

Democrats Abroad Switzerland
Meeting on US Taxes for Americans living and working overseas
31 August 2009, Lully (VD) Switzerland

YOUR QUESTIONS ANSWERED

Who has to file taxes in the US?

1. a) An American citizen who has no ties with the US as far as accounts, property, etc., and married to a Swiss person, can the filing status for the American be: married filing separate return? **Yes**. Or do they need to include their spouse? **If it is more beneficial, a once in a life time election can be made to allow the non US person to file jointly with her US citizen spouse. Then the non US spouse would file jointly for future years, unless revoked either through death, divorce or revocation of the election.**

- b) When this same American is not working do they need to fill out a tax return? **If gross income reaches the personal exemption amount (currently \$3,500), a spouse filing "married filing separately" would need to file. For other filing status there is a different threshold.**

Table 1-1. 2008 Filing Requirements for Most Taxpayers

IF your filing status is...	AND at the end of 2008 you were...*	THEN file a return if your gross income was at least...**
single	under 65	\$ 8,950
	65 or older	\$10,300
married filing jointly***	under 65 (both spouses)	\$17,900
	65 or older (one spouse)	\$18,950
	65 or older (both spouses)	\$20,000
married filing separately	any age	\$ 3,500
head of household	under 65	\$11,500
	65 or older	\$12,850
qualifying widow(er) with dependent child	under 65	\$14,400
	65 or older	\$15,450

* If you were born on January 1, 1944, you are considered to be age 65 at the end of 2008.

** Gross income means all income you received in the form of money, goods, property, and services that is not exempt from tax, including any income from sources outside the United States (even if you may exclude part or all of it). Do not include any social security benefits unless (a) you are married filing a separate return and you lived with your spouse at any time during 2008 or (b) one-half of your social security benefits plus your other gross income is more than \$25,000 (\$32,000 if married filing jointly). If (a) or (b) applies, see the instructions for Form 1040 or 1040A or Publication 915 to figure the taxable part of social security benefits you must include in gross income.

*** If you did not live with your spouse at the end of 2008 (or on the date your spouse died) and your gross income was at least \$3,500, you must file a return regardless of your age.

2. Approximately how much would the tax obligation be to the US government in the case of an American married to a Swiss, filing as "married filing separately", who earns CHF 150'000 per year and pays between 25-35% to the Swiss Government? This would depend on particular facts and circumstances involved, if additional exemptions can be claimed for dependent US citizen children and non US spouse as well as if there investment income being taxed at lower rates in Switzerland or not at all and whether there are itemized deductions that can be claimed. Paying 25% tax rate to Switzerland would likely result in no or very little US tax due.
3. If you have both Swiss and American citizenship, are you required to pay US tax if you are employed in Switzerland as a Swiss citizen? You are required to file. This does not necessarily mean there will be tax due.
4. How interest and capital gains earned in Switzerland is treated. Are they considered taxable in the US? Yes. The US taxes US citizens/green card holders on a world wide basis. If Switzerland does not tax such amounts, they would nonetheless still be taxable by the US.

