



MOODYS TAX™

Renunciation

HIDDEN US TAX RISKS FOR FINANCIAL ADVISORS:

When A Client May be a US Citizen and Is it Time to Renounce?

Alexander Marino JD, LL.M (US TAX)

Director, US Tax Law | Leader, US Tax Practice Group
Moody's Tax Law

© Moody's Tax Law, 2021. Registration #1161703 with the Canadian Intellectual Property Office

Moody's Tax Law is a division of Moody's Private Client Law LLP



Alexander Marino JD, LLM (U.S. TAX)

Director, U.S. Tax Law | Leader of U.S. Tax Practice Group

Alexander Marino has years of experience in cross border tax law, estate planning, corporate tax, and U.S. expatriation law. In addition to leading the U.S. Tax Practice Group at Moodys Tax Law, Alexander also heads the U.S. renunciation practice, annually representing hundreds of clients worldwide in properly giving up their U.S. citizenship or terminating their U.S. green card status. He regularly speaks on the topic of U.S. renunciation and expatriation in Canada and around the world as one of the foremost experts in this area of law.

Alexander is a member of the New Jersey State Bar, Pennsylvania State Bar, American Bar Association Tax Section and the Society of Trust and Estate Practitioners.

After graduating from the University of Pittsburgh with a B.S. B.A. in Finance and Marketing in 2006, Alexander received his JD from Duquesne University School of Law in 2010 and an LLM in taxation from the University of Florida Levin College of Law in 2011.

Disclaimer

- These slides are designed as shorthand aids to an oral or panel presentation and are not to be used or cited as precedent and should not be relied upon as standalone legal advice.
- These slides and this presentation give a high-level overview of just a few of the many complex issues involved when renouncing one's U.S. citizenship. Proper legal advice should always be obtained prior to taking any affirmative action.

Overview: Hidden U.S. Tax Risks

Is Now the Time to Renounce U.S. Citizenship?

Goals of Presentation

1. Tax obligations of U.S. citizens & Green Card holders living outside the United States
2. How to identify your U.S. citizen or Green Card holding clients
3. Common pitfalls and mistakes made by advisors with U.S. citizen or Green Card holding clients
4. Renouncing the U.S. citizenship or Green Card to fix the U.S. tax problem in life and in death
5. Consequences of renouncing or not
 - Tax
 - Exit tax
 - Estate tax
 - Non-tax
 - Name and shame
 - Restrictions on entry by non-U.S. citizens
 - Reed Amendment can prevent entry
6. If so inclined, now may be the time to renounce
 - Reed-Schumer may prevent entry if exit tax applies
 - Change to gifting limit may make difficult to avoid exit tax

Presentation Overview

- Is my client a U.S. citizen?
- Has my client already lost their U.S. citizenship?
- What are the common U.S. tax mistakes resulting in liability exposure to the unknowing advisor?
- What are the U.S. tax reporting obligations of U.S. citizens and Green Card holders living abroad, and how are they enforced?
 - FATCA
- Is renouncing U.S. citizenship right for the client?
- Why the dramatic increase in the number of people renouncing U.S. citizenship?
- Green Card Terminations
- Tax issues: avoiding the U.S. exit tax under Internal Revenue Code § 877A
- Strategies to avoid the U.S. exit tax
- Immigration issues:
 - Reed Amendment
 - Proposed Reed-Schumer Amendments. Is now the best time to get out?
- New IRS Relief Procedure for those willing to renounce (incentive to renounce)
- Relationship with the United States after loss of U.S. citizenship (again, clients can keep Social Security entitlement after renouncing correctly!)

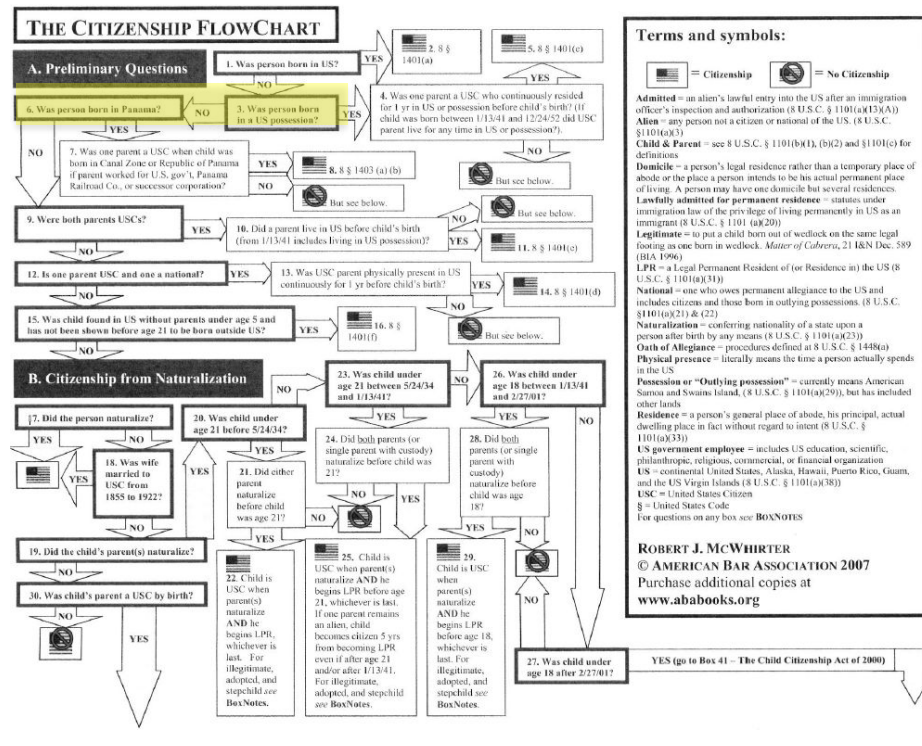
Is My Client a U.S. Citizen?

