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Book	16	Treaties
Chapter	16.2	Treaty Residency Issues
Section	16.2.1	Individuals

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Table of Contents

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

[Process Overview](#)

[Process Applicability](#)

[Summary of Process Steps](#)

- [Step 1](#) – Analyze U.S. Residency Claim
- [Step 2](#) – Analyze Treaty Country Residency Claim
- [Step 3](#) – Apply Treaty’s Residency Tie-Breaker Rules

[Other Considerations / Impact to Audit](#)

[Index of Referenced Resources](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

[Index of Related Practice Units](#)

Process Overview

Determining an Individual's Residency for Treaty Purposes

Process Description

A country's domestic law provides specific rules for the taxation of income of individuals that are residents or nonresidents of that country as defined under domestic law. The United States' domestic tax law is embodied by the Internal Revenue Code (the "Code" or "IRC"), Treasury regulations, and applicable rulings and case law.

A country may, however, enter into a bilateral income tax agreement (a "treaty" or "tax treaty") with another country to modify the results that might otherwise occur under the countries' domestic tax laws. The two countries that are parties to a particular tax treaty are called the "Contracting States."

Except in limited circumstances, generally only residents of a Contracting State may claim tax treaty benefits (that is, claim that the treaty reduces or eliminates the tax that otherwise would be due under a country's domestic law). Whether an individual is a resident of a Contracting State for treaty purposes is a threshold issue in any case in which an individual is claiming treaty benefits. This Practice Unit will help you evaluate whether an individual is a resident of a Contracting State for purposes of a tax treaty.

Article 4(1) (Resident) of the 2006 U.S. Model Income Tax Convention (the "2006 U.S. Model Treaty") defines a resident of a Contracting State as a "person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship . . . or any other criterion of a similar nature . . ." The term "person" includes an individual. A person, including an individual, is not a resident of a Contracting State for treaty purposes, however, if that person is taxable only on income sourced in that State or on business profits attributable to a permanent establishment within that State.

In other words, an individual generally is a resident of a Contracting State for treaty purposes if he or she is subject to tax on worldwide income under that Contracting State's applicable domestic law. Thus, an analysis of residence begins with the domestic law of the Contracting State of which the individual claims to be a resident for treaty purposes. Bear in mind that countries' domestic rules on residency may differ—for example, unlike in the United States, in many countries an individual will not be treated as a tax resident under domestic law solely because the individual is a citizen of that country.

Process Overview (cont'd)

Determining an Individual's Residency for Treaty Purposes

Process Description (cont'd)

If an individual is a resident according to only one Contracting State's domestic laws, normally no further analysis is required: that individual will be considered to be a resident of that Contracting State for treaty purposes. (See [slide 16](#), however, for some treaties that provide additional requirements to be classified as a resident.) Where an individual is a resident under the domestic laws of both Contracting States, however, the applicable treaty usually provides tie-breaker rules that apply to assign a single Contracting State of residence for treaty purposes. This Practice Unit will assist you in making a treaty residency determination and applying the tie-breaker rules, if applicable, in your case.

Remember that every treaty is different. Although this Practice Unit uses the Resident article in the 2006 U.S. Model Treaty for purposes of illustrating residency issues, the Residence article in the treaty you are applying might differ. Therefore, in every case involving a tax treaty, you should carefully review the Residence article (and any other applicable articles) in the treaty, as well as any contemporaneous or subsequent Protocol(s), memoranda of understanding, or exchange(s) of notes between the treaty countries to determine whether an individual meets the treaty definition of a resident. In addition, more interpretive guidance may be found in the Treasury Department's Technical Explanation ("TE") to the applicable treaty, the Joint Committee on Taxation Report on the treaty, the Senate Foreign Relations Committee Report on the treaty, relevant case law, competent authority agreements, and any guidance issued by the IRS.

Process Overview (cont'd)

Determining an Individual's Residency for Treaty Purposes

Example Circumstances under Which Process Applies

During 2007 through 2011, the tax years at issue, John is a Country A citizen and a lawful permanent resident ("LPR" or green card holder) of the United States. The U.S.-Country A Treaty is identical in all material aspects to the 2006 U.S. Model Treaty.

- On November 1, 2007, John first entered the United States on a green card for work.
- John worked in the United States and in Country A from November 1, 2007, through February 28, 2011.
- During this time, John would return to Country A for similar periods of time, but while in the United States, he lived with his fiancée, a U.S. citizen.
- John owns an apartment in Country A. During his trips to Country A, he stayed at that apartment but rented it out when he was not using it.
- John also owns an apartment in the United States, which he rents out because he lives with his fiancée.
- John has siblings in the United States but his parents reside in Country A. He has friends in both countries.
- Once John's fiancée graduates from school in the United States, they intend to get married and will both decide whether they will live in the United States or in Country A.
- On February 28, 2011, John returned to Country A permanently.
- For tax years 2007 through 2010, John filed Forms 1040, U.S. Individual Income Tax Return.
- For tax year 2011, John timely filed a Form 1040NR, U.S. Nonresident Alien Income Tax Return, dual-status return, with a Form 1040 statement attached showing his income as a resident for January 1, 2011, through February 28, 2011.
- John attached to his 2011 Form 1040NR, a Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), claiming that as of March 1, 2011, he was a resident of Country A under Article 4 of the U.S.-Country A Treaty.

As a green card holder, John, is a resident of the United States under U.S. domestic tax law (i.e., the Code). Assume, for purposes of this example, that under Country A domestic tax law, John may also be treated as a resident of Country A by reason of his physical presence in Country A. For each tax year at issue, is John a resident of the United States or Country A for purposes of the U.S.-Country A Treaty?

Process Applicability

Determining an Individual's Residency for Treaty Purposes

Only residents of a Contracting State (as defined by a tax treaty) may claim the benefits of that treaty. Generally, an individual who is a resident under the domestic law of a Contracting State is a resident of that Contracting State for purposes of a tax treaty. Information on tax returns and immigration documents may provide evidence of an individual's country of residence for domestic law tax purposes.

