

2022 Tax Updates & Planning for U.S. Taxpayers Living Abroad



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With 2022 quickly coming to an end, we want to ensure you are aware of your U.S. tax responsibilities and required filings for the upcoming year. Outlined below are helpful tax planning ideas, followed by issues especially relevant to U.S. persons living abroad.

Considerations for 2022:

- ▶ **Inflation Reduction Act of 2022:** The IRS received an additional \$124 billion in funding with a mandate to increase tax enforcement and crack down on tax avoidance.
- ▶ **IRS Operations:** The IRS continues to face significant delays in some of its services including phone support, answering mail from taxpayers, and processing tax returns. Be aware that in some cases getting in touch with the IRS can take additional time.
- ▶ **Access IRS Tax Records in Online Account:** Taxpayers living abroad may now view, print, or download their IRS tax transcripts online, provided they have a U.S. Social Security Number. This service is not yet available to taxpayers with ITINs. Taxpayers must first create an ID.me account and verify their identity. ID.me is an IRS-trusted technology provider. [This link](#) provides helpful information on how to navigate ID.me and verify your identity for the IRS.
- ▶ **IRS Identity Protection PIN (IP PIN):** An IP PIN is a six-digit number that prevents someone else from filing a tax return under your Social Security number or Individual Taxpayer Identification Number (ITIN). If you have an IP PIN, it must be used when filing any federal tax returns to avoid electronic filing rejections and delays. An incorrect or missing IP PIN will result in the rejection of your e-filed return. An IP PIN is valid for one calendar year and a new IP PIN is generated each year for your account. FAQs about the IP PIN can be found [here](#).
- ▶ **IRS Scrutinizes Foreign Trust Reporting Compliance:** The IRS has identified foreign trust information reporting as an area in which the IRS detects a significant increase in abuse by taxpayers. As a result, the IRS plans to scrutinize the reporting of foreign trusts and their activities and is actively working to identify and examine individuals who may have foreign trust reporting requirements more closely. As a reminder, most U.S. individuals with RESPs will not need to file foreign trust disclosure forms (Forms 3520/3520-A).



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Considerations for 2022 (Continued):

- ▶ **Expired Extended Credits:** The following tax provisions for individuals expired at the end of 2021 and have not yet been extended for 2022: expanded child tax credit, expanded child and dependent care credit, increased exclusion for employer-provided dependent care assistance, special earned income tax credit rules for individuals without qualifying children, treatment of mortgage insurance premiums as deductible mortgage interest, charitable contributions for non-itemizers, and increased percentage limits for charitable contributions of cash.
- ▶ **Charitable Contributions for Non-itemizers:** For 2020 and 2021, COVID-19 legislation temporarily allowed taxpayers who do not itemize to take advantage of a \$300 above-the-line deduction for cash contributions to qualified charitable organizations (\$600 for married filing jointly). This deduction is not available for 2022. Going forward, charitable contributions are deducted if the taxpayer is taking an itemized deduction.
- ▶ **Form 1099-K:** Previously, taxpayers selling goods and services received Form 1099-K for payment card transactions and third-party payment network transactions (e.g., PayPal and Venmo) for payments more than \$20,000. As of 2022, the threshold has been reduced to \$600.
- ▶ **Increase in Standard Mileage Rates:** Due to rising gas prices and inflation, the standard mileage rate for business travel will be 62.5 cents per mile and 22 cents per mile for deductible medical/moving expenses. The mileage rate for charitable activity will stay at 14 cents per mile.



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Tips & Planning:

- ▶ If you are a U.S. citizen or a resident alien of the United States and you live abroad, you may qualify to exclude your foreign earnings from your taxable income. The foreign earned income exclusion increased in 2022 from \$108,700 to \$112,000.
- ▶ The \$10,000 annual limit on state and local taxes included in an individual's itemized deductions applies to tax years 2018 through 2025. Multiple states have enacted elective pass-through entity-level taxes to work around the limitation. The pass-through entity-level tax election allows states to tax directly on the pass-through entities rather than the individual owners. The tax paid by the entity may be allowed as a credit to the owner's share of the taxes or alternatively utilized as a reduction to state taxable income on their individual state return. Keep in mind that this varies by state.
- ▶ The Inflation Reduction Act changed the requirement for the electric vehicle tax credit. The tax credit for qualifying electric vehicles is available for only vehicles in which the final assembly occurred in North America. The US Department of Energy has provided a list of 2022 and 2023 qualifying vehicles.
- ▶ Consult your investment advisor if you have non-U.S. mutual funds or exchange traded funds, TFSAs, or RESPs and inform them of your status as a U.S. person. Determine if restructuring your investments is necessary to reduce tax compliance burdens.
- ▶ If you are considering making a large contribution to your RRSP consider how this will affect your U.S. tax liability before the Canadian tax return is filed. Contributions to RRSPs are not deductible in the U.S.
- ▶ Consider U.S. estate and gift tax planning and ways to maximize transfer benefits. The estate tax exemption for U.S. citizens and a U.S. domiciliary is \$12.06 million for 2022. The annual gift tax exclusion is \$16,000 for 2022.
- ▶ Consider if downward attribution may apply to your cross-border organizational structure. VSH's international team can assess whether you or your business is considered to own a controlled foreign corporation (CFC) and what filing requirements and tax implications may apply. Proactive planning may be needed to mitigate the tax effects of this issue.



