Facebook Expat Is Latest Billionaire Without Borders

By Marie Sapirie — msapirie@tax.org

If you tax them, they will leave. That's the message initial Facebook investor and billionaire Eduardo Saverin inadvertently sent when he handed in his U.S. passport and jumped through the required tax hoops to renounce his U.S. citizenship.

After Treasury's publication of the quarterly list of expatriates on April 30 prompted a media frenzy, Saverin's spokesman said the billionaire was not motivated by tax considerations. Rather, he finds rules that make it more difficult for Americans to live and invest overseas oppressive — for example, the Foreign Account Tax Compliance Act. (For the Q1 list of expatriates, see *Doc 2012-9162* or *2012 TNT 84-25*.)

Saverin's decision was not unprecedented. The number of both U.S. citizens who renounce their citizenship and long-term residents who terminate their U.S. residency has increased over the past four years, but it remains small relative to the total U.S. population. The Census Bureau estimated that the U.S. population in 2011 was 311,591,917. Treasury reported that 1,781 people expatriated that year.

Dianne C. Mehany of Caplin & Drysdale said her firm has seen a "significant uptick" in the number of clients looking to expatriate. She said the increased interest in expatriation likely results from both the IRS's international enforcement efforts, such as the offshore voluntary disclosure initiatives, and the reporting regime enacted under FATCA. By requiring foreign financial institutions to report on their U.S. customers, FATCA imposes costs on those institutions that have made some of them decide it is no longer worthwhile to have American business.

Saverin is a fairly typical expatriate. He wasn't born in the United States and wasn't living here when he gave up his citizenship. Saverin, who was born in Brazil, lived in Miami and attended Harvard, where he roomed with Mark Zuckerberg before decamping for Singapore in 2009.

Most Americans who decide to relinquish their U.S. citizenship are foreign residents, said Mehany. She estimated that about 70 percent of clients who consider expatriating live abroad, or are "accidental U.S. citizens" because they were born in the United States or to American parents but had few, if any, U.S. ties. Many of the people in those groups learned that citizens must file U.S. tax returns regardless of where they live after the UBS prosecution and offshore voluntary disclosure programs.

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The eventual tax savings that Saverin may reap by becoming Singaporean puts him in another category of expats: those who have or are about to acquire wealth and who elect to move rather than pay U.S. tax. Mehany said there is a younger generation of expatriates who decide that they don't have to live in the United States because citizenship in other places can afford them a similar lifestyle and yield significant tax savings in the long run. "The tax issue is forefront in their minds," she said.

Finding a Friendly Jurisdiction

Americans must establish another nationality before handing in their passports. Residency in the new jurisdiction is typically required, and that process can take several years. The Caribbean historically has been a popular destination for expatriates who don't already have another citizenship.

For those without long-term resident status in a desirable jurisdiction, one option is St. Kitts and Nevis, which has offered citizenship by investment since 1984. An applicant must pay government fees, buy designated real estate worth at least $400,000, or donate between $250,000 and $400,000 to the Sugar Industry Diversification Foundation to gain citizenship. A St. Kitts and Nevis passport affords its holder visa-free travel throughout the EU, Canada, and Hong Kong, as well as many other countries. Further, St. Kitts and Nevis has no income, capital gains, or estate taxes.

Asian countries like Hong Kong and Singapore, both of which have residence requirements for prospective citizens, have become more popular lately. Singapore generally doesn't tax income received from foreign sources, capital gains, or dividends paid by non-Singaporean companies. Mehany said that a move to Hong Kong may create some pre-expatriation tax complexities, because

Hong Kong has no tax treaty with the United States. However, it is becoming a more desirable jurisdiction for younger generations.

Covered Expatriates

Not all those who expatriate are captured in Treasury's numbers. To appear on Treasury's quarterly list, a taxpayer must meet one of two tests in section 877(a). The first is a net wealth test with a $2 million threshold. The second is an average annual net income tax liability of $151,000 over the previous five years.

Section 877A, enacted as part of the Heroes Earnings Assistance and Relief Tax Act of 2008, revised the exit tax consequences imposed under section 877 by establishing a mark-to-market regime in which the property of covered expatriates is treated as being sold for fair market value on the day before the expatriation date. Any gain arising from the deemed sale is taken into account for the tax year of the deemed sale, less an exclusion amount that is indexed for inflation. An expatriating taxpayer may elect to defer payment of the tax until the property that was marked to market is disposed of. The provision was an offset to pay for benefits to military personnel and was estimated to raise $411 million over 10 years. Rules similar to section 877A had been proposed in every Congress since 1995 and were included in President Clinton's budget proposals.

