Internal Revenue Service
DEPARTMENT OF THE TREASURY

Unit Name	Expatriation On or After June 17, 2008 – Mark-to-Market (MTM) Tax Regime	
Primary UIL Code	9431.04-03	IRC 877A Mark-to-Market

Library Level	Title
Knowledge Base	International
Shelf	Individual Outbound
Book	Jurisdiction to Tax Individual
Chapter	Expatriation

Document Control Number (DCN)	INT-C-259
Date of Last Update	06/21/23

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Expatriation On or After June 17, 2008 – MTM Tax Regime

This unit discusses the Mark-to-Market (MTM) rules under IRC 877A , which imposes an “exit tax” through a MTM tax regime on the worldwide assets of a “covered expatriate” (CE).

An expatriate means (1) a U.S. citizen who relinquishes their citizenship, or (2) a long-term resident of the United States who ceases to be a permanent resident. The MTM rules apply only to individuals whose expatriation date is on or after June 17, 2008.

A CE is an expatriate who meets one of the three tests (income tax liability test, net worth test, or tax certification test), as outlined in Section 2 of Notice 2009-85, *Guidance for Expatriates Under Section 877A*.

The MTM tax regime under IRC 877A(a) is called an exit tax because it imposes an income tax on the net unrealized gains of certain U.S. citizens or long-term residents who are terminating U.S. citizenship or lawful permanent resident status. A long-term resident is an individual who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the individual ceases to be a lawful permanent resident of the United States.

IRC 877A(a) treats the property of a CE as sold on the day before the expatriation date for its fair market value (FMV). The CE is taxed on the net gain from the deemed sale (taking into account all gains and losses from the deemed sale). The difference between the FMV of the property (deemed sales price) and the adjusted basis of the property, less the IRC 877A(a)(3) exclusion amount (indexed for inflation) is taxable as gain or loss to the CE. IRC 877A(d)-(f) provide~~s~~ alternative tax regimes to the MTM tax regime for a CE’s deferred compensation items, specified tax deferred accounts, and interests in nongrantor trusts.

! **CAUTION:** Taxpayers who expatriated prior to June 17, 2008, are subject to the tax provisions under IRC 877 (Expatriation to avoid tax).

Detailed Explanation of the Concept

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▪ An expatriate who is a CE is deemed to have sold for FMV any interest in property that they are considered to own, other than property described in IRC 877A(c), on the day before their expatriation date and is taxed on the net gains from the deemed sale. Gain or loss on the deemed sale is recognized for the taxable year that includes the expatriation date.

▪ Expatriation date is the date a U.S. citizen relinquishes citizenship, or a long-term resident ceases to be a lawful permanent resident, as outlined in Section 2A of Notice 2009-85, Guidance for Expatriates Under Section 877A.</td><td>▪ IRC 877A (a) - Tax Responsibilities of Expatriation
▪ IRC 877A (c) - Tax Responsibilities of Expatriation
▪ Notice 2009-85 - Expatriation, Section 3A</td></tr>
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Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
Properties Included in MTM Tax Regime ▪ A CE is treated as owning at FMV any interest in property that would be taxable as part of their gross estate as if they had died on the day before the expatriation date as a U.S. citizen or resident. ▪ A CE must determine the FMV of each interest in property as of the day before the expatriation date in accordance with the valuation principles applicable for purposes of federal estate tax. The FMV of the CE's worldwide assets is determined under the principles of IRC 2031 (Definition of gross estate), without regard to IRC 2032 (Alternate valuation) and IRC 2032A (Discounted valuation for certain farm and real property), as if the covered expatriate had died as a citizen or resident of the United States on the day before the expatriation date. ▪ For purposes of the MTM tax regime, gross estate includes all property that a decedent has an interest in, real or personal, tangible or intangible, wherever situated.	▪ Notice 2009-85 - Expatriation, Section 3A ▪ IRC 2031 - *Definition of Gross Estate* ▪ IRC 2032 - *Alternate Valuation* ▪ IRC 2032A - *Valuation of Certain Farm, Etc., Real Property* ▪ IRC 2033 - *Property in Which the Decedent had an Interest* ▪ Form 706 - *U.S. Estate Tax Return* ▪ Form 706 Instructions

