COMPARISON OF SAVING CLAUSE PROVISIONS IN BILATERAL U.S. TAX TREATIES

Summarized below are the different types of saving clause provisions in bilateral U.S. tax treaties currently in force. The first four tables are lists of U.S. income tax treaties that:

(1) Contain saving clauses that preserve the right of the United States to tax current citizens but do not expressly mention former citizens;

(2) Contain saving clauses that expressly apply to current citizens and to former citizens (for 10 years after the loss of citizenship if such loss had as one of its principal purposes the avoidance of tax), but do not expressly mention former long-term U.S. residents;

(3) Contain saving clauses that expressly apply to current and former citizens after the loss of citizenship regardless of the reason for such loss; and

(4) Contain saving clauses that expressly apply to current citizens, and to former citizens and former long-term U.S. residents for 10 years after the loss of citizenship if such loss had as one of its principal purposes the avoidance of tax.

The last two tables are lists of U.S. estate and gift tax treaties that:

(1) Do not expressly apply to former citizens or former long-term residents; and

(2) Contain saving clauses that expressly apply to current citizens and to former citizens (for 10 years after the loss of citizenship if such loss had as one of its principal purposes the avoidance of tax), but do not expressly mention former long-term U.S. residents.

These tables are based on information provided by the Treasury Department (See the April 7, 2000, letter from the Treasury Department at A-20). The tables have been updated by the Joint Committee staff to reflect changes in treaties since 2000.

Appendix Table 1.–Income Tax Treaties That Contain Saving Clauses That Preserve the Right of the United States to Tax Its Current Citizens But Do Not Expressly Mention Former Citizens or Former Long-Term Residents

Treaty Partner	Year Treaty/ Protocol Signed	Article No.	Notes
Belgium	1970	23(1)	
Bermuda	1986	4(1)	
China	1984	Protocol 2	(1)
Egypt	1980	6(3)	
Greece	1950	XIV	
Iceland	1975	4(3)	
Japan	1971	4(3)	
Korea	1976	4(4)	
Morocco	1977	20(3)	
Pakistan	1957	II(1)(i)	(2)
Philippines	1976	6(3)	
Poland	1974	6(3)	
Romania	1973	4(3)	
Trinidad and Tobago	1970	3(3)	
USSR	1973	VII	(3)
United Kingdom	1975	1(3)	

Notes to Appendix Table 1:

(1) The Senate Foreign Relations Committee Report and the Treasury Department Technical Explanation to the U.S.-China income tax treaty provide that the saving clause in that treaty is intended to apply to former U.S. citizens whose loss of such status had as one of its principal purposes the avoidance of U.S. tax.

(2) The U.S.-Pakistan treaty does not contain a specific saving clause. Instead, the treaty provides that a resident of Pakistan does not include a U.S. citizen. The intent of the provision is to preserve the right of the United States to tax its citizens.

(3) The U.S.-U.S.S.R. income tax treaty that was signed in 1973 remains in effect for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan (See Rev. Proc. 93-22A).

Appendix Table 2.–Income Tax Treaties That Contain Saving Clauses That Explicitly Apply to Current Citizens and to Former Citizens (for 10 Years After the Loss of Citizenship if Such Loss Had as One of Its Principal Purposes the Avoidance of Tax) But Do Not Expressly Mention Former Long-Term Residents

Treaty Partner	Year Treaty/ Protocol Signed	Article No.	Notes
Australia	1982	1(3)	(1)
Austria	1996	1(4)	(1)
Barbados	1984	1(3)	(1)
Canada	1983	XXIX(2), Protocol; XIII(1)	(1)
Cyprus	1984	4(3)	(1)
Finland	1989	1(3)	(1)
France	1994	29(2)	(2)
Germany	1989	Protocol 1(a)	(2)
India	1989	1(3)	(1)
Indonesia	1988	28(3)	(1)
Ireland	1997	1(4)	(1)
Israel	1975	6(3)	(1) & (3)
Italy	1984	1(2)(b), Protocol 1(1)	(1) & (4)
Jamaica	1980	1(3)	(2)
Luxembourg	1996	1(3)	(1)
Mexico	1992	1(3)	(1)
Netherlands	1992	24(1)	(2) & (5)
New Zealand	1982	1(3)	(1)
Norway	1971	22(3), Protocol IX	(2)
Portugal	1994	Protocol 1(b)	(1) & (3)
Spain	1990	1(3), Protocol 1	(1) & (3)
Sweden	1994	1(4)	(1)
Tunisia	1985	22(2)	(1) & (6)
Turkey	1996	1(3)	(1)

Notes to Appendix Table 2:

(1) The tax avoidance motive is determined by whether there is avoidance of any tax.
(2) The tax avoidance motive is determined by whether there is avoidance of income tax.
(3) Competent authorities shall consult on the purpose of the loss of citizenship.
(4) The Senate has given its advice and consent to a new treaty and protocol with Italy, signed August 25, 1999, which is awaiting ratification by Italy. The new treaty and protocol's saving clause (Article 1(2) and Protocol 1(1)) would explicitly include former citizens and former long-term residents whose loss of such status had as one of its principal purposes the avoidance of tax.
(5) The saving clause does not apply to nationals of the Netherlands.
(6) Tax avoidance motive must be acknowledged by the taxpayer or determined by a court. There is also no limit on the number of years that a country may tax its former citizens.

