finance

From: Paula N. Singer, Esq.

Re: Taxation of Foreign Nationals in the United States
Taxation of U.S. Citizens and Residents Abroad

Thank you for the opportunity to propose income tax simplification on behalf of foreign nationals temporarily present in the United States and for U.S. citizens and lawful permanent residents who reside abroad.

As a tax lawyer with the tax law firm Vacovec, Mayotte & Singer, LLP, Newton, MA, I provided tax services for 30 years, including preparing tax returns for 25 of those years. My clients have been primarily foreign nationals temporarily in the United States and U.S. citizens and lawful permanent residents living abroad and their employers and payers. In addition, I co-founded a software company whose products now owned by Thomson Reuters 1) automate tax residency and treaty analyses, 2) prepare 1042-S information returns for organizations paying foreign nationals, and 3) provide on-line tax return preparation of Forms 1040NR and 1040NR-EZ.

Although I am not an academic, I have given hundreds of seminars on these topics for advisers and administrators through bar associations and trade organizations, and for software clients. I am author of over 80 published articles that have appeared in tax and trade journals, including many published by Tax Analysts,[i] and 11 tax guidebooks on these topics.[ii] I also co-authored two law review articles, one proposing reforms for the taxation of U.S. retirement distributions to foreign nationals[iii] and, one proposing reforms for taxing U.S. citizens and residents residing abroad.[iv]

In today's world, foreign nationals move to the United States temporarily to work, study, train, or engage in research or in other exchange or cultural activities or for personal reasons such as marriage.

U.S. citizens and lawful permanent residents move abroad for the same reasons. The State Department estimates 6.8 million U.S. citizens now reside abroad. They include U.S. citizens born outside the United States who acquired U.S. citizenship through a U.S. citizen parent or parents and U.S. citizens born in the United States to foreign national parents temporarily in the United States who returned home with their parents when they were children (called "accidental citizens").

As a result, there has been a substantial increase in the number of individuals affected by tax rules and procedures designed for a different era. To simplify the taxation of these U.S. individual taxpayers, I urge you to consider these proposals in your tax reform legislation.

I. Foreign Nationals in the United States

Foreign nationals who are nonresident aliens are subject to U.S. income taxes under a special tax regime introduced in the 1960s. Foreign nationals who are resident aliens are taxed like U.S. citizens. Foreign nationals who are nonresident aliens are subject to U.S. income tax only on U.S.-source fixed or determinable annual or periodic (FDAP) income and on income effectively connected with the conduct of a U.S. trade or business. This term includes compensation for services performed in the United States and nonqualified (i.e., taxable) scholarship and fellowship grants paid to or on behalf of foreign nationals in F, J, M, or Q immigration status (collectively "foreign students and scholars").

To ensure collection of the tax, Chapter 3 of the Code requires payers to withhold 30 percent (called "NRA withholding") on U.S.-source FDAP income payments and effectively connected income paid to nonresident aliens unless an exception applies. Exceptions must generally be supported by a valid withholding certificate – Form W-9, W-8BEN, or 8233. Taxable scholarship and fellowship grants made to foreign students or scholars are subject to a lower 14 percent rate because they are taxed at graduated rates on the individuals' nonresident tax return. The withholding rules and procedures for payers are described in IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities* (76 pages). Payers must report the income and taxes withheld on a Form 1042-S information return, not a Form 1099.

Nonresident aliens with effectively connected income and/or FDAP income on which the proper tax was not withheld must submit a Form 1040NR tax return. Foreign students and scholars with employment and/or scholarship or fellowship income may submit a Form 1040NR-EZ. The rules for determining residency start and end dates, conditions and procedures for elections, and income tax and return rules are described in IRS Publication 519, *U.S. Tax Guide for Aliens* (68 pages). Tax treaty exemptions related to U.S. activities are described in IRS Publication 901 (61 pages).

Topic: Tax Residency Rules

Current Law

Section 7701(b) of the Internal Revenue Code which prescribes the rules for determining the tax residency status of foreign nationals was introduced in 1985. Foreign nationals are resident aliens if physically present in the United States for 31 days or more in the tax year and they have 183 countable U.S. days or more based on the following formula (called the "substantial presence test"):

- All of their U.S. days in the current tax year plus
- 1/3 of their U.S. days in the prior tax year plus
- 1/6 of their U.S. days in the tax year before the prior year

Foreign nationals who fail this test are nonresident aliens for federal tax purposes.