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Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Properties Included in MTM Tax Regime (cont'd)</u> ▪ Examples include, but are not limited to: − Real estate − Stocks, including those issued by foreign corporations − Bonds, including tax exempt − Mutual funds − Accrued dividends − Accrued interest − Mortgages, notes and cash ▪ If there is an expectation of repayment and an intention to enforce the debt. ▪ Includes installment obligations. ▪ IRC 7872 addresses interest free loans and loans with below market interest rates.	▪ Form 706 - *U.S. Estate Tax Return* ▪ Form 706 Instructions ▪ IRC 7872 - *Treatment of Loans with Below-Market Interest Rates*

Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Properties Included in MTM Tax Regime (cont'd)</u>	
− Life insurance policies	▪ Form 706 Instructions, Schedule D
▪ If payable on the expatriate's life or if the CE has power to change the beneficiary or to cancel, surrender, assign or borrow against the policy. ▪ If local community property law applies, include only the portion allocable to the CE.	▪ Treas. Reg. 20.2042-1(b)(2) ▪ IRC 2042 - *Proceeds of Life Insurance*
− Jointly owned property ▪ If property held as joint tenant with a right of survivorship with someone other than spouse, include the entire value of the property unless you can establish otherwise.	▪ Form 706 Instructions, Schedule E ▪ IRC 2040(b) - *Joint Interests*
▪ If property held as joint tenant with right of survivorship between spouses, then inclusion is 50% of the value of the property.	▪ Notice 2009-85 - Expatriation, Section 3
− Grantor trust ▪ Include FMV of the CE's beneficial interest in trust to the extent it would not be part of the CE's gross estate in accordance with IRC 2512 (Valuation of gifts) without regard to any prohibition or restriction on such interest.	▪ Form 706, Schedule F - U.S. Estate Tax Return: Other Miscellaneous Property ▪ IRC 2512 - *Valuation of Gifts*
− Power of Appointment ▪ Assets held with a general power of appointment that an expatriate can exercise or release before expatriation.	▪ IRC 2041 - *Powers of Appointment* ▪ Form 706, Schedule H - U.S. Estate Tax Return: Power of Appointment ▪ Form 706 Instructions, Schedule H

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− Annuities
▪ As set forth in IRC 2039, the value of certain annuities or other payments receivable by any beneficiary by reason of surviving the expatriate.
− Miscellaneous properties
▪ Royalties
▪ Leaseholds, revisionary or remainder interests
▪ Claims and rights
▪ Judgments and claims in litigation
▪ Shares in trust funds
▪ Personal effects, such as household goods, automobiles, artwork, and collectibles
▪ Earned but unpaid fees and commissions
▪ Real estate owned by sole proprietorship
▪ Life insurance on the life of a 3rd party</td><td>▪ IRC 2039 - Annuities
▪ Form 706, Schedule I - U.S. Estate Tax Return: Annuities
▪ Form 706 Instructions, Schedule I

▪ Form 706, Schedule F - U.S. Estate Tax Return: Other Miscellaneous Property
▪ Form 706 Instructions, Schedule F</td></tr>
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<tr><td><u>Properties Included in MTM Tax Regime (cont'd)</u>

− Assets transferred for less than full and adequate consideration with retained interest for life or for a period not ascertainable without reference to date before expatriation or for a period that does not actually end before the transferor's date before expatriation. This includes:
▪ The right to use/possess/enjoy
▪ The right to income
▪ A life estate
▪ Transferee possessions conditional on surviving the expatriate
▪ Revocable transfer (where transferor prior to expatriation retains the power to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date before expatriation
▪ Life insurance policies transferred within 3 years of date before expatriation
▪ Payment of gift tax within 3 years of date before expatriation</td><td>▪ Form 706, Schedule G - U.S. Estate Tax Return: Transfer During Decedent's Life
▪ Form 706 Instructions, Schedule G
▪ Form 709 - U.S. Gift (and Generation Skipping Transfer) Tax Return
▪ Form 709 Instructions
▪ IRC 2035 - Adjustments for Certain Gifts Made Within 3 Years of Decedents Death
▪ IRC 2036 - Transfers with Retained Life Estate
▪ IRC 2037 - Transfers Taking Effect at Death
▪ IRC 2038 - Revocable Transfers</td></tr>
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Detailed Explanation of the Concept (cont’d)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Properties Included In MTM Tax Regime (cont’d)</u> − Assets transferred before expatriation in exchange for a note are includible if not a bona fide debt. In determining whether a debt is a bona fide debt, consider the following factors: ▪ Expectation of repayment ▪ Intention to enforce the debt ▪ Promissory note or evidence of indebtedness ▪ Interest charged ▪ Security or collateral ▪ Fixed maturity date ▪ Demand for repayment ▪ Actual repayment ▪ Borrower’s ability to repay ▪ Records documenting the transfer as a loan ▪ Characterization of the transfer for federal tax purposes ! **CAUTION**: The mere promise to pay a sum of money in the future accompanied by an implied understanding that the promise will not be enforced does not represent transfer for adequate and full consideration but transfers for insufficient consideration.	▪ *Estate of Lockett v Comm* - T.C. Memo 2012-123 ▪ *Miller v Commissioner* - 71 T.C. Memo 1674

