



Meghan Markle Marriage to Prince Harry Proves **US Taxes Can Be a Royal Pain**

BY ROBERT WOOD

Worldwide, the IRS can create a degree of uneasiness for nearly anyone who has any US connections. Apple, Google and other tech giants may famously have billions in untaxed profits sitting offshore. But individuals who are American citizens or permanent US residents (holding green cards) must still report their worldwide income to the IRS. For them, offshore does not mean untaxed.

Plus, if you hold a green card, you are conclusively presumed to be a US resident taxpayer who must report worldwide income, even if you only occasionally visit the US. Even entirely foreign individuals and companies that have any US source income must report to the IRS. And reporting can mean audits, statutes of limitation, and worry. In short, nearly everyone, it seems, has some fears about the IRS.

Even if you are rich and famous – and perhaps even if you are royal – you may need to be constantly alert for tax missteps. The anticipated nuptials of American actress Meghan Markle and British Prince Harry seem like a fairy tale that can bring a smile to almost everyone. Leave it to complex US tax laws to spoil it with tax problems.

The taxes at stake could be huge. Buckingham Palace has announced that Markle will become a British citizen after marriage. Yet tax lawyers are the first to point out that Meghan Markle's US citizenship could cause major tax headaches for Britain's royal family.

Taxes and Asset Disclosures

After all, unless she renounces her American citizenship, no matter where she lives, she will have to continue filing US tax returns, plus the Foreign Bank Account Reporting forms known as FBARs, every year. Even if all of her income is earned in the UK (with all taxes paid in the UK), that doesn't matter. She must *still* report her worldwide income to the IRS.

Perhaps even worse, she must keep disclosing her non-US assets too. As a new member of the Royal Family, that could become a sticky wicket for Britain. One can just imagine that the IRS could be rubbing its institutional hands together with anticipation just thinking about *that* tax audit.

Many a dual country couple innocently starts filing US taxes together, and that can be a very costly mistake. Year in and year out, 95 percent of married couples file joint tax returns, often as a knee-jerk reaction. Yet that simple step makes each spouse liable for *everything* on the return – and anything that might not be on the return.

Markle will surely be advised to file taxes separately. Thus, Prince Harry will surely, therefore, not be caught within the US tax net. But if they have children, what about all of them *viz.* the IRS? If they are born as dual US and UK citizens, they could have big tax problems too.

Of course, taxes are only part of the problem. The disclosures in this case might be as bad. It isn't just *income* that the IRS wants to know about. It's *assets* too, maybe even some royal ones.

FATCA

FATCA, the Foreign Account Tax Compliance Act, is a uniquely American law. It was passed in 2010, and is now ramped up worldwide. It *requires* an annual Form 8938 filing with the IRS that could end up involving royal assets.

FATCA spans the globe with an unparalleled network of reporting. America requires foreign banks and governments to hand over secret bank data about depositors. Non-US banks and financial institutions around the world must reveal American account details or risk big penalties.

Markle may well follow London's former Mayor, Boris Johnson, now Britain's Foreign Secretary. Having been born in New York but raised in Britain, Johnson was a dual citizen of the US and UK. But he had a well-publicised run-in



with the IRS over a London home sale. The sale proceeds were tax-exempt in the UK, but they were taxable in the US, despite the fact that then Mayor Boris had not lived in the US for decades. The ensuing tax bill eventually led him to renounce his American citizenship.

Renouncing citizenship is clearly trending. The number of renunciations for the first quarter of 2017 was 1,313. The second quarter's list went up to 1,759, the second highest quarterly number *ever*. The total for calendar 2016 was 5,411, while 2015 had 4,279 published expatriates. Despite the official list, many who leave are not counted, although both the IRS and FBI track Americans who renounce.

Expats have clamored for tax relief for years. Even if you are not royal, America's global income tax compliance and disclosure laws can be a burden, especially for US persons living abroad. Many foreign banks do not want American account holders.

Americans living and working in foreign countries must generally report and pay tax where they live. But they must also continue to file taxes in the US, where reporting is based on their worldwide income. A foreign tax credit often does not eliminate double taxes. Annual foreign bank account reports called FBARs carry big civil and even criminal penalties. The civil penalties alone can consume the entire balance of an account.

Expensive Exit

Ironically, even leaving America can be costly. America charges \$2,350 to hand in your passport, a fee that is more than twenty times the average of other high-income countries. The US hiked the fee to *renounce* by 422 percent, as previously there was a \$450 fee to renounce, and no fee to *relinquish*. Now, there is a \$2,350 fee either way.

The State Department said raising the fee was about demand and paperwork. Perhaps, but in any case, the number of American expatriations

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kept increasing. Moreover, to exit, one generally must prove 5 years of IRS tax compliance. And getting into IRS compliance can be expensive, and worrisome.

There is a certain Kafkaesque air to it all. For some, a *reason* to get into compliance is to renounce, which itself can be expensive. Apart from all of the compliance costs, the US also has an exit tax on renouncing. If you have a net worth greater than \$2 million, or have average annual net income tax for the 5 previous years of \$162,000 or more, you can pay an exit tax.

If you knew you were supposed to accurately report to the IRS and you failed, the IRS may say you were **“willful”**. That legal term can mean large civil penalties or even potential criminal liability.

It is a capital gain tax, calculated as if you sold your property when you left. It isn't just for US citizens. A long-term (8 year) resident giving up a Green Card can be required to pay the exit tax too. Sometimes, planning and valuations can reduce or eliminate the tax. Even so, the tax worries can be real, even for those who will not face it.

Mistakes v. Willfulness

To be sure, Ms. Markle and Prince Harry surely have an elite cadre of tax advisers. In that sense, tax missteps from this soon to be royal pair seem unlikely. But many others are not so lucky and may make material and often innocent mistakes. Under US tax law, some mistakes can be forgiven.

However, some errors clearly are not forgivable, and it can be surprising how the criteria are applied. You may believe your inadvertence was non-willful, but the IRS may not agree. And with FATCA and over 50,000 voluntary disclosures on offshore banking and financial arrangements that name names, the IRS has a treasure trove of data.

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What's more, the IRS and prosecutors use a concept of “willful blindness”.

Essentially, willful blindness involves a conscious effort to avoid learning about the IRS income tax rules or about FBAR reporting. Willfulness involves a voluntary, intentional violation of a known legal duty. In taxes, it applies for civil and to criminal violations. The failure to learn of filing requirements, coupled with efforts to conceal the facts, can spell willfulness. Watch out for conduct meant to conceal, such as:

- Setting up trusts or corporations to hide your ownership.
- Filing some tax forms and not others.
- Keeping two sets of books.
- Telling your bank not to send statements.
- Using code words over the phone.
- Cash deposits and cash withdrawals.
- Moving money from one bank to another when banks don't want undisclosed American accounts.

Even if you can explain one failure to comply, repeated failures can morph conduct from inadvertent neglect into reckless or even deliberate disregard of the rules. Taxpayers should consider their facts carefully, and get some advice about their own circumstances. Is all of this worry enough to dampen a Royal marriage?

Surely Meghan Markle and Prince Harry will navigate the US tax morass deftly. And their marriage is still a nice story. But for many people caught within the US tax and disclosure net, it can be hard to get to a fairly-tale ending. 

Photo Courtesy: Getty / Chris Jackson



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