Covered Expatriate Status and the Section 877A Exit Tax

An Adviser's Guide to who is an expatriate under section 877A, including the long-term resident and the treaty election that ends lawful permanent residence; the three tests for covered expatriate status, the two statutory exceptions and the compliance cure; the mark-to-market deemed sale, the $910,000 exclusion for 2026 and the basis rules; the separate regimes for deferred compensation, specified tax-deferred accounts and nongrantor trust interests; the deferral election; a worked example; the exit-year return, Form 8854 and Form W-8CE; the income tax treaties and the estate and gift tax treaties after expatriation; the reception of the deemed sale in the country of destination; the section 2801 tax on U.S. recipients after the 2025 final regulations; and the sequence that should precede the expatriation date.

Section 877A imposes a tax on the act of leaving the United States tax system. When a citizen relinquishes citizenship, or a long-term resident ceases to be a lawful permanent resident, the Code treats every asset of a covered expatriate as sold for fair market value on the day before the expatriation date, taxes the net gain above an inflation-adjusted exclusion ($910,000 for 2026), deems tax-deferred accounts distributed, prices deferred compensation by whether the United States can still withhold at source, and leaves interests in nongrantor trusts under a 30 percent withholding tax on later distributions. The tax is computed on the final return of the resident period and reported on Form 8854. If the expatriate is covered, section 2801 follows for the rest of the expatriate's life, taxing U.S. recipients of the expatriate's gifts and bequests at 40 percent.

The key factor is one classification, namely covered expatriate status. This is decided by three alternative tests: net worth of $2,000,000 or more, average annual net income tax above $211,000 (2026) for the five preceding years, or failure to certify five years of compliance. The tests are mechanical, the net worth threshold has not been indexed since 2004, and any one of the three suffices.

First, covered status is fixed on the expatriation date and, once fixed, permanent: the certification test can be passed only by compliance completed before that date, the net worth test is measured on that date, and the tax liability test looks at five years already closed. Second, the mark-to-market regime and its three satellite regimes are computed by reference to the day before the expatriation date, so every valuation, every basis record and every notice to a payor must exist by then. Third, for this firm's clients, who leave for countries that have income tax treaties and, in most cases, estate tax treaties with the United States, the treaty determines what the mandatory waivers cost, whether the country of destination will respect the deemed sale, and how the estate of the former citizen will be taxed; the treaty analysis is part of the decision, not a supplement to it.

This article maps the regime from the departing client's side. Part I identifies who is an expatriate and when the expatriation date falls, including the treaty election that ends lawful permanent residence. Part II sets out the three covered expatriate tests, the two exceptions and the routes to compliance. Parts III to VI cover the deemed sale, the deferred compensation rules, the specified account and trust regimes, and the deferral election. Part VII works a numerical example. Part VIII covers the exit-year return, Form 8854 and Form W-8CE, with a compliance calendar. Parts IX and X map the income tax treaties and the estate and gift tax treaties after expatriation, and Part XI the reception of the deemed sale in twelve countries of destination. Part XII covers section 2801 after the 2025 final regulations, and Part XIII collects the practice points. Dollar amounts are the 2026 figures unless stated otherwise; statuses are stated as of September 2026 and must be confirmed against current law in any actual engagement.

Summary. (1) Who. Section 877A applies to a citizen who relinquishes citizenship and to a long-term resident, a lawful permanent resident in at least 8 of the 15 taxable years ending with the year of expatriation, who abandons the card, loses it by final order, or claims residence in a treaty country on a return with Form 8833. For a long-term resident the treaty claim is itself the expatriating act, dated from the day treaty residence commenced.

(2) Covered status. Any one of three tests: net worth of $2,000,000 or more (unindexed since 2004); average annual net income tax for the five preceding taxable years above $211,000 (2026); or failure to certify five years of compliance on Form 8854. The tax on a joint return counts in full for each spouse; net worth is measured for each spouse separately.

(3) Exceptions and cure. Certain dual citizens from birth and minors under 18½ escape the first two tests but never the certification test, and the exceptions are written for citizens only. The streamlined procedures and, for former citizens with no filing history, net worth under $2,000,000 and six-year aggregate tax of $25,000 or less, the Relief Procedures for Certain Former Citizens are the routes to certification.

(4) The deemed sale. Everything that would be in the gross estate is treated as sold at fair market value on the day before the expatriation date; net gain above $910,000 (2026) is taxed by character and bears the 3.8 percent net investment income tax; losses are allowed without the wash sale rule; basis is adjusted by the full deemed gain; property held on the residency starting date takes a basis of not less than its value on that date, for naturalized citizens as well as long-term residents.

(5) The satellite regimes. An eligible deferred compensation item (U.S. payor, Form W-8CE, irrevocable treaty waiver) is not accelerated but bears 30 percent withholding on every later taxable payment; no procedure has ever been issued for a foreign payor to elect in, so foreign pensions are ineligible and included at present value. IRAs (other than SEP and SIMPLE), 529, ABLE, Coverdell, HSA and Archer MSA balances are deemed distributed without the early distribution tax. Grantor trust assets are marked to market; nongrantor trust interests are not, but later distributions bear 30 percent withholding and in-kind distributions trigger gain at the trust level.

(6) Deferral. Tax on the deemed sale, and only that tax, may be deferred property by property until disposition or death, at underpayment-rate interest, against adequate security and an irrevocable treaty waiver, under a tax deferral agreement with the IRS.

(7) Compliance. Dual-status return for the expatriation year; Form 8854 with the return and annually thereafter while a deferral, an eligible deferred compensation item or a nongrantor trust interest remains; Form W-8CE to each payor by the earlier of the day before the first post-expatriation payment and 30 days after the expatriation date; $10,000 penalty under section 6039G(c).

(8) Afterward. A covered expatriate's gifts and bequests to U.S. citizens and residents are taxed to the recipient at 40 percent above $19,000 a year (2026) under section 2801 and the final regulations effective for receipts on or after January 1, 2025 (Form 708, first due June 15, 2027); gifts completed before the expatriation date are outside it. The ten-year former-citizen clauses of the treaties are largely dormant. The country of destination decides whether the exit tax is a final cost or a

prepayment: Canada, Austria and Belgium reset the cost of assets on arrival, the Netherlands and Luxembourg do so for substantial shareholdings, Germany links the cost of substantial shareholdings to the U.S. value actually assessed, capped at the arrival value, with a convention election that can reach the whole balance sheet where the deemed sale coincides with the move, and France, the United Kingdom, Italy, Spain and Ireland keep historical cost.

Part I. Expatriates: citizens, long-term residents and the expatriation date

Section 877A applies to an "expatriate", a term with two branches: a United States citizen who relinquishes citizenship, and a long-term resident who ceases to be a lawful permanent resident.[1] The distinction matters for the date, for the availability of the two statutory exceptions and for the basis rules, and it is drawn precisely here.

A citizen relinquishes citizenship, for tax purposes, on the earliest of four dates: the date of renunciation before a diplomatic or consular officer under section 349(a)(5) of the Immigration and Nationality Act; the date the citizen furnishes to the Department of State a signed statement of voluntary relinquishment confirming an expatriating act under section 349(a)(1) to (4) of that Act; the date the Department issues a certificate of loss of nationality; or the date a court cancels a naturalized citizen's certificate of naturalization.[2] The first two dates count only if the Department subsequently approves the loss by issuing the certificate. Until it does, the individual remains a citizen for tax purposes; once it does, the tax date relates back to the oath or the statement rather than forward to the certificate.[3] Where citizenship was lost by an earlier act, such as naturalization abroad with the requisite intent, the tax date is the day the signed statement reaches the Department, not the day of the act, and the deemed sale is measured on the day before that statement.[4]

A long-term resident is an individual, other than a citizen, who was a lawful permanent resident in at least 8 of the 15 taxable years ending with the taxable year in which the status ends.[5] The count is of taxable years, not of twelve-month periods: a card held on any day of a taxable year counts that year, so a card issued in December of year one and abandoned in January of year eight has already produced eight years.[6] A year in which the individual was treated as a resident of a foreign country under a treaty and did not waive treaty benefits does not count.[7] Lawful permanent residence ends for this purpose when the status is revoked or is administratively or judicially determined to have been abandoned.[8] The regulation treats abandonment as determined when the individual files Form I-407, or a letter of intent enclosing the card, with U.S.

[1] I.R.C. § 877A(g)(2).

[2] I.R.C. § 877A(g)(4)(A) to (D); Instructions for Form 8854 (2025), "Date of relinquishment of U.S. citizenship".

[3] I.R.C. § 877A(g)(4)(A), (B) (each conditioned on the loss being "subsequently approved by the issuance to the individual of a certificate of loss of nationality").

[4] I.R.C. § 877A(g)(4)(B). The nationality-law date of loss under INA § 349 may be earlier; the tax date is fixed by § 877A(g)(4).

[5] I.R.C. § 877(e)(2), incorporated by § 877A(g)(5).

[6] Instructions for Form 8854 (2025) ("You are an LTR if you were a lawful permanent resident of the United States in at least 8 of the last 15 tax years ending with the year you are no longer treated as a lawful permanent resident").

[7] I.R.C. § 877(e)(2), second sentence.

[8] I.R.C. § 7701(b)(6)(A), (B).

Citizenship and Immigration Services or a consular officer, a notice sent by certified mail with return receipt requested being treated as filed when mailed; where the government initiates the determination, the status ends with the final administrative order of abandonment, or with the final judicial order if the individual appeals.[9] The expatriation date of a long-term resident is the date on which the status ends.[10] Income tax residence may nonetheless continue past that date: an individual who meets the substantial presence test for the year remains a resident until the last day of presence in the United States, so the resident period of the exit year can run beyond the expatriation date while the deemed sale remains fixed on the day before it.[11]

The third way in which lawful permanent residence ends is the one most often overlooked in the case of an internationally mobile client. An individual ceases to be a lawful permanent resident if he or she commences to be treated as a resident of a foreign country under a treaty, does not waive the benefits of the treaty, and notifies the Secretary of the commencement of that treatment.[12] The notification is the treaty-based return position: a dual resident who claims treaty residence abroad files Form 1040-NR with Form 8833 attached, and Form 8854 asks for the date on which the individual commenced to be treated as a resident of the treaty country.[13] For a green card holder with eight or more qualifying years, filing as a treaty nonresident is therefore an expatriating act, dated from the first day of treaty residence rather than from the filing, and it triggers section 877A exactly as surrendering the card would. It is often done on the advice of a return preparer solving a different problem, such as the worldwide reporting of a client who has moved home. The screening rule follows: no long-term resident, and no lawful permanent resident approaching the eighth year, should file a treaty-based nonresident return until the full covered expatriate analysis has been run, because the return may be the expatriation. The rule has a constructive side. Treaty years do not count toward the eight, so a lawful permanent resident who has filed consistently as a treaty resident of Germany or France may never become a long-term resident at all, and a client approaching the eighth year can abandon the card in year seven and leave the regime without ever entering it.[14]

Table 1 collects the dates. The deemed sale described in Part III is measured on the day before each of them.

Table 1. The expatriation date by event

Event	Expatriation date	Authority
Renunciation before a U.S. diplomatic or consular officer	Date of the oath, provided the Department of State later issues the certificate of loss of nationality	§ 877A(g)(4)(A)

[9]Treas. Reg. § 301.7701(b)-1(b)(2), (3); Instructions for Form 8854 (2025) (listing Form I-407, a final administrative order of abandonment and a final administrative or judicial order of removal).

[10]I.R.C. § 877A(g)(3)(B).

[11]I.R.C. § 7701(b)(2)(B); Treas. Reg. § 301.7701(b)-4(b).

[12]I.R.C. § 7701(b)(6), flush language.

[13]Treas. Reg. § 301.7701(b)-7(b), (c)(1)(i); Notice 2009-85, 2009-45 I.R.B. 598, § 2 (notification "on Forms 8833 and 8854"); Form 8854 (2025), Part I, line 5; IRS, Expatriation tax (updated Oct. 3, 2025).

[14]I.R.C. § 877(e)(2). The immigration consequences of filing as a nonresident, which bear on the retention of the card itself, are outside this article.

Event	Expatriation date	Authority
Other expatriating act under INA § 349(a)(1) to (4) (for example, naturalization abroad with intent to relinquish)	Date the signed statement of voluntary relinquishment is furnished to the Department of State, provided the certificate is issued	§ 877A(g)(4)(B)
Certificate of loss of nationality issued without a prior oath or statement	Date of issuance	§ 877A(g)(4)(C)
Cancellation of a certificate of naturalization	Date of the court order	§ 877A(g)(4)(D)
Long-term resident files Form I-407 or a letter of intent enclosing the card	Date of filing (date of mailing, if sent by certified mail with return receipt requested)	§ 7701(b)(6)(B); Reg. § 301.7701(b)-1(b)(3)
Long-term resident's status revoked or determined abandoned at the government's initiative	Date of the final administrative or judicial order	§ 7701(b)(6)(A), (B); Reg. § 301.7701(b)-1(b)(2), (3)
Long-term resident claims treaty residence abroad on Form 1040-NR with Form 8833	Date treaty residence commenced	§ 7701(b)(6), flush language; Form 8854, Part I, line 5

Part II. The three tests, the two exceptions and the compliance cure

An expatriate is a covered expatriate if, on the expatriation date, any one of three tests is met.[15]

The tax liability test asks whether the individual's average annual net income tax for the five taxable years ending before the expatriation date exceeds an indexed threshold, $211,000 for expatriations in 2026 and $206,000 for 2025.[16] "Net income tax" is the regular tax and the alternative minimum tax reduced by allowable credits, which the Form 8854 instructions express, for each of the five years, as "total tax less any foreign tax credit".[17] The test looks at liability rather than income, so a client with a high income and large foreign tax credits may pass while a client with a single large gain year in the window fails the average. An individual who filed a joint return takes into account the net income tax shown on the joint return, without allocation between the spouses; a spouse with modest income of his or her own can therefore fail the test on the strength of the other spouse's liability.[18]

The net worth test asks whether the individual's net worth on the expatriation date is $2,000,000 or more.[19] The figure was set by the American Jobs Creation Act of 2004 and has never been indexed; measured against 2026 asset values it reaches many clients who would not describe themselves as wealthy.[20] Net worth is worldwide and is computed on the Form 8854 balance sheet, assets less liabilities, with each interest in property valued under the gift tax valuation principles of section 2512 and its regulations "without

[15] I.R.C. § 877A(g)(1)(A), incorporating § 877(a)(2)(A) to (C).

