Summary of US International Tax Rules For Outbound and Inbound Investments

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Ogle International Tax Advisors

Our Practice

Ogle International Tax Advisors can customize an international tax planning program tailored to your company's specific requirements. Our spectrum of international tax services can provide assistance in the areas of:

- **Foreign business investments** - structure active business investments in offshore subsidiaries to minimize U.S. and host country taxation; Analyze the U.S. CFC and PFIC rules for individual investors.
- **Offshore profits importing** - plan for the repatriation of active foreign profits.
- **Foreign tax systems** - analyze host country deductions, exemptions, and incentives, including foreign tax credits with host country tax advisors.

Ogle International Tax Advisors specialize in advising multi-national companies and high net worth individuals on U.S. international tax matters. Our clients include both public and privately held businesses. We also assist other regional CPA and Law firms who do not have expertise in international tax.

Our firm's staff includes both CPAs and attorneys. Our U.S. international tax services include: export tax incentives, structuring of foreign investments (outbound), repatriation strategies, structuring of U.S. investments (inbound), mergers & acquisitions, transfer pricing and planning for high net worth individuals.

In the area of structuring both inbound and outbound investments, our firm works closely with tax advisors in the relevant foreign country to achieve global tax minimization objectives for all jurisdictions impacted by an investment.

We have significant experience covering a broad range of industries and countries.

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US International Taxation - Outbound Overview

- U.S. taxpayers (corporations, partnerships, individuals, etc.) are taxed in the U.S. on their worldwide income. With respect to individuals, the United States is the only country that taxes its citizens and some green card holders on their worldwide income regardless of their residency (green card holders with residency in Treaty countries may be able to take a tie-breaker position for several years but should consult with their immigration attorney). To add insult to injury, the U.S. subjects certain high net worth individuals to U.S. taxation for a period of ten years after renouncing their citizenship or long term permanent residency status.

- U.S. taxpayers who directly conduct business in foreign countries are usually eligible for a foreign tax credit (FTC) to the extent that foreign income taxes were paid in the foreign country. The FTC mitigates double taxation of the same income.

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US International Taxation - Outbound Overview

Client Experience

"We rely on the Ogle team as one of our key advisors. Their professionals have advised our business for years in the following International Tax areas:
- Transfer Pricing
- Export Tax Incentives
- Structuring of Foreign Investments
- Mergers & Acquisitions

Mr. Ogle's competency and professionalism has made the complicated tax rules we face more understandable and manageable".

Mike Cundiff
Controller
American Torch Tip Company
www.americantorchtip.com

- U.S. taxpayer can generally defer U.S. taxation on their foreign corporation's active business profits up until the time that such profits are repatriated to the U.S. in the form of dividends to the U.S. taxpayer.

- A foreign corporation's profits are not deferred with respect to passive activities (Subpart F & PFIC Regimes).

- Upon repatriation of profits from a foreign corporation, double taxation is only avoided by greater than 10% "U.S. C Corporation Shareholder (s)" by allowing for an indirect FTC to flow up from its foreign subsidiary.

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Subpart F Regime

- The Revenue Act of 1962 established an anti-deferral regime for controlled foreign corporations ("CFCs") under subpart F of the Code. A CFC generally is defined as any foreign corporation if U.S. persons own (directly, indirectly, or constructively) more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only).

- Under the subpart F rules, the United States generally taxes the U.S. 10-percent shareholders of a CFC on their pro rata shares of certain income of the CFC (referred to as "subpart F income"), without regard to whether the income is distributed to the shareholders. Subpart F income typically is passive income or income that is relatively movable from one taxing jurisdiction to another. In effect, the U.S. 10-percent shareholders are treated as having received deemed distributions from the CFC.

