

U.S. ENACTS NEW EXIT TAX ON EXPATRIATES

International Tax Alert
June 19, 2008

Effective June 17, 2008, the U.S. government imposes an “exit tax” on certain citizens and long-term residents who expatriate or terminate their long-term residency. Such individuals, called covered expatriates, will be deemed to have sold all of their worldwide property for its fair market value on the day before expatriating or terminating U.S. residency, and will be liable for U.S. tax on the amount deemed realized in excess of \$600,000 (subject to cost of living adjustments). Certain types of property are subject to special rules under the deemed disposition rules, including deferred compensation items and interests in nongrantor trusts. A special rule also allows for the deferral of this tax under certain conditions, including the provision of adequate security.

Covered expatriates under the new regime are generally the same individuals who were subject to the prior expatriation regime, i.e., citizens and long-term residents who (a) have an average annual U.S. tax liability for the previous five years of \$139,000 (adjusted for inflation), (b) have a net worth of at least \$2,000,000 on the expatriation date, or (c) fail to certify compliance with all U.S. federal tax obligations for the previous five years. For this purpose, a “long-term resident” is an individual who is a lawful permanent resident of the United States in at least eight taxable years during the 15-year period prior to the expatriation date. The new exit tax regime generally preserves the exceptions available under the prior expatriation rules for certain individuals born dual citizens of the United States and another country and for certain expatriating minors.

One of the harshest provisions of the new expatriation regime imposes a transfer tax on the U.S. citizen or resident recipient of certain gifts or bequests received from a covered expatriate. This is a significant departure from the prior expatriation law and the general rules applicable to taxable gifts and bequests, which generally impose the transfer tax on the donor or decedent’s estate.

The new expatriation exit tax rules apply to any individual meeting the definition of covered expatriate whose expatriation date (the date citizenship is relinquished or lawful permanent resident status terminates) is on or after June 17, 2008. For individuals who effectively expatriated under prior law before this date, the rules applicable under prior law, including the 30-days-of-physical-presence test, will continue to apply.

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Because expatriating can now result in immediate U.S. federal income tax, individuals who may be treated as covered expatriates are urged to consult their U.S. tax advisers prior to renouncing citizenship or relinquishing their green cards.

In accordance with Internal Revenue Service Circular 230, we advise you that unless otherwise expressly stated, any discussion of a federal tax issue in this communication or in any attachment is not intended to be used, and it cannot be used, for the purpose of avoiding federal tax penalties.

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