[16] I.R.C. § 877(a)(2)(A) ($124,000, indexed); Rev. Proc. 2025-32, 2025-45 I.R.B., § 4.37; Rev. Proc. 2024-40, 2024-45 I.R.B. 1100, § 3.37.

[17] I.R.C. § 877(a)(2)(A), referring to § 38(c)(1); Instructions for Form 8854 (2025), Part II, Section A, line 1.

[18] Notice 97-19, 1997-1 C.B. 394 (tax liability test) ("An individual who files a joint income tax return must take into account the net income tax that is reflected on the joint income tax return"), carried into the § 877A regime by Notice 2009-85, § 2.

[19] I.R.C. § 877(a)(2)(B).

[20] Pub. L. No. 108-357, § 804 (Oct. 22, 2004), raising the threshold from $500,000 for expatriations after June 3, 2004.

regard to any prohibitions or restrictions on such interest".[21] Beneficial interests in trusts are counted. Notice 97-19 allocates the property of a nongrantor trust among its beneficiaries on all relevant facts and circumstances, including the instrument, any letter of wishes, the historical pattern of distributions and the functions of a protector, and, where no allocation can be made on that basis, under the intestacy principles of the Uniform Probate Code determined by reference to the settlor.[22] Each spouse is measured separately on his or her own property, which is why a completed transfer to a spouse who is not expatriating can hold a marginal client under the line, provided the transfer is real, complete and made well before the date; the unlimited marital deduction covers a transfer to a citizen spouse, while a gift to a non-citizen spouse is deductible only up to $194,000 in 2026.[23] The test counts foreign pensions at their actuarial value, closely held equity at fair market value and the includible share of jointly held property, none of which the client is likely to carry on a personal balance sheet.

The certification test is failed by an individual who does not certify under penalties of perjury, on Form 8854, compliance with all federal tax obligations for the five taxable years preceding the expatriation date, or who fails to submit such evidence of compliance as the IRS requires.[24] Compliance means the filing of income, employment, gift and information returns and the payment of tax, interest and penalties.[25] An expatriate who never files Form 8854 has not certified and is a covered expatriate whatever the balance sheet shows.[26] It is the only test entirely within the client's control, and it is controlled only before the date.

Two exceptions excuse the tax liability and net worth tests. Neither excuses certification, and both are written for citizens.[27] The first covers an individual who became at birth a citizen of the United States and of another country, who as of the expatriation date continues to be a citizen of, and is taxed as a resident of, that other country, and who has been a resident of the United States for not more than 10 of the 15 taxable years ending with the year of expatriation.[28] The second covers an individual who relinquishes citizenship before reaching age 18½ and has been a resident of the United States for not more than 10 taxable years before the date of relinquishment.[29] "Resident" in both exceptions is defined by the substantial presence test, so years spent in the United States as a citizen count toward the ten.[30] A long-term resident, being by definition not a citizen, cannot use either exception. A birthright dual citizen whose facts otherwise satisfy the exception, but who

21 Notice 97-19 (net worth test); Instructions for Form 8854 (2025), Part II, Section B; Form 8854 (2025), Part II, Section B (assets, liabilities and net worth).

22 Notice 97-19, § III; Instructions for Form 8854 (2025), Part II, Section B, lines 9 and 10 (assets held in trust; beneficial interests in nongrantor trusts).

23 I.R.C. § 2523(a), (i); Rev. Proc. 2025-32, § 4.42(2).

24 I.R.C. § 877(a)(2)(C); Form 8854 (2025), Part II, Section A, line 7.

25 Instructions for Form 8854 (2025), Part II, Section A, line 7.

26 Notice 2009-85, § 8.C ("Individuals who fail to make such certification will be treated as covered expatriates within the meaning of section 877A(g) whether or not they also meet the tax liability test or the net worth test"); Instructions for Form 8854 (2025) ("You will be subject to tax under section 877A if you have not certified your compliance with these obligations, regardless of whether your average annual income tax liability or net worth exceeds the applicable threshold amounts").

27 I.R.C. § 877A(g)(1)(B) (an individual "shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2)" in either case).

28 I.R.C. § 877A(g)(1)(B)(i).

29 I.R.C. § 877A(g)(1)(B)(ii).

30 I.R.C. § 877A(g)(1)(B)(i)(II), (ii)(II), each referring to § 7701(b)(1)(A)(ii).

cannot certify five compliant years, is covered notwithstanding the exception.

The compliance cure therefore comes first in almost every engagement, and two routes exist. The streamlined filing compliance procedures remain available for non-willful failures, in the foreign offshore variant without penalty; they require the returns and information returns for the years within the procedures and a certification of non-willfulness, and they are closed once an examination or a criminal investigation has begun.[31] The Relief Procedures for Certain Former Citizens, announced in 2019 and open without a termination date as of this writing, are narrower and more generous. An individual who relinquished citizenship after March 18, 2010, who has no filing history as a citizen or resident, who did not exceed the tax liability threshold, whose net worth is below $2,000,000 at expatriation and at submission, whose aggregate tax liability for the year of expatriation and the five preceding years is $25,000 or less, and whose failures were non-willful, files the six years of returns with Form 8854, is treated as having satisfied the certification test, is not a covered expatriate and owes no tax or penalty for those years.[32] The procedures are addressed to persons who have relinquished, or intend to relinquish, citizenship; a long-term resident with the same profile must use the streamlined procedures before the date.[33] Table 2 summarizes.

Table 2. Covered expatriate tests and exceptions (2026)

Test or exception	Standard	Adviser's note
Tax liability test	Average annual net income tax for the five taxable years ending before the expatriation date above $211,000 (2026; $206,000 for 2025)	Liability, not income; the tax on a joint return counts in full for each spouse; one large gain year in the window can fail the average
Net worth test	Net worth of $2,000,000 or more on the expatriation date, worldwide, assets less liabilities, valued under § 2512 principles	Never indexed since 2004; trust interests allocated under Notice 97-19; each spouse measured separately; completed transfers to a citizen spouse are deductible without limit
Certification test	Certification on Form 8854, under penalties of perjury, of compliance with all federal tax obligations for the five preceding taxable years	Failure to file Form 8854 is a failure to certify; cure through the streamlined procedures before the date or, for former citizens, the Relief Procedures
Dual citizen from birth	Citizen of the United States and of another country at birth; still a citizen of, and taxed as a resident of, that country on the expatriation date; U.S. resident (substantial presence) in not more than 10 of the last 15 taxable years	Excuses the first two tests only; certification still required; citizens only
Minor	Relinquishment before age 18½; U.S. resident (substantial presence) for not more than 10 taxable years before the date	Same limits; citizens only

[31] IRS, Streamlined Filing Compliance Procedures (available as of September 2026); the foreign offshore procedures require the non-residency condition to be met.

[32] IRS, Relief Procedures for Certain Former Citizens (reviewed Sept. 1, 2026), Q1, Q2; IR-2019-151 (Sept. 6, 2019).

[33] IRS, Relief Procedures for Certain Former Citizens, Q2, criterion 1 ("You have relinquished your U.S. citizenship after March 18, 2010"); the page does not mention lawful permanent residents.

Test or exception	Standard	Adviser's note
Relief Procedures for Certain Former Citizens	Relinquishment after March 18, 2010; no filing history; below the tax liability threshold; net worth under $2,000,000 at expatriation and at submission; six-year aggregate tax of $25,000 or less; non-willful	Six years of returns filed with Form 8854; no tax or penalty; not a covered expatriate; open without a termination date as of September 2026

Part III. The mark-to-market deemed sale

For a covered expatriate, all property is treated as sold on the day before the expatriation date for its fair market value.[34] Gain is taken into account notwithstanding any other provision of the Code; loss is taken into account to the extent otherwise provided, except that the wash sale rule of section 1091 does not apply.[35] The deemed gains and losses are computed asset by asset under ordinary principles, so character, holding period and basis carry through: the deemed sale of stock held for years produces long-term capital gain, the deemed sale of a collectible produces gain taxed at the 28 percent rate, and capital losses remain subject to the limitation of section 1211(b).[36] The net amount that would otherwise be included is reduced, but not below zero, by an exclusion of $600,000 indexed after 2008, which is $910,000 for 2026 and was $890,000 for 2025.[37] The exclusion is allocated among the gain assets pro rata to their built-in gains, may not exceed the gain on any asset, and is available once in a lifetime: an individual who expatriates a second time has only the unused portion.[38] It is personal to each covered expatriate, so a married couple who both expatriate have one each, and it does not shelter the deemed distributions and inclusions of Parts IV and V.

The property subject to the deemed sale is defined by an estate tax standard. A covered expatriate is considered to own any interest in property that would be taxable as part of his or her gross estate under chapter 11 if he or she had died on the day before the expatriation date as a citizen or resident, and the assets of any trust of which the expatriate is treated as the owner under the grantor trust rules are the expatriate's for this purpose.[39] The inventory therefore reaches assets a client does not think of as owned: property transferred with a retained interest under sections 2036 to 2038, the includible share of jointly held property under section 2040, property subject to a general power of appointment under section 2041, and the assets of a revocable trust. Three categories are then removed and given their own regimes: deferred compensation items, specified tax-deferred accounts and interests in nongrantor trusts.[40] Fair market value is determined under section 2031 and its regulations, without alternate valuation or special use valuation, which brings the estate tax valuation discipline, including the discounts and premiums of the regulations, into the exit tax.[41] The valuation of closely held companies, carried interests, art and real

[34] I.R.C. § 877A(a)(1).

[35] I.R.C. § 877A(a)(2)(A), (B).

[36] I.R.C. §§ 1(h)(4), 1211(b), 1222; Notice 2009-85, § 3.B.

[37] I.R.C. § 877A(a)(3); Rev. Proc. 2025-32, § 4.38; Rev. Proc. 2024-40, § 3.38.

[38] Notice 2009-85, § 3.B.

[39] Notice 2009-85, § 3.A; I.R.C. § 877A(f)(3) (a nongrantor trust being the portion of a trust of which the individual is not the owner under subpart E, "determined as of the day before the expatriation date").

[40] I.R.C. § 877A(c).

[41] Notice 2009-85, § 3.A ("without regard to sections 2032 and 2032A").

estate is, in consequence, the largest single item of work in most exit tax engagements.

The deemed sale occurs while the individual is still a citizen or resident. The gain is therefore also net investment income for purposes of the 3.8 percent tax of section 1411, which applies to a dual-status individual for the resident portion of the year without proration of the threshold.[42] The deemed distributions from retirement accounts described in Part V are not net investment income.[43] Two further consequences follow from the date. Any period for acquiring replacement property that would reduce the gain recognized on a disposition ends on the day before the expatriation date, and any extension of time for payment of tax ceases to apply on that day, the unpaid portion becoming due as the Secretary prescribes.[44] Where the expatriation itself causes gain to be recognized under section 684, because a foreign trust ceases to be treated as owned by a United States person, section 684 is applied first and section 877A afterward; the trust's appreciation is taxed once, but on the face of the two provisions the section 684 gain is not reduced by the exclusion.[45] State income tax conformity to section 877A varies and must be checked for the state of residence in the expatriation year.

Two basis rules matter. First, the basis of property deemed sold is adjusted by the full amount of the gain or loss taken into account under section 877A(a)(2), without regard to the exclusion, so that a later actual sale does not tax the same appreciation twice in the United States; an asset with a $200,000 basis and a $1,800,000 deemed gain takes a $2,000,000 basis even though part of the gain was sheltered by the exclusion.[46] Whether the country of destination respects either the deemed sale or the new basis is a separate question, taken up in Part XI. Second, for purposes of the mark-to-market tax only, property held by an individual on the date the individual first became a resident of the United States within the meaning of section 7701(b) is treated as having a basis on that date of not less than its fair market value on that date.[47] The rule removes pre-immigration appreciation from the exit tax base. It is not confined to long-term residents: the Form 8854 instructions apply it, and its election, to "a naturalized citizen or an LTR at the time you expatriated", so a citizen who immigrated as a nonresident alien and later naturalized has the same step-up.[48] The relevant date is the residency starting date under section 7701(b), which for a client who was substantially present before the card was issued precedes the card.[49] The step-up applies automatically unless the expatriate elects out, property by property and irrevocably, on Form 8854 filed with the return for the year of the deemed sale, an election that is sensible only for a loss asset whose historical basis exceeds its arrival value.[50] The Notice announced that Treasury

[42] I.R.C. § 1411(a)(1), (c)(1)(A)(iii); Treas. Reg. § 1.1411-2(a)(2)(ii); T.D. 9644, 78 Fed. Reg. 72394 (Dec. 2, 2013) (threshold not prorated for a dual-status resident).

[43] I.R.C. § 1411(c)(5).

[44] I.R.C. § 877A(h)(1)(A), (B).

[45] I.R.C. § 877A(h)(3) ("If the expatriation of any individual would result in the recognition of gain under section 684, this section shall be applied after the application of section 684"); I.R.C. § 684(a); Treas. Reg. § 1.684-2(e).

[46] Notice 2009-85, § 3.C and Example 3.

[47] I.R.C. § 877A(h)(2).

[48] Instructions for Form 8854 (2025), Part II, Section C, cost or other basis column ("if you are a naturalized citizen or an LTR at the time you expatriated, you can make an irrevocable election under section 877A(h)(2) to determine basis without regard to this restriction"); Notice 2009-85, § 3.D (property "held by a nonresident alien on the day that individual first became a resident of the United States").

[49] I.R.C. § 7701(b)(2)(A).

