Why Are Americans **Renouncing** Citizenship?

BY ROBERT WOOD

Every three months, the US Treasury Department publishes a list of people who have renounced their US citizenship. Trump or no-Trump, the list of Americans giving up US citizenship keeps growing.

Every three months, the US Treasury Department publishes a list of people who have renounced their US citizenship. The published list also includes long term (8 year or more) green card holders who are relinquishing their permanent US residency. The publication of these names in the Federal Register is a decades-old practice, but the numbers in recent years have increased significantly.

The latest list is for the first three months of 2017. The published list is meant to include all those who expatriated within the specified three-month period. Yet there has long been debate about how complete these numbers are. In fact, it is widely known that those who do not go through the formal IRS process are not on the list. Despite the official list, many leavers are not counted. Both the IRS and FBI track Americans who renounce.

The number of this quarter's list was 1,313. The total for calendar 2016 was 5,411, up 26 percent from 2015, when the annual total was 4,279 published expatriates. The 2015 total was 58 percent more than 2014. These numbers may seem small, particularly compared to the influx of immigrants.

But expatriations have historically been much lower than these figures. There is no single explanation for the increase. No stated reason must be provided, but some renouncers write why they gave up their US citizenship.

At one time, US tax law distinguished

between expatriations that were tax-motivated and those that were not. As you might predict, the intent was to make it more difficult and more expensive for a person expatriating who was doing it to avoid US taxes. But in practice, it was difficult for the IRS to prove intent, and the law was eventually changed.

Now, it is not relevant why someone expatriates. The reasons for renouncing can be family, tax and legal complications. Dual citizenship is not always possible. Expatriating is rarely about politics, unless you call worldwide tax reporting politics. Add to that FATCA, the Foreign Account Tax Compliance Act.

Some renounce because of global tax reporting and FATCA. FATCA was enacted in 2010, and took years to implement. And it is having a bigger impact than these expat numbers reveal. FATCA has been painstakingly implemented worldwide by President Obama's Treasury Department. It now spans the globe with an unparalleled network of reporting.

America requires foreign banks and governments to hand over secret bank data about depositors. Non-US banks and financial institutions around the world must reveal American account details or risk big penalties. America's global income tax compliance and disclosure laws can be a burden, especially for US persons living abroad.

Like pariahs, they may be shunned because of their American status by banks abroad. Many foreign banks are sufficiently worried about their own positions viz. the IRS and the US government that they do not want American account holders. Americans living and working in foreign countries must generally report and pay tax where they live.

But they must also continue to file taxes in the US, where reporting is based on their worldwide income. Many claim a foreign tax credit on their US tax returns. In theory, this means they will be credited for US tax purposes with the taxes they are paying to the country where they live.

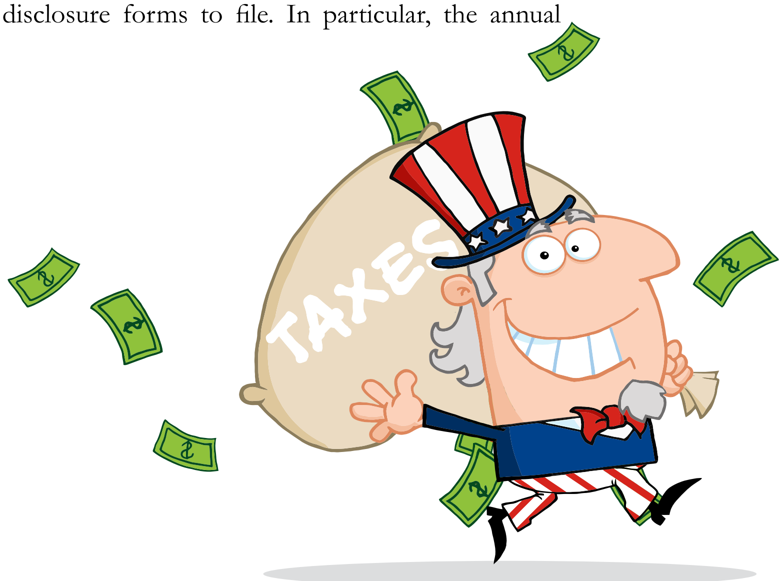
Yet the US foreign tax credit often does not entirely eliminate double taxes. There have been famous examples, including Boris Johnson, now Britain's Foreign Minister and the former Mayor of London. Johnson was born in the US and moved to England as a young boy. His American birth made him a dual citizen, and as an adult, that gave him continuing obligations to the IRS.

