COMMITTEE REPORT:
INTERNATIONAL PRACTICE

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Trouble Ahead for Certain Green Card Holders: Part I

Covered expatriates can't just fade away from the United States

In our global practices spanning cumulatively three quarters of a century, we find that green card holders too often are oblivious to the fact that formal steps must be taken to relinquish their U.S. residency status. Allowing a green card to expire is insufficient, and remaining outside the United States permanently or for long periods of time is inadequate. The Internal Revenue Service Chief Counsel concurs, stating that "merely leaving the U.S. with no intention to return is not sufficient."[1]

Step Up in Enforcement

In 2020, the rapid pre-pandemic expatriation from the United States caught the attention of the U.S. Treasury Inspector General for Tax Administration (TIGTA). As a result, in its Sept. 28, 2020 report, the TIGTA emphasized the need for enhanced enforcement to create disincentives to expatriate from the United States.[2] The TIGTA audited the IRS programs to ensure compliance by expatriates with the U.S. exit tax rules. As a result of the rising number of taxpayers expatriating and apparent widespread taxpayer noncompliance, TIGTA recommended that the IRS enhance controls to enforce U.S. tax laws and reporting provisions applicable to expatriates.

The TIGTA 2020 audit found that the IRS lacked the requisite controls to ensure compliance by expatriates. Specifically, the TIGTA found that the IRS has inadequate controls in place to ensure that taxpayers who qualify as covered expatriates file Form 8854 and pay their requisite amount of exit tax. Based on the data analyzed, the TIGTA found that many expatriates aren't filing Form 8854. Furthermore, the TIGTA found that the expatriate database was insufficient to enforce the exit tax. Many high-net-worth expatriates weren't paying exit tax, and the IRS examination rate of an expatriate's final tax return was low.

On July 19, 2020 the IRS Large Business & International Division announced a new compliance campaign to focus on U.S. citizens and long-term residents (LTRs) who expatriated on or after June 17, 2008, the effective date of the Heroes Earnings Assistance and Relief Tax Act provisions creating new exit tax (Internal Revenue Code Section 877a) and inheritance tax (IRC Section 2801) regimes.

The Inflation Reduction Act significantly expands the IRS. It increases the IRS budget by roughly $80 billion over 10 years.[3] There's a 69% increase in funding for enforcement with over $45 billion committed for this function.

We believe that for every dollar of increased value of assets found by the IRS on the day before expatriation, the IRS might collect anywhere from 23.8% to over 40% of each dollar of increased assessed value under the exit tax rule. This increased collection is subject only to a roughly $750,000 one-time exemption under the mark-to-market exit tax rules. Such large potential revenues create an enormous incentive for the IRS to step up its policing of expatriates as part of its enhanced compliance and enforcement efforts in the international area. This collection is made easier by the fact that all expatriates are required to file Form 8854 Expatriation Statement when they depart the United States.

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U.S. Resident Status

An individual is considered a U.S. person for U.S. income tax purposes if they're either a U.S. citizen or U.S. resident. An individual is considered a U.S. resident if they trigger either the green card or substantial presence test. Once an individual is classified as a U.S. person, they're subject to all U.S. income tax obligations, including filing annual Forms 1040, reporting worldwide income and paying U.S. taxes on that income, as well as filing numerous U.S. international information returns about their foreign investments and business activities.

Determining whether an individual is a U.S. citizen is fairly simple; however, confirming U.S. resident status for income tax purposes can be tricky and can vary from year to year. Obtaining a green card from the U.S. Citizen and Immigration Services (CIS) will cause the individual to become a U.S. income tax resident once the individual enters the United States. An alien individual is treated as a U.S. income tax resident if they're a lawful permanent resident (that is, a green card holder) at any time during the calendar year. Such individual remains a green card holder provided "such status has not been revoked (and has not been administratively or judicially determined to have been abandoned)."[4]

In 2008, Congress introduced a new way of losing U.S. resident status for income tax purposes:

