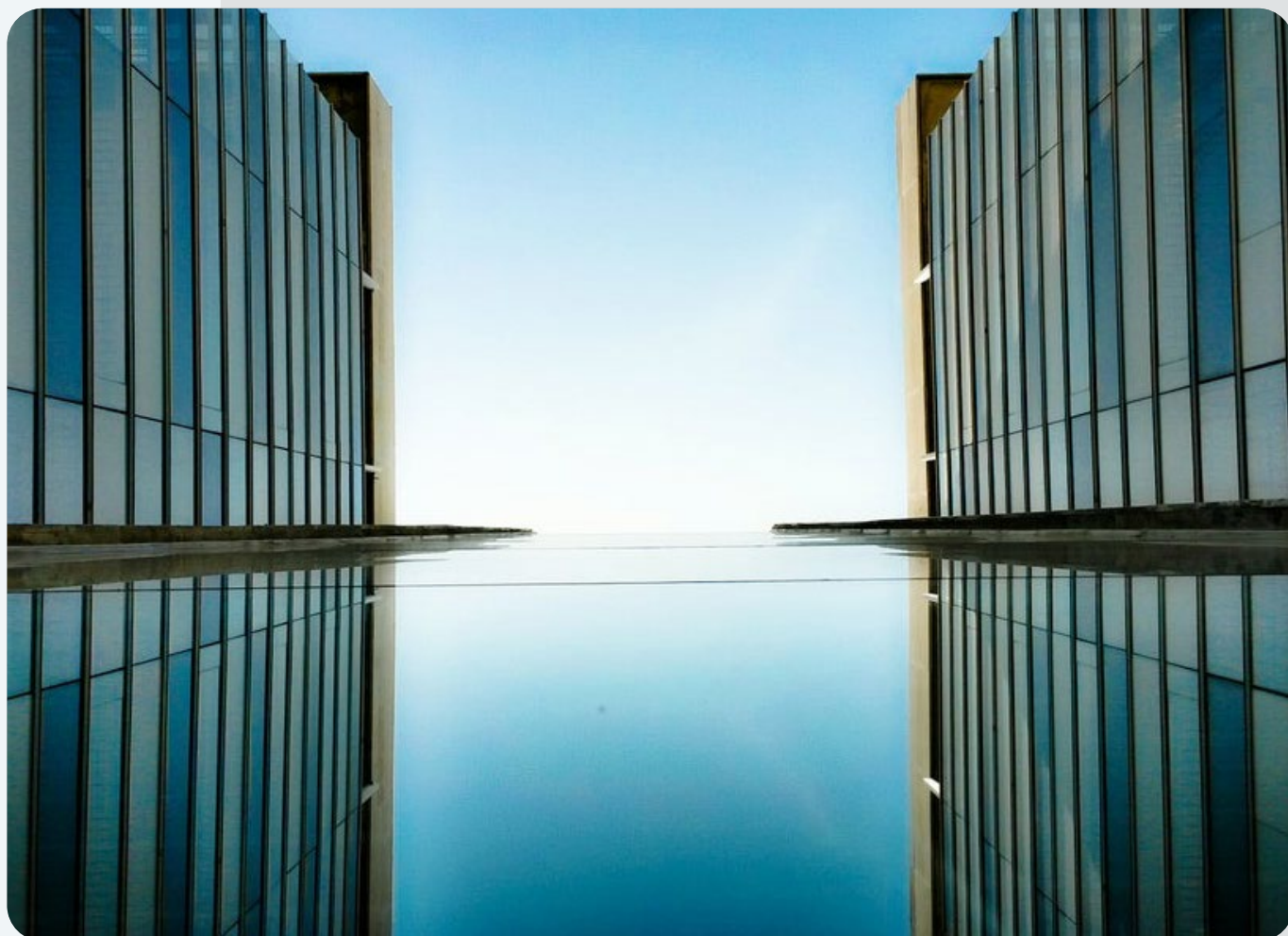


# Expatriating from the US:

Key opportunities  
and considerations





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# Foreword

Citizenship often goes to the heart of who we are as individuals. It can embody whole chapters of our family history, form part of our identity in the eyes of others and sometimes express our most deeply held personal values. And yet who we are is not always static. As time goes by, our lives evolve: where we live, where we feel at home, where we see our and our families' future. As these things change, a change to our citizenship may be necessary or, at the very least, beneficial.