5. I am married and my husband is not American. In terms of bank accounts and income, what do I have to claim to the US for taxes and FBAR? We both work so have a dual income, shared accounts and expenses. And, we both file Swiss taxes. I'm just not sure what I am obligated to report from a US standpoint. [You report everything \(you the US citizen\) and claim a foreign tax credit for taxes paid to Switzerland.](#)
6. Getting Started - Where do first-time filers start? [You will need to file the current plus prior 2 years if there is no balance due in any of the last 6 years. Otherwise, you will need to file the current plus prior 5 years income tax returns. You will also need to file the current and prior 5 year FBAR \(Foreign Bank & Financial Accounts Report\). See IRS Publications for applicable information: <http://www.irs.gov/pub/irs-pdf/p54.pdf> and <http://www.irs.gov/pub/irs-pdf/p593.pdf>](#)
7. Foreign Tax Credit - Benefits of filing Actual vs Accrual with respect to Foreign taxes paid? [Depends on facts and circumstances of individuals involved. Using the paid method can be easier, especially if numerous foreign tax assessments are constantly being issued. The accrued method is interesting to claim when no taxes have been paid but they are expected to be due. Note that once you claim the accrued method, you can not switch to the paid method. This can cause complications if you anticipate moving to a jurisdiction that taxes based on a fiscal year basis \(instead of the calendar year\).](#)
8. Non-Resident Alien. My wife is not American and does not work. Is there any benefit to including her as a dependent (ie: registering her for a SSN)? [You can claim your NRA spouse as an exemption if you obtain an ITIN \(use form W-7\) and \(s\)he does not have any US source income. An ITIN is a tax identification number issued to non US citizens or residents in lieu of a SSN.](#)
9. What is the tax treatment by the US of those employed by an NGO or the UN secretariat? Are those in consulting agreements with the same type of organizations treated any differently than any consultant anywhere else by the IRS? [US citizens are taxed on income regardless of the payor, unless specifically exempted per US tax law. Such wages or consulting income would generally be taxed as any other foreign earned income.](#)

Questions related to declaring Pillar accounts:

1. I am working on my 2008 US tax return. Last year I withdrew from my LIPP account to cover some of the down payment of my primary home in Vaud. My tax advisor is telling me that not only do I need to pay taxes on that withdrawal (ok... I understand even though not so happy about it) but

that I should also declare the retirement amount on the FBAR. Would you be able to discuss the FBAR and how the declaration applies to our Swiss Retirement funds, at all pillars? [The US does not recognize the extra legal pension contributions or employer pension contributions unless specifically allowed for in the US Swiss Income Tax Treaty. So, those amounts would be subject to tax as earned income in the year earned. Excess foreign tax credits, could be used to offset tax thereon on such amounts. Then, when taxable later for Swiss purposes the amounts that were already taxed for US purposes would not be subject to US tax again. Employer pension plan accounts would not generally be reportable on the FBAR. Other extra legal personal pension accounts would be reportable on the FBAR.](#)

2. I am curious about the reporting requirements for retirement assets such as 2eme and 3eme pillier. Are the earning on these funds taxable? Do the amounts need to be reported? [Yes. Earnings from within these accounts are taxable and should be reported. You should keep your US returns as evidence that such income has been reported so as to avoid possibly being taxed again later.](#)
3. I heard that as an American married to a non-American and therefore living under the Swiss marriage law of communal estate the American have to declare the income earned as interest on their spouse's pillar account? Can you explain this? [Under the Community Property regime, all community income is generally owned 50% by each spouse. So, 50% of all investment income would be reported and foreign taxes thereon would be claimed on the US return.](#)
4. How do I avoid paying tax twice on tax-deferred payments into pension fund schemes in Switzerland and the US (i.e., how to make sure one is not paying income tax in the US on contributions into the Swiss system that are tax-deferred in Switzerland, and vice versa). [Unfortunately, it is a timing issue. The only way to avoid this is to make a corresponding contribution to a US type of similar plan or use excess foreign tax credits, if any, to offset any resulting tax liability on the US return.](#)
5. Social Securitiy vs AVS -- If we've contributed to both, do we collect both when the time comes? [Yes. You can possibly collect from both.](#)

Specific Tax filing questions

1. I am an American who has been living in Switzerland for about 5 years now. I am married to a French citizen who was a green card holder when we lived in New York for four years. Up until now I have been filing and declaring joint but my wife hasn't had any income. She has a social security number but she may start working this year and I would like to

know how this will affect my filing status and the income that is to be reported. Her green card apparently expired two years after leaving the U.S. five years ago but she does have a social security number. [As long as she has the green card, the IRS expects her to file – even if the card is expired. Filing jointly with your spouse may not necessarily result in owing additional US taxes. In fact, if she has no income, your taxes would be calculating using the married rates which are more interesting than married filing separately rates.](#)

