

## **Important Deadline for U.S. Taxpayers with Assets in Mexico - September 23rd**

U.S. taxpayers are required to file certain reports with the U.S. government if they own property in Mexico, have a business in the country, or are shareholders in Mexican corporations. Uncle Sam, U.S. tax watchdog, has instituted a voluntary disclosure program for those people who may have omitted reporting in the past. This program is designed to limit penalties that may be imposed on those U.S. taxpayers who have failed to make the required declarations previously.

A tax specialist, familiar with the law and reporting requirements in both the U.S. and Mexico can provide details. However, the most common issues that need to be addressed are the following:

**Property owned in trust (*fideicomiso*):** Under Mexican law, any residential property located in the “restricted” zone when foreigners are involved, must be placed in a Mexican bank trust, *fideicomiso*. The “restricted zone” is an area 50 kilometers (approximately 30 miles) wide along all the Mexican coastlines and 100 kilometers (approximately 60 miles) from the Mexico U.S. and Mexico-Belize borders.

Under the U.S. regulation section 6048 (b) Taxpayers must report ownership interest on Form 3520-A yearly and on form 3520 initially and if there are any changes. The penalty for failing to file these information returns is five percent of the gross value of trust assets determined to be owned by the U.S. taxpayer.

**Bank and Financial Accounts:** U.S. taxpayers must annually report direct or indirect financial interest in a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded \$10,000.00 USD at any time during the year. This report of Foreign Bank and Financial Accounts is commonly known as an FBAR, and the penalty can be as high as the greater of \$100,000. USD or 50% of the total balance of the foreign account if the failure is deliberate omission. (Sec.31 U.S.C. 5321(a)(5). Nonwillful violations are subject to a civil penalty of not more than \$10,000.00 USD.

**Shares of Stock or Interests in Mexican Corporations and/or partnerships:** Generally shareholders or partners with a 10% or greater interest in the partnership or corporation must inform the IRS of same through Forms 5471 or 8865. Failure to file can be quite costly.

As in most countries the U.S. tax regulations are complicated, especially when dealing with properties or assets located outside the United States. Accountants, tax advisors and tax preparers do not always know the rules regarding filings for international assets nor the ramifications of failure to file. For this reason it is highly important that the US taxpayer consult with experts in these bi-national transactions. For further information on these matters you may wish to contact and consult with attorney and accountant Don D. Nelson. ([dondnelson@yahoo.com](mailto:dondnelson@yahoo.com)). Mr.Nelson is a property owner in both

countries and has been preparing US declarations and US tax filings for international clients for over thirty years.

### TAX OBLIGATIONS IN MEXICO:

Any foreigner with real property or business income in Mexico must also plan to pay taxes in Mexico. The good news! When paid with the proper receipts, certain of these taxes can become a CREDIT or a DEDUCTION in the country of tax residence!

For example:

Property Taxes: are due and payable every two months, or can be paid in one annual payment, usually with a substantial discount, during the first two months of each calendar year. Property taxes are based upon the value declared by the property tax office where the property is located and are generally relatively low in comparison with rates in the U.S. and Canada.

On-going taxes on business income: If you have a Mexican corporation or partnership, no matter what the activity, a monthly declaration must be filed for IVA taxes (Added Value Taxes) and *for Impuesto Sobre La Renta* which, in this case, is more like an income tax. *A local Mexican accountant should be hired to review the accounting procedures and to prepare and file the monthly declarations. The monthly tax payments are generally considered as provisional and an annual declaration will show either a refund or a payment due.* These taxes can also be a credit or a deductible expense in a home country, depending upon how the companies are established. An attorney-accountant with international expertise in this will be an important advisor to help avoid double taxation on profits. Again you may wish to consult Mr. Don Nelson: [dondnelson@yahoo.com](mailto:dondnelson@yahoo.com).

*Impuesto Sobre La Renta* when a property is sold: is a capital gains type of tax. For foreigners who are tax residents of another country, the tax is calculated in two ways:

1. It is a flat amount of the total selling price; without deductions, or
2. It is a percentage of the difference between selling price and the tax basis shown in the seller's deed, less allowable deductions.
  1. The Notary Public should also provide the seller with a copy of the tax payment for use with the tax authorities in seller's tax residence country.

*Impuesto Sobre La Renta* when income is received from a rental of Mexican property:

All income received from Mexican property is taxable in Mexico, regardless of the nationality of the owner. Thus, the US or Canadian citizen who rents a condominium or home regularly, or occasionally, through a property manager or via internet, is obligated to file declarations MONTHLY. Failure to declare income can cause very high

penalties. The good news... taxes paid are credits or deductions in taxpayer's home country. For additional information on this very important filing, please contact Lic. Quirino Parra at: [info@settlement-co.com](mailto:info@settlement-co.com).

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*about the author:*

**LINDA NEIL** is the founder of *The Settlement Company*, which specializes in real estate transfers, escrows, and consultations. Just added as a new service, Settlement will now prepare monthly tax declarations, file them and perform additional essential landlord accounting services.