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Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Properties Included in MTM Tax Regime (cont'd)</u> − Other Consideration ▪ In determining property held by the CE under IRC 2033 (property in which the decedent had an interest) and subject to MTM, consider community property/separate property rules for the applicable jurisdiction(s). − All properties acquired by each spouse before marriage, after its termination, or by gift, bequest, devise, or inheritance is separate property of the respective spouse. − Community property is property acquired during marriage by either husband or wife or both. Both spouses have a vested, equal, undivided interest in all community property.	▪ IRC 2033 - *Property in Which the Decedent had an Interest* ▪ IRC 2040(a) - *Joint Interests* ▪ IRC 2040(b) - *Joint Interests*

Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime

Analysis	Resources
<u>Valuation of Properties Subject to MTM Tax Regime</u>	
The value of property is its FMV on the day before the expatriation date. FMV is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Thus, FMV is the price at which the item or a comparable item could be sold at retail. Examples may be found in Treas. Regs. 20.2031-6 and 20.2031-8.	▪ Treas. Reg. 20.2031-1(b)
▪ Traded securities are normally valued at the mean between the high and the low on the valuation date.	▪ Treas. Reg. 20.2031-2
▪ Household and personal effects should be itemized room-by-room. All the articles should be named specifically; however, articles contained in the same room may be grouped if none has a value in excess of $100. If household and personal effects have artistic or intrinsic value in excess of $3,000, an expert appraisal must be filed with the tax return.	▪ Treas. Reg. 20.2031-6 ▪ Treas. Reg. 20.2031-8
▪ A beneficial interest in a trust, other than a nongrantor trust, is valued according to the gift tax valuation principles of IRC 2512.	▪ Notice 2009-85 - Expatriation, Section 1
▪ An interest in a life insurance policy is valued according to the gift tax valuation principles under Treas. Reg. 25.2512-6 as if the expatriate had made a gift of the policy on the day before expatriation. For determination of value, use Form 712, *Life Insurance Statement*, Part II.	▪ Notice 2009-85 - Expatriation, Section 3 ▪ IRC 2512 - *Valuation of Gifts* ▪ IRC 2032 - *Alternate Valuation*
! **CAUTION:** The special valuation rules of IRC sections 2032 (Alternative valuation), 2032A, (Valuation of certain farm, etc., real property), 2055 (Transfers for public, charitable, and religious uses), 2056 (Bequests to surviving spouse), and 2056A (Qualified domestic trust) do not apply.	▪ IRC 2055 - *Transfers for Public, Charitable, and Religious Uses* ▪ IRC 2056 - *Bequests, Etc., to Surviving Spouse* ▪ IRC 2056A - *Qualified Domestic Trust*

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<tr><td><u>Properties Not Included in MTM Tax Regime but Addressed in Alternative Tax Regimes</u>

