

AICPA – NATIONAL TAX CONFERENCE
Keeping Aliens US Tax Compliant
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Choices, Structure and Tax Analysis
Outline

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The US tax system is unique in its
comprehensiveness

- a. Non-resident aliens only pay tax on US source/effectively connected income.
- b. For several billion people that means there is nothing to do!

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Resident aliens....all non-US citizens that are
“tax resident” in the US, must comply with our
tax and banking laws in the same manner as US
Citizens

- a. Green Cards
- b. Substantial Presence
- c. Closer Connection
- d. Treaty Tie breaker

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The US system assesses tax on worldwide income from

- whatever source derived, whether paid in the US or otherwise,
- whether paid in cash or stock or other property, and
- whether paid directly or indirectly

MYTH: If a tree falls in a forest and no one hears it, it does NOT make a sound.

Tax application – if I am a US resident BUT paid in a foreign bank account, or on a foreign payroll and subject to foreign tax, it does not need to be included as US income.

Tax law: If you are a RESIDENT alien in the US, the income MUST be reported, wherever paid. NOTE: If it is properly taxed elsewhere, you generally get a credit in the US for some or all of the foreign income tax.

Some Examples.

To capture all the data you need, ask special questions such as:

- a. Do you have signature authority over any foreign bank, brokerage, insurance, pension or other financial account, whether you are the owner or not?
- b. Do you have any foreign investments? For example, do you own any foreign private or public stocks or other businesses, bonds, mutual funds, real estate, etc?
- c. Do you have a foreign pension of any type?
- d. Are you the beneficiary of any trust?
- e. Do you have any other "offshore investments"?
- f. Did you or do you expect to receive support or a gift or an inheritance from any alien/foreign person?

EXPLAIN that you ask these questions for TWO purposes - -

- So you could identify anti-avoidance regimes for income tax purposes
- So you can advise and assist in preparing disclosures to avoid serious penalties - \$10,000 per occurrence and sometimes jail

Anti-avoidance regimes - CFC

Controlled Foreign Corporations (CFC) and Subpart F

- Shareholder pays tax as deemed dividend if five or fewer US Persons control more than 50% of the vote or value of a foreign corporation
- Deemed dividend increases basis
- Depends on the nature of the corporation's income --- discussion of subpart F

Anti-avoidance regimes (cont'd) - PFIC

Passive Foreign Investment Companies (PFIC)

- Foreign companies that have 75% "investment income" or 50% of the company's assets are investments that produce interest, dividends and/or capital gains.
- Pay tax and interest charge on sale of shares or elect to pay tax annually if marketable security or if internal data available--- Qualified Electing Funds (QEF).

Disclosure Regimes

- a. Information Return of U.S. Persons With Respect to Certain Foreign Corporations, including CFCs - Form 5471
- b. Foreign Trusts and/ or Gifts - Form 3520/3520A
- c. Annual Reporting of Disregarded Foreign Eligible Entities - Form 8858
- d. Annual Reporting of Foreign Eligible Entities Constituting Foreign Partnerships - Form 8865
- e. Report Of Foreign Bank And Financial Accounts - TD F 90-22.1 (Due June 30)

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Challenging foreign financial arrangements --- what are they? Once identified, how are they taxed?

- a. Pensions
- b. Trusts
- c. Life Insurance
- d. Investment accounts
- e. Stock ownership
- f. Some or all of the above, all at once!

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Arriving and Departing

- a. Deferred and current compensation income recognition
 - Sec. 409A compensation issues
 - Sec 83 stock issues
- b. Exit Tax for CERTAIN "long term resident" aliens
- c. Other planning issues

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