

## 2017 second highest year on record for US expatriations

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Following 2016, the single highest year on record for Americans giving up their citizenship, 2017 reflected the second highest year in recorded history.

Each quarter, the Internal Revenue Service publishes a list of the names of each person who has given their United States citizenship. In our experience, the list is intended to be, but clearly is not, complete). This list is intended to include certain long-term residents who are treated as if they were citizens of the United States who lost citizenship. On February 9, 2018, the Internal Revenue Service issued a Notice listing American expatriates for the quarter ended December 31, 2017 reflecting 685, with a year-end figure of 5,133. The quarter end for 2017 was far lower than expected, showing only a high average number as compared to the last quarter of each year for the last decade.

In contrast, year to date numbers through the end of the third quarter had 2017 on track for a record year. The average expatriations in the last quarter brought 2017 in at just under the expatriations for 2016, placing 2017 second overall. 2017 was also within 300 people of the entire decade of expatriations ending in 2007.

While the number of expatriates is small as compared to the overall population on the United States as a whole, the overall annual rate of expatriation has been steadily trending upward. This trend may not surprise those expecting Americans to flee Trump's America. However, this should be viewed with more informal reports that green card and visa-based residents are beginning to seek US citizenship in much increased numbers out of fear that Trumpian nationalism makes their existing immigration status in the United States less assured.

At the intersection of tax and immigration law lies great opportunity for the well advised and traps for the unwary. The current US expatriation tax regime applies to citizens and long-term permanent residents that relinquish their US citizenship or US green card (if they have held their green card in at least eight out of the last fifteen years) and fall within the definition of a "covered expatriate." An individual is regarded as a "covered expatriate" if such person: (i) has a net worth of US \$2,000,000 or more; (ii) has an average US income tax liability for the five-year period prior to expatriation of greater than US \$165,000 (as adjusted and updated from time to time for inflation); or (iii) fails to certify under penalty of perjury that he or she has complied with US tax requirements for the five preceding tax years.

There are two additional notable exceptions from covered expatriate status covering individuals who, either (i) (A) is a citizen of the U.S. and a citizen of another country, (B) continues to be a tax resident of such other country, and © has not been a U.S. tax resident for more than 10 of the last 15 years, or (ii) (A) relinquishes citizenship before attaining age 18½ and (B) has not been a U.S. tax resident for more than 10 years. Both the "dual citizen" exception and the "age 18½" exception require tax compliance requirements for the prior 5 years. A covered expatriate is subject to a so-called "mark-to-market" or "exit" tax which applies to the net unrealized gain on the expatriate's worldwide assets as if such property were sold for its fair market value on the day before the expatriation date. Any net gain on the deemed sale in excess of US \$713,000 (as adjusted and updated from time to time for inflation) is taxable. While it may be possible to defer payment on the deemed sale and mark-to-market of some assets by making a deferral election, IRS guidance on this election illustrates that this is a complicated and potentially cumbersome election process.

The "exit tax" on high net worth and high-income taxpayers can make it prohibitive for certain individuals to expatriate, although with proper planning and structuring, often this tax can be mitigated or avoided altogether. Further, failing to create a match of timing between the expatriation tax and actual tax, can potentially cause future double taxation.

Further, giving up US citizenship has real non-tax impact. It may be obvious that an expatriate would no longer be able to vote (for or against Trump). However, it may be less obvious that giving up your American passport means that you no longer have the benefit of getting assistance from the US government when outside of the United States and that you may need to apply for visas to travel to countries where you previously traveled visa free with your US passport.

An additional issue to consider is whether a covered expatriate has US children. If a covered expatriate leaves their US citizen or resident heirs a gift or bequest, the recipient pays a 40% tax for the privilege of receiving the gift or bequest. In addition, the normal US rules for gifts and bequests apply.

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