Top Ten Reasons to Use the U.S. as an International Tax & Residency Haven

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Overview

- Why the U.S.?
  - For Investment Structuring
  - For Residency Planning
For Investment Structuring

• Reason 1: Because the U.S. is the world’s greatest tax haven
  • Discriminatory tax system
    No capital gains tax for NRA’s, foreign trusts or entities on U.S. (non-real estate, non-trade or business) investments
  • The U.S. dollar is still the world’s safe haven currency
  • Relative political stability and safety net for banks
  • Relative confidentiality and security of bank & tax information
  • Treaty network; not on any blacklists; badge of legitimacy
For Investment Structuring (Cont’d)

• Reason 2: Because U.S. trust (non-tax) law is among the most sophisticated and competitive for meeting international client needs
  • Directed trust laws; private trust company laws
  • Elimination of rule against perpetuities
  • Short statutes for asset protection trusts
  • Freedom of testation, no forced heirship
  • Competitive market place for lawyers, accountants, trustees and investment managers
For Investment Structuring (Cont’d)

- Reason 3: Because U.S. tax law provides the most detailed and positive treatment of trusts for international planning purposes of any high tax jurisdiction
  - The U.S. “Foreign” Trust
    - Foreign Trusts taxed similar to NRA’s (unless U.S. Beneficiaries)
    - Not a special regime; compare Canada, for example
    - Trustee can be U.S. in many U.S. states
    - Income-stripping or foreign grantor trusts can benefit U.S. as well as foreign persons
  - Flexible U.S. holding structures (particularly LLC’s) and tax election (check-the-box)
  - Retained powers to manage investments and hire/fire trustee don’t undermine U.S. tax protection; even family members on PTC Board permissible, if don’t control distributions to themselves
  - Asset Protection Trusts enable grantor to retain interest without income, estate or inheritance taxation
  - State competition for private wealth creates planning opportunities
For Investment Structuring (Cont’d)

• Reason 4: Hide in plain sight! Bank and tax confidentiality stronger than in other tax havens or emerging markets, owing to:
  • U.S. makes the rule; carries a big stick but uses it to beat outside its border
  • Meaningful information exchange from U.S. a growing threat, but U.S. government can only exchange tax information it has. Still very little tax information reported for foreigners investing through appropriate structures accounts into U.S.
  • IGA’s brought on by FATCA truly threaten this but still a weak force compared to pressure for information disclosure on small tax havens, Switzerland
  • England has all crimes legislation, U.S. does not
  • Attorney-client privilege strong
For Investment Structuring (Cont’d)

• Reason 5: Because of access to U.S. investment markets and managers
  • U.S. structures open access to SEC-Registered offerings
  • Makes U.S. real estate investments, though taxable, more tax efficient
    ➢ Avoid withholding under FIRTA
    ➢ Avoid branch profits tax
    ➢ With trusts, reduces capital gains tax from 36% to 20 to 23.5% Federal
  • Regulated & Competitive liquid investment market and management
  • Rights Enforceable; rule of law
  • Flexible investment products (including U.S. insurance products) and
  • Historic/current economic policy emphasis to control inflation
For Residency Planning

• Reason 1: Because U.S. has probably the most complex immigration system in the world, with many avenues in, especially for the wealthy
  • Effective citizenship by investment program: The EB-5 visa to Green Card to Passport
  • Investor, extraordinary ability and other
  • Tourist and visa-waiver programs used by millions for part-time residency
  • Work visas
  • Student and practical training
  • Many alternatives today to obtain citizenship elsewhere entitling one to U.S. part-time residency
  • Liberal access to citizenship by birth and parentage
Reason 2: Because there are options for part-time, and even full-time, residency in the U.S. that do not require U.S. taxation

- Part-time: Substantial presence test, closer connection test, treaty tie-breaker
  - Effective 120 day average
  - Effective 183 day maximum
  - Complex exceptions and rules
- Full-time: Student and practical training
  - Accredited program
  - 5 year maximum (for tax purposes)
  - Derivative student status for spouses
For Residency Planning (Cont’d)

• Reason 3: Because with proper pre-immigration planning the U.S. estate tax for the immigrant’s pre-existing wealth can be minimized if not eliminated
  • If foreign domicile preserved, income tax residency is not equal to U.S. worldwide estate taxation
  • Assets placed in trust before arrival can be excluded from U.S. estate taxation
    ➢ For the benefit of others for generations to come
    ➢ While retaining interests for one’s own benefit in discretionary trusts
      ▪ Choice of jurisdiction with asset protection statues important
      ▪ Availability of sufficient income or wealth for lifestyle important
      ▪ Possible to retain power to remove/replace trustee, other checks and balances for personal protection
• For those adopting U.S. domicile, $5.3 million estate exemption per spouse enable significant retained assets to escape taxation
• Benefits of U.S. life insurance planning create further tax replacement value
For Residency Planning (Cont’d)

- Reason 4: Because with proper pre- or post-immigration tax planning, the U.S. estate gift and income taxation of foreign family wealth can be passed to you U.S. tax-free
  - The foreign grantor trust concept
  - No taxation of direct gifts or gifts in trust for immigrant’s benefit
  - Foreign estates not subject to U.S. income taxation for approximately two years, and no U.S. estate tax
  - Transfers from non-U.S. family members not subject to generation skipping transfer tax
    ➢ Can be placed in trust for generations
For Residency Planning (Cont’d)

- Reason 5: Because with proper pre-immigration tax planning, in many cases, the U.S. income taxation of the immigrants accumulated wealth can be temporarily or indefinitely minimized to a substantial degree.
  - “Temporarily” includes:
    - Stepping up the basis on appreciated assets before arrival
    - Private annuities
    - Non-taxable residency management, including observation of the substantial presence test, closer connection or treaty-tie breaker tests
  - “Indefinitely” includes:
    - Outright gifts and drop-off trusts to others
    - Life insurance planning with trusts
    - Irrevocable discretionary trusts with
      - 5-year rule observed
      - Adverse party consent
    - Transfers to U.S. trusts in no-tax states can save U.S. state income taxes

In Summary, with planning, a lot of U.S. taxation of immigrant wealth is mutable and depends on the level of constraint one is willing to endure.
Example: A diversified approach to structuring assets for US tax residency

<table>
<thead>
<tr>
<th>Possible structure</th>
<th>Income tax rate</th>
<th>Estate tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Irrevocable Offshore Trust</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Current Revocable Trust Assets</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>* Irrevocable offshore trust* or Life insurance wrapper</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Irrevocable offshore trust* or Life insurance wrapper or Holding company/revocable trust</td>
<td>0% or 28.7%**</td>
<td>0% (With Planning)</td>
</tr>
<tr>
<td>Holding company and/or Revocable trust</td>
<td>28.7%**</td>
<td>0%</td>
</tr>
<tr>
<td>Holding company</td>
<td>0% (assuming all active business income and no dividends paid)</td>
<td>0% without domicile change</td>
</tr>
<tr>
<td>Venezuela assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct ownership</td>
<td></td>
<td></td>
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</tbody>
</table>

Total blended nominal income tax rate: 5.8% (or 17.2% if Revocable Trust assets remain exposed)

* Trust must be established 5 years before any beneficiaries become US tax resident
** 25% dividend income at 43.4% rate; 75% long-term gain at 23.8% rate