> An individual shall cease to be treated as a lawful permanent resident of the U.S. if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the U.S. and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.[5]

An individual can potentially terminate U.S. income tax residency by, among other actions, demonstrating after a prescribed number of years that they should be considered a resident of a foreign country under a tax treaty and filing the necessary forms with the IRS to claim such status, including Form 1040NR, Form 8833 and Form 8854. More typically, a green card holder formally abandons permanent legal residency in the United States by filing a Form I-407 with the U.S. CIS. Unlike when renouncing U.S. citizenship, there's no requirement for an interview at a U.S. Embassy or Consulate, and a Form I-407 can either be submitted at a port of entry or by courier.

LTRs

Potential unwanted tax liability can occur when a green card holder retains status too long. Some individuals may become LTRs for income tax purposes, which carries with it potentially significant adverse U.S. tax implications if they subsequently relinquish their green card status or have it revoked. The term "LTR" means:

> [A]ny individual (other than a citizen of the U.S.) who is a lawful permanent resident (i.e., green card holder) in at least 8 taxable years during the period of 15 taxable years ending with the taxable years during which green card status is terminated.[6]

The Instructions to Form 8854 contain similar guidance in confirming that the exit tax only applies to U.S. citizens and LTRs:

Until an individual becomes an LTR, it's not possible for them to be classified as a covered expatriate.

> You are an LTR if you were a lawful permanent resident of the U.S. (i.e., a green card holder) in at least 8 of the last 15 years ending with the year you are no longer treated as a lawful permanent resident. In determining if you meet the 8-year requirement, don't count any year that you were treated as a resident of a foreign country under a tax treaty and didn't waive treaty benefits applicable to residents of the country.[7]

Until an individual becomes an LTR, it's not possible for them to be classified as a covered

expatriate. As a result, there's no exit tax toll charge on departure, and the U.S. inheritance tax can't apply to any U.S. heirs. However, once a green card holder meets the definition of an LTR, there's potential exposure for exit tax and inheritance tax on relinquishment of the green card by the filing of a Form I-407. Accordingly, rather than immediately or ever obtaining a green card, it maybe more strategic to rely on some other type of visa to remain in the United States. In this way, while the individual may trigger U.S. tax residence under the substantial presence test, they'll never become an LTR and therefore never become a covered expatriate who's subject to the Section 877A exit tax or the Section 2801 inheritance tax.

Payment of the exit tax, however, doesn't end exposure to the current tax system.

Covered Expatriates

Section 877A consists of primarily three distinct taxes: (1) the value of an LTR's employer pension or retirement plan accounts is taxable either immediately on expatriation or on a deferred basis if certain paperwork is delivered to the plan custodian within 30 days of departing the United States;[8] (2) if the expatriate is a beneficiary of a non-grantor trust (whether foreign or domestic), distributions to the expat beneficiary will be subject to withholding tax on such portion of the distribution as represents ordinary trust income;[9] and (3) all worldwide assets regardless of location and not covered by the prior categories are subjected to a so-called "mark-to-market" tax on unrealized gains, as if the LTR had sold all such property.[10] Rates of tax under the three categories range from 23.8% to 37%. The mark-to-market segment exempts the first $767,000 (2022).

In general terms, the mark-to-market exit tax rate on unrealized long-term gains is 23.8% on assets in excess of a special one-time expatriation exemption amount of $767,000 (for 2022 expatriations). For example, if on the day before an LTR abandons their green card, they personally own $15 million in cash and $10 million of other non-retirement assets in which they have a basis of $4 million, the LTR has roughly $5.25 million of gain subject to exit tax (after applying the $767,000 special expatriation exemption amount). This gain of $5.25 million would be taxed at 23.8% (as if the LTR sold each asset for fair value). The exit tax would be roughly $1.25 million. There's no exit tax on cash. The LTR would need to provide written valuations for any real estate or business interests or other non-traded, illiquid assets to accompany the Form 8854 Expatriation Statement to demonstrate fair value. The valuation report would then be attached to the LTR's final Form 1040.

