Tax Issues for Non-Citizens
What Immigration Lawyers Need to Know

Presentation by Jennifer Coates for the
American Immigration Lawyers Association

Principal, Jenny Coates Law, PLLC
Seattle and Bainbridge, WA
www.jennycoateslaw.com
jenny@jennycoateslaw.com

Immigration and U.S. Taxes
General Framework

- Some countries use a ***territorial*** approach and only tax income earned within their borders. The United States taxes its residents and citizens on all income, including gain from the sale of property wherever located ***worldwide***.
- A nonresident alien ("NRA") who conducts no business in the United States is taxed *only* on income derived from US sources. The NRA is *not* taxed on gains from the sale of personal property (which are treated as foreign source under US rules). Special rules, however, apply to the sale of U.S. real property.
- Income of a NRA which is effectively connected with the conduct of a U.S. trade or business of the NRA is taxable at graduated rates applicable to U.S. taxpayers.

US Residency

- After acquiring US residency, a foreign national is treated as a "U.S. person" for U.S. tax purposes, subject to tax on all income worldwide.
- An NRA acquires residency by meeting either the "substantial presence test" or the "green card test".
- Green card test - met if at any time during the calendar year a foreign national was a lawful permanent resident of the United States under immigration laws (and status has not been abandoned or withdrawn).
- Substantial presence test - a NRA becomes a resident if a)he or she is present for 183 or more days during the current year or b) if he/she is present for 31 days in the current year and for a total of 183 days over the three year period that includes the current year and two preceding years. This calculation is made by including: a) all days present in the current year , b) 1/3 of the days spent in the prior year and c) 1/6 of the days spent in the second year before the current year. **Need to be mindful of the substantial presence test for visiting relatives!**

Residency Has US Tax Consequences

- As soon as an immigration client (“Client”) either meets the substantial presence test or acquires a green card, he/she becomes a resident and therefore, a US taxpayer.
- Client then is subject to US tax on income from all sources and foreign assets may be subject to unfavorable treatment.
- Serious reporting obligations exist for US. Taxpayers with for foreign bank accounts and financial assets.
- Emigration after long term presence in the US can trigger negative tax consequences.

Foreign Assets – US Tax Implications

- Foreign Life Insurance – US-issued life insurance is structured to meet U.S. tax requirements for treatment as life insurance eligible for tax-free payment of death benefits and tax-free buildup of cash value. The idea behind the requirements of section 7702 (which require actuarial calculations) is to separate out products geared more towards investment yield than a death benefit. Foreign issued life insurance may not be structured to qualify for this treatment. Thus it may be taxed like other investment products, with earnings taxed currently and the benefits taxed on payment.
- Foreign Real Estate – gain on sale will be subject to US tax although the exclusion for gain from the sale of a qualifying principal residence is available for foreign property (use as the principal residence during 2 out of the prior 5 years). $250,000 for individual and $500,000 for joint filers.
- Foreign Retirement Plans - Depending on the applicable treaty and the type of plan or account, distributions may be taxable, earnings in the plan may likewise be taxable and contributions may not be deductible..
- Earnings and gains from other foreign investments and assets are likewise taxable unless excluded under a U.S. tax provision.

Foreign Entity Ownership

- Department of U.S. Treasury, the IRS and U.S. Congress is focusing on the potential for tax avoidance and/or deferral with offshore entities and accounts.
- US taxpayers can use foreign corporations and foreign trusts, which are not subject to US tax, to let income accumulate, thus avoiding US tax.
- Several sets of rules are designed to prevent U.S. taxpayers from doing this.

Foreign Corporations

US Controlled Foreign Corporations ("CFCs") (Sections 951-964)

- If applicable, the CFC rules require US shareholders to pay tax on income of the corporation on a current basis, whether or not such amounts are actually distributed.
- A foreign corporation is a CFC if more than 50% of the vote and value are owned by *US shareholders*.
- US shareholders are US persons owning 10% or more of the total voting power of all classes of stock entitled to vote.
- Current inclusion is required for: a) foreign personal holding income (passive income) and certain other situations where there are related entity transactions crossing country borders and resulting in the elimination or reduction of tax. Income from active operations generally will not trigger current inclusion under the CFC rules.
- If a Client owns shares in a CFC, he/she will be required to report income attributable to this ownership on Form 5471, which form must be attached to Client's regular tax return for the year.

