



## FLORES GROUP ATTORNEYS & ADVISORS

Member of



# US TAX OBLIGATIONS AND DISCLOSURES FOR FOREIGN INVESTORS



## I. ECONOMIC OPPORTUNITIES IN THE USA

The United States offers a stable economic and political environment for foreign capital and investments—which positions the United State as the largest foreign investment haven in the world. This allows foreign investors in the Unites States have many economic and business opportunities.

## **II. TAX INCENTIVE AND BENEFITS TO INVEST IN THE USA**

The United States offers various tax incentives to foreign investors who participate in the U.S. markets, such as: preferential tax rates, tax exemptions, and treaty exemptions. To enjoy such incentives, careful planning, use of corporate entities, and trusts may be required to achieve the desired tax benefits and savings. However, note a structure is not required if the investment is subject to preferential treatment (a separate alert is available on these benefits).

## **III. COMPLIANCE AND DISCLOSURE REQUIREMENTS FOR FOREIGN INVESTORS**

To qualify for some of the benefits available to foreign investors, U.S. tax authorities require certain compliance and disclosures. As well, compliance and disclosures help determine any tax obligations attributed to the foreign investor. Knowing and understanding compliance and reporting requirements protect foreign investors from penalties and sanctions on the U.S. Below is a general list of the U.S. compliance and disclosures requirements for foreign investors. However, additional compliance filings may be required, depending on your particular situation.

- **Form 1040NR** is required for foreign individuals who have U.S. sourced business, portfolio, or investment income. It is used to determine if any tax obligations are due.

- **Form 1120F** is required for foreign corporations that have U.S. sourced business, portfolio or investment income. It is used to determine if any tax obligations are due.
- **Form 3520** is required for foreign trusts that have U.S. beneficiaries or grantors, it may result in taxation of certain income attributable to the U.S. beneficiaries.
- **Form 3520** is required to report gifts made by foreign persons to U.S. individuals in excess of \$100,000 in one calendar year.
- **Form 706 NA** is required upon the death of a foreign person that had U.S. situs assets taxable under the U.S. estate tax provisions.
- **Form 8833** is required by foreign investors who have U.S. sourced income and wish to claim a reduction or no taxation at all on certain types of income in accordance with a tax treaty in effect. Failure to file the form and claim the treat benefit may result in 30% withholdings.
- **Form 8832** allows qualifying foreign entities to elect the tax treatment under U.S. rules (taxed as: a corporation, partnership, or disregarded entity).
- **Form 8840** is required by foreign persons who have substantial presence in the U.S. but have a closer connection to a foreign country - which prevents them from being classified as a U.S. tax resident.
- **FBAR/Fin 114** may be required by certain foreign persons who have a substantial presence in the U.S. it requires disclosure of all foreign bank accounts and certain financial instruments.

A foreign investor/person nevertheless may be considered a U.S. resident for taxation purposes. As such, the reporting requirements for foreign investors who

are also U.S. tax residents increase substantially. A foreign investor may be considered a U.S. resident for taxation purposes if he or she meets the Green Card Test (Residence Card Holder) or the Substantial Presence Test (183-day test). If so, the foreign person must report income from all sources (in the U.S. and other countries), unless other exceptions apply (tax treaty). Furthermore, the foreign person must file the applicable forms and reports associated to having control and/or earnings in foreign corporations (Sub-part F & GILTI).

#### **IV. INTERNATIONAL EXPERIENCE REQUIRED**

The compliance and disclosure requirements for foreign investors differs to the requirements imputed to U.S. persons. As such, tax planning requires specialized knowledge and experience in international tax matters. Severe penalties and sanctions may be incurred for failure to comply with the reporting and disclosure requirements. Therefore, it is important to understand compliance obligations and disclosures required and to retain a tax professional experienced in international matters. Section III above lists various compliance requirements.

#### **V. INTERNATIONAL TAX ATTORNEYS AND ADVISORS**

At the FGA Attorneys and Advisors, we are experienced in international tax, estate, and other legal matters that affect foreign investors. If you are an international investor in the U.S. or are considering expanding your investments in the U.S., please give us a call at (210) 340-3800.

As always, we strive to provide our clients the highest quality of legal representation in the complex area of tax law. We hope this alert has been informative to you. This alert has provided only general information and specific factual scenarios may change any legal conclusions that would apply. Please call to discuss your specific situation with our legal and accounting experts. Do not hesitate to contact us if you have any questions.

Should you need additional information it will be our pleasure to assist you

Sincerely,

Ruben Flores, Attorney & CPA

*As requirement of the United States Treasury Regulations, you should be conscious of the fact that this notice has not been written to be used and it should not be used by the recipient to prevent penalties that could be imposed by U.S. Federal Law.*