

IRS RELIEF PROCEDURES FOR CERTAIN FORMER CITIZENS

Hodgson Russ Federal and International Tax Alert
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On September 6, 2019, the IRS announced a new procedure that will enable certain individuals who renounced or relinquished their United States citizenship after March 18, 2010, and those who do so between now and when the IRS announces an end date to this procedure, to come into compliance with their U.S. tax and information return filing obligations without having to pay any tax due, without incurring any delinquency penalties, and without being subject to the U.S. expatriation tax. These new procedures, called the Relief Procedures for Certain Former Citizens (the “Relief Procedures”), are in addition to the IRS’s existing Streamlined Foreign and Domestic Offshore Procedures and they operate differently from the Streamlined Procedures in several respects.

To be eligible for the Relief Procedures, an individual must:

- (1) renounce or relinquish U.S. citizenship after March 18, 2010;
- (2) have not previously filed a U.S. Individual Income Tax Return (Form 1040) as a U.S. citizen or resident (although, having previously filed a Form 1040NR under the belief that one was not a U.S. citizen does not preclude eligibility);
- (3) not have an average annual net income tax liability for the five years preceding the year of renunciation/relinquishment that exceeds a specified amount adjusted for inflation (\$168,000 for 2019) (“average income tax liability test”);
- (4) have a net worth below \$2,000,000 USD at the time of relinquishment or renunciation of U.S. citizenship;
- (5) have an aggregate total tax liability of \$25,000 or less for the five tax years preceding expatriation plus the year of renunciation/relinquishment (after application of all applicable deductions, exclusions, exemptions and credits, including foreign tax credits, but not any U.S. tax withheld at source, and excluding the application of the U.S. expatriation tax and any penalties and interest);
- (6) agree to complete and submit all required U.S. federal income and gift tax returns, including all required schedules and information returns, for the five years preceding the year of renunciation/relinquishment plus the year of renunciation/relinquishment; and,

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(7) not have willfully failed to comply with U.S. income tax and information return filing obligations.

An individual must renounce or relinquish U.S. citizenship before making a submission to the IRS pursuant to the Relief Procedures because the individual must include with the submission to the IRS a copy of a Certificate of Loss of Nationality issued by the U.S. Department of State. The individual must also include a copy of a birth certificate or valid passport, as proof of identity. In addition, IRS Form 8854 must be attached to the individual's dual status U.S. income tax return for the year of renunciation/relinquishment, even though the IRS is waiving the expatriation tax through the Relief Procedures.

The IRS will not impose any penalties for the late filing of the U.S. income, gift, and information returns and it will not require an eligible individual to pay any tax shown as due on the six years of income and gift tax returns submitted through the Relief Procedures. While the IRS is not requiring an individual to file Reports of Foreign Bank and Financial Accounts (FBARs) through the Relief Procedures, the IRS has indicated that an eligible individual **should** do so and has agreed not to impose any penalties for the late filing of six years' worth of FBARs submitted through the Relief Procedures. Furthermore, an eligible individual will not be required to pay the U.S. expatriation tax.

Unlike the IRS's Streamlined Procedures, through the Relief Procedures, an individual does not need to obtain a U.S. social security number. If, however, an individual previously obtained an individual taxpayer identification number (an ITIN) from the IRS in error, the ITIN should be used on the returns.

Within about two months from the IRS's receipt of submission, the IRS says it will issue a letter confirming receipt of a submission and that it is complete. The IRS will not automatically open an examination but may do so at random. There currently is no end date for the Relief Procedures, but the IRS indicated there will be an end date, which it will announce in advance of closing the Relief Procedures.

This is welcomed relief for any eligible U.S. citizen who just recently learned, or learns in the future, that they should have been filing U.S. income, gift, and information returns. It appears, though, that the Relief Procedures' eligibility requirements, including the \$25,000 aggregate tax liability limitation and the \$2,000,000 USD net worth and non-willfulness requirements, will narrow its applicability.

Please contact James M. Bandoblu, Jr., or another member of Hodgson Russ LLP's International Tax Practice for more information on the Relief Procedures, including renouncing U.S. citizenship.

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