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Tax Management Memorandum™

Form 8854 Expatriation Statements Now in the Crosshairs

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In our long careers advising individuals considering expatriation from the U.S., we cannot remember a more fraught time for those contemplating this momentous decision. Whether a U.S. individual is considering renunciation of his U.S. passport or abandonment of his U.S. ''permanent legal resident'' (i.e., green card holder or PLR) status held for eight or more tax years, understanding the process and especially the requirements of the Form 8854, *Initial and Annual Expatriation Statement*, is essential.

Severing U.S. tax status (a/k/a ''Expatriating'') has increased significantly now that the pandemic is ebbing. More U.S. consulates and missions are scheduling U.S. citizenship renunciation appointments and more green card holders are voluntarily relinquishing their resident alien status. Why are so many individuals considering severing their U.S. taxpayer status? We live in chaotic times, ranging from the pandemic to increasing political and social polarization to significant proposed tax increases. As a result, many U.S. taxpayers are increasingly considering the option of moving a portion of their financial portfolios and even themselves and their families outside of the United States. Permanently severing their U.S. taxpayer status is often part of this discussion.

The increase in expatriation also has caught the attention of the Treasury Department Inspector General for Tax Administration (TIGTA). TIGTA has been highly critical of the IRS for insufficient enforcement results in the expatriation area, and recently reported to Congress that the IRS should have better controls in place to properly enforce U.S. tax and reporting provisions relating to expatriates.

WHAT ARE THE CONSEQUENCES OF TERMINATING U.S. CITIZENSHIP OR GREEN CARD STATUS?

A pre-requisite to a U.S. citizen expatriating is that the individual must have a second passport. Therefore, prior to renunciation of a U.S. passport a U.S. citizen must acquire or retain another citizenship. This can be done in a variety of different ways including (1) by birth outside the United States, (2) through lineage including Israeli Law of Return, (3) through naturalization, or (4) through investment. A green card holder by definition does not have U.S. citizenship.

Aside from the tax considerations from expatriation (discussed below), there are a number of nontax considerations. Former U.S. citizens and green card holders often wish to travel to the United States in the future for medical reasons, or to care for parents, or to spend time near adult children or pursue career goals. Therefore, they need to consider the non-American passport they will be using for that future entry. Canadians and Bermudians do not require visas or ESTA registration to seek entry into the United States. Another group of nationalities do need to register with ESTA but do not need to seek a visa as their home country of residency is included in the U.S. visa

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This article may be cited as Melvin A. Warshaw, Esq. and David Lesperance, *Form 8854 Expatriation Statements Now in the Crosshairs*, 63 Tax Mgmt. Memo. No. 24 (Nov. 21, 2022).

waiver program. For the remaining countries, their nationals need to obtain both a visa and register with ESTA. As a result of Covid-19, visitor visa appointments can have a backlog of over a year at some U.S. consulates and missions. The timing required to satisfy these immigration requirements must be included in an overall expatriation plan.

Another critical issue is if the person has a prior criminal record in the U.S. or elsewhere. They need to have a professional review their case to make sure they are not ''excludable'' from the United States in the future.

Many who are unfamiliar with the rules surrounding expatriation often point to the 1996 Reed Amendment as a hurdle. This was a law that gave the U.S. Attorney General the power to bar an expatriate if the Attorney General determined that the renunciation was motivated by tax avoidance purposes. In the ensuing 26 years, the responsibility for border control was moved from the responsibilities of the Justice Department and into the new Homeland Security Department. More importantly no enabling regulations have been passed to give life to this legislation. There are only two acknowledged attempts to bar an expatriate under the Reed Amendment. Both of these were in the 1990s and one of the authors was involved in one of the cases. The U.S. government dropped their attempted entry block on the basis that it was unenforceable without implementing regulations.

Another consideration for those who are considering expatriation is the reality that if they are found to be ''Covered Expatriates'', they will find their name eventually published in the Federal Register. Although their name may be one of hundreds or even thousands in a given quarterly publication, it will still be there for in the public domain for posterity.

