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Nonresident Tax Issues: Effectively Connected Income, Structures for Holding U.S. Assets, Treaty Benefits

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Nonresident Tax Issues

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Nonresident Tax Issues: Effectively Connected Income, Structures for Holding U.S. Assets, Treaty Benefits

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Introduction

- Nonresident noncitizens face United States tax exposure only on income/assets directly associated with the United States
  - Special tax rules/regimes apply to nonresidents; familiarity with these rules is increasingly a necessity
- The United States is an increasingly appealing jurisdiction for foreign investment
  - Political stability/managerial infrastructure provide advantages, as do beneficial United States tax rules on income beneficially owned by foreigners
    - Careful evaluation of both investment type and client needs/background are needed to optimize tax benefits

Initial Considerations – Taxpayer Classification

- Classification of taxpayers either as domestic or foreign dictates their level of American tax exposure
  - United States-domiciled taxpayers are subject to tax on worldwide income directly earned by them, irrespective of the source of income
    - Deferral opportunities exist if income is earned through a separately taxable foreign entity; however, special rules can require current U.S. stakeholder income inclusion and/or punitive repercussions upon repatriation
  - Nonresident American tax scope much more narrow

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Taxpayer Classification

- Which individuals are United States taxpayers?
  - Citizenship – persons born in the United States, naturalized in the United States, or (under specified circumstances) where parents were United States citizens at the time of their birth
  - Classified as a "resident" for United States income tax purposes if:
    - Lawfully admitted for permanent residence (green card holder); or
    - Meet substantial presence requirements
      - Substantial presence test: must be present in the United States for 31 days during the relevant tax year and the sum of days for the last three years (after use of applicable multipliers) exceeds 183
  - Individuals not classified as United States taxpayers termed "nonresident aliens"

Taxpayer Classification

- Who is a U.S. taxpayer?
  - Exceptions exist to resident classification: (1) closer connection to another country and (2) treaty tiebreaker provisions
    - Closer connection exception: look to whether individual's facts and circumstances show a closer connection to another country
      - Available *only* for substantial presence residents!
    - Income tax treaties – individuals classified as residents of both treaty party countries are reclassified as a resident of only the one which contains their permanent adobe or (if a permanent abode available in both) their "center of vital interests"
      - Available to *both* substantial presence residents and green card holders – but <u>not</u> citizens!
        - Treaty reclassification **only** for income tax liability purposes – information reporting requirements largely unmodified

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Taxpayer Classification

- United States citizens/domiciliaries taxable on transfers of worldwide assets, whether during life or at death
  - However, given a lifetime exclusion of $11.58 million (for 2020fd)
  - Treated as a domiciliary for estate/gift tax purposes when maintaining a United States domicile – domiciliary is a United States resident *with no present intention of leaving*
    - Facts and circumstances determination – look to length of stay, ties to U.S. versus other countries, etc.
    - Imposes an elevated standard for presence-based tax as compared to income tax requirements!
  - Unlimited marital exclusion inapplicable for transfers to noncitizen spouses (even if domiciliaries/residents)
    - Bequests to noncitizen spouses typically done through QDOTs
    - Annual gifts limited to $157,000 (for 2020fd)

Entity Classification

- Why does classification matter?
  - Both reporting requirements and the need for income recognition are largely dictated by entity classification
    - Where an interest is maintained in an entity treated as a flowthrough, income immediately is recognized for U.S. tax purposes
    - Conversely, where a corporate structure is found for U.S. purposes, some level of tax deferral is available

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Entity Classification

- Entity – Regs. 1.1471-1(b)(39) defines an entity as "any non-individual taxpayer"
  - Organization – an entity separate from its owners
  - Critically, whether an "entity" separate from a taxpayer exists for U.S. purposes is determined under U.S. rules, rather than analyzing whether there is an entity for foreign purposes
    - An undertaking by multiple parties is normally classified as an organization
      - Functionally, some type of formal structure/agreement will be needed for an entity to be found

Is the Entity a Trust?

