

U.S. Offshore Disclosure - Compliance Programs

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U.S. Taxation – Resident vs NonResident

- Who is a U.S. resident
 - U.S. citizen
 - Legal resident - green card holder
 - Tax resident – substantial presence
 - Tax resident – first year election

U.S. Taxation – Resident vs NonResident (continued)

- Substantial presence test for U.S. nonresidents
 - 31 days in the U.S. during the current year and
 - 183 days during the 3 year period that includes the current year and the 2 years immediately before that counting:
 - all the days of presence in the current year
 - 1/3 of the days of presence two years back
 - 1/6 of the days of presence the third year

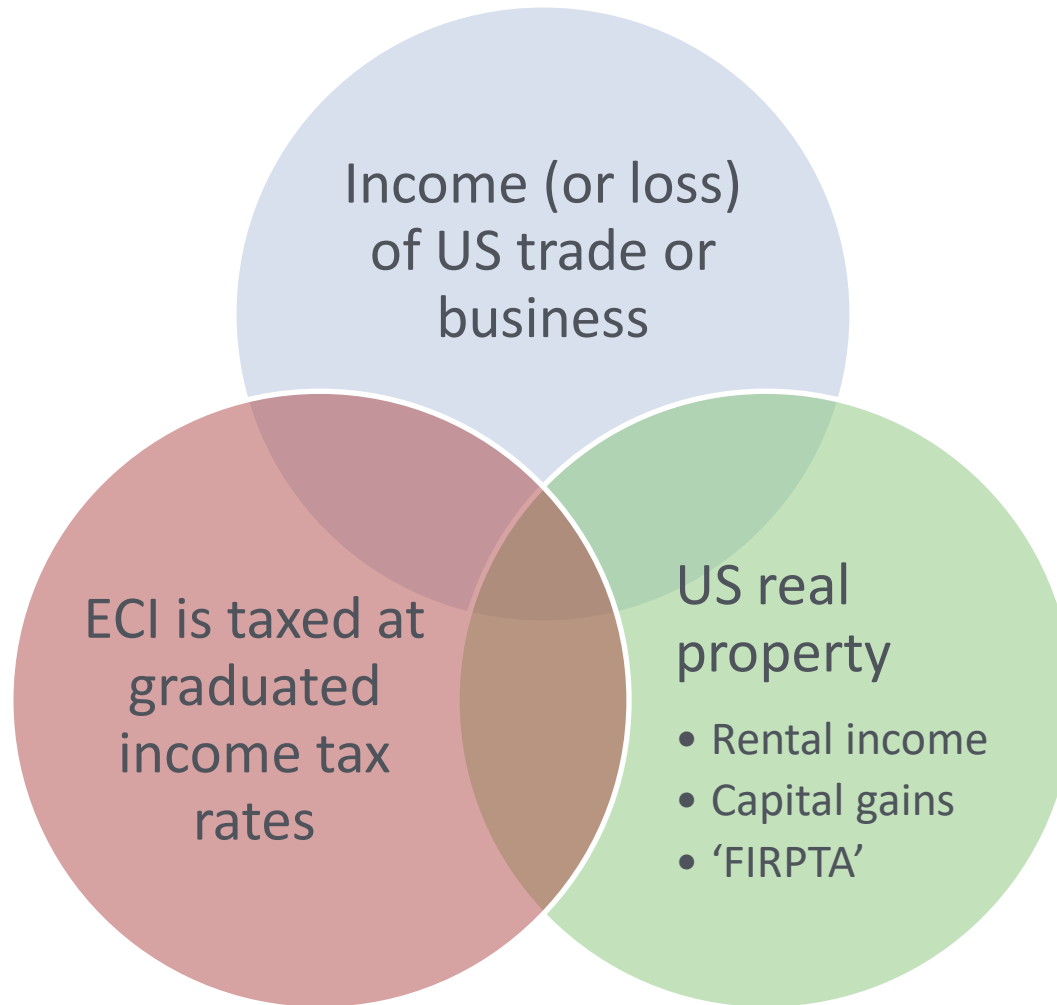
U.S. Taxation – Resident vs NonResident (continued)

- U.S. residents are taxed on worldwide income
- U.S. nonresidents are taxed on
 - U.S. source FDAP (Fixed, Determinable, Annual, Periodic Income)
 - ECI (Effectively Connected Income)
 - Dispositions of U.S. real property

U.S. Taxation – Resident vs NonResident (continued)

- What is FDAP income
 - Interest
 - Dividends
 - Royalties
 - Rental income
- Withholding tax at 30% (or lower treaty rate)

U.S. Taxation – Resident vs NonResident (continued) - ECI



U.S. Taxation – Resident vs NonResident (continued)

Understanding residence status of your client is vital

US Resident:

- Taxable on worldwide income

US Non-Resident:

- Taxable on US source income
 - Effectively Connected Income (ECI)
 - FDAP income from US sources

U.S. Taxation – Foreign Information / Income Reporting

- Foreign Business Ownership
 - Foreign Corporations
 - Foreign Partnerships
 - Foreign Disregarded Entities
 - Foreign Trusts

U.S. Taxation – Foreign Financial Account Reporting

- Foreign Account Reporting
 - FBAR form – IRS 114 (supersedes TD F 90-2.1)
 - Determination of U.S. residency- apply test under sec 7701(b)
 - Penalties –
 - » Civil penalty of \$10,000 for each “non-willful violation”
 - No penalty is imposed if due to reasonable cause
 - » Greater of \$100,000 or 50% of the amount in the account for each violation- and each year for which no FBAR was filed if violation is deemed to be “willful”

U.S. Taxation – Offshore Compliance Initiatives

- IRS Offshore Compliance Initiatives for individuals
 - Offshore Voluntary Disclosure Program (OVDP)
 - Streamlined Compliance Procedures
 - Delinquent FBAR Submission Procedures
 - Delinquent International Information Return Submission Procedures

U.S. Taxation – Offshore Compliance Initiatives

- OVDP – updated January of 2012 - extended indefinitely
 - Compliance with original or amended income tax returns for 8 years
 - Compliance with FBAR forms – 8 years
 - Penalty is 20% Accuracy Related , Failure to file and Failure to pay applied to balance due
 - FBAR penalty 27.5 % up to 50% on OVDP assets

U.S. Taxation – Offshore Compliance Initiatives

- Streamlined Filing Compliance Procedures
 - Individual residing within the U.S.
 - Individuals residing outside the U.S.
 - Certification failure to report income and pay tax due to non-willful conduct (Negligence, inadvertence, mistake or misunderstanding / misinterpretation of the law)

U.S. Taxation – Offshore Compliance Initiatives

- Eligibility requirements – Residents in the U. S.
 - Resided in U.S. Previous 3 years
 - Filed returns for the previous 3 years
 - Failed to report income
 - Failed to comply with reporting on FBAR and or International forms

U.S. Taxation – Offshore Compliance Initiatives

- Eligibility requirements – Residents Outside of the U.S.
 - U.S. resident or citizen for the previous 3 years – no U.S. abode and physically outside the U.S. for at least 330 days
 - Non U.S. citizens / green card holders – any of the previous 3 years did not meet the substantial presence

U.S. Taxation – Offshore Compliance Initiatives

- Delinquent International Information Return
 - Submission Procedures – FBAR and informational forms
 - No unreported income
 - Reasonable Cause statement attached to each submission