The MTM tax regime does not apply to the following items. IRC 877A provides alternative tax regimes or treatments for each of these items:
1. Deferred compensation items which include annuity plans, simplified employee pension plans, simplified retirement accounts, foreign pensions or retirement plans, any property or property right related to the performance of services not previously taxed to the individual under IRC 83.
▪ Exception: Deferred compensation attributable to services performed outside the U.S. before or after the expatriation date <u>and earned while the CE was not a U.S. citizen or resident</u> are not treated as deferred compensation items for purposes of IRC 877A.</td><td>▪ IRC 877A(c) - Tax Responsibilities of Expatriation
▪ Notice 2009-85 - Expatriation, Section 5
▪ IRC 877A(d) - Tax Responsibilities of Expatriation
▪ IRC 83 - Properties Transferred in Connection with Performance of Service
▪ Form 8854 Instructions
▪ Notice 2009-85 - Expatriation, Section 5E</td></tr>
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<u>Properties Not Included in MTM Tax Regime but Addressed in Alternative Tax Regimes (cont'd)</u>
▪ Different tax treatment applies to deferred compensation items, depending on whether they are eligible or ineligible deferred compensation.
− Eligible Deferred Compensation
▪ Any deferred compensation item where payor is a U.S. person or a non-U.S. person who elected to be treated as a U.S. person.
▪ CE must waive right to claim withholding reduction under treaty.
▪ Payor withholds 30 percent tax on any taxable payment (i.e., any payment to the extent it would have been includible in income if such individual continued to be subject to tax as a U.S. citizen or resident).
− Ineligible Deferred Compensation
▪ Any deferred compensation that is not eligible deferred compensation.
▪ CE treated as having received an amount equal to the present value of the accrued benefit on the day before the expatriation date as a distribution under the plan and includes that amount as income on the CE's return for the year of expatriation.
</td><td>
▪ IRC 877A(c) - Tax Responsibilities of Expatriation
▪ Notice 2009-85 - Expatriation, Section 5C
▪ IRC 877A(d) - Tax Responsibilities of Expatriation
▪ Form 8854 Instructions
▪ Notice 2009-85 - Expatriation, Section 5D
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Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	• **Resources**
<u>Properties Not Included in MTM Tax Regime but Addressed in Alternative Tax Regimes (cont'd)</u> 2. Specified tax deferred accounts which include individual retirement accounts and annuities (as defined in IRC 408(a) and 408(b)), qualified tuition plans, Coverdell education savings accounts, health saving accounts. ▪ However, qualified employee pensions (as defined in IRC 408(k)) and simplified retirement accounts (as defined in IRC 408(p)) are deferred compensation items and not tax deferred accounts. ▪ CE treated as having received a distribution of entire interest in such account on the day before expatriation date and includes that amount as income on the CE's return for the year of expatriation. ▪ Early distribution tax does not apply. 3. Interests in nongrantor trusts, domestic or foreign, of which the CE was a beneficiary on the day before the expatriation date. ▪ Trustee must withhold 30 percent of the taxable portion of a distribution from a nongrantor trust received after expatriation date. Taxable portion is the portion which would be includible in CE's gross income if CE continued to be subject to tax as a U.S. citizen/resident.	▪ Notice 2009-85 - Expatriation, Section 6 ▪ IRC 877A(e) - *Tax Responsibilities of Expatriation* ▪ *IRC 408(a) - Individual Retirement Accounts* ▪ *IRC 408(b) - Individual Retirement Accounts* ▪ *IRC 408(k) - Individual Retirement Accounts* ▪ *IRC 408(p) - Individual Retirement Accounts* ▪ Notice 2009-85 - Expatriation, Section 7 ▪ IRC 877A(f) - *Tax Responsibilities of Expatriation*

Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Other MTM Tax Regime Rules</u> ▪ Losses resulting from application of the MTM tax regime can be taken into account to the extent permitted under the Internal Revenue Code, except that the wash sale rules under IRC 1091 do not apply. ▪ Passive activity losses subject to the limitation of IRC 469 (Passive activity losses and credits limited) are not triggered by the MTM deemed sale of assets. ▪ The exclusion of gain from the sale of principal residence under IRC 121 (Gain from sale of principal residence) does not apply to the deemed sale. ! **CAUTION:** Transfer of property to a foreign nongrantor trust – IRC 684 requires immediate recognition of gain when a U.S. person directly, indirectly, or constructively transfers appreciated property to a foreign trust of which the U.S. person is **<u>not</u>** treated as the owner under the grantor trust rules (IRC 671 through 679). Expatriation by a CE may cause a domestic trust of which the CE was treated as the owner on the day before the expatriation date to become a foreign trust; if the expatriation also causes the CE to cease to be treated as the owner of the trust, appreciated property held by the trust will generally be subject to the gain recognition rules of IRC 684 which applied before the MTM regime. Thus, gain subject to the rules of IRC 684 will not be subject to the MTM regime.	▪ IRC 1091 - *Loss From Wash Sales of Stock or Securities* ▪ IRC 469 - *Passive Activity Losses and Credits Limited* ▪ IRC 121 - *Exclusion of Gain on Sale of Personal Residence* ▪ IRC 684 - *Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates* ▪ IRC 671 - *Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners* ▪ IRC 672 - *Definitions and Rules* ▪ IRC 673 - *Reversionary Interests* ▪ IRC 674 - *Power to Control Beneficial Enjoyment* ▪ IRC 675 - *Administrative Powers* ▪ IRC 676 - *Power to Revoke* ▪ IRC 677 - *Income for Benefit of the Grantor* ▪ IRC 678 - *Person Other Than Grantor Treated as Substantial Owner* ▪ IRC 679 - *Foreign Trusts Having One or More U.S. Beneficiaries* ▪ Notice 2009-85 - Expatriation