- Two types of entities can generally exist under U.S. rules: (1) trusts and (2) business entities
  - "**Trust**" defined in the regulations – arrangement whereby trustees take title to property for the purpose of protecting or conserving it for beneficiaries, with the beneficiaries not sharing in the responsibility to protect/conserve the situs (Treasury Regulation § 301.7701-4)
    - CANNOT rely on nominally forming a "trust" – can have reclassifications where trust requirements not met (i.e. as a device to carry on a profit-making business, beneficiaries having sufficient control/management to constitute a business entity)
- Business trusts and commercial trusts - two examples of structures not typically classified as trusts under the Code
  - Macro-level takeaway – evaluate foreign "trusts" to see how they are classified!

Is the Entity a Trust?

- How are foreign trusts taxed?
  - Foreign grantor trust – income is taxable to the trust creator
    - NOTE: nonresident aliens cannot establish trusts treated under U.S. rules as foreign grantor trusts except under narrow circumstances
  - Foreign nongrantor trust – treated as an entity separate from its creator
    - Subject to direct tax only on its U.S. sourced income
    - Special rules apply to foreign nongrantor trusts with U.S. beneficiaries
      - Primary ramification is the "throwback" rule – creating a traceback for accumulation distributions of U.S. beneficiaries of a nongrantor trust

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Is the Entity a Trust?

- United States beneficiaries of foreign nongrantor trust are subject to tax via the "throwback" rule on accumulated distributions
    - Where foreign trust has United States beneficiaries and accumulates income, distributions in excess of current year income amounts carry severe consequences
        - Income classified as ordinary, interest applies from date income originally earned, can be taxed at prior year rates
  - Often better to avoid foreign nongrantor trusts where there will be U.S. beneficiaries, but can mitigate throwback rule ramifications by making current distributions

Is the Entity a Trust?

- United States information reporting requirements: primarily look to Form 3520
  - Required to be filed by the following:
    - Responsible party for reporting a reportable event that occurred during tax year or transferred property to a foreign trust in exchange for an obligation
    - U.S. person who is treated as the owner of any part of the assets of a foreign trust
    - U.S. person receiving distributions from a foreign trust
  - Form 3520-A can also be required – filed by a foreign trust which has a United States owner

Foreign Business Entities

- Business entity - any entity recognized for federal tax purposes that is not classified as a trust or otherwise subject to special treatment
  - Three types of business entities: (1) disregarded entities, (2) partnerships, and (3) associations taxable as corporations
    - Entities with single owners are either disregarded entities or corporations; when multiple owners exist, an entity can be classified as either a partnership or corporation
      - Partnerships and disregarded entities are jointly referenced as "flowthroughs"

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Foreign Entities – Entity Classification

- Foreign-domiciled entities generally are able to elect their entity classification for United States tax purposes
  - EXCEPTION: Per-se corporations (as listed in the Regulations)
  - Default rules for classification exist, which hinge on the limited liability of owners/members
    - If limited liability for owner/owners – association taxable as a corporation
    - If no limited liability for at least one owner – partnership if multiple members, disregarded entity if one

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Foreign Entities – Relevance Determination

- Elections out of default rules are available - can elect to be a partnership, corporation, or disregarded entity
  - Entity with single owner can either by taxed as a corporation or a DRE; entity with multiple owners can be a partnership or corporation
  - Election made on Form 8832 – initial election required within 75 days of entity becoming “relevant”
    - A foreign entity becomes “relevant” when its classification affects the liability of any person for federal tax or information purposes
      - i.e. when a United States filing obligation of some sort (either tax or information return) is created

Nonresident Tax Mechanics - Background Considerations

- Under default U.S. rules, nonresident aliens/foreign business entities are subject to United States tax on:
  - (1) income effectively connected with a United States trade or business, and
  - (2) fixed or determinable annual or periodic income
- **Non-U.S. taxpayers are subject to U.S. tax primarily on income items sourced to the United States**
  - Detailed sourcing rules for income items exist; for example, interest/dividend income is sourced to the payor's location
    - Rent/royalties sourced to the place of use of the asset
    - Personal services sourced to where services performed

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Foreign Entities Entering the United States

- Effectively connected income vs. FDAP income
  - United States views income effectively connected with a United States trade or business as normally creating enough United States contacts to justify tax imposition similar to that of United States persons
    - i.e. normally will find a physical presence in the country, though this rationale may be antiquated
    - Less concern about ultimate tax collection given the extent of contact usually required
  - FDAP income does not necessarily require such contacts with/presence in the United States
    - Withholding system thus utilized to ensure payment of tax
      - Under a withholding approach, factoring in deductions is infeasible