Criteria	Resources
The individual claims residency in a treaty country;	<ul style="list-style-type: none"> ▪ Form 1040NR, Schedule OI—Other Information, Items B–H. Responses on Schedule OI may be evidence of whether the individual is a U.S. resident alien—based on the lawful permanent residence test or the substantial presence test—or a resident of a foreign country (or a resident of both countries).
The individual might be a U.S. citizen or a U.S. resident alien under IRC 7701(b); and	<ul style="list-style-type: none"> ▪ USCIS Form I-551, Permanent Resident Card or Alien Registration Receipt Card. Compare an individual's Forms 1040NR and I-551. Form I-551 (commonly referred to as a “green card”) grants LPR status in the United States.
Where the individual is a resident under both countries' domestic tax laws, the tie-breaker provision in the treaty's Residence article determines residency for treaty purposes.	<ul style="list-style-type: none"> ▪ Form 8833. A U.S. resident alien who is claiming residency in a foreign country under the tie-breaker rules of a tax treaty must timely file Form 1040NR with an attached Form 8833.

Summary of Process Steps

Determining an Individual's Residency for Treaty Purposes

Process Steps

<u>Step 1</u>	Analyze U.S. Residency Claim- Determine whether the individual properly claimed to be a U.S. resident under U.S. domestic law by determining whether the individual is a U.S. citizen or a U.S. resident alien under the lawful permanent resident, physical presence, or first-year election tests.
<u>Step 2</u>	Analyze Treaty Country Residency Claim- Determine whether the individual properly claimed to be a resident of a country that has a treaty with the United States under such country's domestic law.
<u>Step 3</u>	Apply Treaty's Residency Tie-Breaker Rules- If you determine that an individual is a resident of both Contracting States, apply the treaty's residence tie-breaker rules. Where an individual would be a resident of both Contracting States, the treaty's tie-breaker rules apply to determine a single Contracting State of residence for purposes of the treaty.

Step 1: Analyze U.S. Residency Claim

Determining an Individual's Residency for Treaty Purposes

Step 1:

Determine whether the individual properly claimed to be a U.S. resident under U.S. domestic law by determining whether the individual is a U.S. citizen or a U.S. resident alien under the lawful permanent resident, physical presence, or first-year election tests.

Considerations	Resources
<p>Generally, an individual is a U.S. resident under U.S. domestic law and for treaty purposes if he or she is a U.S. citizen or is a U.S. resident alien under IRC 7701(b). An individual is a U.S. resident alien under IRC 7701(b) if he or she (i) is an LPR (i.e., a green card holder); (ii) meets the substantial presence test; or (iii) makes a first-year election to be treated as a U.S. resident alien.</p>	<ul style="list-style-type: none"> ▪ IRC 7701(b)
<p>Article 4 of the 2006 U.S. Model Treaty, which is identical to the Residence article of the U.S.-Country A Treaty, references the definition of residence under U.S. law and the domestic law of the other Contracting State. An individual is a U.S. resident under U.S. domestic law if he or she meets one of the three tests under IRC 7701(b) or is a U.S. citizen.</p>	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(1) ▪ TE to US Model Treaty (2006), Art. 4(1) ▪ IRC 7701(a)(30) ▪ IRC 7701(b)
<p>In addition to the three tests provided in IRC 7701(b), under IRC 6013(g) and (h), a U.S. non-resident alien who is married to a U.S. spouse may elect to be treated as a U.S. resident for income tax purposes, and as a result of the election may not claim to be a resident of a treaty country.</p>	<ul style="list-style-type: none"> ▪ IRC 6013(g), (h) ▪ Treas. Reg. 1.6013-6(a)(2)(v)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p>If an individual is a U.S. resident under U.S. domestic law and is not a resident of the other Contracting State under its domestic law, that individual is a U.S. resident for treaty purposes.</p>	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(1) ▪ TE to US Model Treaty (2006), Art. 4(1)
<p> CAUTION: Remember that each treaty is different. Some treaties require that additional criteria be satisfied for an individual to qualify as a resident of a Contracting State for treaty purposes. See “Additional requirements” on slide 16.</p>	
<p><u>U.S. domestic law:</u> Under IRC 7701(b), an individual is a U.S. resident alien if he or she:</p> <ul style="list-style-type: none"> ▪ is lawfully admitted for permanent residence, ▪ meets the substantial presence test, or ▪ makes a first-year election. 	<ul style="list-style-type: none"> ▪ IRC 7701(b)(1) ▪ <i>Lujan v. Comm’r</i> - T.C. Memo 2000-365 ▪ IRS Info. Letter 2013-0021 (Mar. 28, 2013)
<p><u>Form 1040NR, Schedule OI—Other Information:</u> Schedule OI—Other Information on Form 1040NR, U.S. Nonresident Alien Income Tax Return, can help you evaluate whether the individual is a U.S. resident alien.</p> <ul style="list-style-type: none"> ▪ Item B. Indicates the individual’s claimed country of residence. ▪ Items C, D, and F. Indicate whether the individual may be an LPR. ▪ Items G and H. Indicate whether the individual may meet the substantial presence test. 	<ul style="list-style-type: none"> ▪ Form 1040NR, Schedule OI—Other Information, Items B–H

