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A SWISS BANK ACCOUNT WAS ONCE SYNONYMOUS WITH WEALTH, MYSTERY

and individual sovereignty. Offering investors complete anonymity, this fabled financial fortress seemed unassailable. It placed assets far beyond the reaches of creditors, tax collectors, ex-spouses and plaintiffs.

Today, this and similar strongholds in offshore havens such as Panama, Liechtenstein and the Cayman Islands are under siege. With broad powers born out of policy wars against drugs, terrorism and money laundering, the United States can unearth and examine the most private financial matters of its

citizens almost anywhere in the world. Yet, despite its best efforts, the government has either failed or chosen not to eliminate some of these safe harbors.

In the pages that follow, we examine the current state of offshore asset protection. We scrutinize the various legal options investors can still use to safeguard their wealth in foreign countries. And we recount the stories of individuals who, for a variety of reasons, chose to relinquish their U.S. citizenship.

—*Douglas McWhirter*

BY MICHELLE SEATON

Overseen OVERSEAS

The United States government has tightened the screws on investors seeking offshore havens for wealth.

STEPHAN JAY LAWRENCE THOUGHT HE HAD THE PERFECT solution to his legal problems. When the market crashed in October 1987, Lawrence, a stock options trader, received a \$20 million margin call from his clearing firm, Bear Stearns. He disputed the amount, which bought him 42 months of leeway, but an arbiter and then a federal court eventually ordered him to pay the investment bank the full amount.

Undaunted, Lawrence decided to move most of his liquid assets, estimated at more than \$7 million, into a foreign asset protection trust on the Isle of Jersey. Bear Stearns pursued his assets for several more years, but when the firm got close, Lawrence moved them again, this time to the tiny island nation of Mauritius in the Indian Ocean. There he appointed a new trustee to oversee the money—someone he claimed was a complete stranger—and told Bear Stearns that he had relinquished control of the trust entirely.

Lawrence then filed for personal bankruptcy. He was certain this would leave Bear Stearns with no recourse to his assets. He claimed, during 11 hours of depositions held as part of the bankruptcy proceedings, that he had no idea what had happened to the trust, nor who was in charge of it. He said he could not recall whether he had received any disbursements from it, and claimed that he was no longer in communication with the trustee. At one point he even claimed that the trust had been set up as a charity.

Judge A. Jay Christol of the U.S. Bankruptcy Court for the Southern District of Florida was not amused. He wrote in his judgment: “A bankruptcy

discharge for this type of debtor should be as rare as the dodo bird which once graced the shores of Mauritius.” In the court’s opinion, no one would give away the bulk of his assets to a stranger in a foreign country. In September 1999, Christol found Lawrence in contempt and ordered him to repatriate his assets and settle the bankruptcy. In the meantime, Lawrence was racking up \$10,000 a day in court-imposed contempt charges. When Lawrence failed to show up for his next court date, Christol lost patience and ordered him held in civil contempt.

As *Worth* went to press, Lawrence sits in a Miami jail cell. He continues to appeal the judge’s order, and is trying to have his case designated a criminal matter in the hope that this will limit his time in jail.

you can run . . .

This is the new face of offshore asset protection. Leveraging powers it has garnered over the past two decades, the U.S. government is working with other nations and banks around the world to sharply limit the ability of its citizens to shelter assets anonymously offshore. While legal options for depositing assets in foreign countries still offer some protection from an aggressive plaintiff’s attorneys and relentless ex-spouses (see “Safe Harbors,” page 68), the IRS requires that U.S. citizens report these transactions thoroughly. “Because of the Patriot Act, it seems that most wealthy clients are bringing their money back to

the U.S. because of the onerous reporting requirements,” says Jay Adkisson, a lawyer and coauthor of *Asset Protection*, a guide to legal offshore strategies. “Indeed, I have many wealthy clients and only a scant few have any significant assets offshore. To the extent that they had offshore accounts, most have since closed their accounts and now just keep their money in the United States.”

Despite the current legal and political climate, investors persist in embracing various options offshore. The increasing litigiousness of American society and the ballooning punitive judgments awarded to plaintiffs in court cases motivate some. Others react to what they perceive to be a dangerous, unchecked expansion of government power. As part of its highly publicized war on drugs during the 1980s, the Reagan administration expanded the Bank Secrecy Act, giving broad powers to prosecutors to seize the assets of defendants and paw through their financial records during the course of an investigation. Today those powers continue to grow. “It now covers 130 specific crimes that can be linked to money laundering and result in seizure of assets,” says Robert Bauman, a former congressman from Maryland who is now a member of the executive committee of the Sovereign Society, an online clearinghouse where people discuss and protest the financial transparency demanded by U.S. law. “If you pollute a wetland and make a profit from it, you can be convicted of money laundering. In fact, according to the Supreme Court, the crime of money laundering doesn’t even require an overt act.”