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PFIC Regime

- A PFIC generally is defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income, or 50 percent or more of its assets consists of assets that produce, or are held for the production of, passive income. (Notice the definition does not consider corporate ownership that is relevant under Subpart F)
- The quintessential PFIC is a foreign mutual fund. However, the PFIC definition can also capture other types of entities. A CFC cannot be a PFIC with respect to its 10% or greater U.S. shareholders. However, the same entity can be a PFIC with respect to less than 10% shareholders.
- Alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a PFIC. One set of rules applies to PFICs that are "qualified electing funds," under which electing U.S. shareholders currently include in gross income their respective shares of the PFIC's earnings. A second set of rules applies to PFICs that are not qualified electing funds, under which U.S. shareholders pay tax on dividends from the PFIC or gain realized on disposition (s) of the PFIC, plus an interest charge that is attributable to the value of deferral. A third set of rules applies to PFIC stock that is marketable.

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Outbound Planning Considerations

Client Experience

"Ogle's team has always had a big picture focus on consulting clients. As a result, clients are able to get common sense advice on complicated international tax issues. Both of our firms have jointly advised clients on the following tax matters:
- **Inbound and Outbound Structuring (Including Corporate Restructuring)**
- **Mergers and Acquisitions**
- **Free Trade Zone Planning**
- **FIRPTA – Foreign Owned United States Real Estate Tax Issues**
- **Tax Compliance"**

Dr. Diego Salto
Asesores Fiscales Corporativos
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- Although U.S. individual investors may be able to attain asset protection benefits by holding passive assets in offshore entities, there are no U.S. income tax benefits.
- U.S. individuals and privately held businesses should consider conducting active foreign businesses and holding foreign real estate through hybrid entities (This structure provides for limited liability while still preserving the ability to avoid double taxation)
- U.S. individuals & privately held businesses doing business abroad should carefully plan for how their global operations are financed (Potential traps for Excess FTCs & U.S. withholding taxes).
- Privately owned U.S. exporters should consider an IC DISC structure that generally provides a maximum U.S. income tax rate of 25% on qualified export profits.
- The IRS forms related to outbound transactions bring significant penalties for the failure to file (i.e. generally $10,000 per form per year)

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Outbound Planning Considerations

- The foreign earned income and housing cost exclusions generally allow a U.S. taxpayer to exclude up to approximately $93k of ***EARNED*** income annually.
- The foreign earned income and housing cost exclusions are only available to U.S. taxpayers who are:
  - a citizen of the United States who establishes that they have been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or
  - a citizen or resident of the United States who has been physically present in a foreign country or countries for at least 330 full days during any period of twelve consecutive months and the individual's tax home is in a foreign country or countries throughout the period.
- When both spouses are working abroad, qualification for the foreign earned income & housing cost exclusions are determined separately for each spouse, and each spouse makes an election to claim the exclusion. Planning opportunities exists in determining which methods to elect to calculate housing costs exclusions when both spouses are working abroad.

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US International Taxation - Inbound Overview

- In general, an alien individual shall be treated as a U.S. resident if the individual is a lawful permanent resident (i.e., has a "green card"), meets the "substantial presence" test, or makes certain elections with respect to residency status.

- Under the substantial presence test, individuals are treated as resident aliens if they spend 183 days or more in the United States during the taxable year (or as determined under a "lookback" formula). The "lookback" test is applied as follows.
  - If an alien is present in the United States on at least 31 days of the current calendar year, he may be classified as a resident alien if the sum of the following equals 183 days or more:
    - The actual days in the United States in the current year, plus
    - 1/3 of his days in the United States in the immediately preceding year, plus
    - 1/6 of his days in the United States in the second preceding year.
    - The lookback test can be overridden if the foreign national meets a foreign home & closer connection test.

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US International Taxation - Inbound Overview

- Note that these residency rules only applies for purposes of determining whether the individual is subject to U.S. income taxation. The U.S. residency rules for gift & estate tax purposes look instead to whether the individual has his "domicile" in the U.S. Thus, an individual may be subject to U.S. income taxation without being a U.S. estate tax resident.

