Forbes

Robert W. Wood
THE TAX LAWYER

TAXES 11/30/2017

Meghan Markle & Prince Harry Filing Taxes Separately? Here's Why

It sounds like a feel good story, an American actress wedding a British Prince. Leave it to complex U.S. tax laws to spoil it with tax problems. And here, they could be positively huge. Buckingham Palace has announced that Markle will become a British citizen after marriage. Yet tax lawyers quickly point out that Meghan Markle's U.S. citizenship could cause tax headaches for Britain's royal family. After all, unless she renounces her American citizenship, no matter where she lives, she'll have to file U.S. tax returns, plus FBARs, every year, reporting her worldwide income, *and* disclosing assets.

Many a dual country couple innocently starts filing U.S. taxes together, and that can be a very costly mistake. 95% 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, so Prince Harry will hopefully not be caught within the U.S. tax net. But if they have children, what about them?

It isn't just income that the IRS wants to know about. It's assets too, maybe even some royal ones. 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-U.S. banks and financial institutions around the world must reveal American account details or risk big penalties. Perhaps Markle will 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 U.S. and U.K. But a run-in with the IRS eventually led him to renounce his American citizenship.

Renouncing is trending too. 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 U.S. 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 U.S., 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. 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 U.S. hiked the fee to renounce by 422%, 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, but the number of American expatriations 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.

For some, a *reason* to get into compliance is to renounce, which itself can be expensive. 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. It is a capital gain tax, calculated as if you sold your property when you left. A long-term 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, but the tax worry can be real, even for those who will not face it.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.