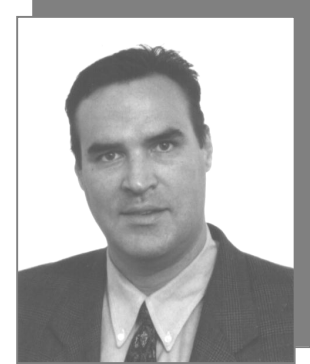


IS IT TIME TO GET OUT OF DODGE CITY?

IMMIGRATION AND CITIZENSHIP STRATEGIES FOR AMERICANS IN A POST-SEPTEMBER 11TH WORLD

By David S. Lesperance



David Lesperance, Barrister & Solicitor is Chief Legal Counsel to Global Relocation Consultants S.A. (GRC), a consultancy that specializes in the integration of immigration and citizenship, offshore trusts and tax planning. GRC specializes in assisting individuals acquire residency and citizenship to fulfil tax or estate planning objectives and works closely with banking, accounting and related professionals on behalf of its clients.

On the morning of September 11th, 2001 the veil of complacency was ripped violently from the face of America. Until that time, war and terrorism were events happening in far away lands. The American public could not conceive of such major acts of war on their home territory. Until this time Americans had only to contend with minor irritants - increasing loss of privacy, lawsuits, and excessive taxation. Living in the comfort and abundance of their birthland afforded them the luxury of dealing with these problems another day.

By comparison, most European countries had already experienced the brutal realities of war and terrorism. Present day Europeans need look back no further than a generation to remember the Holocaust, the Dresden firestorm, the Blitz, or the Iron Curtain. Similar to September 11th, these historic events were incomprehensible, but in retrospect, the underlying causes were recognizable.

In the last century change has accelerated exponentially, especially in the practice of war. It took several years of escalation before World War I erupted. By World War II, "blitzkrieg" meant that the enemy could score decisive victories within a matter of weeks. In 2001, within one hour, an army of only a dozen people had struck the vital blow. The

lesson to be learned is that to survive and prosper in this New World Order, safeguards and strategies must be in place long before the attacks begin. Do not try to buy fire insurance after the fire has started - your house will surely be burned to the ground before you can even get an insurance broker on the phone.

With this in mind, let us examine some of the key emerging trends of the post September 11th world. We will then review some practical residence and citizenship strategies to cope with this rapidly changing world.

TREND 1: We will live in several places throughout our lives (domestic & international).

It is now commonplace for us to have several different careers or jobs during our lifetime. As we progress through our education, career, and retirement life-stages; we will frequently change our residence. Such moves will be increasingly international in nature, as the North American standard of living spreads worldwide. Some of us will maintain current homes in several countries as we bridge our various life-stages or as a hedging strategy.

TREND 2: Countries will join together in regional blocks for increased security from travelling terrorists.

The move to unite Canada and the US into "Fortress North America" has begun. But, while many of us are aware of the growth plans for the North American Free Trade Zone, we are less aware that for the past several years, most of continental Europe has been part of a common visa zone called the "Schengen Treaty Zone". This regional zone will increase in size and strength. Following the lead of North America and Europe, most developed and many developing countries will significantly tighten their borders as part of their regional alliances. Accordingly, if we wish to travel, work or retire overseas, we must secure some type of status in all regional associations. Doing so will ensure the ability (for ourselves and our progeny) to take advantage of the international nature of increased mobility.

TREND 3: We will want to move to or carry the travel documents of low profile countries.

We will increasingly want to carry the passport of a low-profile country and may even choose to have a second or primary home in that country. Since September 11th, the perception is that the world is a more dangerous place and that random violence can occur anywhere. Accordingly, no one wants to be identified as "the American in Room 602" or to

spend too much time in high-profile target areas.

TREND 4: It will be prudent to have several citizenships and residences in the event that one of them acquires undesirable attributes.

The most unattractive attribute of US citizenship is its unique (amongst developed countries) use of citizenship as a basis for worldwide taxation. While it is still possible to legally eliminate this lifetime tax liability, it will certainly be a more complex and involved procedure in the future.

