

# Is It Safe?

## Dealing with the International Aspects of the United States Tax System

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# When Advising on International Tax Questions. . . ask yourself:



# Overview

- Advisors to individuals need to be familiar with the international aspects of the U.S. tax system
- Unfamiliarity is no longer viable or safe, especially in a multinational community such as Southern California
- The full attention of the Federal government is now focused on international tax issues
  - ◆ These issues arise both for individuals with cross-border activities and for anyone who deals with such individuals
- This presentation provides basic information for accountants and other advisors who deal with Americans with international business activities

# Topics Covered

- Debunking the myths
- Taxing U.S. persons with international income
- The foreign tax credit
- Taxation of international business activities
- Taxation of international investment activities
- Foreign trusts and asset protection
- Reporting foreign assets and activities
- Recent government activity relating to foreign bank and financial accounts

# DEBUNKING THE MYTHS

# Debunking the Myths - 1

- Myth #1: My income earned abroad is taxable only when it is brought to the United States
- Fact: This is a widely held belief and it is simply wrong. U.S. persons are taxable on their worldwide income. Where it is earned and/or paid is irrelevant. Failing to declare income earned abroad is no different from failing to declare income earned in the United States
- Fact: A U.S. person who owns a foreign entity may be taxed on his share of the entity's income even if the entity distributes no income

# Debunking the Myths - 2

- Myth #2: I paid tax in a foreign country on my foreign income, so I don't have to pay U.S. tax
- Fact: Wrong again. Income taxes paid to a foreign country may be creditable against U.S. income tax or deductible against income but:
  - ◆ The foreign income must be reported in order to claim the credit or deduction
  - ◆ If the U.S. tax on the foreign income is greater than the credit, the taxpayer must still pay the difference
  - ◆ Foreign tax credit is complex, full of limitations and traps and subject to “leakage”
  - ◆ NO credit or deductions for California personal income tax purposes

## Debunking the Myths - 3

- Myth #3: My parents in Country X set up a trust from which I receive distributions. I don't have to pay tax, do I?
- Fact: If the trust is a nongrantor trust, the distribution will be taxable. A trust with a foreign grantor will be a nongrantor trust unless the trust is revocable. Moreover, the distribution may be subject to adverse tax treatment if it is made out of accumulated income or gains.

# Debunking the Myths - 4

- Myth #4: My client is a nonresident under a treaty, so I can treat him as a foreign person
- Fact: Only for purposes of computing income tax and withholding.
  - ◆ Continues to be a resident for purposes of determining whether a foreign corporation is a “controlled foreign corporation”
  - ◆ Continues to be a resident for reporting purposes (Form 5471, etc.)
  - ◆ Treaty does not apply for state tax purposes
  - ◆ Estate and gift taxes – income tax treaty does not apply; check if there is an estate or gift tax treaty

## Debunking the Myths - 5

- Myth #5: My client has a green card but he lives abroad and rarely if ever visits
- Fact: A green card holder continues to be a resident for income tax purposes until he gives up his card or it is judicially or administratively revoked

# Debunking the Myths - 6

- Myth #6: I am not responsible if my client doesn't tell me about his foreign activities
- Fact: Wrong. You must ask. And you must ask about things that the client might not think to tell you about:
  - ◆ Foreign bank accounts and securities accounts, even if they produce no income and even if the client doesn't consider himself or herself to be the "real owner"
  - ◆ Interests in foreign companies, even if they produce no income
  - ◆ Gifts and inheritances from foreign persons and interests in foreign trusts

**Know your client - learn about foreign connections**



An unsafe policy

# TAXING U.S. PERSONS WITH INTERNATIONAL INCOME

# Taxation of U.S. Persons

- U.S. citizens and residents and U.S. corporations are taxable on worldwide income from all sources
  - ◆ Income is includible according to the taxpayer's method of accounting – for most individuals, the cash method
  - ◆ In other words, foreign income is not generally treated in any way differently than domestic U.S. income
- Because income may also be subject to foreign tax, there is a potential for double taxation, which is generally alleviated in two ways:
  - ◆ Foreign income tax is deductible or, at the taxpayer's election, creditable against U.S. tax, subject to limitations
  - ◆ Foreign countries grant rate reductions and exemptions to U.S. persons especially on investment income; also trade or business if no “permanent establishment”