Foreign Corporations

Corporations Holding Passive Income or Passive Assets ("PFICs")

- Your client's ownership of foreign mutual funds could have consequences. Unlike rules applicable to CFCs, there is no minimum threshold. Any ownership during US tax residency will trigger application of the rules.
- An entity will be a PFIC (passive foreign investment company) if a) 75% or more of its gross income is passive income or b) 50% of its assets are passive (based on quarterly average). Passive income generally includes dividends, interest, gain from the sale of stock or securities, rents and royalty income, and passive assets are assets which generate passive income.
- Under the PFIC rules, distributions which exceed 125% of the prior 3 year average are "excess distributions" subject to tax and an interest penalty. The amount of these distributions is allocated pro rata over the client's ownership as a U.S. taxpayer , with tax (at rates applicable to ordinary income for the period(s) in question) assessed along with interest as if the tax was due and not paid.
- Gain from the sale of PFIC stock is treated as an excess distribution subject to these rules. This also has the effect of converting capital gain (generally taxed at favorable rates) into ordinary income, taxed at higher rates.

Foreign Corporations – PFICs cont.

- Mitigating Elections

  The ***Market to Market Election*** provides that the value of the PFIC shares be marked to market yearly, with differences in value taken into account as ordinary gain or loss for the year. The interest penalty is eliminated.

  A ***Qualified Electing Fund ("QEF")*** election taxes the holder on income and gain in the corporation on a current look-through basis and also eliminates the interest charge. The QEF election likewise preserves capital gain treatment on a sale of the foreign corporation's shares. The QEF election requires the corporation to agree to provide information to the shareholder and open its books and records for inspection. Minority owners will not have the leverage to obtain this information and agreement and thus, the QEF election is often not available.

- PFICs are governed by sections 1291-1298 of the Code.
- Taxpayers attach Form 8621, reporting ownership, to their tax returns.
- Immigrating clients may want to dispose of any PFIC shares before acquiring residency or make a mitigating election.

Foreign Trusts

- US Beneficiaries of both US and foreign trusts (not treated as grantor trusts) are taxable on distributions when received. The character of income items, such as capital gains, dividend income, etc., generally passes through to the beneficiaries.

- Foreign trusts are subject to special additional rules (the "throw-back rules") which, like the PFIC rules, are designed to discourage accumulation of income and tax deferral.

- To the extent distributions exceed current income for the year and there is accumulated undistributed income, they are taxed under a regime which allocates the income over prior years and taxes the income at ordinary income tax rates in effect for those years as well as an interest charge. Like the PFIC rules, these "excess distributions" lose the benefit of favorable tax rates that might apply to certain types of income, such as capital gains or dividends.

- To the extent a trust does not provide specific information about the distribution to the beneficiary, the rules treat the entire distribution as an excess distribution. Depending on the situation, the foreign trust may be unwilling or unable to provide the necessary information to the U.S. beneficiary. A default regime can be elected which eliminates the interest penalty for amounts which don't exceed 125% of the 3 year average distribution amounts, but all distributions are treated as ordinary, thus eliminating any beneficial tax rates applicable to capital gain and dividend income included in the distributions.

Tax Planning Before US Residency

- If property sales are contemplated, do them before moving to the US to avoid being subject the sale to US tax.
- If possible, structure ownership of foreign entities with consideration to the negative tax treatment potentially attributable to distributions from foreign rusts and corporations with passive income/assets or under US taxpayer control. Perhaps use a US trust or a foreign corporation where no more than 50% is owned by US persons.
- Monitor ownership of foreign corporations primarily invested in passive assets and make mitigating elections, such as the QEF election, where possible.

Foreign Financial Tax Reporting

Foreign Account Tax Compliance Act ("FATCA")

FATCA was enacted in 2010 by Congress to target non-compliance by U.S. taxpayers using foreign accounts. FATCA involves a three tiered approach of a) pressuring foreign governments to cooperate with the U.S. in exchanging information about U.S. account holders, b) pressuring foreign financial institutions to provide information to the IRS about U.S. accountholders with the prospect of onerous withholding obligations and c) imposing and enforcing information reporting requirements on individual U.S. taxpayers with foreign financial accounts.

- The US has entered into Intergovernmental Agreements with many foreign governments to promote/require the exchange of information related to US taxpayers with foreign accounts.

- Foreign financial institutions must report to the IRS information about a) financial accounts held by U.S. taxpayers and b) foreign entities in which U.S. taxpayers hold a substantial ownership interest

Foreign Financial Tax Reporting FATCA cont.

