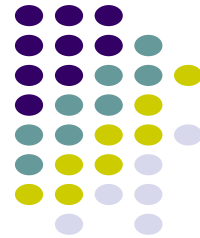


International Forms and Compliance and examples

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IRS Focus -Penalties are steep



- IRS commissioner – Focus is on Compliance
- If you owe more the 50K to the IRS - passport can be revoked
- 5471 or PFIC (penalty -\$10,000 per year)
- 5472 (penalty \$25,000 per year)
- Targeting Non-filers
- Underreported income (1099-K)
- FBAR noncompliance
- Passive losses more scrutiny

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Often Omitted International tax forms



- 5471 – 10% ownership + director (10K Penalty)
- 5472 – Non U.S. person with >25% holder of US entity (25K penalty)
- 8802 – Certificate of residency
- 8621 – Foreign mutual funds (PFIC)
- 3520 – Gifts and Estate from Non residents
- 8938 – Specified foreign financial assets
- 8288 – FIRPTA – Nonresident selling US Real estate
- Fin Cen Form 114 – Foreign Bank Account Reporting (FBAR)

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U.S. Real estate residential (Schedule E)



Gross rental	\$100,000	Cost 1,000,000 Land 200,000 Bldg 800,000
Mortgage Interest	(36,000)	
Real estate Taxes	(20,000)	
Depreciation	(29,000)	27.5 years
Other expenses	(5,000)	
Total expenses	(90,000)	
Net Income	\$10,000	
U.S. partner 1%	\$100	
Chinese partner 99%	\$9,900	US WHT 30% of \$9900 = \$2970

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FIRPTA



- Foreign Investment in Real Property Tax Act (FIRPTA) (section 897) includes:
 - USRPI – US Real Property Interest
 - REIT – Real Estate Investment Trust
 - RIC – Regulated Investment Companies
- Withholding is 15 % of the gross proceeds above \$1 million
- Seller is a Non Resident - tax must be withheld @ closing and sent to the IRS
- FIRTPA taxes could fall on the buyer if the seller defaults

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FIRTPA example



In 2014, a Brazilian citizen (Jeff) U.S. Nonresident purchased an apartment in NYC for 5 million under a sole member LLC. He sold the apartment in 2020 for \$4 million, a loss of 1 million. Tax consequences below:

- FIRTPA (Nov 2020 time of closing) withholding 15% of 4 million = \$600,000 (even though it was a loss)
- TCJA 2017 – The entity was classified as 1120 – Disregarded Entity with form 5472.
- Penalty of 25K could still be imposed on failure to file form 5472
- Filed 3 years returns corp. and personal 2018, 2019, 2020
- Requested refund of FIRTPA withholding on the 2020 personal tax return
- Jeff received the refund in July 2021

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Form 5472



- Form 5472 A U.S. NR holding more than 25% of the US domestic company/entity must file this form with the corporate or individual return.
- Penalty for not filing is \$25,000 per year

Withholding



- Foreign Corporation that distributes US real property interests must withhold 21% of gain on distribution to shareholders
- Domestic corporation 15% of FMV of the property distributed to foreign shareholders Form 8288 or 8288A Must remit withholding to IRS at the time of closing
- FIRTPA withholding threshold amounts:
 - 15% withholding for gross proceeds in excess of \$1 Million
 - 10% for gross proceeds between \$300K and \$1 Million
 - Gross proceeds below \$300K not subject to these FIRTPA rules
- Individuals would need a TIN number to file a NR return and get the excess withholding back
- Transferor can apply for a withholding certificate in some circumstances.
- The IRS requires 90 day turn around time.

Sale of Real Estate By Nonresident



Sale Price	\$1,200,000	US WHT 15 % =\$180,000	
Cost + improvements	\$1,000,000		
Capital Gain	\$200,000		
US Tax - Fed 23.8%		\$47,600	
NYS (approx 6%)		\$12,000	
NYC tax (approx 4%)		\$ 8,000	
Recapture tax on Depreciation (25%)		\$ 7,250	Depreciation is \$29,000 @ 25% = \$7250
Total tax		\$ 74,850	
All Refunds after fed, state & local	\$105,150	\$180,000 - \$74,850	
Federal refund only	\$125,150	\$180,000-\$47,600- \$7250	

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Form 5471



- If a US taxpayer Director and owns more than 10% of the foreign entity they have to file form 5471 with their individual return
- Failure to file this form results in a penalty of \$10,000 per year

Example: A U.S. taxpayer was a developer of a Golf course in India and set up an entity in which he was a director and owned 90% stock of the foreign private company.

In 2014, he received notice for failure to file 5471 for 10 years. Luckily, the golf course was not completed and we filed all the 10 years 5471. IRS waived the penalty.

Sale of Foreign Real Estate & Foreign Tax credit (FTC - Form 1116)



- The U.S. taxpayer first pays tax in the foreign country as the real estate is located in the foreign country
- FTC – The US taxpayer can get credit on the U.S. tax return for foreign tax paid (Form 1116)

Example: US taxpayer sells property in India for a gain of \$100,000 the capital gains rate in India is 20%. Tax consequences:

- *Foreign tax paid in India of \$20,000*
- *Assuming the U.S. capital gains rate (20%) then the FTC will also be \$20,000 (so indirectly - no U.S. tax on this transaction)*
- *State taxes are due. Taxpayer is CT resident and tax rates is 6.7%. State taxes on the gain will be \$6,700*

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Depreciation Recapture



- Rental foreign real estate - taxpayers can claim depreciation over a 40-year period.
- Depreciation needs to be recaptured in the year of sale @ 25% tax rate

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PFIC (Form 8621)



- Passive Foreign Investment Company
- U.S. taxpayers owe the highest individual rate of tax (37%) on their income from PFICs

Example: A U.S. taxpayer had \$100,000 invested in a Birla mutual fund India (a PFIC) and received an income of \$10,000. Neither the taxpayer nor the preparer understood PFIC. Form 8621 was not filed and taxpayer received a notice and paid the penalty for non-compliance