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Federal Tax Update 2016 Year in Review

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Personal Financial Planning Conference

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Legislative Update

Recent Legislation

1. The Protecting Americans from Tax Hikes Act of 2015 (“2015 PATH Act”), 12/18/15
2. The Fixing America’s Surface Transportation Act (“FAST Act”), 12/4/15
3. Bipartisan Budget Act of 2015, 11/2/15
4. Surface Transportation and Veterans Health Care Choice Improvement Act of 2015



2015 PATH Act

Overview: Another “tax extenders” bill, except this time many are made permanent.

Notable Tax Changes/Extensions:

1. Several “extenders” made permanent
2. The remaining “extenders” are extended through 2016
3. Other notable changes to Section 529 Rules



2015 PATH Act

- 1. Several “extenders” made permanent**
 - ❑ Qualified Charitable Dist. from IRA to charity
 - ❑ State and Local Sales Tax Deduction
 - ❑ American Opportunity Tax Credit
 - ❑ Enhanced Child Tax Credit
 - ❑ Section 179 Expensing



2015 PATH Act

2. The remaining “extenders” are extended again, generally through 2016

- Exclusion of Discharged Mortgage Debt on Short Sale
- Deductibility of Mortgage Insurance Premiums
- Above-The-Line Education Deduction for Qualified Tuition and Fees
- 50% Bonus Depreciation (through 2019)



2015 PATH Act

- 3. Other notable changes to Section 529 Rules**
 - a) Expansion of Section 529 Qualified Expenses to include Computer and Related Expenses
 - b) Elimination of Section 529 Plan Aggregation Rule
 - c) Elimination of 529 ABLE Account In-State Residency Requirement

PATH Act

Changes to FIRPTA/REITS

Overview

1. Exclusion from FIRPTA for foreign retirement/pension funds
2. Increase in percentage ownership of publicly traded REIT stock qualifying for USRPI Exception
3. Increased FIRPTA Withholding Rate
4. Exclusion of RICs and REITs from recourse to the cleansing rule

Changes to FIRPTA/REITS

Exclusion from FIRPTA for foreign retirement/pension funds

Section 897(1) – FIRPTA exception if held by a “qualified foreign pension fund” (QFPF)

- A) which is created or organized under the law of a country other than the United States,
- B) which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered,
- C) which does not have a single participant or beneficiary with a right to more than five percent of its assets or income,
- D) which is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in its country in which it is established or operates, and
- E) with respect to which, under the laws of the country in which it is established or operates, either (i) contributions to it which would otherwise be to subject to tax under such laws are deductible, excluded from gross income or taxed at a reduced rate; or (ii) taxation of its investment income is deferred or such income is taxed at a reduced rate.

PATH Act CFC Rules

- Permanent extension of the exception from foreign personal holding company rules for CFCs in the active conduct of banking, financing, securities, or insurance.
- Extension until 12/31/19 for look through rule for payments between related CFCs

FAST Act

Overview: \$305 Billion, five year funding bill for federal surface transportation spending. Scored as revenue neutral without increasing gas tax, which remains at 18.4 cents/gallon (last increased in 1994).

Two Primary Tax Provisions:

1. Passport Revocation for Seriously Delinquent Debt
2. Mandatory Outsourcing of Collections



FAST Act

1. Passport Revocation for Seriously Delinquent Debt

New Code Section 7345, “seriously delinquent tax debt” is grounds for denial, revocation, or limitation of a passport.

- \$50,000 (adjusted for inflation) unpaid, legally enforceable federal tax liability, notice of lien or levy has been filed.
 - Are penalties and interest included?



FAST Act

2. Mandatory Outsourcing of Collections

Amends Section 6306 requiring the IRS to enter into qualified tax collection contracts “for the collection of all outstanding inactive tax receivables.” Defined as:

- IRS has removed from active inventory
- Has not been assigned to an employee when more than 1/3 of the limitations period has expired
- More than 365 days of inactivity have passed in collections



FAST Act

2. **Mandatory Outsourcing of Collections**

Concerns: Congress has tried this twice before once in the early 1900s and once in the mid 90s.

Went terribly!

IRS and National Taxpayer Advocate concluded that the IRS is significantly more effective in collecting tax liabilities.