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p><u>Lawfully admitted permanent resident:</u> Individuals with a Form I-551, Alien Registration Receipt Card (commonly referred to as a “green card”), issued by the U.S. Citizenship and Immigration Services (“USCIS”) are lawful permanent residents of the United States.</p>	<ul style="list-style-type: none"> ▪ IRC 7701(b)(6) ▪ USCIS Form I-551, Alien Registration Receipt Card ▪ Practice Unit, “Determining Tax Residency Status of Lawful Permanent Residents,” DCN: JTO/9431.01_02(2013)
<p><u>Residence dates for individuals who are lawful permanent residents:</u></p> <ul style="list-style-type: none"> ▪ Residence begins on the first date of the calendar year in which the individual is physically present in the United States. ▪ Residence generally ends on the last day of the calendar year the individual is no longer a resident provided that the individual is not a U.S. resident at any time during the following calendar year. (But see the exception explained on the next slide.) 	<ul style="list-style-type: none"> ▪ IRC 7701(b)(2) ▪ IRC 7701(b)(6) ▪ Treas. Reg. 301.7701(b)-4(a) ▪ Treas. Reg. 301.7701(b)-4(b) ▪ Treas. Reg. 301.7701(b)-1(b)(3) ▪ Practice Unit, “Determining Tax Residency Status of Lawful Permanent Residents,” DCN: JTO/9431.01_02(2013)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p><u>Residence dates for individuals who are lawful permanent residents (cont'd):</u></p> <p>Although residence generally ends on the last day of the calendar year the individual is no longer a resident provided that the individual is not a U.S. resident at any time during the following calendar year, if an LPR establishes that for the remainder of a calendar year in which he is no longer an LPR that:</p> <ul style="list-style-type: none"> ▪ his tax home is in a foreign country and ▪ he maintained a closer connection to that foreign country than to the United States, <p>then his residency termination date is the first day in a calendar year that he is no longer an LPR.</p> <p>An individual can establish that he is no longer an LPR when he files either USCIS Form I-407 or a letter stating his intent to abandon LPR status along with his USCIS Form I-551 with a USCIS or consular officer.</p> <p>Under IRC 7701(b)(6), an individual ceases to be treated as an LPR if:</p> <ul style="list-style-type: none"> ▪ such individual commences to be treated as a resident of a foreign country under a tax treaty, ▪ does not waive the benefits of such treaty, and ▪ notifies the IRS of his or her residency status by filing a Form 8833. 	<ul style="list-style-type: none"> ▪ IRC 7701(b)(2)(B) ▪ IRC 7701(b)(6) ▪ Treas. Reg. 301.7701(b)-4(b)(2) ▪ Treas. Reg. 301.7701(b)-1(b)(3) ▪ FSA 200128037, 2001 WL 789915 <p> CAUTION: Field Service Advisory (“FSA”) may not be treated as precedent. It is cited here for illustrative purposes only.</p> <ul style="list-style-type: none"> ▪ USCIS Form I-407, Abandonment of Lawful Permanent Residence Status ▪ Practice Unit, “Determining Tax Residency Status of Lawful Permanent Residents,” DCN: JTO/9431.01_02(2013)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p>In the example on slide 5, John was an LPR from November 1, 2007, through February 28, 2011, when he returned to Country A permanently and filed a Form 8833 notifying the IRS of his Country A residency status.</p> <ul style="list-style-type: none">▪ John's U.S. tax residence began on the first day he was physically present in the United States: November 1, 2007.▪ John's U.S. tax residence ended on February 28, 2011, the first day of the calendar year he was not an LPR. To prove that his U.S. tax residence ended on that day, he must establish that after he left the United States, his tax home was in a foreign country and that he maintained a closer connection with that foreign country than with the United States.	<ul style="list-style-type: none">▪ IRC 7701(b)(6)▪ Treas. Reg. 301.7701(b)-4(a)▪ Treas. Reg. 301.7701(b)-4(b)▪ Practice Unit, "Determining Tax Residency Status of Lawful Permanent Residents," DCN: JTO/9431.01_02(2013)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p><u>Residence under the substantial presence test:</u> The Code provides a formula for calculating whether an individual is a U.S. resident alien for each tax year based on the substantial presence test. To meet the substantial presence test in a calendar year, the individual must be present in the United States for at least:</p> <ul style="list-style-type: none"> ▪ 31 days during the current calendar year and ▪ the sum of the number of days of presence in the current year and the two preceding calendar years equals or exceeds 183 days when multiplied by the following factors— <ul style="list-style-type: none"> — 1 for the number of days in the current year, — 1/3 for the number of days in in the first preceding year, and — 1/6 for the number of days in the second preceding year. <p>Note that, depending on the taxpayer's circumstances, certain days might be excluded from this computation or an exception called the "closer connection" exception might apply. See the practice unit on the substantial presence test for details.</p>	<ul style="list-style-type: none"> ▪ IRC 7701(b)(3) ▪ Treas. Reg. 301.7701(b)-1(c) ▪ Treas. Reg. 301.7701(b)-2 ▪ Treas. Reg. 301.7701(b)-3 ▪ <i>Lujan v. Comm'r</i> - T.C. Memo 2000-365 ▪ Practice Unit, "Substantial Presence Test," DCN: JTO/9431.01_03(2013)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p><u>Residence dates for individuals under the substantial presence test:</u></p> <p>Residence begins on the first date of the calendar year in which the individual is physically present in the United States. Residence ends either on the last day of the calendar year the individual is no longer a resident or on the last day the individual was physically present in the United States.</p> <p>Residence generally ends on the last day of the calendar year the individual is no longer a resident alien provided that the individual is not a U.S. resident at any time during the following calendar year. If such individual establishes that for the remainder of a calendar year in which he is no longer a U.S. resident that:</p> <ul style="list-style-type: none">▪ his tax home is in a foreign country and▪ he maintained a closer connection to that foreign country than to the United States, <p>then residence ends on the last day the individual was physically present in the United States.</p>	<ul style="list-style-type: none">▪ IRC 7701(b)(2)(B)▪ Treas. Reg. 301.7701(b)-4(a), (b)(2)▪ Practice Unit, "Substantial Presence Test," DCN: JTO/9431.01_03(2013)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p><u>First-year election:</u> An individual who does not meet the lawful permanent residence or substantial presence tests for a calendar year (the election year) may elect to be treated as a U.S. resident alien if the individual:</p> <ol style="list-style-type: none">1. was not a resident in the previous tax year;2. is a resident under the substantial presence test for the calendar year immediately following the election year;3. is present for a period of at least 31 consecutive days in the election year; and4. is present during the period beginning with the first day of such 31-day period and ending with the last day of the election year (the testing period) for a number of days equal to or exceeding 75% of the number of days in the testing period.	<ul style="list-style-type: none">▪ IRC 7701(b)(4)▪ Pub. 519, <i>U.S. Tax Guide for Aliens</i>, at Chapter 1, "Nonresident Alien or Resident Alien?"▪ Practice Unit, "First-Year Election Under IRC 7701(b)(4)," DCN: JTO/9431.02_11(2014)

Step 1: Analyze U.S. Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 1](#)

Considerations	Resources
<p><u>Additional requirements:</u> Some treaties require that U.S. citizens or LPRs satisfy additional requirements to be residents of the United States for purposes of a treaty. For example, a treaty might provide that U.S. citizens or LPRs will <i>not</i> be treated as U.S. residents for treaty purposes unless—</p> <ul style="list-style-type: none"> ▪ They have a substantial presence, permanent home, or habitual abode in the United States and are not treated as residents of a third country under a treaty between the other Contracting State and that third country. ▪ They have a substantial presence in the United States or they would be a resident of the United States and not a resident of a third country under the principles of the tie-breaker rules. <p> CAUTION: The substantial presence requirement appears in some treaties. The substantial presence requirement in these treaties is different from the substantial presence test (discussed earlier) in IRC 7701(b)(3), which applies to determine whether an individual is a resident alien under U.S. domestic law. Be sure to carefully read the text of the treaty you are applying and only refer to this Practice Unit as general guidance.</p> <p> DECISION POINT: After determining that an individual is a resident for U.S. domestic law purposes, determine whether the individual is a U.S. resident for treaty purposes based on the text of the treaty before application of the tie-breaker rule (if the resident claims residence in the treaty country).</p>	<ul style="list-style-type: none"> ▪ US-UK Treaty, Art. 4(2) ▪ TE to US-UK Treaty, Art. 4(2) ▪ US-France Treaty, Art. 4(2) ▪ TE to US-France Treaty, Art. 4(2) ▪ IRC 7701(b)(3)

Step 2: Analyze Treaty Country Residency Claim

Determining an Individual's Residency for Treaty Purposes

Step 2

Determine whether the individual properly claimed to be a resident of a country that has a treaty with the United States under such country's domestic law.