The tax residency rules include a variety of exceptions from counting U.S. days, described in IRS Publication 519, chapter 1. Exceptions from counting days applies to three groups of foreign nationals (called "exempt individuals") based on their U.S. immigration status.

- Foreign government related individuals: A (diplomats) and G (employees of international organizations) don't count their U.S. days.
- Students: F (academic), M (vocational) and J (exchange visitors in student or student intern categories) don't count their U.S. days for 5 calendar years.
- Teachers and trainees: J exchange visitors not in a student category[v] and Q (cultural visitors) don't count their U.S. days for 2 out of the current 7 calendar years (4 out of 7 if *all* remuneration paid to the employee is made by their foreign employer as described in section 872(b)(3)).

Students, teachers and trainees must consider prior visits as students, teachers, or trainees when they were exempt individuals to determine in which calendar years of their current visit they are or are not exempt from counting U.S. days. The rules for exempt individuals apply to their accompanying dependents in derivative status (e.g., F-2, J-2) but based on the dependent's U.S. days.

Explanation

The application of these rules is straight forward for foreign nationals who must count their days. Frequent business visitors may remain nonresident aliens by keeping their U.S. days per year on average under 122 or, if their days in the current year do not add up to 183, by claiming a closer connection exception (Form 8840 required). Foreign nationals who come to the United States temporarily to work (e.g., H-1B specialty workers and L-1 intracompany transferees) become resident aliens at least by their second calendar year and pay taxes on their worldwide income just like U.S. citizens. Resident alien workers who change status to student, teacher, or trainee status, however, may revert to nonresident alien tax status.

Foreign nationals in certain U.S. immigration categories remain nonresidents longer because their U.S. days don't count during all calendar years of presence (called "exempt individuals").

1. Foreign government-related individuals who do not count any of their days remain nonresident aliens subject to U.S. tax under the special regime.

2. Students remain nonresident aliens for five calendar years (Form 8843 required). But foreign students who, during a prior visit, were exempt as a student, teacher, or trainee for any part of more than five calendar years (since 1985) will not be exempt individuals as a student in the tax year. Students who can support with facts they are not intending to reside permanently in the United States may claim the closer connection exception for students (Form 8843 and statement of facts required) and continue not counting their U.S. days.

3. Teachers and trainees are nonresident aliens for two of the current seven calendar years (Form 8843 required) provided they have not visited the United States before as a student, teacher, or trainee. They become resident aliens if they stay for 183 days or more in their third and subsequent calendar years. But if their visit extends longer, they will revert to nonresident alien status when their first two exempt calendar years begin to drop out of the prior six calendar

years. For example, a J-1 research scholar's whose visit began in 2008 and extends beyond 2014 has two exempt calendar years (2008 and 2009) and is a nonresident alien. He is a resident alien for 2010 through 2014. He is an exempt individual and a nonresident alien again for 2015 because he has only one exempt calendar year (2009) in the prior six years. He is a nonresident alien for 2016 because he has only one exempt calendar year (2015) in the prior six calendar years.

Teachers and trainees who, during a prior visit, were exempt as a student, teacher, or trainee for any part of two calendar years in the prior six calendar years of this visit, will not be exempt individuals. (A majority of teachers and trainees have such prior visits to the United States.) They may be nonresident aliens one year and resident aliens the next or vice versa. Depending on their pattern of travel for their prior visits, the determination of their tax residency status may be exceedingly complex.

Students, teachers and trainees may be eligible for tax treaty exemptions on their compensation for teaching, research, or training and/or on their noncompensatory scholarship and fellowship grants. Students, teachers and trainees who are nonresident aliens are exempt from Social Security and Medicare taxes under section 3121(b)(19). This rule does not apply to accompanying dependents who may be work authorized. Students, teachers and trainees, including their accompanying spouse and/or dependents in derivative status, who are exempt (from counting U.S. days) individuals must submit an annual report of their excluded days on Form 8843.

Proposals

1. Continue to treat foreign nationals who have become resident aliens based on their substantial U.S. presence as resident aliens as long as they have continuing residence in the United States. Define continuing residence as U.S. residence uninterrupted by an absence of one calendar year or more.