Once the LTR is no longer a U.S. income tax resident, they would file a Form 1040NR and report any U.S. source business income or dividend income from U.S. stocks and pay U.S. tax on such income. If a former residence located in the United States is sold after the LTR leaves the United States, any gain on sale would be subject to U.S. tax.

Payment of the exit tax, however, doesn't end exposure to the current tax system. To the extent that the LTR makes later transfers of assets as gifts or bequests to U.S. citizen or resident heirs or beneficiaries, the U.S. recipient must pay an inheritance tax of 40%.[11]

Only covered expatriates are subject to the exit and inheritance tax regimes. For the exit tax and the inheritance tax to apply, the expatriating LTR need only satisfy one of three tests to be deemed a covered expatriate for life for both exit tax and inheritance tax purposes.

1. If the LTR has a personal net worth above $2 million, the LTR is a covered expatriate. The base of assets in this net worth analysis is quite broad, including worldwide assets, fractional interests in property and businesses, investment and personal use assets wherever located in the world. No category of assets is exempted. If the expatriate is a beneficiary of a trust, even a fully discretionary trust, the IRS says that the beneficial interest must somehow be valued and included in the base.
2. If the average federal income tax liability is $178,000 (for expatriations in 2022) over the previous five years, the LTR is a covered expatriate.

3. The LTR must be fully compliant with all aspects of the IRC over the previous five years and must certify such full tax compliance to the IRS on the Form 8854 Expatriation Statement filed by the LTR for the year of expatriation. Compliance includes not only payment of all taxes but also satisfaction of all U.S. international informational tax reporting requirements, including foreign bank accounts as well as filing of all required gift tax returns.

Pre-Expatriation Planning

Occasionally there's a rebuttal to a presumption that an individual is a covered expatriate if they were a dual citizen at birth and are returning (have returned) to their country of birth. Another exception occurs when the individual relinquishes their LTR status or U.S. citizenship between the ages of 18 and 18½.

However, if an exception to a presumption to covered expatriate status doesn't apply, the LTR can nevertheless engage in some pre-expatriation planning so as to possibly avoid classification as a covered expatriate or to minimize the assets subject to the exit tax regime. This pre-expatriation planning needs to occur while the LTR is still in the United States and is presumably a U.S. domiciliary for U.S. gift tax purposes. If the LTR has a net worth above $2 million, they can use all or part of their lifetime exclusion amount of $12.06 million (2022) to give away assets before expatriation and thus reduce their net worth subject to exit tax. A beneficial interest in a trust that's otherwise countable in net worth can be disclaimed, but the act of disclaimer may itself be a gift that would use up exclusion amount.[12] If a gift is contemplated after the LTR has established residency in a new country, the gift or inheritance tax laws of the LTR's new country of residence or other citizenship must be considered. A few European countries, including the United Kingdom, impose a gift tax, but many others don't.

If the LTR's net worth is so substantial that making gifts of up to $12.06 million won't serve to place the LTR below the $2 million threshold, there are other planning techniques to consider, such as packaging investment assets into company structures and making gifts of fractional interests. Because these fractional interests have a value to the recipient that's often less than the proportionate underlying asset value, the LTR has effectively discounted the valuation. Discounts in the 25% range are common, and it's highly recommended that the expatriating LTR obtain an outside third-party valuation to substantiate the valuation discount.

> In planning to eliminate the inheritance tax, the most effective pre-expatriation estate-planning step that an LTR with U.S. heirs can take is to fund an expatriation trust using as much of the individual's $12.06 million gift tax exemption as possible.

