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United States – Proposed Regs on Taxing Gifts, Bequests from Covered Expatriates

by KPMG LLP's Washington National Tax practice, Washington, D.C. (KPMG LLP in the United States is a KPMG International member firm)

The U.S. Internal Revenue Service (IRS) recently issued proposed regulations relating to the imposition of tax on United States citizens and residents who receive certain gifts or bequests from individuals who relinquished United States citizenship or lawful permanent residence status (i.e., green card holders) on or after June 17, 2008. The proposed regulations concern Internal Revenue Code (I.R.C.) section 2801 and affect taxpayers who receive covered gifts or bequests on or after the date the regulations are published as final regulations.[1]

Why This Matters

Citizens and residents of the United States may be subject to an additional tax under section 2801 on certain gifts or bequests received from certain former citizens and former "green card" holders, and additional filing requirements may apply to such transfers of property. However, payment of this tax and the related filing requirements are postponed until additional guidance is issued by the IRS.

Foreign citizens who are considering obtaining a green card, as well as U.S. citizens who are contemplating giving up their citizenship, should be aware of the section 2801 tax and reporting requirements.

Proposed Regulations

On September 10, 2015, the IRS released a notice of proposed rulemaking in the *Federal Register* concerning a tax on U.S. citizens and residents who receive certain gifts or bequests from individuals who relinquished U.S. citizenship or terminated lawful permanent resident status on or after June 17, 2008. The proposed regulations set forth general rules for the tax imposed by section 2801 of the Internal Revenue Code.[2]

The section 2801 tax applies to any property transferred to a U.S. citizen or resident that qualifies as a covered gift or bequest as defined in section 2801. A covered gift or bequest includes a direct or indirect gift or transfer from a covered expatriate, defined as any individual who meets the definition under I.R.C. section 877A of the expatriate tax regime.

KPMG Note

The definition of "U.S. resident" recipient under section 2801 is based on the domicile status of the individual being in the U.S., as opposed to the income tax definition determined by either the substantial presence or lawful permanent residence tests. Thus, careful planning could provide an opportunity where a non-U.S. citizen is able to relinquish his U.S. domicile status before receiving an otherwise covered gift or bequest.

Exceptions

The proposed regulations provide a few exceptions to the definitions of covered gifts and bequests. Namely, exceptions are available for gifts or bequests transferred to an individual's spouse and taxable gifts reported on a timely filed U.S. gift tax return, as well as property included in the covered expatriate's timely filed U.S. estate tax return, so long as any tax due was paid on time.

Application of the Section 2801 Tax

The U.S. recipient (either a U.S. citizen or resident) is liable for paying the section 2801 tax. Special rules apply to domestic and foreign trusts that receive covered gifts or bequests.

The section 2801 tax is calculated by reducing the total amount of covered gifts and bequests received during the calendar year by the annual gift exclusion limit per-donee (currently $14,000), and then multiplying the net amount by the highest estate or gift tax rate in effect during the same calendar year, currently 40 percent. A credit may be allowed for any estate or gift tax paid to a foreign country on the same transfer of property.

New Form

A new form, Form 708 *United States Return of Tax for Gifts and Bequests from Covered Expatriates*, will be released by the IRS after final regulations have been issued. The form will be used to report and compute any tax under section 2801 relating to covered gifts or bequests received from a covered expatriate on or after June 17, 2008.

The final regulations of section 2801, when issued by the IRS, will include the due date for filing Form 708 and for payment of the section 2801 tax. Individuals affected by section 2801 will be given a reasonable period of time after the final regulations are published to file Form 708 and pay any tax imposed by section 2801.

Footnotes:

1 80 FFR 54447 (https://federalregister.gov/a/2015-22574).

2 Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245 (122 Stat. 1624) (https://www.congress.gov/110/plaws/publ245/PLAW-110publ245.pdf) .

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GMS Video Now Available for Viewing: Same-Sex Marriage and State Tax Filing Following Obergefell v. Hodges

The U.S. Supreme Court's recent landmark decision *Obergefell v Hodges* means that those remaining states that still had a ban on same-sex marriage are now required under the Fourteenth Amendment of the U.S. Constitution to issue marriage licenses to same-sex couples. Marianne Evans and Bob Rothery with the KPMG LLP (U.S.) Washington National Tax practice discuss the impact of this decision on how same-sex married couples file their state tax returns in 2015 and 2016, as well as amended tax returns for prior years. From a global mobility perspective, this has implications for international assignees who are in same-sex marriages with state tax filing obligations. Please see:

Same-Sex Marriage and State Tax Filing Following Obergefell v. Hodges – (app. 8-1/2 minutes)

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