HIDDEN US TAX RISKS FOR FINANCIAL ADVISORS

When A Client May be a US Citizen and Is it Time to Renounce?

8

Is My Client a U.S. Citizen?



Is My Client a U.S. Citizen? Cont'd

1. Born in the United States = U.S. citizen
2. Born outside the United States to two U.S. citizens = U.S. citizen
3. Born outside the United States to **one** U.S. citizen = U.S. citizen if:
 - a) The child is born on or after November 14, 1986, and:
 - i. the U.S. citizen parent resided in the United States for five years,
 - ii. with two of those five years coming after that U.S. citizen parent's 14th birthday.

OR

- b) The child is born before November 14, 1986, and:
 - i. the U.S. citizen parent resided in the United States for ten years,
 - ii. with five of those ten years coming after that U.S. citizen parent's 14th birthday.

Does not matter if the child in question was never issued a U.S. passport, U.S. SSN, U.S. Certificate of Birth Abroad, or U.S. Certificate of Citizenship during life. U.S. citizenship via birth is not optional.

Worldwide Taxation

- U.S. citizens and residents are taxed on their worldwide income, regardless of where it is earned.
 - A U.S. resident is an individual who has a green card or who meets the substantial presence test (i.e., days in the United States)
 - U.S. reporting obligations
 - It is not just the taxes, it is the penalties for failure to file or late filing.
 - Few Aussies actually owe U.S. tax. More Kiwi's end up owing U.S. tax due to lack of capital gains tax issues. Similar with residents of Singapore and Hong Kong.
 - Typically a \$10,000 USD minimum penalty for failure to file certain information returns (e.g., FBAR, Form 8938, etc.).
- U.S. citizens and residents are also subject to the U.S. estate tax when they die, regardless of their place of death.
 - \$5.49M USD exclusion for 2017 □ Raised to \$15M USD for 2026

Has My Client Already Lost U.S. Citizenship?

No, almost certainly not!

Has My Client Already Lost U.S. Citizenship?

- Expatriating Acts must occur concurrently with intent to renounce citizenship
 - Obtaining naturalization in a foreign state
 - Taking an oath to a foreign state
 - Serving in the armed forces of a foreign state that is engaged in hostilities with the U.S.
 - Accepting employment with a foreign government
 - Formally renouncing citizenship before a diplomatic or consular office

Do not retain or follow advice solely from immigration lawyers or advisors on properly renouncing! Dangerous for tax!

Avoid sole accounting firms! NO ATTORNEY CLIENT PRIVILEGE!

Has My Client Already Lost U.S. Citizenship? Effective Date – For Tax Purposes - IRC§877A(g)(4)

- Expatriation is effective on the earliest of the following dates:
 - The date the individual renounces before a diplomatic or consular office
 - The date the individual delivers to the U.S. State Department a signed statement of renunciation or confirming an expatriating act
 - The date the U.S. State Department issues a certificate of loss of nationality
 - If a naturalized citizen, the date a U.S. court cancels certificate of naturalization

What Happens When Your U.S. Clients are not Properly Identified?

Taxable Events

- Tax treatment in the U.S. and the client's home country does not always perfectly align, leading to potential U.S. tax exposure on transactions that are tax-free elsewhere
 1. Investment Pitfalls
 2. Interests in Non-U.S. Trusts
 3. Gift Tax and Estate Tax Differences/Exposure
 4. Interests in Non-U.S. Corporations
 5. Property Transfers / Sale (Especially on Primary Residence)
 6. Divorce Planning
- Common foreign tax planning strategies can lead to negative U.S. tax consequences for clients—and potential liability exposure for advisors who fail to pick up on the issues.



1. Investments – Common Strategies with Significant U.S. Exposure

- Tax-Deferred Accounts
 - TFSAs, RRSPs, RESPs, SIPP, ISAs, KiwiSavers, Superannuation Funds, etc. – All receive special tax treatment in home country, but such treatment is not allowed by the U.S.
 - This can lead to potential U.S. tax liabilities with no offsetting foreign tax credit.
 - These interests may also require special U.S. tax forms (e.g., 3520, 3520-A, 5471) to be filed annually that carry minimum \$10k USD penalties for late filing, per form, per year.
- Investment Mechanisms
 - Non-U.S. ETFs and Mutual Funds
 - U.S. taxpayers are subject to penalty taxes upon selling interests in or receiving dividends from Passive Foreign Investment Corporations (PFICs).
- Form 8621 must be filed every year, per fund by any U.S. taxpayer who has an interest in a PFIC/holding.