2. Simplify the tax residency rules for exempt individuals with regard to the impact of prior visits by counting calendar years as a student, teacher, or trainee whether or not a year of the prior visit was an exempt calendar year.

3. Add a new election allowing foreign students and scholars to elect to be taxed as resident aliens for wage withholding and NRA withholding as well as tax return purposes in return for foregoing exemptions from tax under a tax treaty and Social Security and Medicare tax exemption. Require resident aliens (and U.S. citizens) filing Form 1040 (or simpler Forms 1040A or 1040-EZ) to certify that they have included their worldwide income in the return.

4. Eliminate the statutory requirement for an annual report for students, teachers, and trainees who are exempt individuals under the standard limitation rules described above. Only require the annual report for the current exceptions – foreign nationals with a medical condition which arose while in the United States, professional athletes engaged in a charitable event in the United States, and students claiming a closer connection exception.

5. Use the terms “tax resident” and “tax nonresident” in legislation rather than “resident alien” and “nonresident alien” to differentiate the tax terms from the immigration terms which have different meanings. A U.S. lawful permanent resident (called a “green card holder”) is a resident alien for immigration purposes and also a resident alien for tax purposes under the green card test. But a nonresident alien for immigration purposes is a nonimmigrant who may be either a tax resident or a tax nonresident under the substantial presence test (described above).

Topic: Taxation of Capital Gains of Nonresident Aliens

Current Law

Section 871(a)(2) provides a special rule intended to encourage foreign nationals to invest in the United States. Nonresident aliens may exclude capital gains on personal property (tangible and intangible) provided they have not been physically present in the United States for 183 days or more in the calendar year. **This 183-day rule is different from the 183-day residency rule discussed above.** Nonresident aliens not qualifying under this rule may be subject to 30 percent tax on their net U.S.-source capital gains. Section 865(g) provides a sourcing rule for such gains based on the location of the beneficial owner’s tax home. Under section 162 of the Code foreign nationals employed in the United States for a period anticipated to be more than one year, or which does in fact extend beyond one year, have changed their tax home to their U.S. location.[vi]

Explanation

Foreign nationals in the United States in A, G, F, J, M, or Q status may be nonresident aliens for all or some of their stay in the United States (described above). Nonresident aliens who are physically present in the United States for 183 days (whether countable or not) are subject to 30 percent tax on their net U.S.-source capital gains. Whether their capital gains are U.S. or foreign source depends on the location of their tax home.

Nonresident aliens who have changed their tax home to the United States have U.S.-source gains regardless of where those gains are derived, in the U.S. or abroad. Nonresident aliens who have not changed their tax home to the United States have foreign-source gains regardless of where those gains are derived. Students, teachers, and trainees with no effectively connected income (i.e., compensation for U.S. services or taxable scholarship or fellowship grants), during their U.S. stay, have not changed their tax home to the United States.[vii]

Proposal

Do not count days spent in the United States as exempt (from counting U.S. days) individuals for purposes of the 183-day rule under section 871(a)(2).

This change will tax the gains on personal property of nonresident aliens the same regardless of where they reside, in the United States or abroad. Their gains on personal property will be excluded eliminating the need to determine their tax home for sourcing purposes.

Topic: Gain or Loss on the Sale of Foreign Assets

Current Law

Resident aliens are subject to U.S. income tax on worldwide income in the same manner as U.S. citizens. But foreign nationals (and U.S. citizens living abroad discussed below) have two additional factors when they sell assets denominated in foreign currency.

1. The basis of an asset denominated in foreign currency must be translated into U.S. dollars using the exchange rate as of date of acquisition. The sale proceeds must be translated into U.S. dollars using the exchange rate as of date of sale.[viii]

2. Foreign nationals who acquired foreign assets prior to becoming U.S. resident aliens are not provided with a step-up in basis on those foreign assets. If an asset was acquired by transfer from a decedent, the step-up in basis to the value on date of death of the decedent under section 1014 of the Code applies irrespective of the location of the asset or the U.S. tax residency status of the decedent.

Explanation

The application of these rules can best be described by the following real-life examples:

1. Client A, a citizen of Germany relocated to the United States eventually becoming a U.S. citizen. He owned a castle in Germany inherited from his father who died during World War II. His acquisition basis in the castle and land was the fair market value on his father's date of death. The translation was based on the black market rate for the Deutschmark since there was no official exchange rate during the war. He paid tax on the appreciation from his acquisition date, much of which occurred before he relocated to the United States.