Detailed Explanation of the Concept (cont’d)

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<tr><td><u>Basis Adjustment After Application of MTM Tax Regime</u>

<u>General Rule</u>

▪ When the property is later sold, the basis is adjusted by the amount of gain or loss taken into account under the IRC 877A deemed sale, without regard to the exclusion amount provided in IRC 877A(a)(3). This exclusion will be discussed later in this unit.

<u>Rule for U.S. Real Property Interest (USRPI)</u>

▪ IRC 897 (Disposition of investment in U.S. real property) does not apply to gain or loss recognized as a result of the MTM regime because the CE is not an NRA within the meaning of IRC 7701(b) on the day before the expatriation date. If the CE subsequently disposes of the USRPI, IRC 897 applies, and any gain or loss will be treated as effectively connected income.</td><td>▪ Notice 2009-85 - Expatriation, Section 3C
▪ IRC 877A - Tax Responsibilities of Expatriation

▪ Notice 2009-85 - Expatriation, Section 4
▪ IRC 897 - Disposition of Investment in United States Real Property
▪ IRC 7701(b) - Definitions</td></tr>
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Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Inbound Basis Adjustment for NRAs who Became Residents and are Subject to the MTM Tax Regime</u> For purposes of the MTM tax regime, property that was held by a nonresident individual prior to becoming a U.S. resident under IRC 7701(b) will be treated as having a basis of not less than FMV on the U.S. residency start date unless the CE makes an election to not have the inbound basis adjustment rule apply. If this election is made, the tax basis of any property covered by the election is its cost. ▪ This election is irrevocable and must be made on a property-by-property basis. ▪ This election is made on Form 8854 for the taxable year that includes the date before the expatriation date.	▪ Notice 2009-85 - Expatriation, Section 3D ▪ IRC 877A(h)(2) - *Tax Responsibilities of Expatriation* ▪ IRC 7701(b) - *Definitions*

Detailed Explanation of the Concept (cont'd)

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<tr><td><u>Exclusion Amount Under the MTM Tax Regime</u>

▪ IRC 877A(a)(3) provides an exclusion from the MTM regime for a certain amount of gain, indexed annually for inflation, for purposes of determining the tax under the MTM regime. For the exclusion amount, see Instructions to Form 8854 for the tax year that includes the expatriation date.

▪ The exclusion amount only applies to gain resulting from the application of the MTM tax regime. The exclusion amount is allocated pro-rata to each item of built-in gain property ("gain asset"), including property with respect to which the CE elects to defer the payment of tax, by multiplying the exclusion amount by the ratio of the built-in gain of each gain asset over the total built-in gain of all gain assets.

▪ Allocation of the exclusion amount to an item cannot exceed the item's built-in gain.

