

When are nonresidents of the U.S. subject to federal income tax in the U.S.?

Nonresident aliens are generally subject to U.S. income tax only on their U.S. source income. They are subject to two different tax rates, one for effectively connected income, and one for fixed or determinable, annual, or periodic (FDAP) income.

- 1) Effectively connected income (ECI) is earned in the U.S. from the operation of a business in the U.S. or personal service income earned in the U.S. (such as wages or self-employment income). This income for a nonresident is taxed at the same graduated rates as for a U.S. person.
 - Services performed partly within and partly without the United States. If you perform services as an employee both inside and outside the United States, you must allocate your compensation between U.S. and non-U.S. sources. Compensation (other than certain fringe benefits) generally is sourced on a time basis.

$$\frac{\text{\# of days you performed labor or personal services within the U.S.}}{\text{\# of days you performed services within and outside the U.S.}} \times \text{total compensation}$$

- 2) Fixed or determinable, annual, or periodic (FDAP) income is passive income such as interest, dividends, rents or royalties. This income is taxed at a flat 30% rate, unless a tax treaty specifies a lower rate. A nonresident alien individual who has U.S. income on which the tax liability was not satisfied by the withholding of tax at the source must file a U.S. income tax return.

Tax Treaties - The United States has income tax treaties with a number of foreign countries, including Canada. For nonresident aliens, these treaties may reduce or eliminate U.S. tax on various types of personal services and other income, such as pensions, interest, dividends, royalties, and capital gains. To claim treaty benefits a treaty disclosure must be timely filed.

Know your days in the U.S.

For income tax purposes, the U.S. generally defines a U.S. person as a U.S. citizen, green card holder or person who meets the substantial presence test. Without intending it, you could become a U.S. person for income tax purposes and be subject to U.S. tax on your worldwide income and be required to comply with foreign asset disclosures and additional reporting.

Closer Connection Exception – Form 8840 is required to claim a closer connection to your tax home country if you met the substantial presence test in the U.S. for the tax year. The form may be filed with your U.S. nonresident income tax return or filed separately if an income tax return is not required.

You meet the substantial presence test if you were physically present in the United States for at least,

- 31 days during 2015 and,
- 183 days during the period 2015, 2014, and 2013, counting all the days of physical presence in 2015 but only 1/3 the number of days of presence in 2014 and only 1/6 the number of days in 2013.
- There are exclusions from including certain days in your annual total. See Form 8840 for details.

Treaty Tie Breaker – If you are present more than 183 days in a calendar year in the U.S., you are not eligible to claim the closer connection exception. You may be eligible to claim the tie-breaker provision in an Income Tax treaty. This is only for federal income taxes; foreign disclosures and additional reporting continues to apply.

When are U.S. nonresident income tax filings due?

Form 1040NR - Nonresident aliens must file and pay any tax due using Form 1040NR, U.S. Nonresident Alien Income Tax Return. If you were an employee and received wages subject to U.S. income tax withholding, Form 1040NR for the calendar year is due by *April 15*. If you file after this date, interest and penalties may be due. If you did not receive wages as an employee subject to U.S. income tax withholding, Form 1040NR for the calendar year is due by *June 15*. If you cannot file your return by the due date, a 6-month extension of time to file is available. Any tax remains due from the initial return due date. A nonresident U.S. income tax return may also be required to claim an income tax treaty benefit or to comply with foreign reporting even if a tax return is not otherwise required.

Additional state income tax filings and payments may apply and need to be evaluated in addition to federal requirements.

This material is intended for informational purposes only. You should consult a tax advisor regarding your specific situation.

Please contact us for more information or to discuss further info@atbapllc.com.

Additional Resources:

<https://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens>

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