2. Client B, a green card holder married to a U.S. citizen owned a farm in Jordan. He sold a parcel of the land. The value on his date of acquisition was translated into U.S. dollars. The property had appreciated in value but, because of the translation rule and an currency loss imbedded in the transaction, he had a capital loss instead of a capital gain for U.S. tax purposes.

3. Client C was a green card holder originally from Hong Kong who came to the United States from Canada where he had become a landed immigrant. Canada has a step-up in basis rule for assets owned prior to relocating to Canada. (Canada's rule is the reason many foreign entrepreneurs choose Canada over the United States.) He had potential U.S. tax on the gain on an up-coming sale of a building in Hong Kong in which he owned a large interest. He relocated back to Canada prior to the sale and abandoned his green card. (The departure tax did not apply to him.) He had a small gain on the appreciation during his Canadian residence taxed in Canada and no U.S. tax.

Proposals

1. Provide a step-up in basis rule for foreign nationals who relocate to the United States similar to the rule in Canada.

2. Compute the gain or loss on foreign assets in the foreign currency first and then translate the gain or loss to U.S. dollars for U.S. tax purposes.

Topic: Distributions from U.S. Retirement Plans

Current Law

The rules for taxing a distribution from a U.S. retirement plan made to a nonresident alien requires the distribution to be allocated between 1) employer contributions, 2) tax-advantaged employee contributions and 3) earnings and accretions. The contributions are taxed like personal services income at graduated rates to the extent the contributions related to services in the United States. Contributions for services outside the United States are foreign-source income not subject to U.S. tax. The earnings and accretions are taxed at a flat 30 percent rate. [ix]

Explanation

Pension payments to nonresident aliens are subject to 30 percent withholding under section 1441 of the Code. There is no regulation requiring a pension administrator to keep track of the allocation between contributions and accretions in value. Even if there were, there is currently no way to report the breakdown on a Form 1099-R or 1042-S information return. As a result, many retirement distributions are subject to overwithholding.

Residents of a tax treaty country may be eligible for a reduction in or exemption from tax under an applicable income tax treaty. Treaty-country residents may request an exemption from withholding with a Form W-8BEN (Individuals) but a Form 1040NR tax return is nevertheless required. There is no IRS published guidance for how tax-treaty pension provisions designed for periodic payments from defined-benefit plans apply to IRA and defined contribution plan distributions.

Nonresident aliens generally receive pension income after they have relocated abroad making preparation of their Form 1040NR tax return difficult if not impossible.[x]

Proposals

1. Specify a flat 15 percent rate of NRA withholding 1) distributions from a qualified retirement plan, 2) distributions to the extent not exceeding the required minimum distribution from a defined contribution plan or IRA, and 3) hardship distributions (that are not early distributions).

2. For other distributions from qualified plans (e.g., lump sum distributions), apply the 30 percent rate.

3. Treat the withholding as the final tax liability of the nonresident alien with regard to the distribution, eliminating the requirement of submitting a Form 1040NR.

4. Allow residents from treaty countries exemptions from tax and withholding as allowed by the applicable treaty. Define “pensions” with regard to pension articles as payments from plans subject to required minimum distributions.

II. U.S. Citizens and Residents Abroad

U.S. citizens and green card holders who reside abroad (collectively "Americans abroad")in countries that impose income taxes on their residents (most countries do) are subject to both residence country income tax and U.S. income tax on their worldwide income. They may mitigate worldwide double taxation with two tax mechanisms: section 911 foreign earned income exclusions and foreign tax credits. Employers with U.S. citizens deployed in countries with no income taxation – typically in the Middle East – use the income exclusions as incentives to attract U.S. citizens to work in these uninviting and frequently dangerous locations. Section 911 exclusions are elected on a Form 2555 or 2555-EZ. Foreign tax credits are computed on a Form 1116.

Topic: Citizenship-Based Taxation

Current Law

The United States imposes U.S. income taxes based on an individual's status - U.S. citizen or green card holder. This taxation is referred to hereafter as "citizenship-based taxation." Congress introduced the income tax in 1913. U.S. taxation was imposed on green card holders based on their status by including the green card test in section 7701(b) of the Code which became effective in 1985. Under section 7701(b) all other foreign nationals are subject to U.S. residence-based taxation (described above).