# Who Is a U.S. Person?

- A U.S. citizen
  - ◆ Born or naturalized in the US and subject to its laws (*US Constitution*) (except children of diplomats)
  - ◆ Born outside US to one or two US citizen parents (8 *USCA section 1401*)
  - ◆ Many individuals may not realize they are U.S. citizens, especially if they have never come to the United States
  - ◆ A US citizen may be a dual citizen by birth or marriage – but the US will disregard foreign citizenship of US citizen
- A resident alien (*IRC section 7701(b)*)
  - ◆ Lawful permanent resident, from 1<sup>st</sup> day of presence as holder of such status until formally abandoned or revoked
  - ◆ Substantial presence test (see appendix), based on number of days of presence in calendar year
- A domestic corporation

**MORE INFORMATION IN THE APPENDIX**

# Entity Classification

- U.S. taxpayers must apply U.S. entity classification rules to all foreign entities. Under the “check the box” rules, all such entities by default are:
  - ◆ Corporations, if they appear on a regulatory list (“*per se*” corporations); or
  - ◆ Corporations, if no member has unlimited liability; or
  - ◆ Partnerships, if not on the list and at least one member has unlimited liability but if such an entity has only one member, it is a disregarded entity
- All entities, except *per se* corporations, may elect a different status
  - ◆ Elections need to be made timely and late elections to be treated as partnerships can have adverse consequences

# Source of Income

- Determining the source of income is important:
  - ◆ As we will see, foreign tax credit is limited by reference to the percentage of foreign source income
    - Similarly, foreign source income is reduced by deductions allocable to such income
  - ◆ Section 911 exemption applies only to foreign source earned income
  - ◆ Withholding generally applies only to U.S. source income
  - ◆ Foreign persons are not subject to U.S. tax on foreign source income (with three limited exceptions)

# Major Source Rules

<b>Type</b>	<b>Source Rule</b>
Interest	U.S. if borrower is U.S. corporation or “noncorporate resident” payor
Dividends	U.S. if U.S. corporate payor
Rent/gain from sale of real estate	Location of real estate
Royalties	Place where intellectual property is used (i.e., law under which rights exist)
Sale of personal property (except inventory)	Residence of seller
Sale of inventory	Place where title passes
Services	Place where service performed

# THE FOREIGN TAX CREDIT

# The Foreign Tax Credit

## ■ Direct FTC

- ◆ Dollar-for-dollar credit for foreign income tax paid or accrued by taxpayer directly or through pass-through entities

## ■ Indirect FTC

- ◆ Available only to C corporations
- ◆ Dollar-for-dollar credit for foreign income tax paid or accrued by a foreign corporation in which the C corporation holds at least 10% of the shares

- FTC is only available for involuntary payments of foreign taxes qualifying as income taxes under principles set out in regulations or under a treaty.

# The Foreign Tax Credit - Limitation

- The credit may not exceed U.S. tax on foreign source income
- Computed separately for two broad categories (“baskets”) of income: Passive and general baskets
- U.S. rules are used to determine source of income – no credit for tax on “U.S. source” income
- “Leakage” because U.S. may require deduction from foreign source income of amounts, e.g., itemized deductions, that are not deductible in the foreign country
- Credit must be recomputed for AMT

# Foreign Tax Credit Example 1 (Basic)

■ Foreign income	1,000
■ Foreign tax at 30%	300
■ U.S. tax at 35% pre-credit	350
■ Less: Credit	<u>300</u>
■ U.S. tax post-credit	<u>50</u>

# Foreign Tax Credit Example 2 (Limitation)

■ Foreign income	1,000	
■ Foreign tax at 45%		450
■ U.S. income	<u>4,000</u>	
■ Taxable income	5,000	
■ U.S. tax at 35% pre-credit		1,750
■ Less: Credit (see limitation below)		<u>350</u>
■ U.S. tax post-credit		<u>1,400</u>
■ Total tax burden (overall effective rate 37%)		\$1,850
■ Limitation:		
◆ Foreign income/Worldwide Income x U.S. tax pre-credit		
◆ $1,000/5,000 \times \$1,750 = \$350$		