Considerations	Resources
<p>Generally, an individual who is a resident under the domestic tax law of a Contracting State is a resident of that Contracting State for purposes of a tax treaty (before application of applicable tie-breaker provisions within the treaty). Information on tax returns and immigration documents may provide evidence of an individual's country of residence for foreign domestic tax law purposes.</p> <p>Did the individual provide a certificate of residency? Upon request, the IRS will provide certification that an individual is a resident of the United States for purposes of the income tax laws of the United States. The individual may use this certificate as evidence of U.S. residence to claim income tax treaty benefits in foreign countries (provided that the treaty does not impose additional requirements).</p> <p>The other Contracting State might be able to provide an individual with a similar certification as evidence that he or she is a resident of the other Contracting State for purposes of its domestic tax laws. You can rely on such a certificate as proof that the individual is a resident of the other Contracting State (before application of the treaty's tie-breaker rules, if applicable (see Step 3), unless you have other information that would lead a reasonably prudent person to doubt the validity of the certificate of residency).</p>	<ul style="list-style-type: none"> ▪ Certificate of residency issued by the other Contracting State (and English translation, if applicable) ▪ Cf. IRM 21.8.4.1(3) ("The IRS residency certification, Form 6166, is accepted by many of our treaty partners as proof of U.S. residence for tax purposes for the period specified on the certification.") ▪ Cf. Treas. Reg. 1.1441-6(b) (providing, in an analogous situation, that a withholding agent can rely on a completed Form W-8BEN absent actual knowledge or reason to know otherwise), and Treas. Reg. 1.1441-7(b)(2) (defining "reason to know" for that purpose)

Step 2: Analyze Treaty Country Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 2](#)

Considerations	Resources
<p>In the absence of a valid certificate of residency provided by the other Contracting State, to determine whether an individual is a resident of the other Contracting State you will need to:</p> <ol style="list-style-type: none"> 1. Consider the other Contracting State's domestic laws on residency, and 2. Evaluate the individual's specific facts in light of those rules. 	
<p><u>Consideration of the domestic law of the other Contracting State</u>- Research the domestic tax law of the other Contracting State to determine how the tax residency of an individual is established.</p> <p>For example, in most countries, the right to impose worldwide taxation on an individual is based on residency rather than citizenship. In other words, in most countries, an individual is not considered to be a tax resident solely because he or she is a citizen of that country.</p>	<ul style="list-style-type: none"> ▪ BNA Tax Management Portfolios, Business Operations Abroad (available on Westlaw). Select "Taxation of Resident Individuals" beneath the name of the other Contracting State. ▪ Accounting firm websites may include publically available country-specific reference materials ▪ <i>Topsnik v. Comm'r</i> - 146 T.C. No. 1, 11-17 (2016)

Step 2: Analyze Treaty Country Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 2](#)

Considerations	Resources
<p> CAUTION: <u>“Forfeit” and other “fixed-fee” regimes:</u> Under the domestic laws of Switzerland and Ireland, certain individuals may be subject to a flat tax in lieu of being subject to a comprehensive tax system.</p> <p>For example, non-Swiss nationals who live in certain Swiss cantons (provinces) may be taxed at a flat rate based on a multiple of their rents in that canton (forfeit tax regime). They are nonetheless residents of Switzerland for purposes of the treaty so long as they comply with the requirements of Article 4(5) of the treaty. That article requires such residents to be taxed on their U.S.-sourced, treaty-benefited income (e.g. royalties) at the full cantonal rates in lieu of the flat tax. This is known as the modified forfeit regime.</p> <p>However, most other countries which have treaties with Switzerland don't require taxpayers to use a modified forfeit regime, so it still benefits non-Swiss nationals to use this regime if they derive income from all over the world (athletes especially).</p> <p>Moreover, a Swiss canton may give rulings to individuals permitting them to sell their rights to receive endorsement income from a company which may benefit from special cantonal tax regimes. The company paying the endorsement income then claims treaty benefits, and individuals avoid having to include any US-source income.</p> <p>Ireland has a different fixed fee regime (the domicile levy) that is charged on wealthy individuals who are domiciled in Ireland. When determining whether an individual is a resident of Switzerland or Ireland, ask whether the individual is subject to a forfeit or similar fixed-tax regime. The Irish treaty was negotiated prior to the enactment of the tax so the domicile levy is not mentioned in the treaty.</p>	<ul style="list-style-type: none">▪ US-Switzerland Treaty, Art. 4(5)▪ TE to US-Switzerland Treaty, Art. 4(5)▪ US Model Treaty (2016), Art. 4(1) (prevents individuals subject to tax on a forfeit, fixed-fee or similar basis from claiming benefits as residents)

Step 2: Analyze Treaty Country Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 2](#)

Considerations	Resources
<p><u>Evaluation of the individual's facts:</u></p> <p>Various resources can help you gather information needed to determine whether an individual is a resident of the other Contracting State under its domestic tax laws. For example:</p> <ul style="list-style-type: none"> ▪ Responses on Form 1040NR, Schedule OI, may indicate whether, for each country's domestic law purposes, the individual is a U.S. resident alien, a resident of a foreign country, or a resident of both countries. ▪ Responses on Form 9210, Alien Status Questionnaire, may provide helpful information. For example, Item 12 asks the individual whether he or she filed a foreign income tax return with the other Contracting State and, if so, to provide a copy of the return. ▪ The exchange of information ("EOI") process available under tax treaties and tax information exchange agreements can be used to develop information from outside of the United States. 	<ul style="list-style-type: none"> ▪ Form 1040NR, Schedule OI—Other Information, Items B–H ▪ Form 9210 ▪ Foreign tax return ▪ <i>Topsnik v. Comm'r</i> - 146 T.C. 1, 8-9, 15-17 (2016) ▪ Practice Unit, "Overview of Exchange of Information Programs," DCN: EOI/CU/P_20.1_01(2015) ▪ EOI Practice Network ("PN") (for information on using the EOI process)

