The International Client: Are We Here Yet?

(U.S. Pre-Immigration Planning and Post-Residence Issues)

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OVERVIEW

THIS PROGRAM LOOS AT THE TAX ISSUES U.S. ADVISORS MUST CONSIDER WHEN ADVISING FOREIGN PERSONS WHO ARE PLANNING ON IMMIGRATING TO THE UNITED STATES, INCLUDING:

- What to do when a client walks into your office
- What's at stake in becoming a resident
- Residence and domicile
- Pre-residence planning
- Post-residence issues

A FOREIGN CLIENT WALKS INTO A LAWYER'S OFFICE

WHAT YOU NEED TO ASK FIRST

MAIN TYPES OF FOREIGN CLIENTS:

- The ones planning only to invest
- The ones moving to the U.S. for the short or long term
- There is also a combination: Part of the family is staying home and part is moving here
- The ones who are already in the U.S. are just now seeking advice. Will have to quickly determine:
  - Residence for various purposes (income tax, estate and gift tax, California, immigration)
  - What compliance needs to be done
  - Cataloguing client's entities and assets

WHAT YOU NEED TO ASK FIRST

- Why the client is coming to the United States
  - Circumstances and expected length of stay
  - Immigration status – now and planned
  - U.S. business and investment activities
  - Foreign business and investment activities
- First task is to determine whether the client is planning to live in the U.S. and, if so, to make sure the client understands the consequences of residence and when residence begins. (Sometimes, the client will already be resident. . .)

OBJECTIVES

1. **Low effective tax rate**
2. **Capital gains rates on sales of property and sale of business**
3. **Avoid importing and unrecognized income and unrealized gains; realize losses post-residence**
4. **Avoid double taxation**
5. **Avoid over-withholding**
6. **Minimize exposure to U.S. estate law**
7. **Confidentiality**

NEW TAX LAWS HAVE NOT CHANGED THESE OBJECTIVES

PRE-RESIDENCE PLANNING

OVERVIEW

- Wherever possible, planning should be undertaken and executed before alien becomes a U.S. resident
- It is critical to determine exactly when he or she will become a resident and to carry out any tax planning steps that can best be undertaken before residence begins
- Sometimes, it is possible for an individual to cease to be resident in home country before becoming a U.S. resident and planning can be done during this interim period
- Planning should be coordinated with home country counsel, especially if the country (e.g., Canada, Australia, Netherlands) has a departure tax (outside the scope of this presentation)

PRINCIPAL PRE-RESIDENCE STEPS

- Accurately time when U.S. tax residence begins for both income tax and transfer tax purposes
- Consider what immigration status is appropriate, given punitive rules applicable to immigrants who become green card holders but later become "covered expatriates" if they leave the United States
- Income timing (consider home country tax effects)
- Accelerate collection of non-U.S. income
- Accelerate realization of gains not subject to U.S. tax
- Basis step-up transactions (U.S. does not have landed basis)
- Defer realization of losses
- To the extent necessary and possible, deal with income and gains held in deferred compensation plans

PRINCIPAL PRE-RESIDENCE STEPS (CONT'D)

- Deal with holdings in foreign corporations, especially corporations that might become controlled foreign corporations (CFCs) or passive foreign investment companies (PFICs) once residence begins
- Deal with trusts that are already in existence, whether formed by the prospective resident or by the new immigrant's family members
- Make gifts and create trusts for spouse and children
- Consider not acquiring LPR status unless and until sure that residence will indeed be permanent
  - This prevents 8 years beginning to run
  - May avoid alien becoming domiciled for transfer tax purposes

WHAT'S AT STAKE IN BECOMING A RESIDENT

FEDERAL INCOME TAX

- Nonresident aliens (NRAs) are taxed only on two broad categories of income:
  - Income effectively connected with the conduct of a trade or business within the United States ("ECI")
  - Fixed or determinable annual or periodical income, e.g., interest, dividends, rents, royalties, that is not ECI ("FDAPI") but has a U.S. source
    - Many types of interest (bank interest, "portfolio interest") exempt
- Net amount of ECI taxed at regular graduated rates
- Gross amount (no deductions) of FDAPI taxed at 30%
  - Under FIRPTA, income from the disposition of U.S. real property interests is deemed to be ECI
  - Other capital gains, e.g., sales of stock, are not taxed

