

Hong Kong



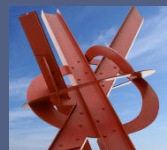
New York



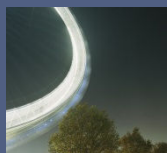
Geneva



Greenwich



London



Milan



New Haven



Expatriation

Transnational Taxation Network
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Who Is A US Citizen Or Green Card Holder?

- US citizens – birth in the United States
 - Any child born in the US is a US citizen, unless parents have full diplomatic immunity from arrest
 - Diplomatic immunity for official acts not enough
 - Citizenship and immigration status of parents is irrelevant
 - Intent of parents is irrelevant
 - No US residency requirement



Who Is A US Citizen Or Green Card Holder?

- US citizens – birth outside the United States
 - Born to two US citizen parents, if either parent had US residence for any time before birth
 - Only one parent is a US citizen who, prior to birth of child, was physically present in the US for 5 years, including 2 years over the age of 14
 - Special rules apply to children born out of wedlock, born before 1987, or born in US possessions



Who Is A US Citizen Or Green Card Holder?

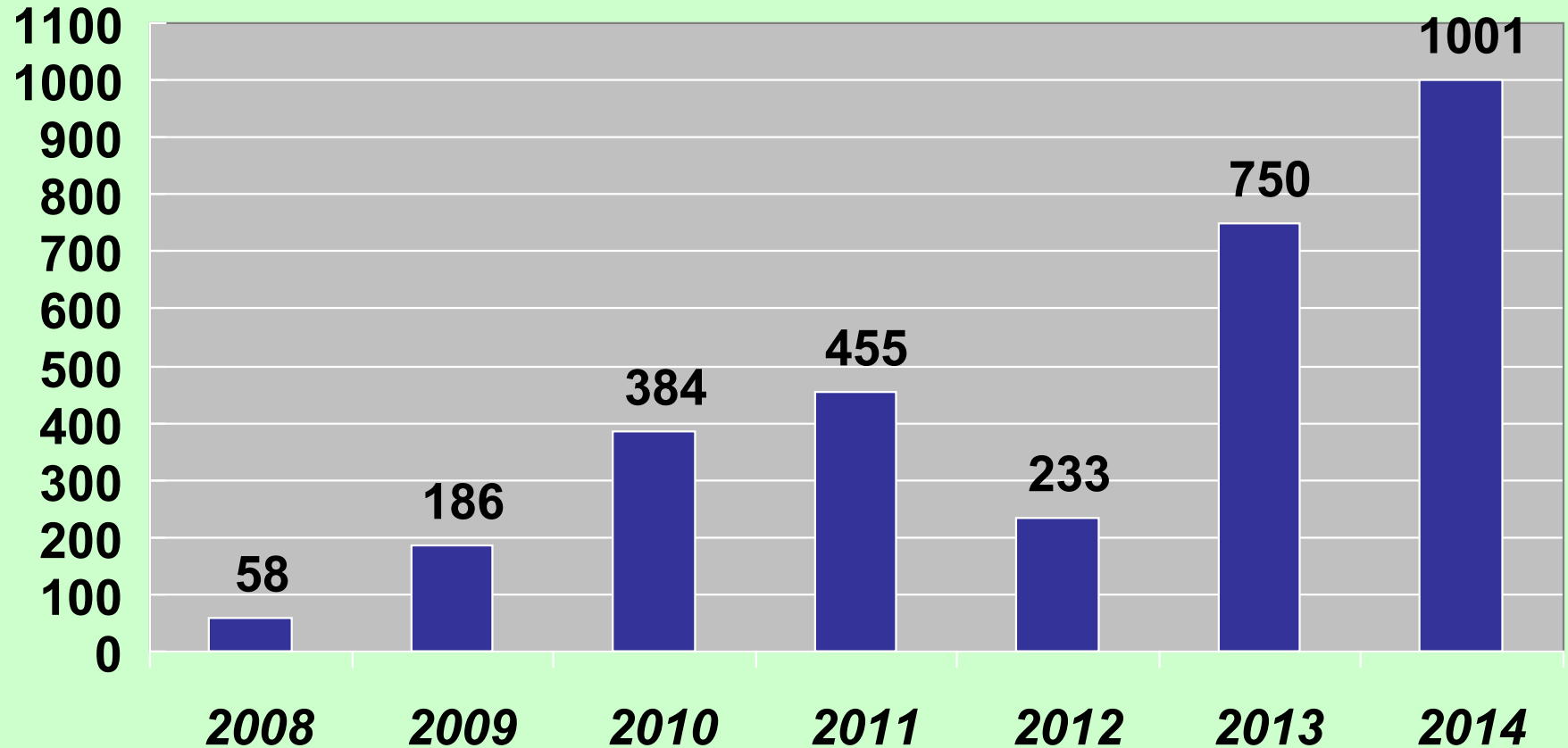
- Green card holders
 - Can be Covered Expatriates if they relinquish their green card after possessing it 8 out of 15 years
 - Tax rule and immigration rule not the same
 - Expiration of green card not enough
 - Moving from the US not enough
 - Must file Form I-407 or take a treaty position on US tax return



