New Exit Taxes for the U.S. Expatriate

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U.S. citizens and permanent residents[1] are subject to U.S. income tax on their worldwide income, regardless of where they reside in the world[2]. To free oneself from the U.S. income tax regime imposed on a U.S. citizen or permanent resident's worldwide income, such persons must expatriate from the U.S. to become non-resident aliens ("NRAs"). Persons deemed NRAs generally enjoy a more tenuous relationship with the U.S. income tax system, only having to encounter it when income is generated from U.S. situs assets, a U.S. business or another U.S. source, and, additionally, when making gifts or bequests of assets considered to have a U.S. situs subject to the U.S. estate tax and gift tax rules.

While U.S. expatriates may enjoy the status of an NRA, they may also qualify as "covered expatriates" subject to the expatriation tax regime or so called exit tax rules which impose immediate as well as possible future tax liabilities on these expatriates. The recently enacted Heroes Earning Assistance and Relief Tax ("HEART") Act[3] not only provided tax relief to military personnel but also changed the exit tax rules for those who expatriate from the U.S. after June 16, 2008. The new exit tax changes the former rules so substantially that not only will it deter some potential U.S. expatriates, but it may also discourage those who are considering making the U.S. a permanent home. This article discusses who is subject to the new exit tax rules and what the two new tax regimes under these rules, the mark-to-market tax and the succession tax, impose on such an individual.[4] Second, this article discusses the potential implications of the new exit tax rules and what issues may arise from their adoption. All references to code sections in this article are to the Internal Revenue Code unless otherwise indicated.

I. THE COVERED EXPATRIATE

HEART substantially changes the expatriation tax regime so that a recent or future expatriate who finds him or herself subject to the exit tax rules will not only endure a lifetime relationship with the U.S. tax authorities, instead of the more limited ten year alternative income tax regime under § 877 that applied to those who expatriated before June 17, 2008, but also face an immediate mark-to-market tax on their worldwide assets. Prior expatriation tax rules, most recently modified by the AJCA in 2004[5], and prior to that by HIPAA in 1996[6], continue to apply to those who expatriated before June 17, 2008.

Those expatriates who qualify as "covered expatriates" are subject to the exit tax rules. A covered expatriate is either a U.S. citizen or a long term resident[7], who relinquishes, abandons or loses either his or her U.S. citizenship or permanent resident status and, as of the day before expatriation[8], has:

1) a net worth of $2 million or more,
2) an average annual net income tax liability (as defined in § 38(c)(1)) over the 5 preceding taxable years of $124,000 or more (adjusted for inflation, $145,000 for 2009), or
3) failed to certify under penalty of perjury that he or she has complied with all U.S. federal tax obligations for the 5 preceding years or failed to submit evidence of such compliance.[9]

There are two exceptions that may exclude a U.S. citizen from otherwise qualifying as a covered expatriate: if the expatriate is a person born as a citizen of both the U.S. and another country, who continues to be a citizen of, and is a tax resident of, that other country as of expatriation, and has either been (i) a U.S. resident for not more than ten out of fifteen of the taxable years immediately preceding expatriation, or (ii) a person who relinquished U.S. citizenship before reaching age eighteen and a half, provided he or she had been a U.S. resident for no more than ten taxable years before such relinquishment.[10] Note that there are no similar exceptions for long term residents.

The net worth test[11] takes into account all of the covered expatriate's interest in property that would be taxable as a gift under Chapter 12 of the Internal Revenue Code if such property were transferred before expatriation. Property for purposes of this test includes all property interests, regardless of whether they produce income or gain. The value of each property interest should be based on a good faith appraisal and need not be made by a qualified appraiser for this purpose, although the principles of § 2512 generally apply. An expatriate's beneficial interest in a trust is also included in this test, but the value of the beneficial interest is determined by a two step process. First, all interests in the trust must be allocated to the beneficiaries, including potential beneficiaries. This first step is determined based on all relevant facts and circumstances, such as the terms of the trust, the grantor's written wishes, the history of trust distributions and functions performed by a trust protector or similar advisor. If such interests cannot be allocated to the beneficiaries under this analysis, then interests of the trust shall be allocated to the beneficiaries based upon the principles of intestate succession under the Uniform Probate Code based on the grantor's intestacy. Second, once beneficial interests are allocated, any such interest allocated to the expatriate is valued under the principles of § 2512 and related regulations without regard to any prohibitions or restrictions on such interest. Note that this

test includes an expatriate's beneficial interest in any trust, regardless of whether it is foreign or domestic.

