INVESTMENT IN U.S. REAL ESTATE
BY FOREIGN INVESTORS

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- Tax Planning
- Tax Returns
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TRENDS IN FOREIGN INVESTMENT

Texas is a favorable place for foreign investment in Real Estate because of various factors:

- Good Investment Opportunity
- Rising Crime and Violence in some foreign countries
- To provide better educational and economic opportunities to the family and children
- Business relocation and domiciliation
CRITICAL QUESTIONS OF FOREIGN PERSONS

- Legal and tax implications of investing in U.S. Real Estate
- U.S. immigration status and options
- U.S. tax status and obligations
- Estate and inheritance taxes
- Best legal forms for a foreign person to invest in U.S. Real Estate
WHO IS CONSIDERED A U.S. TAXPAYER:
DEFINITION & CONSEQUENCES
THREE CATEGORIES OF RESIDENCY

Foreign Persons need to carefully evaluate their residency status before they invest in U.S. Real property:

1. **Income Tax Resident**
   According to Income Tax Law

2. **Estate Tax Resident**
   According to Estate Tax Law

3. **Immigration Resident**
   According to Immigration Law

*The definition and rules are different for each category*
DEFINITION OF INCOME TAX RESIDENT

U.S. INCOME TAX RESIDENT

- U.S. Citizen (Born in U.S./U.S. Parents)
- Permanent Resident/Green Card= USR
- Substantial Presence (> 183 Days) = Tax Resident

FOREIGN INCOME TAX RESIDENT

- Not U.S. Citizen
- Temporary Visas
- No Substantial Presence (< 183 Days)
- Treaty Exception
- Closer Connection Test
U.S. INCOME TAXATION SYSTEM

U.S. INCOME TAXPAYER

FOREIGN INCOME TAXPAYER

GLOBAL INCOME

U.S. SOURCE INCOME
DEFINITION OF ESTATE TAX RESIDENT

U.S. ESTATE TAX RESIDENT

- U.S. Citizen
- Foreign Person who lives in U.S. with no present “intent” to leave

FOREIGN ESTATE TAX RESIDENT

- Foreign person who does not live or have a domicile in the U.S.
- Foreign Person who lives in U.S. but has the present intent to leave and return to foreign country
U.S. ESTATE TAXATION SYSTEM

U.S. ESTATE TAXPAYER
(BASED ON INTENT)

GLOBAL ESTATE

FOREIGN ESTATE TAXPAYER

U.S. ESTATE
IMMIGRATION OPTIONS
Merely investing in US real estate alone does not qualify the foreign person for a US immigration or visa status.

In general, in order to qualify for a business or investor visa the investment has to be considered an active business (not passive) and must generate US employment. (Visa L1, E2, EB5)

Thus, an investment in US real estate that is considered an active business and has US employees may qualify:
1. Commercial properties with active involvement & employees
2. Rental properties with active involvement and employees

*Each form of ownership has different tax consequences*
IMMIGRATION OPTIONS FOR A FOREIGN INVESTOR

U.S. CITIZEN
- Born in U.S.
- Born of U.S. parents
- Naturalized

PERMANENT RESIDENT
- Residency through family
- Residency through investment
- Residency through professional or educational achievements

BUSINESS/INVMT VISAS
- Business Visa
- Investment Visa
- Many Others
TAX CONSEQUENCES OF IMMIGRATION STATUS

- U.S. CITIZEN
  - GLOBAL TAXATION

- U.S. RESIDENT (Green Card)
  - GLOBAL TAXATION

- TEMPORARY VISAS (L-1, E-2, etc.)
  - U.S. SOURCE TAXATION
TAX CHALLENGES FOR FOREIGN INVESTORS
TAXES ON U.S. REAL ESTATE GAINS

INCOME TAX
Indiv. = 37%
Corp. = 21%

CAPITAL GAINS TAX
Indiv. = 20%
Corp. = 21%

FIRPTA withholdings tax
Indiv. = 15%
Corp. = 15%

ESTATE TAX
Indiv. = 40%
Corp. = 0%

* Note: This chart does not include tax on rentals, property taxes, sales tax, etc.
WAYS TO INVEST IN U.S. REAL ESTATE

A foreign person has two ways to invest and own real estate:

1. **DIRECT INVESTMENT** – Individually

2. **INDIRECT INVESTMENT** – Companies, Partnership, etc.

*Each form of ownership has different tax consequences*
INVESTMENT OPTIONS

DIRECT INVESTMENT
- Individual

INDIRECT INVESTMENT
- U.S. Corporation
- U.S. Partnerships
- Foreign Corporation

*Note: How you invest determines how you are taxed
FIRPTA – Foreign Investment Real Property Tax Act

➢ **FIRPTA** taxes real estate gains of foreign investors by requiring withholdings on the gross sales price, regardless if gain or loss on sale.