2. a) I receive a basic salary in US Dollars plus a cost of living allowance/overseas differential which is paid in Swiss francs. My employer adds the Swiss franc COLA amount back into my salary and puts it on my W2 form in the Wages, tips and other compensation box. Must I include the COLA on line 7 of the 1040 form in Wages, salaries, tips, etc? [Yes. On form 2555 there is a special line for COLA \(22a\).](#)
b) If my income is considered salary plus COLA, does it mean I am not eligible for a Roth IRA? (normal salary would qualify but salary with COLA would not). [Correct. If the COLA amount causes your salary to surpass the allowed threshold, you would not qualify to make a Roth contribution. Instead, you can make a non deductible or Traditional IRA contribution, depending on which is most interesting to you given your particular facts and circumstances.](#)
3. I have questions regarding the procedure for filling in form TD F 90-22.1. The form and instructions provided in the IRS 2008 Package 1040-7 seem intended for commercial companies with CFOs and which have substantial and complex financial structures and only one responsible officer to sign; this does not seem to apply to couples with small bank accounts and which file individual IRS Forms 1040. For example, there is no place for the joint tax filer to sign the TD F 90-22.1, in spite of what the instructions say. [Both spouses can sign on the signature box if they only own foreign accounts jointly.](#) What is the relevance of this form for couples with modest Swiss and French tax obligations? [The FBAR is an informational return. No tax is due as a result of filing such forms. However, the penalties for not filing such form or not listing accounts can be significant.](#)

Questions related to property: rental income and transfer of assets

1. If one has a rental property in France, and they are subject to pay taxes on this amount to the French government, is the rent also subject to tax in the US? [Such amounts would be reportable in the US and a tax credit would be allowed for any foreign taxes paid on the rental income.](#)
2. I am also interested in Estate taxes and how the US treats a transfer of assets located in Switzerland. [There is an Estate & Gift Tax Treaty](#)

between the US and Switzerland. The treaty's purpose is to avoid double taxation. However, this does not always work that way. In any event, you'd still need to file US estate and gift tax returns to report all related transactions and claim an applicable treaty relief, if any, on form 8833.

Questions related to Switzerland and US treaty:

1. Under the new accord between the US and Switzerland regarding bank secrecy, is it a requirement to divulge details of Swiss bank accounts held by Swiss citizens, if they are also dual nationals/ American citizens?
Generally, if you are a US citizen, irrespective of holding dual citizenship, the US would consider and treat you as any other US citizen. Although I have not examined such agreement, I would be surprised if any special provision would be mentioned in so far as dual citizenship was concerned.
2. What impact does the recent double imposition treaty between Switzerland and the US have on individual taxes? The purpose of the US Swiss income tax treaty is to avoid double taxation. Relief to US citizens and green card holders is generally granted through resourcing provisions (considering US income as foreign) and allowing foreign tax credits to offset US tax.
3. With regards to the 'UBS list of names' that is to be presented to the US government within the next few months. Is there a way to know who is on this list? Ask UBS if your name is on the list. If you get a letter from the IRS concerning this, it would generally be too late to participate in the Voluntary Compliance Initiative. Contact a lawyer immediately.
4. What are the upcoming tax modifications for US citizens living abroad? Currently, the foreign earned income exclusion is indexed (goes up for inflation). There is continuous talk about possibly permanently revoking the foreign earned income exclusion. For further info, see Section 6 of the following IRS Publication: <http://www.irs.gov/pub/irs-pdf/p553.pdf>

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Visit www.democrats.ch for more information from this meeting and to listen to the [audio podcast](#) of the meeting.

Presentations and reports from the Town Hall on US Taxes and Banking in Geneva on 2 September 2009 can also be found on the [blog](#).

Any advice in this communication is general in nature. Note that tax regulations are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of above information.

You should temper any conclusions you draw from anyone else's situation by taking into account that results may differ because of variables such as marital status, dependents, level of salary or investment income, etc. Clearly, "no one shoe size fits all sizes" when dealing with international tax issues.

We will not update our advice for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof.

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