Another undesirable obligation of citizenship in some countries is mandatory military service. There are many Americans who do not fondly recall registering for the Vietnam, Korea, and World War II drafts. Those who believe a US mandatory draft would never occur again should read *HR 3598 Military Training and Service Act of 2001** which was introduced into the US Congress within 12 weeks of September 11th. Of particular note is the inability to defer or avoid military service. Although service is mandatory for males between 18 and 22, women are also encouraged to volunteer. While this particular bill may not become law, given the projected expanding domestic and international mandate of the US military, it is highly probable that this type of legislation will soon come into effect.

*(http://frwebgate.access.gpo.gov/cgi-bin/ueftp.cgi?Ipaddress=162.140.64.21&filename=h3598ih.txt&directory=/diskb/wais/data/107_cong_bills)

TREND 5: Countries will impose increasingly invasive fiscal and personal information reporting regimes under the rationale of looking for terrorists or money launderers.

This trend, which has been underway for the past decade thanks to increased co-operation between governments to share

information on taxpayers and assist in enforcement of asset seizures, has gathered great momentum and justification after September 11th. Previous hesitation shown by the Bush administration has been swept aside with "the stroke of a pen".

The noose has been tightening for a number of years on Americans who either have unreported overseas accounts or who have simply moved out of the US and stopped filing US tax returns. In 1992, the IRS launched a "non-filer program" in an attempt to catch overseas Americans who stopped or never filed US tax returns. An IRS information return must now be completed in conjunction with the processing of all US passport applications. Some Americans still did not come into the fold, as they already had another passport and simply did not need to renew their US travel document.

However, in 1999, the Qualified Intermediary program ("QI") came into effect. The QI program saw financial institutions entering into direct agreements with the US government, despite being located in financial privacy jurisdictions. The institutions agreed to enter into these agreements in exchange for ongoing access to US securities markets for all of their clients. By the end of 2001, over 1000 financial institutions had signed on as Qualified Intermediaries. This group included almost every large and stable international financial institution, including most "private" banks.

These QI agreements call for the financial institution to implement client review mechanisms to determine if new or existing clients are US taxpayers (i.e. US citizens, resident aliens, or US tax homeowners). This client review mechanism is also designed to detect clients who have foreign passports indicating a US birthplace. This audited procedure should flush out the last holdouts

of the US non-filers discussed above.

If any client is a US taxpayer, the financial institution will submit a report on the client's account to the IRS and withhold and remit the appropriate tax to the US government. The client then has to apply to the IRS for any refund to which they may be entitled. If the prior existence of the account has not been disclosed on the client's US returns (or no returns were filed!), they will face some very hard questions from US tax authorities regarding their entire history of their dealings with the QI institution.

The Uniting and Strengthening of America by Providing Tools Required to Intercept and Obstruct Terrorism Act of 2001 (aka: the "USA Patriot Act") will uncover those non-resident non-filers that may have bank but not brokerage accounts. The Patriot Act requires all foreign financial institutions with a US correspondent banking relationship with a US bank to disclose (upon request) the name (and personal and business background) of the ultimate individual beneficiary of all accounts held in the foreign institution. Foreign and offshore financial institutions which require US correspondent banking relationships are those which offer services such as the processing of US checks and money orders, US dollar accounts, or executing US wire transfers.

Of particular note is the unanimous strong warning by experts against dealing with offshore financial institutions without US banking correspondent banking relationships (i.e. non-Patriot Act compliant). Given that the US dollar is the *de facto* worldwide currency, this is sound, practical advice.

Finally, the successful wide-sweeping IRS order to acquire offshore credit card records from issuers in over 30 countries and the subsequent actions to obtain merchant credit card transaction

records from 44 high-profile retailers and travel companies have also significantly eroded US taxpayer financial privacy. The combined effect of all these efforts will soon result in complete disclosure (to the US government) of all US taxpayer holdings in every worthwhile financial institution in the world. While experts debate the effectiveness of these efforts in uncovering terrorist funding sources, there is no doubt that these regimes will continue to uncover many US citizens and residents who have engaged in thinly disguised tax evasion schemes.

The American government is clearly leading the way in the aggressive scrutiny of taxpayers' domestic and international financial transactions. In response, other western countries may be anxious to either follow the US example against their own taxpayers or seize this opportunity to attract fleeing US taxpayers to their own countries.

