
MEMORANDUM

RE: INTERNATIONAL TAX COMPLIANCE
 FOREIGN ASSETS (U.S. TAXPAYERS)
 #8: DEFINITION OF U.S. PERSON

"Each year, in the United States alone, offshore tax evasion produces an estimated \$100 billion in unpaid taxes that could help pay for health care, education, and more. It's time to put an end to offshore tax dodging that robs the U.S. Treasury of needed funds." —Statement of Senators Carl Levin (D-Mich.) Norm Coleman (R-Minn.), March 6, 2008.

The threshold question is whether the taxpayer is a "U.S. Person." A "U.S. Person" is generally defined as a U.S. citizen or resident or domestic entity (corporation, partnership, estate, trust). IRC §7701(a)(30).

There are two types of U.S. residents. The first type is the lawful permanent resident, which is a foreign person who has received a U.S. green card. The second type is the substantially present resident. This is a person who is present in the United States for 183 days either (1) during the current year, or (2) over 122 days per year, over the past three years based on the following formula: (A) number of days present during the current year, plus (B) number of days present in prior year multiplied by 1/3, plus (C) number of days present two years ago multiplied by 1/6.

For taxpayers who disclaimed their U.S. citizenship or terminated their residency, they are subject to foreign-interest reporting rules. Regardless of their status under immigration law, a taxpayer is still treated as a U.S. citizen or resident for tax purposes until proper notice is given to both the Department of State (or Homeland Security) *and* the IRS.

Gary S. Wolfe
A PROFESSIONAL LAW CORPORATION
9100 Wilshire Blvd., Suite 505 East
Beverly Hills, CA 90212
Tel: 310-274-3116 Fax: 310-274-3118
<http://www.gswlaw.com>
email: gsw@gswlaw.com