FEDERAL INCOME TAX

- U.S. citizens and residents are subject to income taxation on their worldwide income
  - Income is taxed whether or not it is remitted to the United States
  - Income must be computed using the full panoply of U.S. income tax accounting rules
  - Because third party reporting (on Forms W-2 and 1099) rarely applies where the payor is foreign, the United States requires much more comprehensive reporting by taxpayers of their foreign activities and backs this up with ferocious penalties for the non-compliant
  - Double taxation is avoided primarily by allowing U.S. persons to credit foreign taxes against U.S. income tax

WITHHOLDING

- Tax on FDAPI is generally collected by withholding
- Tax on ECI generally paid by NRA
- However, withholding is required as follows:
  - Payor to independent contractor for personal services must withhold 30% *(section 1441)*
  - Payor to employee must withhold under usual domestic rules *(section 3102)*
  - Transferee must withhold 15% of proceeds of disposition of USRPI *(section 1445)*; 10% of proceeds of disposition of partnership interest attributable to ECI assets
  - Partnership must withhold on NRA's share of partnership ECI *(section 1446)*, using estimated tax computation
- Numerous exceptions under statute and treaties

TAX TREATIES

- The United States is party to income tax treaties with 65+ countries. Treaties reduce double taxation:
  - Clarify what income taxes are creditable
  - Declare that taxpayers who would otherwise be residents of both countries are resident of only one of them
  - Limit taxation of business income by United States unless treaty resident has U.S. permanent establishment
  - Reduces withholding rates on interest and royalties (often to 0%) and dividends (typically 5% for corporations but 0% in some cases and typically 15% for individuals)
  - Special rules for employees, artists and athletes, teachers, students, pensions, government agencies

Except for nondiscrimination provisions, California tax laws are generally unaffected by tax treaties

ESTATE AND GIFT TAXES

- NRA pays gift and estate tax on U.S. situs assets
- $60,000 exemption equivalent amount (except for some treaty NRAs)
- Situs of assets (sections 2104 and 2105)
  - Stock of domestic corporation has U.S. situs
  - Obligations of a U.S. obligor have U.S. situs but exceptions for bank accounts and corporate bonds
  - Tangible property: Where physically located (don't bring lots of art and jewelry to U.S. and then die!)
  - Gift tax: Only tangible assets can have U.S. situs
- Cash = tangible property; don't make cash gifts in U.S.
- U.S. estate and gift tax treaties can limit tax

ESTATE AND GIFT TAXES (CONT'D)

- Retained interest rules *(sections 2036, 2038, 2041)* can apply to foreign trusts and their grantors
- GST applies to U.S. situs assets but not gifts or bequests by NRAs of foreign assets
- Limitations on step-up on death
- Non-citizen spouses and QDOTs
- Section 2801 – tax on U.S. recipients of gifts from "covered expatriates" (post 6/18/2008)
- Who files estate and gift tax returns
  - Donee or heir may be responsible for tax returns
    - Especially decedent in civil law country where there is no "estate"
  - Transferee liability for U.S. donees and heirs

CALIFORNIA

- In general, California taxes residents on worldwide income and nonresidents only on business income apportioned to California
- California does not have CFC or PFIC rules and the 2017 law changes to the rules governing CFCs and PFICs therefore do not affect California residents
- New California residents may be surprised by how California will tax pension plans and deferred income accounts
- California's community property rules may create a right in property for the non-owner spouse

BECOMING A RESIDENT

CALIFORNIA

- Residence means different things for purposes of different taxes and related regulatory requirements:
  - General Federal tax residence rules *(section 7701(b))*
  - Federal estate and gift tax purposes (domicile)
  - State tax purposes
  - Regulatory and reporting requirements, e.g., foreign bank account reports, money laundering rules, etc.
  - Home country taxation (and other requirements)
- These rules are not uniform and coordination is erratic
- It is critical to determine when U.S. residence (and citizenship) begins and ends

