

IRS Announces New Relief Procedures for Expatriates

By **Laurie B. Kazenoff**

In September 2019, the IRS announced procedures for certain persons who have relinquished, or intend to relinquish, their US citizenship and who wish to come into compliance with US income tax and reporting obligations and avoid being taxed as a “covered expatriate” under section 877A of the US Internal Revenue Code.

US citizens, regardless of whether they live in the United States or abroad, are required to report and pay to the Internal Revenue Service (IRS) all applicable taxes on their worldwide income, including income from foreign financial assets. With the passage of the Foreign Account Tax Compliance Act (FATCA) in 2010, foreign financial institutions are required to determine whether their customers are US citizens and report certain information about the customer’s account. Some US citizens who live abroad, and may have lived abroad their entire lives, seek to give up their citizenship to rid themselves of these obligations. However, relinquishing US citizenship and its tax impacts are serious matters that involve irrevocable decisions.

An adult US citizen may relinquish US citizenship pursuant to Sec. 349 of the Immigration and Nationality Act, 8 U.S.C. 1481 and the process is administered by the Department of State. Individuals who seek to renounce or relinquish US citizenship should be aware that expatriating may have US tax consequences. To comply with existing tax law and to avoid significant tax liability under the US Internal Revenue Code, US citizens who renounce or otherwise relinquish their citizenship must comply with



Laurie B. Kazenoff

Federal tax requirements for the year of expatriation and for the five tax years prior to their expatriation.

Under IRC 877A, individuals who are “covered expatriates” are treated as having disposed of all worldwide assets on the day before their expatriation date, are required to pay a market-to-market exit tax on the gain (subject to an exclusion amount) resulting from the deemed disposition of their worldwide assets, and are subject to additional tax consequences with respect to certain deferred compensation items and trust distributions. To meet the requirements of the certification test, individuals must file a Form 8854, Initial and Annual Expatriation Statement, with their tax return for the year of expatriation and certify compliance for the prior five tax years.

GGI member firm
Moritt Hock & Hamroff LLP
 Law Firm Services
 Garden City (NY), New York (NY),
 USA
 T: +1 516 873 2000
 W: www.moritthock.com
Laurie B. Kazenoff
 E: lkazenoff@moritthock.com

Certifying compliance for the prior five tax years requires that all Federal tax returns for the five tax years before the year of expatriation were properly filed, complete, and accurate.

Under the new Relief Procedures for Certain Former Citizens, the IRS is providing alternative means for satisfying the tax compliance certification process for citizens who expatriate after March 18, 2010. The relief procedures apply only to individuals (not entities such as estates, trusts, corporations partnerships) who have not filed US tax returns as US citizens or residents, owe a limited amount of back taxes to the United States (an aggregate tax liability of USD 25,000 or less for the taxable year of expatriation and the five prior years), and have net assets less than USD 2 million. Eligible individuals wishing to use these relief procedures are required to file outstanding US tax returns, including required schedules and information returns, for the five years preceding and their year of expatriation. Provided the taxpayer’s tax liability does not exceed USD 25,000 for the six years in question, the taxpayer is relieved from paying US taxes. Individuals who qualify for these procedures will not be assessed penalties and interest. If these individuals meet the requirements of these procedures, they will not be “covered expatriates” under IRC 877A (mentioned above), nor will they be liable for any unpaid taxes and penalties for these years or any previous years. Currently, the IRS is offering these procedures without a specific termination date.

Only taxpayers whose past compliance failures were **non-**

wilful can take advantage of these new procedures. Many in this group may have lived outside the United States most of their lives and may have not been aware that they had US tax obligations.

Thus these procedures may only be used by taxpayers whose failure to file required tax returns (including income tax returns), applicable gift tax returns, information returns (including Form 8938, Statement of Foreign Financial Assets), and Report of Foreign Bank and Financial Accounts (FinCEN Form 114) and whose failure to pay taxes and penalties for the years at issue was due to non-wilful conduct. Non-wilful conduct is conduct that is

due to negligence, inadvertence, or mistake, or conduct that is the result of a good-faith misunderstanding of the requirements of the law.

It is important to note that if an individual has filed a Form 1040NR (US Non-resident Alien Income Tax Return) under the good-faith belief that they were not a US citizen, they may also use these procedures

Submissions should be sent to the Internal Revenue Service, 3651 South I-H 35, Mail Stop 4301 AUSC, Attn: Relief for Certain Former Citizens, Austin, TX 78741. Taxpayers should write at the top of each return in red "Relief for Certain Former Citizens".

After reviewing the submission to confirm that the individual meets the eligibility criteria, the IRS will send a letter stating that the submission was received and complete. It can take up to two months before the IRS will contact the individual regarding the submission.

Finally, note that after expatriation, specific rules apply if the individual is a resident alien or a non-resident alien for tax purposes and **one cannot change his/her mind after the submission.** Unless a finding of loss of US citizenship is vacated by the Department of State, **relinquishing US citizenship is irrevocable.** The IRS Hotline (267) 466-0020 can address questions regarding these submission procedures.