WHO IS A COVERED EXPATRIATE?

A covered expatriate is an individual who meets any one of the three following tests:

- **The Tax Liability Test**. An expatriate who has an average annual federal tax liability for the five preceding taxable years ending before the expatriation date that *exceeds* a specified amount, adjusted annually for inflation. For 2022, the amount is $178,000.[1]
- **The Net Worth Test**. An expatriate who has a net worth of $2 million or more, but this number is not adjusted for inflation.[2]
- **The Certification Test.** An expatriate who fails to certify, under penalty of perjury, compliance with *all* U.S. federal tax obligations for the five taxable years preceding the taxable year that includes the expatriation date[3]. This certification includes obligations to file income tax returns, employment tax, gift tax, and information returns. This certification is made on IRS Form 8854 and must be filed by the due date of the taxpayer's federal income tax return for the taxable year that includes the day before the expatriation.

An individual who does not meet either the Tax Liability Test or the Net Worth Test nonetheless is a Covered Expatriate if the individual cannot satisfy the Certification Test. Compliance with the so-called FBAR requirement arise outside of the U.S. tax code (in U.S.C. Title 31) and are not part of the Certification Test. If a U.S. citizen or PLR is not compliant with his or her other U.S. federal income tax obligations(or FBAR filing obligations) he or she may be eligible to enter into various voluntary IRS disclosure programs to remediate such noncompliance.

ARE THERE ANY EXCEPTIONS TO COVERED EXPATRIATE STATUS?

- **Dual-Citizen Exception**. If the expatriate became a U.S. citizen and a citizen of a foreign country at birth (which excludes all naturalized U.S. citizens) and, as of the expatriation date, the individual continues to be a citizen and is taxed as a resident of the foreign country, and the individual has been a U.S. resident for not more than 10 tax years during the 15-year period ending with the tax during which the expatriation date occurs, such expatriate is not classified as a Covered Expatriate.

- **Minors Exception**. If the expatriate relinquishes U.S. citizenship before age 18 1/2 and has been a U.S. resident for not more than 10 tax years before the date of relinquishment, such expatriate is not classified as a Covered Expatriate.

There are no exceptions for Covered Expatriates status for ''long-term'' lawful permanent residents PLRs. However, unlike U.S. citizens who renounce citizenship, only ''long-term'' green card holders are subject to the Covered Expatriate rules. A ''long-term'' resident under the tax code is a person who has been a ''lawful permanent resident'' (PLR) of the U.S. and, as of the time the person ceases to be a PLR, he or she has been such a PLR in at least eight of the fifteen tax years ending with the year in which the ex-

[1] §877(a)(2)(A).

[2] §877(a)(2)(B).

[3] §877(a)(2)(C).

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patriating event occurs (which is sometimes referred to as the ''8 of 15 test'').[4]

For purposes of the 8 of 15 test, a year of lawful permanent residence does not include any year in which the person is treated as a resident of another country pursuant to an income tax treaty with that other country. It is also necessary that the person has not waived the benefits of the treaty that apply to residents of that country as set out in§877(e)(2). Therefore, if the green card holder has taken up residence in a treaty country in which he has a permanent home and closer connections to such country than the U.S., and he files his U.S. tax return as a non-resident alien (e.g., by filing Form 1040NR) and electing to be a treaty tie-breaker alien (TTBA) for such year by attaching a Form 8833 to such tax return, then that year and other like years are not counted as years of permanent residence in the U.S. under the 8 of 15 test. The U.S. has income tax treaties with over sixty countries (but none with countries in Latin America or with most Mideast countries except Israel).

ARE THERE ANY RELIEF PROVISION FOR CERTAIN FORMER CITIZENS?

In 2019, the IRS announced an amnesty program (the Relief Procedures for Certain Form Citizens) aimed specifically at delinquent U.S. citizens who relinquished their U.S. citizenship who wish to come into U.S. tax compliance and avoid being subject to the U.S. exit tax.

