



2018 Foreign national checklist

Form 1040NR and dual status and resident returns

Client name and number _____

Prepared by _____ Date _____ Reviewed by _____ Date _____

100) General	Yes/ Done	N/A
▶ 101) Have you considered requesting a consent to disclose taxpayer information statement under Sec. 7216?		
▶ 102) Has the client completed the foreign national organizer?		
1. Are there any unanswered questions or items needing clarification or follow up?		
▶ 103) Based on review of the foreign national filing flowchart:		
1. Consider Sec. 6013(g) and 6013(h) elections.		
2. Consider the Sec. 7701(b) election to become a resident if the taxpayer was in the U.S. for less than 183 days. Consider filing an extension to meet the filing requirements of the election.		
3. Consider the 10-day rule under Sec. 7701(b)(2).		
4. Consider a combined Sec. 7701(b) election with a Sec. 6013(g) or Sec. 6013(h) election.		
5. Consider the use of Form 8840, <i>Closer Connection Exception Statement for Aliens</i> . See Sec. 7701(b)(3)(B) and (C), Regs. Sec. 1.7701(b)-2(a), and Regs. Sec. 301.7701(b)-2(f). FBAR filing is not required if the exception is met.		
6. Consider use of the Sec. 911 exclusion with a full-year resident election. Consider state applicability.		
7. Has the substantial presence test (counting days in the U.S. for the past two years) been properly applied?		
8. Consider Form 8843, <i>Statement for Exempt Individuals and Individuals with a Medical Condition</i> . Consider the specific visa, medical condition and if the taxpayer is a professional athlete (remember five-year rule).		

9. Evaluate if Sec. 865(g) is applicable to determine sourcing rules for personal property sales.

10. Did the taxpayer expatriate pursuant to Sec. 877 (not Sec. 877A) prior to June 17, 2008, and enter the U.S. for more than 30 days during the taxable year?

11. Has Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, been filed to claim an exemption from withholding tax?

▶ 104) Treaty issues. See IRS Publication 901, *U.S. Tax Treaties*, for a list of treaty countries. See Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or Section 7701(b)*, instructions for a complete list of disclosure exceptions.

1. Residency tiebreaker

2. Dependent personal services clause

3. Treaty rates

4. State conformity

5. Non-qualified retirement plan

6. Requirement to file Form 8833 under Regs. Sec. 301.7701(b)-7

7. Form 8833 applicable as an attachment to Form 1040NR

8. Note that a “dual resident” taxpayer may elect not to claim treaty benefits and file U.S. returns as a resident alien (Field Service Advice 199935058).

9. Issues that might require “competent authority” or private letter ruling (PLR) guidance

10. Look carefully at the “other income” clause for applicability to refunds, foreign unemployment compensation, etc. For example, see the competent authority expansion of other income clause in the U.S./Belgium treaty.

▶ 105) Residency start date:

1. For the substantial presence test, consider the 10-day de minimis presence exception per Sec. 7701(b)(2)(C).

2. Green card test

3. Start date for purposes of the Sec. 7701(b) election

4. Exempt visas (F, J, A, Q and M). Has the taxpayer been in the U.S. for over five years?

Yes/
Done N/A

▶ 106) Residency start date:

1. Sec. 7701(b)(10) no lapse rule – review the taxpayer’s residency status in prior years.
2. Consider the 10-day rule under Sec. 7701(b)(2).
3. Consider Regs. Sec. 1.6013-6(c), example (3), to file a joint return in the year of departure.

▶ 107) Consider U.S. and Mexican/Canadian citizens who commute to the U.S. daily as U.S. employees. Commuting days are not counted in determining whether a non-resident alien (NRA) meets the 183-day test.

▶ 108) Consider the type of visa and special reporting requirements.

▶ 109) Determine if the taxpayer residing outside of the U.S. qualifies for the automatic two-month filing extension. See Sec. 6081.

Comments/explanations

200) Income

Yes/
Done N/A

▶ 201) Request worldwide income information.

1. Consider IRS and applicable state sourcing rules for wages. See Regs. Sec. 1.861-4(b).
2. Consider IRS and applicable state sourcing rules for stock options.
3. Consider “away from home” status per Rev. Rul. 93-86.

▶ 202) Consider bona fide residence or physical presence test qualifications for the Sec. 911 earned income exclusion. (The income exclusion for 2018 is \$103,900.)

▶ 203) Determine housing costs for the Sec. 911 housing exclusion or housing deduction (Notice 2018-44. For 2018, the IRS provided a higher adjusted limitation on housing expenses in one or more of the high-cost localities above the 2017 amount. Taxpayers could elect to apply the 2018 limitation beginning in 2017. The Treasury Department and the IRS anticipate that future annual notices providing adjustments to housing expense limitations will make a similar election available to qualified individuals who incur housing expenses in the immediately preceding year. For example, when adjusted housing expense limitations for 2019 are issued, it is expected that taxpayers will be permitted to apply those adjusted limitations to the 2018 taxable year.