The second test is based on the expatriate's average tax liability over the five years preceding expatriation. If the expatriate's tax liability exceeds the threshold, adjusted for inflation, and currently at $145,000 for 2009[12] and 2010[13], then he or she is deemed a covered expatriate. Although this test does not specifically address whether the net income tax on an expatriate's joint tax return should be included, at least one notice issued by the Internal Revenue Service ("IRS") affirms the inclusion of the net income tax on an expatriate's joint tax return.[14]

The third and final test that could deem an expatriate subject to the expatriation tax rules is the most inadvertent way for an expatriate to fall into this new tax regime and is typically the easiest to avoid. This test deems an expatriate subject to the exit tax rules until he or she certifies compliance with all federal tax obligations of the five years preceding expatriation. To do this, the expatriate must complete and file Form 8854 when filing Form 1040R with the IRS for the year of expatriation.[15]

II. THE MARK-TO-MARKET TAX – SECTION 877A

Covered expatriates who expatriate after June 16, 2008, will find themselves immediately subject to a mark-to-market tax on their world wide assets[16] requiring the expatriate to recognize gain as if those assets were sold for their fair market value[17] as of the day prior to expatriation.[18] If a property was acquired before the expatriate's U.S. citizenship or permanent residence, the expatriate's basis in that property, for purposes of this tax, will be the fair market value of that property at the time the expatriate became subject to U.S. federal tax laws as a permanent resident[19]. There is some relief to the mark-to-market tax since the covered expatriate may exclude the first $600,000 of gain (which is indexed for inflation so that the excluded amount for 2009 is $626,000[20], and $627,000 for 2010[21]).[22] Actual subsequent gains and losses realized are then adjusted for gains and losses recognized under the mark-to-market tax, without including the $600,000 exclusion. [23] The covered expatriate may also choose to make an irrevocable election on any or all property to defer the recognition of gain but will be required to post adequate security, pay interest on the deferred tax, and irrevocably waive any benefit under a U.S. tax treaty with respect to such tax assessment.[24] In addition, to make such an election, the covered expatriate must enter a tax-deferral agreement with the IRS which includes, among other things, appointment of a U.S. agent.[25] If such an election is made to defer the mark-to-market tax, the deferred tax must be paid once the property is actually disposed of.[26]

There are three groups of assets that will not be subject to the mark-to-market tax but are subject to other taxes upon expatriation or upon receipt: (i) deferred compensation items, (ii) specified taxdeferred accounts, and (iii) any interest in a nongrantor trust. If a covered expatriate has one or more of these types of accounts or interests the day before expatriation, IRS Form W-8CE must be filed with each payor of any of these items within 30 days of expatriation. This form effectively notifies the payor of such account or interest that the covered expatriate is subject to these special tax rules.

Deferred compensation items[27] are divided into two categories. If the payor of a deferred compensation item is a U.S. person or elects to be treated as a U.S. person, and the covered expatriate notifies the payor of his or her status and irrevocably waives any rights to claim under a U.S. treaty to reduce withholding on such item, then the payor of such an *eligible* deferred compensation item shall withhold thirty percent of any taxable payment as tax upon distribution to the covered expatriate.[28] For all other deferred compensation items, an amount equal to the present value of the expatriate's accrued benefit shall be treated as being received by the expatriate on the day before expatriation.[29] Special rules apply to § 83 property.[30]

In the case of specific tax-deferred account items[31], the expatriate is treated as receiving his or her entire interest in the account on the day before expatriation.[32] However, actual (subsequent) distributions will be adjusted for tax purposes taking into account this deemed distribution.[33]

With respect to nongrantor trusts of which the covered expatriate was a beneficiary as of the day before expatriation, the trustee must withhold thirty percent of the taxable portion of any direct or indirect distribution of property to the covered expatriate.[34] The expatriate, however, may elect to be taxed immediately on his or her interest in the trust, effectively reducing or canceling the withholding requirement on subsequent distributions.[35] The taxable portion is the portion that would be includible as income if the expatriate were subject to tax as a U.S. citizen.[36] If property is distributed to the covered expatriate, the trustee must declare any gain as if the property was sold for its fair market value on the date of distribution to the covered expatriate.[37] Note, this withholding rule applies to both domestic and foreign nongrantor trusts.[38]