As a practical matter, due to the various requirements of the program it may be of limited usefulness to many delinquent former U.S. citizens. Here are all the requirements which must be met to be eligible to enter the program: (1) the individual relinquished U.S. citizenship after March 18, 2010; (2) the individual has no filing history as a U.S. citizen or resident (in the FAQs the IRS notes that if the individual mistakenly filed in the past as a non-resident, by filing Form 1040NR, this does not make the individual ineligible for the program); (3) the individual does not exceed the two thresholds that trigger the U.S. exit tax, the Tax Liability Test or the Net Worth Test; (4) the individual has an aggregate tax liability of $25,000 or less for the five tax years preceding renunciation and in the year of renunciation; (5) the individual submits all required federal tax returns for the six tax years at issue, including all information returns; (6) the individual submits a copy of the Certificate of Loss of Nationality (CLN), Forms DS-4083, or similar legal document cancelling a naturalized citizens certificate of naturalization; (7) the individual's past noncompliance failures were due to non-willful conduct.

The IRS notes that filing of late FBARs is actually not one of the eligibility requirements for the program. Rather, if an individual has an FBAR filing obligation, the individual should file such late FBAR because if eligible to participate in the program and the individual files the late FBARs before submission under the amnesty program, the IRS will not assert FBAR penalties.

WHAT ARE THE FOUR DIFFERENT EXIT TAX VARIETIES?

Mark-to-Market Tax

Most individuals considering expatriation are familiar with the ''mark-to-market'' tax on the *deemed* gain on the worldwide assets of the individual, with each asset ''marked to the market,'' as if the asset had been sold by the taxpayer on the day before expatriation date at fair market value.[5] For former ''long-term'' residents (i.e., green card holders), the gain or loss on assets which the individual held on becoming a U.S. resident is calculated against a basis equal to at least the fair market value of the asset on the date of residency.

The expatriation of a U.S. citizen or cessation of residency of an individual could cause a trust to become a ''foreign trust'' as defined in §7701(a)(31). This would occur if the individual were the donee of a power of appointment over the trust estate, because the donee of the power no longer would be a U.S. person (as defined in §7701(a)(30)) upon expatriation. At that point, a non-U.S. person would hold a substantial decision-making authority over the trust, thus causing the trust to convert from a U.S. trust and become a foreign trust. Under §684, when a trust converts from a U.S. trust to a foreign trust, the trust becomes subject to the special exit tax on trusts on its deemed mark-to-market gain on its assets. To the extent the exit tax on trusts under §684 applies, the exit tax under §877A applicable to individuals would not apply.

The amount of gain under the mark-to-market rules applicable to individuals is reduced by a one-time special exclusion amount of $767,000, adjusted annually for inflation. This special exclusion provision does not apply to the exit tax on trusts under §684).

Tax on Specified Tax Deferred Accounts

Under this variety of the exit tax, the taxpayer is treated as receiving a distribution of his entire interest

[4] §877(e). All section references herein are to the Internal Revenue Code of 1986, as amended (the Code), or the Treasury regulations promulgated thereunder, unless otherwise indicated.

[5] §877A(a).

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in the "specified tax deferred account" on the day before the expatriation date. Income tax will be due at ordinary income rates on the entire taxable amount.

Specified tax deferred account includes IRAs and certain other specified types of accounts. There is no exemption available and no election to defer payment of the tax.

Deferred Compensation Items

Deferred compensation items include traditional qualified pension, profit-sharing, or qualified annuity plan, and also include a foreign retirement plan (excluding the extent to which the services were performed outside the United States while the individual was not a U.S. citizen or resident) as well as items of deferred compensation and property which the individual is entitled to receive in connection with the performance of services under §83.

