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PRACTICE FOCUS / TAXATION

Top Pre-immigration Tax Planning Tips for Businesses Moving to US

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There is considerable global income up for taxation as the surge of foreign nationals living in or immigrating to international hot spots like South Florida or New York continues to grow even though many business professionals contemplating immigrating to the U.S. often fail to understand the international tax laws and residency requirements, which cause them to drastically 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.

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

As an example, a new client from Brazil had already spent substantial time in the U.S. 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.

TAX AVOIDANCE

Here are the key steps for handling pre-immigration tax planning and avoiding excess taxes:

- Identify your client's intent. In this case, it was clear that he and other family members were moving to the US to live permanently with the objective of obtaining their green cards as soon as possible.
- 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 US for the past two years and he understood the impact, he immediately headed to Brazil and actively engaged in the pre-immigration tax planning process.
- Understand the family dynamics by asking these questions — Who is in the immediate family? Who is American and who is not? Who will become American? And who is responsible and trusted?

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From the responses to all of this information, you can then create an estate and gifting plan.

Aside from the tax planning process, be mindful of three quick tax tips, which will save substantial personal and corporate wealth.

If possible, pay taxes only once. The benefits of special elections taken against a business aboard are 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.

Be aware 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 in a year.

For purposes of immigrating, there can occasionally be another standard. There is also a substantial presence test — a three-year look back at your days in the U.S. If a person goes through that test, the average is 120 days in the U.S. When considering moving to the U.S. and/or bringing a business here, consider whether or not you're close to the maximum time permitted stateside.

- Protect the future of your estate. Before 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 U.S. assets, 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, pay taxes only 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 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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