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Often overlooked are the tax implications of acquiring a green-card. This Article summarizes certain U.S. tax obligations imposed on green-card holders and the application of the new expatriation tax rules to individuals who relinquish their green-cards upon leaving the United States. This Article is not intended to be all-encompassing nor is it designed to cover every aspect of the tax issues related to green-card holders.

Taxation of U.S. green-card holders

The United States taxes U.S. green-card holders and citizens on their worldwide income. This generally means that green-card holders and citizens not only must pay U.S. income tax on income earned in the United States, but also must report and pay U.S. tax on income earned elsewhere in the world. This rule applies even though the person no longer resides in the United States. Although a foreign tax credit is generally afforded by the United States for foreign taxes paid on income, the inconvenience and expense of having to continue to file U.S. tax returns after leaving the United States lead some to consider abandoning their green-cards or citizenships with the hope of freeing themselves from the U.S. tax system.

On June 17, 2008, President Bush signed into law the Heroes Earnings Assistance and Relief Tax Act of 2008 (the “HEART Act”). The Act contains a new expatriation tax regime that applies to individuals who expatriate from the United States on or after June 17, 2008. The new rules are intended to tighten the prior rules by imposing an exit tax on certain individuals who abandon their green-card or U.S. citizenship.

Who is affected by the new expatriation tax rules?

The new expatriation rules apply to (i) any U.S. citizen who relinquish his or her U.S. citizenship on or after June 17, 2008; and (ii) any long-term resident of the U.S. who abandons his or her U.S. green-card on or after June 17, 2008. A “long-term resident” is an individual who has held a green-card for any portion of at least 8 of the 15 taxable years ending with the taxable year in which the individual relinquishes his or her green-card.

A U.S. citizen or long-term resident who relinquishes his or her U.S. citizenship or green-card on or after June 17, 2008, will be subject to the new expatriation tax rules if any of the following apply:

- (1) His or her average annual net income tax for the five taxable years preceding expatriation exceeds \$139,000;
- (2) His or her net worth is \$2 million or more on the date of expatriation; or
- (3) He or she fails to certify under penalty of perjury that he or she has complied with all U.S. federal tax obligations for the five preceding taxable years, or fails to submit such evidence of compliance as the IRS may require.

What are the requirements for abandoning a U.S. green-card?

Under the new rules, an individual ceases to be a green-card holder for tax purposes (*not to be confused with immigration purposes*) if the individual revokes or abandons his or her green card or if the individual: (1) commences to be treated as a resident of a foreign country under a tax treaty between the US and that foreign country; (2) does not waive the benefits of the treaty applicable to residents of the foreign country; and (3) notifies the IRS of the commencement of such treatment.

How will an individual subject to the exit tax be taxed?

For purposes of this Article, special attention should be paid to two particular features of the HEART Act: (i) a deemed sale of all assets on the day before expatriation; and (ii) a tax on the receipt of gifts or bequests by a U.S. person from an individual who expatriate on or after June 17, 2008.

Deemed Sale.

U.S. income tax is imposed on the net unrealized gain on the individual's worldwide assets as if the assets had been sold for their fair market value on the day before the expatriation or termination of U.S. residency. Any net gain in excess of \$600,000 on the deemed sale is subject to tax. An individual may elect to defer payment of the tax until the individual actually disposes of the assets. Interest accrues on the unpaid tax and the individual must post adequate security. In the case of a green-card holder, assets held by an individual on the date the individual first became a resident of the United States are treated as having a basis on such date of not less than their fair market value (unless the individual elects otherwise).

Tax on Gifts and Bequest.

Any U.S. person who receives a gift or bequest from a former U.S. citizen or green-card holder who is subject to the new expatriation rules, must pay U.S. tax on the receipt of such gift. The fair market value of the gift is first reduced by the available annual exclusion (\$12,000 in 2008) and is then assessed at the highest applicable gift tax rate at the time of the gift.