

The U.S.-Guam Income Tax Relationship re: Individuals

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Since Congress has imposed the income tax provisions of the U.S. Internal Revenue Code on Guam, and since Guam cannot amend those provisions, the Guam and the U.S. income tax laws are identical. Prior to 1973, however, the system was quite complex for a U.S. citizen who resided in Guam or had income from Guam, and for a Guamanian citizen who resided in the U.S. or had income from the U.S. The reason was because two individual income tax returns had to be filed, and often the individual paid more total tax to both jurisdictions than he would have paid if he had only been taxed in the place of his residence.

Beginning in 1973, the Guam-U.S. income tax relationship with respect to individuals was vastly simplified. Under present law only one tax return needs to be filed, with the jurisdiction where the individual is a resident. If the individual has income from the other jurisdiction, therefore, that jurisdiction does not also tax the same income (for example, a U.S. citizen residing in the United States with Guam income would file only one return,

with the United States, and Guam would not tax the Guam-source income). The new system works because the two income tax systems are identical. If Guam had the power to amend its income tax law, however, the system would be much more cumbersome and probably unworkable; such a system might also be politically unacceptable to Congress, since Guam in effect would have the power to become a tax haven by imposing little or no tax on U.S. citizens who became residents of Guam.

The U.S.-Marianas Income Tax Relationship re: Individuals

The U.S.-Marianas income tax relationship with respect to individuals, which is outlined in sections 601 and 602 of the draft, bears some resemblance to the U.S.-Guam system, with important differences. Apparently an individual would not have to file two income tax returns where he was a citizen and resident of one jurisdiction with income from the other, so long as the income from the other jurisdiction was not more than a few thousand dollars. However, two returns would have to be filed where such income was greater, or in most cases where a citizen of one jurisdiction became a tax resident of the other.

Where two tax returns had to be filed an individual would usually not pay any more tax than he would if he had filed only one return. However, excess taxes would usually result where an individual had carryovers or carrybacks available to him in one jurisdiction but not in the other (for example, carryovers or carrybacks under the capital loss, net operating loss, investment credit, and foreign tax credit provisions of the Internal Revenue Code); excess taxes would also result in many cases where an individual who changed the place of his residence wished to elect income averaging. None of these problems can occur under the new U.S.-Guam system.

It is unclear how the draft bill would treat tax problems arising between the Marianas and Guam. It is assumed that the Marianas-Guam relationship would be the same as the Marianas-U.S. relationship.

The dual filing requirements and the excess tax problems discussed above could become either less serious, or more serious, depending on the specific amendments which are adopted by the Marianas legislature in the future. If the Marianas tax rates are increased, the tendency would be for both problems to become more serious for U.S. citizens but less serious for Marianas natives. On the other hand, if the Marianas tax rates are reduced, the problems would become less serious for U.S.

citizens but more serious for Marianas natives. Other less generalized amendments could cut both ways, depending on the precise circumstances.

As we have pointed out, the dual filing and excess tax problems can be avoided if the Guam system is adopted, and the Marianas would still retain de facto power to amend its income tax law by giving income tax rebates. A rebate system would place some limitations on the Marianas, however, since Congress in the past has approved only rebate systems which limit the rebates to tax which is imposed on income from sources within the particular possession. Thus Congress would disapprove of a rebate system under which the Marianas rebated Marianas income tax imposed on U.S.-source income as well as Marianas-source income, but would not disapprove a rebate system which rebated tax imposed on Marianas-source income only.

We have the following technical comments and questions on the draft:

1. Is it intended that U.S. citizens resident in the United States with Marianas-source income would be taxed under section 1 of the Marianas Code? In other words, is it intended that the Ninth Circuit decision of Manning v. Blaz apply? That decision was opposed by the Treasury Department

and was not followed by the Third Circuit. Presumably there is nothing to prevent the Marianas Government from arguing that the decision does not apply to it, and ultimately convincing the U.S. Supreme Court that the Third Circuit (and not the Ninth Circuit) was correct. If so, the excess tax burden on U.S. citizens would become much more serious.

2. If the answer to question 1 is yes, is the same rule intended to apply to Guamanian^gs resident in Guam with Marianas-source income?

3. If the answer to question 1 is yes and if the Marianas Code is clarified to make this explicit, what is to prevent the Marianas legislature from amending the Marianas Code to impose higher tax rates on non-resident U.S. citizens than on Marianas residents? Will there be a privileges and immunities clause in the Marianas Organic Act to prevent such an amendment? Such a clause is in the Puerto Rican Constitution, but not in the Guam Organic Act.

4. Would the Marianas . . . to a U.S. citizen resident in the Marianas who received Guam-source income, but who paid tax on such income to the United States instead of Guam (under §935 of the Internal Revenue Code)?

5. How is it intended that a Marianas native with Guam-source income be taxed under section 935 of the Code? Would Guam impose a tax, or would the United States impose it? If Guam imposes a tax, is it imposed under section 1 or section 871 of the Guam income tax law?

6. Would an alien resident in Guam or the United States but having Marianas-source income be taxed in the Marianas under section 871 of the Marianas Code?

7. Would section 931 of the U.S. Internal Revenue Code apply to a U.S. citizen with income from Marianas sources? If so, would the §931 exclusion also be available to U.S. corporations?