Bipartisan Budget Act of 2015

Overview: Two-year federal budget and debt ceiling increase.

Primary Tax Change:

1. MAJOR Change to Partnership Audit Rules:
Elimination of TEFRA!



Bipartisan Budget Act of 2015

1. MAJOR Changes to Partnership Audit Rules

TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) provided the old rules for auditing partnership. Adjustments flowed down to partners.

Partnerships could be audited under three sets of rules:

1. Unified Audit Rules
2. Small Partnership Rules
3. Electing Large Partnership Rules

Bipartisan Budget Act of 2015

1. MAJOR Changes to Partnership Audit Rules

This ACT repeals TEFRA. New audit rules:

- a) Any adjustments are determined at the PARTNERSHIP level
- b) Each partner's return must be consistent with the partnership's return
- c) Each partnership must designate a partner as the representative. Partnership and representative receive notice of proceeding and adjustment.



Bipartisan Budget Act of 2015

1. MAJOR Changes to Partnership Audit Rules

OPT OUT

- Partnerships with 100 or fewer partners
- To opt out, each partner must be
 - i. Individual
 - ii. C Corporation
 - iii. Foreign entity that would be treated as a C Corporation if it were domestic
 - iv. S Corporation (EACH SHAREHOLDER COUNTS)
 - v. Estate of deceased partner



Bipartisan Budget Act of 2015

1. MAJOR Changes to Partnership Audit Rules

Effective Date: Applies to partnership taxable years after 12/31/2017. Opt-outs can occur for taxable years beginning after 11/2/15 and before 1/1/2018.



T.D. 9780 – Election into Partnership Audit Regime

- Election to have new partnership audit regime apply must be made within 30 days of the date of written notice from the IRS that the partnership return has been selected for examination.



Bipartisan Budget Act of 2015

- 1. Also deleted Section 704(e) and added to Section 761(b) the following:**
 - **“In the case of a capital interest in a partnership in which capital is a material income-producing factor, whether a person is a partner with respect to such interest shall be determined without regard to whether such interest was derived by gift from any other person.”**
 - **Negates holding of Castle Harbour III**



Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

Overview: 3 Month Extension of the Highway and Transportation Funding Act of 2014, moves \$8 Billion into the Highway Trust Fund. Revenue neutral through administrative and compliance changes.

Significant Tax Law Changes

1. Business Tax Return Due Dates
2. Mortgage Reporting Requirements
3. Estate Basis Reporting
4. Substantial Understatement SOL Clarification

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

1. Business Tax Return Due Dates

- Partnership – New due date if March 15, six month extension to September 15
- S Corps – Unchanged at March 15
- C Corps – (FISCAL YEAR) New due date is April 15, for tax years ending on or before 12/31/2015 only FIVE month extension.



Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

1. Business Tax Return Due Dates

- Trusts – Unchanged at April 15
- FinCEN Report 114– Moved up to April 15 WITH an extension. However, how do you extend? We don't know yet.



Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

2. Mortgage Reporting Requirements

- Requires tax information returns reporting mortgage information to include the following additional information:
 - i. Outstanding Principal
 - ii. Date of origination.
 - iii. Address of property which secures the mortgage.

- Effective date: Reports after 12/31/16

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

3. Estate Basis Reporting

ONLY APPLIES FOR TAXABLE ESTATES

- Executors must disclose to the IRS and to persons acquiring any interest in the estate information about the value of property received.
- Must be furnished within 30 days of the estate tax return date.
- No reporting required until 2/29/16 **ADDITIONAL EXTENSION TO 6/30/16**



Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

4. Substantial Understatement SOL Clarification

Typical SOL is 3 years, extended to 6 years for substantial understatement of income (or \$5,000 or more of foreign income).

- **Prior Precedent** – *Home Concrete & Supply, LLC*, Supreme Court States that overstatement of basis in property sold is not understatement for 6 Year SOL Rule.
- **New Rule:** Section 6501 “an understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income”
- **Effective Date:** Tax Returns filed after 7/31/15, and returns filed before that with active SOL



Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

4. Substantial Understatement SOL Clarification

Compare with Gassoway v. Commissioner, T.C. Memo 2015-13

Taxpayer who incorrectly claimed refundable credits avoids the accuracy-related penalty for substantial understatement of income because an understatement is not the same thing as a deficiency.