2. Interests in Non-U.S. Trusts

- U.S. taxpayers are subject to special rules for “foreign” trusts, often leading to downsides that outweigh potential domestic benefits.
- U.S. taxpayers must file Form 3520 to report transactions with foreign trusts, subject to complex rules found in IRC §671-679.
- Any trust that is treated (under U.S. law) as having a U.S. taxpayer as its owner must file Form 3520-A every year to report information about the trust, its U.S. beneficiaries, and any U.S. person treated as an owner of any portion of the trust.
- The penalty for late filing is generally at least \$10k USD, per form, per year.
- The “Throwback Rules” can cause current distributions from such trusts to be treated as if paid in previous years, resulting in additional interest and penalties, or cause current trust income to be treated as distributed despite the funds remaining in the trust.



3. Interest in Non-U.S. Corporations – PFICs, CFCs, GILTI, and More

- Interests in closely-held, non-U.S. companies should be avoided at all costs for U.S. persons.
 - PFICs – Passive Foreign Investment Corporations.
 - Strict rules designed to prevent U.S. persons from avoiding U.S. tax by investing in low-tax jurisdictions.
 - CFCs – Controlled Foreign Corporations.
 - Designed to keep investments of U.S. persons in the U.S. tax net, even if held abroad.
- Investing in foreign corporations makes U.S. tax reporting and filing obligations more burdensome, more complex, and more expensive.
 - Form 5471 reporting - \$10k USD penalties if late/incorrect!
 - Transactions can be recategorized or treated as occurring in previous years, resulting in potential U.S. tax owing.
 - Non-U.S. shareholders can be exposed to significant U.S. compliance issues because of the U.S. taxpayer's involvement.

4. Property Transfers

- Denial of Tax-Free Treatment
 - Sale of a primary residence is tax-exempt in many foreign jurisdictions, including the UK, Canada, and Australia, but not in the U.S. - see later examples in slides.

5. Divorce Planning

- Spousal Support and Alimony
 - The U.S. rules are different from many foreign jurisdictions.
 - The mismatch can sometimes lead to higher net tax liabilities on transfers incident to divorce.
- Transfers Incident to Divorce – The §1041(d) Rule.
 - U.S. law generally exempts transfers/divisions incident to divorce from tax where both spouses are U.S. persons.
 - That exemption does not apply if the spouse receiving the transfer is a non-U.S. person, instead treating any transfer incident to divorce from a U.S. spouse to a non-U.S. spouse as a taxable event to the U.S. citizen.



This Man was in a Similar Position to Many of Your Clients



This Man Was In a Similar Position as Many of Your Clients: Boris Johnson, Former Prime Minister of the UK

- Born June 19, 1964, New York City.... United States
- Emigrated from U.S. to England at age five
- Sold London house in 2009 for \$1.85M USD
 - U.S. tax bill in “six figures”
- Asked whether he will pay the bill he responded:
 - ***“No is the answer. It’s absolutely outrageous. Why should I?”***
- January 2015 paid the tax bill
- February 2015 announced his intention to renounce U.S. citizenship
- Name was published in the 2016 fourth quarter list of individuals who renounced