▪ Although rare, it is possible that someone can expatriate more than once. For example, a lawful permanent resident (LPR) who expatriated may become an LPR again in a later year and then eventually expatriate. Each individual is allowed only one exclusion, regardless of the number of expatriations. The unused portion of the exclusion amount (if any) from the first expatriation can be carried over to the second expatriation. For example, a CE who used 70% of the exclusion amount in the first expatriation may apply 30% of the exclusion amount, adjusted for inflation, to the second expatriation.</td><td>▪ Notice 2009-85 - Expatriation, Section 1

▪ Notice 2009-85 - Expatriation, Section 3B</td></tr>
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Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Exclusion Amount Under the MTM Tax Regime (cont'd)</u> ▪ The steps to allocate the exclusion amount to a specific asset are as follows: 1. List all properties with built-in gain subject to the MTM tax regime. 2. Determine the built-in gain for each property by subtracting the asset's adjusted basis from its FMV. 3. Determine the ratio of built-in gain of each gain asset over the total built-in gain of all gain assets. Divide the built-in gain for that property by the total MTM gain for all properties excluding any properties with deemed MTM losses. 4. The amount of exclusion allocated to a specific asset is determined by multiplying the total exclusion amount by the fraction determined in Step 3 above. ▪ For examples, see Notice 2009-85, Section 3B.	▪ Notice 2009-85 - Expatriation, Section 3B

Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime

Analysis	Resources
<u>Deferral of Tax Payment</u> A CE can irrevocably elect to defer payment of additional tax imposed under the MTM regime with respect to any property deemed sold by reason of IRC 877A(a) by providing adequate security and waiving treaty rights that would prevent the assessment or collection of the deferred tax. ▪ The election is made on a property-by-property basis. ▪ To make the election, follow the instructions to Form 8854 and refer to Notice 2009-85. (The address listed in Section 3E of Notice 2009-85 is no longer valid; instead, refer to the Instructions to Form 8854.) ▪ The CE must: − Make an irrevocable waiver (on Form 8854) of any right under any U.S. treaty that would preclude the assessment or collection of any tax~~es~~ imposed by reason of IRC 877A, − Provide adequate security, − Execute a tax deferral agreement with the Internal Revenue Service (IRS), and − Appoint a U.S. agent.	▪ Notice 2009-85 - Expatriation, Section 3E ▪ IRC 877A(b) - *Tax Responsibilities of Expatriation*

Detailed Explanation of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Analysis	**Resources**
<u>Deferral of Tax Payment (cont'd)</u> ▪ Interest will be charged for the period the tax is deferred, from the due date of the return (without extensions) for the taxable year that includes the day before the expatriation date until the date the tax is paid. ▪ Deferred tax with accrued interest may be paid at any time. ▪ The CE must file a Form 8854 annually, to report the status of assets for which the deferral election was made, for taxable years up to and including the taxable year in which the full amount of deferred tax and interest is paid.	▪ Notice 2009-85 - Expatriation, Section 3E ▪ IRC 877A(b) - *Tax Responsibilities of Expatriation*

Detailed Explanation of the Concept (cont'd)

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<tr><td>
<u>Determination of Tax Attributable to Particular Assets</u>

▪ A CE who elects to defer the payment of MTM tax attributable to one or more assets deemed sold under the MTM regime must determine the amount of tax attributable to each asset. Steps to determine the amount of MTM tax attributable to an item are as follows:
1. Determine the amount of tax for the portion of the taxable year that includes the day before the expatriation date, computed without regard to the MTM gain.
2. Determine the amount of tax for the portion of the taxable year that includes the day before the expatriation date including tax on the MTM gain.
3. Subtract the result of Step 1 from that of Step 2 to arrive at tax attributable to the deemed sale.
4. For each asset, determine the ratio of built-in gain (excluding any built-in losses) to the total amount includible in gross income for all gain assets.
5. To determine the tax attributable to each asset, multiply tax attributable to the deemed sale (Step 3) by the ratio of the amount includible in gross income with respect to each asset to the total amount includible in gross income with respect to all gain assets (Step 4).
▪ See Example 6 in Notice 2009-85, Section 3E.
</td><td>
▪ Notice 2009-85 - Expatriation, Section 3E
▪ IRC 877A (b) - Tax Responsibilities of Expatriation
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</table>

Examples of the Concept

Expatriation On or After June 17, 2008 – MTM Tax Regime

Examples

Example: Allocation of Exclusion Amount Example

J relinquished his citizenship on June 30,2019. The exclusion amount for 2019 is $725,000. On June 29, 2019, J has the following capital assets:

Capital Asset	FMV on 6/29/19	Basis	Built-in Gain/Loss	Exclusion	Schedule D Gain/Loss	New Basis
1	$200,000	$100,000	$100,000	$72,500	$27,500	$200,000
2	500,000	600,000	(100,000)	0	(100,000)	500,000
3	1,000,000	100,000	900,000	652,500	247,000	1,000,000

Notes:

Built-In Gain/Loss = FMV - basis

Exclusion allocated to each gain asset = (Exclusion Amount) x (Built-in Gain on Asset/Total Built-in Gain on all gain assets).

