FREQUENTLY ASKED QUESTIONS FOR INDIVIDUALS WHO EXPATRIATE AFTER JUNE 16, 2008

In order to properly determine how the U.S. tax expatriation rules may apply to you, you should have a good understanding of the following terms:

Lawful Permanent Resident (aka Green Card Holder): an individual who has been granted authorization to live in the United States on a permanent basis. As proof of that status, an individual is granted a permanent resident card, commonly called a “green card.”

Long-Term Resident: A lawful permanent resident of the United States in at least 8 out of the last 15 tax years ending with the tax year of expatriation.

An individual is not treated as a lawful permanent resident for the tax year if for that year the individual is treated as a resident of a foreign country under the provisions of a U.S. income tax treaty with a foreign country and does not waive the benefits of the income tax treaty applicable to a resident of the foreign country.

Expatriate: A U.S. citizen who relinquishes U.S. citizenship or a U.S. long-term resident who ceases to be a U.S. lawful permanent resident.

Covered Expatriate: an “expatriate” who meets at least one of the following tests:

(i) Tax Liability Test: An expatriate whose average annual net income tax liability for the 5 tax years immediately preceding the year that includes the individual’s expatriation date exceeds a specified amount that is adjusted annually for inflation ($206,000 for individuals who expatriate during 2025),

(ii) Net Worth Test: An expatriate whose net worth is $2 million or more as of the expatriation date, or

(iii) Tax Certification Test: An expatriate who failed to certify on Form 8854, Initial and Annual Expatriation Statement, compliance with all U.S. federal tax obligations for the 5 tax years immediately preceding the tax year that includes the expatriation date.

(See FAQ #3 below for exceptions to the Tax Liability and Net Worth Tests. Note these exceptions are not exceptions to the Tax Certification Test).

Expatriation Date: The date an individual relinquishes U.S. citizenship or the date the individual ceases to be a lawful permanent resident of the United States.

(i) U.S. Citizens will be considered to have relinquished U.S. citizenship on the earliest of the following dates:

- The date the individual renounced U.S. citizenship before a U.S. diplomatic or consular officer as long as this was subsequently confirmed by the issuance of a certificate of loss of nationality (“CLN”) by the U.S. Department of State,
- The date the individual furnished to the U.S. Department of State a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act as long as this was subsequently confirmed by the issuance of a CLN by the U.S. Department of State,

- The date the U.S. Department of State issued a CLN, or
- For a naturalized citizen, the date that a U.S. court canceled the certificate of naturalization.

(ii) Long-Term Residents will be considered to have terminated lawful permanent resident status on the earliest of the following dates:

- The date the individual voluntarily abandoned lawful permanent resident status by filing Department of Homeland Security Form I-407, Record of Abandonment of Lawful Permanent Resident Status, with a U.S. consular or immigration officer, and the Department of Homeland Security determined that the individual had, in fact, abandoned lawful permanent resident status.
- The date the individual became subject to a final administrative or judicial order for removal from the U.S. under the Immigration and Nationality Act and actually left the U.S. as a result of that order.
  - » In the case of a **Dual Resident** of the United States and a country with which the United States has an income tax treaty, the date the individual commences to be treated as a resident of the treaty country, does not waive the benefits of the treaty applicable to residents of the treaty country, and timely notifies the IRS of that treatment.

1. What happens when I relinquish my U.S. citizenship or cease to be a long-term resident?

Your tax consequences will depend on whether you are a "covered expatriate." All expatriates are subject to certain filing requirements as described in FAQ #2 below. However, expatriates who are "covered expatriates" are also subject to a mark-to-market tax regime and may have other tax consequences depending on the type of interests they have at the time of expatriation, all of which are described in other FAQs below.

