February 22, 2016 UMV: 269,895

Tax Planning Tips For Investors Relocating To The US

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With the flood of foreign nationals living in or immigrating to international hot spots like South Florida or New York, there is considerable global income up for taxation. However, numerous business professionals considering immigrating to the U.S. often fail to understand the international tax laws and residency requirements, which cause them to grossly overpay the amount of tax actually necessary. It is not unusual to encounter businesspeople who are paying taxes in two countries without knowing they could be saving millions.

What is the best way to avoid the potential tax hurdles that can arise as an investor looking to immigrate to the U.S.? Anybody planning on immigrating — especially with about $10 million in assets or more, and if there are benefactors and international businesses in play — need to be involved in pre-immigration tax planning.

As an example, a new client from Brazil had already spent substantial time in the U.S. this year and was close to becoming a U.S. tax resident. His U.S. activities to date are fairly minor but his business in Brazil and his global wealth are quite significant. His annual income in Brazil is in excess of $20 million and his net worth is in excess of $200 million. The annual income is subject to significant tax in Brazil, in excess of 30 percent, and with no planning he would have distributed that income on an annual basis and paid another 43 percent tax in the U.S. Even worse, if he were to die after becoming a U.S. domiciliary (based upon his clear intent), his U.S. estate tax would be in excess of $80 million not considering the wealth he would be building in the U.S.

Based on a rather typical client situation as outlined above, let’s break down the key essential steps for handling pre-immigration tax planning and avoiding excess taxes.

The first step is to identify your client’s intent. In this scenario, it was clear that he and other family members were moving to the U.S. to live permanently with the objective of obtaining their green cards as soon as possible.

Next step is to confirm that both he (and the other family members) did not overspend the amount of days in the U.S. in the current year to avoid becoming a U.S. tax resident, considering both the number of days in the current year and examining the substantial presence test. Once he gathered the relevant historical information related to days in the U.S. for the past two years and he understood the impact, he instantly headed to Brazil and actively engaged in the pre-immigration tax planning process.

Then follows understanding the family dynamics by asking these questions — Who is in the immediate family? Who is American and who is not? Who will become American? Who is responsible and trusted? From the responses to all of this information, you can then develop an estate and gifting plan.

In this particular client scenario, ultimately the client’s goal was to obtain a certain amount of income on

an annual basis for the rest of his life while working to build his new U.S. business. As a result, we established trusts for him to sell a majority of his global assets to step up the basis in those assets while retaining a note receivable that will pay him interest annually. Also, he gifted the balance of the assets to the trust to make him and his family estate tax proof. The outcome is that he will retain his desired annual income for the rest of his life, thereby creating a trust structure that not only protects him (and his family) from estate tax, but also provides significant asset protection. Both he and his U.S. family members will be subjected to less U.S. income tax as a result of the global step-up in basis of all of his assets.
Besides the tax planning process outlined above, be aware of three quick tax tips, which will save significant personal and corporate wealth.

Be mindful of your time restriction. There's a certain amount of time a foreign national can spend in the U.S. before being considered a tax citizen. It's often 182 days or six months out of a year. For purposes of immigrating, there can occasionally be another standard. There is also a substantial presence test — a three-year look-back on your days in the U.S. If a person goes through that test, the average is 120 days in the U.S. When considered moving to the U.S. and/or bringing a business here, it's recommended that you consider whether or not you're close to the maximum time permitted stateside.

Protect the future of your estate. Prior to becoming a U.S. citizen, you can essentially do anything you want because you're not under U.S. tax law — you can gift assets, you can move assets, etc. In the case of businesses abroad, if a person is looking to maintain those businesses out of their global income, the entities must be passed on to another prior to immigrating. The same applies for estate planning — move assets before immigration to guarantee benefactors' futures. If a person has assets stateside, such as real estate or a financial portfolio , and does not immigrate to the U.S., those assets will be subject to a 40 percent tax upon the owner's death.

If possible, only pay taxes once. What are the benefits of those special elections taken against a business aboard? They can help businesspeople steer clear of paying taxes on the same thing twice — once in the home country and once in the U.S. For example, if a Brazilian businessperson pays taxes in Brazil and then gets a credit against his or her U.S. income, he or she avoids paying twice. They're paying the higher of the two jurisdictions' taxes, but it's only once.

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