There are two categories of deferred compensation items: "eligible" and "other." Classification as "eligible" allows the tax to be deferred and for the tax to be capped at 30%. The payor must be a U.S. person. The Covered Expatriate must notify the payor of his status and make an irrevocable waiver of any treaty right to claim a reduction in withholding. This notice must be given to the U.S. payor within 30 days of expatriation. IRS is very strict and prohibits late-filed notice to a custodian. Notice is typically given by the expatriate providing the U.S. payor with an IRS Form W-8CE. If timely notice is given, the exit tax is postponed until normal retirement age when the custodian would be obligated to withhold 30% of each plan distribution to the Covered Expatriate. However, the Covered Expatriate must file a Form 8854 for each year that the U.S. custodian withholds tax on plan distributions received by such Covered Expatriate during retirement.

Interests in NonGrantor Trusts

The final variety of exit tax is imposed on distributions from a trust which is a non grantor trust as to the Covered Expatriate and includes the Covered Expatriate as a beneficiary on the day before expatriation. To the extent of the "taxable portion" of the trust distribution, the expatriate pays U.S. tax as a typical non-resident, non-citizen of the U.S. and the trustee is obligated to withhold 30% of such taxable portion.

WHAT IS THE U.S. INHERITANCE TAX IMPOSED ON U.S. HEIRS OF COVERED EXPATRIATES?

Since 2008, the United States imposes an inheritance tax on the receipt by a U.S. citizen or resident of inter vivos gifts or testamentary bequests received directly or indirectly by U.S. heirs of a Covered Expatriate, or a trust established by a Covered Expatriate, in excess of the gift tax annual exclusion amount for the year. The tax rate is currently 40%.[6]

This is an especially onerous tax because the recipient is not allowed to reduce his inheritance tax by the lifetime gift/estate tax exemption amount on receiving such gifts or bequests. The inheritance tax can be imposed on property subsequently acquired by the covered expatriate long after he or she left the United States and which property the expatriate may have self-created or inherited following departure from the United States. The inheritance tax is imposed on receipt of property located anywhere in the world. The U.S. recipient has the burden of proof to convince the IRS that the donor was not a covered expatriate.

WHAT ARE SOME OF COMMON PRE-EXPATRIATION PLANNING IDEAS?

The authors have written extensively on strategies to reduce net worth subject to the exit tax and the early funding of irrevocable trusts in certain U.S states that may avoid inheritance tax for U.S. beneficiaries before the settlor is classified as a covered expatriate. Consideration of a "special power of appointment" trust in which the expatriating settlor is not designated an initial beneficiary may be appropriate. Utilization of a U.S. citizen or domiciliary's lifetime gift/estate tax exemption amount ($12.06 million for 2022 and $12.92 million for 2023) is a cornerstone of effective pre-expatriation planning. Consideration of leveraged gift techniques involving transfers of fractional interests in private investment entities is also appropriate.

Careful thought should also be given to the timing of gifts close to expatriation. Gifts made in the year of expatriation may result in payment of gift tax, according to the IRS. More problematic in our view is that U.S. tax preparers not intimately familiar with Form 8854 are prone to overlook the IRS instruction that the taxpayer provide a separate statement of all material asset changes in the five years prior to the year of expatriation. In the authors' view, the scope of material changes includes not only reporting of all gifts that presumably were properly reported on a gift tax return, but also surrender or lapsing of powers of appointment over existing trust assets and other transfers that are brought within the gross estate tax concept as well as sales or exchanges for consideration. The IRS is clearly focused on all material changes in

[6] §2801.

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an expatriate's balance sheet in the run-up to expatriation to ensure that all transfers during this period were arm's length transactions at rational valuations. The authors remain wary of any material mischaracterizations, inaccuracies and omissions during this pre-expatriation period that are not adequately disclosed on the Form 8854, because such lack of disclosure could result in failure to satisfy the certification test statement within the Form 8854. Regardless of the expatriate's wealth or income, any inaccuracy in the disclosure sheet attached to the Form 8854 could result in classification as a covered expatriate for failing the certification test.

WHAT ARE THE CONSEQUENCES OF FILING A FORM 8854 LATE?