Moving money out of nations considered politically or financially undesirable is as old as capital itself. For centuries, both American and global investors have found the United States a safe harbor for their wealth. In the 1980s and 1990s, however, a number of libertarian-minded investors, disenchanted with changes in the landscape of U.S. regulations, began to move some of their money to accounts in Switzerland, Panama, Liechtenstein and other nations. Sensing an opportunity, the governments of some small island nations rewrote their laws to attract offshore investors. Timothy Scrantom, a senior partner of Ten State Street, a Charleston, S.C., law firm specializing in asset protection, helped countries such as Grenada, the Seychelles, Iceland, Fiji, the Dominican Republic and St. Vincent write investor-friendly banking laws. “It was a race to the bottom,” admits Scrantom, who now advises some of these same governments on how to avoid money-laundering schemes.

At the time, the laws Scrantom wrote were consistent in tone: strict on privacy and lax on the documentation needed to establish a trust or corporation. More importantly, though, they were universally antagonistic to foreign jurisdictions. Some laws permitted the creation of trusts that were nothing more than pieces of paper, while investors could house and manage the money in another bank in another country under another name.

Capital, both above-board and otherwise, flooded into these havens from around the world. Financial planners in the United States began selling the idea of hiding

money in these countries to avoid taxes or to conceal it from creditors and former spouses. Some sold cookie-cutter trusts for \$10,000 each. These one-size-fits-all trust structures, of dubious legal merit, could be set up in a few days. Other pundits, such as Terry Neal, author of *The Offshore Advantage*, held expensive seminars to teach

top view

SWISS BANK ACCOUNTS, multiple passports and Cayman Islands trusts

once placed individual wealth safely beyond the reach of creditors, trial lawyers and even tax authorities. But those days are gone. The federal government, working with other nations and foreign banks, has put an end to many popular offshore shelters. Yet, for investors seeking various degrees of protection from creditors and lawsuits, legal options remain.

customers how to hide their money in offshore trusts. (According to his own website, in April 2004 Neal pled guilty to trying to defraud the U.S. government of taxes.) Jerome Schneider was perhaps the most brazen of these gurus. He bought full-page, full-color ads in magazines touting his system for avoiding U.S. taxes. For \$100, customers could buy a set of books and tapes called “Finding Your Own Offshore Wealth Haven.” Last December, a San Francisco judge sentenced Schneider to six months in prison for conspiracy to defraud the IRS.

The offshoring frenzy hit a wall in

external revenue service

ALL U.S. CITIZENS must pay taxes on their worldwide income, and that specifically includes income from offshore investments. “The law says that no matter where you live in the world or where your income is sourced, you are liable every year to file your 1040 form,” the Sovereign Society’s Robert Bauman says. “That means the IRS at least has to know about your offshore investments.”

If you have an offshore bank account that has had more than \$10,000 in it at any time over the tax year, you must declare it on Schedule B of your income tax return. You also need to fill out a more detailed form—TDF 90-22.1—and file it with the Treasury by June 30 of the year after your reporting. “If you do not comply with either of those reporting requirements, the penalties are extremely serious, including, in certain cases, criminal penalties,” advises attorney Michael Chatzky, an asset protection specialist in La Jolla, Calif. —John Ferry

November 1994 when *Forbes* published an article that described how high-profile American billionaires had surrendered their U.S. citizenship and departed for more tax-friendly nations (see “The Perpetual Traveler,” page 76). Congress reacted with outrage. In 1995, the House Ways and Means Committee proposed legislation to punish U.S. citizens who renounced their citizenship for tax purposes. Larry Heller, partner in the Los Angeles office of the international law firm of Bryan Cave, testified at those hearings, challenging several of the proposed laws, including a hefty exit tax for expatriates. “There was a lot of misinformation about people expatriating for tax purposes. Really, only a handful of people do that,” Heller claims.

Over the protests of people such as Heller, Congress passed the Illegal Immigration Reform & Immigrant Responsibility Act in 1996. Although the law has proven to have more bluster than bite, something substantive did emerge from congressional hearings on expatriation. Heller recalls that one lawyer in particular boasted of having set up hundreds of trusts for his clients who were considering giving up their citizenship. “Someone in the IRS took note of that number and found that there was no paperwork filed on any of those trusts,” he says. Consequently, the 1996 legislation included a new reporting regulation for grantors of foreign trusts. People who opened offshore trusts were required to file Form 3520 with their income taxes each year, listing the name of any foreign trust, any co-owners and the estimated value of the trust. “So people thought, ‘Well, I won’t file the form and if I get caught, I’ll just pay the fine,’” says Michael Chatzky, a partner in the La Jolla, Calif., firm of Chatzky and Associates, which specializes in asset protection services. He represents many clients who have—or had—offshore trusts. Prior to the 1996 legislation, failing to report an offshore trust carried a fine of \$1,000 per offense. The new law imposed a much heavier penalty—35 percent of the assets in the offshore account. “Now I’m emphatic that my clients fill this form out in a timely manner,” Chatzky says. “It’s no longer a game of hide and seek; it’s a game of show and tell.”

