1818 Society
Easing International Tax Complexity

Presented by:
Dale Mason, CPA
The Wolf Group
Disclaimer

Any U.S. tax issues addressed in the body of this presentation is not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

The U.S. tax law is very complex, please seek professional tax assistance based on your specific situation.
Easing Tax Complexity - Agenda

- U.S. Tax Residency Rules
- Summary of Recent Tax Law Changes
- Tax Tips
- Foreign Information Reporting
- IRS “Amnesty” Program
- The Exit Tax
U.S. TAX RESIDENCY RULES
U.S. Tax Residency

- U.S. Citizens
- U.S. Lawful Permanent Residents (Green Card Holders)
- Substantial Presence Test
Substantial Presence Test

Formula:

100% Of days present in U.S. during current year,

+ 

1/3 of days of US present for first preceding year,

+ 

1/6 of days of US presence for second preceding year
U.S. Residency
“Substantial Presence Test”

- Days in the US by reason of **full-time** employment with an international organization **are exempt** (and spouse and family if visa status dependent on employee’s visa)

- If 183 **countable** days or more in the U.S. under formula, person is a resident as of 1st day of presence in the US for the current year
G-4 Visa Holder Consultant
Are you a Tax Resident?

- Only “full-time employees” of international organizations and their dependents are exempt from counting days in the United States.

- “Full-time employee” means an individual whose “employment is consistent with an employment schedule of a person with a standard full-time work schedule with the organization.”
Recent Tax Changes and Tax Tips
## Inflation-Adjusted Numbers

<table>
<thead>
<tr>
<th>Category</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>FICA Tax Limits</td>
<td>$117,000</td>
<td>$118,500</td>
</tr>
<tr>
<td>Personal Exemptions</td>
<td>$3,950</td>
<td>$4,000</td>
</tr>
<tr>
<td>Foreign Earned Income Exclusion</td>
<td>$99,200</td>
<td>$100,800</td>
</tr>
<tr>
<td>Estate Tax Exemption</td>
<td>$5,340,000</td>
<td>$5,430,000</td>
</tr>
<tr>
<td>Taxable Gift</td>
<td>$14,000</td>
<td>$14,000</td>
</tr>
<tr>
<td>Standard Deduction (MFJ)</td>
<td>$12,400</td>
<td>$12,600</td>
</tr>
<tr>
<td>Standard Deduction (MFS, S)</td>
<td>$6,200</td>
<td>$6,300</td>
</tr>
<tr>
<td>Standard Deduction (HH)</td>
<td>$9,100</td>
<td>$9,100</td>
</tr>
</tbody>
</table>
2015 Top Tax Rates

- Top tax rate is 39.6% rate above the following taxable income thresholds:
  - $464,850 Joint filers
  - $413,200 Single
2015 Phase-Out of Personal Exemption

- Phase-out of personal exemptions
- Phase-out begins at the following AGI thresholds:
  - $309,900 MFJ
  - $258,250 Single
2015 Phase-Out of Itemized Deductions

- Phase-out begins at the following AGI thresholds:
  - $309,900 MFJ
  - $258,250 Single
Tax on Net Investment Income

Tax is **3.8%** of the lesser of:

- **Net Investment Income OR**
- The excess of Modified Adjusted Gross Income over:
  - $250,000 (MFJ)
  - $125,000 (MFS)
  - $200,000 (Single & Other taxpayers)
Tax Tips
IRA Qualified Charitable Contributions Made Permanent

- Direct transfers to a qualified charity totaling up to $100,000 of tax-deferred IRA savings can be donated to charity without inclusion in AGI.

- To qualify, IRA owner must be 70 ½ years old.

- This offers advantages over taking a taxable IRA distribution and then contributing the proceeds of that distribution to a charity. That’s because taxable IRA distributions must be included in adjusted gross income.
Taxation of Sale of Principal Residence

- Every individual can exclude up to $250,000 of the gain from the sale of a principal residence ($500,000 on a joint income tax return)....if:
  - Home must be a principal residence and be occupied as such for 2 years out of the previous 5 years prior to the sale
    - Exclusion can be taken once every two years
    - Reduced exclusion available for change in place of employment, health or “unforeseen circumstances”
    - Watch out for renting home to others for more than 3 years
Itemized Deductions

- **State taxes** – Pay January 15\textsuperscript{th} estimated tax payment by December 31\textsuperscript{st}.

- **Property taxes** – Pay property taxes by December 31\textsuperscript{st}.