He finally renounced his US citizenship, but not before a big tax problem with the IRS over the sale of his London home. Under UK income tax law, there was no tax on the sale of his first home. But under US tax law, it was fully taxable even though the sale was in the UK and Johnson resided in the UK. The IRS wanted its cut of the sale proceeds. After much public discussion, Johnson evidently resolved the issues with the IRS in the only way he could: he paid.

NON-US BANKS AND FINANCIAL INSTITUTIONS AROUND THE WORLD MUST REVEAL AMERICAN ACCOUNT DETAILS OR RISK BIG PENALTIES. AMERICA'S GLOBAL INCOME TAX COMPLIANCE AND DISCLOSURE LAWS CAN BE A BURDEN, ESPECIALLY FOR AMERICANS LIVING ABROAD.

There are many examples of a lack of symmetry with tax systems that make for big tax problems. In Canada, lottery winnings are tax-exempt. In the US, they are fully taxable. So, a dual citizen who wins the Canadian lottery may still have to fork over up to 39.6 percent to the IRS. A foreign tax credit will not help.

The tax reasons for expatriations are not even all about taxes. Quite apart from an American's duty to file US tax returns with the IRS, there are additional disclosure forms to file. In particular, the annual



There can be taxes on exit too. From a tax viewpoint, leaving America can be costly. To exit, you generally must prove 5 years of IRS tax.

foreign bank account reports commonly called FBARs carry big civil and even criminal penalties.

Even civil penalties can quickly consume the balance of an account, so enforcement fears are palpable. FATCA, too, has ramped up worldwide. FATCA requires an annual Form 8938 filing if one's foreign assets meet a threshold.

All of these problems might suggest that giving up a US passport or green card may make financial sense, even though it can be a big and consequential step in many ways. Yet there can be taxes on exit too. From a tax viewpoint, leaving America can be costly. To exit, you generally must prove 5 years of IRS tax compliance.

And getting into IRS compliance – to exit or for any other reason – can be expensive and worrisome. Again, recall Britain's Foreign Minister Boris Johnson. For many more ordinary taxpayers in this circumstance, it makes it all the more frustrating if the *reason* you are getting into compliance is so you can renounce! Kafka might well appreciate this irony, but many people do not.

The exit when you make it can be expensive. If you have a net worth greater than $2 million, or have average annual net income tax for the 5 previous years of $162,000 or more, you can pay an exit tax. It is a capital gain tax, calculated as if you sold your property when you left. A long-term resident giving up a Green Card can be required to pay the exit tax too.

Sometimes, planning and valuations can reduce or eliminate the tax, but taxed or not, many are headed for the exits. Fees may add to the annoyance. America charges $2,350 to hand in your passport, a fee that is more than twenty times the average of other high-income countries. The US hiked the fee to renounce by 422 percent.

Previously, there was a $450 fee to *renounce*, and no fee to *relinquish*. Now, there is a $2,350 fee either way. The State Department said raising the fee was about demand and paperwork, but the number of American expatriations still increased after the fees went up. With all of these costs and taxes, some leavers figure that they will not file anything with the IRS.

As a technical matter, it is possible to hand in a passport or green card and even get the appropriate paperwork from the US State Department proving that you have left. But if you do not settle your affairs with the IRS too, the IRS statute of limitations (usually three or six years depending on the taxes at stake) will never even *commence* to run.

There are a few famous examples of this too, where the IRS has succeeded in claiming many years' worth of income taxes. It can be a sobering reminder that the memory of the IRS can be long, as can its global reach.

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