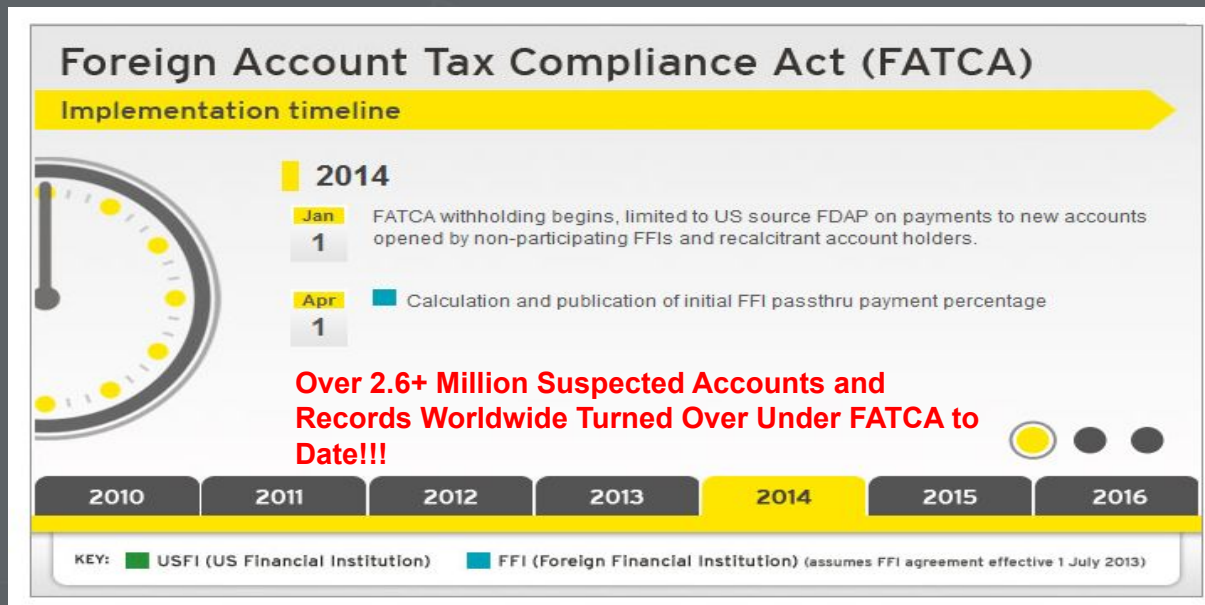
U.S. Tax Reporting Obligations

Common U.S. Reporting Obligations

Form 1040	Individual Income Tax Return
Form 8938	Specified Foreign Financial Assets >\$200K USD (\$400K USD if joint) last day of year; >\$300K USD (\$600K USD if joint) at any time during year
Form 3520	Transfer of Property to Trust
Form 3520	Distribution from Trust
Form 3520	Distribution from U.S. Estate > \$100K
Form 3520 -A	Non-U.S. Owner of Non-U.S. Trust
Form 3520	Owner of Certain Non-U.S. Mutual Funds
Form 8621	Sale of U.S. Partnership
Form 8865	Non-U.S. Partnership
Form 8865	Non-U.S. Partnership Shareholder, Officer, Director of U.S. Corporation
Form 5471	Non-U.S. Corporation Transfer Property to U.S. Corporation
Form 926	Non-U.S. Corporation Signatory Authority over or Ownership Interests in U.S. Accounts
Form 8833	Non-Treaty Based Return Position

Enforcing U.S. Worldwide Taxation: FATCA

First exchange of information with the IRS occurred on September 30, 2015



U.S. Internal Revenue Service Voluntary Disclosure Programs

- There are options available for U.S. taxpayers who are not compliant with their U.S. tax filing obligations or otherwise have undisclosed foreign financial assets:
 1. Streamlined Offshore Procedures;
 2. Delinquent International Information Return Submission Procedures (including FBARs); and
 3.  P (replaced by regular IRS Criminal Investigation Voluntary Disclosure Program; no standard terms or penalty abatement schedule)

The Offshore Voluntary Disclosure Program (OVDP) provided protection from criminal prosecution under a standardized monetary penalty schedule but closed at the end of September 2018.

IRS Voluntary Disclosure Programs Cont'd

1. Streamlined program:

- Is generally the first option to consider
- Three years of tax returns required (but six years of FBARs)
- Amnesty from civil penalties only
- Cannot be under civil examination or criminal investigation
- Is generally a continuation of the 2012 Streamlined program and expands the eligible group of taxpayers. There are two versions of the 2014 Streamlined program:
 - Nonresident Streamlined (“**Streamlined Foreign Offshore Procedures**”)
 - No civil penalties
 - Must meet the “non-residency requirement”
 - Resident Streamlined (“**Streamlined Domestic Offshore Procedures**”)
 - 5% penalty on a taxpayers undisclosed foreign financial assets
 - Separate requirements apply for each

IRS Voluntary Disclosure Programs Cont'd

2. Delinquent International Information Return Submission Procedures (including FBARs)

- Various requirements apply, including reasonable cause arguments
- Forms 3520, 3520-A, 5471, etc.

Delinquent FBAR Submission Procedures

- Available to taxpayers whose only failure to file was FBARs

IRS Voluntary Disclosure Programs Cont'd

3. OVDP (Off Shore Voluntary Disclosure Program)

- Is generally the last option to consider
- Eight years of returns required
- Provides amnesty from civil and criminal penalties
- Is generally a continuation of the 2012 OVDP but with much harsher penalties
- 27.5% penalty, possibly 50%, on the taxpayer's undisclosed foreign financial assets
 - Eliminates the 2012 OVDP's reduced penalty percentage (12.5% or 5%)
 - 50% if either a foreign financial institution at which the taxpayer has or had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement has been publicly identified as under investigation by the U.S. government or as cooperating with a U.S. government investigation

The Future of IRS Voluntary Disclosure Programs

- Note, that the IRS may change these amnesty programs at any time. For example, on October 8, 2014, the IRS issued FAQs clarifying the amnesty programs.
 - The Nonresident Streamlined FAQ explains that taxpayers who have spent 35 days or more in the United States in each of the three years that must be filed under Streamlined and who have not filed returns for those years are ineligible.

Relief Procedure for Persons Willing to Renounce...Sweetening the Pot?

- To qualify for the Relief Procedures, an individual must:
 - Have no US income tax filing history as a US citizen or resident
 - Not exceed the threshold in the average income tax liability test
 - Have a net worth of less than \$2 million at both the time of expatriation and the time of making a submission under the Relief Procedures
 - Have a total tax liability of \$25,000 USD or less for the tax year of expatriation *and* the five prior years in aggregate

Thus, if you are willing to renounce today, qualify for the Relief Program, and owe up to \$25k USD in tax on the last 5+ years of US returns being filed, the tax liability is reduced to \$0!

THIS PROGRAM WON'T LAST FOREVER!!!

Is Renouncing U.S. Citizenship Right for the Client?

Is Renouncing U.S. Citizenship Right for the Client? What Giving Up U.S. Citizenship Means

1. Protection of U.S. Citizens Abroad

Protection abroad may be an issue for U.S. citizens who find themselves in politically unstable parts of the world. Generally, for U.S. citizens living in stable and prosperous countries, this is not a determinative factor when considering retaining one's U.S. citizenship.

2. Consular Services Offered to U.S. Citizens Abroad

Consular services are available to U.S. citizens living abroad and include assistance in situations of detainment by foreign governments, passport issues, and cross-border legal affairs.