Foreign Entities Entering the United States

- U.S. tax primarily imposed on foreign corporations as to their income sourced to the United States
  - Sourcing rules become important as a result
    - Interest – sourced to payor’s residence
    - Dividends – sourced to payor’s place of incorporation
    - Rents/royalties – sourced based upon place of use of asset
    - Personal services – sourced based on where services are performed

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Foreign Entities – Effectively Connected Income

- Foreign entities are taxed in the United States on income effectively connected with a United States trade or business (“ECI”) on a net basis
  - “Trade or business” undefined in the Code/regulations – but profit-oriented activities carried on in the United States which are <u>regular, substantial, and continuous</u> are properly classified as a trade or business for these purposes
    - Activities of an agent normally are imputed to the agent’s principal for determining whether the principal is engaged in a United States trade or business
    - Foreign corporations have been held to have carried on a United States trade or business through a single person acting as a United States agent, even where the agent (for a sales company) assumed full responsibility for sales under the relevant contracts.

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Foreign Entities – Effectively Connected Income

- Special rules regarding ECI:
  - Generally, the performance of personal services within the United States constitutes a United States trade or business
    - Treaties can modify implementation
  - Partnerships – foreign partners of a partnership are classified as engaged in any U.S. trade or business carried on by the partnership
    - Treated as deriving gain or loss which is effectively connected upon sale/exchange of the partnership interest
  - Gain from disposition of U.S. real property interests are **automatically** classified as ECI (irrespective of whether connected to a U.S. trade or business)

Macro-level: relatively light requirements for a United States trade or business; where such trade or business exists, taxpayer subject to United States taxes on income effectively connected with the trade or business

Foreign Investment in United States Real Property ("FIRPTA")

- Gain from disposition of United States real property interest by a foreign person is subject to tax, and is automatically classified as ECI
  - United States real property interest: any interest in United States real property or an interest in a domestic corporation unless such corporation was not a United States real property holding corporation for the prior five years
    - United States real property holding corporation: corporation where more than 50% of the corporation's assets are United States real property interests
      - United States real property holding corporation required to withhold on property distributions to a foreign shareholder in complete liquidation, in redemption of its stock, or as a non-dividend distribution

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Foreign Investment in United States Real Property ("FIRPTA")

Transferee must withhold on disposition at a rate of 15% of the amount realized

- Exceptions exist:
  - Transferor furnishes nonforeign affidavit
  - Affidavit received from U.S. corporation that company is not a United States real property holding corporation
  - "Qualifying statement" received from the Service that the tax is not required to be withheld or withholding rate is reduced
- Where withholding obligation not met, party required to withhold is liable for tax itself

Foreign Entities – Effectively Connected Income

Foreign corporations engaged in a United States trade or business are generally subject to regular United States tax at normal graduated rates

- Withholding unrequired for effectively connected income
  - –Recipient should provide Form W-8ECI to substantiate the income is ECI
- Foreign corporations engaged in a United States trade or business are allowed deductions; however, must timely file a “true and accurate return” to obtain them
  - –18-month grace period is applicable for these purposes, generally requiring the return to be filed within 18 months of the due date
    - Filing a protective return can be beneficial where questions exist as to whether there is a United States trade or business

Foreign Entities – Branch Profits Tax

- Branch profits tax is imposed as a second tax on foreign corporations engaged in a United States trade or business through branch operations
  - Tax equal to 30% of the foreign corporation's "dividend equivalent amount" for the year

Branch profits tax subject to significant treaty modification

  - Regulations list 28 countries for which the branch profits tax is eliminated for qualified residents
  - Exceptions to branch profits tax can also apply – i.e. in year of complete termination of U.S. activities

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Foreign Entities – Branch Profits Tax

Rationale: want to put foreign corporations conducting branch operations in the same position as a corporation operating through a U.S. subsidiary

- Tax at corporate level when income is earned, and tax on transmittal of funds to "parent"
  - Dividends from foreign corporation to foreign shareholder are usually foreign-source income not subject to U.S. tax
- In actual application, however, can disincentivize branch operations
  - Foreign corporation with United States subsidiary can control timing of second level of tax by deciding when a dividend will be paid; this is not the case with branch operations, where repatriation is deemed to have occurred (even if it has not!)