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IRS RULINGS AND CASE LAW UPDATE

Reasonable Compensation

- **C CORPORATIONS: Reasonable Compensation**
 - **Brinks Gilson & Lione A professional Corporation v. Commissioner**
 - Law Firm zeroed out net income with salary deductions
 - Reliance on accounting firm failed



Reasonable Compensation

- **H.W. Johnston, Inc. v. Commissioner, T.C. Memo 2016-95 (05/11/2016)**
- **Shareholder-employees were integral to success of corporation. IRS argued that reasonable comp was too high because the “independent investor would have demanded a return more commensurate with the corporation’s superior performance”**
 - **Tax Court disagrees: at least 10% tends to indicate that investor would be satisfied**



Uniform Capitalization Rules

City Line Candy & Tobacco Corp v. Commissioner, 141 T.C. 414

Section 263A(b)(2)B: small reseller exception if gross receipts do not exceed \$10M for the three period immediately preceding taxable year

- **Cigarette stamp tax included in GROSS receipts**



Year of Deduction

- Giant Eagle, Inc. v Commissioner
 - Fuelperks! Customer rewards
 - Tax court ruled against
 - Circuit court overturned, looked to State law for “the existence...of both an absolute liability and near certainty that the liability would soon be discharged by payment”



Deductions for Personal Expenses

- Voss v. Commissioner, 796 F.3d 1051 (9th Cir. 8/7/15)
 - Principal Residence Indebtedness 163(h)(3)(B)(ii)
 - Tax Court found it on a per residence basis
 - Circuit court overturned, focusing on plain statutory language where married couple gets debt ceilings halved



Selected Court Cases/IRS Authority

S CORPORATIONS

- CCA 201624021 – No Safe Harbor Election for Target on 338(h)(10) Deemed Asset Sale
 - Safe-harbor election available if “covered transaction” under Treas. Reg. 1.263(a)-5(e)(3), including:
 - A taxable acquisition by the taxpayer of assets that constitute a trade or business.
 - A taxable acquisition of an ownership interest in a business entity (whether the taxpayer is the acquirer or the target).
 - Certain section 368 reorganizations.



Selected Court Cases/IRS Authority

- **Responsibility for taxes in bankruptcy - In Re. Medley v. Citizens Southern Bancshares, No. 13-12371, 2016 BL 156873 (Bankr. M.D. Ala. 2016)**
- The Bankruptcy Court found that the Trustee/bankruptcy estate was responsible for the taxes:
 - Debtors did not make a section 1398 election to treat the year the bankruptcy commenced as two separate short tax years.
 - The income or loss of an S corporation is determined as of the last day of the corporation's tax year.
 - At the commencement of the bankruptcy cases, the bankruptcy estate became the owner of the debtors' stock in the S corporation.



Selected Court Cases/IRS Authority

- **Duty of Consistency** - Squeri et al. v. Commissioner, T.C. Memo 2016-116 (June 16, 2016)
 - Duty of Consistency doctrine applies if:
 - Representation or report made by the taxpayer,
 - Reliance by the IRS, and
 - Attempt by the taxpayer after statute of limitations has run to change the previous representation or to recharacterize the situation in such a way that harms the IRS.



Selected Court Cases/IRS Authority

- **S Corporation Modernization Act (S. 3181)**
 - The Act proposes to relax S corporation rules including the following:
 - Allow nonresident aliens to be qualified beneficiaries of an electing small business trust.
 - Allow electing small business trusts to deduct charitable contributions.
 - Expand S corporation eligible shareholders to include IRAs.
 - Provide for a basis adjustment of S corporation assets upon the death of a shareholder by providing for a 15-year amortization deduction attributable to the percentage of S corporation assets owned by the deceased owner under the proposal.
 - Raise a threshold for S corporations that were previously C corporations so that they will not be subject to an additional tax unless 60% of the income is passive.



