Notice 98-34, 1998-2 C.B. 29

July 06, 1998

SECTION I. PURPOSE

Sections 877, 2107, and 2501(a)(3) of the Internal Revenue Code (Code) govern the federal tax treatment of certain former U.S. citizens and former U.S. long-term residents. Section IV of Notice 97-19, 1997-1 C.B. 394, provides guidance regarding the ruling request process under these sections, including the procedures for submitting a ruling request and the effect of a favorable ruling.

This notice modifies certain portions of section IV of Notice 97-19 by providing that certain individuals, in order to rebut the presumption of tax motivation under sections 877(a)(2), 2107(a)(2)(A), and 2501(a)(3)(B), are no longer required to obtain a substantive ruling that the individual did not have a principal purpose of tax avoidance. Rather, these individuals may rebut the presumption of tax avoidance if they submit a complete ruling request in good faith. The Service will rule as to whether a submission was complete and provided in good faith. However, unless the Service also issues a substantive ruling that the individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes, an individual who receives a ruling that his or her request is complete and was submitted in good faith may, in a subsequent examination of the individual's returns, ultimately be found to have had a principal purpose of tax avoidance based on all the facts and circumstances.

This notice also specifies the information required to be submitted in order to receive a ruling from the Service that a request is complete and was submitted in good faith, as well as modifies the categories of former long-term residents eligible to submit ruling requests.

Treasury and the Service expect to issue regulations to incorporate the guidance set forth in this notice. Until such regulations are issued, taxpayers may rely on the guidance set forth in this notice.

SECTION II. BACKGROUND

Section 877 generally provides that a citizen who loses U.S. citizenship or a long-term resident (as defined in section 877(e)(2)) who ceases to be taxed as a U.S. resident (collectively, individuals who "expatriate") within the 10-year period immediately preceding the close of the taxable year will be taxed on U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss or cessation did not have for one of its principal purposes the avoidance of U.S. taxes. Sections 2107 and 2501(a)(3) provide special estate and gift tax regimes, respectively, for individuals who expatriate with a principal purpose to avoid U.S. taxes.

A former citizen is considered to have expatriated with a principal purpose to avoid U.S. taxes for purposes of sections 877, 2107 and 2501(a)(3) if the individual's average income tax liability (the "tax liability test") or the individual's net worth (the "net worth test") on the date of

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expatriation exceed certain thresholds. See sections 877(a)(2), and 2107(a)(2)(A) and 2501(a)(3)(B).

A former U.S. citizen whose net worth or average tax liability exceeds these thresholds, however, will not be considered to have a principal purpose of tax avoidance by reason of one of those tests if that former citizen is described within certain statutory categories and submits a request for a ruling within one year of the date of loss of U.S. citizenship for the Secretary's determination as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes. See sections 877(c)(1), 2107(a)(2)(B), and 2501(a)(3)(C).

The tax liability and net worth tests also apply for purposes of determining whether a former long-term resident is considered to have a principal purpose of tax avoidance. Section 877(e)(3)(A) provides that the exception set forth in section 877(c) with respect to U.S. citizens who submit a request for a ruling shall not apply to former long-term residents. However, section 877(e)(4) gives the Secretary the authority to exempt categories of former long-term residents from section 877. In addition, section 877(e)(5) authorizes the Secretary to prescribe appropriate regulations to carry out the purposes of section 877(e).

In section IV of Notice 97-19, Treasury and the Service announced that, until regulations are issued, a former long-term resident may request a ruling for a determination as to whether such individual had a principal purpose of tax avoidance if the individual is within certain categories enumerated in section IV of Notice 97-19. Section IV of Notice 97-19 also provides detailed guidance on ruling requests under sections 877, 2107 and 2501(a)(3), including the procedures for submitting a request, the information that must be submitted with a request, and the effect of a favorable determination.

