

**TAX CONSEQUENCES  
EXPATRIATION -- AFTER JUNE 16, 2008  
FREQUENTLY ASKED QUESTIONS**

**1. What will my filing obligations be if I expatriate?**

Dual Status Return. You will need to file a dual status tax return for the year during which you expatriate. A dual status tax return consists of a Form 1040NR (for the portion of the year beginning with your expatriation date), with a Form 1040 (for the portion of the year preceding your expatriation date) attached as a schedule. See Publication 519, U.S. Tax Guide for Aliens, for more information about dual status returns. You will need to report the tax that is due under the mark-to-market regime on the Form 1040, even if you elect to defer payment of that tax.

Initial Form 8854. In every case, you will need to file Form 8854 with your dual status return to certify that you have been in compliance with all federal tax laws during the 5 years proceeding the year during which you expatriate. The initial Form 8854 is also used for certain other purposes such as waiving treaty benefits for eligible deferred compensation items. See the Instructions for Form 8854 for further information.

Annual Forms 8854. If you are a covered expatriate and you elect to defer payment of the tax that is due under the mark-to-market regime, you must file Form 8854 for each year up to and including the year in which the full amount of the deferred tax and interest is paid. You also may need to file annual Forms 8854 in certain other circumstances. See the Instructions for Form 8854 for further information.

Form W-8CE. If you are a covered expatriate and you have a deferred compensation item, a specified tax deferred account, or an interest in a nongrantor trust, you will need to file Form W-8CE with the payor of the income within 30 days of your expatriation date.

**2. What happens if I give up my U.S. citizenship?**

If you are a "covered expatriate" (defined below), you will be subject to income tax on the net unrealized gain (or loss) in your property as if you had sold the property for its fair market value on the day before your expatriation date ("mark-to-market regime"). The mark-to-market regime will apply to most types of property interests that you hold on the date you relinquish your citizenship.

The amount that would otherwise be includible in gross income by reason of the mark-to-market regime will be reduced (but not to below zero) by an exclusion amount that is adjusted annually for inflation. For calendar year 2011, the exclusion amount is \$636,000. You will need to allocate the exclusion amount among all of your assets with respect to which there is unrealized gain. See Notice 2009-85, Guidance for Expatriates Under Section 877A, for examples of allocating the exclusion amount.

**3. Will the mark-to-market regime apply if I give up my green card?**

It depends. The mark-to-market regime applies to a "long-term resident" of the United States who is a "covered expatriate" (defined below). You are a long-term resident if you have been a lawful permanent resident (green card holder) during any part of at least 8 years during the period of 15 years ending with the year that includes your expatriation date.

If you have a green card but are not a long-term resident, you will not be a covered expatriate and you will not be subject to the mark-to-market regime.

**4. Who is a covered expatriate?**

You will be a covered expatriate if you are a U.S. citizen who relinquishes your citizenship or a long-term resident who gives up your green card and at least one of the following is true --

- Tax liability test. Your average annual net income tax liability for the 5 years ending before your expatriation date exceeds a specified amount that is adjusted annually for inflation (\$147,000 for individuals who expatriate during in 2011),
- Net Worth Test. Your net worth is \$2 million or more as of your expatriation date, or

- **Certification Test.** You fail to certify on Form 8854, Initial and Annual Expatriation Statement, that you have complied with all U.S. federal tax obligations for the 5 years preceding the year that includes your expatriation date.

### 5. Are there any exceptions to these rules?

Yes, there are two. You will not be subject to the Tax Liability Test or the Net Worth Test if you satisfy one of the following exceptions:

- **Dual Citizens:** This exception will apply if you became at birth a U.S. citizen and a citizen of another country and you continue to be a citizen of, and are taxed as a resident of, that other country. In order for this exception to apply you must not have been a resident of the United States for more than 10 years during the 15-year period ending with the year during which you expatriate.
- **Certain Minors:** This exception will apply if you expatriated before you were 18½ and you have not been a resident of the United States for more than 10 years before you expatriate.

Note: Even if you qualify for one of these two exceptions, you will still be subject to the Certification Test.

### 6. If I am below the net income tax liability and net worth thresholds, will I still have to certify?

Yes. Just because you are below the thresholds does not mean that you cannot be a covered expatriate. You will still be treated as a covered expatriate if you fail the Certification Test.

### 7. What is my expatriation date?

Your expatriation date will be the date you relinquish your U.S. citizenship or, if you are a long-term resident of the United States, the date on which you cease to be a lawful permanent resident of the United States.

If you are a U.S. citizen, you will be considered to have relinquished your U.S. citizenship on the earliest of the following dates:

- The date you renounce your U.S. citizenship before a diplomatic or consular officer of the United States (provided that your renouncement is subsequently approved by the issuance of a certificate of loss of nationality by the State Department);
- The date you furnish to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (provided that your voluntary relinquishment is subsequently approved by the issuance of a certificate of loss of nationality by the State Department);
- The date the State Department issues a certificate of loss of nationality to you; or
- If you are a naturalized citizen, the date that a U.S. court cancels your certificate of naturalization.