Is Renouncing my U.S. Citizenship Right for the Client? What Giving Up Your U.S. Citizenship Means Cont'd

3. The Right to Vote in U.S. Elections

Many individuals holding U.S. citizenship are very proud and patriotic when it comes to being American. With U.S. citizenship comes a constitutionally granted privilege to participate in U.S. elections. Renouncing one's citizenship eliminates this privilege to vote in U.S. elections.

4. Access to the U.S. Job Market

Depending on a client's situation, this may be the most important factor to consider when renouncing one's U.S. citizenship, especially for younger individuals. U.S. citizens are legally able to work anywhere in the United States and giving up citizenship closes off the U.S. market as an available source of employment without going through the proper immigration channels to obtain the correct visas and work permits.

5. Travel to the United States

U.S. citizens are able to travel into and out of the United States at their leisure.

Is Renouncing U.S. Citizenship Right for the Client?

Pros of Renouncing U.S. Citizenship

1. U.S. Tax Filing Obligations/ U.S. Tax Owing (Double Tax)

Once a client has renounced their U.S. citizenship, they will be issued a Certificate of Loss of Nationality (“**COLN**”) effective on the date they appeared before a U.S. Embassy or Consulate General and took the oath of renunciation and conducted the exit interview. A timely-filed tax return is still due for the year in which the client renounced. It is a “dual status” return which will reflect from January 1 to the date the COLN was issued (exit interview date). Once the client has been issued a COLN, and filed their final year return, they will generally no longer have U.S. reporting and filing obligations thereafter, unless they have U.S. income or assets.

Is Renouncing U.S. Citizenship Right for the Client?

Pros of Renouncing U.S. Citizenship Cont'd

2. U.S. Estate and Gift Tax Exposure

U.S. citizens and residents are subject to estate tax on their worldwide assets and are afforded the full unified credit available. Assuming an individual who successfully renounces his or her U.S. citizenship is not considered a resident for U.S. estate and gift tax purposes (domicile test), he or she will not be subject to U.S. estate tax on his or her worldwide assets at death (with the potential exception of U.S.-situs property).

Dec. 2017 Republican Tax Reform (Tax Cuts and Jobs Act)

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Exclusion Amount	\$675,000	\$1 million	\$1 million	\$1.5 million	\$1.5 million	\$2 million	\$2 million	\$2 million	\$3.5 million	Repealed	\$5 million	\$5.12 million	\$5.25 million	\$5.34 million	\$5.43 million	\$5.45 million	\$5.49 million	\$11.2 million	\$11.4 million	\$11.58 million	\$11.7 million	\$12.06 million	\$12.92 million	\$13.61 million	\$13.99 million	\$15 million
Max/Top Tax Rate	55%	50%	49%	48%	47%	46%	45%	45%	45%	Repealed	35%	35%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%

- Estate, gift, and generation-skipping taxes NOT repealed
 - Creates more opportunities to expatriate tax-free now before change
- Changes can be (quickly) reversed with a change in political power
 - Waiting has already proven more expensive for many

Example:

- November 1, 2017: renouncer with controlled foreign corporation not subject to transition tax
- November 2, 2017: renouncer with same facts must pay this tax
- Would not have been possible to know this until December 22, 2017

Strong opportunities to expatriate under current tax changes

Dec. 2017 Republican Tax Reform (Tax Cuts and Jobs Act) Cont'd

- First major overhaul of U.S. tax law since 1986
- Changed to territorial system for corporations, but not for individuals
- Some U.S. persons owning non-U.S. corporations will be worse off:
 - Transition tax
 - One-time “deemed repatriation” of earnings and profits of “controlled foreign corporations” (15.5% tax on cash/liquid earnings, 8% tax on non-liquid earnings)
 - Limited planning and mitigation opportunities: applies retroactively (as of November 2, 2017)
 - Horrible for U.S. citizens owning privately controlled foreign corporations (CFCs) with earnings and profits from November 2, 2017, to December 31, 2017
 - Tax on global intangible low-taxed income (GILTI)
 - Income over a specified ordinary rate of return (10%) on tangible assets deemed GILTI and deemed distributed and taxable to U.S. shareholders
 - Creditability of non-U.S. tax means U.S. individuals living in jurisdictions with similar corporate rates may not end up paying additional tax, but they will have additional complexity in their U.S. returns
 - Ongoing system (unlike transition tax)

Since 2012 warning people to get out before things got worse!

Supreme Court Upholds Transition Tax on U.S. Citizens with Interests in Non-U.S. Privately Held Corporations – June 20, 2024

“Justices uphold Trump
Tax on overseas
investments...”
-CNN

“A 2017 law signed by
then-President Donald Trump
to generate more than \$340 billion...”
-ABC News



“The court ruled 7-2 that the
so-called mandatory repatriation
tax is constitutional...”
-CBS News

“Rejecting an appeal that
could have saved companies
hundreds of billions of dollars”
-Bloomberg

Trump Transition Tax is Constitutional!!!

BIG BEAUTIFUL BILL...Only Made Things Worse for the US Expat!

Passed on July 4, 2025

- **No US Expat Tax Relief at All**
 - Citizenship-based taxation is not going anywhere.
 - No increases to the Foreign Earned Income Exclusion.
 - Harder rules in applying foreign tax credits, increasing the risk of tax owing for expats.
- **Annual Compliance and Reporting Complexity Increase**
 - Increased muscle behind reporting forms with larger penalties for late or non filing.
 - Especially on partnerships, S Corps, and other foreign owned pass throughs.
 - Expected stronger enforcement under FACTA and PFIC reporting regimes.
 - Lower thresholds to trigger FACTA.
 - More US expats need to file and will be caught in the FATCA net.