# Foreign Tax Credit Example 3 (Leakage)

■ Foreign income	1,000	
■ Foreign tax at 45%		450
■ U.S. income	4,500	
■ Itemized deductions	<u>-500</u>	
■ Taxable income	5,000	
■ U.S. tax at 35% pre-credit		1,750
■ Less: Credit (see limitation below)		318
■ U.S. tax post-credit		<u>1,400</u>
■ Total tax burden (overall effective rate 37%)		\$1,850
■ Limitation:		
◆ Foreign income (reduced by share of itemized deductions)/Worldwide Income x U.S. tax pre-credit		
◆ $909/5,000 \times \$1,750 = \$318$		

# Foreign Tax Credit Example 4 (Baskets)

■ Foreign investment income	2,000	
■ Foreign tax at 5%		100
■ Foreign business income	3,000	
■ Foreign tax at 45%		1,350
■ U.S. income	<u>5,000</u>	
■ Taxable income	10,000	
■ U.S. tax at 35% pre-credit		3,500
■ Less: Credit (see limitation below)		<u>-1,150</u>
■ Total tax burden (overall effective rate 38%)		\$3,800
■ Limitation: \$100 allowable in full; only \$1,050 (3K/10K x \$3,500) of \$1,400 allowed		

# TAXATION OF FOREIGN INCOME



# Taxation of International Business Activities

- Income earned directly by the taxpayer is taxed as it is earned, according to the taxpayer's method accounting
- For individuals, most common type of foreign source business income is income from services
  - ◆ Individual that lives abroad entitled to section 911 exemption on up to \$91,500 of foreign earned income
    - 2004 legislation cut back advantage of this exemption
    - Additional exemption applies to “excess housing costs”
  - ◆ Otherwise, income is taxed like U.S. source income
  - ◆ Foreign tax credit available if foreign country taxes the income

# Structuring a Foreign Business Activity

- The major choice to be made here is whether to invest through a foreign corporation or through an entity classified as a partnership
- Advantage of a corporation:
  - ◆ No tax until dividend paid, except for Subpart F income (see next slides)
  - ◆ Until 2011 (perhaps beyond) long-term capital gains treatment for dividends from corporations in treaty countries
  - ◆ But: No indirect FTC for noncorporate U.S. shareholder
- Advantage of a partnership (or disregarded entity)
  - ◆ Foreign tax credits available to U.S. partners for taxes paid by the partnership

2009	Rate	Partnership Treatment	Rate	Corporate Treatment (Qualified Dividend)
Income		1,000,000		1,000,000
China corporate tax	25.00%	250,000	25.00%	250,000
Net income		750,000		750,000
China withholding tax - with or without HK holding company	China	75,000	China	75,000
Dividend (grossed up)				1,000,000
Adjusted gross income (pre-state deduction)		1,000,000		750,000
State tax:				
State tax at 9.30%	CA	93,000	CA	69,750
Taxable income		907,000		930,250
Tax on LTCG	15.00%		15.00%	139,538
Tax on ordinary income	35.00%	317,450	35.00%	0
Total U.S. tax pre-credit		317,450		139,538
Foreign tax credit (FTC)		325,000		75,000
U.S. tax post-credit		-7,550		64,538
China taxes paid				325,000
<b>Combined tax burden:</b>				
Payable when income earned		410,450		250,000
Payable when income distributed		0		209,288
<b>Total tax burden</b>		<b>410,450</b>		<b>459,288</b>

<b>2011</b>	<b>Rate</b>	<b>Partnership Treatment</b>	<b>Rate</b>	<b>Corporate Treatment (No Qualified Dividend)</b>
Income		<b>1,000,000</b>		1,000,000
China corporate tax	25.00%	250,000	25.00%	250,000
Net income		750,000		750,000
China withholding tax - with or without HK holding company	<b>China</b>	75,000	<b>China</b>	75,000
Dividend (grossed up)				1,000,000
Adjusted gross income (pre-state deduction)		1,000,000		750,000
State tax:				
State tax at 9.30%	<b>CA</b>	93,000	<b>CA</b>	69,750
Taxable income		907,000		930,250
Tax on LTCG	20.00%		20.00%	0
Tax on ordinary income	39.60%	359,172	39.60%	368,379
Total U.S. tax pre-credit		359,172		368,379
Foreign tax credit (FTC)		325,000		75,000
U.S. tax post-credit		34,172		293,379
China taxes paid				325,000
<b>Combined tax burden:</b>				
Payable when income earned		452,172		250,000
Payable when income distributed		0		438,129
<b>Total tax burden</b>		<b>452,172</b>		<b>688,129</b>