Altering the rules of that one game changed the entire landscape of foreign asset protection. Perhaps the most important reason individuals had for protecting money in offshore trusts was to hide it from creditors—often either plaintiffs in multimillion dollar lawsuits or ex-spouses bearing court orders. Once the IRS could theoretically compel people to list their worldwide holdings for tax purposes, lawyers began to use this information as a tool in their litigation. “One of the first things a creditor will do is subpoena your tax records, and that’s a road map to your assets worldwide,” Adkisson says. That does not guarantee a creditor will get your tax records, but if he does, he can ask a judge for a repatriation order. Debtors who ignore this order could face a contempt of court charge and jail. In several precedent-setting cases, including the one involving Lawrence, judges have shown that they will cheerfully send individuals to prison until they repatriate their assets—no matter how long it takes.

... but you can't hide

This assumes that tax evaders or those who owe money actually report their foreign assets to the IRS. If they never admit they have money stashed away in an offshore trust, catching them becomes difficult. Many offshoring nations pride themselves on their privacy regulations.

Despite pressure from the Treasury Department and governments around the world, many offshoring nations refused to cooperate with international efforts to track down tax evaders and money launderers during the late 1990s. Scrantom, who helped these nations write the privacy laws governing foreign-held assets, was not surprised that his former clients refused to bend to U.S. pressure. “For many of these places it’s their only industry. What else are they going to do to make money?”

Ultimately, though, the offshoring nations did back down. The United States, working in tandem with a coalition of European tax authorities, established several treaties with the governments of tax havens that soften privacy rules and force banks in these nations to give up tax evaders or freeze accounts when faced with a court order from the U.S. Justice Department. The IRS also signed qualified intermediary, or QI, agreements directly with banks doing business in offshore havens. In return for collecting and filing information on their U.S.-based customers with the IRS, QI banks gain several regulatory advantages in their dealings with the IRS and the Treasury Department. QI banks also have access to the U.S. financial markets.

By December 2000, almost every financial institution in some four dozen tax refuges—including the Caymans, the British Virgin Islands, Switzerland and Liechtenstein—had signed on. Between the tax treaties and the QI agreements, the Treasury Department has effectively extended the know-your-customers provisions of the Bank Secrecy Act into the world's erstwhile tax havens. With a court order or a money laundering conviction in hand, a U.S. government official can freeze virtually any account almost anywhere in the world. "Of

information on U.S. citizens who hold credit cards issued by offshore banks. After a token squabble in the courts, the card companies complied and allowed the IRS to search transactions of those cardholders suspected of evading taxes or of living beyond their means.

capital intentions

Today an investor who, for example, inquires about the best way to form an offshore trust will likely face intense scrutiny. Heller's firm screens potential clients to ensure that they have complied with IRS reporting standards in the past and insists that they do so in the future. "We want to make sure that they aren't removing assets away from creditors. We have to know that what they're doing is legal."

"People are amazed when trying to open a bank account here in Panama," says Derek Sambrook, a financial advisor with Trust Services in Panama. "In many cases it's easier to open an account in Miami than it is here. In some cases they've tightened the screws too much." According to Heller, the Cayman Islands is no better. "It's a different world today than it was 10 years ago," he says. "They want references from you and letters of recommendation from your bank. They want to know how you made your money."

The 9/11 terrorist attacks delivered perhaps the final blow to Americans who want to hide assets offshore. The Bush administration quickly connected clandestine worldwide banking activities of any kind with terrorism. It was easy to link terrorism to money laundering; the step from money laundering to offshore tax havens was a small one. The new emphasis on security set the stage for the Patriot Act, which requires financial institutions, now broadly defined, to file a Suspicious Activity Report whenever anyone makes a transfer of more than \$10,000 to or from certain banks in certain countries. These institutions must provide information on these transfers but cannot tell any customer that he or she is under investigation.

While challenges to the offshore asset protection industry abound, no one feels that it is entirely finished. "Offshoring has been around for 500 years, and it has a place in the global economy," Scramton says. It will continue to thrive, he adds, but without the sums of American money it has seen in the past 15 years, and, at least temporarily, without as much U.S. corporate money. The American Jobs Creation Act of 2004 offers tax breaks to corporations that move their offshore investments

"BECAUSE OF THE PATRIOT ACT, it seems that most wealthy clients are bringing their money back to the U.S. . . ."

course, we try to resist these things," says Robert Vrijhof, senior partner of the investment firm Weber Hartmann Vrijhof & Partners in Zurich. "It has to be a crime in Switzerland before we seize any accounts. You have to deliver a verdict from a [Swiss] judge for money laundering," he says. Scramton finds this assertion amusing: "For years I've told people that it's easier to freeze accounts in Switzerland than it is in Delaware."

Meanwhile, in 2000, the IRS asked Visa and American Express to release

back to the United States. As a result, companies are planning to repatriate tens of billions of dollars. "That exodus will probably be offset by the Chinese, who are aggressively moving their money into these havens to avoid taxes," Adkisson says. Offshoring will always exist, unless other countries follow the U.S. model of taxing assets worldwide and changing their laws to seek out tax evaders, he argues.