Is 2026 shaping up to be the 'Perfect Storm' for Expats to Renounce?

2020 FATCA Deadline + COVID-19 Spending + 2024 Election Certainty

- a) 2020 FATCA Deadline: Under the US/Canada Treaty relating to FATCA + Canadian tax rules, Canadian financial institutions are obligated to have a U.S. Social Security Number ("SSN") of any suspected account reported under FATCA. This rule has always been in place since FATCA started in 2014, but there was a grace period for the banks to enforce at no penalty until January 1, 2020.
 - i. Banks are now on the hook under FATCA for a 30% penalty for every dollar they earn from the U.S., if they have not properly reported a suspected account held by a U.S. depositor or do not have a reported Social Security Number for said depositor. Banks now have skin in the game for the first time.
 - ii. Many banks are looking to close suspected U.S. citizen accounts because of this. Not worth the risk.
 - iii. Technology is making it easier to catch U.S. expats and enforce tax laws.

Is 2026 shaping up to be the 'Perfect Storm' for Expats to Renounce?

2020 FATCA Deadline + COVID-19 Spending + 2024 Election Certainty

- b) COVID-19 / Spending: Who is going to pay the bill?
 - i. The government response to COVID-19 topped more than \$6 trillion in spending!
 - ii. \$20+ trillion in government debt coming into 2020.
 - iii. \$40+ trillion in government debt today.
 - iv. Will US citizens abroad have to help foot the bill in the future if U.S. taxes are increased or changed? I would bet YES!
- c) 2024 Election Certainty:
 - v. Biden 2020 election win
 - vi. Trump 2024 election win
 - vii. Trump tax consequences for expats? Good? Bad?

**ALL THESE FACTORS POINT TO RECORD U.S. CITIZENS AROUND THE WORLD,
LOOKING TO RENOUNCE IN 2026 ASAP!!!**

Tax Issues – Avoiding the U.S. Exit Tax

Tax Issues: Avoiding the U.S. Exit Tax Under IRC§877A

To whom does §877A apply?

1. U.S. citizens who renounce citizenship, and
2. Long-term U.S. residents who terminate U.S. residency (individuals who give up U.S. green cards)
 - a) A long-term U.S. resident is an individual who was a lawful permanent resident (green card holder) at any time in any of the eight taxable years during the 15 year period preceding termination.
 - b) Even a partial year is considered to be a taxable year for the eight year period.

Tax Issues: Avoiding the U.S. Exit Tax Under IRC§877A Cont'd

The U.S. Exit Tax applies when a renouncing individual violates any one of the below three triggers:

- a) the individual has a net worth of \$2M USD or more at the time of renunciation (“Too Rich” trigger, amount not inflation – indexed);
- b) the individual had an average annual net income tax liability of more than USD \$211,000 in the five years ending before the date of expatriation (“Paid Too Much Tax” trigger, 2026 inflation – indexed amount); or
- c) the individual failed to certify on Form 8854 that he or she had complied with all U.S. Federal tax obligations for the five years preceding the date of expatriation (“Five Years of U.S. Tax Returns” trigger).

Tax Issues: Avoiding The U.S. Exit Tax Under IRC§877A Cont'd

Two exceptions to the application of the U.S. Exit Tax “Too Rich” and “Paid Too Much Tax” triggers:

1. “**Dual at Birth**” exception applies if the individual:
 - a) became a dual citizen at birth and continued to be a citizen and tax resident of the other country (Australia/New Zealand) at the time of renunciation of citizenship, **AND**
 - b) was a resident of the U.S. for no more than ten of the fifteen tax years ending with the tax year during which the renunciation of citizenship occurred

OR
2. “Eighteen to Eighteen and a Half” exception applies if the individual:
 - a) renounces his or her U.S. citizenship before the age of 18 and a half, **AND**
 - a) was a resident of the United States for no more than ten years before the age of 18 and a half.

Strategies to Avoid The U.S. Exit Tax

Avoiding the U.S. Exit Tax Net Worth Test ("Too Rich Test")

- If exception does not apply, then MUST have net worth <\$2M USD when expatriate in order to avoid exit tax
- Strategies to reduce net worth
 - Gift assets to spouse, charities, and others to reduce net worth
 - Use of \$15M USD “credit equivalent” for gifting
 - “Discount” planning by transferring assets to limited partnerships and other entities
 - “Bargain Sale” of assets to family members
 - BEWARE of Foreign and U.S. income tax consequences to gifts

Immigration Issues – 1996 Reed Amendment

Keep Your Clients Out Of The
U.S. Permanently... Maybe

Immigration Issues: 1996 Reed Amendment

Exit Interview at Embassy or Consulate

If it is determined that the U.S. citizen renounced for the primary purpose of avoiding U.S. tax, that person will be denied re-entry into the United States (8 U.S.C. §1182(a)(10)(E)(2011)). **Any alien who is a former U.S. citizen who officially renounces U.S. citizenship and who is determined by the Attorney General to have renounced for the purpose of avoiding taxation by the U.S. is inadmissible.**

