

# Sometimes Random Client Telephone Calls Produce the Most Interesting Questions

By [James F. McDonough, Jr.](#) on February 10th, 2012

I received a call from an old client who had retired and moved away. The client had met a prospective spouse who was a [citizen of a civil law country](#), and they were discussing marriage. In addition, they were also discussing moving permanently to a third country, where neither one was a citizen or resident. The client had question about [pre-nuptial agreements](#), choice of laws, and tax issues. One of my questions, which troubled my client, was the length of time that the prospective spouse had spent in the [United States](#) and whether permanent residency had been already acquired.

I was, in turn, asked what would happen if the client relinquished [United States citizenship](#). The answer is somewhat complicated. U.S. citizens, having a net worth of \$2,000,000 or average income over 5 years of \$145,000, who become expatriates, have a number of issues with which to deal. These include whether to make a [mark-to-market gain recognition](#) or elect to defer gain. In addition, if the U.S. person successfully becomes an expatriate, any United States citizens or residents who receive a bequest from the ex-pat are then subject under [§877A](#) of the Internal Revenue Code to an inheritance tax (See IRC [§2801](#)). Yes, §2801 is a [federal inheritance tax](#). The client at issue here has children that will remain in the United States and be the objects of the client's bounty. I also cautioned the client that civil law jurisdictions have forced heirship that prevents one spouse from disinheriting the other.

The prospective spouse in my client's case is a citizen of an [E.U. country](#) and has a number of interesting options available, leaving aside any U.S. options that might apply. For example, residence in Belgium acts as a form of economic citizenship that may prove interesting. Although [Belgium](#) taxes citizens on worldwide income, it does not [tax capital gains](#), and it taxes dividends at 15% to 25% depending on the type of shares. It may even be possible to avoid the equivalent of estate taxes and income taxation of certain foreign source income. The Belgium treaty network is extensive and the applicable treaty, between Belgium and the country where the prospective spouse is a citizen, is helpful in ceding residency and taxation. The issues of the prospective spouse are very different from those faced by the United States client. What is more important is that solutions available to the prospective spouse are easier to achieve.

There are other choices for the prospective spouse. The citizenship by investment program in St Kitts allows one to make an investment in real estate or a contribution (\$250,000 to \$500,000) to a public charity in exchange for citizenship without requiring residency. Citizens of St. Kitts & Nevis are allowed to hold dual citizenship, and the

acquisition of citizenship is not reported to other countries. It has a passport program that allows travel to many countries without visas.

What may be a possible solution may not be a reasonable one in the eyes of the client, or the client's the prospective spouse. I therefore suspect that my client will need to give this some careful consideration before moving forward.