Congress amended the income tax law in 1916 to apply to "income from whatever source derived" which became the basis for taxing overseas income. In 1924, the U.S. Supreme Court upheld the taxation of Americans on their foreign earned income.[xi] U.S. citizens and green card holders remain subject to U.S. taxation on their worldwide income regardless of where they reside, in the United States or abroad, until they lose their status. U.S. citizens lose their status by renunciation or revocation. A green card holder loses their status by abandonment (intended or inadvertent) or by revocation. A U.S. court has yet to rule on whether the United States has the right to tax green card holders who may have abandoned their status for immigration purposes (and as a result may not reenter the United States in that status) but have not effectively abandoned their green card status for tax purposes.[xii]

The United States is unique in basing taxation on the status of the individual – citizenship or lawful resident under the immigration law. Other countries generally tax based on residence in the country as defined by the country's internal tax law.

Explanation

Americans abroad must follow all other U.S. income tax rules designed for domestic taxpayers, converting their transactions into U.S. dollars using IRS rules and recording their foreign transactions on the U.S. tax returns using U.S. tax principles. In addition, to mitigate the double taxation of their worldwide income, Americans abroad must use complex tax rules and procedures – section 911 foreign earned income exclusions and foreign tax credits (discussed below). As a result, the cost of preparing a U.S. tax return for an American abroad, a process unfamiliar to most tax return preparers, can be very expensive.

For an explanation of the special rules and procedures that apply to Americans abroad, see IRS Publication 54, *Tax Guide for U.S. Citizens and Residents Abroad* (38 pages) and IRS Publication 514, *Foreign Tax Credits for Individuals* (39 pages).

Proposals

1. Eliminate citizenship-based taxation for:

    a. U.S. citizens by birth abroad to a U.S. parent or parents
    b. Accidental citizens
    c. Citizens and residents with who have been bona fide residents of a foreign country or countries and who have had no U.S. abode[xiii] for a minimum required period (e.g., three years or more) whether or not such status was elected under section 911 (described below)

2. Apply U.S. residence-based taxation to U.S. citizens and green card holders no longer subject to citizenship-based taxation under the same tax rules that apply to foreign nationals:

    a. Determine their U.S. tax residency status under the rules for foreign nationals. Use the rules for determining residency start and end dates and procedures for dual-status years that apply to foreign nationals.
    b. Treat these Americans abroad as "foreign" for purposes of the special reporting rules related to financial accounts under the Foreign Accounts Compliance Act (FATCA) to the extent the account is in their home country.
    c. Treat these U.S. citizens as nondomiciliaries for U.S. estate tax purposes and increase the exemption equivalent amount for U.S.-situs assets subject to the estate tax for from $60,000 to $600,000.

3. Maintain the current rules for military and other personnel abroad paid by the U.S. government

Topic: Foreign Earned Income Exclusions

Current Law

Section 911 of the Code provides Americans abroad with two possible income exclusions to mitigate worldwide double taxation: a foreign earned income exclusion (FEIE) and a housing cost exclusion. Congress first added a full income exclusion of overseas income in 1926 because of their concern about the competitive handicap for U.S. citizens and U.S. corporations. In 1932, Congress eliminated the exclusion for income paid by the United States or any federal agency.

Congress added an exclusion cap of $20,000 in 1962 and has since periodically amended the exclusion amount(s) and related rules most recently under the Bush Administration, as a revenue raiser to offset revenue lost from lowering the tax rates on dividends and capital gains. The increased revenue never materialized because Americans abroad revoked the exclusions and claimed foreign tax credits instead.

Explanation

To qualify for the exclusions a U.S. citizen must be a bona fide resident of a foreign country or countries for at least one full calendar year. U.S. citizens with a U.S. abode do not meet this test. The bona fide residence test may not be used by green card holder unless the taxpayer is a resident of a country with a tax treaty with the United States with a nondiscrimination clause. Alternatively, Americans abroad who are physically present in a foreign country or country for 330 days or more in overlapping 12-month periods may claim the exclusions.

Proposals

1. Provide a single exclusion of $250,000 for foreign earned income indexed annually for inflation for Americans abroad not subject to citizenship-based taxation. “Earned” is a tax term meaning income from employment or self-employment.

2. Do not apply the income exclusion to unearned income. “Unearned” is a tax term meaning passive income such as dividends, interest, royalties, and capital gains.