- **Charitable contributions** – Make contributions by December 31\textsuperscript{st}.
  - Consider giving appreciated stock
  - Giving household items
Tax Sheltered Gifts

- Gift up to $14,000 per person per recipient per year with no gift tax return filing requirements
  - Gifts not taxable to recipient

- 529 Plans – Up to 5 times the exclusion ($70,000) may be given.

- Gifts *received* are not taxable
Questions ?
Foreign Financial Asset Reporting

TD Form 114 & IRS Form 8938
IRS Form 8621
IRS Form 3520
Other
Foreign Bank Account Reporting: FinCen Form 114

❖ Who should file:
  • U.S. citizens and residents
  • Persons with financial interest in or **signature authority** over foreign financial account(s)
  • Aggregate value exceeding $10,000 at any time during the year

❖ Must be e-filed by June 30 of the following year
  • No extensions

❖ **Beginning with 2016 calendar year. FBAR will be due April 15th and extension will be allowed to October 15!**

❖ Not filed with tax return
  • Schedule B question
Foreign “Financial Account”

- Bank, savings and checking accounts
- Securities accounts such as mutual funds and brokerage accounts
- Even foreign annuity or insurance policy with a cash surrender value
- **Not** individual bonds, notes or stock certificates
Form 114 Penalties

❖ Non-willful failure penalty
  • $10,000
  • May be waived due to “reasonable cause”

❖ Willful failure penalty
  • Greater of $100,000 or 50% of account balance

❖ Criminal penalties

❖ 6 year statute of limitations
Specified Foreign Financial Assets Report – Form 8938

- Effective for individuals beginning in 2011

- Interest in “Specified Foreign Financial Assets” with an aggregate value exceeding $50,000 (or more)

- Information statement attached to the individual's U.S. income tax return

- This reporting requirement is in addition to FBAR!
Specified Foreign Financial Assets Report – Form 8938

“Specified foreign financial asset”
- Any financial account maintained by a foreign financial institution
- Any stock or security issued by a foreign person
- Any financial instrument/contract – foreign issuer
- Any interest in a foreign entity

Information statement - Maximum value of assets, account numbers, names and addresses of foreign financial institutions, etc.
# Form 8938 Filing Thresholds

<table>
<thead>
<tr>
<th></th>
<th>Year-End Aggregate Value of All Specified Foreign Financial Assets Exceeds:</th>
<th>Highest Annual Balance Exceeds:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Single, living in the U.S.</strong></td>
<td>$50,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>Single, living outside the U.S.</td>
<td>$200,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>MFS, living in the U.S.</td>
<td>$50,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>MFS, living outside the U.S.</td>
<td>$200,000</td>
<td>$300,000</td>
</tr>
<tr>
<td><strong>MFJ, living in the U.S.</strong></td>
<td><strong>$100,000</strong></td>
<td><strong>$150,000</strong></td>
</tr>
<tr>
<td>MFJ, living outside the U.S.</td>
<td>$400,000</td>
<td>$600,000</td>
</tr>
</tbody>
</table>
Form 8938 Penalties

- $10,000 penalty for failing to file Form 8938
- Additional penalties following notification from IRS
- 40% underpayment penalty
- Criminal penalties
- Extended statute of limitations
## FBAR vs. 8938

<table>
<thead>
<tr>
<th></th>
<th>FBAR (TD F 90-22.1)</th>
<th>Form 8938</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who Must File</td>
<td>U.S. Persons</td>
<td>“Specified Persons”</td>
</tr>
<tr>
<td>What is Reported?</td>
<td>Foreign financial accounts</td>
<td>SFFAs</td>
</tr>
<tr>
<td>Signature Authority?</td>
<td>Reported</td>
<td>Not reported</td>
</tr>
<tr>
<td>Filing Threshold</td>
<td>$10,000</td>
<td>$50,000 - $600,000</td>
</tr>
<tr>
<td>Minimum Penalties</td>
<td>No minimum</td>
<td>$10,000</td>
</tr>
<tr>
<td>Due Date</td>
<td>6/30, no extensions</td>
<td>4/15, plus extensions</td>
</tr>
<tr>
<td>Statute of Limitations</td>
<td>6 years from filing date</td>
<td>3 years from filing date</td>
</tr>
</tbody>
</table>
Form 8938: World Bank Pension

- Subject to special valuation rules
- Value of participant’s share of defined benefit plans generally not ascertainable
- Value equal to distributions received during the year
  - Gross distribution reported on Form 1099-R
Example: Facts

- Single individual living in the U.S.
- Retired from the World Bank
- Receives an annual gross distribution of $75,000
### Example: Sample 8938

**SAMPLE – FOR DISCUSSION PURPOSE ONLY**

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**Form 8938**

**Statement of Specified Foreign Financial Assets**

> Information about Form 8938 and its separate instructions is at www.irs.gov/form8938.

