Rödl & Partner

Retirement for German Nationals who worked in the USA – German and U.S. Tax Considerations

Frequently Asked Questions

June 2021

General comments:
Please find below some frequently asked questions and our general answers. Specific tax advice needs to come from a German or U.S. tax advisor based on the specific facts and circumstances considering the German and U.S. income tax regulations.

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→ Who in Germany is the official Authority to settle Rentenansprüche?

The Deutsche Rentenversicherung Bund is the main organization in Germany with several regional agencies. For more information, please visit their website:
https://www.deutsche-rentenversicherung.de/DRV/DE/Home/home_node.html

You can also download a PDF document with specific information about working in Germany and in the U.S. ("Arbeiten in Deutschland und in den USA").

→ How are Roth IRA 's, 401K treated in Germany if I move back? What if I move back to Germany will I receive my Social Security Income and how will it be taxed?

In general, a Roth IRA will be treated as regular income in Germany, and it will be subject to German income tax. The U.S. tax treatment will not apply in Germany. A Roth IRA is a retirement plan created under U.S. tax laws. German tax law does not conform to the U.S. law unless there is bilateral agreement, i.e., the income tax treaty, which alters the tax treatment. The U.S./German income tax treaty might provide relief in cases where income could be subject to double taxation. As there is no specific provision in the treaty that discusses Roth IRA plans, further analysis is required regarding the application of the treaty.

401(k) income received from the U.S. will generally be treated as pension income under the Art. 18 of the U.S./German tax treaty as long as certain requirements are met. As such, the country where the beneficiary resides should have the right to tax that income.

Social Security income can be received in any country by U.S. citizens or permanent residents. Social Security income should be taxed in the country where the recipient resides. Germany should have the right to tax that income to a German resident under the provisions of the income tax treaty.

→ Are Roth IRA's taxable in Germany even if the Person is not retired yet?

Yes, generally, distributions from a Roth IRA will be taxable in Germany when made as a ROTH IRA is not a recognized retirement plan for German tax purposes.

→ Do traditional 401(K) qualified Distributions start at Age 55 (Rule of 55)?

In general, you are eligible to start taking distributions from 401(k) plans after you have retired and between ages of 59 ½ and 70 ½ without penalties.

In general, if you take distributions from a 401(k) before age 59 ½ you will be subject to a 10% early withdrawal tax penalty in addition to the income tax associated with the distribution. However, under the Rule of 55, if you leave your job (voluntarily or involuntarily) during or after the year you turn 55 then the distributions from that job's 401(k) would not be subject to the 10% early withdrawal tax penalty. You would also need to check with your company to see if their plans allow for early withdrawal under the Rule of 55.

The Required minimum distributions("RMD") rules also apply as determined by tables provided by the IRS after attaining the age of 70 ½. Failure to comply with the RMD rules can also result in a penalty of additional tax.

→ Can you please explain the Covered Expat regarding the Exit Tax?

You are a covered expatriate if you are a U.S. citizen or long-term resident ("LTR"). An LTR is a lawful permanent resident of the United States in at least 8 of the last 15 tax years ending with the year the status as an LTR ends. You are covered expatriate if you meet the following criteria:

- Your average annual net income tax liability was more than $172,000 for the five tax years prior to expatriation date (2021).
- Your net worth is $2 million or more on the date of your expatriation or termination of residency.
- You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.

→ Is the $2M Net Worth Test applicable to Married Couple, or is it per Individual?

The $2 million net worth test applies per individual. The expatriation tax is not calculated jointly for married individuals. If married individuals are subject to the expatriation regime, both must calculate their own net worth separately and must file Form 8854 individually.

→ Expatriation Tax: Are you taxed on your Worldwide Assets or just what you own in the U.S.?

All assets owned by a covered expatriate regardless of where the assets are located will be deemed sold on the day before the expatriation date. The value of the assets is determined using the mark-to-market valuation method. This method assigns a fair market value to all of the property and then reduces the values pro-rata by the statutory exclusion of $744,000 (for 2021). The gains resulting from the deemed sales will be subject to Federal income taxes.

→ Is Section 877A - Fair Market Value Assessment also applicable for a deceased Person/Resident for U.S. Income Tax or Death Tax/Erbschaftssteuer?

Section 877A applies to U.S. citizens or long-term residents who are giving up or relinquishing their citizenship or permanent resident status. A person who dies being a citizen or long-term resident cannot become a nonresident after passing away. Any estate or inheritance left to his descendants will be subject to the U.S. estate tax regime.

→ Does the Treaty include Inheritance Tax?

There is a separate U.S./Germany Estate & Gift tax treaty that includes provisions involving the domicile of the decedent, which country has the right to tax the estate or gift, and the treatment of income derived or paid by an estate to its beneficiaries, among many others.

→ What is the $23.16M Exemption vs. the $11.58M?

$23.16M is the married couple’s lifetime exclusion of Estate and Gift tax for year 2020. $11.58M is the lifetime exclusion per individual. For year 2021, these amounts have been increased to $23.4M per couple and $11.7M per individual. These exclusion amounts apply to U.S. citizens. A pro-rated amount many be applied to non-residents.

→ How long retroactively can you file a 1040NR to recover U.S. Withholding Tax on Dividends paid in earlier years?

A claim must be filed within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever period is later. If no return was filed by the taxpayer, a claim must be filed within 2 years from the time the tax was paid.

Please contact Rödl & Partner for additional information and assistance.

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