There's no guidance from the IRS and some uncertainty whether an LTR is entitled to the gift tax credit as a resident of the United States in the year of expatriation because of the reference to the credit being the "applicable credit amount in effect under section IRC Section 2010(c) that would apply *if the donor died as of the end of the calendar year*" (emphasis added). This could mean either: (1) the LTR has no lifetime gift tax exemption equivalent amount available in the year of abandoning their green card (because they're not a green card holder on Dec. 31 of such year), or (2) they're entitled to their full gift tax exemption amount for the year of expatriation. We're not aware of any official guidance from the IRS clarifying which interpretation is correct; however, based on the instructions on Form 709, the former is more likely the proper interpretation. To adhere to the more conservative and likely correct interpretation of the gift tax statute, an LTR considering abandoning their green card who would like to undertake significant gifting

prior to expatriation is well-advised to do so in the year or years prior to the year of expatriation.

Elimination of exit tax. Certain trust structures are available under the laws of some of the U.S. states that may remove the assets from the net worth calculation of the expatriating LTR who will be a covered expatriate on expatriation. The terms of the expatriation trust involve a number of complex considerations, which are beyond the scope of this article. A non-exhaustive list of key considerations include what should be the governing law of the trust and where should it be administered, whether it should be a directed trust, whether the settlor should grant a trust protector a special power of appointment during the settlor's life (that is, decanting power), who should be the beneficiaries and what's their current and future citizenship and residency, who should be the trustee and what's their citizenship and residency, should the trust be a U.S. domestic trust or a foreign trust and should the trust be drafted as a grantor trust for income tax purposes.

Some day in the very near future, the IRS and U.S. CIS and State Department databases will eventually communicate with each other.

Elimination of inheritance tax. Aside from the exit tax applicable to the departing LTR, the covered expatriate's U.S. heirs will be subject to the inheritance tax if they're U.S. citizens or residents at the time of their receipt of gifts or testamentary bequests from the covered expatriate. A key advantage of a properly established expatriation trust is that if the trust is established and funded well before the LTR abandons their green card, any subsequent trust distribution to U.S. heirs won't be subject to the punitive U.S. inheritance tax. This is a very important planning consideration for someone who's leaving behind children and grandchildren who will remain U.S. citizens or residents.

In planning to eliminate the inheritance tax, the most effective pre-expatriation estate-planning step that an LTR with U.S. heirs can take is to fund an expatriation trust using as much of the individual's $12.06 million gift tax exemption as possible. This is important to do before expatriation because once an expatriate severs their U.S. domicile, their estate tax exemption amount will drop from $12.06 million to $60,000 (not adjusted for inflation). It's therefore important to use the larger exemption while it's available. Further, when deciding which assets to use to fund an expatriation trust, it may be most prudent to use assets like U.S. real estate that are impossible to move outside of the United States and that would be difficult to restructure into non-U.S. situated assets for U.S. estate tax purposes once an LTR departs the United States.

Funding such expatriation trusts prior to expatriation is an especially important step to take if the LTR anticipates that they'll want to make gifts or bequests to a U.S. citizen or resident beneficiaries in the future after their expatriation date. As discussed above, the inheritance tax is imposed on U.S. recipients who receive gifts and bequests from covered expatriates. By contrast, the inheritance tax isn't imposed on distributions from expatriation trusts that were funded by an LTR prior to expatriation. Thus, an irrevocable domestic (expatriation) trust that's funded prior to expatriation may allow a covered expatriate to continue to provide for beneficiaries remaining in the United States without forcing those beneficiaries to pay the inheritance tax on the trust distributions that they receive from the expatriation trust.

Form 8854

All U.S. citizens and LTRs who are subject to Section 877A rules (even if they're exempt from the exit tax due to their not being classified as covered expatriates) must nevertheless file a Form 8854 either after they expatriate or by the due date for the first Form 1040NR (U.S. Nonresident Alien Income Tax Return).[13] The IRS hasn't issued regulations on Form 8854, so taxpayers must look to IR Notice 2009-85 for guidance. Included in Form 8854 is the crucial language concerning satisfying the certification test:

> Do you certify under penalties of perjury that you have complied with all of your tax obligations for the 5 preceding years (see instructions)?[14]

An often overlooked requirement of Form 8854 is that in addition to asking for providing financial information, the instructions say:

> Note: If there has been significant changes in your assets and liabilities for the period that began 5 years before your expatriation and ended on the date that you first filed Form 8854, you must attach a statement explaining the changes.