If you are a long-term resident, you will be considered to have terminated your lawful permanent resident status on the earliest of the following dates:

- The date you voluntarily relinquish your lawful permanent resident status by filing Department of Homeland Security Form I-407 with a U.S. consular or immigration officer, and the Department of Homeland Security determines that you have, in fact, abandoned your lawful permanent resident status;
- The date you become subject to a final administrative order for your removal from the United States under the Immigration and Nationality Act and you actually leave the United States as a result of that order; or
- If you are a dual resident of the United States and a country with which the United States has an income tax treaty, the date on which you begin to be treated as a resident of that country and you determined that, for purposes of the treaty, you are a resident of the treaty country and notify the IRS of that treatment on Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

## 8. What if I am unable to pay the tax that I owe under the mark-to-market regime?

You will be able to make an irrevocable election to defer payment of the tax by entering into a deferral agreement with the IRS. If you make this election, the following rules will apply.

- You will be able to make the election on a property-by-property basis.
- The deferred tax attributable to a particular property will be due by the due date (without extensions) of your return for the tax year in which you dispose of the property.
- Interest will be charged for the period the tax is deferred.
- You will need to enter into a tax deferral agreement with the IRS and provide adequate security (such as a bond),
- You will be required to make an irrevocable waiver of any right under any U.S. treaty that would preclude assessment or collection of the tax.

You will not be able to extend the due date for the payment of the deferred tax beyond the earlier of the following dates.

- The due date of the return required for the year that includes the date of your death, or
- The date the IRS notifies you that the security you provided for the deferred tax no longer qualifies as adequate security (unless you correct such failure within 30 days).

For more information about the deferral of payment, see section 3.E of Notice 2009-85, Guidance for Expatriates Under Section 877A and the Instructions for Form 8854.

## 9. I have an employer pension plan. Does the mark-to-market regime apply to pension plans?

No. There are different rules for “deferred compensation items” such as interests in qualified and non-qualified U.S. and foreign retirement and deferred compensation plans, other deferred compensation, and interests in property, or rights to property, that the covered expatriate is entitled to receive in connection with the performance of services to the extent not previously included under section 83 of the Internal Revenue Code.

If your pension plan or other deferred compensation item is an “eligible deferred compensation item” (defined below), you will not be subject to tax on that deferred compensation item until you receive payments. When you receive a payment, the payor will be required to deduct and withhold a tax equal to 30 percent of any “taxable payment.” The term “taxable payment” means any payment to the extent it would have been includible in your gross income if you had continued to be subject to tax as a citizen or resident of the United States.

If your deferred compensation item is **not** an eligible deferred compensation item (often referred to as an ineligible deferred compensation item), you will be treated as having received (and will be subject to tax on) an amount equal to the present value of your accrued benefit on the day before your expatriation date.

## 10. What is an eligible deferred compensation item?

The term “eligible deferred compensation item” means any deferred compensation item with respect to which

- the payor of such item is either (i) a U.S. person or (ii) a non-U.S. person who elects to be treated as a U.S. person solely for this purpose, and
- the covered expatriate notifies the payor of his or her status as a covered expatriate and irrevocably waives any right to claim any withholding reduction under any treaty with the United States.

## 11. How will I know whether the payor of a deferred compensation item is a U.S. person?

The term 'United States person' means:

- A citizen or resident of the United States,

- A partnership created or organized in the United States or under the law of the United States or of any State,
- A corporation created or organized in the United States or under the law of the United States or of any State,
- Any estate or trust other than a foreign estate or foreign trust.
- Any other person that is not a foreign person.

The term “foreign person” means:

- A nonresident alien individual;
- A corporation created or organized in a foreign country or under the laws of a foreign country;
- A partnership created or organized in a foreign country or under the laws of a foreign country;
- A foreign trust;
- A foreign estate, or
- Any other person that is not a U.S. person.

#### **12. I have an IRA. Will my IRA be subject to tax under the mark-to-market regime?**

No. An individual retirement account (IRA) is a “specified tax deferred account.” Other specified tax deferred accounts are qualified tuition plans, Coverdell education savings accounts, health savings accounts, and Archer MSAs. If you have an IRA or another specified tax deferred account on the day before your expatriation date, you will be treated as having received (and will be subject to tax on) a distribution of your entire interest in your account on the day before your expatriation date.

#### **13. What if I have an interest in a nongrantor trust? Will that interest be subject to tax under the mark-to-market regime?**

If you have an interest in a nongrantor trust on the day before your expatriation date, you generally will not be subject to any tax with respect to that interest until you receive a distribution from the trust. (For this purpose, a nongrantor trust is a trust of which you are not considered the owner under the grantor trust rules.) When you receive a distribution from the trust, the trustee will be required to deduct and withhold from the distribution an amount equal to 30% of the “taxable portion” of the distribution. The taxable portion of a distribution will be the portion of the distribution that would have been includible in your gross income if you had continued to be subject to tax as a citizen or resident of the U.S.

You will be deemed to have waived any right to claim any reduction under any treaty with the United State in withholding on any distribution from the nongrantor trust unless you elect to be treated as having received (and you pay tax on) the value of your interest in the trust as of the day before your expatriation date.

#### **14. Where can I go for further guidance on expatriation?**

For further guidance on expatriation see –

- Notice 2009-85, Guidance for Expatriates Under Section 877A.
- Publication 519, U.S. Tax Guide for Aliens.
- Form 8854, Initial and Annual Expatriation Statement, and the Instructions for Form 8854
- Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits