esquiregroup

Foreign Investors
in United States Real Estate

It is critical that you educate yourself and consult with an experienced tax professional that specializes in international taxation such as the Esquire Group.

The prospect of investing in U.S. real estate can be attractive for citizens of foreign countries. The combination of a depressed real estate market and weak dollar is spurring foreign investment in U.S. real estate. Although the option to buy and sell property, purchase rental properties or acquire a second home in the U.S. may be attractive, as a nonresident alien you must be mindful of the U.S. tax system.

The U.S. tax system can be quite different from the tax system of your home country. Furthermore, the U.S. tax system treats nonresident aliens quite differently than it does U.S. citizens and residents. Without proper planning and advice you could find yourself paying more tax than expected, or worse, end up in trouble with the Internal Revenue Service (IRS).

It is critical that you educate yourself and consult with an experienced tax professional that specializes in international taxation such as the **Esquire Group**. Avoid relying on the advice of just ***any*** tax professional because most have little or no knowledge of the issues facing nonresident aliens.

The following are some of the considerations you will want to explore:

FIRPTA (Foreign Investment in Real Property Tax Act 1980)

What is it and does it apply to me?

FIRPTA requires that a buyer withhold 10% of the gross sales price, subject to certain exceptions, and send it to the Internal Revenue Service if the seller is a “foreign person.” A foreign person is a nonresident alien individual, or a foreign corporation, partnership, trust, estate or other entity. Tax is imposed on the full amount realized (sale price) by the seller with no deduction for expenses. In short, 10% of what you sell your real estate for will be withheld and paid to the IRS unless you qualify for an exception.

Filing procedures vary depending on how the property is held and penalties are high for failure to comply.

We can assist you in navigating the FIRPTA regulations; including determining if you qualify for an exemption from withholding.

U.S. Individual Taxpayer Identification Number (ITIN)

Do I need one?

You may. Whether or not you will be required to obtain an Individual ITIN depends on how the property is owned. Another consideration is whether you already have or qualify for a Social Security Number (SSN).

We can assist you in determining whether you need an ITIN and in obtaining one, if necessary.

U.S. Estate and Gift Taxes

What are the tax consequences?

As a nonresident alien, if your U.S. net estate has a value exceeding $60,000 it will be subject to federal – and possibly state – estate tax at death. U.S. estate tax rates can be as high as 35% (up to 55% in 2013) Treaty provisions between your home country and the U.S. may reduce tax obligations.

If you become a U.S. citizen or resident, your worldwide holdings, including assets outside the U.S., will become exposed to estate tax. You can become a U.S. resident by being in the U.S. a specified number of days regardless of what type of visa you had upon entering the U.S.

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We can help you determine your residency status in the U.S. for tax purposes. Furthermore, we can assist you in taking advantage of any available treaty benefits and structuring your affairs to avoid the U.S. estate tax.

State and Local Taxes Issues

How do they factor into the equation?

Nonresident state and local taxes vary between states. Some states, such as California, require a withholding percentage of the total sales price. Each state has separate rules and procedures for withholding and exemption obligations.

U.S. real estate taxes also vary from state to state as each state has their own right to implement whatever rates they deem fair provided they do not interfere with the federal government. Real estate taxes are often imposed on the value of the property based on the fair market value of the property.

Reporting obligations for non-U.S. owners of U.S. real estate

What are they?

Nonresident aliens are taxed only on their income from sources within the U.S. The IRS may require that you file a U.S. tax return to report the income and expenses associated with your property. Who must file the return will depend on whether you own the property personally or if the property is owned by an entity.

If you purchase agricultural property the federal government also imposes additional reporting requirements all foreign buyers of agricultural land to report their purchase within 45 days of closing the transaction.

Although the use of cash is common in many countries, it is becoming increasingly uncommon in the U.S. Cash transaction in excess of $10,000 (cash transactions of less than $10,000 made around the same time can be considered one transaction) are subject to reporting. Failing to report these transactions can result in severe penalties, including criminal prosecution.

We can assist you in determining what your reporting requirements are and preparing the necessary tax returns.

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Limitations on foreign ownership of U.S. real estate

Are there any?

There are few restrictions on foreign real estate investors, buyers, or sellers. The only exceptions concern national security, hostile countries, purchase or control of federal lands, and purchasing a business in a sensitive category.

Planning techniques (Investment Structures)

What are available to nonresident aliens for buying, holding and selling U.S. real estate?

There are several planning techniques that can be utilized for nonresident aliens owning real estate in the U.S. Unfortunately, there is no one right way to structure a nonresident alien's U.S. real estate investment. The proper structure depends on many variables, including, but no limited to:

- Your country of residence
- Your country of citizenship
- Any treaties with your home country
- Whether you are holding the property as a long-term hold, rental or to resell
- Which state the real estate is located in
- Your risk tolerance

Some Common Ownership Structures:

- Direct Ownership by Foreign Individuals
- Direct Ownership by Foreign Corporation
- Direct Ownership by Foreign Partnership
- Foreign Investment through U.S. Corporation/LLC/Partnership
- Foreign Corporation (Parent)/U.S. Corporation (Subsidiary) Structure

Each of the above ownership structures has distinct advantages and disadvantages. We can analyze your particular circumstances and assist you in implementing the right structure for you.

What entities are available in the U.S.?

The two most common entity types in the U.S. are Corporations and Limited Liability Companies (LLCs). Many structures include one or more U.S. Corporations or LLCs.

Corporations and LLCs protect your personal assets from liability created from the operation of your business.

Some of the benefits of these entities are:

- Corporations and LLCs protect your personal assets from liability created from the operation of your business.
- LLCs provide management flexibility without the formal requirements of a corporation.
- If you chose to liquidate real estate holdings in a Corporation or LLC after a year, you have the flexibility to sell the LLC and not the actual real estate thus lowering your tax liability to that of long-term capital gains (15% tax rate).
- LLCs are useful to segregate the risk or owning numerous rental properties.
- LLCs can help avoid martial claims against real estate created under various state statutes.
- LLCs have the flexibility to be taxed as corporations, partnerships or disregarded entities

There are several other benefits offered by Corporations and LLCs but they are too many to list here. The above is meant to give you a general idea of the benefits they have to offer.

As you can see, purchasing real estate in the U.S. is not a simple transaction and requires the expertise of tax professionals who are knowledgeable in international taxation, domestic taxation, real estate taxation, and asset protection.

The **Esquire Group** has a team of professionals who are specialists in these areas. We will be able to evaluate your individual circumstances and develop strategies that will best help you to achieve your goals while ensuring compliance to U.S., state, and local tax regulations.

We work with an extensive network of attorneys and accountants all over the world that assist us in advising our clients. These professionals are well versed in international taxation and asset protection and are ready to assist you as well. Please let us know if you need a referral to one of these professionals for assistance in your home country.

FOR ADDITIONAL INFORMATION, PLEASE
CONTACT ONE OF OUR OFFICES:

LAS VEGAS, NEVADA
633 South 4th Street, Suite 7
Las Vegas, NV 89101
Tel. 702-384-4829
Fax. 702-383-6603
service@esqtax.com

PHOENIX, ARIZONA
928 West Chandler Boulevard
Chandler, AZ 85142
Tel. 480-525-4829
Fax. 480-624-5968
service@esqtax.com

VIENNA, AUSTRIA
Renngasse 12/16
1010 Vienna
Tel/Fax. +43 1 533 72 11
service@esqtax.com