SECTION III. RULING REQUEST SUBMISSIONS

Difficulties of current ruling practice. Since the issuance of Notice 97-19, the Service has received a substantial number of requests for rulings under sections 877(c)(1), 2107(a)(2)(B), and 2501(a)(3)(C). In considering these requests, the Service has found that making a determination regarding tax avoidance in an advance ruling presents difficulties due to the inherently factual and subjective nature of the inquiry. In some cases, the Service has been able to reach a determination as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes based on the information submitted with the ruling request. In other cases, however, the Service has not been able to make a definitive advance determination regarding a principal purpose of tax avoidance because the information submitted with the ruling request did not clearly establish the existence or lack of such a principal purpose.

Under section IV of Notice 97-19, an expatriate eligible to submit a ruling will be subject to sections 877, 2107, or 2501, unless such individual obtains a favorable ruling, rather than merely submits a request, that the individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes. Thus, under current law, an expatriate would be adversely affected (i.e., the presumption of tax avoidance would apply) if the Service were unable to make an advance determination regarding tax motivation in certain cases because of the inherently

factual and subjective nature of such an inquiry.

Modification of current ruling practice. Due to the foregoing reasons, Treasury and the Service have decided to modify the current ruling practice. Under the modified ruling practice, an individual may overcome the presumption of tax avoidance under sections 877(a)(2), 2107(a)(2)(A), and 2501(a)(3)(B) by submitting a request for a ruling as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes, provided that such individual's ruling request is complete and was submitted in good faith.

Under such circumstances, the presumption of tax avoidance under sections 877(a)(2), 2107(a)(2)(A), and 2501(a)(3)(B) will not apply even if the individual does not receive a substantive ruling that the individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes. However, in a subsequent examination of such an individual's returns, the individual may ultimately be found to have had a principal purpose of tax avoidance based on the individual's facts and circumstances. Treasury and the Service believe that this approach is supported by section 877(c)(1)(B), which contemplates that the Service may determine that the conclusive presumption of tax avoidance under section 877(a)(2) does not apply if an eligible individual submits a ruling request for a determination as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes.

Effect of ruling request submissions and administration of rulings under new ruling practice. To reflect the change in the Service's ruling practice, this notice modifies section IV of Notice 97-19 as set forth below.

Under this notice, if an expatriate's tax liability or net worth exceeds the applicable thresholds, the presumption in sections 877(a)(2), 2107(a)(2)(A) and 2501(a)(3)(B) that the expatriate had a principal purpose of tax avoidance will not apply if the expatriate (i) is eligible to submit a ruling request that his or her expatriation did not have for one of its principal purposes the avoidance of U.S. taxes, (ii) submits such a request in a timely manner, and (iii) provides the Service with a complete and good faith ruling request submission.

The Service will rule as to whether a submission was complete and provided in good faith. A ruling that a request constitutes a complete and good faith submission may, depending on the information submitted, also contain either:

(1) a substantive ruling that the individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes in those cases where the information submitted clearly establishes the lack of such a principal purpose; or

(2) a substantive ruling that the individual's expatriation did have for one of its principal purposes the avoidance of U.S. taxes in those cases where the information submitted clearly establishes the existence of such a principal purpose.

Alternatively, a ruling that a request constitutes a complete and good faith submission may express no opinion as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes in those cases where the information submitted clearly establishes neither the existence nor lack of such a principal purpose. If the Service rules solely that a request

was complete and submitted in good faith, such a ruling is not conclusive as to whether the individual ultimately can be found to have a principal purpose of tax avoidance under sections 877(a)(1), 2107(a)(1), and 2501(a)(3)(A) based on the individual's facts and circumstances. See section 877(c)(1).

If, for any reason, the Service does not issue a favorable substantive ruling that the individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes, information collected as part of the ruling process may be forwarded to the Office of Assistant Commissioner (International) to consider in any later examination of the individual's returns.