RESIDENCE FOR INCOME TAX PURPOSES – TWO TESTS

- **Lawful permanent resident (LPR) test** *(section 7701(b)(6))*
  - Sometimes referred to as the green card test
  - Applies to LPRs
- **Substantial presence test** *(section 7701(b)(3))*
  - Sometimes referred to as the day counting test
  - Applies to non-immigrants

LPR TEST

- Alien is a U.S. resident with respect to any calendar year if he or she is an LPR at any time during such calendar year
- Definition of LPR:
  - Alien has been admitted with, or adjusted to, lawful permanent resident status with the right to reside and work without restriction in the United States ***(includes EB-5)***, and
  - Status has not been revoked (and not administratively or judicially determined to have been abandoned) and
  - Alien is not tax resident of another country under the provisions of a tax treaty
- Many aliens hold green cards but live abroad – unless a treaty applies, they remain tax resident so long as their LPR status has not been taken away

SUBSTANTIAL PRESENCE TEST

- Two possibilities:
  - Either 183 days of physical presence in current calendar year <u>or</u>
  - CY >= 31 days and CY+(PY1 /3) +(PY2 /6)>=183, where
    - CY = days of physical presence in current calendar year
    - PY1 = days of physical presence in preceding calendar year
    - PY2 = days of physical presence in 2nd preceding calendar year
    unless taxpayer shows closer connection to a foreign tax home in current year (see next but one slides)
- If CY < 31, not resident under this test
- Not all days of presence are counted (see next slide)

DAYS OF PRESENCE

- Tested on calendar year basis
- Presence during any part of day counts as full day
- Days in transit between two foreign points excluded if stay is less than 24 hours
- Days don't count for some classes of nonimmigrants
  - Students, teachers, diplomats, international organization employees, some professional athletes, regular commuters from Canada or Mexico (special rules for each class)
    - Note: Students lose status 30 days after end of course of study

DAYS OF PRESENCE

- Alien unable to leave because of medical condition which arose while present in the United States
  - Not illness known to alien before coming to United States – so this should be taken into account by medical tourists
  - No exclusion if alien remains beyond reasonable period for making arrangements to leave
  - No exclusion for family members