We've seen situations in which foreign offices of major accounting firms overlook this disclosure requirement, rendering the originally filed Form 8854 incomplete. If the LTR makes a large transfer (gift) more than five years before expatriation, the transfer to the trust presumably needn't be disclosed on Form 8854 even though it may be considered a significant change in assets and liabilities of the LTR.

Noncompliant LTRs

If an LTR fails any of the three tests noted above under Section 877A(a), such individual is classified as a covered expatriate under Section 877A(g)(1) and is thus subject to the exit tax rules, and their U.S. heirs are potentially subject to the Section 2801 inheritance tax rules. What happens if an LTR expatriates and their U.S. accountant filed a dual status Form 1040/Form 1040NR tax return for the year of expatriation, but the LTR didn't attach Form 8854 and a delinquent original Form 8854 was never filed?

Because the required Form 8854 was never filed with the IRS, the expatriate has been classified as a covered expatriate since their expatriation date and thus was subject to Section 877A for the year of expatriation.[15] This is true even if the former LTR's net worth and prior five years' tax liability were below the applicable Section 877A thresholds. Because the former LTR never certified on Form 8854 that they had complied with all U.S. tax obligations for the prior 5-year period, they're classified as a covered expatriate for life. Accordingly, the expatriate remains subject to the exit tax rules of Section 877A with respect to all worldwide assets as of the expatriation date, and all gifts and bequests to U.S. heirs are subject to inheritance tax.[16]

Though not well-publicized by the IRS, the government has acknowledged that in administering the Streamlined Foreign Offshore Procedures (SFOP) program, former LTRs now living abroad can come clean on their prior noncompliance. To do so, the IRS requires expatriated taxpayers to submit five years of tax returns under the SFOP.

Some day in the very near future, the IRS and U.S. CIS and State Department databases will eventually communicate with each other. The IRS will know in real time which LTRs have permanently left the United States, with the real possibility that the U.S. CIS might involuntarily revoke their green card, a situation that would typically result in a deemed expatriation under Section 877A. As we'll discuss more fully in Part II of this article, an LTR may already have this risk simply by living full-time outside the United States while retaining their green card and claiming non-residency under a tax treaty and non-U.S. domiciliary status for U.S. transfer tax purposes.

Except for 2021, expatriation has increased significantly in recent years according to the TIGTA Task Force 2022 report.[17] According to the Treasury department, the number of expatriates for 2021 was only 2,426, a 64% decrease from 2020.[18] We believe that this dramatic decline is likely attributable to COVID-19 and the inability of many individuals to secure appointments to renounce their U.S. citizenships. An LTR needn't obtain an appointment to abandon their green card; they need only submit a Form I-407 with the U.S. CIS.

We're aware of situations, particularly of those who are old or infirm, concerning their prior non-compliance with U.S. international information reporting obligations. The targeted continuing green card holder hopes they can avoid or delay their day of reckoning by warding off the IRS or Department of Justice (DOJ) while they're alive. We don't recommend such a misguided strategy to try to defer this looming problem with the U.S. tax authorities.

The IRS and DOJ have various legal routes they can take to pursue payment after the offending taxpayer dies. One recent case is *U.S. v. Estate of Steven Schoenfeld and Robert Schoenfeld, a distribute of the Estate of Steven Schoenfeld.*[19] In that case, the government demonstrated the efforts to which it will go to chase down heirs who receive money from a deceased taxpayer on which U.S. income taxes were never paid. When a taxpayer refuses to pay a Report of Foreign Bank and Financial Accounts (FBAR) penalty, the DOJ must file a collection lawsuit within two years of the date on which the IRS assessed the penalty.

> Remand is considered the proper remedy when an administrative agency such as the IRS makes an error of law.