Content of ruling request submissions. In addressing the numerous requests received after the issuance of Notice 97-19, the Service has found that the information required in section IV of Notice 97-19 to be submitted with ruling requests was insufficient in many instances for the Service to make a substantive determination as to whether an individual's expatriation had for one of its principal purpose the avoidance of U.S. taxes. Accordingly, this notice modifies the information that must be submitted with ruling requests to ensure that all useful information is submitted with these requests. Much of the information requested below was also requested in Notice 97-19. For convenience, however, the list below sets forth all of the information that must be included with ruling requests submitted after July 6, 1998.

To be considered a complete and good faith submission by the Service, a request submitted by a citizen or long-term resident for a ruling as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes must contain the following information, with paragraphs labeled to correspond with the numbers set forth below:

(1) the date (or expected date) of expatriation;

(2) a full explanation of the individual's reasons for expatriating;

(3) the individual's date of birth;

(4) all foreign countries of which the individual is a resident for tax purposes and/or intends to obtain residence for tax purposes, and a statement as to whether the individual is subject to worldwide income and estate taxation in the country of residence. If the individual is not subject to worldwide taxation, attach an explanation of the manner in which the individual is taxed (e.g., whether foreign source pension income or capital gains are exempt from tax);

(5) all foreign countries of which the individual is a citizen and/or intends to acquire citizenship after expatriation;

(6) the countries where the individual's spouse (if any) and parents were born, the countries of citizenship and residence of the individual's spouse (if any), and a statement as to whether the individual's spouse has expatriated or intends to expatriate;

(7) the country where the individual's tax home is located (within the meaning of section 911(d)(3));

(8) a description of the individual's ties to the United States and the individual's ties to the foreign country where the individual resides (or intends to reside) for the period that began five years prior to expatriation and ends on the date that the ruling request is submitted, including the location of the individual's permanent home, family and social relations, occupation(s), political, cultural, or other activities, business activities, personal belongings, the place from which the individual administers property, the jurisdiction in which the individual holds a driver's license, the

location where the individual conducts routine personal banking activities, the location of the individual's cemetery plot (if any), and any other similar information;

(9) a balance sheet, in substantially the following format, that sets forth the individual's assets and liabilities immediately prior to expatriation:

Assets	(a) Fair Market Value (FMV)	(b) U.S. Adjusted Basis	(c) Gain (Loss) [col. (a) less col. (b)]
1 Cash, including bank deposit			
2 Marketable stock and securities issued by U.S. companies			
3 Marketable stock and securities issued by foreign companies			
4 Nonmarketable stock and securities issued by U.S. companies			
5 Nonmarketable stock and securities issued by foreign companies			
6 Pensions from services performed in the U.S.			
7 Pensions from services performed outside the U.S.			
8 Partnership interests (attach statement as described below)			
9 Assets held by trusts you own under sections 671 through 679 (attach statement as described below)			
10 Beneficial interests in nongrantor trusts (attach statement as described below)			
11 Intangibles used in the U.S.			
12 Intangibles used out-side the U.S.			
13 Loans to U.S. persons			
14 Loans to foreign persons			
15 Real property located in the U.S.			
16 Real property located outside the U.S.			
17 Business property located in the U.S.			
18 Business property located outside the U.S.			
19 Other assets (attach statement)			
20 Total assets (add lines 1 through 19)			

Liabilities	Amount		
21 Installment obligations		----------	----------
22 Mortgages, etc.		----------	----------
23 Other liabilities		----------	----------
24 Total liabilities (add lines 21 through 23)		----------	----------
25 **Net worth** (subtract line 24 from line 20)		----------	----------

For purposes of allocating the property interests of a nongrantor trust to a beneficiary, use the methodology described under section III of Notice 97-19 (i.e., based on facts and circumstances where possible). To determine the value of a beneficial interest in a nongrantor trust, use the valuation principles under section 2512 and the regulations thereunder without regard to any prohibitions or restrictions on such interest. See section III of Notice 97-19. In addition, the individual must attach to the balance sheet a statement that separately identifies each partnership interest, each portion of a trust that the individual is considered to own under sections 671 through 679, and each nongrantor trust in which the individual holds a beneficial interest. This statement must identify:

(i) the EIN of the partnership or trust (if any),

(ii) the assets and liabilities of each partnership or trust (categorized according to the categories of the balance sheet) attributable to the individual's interest in the partnership or trust,

(iii) in the case of a grantor trust, an explanation of the facts and law (including the applicable section of the Internal Revenue Code) that establishes that the trust (or portion of a trust) is treated for U.S. tax purposes as owned by the individual, and

(iv) in the case of a nongrantor trust, the methodology used to determine the individual's beneficial interest in each trust;

(10) a statement as to whether there have been (or are expected to be) significant changes in the individual's assets and liabilities for the period that began five years prior to expatriation and ends ten years following the date of expatriation. If so, the individual should attach an explanation of such changes;

(11) a description of all exchanges described in section 877(d)(2)(B) and all removals of appreciated tangible personal property from the United States (as described in section V of Notice 97-19), that:

(i) occurred at any time beginning 5 years prior to expatriation (but not including exchanges that took place prior to February 6, 1995) and ending on the date that the ruling request is submitted, or

(ii) occurred, or are expected to occur, during the 10-year period following expatriation.

If the individual is subject to section 877 because of section 511(g)(3)(A) of the Health Insurance Portability and Accountability Act of 1996 (see section X of Notice 97-19), the individual must also include a description of all exchanges described under section 877(d)(2)(B) that occurred on or after the date of the individual's expatriating act (see section X of Notice 97-19) and before February 6, 1995;

(12) a description of all occurrences under section 877(d)(2)(E)(ii) that are treated as exchanges under section 877(d)(2) (as described in section V of Notice 97-19) that:

(i) occurred at any time beginning 5 years prior to expatriation (but not including occurrences that took place prior to February 24, 1997) and ending on the date that the ruling request is submitted, or

(ii) occurred, or are expected to occur, during the 10-year period following expatriation;

(13) a statement describing the nature and status of any ongoing audits, disputes or other matters pending before the Internal Revenue Service;

(14) a statement as to whether the individual satisfied his or her U.S. tax liability during the period that he or she was a U.S. citizen or lawful permanent resident of the United States;

(15) a copy of the individual's U.S. tax returns (including all attachments and schedules) for each of the three years prior to expatriation, and, if filed or required to be filed prior to the date the ruling request is submitted, the U.S. tax returns for the year during which the individual expatriated and for all years subsequent to expatriation. If Form 1116, *Foreign Tax Credit*, was filed with these income tax returns, provide copies of documents required to be attached to Form 1116 (e.g., foreign income tax return, receipt for payment of foreign tax, or other secondary evidence of payment or accrual of foreign taxes accepted by the District Director, as described in Treas. Reg. § 1.905-2). If there is a discrepancy between the income or gain reported for tax purposes with respect to the assets set forth in the balance sheet in paragraph (9) above and the income or gain that reasonably would be expected to be generated by such assets, provide a complete explanation of such discrepancy;

(16) a copy of the information statement filed in accordance with section 6039G of the Code. If the information statement has not been filed, a statement as to when the individual intends to file the information statement;

(17) a calculation of the individual's projected U.S. and foreign income tax liability upon a deemed disposition at fair market value of all of the individual's assets immediately following expatriation, including a description of the foreign income tax treatment (e.g., tax-exempt income and rates of tax) that would arise as a result of such disposition, under each of the following circumstances:

(i) if it is determined that the individual did not expatriate with a principal purpose to avoid U.S. taxes, and

(ii) if the individual had remained a U.S. citizen or U.S. lawful permanent resident;

(18) a projection of the individual's U.S. and foreign income tax liability for each of the three years following expatriation, including a description of the foreign income tax treatment (e.g., tax-exempt income and rates of tax), under each of the following circumstances:

(i) if it is determined that the individual did not expatriate with a principal purpose to avoid U.S. taxes, and

(ii) if the individual had remained a U.S. citizen or U.S. lawful permanent resident.