Attach to your tax return.

For calendar year 2020 or tax year beginning , 2020 and ending , 2020

If you have attached continuation statements, check here □ Number of continuation statements

---

<table>
<thead>
<tr>
<th>Name(s) shown on return</th>
<th>TIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dale W. Mason</td>
<td>111-11-1111</td>
</tr>
</tbody>
</table>

---

**Part I  Foreign Deposit and Custodial Accounts Summary**

1. Number of Deposit Accounts (reported on Form 8938) ▶ 0
2. Maximum Value of All Deposit Accounts $0
3. Number of Custodial Accounts (reported on Form 8938) ▶ 0
4. Maximum Value of All Custodial Accounts $0

**Part II  Other Foreign Assets Summary**

1. Number of Foreign Assets (reported on Form 8938) ▶ 1
2. Maximum Value of All Assets $75,000
3. Were any foreign assets acquired or sold during the tax year? □ Yes □ No

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## Example: Sample 8938

### Part III  Summary of Tax Items Attributable to Specified Foreign Financial Assets (see instructions)

<table>
<thead>
<tr>
<th>(a) Asset Category</th>
<th>(b) Tax item</th>
<th>(c) Amount reported on form or schedule</th>
<th>(d) Form and line</th>
<th>(e) Schedule and line</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 Foreign Deposit and Custodial Accounts</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1a Interest</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1b Dividends</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1c Royalties</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1d Other income</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1e Gains (losses)</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1f Deductions</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1g Credits</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2 Other Foreign Assets</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2a Interest</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2b Dividends</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2c Royalties</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2d Other income</td>
<td>$ 75,000</td>
<td>75,000</td>
<td>Form 1040, Line 16a</td>
<td></td>
</tr>
<tr>
<td>2e Gains (losses)</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2f Deductions</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2g Credits</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Example: Sample 8938

Part IV  Excepted Specified Foreign Financial Assets (see instructions)
If you reported specified foreign financial assets on one or more of the following forms, enter the number of such forms filed. You do not need to include these assets on Form 8938 for the tax year.

1. Number of Forms 3520 ________  2. Number of Forms 3520-A ________  3. Number of Forms 5471 ________
4. Number of Forms 8621 ________  5. Number of Forms 8865 ________

Part V  Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary (see instructions)
If you have more than one account to report, attach a continuation statement for each additional account (see instructions).

<table>
<thead>
<tr>
<th></th>
<th>Type of account</th>
<th>Account number or other designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Check all that apply</th>
<th>Account opened during tax year</th>
<th>b</th>
<th>Account closed during tax year</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td>a</td>
<td></td>
<td>c</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d</td>
<td></td>
<td>d</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Maximum value of account during tax year</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars?</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>If you answered “Yes” to line 5, complete all that apply.</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>

(a) Foreign currency in which account is maintained  (b) Foreign currency exchange rate used to convert to U.S. dollars  (c) Source of exchange rate used if not from U.S. Treasury Department’s Bureau of the Fiscal Service

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 37753A

Form 8938 (2015)
**Example: Sample 8938**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Part V</strong></td>
<td><strong>Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary</strong></td>
</tr>
<tr>
<td>7 a</td>
<td>Name of financial institution in which account is maintained</td>
</tr>
<tr>
<td>8</td>
<td>Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.</td>
</tr>
<tr>
<td>9</td>
<td>City or town, state or province, and country (including postal code)</td>
</tr>
</tbody>
</table>
### Part VI Detailed Information for Each "Other Foreign Asset" Included in the Part II Summary (see instructions)

Note. If you reported specified foreign financial assets on Forms 3520, 3520-A, 5471, 8621, or 8865, you do not have to include the assets on Form 8938. You must complete Part IV. See instructions.

If you have more than one asset to report, attach a continuation statement for each additional asset (see instructions).

