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Internal Revenue Code Section 877A(d)(3)

Tax responsibilities of expatriation

(a) General rules.
For purposes of this subtitle-

(1) Mark to market.
All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.

(2) Recognition of gain or loss.
In the case of any sale under paragraph (1) -

(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence, determined without regard to paragraph (3).

(3) Exclusion for certain gain.

(A) In general. The amount which would (but for this paragraph) be includible in the gross income of any individual by reason of paragraph (1) shall be reduced (but not below zero) by $600,000.

(B) Adjustment for inflation.

(i) In general. In the case of any taxable year beginning in a calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to-

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 2007" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(ii) Rounding. If any amount as adjusted under clause (i) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(b) Election to defer tax.

(1) In general.

If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a) , the time for payment of the additional tax attributable to such property shall be extended until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

(2) Determination of tax with respect to property.
For purposes of paragraph (1) , the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

(3) Termination of extension.
The due date for payment of tax may not be extended under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4) , unless the taxpayer corrects such failure within the time specified by the Secretary).

(4) Security.

(A) In general. No election may be made under paragraph (1) with respect to any property unless adequate security is provided with respect to such property.

(B) Adequate security. For purposes of subparagraph (A) , security with respect to any property shall be treated as adequate security if-

(i) it is a bond which is furnished to, and accepted by, the Secretary, which is conditioned on the payment of tax (and interest thereon), and which meets the requirements of section 6325 , or

(ii) it is another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.

(5) Waiver of certain rights.
No election may be made under paragraph (1) unless the taxpayer makes an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section .

(6) Elections.
An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable.

(7) Interest.
For purposes of section 6601 , the last date for the payment of tax shall be determined without regard to the election under this subsection .

(c) Exception for certain property.
Subsection (a) shall not apply to-

(1) any deferred compensation item (as defined in subsection (d)(4)),

(2) any specified tax deferred account (as defined in subsection (e)(2)), and

(3) any interest in a nongrantor trust (as defined in subsection (f)(3)).

(d) Treatment of deferred compensation items.

(1) Withholding on eligible deferred compensation items.

(A) In general. In the case of any eligible deferred compensation item, the payor shall deduct and withhold from any taxable payment to a covered expatriate with respect to such item a tax equal to 30 percent thereof.

(B) Taxable payment. For purposes of subparagraph (A) , the term "taxable payment" means with respect to a covered expatriate any payment to the extent it would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States. A deferred compensation item shall be taken into account as a payment under the preceding sentence when such item would be so includible.

(2) Other deferred compensation items.

In the case of any deferred compensation item which is not an eligible deferred compensation item-

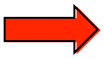
(A)

(i) with respect to any deferred compensation item to which clause (ii) does not apply, an amount equal to the present value of the covered expatriate's accrued benefit shall be treated as having been received by such individual on the day before the expatriation date as a distribution under the plan, and

(ii) with respect to any deferred compensation item referred to in paragraph (4)(D) , the rights of the covered expatriate to such item shall be treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the plan to reflect such treatment.



(3) Eligible deferred compensation items.

For purposes of this subsection , the term "eligible deferred compensation item" means any deferred compensation item with respect to which-

(A) the payor of such item is-

(i) a United States person, or

(ii) a person who is not a United States person but who elects to be treated as a United States person for purposes of paragraph (1) and meets such requirements as the Secretary may provide to ensure that the payor will meet the requirements of paragraph (1) , and

(B) the covered expatriate-

(i) notifies the payor of his status as a covered expatriate, and

(ii) makes an irrevocable waiver of any right to claim any reduction under any treaty with the United States in withholding on such item.

(4) Deferred compensation item.

For purposes of this subsection , the term "deferred compensation item" means-

(A) any interest in a plan or arrangement described in section 219(g)(5) ,

(B) any interest in a foreign pension plan or similar retirement arrangement or program,

(C) any item of deferred compensation, and

(D) any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83 .

(5) Exception.

Paragraphs (1) and (2) shall not apply to any deferred compensation item to the extent attributable to services performed outside the United States while the covered expatriate was not a citizen or resident of the United States.

(6) Special rules.

(A) Application of withholding rules. Rules similar to the rules of subchapter B of chapter 3 shall apply for purposes of this subsection .