- FATCA also requires reporting by individual taxpayers who own certain foreign financial assets with an aggregate fair market value exceeding either **$50,000** on the last day of the tax year or **$75,000** at any time during the tax year or **$100,000** and **$150,000**, respectively for joint filers. Higher thresholds apply to nonresident US taxpayers.
- FATCA reporting applies to "specified foreign financial assets" which are foreign financial accounts and foreign non-account assets held for investment (as opposed to held for use in a trade or business),including:
  - foreign stock and securities,
  - foreign financial instruments,
  - contracts with non-U.S. persons,
  - and interests in foreign entities.
- FATCA reporting, on Form 8938, is attached to the U.S. taxpayer's annual return. No filing is required if no U.S. tax is due.

Foreign Financial Tax Reporting FATCA cont.

FATCA Reporting Not Required

- A financial account maintained by a U.S. branch of a foreign financial institution, a foreign branch of a U.S. financial institution, and certain foreign subsidiaries of U.S. corporations.
- A beneficial interest in a foreign trust or foreign estate, if the taxpayer has no knowledge or reason to know of the interest.
- An interest in social security, social insurance or similar program of a foreign government
- Specified foreign financial assets already reported on other forms, such as trusts and foreign gifts on Forms 3520 and 352-A, foreign corporations on Form 5471, PFICs on Form 8621, and foreign partnerships on Form 8865.

Foreign Financial Tax Reporting

Report of Foreign Bank and Financial Accounts ("FBAR")

- The Bank Secrecy Act ("BSA"), originally passed by Congress in 1970, is designed to prevent money laundering, tax evasion and other criminal activity. The BSA imposes a number of reporting and record keeping requirements on financial institutions and with FBAR also requires reporting from individual taxpayers.

- FBAR and other BSA filing requirements are administered by the US Department of Treasury's Financial Crimes Enforcement Network ("FinCEN").

- Unlike the individual FATCA filing obligation, the FBAR filing is separate from federal income tax return filing, with a deadline of June 30 for each year. The FBAR filing is made on **FinCEN Report 114** (on-line filing required). Some duplication with FATCA.

Foreign Financial Tax Reporting FBAR Cont.

- FBAR applies to US persons with financial interests in, **or signatory authority** over foreign financial accounts if the value of such foreign financial accounts exceeds $10,000 at any time during the calendar year reported.

- Compliance was relatively low until Congress in 2004 introduced new penalties for non-willful violations and more stringent penalties for willful violations. US Treasury also granted more investigatory and enforcement authority to the IRS.

Foreign Financial Tax Reporting – FBAR cont.

A "foreign financial account" for purposes of FBAR is *a financial account located outside the U.S.* This includes:

- an account maintained with a branch of a U.S. bank that is physically located outside of the U.S.
- a foreign securities account, brokerage account, commodities account, an insurance contract with cash surrender value or an annuity or mutual fund accounts;
- a debit card account is a financial account; and
- even credit card accounts may be treated as a financial account under certain circumstances.

Foreign Financial Tax Reporting FBAR cont.

FBAR Filing Not Required

- IRA Owners and Beneficiaries
- Participants in and Beneficiaries of Tax-Qualified Retirement Plans
- US branch account of Foreign Financial Institutions
- A beneficial interest in a foreign trust or a foreign estate, if there is no knowledge, or reason to know of, the interest
- Foreign Partnership Interests
- Directly-held Foreign Real Estate
- Foreign Government Social Security-type Benefits

Foreign Tax Reporting - Penalties

- The civil penalty for willfully failing to file an FBAR can be as high as the greater of $100,000 or 50 percent of the total balance of the foreign financial account per violation. See 31 U.S.C. § 5321(a)(5). Non-willful violations that the IRS determines were not due to reasonable cause are subject to a $10,000 penalty per violation.
- The penalty for failing to file FATCA information returns is $10,000 for each, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return. Underpayments of tax attributable to non-disclosed foreign financial assets are also subject to additional substantial understatement penalty of 40 percent.
- Possible criminal charges and penalties may apply if failures to make FBAR and FATCA filings or inaccurate filings are found to be willful, with potential fines of not more than $250,000, or imprisonment of up to five years, or both. If an FBAR violation occurs with violation of another law, such as tax, penalties increased to a $500,000 fine and/or 10 years imprisonment. This is harsher punishment than for some violent felonies.
- A green card holder can potentially be deported for willful violation of these or other tax filing, reporting and/or payment provisions.

