

Tax Issues and Planning Strategies with Non-Residents



Sol Schwartz & Associates, P.C.
Certified Public Accountants

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TAX ISSUES AND PLANNING STRATEGIES WITH NON-RESIDENTS

Presented by
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AGENDA

- > U.S. Person vs Foreign Person
- > U.S. Estate Tax
- > Gifts & Inheritances
- > Structuring Opportunities
- > Restructuring of Current Structure
- > FIRPTA



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Tax Issues and Planning Strategies with Non-Residents

S | U.S. PERSON VS FOREIGN PERSON

- ▶ U.S. Persons:
 - U.S. Citizens
 - Permanent Residents (Green Card)
 - Substantial Presence Test
 - Domestic Entities
- ▶ Foreign Persons:
 - All Other...

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S | U.S. TAXATION SYSTEM

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graph TD; A[U.S. Tax Code] --> B[U.S. Persons]; A --> C[Foreign Persons]; B --> D[Report Worldwide Income]; C --> E[Only Report U.S. Source Income];
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S | U.S. PERSON VS FOREIGN PERSON

U.S. Person	Foreign Person
1120	1120-F
1040	1040-NR
1065	8865
706	706-NA
1041	3520A


- ▶ Foreign Informational Reporting Forms

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 **U.S. ESTATE TAX**


- ▶ U.S. persons subject to estate tax on worldwide estate
 - \$5.49M Exemption
 - Unlimited Marital Exemption
- ▶ Foreign Persons subject to estate tax on U.S. situs assets only
 - \$60k Exemption
 - \$147k Marital Exemption

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 **DOMICILE VS SUBSTANTIAL PRESENCE TEST**

- ▶ The U.S. estate tax rules define residency differently than the US income tax rules
- ▶ Domicile doesn't necessarily equals U.S. income tax residency
 - Looks to intent
 - Subjective tests
 - Facts and circumstances

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 **GIFTS AND INHERITANCES**

- ▶ U.S. persons subject to gift tax on annual gifts in excess of \$14k
 - Can utilize lifetime exemption (\$5.5M)
- ▶ Foreign persons subject to gifts of U.S. assets only
 - CANNOT use exemption to minimize tax!
- ▶ There is no limit, nor tax, when foreign persons make gifts or bequests of foreign assets to U.S. persons


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ESTATE TAX VS GIFT TAX

Property Type	Estate Tax		Gift Tax	
	Yes	No	Yes	No
Tangible Personal Property in U.S. (e.g., artwork, jewelry)	X		X	
Currency in U.S. Safe Deposit Box	X		X	
Cash Deposits in a U.S. Bank		X	X	
U.S. Real Estate	X		X	
Non-U.S. Real Estate		X		X
U.S. Stocks	X			X
Non-U.S. Stocks		X		X
U.S. Government and Corporate Bonds		X		X
U.S. States/Muni Bonds	X			X
U.S. Partnership/LLC Interest	Depends ³			X
Retirement Plans		X		N/A
Life Insurance Cash Value	X			X
Life Insurance Death Benefits		X		X

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STRUCTURING OPPORTUNITIES

- What are your objectives?
- What type of business are you engaged in?
- Are you looking to acquire assets for personal use?
- Will you be migrating to the U.S. to seek residency?
- Are you planning to remain abroad?
- Can we make an entity election (check the box)?
- Is there an income tax treaty available?

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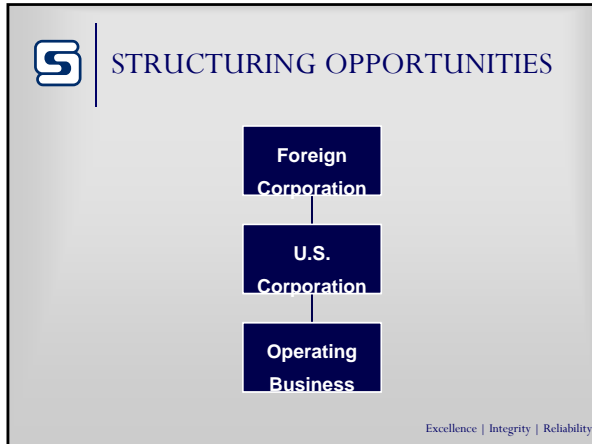


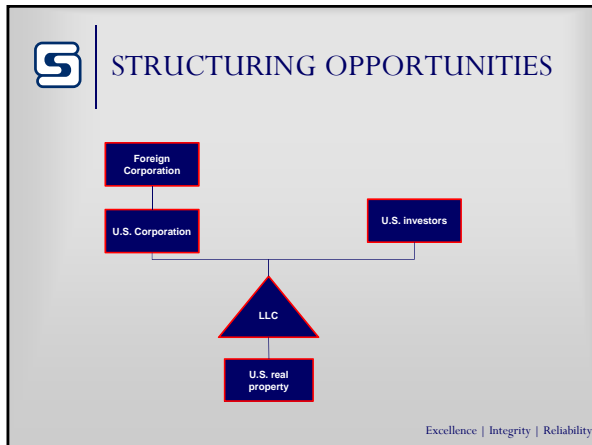
ENTITY SELECTION

- U.S. Persons:
 - LLC
 - S or C corporation
 - Limited Partnerships
 - Various Trusts (simple/complex/grantor)
- Foreign Persons:
 - C Corporation
 - LLC
 - Foreign Corporation
 - Irrevocable Trusts

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S | YOU DIDN'T FOLLOW THE ADVICE FROM YOUR FRIENDS AT SOL SCHWARTZ, SO NOW WHAT???


- Sell assets
- Life insurance
- Restructure holdings to provide U.S. estate tax protection

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 FIRPTA

- ▶ What is it and why should I care?
- ▶ Withholding on real estate transactions
 - 15% in most cases
 - Can be lowered to 10%, and possibly exempt from withholding

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 FIRPTA

- ▶ How to mitigate or eliminate FIRPTA withholding:
 - Property being sold will be used as a personal residence
 - No withholding if below \$300k
 - 10% withholding if between \$301k - \$1M
 - Withholding certificate
 - 897(i) election

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 CONTACT INFORMATION

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