<table>
<thead>
<tr>
<th></th>
<th>Description of asset</th>
<th></th>
<th>Identifying number or other designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Staff Retirement Plan of the Int'l Bank for Recon. and Develop.</strong></td>
<td>2</td>
<td>111-11-1111 (or other identifying number)</td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Complete all that apply. See instructions for reporting of multiple acquisition or disposition dates.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>Date asset acquired during tax year, if applicable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>Date asset disposed of during tax year, if applicable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Check if asset jointly owned with spouse</td>
<td>d</td>
<td>Check if no tax item reported in Part III with respect to this asset</td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Maximum value of asset during tax year (check box that applies)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>$0 - $50,000</td>
<td>b</td>
<td>$50,001 - $100,000</td>
</tr>
<tr>
<td>e</td>
<td>If more than $200,000, list value</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Did you use a foreign currency exchange rate to convert the value of the asset into U.S. dollars?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>If you answered &quot;Yes&quot; to line 5, complete all that apply.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>Foreign currency in which asset is denominated</td>
<td>(b)</td>
<td>Foreign currency exchange rate used to convert to U.S. dollars</td>
</tr>
<tr>
<td>(c)</td>
<td>Source of exchange rate used if not from U.S. Treasury Department’s Bureau of the Fiscal Service</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Example: Sample 8938

7 If asset reported on line 1 is stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.
   a Name of foreign entity: Int'l Bank for Reconstruc'tn and Devlop'm't
   b Reserved
   c Type of foreign entity: (1) □ Partnership (2) □ Corporation (3) □ Trust (4) □ Estate
   d Mailing address of foreign entity. Number, street, and room or suite no.
      1818 H Street, NW
   e City or town, state or province, and country (including postal code)
      Washington, DC 20433

8 If asset reported on line 1 is not stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.
   Note. If this asset has more than one issuer or counterparty, attach a continuation statement with the same information for each additional issuer or counterparty (see instructions).
   a Name of issuer or counterparty
      Check if information is for □ Issuer □ Counterparty
   b Type of issuer or counterparty
      (1) □ Individual (2) □ Partnership (3) □ Corporation (4) □ Trust (5) □ Estate
   c Check if issuer or counterparty is a □ U.S. person □ Foreign person
   d Mailing address of issuer or counterparty. Number, street, and room or suite no.
   e City or town, state or province, and country (including postal code)
Passive Foreign Investment Company (PFIC) - Form 8621

- Foreign nationals with diversified investment portfolios often own **foreign mutual funds**

- Foreign corporation is a PFIC if it meets the asset or income thresholds

- There is no ownership percentage threshold

- Form 8621 required
  - Penalty: Statute of limitations remains open
What’s wrong with having a PFIC?

Excess distribution regime:

- Default regime
- Income and gains are **taxed at the highest marginal rate** (e.g. 39.6% in 2015)
- **No** qualified dividend treatment
- **No** preferential capital gain rate
- Interest is assessed on the deferred tax
Certain ownership and transactions with foreign trusts must be reported.

A U.S. person must report on Form 3520 any gift from a nonresident person if:

- The gift or bequest is valued at more than $100,000 from a nonresident alien individual or foreign estate.
- Must aggregate gifts from related parties.
Form 3520

- Filed separately from U.S. Tax Return

- **Penalty for failure to file**: Greater of $10,000 or 5% of the amount of the gift for each month that the failure continues, up to a maximum penalty of 25%.
Other Important Foreign Financial Forms

- Form 5471 – To report ownership in foreign corporations
- Form 8865 – To report ownership in foreign partnerships
IRS Offshore Amnesty Program
New IRS “Amnesty” Program

❖ Since 2009, Offshore Voluntary Disclosure Program has now brought in:
  • 45,000 Disclosures
  • $6.5 Billion
Old Offshore Voluntary Disclosure Program - pre 7/1/14

- 2012 OVDP
  - 27.5% general “offshore penalty”
- No penalty if no unreported income
- Old Streamlined: no penalty if meet certain restrictive requirements (live outside U.S., <$1,500 tax due, haven’t filed tax returns, “low risk”)
- All changed effective 7/1/14
Offshore Voluntary Disclosure Program

- OVDP applies to taxpayers who can't certify to non-willfulness

- Penalty is 27.5% in most cases, raised to 50% beginning August 4, 2014 if the taxpayer has an account with a foreign bank or facilitator that is under public investigation
New IRS Amnesty “Streamlined Procedures”

❖ General requirements:
  • Certify that noncompliance is non-willful
  • Available to individual taxpayers and their estates
  • Not available if IRS has started civil or criminal investigation

❖ Must choose **EITHER** OVDP or Streamlined, can't switch
Foreign Streamlined Program