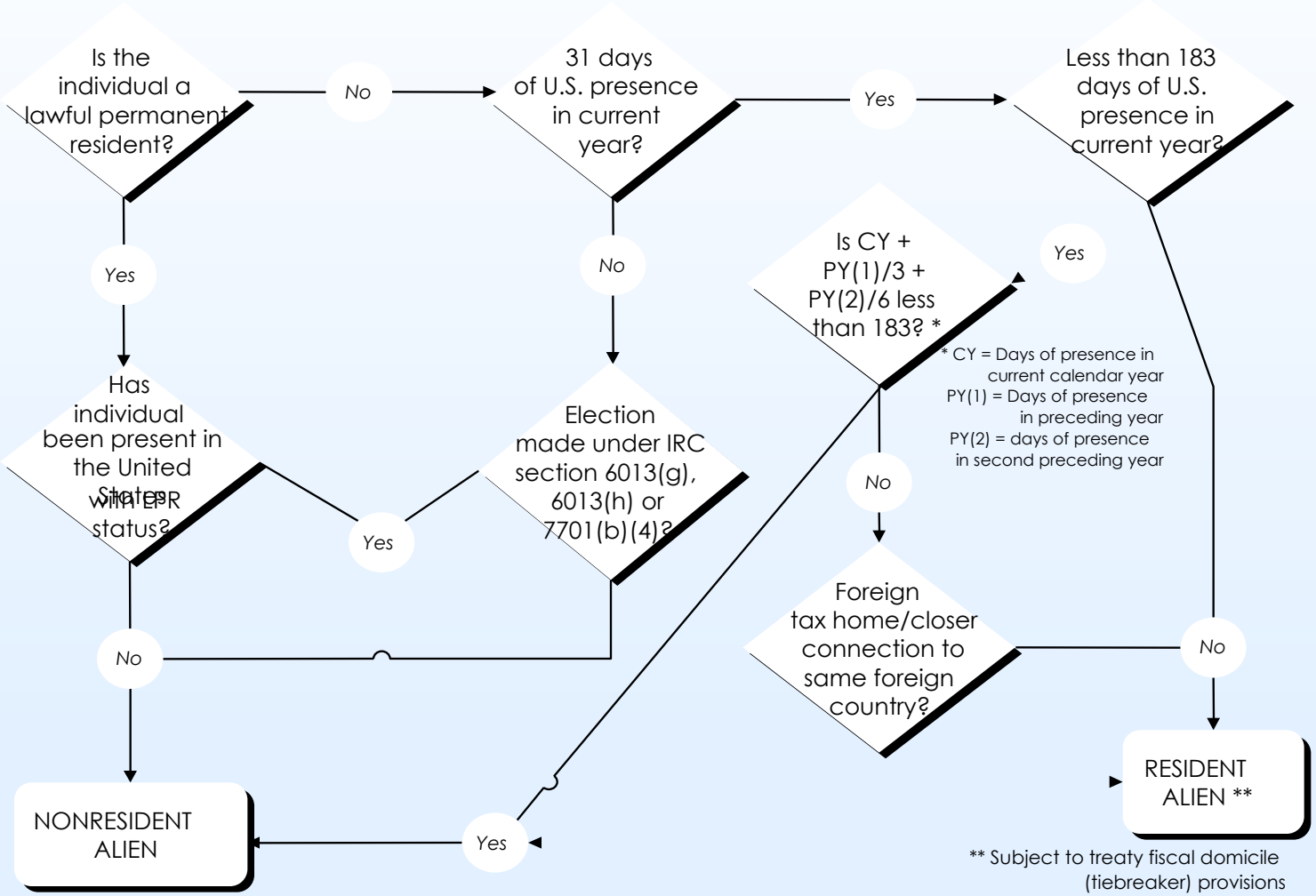
FOREIGN TAX HOME/CLOSER CONNECTION

- "Tax home" does not mean tax residence under foreign country's law. It is defined as the taxpayer's regular or, if more than one, his/her principal place of business; if no place of business, it is the taxpayer's regular, or if more than one, principal place of abode

- Closer connection focuses on personal connections (location of home, family, belongings, social organizations, bank accounts, driver's license, statements on non-tax documents, etc.)

- Important but not absolutely required that number of days in foreign country exceed number of days in the United States

DIAGRAM OF INCOME TAX RESIDENCE RULES



BEGINNING OF RESIDENCE

- Substantial presence test: First day of presence in first year in which test is met
- LPR test: First day of physical presence in the United States with the status of an LPR (unless already a resident under substantial presence test)
- Elective residence is possible under:
  - IRC section 7701(b)(4): During testing period beginning on date specified by taxpayer and ending on December 31, 31 days of continuous presence and days of presence in the United States equal to 75% of all days
  - IRC section 6013(g): If at close of year NRA is married to U.S. citizen or resident, both may file joint return with NRA treated as resident for whole year
  - IRC section 6013(h): Two married individuals one or both of whom were nonresident at the beginning of the year but both resident at end of the year may elect to file joint return as residents for the whole year

TAX TREATY TIEBREAKERS

- What if an individual would be a tax resident of the United States and another country?
- Tax treaties almost always provide a tiebreaker based on the U.S. Treasury Model Income Tax Convention (based on OECD Model)
- First, apply domestic tax laws of each country without regard to treaty
- Then, apply series of tests (see next slide)
- U.S. citizens may escape residence of a foreign country under these tests, but:
  - U.S. citizens living abroad remain subject to U.S. taxation on worldwide income
  - U.S. citizens cannot make treaty claim to foreign country unless they are also "resident" in the United States

TAX TREATY TIEBREAKERS (CONT'D)

- If taxpayer would be resident of both "contracting states" (treaty partners) under their respective laws:
  - Deemed resident only of the State in which he has a **permanent home available to him**
  - If he has a permanent home available to him in both States, deemed resident only of the State with which **personal and economic relations are closer (center of vital interests)**
  - If center of vital interests cannot be determined, or if no permanent home is available to him in either State, deemed resident only of the State in which he has an **habitual abode**;
  - if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the **State of which he is a national**
  - if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by **mutual agreement**