Foreign Entities – FDAP Income

- United States-sourced fixed or determinable annual or periodic income ("FDAP income") is also subject to United States tax if from sources within the United States
  - Can include interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, etc.
  - FDAP income functionally is an overarching income inclusion of all U.S. sourced items other than capital gains and certain other limited exceptions

Foreign Entities – FDAP Income

- Tax generally not imposed on interest – narrow scope where it is subject to tax
  - Portfolio interest/interest on bank accounts exempted

Rents – look to whether the management of the relevant property constitutes a trade or business

  - If so, treated as ECI rather than FDAP
    - Election is available to treat income from real property as effectively connected when it would not be if no election was made

Salaries/wages - usually subject to ECI rules rather than FDAP

Capital gains and losses generally exempted from withholding tax

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Foreign Entities – FDAP Income

- Interplay exists between ECI and FDAP income
  - US-sourced income is classified as effectively connected to a U.S. trade or business rather than FDAP if it satisfies an asset use test or a business activities test
    - Asset use test: income derived from assets used in the conduct of a United States trade or business is ECI
    - Business activities test: income is treated as ECI if activities of a United States trade or business were a material factor in creation of the income
  - Goal of asset use test and business activities test is to determine whether income is actually connected with a U.S. trade or business
  - **If capital gains are not ECI (including FDAP), they are not taxable by the United States!**

Foreign Entities – FDAP Income

- FDAP income generally subject to a flat 30% rate of tax
  - Importantly, deductions not permitted for FDAP income
    - Cannot factor in costs associated with generating the income
  - **FDAP income subject to withholding by payors**
    - Taxpayers receiving solely income subject to withholding relieved of obligation to file tax return if all United States tax liabilities are covered by withheld amounts

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Nonresident Alien Employees

- Nonresident aliens are also subject to tax in the United States on ECI and FDAP income
  - Where nonresident alien performs services in the United States this is normally classified as a trade or business
    - Generally taxed at normal United States rates
  - Nonresident alien performing services in the United States as an employee subject to withholding at regular rates for employees
    - Foreign employers paying compensation for services performed in the United States generally are required to withhold tax where amounts paid are properly classified as wages

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Filing Requirements

Nonresident aliens file Form 1040NR

- **NOTE:** if nonresident aliens spend sufficient time in United States can be classified as a United States resident ("accidental resident")
  - If so, subject to tax on worldwide income/subject to United States information reporting requirements
  - Individual meets substantial presence requirements in a given year) if they were present in the United States for at least 31 days during the current year and the sum of days spent over the last three years (after use of applicable multipliers) is 183
    - Applicable multiplier for the current year is 1, the applicable multiplier for the first preceding year is 1/3, and the applicable multiplier for the second preceding year in 1/6

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United States Income Tax Treaties – Basic Structure

- The United States maintains income tax treaties with roughly seventy countries, with each treaty containing distinct terms/articles built around common principles
  - Under treaties, residents of a treaty country can be taxed at a reduced rate, or even exempted from tax, on specified items of income from the other country
  - Savings clause prevents a United States citizen/resident/entity from using a tax treaty to alter tax on US-source income
    - Narrow exceptions are normally provided in treaties to the savings clause, allowing limited modifications to U.S. tax rules for specified foreign income items

United States Income Tax Treaties – Basic Structure

- Residency a critical aspect of treaty relief – foreign taxpayers are normally entitled to treaty benefits only when valid residents of a country with which the United States has a tax treaty
  - *Residency* required – citizenship without residency does not qualify an individual for treaty benefits
- Treaty definitions of residence normally include persons liable for tax to a country based on domicile, residence, citizenship, place of management, or place of incorporation
    - Corporations are residents of countries for these purposes if liable for tax based on the country being its place of management
      - Can have conflicts as to residence where place of management and place of incorporation differ
        - Tiebreaker typically is the treaty between those two countries
  - Rules exist to prevent "treaty shopping" – entity creation solely for purposes of treaty benefits

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United States Income Tax Treaties – Who Can Obtain Benefits?

- Tax treaties provide benefits to qualified residents of a treaty party country (normally for income sourced to the other treaty jurisdiction)
  - Threshold question regarding treaty benefits: can residence in a treaty country be established?
    - United States Model Treaty Art. 4(1): taxpayer is a resident of a country for treaty purposes if it “is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature”

United States Income Tax Treaties – Who Can Obtain Benefits?