III. COVERED GIFTS AND COVERED BEQUESTS – THE SUCCESSION TAX UNDER SECTION 2801

In addition to the new mark-to-market tax under § 877A, HEART also introduced § 2801 to subtitle B of the Code which provides new succession tax rules to replace the previous special transfer tax rules[39] for covered expatriates. Under § 2801, a transfer is subject to a succession tax if it is a "covered gift" or a "covered bequest". A covered gift is a gift received directly or indirectly by a U.S. person from a donor who at the time the gift is made is a covered expatriate.[40] Similarly, a covered bequest is a bequest received directly or

indirectly by a U.S. donee from the estate of a covered expatriate.[41] The covered gift or bequest is subject to the highest estate or gift tax rate available which means possibly higher transfer tax rates may be imposed than if the transfer was made by a U.S. donor.[42] Although the U.S. donee is liable for the tax imposed under § 2801, such donee may exclude the first $13,000[43] of gifts or bequests received from covered expatriates in the aggregate in each year.[44] Thus, the donee can only exclude the first $13,000 of covered gifts and bequests received in that year regardless of the number of covered expatriate donors involved.[45] Both donor and donee seem to lose out on these new succession tax rules. First, the donor's opportunity to reduce his or her estate by gifting is diminished because the donee pays the tax. In turn, the donee receives a significantly lower net value in the gift because he or she carries the burden of paying the gift or estate tax due *post* transfer.

Covered gifts to trusts are treated differently depending on whether the trust is domestic or foreign. If domestic, the trust is treated as a U.S. citizen so that the trust shall pay the gift tax on the covered gift.[46] If a foreign trust receives a covered gift, any distribution to a U.S. citizen or resident that is attributable to the covered gift shall trigger the tax under § 2801 which is imposed on the U.S. beneficiary.[47] A foreign trust may make a revocable election to be treated as a domestic trust for purposes of paying the succession tax.[48] However, the beneficiary who pays such tax may take a § 164 income tax deduction to the extent such tax is imposed on the portion of the distribution included as income to the beneficiary.[49]

Three significant exceptions apply to the succession tax rules. First, any transfer that would be entitled to a marital or charitable deduction is not included as a covered gift or bequest.[50] Hence, a covered expatriate may gift and bequest to a U.S. spouse or gift up to the applicable amount under § 2523(i), currently at $133,000[51], to a non-U.S. spouse, without being subject to § 2801. Second, if the covered gift or bequest is a taxable gift shown on the donor's gift tax return or estate tax return, such property is not included as a covered gift or bequest.[52] Third, the succession tax is reduced by any foreign gift or estate taxes paid on the covered gift or bequest.[53]

The new mark-to-market tax and succession tax rules are a distinct break with prior exit tax rules, and, in turn, provide new challenges to the potential expatriate and the potential U.S. immigrant. While the prior expatriation tax rules[54] subjected the covered expatriate to a ten year shadow period, which imposed for ten years on the covered expatriate an alternative income tax regime on U.S. source income and gain, as well as modified estate and gift tax rules, the new succession tax rules continue throughout the expatriate's lifetime and life of his or her estate and so may extend significantly beyond the ten year period under the former exit tax rules. Thus, although a covered expatriate might leave the U.S. early in life, he or she may forever be subject to the succession tax rules of § 2801, possibly long after the covered expatriate's ties with the U.S. end.

IV. COMMENTARY

The preferred option for a person considering expatriating is to make sure he or she does not qualify as a covered expatriate under the net worth test. A number of strategies are possible for the expatriate to reduce his or her net worth below the $2 million threshold if he or she is willing to gift assets prior to expatriation that he or she had already planned to gift later or at death. While gifting outright to younger family members may not be appropriate, trusts, if set up significantly ahead of the expatriation date, may enable the expatriate to determine how and when the assets will be available to its beneficiaries without the trust being included under the net worth test.

Depressed values under the present economy will also help some expatriates fail the net worth test. If an expatriate cannot avoid qualification as a covered expatriate, the expatriate should gift as much of his or her assets as he or she is comfortable with before expatriation to the extent the covered expatriate can fully utilize his or her lifetime gift exemption. For those expatriates who intend to transfer assets to U.S. persons, it may be worth incurring gift taxes on transfers, where there is no available gift exemption, to avoid burdening the donee with a succession tax liability and a lower net value on such gifts. Gifting before expatriation will also remove those assets that would otherwise be subject to the more immediate mark-to-market tax.