[50] Notice 2009-85, § 3.D; Instructions for Form 8854 (2025) (print "(h)(2)" after the entry).

intended to exclude United States real property interests and property used in a U.S. trade or business from the step-up by regulation; no regulation under section 877A has been issued as of this writing, so the exclusion rests on the Notice alone.[51] For a client who immigrated with an appreciated portfolio or a family company, the step-up often does more than the exclusion, and the records proving values on the residency starting date should be assembled at the start of the engagement.

Part IV. Deferred compensation items: eligible and ineligible

Deferred compensation is removed from the deemed sale and divided into two regimes by the answer to one question: can the United States still collect at source when the compensation is eventually paid? The category is wide. A deferred compensation item is any interest in a plan or arrangement described in section 219(g)(5), which covers qualified plans, section 403(a) and 403(b) annuities, simplified employee pensions, SIMPLE plans and governmental section 457(b) plans; any interest in a foreign pension plan or similar retirement arrangement; any item of deferred compensation, including arrangements subject to section 409A; and any property, or right to property, that the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83.[52] The last category places unvested restricted stock and statutory and nonstatutory stock options in the deferred compensation regime rather than in the deemed sale; only property already taken into account under section 83, such as vested shares or shares for which a section 83(b) election was made, is marked to market.[53]

An eligible deferred compensation item is one whose payor is a United States person, or a non-U.S. person who elects to be treated as a United States person and meets the requirements the Secretary provides, and as to which the covered expatriate notifies the payor of covered status on Form W-8CE and irrevocably waives any right to claim a reduction in withholding under any treaty.[54] Eligible items are not accelerated. The plan pays on its own schedule, and the payor deducts and withholds 30 percent of each taxable payment, a payment being taxable to the extent it would have been included in gross income had the expatriate remained a citizen or resident, so that the source rules that would otherwise exclude the foreign-service portion of a pension paid to a nonresident do not apply.[55] The item is subject to tax under section 871, the 30 percent withholding replaces withholding under section 1441 and chapter 24, and any amount not collected by withholding is reported on the expatriate's return.[56] The bargain is deferral preserved at a fixed gross rate with no treaty relief, and its cost depends on the destination. A resident of France gives up nothing, because the treaty already allocates U.S. pension distributions and lump sums exclusively to the United

[51] Notice 2009-85, § 3.D ("The IRS and Treasury Department intend to exercise their regulatory authority to exclude from this step-up-in-basis rule United States real property interests within the meaning of section 897(c) ... and property used or held for use in connection with the conduct of a trade or business within the United States"). No regulations under § 877A appear in 26 C.F.R. as of September 2026.

[52] I.R.C. § 877A(d)(4)(A) to (D); I.R.C. § 219(g)(5).

[53] Notice 2009-85, § 5.B(1)(d) (listing "statutory and nonstatutory stock options" among the property and rights to property described in § 877A(d)(4)(D)).

[54] I.R.C. § 877A(d)(3); Notice 2009-85, § 5.B(2); Form W-8CE (Rev. Oct. 2025), Part II, box 1.

[55] I.R.C. § 877A(d)(1), (d)(5); Notice 2009-85, § 5.C.

[56] I.R.C. § 877A(d)(6); Notice 2009-85, § 5.C.

States; a resident of Germany, the United Kingdom, Switzerland, Italy, the Netherlands, Belgium, Spain, Austria, Luxembourg or Ireland gives up an exemption, because those conventions allocate private pensions exclusively to the State of residence; a resident of Canada gives up a 15 percent ceiling on periodic payments.[57] The waiver has a second cost in the country of destination, which will tax the pension as its own and credit only U.S. tax imposed in accordance with the convention. The German relief article, for example, credits "the United States tax paid in accordance with the law of the United States and with the provisions of this Convention" and does not list pensions among the items to which the credit method applies, so the 30 percent should be modeled as a final cost unless local counsel confirms relief.[58]

An ineligible deferred compensation item is any deferred compensation item that is not eligible.[59] The present value of the covered expatriate's accrued benefit is treated as received on the day before the expatriation date as a distribution under the plan and taxed at ordinary rates in the resident period; property described in section 877A(d)(4)(D) is treated as becoming transferable and no longer subject to a substantial risk of forfeiture on that day, so that unvested awards and options are taxed under section 83 as though vested; the early distribution taxes of sections 72(t), 220(f)(4), 223(f)(4), 409A(a)(1)(B), 529(c)(6), 529A(c)(3) and 530(d)(4) do not apply; and later actual distributions are adjusted for the amount already included.[60] The payor of an ineligible item must, within 60 days of receiving a properly completed Form W-8CE, advise the expatriate of the present value of the accrued benefit on the day before the expatriation date, defined benefit plans being valued under Revenue Procedure 2004-37; pending further guidance no withholding is required on the deemed receipt, and the expatriate reports the inclusion on the Form 1040 for the resident portion of the year.[61]

The line between the regimes is drawn by the identity of the payor and by the notice, not by the merits of the plan. The statute contemplates a foreign payor electing into the eligible regime, and the Notice promised separate guidance on the election; as of September 2026 no procedure has been published, the Form 8854 instructions still describe the procedure as one the Secretary "may provide", and there are no regulations under section 877A.[62] A foreign pension, whether a German *Direktzusage*, the extra-mandatory portion of a Swiss *Pensionskasse* benefit, a French supplementary scheme or a British occupational scheme, is therefore in practice an ineligible item, included at present value in the year of expatriation, and it is often the largest number in the case of a client who does not otherwise appear wealthy. Conversely, an item with a United States payor becomes eligible only if Form W-8CE with the waiver reaches the payor in time; an expatriate who does not complete that procedure holds an ineligible item and is taxed on its present value at once.[63] That

[57] See Part IX and Table 7, with the conventions cited there.

[58] U.S.-Germany Income Tax Convention (Aug. 29, 1989), as amended by the Protocol of June 1, 2006, Art. 23(3)(b), Art. 18(1).

[59] I.R.C. § 877A(d)(2); Notice 2009-85, § 5.B(3).

[60] I.R.C. § 877A(d)(2)(A)(i), (ii), (B), (C).

[61] Notice 2009-85, §§ 5.D, 5.F.

[62] I.R.C. § 877A(d)(3)(A)(ii); Notice 2009-85, § 5.B(2) ("Separate guidance will be issued under section 877A(d)(3)(A) providing rules for a non-U.S. person to elect to be treated as a U.S. person"); Instructions for Form 8854 (2025).

[63] Notice 2009-85, § 5.G, Example 18 (an expatriate who "does not comply with the prescribed procedures for notifying the payor of her status as a covered expatriate and making an irrevocable waiver" holds an ineligible item taxed at present value).

consequence can also be chosen deliberately: a client whose destination will tax the pension in any event, and who has capacity in the exit year, may prefer immediate inclusion at ordinary rates, with a basis carried into later distributions, to an open-ended 30 percent withholding that the destination may not credit. The inventory of deferred compensation, with the identity of each payor, belongs at the top of the engagement checklist.

Part V. Specified tax-deferred accounts and interests in trusts

A specified tax-deferred account is an individual retirement plan within section 7701(a)(37) other than a simplified employee pension or a SIMPLE arrangement, a section 529 qualified tuition program, a section 529A ABLE program, a Coverdell education savings account, a health savings account or an Archer MSA.[64] SEP and SIMPLE IRAs are deferred compensation items and follow Part IV, as do qualified employer plans. A covered expatriate is treated as receiving a distribution of the entire interest in each specified account on the day before the expatriation date, the early distribution taxes do not apply, and later actual distributions are adjusted for the amount included.[65] The deemed distribution is taxed as an actual distribution of the whole balance would be, so a traditional IRA is ordinary income in full, a Roth IRA recovers its basis and is taxed only on earnings that would not have been a qualified distribution, and a 529 or Coverdell account is taxed on its earnings; the custodian must advise the expatriate of the amount of the entire interest within 60 days of receiving Form W-8CE.[66] There is no 30 percent withholding alternative and no deferral election for these accounts; the deferral simply ends, and the inclusion stacks on the mark-to-market gain in a single year. The mitigations are all pre-date: Roth conversions in lower-bracket years, charitable offsets, timing the date into a year with capacity, and, for a client near the thresholds, protecting non-covered status.

Trusts divide by the client's relationship to them on the day before the expatriation date. To the extent the client is treated as the owner of a trust under sections 671 to 679, the trust's assets are the client's for the deemed sale, and the usual grantor trust planning intuitions run in reverse: a revocable trust, an intentionally defective grantor trust and a foreign trust that is a grantor trust under section 679 are all marked to market as if held directly.[67] Because the grantor or nongrantor character of a trust is fixed as of the day before the expatriation date, a foreign trust that was a grantor trust under section 679 while the settlor was a United States person, and that ceases to be one when the settlor is no longer a United States person, is taxed through section 684 and the deemed sale and does not, on the face of the statute, enter the withholding regime described next.[68]

A beneficial interest in a nongrantor trust is the opposite case. It is not marked to market. Instead, the trustee must deduct and withhold 30 percent of the taxable portion of any direct or indirect distribution to the covered expatriate, the taxable portion being the part that would have been included in the expatriate's gross income had he or she remained a citizen or resident; and if property is distributed in kind at a fair market value

[64] I.R.C. § 877A(e)(2)(A) to (F); Form W-8CE (Rev. Oct. 2025), box 3 instructions.

[65] I.R.C. § 877A(e)(1)(A) to (C).

[66] Notice 2009-85, § 6; I.R.C. § 877A(e)(1)(B).

[67] Notice 2009-85, §§ 3.A, 7.A; I.R.C. § 877A(f)(3).

[68] I.R.C. § 877A(f)(3), (h)(3); I.R.C. § 679(a) (applying to "a United States person" who transfers property to a foreign trust); Treas. Reg. § 1.684-2(e).

above its adjusted basis in the trust, the trust recognizes gain as if it had sold the property to the expatriate.[69] The rule applies only if the expatriate was a beneficiary of the trust on the day before the expatriation date, and it applies to any trust, domestic or foreign, and to any portion of a trust of which the expatriate is not the owner.[70] If a trust that was a nongrantor trust immediately before the expatriation date later becomes a grantor trust of which the covered expatriate is treated as the owner, the conversion is deemed a taxable distribution to the extent of the portion then owned.[71] The expatriate is treated as having waived any treaty reduction of the withholding unless he or she agrees to the alternative the IRS prescribes, which is an election on Form 8854, supported by a letter ruling on the value of the interest, to be treated as having received the value of the interest on the day before the expatriation date and to pay tax accordingly; until the trustee receives the ruling and the expatriate's certification that the tax has been paid, withholding continues.[72] The withheld tax is imposed under section 871, and the covered expatriate must file Form 8854 annually to certify that no distributions were received or to report those received.[73]

A covered expatriate who is the beneficiary of a family trust therefore exchanges a present tax for an indefinite 30 percent withholding on distributions, which the country of residence may decline to credit because the treaty, had it applied, would have allocated the income to that country alone. The alternatives are all pre-date: distributions or a partial termination while the client is still a United States person, a decanting that removes the client as a beneficiary, or the valuation election with its ruling. Table 3 maps the regimes to the boxes of Form W-8CE.

Table 3. Asset regimes at expatriation

Asset category	Treatment on the day before the expatriation date	Treatment afterward	Form W-8CE
Property generally, including the assets of grantor trusts and revocable trusts	Deemed sold at fair market value; net gain above $910,000 (2026) taxed by character; net investment income tax applies; basis adjusted by the full deemed gain or loss	Later sales use the adjusted basis for U.S. purposes; the country of destination may not (Part XI)	None
Eligible deferred compensation item (U.S. payor; Form W-8CE; irrevocable treaty waiver)	Not accelerated; no inclusion	30 percent withholding on each taxable payment, measured as if the expatriate had remained a U.S. person; no treaty reduction; annual Form 8854	Box 1
Ineligible deferred compensation item (foreign payor, or U.S. payor without a timely Form W-8CE and waiver)	Present value of the accrued benefit included as a plan distribution at ordinary rates; unvested § 83 property and options treated as vested; no early distribution tax	Later payments adjusted for the amount included	Box 2

[69] I.R.C. § 877A(f)(1)(A), (B), (f)(2); Notice 2009-85, §§ 7.A, 7.B and Example 20 (a trust with a $100,000 basis that distributes a $400,000 painting recognizes $300,000 of gain).

[70] I.R.C. § 877A(f)(5), (f)(3).

[71] Notice 2009-85, § 7.A.

[72] I.R.C. § 877A(f)(4)(B); Notice 2009-85, § 7.D; Form W-8CE (Rev. Oct. 2025), the box beneath box 4; Instructions for Form 8854 (2025) (election by checking the box under line 1d and attaching the ruling to the form and to the timely filed return).

[73] I.R.C. § 877A(f)(4)(A), (B); Notice 2009-85, § 8.C.

Asset category	Treatment on the day before the expatriation date	Treatment afterward	Form W-8CE
Specified tax-deferred account (IRA other than SEP and SIMPLE; 529; ABLE; Coverdell; HSA; Archer MSA)	Entire interest deemed distributed and taxed under the account's own rules; no early distribution tax	Later distributions adjusted for the amount included	Box 3
Beneficial interest in a nongrantor trust (beneficiary on the day before the expatriation date)	Not marked to market; no inclusion unless the valuation election with a letter ruling is made	30 percent withholding on the taxable portion of every distribution; gain at the trust level on in-kind distributions; conversion to grantor trust status treated as a distribution; annual Form 8854	Box 4 (and the election box)

Part VI. The deferral election under section 877A(b)

The mark-to-market tax is due with the return for the year of the deemed sale, but a covered expatriate may elect, property by property, to defer the payment of the tax attributable to any particular property until the due date of the return for the year in which the property is disposed of.[74] The tax attributable to a property is the proportion of the total mark-to-market tax that the gain on that property bears to the total gain.[75] The election is irrevocable and carries four conditions. The deferral ends no later than the due date of the return for the year that includes the expatriate's death.[76] The expatriate must furnish adequate security, a bond conditioned on payment and meeting the requirements of section 6325 or another form the Secretary accepts, such as a letter of credit, and must keep it adequate, a failure of security ending the deferral unless it is cured.[77] The expatriate must irrevocably waive any right under any treaty that would preclude assessment or collection of the tax.[78] And interest accrues at the underpayment rate for the period of the deferral, as if the election had not been made.[79] The mechanism is a tax deferral agreement with the IRS, requested on Form 8854 and sent in original to the IRS in Austin, Texas, with Form 8854 filed annually until the deferred tax and interest are paid in full.[80] The election reaches only the tax imposed by section 877A(a); the deferred compensation, specified account and trust regimes have their own timing and cannot be deferred under it.