# Taxation of International Investment Activities

- Foreign corporations with no U.S. income are not taxed even if 100% owned by U.S. persons
- However, where a foreign corporation has U.S. shareholders it may be:
  - ◆ A controlled foreign corporation; or
  - ◆ A passive foreign investment company; or
  - ◆ Neither
- CFC: 10% U.S. shareholders own a majority
- PFIC: 75% of gross income or 50% of assets are passive

# Controlled Foreign Corporations

- Current taxation to U.S. shareholders (10%+) of Subpart F income
- Subpart F income:
  - ◆ Passive income (interest, dividends, rents, royalties, capital gains from passive income producing assets)
  - ◆ Business income from related party transactions except within the CFC's country of incorporation
- Non-Subpart F income deemed distributed under section 956 if foreign corporation invests in the United States, with some exceptions
- Sale of shares in CFC yields dividend income to the extent of undistributed Subpart F income

# Passive Foreign Investment Companies

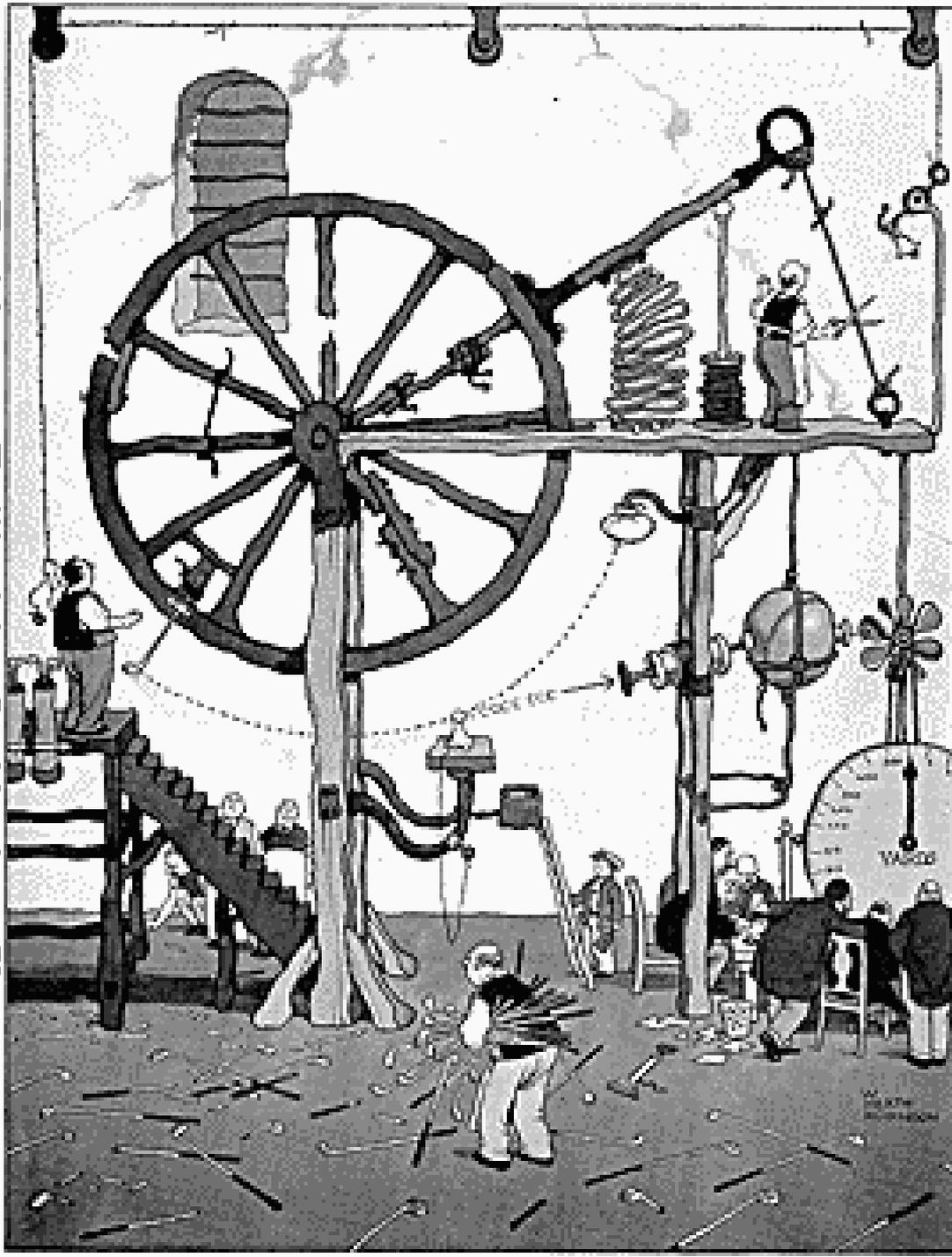
- Designed to level playing field between U.S. and offshore mutual funds, but applies more broadly
- No immediate taxation of U.S. shareholder (any percentage) but:
  - ◆ All gains from sale of PFIC stock are ordinary
  - ◆ Any “excess distribution” (more than 125% of rolling three year average) is allocated back over entire period of ownership of PFIC and generates interest charge on resulting tax – tax can exceed 100% of distribution
- If PFIC provides required information, shareholder can elect to recognize his share of PFIC income and gains on current basis (“QEF election)

