Sacred Trust:

Counselling Clients through the "Trauma of U.S. Citizenship Abroad"

in a FATCAesque World

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Prologue:
"The Reality of U.S. Citizenship Abroad"

Nobody denied that the unintended targets of Congressional legislation aimed at those who supposedly "owe allegiance" to the USA, now assisted by craven foreign governments anxious lest their financial services entities lose access to the US market, are mostly unlikely to do anything at all. ***But the whole idea of universal self-assessment of taxation is to keep the taxpayer in an anxious condition, to make him overpay if possible, but at least not to underpay. Those now faced with an unprecedented, even retroactive, enforcement campaign and who must, if they wish to become compliant and avoid penalty or even prosecution (should they be identified in the future), sacrifice much of their wealth, even become insolvent."***

http://citizenshipsolutions.ca/2013/12/15/what-you-should-consider-before-contacting-a-lawyer/

FATCA Hunt – July 1, 2014 The search for U.S. persons begins

- Financial institutions around the world are now seeking people with U.S. indicia
- The discovery of U.S. indicia requires that people answer certain questions and/or provide certain information
- Some will admit “U.S. person status” and some will deny “U.S. person status”
- The issue is what is required to deny U.S. person status
- Many people are now forced to consider whether they are “U.S. persons”

The FATCA Letter

- If “U.S. indicia” have been found, the client will receive the “FATCA Letter”
- They will be asked to do something – usually complete forms, but some are asked to move their account
- They will agree they are “U.S. persons” or disagree they are “U.S. persons”
- What should you do if you receive a FATCA Letter?

http://citizenshipsolutions.ca/2014/10/29/have-you-received-a-fatca-letter-or-been-warned-of-the-consequences-of-being-a-u-s-person/

The Denial of U.S. Citizenship

The parameters for how to deny U.S. citizenship are found in the Model 1 IGA (FATCA Intergovernmental Agreement)

If one is born in the U.S., "U.S. citizenship can be rebutted with either:

1. A CLN ("Certificate of Loss of Nationality") or;
2. A "Self-Certification" that one is not a U.S. person*

* Which is subject to its own system of rules and complexity

Part 1 – "The Terrible Twos"
It's not ONLY the "Tax", it's the "Trauma"

- Before and after – **Two "OMG" Moments**
- **First – OMG: I'm a "U.S. Person"**
- **Second – OMG: I have to file U.S. taxes**
- Fear, confusion, denial
- Houston, we have a problem
- Help! What should I do?
- It's NOT about making a decision, it's about determining **how to make a decision**

Part 2 – The question is NOT who is a "U.S. person", the question is who is NOT a U.S. person

- Birth or naturalization in the U.S. is only the starting point in the enquiry (Consider whether relinquishment has occurred under S. 349(a) – Immigration and Nationality Act

- Never presume that the children born to U.S. citizens abroad are U.S. persons

- Remember that "Green Card" holders are included

- You may want to send the client to the "Determination of U.S. Personhood Lab" for analysis

Part 3 – The "Determination of U.S. Personhood Lab" – What facts matter?

- Is somebody born in the U.S. still a U.S. person or have they relinquished?

- All facts bear on the question of whether the person intended to relinquish U.S. citizenship at the time of performing the "expatriating act" under S. 349(a) of INA

- The "expatriating acts" defined in S. 349(a) have evolved over the years. But they may include: Naturalization, Oaths, Military Service, Government office or employment, renunciation or treason

Part 4 – You've Got A Live "U.S. Person", What Next? Whether 'tis better to remain a U.S. person or to renounce …

- If you don't know where you're going, any road will do.
- Does the person want to remain a U.S. person or renounce?
- The answer to this question will impact your choice of compliance options.

Part 5 – Exploring Renunciation – AKA the new “Know your client” rule - Objective

- Assets
- Business
- Net worth
- Unrealized capital gains
- Marital status
- Anything and everything
- Criminal record? (they still want to be able to enter the U.S.)
- Do one want their children to be U.S. citizens?
- Would the person be a “covered expatriate”?