NONRESIDENT ALIENS

- *Section 7701(b)(1)(B)*
  - Any individual who is not a U.S. citizen or U.S. tax resident
  - As noted above, residence may be affected by treaty residence tiebreaker provision
  - Note laws applicable to long-term LPRs who give up their status or cease to be resident under a treaty – see later slides

NO SPECIAL PROVISION FOR NEW OR TEMPORARY RESIDENTS

TRANSFER TAXES (ESTATE, GIFT, GST)

- RAs and U.S. citizens taxed on worldwide assets; NRAs taxed on assets with U.S. situs
  - Note that gift tax does not apply to gifts of intangible assets, including stock of U.S. corporation or interest in a partnership
- Note special GST rules *(Treas. Reg. § 26.2663-2)*
  - Transfer by an NRA is a direct skip only to the extent transfer is subject to estate or gift tax
  - GST applies to taxable distribution or taxable termination only to the extent the initial transfer to trust by an NRA transferor, whether during life or at death, was subject to estate or gift tax
- Tax on gifts and bequests by "covered expatriates" *(section 2801)* – see expatriation slides below

RESIDENCE FOR TRANSFER TAX PURPOSES

- The residence of aliens is based on "domicile"
  - "A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal." *Treas. Reg. §§ 20.0-1(b) and 25.2501-1(b)*
- Intent is key – immigration status can be an important but not decisive indicator of intent

RESIDENCE FOR TRANSFER TAX PURPOSES (CONT'D)

- So what effect does immigrant or non-immigrant status have on determination of domicile?
  - LPR – strong indicator of intent to remain indefinitely
  - Nonimmigrant or lack of status – indicates intent to leave but:
    - Undocumented alien - Rev. Rul. 80-209, 1980-2 C.B. 248 and *Estate of Robert A. Jack v. United States*, 54 Fed. Cl. 590 (2002) (granting government's summary judgment motion that it should be allowed to show that the decedent intended to stay in the United States in violation of his visa)
    - Multiple renewals of nonimmigrant visas – *Elkins v. Moreno*, 435 U.S. 647 (1978) (non-tax case involving domicile for succession purposes of holder of G-4 visa for employee of international organization who remained in the United States for many years), cited by IRS in Rev. Rul. 80-36, 1980-2 C.B. 249

RESIDENCE FOR CALIFORNIA TAX PURPOSES (1)

- R&TC section 17014(a) defines "resident" as:
- Every individual who is in California for other than a temporary or transitory purpose; and
- Every individual domiciled in this State who is outside the state for a temporary or transitory purpose
- FTB's take on rules in this and next slide, see www.ftb.ca.gov/aboutftb/manuals/audit/rstm/rstm.pdf
- Planning must take into account differences between Federal and state definitions of residence
- Treaties generally and residence tiebreakers in particular do not apply for purposes of California taxation – it is quite possible to be a nonresident for Federal purposes but resident for California purposes

RESIDENCE FOR CALIFORNIA TAX PURPOSES (2)

- Special rules:
  - California resident remains a resident even though temporarily absent. Section 17014(c)
  - Rebuttable resumption of residence if in the aggregate more than 9 months of the taxable year in California. Section 17016; no reverse presumption
  - Uninterrupted absence of 546 consecutive days (18 months) or more under employment-related contract considered to be for other than temporary or transitory purpose. Section 17014(d)
    - Return to California for up to 45 days during taxable year disregarded in determining the 546 consecutive days.
    - Also applies to spouse accompanying the taxpayer.
    - Does not apply if: Individual or spouse has income from intangibles in excess of $ 200,000 in any taxable year employment contract in effect, or principal purpose of absence is to avoid taxes

FOREIGN COUNTRIES

- Foreign country rules on when residence ceases may differ
- Some countries, e.g., Canada, consider residence only when new residence acquired. Others consider residence ends when taxpayer leaves sufficiently permanently
- Must coordinate timing with client's home country advisors

