

Married to a Non-U.S. Citizen?

Article Highlights:

- Worldwide Income
- Filing Status
- Resident Alien Spouse
- Non-resident Alien Spouse
- Undocumented Alien Spouse
- Substantial Presence Test

With modern transportation the world continues to shrink, and it is increasingly common for a U.S. citizen to marry someone from another country who is not a U.S. citizen. If this describes your marital circumstances, there are some special tax filing issues you will have to deal with. Based on your particular situation, the filing issues could be very complicated or straightforward. But in either case, someone knowledgeable with non-U.S. citizen issues should complete the preparation of your return.

There are two important tax principles that apply in all situations:

- U.S. citizens are taxed on worldwide income, and
- If you are married, you must either file jointly with your spouse, file as a married person filing separately or file as head of household if you otherwise qualify.

The next issue is the status of your non-U.S. citizen spouse, which dictates how you are taxed. Although there may be certain special situations, the status of your non-U.S. citizen spouse is generally one of the following:

A permanent resident of the U.S. – A permanent resident, also referred to as a green card holder, is taxed in the same manner as a U.S. citizen, so there are no special filing requirements and the return, or returns if filing separately, are prepared in the same way and under the same rules as they would be if you were married to a U.S. citizen.

A non-resident alien – A non-resident alien is someone who is not a U.S. citizen and who has not met the requirements to have a green card (which would give the non-U.S. citizen the privilege, according to immigration laws, of residing permanently in the United States as an immigrant) or who hasn't been in the U.S. long enough to meet the substantial presence test described later. Often a non-resident alien resides outside of the U.S. If you are married to a non-resident alien, you generally have the following two filing options:

- File as a married individual filing separately or head of household if you have provided over half the costs of keeping up a home for a qualifying individual and you have not made the election described next to treat your spouse as a resident alien, or
- Elect to file jointly with your non-resident alien spouse, effectively treating the spouse as a resident alien for tax purposes. However, this election is binding until revoked, and both spouses must affirmatively agree to the election. Once the election is made, the joint U.S. tax return must include the worldwide income of both spouses.

An undocumented alien – If you are married to an undocumented alien, there are two possible situations:

- **Spouse meets the substantial presence test** – An individual who meets the substantial presence test is taxed in the same manner as a U.S. citizen or resident alien, so there are no special filing requirements and the return, or returns if filing separately, are prepared in the same way as when married to a U.S. citizen or resident alien.

To meet the substantial presence test, your spouse must have been physically present in the United States on at least 31 days during the current year and 183 days during the 3-year period that includes the current year and the 2 years immediately before it, counting all the days present in the current year, 1/3 of the days present in the first year before the current year, and 1/6 of the days present in the second year before the current year.

- **Spouse does not meet the substantial presence test** – If the spouse does not meet the substantial presence test, the spouse is treated as a non-resident alien, as discussed previously.

Where your spouse is a non-resident alien and has U.S. source income and does not elect to file jointly with you, then your spouse must file a Form 1040NR to pay the taxes on the U.S. source income, generally at a flat rate of 30%.

If you reside in a foreign country with your non-U.S. citizen spouse, that does not exempt you from U.S. taxes. As was noted at the beginning of this article, U.S. citizens are taxed on worldwide income.

There are provisions that help shield you from double taxation, such as an exclusion of foreign earned income (limited each year to an inflation-adjusted amount, \$101,300 for 2016), a foreign tax credit (not available on the same foreign income that is excluded), and provisions spelled out in the tax treaties between the U.S. and foreign countries.

These and other nuances encountered when you are married to a non-U.S. citizen need to be addressed based upon your particular circumstances. Please contact this office for assistance.