Expatriation Recent US Initiatives

- Heroes Earnings Assistance and Relief Tax (“HEART”) Act
 - Enacted in 2008, it significantly changed the expatriation rules
- 2009 Offshore Voluntary Disclosure Program
- Hiring Incentives to Restore Employment (“HIRE”) Act
 - Enacted in 2010
 - Increased reporting obligations for US persons with non-US assets
- 2011 Offshore Voluntary Disclosure Initiative
- 2012 Offshore Voluntary Disclosure Program
- 2014 Offshore Voluntary Disclosure Program
- Foreign Account Tax Compliance Act (“FATCA”)
 - US account holders of non-US accounts to be reported to the IRS

Number of Expatriates Quarterly Average Each Year





Expatriation Tax Ramifications for Covered Expatriates

- Covered Expatriates
 - Exit tax (a/k/a the mark-to-market tax)
 - First \$690,000 of gain exempt
 - 30% withholding tax on future trust distributions
 - 40% tax on gifts or bequests to US persons



Expatriation Covered Expatriate Defined

- Who is a Covered Expatriate?
 - Net Worth test – worth US\$2 million or more
 - Include interests in nongrantor trusts
 - Does not include a mere expectancy (e.g., inheritances)
 - Tax Liability test – US income tax liability of US\$160,000 or more
 - Average US federal tax paid over the past 5 years
 - Compliance test - failed to comply with all US tax obligations for past 5 years



Expatriation Two Exceptions

- There are two exceptions to Covered Expatriate status
 - Dual Citizen exception
 - Citizen of the US and another country at birth
 - Continues to be a citizen and tax resident of the other country
 - Not resident in the US for more than 10 of 15 years
 - Minor exception
 - Expatriate from the US before turning 18½
 - Not resident in the US for more than 10 years
 - Exceptions do NOT apply to green card holders
 - Must be tax compliant! (Voluntary Disclosure?)



Options for Becoming Compliant

- Offshore Voluntary Disclosure Program (Noisy Voluntary)
 - No recommendation for criminal penalties or prosecution
 - All taxes, interest, late filing penalties for 8 years – prior years ignored
 - 27.5% (up to 50% in some cases) Offshore Penalty on highest “account balance” and value of non-compliant offshore assets, “in lieu” of all other information filing penalties
- IRS Streamlined Compliance Procedures (revised 1 July 2014)
 - File and pay all taxes and interest for 3 years, file 6 years of foreign bank account reports (FBARs), and NO penalty exposure
 - Must certify your conduct was non-willful to the satisfaction of the IRS
- Quiet Voluntary
 - Lower upfront costs
 - Can make sense for taxpayers with limited penalty exposure and reasonable cause, but preferred approach may be to participate in revised IRS Streamlined Compliance Procedures



Expatriation – The Process

- Get another passport
- Get in line at the US Embassy / Consulate
- Completing the immigration forms
- The interview / expatriation appointment
- The Oath of Renunciation...
- Certificate of Loss of Nationality (“CLN”)
- Final “dual-status” US tax return & IRS Form 8854 (expatriation certification)



Expatriation

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