The election is useful in a narrow and recurring case: the client whose wealth is a single illiquid position, a closely held company, a carried interest or unimproved land, where the deemed sale produces a large tax with no cash event and security can be given without liquidating the position. It fits badly where the security itself requires the liquidation the client is avoiding, and because interest accrues it is a financing decision rather than a saving. The deferral analysis is therefore run beside two alternatives that should always be priced against it: a sale or a gift of the asset before the date, accepting real tax or using exemption at pre-expatriation values, and a later expatriation date in a year in which the position can be restructured.

[74] I.R.C. § 877A(b)(1), (6).

[75] I.R.C. § 877A(b)(2).

[76] I.R.C. § 877A(b)(3)(A).

[77] I.R.C. § 877A(b)(3)(B), (b)(4).

[78] I.R.C. § 877A(b)(5).

[79] I.R.C. § 877A(b)(7); I.R.C. § 6601.

[80] Notice 2009-85, § 3.E; Instructions for Form 8854 (2025), Part II, Section D, line 1 (the Bensalem address given in the Notice is no longer valid; requests go to Internal Revenue Service, 3651 S IH35, MS 4301 AUSC, Austin, TX 78741).

Part VII. A worked example

Tables 4 and 5 work the regime for a long-term resident. The facts are assumed and the rates are simplified for illustration: the deemed gains are treated as long-term and taxed at 20 percent plus the 3.8 percent net investment income tax, the ordinary income is taxed at an assumed marginal rate of 37 percent, and state tax is ignored.

M, a German citizen, obtained a green card and became a U.S. resident on March 1, 2013, with no earlier substantial presence. M's Form I-407 is filed with U.S. Citizenship and Immigration Services on September 30, 2026, and M moves to Munich on November 1, 2026, in that order. M held the card in 14 taxable years and is a long-term resident; with net worth well above $2,000,000, M is a covered expatriate. The expatriation date is September 30, 2026, and the deemed sale is measured on September 29, 2026. M remains a U.S. income tax resident under the substantial presence test until departure, so the resident period of the dual-status year runs to November 1, but the deemed sale, the deemed distributions and the present value inclusion are all fixed on September 29.[81]

Table 4. Worked example: the mark-to-market computation (U.S. dollars; expatriation date September 30, 2026)

Asset (year acquired; historical cost)	Value Mar. 1, 2013 (residency start)	Value Sept. 29, 2026	Basis used	Deemed gain or (loss)	Exclusion	Taken into account
Portfolio A (2010; cost 1,000,000)	1,600,000	3,400,000	1,600,000 (step-up)	1,800,000	390,000	1,410,000
Portfolio B (2018; cost 900,000)	n/a	1,500,000	900,000	600,000	130,000	470,000
25 percent of a German GmbH (2005; cost 500,000)	1,200,000	2,600,000	1,200,000 (step-up)	1,400,000	303,333	1,096,667
Munich apartment, personal use (2008; cost 700,000)	900,000	1,300,000	900,000 (step-up)	400,000	86,667	313,333
Portfolio C (2022; cost 300,000)	n/a	200,000	300,000	(100,000)	none	(100,000)
Net long-term capital gain after exclusion and loss				4,100,000 net	910,000	3,190,000

Table 5. Worked example: the satellite regimes and the illustrative federal tax (U.S. dollars)

Item	Amount Sept. 29, 2026	Treatment	Taken into account
Traditional IRA (rollover of a former employer's plan)	650,000	Specified tax-deferred account: entire balance deemed distributed; no early distribution tax	650,000 ordinary income
Current employer's 401(k) plan (U.S. payor; Form W-8CE with waiver delivered October 28, 2026)	900,000	Eligible deferred compensation item: not accelerated	30 percent withholding on each later taxable payment

[81] I.R.C. § 877A(g)(3)(B); § 7701(b)(2)(B).

Item	Amount Sept. 29, 2026	Treatment	Taken into account
German company pension (*Direktzusage*)	700,000 (present value of the accrued benefit)	Ineligible deferred compensation item (foreign payor; no election procedure): included at present value	700,000 ordinary income
Discretionary interest in a U.S. nongrantor trust settled by the parents of M's spouse	not valued	Not marked to market; treaty reduction deemed waived	30 percent withholding on the taxable portion of later distributions
Illustrative federal tax		Net long-term capital gain 3,190,000 at 20 percent, 638,000; net investment income tax at 3.8 percent, 121,220; ordinary income 1,350,000 at 37 percent, 499,500	1,258,720

Three observations follow. The step-up removed $1,500,000 of pre-immigration appreciation from the base (Portfolio A $600,000, the GmbH shares $700,000, the apartment $200,000), more than the $910,000 exclusion, and it applied to the apartment and the GmbH shares as much as to the securities. The German company pension, an ineligible item because no procedure exists for a foreign payor's election, produced $700,000 of ordinary income without a payment. And the German side was planned with the dates in view. Germany had taxed the appreciation of the GmbH shares to March 2013 under § 6 AStG when M left; the United States, through the section 877A(h)(2) step-up, taxes only the appreciation since arrival; and on M's return § 17 Abs. 2 Satz 3 EStG links the German acquisition cost to the value assessed in the United States, capped at the *gemeiner Wert* on November 1, 2026, which presupposes a covered expatriate with an assessed tax and a file containing Form 8854, the dual-status return and the IRS transcript (Part XI). M's return thirteen years after departure is outside the returnee rule of § 6 Abs. 3 AStG, so the exclusion of § 17 Abs. 2 Satz 4 EStG does not apply, and M gave up the German *Wohnsitz* in 2013, so unlimited tax liability commences afresh. Portfolios A and B carry their new U.S. basis but keep their historical cost for German purposes unless M can invoke the election of Article 13(6) of the convention, which presupposes a deemed sale that is the consequence of the end of U.S. residence; with Form I-407 filed a month before the move, the safer course is to sell and repurchase them in the interval, during which M holds a stepped-up U.S. basis and is not yet resident in Germany. Had M instead taken up residence in Germany and claimed treaty residence on the same day, the expatriation date, the arrival and the valuation date would have coincided under section 7701(b)(6), and the election would have been available for the whole balance sheet. The apartment needs no such step, because Germany does not tax the sale of privately held real property after ten years of ownership.[82]

Part VIII. The exit-year return, Form 8854 and Form W-8CE

The year of expatriation is reported on a dual-status return unless the expatriation date is January 1: Form 1040-NR is the return, and Form 1040 is attached as a statement for the resident period through the day before the expatriation date, which carries the mark-to-market gain, the ineligible deferred

[82] § 23 Abs. 1 Satz 1 Nr. 1 EStG.

compensation inclusions and the deemed account distributions; the nonresident period reports U.S.-source income under sections 871 and 872.[83] Form 8854 is attached to that return and does the regime's classification work. Part I records the expatriation date; Part II, Section A applies the tax liability and net worth tests and carries the certification; Section B is the balance sheet; Section C computes the deemed sale asset by asset with the exclusion allocation and the (h)(2) election; Section D carries the deferral election.[84] Every expatriate files it, covered or not, and an expatriate with no filing obligation for the year sends it to the Austin address by the date the return would have been due.[85] Its importance is structural. An expatriate who never files has not certified and is covered by default, and an individual required to file who fails to file, files late or files an incomplete or incorrect form owes a penalty of $10,000 unless the failure is due to reasonable cause and not willful neglect.[86] The IRS publishes quarterly in the Federal Register the names of the individuals who have expatriated.[87]

Form 8854 is filed again, annually, by a covered expatriate who deferred tax on any property, who reported an eligible deferred compensation item, or who reported an interest in a nongrantor trust, attached to the year's Form 1040-NR with a copy sent to Austin, until the deferred tax is paid, the item is fully distributed or the trust interest ends.[88]

Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits, in its October 2025 revision, is the operational notice. The covered expatriate gives it to the payor of each deferred compensation item, the custodian of each specified tax-deferred account and the trustee of each nongrantor trust, on the earlier of the day before the first distribution on or after the expatriation date and 30 days after the expatriation date; it is not sent to the IRS.[89] Box 1 routes an item into the eligible regime with the treaty waiver, box 2 notifies the payor to compute the present value of an ineligible item, box 3 triggers the custodian's valuation of the deemed distribution, box 4 puts the trustee on notice of the withholding and the deemed waiver, and the box beneath it records the valuation election.[90] The form states no penalty for lateness; the consequence is substantive, because an item with a U.S. payor that is not the subject of a timely notice and waiver is an ineligible item taxed at present value.[91] Table 6 sets out the calendar.

[83]Notice 2009-85, § 8.B; IRS Publication 519 (Dual-Status Return; Dual-Status Statement).

[84]Form 8854 (2025), Parts I and II; Instructions for Form 8854 (2025).

[85]Notice 2009-85, § 8.C; Instructions for Form 8854 (2025), "When To File" and "Where To File" (Internal Revenue Service, 3651 S IH35, MS 4301 AUSC, Austin, TX 78741; the Philadelphia address of the 2019 and 2020 instructions is no longer used).

[86]I.R.C. § 6039G(a), (c); Instructions for Form 8854 (2025), "Penalties".

[87]I.R.C. § 6039G(d), flush language.

[88]Instructions for Form 8854 (2025), Part III; Notice 2009-85, §§ 3.E, 8.C.

[89]Form W-8CE (Rev. Oct. 2025) ("File Form W-8CE on the earlier of (a) the day before the first distribution on or after the expatriation date, or (b) thirty (30) days after the expatriation date"; "Give this form to the payer. Do not send to the IRS."); Notice 2009-85, § 5.F.

[90]Form W-8CE (Rev. Oct. 2025), Part II.

[91]Notice 2009-85, §§ 5.B(2), (3), 5.G, Example 18.

Table 6. Compliance calendar

When	Step	Authority
At the outset of the engagement	Count lawful permanent resident years and treaty years; screen every prior return for a treaty-based nonresident position; run the three tests on current figures; identify the residency starting date and assemble values as of that date	§§ 877(e)(2), 7701(b)(6); § 877A(h)(2)
Before the expatriation date	Complete the compliance cure (streamlined procedures or, for former citizens, the Relief Procedures); complete pre-expatriation gifts and spousal transfers; obtain appraisals as of the anticipated day before the date; inventory deferred compensation items, accounts and trust interests with payor identities; decide the eligible or ineligible route for each U.S.-payor item; model the deferral election and its security; sequence the departure with the destination's basis rules in view	§ 877(a)(2)(C); § 2801; Notice 2009-85, §§ 3, 5, 7
Expatriation date	Renunciation before a consular officer, or Form I-407 filed, or the commencement of treaty residence; deemed sale measured on the preceding day	§ 877A(g)(3), (4); § 7701(b)(6)
Within 30 days after the expatriation date (or the day before the first payment, if earlier)	Form W-8CE to each payor, custodian and trustee	Form W-8CE (Rev. Oct. 2025); Notice 2009-85, § 5.F
Within 60 days after receipt of Form W-8CE	Payor or custodian advises the present value or the account balance on the day before the expatriation date	Notice 2009-85, §§ 5.D, 6
Due date of the return for the expatriation year, with extensions	Dual-status return (Form 1040-NR with Form 1040 statement); Form 8854 attached, with the certification, the (h)(2) election and the valuation election with its letter ruling, if any; deferral agreement request in original to Austin	Notice 2009-85, §§ 3.E, 8.B, 8.C; Instructions for Form 8854 (2025)
Each later year while a deferral, an eligible item or a nongrantor trust interest remains	Annual Form 8854 with Form 1040-NR and a copy to Austin	Instructions for Form 8854 (2025), Part III
Ten years after the expatriation date	Expiry of the former-citizen and former-long-term-resident clauses of the income tax treaties and, where present, of the estate and gift tax treaties (Parts IX and X)	Treaty saving clauses
June 15, 2027 and the fifteenth day of the eighteenth month after each later year of receipt	Form 708 by each U.S. recipient of a covered gift or bequest received in the preceding calendar year (Part XII)	Treas. Reg. § 28.6071-1(a); Instructions for Form 708 (12/2025)

Part IX. The income tax treaties after expatriation

For this firm's clients the treaty is the rule, and four treaty questions arise in every expatriation. Table 7 answers them for the twelve countries that account for most of the firm's matters.

First, the tie-breaker. The residence article of each convention resolves dual residence in favor of the State of the permanent home, the center of vital interests, the habitual abode and, failing those, nationality, with the paragraph number varying by convention.[92] A

[92]E.g., U.S.-Germany Income Tax Convention (Aug. 29, 1989), Art. 4(2); U.S.-France Income Tax Convention (Aug. 31, 1994), Art. 4(3); U.S.-United Kingdom Income Tax Convention (July 24, 2001), Art. 4(4); U.S.-

green card holder who has moved home and satisfies the tie-breaker abroad is entitled to claim treaty residence there, and the claim, once notified on Form 8833, ends lawful permanent residence for tax purposes under Part I. The treaty is therefore the instrument of the inadvertent expatriation as well as of the relief.

