

Renounce or Retain US Citizenship

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Disclaimer

THIS SESSION IS OF A GENERAL NATURE. IT IS NOT INTENDED TO AND SHOULD NOT BE UNDERSTOOD TO OFFER LEGAL OR TAX ADVICE OF ANY KIND.

Entering the US Tax System

My bank asked for my US SSN? Does that mean I must file US tax returns?

- First step – self education
- What is the cost of filing?
 - *US tax*
 - *Compliance costs*
 - *Opportunity costs*
- What are the real risks of not filing?
- US taxation based on citizenship is unique
 - *Difficult to enforce until FATCA (2010)*
- Australian residents subject to US tax are engaging in cross-border transactions daily!

Entering the US Tax System

What are the consequences of coming into compliance?

- As a US taxpayer resident in Australia you are a “tax resident” of both countries simultaneously
 - *The US will treat everything you have in Australia as “foreign”*
 - *Australia will treat everything you have in the US as foreign*

Entering the US Tax System

If I decide to come into compliance, how do I do that?

- Streamlined Foreign Offshore Procedure
 - *3 years of tax returns*
 - *6 years of FBARs*
 - *Form 14653 with statement of non-wilful noncompliance*
- ~~Quiet Disclosure Obeying the Law~~
 - *Just file*
 - *Discouraged by the compliance industry*

Entering the US Tax System

What does filing US tax returns mean for my super and investments?

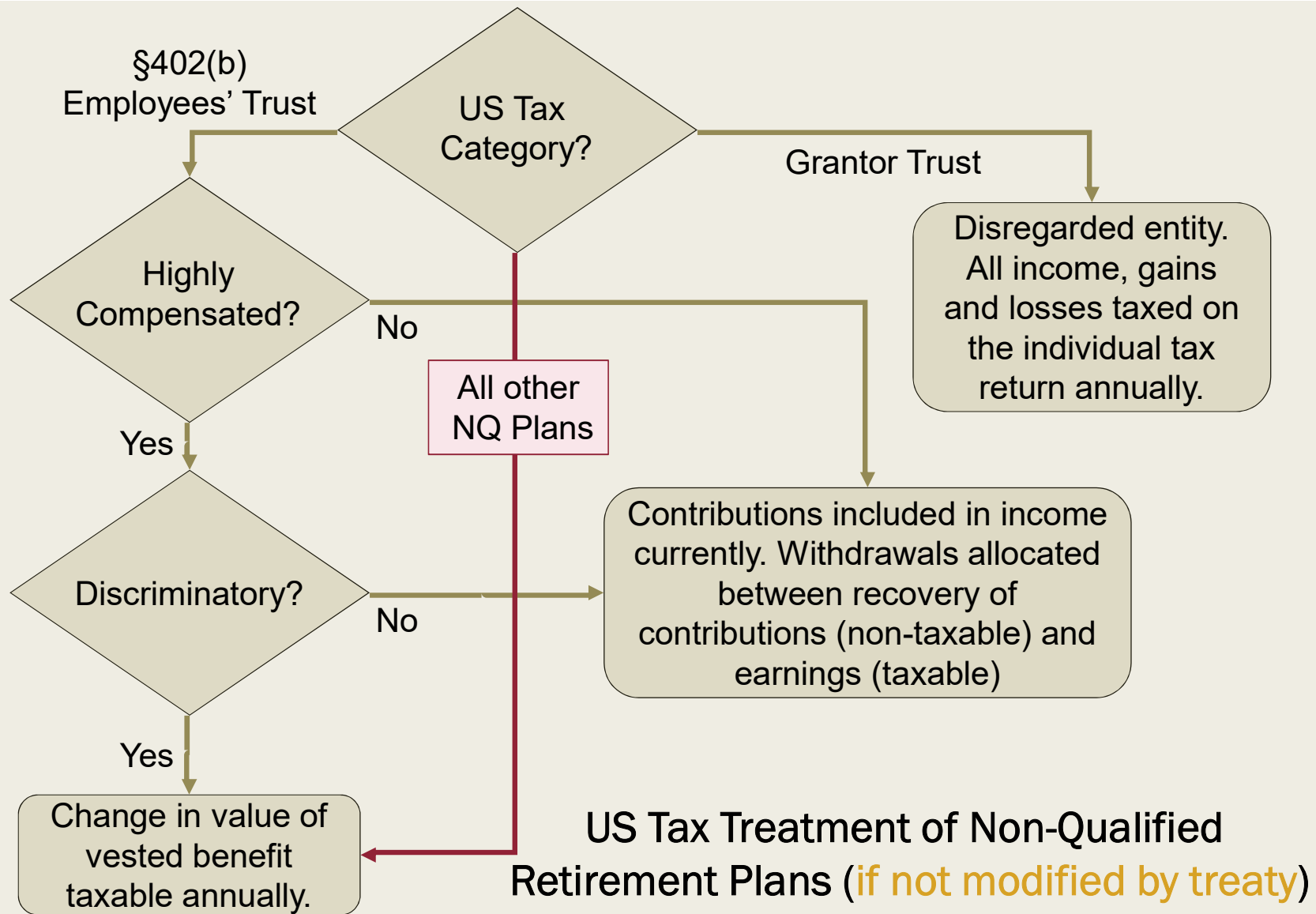
Passive Foreign Investment Company

- No definitive IRS ruling on super
- Most common is 402(b) employee trust and/or foreign grantor trust
 - *Contributions taxed as income*
 - *Possible US taxation of income inside super*
 - *Possible trust reporting requirements*
- Less common: super is privatised social security, exempt from US tax
- Managed Funds: possible PFIC treatment
 - *No IRS rulings on point*
- Double taxation when there is a big timing difference and when US rules treat Australian assets as “foreign” with punitive tax rules
 - *Foreign tax credits expire after 10 years on US return*

How is my Super classified?