▶ 204) Inquire if the taxpayer had investment income from foreign sources and if tax was withheld at the source.

▶ 205) Personal residence:

1. Is the taxpayer renting a personal residence?
2. Are there foreign currency mortgage gains?
3. Are gains properly computed on personal residence vs. rental property?
4. Consider exchange rates/qualified business unit (QBU) status.
5. Correct depreciation methods.

Depreciation should be calculated in the local currency using a 40-year life and then the current year expense should be converted to U.S. dollars using the average annual exchange rate for the current year.

6. Consider Sec. 469(j)(7) mortgage interest (claim on Schedule A).
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▶ 206) U.S. rental property:

1. If the taxpayer is renting U.S. real property, consider making a Regs. Sec. 1.871-10(d)(1)(ii) election.
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▶ 207) Consider the following:

1. Foreign tax credit (Form 1116)
 2. Proper calculation of the foreign tax credit reduction if claiming Sec. 911 exclusion(s)
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▶ 208) Consider a potential situation where alternative minimum tax (AMT) income is in excess of actual taxable income for married filing separate taxpayers from Canada. AMT is not a creditable tax in Canada.

▶ 209) Is there any self-employment income? Consider Social Security (SS) totalization agreements. Note that totalization agreements use different rules to determine residency for application of self-employment tax.

Comments/explanations

300) Other requirements

Yes/
Done N/A

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- ▶ 301) Determine if Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*, is needed to report foreign financial accounts (US\$ 10,000, in aggregate, at any point during the year).

Consider the following:

1. Retirement accounts
2. Accounts associated with a non-U.S. rental property
3. Investment in a foreign entity over which the taxpayer has signature authority over the foreign entity's foreign financial accounts
4. Investment in a foreign entity over which the taxpayer has no signature authority over the foreign entity's foreign financial accounts but has a greater than 50% ownership interest (direct or indirect). This will trigger an FBAR filing for this entity.
5. Accounts covered under a power of attorney create a reportable account due to signature authority held by the taxpayer.
6. Credit cards
7. The e-file requirement and the due date of the FBAR filing of April 15 with an automatic extension granted to Oct. 15

Notes: Sec. 6038D reporting on Form 8938, *Statement of Specified Foreign Assets*, is required in addition to, and not as a replacement of, the FBAR filing. If applicable, taxpayers will need to file both FBAR and Form 8938 for the same asset.

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- ▶ 302) Review the requirements to report foreign financial assets under Sec. 6038D and determine if Form 8938 is needed. Complex filing thresholds begin when fair market value of aggregate assets exceed US\$ 50,000 on the last day of the year or more than US\$ 75,000 at any time during the year. If required to be filed, Form 8938 is included with Form 1040NR as well as Form 1040. Refer to the instructions for Form 8938.

Consider the following:

1. Financial accounts held at a foreign financial institution
2. Foreign-issued life insurance or annuity contract with cash value
3. Foreign hedge funds and foreign private equity funds
4. Foreign stock or securities not held in a financial account
5. Foreign partnership interests
6. Private contracts with foreign counterparties
7. Loans to non-U.S. persons

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- 8. Triple net leases with non-U.S. counterparties
 - 9. Purchase and sale contracts with non-U.S. counterparties
 - 10. Foreign mutual funds (possible PFIC issues - see 308)

Note: This is not a complete list of reportable items.

▶ 303) For gifts received by a U.S. person from foreign donors under Sec. 6039F, consider the requirement to file the information return (Form 3520).

▶ 304) Do family members need individual taxpayer identification numbers (ITINs)? If so, complete Form W-7, *Application for IRS ITIN*, for each family member.

▶ 305) Did the taxpayer(s) bring a household employee or nanny with them into the U.S.?

- 1. Was proper visa and employment paperwork obtained?
- 2. Did he or she apply for a Social Security number?
- 3. Is the employee an au pair under a J visa? Consider a potential exemption of payroll taxes.

▶ 306) Has the filing requirement for Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, been considered for the following?

- 1. Officer or director of foreign company
- 2. Shareholder of controlled foreign corporation, directly or indirectly

▶ 307) Other filings to consider:

- 1. Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*
- 2. Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund* (See #308)
- 3. Form 8840, *Closer Connection Exception Statement for Aliens*
- 4. Form 8858, *Information Return of U.S. Persons With Respect To Foreign Disregarded Entities*
- 5. Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*

▶ 308) For investments in PFICs (passive foreign investment companies), consider the following:

- 1. Shareholder election to be treated as a "qualified electing fund" (QEF)?

