

Beware the Devil's choice in giving up your U.S. Citizenship

The increased aggressiveness of the IRS towards U.S. persons holding financial accounts outside the U.S., including many Americans living overseas, seems to be highly correlated with the increased waiting time for Americans trying to renounce their U.S. citizenship at the Embassy in Bern, Switzerland. Unofficial waiting times have risen to over 5 months for the renunciation interview, whereas in years past the appointments could be made in a matter of days. Although most people are not “officially” giving up their U.S. citizenship for tax reasons, the cost of the annual tax compliance, the potential effects of the ever-changing U.S. Estate tax laws, and the sheer complexity of the rules, on top of the real or perceived threats from the IRS, are driving many dual nationals to jettison the once coveted U.S. citizenship.

On June 17, 2008, new, and clearer rules were put into place as to who the US Government considered giving up their U.S. citizenship for “tax reasons”, as opposed to those people who, for whatever other reason, no longer felt the desire to maintain their U.S. citizenship. For those who follow the regulations, it is fairly well known that for those U.S. citizens who A) Have less than \$2 million in assets B) Had a five year average U.S. Tax Liability of less than \$145,000 (2009 limit, indexed annually for inflation) and C) Certify under penalty of perjury that they have complied with all U.S. Tax Obligations for the past five years, the process of renunciation is relatively straight-forward. There is a five page form DS-4079 that needs to be filled in and then a meeting needs to be scheduled with a diplomatic or consular official.

If you don't fall into all of the three categories above, then at the time of your renunciation you are considered a “covered expatriate” and all of your assets are essentially considered sold (the day before renunciation). If you would have a capital gain from the deemed sale of more than \$600,000, then you will be required to pay an exit tax immediately, or alternatively with a bond to the IRS and interest charged you can get the tax delayed until the due date of the tax return for the year of expatriation. (The rules are actually more complicated than this with respect to taxation, income from trusts, and deferred compensation, trust me if you are in this situation, seek professional advice.)

The real devil, however, that I am writing about (choosing between pain for yourself and pain for your child) in the renunciation details has to do **with taxation of gifts and bequests from a “covered expatriate” to a U.S. Person**. I am specifically thinking of people who may be considering giving up their U.S. citizenship, but whose potential heirs (read children or other heirs who are not a spouse) retain their U.S. citizenship. The U.S. citizen receiving a gift or inheritance from someone who has given up their U.S. citizenship will be liable for taxes at the “highest bracket rates”; though this excludes marital and charitable gifts that would have qualified for a deduction made by a U.S. person.

So if you considering renouncing your citizenship and you would be considered a covered expatriate, your U.S. citizen spouse should be OK, but your U.S. children, grandchildren or other heirs could really get stuck paying a lot more in U.S. taxes if you

renounce and they don't, than if you keep your US Citizenship. This is one of the few times in the history of US Federal taxation, that the receiver of a gift or inheritance (as opposed to the estate or the donor) is liable for taxes.

As in many of my previous articles, I will at this point advise readers to strongly consider getting professional assistance from an experienced tax or estate planning attorney or a CPA. I advise you to carefully consider your non-tax motivations for making any big decisions such as the renunciation of any citizenship and then clearly get an understanding of the tax implications. In the case of renouncing your U.S. citizenship, it may be better (financially) to continue to bear the annual filing pain and construct an estate plan with a professional rather than stick your heirs with a much higher tax bill than they may have otherwise had. Then again it may not matter to you if your estate planning as a parent is like the expectations my father set for all of his children, was that he would be spending his last dime on the day he died...

P.S. A person who was born as a dual-national, and retains citizenship, residency and is taxed by the 2nd (non-U.S.) country should be able to escape the "covered expatriate" designation as can a person who expatriates before the age of 18 ½ . In both of these cases, the individual can not have been a U.S. resident for a certain number of years before expatriating, again seek professional assistance!

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