Choices – Reporting Failures

- Do Nothing*
- Make prospective filings only*
- Make belated prior filings ("Quiet Disclosure")*
- Offshore Voluntary Disclosure Program ("OVDP")
- Streamlined Disclosure
- Delinquent FBAR Submission Procedures
- Delinquent Internal Information Return Submission Procedures (FATCA) Procedures

***Not recommended**

Reporting Failures – Amnesty

OVDP

- The OVDP is essentially an amnesty program which allows taxpayers to come clean with all of their previously unreported foreign accounts, unfiled FBARs and FATCA information returns, and related tax return omissions in exchange for reduced civil penalties and no threat of criminal prosecution.
- The OVDP is a punitive regime, but can mitigate the consequences otherwise applicable for willful violations on audit and provides closure through a formal negotiated settlement process with the IRS.
- With the addition of other options for non-willful failures to comply, the punitive regime of the OVDP now will primarily apply to willful noncompliance.
- Unlike prior versions of the program, there is no deadline to apply for the 2014 OVDP, however the IRS reserves the right to discontinue the program.

Amnesty - OVDP cont.

- Generally, the price in OVDP for avoiding layers of potential accruing civil penalties and the threat of criminal prosecution is a flat 27.5% penalty (based on the highest value of the assets/ accounts during the OVDP period).
- Taxpayers also must a) file income tax returns, FBARs and FATCA information reports for the prior 8 years, b) pay income tax, a 20% accuracy related penalty and interest for those 8 years and c) waive the statute of limitations for assessing interest and penalties w/r/t to disclosed accounts.
- A 50% (instead of 27.5%) penalty applies if the taxpayer's financial institution has been publicly identified as under investigation or cooperating with a US govt. investigation (e.g. Swiss banks, HSBC India)
- The 2014 OVDP no longer provides reduced penalties for non-willful FBAR and FATCA violations. **Non-willful failures to file/report generally now are handled through the Streamlined Filing Compliance Procedures.**

Amnesty

Expanded Streamlined Procedures

- The streamlined filing compliance procedures essentially allow taxpayers to self-certify and amend prior violation of FBAR and FATCA to avoid penalty and criminal prosecution. While previously only available to nonresident US taxpayers, subject to an extremely low $1,500 income tax liability limit, these procedures have been expanded to include US resident taxpayers and have eliminated the liability threshold for eligibility.
- All income tax related penalties associated with the offshore income are waived but the IRS reserves the right to audit and can assess penalties if there is a later finding of willfulness.
- There is no current participation deadline.

Amnesty
Streamlined Procedures, cont.

- Streamlined procedures not available if audit or criminal investigation already initiated.
- Does not formally protect against criminal prosecution unlike OVDP. However, referral for prosecution unlikely if taxpayer makes full disclosure, cooperates and makes arrangements to pay tax in good faith.
- Different procedures for resident US taxpayers and nonresident US taxpayers.
- **Taxpayers must certify that their failure to report foreign financial assets and pay tax due was not willful in order to participate.**

Amnesty
Streamlined Procedures, cont.

- Returns filed under the Streamlined Procedures are processed like other tax return filings.
- No receipt acknowledgement of the streamlined procedures submission by the IRS.
- No closing agreement entered into with the IRS.
- Returns may be selected for audit under existing audit selection processes applicable to other US tax returns. There is no increased risk of audit from participating in the procedures.

Amnesty
Streamlined Procedures, cont.

To use the special compliance procedures, a **US resident taxpayer** must:

1) have filed tax returns (if required) for the past 3 years and then must file amended tax return filings for the past 3 years, with required FATCA and other information returns;

2) file required FBAR filings for the prior 6 years; and

3) pay a penalty equal to 5% of the highest aggregate balance/value of the taxpayer's foreign financial assets which should have been reported under FBAR or FATCA (the "Title 26 miscellaneous offshore penalty").

Amnesty
Streamlined Procedures, cont.

To use the special compliance procedures, a **US non-resident taxpayer** must:

1) have filed tax returns (if required) for the past 3 years and then must file amended tax return filings for the past 3 years, with required FATCA and other information returns; and

2) file required FBAR filings for the prior 6 years.

There is no penalty price imposed on US nonresident taxpayers submitting under the streamlined procedures.

Amnesty
Streamlined Procedures, cont.