# Other Forms of Investment

- Shares in foreign corporation that is neither a CFC or a PFIC in the hands of the U.S. shareholder:
  - ◆ Gains and dividends taxed according to taxpayer's method of accounting
  - ◆ Dividends from “qualified foreign corporation” entitled, through 2010, to long-term capital gains treatment
    - Corporation must be incorporated in treaty jurisdiction
- Investments in foreign bank accounts, direct holdings of foreign bonds and other interest-bearing instruments – interest taxable when paid

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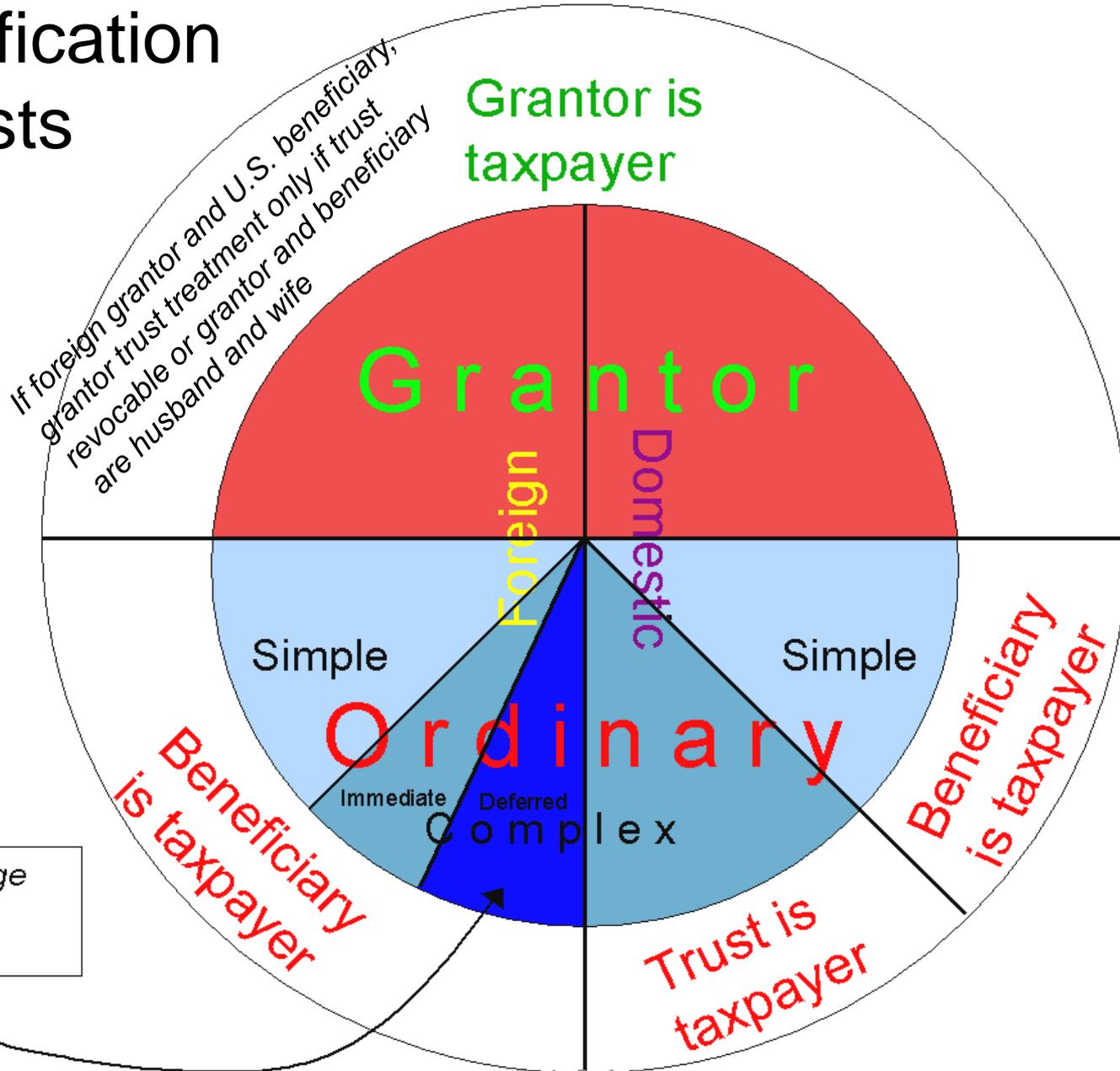
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# Classification of Trusts



# Grantor Trust – Before and After Grantor's Death

Time	Before Grantor's Death	After Grantor's Death
Income earned	<p>All trust income is treated as grantor's – but foreign and favored U.S. income not taxed</p>	<p>All trust income is treated as trustee's – but foreign and favored U.S. income not taxed</p>