2. I'm a U.S. citizen or long-term resident, what are my filing obligations if I expatriate?

(i) Dual-Status Return. If you are a U.S. citizen or long-term resident who is expatriating, you will normally need to file a dual-status tax return for the year during which you expatriate, regardless of whether you are a "covered expatriate." A dual-status tax return consists of a Form 1040-NR U.S. Nonresident Alien Income Tax Return, which must report the income and expenses applicable to the portion of the tax year that begins with your expatriation date and ends with the last day of the tax year in which you are no longer a U.S. person and includes a Form 1040 U.S. Individual Income Tax Return, as an attachment, that reports the income and expenses from the beginning of the tax year through the day before your expatriation date while you were a U.S. person.

See Publication 519, U.S. Tax Guide for Aliens, for more information about dual-status returns. You will need to report the tax that is due, if any, under the mark-to-market regime on your Form 1040, even if you elect to defer payment of that tax as mentioned in FAQ #7 below.

(ii) Form 8854, Initial and Annual Expatriation Statement.

Initial Requirement to File Form 8854. If you are a U.S. citizen or long-term resident who is expatriating, you also will need to file Form 8854 with your dual-status return for the year during which you expatriate to certify that you have been in compliance with all federal tax laws during the 5 years immediately preceding the year that includes your expatriation date.

(**CAUTION:** Failure to file Form 8854 will cause you to be a "covered expatriate" even if you do not meet the Tax Liability Test or the Net Worth Test and may also subject you to penalties.)

On the initial Form 8854 you file for the year that includes your expatriation date, you must report information relating to your income and assets. For example, if eligible, you may also be able to make an election to treat certain deferred compensation items as "eligible deferred compensation," or defer the payment of tax imposed under the mark-to-market regime on an item of income by item of income basis. The Form 8854 must be attached to your income tax return. Additionally, a copy of Form 8854 is required to be mailed to the IRS office in Austin, TX. See the Instructions for Form 8854 for more detailed information and filing instructions.

Annual Requirement to File Form 8854. If you are a "covered expatriate," you may also be required to file Form 8854 annually for subsequent years in certain cases. For example, if you elect to defer payment of the tax that is due under the mark-to-market regime, you must file Form 8854 for each year up to and including the year in which the full amount of the deferred tax and interest is paid. Similarly, if you make an election to be treated as having eligible deferred compensation you will also need to file annual Forms 8854 to report distributions of eligible deferred compensation items or to certify that no distributions were received. See the Instructions for Form 8854 for further information.

(iii) Form W-8CE, *Notice of Expatriation and Waiver of Treaty Benefits.* If you are a "covered expatriate" and you have an eligible deferred compensation item, an ineligible deferred compensation item, a specified tax deferred account, or an interest in a nongrantor trust, you will need to file Form W-8CE with the payor of the income within 30 days of your expatriation date. You will not need to file a copy of Form W-8CE with the IRS, but you will need to provide the same information on Form 8854, which you must file with the IRS.

3. Are there any exceptions to being treated as a "covered expatriate" even if you're over the net worth or average income tax liability thresholds?

You are treated as a "covered expatriate" if you meet at least one of three separate tests, the Tax Liability Test, the Net Worth Test, or Tax Certification Test. There are two exceptions to the Tax Liability and Net Worth Tests, but these are not exceptions to the Tax Certification Test. If you are an expatriate, even if your average income tax liability is over the threshold amount or your net worth is over the threshold amount, you will not be subject to either of these tests if you satisfy one of the following exceptions:

(i) Dual Citizen at Birth: This exception will apply if all three of the following are true:

1. You became, at birth, a U.S. citizen and a citizen of another country,
2. As of the date of expatriation, you continue to be a citizen of, and are taxed as a resident of, that other country, and
3. You were not a U.S. resident for more than 10 taxable years during the 15-year period ending with the taxable year during which you expatriated.

(ii) Certain Minors: This exception will apply if you expatriated before the age of 18½ and you were not a U.S. resident for more than 10 taxable years before you expatriated.