Yes/
Done N/A

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2. Annual election made on Forms 8621 previously filed?
 3. Prior Forms 8621 filed in client's file?
 4. Did the shareholder transfer the PFIC stock to a pass-through entity?
 5. Should a "retroactive QEF election" be made, if done timely?
 - a) If so, obtain IRS consent to make the retroactive election under Regs. Sec. 1.1295-3(g).
 6. Should the shareholder make a "deemed sale election" on Form 8621 before it is filed?
 7. Has a PFIC made a distribution or been disposed of during the year? If so, consider deferred tax regime requirements.

▶ 309) For a deferred compensation plan, pension plan, etc., consider the following:

1. Deferred foreign taxation – U.S. treatment
2. State conformity
3. Potential treaty utilization

▶ 310) Form 1116, *Foreign Tax Credit*, applicable to Form 1040NR?

▶ 311) Is a foreign tax payment eligible or more advantageous as a Sec. 164 deduction?

▶ 312) Is Form 8288, *U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests*, applicable to report on Form 1040NR?

Comments/explanations

400) Offshore nonresident tax implications

Yes/
Done N/A

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- ▶ 401) Is there any U.S.-based income-generating property (rent, royalty, dividends, Social Security, retirement, IRA, pension, alimony)? See the treaty for exceptions.
 - ▶ 402) Are there any tax withholding requirements? Consider Form 8804-C, *Certificate of Partner-Level Items to Reduce Section 1446 Withholding*.
 - ▶ 403) Consider filing Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*.
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Yes/
Done N/A

▶ 404) Consider filing Form W-7, *Application For IRS Individual Taxpayer Identification Number*.

▶ 405) Consider the substantial omission of items period (six years) for not reporting income for prior year(s). See Sec. 6501(e)(1)(A), as amended.

▶ 406) Determine if any Forms 1042S, *Foreign Persons U.S. Source Income Subject to Withholding*, are applicable to report on Form 1040NR.

▶ 407) Consider the U.S. withholding tax requirement for sales of U.S. property by non-residents.

Comments/explanations

500) Other considerations

Yes/
Done N/A

▶ 501) Consider state filing options.

1. Consider treaty applicability for state purposes.

2. Consider that residency status in a state may not coincide with the status for federal purposes.

▶ 502) Review the federal position for state applicability.

▶ 503) Consider application of community property rules.

▶ 504) Consider application of state registered domestic partners rules.

▶ 505) Consider the potential for a state tax credit for foreign taxes paid.

Refer to the AICPA Form 1040 checklist for other state items that should be considered. State rules vary from state to state and could differ from the federal rules.

Comments/explanations

600) Expatriation or termination of residency	Yes/ Done	N/A
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▶ 601) Did Sec. 877 apply prior to June 17, 2008, or does Sec. 877A apply after that date? See Form 8854, *Initial and Annual Expatriation Statement* and the guidance provided in Notice 2009-85.

▶ 602) Consider if the taxpayer was a lawful permanent resident of the U.S. for eight of the last 15 years. See Sec. 7701(b)(6).

▶ 603) Was the taxpayer a covered expatriate with deferred compensation, a specified tax deferred account, and/or a grantor trust? See Form W8-CE, *Notice of Expatriation and Waiver of Treaty Benefits*.

▶ 604) For all departing aliens, consider the sailing permit (foreign citizens, regardless of their resident status). The permit is obtained by either filing:

1. Form 2063, *Departing Alien Income Tax Statement*, before leaving the U.S, or
2. Form 1040-C, *U.S. Departing Alien Income Tax Return*. This return is required for departing aliens who do not qualify to file Form 2063 before leaving the U.S.
3. Consider the potential exemption from obtaining sailing permits, including diplomats, qualified international organization employees and other foreign government employees, alien students, industrial trainees, exchange visitors and others who generally have no income subject to U.S. tax.

▶ 605) Did a "covered expatriate" receive a cash or noncash distribution from a nongrantor trust? See Notice 97-19.

1. Did the trustee withhold U.S. tax on the distribution?
2. Is an IRS letter ruling required as to the value of the expatriate's interest in the trust?
3. Consider annual filings of Form 8854, *Initial and Annual Expatriation Statement*, to report distributions or non-receipt of distributions.
4. Did the expatriate make a "deferral election?"

Comments/explanations

700) Estate and gift tax implications (Sec. 2001(a), 2031, 2056, 2056A, 2501(a), 2503(a))	Yes/ Done	N/A
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▶ 701) Were any gifts made in excess of \$14,000? Determine if a gift tax return is required.

▶ 702) Were there any transfers between spouses?

▶ 703) Does an estate and gift tax treaty apply?

Yes/
Done N/A

▶ 704) Does a foreign estate tax credit apply?