Step 2: Analyze Treaty Country Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 2](#)

Considerations	Resources
<p><u>Dual residents:</u> An individual who is treated as a resident under U.S. domestic law and as a resident of the other Contracting State under the domestic law of a foreign country is a "dual resident." A dual resident is generally subject to tax in both countries. However, such an individual will often claim to be treated as a resident of a single country for purposes of the treaty.</p>	
<p><u>Additional requirement for dual resident aliens:</u> A U.S. resident alien who is claiming foreign residency under a treaty's tie-breaker rules must timely file Form 1040NR with an attached Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 301.7701(b)-7 ▪ Form 8833
<p> CONSULTATION: Treas. Reg. 301.7701(b)-7(b) requires a U.S. resident alien claiming foreign country treaty residence to file Form 1040NR on a timely basis. Confer, if needed, with the Treaties IPN or Counsel if you see a taxpayer filing an untimely Form 1040NR with an attached Form 8833.</p>	

Step 2: Analyze Treaty Country Residency Claim (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 2](#)

Considerations	Resources
<p>In the example on slide 5, John filed Form 1040 as a U.S. resident from November 1, 2007, through tax year 2010. For the tax year beginning in 2011, John filed a Form 1040NR dual-status return claiming to be a Country A resident for the period beginning after February 28, 2011. In his response to Form 9210, John claims residence in Country A and submitted a copy of his Country A tax return.</p> <p>John claims to be a U.S. tax resident for the period beginning on November 1, 2007, through February 28, 2011, and a Country A tax resident for the period beginning after February 28, 2011. For tax years 2007 through 2011, the tie-breaker rules in the U.S.-Country A Treaty will assign John a single Contracting State of residence.</p> <p> DECISION POINT: Determine whether the individual would be a resident of the other Contracting State for treaty purposes based on the text of the treaty before application of the tie-breaker rules. You can STOP and proceed to “Other Considerations / Impact to Audit” on slide 36 if the individual would be resident of the other Contracting State or a resident of the United States but not both.</p> <p>If the individual would be a resident of <i>both</i> the United States and the other Contracting State (like John, as explained above) proceed to Step 3 to apply the tie-breaker rules.</p>	

Step 3: Apply Treaty's Residence Tie-Breaker Rules

Determining an Individual's Residency for Treaty Purposes

Step 3

Where an individual would be a resident of both Contracting States, the treaty's tie-breaker rules apply to determine a single Contracting State of residence for purposes of the treaty.

Considerations	Resources
<p>The tests in a treaty's tie-breaker provision are applied in the order in which they are stated and generally determine residence based on:</p> <ol style="list-style-type: none">1. The existence and location of a permanent home;2. Center of vital interests;3. Habitual abode; and4. Nationality. <p>Because these tests are applied in the order in which they appear in the treaty, if a single Contracting State of residence can be determined under the first tie-breaker test, for example, then you do not need to proceed to the next test.</p> <p>If an individual remains a resident of both Contracting States after application of the tie-breaker rules, the competent authorities will try to assign a single Contracting State of residence through mutual agreement.</p>	<ul style="list-style-type: none">▪ US Model Treaty (2006), Art. 4(3)▪ TE to US Model Treaty (2006), Art. 4(3)▪ See Commentary on OECD Model Treaty (2014), Art. 4, Para. 14, for a general discussion of the tie-breaker rules

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
 CAUTION: Remember that each treaty is different. Although this Practice Unit primarily addresses the Residence article (and tie-breaker tests) found in the U.S.-Country A Treaty which resembles the 2006 U.S. Model Treaty, the test in the treaty you are applying might differ. Be sure to carefully read the text of treaty you are applying and refer to this Practice Unit only as general guidance.	
<p>For example, the U.S.-China Treaty states that the competent authorities of the Contracting States determine residency for individuals who otherwise would be residents of both Contracting States.</p> <p>As another example, the U.S.-Pakistan Treaty does not have a standalone article on residence. Instead, the terms “resident of the United States” and “resident of Pakistan” are defined along with other terms in the Definitions article of the treaty.</p>	<ul style="list-style-type: none">▪ US-China Treaty, Art. 4(2)▪ US-Pakistan Treaty, Art. 2(1)(i) & (j)

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Permanent home:</u> In most treaties, the first tie-breaker test is the permanent home test. A permanent home is one that is retained for permanent and continuous use and is not a place retained for a short duration. An individual has a permanent home in the United States if he or she:</p> <ul style="list-style-type: none"> ▪ purchased a home in the United States, ▪ intended to reside in that home for an indefinite time, and ▪ actually did reside in that home. 	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(a) ▪ TE to US Model Treaty (2006), Art. 4 ▪ Commentary on OECD Model Treaty (2014), Art. 4, Para. 13 ▪ PMTA 2007-00020 <p> CAUTION: Chief Counsel Program Manager's Technical Advice (PMTA) may not be treated as precedent. It is cited here for illustrative purposes only.</p>
<p>Individuals may also have a permanent home where:</p> <ul style="list-style-type: none"> ▪ a room/apartment is continuously available to them, ▪ their personal property (e.g., automobiles, personal belongings) is stored at a dwelling, and ▪ they conduct business (e.g., maintaining an office, registering a telephone), including using such address for insurance and a driver's license. 	<ul style="list-style-type: none"> ▪ <i>Podd v. Comm'r</i> - T.C. Memo 1998-418 ▪ See Commentary on OECD Model Treaty (2014), Art. 4, Para. 13, for a general discussion of the permanent home test

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p>Permanent home indicated from family life. In certain treaties, an individual's family life may be evidence of a permanent home. You may need to determine:</p> <ul style="list-style-type: none"> ▪ where the individual's family members reside and ▪ where the individual's children, if any, are enrolled in school. <p>Other treaties explicitly define permanent home in relation to where an individual dwells with his or her family. As always, be sure to read carefully the text of treaty you are applying to identify any special rules.</p>	<ul style="list-style-type: none"> ▪ US-Australia Treaty, Art. 4(3) ▪ US-Indonesia Treaty, Art. 4(2) (flush language) ▪ US-Korea Treaty, Art. 3(2) (flush language) ▪ PMTA 2007-00020 <p> CAUTION: Chief Counsel Program Manager's Technical Advice (PMTA) may not be treated as precedent. It is cited here for illustrative purposes only.</p>
<p>Check the individual's Form 8833 (if any). Beneath the entry provided for the individual's name are entries for "Address in country of residence" and "Address in the United States."</p>	<ul style="list-style-type: none"> ▪ Form 8833