All expatriates (even those not classified as Covered Expatriates) are required to file Form 8854. Section 6039G requires expatriates to file information returns. Congress gave the IRS the discretion for setting filing deadlines. Since Congress did not provide explicit instructions for the information return required by §6039G, the IRS has the authority to set the filing deadline.

The instructions to Form 8854 set out that the deadline for its filing with the IRS: the same deadlines that apply for filing an income tax return. If a taxpayer filed for an extension, the taxpayer is entitled to an extension to file the Form 8854.

Notice 2009-85, §8.A would appear to lend support that only "covered expatriates" must file Form 8854. The enabling legislation for the 2008 tax act establishing the current exit tax rules under §877A indicate that the Treasury and IRS intend to issue regulations that will require covered expatriates who are liable for tax under §877A to report certain information in connection with their expatriation. Notice 2009-85 does not discuss reporting obligations of non-covered expatriates. However, one cannot assume that Notice 2009-85 intends to exempt non-covered expatriates from filing Form 8854. Presumably, the IRS's authority to design forms and collect data needed to enforce federal tax laws likely justifies IRS imposing a requirement that noncovered expatriates also file a Form 8854. How would the IRS know if an individual is or is not a Covered Expatriate unless the expatriate files a Form 8854 for the year of expatriation? Sufficient information needs to be provided to the IRS on a form so they can make a determination of proper classification of an expatriate based on the legal thresholds prescribed by Congress.

If §6039G only applies to Covered Expatriates, then the $10,000 penalty for not filing a Form 8854 or filing late applies unless the taxpayer can demonstrate that such failure is due to reasonable cause and not willful neglect. If §6039G only applies to covered expatriates it is unclear what penalty can apply to a non-covered expatriate who does not file a Form 8854. If Form 8854 is not specifically required of non-covered expatriates, perhaps noncovered expatriates are subject to the IRS's generic authority to require returns to be filed and a failure to comply can result in a 5% per month penalty (up to 25%). However, Form 8854 does not carry with it any tax liability. The tax liability is found on Forms 1040 and 1040NR.

Assume a noncovered expatriate inadvertently fails to file Form 8854 on time. Does this mean that there is automatic conversion of a non-covered expatriate status to covered expatriate status? Probably not. Section 877A(g)(1) is quite clear that the only way an expatriate becomes a covered expatriate is by satisfying one of the three requirements specified in the statute. If Congress wanted a late-filed Form 8854 to create a covered expatriate, it would have said so.

Notice 2009-85 provides that an individual is a covered expatriate merely if the individual fails to satisfy the certification test. According to Notice 2009-85 this certification must be made on Form 8854 and must be filed by the due date of the taxpayer's federal income tax return for the taxable year which includes the day before the expatriation date. While Notice 2009-85 appears to hard-wire a *timely certification*, §877(a)(2)(C) merely makes the certification test a pre-requisite for avoiding classification as a covered expatriate.

HOW TO ADVISE AN EXPATRIATE WHO HAS NOT FILED A FORM 8854 AND WHO MAY HAVE BEEN CLASSIFIED AS A COVERED EXPATRIATE SINCE HIS OR HER EXPATRIATION DATE?

Remember, even if an expatriate had a net worth below $2 million and average income tax liability below the annual threshold, such individual is a covered expatriate if he or she has never certified on Form 8854 that they complied with all U.S. tax obligations for the prior five-year period. Thus, the expatriate remains subject to the exit tax rules of §877A in respect to all worldwide assets as of the expatriation date.[8] Further, the expatriate's U.S. heirs would remain subject to §2801.

Presumably, the expatriate who fails to timely file a Form 8854 has likely lost the opportunity to elect to defer the tax on eligible assets (primarily personal and business assets, and certain deferred compensation).

[8] The exit tax is technically actually calculated as of the day immediately prior to the expatriation date. *See* §877A(a)).