- Non-willful conduct for purposes of the procedures is conduct arising from "negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law."
- Certification requires a taxpayer to enumerate the specific reasons for failure to report and to provide contact information for any professional advisor used and the nature of the advice.
- It is getting harder for taxpayers to argue they "didn't know" about the requirements. The IRS has been making a point to publicize the rules and make more information available.

DELINQUENT FATCA AND FBAR PROCEDURES

The delinquent procedures present a more appropriate course of action than the Streamlined procedures or OVDP where a taxpayer has reported and paid tax owed on its tax accounts but has failed to make the requisite FATCA or FBAR information filings for reasonable cause.

- For the FATCA delinquent submission procedures, the taxpayer must formally explain its "reasonable cause" for not timely filing the information return
- For the FBAR delinquent submission procedures, the taxpayer must have properly reported on tax returns, and paid tax on, any income from the delinquent filings and not have been contacted by the IRS in relation to the tax returns corresponding to the delinquent FBAR filings.
- The taxpayer can't be under civil examination or criminal investigation by the IRS and can't have already been contacted by the IRS about delinquent FATCA or FBAR reporting

Amnesty

DELINQUENT FATCA AND FBAR PROCEDURES cont.

- A taxpayer may simply file the delinquent FBAR forms and select as a reason for not filing the forms that he/she did not know he had to file them. Filings using the delinquent FBAR procedure will not increase the risk of audit.
- The FATCA delinquent submission procedure requires a statement explaining the reasonable cause for failing to make the filings, which statement should be attached to the amended returns relating to the information statements.

Foreign Financial Tax Reporting Takeaway

- With the revised OVDP, expanded Streamlined Filing Compliance Procedures and formalized Delinquent FBAR and FATCA submission procedures, there are more options to correct non-willful violations of FBAR and FATCA.
- There is a risk that for those using the Expanded Streamlined Procedures, the IRS will not view the violations as “non-willful”.
- It is likely the IRS will not be lenient with those doing quiet disclosures and prospective filings given the new opportunities for disclosures outside the harsher OVDP regime.

U.S. Investment

- Regular Corporation – Profits are subject to two levels of taxation, once at the corporate level, at a maximum rate of 35%, and again at the shareholder level, when paid out as dividends. Favorable rates apply to dividends.
- S corporation – Profits are not taxable at the corporate level if an election is made to treat the entity as an S corporation. An S corporation cannot have more than one class of stock and is limited to less than 100 shareholders, with entities and **non-resident alien shareholders not allowed.** S corporation distributions can be paid out as either self employment income or as dividends.
- Partnership – Profits are only subject to one level of tax in the hands of the partner/ owner with partners taxable on income, whether or not distributed. No limited liability. NRA owners are treated as engaged in the trade or business of the partnership in the U.S. and may have US tax filing and possible tax obligations. Clients who may wish to involve nonresident family members in US business ventures should be aware of this limitation for the partnership entity.
- LLC – A versatile entity which can be taxable as a corporation, partnership, S corporation or sole proprietorship as the owner(s) elect. For LLC's treated as partnerships, the tax issues related to non-resident alien investment. LLC's also often do not receive favorable treatment under foreign tax and business laws or tax treaties.

And if Client Wants to Return Home?

There are consequences to acquiring US residency and to relinquishing it, as well.

- Departure Can Trigger an Exit Tax under section 877A
- Estate tax planning required to minimize continued US estate tax exposure
- Potential US tax triggered on outbound transfers of assets to remove them from estate tax or as part of restructuring of holdings in connection with relocation.
- US tax implications for sales of US real estate holdings after US residency is abandoned.