POST-RESIDENCE ISSUES

THE BIG SWITCH: INBOUND TO OUTBOUND

- An NRA who becomes a U.S. resident often is making a critical switch:
  - Before residence, the NRA was an inbound investor
  - After residence, the NRA has become an outbound investor with respect to holdings that previously had no U.S. tax consequences and will also be subject to comprehensive and onerous reporting requirements
- Nowhere can the consequences be more wide ranging (and in some cases wildly disadvantageous) than in the case of holdings of private investments

CASE STUDY 1: FROM FOREIGN CORPORATION TO CFC

- Consider the following, rather common, scenario:
  - NRA owns F Corp., a successful business abroad
  - F Corp. is a corporation under U.S. entity classification rules
  - F Corp. establishes a U.S. subsidiary (U.S. Sub), which it capitalizes with a combination of equity capital and short- and medium-term debt
  - NRA moves to the United States to grow the business of U.S. Sub
  - The foreign corporation continues to be profitable at home

WHAT HAPPENS?

- Before NRA was U.S. resident:
  - United States did not tax NRA on F Corp. income
  - United States taxed F Corp. on dividends from U.S. Sub, but under many treaties only at 5% or even 0%
  - Note: F Corp.'s country did not tax dividends from U.S. Sub (territorial system) or gave credit to F Corp. for U.S. tax on U.S. Sub

WHAT HAPPENS? (CONT'D)

- After NRA becomes U.S. resident
  - Undesirable sandwich structure (U.S. person owns foreign corporation that owns U.S. corporation)
  - F Corp. becomes a CFC
  - U.S. taxes NRA (now RA) on F Corp.'s Subpart F income and GILTI (which from 2018 covers most non-Subpart F income)
  - U.S. taxes NRA on his share of post-residence F Corp. income, even if not distributed, up to amount of equity and loans provided by F Corp. to U.S. Sub (section 956)
  - Subpart F inclusions are <u>not</u> qualified dividends, even if F Corp. is in a treaty country, so taxed as ordinary income

CASE STUDY 2: PFIC

- Foreign family (parents and two children) owns foreign holding company which invests in rental real estate and stocks and shares
- The company pays some salary but reinvests most of the profits, including occasional substantial capital gains
- One child, owner of one quarter of the shares, moves to the United States
- Fact pattern varies
  - Parents do not give much information to children
  - Child who remained behind takes over from parents – U.S. child not much involved in management

F CORP. MAY BE A PFIC

- All dividends are ordinary income
  - Interest charge on tax on "excess distribution", allocated to every day the F Corp. has been a PFIC
- Excess distribution is:
  - Distribution in excess of 125% of rolling average of distributions in 3 previous years
  - Any gain on sale or exchange of the shares
- Could make "qualified electing fund" (QEF) election
  - Pay tax on QEF's earnings and capital gains as earned
  - Needs to be made in good time and requires significant cooperation from company management
  - No credit for foreign taxes paid by QEF
- Consider instead making "check the box" election to treat F Corp. as partnership – See Appendix

FBARS – WHAT ACCOUNTS ARE COVERED?

- 2010 and later years:
  - Accounts with foreign banks and financial institutions.
    - Includes foreign branches of U.S. institutions.
    - But not U.S. branches of foreign institutions.
  - Insurance policies with a cash value issued by foreign insurance company.
  - Annuities with a foreign financial institution.

FBARS – WHAT ACCOUNTS ARE COVERED? (CONT'D)

- What about pensions?
  - Individually owned accounts must be reported.
  - Foreign plans owned or sponsored by employers – uncertain
    - Unfunded plans probably do not need to be reported.
- What about safe deposit boxes? Not covered.
- What about gold bullion? Depends on facts.