If the individual expects a substantial change in his or her projected U.S. or foreign income tax liability as a result of a change in income for the remainder of the 10-year period, attach an explanation;

(19) a statement indicating whether the individual has transferred any property by gift with an aggregate value of $100,000 or more (including gifts to the individual's spouse), regardless of whether or not such transfers were taxable under subtitle B of the Code, during the period that began five years prior to expatriation and ending on the date that the ruling request is submitted. If so, include a description of the gift, provide an estimate of its fair market value, indicate when and to whom the gift was made, and attach copies of the relevant U.S. gift tax returns (if any);

(20) a statement indicating whether the individual expects to make any substantial gifts during any year of the 10-year period following expatriation. If so, include a projection of the U.S. and foreign gift and other transfer taxes that would be owed on the expected transfer of property by gift during this period, including a description of the foreign tax treatment (e.g., manner and rates of tax) that would result upon the transfer of such property, under each of the following circumstances:

(i) if it is determined that the individual did not expatriate with a principal purpose to avoid U.S. taxes, and

(ii) if the individual had remained a U.S. citizen or U.S. lawful permanent resident domiciled in the United States.

The individual should also describe the expected gift, provide an estimate of its fair market value, and indicate when and to whom the individual expects to make the gift;

(21) in the case of an individual age 60 or older on the date of expatriation, the present value (determined as of the date of expatriation) of the estimated U.S., foreign and other death taxes that would be imposed as a result of the individual's death, and a description of the foreign tax treatment that would arise as a result of the individual's death, under each of the following circumstances:

(i) if it is determined that the individual did not expatriate with a principal purpose to avoid U.S. taxes, and

(ii) if the individual had remained a U.S. citizen or U.S. lawful permanent resident domiciled in the United States.

For purposes of this calculation, the estimated death tax is determined based on the assumption that the individual's taxable estate consists of the value of property that would comprise the taxable estate if the individual died immediately before the date of expatriation without taking into account any potential marital or charitable deduction. The present value of the estimated death tax liability as of the date of expatriation is determined under the tables prescribed by section 7520 and Treas. Reg. § 20.2031-7, using the appropriate interest rate under section 7520 for that date and the individual's age as of that date;

(22) in the case of an individual who would be considered to own a trust under sections 671 through 679 if the individual had remained a U.S. citizen or U.S. resident, a description of the U.S. and foreign tax treatment to both the trust and the individual (in the country of organization of the trust and the individual's country of residence) of the expected trust income and distributions for each of the three years following expatriation, under each of the following circumstances:

(i) if it is determined that the individual did not expatriate with a principal purpose to avoid U.S. taxes, and

(ii) if the individual had remained a U.S. citizen or U.S. lawful permanent resident.

If the individual expects a substantial change in the projected U.S. or foreign income tax liability of such trust income and distributions for the remainder of the 10-year period following expatriation, attach an explanation;

(23) in the case of an individual who is a beneficiary (as determined under section III of Notice 97-19) of a trust, a description of the U.S. and foreign tax treatment of the expected trust distributions to the individual for each of the three years following expatriation, under each of the following circumstances:

(i) if it is determined that the individual did not expatriate with a principal purpose to avoid U.S.

taxes, and

(ii) if the individual had remained a U.S. citizen or U.S. lawful permanent resident.

If the individual expects a substantial change in the projected U.S. or foreign income tax liability of such trust distributions for the remainder of the 10-year period following expatriation, attach an explanation; and

(24) any other information reasonably required by the Service after its review of the submission.

Although individuals must provide good faith estimates of fair market values, formal appraisals are not required. If an individual fails to provide the aforementioned information, including information reasonably required by the Service, the individual's ruling request may be closed pursuant to section 10.06(3) of Rev. Proc. 98-1, 1998-1 I.R.B. 7. If an individual's request is closed, the individual will not be considered to have submitted a complete and good faith ruling request. Accordingly, the individual will be considered by the Service to have expatriated with a principal purpose to avoid U.S. taxes under sections 877(a)(2), 2107(a)(2)(A) and 2501(a)(3)(B).