For asset #1: (725,000) x (100,000/1M) = 72,500 exclusion allocated

For asset #2: Exclusion = 0 because asset has a built-in loss

For asset #3 (725,000) x (900K/1M) = 652,500 exclusion allocated

Schedule D Recognized Gain/Loss = FMV – basis – exclusion amount. However, 100,000 loss would be limited by IRC 1211(b)

New Basis will be used on subsequent sale = FMV on 6/29/19

For more examples, see Notice 2009-85 Section 3B, Examples 1 and 2.

Examples of the Concept (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime

Examples

Example (cont'd) – Deferral of Tax Payment

Assume the total tax liability is $60,000, which includes the taxable gain resulting from the deemed sales under IRC 877A(a). The tax liability without taking into account IRC 877A(a) is $30,000. Therefore, deferred tax amount = $30,000 ($60,000 total tax liability less $30,000 tax liability without MTM markup)

Capital Asset	Deferred Tax Attributable to Asset = [(Asset Gain/Total Gain of all asset) x (Deferred Tax or Tax Liability with MTM markup – tax liability without MTM markup)
1	$3K = (27,500 gain recognized for asset 1/275K total gain for asset 1 and 3) x (30K deferred tax)
2	$0 (Loss is considered to be 0 in calculating deferred tax).
3	$27K = (247,500 gain recognized for asset 3/ 275K total gain asset 1 and 3) x (30K deferred tax)
	$30K Total deferred tax

For more detailed explanation on the example, see Notice 2009-85 Examples, Section 3E, Example 6.

Index of Referenced Resources

Expatriation On or After June 17, 2008 – MTM Tax Regime
IRC 121
IRC 408
IRC 469
IRC 671
IRC 672
IRC 673
IRC 674
IRC 675
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IRC 678
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IRC 877A
IRC 897
IRC 1091

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IRC 2031
IRC 2032
IRC 2032A
IRC 2033
IRC 2035
IRC 2036
IRC 2037
IRC 2038
IRC 2039
IRC 2040
IRC 2041
IRC 2042
IRC 2055
IRC 2056
IRC 2056A
IRC 2512

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IRC 7701
IRC 7872
Treas. Reg. 20.2031-1
Treas. Reg. 20.2031-2
Treas. Reg 20.2031-6
Treas. Reg. 20-2031-8
Treas. Reg. 25.2042-1
Treas. Reg. 25.2512-6
Notice 2009-85
Form 706
Form 706 Instructions
Form 709
Form 709 Instructions
Form 712
Form 8854
Form 8854 Instructions

Index of Referenced Resources (cont'd)

Expatriation On or After June 17, 2008 – MTM Tax Regime
Estate of Lockett v Commissioner - TC Memo 2012-123
Miller v Commissioner - 71 TCM 1674

Glossary of Terms and Acronyms

Term/Acronym	Definition
CE	Covered Expatriate
FMV	Fair Market Value
IRC	Internal Revenue Code
IRS	Internal Revenue Service
LPR	Lawful Permanent Resident
MTM	Mark-to-Market
NRA	Nonresident Alien
UIL	Uniform Issue List
USRPI	U.S. Real Property Interest

Training and Additional Resources

Expatriation On or After June 17, 2008 – MTM Tax Regime	
Type of Resource	**Description(s)**
Databases / Research Tools	▪ *BNA Tax Management U.S. Int'l Portfolio 837-4th – Non-Citizens - Estate, Gift and Generation-Skipping Transfer Taxation* ▪ FederalRegister.gov - *Quarterly Publication of Individuals Who Have Chosen to Expatriate* URL: https://www.federalregister.gov/quarterly-publication-of-individuals-who-have-chosen-to-expatriate
Other Training Materials	▪ IRS.gov - *Expatriation Tax* URL: https://www.irs.gov/individuals/international-taxpayers/expatriation-tax ▪ IRS Notice 2009-85 - *Guidance for Expatriated Under Section 877A*

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
	None at this time.