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
 <p>DECISION POINT: If the individual has a permanent home in only one of the Contracting States, the individual will be treated as a resident of that State for treaty purposes. You can STOP and proceed to “Other Considerations / Impact to Audit” on slide 36. If the individual has a permanent home in both Contracting States, proceed to the next test in the tie-breaker rules (the center of vital interests). If the individual does not have a permanent abode in either state then determine in which Contracting State he has a habitual abode.</p>	
<p>For example, on slide 5, for part of each year, John resides in an apartment he owns in Country A. In the United States, his fiancée's home is available to him as he regularly stays there when in the United States. His United States apartment may also be available to him depending on the terms of his agreement with his renters. John likely has a permanent home available to him in both countries. Therefore, you would need to move to the next test to determine John's treaty residency.</p>	

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Center of vital interests:</u> In most treaties, the second tie-breaker test is the center of vital interests test. The test is where the individual's personal and economic relations are closer. Assess the location of the individual's personal, community, and economic relations.</p>	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(a) ▪ TE to US Model Treaty (2006), Art. 4 ▪ Commentary on OECD Model Treaty (2014), Art. 4, Para. 14
<p><u>Personal relations:</u></p> <ul style="list-style-type: none"> ▪ Family location- Includes parents and siblings, and where the individual spent his or her childhood. ▪ Recent relocation- Whether the family moved from their permanent home to join the individual or the individual relocated to a second state (for example, as a result of marriage). 	<ul style="list-style-type: none"> ▪ <i>Podd v. Comm'r</i> - T.C. Memo 1998-418
<p> CAUTION: Don't forget that treaties may have different requirements for determining an individual's center of vital interests. An example is our treaty with Israel, which provides that a person who is an "oleh" (as defined in section 9(16) of the Israeli Income Tax Ordinance; generally, a Jewish person emigrating to Israel) is deemed to have a center of vital interests in Israel.</p>	<ul style="list-style-type: none"> ▪ US-Israel Treaty, Art. 3(2)(a)

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Community relations:</u> Determine where the individual has his or her-</p> <ul style="list-style-type: none"> ▪ health insurance, ▪ medical and dental professionals, ▪ driver's license/motor vehicle registration, ▪ health club membership, ▪ political and cultural activities, and ▪ ownership of bank accounts. 	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(a) ▪ <i>Podd v. Comm'r</i> - T.C. Memo 1998-418 ▪ See Commentary on OECD Model Treaty (2014), Art. 4, Para. 15, for a general discussion of shifting center of vital interests
<p><u>Economic relations:</u> Determine where the individual-</p> <ul style="list-style-type: none"> ▪ keeps his or her investments or conducts business, ▪ incorporated his or her business, and ▪ retains professional advisors (e.g., attorneys, agents, and accountants). 	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(a) ▪ <i>Podd v. Comm'r</i> - T.C. Memo 1998-418

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Personal, community, and economic relations as a whole:</u> Note that the factors listed on the previous two slides are merely illustrative and are <i>not</i> the exclusive factors to be considered when assessing where an individual's personal and economic relations are closer. An individual's personal, community, and economic relations are <i>all</i> relevant in determining his or her center of vital interests.</p>	<ul style="list-style-type: none"> See Commentary on OECD Model Treaty (2014), Art. 4, Para. 15, stating that the individual's circumstances must be considered as a whole
<p>For example, in <i>Escobedo v. United States</i>, the district court rejected the government's motion for summary judgment that the taxpayer's center of vital interests lay within the United States because his personal relations were almost entirely in the United States. Although the taxpayer's personal relations were in the United States, he maintained economic relations with Mexico, and genuine issues of material fact existed with respect to his economic relations within the United States. The court did not hold that the taxpayer's center of vital interests could not be determined, just that it could not determine it as a matter of law at that early stage of the litigation.</p>	<ul style="list-style-type: none"> See <i>Escobedo v. United States</i> - 112 A.F.T.R.2d 2013-7005, 2013 WL 6058485 (S.D. Cal. Nov. 14, 2013) (order denying motion for summary judgment), for additional factors to consider when determining the location of an individual's personal and economic relations

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Shifting center of vital interests:</u> When an individual retains ties in one Contracting State but establishes ties in a second Contracting State, this is evidence of a change in the individual's center of vital interests. All of the surrounding facts and circumstances aid in determining an individual's center of vital interests.</p> <ul style="list-style-type: none"> ▪ Evidence that an individual has executed contracts relating to his or her business in the second State may indicate that the center of vital interests is in the second State. ▪ If an individual relocates to the second State due to marriage, this may also evidence a shift in the center of vital interests. 	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(a) ▪ <i>Podd v. Comm'r</i> - T.C. Memo 1998-418 ▪ See Commentary on OECD Model Treaty (2014), Art. 4, Para.15, for a general discussion of shifting center of vital interests
<p> CAUTION: As you determine an individual's center of vital interests (and whether it has shifted), evaluate their personal, community, and economic relations as a whole, based upon the facts and circumstances of the individual's case.</p>	

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
 DECISION POINT: If you determine that the individual's center of vital interests is in one of the Contracting States because his or her personal, community, and economic relations are closer to that State, the individual will be treated as a resident of that Contracting State for treaty purposes. You can STOP and proceed to "Other Considerations / Impact to Audit" on slide 36 . If the individual's center of vital interests cannot be determined, proceed to the next test in the tie-breaker rules.	
For example, on slide 5, John's friends and family are in both the United States and in Country A. John and his fiancée will jointly decide where they will reside once they are married. John is renting out property he owns in both the United States and Country A. John's personal and economic relations are in both Contracting States. There is not sufficient information to determine in which Contracting State John's center of vital interests are located. Move on to the next test.	