Income actually (or required to be) distributed to U.S. beneficiary in year earned	<p>Distribution treated as gift by grantor to beneficiaries</p> <ul style="list-style-type: none"> <li>• No U.S. income tax</li> <li>• No U.S. gift tax if made outside United States</li> </ul>	<ul style="list-style-type: none"> <li>• Taxable to beneficiary when distributed</li> <li>• Capital gains treatment available</li> </ul>
Income accumulated and distributed to U.S. beneficiary in later year		<ul style="list-style-type: none"> <li>• Taxable to beneficiary when distributed</li> <li>• Capital gains taxed as ordinary income</li> <li>• Interest on deferred tax</li> </ul>

# Reporting Foreign Assets and Activities

- A selection of IRS tax forms
  - ◆ Forms 5471 (U.S. owned foreign corporation) and 5472 (foreign owned U.S. corporation )
  - ◆ Forms 8865 (foreign partnership) and 8858 (foreign disregarded entity)
  - ◆ Form 8621 (PFICs – starting 2010, required even if no distributions received)
  - ◆ Forms 3520 and 3520-A (foreign trusts and gifts)
- The FBAR (discussed below)
- Coming soon (taxable years beginning after the date of the enactment of the HIRE Act of 2010):
  - ◆ IRC section 6038D will requires annual filing information regarding foreign financial assets in excess of \$50,000 – does not replace the FBAR
- And many more . . .