The district court in *Schoenfeld* addressed the issue of whether the cause of action against the noncompliant U.S. taxpayer for collection of FBAR penalties disappears or abates on their death. The district court looked to federal common law. It determined that Congress created two categories of FBAR penalties, one civil and the other criminal. The court found that the FBAR penalty in question was intended to be civil not criminal, resting largely on the fact that the relevant provision is titled "Civil Penalties." The court went on to find that the FBAR penalty involves monetary fines, monetary fines have traditionally been viewed as civil and the IRS can assess an FBAR penalty regardless of the taxpayer's mindset. The court ultimately concluded that the FBAR penalty is remedial/civil in nature, not penal/criminal, such that liability for the civil penalty doesn't end with the death of the U.S. taxpayer who committed the violation and could be collected from heirs who inherited the transgressing taxpayer's assets.

In *U.S. v Diana Garrity, Paul Garrity, Jr., and Paul Sterczala, as fiduciaries of the estate of Paul G. Garrity, Sr., deceased,*[20] the DOJ realized that voluntary payments wouldn't be forthcoming, so it started a collection action in district court against three "co-fiduciaries" of the estate. The jury sided with the DOJ in finding that the deceased taxpayer had a reportable interest in a foreign account and his failure to file an FBAR was willful.

The DOJ relies on two main laws in enforcing international collection actions. These two routes force taxpayers to send money or other property back to the United States so the government can use it to satisfy or reduce an outstanding U.S. tax liability. First, IRC Section 7402(a) authorizes a district court to issue orders and render judgments as may be necessary and appropriate to enforce the "internal revenue laws." Section 7402(a) further provides that such remedies "are in addition to and not exclusive of" all other remedies permitted by other courts to enforce such laws. Second, the Federal Debt Collection Procedures Act (FDCPA) is broader.[21] The FDCPA describes the procedures for recovering not only amounts related to "internal revenue laws" but also to all "judgments on a debt" to the government.[22]

The government has been active in bringing these repatriation cases for some time. A fairly recent case is *U.S. v Schwarzbaum.*[23] Isac Schwarzbaum became a green card holder in 1993 and a U.S. citizen in 2020. Isac had reportable interests in 20 accounts during the relevant years. In 2009, UBS in Switzerland sent Isac a letter indicating that the IRS was seeking information about U.S. account holders like him. Through a Swiss lawyer, Isac tried unsuccessfully to prevent UBS from disclosing his data to the U.S. government. He applied to the IRS offshore voluntary disclosure program, but then opted out and faced an IRS audit. The IRS agent applied full FBAR penalties for 2006 through 2009. The taxpayer refused to pay the FBAR penalties, so the DOJ began a collection lawsuit in district court.

The district court in *Schwarzbaum* held in favor of the DOJ for nearly all years on the grounds that Isac had shown "recklessness" and "willful blindness" regarding his FBAR duties. Isac continued to refuse to pay after the verdict, so about a year later, the DOJ filed a motion in district court seeking a repatriation order obligating Isac to transfer sufficient funds from abroad covering his growing liability due to the

U.S. government. The DOJ was demanding not only payment of roughly $12.5 million in FBAR penalties but also pre-judgment interest, late payment penalties and a special "surcharge" equal to 10% of the total debt owed the U.S. government, for a total of $18.3 million. The DOJ alleged that Isac sold his personal residence in the United States, moved to Switzerland, transferred essentially all of his assets to Switzerland and took other actions, both before and after the FBAR penalty trial, in an effort to render himself "judgment proof." Based on information it obtained during discovery, the DOJ explained to the court that the taxpayer had more than $49 million in assets in Switzerland that he could use to pay his U.S. liability. The district court referred the government's motion to repatriate foreign assets to a Magistrate Judge for a so-called "Report and Recommendations" (R&R). The Magistrate found that the district court had the requisite authority under the FDCPA. The district court also found the R&R to be well-reasoned and correct and ordered the taxpayer to repatriate from abroad sufficient assets to satisfy his significant penalties and debts due the U.S. government.