Americans still legally utilize offshore investment tools sanctioned by the IRS, such as bank accounts, trusts and offshore companies. However, the anonymity that these options offer is now limited and the price for noncompliance with current asset protection laws can be steep. "No one is going to cheat on their taxes if there's a chance the foreign bank is going to turn them in," Adkisson observes. "The heck with that." ■

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safe

BY JOHN FERRY

HARBORS

Despite the United States government's crackdown, legal options abound for those seeking to shelter assets abroad.

THE AVERAGE NEW YORK CITY OBSTETRICIAN HAS ENDURED eight lawsuits, according to Robert Lambert, a consultant with Asset Protection. Lambert's job is to help these doctors, and others who may be subject to frivolous lawsuits or other claims, protect their wealth. "We have a whole industry in America of lawyers looking to rip people off, and as the government and the court system are not going to take care of you, my clients take the matter into their own hands," the New York-based advisor explains. "They say, 'I'm not going to be vulnerable to anyone at any time, ever again.'"

Achieving invulnerability here in the world's most litigious country is no easy task. However, individuals who move their assets overseas can significantly reduce their exposure. The simple offshore bank account is perhaps the most well-known tool for doing this, but there are other effective strategies, suitable for a range of objectives and circumstances. These include establishing offshore trusts, setting up a company abroad or obtaining insurance from

a foreign company. While these approaches no longer provide the level of safety and anonymity they did as recently as 15 years ago, they can still make it much more difficult, and expensive, for our legal adversaries to obtain the type of financial information they need to press their claims.

By domiciling assets in foreign locales, far from attorneys and their investigators, individuals can lower their risk of a lawsuit, according to Michael Chatzky, an attorney in La Jolla, Calif., who specializes in international wealth protection. Certain offshore strategies, he explains, “move the assets off the radar screen, so a private investigator trying to find out what kind of assets I have would not come across them, unless he finds a financial statement somewhere.”

For nearly two decades, the U.S. government has attempted to discourage people from hiding assets offshore, and the Treasury Department requires that offshore asset protection strategies

(depending on the type of investment) several options remain available.

The primary benefit of offshoring derives from jurisdictional immunity. This means, essentially, that courts in other countries do not recognize U.S. legal judgments. Those trying to seize an individual’s offshore assets must re-litigate in the country where their target has his or her money. They must hire a legal team in that country and navigate the entire administrative process of presenting a case from scratch. “By the time they litigate their claim in the other jurisdiction, they will have wasted all the money they might have gotten,” says Robert Bauman, a member of the executive committee and legal counsel for the Sovereign Society, an organization that advises wealthy individuals on investing overseas. “Instead they may say, ‘Why don’t we settle at 10 cents on the dollar?’”

If the cost of an offshore legal fight does not dissuade a creditor or plaintiff, then roadblocks built into the actual legal system of the jurisdiction in which the assets reside may do so. The legal codes of popular offshore asset shelters such as Switzerland or Panama favor asset protectors. For example, the country may simply not recognize a case brought by a foreign person trying to get at assets domiciled there, or it may have a short statute of limitation period. In the Cook Islands, for example, a plaintiff must initiate a claim within one year.

offshore bank accounts

The offshore bank account is the first tool Bauman recommends to people seeking to protect their assets. “With that you can use your bank as an investment service,” he says. “The bank can buy in your name, and you get around all the SEC rules that restrict Americans’ rights to buy foreign stocks directly, or mutual funds or bonds.”

“THEY HAVE TO CONVINC ME that the way they made their monies was done in a decent manner and fashion.”

be as transparent as possible. (See “Overseen Overseas,” page 60.) Despite the government’s efforts, there are still ways to place assets beyond the reach of investigators and creditors, while complying with U.S. tax and reporting laws. In general, as long as those who shelter their assets report the offshore holdings to the Internal Revenue Service (and to the Treasury,

The Swiss bank account remains the classic offshore device. Switzerland has a long history of respecting individual financial privacy, and its legal and financial systems are renowned for their stability. “No one can just go snooping around and ask a bank for information and expect it to comply,” says private banker Robert Vrijhof, of Weber Hartmann Vrijhof & Partners in Zurich.

“The cheapest way of protecting yourself as a U.S. citizen is to have an offshore account,” adds Thomas Fischer, head of international client relations at Jyske Bank Private Banking in Copenhagen. While Denmark does not have the stringent banking secrecy laws in place that Switzerland and other countries can boast, investors can gain a degree of asset protection simply by placing their wealth in such a jurisdiction outside the United States. “We wouldn’t even respond if a [U.S.] lawyer wrote to us asking to freeze an account,” Fischer admits. “It would have to go through the Danish legal system. It would be a very lengthy and expensive process for an American lawyer to get a Danish lawyer to get an injunction.”

top view

DEPOSITING ASSETS IN OFFSHORE ACCOUNTS is legal under U.S. law,

offering investors some degree of protection. Overseas bank accounts, trusts, businesses

and life insurance products are the most common methods of shielding wealth from

U.S. litigants, but investors must be wary of violating strict IRS regulations.