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As a practical matter, the authors have never been involved with taxpayers who have chosen to elect to defer the mark-to-market tax on personal and business assets, but they are aware of many uninformed expatriates who did not know about the tight notice requirements to elect to defer recognition of certain eligible deferred compensation (excluding IRAs). Since filing additional Forms 8854 is required only for years when Covered Expatriate receives a distribution from an eligible deferred compensation item subject to the 30% withholding rules, such Covered Expatriate should not be at risk of ongoing annual $10,000 penalties for years in which a Form 8854 is not required to be filed.

Most important, the pre- §877A law would not apply despite the expatriate's delinquent status under §877A. The result is that the rule of §7701(n), which provides that an expatriate who did not file Form 8854 under pre- §877A law would continue to be classified as a U.S. citizen or resident for U.S. federal income tax purposes until the form was eventually filed, was repealed for all individuals whose expatriation date was after June 6, 2008.

It would seem likely that the additional tax under §877A cannot be imposed for the year of expatriation, assuming no civil or criminal fraud. Although §6501(c)(8) keeps the statute of limitations open in the case of failure to file certain information returns, Form 8854 is not covered by that rule.[9] Thus, the failure to file Form 8854 for the year of expatriation in itself should not have the effect of keeping open the statute of limitations.

If the expatriate owns personal or investment assets that are sold at some point after the expatriation date, the expatriate's non-resident alien status for U.S. income tax purposes will result in an exemption from U.S. tax on the gain.

As noted, if in a later year the expatriate decides to comply with the current §877A rules for the year of expatriation, it is assumed that the $10,000 penalty for not filing Form 8854 can be avoided if the individual can prove reasonable cause and a lack of willful neglect. We presume that the individual could be subject to exit tax under §877A plus interest in respect to all relevant property and it would be too late to elect to defer the tax on any assets, including eligible deferred compensation items.

In our view, a major reason for attempting to comply with §877A in a later year would be to avoid the draconian impact of the §2801 inheritance tax on a delinquent expatriate's U.S. citizen and resident heirs to whom the recalcitrant expatriate might want to make a gift or bequest in the post-expatriation years. Our view is that the potential long-range effect of the §2801 tax must always be considered in these delinquent Form 8854 filing situations. We are both aware of expatriates who had a net worth below $2 million on the expatriation date, however the failure to file the Form 8854 would make them a covered expatriate due to the lack of having complied with Certification Test on the Form 8854. The result is that any later gift or bequest to U.S. persons would be subject to §2801 inheritance tax. Since the §2801 inheritance tax is not limited to the expatriate's net worth on the expatriation date, an expatriate who has a nominal net worth on the expatriation date but fails the Certification Test and then later becomes very wealthy, perhaps as a business entrepreneur in a foreign country or as a result of a large inheritance from any source, and the U.S. recipients of any gifts or bequests received from a Covered Expatriate in excess of the annual gift tax exclusion amount will subject such gift or bequest to the U.S. inheritance tax of currently 40%.

IN THE PAST, HOW HAS THE IRS DONE IN ENFORCING COMPLIANCE WITH FORM 8854?

In their September 28, 2020, report, the TIGTA was quite critical of the IRS. The TIGTA claimed that insufficient enforcement actions had been taken by IRS involving expatriation, exit tax and filings of Form 8854.

The TIGTA reported that for the 10-year period between 2008 to 2018 over 40% of expatriates who had received Certificates of Loss of Nationality failed to file a Form 8854. Technically, filing a Form 8854 merely satisfies an expatriate's information tax filing obligation. Expatriates must still compute any tax due (including their exit tax) and file all applicable federal tax returns.

Specifically, the TIGTA report found that the IRS lacks controls to ensure compliance by expatriates, many expatriates are not filing Form 8854 with the IRS Philadelphia campus and that the expatriate database is insufficient to enforce the exit tax. Of greatest concern was the finding that high net worth expatriates appeared not to be paying the exit tax.