- Treaties generally override the above U.S. statutory rules for tax residency by providing certain “tie-breaker” provisions that can allow a foreign national to fail the above tests but still avoid being a U.S. tax resident. This is an important U.S. tax planning consideration because non-residents are only subject to U.S. income taxes on U.S. sourced income versus worldwide income.

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US International Taxation - Inbound Overview

- U.S. sourced income of non-residents are generally taxed under three regimes:
  - FDAP at 30% U.S. withholding tax (i.e. Dividends, Certain Rents & Interest, Royalties, and Pensions & Annuities)
  - Effectively Connected Income (active business income) at traditional U.S. graduated income tax rates
  - Capital Gains & Portfolio Interest are generally exempt from taxation. However, real estate capital gains are taxed under FIRPTA rules (10% U.S. withholding tax).
  - The above statutory rules can be overridden by Treaties to provide for a reduce or exempt rate of U.S. tax. Please note a non resident must be a resident of a treaty country to qualify for treaty benefits (i.e. citizenship is not enough to qualify for treaty benefits). A resident must be "liable for tax" to the treaty country to qualify as a resident.

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Inbound Planning Considerations

- Non-residents should generally avoid becoming a U.S. tax resident for as long as possible
- Non-residents that will become U.S. tax residents should retain a U.S. international tax advisor for pre immigration planning.
  - It may be beneficial to trigger gain on certain assets before becoming a U.S. tax residents
  - Certain pre-immigration installment sales may not be taxable in the U.S. (does not apply to interest or foreign exchange related gains)
- Non-residents should be careful when establishing legal entities for U.S. businesses or U.S. real estate:
  - Fiscally transparent entities can cause the non-resident to not qualify for treaty benefits due to the “liable for tax” requirement under the residency clauses (i.e. non-resident owning U.S. rental property through U.S. LLC that is treated as a flow through entity for U.S. tax purposes)

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Biography

Jerry E. Ogle , CPA is founder of the firm. He started his career with Deloitte & Touche, LLP. During his tenure at Deloitte, he worked as a tax advisor to various public & private companies. His clients included PepsiCo, Inc. and Interactive Cable Systems, Inc. (Joint Venture that included MCI Communications, Inc., Michael Milken, and Andersen News).

He left Deloitte as a Senior Tax Advisor to join his then client PepsiCo, Inc. He joined the Pepsi Team as a Manager of International Tax Planning. During his tenure at Pepsi, he was responsible for working with the financial and business planners to ensure global minimization objectives were met with respect to Pepsi's expanding and changing business environment. He led significant international planning projects in the UK, Belgium, France, Mexico, and China. He developed strong working relationships with Divisional Presidents and CFOs. He provided guidance to the Divisional Controller's group on the proper recording of tax expenses and cash flow impacts.

Since founding Ogle International Tax Advisors in 2000, he has assisted clients domestically and abroad primarily with U.S. international tax planning. He represents members of the Fortune 500 as well mid-sized regional businesses. His clients include manufacturers, distributors, food processors, developers, resorts, restaurant chains, service providers, and high net worth individuals.

Ogle International Tax Advisors

Biography

Professional Affiliations:

- American Institute of Certified Public Accountants (AICPA) - Tax Section Member
- Florida Institute of Certified Public Accountants - International Tax Committee
- Member of the Business Advisory Council and serves as a Senior Florida Delegate for the National Republican Congressional Committee
- Treasurer of Sarasota Sister Cities Association
- Ambassador – International Business Council of Sarasota
- Treasurer of Harvest United Methodist Church
- Guest Columnist with Tampa Bay Business Journal for International Tax Matters

Educational background:

- Master's Degree in Accounting – Concentration in Taxation Cum Laude, University of South Florida.
- Bachelor's Degree in Accounting - Minor in International Economics Summa Cum Laude, University of South Florida.
- Placed 2nd in Florida and in the top 100 in America on first sitting for the National CPA Exam.
- Biography published in the 17th and 18th annual edition of The National Dean's List for placing in the top 1/2 of 1% academically in our nation's universities.

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