Individuals can also glean other advantages by depositing funds in foreign banks. “The dollar has been falling for the last two or three years, so U.S.-based clients have made a lot of money just being outside of it,” Fischer explains. “Meanwhile, they also have

Jacobs, a Prairie Village, Kan.-based advisor and publisher of the newsletter *International Wealth Protection Monitor*.

With these instruments, a grantor directs a trustee based in an offshore haven to take legal control of his assets and manage them for the good of his beneficiaries. “With a trust,” Bauman points out, “you really do have to surrender control of your assets to the trust and the trustee, but it is a very good offshore asset protection tool.”

BY HIDING ASSETS FROM ATTORNEYS and their investigators in foreign locales, investors lower their wealth profiles, and therefore, the argument goes, the risk of being sued.

access to bonds throughout Europe, Eastern Europe and Asia with higher yields than they would get in the U.S.”

While opening an offshore bank account is relatively easy, Americans must still clear certain hurdles. Vrijhof says his bank likes to meet all of its potential clients in person. “They have to convince me that the way they made their monies was done in a decent manner and fashion.” But larger private banks may not require face time. “An account can be set up in a matter of a couple of days,” Fischer says. “The client doesn’t have to come to the country. They can do it all by mail or email via an opening application form. We require a certified copy of the passport and a utility bill verifying the residential address.” He adds that Jyske Bank’s entry level is just \$35,000, “and with that you get an account manager.”

As with other offshore protection tools, U.S. citizens must still pay taxes on any income that is derived from their offshore-based investments.

offshore trusts

Offshore trusts do not completely protect assets from creditors, but they do shield money from the gaze of perfunctory investigations while providing jurisdictional immunity. “The offshore trust is the [investment vehicle] that the fewest number of creditors are going to go after because they know it’s going to cost time and money,” says Vernon

While investors might be reluctant to pass control of their wealth to a foreign trustee, advisors claim that safeguards are available. “If I have a client who is concerned about relinquishing title to his assets, I tell him he can’t legally own the assets anymore,” says Derek Sambrook, managing director of Panama-based Trust Services. “However, we can put in place certain breaks that will let him have checks made on the trustee to ensure that the assets are managed in the way he wishes.” The best-known strategy is to appoint a protector, whom the grantor assigns to oversee the trust. The protector must approve any important changes to the trust and has the power to replace the trustee if necessary. “It can be set up so that a custodian bank in the States holds all the shares of the trust’s portfolio, and there is a requirement that the joint signatures of a third party and a trustee are required for any of those shares to be removed,” Sambrook explains.

Investors who establish an offshore trust must report it to the IRS using Form 3520. “In recent years, this has evolved to an extensive form that requires the submission of very detailed information,” Chatzky notes. It includes, for example, details on any memoranda of wishes, and even oral understandings with the trustee.

Offshore trusts offer no significant tax benefits, because the IRS treats all trust income as the grantor’s personal income. Bauman, however, suggests that there is one potential tax advantage. “The trust can be set up in such a way as to escape American federal and estate taxes,” he says. Bauman advises that assets placed in a foreign trust under the terms of a will are counted once for estate tax purposes as part of the grantor’s estate. Other than that, the trust and its assets may be exempt from most U.S. taxes. However, he cautions that taking advantage of this exemption requires very careful estate planning.

businesses registered offshore

By creating a business outside of the United States, investors can achieve some degree of asset protection through a mixture of financial privacy and legal immunity. Anyone setting up a business in the United States must make certain information public, such as the names and addresses of the company’s owners and directors. In contrast, those establishing businesses in certain foreign locales (which are known as international business companies, or IBCs) can keep this type of information confidential. The Cayman Islands, for example, offers secrecy of ownership.

“A U.S. citizen can start up a foreign corporation as long as it is lawful to do so in the country in which the corporation is established,” Chatzky explains. But, as with offshore trusts, income from the business must still be reported and is taxed

in the United States. “The general rule is that if the foreign corporation is actively conducting its business in the country in which the corporation is formed, then the income from that corporation is not taxable in the United States until it is distributed to a U.S. owner, through, for example, dividends,” Chatzky says.

Local attorneys or trust advisors can assist in setting up an IBC quickly and easily. But Bauman warns that IBCs can be cumbersome. “The problem is that the American tax code has a very long and convoluted series of tests on whether or not an offshore corporation is controlled by a U.S. person, what percentage is American owned, whether it’s passive or active income, and so on,” he explains. “If it’s just investment that you want, then use a bank account.”

One offshoot of the IBC is the international limited liability company. LLCs first emerged as legal entities in the United States in the 1970s; some offshore asset refuges subsequently copied their structure. An LLC owner is not liable for any of the company’s

debts. This adds an additional layer of protection from creditors on top of those provided by a traditional IBC. An LLC offers more flexibility than a trust. “I still have control of my assets in the foreign jurisdiction, and it appears that if I got sued, then a creditor would literally have to go to [the country where the LLC is registered] to get a judgment against me there,” Jacobs says.

annuities and life insurance

Investors can also acquire privacy and legal immunity via offshore annuities and life insurance policies. Again, these are just like their domestic counterparts, with offshore life insurance policies paying out to U.S.-based beneficiaries upon death. With annuities, offshore insurance companies invest the premiums to create a string of payments to designated beneficiaries for either a predetermined period or for the life of the client.