Selected Court Cases/IRS Authority

PARTNERSHIPS

- **Bona Fide Partnership** – DJB Holding Corp. v. Commissioner, 803 F.3d 1014 (9th Cir. 10/7/15)
 - Purported related-party partnership was not a bona partnership for tax purposes.
- **Conservation Tax Credits** – Route 231, LLC v. Commissioner, 810 F.3d 247 (4th Cir. 1/8/16)
 - Section 707(a)(2)(B) disguised sale rules applied to transaction involving contribution of cash to a partnership followed by a distribution and allocation to that partner of State of Virginia conservation tax credits.



Selected Court Cases/IRS Authority

- **Breach of Closing Agreement – Davis v. U.S., 811 F.3d 335 (9th Cir. 1/25/16)**
 - IRS breached closing agreement with partnership, but partner, Al Davis, still responsible for taxes.



Selected Court Cases/IRS Authority

- **Self-Employment Tax - T.D. 9766 – Self-Employment Tax Treatment of Partners in Partnership that Owns a Disregarded Entity**
 - Partner in a partnership is considered self-employed even though the partner is an employee of a disregarded entity owned by the partnership.



Selected Court Cases/IRS Authority

TAX SHELTERS

- **Transferee Liability** – Tricarichi v. Commissioner, T.C. Memo 2015-201 (10/14/15)
 - Taxpayer participated in Midco transaction and sole stock of company to a Cayman Islands company which used a distressed debt strategy to generate a bad debt deduction and eliminate taxes from settlement.
 - Taxpayer was held liable as transferee.
 - T.C. Memo 2016-132 – Supplemental opinion upheld government's calculation of pre-notice interest – properly determined under federal and not state law.



Selected Court Cases/IRS Authority

- **Section 1256 Foreign Currency Contracts – Wright v. Commissioner, 809 F.3d 877 (6th Cir. 1/17/16)**
 - Section 1256 provides that a foreign currency option can be a foreign currency contract
 - Allowed taxpayer to engineer a desired tax loss by paying only a minimal cash outlay and engaging in major-minor transactions that subjected taxpayer to little actual economic risk.



Selected Court Cases/IRS Authority

- **New Listed Transactions/Transactions of Interest**
 - Notice 2015-73
 - Notice 2015-74
- **T.D. 9764** – Final Regulations for Section 6708 Failure to Maintain List of Advisees with Respect to Reportable Transactions

Selected Court Cases/IRS Authority

- **Bank Secrecy Act Jurisdiction - Norman v. United States, 126 Fed. Cl. 277 (4/11/16)**
 - Court of Federal Claims has jurisdiction to hear suits seeking a refund of FBAR penalties imposed under the Bank Secrecy Act.
 - District Courts do not have exclusive jurisdiction.
- **Section 6621(d) Netting - Wells Fargo & Co. v. United States, 117 A.F.T.R.2d 2016-2263 (Fed. Cir. 6/29/16)**
 - If before a merger of two corporations, one has an underpayment and the other has an overpayment, you cannot net the interest because the payments were made by two separate corporations.



Selected Court Cases/IRS Authority

- **Attorney-Client Privilege - Schaeffler v. United States, 806 F.3d 34 (2d Cir. 11/10/15)**
 - District Court had refused to quash a summons issued to Ernst & Young on attorney-client/tax practitioner privilege grounds because privilege was waived by sharing an E&Y memo with a bank consortium which did not share a legal interest with the taxpayer.
 - Second Circuit reversed and found that the attorney-client privilege had not been waived and that the E&Y memo was protected by the work product doctrine.



Selected Court Cases/IRS Authority

- **Summons/Improper Purpose - United States v. Clarke, 816 F.3d 1310 (11th Cir. 3/15/16)**
 - During a partnership audit, the IRS issued a summons to four individuals associated with the partnership whom the IRS believed had information and records relevant to the audit.
 - The individuals refused to comply, asserting that the IRS issued the summons for an improper purpose – to punish the partnership for refusing to extend the statute of limitations, and sought enforcement for an improper purpose – to evade the Tax Court’s limitations on discovery.
 - Court found no improper purpose or motive.



Selected Court Cases/IRS Authority

- **Summons Authority** - U.S. v. Chen, 815 F.3d 72 (1st Cir. 2/29/16)
 - Required records doctrine (an exception to the Fifth Amendment) applies to the recordkeeping scheme of the Bank Secrecy Act, as it meets test:
 - Government's inquiry must be essentially regulatory
 - Information to be obtained is of kind the regulated party has customarily kept
 - Records must have assumed public aspects that render them analogous to public documents.