- No penalties! Only tax and interest!
- Failed to report income from foreign financial asset, may have failed to file FBAR(s), noncompliance is due to non-willful conduct
- Non-residency requirement (joint filers must both meet):
  - U.S. citizens and GCHs: for any ONE of the last 3 years for which U.S. tax return due date has passed, didn’t have a U.S. abode AND was physically outside the U.S. for 330 days or more
Domestic Streamlined Procedure

- Pay tax, interest and “offshore penalty” of 5% of highest aggregate value of foreign financial assets that are subject to the penalty and no other penalties!
Domestic Streamline Procedure

- Must meet above general requirements
- Must fail to meet the applicable non-residency requirement (above)
  - Joint filers: only one must fail
- Must have previously filed a U.S. tax return if required for last 3 years
- Must have failed to report gross income from foreign account and may have failed to file FBARs or information returns
- Noncompliance is not willful
Streamlined Procedures

To Do

- 3 years of delinquent (foreign only) or amended returns with information returns
- 6 years of FBARs
- Pay tax and interest and offshore penalty of 5% (domestic streamlined only)
Questions ?
The Exit Tax

You mean...you're LEAVING US?
What is the Exit Tax?

- Applies only to “Covered Expatriates”

- “Mark-to-Market” tax on deemed property gains exceeding $690,000 (2015)

- Deemed distribution of certain deferred compensation

- Deemed distribution of certain specified “tax-deferred accounts”

- Gift and estate tax issues
What is the Exit Tax?

- Imposition of a tax at the highest gift or estate tax rates on receipt by a U.S. person of a “covered gift” or bequest from a “covered expatriate”

- Recipient pays the tax

- Compliance requirements: Form 8854 and W-8CE
“Covered Expatriate”

- U.S. citizens who relinquish U.S. citizenship
- Termination of “Long-term residency”
  - Green card holders who cease to be lawful permanent residents
    - 8 out of 15 years
    - Counting of years important
    - Revoked or abandoned (not simply expired)
    - Treaty tie-breaker provision
- Failure to file Form 8854
- 5 year tax compliance requirement
Net Worth Test

- $2,000,000 or more of net worth
- Global assets minus global liabilities
- Value of assets determined under “gift tax principles” (appraisals not required)
- Present value of pensions is included in net worth calculation
Net Worth Test Cont.

- Present value of World Bank pension is included in net worth test
  - Actual calculation should be made by an actuary
Net Income Tax Test

- Average annual net income (5 years)
  - $160,000
  - Test applies to each taxpayer for joint liability
Tax on Deferred Compensation

- Not part of “Mark-to-Market” tax calculation

- Deferred compensation
  - U.S. and foreign retirement plans

- Eligible deferred compensation
  - Applicable to payments of deferred compensation made by U.S. payors
  - Payor must deduct and withhold 30% withholding tax
Tax on Deferred Compensation

- Ineligible deferred compensation
  - Non-U.S. payor who fails to make the election to become U.S. payor
  - Present value of the covered expatriate’s “accrued benefit” is treated as being received on the day before expatriation
  - W-8CE presented to payor. Payor should provide the amount of the PV of accrued benefit within 60 days (Rev. Proc. 2004-37 or Prop. Reg 1.409A-4)
Specified Tax Deferred Accounts

- Not included in the “Mark-to-Market” tax
- Specified Tax Deferred Account:
  - Individual Retirement Accounts
  - 529 Plans
- Deemed distributed on the day before expatriation date
- No early withdrawal penalty
Compliance Issues

- Dual status tax return required for year of expatriation
- File Form 1040NR in subsequent years
- Form 8854
  - Must certify compliance with all U.S. tax obligations for past 5 years (otherwise will automatically be considered a “covered expatriate”)
  - File the Form 8854 by the due date of tax return
  - Penalty for failure to timely file is $10,000
- Form W-8CE
U.S. Gift/Estate Tax Consequences

- U.S. citizen or resident receives property either by gift or bequest from a “covered expatriate”

- Transfer of the property is subject to tax
  - $14,000 annual exclusion applies
  - Exception: Generally to U.S. citizen spouse

- Equal to the value of the property multiplied by the highest rate of tax for federal estate tax or gift tax

- The tax is payable by the recipient
Simple Exit Tax Planning

- Hold on to “long-term resident” status
- Surrender green card before becoming a long-term resident (less than 8 year threshold) and obtain non-immigrant visa
- Surrender green card before income tax/asset thresholds met and obtain non-immigrant visa
- Become a U.S. citizen!
  - File U.S. taxes forever
Questions ?
Stressed out?
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- Financial Planning/Wealth Management Services
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