# Expatriation

- Since June 17, 2008, new mark-to-market tax on former citizens and “long-term residents” who become “covered expatriates” (IRC section 877A)
- Also, gifts and bequests from covered expatriates to U.S. persons subject to tax at highest estate or gift tax rate (IRC section 2801)
- Covered expatriate: Former citizen or long-term resident with net worth of \$2 m or average annual tax liability for five years greater than \$145,000



**“You can check out any time you want,  
but you can never leave”**



# Foreign Accounts – Recent Developments

- Increased emphasis on foreign bank account reports and increased penalties enacted in 2004
- UBS AG (Switzerland) settlement with IRS and Swiss government of IRS information requests
- Voluntary Disclosure initiative, with 5%/20% penalty framework, expired October 15, 2010
  - ◆ 14,700 filings
  - ◆ Where are we?
  - ◆ What next?
- Foreign Account Tax Compliance Act (FATCA) provisions of the HIRE Act

# Foreign Bank and Financial Accounts

- U.S. persons who have a financial interest in or “signature or other authority” over a foreign bank account or financial account must report annually by June 30 for prior year
  - ◆ Report is TD F 90.22-1, known by all as the FBAR
  - ◆ Not a tax return, although filed with IRS in Detroit
  - ◆ No timely mailing rule
  - ◆ IRS has postponed to June 11, 2011 deadline for 2003-2009 reporting of signature/other authority-only accounts
  - ◆ IRS has also postponed reporting in relation to ownership of offshore mutual funds and other collective investment vehicles

# Foreign Accounts and Income Tax Returns

- Question on Form 1040, Schedule B, Part III
- New IRC section 6038D (part of FATCA)
  - ◆ Annual report, presumably attached to income tax return
  - ◆ Requires reporting of “specified foreign financial assets”
    - See definitions on following slides
  - ◆ Applies to individuals and domestic entities formed or availed of for purposes of holding foreign financial assets, directly or indirectly
  - ◆ Threshold will be aggregate of more than \$50,000
  - ◆ Otherwise, many aspects of overlap with FBAR unclear
  - ◆ Effective for taxable years beginning after March 18, 2010

# FATCA Definitions - Foreign Financial Institution

- Foreign entity that
  - ◆ accepts deposits in the ordinary course of a banking or similar business
  - ◆ as a substantial portion of its business, holds financial assets for others, or
  - ◆ is engaged (or holding itself out as being engaged) primarily in business of investing, reinvesting, or trading in securities, partnership interests, or commodities or derivatives
- This definition is far broader than what we think of as a financial institution
  - ◆ Simple family-owned investment company can be FFI
  - ◆ Treasury can make exceptions

# FATCA Definitions – Financial Accounts

- Financial account defined as:
  - ◆ Any depository account maintained by a financial institution
  - ◆ Any custodial account maintained by financial institution, and
  - ◆ Any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market)
- Breathtakingly broad – for example, theoretically could include account receivable owed by foreign customers that are FFIs
- Treasury has broad authority to make exceptions

# FATCA Definitions – Specified Foreign Financial Asset

- Financial account with FFI
- Assets not in financial account with FFI if
  - ◆ Stock or security issues by non-U.S. person
  - ◆ Financial instrument or investment contract with non-U.S. counterparty
  - ◆ Any interest in a foreign entity

# FATCA Withholding

- FATCA added a whole new set of withholding provisions (Chapter 4 – sections 1471-1474) effective 2013 (some grandfathered obligations)
- Basic Concept: All payors of U.S. source investment income or gross proceeds related to U.S. securities (defined as “withholdable payments”) must withhold 30% from such amount paid to a non-U.S. payee unless payee agrees to provide information on its U.S. customers or owners.
- All withholding agents must apply Chapter 4 before applying the current Chapter 3 rules
- Substantial penalties for failure to comply

# What FFIs Must Do

- Enter into agreement with IRS to
  - ◆ provide the identity of U.S. individuals and “substantial U.S. owners” (i.e., U.S. persons owning directly or indirectly more than 10% of the foreign entity and, in some cases, more than zero percent) of foreign entities that maintain financial accounts
  - ◆ provide relevant account information
  - ◆ comply with verification and due diligence procedures
  - ◆ report annually certain information to the Treasury
- If they do not, a 30% tax must be withheld on all withholdable payments

# Withholding on non-FFIs

- 30% withholding required on withholdable payments to non-financial foreign entity unless the entity provides to withholding agent:
  - ◆ Certification that there are no substantial U.S. owners; or
  - ◆ Name, address and TIN of substantial U.S. owners
- Exceptions when payment beneficially owned by public company or its affiliates, foreign governments, international organizations and central banks
- Treasury may identify classes of persons and classes of payments to which withholding will not apply