There are no regulations for section 877A, but Notice 2009-85 contains rules for determining whether an individual is subject to section 877A, how the mark-to-market regime operates, how section 877A interacts with other code provisions, and how to apply the ''alternative tax regimes'' to deferred compensation items, specified tax deferred accounts, and interests in non-grantor trusts. (For a related special report, see p. 1035. For prior coverage, see *Tax Notes*, Oct. 19, 2009, p. 288, *Doc 2009-22743*, or *2009 TNT 198-2*. For Notice 2009-85, 2009-45 IRB 598, see *Doc 2009-22733* or *2009 TNT 198-7*.)

Regardless of whether they meet the section 877(a) tests, all individuals must certify before expatriating that their past five years of U.S. tax returns are fully compliant. Before that certification can be made, many nonresident citizens must file returns and foreign bank account reports, Mehany said. Part of the analysis in that step is to determine whether it is in the taxpayer's interest to enter the offshore voluntary disclosure initiative or to explore other planning alternatives before starting the expatriation process to allow the taxpayer time to become compliant, she said.

Expatriates must ensure that they do not fall back into the tax system by spending too many days in the United States after they have expatriated. Also, if they have U.S.-source income in the 10 years after expatriation, they will have to file Form 1040-NR,

SENATE DEMOCRATS INTRODUCE BILL TO PREVENT RENOUNCING OF U.S. CITIZENSHIP TO AVOID TAXES

Taxpayers who relinquish their U.S. citizenship to avoid paying taxes would face several new penalties under a bill introduced May 16 by Senate Finance Committee member Charles E. Schumer, D-N.Y., and Sen. Robert P. Casey Jr., D-Pa.

Under the bill, the Expatriation Prevention by Abolishing Tax-Related Incentives for Offshore Tenancy Act, if the IRS finds that a taxpayer has renounced his U.S. citizenship during the last 10 years for tax purposes, that taxpayer would not only be banned from returning to the United States but would pay additional tax penalties under section 871, including a new 30 percent capital gains tax on any investments the taxpayer may make in the United States after the bill's enactment. (For a release, see *Doc 2012-10626* or *2012 TNT 97-32*.)

The bill follows Facebook Inc. investor Eduardo Saverin's relinquishment of his U.S. citizenship before Facebook's initial public offering. Saverin cited U.S. regulatory burdens as the impetus for his move to Singapore.

Although the law already prevents those who have renounced their citizenship to avoid taxes from returning to the United States, it has been difficult to enforce and no former citizen has been barred from returning, Schumer told reporters at a press conference. He said his bill would address those issues.

''Expatriates like Saverin cannot continue to receive the benefits of doing business in the United States without any tax responsibility,'' Schumer said. ''Citizenship is not for sale. The despicable trend that Saverin exhibits must be stopped dead in its tracks.''

''It's very hard for someone with that kind of net worth not to invest in the United States even if he stays in Singapore,'' Schumer said. The 30 percent tax would apply only to future investments and would not be retroactive, he said.

Antonia Ferrier, spokeswoman for Senate Finance Committee ranking minority member Orrin G. Hatch, R-Utah, said the proposal was ''a talking point rather than a real solution'' and suggested that comprehensive tax reform would do a better job of removing incentives to expatriate. ■

— Meg Shreve

"U.S. Nonresident Alien Income Tax Return," in accordance with section 877(b), Mehany said.

Estate planning is another important part of expatriation for wealthy taxpayers. The estate tax is one of the biggest concerns for individuals who are contemplating expatriation, Mehany said, adding that many U.S. expats become citizens of a jurisdiction that has a higher income tax rate, but larger estate tax exemptions, lower rates, or greater availability of trust structures that hold wealth outside the estate.

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The estate tax is one reason some taxpayers decide not to leave. In some cases, entire families expatriate together, but other expatriates still have a spouse or children in the United States. If future heirs remain U.S. citizens and the estate, perhaps because of the location of the assets, will be subject to U.S. tax, expatriation won't always produce significant tax savings in the long run, Mehany said.

Don't Fence Me In

Relocating for tax purposes is occurring at the state level, too. Even if moving operations overseas is not an option, companies are finding that there are appealing stateside spots that offer a good quality of life and lower taxes. Oregon and Washington are two examples — Washington has no state income tax and Oregon has no sales tax.

The reasons for having white-collar employees in one location are rapidly diminishing for many businesses. Facebook's engineers could work essentially anywhere they have an Internet connection — they don't have to be in Menlo Park, Calif., where the company is headquartered.

States, like nation-states, should expect to see even more migration as more jobs become mobile. Once enough employers are willing to allow remote work, a principal reason for people to stay in a geographical area will be gone. Other factors in geographic immobility, like schools, could be on their way out. For over a decade, the Massachusetts Institute of Technology has offered many courses online and made them free to anyone (although you can't get a degree). A few states are experimenting with offering high school curriculums online as well.

Saverin made a pragmatic and well-timed move to Singapore. The process of expatriating can take time, and he had the added pressure of needing to leave before the Facebook IPO put a high FMV on his shares. In 2010 he wrote, "In the digital world, borders are permeable." Turns out that borders are pretty permeable in the real world, too. ■