Appendix Table 3.–Income Tax Treaties That Contain Saving Clauses That Explicitly Apply to Current Citizens and Former Citizens After the Loss of Citizenship Regardless of the Reason of Such Loss But Do Not Mention Former Long-Term Residents

Treaty Partner	Year Treaty/ Protocol Signed	Article No.	Notes
Czech Republic	1993	1(3)	(1)
Hungary	1979	1(2)	(1)
Kazakhstan	1993	1(3)	(1)
Russian Federation	1992	1(3)	(1)
Slovak Republic	1993	1(3)	(1)
Switzerland	1996	1(2)	(1)
Ukraine	1994	1(3)	(1)

Notes to Appendix Table 3:

(1) The treaty contains no restriction on the number of years that either country may tax a former citizen and no requirement that the former citizen expatriated for a tax avoidance purpose.

Appendix Table 4.–Income Tax Treaties That Contain Saving Clauses That Explicitly Apply to Current Citizens and to Former Citizens and Former Long-Term Residents for 10 Years After the Loss of Such Status if Such Loss Had as One of Its Principal Purposes the Avoidance of Tax

Treaty Partner (1)	Year Treaty/ Protocol Signed	Article No.	Notes
Denmark	1999	1(4)	
Estonia	1998	1(4)	
Latvia	1998	1(4)	
Lithuania	1998	1(4)	
Slovenia	1999	1(4)	
South Africa	1997	1(4)	
Thailand	1996	1(2)	
Venezuela	1999	1(4), 17(3), Protocol 1	(2)

Notes to Appendix Table 4:

(1) The Senate has given its advice and consent to ratification of a new U.S. income tax treaty and protocol with Italy (signed August 25, 1999). The treaty and protocol are currently are awaiting ratification by the Italian government. The new treaty and protocol (Article 1(2), Protocol 1(1)) contain a saving clause provision which explicitly would include former citizens and former long-term residents for 10 years if the loss of such status had for one of its principal purposes the avoidance of U.S. tax.

(2) Former long-term residents are addressed in the Limitation on Benefits provision of the U.S.- Venezuela income tax treaty (Article 17(3)), which denies such persons the benefits of the treaty for 10 years if the loss of such status had for one of its principal purposes the avoidance of U.S. tax. The effect of this provision is to preserve the right of the United States to tax such former long-term residents.

Appendix Table 5.–Estate and Gift Tax Treaties That Do Not Explicitly Preserve the Right of the United States to Tax Former Citizens or Former Long-Term Residents

Treaty Partner	Year Treaty Signed	Article No.	Notes
Australia	1953	V(1)	(1) & (2)
Finland	1952	IV(1), V(1)	(1) & (3)
France	1978	8	(4)
Greece	1950	VI(1)	(1) & (3)
Ireland	1949	V(1)	(1) & (3)
Italy	1955	V(1)	(1) & (3)
Japan	1954	V(1)	(1) & (4)
Netherlands	1969	9	(3)
Norway	1949	V(1)	(1) & (3)
South Africa	1947	IV(2), V(1)	(1) & (3)
Switzerland	1951	III, IV (1)	(1) & (3)
United Kingdom	1978	5(1)(b)	(4)

Notes to Appendix Table 5:

(1) The treaty does not have an explicit saving clause. However, the general structure of the treaty allows the United States to tax its citizens, provided a foreign tax credit is allowed for tax imposed by the other country on property situated in that other country.

(2) The United States has an estate tax treaty and a gift tax treaty with Australia, both of which were signed in 1953.

(3) The treaty covers estate taxes.

(4) The treaty covers both estate and gift taxes

Appendix Table 6.–Estate and Gift Tax Treaties Containing Saving Clauses That Explicitly Apply to Current Citizens and to Former Citizens for 10 Years after the Loss of Citizenship if Such Loss Had as One of its Principal Purposes the Avoidance of Tax (Including Income Tax), But That Do Not Explicitly Mention Former Long-Term Residents

Treaty Partner	Year Treaty/ Protocol Signed	Article No.	Notes
Austria	1982	9(1)	(1)
Denmark	1983	1(3)	(1)
Sweden	1983	1(3)	(1)

Notes to Appendix Table 6:

(1) The treaty covers both estate and gift taxes.