Procedures for submitting ruling requests and user fees. Individuals should refer to section 8 of Rev. Proc. 98-1, 1998-1 I.R.B. 7, 24, for general instructions on the proper procedures to follow when submitting ruling requests. Individuals should also consult section 15 of Rev. Proc. 98-1, 1998-1 I.R.B. 7, 51 for information on the applicable user fee that must be submitted with a ruling request.

Effective date. Section III of this notice is effective for pending ruling requests and requests submitted after July 6, 1998. However, an individual with a request currently pending with the Service as of July 6, 1998 is not required to submit any additional information unless requested to do so.

This notice does not affect the validity of any rulings previously issued by the Service. An individual who previously withdrew a ruling request is not considered to have submitted a complete and good faith request. However, such individual may resubmit a ruling request in accordance with this notice. Such a resubmission must be filed by the later of October 6, 1998 or the date that is one year following the date of the individual's expatriation.

SECTION IV. LONG-TERM RESIDENTS ELIGIBLE TO SUBMIT RULING REQUESTS

Modification of categories of individuals eligible to submit ruling requests. Section IV of Notice 97-19 provides that long-term residents within certain categories are eligible to submit a ruling request. Under Category (1) of Notice 97-19, long-term residents who are citizens of certain countries and become fully liable to tax in such country by reason of the individual's residence are eligible to submit a ruling request. This notice modifies Category (1) to read as follows:

(1) the individual becomes (not later than the close of a reasonable period after the individual's expatriation) a resident fully liable to income tax in one of the following countries:

(a) the country in which the individual was born,

(b) the country where the individual's spouse was born, or

(c) the country where either of the individual's parents was born.
For this purpose, a resident who is not domiciled in a country is not considered a resident fully liable to income tax in such country if his or her income is subject to tax in a different manner than the income of a resident who is domiciled in the country.

If a former long-term resident within the aforementioned category expatriated prior to July 6, 1998 such individual will be considered to have submitted a timely ruling request if such request is filed by the later of January 6, 1999 or the date that is one year following the date of the individual's expatriation.

The following example illustrates circumstances under which an individual is not considered a resident fully liable to income tax in a foreign jurisdiction:

> *Example 1.* A, a former long-term resident, expatriated on January 1, 1998. A exceeded the threshold of the net worth test on the date of her expatriation. After A expatriated, A moved to Country B. A was born in Country B. A is considered a resident of Country B, but is not domiciled in Country B. Under Country B's income tax laws, nondomiciliary residents of Country B are not taxed on foreign source income unless such income is remitted to Country B. Residents of Country B who are also domiciled in Country B, however, are liable to tax in Country B on worldwide income, regardless of whether such income is remitted to Country B. Since A is not liable to tax on foreign source income in the same manner as a domiciliary resident of Country B, A is not considered a resident fully liable to income tax in Country B. Accordingly, A is not eligible to submit a ruling request under paragraph (1) above.

SECTION V. EFFECT ON OTHER DOCUMENTS

Section IV of Notice 97-19 is modified.

REQUEST FOR COMMENTS

Treasury and the Service invite public comments on the guidance provided in this notice. Comments should be submitted by September 6, 1998 to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Attn: CC:CORP:T:R, (Notice 98-34)
Room 5228
Washington, DC 20044

or, alternatively, via the internet at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html

The comments you submit will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Trina Dang of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Dang or Willard Yates at (202) 622-3880 (not a toll-free call).

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1531.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information related to the submission of ruling requests is required to help the Secretary make a determination as to whether an individual submitted a complete and good faith request and to help the Secretary make a determination as to whether the individual expatriated with a principal purpose to avoid U.S. taxes. This information will be used by the Service for tax administration purposes.

The respondents will be eligible individuals who lose U.S. citizenship or cease to be taxed as lawful permanent residents of the United States. The estimated total annual reporting burden is 350 hours. The estimated annual burden per respondent is 3.5 hours. The estimated annual number of respondents is 100. The estimated annual frequency of responses is on occasion.

Books or records relating to collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.