

This provision was published in President Obama's 2015 Budget Proposal. Please see pages 282 and 283 of this document: <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf#page=293>

PROVIDE RELIEF FOR CERTAIN ACCIDENTAL DUAL CITIZENS

Current Law

An individual may become a U.S. citizen at birth either by being born in the United States (or in certain U.S. territories or possessions) or by having a parent who is a U.S. citizen. All U.S. citizens generally are subject to U.S. income taxation on their worldwide income, even if they reside abroad. In contrast, non-resident aliens are taxed on certain income derived from U.S. sources and on income that is effectively connected with a U.S. trade or business.

U.S. citizens that reside abroad also may be subject to tax in their country of residence. Potential double taxation is generally relieved in two ways. First, U.S. persons can credit foreign taxes paid against their U.S. taxes due, with certain limitations. Second, U.S. individuals may exclude from their U.S. taxable income a certain amount of income earned from working outside the United States (\$100,800 for 2015).

Section 877A imposes special rules on certain individuals who relinquish their U.S. citizenship or cease to be lawful permanent residents of the United States ("expatriates"). Expatriates who are "covered expatriates" generally are required to pay a mark-to-market exit tax on a deemed disposition of their worldwide assets as of the day before their expatriation date.

An expatriate is a covered expatriate if he or she meets at least one of the following three tests: (1) has an average annual net income tax liability for the five taxable years preceding the year of expatriation that exceeds a specified amount that is adjusted for inflation (the "tax liability test"), (2) has a net worth of \$2 million or more as of the expatriation date (the "net worth test"), or (3) fails to certify, under penalty of perjury, compliance with all U.S. Federal tax obligations for the five taxable years preceding the taxable year that includes the expatriation date (the "certification test").

The definition of covered expatriate includes a special rule for an expatriate who became at birth a citizen of both the United States and another country at birth and, as of the expatriation date, continues to be a citizen of, and taxed as a resident of, such other country. Such an expatriate will be treated as not meeting the tax liability or net worth tests if he or she has been a resident of the United States for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation occurs. However, such an expatriate remains subject to the certification test. Because U.S. citizens are subject to U.S. Federal income tax on their worldwide income, dual citizens who choose to expatriate may be required to pay a significant amount of U.S. tax before they are able to certify that they have satisfied their U.S. tax obligations for the five taxable years preceding the year in which they expatriate.

Reasons for Change

Individuals who became citizens of both the United States and another country at birth may have had minimal contact with the United States and may not learn until later in life that they are U.S. citizens. In addition, these individuals may be citizens of countries where dual citizenship is illegal. Many of these individuals would like to relinquish their U.S. citizenship in accordance with established State Department procedures, but doing so would require them to pay significant U.S. tax.

Proposal

Under the proposal, an individual will not be subject to tax as a U.S. citizen and will not be a covered expatriate subject to the mark-to-market exit tax under section 877A if the individual:

1. became at birth a citizen of the United States and a citizen of another country,
2. at all times, up to and including the individual's expatriation date, has been a citizen of a country other than the United States,
3. has not been a resident of the United States (as defined in section 7701(b)) since attaining age 18½,
4. has never held a U.S. passport or has held a U.S. passport for the sole purpose of departing from the United States in compliance with 22 CFR §53.1,
5. relinquishes his or her U.S. citizenship within two years after the later of January 1, 2016, or the date on which the individual learns that he or she is a U.S. citizen, and
6. certifies under penalty of perjury his or her compliance with all U.S. Federal tax obligations that would have applied during the five years preceding the year of expatriation if the individual had been a non-resident alien during that period.

The proposal would be effective January 1, 2016.