Vrijhof helps clients set up annuities in Liechtenstein, Switzerland’s tiny neighbor, whose insurance laws, he says, offer the highest level of asset protection and privacy in the world. “Most annuities are done out of Liechtenstein,” Vrijhof explains, adding that they can be set up as easily as a trust.

Like their domestic counterparts, offshore annuities can be fixed or variable. With a fixed annuity, the insurance company agrees to make payments of a set amount for the contract period. With variable annuities, payouts depend on the performance of the investment strategy. “The only major attractiveness to American investors of offshore life insurance and annuities is that they allow deferred taxation,” Bauman explains. Income earned from an annuity is tax-deferred until the contract is liquidated or payments begin. So if the annuity pays out at death, then tax on the income earned is not paid until that point. **W**

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superlative sanctuaries

ACCORDING TO THE SOVEREIGN SOCIETY, an organization based in Waterford, Ireland, that collects and disseminates information on offshore asset protection, the world’s best asset havens are those that offer an attractive combination of legal, political and financial stability, a favorable economic climate and taxes, and privacy.

SWITZERLAND Despite a slow erosion of its once impenetrable banking privacy laws, Switzerland still ranks as the world’s top asset haven. With its world-class banking system and fabled political stability, investors can house their

assets in Swiss banks and still expect high degrees of privacy.

PANAMA According to the Sovereign Society, Panama “combines maximum financial privacy, a long history of judicial enforcement of asset-protection-friendly laws, strong anti-money-laundering laws, tax exemptions for foreigners . . . and a high degree of independence from outside pressures.” Unlike Switzerland, however, Panama is liable to the socio-economic swings of a developing nation, and has a history of political instability.

LIECHTENSTEIN With 32,000 residents,

this European principality offers a no-tax environment and long-standing banking privacy laws. While in 2000 Liechtenstein came under criticism for dragging its feet in a global war against money laundering, its financial institutions and policies remain highly reputable.

HONG KONG What this former British colony lacks in political stability it makes up for in sheer financial sophistication. Furthermore, while its secrecy laws may not be as unassailable as those of Switzerland or Liechtenstein, China has been traditionally unreceptive to foreign demands for investor information.

BY MICHAEL VERDON

the perpetual TRAVELER

Surrendering United States citizenship may be the ultimate estate plan, but for many, it comes at a steep price.

IN THE 1970S, AUTHOR W.G. HILL CREATED THE PERPETUAL Traveler, a character popular with those burdened by high taxes. In a series of instructional books, the Perpetual Traveler roamed from country to country with no fixed residence—or rather, he had homes in several countries, and moved from one to the next every few months. His assets remained in countries that offered secret tax havens and untraceable accounts, so that no government could pry into his affairs. A resident of no country, he paid no taxes.

Guarding his privacy with a fanaticism bordering on paranoia, the Perpetual Traveler would typically journey on a second passport under an assumed name. He would use post office boxes with no physical or forwarding addresses, and would always conduct business on a public pay phone to avoid snooping government agencies. He was a citizen of the world, with allegiance to none but himself.

He was also a man without a country because the key to his financial success was to stay on the run. Although no one knows exactly how many people ever successfully adopted this peripatetic lifestyle, the PT moniker became something of a legend among affluent individuals, particularly in the United Kingdom, where the tax rate approached 80 percent under the Labour government. William* is a real-life example of a perpetual traveler. A native-born American who now travels on a Dutch passport, he tendered his U.S. citizenship in 2000 because he anticipated that the federal government would interfere in his

**Worth has changed the names of the individuals profiled in this article.*

oil refining and shipping businesses in the Caribbean. “I visited Cuba in the ’90s, and disagreed with what the U.S. was doing there,” he says, referring to the effects of decades-old sanctions that prohibit U.S. citizens and corporations from establishing economic ties with

year preparing to expatriate, deciding which nation would be the most potentially advantageous as a new home. He set up residence in the Antilles, moved his U.S. assets offshore and paid all outstanding taxes to the IRS.

However, as he approached the border, he realized that he would be closing the door on his native country, one that might never freely open to him again. He pulled the car over, unable to proceed. “My friend said, ‘If you don’t cross this bridge, you’ll never go through with it. It’s now or never.’” William drove through

“I HAD THIS INTENSE MOMENT of doubt, and had to pull the car over. I wondered if I should really go through with it, or just turn around and drive back home.”

the communist nation. The Office of Foreign Assets Control, the arm of the Treasury Department that administers sanctions, came after any American trying to do business there, William says. “I never had any run-ins with them, and was in Cuba legally, but I wanted to get as far away from their jurisdiction as I could. I felt that I could not exercise my democratic right to travel with my passport. I wanted to do business with other countries that the United States has sanctions on.” William, who resides in the Netherlands Antilles, says he also has a moral problem with the IRS requiring Americans living abroad to file annual income tax returns.