➢ It makes the buyer, agents, and other real estate professionals responsible for the tax if not withheld.

➢ Includes sales of Real Estate, and may include sales of corporate stock or partnership interests.

*Note: Does not matter if Real Estate is held directly or indirectly, it may be subject to FIRPTA.*
U.S. REAL PROPERTY DEFINED

U.S. REAL PROPERTY

Real Property and its improvements or permanent attachments located in the U.S., also includes stock of a “U.S. Real Estate Holding Co.”

U.S. REAL ESTATE HOLDING COMPANY

A U.S. Corporation with US real estate that is more than 50% of total of global real property and other Business property. The sale of stock of the corporation is treated as a sale of U.S. real property.
WITHHOLDING REQUIREMENTS - FIRPTA

15% withholding required upon sale of U.S. real property, also sale of stock of USRP company.

15% of gross sales price

Seller and his/her agents are responsible

Forms 8288 & Form 8288-A Required
EXCEPTIONS TO WITHHOLDING

No Withholding Required if:

- Seller provides “Non foreign affidavit”
- Sale of house to be used as residence and sales price is less than $300,000
- Seller obtains an “Exception Certificate” from the IRS.
EXAMPLE #1 SALE AT A LOSS

1) U.S. Real Estate is a U.S. Property
1) Seller and buyer subject to FIRPTA
1) Withholding required at 15%
EXAMPLE #2 SALE AT A GAIN

U.S. REAL ESTATE

FP

Cost $100,000

Price $250,000

BUYER

1) U.S. Real Estate is not considered U.S./FIRPTA property if used as a residence and price is less than $300,000

1) Seller and buyer not subject to FIRPTA
EXAMPLE #3 SALE OF A US COMPANY

1) Stock is considered U.S. Property interest if more than 50% of assets are U.S. real estate.

1) Seller & buyer subject to FIRPTA

1) Withholding required at 15%
EXAMPLE #4 SALE OF A FOREIGN COMPANY

FP

Cost $500,000

STOCK OF FOREIGN COMPANY

Price $1 million

BUYER

U.S. REAL PROPERTY

1) Stock is not considered U.S. property regardless of percentage

1) No withholding required
RENTAL INCOME FROM U.S. REAL ESTATE
RENTAL INCOME FROM U.S. REAL ESTATE

A foreign person that has rental property in the U.S. is subject to a 30% withholding tax on the gross rentals (no deductions allowed).

1. Foreign Person is responsible

1. Property manager and persons that control the rentals are also responsible
RENTAL INCOME – BUSINESS ELECTION

Foreign Person can make an election to treat the rental property as a U.S. trade or business and it is no longer subject to 30% withholding tax.
Instead, the net rental income is taxed at regular tax rates.

Deductions are allowed if the election is made:

1. OPERATING EXPENSES
2. DEPRECIATION
3. INTERESTS
4. TAXES
DIFFERENT LEGAL FORMS TO INVEST IN U.S. REAL ESTATE
U.S. TAXATION OF REAL PROPERTY INTEREST

INVESTMENT OPTIONS

DIRECT INVESTMENT
- Individual

INDIRECT INVESTMENT
- U.S. Corporation
- U.S. Partnerships
- Foreign Corporation

*Note: How you invest determines how you are taxed*
STRUCTURES FOR INVESTING IN U.S. REAL ESTATE
STRUCTURE #1

FOREIGN INDIVIDUAL

U.S. Real Estate (Personal Use)

- No Asset Protection
- Estate Tax applies
- FIRPTA Applies
- Capital Gains Tax
STRUCTURE #2

- Asset Protection
- No Estate Tax on shares
- Regular Tax applies to Property
- FIRPTA applies to property
STRUCTURE #3

Foreign Corporation

U.S. Corporation

U.S. Real Estate

- Asset Protection
- No Estate Tax on foreign shares
- No gift tax on foreign shares
- No FIRPTA on property
- Regular Tax rates applies to property
STRUCTURE #4

FOREIGN CORPORATION

Sec. 897 (i) Election

U.S. Real Estate

- Asset Protection
- No Estate Tax on shares
- FIRPTA does not apply to property
- Regular tax rates apply
STRUCTURE #5

FOREIGN INDIVIDUALS

U.S. IRREVOCABLE TRUST

Beneficiaries

U.S. Personal Real Estate

- Asset Protection
- No Estate Tax
- No FIRPTA
- Regular tax rates apply
THANK YOU!

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