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U.S. Expatriation & Exit Tax

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U.S. Expatriation & Exit Tax

Expatriation Covers:

U.S. Citizens

Long-term Residents

Green Card Holders

Filed 1040 returns for more than seven years

Exit tax imposed since June 2008:

Mark to market value for assets on date of expatriation

Income Tax Test: average tax > \$155,000 (2013) for 5 years

Asset Test: wealth exceeds \$2mm

Exit Tax Calculation

Assets treated as if sold on date of expatriation ⁽¹⁾

<u>Assets</u>	<u>FMV</u>	<u>Basis</u>	<u>Gain</u>
Tech Stock	\$2mm	-0-	2,000,000
Real Estate			
In U.S.	\$2mm	1.5m	500,000
Family home in Europe	\$1mm	800	200,000
Total Assets			2,700,000
Exemptions			<668,000> (2013)
Taxable Gain			2,032,000

Tax rate [federal only] ⁽²⁾	2012	15%
	2013	23.8% ⁽³⁾

(1) Election permitted for incoming foreign nationals to step up tax basis

(2) A succession tax at highest rate [currently 40%] also applies to gifts and inheritances from “expatriates” to U.S. persons.

(3) Capital gains tax	20%
Medicare set on retirement accrue	3.8%
Total	23.8%

How to Minimize Exit Tax

1. Gifting away assets

H - \$5.25 mm gift tax exclusion + 2mm exit tax exemption = 7.25mm

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2. Use of family limited partnership to obtain discounts [for minority interest and lack of control] on amounts gifted.
3. Delay
 - getting green card
 - getting U.S. citizenship
4. If green card resident lives outside U.S., consider filing nonresident returns [Form 1040NR] by using the applicable tie breaker tests that allow one to file as a nonresident. Nonresident returns are excluded from the 7 year test.
5. Avoid receiving inheritances from foreign relatives through use of U.S. or foreign trusts.
6. Convert a direct ownership in assets to an indirect ownership as a beneficiary of a non-grantor trust. Beneficial interest in non-grantor trusts are excluded from the exit tax.
7. Individuals can expatriate prior to attaining 18½ years without trigger exit tax.

Immigration Concerns

1. Is returning to the U.S. a problem after expatriating?
 - (a) Re-entry permits granted
 - (b) Expatriation should not be for tax avoidance purposes
2. Will the Reed Amendment or proposed legislation deny one re-entry into the U.S.?
3. Immigration conflict with tax law:

Tax code permits a green card resident to file as a nonresident if a treaty tie breaker test applies.

Immigration rules provides that a green card holder who files a nonresident return can potentially have his residence status challenged.
4. Will filing a treaty based return create an act of expatriation under Section 7701(b)(6)? Code and Rev. Procedure 2009-85 indicate that expatriation only occurs when a nonresident return is filed and notification is given to the IRS [Forms 8833 and 8854]

* These issues should be discussed and coordinated with immigration counsel.

Certification

- Covered expatriates must file Form 8854 or be subjected to penalties
- Form 8854 requires taxpayers to certify compliance with federal filings for prior 5 years including:
 - Prior income tax returns
 - Foreign bank account filings [TDF 90-22.1]
 - Ownership in foreign entities including
 - Foreign corporation 5471
 - Foreign partnership 8865
 - Disregarded entities 8858
 - Foreign trust 3520 / 3520A
 - Reporting of foreign transactions
 - Gifts exceeding \$100,000
 - Distributions received from a foreign trust [any amount]
 - Reporting of foreign financial assets Form 8938 [new in 2011]

Rowbotham & Company

Brian Rowbotham is a CPA with over 35 years of experience advising businesses and individuals on complex domestic and international income and estate tax planning. He is the founding partner of Rowbotham & Company LLP which is almost exclusively dedicated to businesses and investors needing domestic and international tax and accounting services. His clients include private and public companies around the globe which consist of U.S. and foreign institutional investors, multinational families and executives and non-U.S. investors doing business in the U.S.

Cindy Hsieh is a CPA and joined Rowbotham & Company LLP in 2001. Her experience includes providing cross-border tax consulting and compliance services for domestic and international businesses, and high net worth individuals. She specializes in tax planning and estate tax planning for multi-national families and has clients in the venture capital, high technology, and real estate sectors. She has spoken to U.S. and foreign tax planning associations and also a guest speaker at the Haas Business School at U.C. Berkeley. She is fluent in Mandarin.

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International Taxation of Fund Structures

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