FBAR PENALITIES

- Willful Failures
  - Willful failure to file:
    - Civil Penalty: the greater of $100,000 or 50% of the account balance at the time of the violation. Recent case suggests $100,000 limit until regulations updated
    - Criminal Penalty: up to $250,000 or 5 years in jail or both or if the failure to file occurs while violating certain other laws, up to $500,000 or 10 years in jail or both
  - Knowingly and willfully filing false
    - Civil Penalty: the greater of $100,000 or 50% of the account balance at the time of the violation
    - Criminal penalty: $10,000 or 5 years in jail or both
- Non-Willful Failures
  - Up to $10,000 for each negligent violation
- IRS says these penalties are per account – this has not been tested in a court

FORM 1040 SCHEDULE B

Part III	You must complete this part if you **(a)** had over $1,500 of taxable interest or ordinary dividends; **(b)** had a foreign account; or **(c)** received a distribution from, or were a grantor of, or a transferor to, a foreign trust.	Yes	No
Foreign Accounts and Trusts (See instructions.)	**7a** At any time during 2017, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions		
	If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements		
	b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶		
	8 During 2017, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions		

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 17146N **Schedule B (Form 1040A or 1040) 2017**

- The IRS and DOJ regard this as the ace in the hole – tax returns with box checked "No" combined with non-reporting of income are regarded as an indicator of willfulness in connection with failure to file FBAR.

- Government has had some successes but they also have had some startling losses. . .

EXPATRITION (1)

- Special rules apply to "covered expatriates", meaning a citizen who gives up citizenship or a long-term permanent resident, defined as LPR who
- has been a LPR in any part of 8 of the preceding 15 years (in practice, this means between 6 and 7 years); and
- either (a) ceases to be a LPR or (b) claims residence in another country under a treaty tiebreaker
- The rules apply if the former citizen or LPR had a net worth of $2 million or an average annual income tax of $165,000 or fails to certify to having been tax compliant for five years

EXPATRITION (2)

- Consequences of expatriation:
  - Section 877A(a) – taxpayer deemed to have sold worldwide assets at fair market value the day before the expatriation event
  - Special provisions apply to interests in deferred compensation plans, tax deferred accounts and trusts – the statute appears to go as far as requiring withholding by foreign trustees of a foreign trust at 30% of any distribution to a covered expatriate
  - Section 2801 – gift by covered expatriate to U.S. person taxable to the recipient at top rate of estate or gift tax
- Pre-residence planning – consider if a green card is really needed; warn about deadline for giving it up before covered expatriate status would be triggered

APPENDIX: QEF v CHECK-THE-BOX

	QEF election by U.S. direct or indirect shareholders of F Corp.	**F Corp. Makes Check-the-Box Election**
Who makes the election	U.S. members of F Corp. make QEF elections individually	F Corp. makes the election; generally, no shareholder consent required
Election applies to	Each U.S. member can decide whether or not to elect	Election applies to all U.S. members
Effect on non-U.S. investors	None	None
Timing	Made on U.S. member's timely filed tax return for the first year he owned an interest in the QEF	Made by F Corp. no later than 75 days after the desired effective date of the election. Effective date should be prior to first date they have business activity. Late filing possible – must follow Rev. Proc. 2009-41; IRS quite liberal in practice
What income is included	U.S. member's pro rata share of (i) net capital gain of the QEF's taxable year plus (ii) the balance of the earnings and profits not attributable to net capital gain	U.S. member's allocable share of F Corp.'s net income and gains
Treatment of sale of F Corp. asset	Net capital gain taxed as long-term capital gain only to the extent gain exceeds depreciation recapture	Net capital gain taxed as long-term capital gain only to the extent gain exceeds depreciation recapture
Treatment of sale of F Corp. stock	Long-term capital gain	Long-term capital gain
Information	QEF election invalidated if F Corp. does not provide "PFIC Annual Information Statement" described in Treas. Reg. § 1.1295-1(g)	Check-the-box election not invalidated by failure of F Corp. to provide information to U.S. direct or indirect shareholders
Other issues	(i) No foreign tax credits in the event any F Corp. income taxed by foreign country (ii) No issues for U.S. tax-exempts (iii) Election terminated if F Corp. becomes CFC	(i) Foreign tax credits flow through to U.S. members (ii) U.S. tax-exempts, e.g., IRAs, pension plans, non-profits, may have heavily taxed "UBTI" which may make deal unattractive (iii) Not affected if F Corp. becomes majority U.S. owned

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