

OBAMA BUDGET PROPOSAL WOULD PROVIDE RELIEF FOR CERTAIN ACCIDENTAL DUAL CITIZENS

Canada-U.S. Cross-Border Alert
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A provision contained in the Treasury's green book explaining President Obama's 2016 budget proposals may provide U.S. tax and reporting relief for certain dual citizens.

An individual can become a U.S. citizen at birth either by being born in the United States or, in certain circumstances, by having a parent who is a U.S. citizen. Because U.S. citizens are subject to U.S. income tax on their worldwide income even if they reside outside the United States and can also be subject to information reporting obligations, many such individuals wish to relinquish their U.S. citizenship.

Section 877A of the Code imposes a mark-to-market tax on the worldwide assets of individuals who relinquish their U.S. citizenship if they meet a tax liability test (\$160,000 in 2015), a net worth test (\$2 million), or if they fail to certify their compliance with U.S. federal tax obligations for the five preceding tax years.

Section 877A provides an exception from the tax liability and net worth tests for certain dual citizens who have had minimal contacts with the United States during the 15 years preceding the relinquishment of their U.S. citizenship. Such individuals, however, remain subject to the certification test, meaning that before they can expatriate, they must first complete five years of U.S. tax filings.

The administration's proposal would exempt an individual from tax under Section 877A if the taxpayer meets the following conditions:

- The taxpayer became at birth a citizen of the United States and a citizen of another country
- At all times, up to and including the individual's expatriation date, the taxpayer has been a citizen of a country other than the United States
- The taxpayer has not been a resident of the United States (as defined in section 7701(b)) since attaining age 18½ years
- The taxpayer has never held a U.S. passport or has held a U.S. passport for the sole purpose of departing from the United States in compliance with immigration regulations requiring use of a U.S. passport

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- The taxpayer relinquishes his U.S. citizenship within two years after the later of January 1, 2016, or the date on which the individual learns that he is a U.S. citizen
- The taxpayer certifies under penalty of perjury his compliance with all U.S. federal tax obligations that would have applied during the five years preceding the year of expatriation if the individual had been a non-resident alien during that period.

Therefore, it would allow certain U.S. citizens to relinquish their citizenship without having to incur the expense of filing U.S. tax returns under the current IRS voluntary disclosure or streamlined programs. Given the significant time and expense involved with this compliance, this would be a welcome relief to many of our dual citizen clients.