▶ 705) Consider the location and type of assets within the estate.

▶ 706) Are there any state estate, inheritance, or gift tax implications?

▶ 707) Did the taxpayer receive any gifts or bequests from a NRA or foreign estate? Consider gifts of intangibles.

▶ 708) Did the taxpayer receive any gifts or bequests from a "covered expatriate?" See the definition of "covered expatriate" in Sec. 877A(g)(1)(A). Consider gifts of intangibles.

▶ 709) Did the taxpayer receive any gifts from a foreign corporation or foreign partnership?

▶ 710) Is there any evidence of a foreign gift being made by a "nominee" or "intermediary" for any other person's benefit?

▶ 711) Is Sec. 2801(c) applicable for a "covered gift or bequest" received from a "covered expatriate?"

▶ 712) Is there a qualified domestic trust (QDOT)? Note that a QDOT is a separate tax filing from the income tax return.

▶ 713) Look at distributions, if any, from a QDOT.

▶ 714) Review mutual funds, exchange-traded funds and other "basket type investment holdings" to determine the underlying situs of the assets. Look through the investment holding to determine where the specific assets are located.

Comments/explanations

800) Foreign trusts

Yes/
Done N/A

The items in this section are specific to reporting related to foreign trusts (Sec. 6048). See Forms 3520 and 3520-A.

- Form 3520 is due on the due date of the individual income tax return, including extensions. Form 3520 is extended by the filing of the extension for the individual income tax return.
- Form 3520-A is due by the fifteenth day of the third month after the end of the trust's tax year. Form 3520-A is extended by filing Form 7004.

▶ 801) Was a foreign trust created?

▶ 802) Was property transferred directly or indirectly to a foreign trust?

1. Was a foreign trust established within five years of becoming a U.S. resident? See Regs. Sec. 1.679-2(a)(3).

▶ 803) Were distributions received, directly or indirectly, from a foreign trust or foreign estate?

▶ 804) Were loans received, unless with arm's-length terms, from a foreign trust or a foreign estate?

▶ 805) Is the taxpayer a beneficiary of a foreign trust?

▶ 806) Was property transferred to a foreign grantor of the trust?

▶ 807) Did the taxpayer (or a person related to the trust) hold an outstanding obligation of a foreign trust?

▶ 808) If #807 is yes, ensure that principal and interest payments were made during the year and determine if the obligation meets the "qualified obligation criteria."

▶ 809) Did the taxpayer receive a foreign grantor trust beneficiary statement from a foreign trust, trustee, or custodian?

▶ 810) Did the taxpayer receive a foreign nongrantor trust beneficiary statement from a trustee of a foreign trust?

▶ 811) Determine if Schedule B of Part III, page 5 of Form 3520 can be completed with information from the foreign fiduciary and/or entity's financial records?

▶ 812) Are there any "personal use" of trust property? See Sec. 643(i) and Sec. 679(c)(6).

▶ 813) Was there any consideration paid by the user for such personal use of trust property?

▶ 814) Is Form 4970, *Tax on Accumulation Distribution of Certain Trusts*, applicable as an attachment to Form 3520?

▶ 815) Was an election filed to treat the foreign trust as a domestic trust for purposes of the Sec. 2801 tax? If not, should it be filed?

Comments/explanations

Yes/
Done N/A

900) Other considerations

- ▶ 901) If the taxpayer owns a U.S. real property interest (other than a vacation home) or 10% or more of a U.S. business enterprise, has the taxpayer registered with the U.S. Department of Commerce (BEA Form BE-11, BE-10 (once every 5 years), BE-577, BE-13, BE-605, BE-15, BE-12 (once every five years))?
See U.S. Department of Commerce, Bureau of Economic Analysis [International Surveys](#) and their related [guide](#) for additional information.

- ▶ 902) If the taxpayer has property in which he or she is vesting an interest, has a Sec. 83(b) election been timely filed (within 30 days of receiving the property interest)?

- ▶ 903) Consider if Sec. 409A is applicable for any deferred compensation arrangements including pensions in the home country.

- ▶ 904) Have any of the taxpayer's entities checked the box? Attach Form 8832, *Entity Classification Election*, in the year of election.

- ▶ 905) Does the departing non-resident alien have a PFIC (Sec. 1291 et. seq.) triggering taxation on the date of departure or revocation of a Sec. 6013(g) election (Regs. Sec. 1.1291-3(b)(2))?

- ▶ 906) Consider *Pierre v. Commissioner* (133 T.C. No. 2 & T.C. Memo. 2010-106) to rearrange or set up investments in U.S. situs assets to minimize or avoid U.S. estate and gift taxes.

Note: All references are to the Internal Revenue Code of 1986, as amended, and the regulations thereunder, unless otherwise indicated.

Comments/explanations