- Same inadmissible list includes:
 - Aliens who are determined to be current or former traffickers of controlled substances
 - Aliens who have or are engaged in terrorist activities
 - Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.
 - International child abductors
 - Current or past involvement in sex trafficking
 - And the real threat to the American way of life...
 - **FORMER CITIZENS WHO RENOUNCE CITIZENSHIP TO AVOID TAXATION!**



\$450 (USD)

\$2,350(USD)

CONSUL AR OFFICER'S ATTESTATION

appeared personally and ☐ read ☐ had read to him/her

this declaration before my commission in testimony to the contents of the statement/declaration of United States

citizenship was signed by the respondent ☐ under oath ☐ by affirmation before me this _____ day of _____

(Month) (Year)

AP-08

Consul of the United States of America

Travel/Immigration Issues: 1996 Reed Amendment Cont'd

10. My renunciation/relinquishment may not exempt me from United States income taxation. With regard to United States taxation consequences, I understand that I must contact the United States Internal Revenue Service.



Further, I understand that if my renunciation of United States citizenship is determined by the United States Attorney General to be motivated by tax avoidance purposes, I will be found excludable from the United States under Immigration and Nationality Act, as amended.



Relationship with the U.S. Post Renunciation: Myths About Life After Renouncing U.S. Citizenship

Life After Renouncing U.S. Citizenship Travel to the United States

- Individuals who renounce can freely travel into and out of the United States (just like anyone else who holds the same fall back passport).
- Same restrictions that apply to all other non-U.S. persons.
 - Crimes of moral turpitude (special permission)
 - Communicable diseases (special permission)
- No issues with Nexus Pass for renounced citizens travelling on fall back passport born in the United States when renunciation process is “done right”.

Life After Renouncing U.S. Citizenship

- Social Security Benefits
 - If eligible under Social Security law, a renounced individual can still collect payments
- Retirement Plans
 - A renounced individual can still receive payments from U.S.-based retirement plans, i.e. a 401(k), IRA, etc.
- U.S. Real Estate
 - A renounced individual can still buy and sell U.S. real property like anyone else holding the same passport.
- Kids' Citizenship
 - The renunciation of an individual does not affect the citizenship status of his or her children or other family members
- Day Count
 - Need to be mindful of immigration and tax day count rules

**If renounced properly, your client will be treated like every other
citizen of their home country.**

Life After Renouncing U.S. Citizenship Cont'd

- Other Common Questions About Renunciation
 - Will my client continue to be taxed by the United States?
 - Old law continued to tax an individual for 10 years after renunciation; there is no longer such a 10-year period for persons renouncing on or after June 17, 2008.
 - Will my client be allowed to enter the United States afterwards?
 - Former U.S. citizens are generally entitled to any visa status, same as anyone else holding the same fall back passport.
 - Client's home country has an income tax treaty with the United States - do they still need to renounce?
 - Yes. U.S. citizens cannot escape worldwide taxation simply by living in a U.S. treaty country. All U.S. income tax treaties have a "saving clause" allowing citizenship-based taxation notwithstanding the treaty.

Green Card Terminations

Green Card Terminations

- U.S. worldwide income taxation applies to both U.S. citizens and residents.
 - Individuals are U.S. residents under §7701(b) if they meet any of the following tests or so elect:
 - Lawful permanent resident or green card test: a “lawful permanent resident of the United States,” or green card holder, is treated as a U.S. resident for income tax purposes
 - Substantial presence test (183 or more days, based on 3 year average): individuals who spend enough in the United States are U.S. resident aliens regardless of immigration status
 - First-year election. Individuals making a first year election to be treated as U.S. resident aliens will be so treated
 - Note: different standards apply for estate, gift, and generation skipping transfer taxes

Green Card Terminations Cont'd

- The exit tax also applies to green card holders who are “long-term residents”
 - The exit tax did not apply to green card holders until 1995, and different rules apply depending on when residency terminates
 - A “long-term resident” is a taxpayer who was a green card holder in at least eight of the last fifteen taxable years ending the year residency terminates.
 - There are various ways to terminate your green card without triggering the exit tax
 - The Reed Amendment does not apply to green card holders who terminate their cards

Green Card Holders are Taxed the Same as US Citizens: Rishi Sunak, Former Prime Minister of the UK

- Acquired Green Card status in sometime in the 2000's
- Terminated his Green Card in October 2021, before his first diplomatic trip to the US as a UK government minister
- Former Prime Minister, Boris Johnson, spoke about Rishi Sunak surrounding his Green Card status, stating that he “understands everything required to do”
- Sunak became Prime Minister in October 2022, one year after his Green Card termination
- Spokesperson for Sunak claims US tax returns had been filed as a non-resident while holding the Green Card and was in full compliance with US tax laws



Summary of Presentation

Summary of Presentation

- Is my client a U.S. citizen?
- Has my client already lost their U.S. citizenship?
- What are the common U.S. tax mistakes resulting in liability exposure to the unknowing advisor?
- What are the U.S. tax reporting obligations of U.S. citizens and Green Card holders living abroad, and how are they enforced?
 - FATCA
- Is renouncing U.S. citizenship right for the client?
- Why the dramatic increase in the number of people renouncing U.S. citizenship?
- Green Card Terminations
- Tax issues: avoiding the U.S. exit tax under Internal Revenue Code § 877A
- Strategies to avoid the U.S. exit tax
- Immigration issues:
 - Reed Amendment
 - Proposed Reed-Schumer Amendments. Is now the best time to get out?
- New IRS Relief Procedure for those willing to renounce (incentive to renounce)
- Relationship with the United States after loss of U.S. citizenship (again, clients can keep Social Security entitlement after renouncing correctly!)

