

# **Pre-Immigration Tax Planning**

**Safeguarding The Immigrant's Financial Interests  
Prior to Residency**

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## **Safeguarding The Immigrant's Financial Interests Prior to Residency**

The general principles discussed herein are not intended to be legal or tax advice and taxpayers should consult with their individual legal, accounting and tax advisors.

# **PRE-IMMIGRATION TAX PLANNING**

## ***What Can Be Accomplished Prior to Residency Status***

South Florida continues to be a destination for legal aliens hoping to invest; do business and live in the United States. Very often immigrating residents are unfamiliar with the tax laws of the United States that they will face upon obtaining their resident status. Often this lack of knowledge can be costly with immigrants paying unnecessary taxes and burdening themselves with liabilities. The following is a checklist of issues that may be helpful to avoid these tax problems. The checklist does not consider the effect of a tax treaty that may apply to an immigrant.

### **I. Status for Tax Purposes**

- **Resident for Income Tax Purposes**
  - a. Green Card
  - b. Substantial Presence Test
  - c. Voluntary Election
  
- **Resident for Estate and Gift Tax Purposes**
  - a. Country of Domicile

### **II. Taxation Pattern**

- **Resident - Subject to Taxation**
  - a. Income Taxation - Worldwide Income
  - b. Estate Taxation - Worldwide Assets
  - c. Gift Taxation - Worldwide Assets
  
- **Non Resident Alien - Subject to Taxation**
  - a. Income Taxation - United States Source Income, Limited type of Foreign Source Income
  - b. Estate Tax - United States Situs Assets Only
  - c. Gift Tax - Real and Tangible Personal Property with a United States Situs

- **Situs of Assets**

- a. Real Property in the U.S. - U.S. Situs
- b. Tangible Personal Property - Located in the U.S. - U.S. Situs
  - 1. - Cash - Needs Special Consideration
  - 2. - Exceptions for visiting art work
- c. Intangible Personal Property - Dependent upon the type of intangible property

### **III. Pre-Immigration Planning - Income Tax and Gain**

- **Objective - Minimize United States Gains and Income Tax**

- a. Key Strategy is to accelerate gains prior to residency so that gains earned while one was a non resident alien are not subject to U.S. tax after residency is obtained. Some examples of acceleration of gain are:
  - b. Traded securities with unrealized gain may be sold before residency and repurchased with a new cost basis
  - c. Illiquid assets with unrealized gain may be sold to related parties or third parties and gain realized. Careful planning must be undertaken if one sells and repurchases illiquid assets; especially with related parties.
  - d. Income expected to be paid after residency should be accelerated where possible and paid prior to residency.

Some examples of acceleration of income are:

- 1. - Exercise stock options
- 2. - Accelerate taxable distributions from deferred compensation plans
- 3. - Accelerate gains on Notes held from installment sales

## IV. Pre Immigration Planning - Estate and Gift Tax

- **Objective-Minimize United States Estate Tax**

- a. Key strategy is to minimize assets in one's estate before obtaining residency status; and where possible to retain some degree of control over assets;
- b. Planned gifts to third parties should be made prior to residency;
- c. Planned gifts of United States Situs Property
  1. - Tangible Property - Physical Change of Situs to a Foreign Situs Before Gift is made;
  2. - Real Estate - Contribution to foreign corporation and gift of stock in foreign corporation.
- d. Transfers in Trust for Beneficiaries

## V. EXCEPTIONAL CIRCUMSTANCES AND SPECIAL TAX BENEFITS

- **Students**

a. A foreign student who has obtained the proper immigration status will be exempt from being treated as a U.S. resident for U.S. tax purposes even if he or she is here for a substantial time period that would ordinarily result in the student being taxed as a U.S. resident.

b. This student visa not only permits the student to study in the United States and pay taxes only on income from U.S. sources not worldwide income. The visa also permits the student's direct relatives to accompany the student to the United States and receive the same tax benefits.

c. Assume the student, a Columbian woman aged 40, is married to an extremely successful Columbian businessman who accompanies her with their two children to the U.S. His annual income is \$1.0 Million and is earned from the banking business in Columbia. He earns no U.S. income. Under those circumstances, for U.S. income tax purposes, this businessman is exempt from U.S. tax on his worldwide income while living full-time in the U.S. for less than five calendar years.

- **Treaty Benefits**

Aliens that are governed by a tax treaty can generally spend more time in the U.S. than an alien not covered by a treaty before being considered a resident alien for tax purposes.



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