Part 6 – Exploring Renunciation – AKA the new “Know your client” rule – Subjective

- Issues of identity (I’ve always thought of myself as American)

- Issues surrounding the primal emotions of fear, anger and betrayal

- Issues surrounding guilt (as a U.S. person I am hurting or a “burden to my family”)

- Issues surrounding being targeted in the “FATCA Roundup” - “It’s unjust, it’s inhumane, I didn’t choose where I was born”

Part 7 – Exploring remaining a U.S. citizen – It's a lot of work and very expensive

- U.S. persons simply do NOT have the same life opportunities that persons of other nationalities have
- Restrictions on retirement planning necessitate VERY specialized financial counselling
- Restrictions on how they can carry on business
- Marriage if only one partner is a U.S. person
- Hefty compliance costs every year
- **How do you like your freedom now?**

Part 8 – Renunciation/death and rebirth – Getting the affairs in order

- Make sure the client has a second citizenship.
- We begin with the end – what does the 8854 look like?
- Does the 8854 tell us the client is covered or not covered?
- If covered because the client has a net worth of 2 million we explore ways of reducing that net worth – **Very common**
- If covered because the average tax bill is too high, we may wait a year or so to allow the average tax bill to decline. – **Very rare**
- If covered because the client can't certify 5 years of tax compliance we help them meet the test of 5 years of compliance. This requires exploring the various compliance options ("streamlined", etc.) and depends on the clients facts. The solution must reflect the client's age, wealth, tolerance for risk, etc. – **Very often**
- **Not all clients are the same.**

Part 9 – Expatriation/renunciation and The "Covered Expatriate" – The Exit Tax triggered

- The rules are technical and complex, but the general principle is that you assume that all property is sold on the day before expatriation – Deemed disposition – Capital gains tax on pretend gain
- Exceptions to capital gains treatment for certain things – can be more or less punitive
- **Be very careful with non-U.S. pensions** and other deferred income items!
- See S. 7701(a)(50), S. 877 and S. 877A of the Internal Revenue Code. It looks more simple than it is.
- "Exit Tax" can result in very significant amounts of tax owing!
- **The price for your freedom may be high. Are you willing to pay that price?**

Part 10 – Expatriation/renunciation – The "Paper Work" triggered

- **"Non-Covered Expatriate"** – Exit Tax does NOT apply
- **"Covered Expatriate"** – Exit Tax does apply
- Be aware of timing requirements in relation to all forms!
- If you fail to file or file late, very bad things can happen …. You can/will become a "Covered Expatriate" which means the Exit Tax applies

(The Horror of Covered Expatriate status)

I will leave it you to investigate this!

Part 11 – Counselling clients through the trauma of U.S. citizenship abroad

- **Sacred trust,** this is an area where clients are extremely vulnerable – **(mistakes can be "life altering")**

- Gives new meaning to the phrase "*Trusted Adviser*" - **(their future is in your hands)**

- It's more about being a life counsellor than a tax or legal adviser – **(when bad things happen to good people)**

- The important question to ask clients is:

  What do you want your life to look like in five years, ten years …

Part 12 - Concluding thoughts …

- It's helpful to work with clients over multiple sessions.

- It's important to emphasize that they must respond to the situation and not react. Clients don't need to make any decisions today! Send them on a vacation.

- Those who counsel U.S. citizens abroad must do a lot of background work before getting to the tax issues!

- Citizenship counselling includes but is not limited to tax counselling

- To repeat! Many of your clients are undergoing degrees of trauma and are in a "reactive mode" **making it difficult for them to think clearly**

As history is made …

- As historians have written: *As goes taxes so goes civilizations*
- U.S. ~~citizenship taxation~~ "place of birth taxation" is unique in the world. What effect will this have on the future of the U.S.A.?
- Consider the following comment at Forbes in relation to London Mayor Boris Johnson's renunciation of U.S. citizenship - February 16, 2015

http://www.forbes.com/sites/robertwood/2015/02/15/savvy-london-mayor-boris-johnson-paid-irs-is-now-renouncing-u-s-citizenship/?commentId=comment_blogAndPostId/blog/comment/1057-33189-10113

Marc - Professor in Europe

“U.S. citizens are now toxic to most all international banks, but apart from that they are toxic and unwanted in business partnerships abroad, as once they hold more than 10% of the business venture, the entire business falls under U.S. tax reporting. That is unthinkable and unacceptable for the other non-U.S. partners, so the U.S. person is systematically excluded from the rapidly growing global economy of start-ups and international business ventures. In many countries banks immediately advise business start-ups that they will not handle their accounts if there is any U.S. participation whatsoever. Knowing these powerful facts, why have you not questioned those responsible for this as to how they justify keeping such self destructive, anti- U.S. person/business laws in place?’