Second, the saving clause. Every convention reserves the right of the United States to tax its residents and citizens as if the convention had not come into effect, and most extend the reservation to former citizens, and in the more recent conventions to former long-term residents, for ten years after the loss of status. The formulations differ. The German, French, Belgian and Canadian conventions cover former citizens and former long-term residents for ten years without any inquiry into purpose, the French and Canadian texts confining the reservation to U.S.-source income; the British, Italian and Dutch conventions cover both classes but only where the loss of status had the avoidance of tax as one of its principal purposes; the Spanish, Austrian, Luxembourg and Irish conventions cover former citizens only, with the purpose test; and the Swiss convention reserves the taxation of "former citizens" without a stated period or purpose test, its technical explanation referring to the ten-year rule of the Code.[93] These clauses were written for the regime that section 877A replaced: the ten-year alternative tax of section 877(b), under which a former citizen was taxed on U.S.-source income, broadly defined, at the higher of the resident and nonresident computations. Section 877(b) does not apply to anyone whose expatriation date is on or after June 17, 2008, and the technical explanations of the German and French protocols describe the clauses as conforming the conventions to section 877.[94] For an expatriate today, the domestic law that the clauses preserve is the ordinary nonresident regime of sections 871 and 872 together with the 30 percent withholding of section 877A(d) and (f), which the statute already secures through the mandatory waivers. No published guidance applies the ten-year clauses to deny a former citizen the ordinary treaty rates on U.S.-source dividends, interest or other income after June 17, 2008. The clauses are best described as dormant, but they remain in the texts, and the ten-year period is the horizon within which any treaty claim by a covered expatriate should be documented with particular care.

Third, the pension article. The article decides what the section 877A(d) waiver forgoes and what the country of residence will do with the 30 percent withholding. Under the German, British, Italian, Swiss, Dutch, Belgian, Spanish, Austrian, Luxembourg and Irish conventions, private pensions and similar remuneration in consideration of past employment are taxable only in the State of residence, so the waiver converts an

Canada Income Tax Convention (Sept. 26, 1980), Art. IV(2).

[93]U.S.-Germany, Art. 1(4)(b) (Protocol of June 1, 2006); U.S.-France, Art. 29(2) (Protocol of Jan. 13, 2009); U.S.-Belgium Income Tax Convention (Nov. 27, 2006), Art. 1(4); U.S.-Canada, Art. XXIX(2)(b) (Protocol of Sept. 21, 2007); U.S.-United Kingdom, Art. 1(6); U.S.-Italy Income Tax Convention (Aug. 25, 1999), Protocol ¶ 1; U.S.-Netherlands Income Tax Convention (Dec. 18, 1992), Art. 24(1) (Protocol of Mar. 8, 2004); U.S.-Spain Income Tax Convention (Feb. 22, 1990), Protocol ¶ 1; U.S.-Austria Income Tax Convention (May 31, 1996), Art. 1(4); U.S.-Luxembourg Income Tax Convention (Apr. 3, 1996), as described in S. Exec. Rep. No. 105-8; U.S.-Ireland Income Tax Convention (July 28, 1997), Art. 1(4); U.S.-Switzerland Income Tax Convention (Oct. 2, 1996), Art. 1(2), and Treasury Technical Explanation, Art. 1.

[94]I.R.C. § 877(h); Treasury Technical Explanation of the 2006 Protocol to the U.S.-Germany Convention, Art. 1 (paragraph 4 "allows the United States to tax former U.S. citizens and former U.S. long-term residents in accordance with section 877 of the Code"); Treasury Technical Explanation of the 2009 Protocol to the U.S.-France Convention, Art. XIII.

exemption into a 30 percent gross tax; the British and Italian conventions allocate certain lump sums to the State of the scheme or of the former residence, and the Dutch convention permits source taxation of non-periodic payments to a person who was a resident of the source State within the preceding five years.[95] Under the French convention, pension distributions and lump sums arising in a State, that is, paid by an arrangement established there, are taxable only in that State, so a French resident's U.S. pension is taxed by the United States with or without the waiver.[96] Under the Canadian convention the source State may tax, but periodic pension payments to a resident of the other State are capped at 15 percent, which the waiver lifts to 30.[97] Social security benefits are not deferred compensation items and are not touched by the waiver; they are allocated by the conventions in the ordinary way, and the allocation varies: to the State of residence under the German, British, Italian, Irish and Canadian conventions, to the paying State under the French, Dutch, Belgian, Austrian and Luxembourg conventions, and with a shared or capped right under the Swiss and Spanish conventions.[98]

Fourth, the other income article. Distributions from a U.S. nongrantor trust to a beneficiary resident abroad are, for the trustee's withholding, characterized by their components at the article rates, and the residence-only treatment of the other income article is the beneficiary's home-country position and refund claim; under section 877A(f) both are foreclosed by the deemed waiver unless the valuation election is made. The other income articles of the German, French, Italian, Swiss, Dutch, Belgian, Spanish, Austrian, Luxembourg and Irish conventions allocate income not otherwise dealt with exclusively to the State of residence; the British article does the same but excludes income paid out of trusts or estates in administration, and the Canadian article permits source taxation, with a 15 percent ceiling on trust distributions.[99]

Two conventions contain a provision made for exit taxes. The German convention, since the 2006 Protocol, allows an individual who, on ceasing to be a resident of one State, is treated under that State's law as having alienated property and is taxed there accordingly, to elect to be treated in the other State as having sold and reacquired the property at fair market value immediately before ceasing to be a resident; the provision is excepted from the U.S. saving clause. The Canadian convention, since the 2007 Protocol, contains the same election in broader terms, for an individual who is treated at any time by one State as having alienated property, without reference to residence.[100] For a client bound for

[95]U.S.-Germany, Art. 18(1); U.S.-United Kingdom, Art. 17(1)(a), (2); U.S.-Italy, Art. 18(1), (3); U.S.-Switzerland, Art. 18(1); U.S.-Netherlands, Art. 19(1), (2); U.S.-Belgium, Art. 17(1)(a); U.S.-Spain, Art. 20(1)(a); U.S.-Austria, Art. 18(1)(a); U.S.-Luxembourg, Art. 19 (as described in S. Exec. Rep. No. 105-8); U.S.-Ireland, Art. 18(1)(a).

[96]U.S.-France, Art. 18(1) (Protocol of Jan. 13, 2009).

[97]U.S.-Canada, Art. XVIII(1), (2)(a).

[98]U.S.-Germany, Art. 18(5); U.S.-United Kingdom, Art. 17(3); U.S.-Italy, Art. 18(2) and Protocol ¶ 2(a) (the exception from the saving clause limited to Italian nationals); U.S.-Ireland, Art. 18(1)(b); U.S.-Canada, Art. XVIII(5); U.S.-France, Art. 18(1); U.S.-Netherlands, Art. 19(4); U.S.-Belgium, Art. 17(2); U.S.-Austria, Art. 18(1)(b); U.S.-Luxembourg, Art. 19(1)(b); U.S.-Switzerland, Art. 19(4) (source tax not exceeding 15 percent); U.S.-Spain, Art. 20(1)(b) (source State may tax).

[99]U.S.-Germany, Art. 21(1); U.S.-France, Art. 22(1); U.S.-Italy, Art. 22(1); U.S.-Switzerland, Art. 21(1); U.S.-Netherlands, Art. 23(1); U.S.-Belgium, Art. 20(1); U.S.-Spain, Art. 23(1); U.S.-Austria, Art. 21(1); U.S.-Luxembourg, Art. 22 (as described); U.S.-Ireland, Art. 22(1); U.S.-United Kingdom, Art. 22(1); U.S.-Canada, Art. XXII(1), (2).

[100]U.S.-Germany, Art. 13(6) (Protocol of June 1, 2006) and Art. 1(5)(a); U.S.-Canada, Art. XIII(7) (Protocol of Sept. 21, 2007); the Swiss convention, Art. 13(7),

Germany the election has four advantages over the domestic rule of § 17 Abs. 2 Satz 3 EStG discussed in Part XI, and as a treaty rule it takes precedence over that provision: it turns on the change of residence rather than on the commencement of unlimited German tax liability; it produces the market value rather than a value capped at the U.S. figure; it is not displaced by the returnee exclusion of § 17 Abs. 2 Satz 4 EStG; and it reaches every asset deemed sold, including portfolio holdings, for which § 20 EStG provides no step-up on arrival.[101] Two limits remain. The first is shared with the domestic rule: the election presupposes that the departure State actually taxed the individual. The Bundesfinanzhof has read the parallel provision of the German-Dutch convention as giving the departure State the possibility but not the obligation to tax, and as binding Germany only where that right was in fact exercised, so that a non-covered expatriate, on whom no section 877A tax is assessed, has nothing to elect.[102] The second is the election's own. Both its trigger and its value are tied to a single event, the end of residence in the departure State: the deemed sale must be the consequence of ceasing to be a resident of the United States (in the German text, of the *Wegzug*), and the reacquisition value is the value immediately before that event. For a green card holder whose status ends at the move the two coincide. For a citizen the provision does not fit. Citizenship is not a residence criterion under Article 4, and Germany treats a U.S. citizen as a resident of the United States only while he or she keeps a substantial presence, a permanent home or a habitual abode there; a citizen who has lived in Germany for years ceased to be a resident of the United States on the move, when nothing was deemed sold, and the deemed sale on the later renunciation is triggered by the loss of citizenship, an event the provision does not mention. The election is therefore not available to that citizen, whatever the assets; it does not merely stop at the value on arrival. Whether it reaches a green card holder who moves to Germany, keeps filing as a U.S. resident and surrenders the card years later is open, because the United States treated that individual as a resident until the surrender while the convention treated him or her as a resident of Germany from the move; ending the status at the move avoids the question. A deemed sale that precedes the departure, as when the card is surrendered before the move, is doubtful for the same reason. Under the Canadian wording, by contrast, the section 877A deemed sale of a citizen resident in Canada is generally thought to qualify. No published statement addresses section 877A specifically; the position is built with local counsel and rests on the documents described in Part XI.[103]

contains a differently worded election for a resident subject to income taxation in both States.

[101] § 2 AO (precedence of treaties over domestic law); § 17 Abs. 2 Satz 3, 4 EStG; § 20 Abs. 4 Satz 1 EStG.

[102] BFH, Urt. v. 26.10.2021, IX R 13/20 (on Art. 13 Abs. 6 DBA-Niederlande 2012).

[103] Treasury Technical Explanation of the 2006 Protocol to the U.S.-Germany Convention, Art. 13 (the other State's tax is limited to the gain accrued once the individual ceased to be a resident of the first State); U.S.-Germany, Art. 4(1) and Protocol ¶ 2(a) (Germany treats a U.S. citizen or green card holder as a resident of the United States only if the person has a substantial presence, permanent home or habitual abode in the United States); U.S.-Canada, Art. XIII(7) ("Where at any time an individual is treated for the purposes of taxation by a Contracting State as having alienated a property"); Treasury Technical Explanation of the 2007 Protocol to the U.S.-Canada Convention, Art. XIII (describing the election as available to an individual who emigrates from Canada to the United States).

Table 7. Income tax treaty map for expatriation (twelve countries)

Country (convention)	Tie-breaker	Former citizens and long-term residents (saving clause)	Private pensions; social security	Other income
Germany (1989; Protocol 2006)	Art. 4(2)	Art. 1(4)(b): former citizens and long-term residents; ten years; no purpose test	Art. 18(1): residence only. Social security, Art. 18(5): residence only	Art. 21(1): residence only
France (1994; Protocols 2004, 2009)	Art. 4(3)	Art. 29(2): former citizens and former long-term residents (defined as eight of fifteen years); ten years; no purpose test; U.S.-source income only	Art. 18(1): pensions and lump sums taxable only in the State where the arrangement is established. Social security: paying State only	Art. 22(1): residence only
United Kingdom (2001)	Art. 4(4)	Art. 1(6): former citizens and long-term residents; principal-purpose test; ten years; U.S.-source income only; not for losses of status before Feb. 6, 1995	Art. 17(1)(a): residence only; Art. 17(2): lump sums taxable only in the State of the scheme. Social security, Art. 17(3): residence only	Art. 22(1): residence only, excluding income paid out of trusts or estates in administration
Italy (1999)	Art. 4(2)	Protocol ¶ 1: former citizens and long-term residents; principal-purpose test; ten years	Art. 18(1): residence only; Art. 18(3): lump sums after a change of residence taxable only in the former State. Social security, Art. 18(2): residence only (saving-clause protection limited to Italian nationals)	Art. 22(1): residence only
Switzerland (1996; Protocol 2009)	Art. 4(3)	Art. 1(2): "citizens (including its former citizens)"; no long-term residents; no period or purpose test stated	Art. 18(1): residence only. Social security, Art. 19(4): source State may tax up to 15 percent	Art. 21(1): residence only
Netherlands (1992; Protocol 2004)	Art. 4(2)	Art. 24(1): former citizens and long-term residents (not Dutch nationals); avoidance of income tax as a principal purpose; ten years	Art. 19(1): residence only; Art. 19(2): non-periodic payments and lump sums to a person resident in the source State within the prior five years may be taxed at source. Social security, Art. 19(4): paying State only	Art. 23(1): residence only
Belgium (2006)	Art. 4(4)	Art. 1(4): former citizens and former long-term residents; ten years; no purpose test	Art. 17(1)(a): residence only. Social security, Art. 17(2): paying State only	Art. 20(1): residence only
Spain (1990; Protocol 2013)	Art. 4(2)	Protocol ¶ 1: former citizens only; principal-purpose test; ten years	Art. 20(1)(a): residence only. Social security, Art. 20(1)(b): source State may tax	Art. 23(1): residence only
Austria (1996)	Art. 4(2)	Art. 1(4): former citizens only; principal-purpose test; ten years	Art. 18(1)(a): residence only. Social security, Art. 18(1)(b): paying State only	Art. 21(1): residence only
Luxembourg (1996; Protocol 2009)	Art. 4	Former citizens only; principal-purpose test; ten years (S. Exec. Rep. No. 105-8)	Art. 19: residence only. Social security, Art. 19(1)(b): paying State only	Art. 22: residence only
Ireland (1997)	Art. 4(3)	Art. 1(4): former citizens only; principal-purpose test; ten years	Art. 18(1)(a): residence only. Social security, Art. 18(1)(b): residence only	Art. 22(1): residence only

