



U.S. TAX RULES RELATING TO FOREIGN NATIONALS INVESTING IN U.S. REAL ESTATE



By:

***Renea M. Glendinning, CPA
(Shareholder)***

***Kerkering, Barberio
& Co., P.A., CPAs
1990 Main Street
Suite 801
Sarasota, FL 34236***

Phone:
(941) 365-4617

Email:
rglending@kbgrp.com

www.kbgrp.com

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About the Author:

Ms. Glendinning joined the firm in 1987 and has headed the International Tax Department since 1996. She has authored articles regarding various international tax issues and frequently gives presentations on U.S. income and estate taxation of foreign nationals doing business in the U.S.

The rules regarding the U.S. income and estate taxation of foreign nationals are very different from those that apply to U.S. citizens and residents. It is important that foreign nationals understand the potential U.S. tax implications of investing in U.S. real estate that are applicable to them.

The first thing that must be determined is whether or not the foreign national is treated as resident or nonresident for purposes of U.S. taxation. While this is obvious in most cases, there are situations where the distinction may not be so clear. U.S. citizens are always residents for U.S. tax purposes, regardless of whether or not they live in the U.S. or possess citizenship in other countries in addition to the U.S. Green card holders are generally treated as U.S. tax residents, but there are circumstances in which they can claim nonresidency. Foreign nationals could be determined to be U.S. tax residents based solely upon the number of days they are physically present in the U.S. If the foreign national is uncertain of his U.S. tax status, this is the first thing that should be determined.

Once it has been concluded that the foreign national is in fact a nonresident for U.S. income and estate tax purposes, he must then decide the best way to hold title to his U.S. real estate. Ownership in an individual name generally results in the least amount of income tax upon sale of the property, but could result in significant exposure to U.S. estate tax if the foreign national dies while owning the property. Corporate ownership of the property could eliminate the U.S. estate tax exposure, but could subject the foreign national to higher income taxes upon sale of the property.

If a nonresident sells U.S. real estate, he is subject to a withholding of 10% of the sales price. For example, if the sales price is \$500,000, an amount of \$50,000 (\$500,000 sales price times 10%) is deducted from the amount due to the seller and remitted to the Internal Revenue Service (IRS). The foreign national must report the sale of the property by filing a U.S. income tax return which contains a calculation of the actual tax on the sale. If the tax is less than the amount withheld, the difference will be refunded. If the tax is more than the amount withheld, the difference is due with the filing of the income tax return.

The rules relating to U.S. taxation of foreign nationals are quite complicated. There are exceptions to the general rules and the conclusions could be quite varied, depending upon the specific country where the foreign national is resident. It is important that foreign nationals consult with a U.S. tax professional who is knowledgeable in this area to determine their particular U.S. tax status in order to make informed decisions with respect to their U.S. real estate investments.

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