Selected Court Cases/IRS Authority

- **Fifth Amendment Privilege - U.S. v. LaMotte, 117 A.F.T.R.2d 2016-1725 (D. Mass. 5/10/16)**
 - LaMotte invoked Fifth Amendment privilege to questions posed by IRS in proceeding relating to captive insurance.
 - Court held LaMotte properly invoked his rights because:
 - The information sought by IRS was incriminating on its face, and
 - The court determined that there was a sufficient possibility of criminal prosecution to trigger the need for constitutional protection.



Selected Court Cases/IRS Authority

- **Non-Profit Refund Interest Rate - Maimonides Medical Center v. U.S.**, 809 F.3d 85 (2d Cir. 12/18/15)
 - Lower interest rate that applies to a refund for an overpayment of taxes due to a corporation applies to not-for-profit corporations.
- **Section 7605(b) Limitation of Audit - U.S. v. Titan International, Inc.**, 811 F.3d 950 (7th Cir. 2/1/16)
 - Section 7605(b) limits the IRS to one inspection of a taxpayer's books per audit of a given year's tax return and the IRS can inspect the same books and records in each audit.

Selected Court Cases/IRS Authority

■ **Administrative/Litigation Costs**

■ Rev. Proc. 2016-17 (2/29/16)

- Provides guidance for recovery of administrative and litigation costs by individuals and organizations that provide pro bono representation to taxpayers.
- Hourly rate is limited to statutory hourly rate in Section 7430(c)(1)(B)(iii).

■ Alterman Trust v. Commissioner, 146 T.C. No. 14 (5/2/16)

- Trust sought administrative and litigation costs as a prevailing party.
- Court held that net worth requirement of Section 7430(c)(4)(A)(ii) is determined on the last day of the taxable year involved in the proceeding, and in transferee liability proceeding, the taxable year involved is the taxable year stated in the notice of liability.



Selected Court Cases/IRS Authority

■ **Last Known Address –**

- Onyango v. Commissioner, 638 Fed. Appx. 5 (D.C. Cir. 3/22/16)
 - Taxpayer who is reasonably able and had multiple opportunities to check his mail and intentionally failed to do so for the purpose of avoiding receipt of the deficiency notice cannot contend that he did not receive it.

- Bongam v. Commissioner, 146 T.C. No. 4 (2/11/16)
 - IRS used incorrect address where taxpayer never filed a change-of address form.



Selected Court Cases/IRS Authority

■ Tax Court Jurisdiction

- LG Kendrick, LLC v. Commissioner, 146 T.C. No. 2 (1/21/16)
 - Original notice of determination did not include a determination to sustain a collection activity for a particular liability and therefore did not confer jurisdiction on the Tax Court.
 - Court held that a supplemental notice of determination following a CDP hearing does not provide the basis for Tax Court jurisdiction to review this determination.
- Painting, Inc. v. Commissioner, T.C. Memo 2016-61 (4/5/16)
 - Tax Court does not have jurisdiction after SS-8 determination of employment status.
- Guralnik v. Commissioner, 146 T.C. No. 15 (6/2/16)
 - When Tax Court is inaccessible, petition is not late.



Selected Court Cases/IRS Authority

- **New Grounds - Ax v. Commissioner, 146 T.C. No. 10 (4/11/16)**
 - IRS may continue to raise new grounds to support a notice of deficiency beyond those grounds originally addressed.
 - Burden of proof on new matter is on Respondent/IRS.



Selected Court Cases/IRS Authority

- **Supremacy Clause** - WRK Rarities, LLC v. U.S., 117 A.F.T.R.2d 2016-856 (N.D. Ohio 2/29/16)
 - State law determines whether an interest in property exists (including determining whether taxpayer was a nominee or alter ego of a predecessor entity).
 - Federal law dictates the tax consequences.