Country (convention)	Tie-breaker	Former citizens and long-term residents (saving clause)	Private pensions; social security	Other income
Canada (1980; Protocols to 2007)	Art. IV(2)	Art. XXIX(2)(b): former citizens and former long-term residents; ten years; no purpose test; U.S.-source income only	Art. XVIII(1), (2): source State may tax; 15 percent ceiling on periodic pension payments. Social security, Art. XVIII(5): residence only	Art. XXII(1): source State may also tax; Art. XXII(2): trust distributions capped at 15 percent

Part X. The estate and gift tax position after expatriation

After the expatriation date the former citizen or long-term resident is, for estate and gift tax purposes, a nonresident who is not a citizen, taxed on the transfer of U.S.-situs property only.[104] The estate is allowed a unified credit of $13,000, the equivalent of a $60,000 exemption; U.S. shares and U.S. real property are taxable; and lifetime gifts of U.S. real property and tangibles are taxable while gifts of intangibles are not.[105] The ten-year expatriate provisions of the pre-2008 regime, sections 2107 and 2501(a)(3), apply only to a decedent or donor to whom section 877(b) applies and are therefore inoperative for anyone whose expatriation date is on or after June 17, 2008; their place is taken by section 2801, which taxes the U.S. recipient (Part XII).[106]

The estate and gift tax treaties then govern the estate of the expatriate who dies domiciled in a treaty country. The United States has fourteen conventions in force, seven of which also cover gifts, and Canada's income tax convention contains death tax provisions in Article XXIX B; Belgium, Spain, Luxembourg and Portugal have none.[107] The domicile-type conventions (Germany, France, the United Kingdom, the Netherlands, Denmark and Austria) allocate taxing rights by the decedent's domicile, with situs exceptions for real property and business property; the German and French conventions and the Canadian article grant the estate of a domiciliary of the treaty country a pro rata share of the unified credit available to a citizen's estate; and the older situs-type conventions (Australia, Finland, Greece, Ireland, Italy, Japan, South Africa and Switzerland) fix the situs of each class of property and provide a credit.[108]

Five of these instruments contain a former-citizen reservation. The German and French conventions permit the United States to tax the estate or gift of a former citizen or long-term resident whose loss of status had the avoidance of tax as one of its principal purposes, for ten years after the loss; the Austrian and Danish conventions do the same for former citizens; and the Canadian article withholds several of its death tax benefits from the estates of former citizens within the ten-

[104] I.R.C. §§ 2101, 2103, 2104, 2105 (estate tax); §§ 2501(a)(2), 2511(a) (gift tax on nonresidents confined to U.S.-situs property and excluding intangibles).

[105] I.R.C. §§ 2102(b)(1), 2104(a), 2501(a)(2).

[106] I.R.C. § 2107(a) ("if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b)"); § 2501(a)(3)(A) ("a donor to whom section 877(b) applies"); § 877(h).

[107] IRS, Estate & Gift Tax Treaties (International); Instructions for Form 706-NA (Rev. Sept. 2025).

[108] Instructions for Form 706-NA (Rev. Sept. 2025) (listing the conventions with Australia, Canada, Finland, France, Germany, Greece, Italy, Japan and Switzerland as containing provisions to which § 2102(b)(3)(A) applies); U.S.-Germany Estate, Inheritance and Gift Tax Convention (Dec. 3, 1980), as amended by the Protocol of Dec. 14, 1998, Art. 10(5); U.S.-France Estate and Gift Tax Convention (Nov. 24, 1978), as amended by the Protocol of Dec. 8, 2004, Art. 12(3); U.S.-Canada, Art. XXIX B(2).

year clause of Article XXIX(2).[109] The British, Dutch, Irish, Swiss, Italian, Australian, Japanese, Finnish, Greek and South African conventions contain no such clause; the British reservation is by nationality at death only, and the eight conventions of the 1940s and 1950s predate the expatriation provisions first enacted in 1966.[110] Like their income tax counterparts, the reservations preserve a domestic tax that no longer exists for post-2008 expatriates, since sections 2107 and 2501(a)(3) key to section 877(b); they are dormant as against the transferor. Section 2801 is a different matter. It is imposed on the U.S. recipient rather than on the estate or the donor, the conventions allocate the taxation of the transferor, and the final regulations do not resolve the interaction, so a treaty defense to section 2801 should be treated as untested (Part XII). Table 8 maps the conventions.

Table 8. Estate and gift tax treaties after expatriation

Country	Convention	Coverage	Type	Former-citizen clause	Pro rata unified credit
Australia	May 14, 1953 (two conventions)	Estate; gift	Situs	None	Yes
Austria	June 21, 1982	Estate; gift	Domicile	Former citizens; purpose test; ten years (Art. 9(1))	No
Canada	Income tax convention, Art. XXIX B (Protocol of Mar. 17, 1995)	Estate	Credit and unified credit provisions	Former citizens and long-term residents within Art. XXIX(2)(b); ten years; no purpose test (Art. XXIX(3)(a))	Yes (Art. XXIX B(2))
Denmark	Apr. 27, 1983	Estate; gift; generation-skipping transfers	Domicile	Former citizens; purpose test; ten years (Art. 1(3))	No
Finland	Mar. 3, 1952	Estate	Situs	None	Yes
France	Nov. 24, 1978; Protocol Dec. 8, 2004	Estate; gift	Domicile	Former citizens and long-term residents; purpose test; ten years (Art. 1(4)(a)(iii))	Yes (Art. 12(3))
Germany	Dec. 3, 1980; Protocol Dec. 14, 1998	Estate; inheritance; gift	Domicile	Former citizens and long-term residents; purpose test; ten years (Art. 11(1)(a)(iii))	Yes (Art. 10(5))
Greece	Feb. 20, 1950	Estate	Situs	None	Yes
Ireland	Sept. 13, 1949	Estate	Situs	None	No
Italy	Mar. 30, 1955	Estate	Situs	None	Yes

[109] U.S.-Germany Estate Convention, Art. 11(1)(a)(iii) (1998 Protocol); U.S.-France Estate Convention, Art. 1(4)(a)(iii) (2004 Protocol); U.S.-Austria Estate and Gift Tax Convention (June 21, 1982), Art. 9(1); U.S.-Denmark Estate, Gift and Generation-Skipping Transfer Tax Convention (Apr. 27, 1983), Art. 1(3); U.S.-Canada, Art. XXIX(3)(a) (Art. XXIX B(2), (3), (4) and (7) excepted from the saving clause only "as applied to estates of persons other than former citizens referred to in paragraph 2").

[110] U.S.-United Kingdom Estate and Gift Tax Convention (Oct. 19, 1978), Art. 5(1)(b); U.S.-Netherlands Estate Tax Convention (July 15, 1969), Arts. 1, 9; U.S.-Ireland Estate Tax Convention (Sept. 13, 1949); U.S.-Switzerland Estate Tax Convention (July 9, 1951); U.S.-Italy Estate Tax Convention (Mar. 30, 1955); U.S.-Australia Estate and Gift Tax Conventions (May 14, 1953); U.S.-Japan Estate, Inheritance and Gift Tax Convention (Apr. 16, 1954); U.S.-Finland Estate Tax Convention (Mar. 3, 1952); U.S.-Greece Estate Tax Convention (Feb. 20, 1950); U.S.-South Africa Estate Tax Convention (Apr. 10, 1947); Foreign Investors Tax Act of 1966, Pub. L. No. 89-809, 80 Stat. 1539.

Country	Convention	Coverage	Type	Former-citizen clause	Pro rata unified credit
Japan	Apr. 16, 1954	Estate; inheritance; gift	Situs	None	Yes
Netherlands	July 15, 1969	Estate	Domicile	None	No
South Africa	Apr. 10, 1947	Estate	Situs	None	No
Switzerland	July 9, 1951	Estate	Situs (no situs code; credit and proportional exemption)	None	Yes
United Kingdom	Oct. 19, 1978	Estate; gift	Domicile	None (nationality at death only, Art. 5(1)(b))	No
Belgium, Spain, Luxembourg, Portugal	No convention			Code only: § 2102(b)(1) credit of $13,000; §§ 2104, 2105 situs rules	No

Part XI. Reception of the deemed sale in the country of destination

The section 877A basis adjustment is a rule of United States law and binds no other country. The question in the country of destination is whether its own law resets the acquisition cost of assets held on arrival to their value at that time and, where it does not, whether it recognizes a foreign exit tax value or exempts the gain by other means. Table 9 summarizes the position in the twelve countries, verified against the national statutes and administrative guidance as of September 2026.

The pattern is uneven. Canada gives the fullest step-up: an individual who becomes resident is deemed to have disposed of and reacquired each property, other than taxable Canadian property and certain other classes, at fair market value at that time.[111] Austria treats the fair market value as the acquisition cost of every asset within its capital income regime on the entry of Austria's taxing right.[112] Belgium's new tax on capital gains on financial assets, in force for gains realized from January 1, 2026, takes the value at the time the taxpayer becomes a resident as the acquisition value.[113] The Netherlands and Luxembourg reset the acquisition price of substantial shareholdings only. A person who comes to live in the Netherlands takes the market value at that time as the acquisition price of an *aanmerkelijk belang*, subject to exceptions for former residents and for shares previously within Dutch non-resident taxation, in which case the historical price is increased by the growth on which a reasonable foreign income tax was paid in connection with the move; Luxembourg sets the acquisition price of a

[111] Income Tax Act (Canada), s. 128.1(1)(b), (c).

[112] § 27 Abs. 6 Z 1 lit. e EStG 1988 ("*Im Falle der Entstehung des Besteuerungsrechts der Republik Österreich im Verhältnis zu anderen Staaten gilt der gemeine Wert als Anschaffungskosten*").

[113] Wet van 6 april 2026 tot invoering van een belasting op meerwaarden op financiële activa; Chambre des représentants, DOC 56 1244/001 (Dec. 17, 2025), *exposé des motifs*, p. 9 ("*Le prix d'acquisition à titre onéreux d'un actif financier correspondra à sa valeur au moment où le contribuable non-résident devient habitant du Royaume*"); Circulaire 2026/C/74 (July 22, 2026), no. 3.5.

participation importante at its estimated realization value on the date a non-resident becomes resident, unless the taxpayer was resident for more than fifteen years and then non-resident for less than five.[114]

Germany is the model of the conditional rule, and each of its conditions matters in the section 877A case. For shares within § 17 EStG, holdings of at least one percent, the rule is a linkage to the departure State's value rather than a step-up: if the taxpayer proves that the shares were held when unlimited German tax liability began and that the appreciation accrued to that date was subject in the departure State, by force of its law, to a tax comparable to § 6 AStG, the acquisition cost is replaced by the value the departure State used in computing that tax, but not above the *gemeiner Wert*, which on the purpose of the provision and the prevailing reading is the value at the time of arrival.[115] For portfolio securities and other capital assets within § 20 EStG the historical acquisition cost carries over without adjustment.[116] Applied to section 877A, the linked value is the fair market value used in the mark-to-market computation on the day before the expatriation date, determined under the estate tax principles of section 2031, and the German acquisition cost becomes the lower of that value and the *gemeiner Wert* at arrival. A U.S. appraisal carrying discounts and a German valuation under the *vereinfachtes Ertragswertverfahren* can diverge, and each figure is converted into euro at the exchange rate of its own date, so both the valuation standard and the rate bear directly on the later German gain; the same value governs § 6 AStG if the individual later leaves Germany.[117]

Four conditions follow, and each can fail. First, comparability. The mark-to-market tax is a deemed disposal of the whole balance sheet at market value on leaving the U.S. tax jurisdiction and is, functionally, the counterpart of § 6 AStG; that it is triggered by the loss of citizenship or of long-term resident status rather than of residence, reaches every asset and knows no participation threshold does not defeat comparability by purpose, but no published administrative statement or decision addresses section 877A, and the argument must be made in each case.[118] Second, an assessed tax. The Bundesfinanzhof requires that the departure State actually calculated and assessed a tax: a valuation without an assessment is insufficient, while payment is not required, a point on which the court departed from the lower court, which had demanded payment.[119] Only a covered expatriate is assessed under section 877A. A non-covered expatriate, and a green card holder who never reached eight of fifteen years, receives no German relief at all, and the entire gain since the original acquisition, pre-arrival appreciation included, is taxable under

[114] Wet inkomstenbelasting 2001, art. 4.25(1) to (3); Uitvoeringsbesluit inkomstenbelasting 2001, art. 16(1), (2); Belastingdienst, *kennisgroepstandpunt* KG:003:2022:17; Hoge Raad, Sept. 20, 2024, ECLI:NL:HR:2024:1243; L.I.R. (Luxembourg), art. 102(4a) (loi du 18 décembre 2015).

[115] § 17 Abs. 2 Satz 3 EStG ("*tritt an die Stelle der Anschaffungskosten der Wert, den der Wegzugsstaat bei der Berechnung der der Steuer nach § 6 des Außensteuergesetzes vergleichbaren Steuer angesetzt hat, höchstens jedoch der gemeine Wert*"); § 11 BewG.

[116] § 20 Abs. 4 Satz 1 EStG.

[117] Notice 2009-85, § 3.A; §§ 11, 199 ff. BewG; BFH, Urt. v. 24.1.2012, IX R 62/10 (acquisition cost and proceeds under § 17 EStG each converted at the rate of their own date); § 6 AStG.

[118] § 17 Abs. 2 Satz 3 EStG; I.R.C. § 877A(a)(1).

[119] BFH, Urt. v. 26.10.2021, IX R 13/20 (headnote: the appreciation has not been subject to a comparable tax "*wenn dort keine Steuer festgesetzt worden ist*"; "*zumindest ein Steuerbescheid des Wegzugsstaats mit Berechnung und Festsetzung der Steuer ergangen sein muss*"); FG Düsseldorf, Urt. v. 1.7.2020, 7 K 2991/19 E (payment required); OFD Frankfurt a.M., Vfg. v. 8.9.2022, S 1978 A-048-St 519.

