

Renouncing US Citizenship Or Giving Up A Green Card: Why And How To Consider It

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Israel and the United States share a strong bond, and U.S. citizenship or permanent resident status allows access to the largest economy in the world. Why would a dual Israeli-U.S. citizen, or an Israeli who has been granted a U.S. “green card,” ever consider giving that up? Increasingly, the answer is one word: tax.

Unique among global powers, the United States taxes the worldwide income of its citizens and permanent resident status holders no matter where they live. Additionally, the requirement that an Israeli-U.S. citizen or green card holder file an annual U.S. income tax return is not waived by the fact that the United States grants a credit for taxes paid to Israel. In fact, many U.S. citizens living abroad do not actually owe U.S. tax, but they can face very stiff monetary penalties for failing to file required disclosures about non-U.S. assets in a timely manner.

U.S. citizens who do not call America home also face the specter of estate and gift taxes following them outside U.S. borders. Indeed, it is possible for a person who has never been to the United States to be subject to annual U.S. income tax obligations, gift taxes on large gifts made during life, and estate tax upon death. For example, many children born abroad to U.S. parents are automatically U.S. citizens and are therefore subject to U.S. federal tax law. Individuals born in the United States are also U.S. citizens subject to U.S. tax, even if they left as infants and have never returned. Israelis who have held U.S. green cards are subject to U.S. income tax and reporting obligations unless they properly terminated their status and filed final U.S. tax returns.

None of this is new, but what is novel is increased and more sophisticated enforcement. The U.S. *Foreign Account Tax Compliance Act* (FATCA) went into full effect on July 1, 2014, mandating international information-sharing on U.S. individuals with non-U.S. bank accounts. Israel’s Supreme Court rejected a challenge to FATCA implementation in September 2016, so Israeli banks now must automatically disclose U.S. account holders to the Ministry of Finance, which exchanges data with the U.S. Internal Revenue Service (IRS). U.S. individuals in Israel—estimated by some to comprise as much as five percent of the population—may be facing sleepless nights in anticipation of a notice from the IRS asking why they have not filed.

The solution to this predicament often comes in the form of renouncing U.S. citizenship or turning in one’s green card. As U.S. lawyers who have helped many individuals give up U.S. citizenship or green card status, we find that clients are often emotionally and financially drained by the process of becoming U.S. tax-compliant, staying compliant, and continually planning for cross-border tax issues. While the IRS currently offers amnesty programs to help reduce penalties for taxpayers who come forward before being contacted, getting compliant is not easy. Many U.S. individuals who might not otherwise consider renouncing eventually find that the benefits of keeping U.S. citizenship do not outweigh the headaches.

Renunciation carries serious consequences, including tax and immigration traps; any Israeli considering it must decide if it is the right choice and then get competent advice before going through the process.

Renouncing U.S. citizenship is permanent: once the U.S. Department of State issues a Certificate of Loss of Nationality (COLN), the only way to regain U.S. status is through the long and difficult process of naturalization. Further, patriotism aside, U.S. citizenship does provide certain benefits that can prove very valuable depending on an individual's circumstances: protection and consular services abroad, the right to vote in U.S. elections, access to the U.S. job market, and an unquestionable right to travel to the United States at any time. Renouncing provides relief from the U.S. tax regime, but it is not for everyone.

If an Israeli decides to renounce, he or she must take precautions to avoid the imposition of the U.S. exit tax. Under the law in effect since 2008, a renouncer can become a "covered expatriate" by failing one of three key tests. If a renouncer is deemed a covered expatriate, he or she is treated as having sold all property for "fair market value" the day before renunciation and is taxed on the imputed gain in those assets (less a credit of \$699,000). Gifts that the covered expatriate later makes to U.S. citizens or residents during life or after death also become taxable in the hands of the recipient at a rate of about 40%. A renouncer becomes a covered expatriate when he or she has a net worth of \$2 million or more at the time of renunciation; has an average annual U.S. net income tax liability of more than \$162,000 in the five years ending before the date of expatriation; or fails to timely certify to the IRS that he or she complied with all U.S. federal tax obligations for the five years preceding the date of expatriation.

There are limited exceptions to the U.S. exit tax. The most important is that a renouncing Israeli who was born a dual citizen and who still lives in Israel is not subject to the net worth or tax liability tests. Individuals who have just turned 18 also enjoy some special exemptions as it is generally difficult to renounce as a minor and a parent or guardian cannot renounce on a child's behalf. Every renouncer will always be subject to the compliance test. Thus, avoiding the exit tax requires that a renouncing individual is U.S. tax-compliant in all circumstances.

Assuming a renouncer takes the tax compliance steps need to avoid imposition of the exit tax, the actual process of renouncing one's U.S. citizenship also has immigration issues of which to be wary. The U.S. *Immigration and Nationality Act* includes a provision (known as the "Reed Amendment") that denies a former citizen reentry to the United States if the U.S. Attorney General determines that the individual renounced for the purpose of avoiding U.S. tax. This is an example of why potential renouncers need qualified advisors: what a renouncer says during his or her exit interview at a U.S. embassy or consulate is critical.

Many individuals pursuing renunciation request that a U.S.-trained and licensed attorney accompany them to the interview. This is possible at the discretion of the individual embassy or consulates. At minimum, consulting with U.S. counsel before an exit interview will help avoid legal traps and make what can be an intense, emotional event less so.

In the end, renouncing U.S. citizenship requires careful consideration. U.S. immigration and tax pitfalls are scattered throughout the process, so both understanding the repercussions of renouncing and proceeding carefully are imperative to a smooth departure from the U.S. club and its membership fees.

Moody's Gartner will be hosting a [free webinar on March 30](#) for those who would like to find out more about the pros and cons of renouncing, and whether or not it may be the right decision for them. If you would like to attend, we'd be happy to answer your questions, but would ask that you please register in advance.