Selected Court Cases/IRS Authority

- **Whistleblower Award** - Whistleblower 22716-13W v. Commissioner, 146 T.C. No. 6 (3/14/16)
 - Section 7623(b)(5)(B) provides that a whistleblower is entitled to a nondiscretionary award only if the taxes, penalties, interest, additions to tax and additional amounts in dispute exceed \$2,000,000.
 - Court held that FBAR penalties are not additional amounts and must be excluded in determining whistleblower award.
- **Collateral Estoppel** - Senyszyn v. Commissioner, 146 T.C. No. 9 (3/31/16)
 - IRS Revenue Agent pleaded guilty to criminal tax evasion.
 - IRS issued a notice of deficiency for omitted income.
 - Court determined amount of deficiency was in question and would not use collateral estoppel to determine deficiency.



Selected Court Cases/IRS Authority

EXEMPT ORGANIZATIONS

- **Program-Related Investments – T.D. 9762 – Examples of Program-Related Investments**
 - Program-related investments are not jeopardizing investments
 - May advance science, combat environmental deterioration and promote the arts.
- **501(c)(4) Notification Requirement – T.D. 9775 – Requirement to Notify the IRS of Intent to Operate as a Section 501(c)(4) Organization.**



Selected Court Cases/IRS Authority

- **Withdrawal of Proposed Regs requiring substantiation of charitable contributions – IRS 2015-0049-37970**
 - IRS won't require donor's information on information return.
- **Conservation Easements – Carroll v. Commissioner, 146 T.C. No. 13 (4/27/16)**
 - Conservation easement deed provided that in case of extinguishment, grantee would not be guaranteed a proportionate share of extinguishment proceeds.





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INTERNATIONAL UPDATES

Youssefzadeh and the Required Records Doctrine

- Overview of Youssefzadeh, T.C. No. 14868-14 (Nov. 6, 2015)
 - Taxpayer Victory on pleading 5th Amendment
- Required Records Doctrine
- Compare to OVDP/Streamlined Procedures

New Streamlined Procedures Guidance (January 7, 2016)

- Penalty Guidance
- Guidance on Statement of Non-Willful Conduct
- Spousal Non-Participation on Joint Returns

New Streamlined Procedures Guidance (January 7, 2016)

- Canadian RSSPs
 - i. If Canadian RSSP is only asset, do not have to enter Streamlined Procedures
 - ii. Canadian RSSPs are not included in 5% Penalty base
 - iii. Form 14708 – Can request reconsideration of Penalty if previously paid penalty on Canadian RSSP

Update on Foreign Bank Account Reporting

- **FinCEN now offers an alternative FBAR e-filing method.**
 - Web Browser instead of PDF
 - Only Available to Individual Filers NOT Agents