It is important to note, that even if you qualify for one of these two exceptions, you will still be treated as a "covered expatriate" unless you file Form 8854 to certify that you have complied with all U.S. federal tax obligations for the 5 tax years immediately preceding the year that includes your expatriation date.

4. If I expatriate and I am below the average income tax liability and net worth thresholds, will I still have to file Form 8854?

Yes. If you are an expatriate who does not meet either the Tax Liability Test or the Net Worth Test, you will still be a "covered expatriate" under the Tax Certification Test if you fail to file a Form 8854 certifying that you complied with all U.S. federal tax obligations for the 5 tax years immediately preceding the year that includes your expatriation date.

5. What is the mark-to-market tax regime?

If you are a "covered expatriate," you are subject to section 877A(a) of the Internal Revenue Code which imposes a mark-to-market regime on "covered expatriates." Under the mark-to-market regime, you will generally be deemed to have sold your worldwide assets at fair market value on the day before your expatriation date, while you are still a U.S. person. As a result, you will be subject to federal income tax on the gains resulting from the deemed sale of your appreciated assets. This mark-to-market gain will be reduced, but not below zero, by an exclusion amount that is adjusted annually for inflation. For calendar year 2025, the exclusion amount is $890,000. You will need to allocate the exclusion amount pro-rata among all your assets with respect to which there is built-in gain. See section 3B of Notice 2009-85, Guidance for Expatriates Under Section 877A, for examples of how to allocate the exclusion amount.

6. When is the payment of the mark-to-market tax due?

Although the mark-to-market tax is often referred to as an "exit tax," the tax is not due until the due date for your income tax return for the year in which you expatriate. The mark-to market tax must be reflected on that income tax return.

7. What if I am unable to pay the tax that I owe under the mark-to-market regime?

If eligible, you may be able to enter into a tax deferral agreement with the IRS to make an irrevocable election to defer payment of the tax with respect to any items of property deemed sold under the mark-to-market tax regime. If you make this election, the following rules will apply:

(i) You will be able to make the election on a property-by-property basis.

(ii) You will need to enter into a written tax deferral agreement with the IRS and provide adequate security such as a bond.

(iii) You will need to appoint a U.S. agent.

(iv) You will be required to make an irrevocable waiver of any right under any U.S. treaty that would preclude assessment or collection of the tax.

(v) Interest will be charged for the period the tax is deferred.

(vi) Payment is deferred until the earlier of the following dates:

» the due date, without extensions, of your return for the tax year in which you dispose of the property,

» the due date of the return required for the tax year that includes the date of your death, or

» the date the IRS notifies you that the security you provided for the deferred tax no longer qualifies as adequate security, unless you correct such failure within 30 days.

For more information about the deferral of payment of the mark-to-market tax, see section 3E of Notice 2009-85, and the instructions for Form 8854.

8. Are any assets of a "covered expatriate" excepted from the mark-to-market regime?

Yes. The mark-to-market regime does not apply to the following assets:

(i) Deferred compensation items (including pensions). Examples of deferred compensation items include any interest in U.S. pension and retirement plans (such as a 401(k) plan) or foreign retirement plans, items such as restricted stock, stock-settled stock appreciation rights, stock-settled restricted stock units, cash-settled stock appreciation rights, cash-settled restricted stock units, etc. For more information, see section 5B of Notice 2009-85. There are two types of deferred compensation items – eligible and ineligible.

A deferred compensation item will be treated as an **eligible deferred compensation item** only if (1) the payor is either a U.S. person or a non-U.S. person who elects to be treated as a U.S. person and (2) the "covered expatriate" notifies the payor of his or her status as a "covered expatriate" on Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits, and irrevocably waives any right to claim any withholding reduction on such item under any treaty with the United States. See below for information about Form W-8CE. If you have an "eligible" deferred compensation item, you will not be taxed with respect to the item when you expatriate, but you will be subject to a 30% withholding tax at the time you receive actual distributions.

