

LB&I International Practice Service Concept Unit

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Unit Name	Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad
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Table of Contents

(View this PowerPoint in "Presentation View" to click on the links below)

[General Overview](#)

[Relevant Key Factors](#)

[Detailed Explanation of the Concept](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

[Index of Related Issues](#)

General Overview

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

- The Federal Insurance Contributions Act (FICA) is a tax on wages from employment which is comprised of (1) old-age, survivors, and disability insurance (known as the Social Security Tax) and (2) the hospital insurance tax (known as the Medicare tax). As a general rule, FICA taxes must be paid by U.S. citizens and resident aliens who work abroad for an American employer. FICA taxes must also be paid on behalf of U.S. citizens and resident aliens who work abroad for a foreign affiliate of an American employer if the American employer agreed with the IRS to pay FICA taxes on all U.S. citizens and resident aliens employed by its foreign affiliate.
- Payments for services are subject to FICA only if such payments constitute “wages “ and the services constitute “employment” as these terms are defined in IRC 3121(a) and (b), respectively. Please note that self-employed U.S. citizens and resident aliens abroad may be responsible for U.S. self-employment tax; see Practice Unit, “Self-Employment Taxes – U.S. Citizens and Resident Aliens Working Abroad,” DCN:JTO/C/09_03-23.
- Totalization Agreements, also referred to as Social Security Totalization Agreements, are entered into between the United States and some foreign countries to prevent the payment of Social Security taxes to two jurisdictions on the same wage or self-employment income. If the U.S. has entered into a Totalization Agreement with the foreign country in which the wages were earned, the terms of that agreement will govern whether Social Security taxes must be paid in the United States.

Relevant Key Factors

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

Key Factors

- FICA taxes are payable on the wages of U.S. citizens and resident aliens working abroad for:
 - An American employer,
 - In certain instances, the foreign affiliate of an American employer or
 - A foreign person treated as an American employer under IRC 3121(z).
- FICA tax consists of:
 - Social Security taxes (including old-age, survivors, and disability insurance) and
 - Medicare taxes (hospital insurance tax).
- American employer includes:
 - The U.S. government or an instrumentality of the U.S. government,
 - An individual who is a U.S. resident,
 - A partnership if at least two-thirds of the partners are U.S. residents,
 - A trust if all the trustees are U.S. residents,
 - A corporation that is organized under the laws of the United States, any U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, or American Samoa and
 - A foreign employer that has an employee performing services in connection with a contract between the U.S. government (or instrumentality thereof) and a member of a domestically controlled group of entities which includes the foreign employer.
- A foreign affiliate of an American employer is:
 - A foreign entity in which an American employer has at least a 10% interest.
 - The 10% interest can be held directly or indirectly by the American employer.
 - If the foreign entity is a corporation, the 10% interest must be in voting stock.
 - If the foreign entity is not a corporation, the 10% interest must be in the entity's profits.

Relevant Key Factors (cont'd)

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

Key Factors

- An employee includes an individual who:
 - Has the status of an employee under the usual common law rules applicable in determining the employer-employee relationship or
 - Serves as a superintendent, manager, or officer of a corporation.



CAUTION: The term “employee“ does not include a director acting in this capacity or an officer who neither performs any services nor receives any compensation.

Detailed Explanation of the Concept

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

As a general rule, FICA taxes must be paid by U.S. citizens and resident aliens who work abroad for an American employer. FICA taxes must also be paid by U.S. citizens and resident aliens who work abroad for a foreign affiliate of an American employer if the American employer agreed with the IRS to pay FICA taxes on behalf of all U.S. citizens and resident aliens employed by its foreign affiliate.

Analysis	Resources
<ul style="list-style-type: none">▪ FICA taxes are owed on wages only if such wages are received pursuant to work performed in an employer-employee relationship. An employer-employee relationship exists where the person performing the services is subject to the will and control of the employer. It is necessary to determine whether an individual is an employee or an independent contractor since payments for services are subject to FICA only if such payments constitute wages and the services constitute employment. This is a facts and circumstances test in which no one factor is determinative. Self-employment income for U.S. citizens and resident aliens abroad is subject to self-employment tax; see Practice Unit, “Self-Employment Taxes – U.S. Citizens and Resident Aliens Working Abroad,” DCN: JJTO/C/09_03-23, for more information.▪ It is essential to determine who the employee’s employer is in order to make a proper determination regarding employment taxes. An employee may be employed by a foreign employer, an American employer, a foreign affiliate of an American employer (with or without an election to provide FICA coverage), a foreign employer contracted to perform services for the U.S., or some combination of these. A determination of who pays the employee’s wages is a starting point for this analysis.	<ul style="list-style-type: none">▪ IRC 3101 – 3111

Detailed Explanation of the Concept (cont'd)

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

As a general rule, FICA taxes must be paid by U.S. citizens and resident aliens who work abroad for an American employer. FICA taxes must also be paid by U.S. citizens and resident aliens who work abroad for a foreign affiliate of an American employer if the American employer agreed with the IRS to pay FICA taxes on behalf of all U.S. citizens and resident aliens employed by its foreign affiliate.

