It used to be difficult for me to offer advice to people who emigrate from the United States about the tax rules that apply to them. As the son of an immigrant – my father came to this country by ship from Russia in the 1920s – I couldn’t understand why an American would relinquish his benefits and protections as a citizen of the country with the greatest liberty and highest standard of living the world has ever known.

Until recently, anyway. The sad truth is that the business environment in our country was in decline even before the recent economic crisis. Federal and state governments, through encroaching regulation and selective enforcement, appear hostile to both entrepreneurs and big business. Deficits will plague our country for decades, and without the political backbone to tackle entitlements, the only alternative is increasing taxes on the “wealthy.”

All of which has created an opportunity for those who don’t need to be in the United States to earn a living. This year, when the maximum capital gains tax rate is historically low, will be an excellent time to expatriate. The same is true even next year, when the rate is scheduled to rise from 15 percent to 20 percent.

And if you’ve suffered a substantial decline in the value of your assets over the past few years, expatriation from the United States before these assets regain their value also makes financial sense. The new expatriation tax regime is a “mark to market” system, with the value of assets determined on the day before you cease being a U.S. citizen. Fair market value will generally be determined under the estate tax rules. This means that expatriates must pay an immediate exit tax on their assets, as if they sold them on
the day prior to the date of expatriation.

Under prior law, an expatriate could avoid U.S. transfer taxes if he did not make gifts or die for 10 years after expatriation. Under current law, a departing U.S. citizen can defer federal tax until the sale or disposition of each asset. But the expat must provide adequate security to the IRS and pay interest on the deferred tax.

Once expatriation occurs, future increases in the value of these assets generally won’t be subject to U.S. taxes. But future appreciation of some types of assets, such as U.S. real estate, remains subject to U.S. taxes under nonresident alien tax rules.

There is also a new regime for gifts and bequests made by expatriates to U.S. persons (excluding charities and spouses). These gifts are subject to an inheritance tax at the highest gift or estate tax rate and are payable by the recipient unless the grantor/decedent had reported the items on a timely filed tax return. If the gift is property and the recipient can’t pay any inheritance tax, or if the expatriate doesn’t want to burden the recipient with the tax liability, the expatriate needs to ensure that he (or the estate) files gift tax (or estate tax) returns with respect to taxable gifts or bequests and pays any tax due.

The tax planning doesn’t end here. Expatriates who become citizens of countries without tax treaties with the U.S – as is the case with many low- or zero-tax jurisdictions – will generally be subject to a 30 percent withholding tax on dividends from U.S. companies. So proper planning would include post-expatriation entity structures that minimize this exposure. Likewise, noncitizens and non-U.S. residents are nevertheless subject to U.S. estate tax on property located within the U.S. (which includes for this purpose stock in U.S. companies) at the time of death, so post-expatriation structures need to be put in place to eliminate or minimize this risk too.

Ex patriating when asset values are depressed and capital gains taxes low makes more financial sense than waiting for those values and taxes to rise. If you plan to expatriate, start planning now.