Once subject to § 877A, the most immediate concern the expatriate will face is whether he or she has sufficient liquidity to pay the mark-to-market tax on his or her worldwide property, although Congress seems to have anticipated this by allowing an irrevocable deferral of such taxes. Whereas the prior ten year shadow rule for those who expatriated before June 17, 2008, permitted the covered expatriate to avoid expatriation taxes by delaying disposition of assets until after such ten year period, the covered expatriate is faced with paying up front the gain on a deemed sale of most of his or her assets, regardless of whether those assets are disposed of tomorrow or at a much later death. If an election is made to defer the tax, providing the required adequate security as well as the ongoing accrual of interest on the tax may be deemed as significant penalties to electing such a deferral.

However, the depressed values under the present economy may enable the covered expatriate to report lower fair market values which would cause recognition of less gain, for purposes of the mark-to-market tax. Although it is likely that minority and lack of marketability discounts may be taken for closely held business interests, one should also expect the IRS to possibly challenge such valuation. Thus, more cost and

effort may be required by the covered expatriate who employs such discounts.

The succession tax presents significant challenges for gifting to U.S. donees. Under the prior expatriation tax rules, particular assets, such as intangibles and stock in a controlled foreign closely-held company that held U.S. situs assets were subject to U.S. transfer taxes during the covered expatriate's applicable 10 year shadow period. Although under the new exit tax rules, a covered expatriate may be able to gift, for example, intangibles without incurring the gift tax, with few exceptions a gift of any type of asset to a U.S. donee at *anytime* during the covered expatriate's life or at death, is subject to the succession tax. Under the prior rules, a covered expatriate could avoid such taxation by holding onto those assets (and not dying) until the expiration of the 10 year shadow period. The new exit tax rules may subject the covered expatriate to a succession tax on assets whose appreciation or purchase may occur long after expatriation, and possibly long after the covered expatriate has held significant ties with the U.S. Thus, pre-expatriation planning to avoid transfers subject to the succession tax is essential for those planning to transfer assets to U.S. donees. Depending on the timing of the gift and the type of trust created, transfers to a trust may not be subject to the exit tax rules.

The new exit tax rules will both encourage and delay expatriation. Receiving a sizable bequest or inheritance with a step-up in basis may not trigger considerable gain for purposes of the mark-to-market tax if expatriation is sooner rather than later. Expecting substantial assets to enjoy significant appreciation may also likely expedite expatriation if expatriation was a consideration before. Covered expatriates who do not intend to transfer assets to U.S. persons will likely not be deterred from exiting the U.S. For these persons, expatriation today presents a great opportunity to successfully cut off ties to the U.S. tax system for all non-U.S. situs assets and non-U.S business and source income without having to wait an additional ten years as required for those who expatriated under the former exit tax rules.[55] In addition, covered expatriates will no longer be subject to the thirty day rule which essentially punished those covered expatriates who visited the U.S. for more than thirty days in any calendar year by subjecting them to U.S. taxation as a U.S. person for that year.[56] However, those persons whose family members are and will continue to be U.S. persons may need to plan more carefully and delay or, in some cases, abandon expatriation since post-expatriation transfers to family members, without careful preexpatriation planning, will likely trigger the succession tax.[57]

Further, the covered expatriate's resident jurisdiction may subject the covered expatriate to transfer and income taxes of its own on the disposition of the same assets covered under the U.S. exit tax rules. While § 877A allows for an adjustment to the basis of those assets subject to the mark-to-market tax upon its actual (and later) disposal, the adjustment may only be helpful with respect to future U.S. tax liability. There is no guarantee that every foreign taxing jurisdiction will recognize an adjusted basis in accordance with U.S. tax rules. Double taxation for transfers to a U.S. donee, especially without an applicable U.S. treaty (with an applicable provision for such treatment under the exit tax rules), is likely.

