The Man (Or Woman) Without A Country

Over the last two years, the number of U.S. expatriations has skyrocketed. For 2013 alone, the number of Americans renouncing their citizenship has increased to 221%. As shocking as this statistic might appear, according to those in the "know," it is grossly understated. This has inspired many to call the trend, "Ellis Island in reverse."

What has caused so many to resort to something as extreme as renouncing their U.S. citizenship? None other than the usual suspects, or what I like to refer to as the "dynamic duo" (for all you "Batman" fans): the United States' system of worldwide taxation, on the one hand and FATCA, on the other. While I could go on endlessly about the harmful effects of global tax reporting and FATCA, the purpose of this blog is to discuss the steps that must be taken in order to expatriate.



Back in the salad days, and we're talking about the George W. Bush years, renouncing U.S. citizenship was a relatively simple affair.

But then Facebook co-founder Edurado Saverin renounced his citizenship and became Singaporean, where he had been living for the past three years. In response, New York Sen. Charles Schumer and Pennsylvania Sen. Bob Casey co-sponsored the cleverly-titled Expatriation Prevention by Abolishing the Tax-Related Incentives for Offshore Tenancy Act, or "Ex-PATRIOT Act," which would have made it easier to prosecute expatriates as tax cheats.

That bill went nowhere, but then the "suits" in the State Department grew weary of seeing a steady stream of dollars flowing overseas. So, last summer, the government raised the filing fee a whopping 422 percent, more than twenty times the average level in other high-income countries.

Officials explained that the increase was meant to offset the extra payroll costs involved in processing paperwork. Specifically, the State Department justified the fee increase on the increased labor costs needed to keep up with the growing demand of U.S. citizens attempting to shed their U.S. citizenship. And if you believe that one, I have some oceanfront property in Kansas that's a great investment opportunity and priced to move.

There are some other hoops to jump through. According to the new State Department rule, the potential renunciant must sit through two "intensive interviews" with Consular officials. That sounds a bit ominous, but I have it on fairly good authority that no waterboarding is involved. As if the process did not already impose enough barriers to discourage would-be U.S. citizens from renouncing their citizenship, leave it to the government to create another one. Local officials no longer have the authority to remove citizenship. That must be done by a "higher-up" in Washington from the Directorate of Overseas Citizens Services, who if I had to guess is a "bureaucrat." Only with this person's blessing will the case be returned to the Consular officer overseas for delivery of the Certificate of Loss of Nationality to the renunciant.
Finally, the renunciant must clearly understand all the ramifications of giving up U.S. citizenship, including loss of the right to reside in the U.S. without documentation as an alien. We'll get back to that in a minute.

How Does It Work?

First and foremost, renunciation is permanent. If you're thinking that you can move to Brazil for a few years until the Republicans lower the capital gains tax, and then move back to your brownstone in Brooklyn, think again. For those who are thinking about renouncing citizenship, and there are some perfectly good reasons for doing so, my advice is to sleep on it.
There are some specific qualifications.

- It may seem like a no-brainer, but you must be a citizen. It's not unusual for undocumented immigrants to try and "renounce their citizenship" and return to their home countries as a back-door way to make their dependents eligible for lawful status or to stay one step ahead of ICE.

- You must show five years of tax compliance. That means no outstanding forms, no known tax problems, and no balance due.

- Wealthy individuals must pay an exit tax. If you have a net worth of greater than $2 million, or have paid an average of about $157,000 in taxes for the last five years – the specific amount is tied to inflation – the IRS will hit you with an expatriation tax. The Service considers all your property sold, and you must pay the dreaded capital gains tax on that amount. Contrary to popular belief, long-term residents surrendering a Green Card must also pay the exit tax. Thankfully, there is an exemption, but don't get too excited. It only applies to those who own assets in the seven figures. For 2014, the exemption amount was $ 680,000.

All this must be done at a foreign consulate. You must appear in person. It cannot be done by mail or through an agent.

Why Do It?

I would be disingenuous if I didn't acknowledge that there are drawbacks associated with renunciation. While some are obvious, others aren't. This is why a decision to expatriate should never be taken lightly.

For starters, you cannot visit the United States without a visa. Not only would you have the hassle of all that paperwork, possibly multiple times a year, but there would also be no possibility of an emergency or spur-of-the-moment visit. You are also quite literally a person without a country. If you have a legal dispute, the courts may be closed. If you have a situation that requires favorable action from a government official, no office holder will care. In a similar vein, renunciation cannot erase back taxes or criminal liability.

There is obviously a significant upside, or people would not be lining up in droves to take the "un-oath" of renunciation. The United States is one of the only countries left in the world that taxes its citizens on their worldwide income regardless of domicile. Live and work in Rio De Janeiro? You must pay taxes to the U.S. government on your foreign-source income. Own a business in Bangladesh? The U.S. will tax the money that you earned there, too. Of course, the U.S. system of worldwide taxation is tamed (somewhat) by the foreign earned income exclusion and the foreign tax credit.

As one attorney put it best, it is like *Fatal Attraction*: The U.S. never allows you to leave the relationship. You have to walk away yourself, either by dying or renouncing citizenship. The lack of future tax liability is about the only benefit to renunciation, but it is enough, in the mind of many, to outweigh all the drawbacks.