§ 17 EStG. The proof must present the U.S. self-assessment as the functional equivalent of a *Steuerbescheid*: Form 8854 with the mark-to-market computation for each asset, the dual-status return of the expatriation year, the IRS account transcript recording the assessment, and the underlying valuation. A deferral under section 877A(b) is harmless on this reading, because the tax has been computed and assessed. The exclusion amount is the sensitive point: on the wording, the linked value is the full fair market value whether or not the exclusion absorbed part of the gain, but where the whole mark-to-market gain falls within the exclusion no tax is assessed and the court's headnote argues against any relief, and where the exclusion absorbs only part of the gain a restrictive reading by the tax administration cannot be excluded; the question is undecided. Third, no retained German *Wohnsitz*: a person who kept a German residence through the U.S. years does not commence unlimited tax liability on return and is outside the wording of the provision. Fourth, no returnee lapse: § 17 Abs. 2 Satz 4 EStG excludes the linkage in the cases of § 6 Abs. 3 AStG, so a German whose exit tax lapsed on return within seven years keeps the historical cost although the United States taxed the appreciation of the U.S. years under section 877A, having excluded the pre-arrival appreciation under section 877A(h)(2).[120]

The timing of the two dates is, in practice, the largest problem. The German rule keys to the commencement of unlimited tax liability, section 877A to the expatriation date. For a green card holder the two can be synchronized, because the claim of treaty residence in Germany itself ends long-term resident status under section 7701(b)(6) and fixes the expatriation date. For a United States citizen who has lived in Germany for years and renounces afterward, the U.S. date follows the arrival: § 17 Abs. 2 Satz 3 EStG applies in principle, since the appreciation to arrival was subject to the U.S. tax, but the linked value is capped at the *gemeiner Wert* at arrival, which must be established retrospectively, and the appreciation between arrival and expatriation is taxed twice, by the United States in the expatriation year and by Germany on the later actual sale, without credit: § 34c Abs. 1 Satz 5 EStG confines the credit to tax on the income of the same assessment period, and Article 23(5)(a) of the convention confines Germany's credit for a U.S. citizen resident in Germany to tax the United States may impose under the convention other than tax imposed solely by reason of citizenship, which, for a gain that Article 13(5) allocates to Germany alone, is the whole of the exit tax.[121] Where, conversely, the expatriation precedes the arrival, as when the card is surrendered in year one and residence is taken up in year three, only the lower U.S. value is linked. The election under Article 13(6) of the convention (Part IX) avoids the commencement requirement, the cap and the returnee exclusion, and reaches the portfolio, but it presupposes an assessed U.S. tax and a deemed sale that is the consequence of the end of U.S. residence; for the citizen who renounces after years in Germany it is not available, so that citizen's portfolio has no relief route at all. Three planning conclusions follow. A green card holder should place the arrival, the treaty residence claim and the expatriation date on one day and document the valuation on that day under both standards. A United States citizen with a longer German residence is better served by

[120] § 17 Abs. 2 Satz 4 EStG; § 6 Abs. 3 AStG; I.R.C. § 877A(h)(2).

[121] § 34c Abs. 1 Satz 5 EStG; U.S.-Germany Income Tax Convention (Aug. 29, 1989), as amended by the Protocol of June 1, 2006, Art. 13(5), Art. 23(5)(a).

an actual sale before the expatriation date, because Article 23(5)(b) secures the U.S. credit for the German tax on that sale, whereas the later mark-to-market tax on the same assets would be lost in Germany; for the portfolio this is the only course, for substantial holdings it is usually the cleaner one. And in every case the IRS transcript of the expatriation year belongs in the file.[122]

France, the United Kingdom, Italy, Spain and Ireland keep historical cost for individuals and give relief, if at all, through a regime for new residents. France computes the gain from the price actually paid and has no arrival or foreign-exit-tax rule; the impatriate regime of article 155 B exempts half of the gain on foreign securities but is available only to persons taking up employment in France.[123] The United Kingdom computes the gain from the consideration given, with no rebasing on arrival; since April 6, 2025 a qualifying new resident, one not resident in any of the ten preceding tax years, may claim exemption for foreign gains, including pre-arrival appreciation, for the first four tax years of residence, after which historical cost governs, the 2017 rebasing being confined to former remittance-basis users.[124] Italy computes the gain from the cost or value subject to tax, has no step-up for individuals, and offers instead the substitute tax for new residents, EUR 300,000 a year for transfers of residence from January 1, 2026, which does not cover gains on qualified holdings realized in the first five years of the option.[125] Spain computes the gain from the real amount of the acquisition and has no arrival rule; the special regime for inbound workers taxes only Spanish-source income for the year of arrival and the five following years, so foreign gains fall outside Spanish tax during that period and revert to historical cost afterward.[126] Ireland computes the gain from the consideration given and taxes a resident who is not Irish-domiciled on foreign gains only as remitted.[127] Switzerland taxes no capital gain on private movable property at the federal level, so the question does not arise for securities held privately, while gains on business assets are taxable.[128]

Where historical cost carries over, the exit tax is a prepayment on which no credit will be given, because the country of destination sees no foreign tax on the later sale. The planning response is to realize the gain in fact during the interval between the expatriation date and the establishment of residence in the destination, when the individual holds a stepped-up U.S. basis and is not yet a resident abroad, and to repurchase, so that both systems start from the same value; for a German-bound client whose deemed sale does not coincide with the move, or who cannot invoke the Article 13(6) election, this resets the § 20 EStG cost of the portfolio, and for a client bound for France, Italy, Spain or, after the fourth year, the United Kingdom it does the same. Where a step-up is available it should be documented at arrival with the same appraisals used for Form 8854, because the arrival value, not the U.S. deemed-sale value, is the figure the destination will use, and the two dates are rarely the same. The

[122] U.S.-Germany Income Tax Convention, Art. 23(5)(b).

[123] CGI art. 150-0 D, 1 and BOI-RPPM-PVBMI-20-10-20-10 (May 25, 2023); CGI art. 155 B and BOI-RSA-GEO-40-10-30-30 (Dec. 20, 2019).

[124] TCGA 1992, s. 38(1)(a); ITTOIA 2005, s. 845B (inserted by Finance Act 2025, s. 37); TCGA 1992, Sch. D1 (inserted by Finance Act 2025, s. 39); Finance Act 2025, Sch. 11, para. 1.

[125] TUIR art. 68, c. 6; TUIR art. 24-bis, c. 1 and 2, as amended by L. 30 dicembre 2025, n. 199, art. 1, c. 25, 26; TUIR art. 166-bis (inbound step-up confined to enterprises).

[126] Ley 35/2006 (LIRPF), art. 35.1, art. 93.

[127] TCA 1997, s. 552(1)(a), s. 29(4) (as amended by Finance (No. 2) Act 2008, s. 42).

[128] DBG art. 16 Abs. 3; art. 18 Abs. 2.

mirror also matters: Germany, France, the Netherlands, Spain, Austria, Belgium and Canada have exit taxes of their own, so a client who later moves on from the destination will meet the same problem in the other direction.[129]

The gift and inheritance taxes of the destination reach the transfers that section 2801 also taxes. Germany, France, the Netherlands and Italy tax gifts by a resident donor wherever the property and the donee are located; Ireland does so once the disponer is resident or ordinarily resident, a non-domiciled disponer only after five consecutive years; Spain taxes the donee, so a gift of non-Spanish property to a U.S.-resident child bears no Spanish gift tax, though the donor may realize a capital gain on the transfer; the United Kingdom's inheritance tax reaches non-U.K. property only once the donor has been resident in ten of the preceding twenty tax years; Austria has had no gift tax since 2008; Belgium and Luxembourg tax registered gifts of movables only; Switzerland's taxes are cantonal, and Zurich, among others, exempts descendants; and Canada has no gift or estate tax but treats a gift and death as dispositions at fair market value.[130] A covered expatriate's gift to a U.S. child from a German or French domicile is therefore taxed twice, once to the child under section 2801 and once under the local law, with the section 2801 reduction limited to foreign gift or estate tax paid on that transfer.

Table 9. Reception of the deemed sale in the country of destination (September 2026)

Country	Acquisition cost on arrival	Recognition of the U.S. exit tax value	Own exit tax on individuals	Gift tax on a resident donor's gifts to U.S. donees
Germany	For § 17 EStG holdings (at least one percent), the value the departure State used in assessing its exit tax replaces the acquisition cost, capped at the *gemeiner Wert* at arrival (§ 17 Abs. 2 S. 3 EStG); historical cost for § 20 EStG portfolio assets	Yes for § 17 holdings, but only where a section 877A tax was actually assessed (BFH IX R 13/20), so not for non-covered expatriates; excluded for returnees within § 6 Abs. 3 AStG (§ 17 Abs. 2 S. 4 EStG); treaty Art. 13(6) election for all assets only where the deemed sale is caused by the end of U.S. residence; not for a citizen who renounces after the move	§ 6 AStG; seven-year returnee lapse (§ 6 Abs. 3 AStG)	Yes, worldwide (§ 2 Abs. 1 Nr. 1 ErbStG)

[129] § 6 AStG; CGI art. 167 bis; Wet inkomstenbelasting 2001, art. 4.16(1)(h), art. 2.8; LIRPF art. 95 bis; § 27 Abs. 6 Z 1 EStG 1988; Belgian law of Apr. 6, 2026 (deferred exit charge with a two-year rule); Income Tax Act (Canada), s. 128.1(4)(b) (with the sixty-month exception for short-term residents).

[130] § 2 Abs. 1 Nr. 1 ErbStG; CGI art. 750 ter; Successiewet 1956, art. 1(1); D.Lgs. 346/1990, art. 2; CATCA 2003, ss. 6, 11; Ley 29/1987, arts. 5, 6, 7, and LIRPF arts. 33, 36; IHTA 1984, ss. 6(1), 6A (Finance Act 2025, s. 44); § 121a BAO (reporting only); Vlaamse Codex Fiscaliteit (Belgium) and loi modifiée du 23 décembre 1913 (Luxembourg); Zurich ESchG § 2(1)(b), § 11(1); Income Tax Act (Canada), ss. 69(1)(b), 70(5).

Country	Acquisition cost on arrival	Recognition of the U.S. exit tax value	Own exit tax on individuals	Gift tax on a resident donor's gifts to U.S. donees
France	Historical cost (art. 150-0 D CGI); 50 percent exemption of gains on foreign securities under the impatriate regime for employees (art. 155 B)	None	Art. 167 bis CGI	Yes, worldwide (art. 750 ter 1° CGI)
United Kingdom	Historical cost (TCGA 1992 s. 38); foreign gains exempt for four tax years for a qualifying new resident (Finance Act 2025)	None	None (temporary non-residence rule, TCGA 1992 s. 1M)	Non-U.K. property outside inheritance tax until resident in 10 of 20 tax years (IHTA 1984 s. 6A)
Italy	Historical cost (art. 68 TUIR); substitute tax of EUR 300,000 a year for new residents from 2026 (art. 24-bis), excluding qualified-holding gains in the first five years	None for individuals (art. 166-bis: enterprises only)	None for individuals (art. 166: enterprises)	Yes, worldwide (D.Lgs. 346/1990 art. 2)
Switzerland	Not relevant: private capital gains exempt (art. 16 Abs. 3 DBG)	Not needed	None for private assets	Cantonal; Zurich exempts descendants (ESchG § 11)
Netherlands	Step-up to market value for a substantial interest (art. 4.25 Wet IB 2001), with exceptions for former residents and prior non-resident taxation (art. 16 UBIB 2001: historical cost plus growth taxed abroad in connection with the move); box 3 deemed return for portfolio assets	Substantial interests only, in the excepted cases	Art. 4.16(1)(h), art. 2.8 Wet IB 2001; *conserverende aanslag*	Yes, worldwide (Successiewet 1956 art. 1)
Belgium	Market value on becoming a resident (law of Apr. 6, 2026; Circulaire 2026/C/74 no. 3.5); 10 percent tax on financial assets from 2026	Not needed	New deferred exit charge; two-year rule	Registered gifts of movables only (regional)
Spain	Historical cost (art. 35.1 LIRPF); inbound workers' regime taxes Spanish-source income only for six years (art. 93)	None	Art. 95 bis LIRPF	Tax on the donee; non-resident donees taxed on Spanish-situs property only (Ley 29/1987 arts. 5 to 7)
Austria	Step-up to fair market value on entry into Austrian taxing rights for all capital assets (§ 27 Abs. 6 Z 1 lit. e EStG 1988)	Not needed	§ 27 Abs. 6 Z 1 EStG 1988	None since 2008; reporting under § 121a BAO
Luxembourg	Estimated realization value on becoming resident for *participations importantes* (art. 102(4a) L.I.R.); portfolio gains after six months exempt	Substantial holdings only	None in general; trailing taxation of former long-term residents (art. 156 no. 8 L.I.R.)	Registration duty on notarial gifts only
Ireland	Historical cost (TCA 1997 s. 552); remittance basis for foreign gains of a non-domiciled resident (s. 29(4))	None	Limited (s. 29A TCA 1997, temporary non-residents)	Yes, once resident or ordinarily resident; a non-domiciled disponer only after five consecutive years (CATCA 2003 s. 6)

Country	Acquisition cost on arrival	Recognition of the U.S. exit tax value	Own exit tax on individuals	Gift tax on a resident donor's gifts to U.S. donees
Canada	Deemed reacquisition at fair market value of all property other than taxable Canadian property (ITA s. 128.1(1)(b), (c))	Not needed; treaty Art. XIII(7) election available for the residue	ITA s. 128.1(4); sixty-month exception for short-term residents	None; gifts and death are dispositions at fair market value (ss. 69(1), 70(5))

Part XII. Section 2801: covered gifts and bequests to U.S. recipients

Covered status does not expire, and its most important consequence arrives after the expatriate has left. Section 2801 imposes on a United States citizen or resident who receives a covered gift or covered bequest a tax equal to the value received multiplied by the highest rate of estate tax in effect on the date of receipt, currently 40 percent, to the extent the value received in the calendar year exceeds the annual exclusion amount, $19,000 for 2026.[131] A covered gift is property acquired by gift from an individual who is a covered expatriate at the time of the transfer; a covered bequest is property acquired by reason of the death of an individual who was a covered expatriate immediately before death, to the extent it would have been included in the gross estate had the decedent been a citizen.[132] The tax is the recipient's. It is reduced by any gift or estate tax paid to a foreign country on the same transfer; Treasury declined to extend the reduction, as section 2014 does for the foreign death tax credit, to taxes imposed in lieu of a gift or estate tax, and whether an inheritance tax levied on the recipient, such as the German *Erbschaftsteuer* or the French *droits de succession*, is a "gift or estate tax" for this purpose is not settled.[133]

The section was enacted in 2008 and stood without regulations until Treasury published final regulations on January 14, 2025, applicable to covered gifts and bequests received on or after January 1, 2025.[134] The recipient reports on Form 708, released in December 2025, due on the fifteenth day of the eighteenth month after the close of the calendar year of receipt, so that the first returns, for receipts in 2025, are due June 15, 2027, with an automatic six-month extension on Form 7004 that does not extend the time to pay; the return is filed in Kansas City.[135] Six exceptions remove a transfer from the definition: property reported as a taxable gift on the covered expatriate's timely filed Form 709 or 709-NA; property included in the covered expatriate's gross estate and reported on a timely filed Form 706, 706-NA or 706-QDT; property already taxed as a covered gift; transfers to charity to the extent a charitable deduction would have been allowed had the expatriate been a citizen; transfers to a spouse to the extent a marital deduction would have been allowed, which for a non-citizen spouse means the annual amount of section 2523(i) for gifts and a qualified domestic trust for

[131] I.R.C. § 2801(a), (c); Treas. Reg. § 28.2801-4(b)(1), (2); Rev. Proc. 2025-32, § 4.42(3).