Additional Resources

HIDDEN US TAX RISKS FOR FINANCIAL ADVISORS

When A Client May be a US Citizen and Is it Time to Renounce?

63

Additional Resources

1. Alexander Marino, *Renouncing Your U.S. citizenship: Is Divorcing Uncle Sam Right for You?* available at <https://www.moodystax.com/renouncing-your-u-s-citizenship-is-divorcing-uncle-sam-right-for-you/>
2. Alexander Marino, *Renouncing Your U.S. citizenship: Failed Amendment May Signal that Now is the Time to Get Out!* available at <https://www.moodystax.com/renouncing-your-us-citizenship-how-law-may-keep-you-out-forever/>
3. Alexander Marino and Kevin Kirkpatrick, *Why the List of Britons Giving Up U.S. Status Continues to Grow* available at <https://www.moodystax.com/1-a-uk-citizen-why-britons-giving-us-status-continues-grow/>
4. Alexander Marino, *5 Things You Need to Know if You're a US Citizen Living Abroad* available at <https://moodystax.ca/client/5-things-you-need-to-know-if-youre-a-us-citizen-living-abroad/>
5. Alexander Marino, *Six Ways the US Can and Will Tax American Citizens Living Abroad...If They Don't Renounce Beforehand* available at <https://moodystax.ca/client/six-ways-the-us-can-and-will-tax-american-citizens-living-abroad-if-they-dont-renounce-beforehand/>
6. Paul Barba, *Amended IRS Disclosure Programs Expand Eligible Taxpayers But Create the Canadian Snowbird Dilemma: Part 1* available at <https://www.moodystax.com/amended-irs-disclosure-programs-expand-eligible-taxpayers-but-create-the-canadian-snowbird-dilemma-part-1/>
7. Paul Barba, *Updated IRS Streamlined Filing Program: Snowbirds Beware* available at <https://www.moodystax.com/updated-irs-streamlined-filing-program-snowbirds-beware/>
8. Alexander Marino, *'What Happens to My Social Security Payments?' and Some Common Myths About Life After Renouncing Your US Citizenship* available at <https://moodystax.ca/client/what-happens-to-my-social-security-payments-and-some-common-myths-about-life-after-renouncing-your-us-citizenship/>
9. Alexander Marino, *US Tax Increases May Be Coming. Are You Ready to Pay More for Your US Citizenship?* available at <https://moodystax.ca/client/president-bidens-tax-plan/>
10. Alexander Marino, *Setting the Record Straight on Scheduling an Interview to Renounce Your US Citizenship During the Pandemic* available at <https://moodystax.ca/client/the-guardian-renunciation-article-response/>
11. Alexander Marino, *The US government is giving the IRS an extra \$80 billion in funding under the newly passed Inflation Reduction Act. Where's that extra money going to come from?* available at <https://moodystax.ca/client/extended-irs-powers-us-citizenship-renunciation/>
12. Alexander Marino, *Want to Avoid Your Own "Succession" Drama? How Renouncing Your US Citizenship Before Death Can Preserve Your Family's Generational Wealth.* Available at <https://moodystax.ca/client/avoid-succession-drama-as-estate-tax-citizenship-renunciation/>



Alexander Marino JD, LLM (US TAX)

Director, US Tax Law
Leader, US Tax Practice Group
Moodys Tax Law
403.693.5114
amarino@moodystax.com

Katherine Bradish

US Renunciation and Compliance Manager
Moodys Tax Law
403.693.5122
kbradish@moodystax.com

Calgary, AB

210, 2020 – 4 Street SW
Calgary, AB T2S 1W3 Canada
403.693.5100

Edmonton

Suite 701, 10130 – 112 Street NW
Edmonton, AB T5K 2K4 Canada
780.784.2500

Toronto

1008 -150 York Street,
Toronto, ON M5H 3S5 Canada
416.525.2040

NEXT STEPS FROM HERE:

Option #1

If you or your clients would like to get the process started of addressing the US issues, with the legal fees in mind, please schedule a complimentary 1 hour call or video conference consultation with Alex to get things off the ground. You can book this session by:

- Signing up on our virtual calendar at <https://calendly.com/moodystax>; or
- By contacting Katherine at kbradish@moodystax.com or 403-693-5122.
- Contact Alex directly at amarino@moodystax.com or 403-693-5114.

- OR -

Option #2

If you or your clients are on the fence about moving forward or need more information to decide, you can schedule the same 1 hour call or video conference consultation with Alex at a fee of CDN \$1k. If you or they later engage our services to help address the US issues after the consultation, this CDN \$1k is waived or credited back. You can book this session by:

- Signing up on our virtual calendar at <https://calendly.com/moodystax>; or
- By contacting Katherine at kbradish@moodystax.com or 403-693-5122.
- Contact Alex directly at amarino@moodystax.com or 403-693-5114.