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# getting a green card subjects noncitizens to u.s. foreign bank account reporting requirements

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MSK Client Alert

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**practice areas**

transactional tax

A resident or citizen of a country other than the United States who obtains lawful permanent resident status in the United States, often referred to as a “green card,” becomes a resident of the United States for U.S. income tax reporting purposes, regardless of the number of days that the individual spends in the United States in a calendar year. As a United States tax resident, the holder of the green card is subject to United States federal income tax on their worldwide income. However, if the individual is a tax resident or citizen of a country that has an income tax treaty with the United States and the individual is deemed to have closer connections with that other country under the “tie-breaker” clause of the income tax treaty, the individual is treated as a nonresident of the United States for purposes of calculating their United States income tax liability for that year.

However, for purposes of determining whether the individual is subject to certain United States information reporting requirements, a green card holder is considered to be a United States tax resident, *regardless* of the tie-breaker clause of an income tax treaty. These reporting requirements include:

- IRS Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. This form generally must be filed by a U.S. tax resident who (1) is treated as the owner of a foreign trust for tax purposes; (2) receives a distribution from a foreign trust; or (3) receives gifts above certain thresholds from foreign sources.
- IRS Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations. This form generally must be filed by a U.S. tax resident who owns or acquires 10% or more of the stock of a foreign corporation.
- IRS Form 8938, Statement of Foreign Financial Assets. This form generally must be filed by a U.S. tax resident to disclose foreign financial assets.



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- FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). This form requires a U.S. resident to report all foreign bank and financial accounts that the resident has a financial interest in or signature authority over if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year.

If the green card holder is required to file these forms and fails to do so, he or she could be subject to substantial penalties. In addition, the failure to comply with the FBAR reporting requirements could subject the green card holder to criminal penalties resulting in loss of permanent resident status.

For additional information regarding this matter, please contact any member of our practice group.