[132] I.R.C. § 2801(e)(1); Treas. Reg. § 28.2801-3(a), (b).

[133] I.R.C. § 2801(b), (d); Treas. Reg. § 28.2801-4(e)(1); T.D. 10027, 90 Fed. Reg. 3376 (Jan. 14, 2025), preamble, part 4.C (the statute "unambiguously limits the reduction to the amount of gift or estate tax paid to a foreign country with respect to a covered gift or covered bequest and does not contain the kind of statutory language that appears in section 2014").

[134] Pub. L. No. 110-245, § 301 (June 17, 2008); T.D. 10027, 90 Fed. Reg. 3376 (Jan. 14, 2025); Treas. Reg. §§ 28.2801-2(n), 28.2801-3(g), 28.2801-4(g), 28.6071-1(d).

[135] Treas. Reg. § 28.6071-1(a)(1); Form 708 (Dec. 2025); Instructions for Form 708 (12/2025).

bequests; and property passing under a qualified disclaimer.[136] A covered gift or bequest to a domestic trust is taxed to the trust; a transfer to a foreign trust is not taxed on receipt, but each distribution to a U.S. beneficiary attributable to it is a covered gift or bequest to that beneficiary, unless the foreign trust elects to be treated as a domestic trust for this purpose.[137]

Two features of the regulations bear on the departing client. First, the determination of covered status is made once, on the expatriation date, and holds "at all times after the expatriation date", except during any later period in which the expatriate is again subject to U.S. estate or gift tax as a citizen or resident.[138] Second, the burden of proof sits with the recipient: a U.S. recipient must determine whether the donor is a covered expatriate, may obtain the donor's return information from the IRS only with the donor's authorization, and, where a living donor does not authorize disclosure, faces a rebuttable presumption that the donor is a covered expatriate and the gift a covered gift.[139] A covered expatriate who intends to benefit U.S. family should therefore expect to document his or her status to them for the rest of his or her life, or to file the U.S. gift tax returns that take the transfers out of the section.

The interaction with the estate and gift tax conventions is unresolved. The tax falls on the recipient, the conventions allocate the taxation of estates and donors, and the final regulations do not address the question; a treaty position against section 2801 is untested and should not be relied on in planning.[140] The planning conclusions run backward into the expatriation timeline. A gift completed while the donor is still a citizen or resident is not a covered gift, whatever the donor's later status, and it is made with the donor's full basic exclusion amount of $15,000,000 for 2026 and the annual exclusions available to a citizen; a transfer to a U.S. citizen spouse before the date is deductible without limit; vehicles for U.S. beneficiaries funded before the date are outside the section, while a foreign trust funded afterward carries the tax into every distribution; and, for a client with U.S. children or grandchildren, avoiding covered status altogether is often worth more than any asset-level planning, because the exit tax is paid once and section 2801 prices every future transfer at 40 percent.[141]

Two other consequences of expatriation lie outside the Code. A former citizen who officially renounces citizenship and is determined by the Attorney General to have renounced for the purpose of avoiding U.S. taxation is inadmissible to the United States under the Reed Amendment of 1996; the provision has no implementing regulations beyond the visa ineligibility rule and is rarely invoked, but it has not been repealed.[142] And the loss of citizenship or of residence is governed by the nationality and immigration

[136] I.R.C. § 2801(e)(2), (e)(3); Treas. Reg. § 28.2801-3(c)(1) to (6).

[137] I.R.C. § 2801(e)(4); Treas. Reg. § 28.2801-3(d); Instructions for Form 708 (12/2025) (electing foreign trust).

[138] Treas. Reg. § 28.2801-2(h); I.R.C. § 877A(g)(1)(C).

[139] Treas. Reg. § 28.2801-7(a), (b)(1), (2); Instructions for Form 708 (12/2025).

[140] T.D. 10027, 90 Fed. Reg. 3376 (Jan. 14, 2025) (the preamble does not resolve the interaction with the estate and gift tax conventions); the conventions' former-citizen reservations (Part X) address the taxation of the transferor.

[141] Treas. Reg. § 28.2801-3(a) (covered expatriate "at the time" of the transfer); I.R.C. § 2010(c)(3)(A), as amended by Pub. L. No. 119-21, § 70106 (July 4, 2025); Rev. Proc. 2025-32, §§ 2.14, 4.42(1); I.R.C. § 2523(a).

[142] 8 U.S.C. § 1182(a)(10)(E), enacted by Pub. L. No. 104-208, div. C, § 352 (Sept. 30, 1996); 22 C.F.R. § 40.105.

laws, whose dates and consequences do not always coincide with the tax dates in Part I. Table 10 summarizes section 2801.

Table 10. Section 2801 after the 2025 final regulations

Element	Rule	Authority
Taxpayer	The U.S. citizen or resident recipient, or a domestic or electing foreign trust	§ 2801(b); Reg. § 28.2801-3(d)
Rate and base	40 percent of the value of covered gifts and bequests received in the calendar year above $19,000 (2026)	§ 2801(a), (c); Reg. § 28.2801-4(b)
Covered expatriate	Status fixed on the expatriation date and permanent, except during a later period as a U.S. citizen or resident for transfer tax purposes	Reg. § 28.2801-2(h); § 877A(g)(1)(C)
Exceptions	Timely Form 709 or 709-NA; timely Form 706, 706-NA or 706-QDT; prior covered gift; charitable; marital (qualified domestic trust for a non-citizen spouse); qualified disclaimer	§ 2801(e)(2), (3); Reg. § 28.2801-3(c)
Reduction	Foreign gift or estate tax paid on the same transfer; no reduction for other taxes; status of recipient-based inheritance taxes unsettled	§ 2801(d); Reg. § 28.2801-4(e); T.D. 10027, preamble, part 4.C
Return	Form 708, due the fifteenth day of the eighteenth month after the year of receipt; first returns (2025 receipts) due June 15, 2027; Form 7004 extension; filed in Kansas City	Reg. § 28.6071-1(a); Instructions for Form 708 (12/2025)
Proof of status	Recipient's burden; IRS disclosure with the donor's authorization; rebuttable presumption of covered status if a living donor refuses	Reg. § 28.2801-7
Treaties	Interaction unresolved; the conventions address the transferor's tax	T.D. 10027 (Jan. 14, 2025)
Pre-expatriation gifts	Outside the section; made with the $15,000,000 basic exclusion (2026) and the citizen's annual exclusions	Reg. § 28.2801-3(a); § 2010(c)(3)

Part XIII. Practice points

1. **Screen for the expatriating act before it happens.** Count lawful permanent resident years toward eight of fifteen, and never let a long-term resident file a treaty-based nonresident return without the full section 877A analysis; the return, dated from the first day of treaty residence, is the expatriation.
2. **Pass the certification test first.** Five compliant years are a precondition for every expatriate, including those within the dual citizen and minor exceptions; use the streamlined procedures before the date, or the Relief Procedures for a former citizen with no filing history, net worth under $2,000,000 and six-year aggregate tax of $25,000 or less.
3. **Manage the net worth test with the calendar, with completed gifts and with valuation.** The $2,000,000 line is unindexed and measured for each spouse separately; a completed transfer to a citizen spouse, gifts to children within the $15,000,000 basic exclusion and disciplined valuation under section 2512 can hold a marginal client under it, if done well before the date.
4. **Build the valuation and basis file early.** Appraise every material asset as of the anticipated day before the expatriation date and, for a long-term resident or a naturalized citizen, as of the residency

starting date; the step-up removes pre-immigration appreciation and often exceeds the $910,000 exclusion.

5. **Inventory deferred compensation and route each item deliberately.** Identify every plan and payor. A foreign payor cannot elect into the eligible regime because no procedure exists, so a foreign pension is included at present value; for a U.S. payor, decide between Form W-8CE with the waiver (30 percent withholding for the life of the plan, which the destination may not credit) and immediate inclusion, and deliver Form W-8CE within 30 days where the eligible route is chosen.
6. **Resolve trust exposure before the date.** Grantor trust assets are in the deemed sale; a nongrantor trust interest carries 30 percent withholding on every later distribution, gain at the trust level on in-kind distributions and an annual Form 8854; distribute, decant or obtain the valuation ruling while the client is still a United States person.
7. **Price the deferral election as financing.** Interest at the underpayment rate, adequate security and a treaty waiver under a tax deferral agreement; compare it with a pre-date sale, a gift or a later date before electing, and remember that it reaches only the mark-to-market tax.
8. **Sequence the departure around the treaty and the destination.** Expatriate before establishing residence abroad where the destination's step-up depends on the gain having been taxed before arrival, or, for Germany, place the arrival, the treaty residence claim and the expatriation date on one day so that § 17 Abs. 2 Satz 3 EStG and the Article 13(6) election can operate on an assessed U.S. tax; for a citizen already resident in Germany, sell appreciated positions, the portfolio above all, before the date, since neither provision reaches them afterward; use the interval to sell and repurchase assets whose historical cost the destination would otherwise keep; keep the IRS transcript of the expatriation year in the file; and model the cost of the waivers under the pension article and the relief article of the destination.
9. **Complete U.S. family gifts before the date.** A gift completed while the donor is a citizen or resident is outside section 2801 and uses the full basic exclusion; afterward every gift and bequest to a U.S. person from a covered expatriate is taxed to the recipient at 40 percent on Form 708, with the recipient carrying the burden of proving that the donor is not covered.
10. **File the exit package completely and keep filing.** Dual-status return, Form 8854 with the certification, the (h)(2) election and the deferral agreement if elected, Form W-8CE notices, and the annual Form 8854 while a deferral, an eligible item or a trust interest remains; coordinate the destination's treatment of the deemed sale and the new basis with local counsel.

Conclusion

Section 877A taxes a balance sheet on a date, and the date is chosen. On the day before the expatriation date the Code treats every asset that would have been in the gross estate as sold, taxes the net gain above $910,000 as though realized, deems the retirement accounts distributed, includes foreign pensions at present value, leaves United States pensions and nongrantor trust interests under a 30 percent withholding secured by treaty waivers, and, for the rest of the expatriate's life, taxes every gift and bequest to

U.S. family at 40 percent on the recipient's side. All of that applies only to a covered expatriate, and covered status is the one element that responds to work done in advance: the certification test is passed by compliance completed before the date, the net worth test is managed by completed transfers and valuation, the two exceptions protect birthright dual citizens and minors who can certify, and the date itself is elective. For clients bound for treaty countries the treaty supplies the rest of the analysis: it is the instrument that expatriates a long-term resident by accident, the measure of what the mandatory waivers cost, the framework within which the estate of the former citizen will be taxed, and, together with the destination's own basis rules, the determinant of whether the exit tax is a final cost or a prepayment. The adviser's work is therefore done before the consular appointment or the Form I-407: five clean years, a count of the green card years before any treaty claim, a valued balance sheet with residency-start values, a routed inventory of deferred compensation and trust interests, completed gifts to the U.S. family, and a sequence of dates chosen with the destination's law in view. Expatriation is irreversible; covered status, addressed early enough, is in most cases avoidable, and where it is not, its cost is fixed by what was done before the date rather than by anything that can be done after it.

Contact

The section 877A exit tax turns on a single classification, covered expatriate status under the net worth, tax liability and certification tests, and then taxes the departing client through a deemed sale of everything above the $910,000 exclusion for 2026, present value inclusion or 30 percent withholding for deferred compensation, deemed distribution of retirement accounts and 30 percent withholding on nongrantor trust distributions, with Form 8854 and Form W-8CE carrying the compliance, section 2801 pricing every later gift to U.S. family at 40 percent on the recipient's side, and the income tax and estate tax treaties and the destination's own basis rules deciding what the exit costs. **Ashford International Law PC advises families, fiduciaries, and their advisers** across the whole map: screening for long-term resident status and the treaty election, the five-year compliance cure and the Relief Procedures, management of the net worth and tax liability tests and the timing of the expatriation date, valuation of the balance sheet and the residency-start step-up, the routing of deferred compensation and trust interests and the deferral election, pre-expatriation gifts to U.S. family and section 2801 exposure, and the dual-status return, Form 8854 and Form W-8CE, coordinated with counsel in the country of destination on the reception of the deemed sale.

The firm is led by attorney **Caroline Esche Ashford, PhD, JD**. A graduate of Columbia University Law School, her practice focuses on international estate planning and the cross-border taxation and administration of estates and trusts, including expatriation planning under sections 877A and 2801 for citizens and long-term residents leaving for Europe and Canada. Dr. Ashford is also licensed to practice law in Germany. She advises in French and German as well as English.

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