- Limitation of benefits provisions ensure only qualified residents receive treaty benefits
  - LOB goal: residence country is protected from entities forming in their country, not being taxed on specified income items by that country, but still getting treaty benefits
    - i.e. flowthrough entities formed in an otherwise unconnected jurisdiction
      - Inconsistent with treaty goals to allow residency purely for tax planning
    - Macro-level idea: for taxpayer to receive treaty benefits, they must be subject to tax by the treaty jurisdiction on the income for which relief is sought

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United States Income Tax Treaties – Who Can Obtain Benefits?

Treaty provisions can be given precedence over statutory authority, though deference is limited in some circumstances (i.e. where abuses are perceived)

- Treaties have the force of law even though not enacted as statutes
  - Treaties and statutes of equal authority
  - When conflict exists between a treaty provision and U.S. law, typically the one enacted later in time controls
- Generally must either use a treaty to determine entirety of tax obligations or not use them at all

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Permanent Establishments - Overview

Treaties substantially modify default United States rules; one primary alteration is replacement of the “U.S. trade or business” standard with an elevated standard of a “permanent establishment”

- Provisions are treaty-specific, but usually provide that business profits of a resident of one country may be taxed by the other country only where a permanent establishment exists in that country and the profits are attributable to such a permanent establishment
  - Where no permanent establishment exists, nonresident only subject to U.S. tax on U.S. sourced income (rather than *all* income attributed to the permanent establishment, irrespective of source)

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Permanent Establishments - Overview

Business profits subject to treaty tax – look to whether a permanent establishment exists, whether there is income, and whether the income is attributable the permanent establishment

- Permanent establishment – fixed place of business through which the business of an enterprise is wholly or partly carried on
  - Includes place of management, branch, office, etc.
  - Can also have attribution through which an agent conducts activities through a fixed place of business
- "Attributable to" – largely similar to the "effectively connected" concept

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Permanent Establishments - Overview

Permanent establishment vs. United States trade or business

- Permanent establishment standard higher, but both look to similar factors
  - A primary differentiation is the "permanence" aspect – historically necessitating more of a physical footprint
    - Standard evolving with digitization of business – less need for physical presence to economically utilize a jurisdiction
- Permanent establishment generally a low threshold: as an example, maintenance of a small office in the United States solely to solicit orders for work done outside the United States has constituted a permanent establishment.
  - *See* Revenue Ruling 65-263

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Permanent Establishment Mechanics

- Permanent establishment - fixed place of business through which the business of an enterprise is wholly or partly carried on
  - Places of management, offices, branches specifically included
    - Places where preparatory/auxiliary activities occur – specifically <u>not</u> included
      - Storage/display in a jurisdiction also not sufficient for a permanent establishment
  - Fixed place of business determined by reference to the source jurisdiction's local rules

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Permanent Establishment Mechanics

- Agent activities can create a permanent establishment within a jurisdiction (without otherwise maintaining a sufficient physical footprint)
  - Agent activities create a permanent establishment if the agent has and habitually exercises authority within the country to conclude contracts on behalf of the business enterprise
    - Agent activities can also create permanent establishment where goods processed by an agent in the jurisdiction (using assets provided by the enterprise)
      - Storage/display in a jurisdiction also not sufficient for a permanent establishment
  - Activities of agents acting in an independent fashion usually will not create a permanent establishment for an enterprise

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Tax Treaty Benefits

FDAP income also impacted by treaty terms

- Treaties often reduce/eliminate tax on FDAP income
  - FDAP income attributable to a permanent establishment is governed by the business profits/permanent establishment treaty provision
  - Dividends – can still be taxed, but rates usually reduced
  - Tax of interest/royalties can be removed from source country under treaties

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Nonresident Individuals – Transfer Taxes

- Estate tax: nonresident individuals subject to tax on all property (whether tangible or intangible) sitused within the U.S.
  - Subject to some exceptions: (1) bank accounts not used in a U.S. trade or business, (2) stock/securities generating portfolio interest, and (3) life insurance proceeds
  - Real property and tangible personal property are sitused in accordance to where the assets are physically located
    - Shares of a corporation are sitused in the country in which the corporation is formed
  - Nonresident individuals receive a $60,000 estate tax exclusion with a maximum 40% rate of tax applicable
    - Nonresidents taxed $345,800 on their first $1,060,000 of U.S.-sitused assets, then at a flat 40% rate above that number