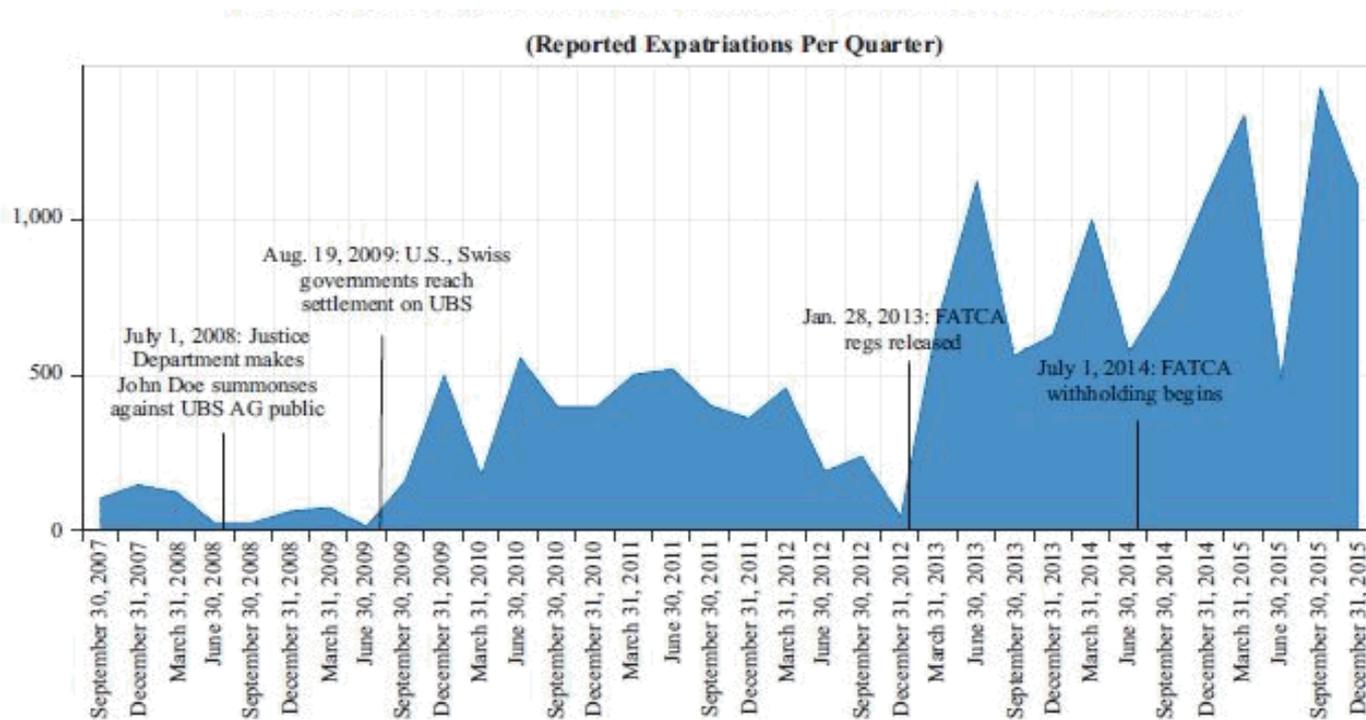


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Section 2801 Prop. Regs. Gifts from Covered Expatriates

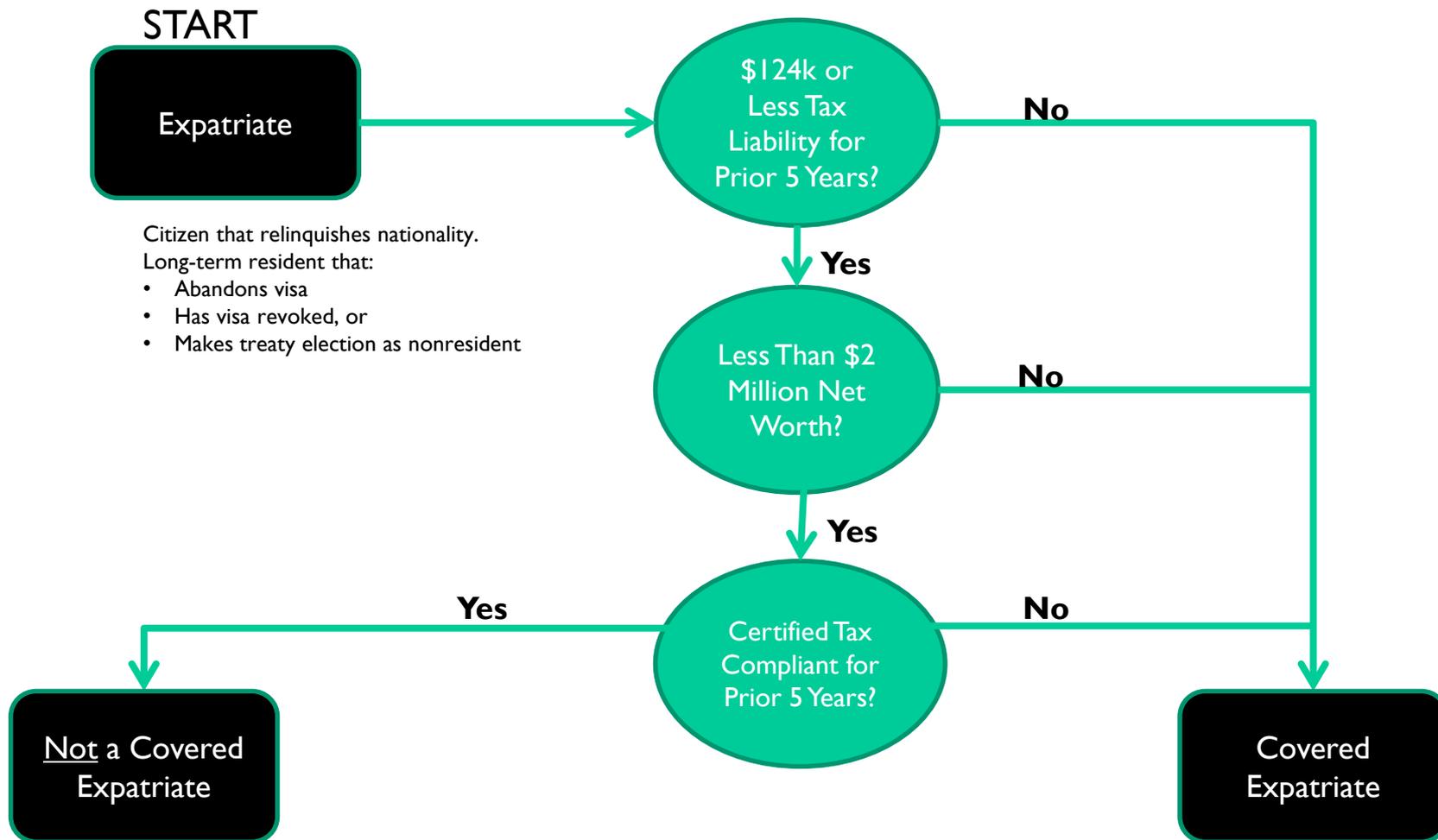
2015: Record-Setting Year for Expatriations