The IRS Large Business & International Division (LBI) announced a new compliance campaign on July 19, 2020, to focus on U.S. citizens and long-term residents who expatriated after the effective date of the HEART Act expatriation effective date of June 17, 2008, and who have not met their exit tax or reporting requirements.

[9] Thomas S. Bissell, *Old Expatriates Who Didn't Comply with the Code – What is Their Liability Today? – Part IV*, International Journal of Taxation (June 14, 2019).

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WHAT HAS CHANGED TO MAKE EXPATRIATES REALIZE THEY NEED TO TAKE THEIR FORM 8854 FILING OBLIGATIONS AND EXIT TAX PAYMENTS SERIOUSLY?

Here we offer two different pieces of evidence that the IRS and Department of Justice take filing an honest Form 8854 very seriously.

First, on October 1, 2021, Oleg Tinkov entered a plea to one count of filing a false tax return. According to the plea agreement, Tinkov was born in Russia and became a naturalized U.S. citizen in 1996. In 2005 Tinkov founded a Russian-based branchless bank (Tinkoff Credit Services, TCS) that provided its customers with online banking and financial services. Through a foreign entity Tinkov held the majority of the shares in the Russian bank company.

In October 2013, TCS held an initial public offering (IPO) on the London Stock Exchange and became a multi-billion dollar, publicly-traded company. As part of going public, Tinkov sold a small portion of his majority stake for more than $192 million, and his assets following the IPO had a fair market value of more than $1.1 billion. Three days after the successful IPO, Tinkov walked into the U.S. Embassy in Moscow to turn in his U.S. passport.

According to his plea agreement, Tinkov was told of his Form 8854 filing and U.S. exit tax payment obligations by both the U.S. Embassy personnel in Moscow and his U.S.-based accountant. When asked by his accountant if his net worth was more than $2 million for purposes of completing the Form 8854 accurately, Tinkov lied and told the accountant that he did not own personal assets in excess of $2 million. When his accountant later followed up and inquired if his net worth was under $2 million, rather than answer the question honestly, Tinkov filled out the Form 8854 himself falsely reporting that his personal net worth was only $300,000.

For the year of expatriation, Tinkov filed a Form 1040 that falsely reported he had only $205,000 of income. Critically, Tinkov failed to report the deemed sale of his worldwide appreciated assets that he beneficially owned worth more than $1.1 billion and he failed to pay the applicable taxes, as required by the U.S. exit tax law. As part of his plea agreement, Tinkov paid over $248 million in exit tax plus substantial penalties together with tax liabilities for other years. Prior to sentencing, Tinkov paid a total of almost $509 million which is more than twice what Tinkov had sought to pay on expatriating from the U.S., including a nearly $100 million fraud penalty.

Second, following passage earlier this year of the Inflation Reduction Act of 2022, Congress will give the IRS nearly $80 billion over the next decade in an effort to put the agency back on the path to effective and efficient tax administration. At a recent American Bar Association meeting, Audrey Morris from the IRS Office of Chief Counsel publicly stated that tax compliance among foreign nationals living and working in the U.S. will be a priority and focus of the IRS' new funding.[10]

Advisors to those U.S. citizens and green card holders who are contemplating a departure from the U.S. tax system need to be aware of two major realities. First the rules are complex and far-reaching. The more complicated and multi-jurisdictional the expatriate's financial affairs, the more complex pre-expatriation planning becomes. Start early to plan for renunciation of U.S. citizenship, or if a green card holder (PLR) for abandonment of such U. S. immigration status. their fire escape plan. Second, what prior expatriates may have been able to get away with in years past is no longer possible. The IRS is focused, resourced and has the taste of blood from the Tinkov case. Assuming an IRS audit of a client's final U.S. tax return (including Form 8854) filed for the year of expatriation is an increasing good working premise.

[10] https://onpractice.law.com/4058728/irs-funding-focus-tax-compliance-us-citizens-residents?slreturn=2022-10-31T14:36:06+00:00.

ISSN 0148-8295