3. Apply the section 911 bona fide residence test to both U.S. citizens and green card holders.

Topic: Foreign Tax Credits

Current Law

Section 901 of the Code provides a foreign tax credit (FTC) or deduction to offset U.S. taxes attributable to foreign income. The current law was introduced by the 1986 Tax Reform Act and was specifically designed for corporations. It applies to individuals as well because the ’86 Act failed to provide a simpler foreign tax credit regime for individuals. Congress add an election to apply the FTC without the limitations and Form 1116 for U.S. citizens and residents whose only foreign taxes are on passive income, the foreign taxes are under $300 ($600 for joint filers), and the income and foreign tax are reported on a Form 1099.

Explanation

To be creditable a foreign tax must have the character of a compulsory income tax under U.S. tax principles, limiting its use generally to income taxes.[xiv] The rules for separate income baskets and separate application of the rules to the alternative minimum tax have required multiple Forms 1116 in order for individual taxpayers to compute their FTC.

Proposals

If the foreign tax credit/deduction rules are amended as a part of international corporate tax reform, consider how the changes will affect individual taxpayers and provide simpler rules for them.

Topic: Expatriation Tax

Current Law

Section 877A of the Code imposes an expatriation tax on certain U.S. citizens who lose their citizenship status and on long-term residents who lose their green card status (even if lost unintentionally). Long-term residents are green card holders who have been in that status for any part of eight of 15 tax years ending with the year such status is lost (even if such loss is unintended). Years that a green card holder has elected to be treated as a nonresident alien under a tax treaty residency tie-breaker rule are not counted for this purpose.

Explanation

How the expatriation tax is imposed, reported, and paid depends on when expatriation occurred. These complex rules are described for taxpayers in IRS Publication 519, pages 22-24.

Recommendations

If the recommendations above for citizenship-based taxation are implemented:

1. Repeal the expatriation tax with transitional consideration for those already subject to its provisions.

2. Replace the revenue lost from the repeal with a departure tax based on the Canadian deemed distribution model based on a change from tax resident to tax nonresident.[xv]

3. Do not impose the departure tax with a change from citizenship-based taxation to residence-based taxation on those Americans abroad no longer covered by citizenship-based taxation provided they have resided abroad for a minimum specified period as of the date of the legislation.

[i] **U.S. Taxation of Foreign Nationals**

"Tax Return Challenges for Foreign Students and Scholars," *Tax Notes International*, April 6, 2015
"A New Challenge for Accounts Payable – FATCA," *Tax Notes International*, October 27, 2014
"Withholding and Reporting on Payments to Foreign Persons," *Tax Notes International*, March 17, 2014
"When Immigration and Tax Converge," co-authored with Linda Dodd-Major, *Tax Notes International*, March 12, 2012
"Certain Nonresident Aliens Are Now Obligated for U.S. Self-Employment Tax," *Tax Notes International*, April 4, 2011
"Information Reporting on Form 1042-S: A New Challenge for Accounts Payable," *Tax Notes International*, November 22, 2010
"U.S. Tax Rules for Paying Foreign Employees," *Tax Notes International*, January 18, 2010
"U.S. Tax Returns for Foreign Nationals," *Tax Notes International*, January 26, 2009
"The 10 Rules of U.S. Taxation of Payments to Foreign Nationals," *Tax Notes International*, January 7, 2008
"Don't Extend U.S. Social Security Taxation to Currently Exempt Foreign Workers," *Tax Notes International*, August 13, 2007
"Top 10 U.S. Tax Return Errors by Foreign Nationals Tax Notes International," *Tax Notes International*, March 5, 2007
"New U.S. Rules for Withholding on Wages of Nonresident Employees," *Tax Notes International*, February 6, 2006
"New U.S. Acceptance Agent Application Procedures for Nonresident Taxpayers," *Tax Notes International*, January 16, 2006
"B-1 Visitors: U.S. Tax Traps for the Unwary," *Tax Notes International*, September 12, 2005
"In Search of Guidance on U.S. Taxation of Scholarship Grants for Foreign Nationals," *Tax Notes International*, April 18, 2005
"Special U.S. Payroll Tax Rules and Procedures Apply to Foreign Employees, *Tax Notes International*, May 23, 2005
"Identification Numbers and U.S. Government Compliance Initiatives," co-authored with Linda Dodd-Major, *Tax Notes*, September 20, 2004