Nonresident Individuals – Transfer Taxes

- Gift tax: nonresidents normally are subject to gift tax on lifetime gratuitous transfers of tangible property within the United States
  - Generally comprising real property situated within the country and tangible personal property within the U.S. at the time of the gift, including hard currency or cash situated within the U.S.
    - Intangible property (i.e. shares of a corporation) is not subject to gift tax for nonresident alien donors
- No specific gift tax exclusion for nonresident individuals, though the $15,000 per donee annual exclusion is available

Nonresident Individuals – Transfer Taxes

- What isn't subject to transfer tax?
  - Non-U.S. sitused assets are not subject to U.S. transfer tax when donor is a NRA
    - Foreign property, foreign holdings are not subject to U.S. transfer taxes
  - Intangible assets are not subject to gift tax for NRA donor *regardless of situs*
    - i.e. stock in a U.S. corporation generally will not be subject to gift tax
      - Reliance on ability to gift asset pre-death to remove from taxable estate an option, but carries risk (i.e. sudden death)

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Structuring Nonresident United States Investments

- United States tax rules for nonresidents starkly contrast with those applicable for U.S.-based taxpayers
  - United States taxpayers - taxable on income earned worldwide, no matter what type
    - Individuals are taxable on gifts/bequests exceeding a lifetime exclusion amount
  - Nonresidents are subject to tax only on certain U.S. sourced-gains, with certain types of gains (non-ECI capital gains) not subject to tax
    - Nonresident alien individuals are subject to estate/gift tax only on U.S. sitused assets, but exemptions are comparatively miniscule

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Structuring Nonresident United States Investments

- How should nonresident alien investments into the United States be structured?
  - Nonresident alien investors typically focus on three United States tax factors: (1) income tax consequences, (2) estate/gift tax consequences, (3) anonymity; and (4) simplicity of structure/minimization of filing requirements
    - Anonymity – nondisclosure of identity to the United States government
  - Foreign corporations do not face estate/gift tax exposure, but are subject to branch profits tax
    - Branch profits tax avoidance available by having foreign corporation own a separate U.S. corporation

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Structuring Nonresident United States Investments

- **Critically, proper structure will hinge on the specific investment involved, given the variable considerations at issue**
  - Multitude of questions needs to be asked in order to properly structure the investment's ownership
    - Questions will typically focus on the types of income/gains anticipated from an investment, the type of taxpayer making the investment, treaty application, etc.
  - Additional layer of questions – what are the home country tax implications?

Structuring Nonresident United States Investments

- Common ownership structures
  - Individual ownership of a U.S.-sitused income generating asset (or ownership through a DRE)
    - Benefits: exemption from capital gains tax (*if* gain from asset sale not classified as ECI – real estate gains **not** exempt), long-term assets which are ECI subject to capital gains rates on disposition (though can be subject to FIRPTA withholding)
    - Detriments – estate/gift tax exposure, need to file individual U.S. tax returns if ECI generated

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Structuring Nonresident United States Investments

- Common ownership structures
  - Ownership of a U.S.-sitused income generating asset through a foreign corporation
    - Benefits: same exemption from capital gains tax as for NRA ownership; protection from estate/gift tax exposure (as NRA owns a foreign corporation – non-U.S. sitused asset); subject to corporate tax rates on income
    - Detriments – exposure to branch profits tax on earned income; Form 1120-F can require disclosure of underlying ownership; no differentiated tax rate for LTCG

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Structuring Nonresident United States Investments

- Common ownership structures
  - Ownership of a U.S.-sitused income generating asset through a foreign corporation owned by a domestic corporation
    - Benefits: protection from estate/gift tax exposure; no branch profits tax; no disclosure of ownership required (as Form 1120 filed showing foreign corporation as owner); subject to corporate tax rates on income
    - Detriments – no differentiation for LTCG; no exemption for non-ECI capital gains (as asset owned by domestic corporation)

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Structuring Nonresident United States Investments

- Common ownership structures
  - Ownership of a U.S.-sitused income generating asset through a foreign nongrantor trust
    - Benefits: protection from estate/gift tax exposure; no branch profits tax; subject to LTCG rates
    - Detriments – potential ramifications for U.S. beneficiaries of trust; need disclosure of identity on tax return; subject to individual tax rates on ordinary income

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