Analysis

 **CAUTION:** United States employment taxes, including FICA, do not apply to payment for services performed abroad as an employee of a foreign government, including payments for services performed by ambassadors, other diplomatic and consular officers and employees, and non-diplomatic representatives. Payments for services performed for a United States or Puerto Rican corporation that is owned by a foreign government are subject to U.S. employment taxes.

- If the U.S. has entered into a Totalization Agreement with the foreign country in which the wages or net earnings from self-employment were earned, the terms of that agreement will govern whether Social Security taxes must be paid in the United States. Under IRC 3101(c), 3111(c), and 1401(c), where a Totalization Agreement is in place, tax is not owed to the United States if the terms of the agreement provide that the wages or net earnings from self-employment are subject only to foreign social security taxes and are exempt from U.S. Social Security tax. As a general rule, a certificate of coverage must be requested from the foreign jurisdiction and attached to the tax return establishing that the wages are subject to social security tax only in the foreign jurisdiction.

Resources

- IRC 3101(c)
- IRC 3111(c)
- IRC 1401(c)
- http://www.ssa.gov/international/agreement_descriptions.html#texts

Detailed Explanation of the Concept (cont'd)

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

As a general rule, FICA taxes must be paid by U.S. citizens and resident aliens who work abroad for an American employer. FICA taxes must also be paid by U.S. citizens and resident aliens who work abroad for a foreign affiliate of an American employer if the American employer agreed with the IRS to pay FICA taxes on behalf of all U.S. citizens and resident aliens employed by its foreign affiliate.

Analysis	Resources
<ul style="list-style-type: none">▪ If the American employer of a foreign affiliate elects to include the employee for FICA purposes, it is generally the American employer that pays both the employer's AND employee's share of the taxes. The employee has imputed income attributable to the amount of FICA paid on his or her behalf by the American employer. <p> CAUTION: It is the American employer of a foreign affiliate's obligation to make the FICA election for its foreign employees, using Form 2032, Contract Coverage Under Title II of the Social Security Act. The election is binding on all subsequent years. There are several tax consequences as a result of the election for both the American employer and the employee.</p> <ul style="list-style-type: none">▪ A U.S. citizen working outside the U.S. for someone other than an American employer or a foreign affiliate with a coverage election is generally exempt from FICA, and generally cannot "elect" to be covered by FICA.	<ul style="list-style-type: none">▪ Rev. Rul. 79-49▪ Treas. Reg. 1.406-1(c)(2)(iii) ▪ Form 2032, Contract Coverage Under Title II of the Social Security Act

Training and Additional Resources

Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad

Type of Resource	Descriptions and/or Instructions for Accessing	References
BNA Tax Management Portfolio	<ul style="list-style-type: none"> ▪ <i>BNA Tax Management Int'l Portfolios</i>: Foreign Income Series: Provisions Applicable to U.S. and Foreign Persons 6830-1st Sec. VI: FICA Tax on U.S. Citizens and Resident Aliens Outside the United States 	<ul style="list-style-type: none"> ▪ BNA 6830-1st – TMFEDPORT No 6830 s VI
BNA Tax Management Portfolio	<ul style="list-style-type: none"> ▪ <i>BNA Tax Management Int'l Portfolios</i>: Foreign Income Series: Provisions Applicable to U.S. and Foreign Persons 6830-1st Sec. III: Social Security Totalization Agreements 	<ul style="list-style-type: none"> ▪ BNA 6830-1st – TMFEDPORT No 6830 s III

Glossary of Terms and Acronyms

Term/Acronym	Definition
DCN	Document Control Number
FICA	Federal Insurance Contributions Act
IRC	Internal Revenue Code

Index of Related Issues

Issue	Associated UILs	References
Self-Employment Taxes for U.S. Citizens and Resident Aliens Working Abroad	▪ 9431.04	▪ Practice Unit, “Self-Employment Taxes – U.S. Citizens and Resident Aliens Working Abroad,” DCN:JTO/C/09_03-23
Calculating the Foreign Earned Income Exclusion for an Employee	▪ 9431.06	▪ Practice Unit, “Calculating Foreign Earned Income Exclusion – Employee,” DCN:JTO/P/09_06_05-12 (formerly JTO/9431.06_12(2015))