Taxation of U.S. Citizens and Residents Abroad

Contributor, untitled article on the impact of the 1998 IRS Reform and Restructuring Act on individual taxpayers with international issues, *Forty Years of Change, One Constant, Tax Analysts*, 2010
Contributor, "Individual Nonfilers and the International Tax Gap," *Toward Tax Reform: Recommendations for President Obama's Task Force*, 2009
"Tax Reform for Americans Abroad," *Tax Notes International*, May 25, 2009
"Common-Sense Tax Reform (includes proposal for taxing U.S. citizens and residents abroad)," *Tax Notes Year in Review Edition*, *Special Report*, January 5, 2009
"A Common-Sense Solution for Taxing U.S. Citizens and Immigrants Abroad," *Tax Notes International*, November 17, 2008
"U.S. Tax Code and Treaty Solutions for Resident Aliens Working Abroad," *Tax Notes International*, May 5, 2008
"U.S. Policy on Taxing U.S. Citizens and Residents Abroad: A Closer Look," *Tax Notes International*, June 19, 2006
"Important Information for Those Considering Expatriation, On-line Services, January 6, 2005
"U.S. Tax Policy for Citizens and Immigrants Living Abroad Merits a Closer Look," *Tax Notes International*, July 19, 2004

[ii] **Books distributed by Thomson Reuters**

Tax Treaty Benefits for Foreign Nationals Performing U.S. Services
A Guide for Filing Forms 1042 and 1042-S (out of print)
U.S. Taxation of B-1 Business Visitors
J-1 Exchange Visitors Performing U.S. Services
L-1 Intracompany Transferees on U.S. Assignment

U.S. Taxation of H-1B Specialty Workers
U.S. Taxation of Foreign Students
U.S. Taxation of Scholarship and Fellowship Grants
J-1 Exchange Visitors
Honorarium and Other Payments to Independent Contractors:
A Guide to Immigration and Tax Administration, co-authored with Linda Dodd-Major
International Aspects of Individual Tax Returns (out of print)

[iii] "A Proposal for Taking the Complexities out of Tax U.S. Retirement Distributions of Foreign Nationals," co-authored with Prof. Cynthia Blum, *Florida Tax Review*, Vol. II, Number 10, 2011

[iv] "A Coherent Policy for U.S. Residence-Based Taxation of Individuals," *Vanderbilt Journal of Transitional Law*, co-authored with Prof. Cynthia Blum, Vol. 41, No. 3, May 2008

[v] There are 16 categories of exchange visitors: Au pair, Camp Counselor, College/University Student, Secondary School Student, Government Visitor, International visitor (Department of State), Alien Physician, Professor, Research Scholar, Short-Term Scholar, Specialist, Summer Work/Travel, Teacher, Trainee, Intern, and Student Intern

[vi] See Revenue Rulings 79-388, 1979-2 CB 270 and Revenue Procedure 2004-37 in IRB 2004-26

[vii] *See* http://www.irs.gov/Individuals/International-Taxpayers/Nonresident-Alien-Students-And-the-Tax-Home-Concept for more details

[viii] For a discussion of these rules, see *Quijano vs. the United States*, 93 F.3d 26 (1st Cir. 1996), affirming an unreported district court decision.

[ix] See Revenue Procedure 93-86, 1993-2 CB 71, 1993-40 IRB 4

[x] Pages 16 through 19 of Form 1040NR instructions describe how to record IRA distributions, pensions and annuity payments.

[xi] Cook v. Tait, 265 U.S. 47 (1924)

[xii] For a description of how difficult it is to determine when loss of status by green card holders occurs, see Linda Dodd-Major, "Who Is a Green Card Holder and Why Does It Matter for U.S. Tax Purposes," *Tax Notes International*, Tax Analysts, August 18, 2014.

[xiii] The case law under section 911 lays out in detail the facts determinative of bona fide residence status and U.S. abode.

[xiv] Revenue rulings related to the introduction of the earliest Social Security agreements make it clear that social welfare taxes, which are income taxes because if they are computed on income, may no longer be creditable after the implementation of a Social Security agreement with the country. For a list of countries with Social Security agreements with the United States, see www.socialsecurity.gov/international.

[xv] For more details regarding this proposal and other reform proposals submitted by American Citizens Abroad, see https://americansabroad.org/issues/taxation