While the exit tax rules have always placed significant exit tax burdens on covered expatriates, the mark-to-market tax under § 877A may be the most onerous expatriation tax to date. However, once such tax is paid, the covered expatriate is essentially treated like any other NRA - so long as future transfers do not include U.S. donees. Although it is likely that these new rules will deter and offer significant disincentives to expatriate from the U.S., the cost may be a similar and comparable deterrence for those with substantial wealth who are considering moving permanently to the U.S. but are not willing to risk an income tax expatriation penalty and a lifelong relationship with the U.S. tax system upon an anticipated future exit.

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[1] Defined under § 7701(b) for income tax purposes.

[2] For those U.S. citizens or permanent residents who find themselves residing in a treaty country, a foreign tax credit is generally available for those foreign taxes paid on the same items of income, but this relief does not lift the burden of filing U.S. income tax returns.

[3] P.L. 110-245 (2008) ("HEART").

[4] If § 877A applies to a person, such person must also file an annual information statement with the Secretary. § 6039G which essentially means in the year of expatriation unless deferral of tax under § 877A is elected.

[5] American Jobs Creation Act, P.L. 108-357 (2004) ("AJCA").

[6] Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (1996) ("HIPAA").

[7] A long term resident is a permanent resident as defined under § 7701(b)(6) who has retained such status for at least 8 of the 15 preceding taxable years ending with the year of his or her expatriation. § 877A(g)(5)and § 877(e).

[8] The date of expatriation is the earlier of the dates a U.S. citizen (i) relinquishes his or her U.S. nationality to the Department of State (and such relinquishment is subsequently approved), (ii) renounces his or her nationality before a U.S. diplomatic or consular officer (and such renouncement is subsequently approved), (iii) is issued a Certificate of Loss of Nationality by the Department of State, or (iv) is issued a court order canceling his or her certificate of naturalization. § 877A(g)(4). The expatriation date for a long term permanent resident is the date he or she ceases to be a lawful permanent resident as defined under § 7701(b)(6). § 7701(b)(6) states that an individual is a lawful permanent resident if that person has been accorded the privilege of residing permanently in the U.S. and "such status has not been revoked (and

has not been administratively or judicially determined to have been abandoned.)". Alternatively, under § 7701(b)(6), the flush language provides that a permanent resident loses his or her status when he or she commences to be treated as a resident of a foreign country under the provision of a U.S. tax treaty, and he or she does not waive the benefits of such treaty and notifies the Secretary of the commencement of such treatment. Accompanying regulations explain that such a determination of abandonment may be initiated by the individual, by filing Form I-407, or by a letter stating his or her intent to abandon resident status and enclosing his or her Alien Registration Receipt Card, with the USCIS or consular officer, or deemed complete by a final administrative or judicial order issued to such person. Treas. Reg. § 301.7701(b)-1(b).

[9] § 877A(g)(1)(A).

[10] § 877A(g)(1)(B).

[11] The net worth test is further described under Section III of Notice 97-19, 1997-1 C.B. 394, Obsoleted in part by Notice 2005-36 ("Notice 97-19").

[12] § 877(a)(2)(A). Rev. Proc. 2008-66, 2008-45 I.R.B. 1107, § 3.26.

[13] Rev. Proc. 2009-50, 2009-45 I.R.B. at § 3.26.

[14] "*Determination of tax liability.* For purposes of the tax liability test, an individual's net U.S. income tax is determined under § 38(c)(1). An individual who files a joint income tax return must take into account the net income tax that is reflected on the joint income tax return for purposes of the tax liability test." Section III, Notice 97-19.

[15] Form 8854 is also the form used by covered expatriates to report information on an annual basis while subject to § 877, and for some covered expatriates as described in Section 8.C. of Notice 2009-85, 2009-45 I.R.B.

[16] For purposes of this test, an asset is any interest in property that would be taxable as part of the covered expatriate's estate as if she or he died the day before expatriation without reference to § 2010 through §2016. Notice 2009-85.

[17] Valuation principles used for federal estate tax purposes should be applied to determine the fair market value under § 2031 but without regard to § 2032 and § 2032A. For rules of valuation of beneficial interests in trusts, see Section 3.A., Notice 2009-85.

[18] § 877A(a)(1).

[19] § 877A(h)(2). An individual may elect not to have this section apply; such election is irrevocable. For exceptions to this basis rule, see Section 3.D., Notice 2009-85.

[20] Rev. Proc. 2008-66, 2008-45 I.R.B. 1107 at § 3.27.

[21] Rev. Proc. 2009-50 at § 3.27.

