

Expatriation On A Record Pace This Year

By Robert W. Wood

The number of Americans renouncing U.S. citizenship or terminating permanent residency (a green card) is on a record pace this year. Federal law requires the publication of a list of such persons every calendar quarter. Thus, every three months, the government publishes a list of those who renounced their U.S. citizenship or gave up their green card.

Although some observers criticize the list as a public outing, it remains required. The list is getting longer now, due to a huge uptick in such figures over the last year. Yet the numbers are still comparatively small, particularly when one considers the throngs of immigrants who still want to come to America.

The January-March 2014 list, the most recent available, contains 1,001 names. One name you'll recognize: Tina Turner. The total for one quarter in 2013 was even higher, yet there has still been almost a 50 percent increase from the same quarter last year.

With 2,999 for all of 2013, the number for 2014 may very well top 4,000. But these are just Internal Revenue Service and Treasury Department numbers. And there is a brewing controversy over how these numbers are collected and who does or does not appear on the list.

"Consular expatriations," where people don't file exit tax forms with the IRS, are apparently not counted. The exit tax is computed on an IRS Form 8854, and it is filed independent of any filings with the State Department.

Which forms will or will not land you on the list is unclear. The Treasury Department's published list states explicitly that it merely reflects those persons about whom the secretary of the treasury has data.

Unofficially, many stories suggest that some people are on the list based on particular fact patterns and means of expatriation, and many are not. There does seem to be general agreement that the official published numbers are understated, some say considerably. Statistics are also not available for why people say good-bye.

There is often press coverage and speculation about tax avoidance motives, as there was when Facebook founder Eduardo Saverin expatriated in 2011. Is tax avoidance usually a factor? For many years, U.S. tax law distinguished between persons leaving for tax reasons and for other reasons. But careful and well-advised people were usually able to arrange their affairs so they had many good reasons beyond taxes.

In 2008, the tax law was changed to make tax avoidance reasons irrelevant. And complex or costly taxes are usually only one factor. America's global income tax compliance and disclosure laws can be inconvenient, expensive and some say downright oppressive. Fear about running afoul of those laws is not exactly "tax avoidance," although it is in some sense related.

No group is more severely impacted than U.S. persons living abroad. For those living and working in foreign countries, it is almost a given that they must report and pay tax where they live. But they must also continue to file taxes in the U.S.

What's more, U.S. reporting is based on their worldwide income, even though they are paying taxes in the country where they live. Many claim a foreign tax credit on their U.S. returns, but it generally does not eliminate all double taxes. Today, enforcement fears are palpable.

The annual foreign bank account reports, known as "FBAR forms," carry civil penalties if delinquent and can quickly consume the balance of an account. Criminal penalties are possible too. Plus, FATCA — the Foreign Account Tax Compliance Act — is ramping up worldwide. On an individual level, FATCA requires an annual Form 8938 to be filed with income tax returns for foreign assets meeting a threshold.

However, the major impact of FATCA is on foreign institutions. They are enlisted by FATCA to help Americans remember their tax and reporting obligations. If Americans do not prove compliance with the IRS, the institutions must reveal their names. The IRS offers two ways foreign institutions can comply. One is by direct access to the IRS, just sending in the information.

The other and more popular way is via agreements between the U.S. and foreign governments. With 60 or more such agreements signed and more in the works, the U.S. has guaranteed a slush fund of foreign account data from most nations. Even Canada agreed to turn over data to the U.S.

Leaving America can have a special tax cost. To exit, you generally must prove five years of tax compliance in the U.S. Plus, if you have a net worth greater than \$2 million or have average annual net income tax for the five previous years of \$155,000 or more (that's tax, not income), you pay an exit tax.

The theory of the exit tax is that it is the last chance the U.S. has of taxing you. It is a capital gain tax as if you sold your property when you left. At least there's an exemption of \$668,000.

Citizens aren't the only ones to suffer. Long-term residents giving up a green card can be required to pay the tax too. A decision to expatriate should never be taken lightly. Yet more and more people are talking about making this move.



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