In 1995, he and a friend drove to Laredo, Texas, and stopped at the border to Mexico. Crossing over proved an emotional hurdle. “I had this intense moment of doubt, and had to pull the car over. I wondered if I should really go through with it, or just turn around and drive back home.” At this point, however, he actually had no place to call home. William had spent the past

the border crossing, flashed his U.S. passport to the Mexican immigration authorities, and five years later, after obtaining Dutch citizenship, surrendered the passport to a U.S. consular officer in the Caribbean. “To be honest, I felt like crying after handing it over,” he said. “It was one of the toughest things I’ve had to do.”

William’s life after expatriation, however, has been much less shadowy than that of Hill’s Perpetual Traveler. He first immigrated to a Dutch island that would give him a passport issued by the Netherlands, and beyond there, access to the European Union. “I figured if my business ever dried up, I could find a job in one of the EU member countries,” he says. “The last thing you want to do is be a stateless individual.” As a Dutch citizen, he can travel to the United States without a visa and stay up to 122 days a year.

But William has also experienced the downside of expatriation. Some members of his family disagree with his choice to leave the United States. His sister-in-law thinks it unpatriotic, and his mother worries what neighbors or friends of the family will think. If William ever decides to reapply for U.S. citizenship, he will have to submit to the same process as any naturalized alien. And the INS occasionally bars expatriates from reentering the United States, especially if they have handed over their passports to evade taxes. (See “Expatriate Acts,” page 80.)

A decade later, William harbors no regrets about his choice, which has boosted his business. “I can travel to more countries without a visa than an American can,” he says. “There’s no question that I’m better off financially. My tax rates are lower and I don’t have to file in the U.S. anymore. But more than anything, I just feel more free.”

the price of freedom

Many émigrés who hand in their passports are seeking greater independence. Some have strong libertarian leanings, while others vehemently disagree with government policies. David Lesperance, a Canadian attorney who counsels U.S. clients on tax and expatriation issues, notes that some of his clients are concerned about the possibility of the government drafting their children for service in Iraq. Most of them, however, simply want to protect their assets. Some call expatriation the ultimate estate plan, in the belief that once clear of the U.S.

top view

FOR MOST AMERICANS, the idea of renouncing one’s citizenship is

abhorrent. Yet impelled by financial, political or other reasons, a small number of Americans choose to become citizens of other countries each year. The U.S. government frowns upon expatriation, but it is legal. And while it may ultimately deliver some desired benefits, the decision to expatriate often comes with a substantial emotional price.

government, individuals can avoid income and estate taxes.

While most Americans view expatriation with disdain, they hold financially motivated expatriation in howling contempt. In 1994, *Forbes* ran an article on a group of wealthy U.S. citizens who had expatriated to preserve their estates for their heirs. These “taxpatriates,” as they came to be called, included the founder of Carnival Cruise Lines, Ted Arison, who kept his Israeli citizenship and moved back to Israel; billionaire John Dorrance III, an heir to the Campbell Soup fortune, who moved to Ireland and tendered his U.S. passport; and Kenneth Dart, heir to Dart Container, whose fortune was valued at \$1 billion at the time. He became a citizen of Belize and works in the Cayman Islands. Congress reacted to the subsequent outcry, rushing through a series of laws designed to make expatriation, particularly for the wealthy, more difficult.

Most affluent individuals who give up their citizenship move to either no-tax or low-tax countries (although under IRS rules, taxpatriates must pay U.S. taxes for 10 years after renouncing their U.S. citizenship) in order to avoid what they believe are unfair estate taxes. However, several attorneys interviewed for this article report that their expatriate clients move most of their assets offshore, making it tricky for the IRS to enforce its 10-year rule.

Anthony, whose family owned a specialty steel manufacturing business worth \$30 million, says he decided to pursue expatriation when he realized that he wanted to leave most of his money to his children and grandchildren—not the federal government. Because the United States is the only developed nation with taxes based on citizenship rather than residency, Anthony knew that he could not simply leave the country and establish residency in a tax haven such as the Bahamas. He would still be liable for any dividends or investment income, and his estate would be subject to U.S. tax laws.

In the late 1990s, Anthony secured Grenadian citizenship for himself and his wife through a government passport purchase program (which has since been phased out) and took up residence in the Bahamas, where there is no estate tax. After moving his residence and domicile there, the couple relinquished their U.S. citizenship. Next, reluctant to stake his future on the relative insecurity of a country such as Grenada, he secured a permanent residence visa to Canada and moved there. He also set up a trust that, under a special exemption in Canadian law, allowed income and assets to remain tax-free for five years. The couple’s Grenadian passport with a Canadian permanent residence visa meant they could travel to the United States without a visa, and stay up to 122 days a year. After three years, Anthony and his wife acquired Canadian passports, gave up residence in Canada and moved back to the Bahamas.

expatriate acts

EXPATRIATION—the act of formally relinquishing your U.S. citizenship and physically handing back your passport—is surprisingly simple. Under Section 349(a) of the Immigration and Nationality Act, those relinquishing their citizenship must appear in person at an American embassy or consulate in a foreign country and make a voluntary written renunciation of nationality. The State Department reviews all oaths of renunciation and must issue a Certificate of Loss of Nationality for it to be legally binding.