(B) Application of tax. Any item subject to the withholding tax imposed under paragraph (1) shall be subject to tax under section 871 .

(C) Coordination with other withholding requirements. Any item subject to withholding under paragraph (1) shall not be subject to withholding under section 1441 or chapter 24.

(e) Treatment of specified tax deferred accounts.

(1) Account treated as distributed.

In the case of any interest in a specified tax deferred account held by a covered expatriate on the day before the expatriation date-

(A) the covered expatriate shall be treated as receiving a distribution of his entire interest in such account on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the account to reflect such treatment.

(2) Specified tax deferred account.

For purposes of paragraph (1) , the term "specified tax deferred account" means an individual retirement plan (as defined in section 7701(a)(37)) other than any arrangement described in subsection (k) or (p) of section 408 , a qualified tuition program (as defined in section 529), a qualified ABLE program (as defined in section 529A ,) a Coverdell education savings account (as defined in section 530), a health savings account (as defined in section 223), and an Archer MSA (as defined in section 220).

(f) Special rules for nongrantor trusts.

(1) In general.

In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate-

(A) the trustee shall deduct and withhold from such distribution an amount equal to 30 percent of the taxable portion of the distribution, and

(B) if the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain shall be recognized to the trust as if such property were sold to the expatriate at its fair market value.

(2) Taxable portion.

For purposes of this subsection , the term "taxable portion" means, with respect to any distribution, that portion of the distribution which would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States.

(3) Nongrantor trust.

For purposes of this subsection , the term "nongrantor trust" means the portion of any trust that the individual is not considered the owner of under subpart E of part I of subchapter J. The determination under the preceding sentence shall be made immediately before the expatriation date.

(4) Special rules relating to withholding.

For purposes of this subsection -

(A) rules similar to the rules of subsection (d)(6) shall apply, and

(B) the covered expatriate shall be treated as having waived any right to claim any reduction under any treaty with the United States in withholding on any distribution to which paragraph (1)(A) applies unless the covered expatriate agrees to such other treatment as the Secretary determines appropriate.

(5) Application.

This subsection shall apply to a nongrantor trust only if the covered expatriate was a beneficiary of the trust on the day before the expatriation date.

(g) Definitions and special rules relating to expatriation.

For purposes of this section -

(1) Covered expatriate.

(A) In general. The term "covered expatriate" means an expatriate who meets the requirements of subparagraph (A) , (B) , or (C) of section 877(a)(2) .

(B) Exceptions. An individual shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2) if-

(i) the individual-

(I) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

(II) has been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation date occurs, or

(ii)

(I) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½ and

(II) the individual has been a resident of the United States (as so defined) for not more than 10 taxable years before the date of relinquishment.

(C) Covered expatriates also subject to tax as citizens or residents. In the case of any covered expatriate who is subject to tax as a citizen or resident of the United States for any period beginning after the expatriation date, such individual shall not be treated as a covered expatriate during such period for purposes of subsections (d)(1) and (f) and section 2801 .

(2) Expatriate.

The term "expatriate" means-

(A) any United States citizen who relinquishes his citizenship, and

(B) any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(3) Expatriation date.

The term "expatriation date" means-

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(4) Relinquishment of citizenship.

A citizen shall be treated as relinquishing his United States citizenship on the earliest of-

(A) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(5) Long-term resident.
The term "long-term resident" has the meaning given to such term by section 877(e)(2) .

(6) Early distribution tax.
The term "early distribution tax" means any increase in tax imposed under section 72(t) , 220(f)(4) , 223(f)(4) , 409A(a)(1)(B) , 529(c)(6) , 529A(c)(3) , or 530(d)(4) .

(h) Other rules.

(1) Termination of deferrals, etc.
In the case of any covered expatriate, notwithstanding any other provision of this title-

(A) any time period for acquiring property which would result in the reduction in the amount of gain recognized with respect to property disposed of by the taxpayer shall terminate on the day before the expatriation date, and

(B) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

(2) Step-up in basis.
Solely for purposes of determining any tax imposed by reason of subsection (a) , property which was held by an individual on the date the individual first became a resident of the United States (within the meaning of section 7701(b)) shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(3) Coordination with section 684 .
If the expatriation of any individual would result in the recognition of gain under section 684 , this section shall be applied after the application of section 684 .

(i) Regulations.
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.