The United States (US) is one of the few countries that imposes worldwide income and capital gains taxes and worldwide transfer taxes – such as estate, gift and generational-skipping transfer taxes – based upon citizenship (including Green Card holders and certain domiciliaries). Regardless of where in the world a US citizen or Green Card holder resides, where their income is sourced or where their assets are located, they will likely be subject to worldwide US taxation.

Expatriation – giving up one's US citizenship or Green Card status – is often the only way to extricate oneself from worldwide US taxation. While the process of expatriation is fairly straightforward, there is a possibility that “covered expatriates” will face an “exit tax” and other restrictions.

The decision to shed US citizenship is not to be taken lightly. This paper sets out some of the main elements in this process, which require deep reflection in collaboration with independent tax and legal advisors. And we remind readers that the decision involves much more than financial considerations.

If you would like to discuss any aspect of this paper with us, we stand ready to engage with you and your other advisors.



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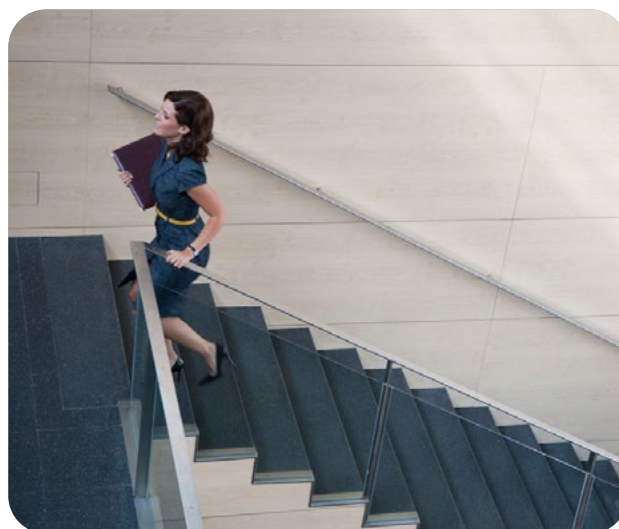
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# The expatriation process

To pursue expatriation, an individual must be a citizen and a passport holder of a second country. They are not allowed to expatriate without a secondary citizenship as this would potentially leave them stateless.

If this condition is met, the expatriation procedure depends on your status:

- **Long-term residents of the US<sup>1</sup>** will usually file Form I-407, although there are other methods of termination of Green Card status. They may do this in person at a US embassy or consulate, or they may mail the Form I-407.
- **US citizens** will usually need to appear in person outside the US at a US embassy or consulate and submit Department of State Forms 4079-4083. They will be subject to an exit interview to help ensure they are making the decision of their own free will and understand the consequences. Some individuals are required to have a second interview to confirm they fully understand their decision. The signed forms are then forwarded to the US Department of State. Once approved for expatriation, the individual will receive a stamped Form DS-4083, which is known as a “Certificate of Loss of Nationality,” effective as of the date of expatriation.



Next, the expatriate will need to make the following tax filings:

- **Form 8854:** the expatriation statement. If deemed to be a “covered expatriate” – see page 5 – they will calculate the “exit tax,” if any, on this form. In addition, they will need to file two separate tax returns for the final year of their tax filing. **Form 1040** covers the period of the year up to and including the date of their expatriation, while **Form 1040NR** covers the balance of the year after the date of their expatriation.

<sup>1</sup>A long-term resident as a Green Card holder who has resided in the US for eight of the past fifteen years.

Tax information throughout reflects current rules under the Internal Revenue Code, Treasury Regulations, and other guidance promulgated by the United States Department of the Treasury. Information is current as of February 2025 and is subject to change.

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# Expatriation rules

Since 1966, there have been numerous separate and distinct rules governing expatriation from the US. The current rules apply to those who have expatriated on or after June 17, 2008, and will be our focus here.

## Cover Expatriates

The US imposes an “exit tax” on US citizens and certain long-term residents of the US who give up their Green Cards if they are determined to be covered expatriates.