# What U.S. Withholding Agents Must Prepare For

- Determine whether entity is FFI or NFFE
- Determine whether FFI has an IRS agreement
- Redesign systems and procedures

The IRS is mounting a massive guidance project

# Appendix – Citizenship and Residence

- The following slides provide additional information on determining U.S. citizenship and residence

# Appendix A. Who Is Born a US Citizen?

## ■ Birth in US

- ◆ Birth in US (including, in most cases, Puerto Rico, Guam and US Virgin Islands), except to foreign diplomat
- ◆ Proof of citizenship: birth certificate

## ■ Birth abroad to TWO US citizens

- ◆ Both parents were US citizens when individual was born;
- ◆ At least one parent lived in US at some point in their life.
- ◆ Proof of citizenship
  - Record of birth abroad, if registered with US consulate or embassy
  - Provision of information required by passport application
  - Certificate of Citizenship – apply using Form N-600

## ■ Birth abroad to ONE US citizen

- ◆ One parent was US citizen when individual born
- ◆ Before individual born, citizen parent lived in US at least 5 years, at least 2 of which after citizen parent's 14th birthday (10 and 5 years if individual born before November 14, 1986)
- ◆ Proof of citizenship: same as for birth abroad to two US citizens

# Resident Aliens

- **Substantial presence test** (*IRC section 7701(b)(3)*)
  - ◆ Either 183 days of presence in current calendar year *or*
  - ◆  $CY \geq 31$  days *and*  $CY + (PY_1 / 3) + (PY_2 / 6) = 183$ , where CY = days of presence in current calendar year, PY = days of presence in two preceding years, *unless* taxpayer shows closer connection to a foreign tax home in current year
  - ◆ If  $CY < 31$ , not resident under this test
  - ◆ Exceptions for students, teachers, diplomats, employees of international organizations, some professional athletes, certain cases of illness preventing departure

# Resident Aliens (cont'd.)

More on the **substantial presence test**:

- Tested on calendar year basis
  - ◆ Can elect residence in first year
- Days of presence
  - ◆ Arrival and departure both count
  - ◆ Days in transit between two foreign points will be excluded if stay is less than 24 hours
  - ◆ Special rules for commuters from Canada and Mexico
- Foreign tax home/closer connection
  - ◆ Tax home defined as regular/principal place of business
  - ◆ Closer connection focuses on personal connections (location of home, family, belongings, social organizations, bank accounts, driver's license, etc.)

# Resident Aliens (cont'd.)

## ■ More on the **lawful permanent resident test**

- ◆ Residence under this test begins on first day of presence as a lawful permanent resident
- ◆ This often is not the date of receipt of the green card
  - Adjustment of status or passport stamp may come first

## ■ **Elective residence**

- ◆ First year election under section 7701(b)(4)
- ◆ Joint return elections
  - Section 6013(g) (one member of couple U.S. for whole year, other nonresident alien – NRA can elect to be resident)
  - Section 6013(h) (both members of couple at U.S. at end of year – can elect to be U.S. for whole year)

# Nonresident Aliens

- Nonresident aliens (“NRAs”) (*section 7701(b)(1)(B)*)
  - ◆ Any individual who is not a US citizen or US resident
  - ◆ NRA may elect to be treated as a resident alien under certain circumstances (*sections 7701(b)(4), 6013(g), 6013(h)*)
  - ◆ Residence may be affected by treaty residence (“tiebreaker”) provision (*US Model Treaty, Art. 4(2)*)
  - ◆ Laws applicable to former citizens who expatriate to avoid US taxes (*section 877*) now apply to aliens who give up their green card after at least 8 years of residence within a 15-year period (*section 877(e)*) – these were significantly revised effective 6/17/2008

***No special provision for new or temporary residents***

# Typical Treaty Tiebreaker

Where, by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a **permanent home** available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his **personal and economic relations are closer (center of vital interests)**;

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an **habitual abode**;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a **national**;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by **mutual agreement**.

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