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Habitual abode:</u></p> <p>In most treaties, the third tie-breaker test is the habitual abode test. An individual's habitual abode is located in the Contracting State in which the individual has a greater presence during a calendar year. Although the length of time is not specified, the comparison must cover sufficient length of time and take into account the intervals at which the stays take place for it to be possible to determine where residence is habitual. For example, an individual who is present in the United States more frequently and at longer intervals than in the other Contracting State during a calendar year likely has a habitual abode in the United States.</p> <p>Determine whether the individual has a habitual abode in the United States by calculating how much time the individual spent in in the United States in a tax year. Note that this is not just a day counting test however.</p> <p>For example, in <i>Escobedo v. United States</i>, the government argued that the taxpayer's habitual abode was in the United States because the taxpayer spent 243 days and 240 days in the United States in 2005 and 2006 respectively. The court did not decide the issue, however, because a decision would have been premature at that stage.</p> <p> OPPOSING VIEW: Foreign jurisdictions may have varying interpretations of "habitual abode." For example, a Canadian tribunal found that an individual present in the United States for 69 out of 623 days did not have a U.S. habitual abode. The court based its decision, in part, on the frequency, duration, and regularity of visits to determine where the individual normally lived. This interpretation does not reflect U.S. law.</p>	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(b) ▪ See Commentary on OECD Model Treaty (2014), Art. 4, Para. 19, for a general discussion of the habitual abode test ▪ Form 1040NR, Schedule OI—Other Information, Item G ▪ See <i>Escobedo v. United States</i> - 112 A.F.T.R.2d 2013-7005, 2013 WL 6058485 (S.D. Cal. Nov. 14, 2013) (order denying motion for summary judgment)

Step 3: Apply Treaty's Residence Tie-Breaker Rules (cont'd)

Determining an Individual's Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Habitual abode (cont'd):</u> The habitual abode test must be applied over a sufficient length of time to determine whether residence in either Contracting State is habitual. In <i>Podd v. Commissioner</i>, an individual had a habitual abode in one State in a year during which he was present for 210 days (and present in the other State for 120 days).</p> <p> CAUTION: In determining an individual's habitual abode, you should note that some countries measure over a period of time that is longer than a tax year. Be sure to carefully read the text of the treaty you are applying and refer to this Practice Unit only as general guidance.</p> <p> DECISION POINT: If the individual has a habitual abode in only one of the Contracting States, the individual will be treated as a resident of that State for treaty purposes. You can STOP and proceed to "Other Considerations / Impact to Audit" on slide 36. If the individual has a habitual abode in both Contracting States (or neither), proceed to the next test in the tie-breaker rules.</p> <p>In the example on slide 5, John spent a comparable amount of time in both the United States and Country A at similar intervals. Because John does not have a greater presence in either State, the habitual abode test is inconclusive. Therefore, you would need to move to the next test to determine John's treaty residency.</p>	<ul style="list-style-type: none"> ▪ <i>Podd v. Comm'r</i> - T.C. Memo 1998-418

Step 3: Apply Treaty’s Residence Tie-Breaker Rules (cont’d)

Determining an Individual’s Residency for Treaty Purposes

[Step 3](#)

Considerations	Resources
<p><u>Nationality:</u> In most treaties, the fourth tie-breaker test is the nationality test. A “national” of a Contracting State is an individual who is either a citizen or a national of that Contracting State. An individual who is not a U.S. citizen is unlikely to be defined as a U.S. national under the tie-breaker rules in U.S. tax treaties.</p> <p>Determine the individual’s State of nationality by examining her passport and/or her USCIS Form I-94. Reconcile these documents with the individual’s Form 1040NR, Schedule OI, Item A, which inquires about the filer’s citizenship.</p> <p>You may also submit an exchange of information request to determine an individual’s nationality.</p> <p> DECISION POINT: If the individual is a national in only one of the Contracting States, the individual will be treated as a resident of that State for treaty purposes. If the individual is not a national of the Contracting State of which he or she claims to be a resident, then his or her claim to a treaty benefit that is contingent on residency should be tentatively disallowed. If an individual is a national of both Contracting States (or neither), then the competent authorities will endeavor to assign a State of residence through the mutual agreement procedure.</p> <p>In the example on slide 5, John is a Country A citizen. He is not a U.S. citizen. Because John is a Country A national (and not a U.S. national), as defined by the U.S.-Country A Treaty, he is a resident of Country A according to the tie-breaker rules in Article 4(3)(c) (Resident) of the U.S.-Country A Treaty.</p>	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Art. 4(3)(c) ▪ US Model Treaty (2006), Art. 3(1)(j)(i) ▪ Form 1040NR, Schedule OI—Other Information, Item A ▪ USCIS Form I-94, Arrival/Departure Record, Item 4 ▪ Practice Unit, “Overview of Exchange of Information Programs,” DCN: EOI/CU/P_20.1_01(2015) ▪ EOI IPN (for information on using the EOI process)

Other Considerations / Impact to Audit

Determining an Individual's Residency for Treaty Purposes	
Considerations	Resources
<p><u>Impact of the saving clause</u>- Generally, with specific exemptions, the saving clause reserves the right of a Contracting State to continue to tax its citizens and residents (as defined by the treaty's residence article) under the Contracting State's domestic law as if a treaty were not in effect. Even if a U.S. citizen is a resident of the other Contracting State under the tie-breaker rules, the United States may tax the U.S. citizen as if the treaty had not come into force unless an exception to the saving clause applies.</p>	<ul style="list-style-type: none"> ▪ US Model Treaty (2006), Arts. 1(4) (saving clause) and 1(5) (exceptions to the saving clause)
<p><u>Competent Authority</u>- A taxpayer seeking to clarify their U.S. residency status may do so by contacting the U.S. Competent Authority. Generally, U.S. Competent Authority assistance is limited to situations where (a) resolution of a residency issue is necessary to avoid double taxation (for example, where the IRS and the tax authority of the other Contracting State each claim they are entitled to tax the same item of income) or to determine the applicability of a particular treaty benefit and (b) the issue requires consultation with the foreign competent authority to ensure consistent treatment under the applicable U.S. tax treaty. Special rules govern whether the U.S. Competent Authority will consider cases pending before IRS Appeals or a U.S. court.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, 2015-35 I.R.B. 236, sections 3.04, 3.06(1), 6.04, 6.05 ▪ IRM 4.60.2.3
<p><u>Expatriation</u>- An individual may be subject to an expatriation tax if, among other conditions:</p> <ul style="list-style-type: none"> ▪ the individual has been an LPR at any time during at least 8 of the previous 15 years and ▪ the individual's LPR status has been revoked or they have taken the position that they are a resident of a treaty country. 	<ul style="list-style-type: none"> ▪ IRC 877, 877A, and 7701(b)(6) ▪ Pub. 519, <i>U.S. Tax Guide for Aliens</i>, at Ch. 4, "How Income of Aliens is Taxed: Expatriation Tax"