Big Picture (but subject to individual circumstances):

- Possibly social security (problems go away)
- If not social security
 - *Non-concessional contributions will generate US tax issues (foreign grantor trust)*
 - *Concessional contributions made through employer likely treatment is taxation of contributions as made. Earnings inside plan taxable in US on withdrawal. (You will be paying US tax even though you have no Australian tax liability)*



Entering the US Tax System

Does filing as if resident in both US and Australia defeat financial and retirement planning in Australia?

- What one system gives, the other takes away
- However, there are investments that work similarly in both countries
 - *Direct shares, property investment, US-domiciled ETFs*
- It may be possible to optimise, but the advice required will be expensive and hard to find

US Tax Reform

Global Intangible Low Taxed Income

What are the Transition Tax and GILTI?

- Transition/Repatriation tax – aimed at Apple
 - *US expat business owners are collateral damage*
- Tax of 15.5% on accumulated “foreign earnings” of CFCs held in cash (8% on the rest)
 - *Individual US shareholders of CFCs pay higher rate*
- Headlines: US has moved to a territorial tax system for corporations
 - *BUT, GILTI re-defines what is US source*
- Transition tax is a one-off (2017); GILTI is ongoing (starting in 2018)
- Trick is to avoid being a CFC (deferral is dead)

Controlled Foreign Corporations

US Tax Reform

Will this ever be fixed? What about TTFI?

- Generally, Americans abroad would be taxed by the US ONLY on US source income
- The devil is in the details
 - *There will be winners and losers*
- TTFI is something you “opt in” to
 - *Requires 3 years of compliance to elect TTFI*
 - *Possible one-time transition tax*
- Current status
 - *Rep George Holding (R – NC) is leading the legislative effort*
 - *Draft bill is being “scored” by JCT*
- Prospects?

How do I renounce or relinquish US citizenship?

- Renounce – done at a US consulate
- Relinquish – performing any “expatriating act” (including renouncing)
- Both are documented by a Certificate of Loss of Nationality (CLN)
 - Cost is USD 2,350
- The process of losing US citizenship is separate from the process of exiting the US tax system
- Expatriating Acts (INA 349) – all require intent to lose US citizenship
 - *Naturalizing in a foreign country after age 18*
 - *Oath of allegiance to a foreign country (or political subdivision)*
 - *Serving in armed forces of another country as an officer*
 - *Employment by a foreign government (if also a citizen)*
 - *Formal renunciation at US consulate*

Exiting the US Tax System

What is the exit tax?

- An exit tax applies only to “covered expatriates” (defined on the next slide)
- Computed as:
 - *Gain on all assets as if sold immediately prior to expatriation – with exemption for first ~US\$700,000 of gains*
 - *Tax on all foreign retirement savings as if distributed immediately prior to expatriation*

Exiting the US Tax System

What is a covered expatriate?

- You're a covered expatriate if you meet *any* of three criteria:
 - *Net worth exceeds US\$2,000,000 (not indexed for inflation)*
 - *Average US tax liability exceeding US\$165,000 over the prior 5 tax years*
 - *Failure to certify (on form 8854) that all US federal income tax obligations have been met for the prior 5 tax years*
- There are exceptions to the first two criteria for those who are dual citizens from birth or who expatriate before age 18½ (conditions apply)

Exiting the US Tax System

What are the mechanics of filing a final US return?

- Final year return is a “Dual Status Return”
 - *File form 1040NR with attached 1040 covering period from beginning of year to day before renouncing*
 - *Married filing joint filing status not allowed if both spouses are NRA*
 - *Attach form 8854 to return and file a copy with IRS office in Philadelphia*

How do I decide whether renunciation is right for me?

- Where are your personal, financial, and emotional ties?
- Is the ability to live and/or work in the US important to you?
- What are the costs of renouncing based on your own personal situation?

Renouncing is permanent – make sure you understand the consequences

Life as a Nonresident Alien (NRA)

What happens to my Social Security?

- Social security can be paid to NRA resident of Australia
 - *US withholding of 25.5%*
 - *Not taxable in Australia (treaty)*
 - *If you have super, you may be subject to Windfall Elimination Provision (WEP) whether you renounce or not*

Life as a Nonresident Alien (NRA)

What happens to my 401(k) or IRA?

- On withdrawal – US tax might be withheld at 30%
 - *However, if you are fully retired or over age 65, withdrawals might qualify as pension payments under Article 18(1) of the tax treaty – meaning that only Australia may tax and zero US withholding*
- Australian tax – appears to be on appreciation only, not original contributions (check with your Australian tax adviser)

Life as a Nonresident Alien (NRA)

Can I still travel to the US?

- You are subject to the same rules as any other Australian
 - *While most have no problem, you can be ruled inadmissible based on US law*
- Travel up to 90 days – Australian citizens are eligible to apply for visa waiver using ESTA
- Longer travel – tourist visas are available.
- To work – if applicable, an E-3 visa grants the right to work in the US for Australian citizens taking up employment that requires a bachelors degree or higher.

Final Thoughts

Hope for the best

- In the short term
 - *TTFI could help some*
- Longer term
 - *treaty re-negotiation will take a decade or more*
 - *US adoption of RBT, and/or FATCA repeal possible, though not likely*

Plan for the worst

- No change
- Further US law changes that ignore impact on nonresident citizens