[22] § 877A(a)(3).

[23] § 877A(a)(2).

[24] § 877A(b). Adequate security is defined as a bond conditioned on the payment of tax (and interest thereon), and which meets the requirements of § 6325. Alternatively, adequate security may also be in another form, including letters of credit, which meets the Secretary's requirements as the Secretary may prescribe. § 877A(b)(4)(ii). To make this election to defer, the expatriate must also irrevocably waive any right under a treaty with the U.S. that would preclude assessment or collection of any tax imposed by § 877A. § 877A(b)(5). See Section 3.E.,Notice 2009-85.

[25] Section 3.E. of Notice 2009-85. For a sample tax-deferral agreement, see Appendix A, Notice 2009-85.

[26] § 877A(b)(1).

[27] Deferred compensation items include the covered expatriate's interest in qualified § 219(g)(5) plans, interests in foreign pension, retirement or similar plans, and interests in property to be received in connection with services performed not previously taken into account in accordance with or under § 83. § 877A(d)(4).

[28] § 877A(d)(1)(A) and § 877A(d)(3).

[29] § 877A(d)(2)(A)(i); Section 5.D. of Notice 2009-85. For applicable filing and reporting requirements, see Section 8 of Notice 2009-85.

[30] § 877A(d)(2). For a more complete discussion of these rules, see *The Increased Cost of Expatriation: Is This the Final Chapter?* by Henry P. Alden II and Thomas S. Bissell (38 TM International Journal 429) (2009).

[31] Aspecified tax-deferred account item means an individual retirement plan (as defined in § 7701(a)(37)) other than a plan described under § 408(k) or (p), a "§ 529" qualified tuition plan, a "§ 223" Coverdell education savings account, a "§ 223" health savings account, and a "§ 220" Archer MSA. § 877A(e)(2).

[32] § 877A(e)(1)(A). Within 60 days of receipt of a completed Form W-8CE, the custodian of the tax deferred account must inform the covered expatriate of the value of the entire interest as of the day before expatriation. Section 6, Notice 2009-85.

[33] § 877A(e)(1)(C).

[34] § 877A(f)(1)(A).

[35] Although not expressly stated in § 877A, instructions under Part B, Line 7.d of Form 8854 (2008) permit such immediate tax recognition of interest in a nongrantor trust if certain requirements are met which includes, in part, obtaining a letter ruling re the value of such interest from the I.R.S. See Section 7, Notice 2009-85.

[36] § 877A(f)(2).

[37] § 877A(f)(1)(B).

[38] If a nongrantor trust converts to a grantor trust subsequent to a covered expatriate's expatriation and the covered expatriate is deemed an owner of the trust, then the conversion is deemed a taxable distribution under § 877A(f)(1) to the extent the trust is owned by the covered expatriate. Section 7, Notice 2009-85.

[39] For example, see §§ 2107 and 2501(a)(3).

[40] § 2801(e)(1)(A).

[41] § 2801(e)(1)(B).

[42] § 2801(a).

[43] As adjusted under § 2503(b). § 2801(c).

[44] § 2801(c).

[45] *Id.*

[46] § 2801(e)(4)(A).

[47] § 2801(e)(4)(B).

[48] § 2801(e)(4)(B)(iii).

[49] § 2081(c)(4)(B)(ii).

[50] § 2801(e)(3).

[51] Rev. Proc. 2008-66, 2008-45 I.R.B. 1107 (11/10/2008), § 3.30(2).

[52] § 2801(e)(2).

[53] § 2801(d).

[54] The expatriation tax rules were first introduced by the Foreign Investors Tax Act of 1966 (FITA), P.L. 89-809, and then substantially modified twice: first, by the HIPAA in 1996, and second, by the AJCA in 2004.
[55] In particular, the prior rules that subjected covered expatriates to capital gains tax would no longer apply to those who expatriate after June 16, 2008, so that, under the NRA rules, investment in U.S. securities without this tax would be an option immediately after expatriation. Further, the portfolio interest exemption under § 2105(b) would no longer be denied under § 2107 to such covered expatriates.

[56] § 877(g).

[57] For example, if a permanent resident (i.e., green card holder) did not expatriate but instead established a non-U.S. domicile, then he or she could transfer assets to U.S. family members under the regular NRA transfer tax rules, although he or she would still be subject to U.S. income tax rules.