An individual who expatriates will be deemed to be a covered expatriate if they meet any of the following three tests:

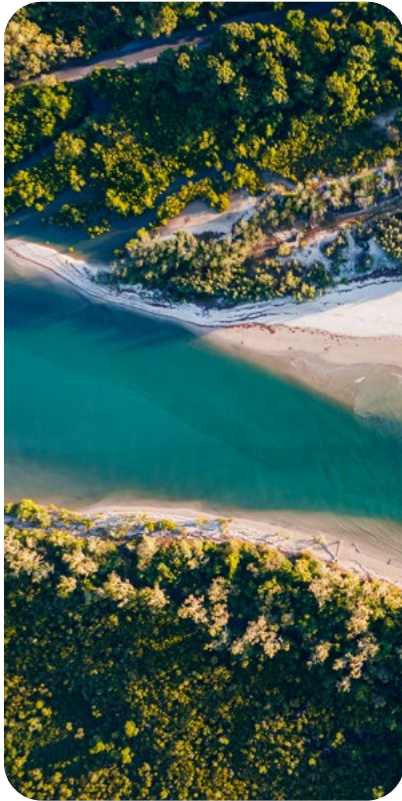
1. **The income test** – The expatriate’s average net income for the prior five years exceeds an inflation indexed threshold amount. The threshold amount for 2025 is \$206,000 or
2. **The net worth test** – The expatriate’s net worth exceeds \$2,000,000; or
3. **The certification test** – The individual is unable to certify (Form 8854), under penalty of perjury, that they are in full compliance with all federal tax and reporting obligations for the prior five years.

The following two exceptions for US citizens apply to covered expatriate status, provided the expatriate can certify under penalty of perjury that they are in full compliance with all federal tax obligations for the prior five years. If either of these exceptions apply, the expatriate will not be deemed a “covered expatriate,” even if they meet one of the three tests above.

- The expatriate was (i) a dual citizen of the US and another country from birth, (ii) a tax resident of the other country in which they were born on the date of expatriation, and (iii) not a US income tax resident for more than ten of the past fifteen years.
- The expatriate (i) expatriates within six months of their eighteenth birthday and (ii) has not been a US income tax resident for more than ten years.

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## Computation of the “Exit Tax”

If an individual is determined to be a covered expatriate, they will be deemed, among other things, to have sold all their assets at fair market value as of the day before the date of their expatriation. Amounts of gain, if any, over the inflation-indexed threshold amount are subject to capital gains tax. Losses are taken into account but are not subject to the wash sale rules. The threshold amount for 2025 is \$890,000.

There is an option to defer the capital gains tax until the sooner of when the asset is sold or the death of the expatriate, but a security (such as a bond) for the amount due must be posted with the Internal Revenue Service (“IRS”) in such cases.

Grantor trusts and any trust that would have been included in the covered expatriate’s taxable estate (revocable trusts, trusts with certain retained interests, incomplete gifts, etc.) are included in the calculation of the “exit tax.”

There are special rules for deferred compensation, specified tax-deferred accounts (including most retirement accounts) and any interests in non-grantor trusts. These items are generally excluded from the calculation of the “exit tax” but are subject to special income and capital gains tax treatment.

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## Restrictions on future gifts and bequests to US persons

During the balance of the life of the “covered expatriate,” if they make any covered gifts or bequests, a special transfer tax is imposed. Covered gifts or bequests include any gratuitous transfers by the covered expatriate to a US person or resident, whether outright or in a US domestic trust. If the covered gift or bequest is made to a foreign trust, any distribution to a beneficiary who is a US citizen or resident is treated as a covered gift.

Unlike the US gift or estate tax, this special transfer tax is payable by the recipient rather than the transferor. The rate is the highest estate rate imposed. The highest rate for 2025 is 40%.

Excepted from this special transfer tax are:

- **Annual exclusion gifts** – amounts under the annual gift tax exemption (\$19,000 for 2025)
- **Gifts or bequests that qualify for the marital deduction** – amounts that qualify for the unlimited marital deduction for US citizen spouses and amounts that pass to a non-US citizen spouse under the annual exclusion amount (\$190,000 for 2025) or passed in a qualified domestic trust (QDOT)
- **Gifts or bequests that qualify for the charitable deduction** – amounts passing to a qualified charity

## Post-expatriation US taxation

While the expatriate will no longer be subject to US worldwide income and capital gains taxation, they will still be subject to US taxation on certain types of US source income, just like all other non-US persons.