A deferred **compensation item** that is not an eligible deferred compensation item is an ineligible deferred compensation item. If you have an "ineligible" deferred compensation item, you will be treated as having received a distribution equal to the present value of your accrued benefit in the item on the day before your expatriation date. You will also be required to include the distribution on your tax return for the year in which you expatriate. For more information about deferred compensation items, see section 5 of Notice 2009-85.

(ii) Specified tax deferred accounts (including IRAs). Specified tax deferred accounts include IRAs, qualified tuition plans, Coverdell education savings accounts, health savings accounts, and Archer Medical Savings Accounts. If you have a specified tax deferred account, you will be treated as having received a distribution of the present value of your entire interest in the account on the day before your expatriation date and you will be required to include the distribution on your tax return for the year in which you expatriate. For more information about specified tax deferred accounts, see section 6 of Notice 2009-85.

(iii) Interests in nongrantor trusts. If you have an interest in a nongrantor trust on the day before your expatriation date, you generally will not be subject to any tax with respect to that interest until you receive a distribution from the trust. For this purpose, a nongrantor trust is a trust of which you are not considered the owner under the grantor trust rules. When you receive a distribution from the trust, the trustee will be required to deduct and withhold from the distribution an amount equal to 30% of the "taxable portion" of the distribution. The taxable portion of a

distribution will be the portion of the distribution that would have been includible in your gross income if you had continued to be subject to tax as a U.S. citizen or resident. You will be deemed to have waived any right to claim any reduction under any treaty with the United States in withholding on any distribution from the nongrantor trust unless you elect to be treated as having received the value of your interest in the trust as of the day before your expatriation date. To make the election to be treated as having received the value of your interest in the trust as of the day before your expatriation date, you must first obtain a letter ruling from the IRS as to the value of your interest in the trust, and you must pay tax on such value of your interest on your tax return for the year in which you expatriate. For more information see section 7D of Notice 2009-85, and the instructions for Form 8854.

9. What are the tax consequences if I, as a "covered expatriate," give gifts or bequests to U.S. citizens or U.S. residents?

Gifts and bequests from a "covered expatriate" are taxed under section 2801 of the Internal Revenue Code to the U.S. citizen or U.S. resident at the highest estate tax rate in effect on the date the U.S. citizen or U.S. resident receives the gift or bequest, but only to the extent that the value of the total gifts or bequests received by the U.S. citizen or U.S. resident in that year exceeds the gift tax annual exclusion amount under section 2503(b). Gifts and bequests are not taxed to the U.S. citizen or U.S. resident to the extent they are reported by the "covered expatriate" as subject to U.S. gift or estate tax, and to the extent a charitable or marital gift or estate tax deduction would be allowed if the "covered expatriate" were a U.S. person.

Gifts and bequests from a "covered expatriate" to trusts also have tax consequences. In the case of a domestic trust, the gift or bequest from a "covered expatriate" is taxed to the trust. In the case of a foreign trust, U.S. citizens and U.S. residents are taxed on distributions from any foreign trust that are attributable to gifts and bequests from a "covered expatriate."

The U.S. citizen, U.S. resident, or domestic trust receiving the gift or bequest reports the gift or bequest and pays the section 2801 tax using Form 708, United States Return for Gifts and Bequests Received From Covered Expatriates. For more information see the instructions for Form 708.

10. Where can I go for more information on expatriation?

- **www.irs.gov/Individuals/International-Taxpayers Expatriation-Tax**
- Notice 2009-85, Guidance for Expatriates under Section 877A, for expatriation on or after 6/17/2008, **www.irs.gov/irb/2009-45_IRB/ar10.html**
- Publication 519, U.S. Tax Guide for Aliens
- Form 8854, Initial and Annual Expatriation Statement, and the instructions for Form 8854
- Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits
- Treasury Decision 10027