The U.S. Court of Appeals for the Eleventh Circuit upheld the district court's determination that the taxpayer was willful, even if his conduct was only reckless.[24] However, the Eleventh Circuit further held that the district court erred in failing to remand the taxpayer's matter back to the IRS for computation of the penalties under the Administrative Procedure Act. Basically, the Eleventh Circuit held that district courts don't have "original calculation" jurisdiction over FBAR penalties, as that power belongs exclusively to the IRS. Remand is considered the proper remedy when an administrative agency such as the IRS makes an error of law. The DOJ conceded in *Schwarzbaum* that the IRS mistakenly calculated the taxpayer's statutory maximum penalties using his highest annual balances rather than their June 30 balances.

Coming Up

In Part II of our article, we'll discuss some possible planning techniques available to certain departed LTRs who wish to possibly eliminate or minimize covered expatriate status retroactively even though they've already moved out of the United States without having satisfied the Form 8854 filing requirement.

Endnotes

1. "IRS Addresses Rules Affecting Green Card Holders, Expats," *Tax Notes* (Aug. 15, 2014), *www.taxnotes.com/research/federal/irs-private-rulings/information-letters/irs-addresses-rules-affecting-green-card-holders%2C-expats/1fkv5.*
2. *www.treasury.gov/tigta/auditreports/2020reports/202030071fr.pdf.*
3. Alex Muresianu, "How to Think About the IRS Tax Enforcement Provisions in the Inflation Reduction Act" (Aug. 17, 2022), *https://taxfoundation.org/inflation-reduction-act-irs-funding/.*
4. Internal Revenue Code Section 7701(b)(6).
5. *Ibid.,* added by the Heroes Earnings Assistance and Relief Act of 2008, P.L. 1110-25.
6. Treasury Regulations Section 301.7701(b)-1(b)(2); *ibid.*
7. Instructions to 2021 Form 8854, page 1.
8. IRC Section 877A(c)(1), (2).
9. Section 877A(c)(3). A non-grantor trust is one that the settlor isn't considered to own for U.S. income tax purposes under IRC Sections 671 through 678.
10. Section 877A(a)(1).
11. IRC Section 2801.
12. IRC Section 2518.
13. IRC Section 6039G(a).
14. Form 8854, Part IV, Section A, Question 6.
15. Thomas Bissell, "Old Expatriates Who Didn't Comply with the Code—What is Their Liability Today?" *International Journal of Taxation* (June 14, 2019).
16. The exit tax is actually calculated as of the day immediately prior to the expatriation date. *See* IRC Section 877A(a)(1).
17. According to the Treasury Inspector General for Tax Administration 2022 report, a "record 6,047 individuals expatriated through the first three quarters of 2020, compared to the previous annual record of 5,411 expatriates in 2016," *www.treasury.gov/tigta/auditreports/2020reports/202030071fr.pdf. See also* the 2021 Treasury Department published list of the names of individuals who renounced their U.S. citizenship or terminated their long-term U.S. residency during the fourth quarter of 2021, *www.federalregister.gov/documents/2022/01/26/2022-01510/quarterly-publication-of-individuals-who-have-chosen-to-expatriate.*
18. *https://intltax.typepad.com/intltax_blog/number-of-expatriates.*
19. *U.S. v. Estate of Steven Schoenfeld and Robert Schoenfeld, a distribute of the Estate of Steven Schoenfeld,* 344 F. Supp. 3d 1354 (D. Ct. Fla. 2018).
20. *U.S. v. Diana Garrity, Paul Garrity, Jr., and Paul Sterczala, as fiduciaries of the estate of Paul G. Garrity, Sr., deceased,* 304 F. Supp. 3d 267 (D.C. Conn. 2018).
21. 28 U.S.C. Sections 3001 through 3308.
22. U.S.C. Section 3001(a)(1).
23. *U.S. v. Schwarzbaum,* No. 18-cv-81147 (D.C. Fla. Aug. 26, 20, 2020).
24. *U.S. v. Schwarzbaum,* 24 F.4th 1355 (11th Cir. 2022).