Source: Quarterly *Federal Register* reports made by the IRS, required under section 6039G.



Who is a Covered Expatriate?



Section 2801 Tax

- Prop. Treas. Reg. 28.2801
- Tax on “covered gift”
 - Direct or indirect gift from covered expatriate
- Tax imposed on recipient
- Tax rate is highest applicable gift/estate tax rate
 - Current rate is 40%
- Note: U.S. estate/gift tax based on domicile. CE could still be subject to U.S. estate/gift tax if he has not broken U.S. domicile

Exceptions

- Gifts/bequests up to the §2503(b) annual exclusion amount, \$14,000 for 2016, §2801(c)
 - Gift/bequest does not have to meet requirements of annual exclusion gift
 - For example, gift to domestic trust without Crummey provision still gets exclusion
- Transfers otherwise subject to U.S. Gift/Estate Tax
 - For example, CE makes gift of U.S. situs property
 - Tax must be timely paid
 - Annual exclusion gift is still a covered gift/bequest
 - Example: H & W both CEs. Visit U.S. Each give daughter \$14,000 in gold coins, \$28,000 total. Subject to U.S. gift tax, tangible U.S. property. Both qualify for annual exclusion, so not “taxable gifts.” Section 2801 applies and daughter can only exclude \$14,000. Section 2801 tax applies to remaining \$14,000.

Exceptions

- Transfers to Charities (that qualify for charitable deduction)
- Transfers to Spouse (that qualify for marital deduction)
 - Includes QTIP property
 - If for non-citizen spouse, bequest to QDOT qualifies
 - If CE is QDOT beneficiary, death of CE does not caused covered bequest
 - Gifts by CE to non-citizen spouse qualify for “supersized” annual exclusion of §2523(i)(2). \$148,000 for 2016.
 - Because individual must be U.S. domiciled to be a U.S. recipient for §2801, exception will most likely apply when spouse of CE is green card holder

How to Calculate Tax

1. Determine value of gift on date “received”
 - Gift “received” on date for gift tax purposes
 - Bequest “received” on date distributed except if passes by operation of law or beneficiary designation, then “received” on date of death
2. Reduce value of gift by annual exclusion
 - \$14,000 for 2016
3. Multiply net amount by highest gift/estate tax rate in effect
 - 40% for 2016

Reporting

- Any covered gift/bequest since June 17, 2008 is subject to §2801 and will be reported on Form 708
- Form 708
 - Won't be issued until final §2801 regulations
 - Recipient will have “reasonable period” to file when form issued
 - Recipient must file, unless all covered gifts/bequest below annual exclusion
 - Recipient may file protective Form 708
 - Form is due on June 15 of applicable year
 - Generally June 15 of second calendar year after received
 - For bequest not received on date of death, due on later of:
 1. June 15 of second calendar year after CE died; or
 2. June 15 of calendar year following year covered bequest received
 - File Form 7004 for automatic six-month extension