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Tips & Planning (Continued):

- ▶ Disclosures of non-U.S. corporations are generally required to be based on calendar-year financial information. Consider adopting a year end of December 31st to streamline the preparation of annual disclosures.
- ▶ Avoid loans from non-U.S. corporations to U.S. owners, as they may be considered income to the owner for tax purposes and subject to U.S. tax.
- ▶ Depending on filing status and income amounts, it may be advantageous for U.S. tax purposes to pay wages instead of dividends from a controlled foreign corporation. Additional analysis would be needed, so please contact your VSH tax advisor.
- ▶ Consult your accountant if you are considering owning a foreign entity (even a personal business).

These suggestions are only an overview and would need further examination for your unique scenario before implementation. Please also note these suggestions are for U.S. tax planning purposes only and should be reviewed with your Canadian accountant to determine the effect in Canada.

International Investment Overview and Required Filings



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International Investment Overview and Required Filings:

Filing requirements are based on a taxpayer's specific facts and need continual evaluation.

FinCEN Form 114 - Foreign Bank and Financial Account Reporting (FBAR):

Required by U.S. persons and entities to report non-U.S. financial accounts exceeding an aggregate of \$10,000 USD at any time during the calendar year.

- ▶ **What is a financial account?** Bank, security, security derivatives and other financial instrument accounts, commodity futures, options, and insurance or annuity policies with a cash surrender value.
- ▶ **What is not a financial account?** Individual bonds, notes, or stock certificates held by the filer as well as unsecured loans to a foreign trade or business that is not a financial institution.
- ▶ Due date: April 15th, ext. October 15th
- ▶ Penalties start at \$10,000

Form 8938 - Statement of Specified Foreign Financial Assets:

Required by U.S. individuals, businesses owned by U.S. individuals, and trusts with U.S. owners and/or beneficiaries if they own non-U.S. assets valued at more than \$50,000 USD (depending on circumstances, the threshold may be higher). Assets include (1) depository or custodial accounts with a non-U.S. financial institution; (2) stocks or securities issued by foreign entities; (3) any other financial instrument or contract issued by a non-U.S. person; (4) any interest in a non-U.S. entity and (5) loans issued by filer to non-U.S. individuals or entities.

- ▶ Due date: April 15th, ext. October 15th
- ▶ Penalties: \$10,000

Form 3520/3520-A - Foreign Trust Reporting Compliance:

Required by a U.S. person who makes a transfer to or receives a distribution from a foreign trust, who is considered the owner of foreign trust assets, or who received a gift from a foreign person during the year.

- ▶ Due date: April 15th/March 15th, ext. October 15th/September 15th
- ▶ Penalties start at \$10,000



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International Investment Overview and Required Filings (Continued):

Form 5471 - Non-U.S. Corporate Reporting:

Required by certain U.S. persons who are shareholders, officers, or directors of certain non-U.S. corporations. Form 5471 has multiple schedules; a filer's specific facts determine which schedules must be completed.

- ▶ Due date: April 15th, ext. October 15th
- ▶ Penalties start at \$10,000

Form 8858 - Non-U.S. Business Reporting:

Required by U.S. persons who are owners of foreign disregarded entities or foreign branches. U.S. persons who earn non-U.S. rental income or who earn non-U.S. self-employment income may be considered to own a foreign branch.

- ▶ Due date: April 15th, ext. October 15th
- ▶ Penalties start at \$10,000

Tax-Free Savings Accounts (TFSA) and Registered Education Savings Plans (RESPs):

While these plans offer a great tax savings opportunity for Canadian purposes, the income earned in TFSA and RESP are not tax-free in the U.S. In addition, TFSA may be considered foreign grantor trusts or foreign disregarded entities for U.S. purposes which would require Forms 3520/3520-A or Form 8858 to be filed to report the account each year. Individual circumstances vary as to whether there is a worldwide tax benefit to one of these accounts or if the U.S. tax consequences and additional administrative burden outweigh the Canadian tax savings.

Passive Foreign Investment Companies (PFICs):

PFIC status applies to non-U.S. companies with at least 75% of income from passive sources or at least 50% of assets that produce passive income. Common PFICs include non-U.S. mutual funds or exchange traded funds (ETFs), non-U.S. corporations owning real estate and non-U.S. holding companies. The PFIC rules, which are complex, often result in additional tax and interest in the U.S. In general, U.S. owners of PFICs must report income as it's reported in the corporation, regardless of when distributions are made. Planning may be available to prevent being classified as a PFIC and to manage any additional U.S. tax liability. Failing to disclose a PFIC may result in penalties and the tax return being considered incomplete.



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International Investment Overview and Required Filings (Continued):

Shareholders of Controlled Foreign Corporations (CFCs) and Corporate Ownership:

- ▶ **GILTI:** Global intangible low-taxed income (GILTI) is a U.S. tax provision that impacts 10%-or-more U.S. shareholders of controlled foreign corporations (CFCs). In general, U.S. shareholders of CFCs are subject to current taxation on income earned through a CFC in excess of a 10% return on the CFC's tangible assets. For companies with little or no basis in tangible assets, essentially the entire net income could be subject to U.S. tax each year. Proactive planning is especially important for individual shareholders, as they are the most significantly impacted.
- ▶ **Downward Attribution of Ownership:** U.S. tax reform broadened the definition of constructive ownership for the purpose of determining if a non-U.S. corporation is a CFC by instating "downward attribution" of ownership. The general concept of downward attribution is an entity is deemed to constructively own other entities that are owned by its owners. As a result, many non-U.S. corporations that previously were not CFCs may now be treated as CFCs. If a corporation is a CFC, its U.S. shareholders are subject to disclosure requirements (Form 5471), as well as deemed income inclusions, such as the Subpart F and GILTI tax regimes.