Given these trends, what practical residence and citizenship strategies should a prudent person consider undertaking?

Before discussing immigration and citizenship strategies for Americans, it is worth clarifying the US government position relating to dual citizenship. Current US government policy states that an individual who is becoming a naturalized US citizen is not required to renounce their existing citizenship. On the other hand, an American citizen who is becoming naturalized in a foreign state does not automatically lose their US citizenship. You can use the foreign naturalization as a method of relinquishing US citizenship (as part of a tax expatriation plan) but this must be done very carefully and with an overwhelming demonstration of the intent to lose American citizenship. This has not always been the American government's

position, so prior presumed or proven loss of foreign or US citizenship must be re-examined in light of this current policy.

STRATEGY 1: Acquire a lineage citizenship to which you may have a legal claim.

Ireland and Israel are two countries that are presently contemplating limiting their traditional liberal access to lineage claims to their nationality. Other countries, like Holland and Belgium, are reviewing their existing laws relating to previous loss of citizenship through naturalization in foreign countries. Other countries, such as Estonia, Latvia, and Hungary, are expanding their access to their diaspora as they emerge from under the Iron Curtain. If you (or one of your parents or grandparents) were born in another country, you should examine closely your ability to claim or reclaim that country's citizenship.

STRATEGY 2: Acquire a second citizenship and/or passport through an economic or residence-leading-to-citizenship program.

Many large countries offer citizenship to those who acquire residence status and fulfil tax and possibly physical presence requirements over a predetermined naturalization period. Other countries offer citizenship directly by fixing an additional government fee in lieu of a naturalization period. Which option or combination is appropriate depends on your personal goals and circumstances.

The proper structuring and implementation of this type of strategy requires the assistance of an experienced advisor. Such an adviser will look at issues such as timing, cost, minimizing the "footprint" of tax and residence obligations through planning structures, escaping US tax regimes, maintaining the ability

to travel visa-free to as many countries as possible, and the practical "livability" of such a strategy for all family members. A properly structured and executed residence and/or citizenship plan will greatly impact the lives of your descendants for several generations.

STRATEGY 3: Acquire a home and assets outside of your home country.

This may involve obtaining a retirement residence permit in a low-profile country or could be in combination with economic citizenship or residence leading to citizenship. This strategy would result in the long-term ability to move to a chosen location on a full or part-time basis. This strategy may become increasingly attractive as privacy and tax strategies fall victim to "anti-terrorist" laws. If as part of this strategy, the proper steps are taken to lose the status of US taxpayer, then a wide range of legal offshore tax avoidance and asset protection strategies also become available.

STRATEGY 4: Take proper legal steps to reduce tax and privacy evasion.

The days of "off-the-shelf" trusts, bearer share IBCs and anonymous offshore banks accounts with linked credit cards, as the means to reduce your tax burden and regain privacy are gone. The new reality is that if you chose to remain within jurisdictions like the US, you will have to get used to a decreased level of privacy in your financial dealings.

Furthermore, if you wish to decrease your tax burden, your only option is to retain sophisticated tax advisors to help you take advantage of a dwindling number of legal tax avoidance strategies. Quick, cheap undetectable tax evasion strategies are now useless and dangerous. Implementing legal tax avoidance plans for those

who remain US taxpayers will have its own problems. Constantly changing domestic rules result in long-term uncertainty and “change fatigue” as domestic advisors suggest expensive on-going revisions to your “estate plan”.

These government actions will become triggering catalysts for increasing numbers of wealthy, ambitious or educated Americans to take the required legal steps to withdraw from the status of being a US taxpayer.

The Irish Potato Famine, the Scottish Highland Clearances, the Russian Pogroms, and World War II were major historical

events that drove immigration to the US. September 11th 2001 may well be remembered as the time when a group of far-sighted Americans were inspired to review their current lives and implement changes to their residence and citizenship that would greatly enhance the lives of the generations that followed them.

Undertaking these changes in an effective, timely, and cost-efficient manner is the immediate and major challenge for these pioneers and their advisors.

Recognizing the impact and predictable fallout of current events is the first step. Taking action is the second. Maybe now is the time to get out of Dodge!