Fewer than 1,000 Americans each year follow through with the expatriation process, and most are not necessarily tax-motivated or “taxpatriates,” notes Robert Bauman, legal counsel to the Sovereign Society, an association

that promotes offshore investing within full compliance of U.S. tax laws. “Many are people who have married someone outside the country, or people with parents who were U.S. citizens but have no emotional or financial ties to the United States. Very few people expatriate for only tax reasons.”

Those who do should begin by liquidating all U.S. assets, which can take up to several years. Then the individual must move to a no-tax foreign nation to establish residency and start the process for new citizenship, which can take anywhere from one to 10 years. Once a new passport, residence and domicile are secured, the individual surrenders his or her U.S. passport.

The IRS, however, requires some taxpatriates to file U.S. income tax forms

for 10 years and to pay taxes on U.S.-based assets if they have given up citizenship to avoid paying taxes.

Also, the Illegal Immigrant Reform & Immigration Responsibility Act of 1996 gives the attorney general the right to block entry to former citizens who renounced citizenship to avoid taxation. The law, which lumps taxpatriates in the same category with terrorists, drug traffickers, prostitutes and polygamists, has yet to be enforced. “Then-Attorney General Janet Reno said she couldn’t think of how she could enforce it,” Bauman explains, “so it has been something of a paper tiger.” However, the fact that it remains on the books should be a consideration—if only a minor one—in the decision to expatriate. —MV

foreign appeal

This tactic provided the couple with the security and freedom of a Canadian passport, while their Bahamian residency precluded them from paying income and estate taxes after the five-year grace period ended. Anthony and his wife now spend up to six months each year in Canada, 122 days in the United States (any longer and they would be considered legal aliens who fall under U.S. tax law again) and the rest of their time in the Bahamas.

Still other expats have a philosophical ax to grind with U.S. policies. “I’m giving myself a birthday present next June and moving out of the U.S. for the rest of my life,” explains Michael, an heir to a long-established business fortune. “I am taking up residency in Ireland, a country that doesn’t invade other lands, and has no phony wars on drugs or terrorists.”

Michael explains that his motivations are partially tax-driven, but he also cites “threats to my wealth through lawsuits and other unjust laws in America” as additional reasons for his emigrating. He claims he pays thousands in legal fees each year for frivolous lawsuits.

While expatriation might indeed be the ultimate estate plan, it also borders on the unfathomable, and unforgivable, in the American psyche. After Michael announced his departure in the newsletter of the Sovereign Society, an association that promotes offshore investing, he received a string of hate mail—from fellow members. Some called him an economic Benedict Arnold, while others launched salvos that are unprintable. “Good riddance,” one penned. “Where and how did you accumulate your wealth and have the freedom to leave on your own free will? Once you’re on foreign soil, remember where your bread was buttered all these years.”

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INCOME AND ESTATE TAXES can play a significant role in determining where one establishes a residence or domicile.

Malta allows individuals to acquire permanent nonresident status if they can show income in excess of \$25,000 a year. Residents pay a 15 percent tax on income brought into the country, but there is no tax on outside income or assets. Malta has a double-taxation treaty with more than 30 countries.

Monaco is a popular choice for wealthy individuals seeking tax relief. The small European principality has no income taxes, and according to Christian Kalin, of Henley & Partners, an international residency advisory firm in Zurich, residency requirements are not as strict as commonly thought. An individual must be able to afford Monaco’s lifestyle, particularly the high rent, and must also spend at least 183 days in the country each year.

In Latin America, Panama offers fast-track residency status to “financially independent persons” or investors. The country only taxes locally sourced income. Permanent residents need not spend time in Panama.

The Bahamas also offers permanent residence with the advantage of no income, capital gains or inheritance taxes. According to Kalin, investors or owners of residences valued at more than \$500,000 receive accelerated consideration for residence permits.

“One of the reasons people consider expatriation and a second citizenship is that they want to have arrows in their quiver,” says David Lesperance, a Canadian attorney. Three-quarters of his clients are U.S. citizens inquiring about expatriation. Some, he says, are Americans who have lived their lives in Canada and feel no emotional ties to the United States but still pay taxes. Others are attracted to the fact that Canada has no estate tax. “My clients tend to be the millionaire-next-door types who have generally made their own money, and it irks them that a great chunk of their wealth will be spent imprudently by their government.”

The Canadian press gleefully reports that since the reelection of President Bush, there has been a threefold increase in the number of Americans applying for Canadian citizenship. In Canada, these individuals will find some of the world’s best opportunities for those who may want to give up their citizenship and pursue tax-free living. Section 94 of Canada’s income tax code was created to give qualified immigrants—typically wealthy individuals or entrepreneurs—a complete personal income tax moratorium for the first five years of residence. After five years of living tax-free, new citizens can then move to a no-tax country and pay no income or estate taxes. The catch is that they have to give up their U.S. citizenship, and even then, they may be responsible for paying taxes to the IRS for 10 years, especially if they fall under the taxpatriate guidelines. —MV

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