If the covered expatriate is a beneficiary of a US trust, there will be a 30 percent withholding on the taxable portion of all future distributions, and the future distribution of appreciated assets will be subject to immediate US capital gains tax.

All expatriates, covered or not, will still be treated, subject to the above, like any other non-US person.

Consequently, if an expatriate spends substantial time in the US in a given year and meets the substantial presence test – generally 183 days in the US, including a portion of days during the prior two years – then, absent a closer connection exception, they can again be subject to worldwide income tax in such years.

In addition, expatriates will still be subject to (i) US gift tax, subject to treaty provisions, if any, on transfers of certain types of US situs assets and (ii) US estate tax, subject to treaty provisions, if any, on certain types of US situs assets held in their personal names at the time of their passing.



### Other consequences of expatriation

- Expatriation is irrevocable once approved, unless it can be demonstrated that it was done under duress or lack of understanding.
- For US immigration purposes, the expatriate will be treated the same as any other non-US person. As such, if they wish to visit or work in the US in the future, they will need an appropriate visa. Expatriates are allowed to apply for Green Cards and ultimately US citizenship, but subject to the same process as any other non-US person, i.e., without special treatment.
- Children born to an expatriate after expatriation will not be entitled to US citizenship.
- Expatriates are not allowed to own or possess any firearms in the US.
- The names of expatriates are publicly published in the Federal Register.
- The Reed Amendment, enacted in 1996, gives the Department of Homeland Security the authority to bar any expatriate, that it determines expatriated for tax avoidance purposes, from entry to the US. However, due to lack of regulations and procedures, there are no reported cases of any expatriates ultimately denied entry into the US. A few individuals who were initially denied entry ultimately challenged the decision successfully.

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# Pre-expatriation planning



Once the decision to seek expatriation is made, there are numerous planning opportunities that should be considered prior to expatriation. This is especially true for those who will be deemed covered expatriates and subject to the exit tax. Careful discussion and review with their external tax and legal advisors is essential.

First, covered expatriates can make irrevocable gifts to reduce the size of their assets that will be subject to the calculation of the “exit tax.” This includes fully utilizing their unused unified credit from the gift tax (\$13,990,000 for 2025), annual exclusion gifts (\$19,000 for 2025), transfers to non-grantor trusts, gifts to spouses and charitable contributions. Note that gifts to individuals and trusts, other than to the spouse or a trust for the spouse’s sole benefit, should be made at least three years prior to the date of expatriation to avoid potential inclusion.

Second, covered expatriates should consider income and capital gains tax to minimize the exit tax. Assets can be restructured to reduce the valuation of fair market value used in the computation of the exit tax. They can consider selling their primary residence to take advantage of gain exclusions, if applicable. Finally, they may consider accelerating income and capital gains if it is anticipated that the tax rates will have risen by the time of expatriation.

Third, covered expatriates should weigh and understand their options to return to the US in the future if necessary (e.g., visiting family members, obtaining medical care, etc.), including whether they might be prevented from re-entry to the US for excludable reasons (e.g., prior violation of immigration laws, criminal convictions, medical grounds, etc.).

## Expatriation checklist

- ☐ Obtain independent legal and tax advice
- ☐ Have a valid secondary citizenship and passport
- ☐ Determine if you will be a covered expatriate
- ☐ Review all assets and ownership rights to property
- ☐ Consider engaging in pre-expatriation planning
- ☐ If a covered expatriate, estimate the amount of the “exit tax”
- ☐ Balance the pros and cons of expatriation
- ☐ Complete all appropriate forms and filings
- ☐ Schedule an exit interview at a US embassy or consulate
- ☐ If the expatriation is approved, file all appropriate forms and returns, including payment of the “exit tax,” if any

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# Closing thoughts

The decision to expatriate can be intensely personal and emotional and, as such, should not be taken without deep investigation and deliberation.

While there may be very significant tax savings in the future, these need to be weighed carefully against non-tax considerations, including location of family members, ease of future travel and work, access to medical care and other lifestyle issues.

It is therefore imperative that potential expatriates fully understand the consequences of expatriation in order to make a fully informed decision.



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For more information, please contact your Private Banker or the group head in your region.

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