Index of Referenced Resources

Determining an Individual's Residency for Treaty Purposes

IRC 877 - *Expatriation to avoid tax* and 877A - *Expatriation to avoid tax*

IRC 6013(g), (h) - *Confidentiality and disclosure of returns and return information*

IRC 7701(a)(30) - *Definitions*

IRC 7701(b)(1), 7701 (b)(2), 7701(b)(2)(B), 7701(b)(3), 7701(b)(4), 7701(b)(6) - *Definitions*

Treas. Reg. 1.1441-6(b)

Treas. Reg. 1.6013-6(a)(2)(v)

Treas. Reg. 301.7701(b)-1(b)(3)

Treas. Reg. 301.7701(b)-1(c)

Treas. Reg. 301.7701(b)-2

Treas. Reg. 301.7701(b)-3

Treas. Reg. 301.7701(b)-4(a)

Treas. Reg. 301.7701(b)-4(b), (b)(2)

Treas. Reg. 301.7701(b)-7

Escobedo v. United States - 112 A.F.T.R.2d 2013-7005, 2013 WL 6058485 (S.D. Cal. Nov. 14, 2013)

Lujan v. Comm'r - T.C. Memo 2000-365

Podd v. Comm'r - T.C. Memo 1998-418

Topsnik v. Comm'r - 146 T.C. 1, 8-9, 11-17 (2016)

Index of Referenced Resources (cont'd)

Determining an Individual's Residency for Treaty Purposes
US-Australia Treaty, Art. 4(3)
US-China Treaty, Art. 4(2)
US Model Treaty (2006), Art. 4(3), 4(3)(a)
US Model Treaty (2006), Art. 1(4), 1(5), Art. 3(1)(j)(i), Art. 4, 4(3), 4(3)(b), 4(3)(c)
US Model Treaty (2016)
TE to US Model Treaty (2006), Art. 4
US-France Treaty
TE to US-France Treaty
US-Indonesia Treaty, Art. 4(2), flush language
US-Israel Treaty, Art. 3(2)(a)
US-Korea Treaty, Art. 3(2), flush language
US-Pakistan Treaty, Art. 2(1)(i) & (j)
US-Switzerland Treaty
TE to US-Switzerland Treaty
US-UK Treaty
TE to US-UK Treaty
Commentary on OECD Model Treaty (2014), Art. 4, Paras. 13-15, 19

Index of Referenced Resources (cont'd)

Determining an Individual's Residency for Treaty Purposes
Form I-94 - Arrival/Departure Record (USCIS)
Form I-407 - Abandonment of Lawful Permanent Residence Status (USCIS)
Form I-551 - Permanent Resident Card or Alien Registration Receipt Card (USCIS)
Form 1040NR - Schedule OI—Other Information
Form 8833 - Treaty-Based Return Position Disclosure under Section 6114 or 7701(b)
Form 9210 - Alien Status Questionnaire
IRM 4.60.2.3 – <i>Processing Examination Cases</i>
IRM 21.8.4.1(3) - <i>United States Residence Certification (Form 6166) Program Scope and Objectives</i>
Pub. 519 - U.S. Tax Guide for Aliens, at Chapter 1, “Nonresident Alien or Resident Alien?”
Pub. 519 - U.S. Tax Guide for Aliens, at Chapter 4, “How Income of Aliens is Taxed: Expatriation Tax,”
Rev. Proc. 2015-40, sections 3.04, 3.06(1), 6.04, 6.05

Index of Referenced Resources (cont'd)

Determining an Individual's Residency for Treaty Purposes

BNA Tax Management Portfolios, Business Operations Abroad (Westlaw)

Field Service Advisory 200128037, 2001 WL 789915

IRS Info. Letter 2013-0021 (Mar. 28, 2013)

Lingle v. Canada - [2010] 5 C.T.C. 162 (Can. B.C. C.A.)

Program Manager Technical Advice (PMTA), 2007-00020

Training and Additional Resources

Determining an Individual's Residency for Treaty Purposes	
Type of Resource	Description(s)
SABA Sessions	Legal Status of Taxpayer and Treaties & Jurisdiction to Tax. These SABA Sessions can assist field personnel in determining the legal status of an individual and the validity of the individual's treaty claims.
White Papers / Guidance	Publication 519, U.S. Tax Guide for Aliens, and Publication 901, U.S. Tax Treaties. These documents summarize aspects of the residency rules under U.S. income tax treaties.
Podcasts / Videos	FY11 Face-to-Face CPE Video Modules. This information is also available in a PowerPoint slide deck format.
Reference Materials – Treaties	The Technical Explanation for the US Model Treaty and the Commentary for the OECD Model summarize the rules on residency under the US Model Treaty and the OECD Model Treaty

Glossary of Terms and Acronyms

Term/Acronym	Definition
Code	Internal Revenue Code
Contracting State	A country that is a party to a particular tax treaty
EOI	Exchange of Information
FSA	Field Service Advisory
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LPR	Lawful permanent resident
OECD	Organization for Economic Cooperation and Development
PMTA	Chief Counsel Program Manager's Tax Advice
PN	Practice Network
TE	Treasury Department Technical Explanation to a U.S. tax treaty
Treaty (or tax treaty)	Bilateral income tax agreement
USCIS	U.S. Citizenship and Immigration Services

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit	DCN
▪ 9431.01-01	Substantial Presence Test	JTO/P/09_01_01-03 (formerly JTO/9431.01_03 (2013))
▪ 9431.01-02	Determining Tax Residency Status of Lawful Permanent Residents	JTO/P/09-01_02-02 (formerly JTO/9431.01_02(2013))
▪ 9431.02-05	First Year Election under IRC 7701(b)(4)	JTO/P/09_02_05-11 (formerly JTO/9431.02_11(2014))
▪ 9431.02	Election under IRC 6013(g)	JTO/P/09_02_06-09 (formerly JTO/9431.02_09(2014))
▪ 9431.02-06	Election under IRC 6013(h)	JTO/P/09_02_06-10 (formerly JTO/9431.02_10(2014))
▪ 9455.01	Overview of EOI	EOI/C/20_01-01 (formerly EOI/CU/P_20.1_01(2015))