Exit Tax under §877A

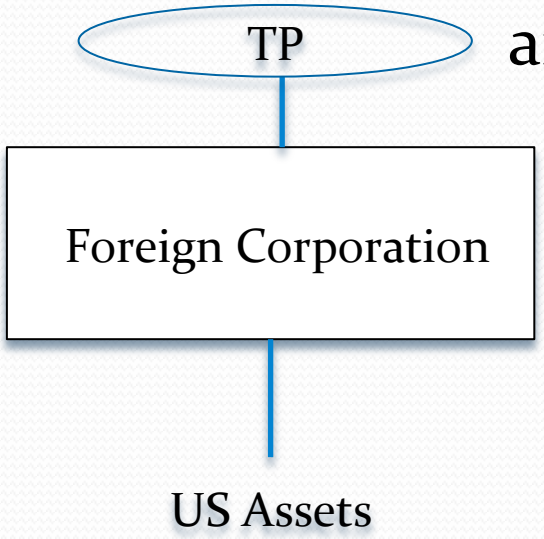
- In 2008, Congress enacted a broad mark-to-market "exit tax" which taxes expatriating U.S. citizens and "long-term residents" as though all of their assets (including those not in the US!) were sold for fair market value on the day before they expatriated. Codified under section 877A, the tax applies if the departing person:
  a) has a net worth of $2,000,000 or more on departure,
  b) had an average annual net income tax of $160,000 (for 2015, indexed for inflation) for the five years preceding expatriation or
  c) fails to certify that he has satisfied his U.S. tax obligations for the five preceding years.
- Gain under the amount of $690,000 (indexed for inflation) is exempt from tax.
- For the purposes of § 877A, a "long-term resident" is defined as any individual who is a lawful permanent resident of the United States for at least 8 of the 15 taxable years prior to expatriation. Foreign nationals who have green cards are "lawful permanent residents" who could become "long term residents" if they spend sufficient time in the US.
- Clients who anticipate emigrating need to plan around the exit tax.

Estate Tax

- A U.S. citizen or resident's taxable estate on death generally includes all assets worldwide, whether or not located in the United States. Estates valued under $5, 430,000 are exempt from federal estate tax. The top federal estate tax rate is currently 40%. States have their own exemption amounts. Washington State currently does not tax estates under $2,054,000, with taxable estates subject to rates of up to 20%.
- The estate of a nonresident alien individual only includes U.S. situs property owned at the time of death. U.S. situs property includes personal property located in the U.S., and stock or securities of issuers resident in the United States, e.g., stock and debt of U.S. companies.
- Ownership of business assets may need to be restructured in connection with a Client's departure from the United States. Any such restructuring needs to take into account U.S. federal income tax implications.

Cross- Border Estate Planning

- To avoid the direct ownership of US situs assets by a foreign individual, estate planning would generally contemplate transfer of these assets to foreign corporate ownership, with Client continuing to hold the US assets through the corporate holding company structure. This brings up complex issues in the interaction of US estate and income tax as well as foreign tax rules and treaty provisions.



Cross-Border Planning

- Transfers of appreciated assets abroad by U.S. persons can trigger tax consequences in transaction structures which would otherwise be tax-free in the domestic context.
- Section 367 (Outbound reorganizations) – generally denies favorable treatment which would apply to US shareholders participating in outbound corporate reorganizations. US transferors of appreciated assets taxed on gain.
- Section 7874 (Inversion transactions) – e.g. where substantially all of a US corporation's stock or assets are transferred to foreign ownership. Generally applies where there is 60% or more of the US company shareholders own shares in the new foreign parent company and there is no substantial business activity in the foreign country. Can impose tax over a 10 year period on certain transfers of the US entity. Or, if there is 80% or more ownership of the foreign entity by previous shareholders, the foreign entity will be treated for all purposes of the US tax code as U.S. corporation, basically undoing the inversion.

Ownership of US Real Estate

- Foreign nationals expatriating who continue to own U.S. real estate will be subject to special U.S. tax rules applicable to foreign ownership of U.S. real estate. In 1980, the Foreign Investment Real Property Tax Act ("FIRPTA") amended the Code to add section 897, a regime designed to tax foreign persons on gain from the sale of U.S. real property. Under these rules, gain or loss recognized by a foreign person on the disposition of a United States real property interest (a "USRPI") is taxable in the United States as income or loss effectively connected with a U.S. trade or business, taxable at graduated ordinary income rates applicable to US taxpayers.

- The FIRPTA rules supersede the general rules which would not tax the sale of personal property located in the United States by nonresident aliens and foreign corporations.

- Generally, a USRPI includes interests in:
  - real property located in the U.S.; *and*
  - interests in United States real property holding corporations ("USRPHCs").

- A domestic corporation is a USRPHC if at any point within the five prior years ("Five Year Look-Back Rule"), 50% or more of its total value of assets consists of USRPIs.

Planning Around FIRPTA

- Foreign nationals may wish to sell US property before departing, if they are otherwise considering a sale, so as to obtain the lower capital gain tax rates applicable to sales of U.S. real estate, obtain the benefit of the principal residence income exclusion if applicable and avoid FIRPTA.
- FIRPTA consequences can be mitigated by inserting a US corporation under the foreign corporation in the estate planning structure. This avoids US branch profits tax that would apply if the foreign corporation held the real estate directly, and the real estate can eventually be sold with only one level of tax by liquidating the US corporation into the foreign parent.