

# Could You Be an “Accidental American”?



Anta Cissé-Green  
Senior Counsel

The United States is unusual among nations in that it imposes income tax based on citizenship. No matter where in the world they reside, U.S. citizens are subject to U.S. income tax on all income from sources within or without the U.S. Citizens are also required to file various related tax information forms, such as the foreign bank account report (FBAR) identifying direct or indirect ownership in, or signature authority over, foreign financial accounts, and additional statements regarding interests in foreign companies and partnerships. The same applies to individuals with green cards.

An “accidental American” is an individual who, in good faith, is unaware that she is a U.S. citizen or that she is subject to the long arm of the U.S. tax law. Most individuals become U.S. citizens by birth within the U.S. or its possessions; others by birth abroad to at least one U.S.



citizen parent who meets certain U.S. residency requirements at the time of birth. Once citizenship is acquired, it generally cannot be lost unless the individual affirmatively renounces it (and pays any applicable expatriation tax). A typical accidental American is an individual who was born in the U.S. to non-U.S. citizen parents, left the U.S. at an early age, lived her entire life in a foreign country of which she is a citizen or resident and does not identify as an American.

An accidental American whose status as a U.S. citizen comes to light (or a U.S. green card holder) may be liable for years of back U.S. income taxes and reporting, as well as related penalties and interest. The individual also may be subject to other civil and criminal liabilities resulting from failure to file FBARs and other informational returns. Each failure to file an FBAR can result in a penalty of up to 50 percent of the value of all unreported foreign accounts. While U.S. income taxes may be reduced or eliminated by the foreign tax credit, interest and penalties on failure to file returns generally cannot be alleviated. But there may be exceptions.

If an individual discovers that she is an accidental American, her choices are to embrace U.S. citizenship or renounce it, but, in either event, she must first square accounts with the IRS. If the individual makes the discovery before the IRS does, her best bet may be to enter the IRS voluntary disclosure program. Since July 2014, this program has offered a streamlined procedure specifically for U.S. taxpayers who reside abroad and whose failure to file U.S. tax returns, pay U.S. income taxes and/or file FBARs was “non-willful.” Participants must file three years of back tax returns and six years of FBARs, but will benefit from waived or significantly reduced penalties and a clean slate going forward.

The New York Private Clients Group is available to advise individual clients in navigating the voluntary disclosure program and, if desired, evaluating the tax implications of expatriation and developing proactive strategies around expatriation.

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