

TTN Conference Miami 2013

Inbound / Outbound US Tax Planning for Venezuelans

Life on the Fence

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The Bankers Club
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U.S. Federal Income Tax Residency

- Subject to U.S. federal income tax on **worldwide income**
 - Highest marginal federal income tax rate for **ordinary income** = 39.6%
 - Federal income tax rate for **capital gains and qualified dividends** = 15-20%
 - **3.8% Medicare** tax on lesser of:
 - net investment income, or
 - excess of modified AGI over threshold amount (250K for jt. filer, 200K for ind.)
 - **not applicable to nonresident aliens**
- Includes:
 - U.S. citizens
 - Lawful permanent residents (“**Green Card**”)
 - Persons who meet the **substantial presence test** (day count)

Substantial Presence Test

- Presence in U.S. at least 31 days during calendar year; and
- Presence in U.S. for 183 days or more taking into account *3 year weighted average*,
 - All the days of the calendar year at issue,
 - 1/3 of the days of the 1st preceding calendar year, and
 - 1/6 of the days of the 2nd preceding calendar year.
- Plan to keep presence under 121 days per calendar year

Substantial Presence Test (Exceptions)

- **Closer Connection to Foreign Country** (Form 8840)
 - Presence in U.S. for **less than 183 days** during current calendar year,
 - **Tax Home** in a foreign country,
 - **Closer Connection to the same foreign country** as tax home (unless closer connection to two foreign countries), and
 - **No application for Green Card** or affirmative steps to obtain Green Card

Substantial Presence Test (Exceptions)

- **Closer Connection to Foreign Country** (Form 8840)
 - Attach to timely filed Form 1040NR (Non-resident alien income tax return)
 - **Due by June 15th** unless taxpayer has US wages, then April 15th
 - **Late filing will NOT be accepted** unless showing of **clear and convincing evidence** that taxpayer took reasonable actions to become aware of filing requirements and **significant steps to comply** with those requirements.
- **No information returns or FBAR's required** similar to resident alien, or taxpayer taking treaty position.

Substantial Presence Test (Exceptions)

- **Treaty Based Return Position** (Form 8833)
 - Only pay US federal income tax on US source income and income effectively connected with US trade or business
 - Foreign source income not taxable in the US
- Applies to “dual-resident” taxpayers who may be considered a resident of the U.S. and a foreign country under both countries internal domestic laws
 - VZ citizens presumed to be VZ tax residents unless proven otherwise by certificate issued by the competent authorities of the State in which they reside. See Organic Tax Code, Art. 30.
 - IRS Form 6166, **Certificate of US Tax Residency** (application on Form 8802), **not recommended**.

Substantial Presence Test (Exceptions)

- **Treaty Based Return Position** (Form 8833)
 - **Four (4) Treaty Tie-breaker Factors**
 - Permanent Home
 - Center of Vital Interests (Economic and Personal Relations)
 - Habitual Abode
 - Involves notions of frequency, duration and regularity of stays of a quality which are more than transient.
 - Nationality
- **Same international information reporting as US resident aliens**
 - Foreign corporations, foreign partnerships, foreign trusts, gifts from NRA's
 - Foreign banks accounts (FBAR), foreign financial assets (Form 8938)

U.S. Federal Estate and Gift Tax Residence; Domiciliary

- U.S. Domicile: physical presence with intent to reside in the U.S. indefinitely
 - U.S. citizens are considered U.S. “domiciled” regardless of their actual residence
- Subject to U.S. federal estate tax on worldwide assets
- Subject to U.S. federal gift tax on gratuitous transfers made during lifetime

U.S. Federal Estate and Gift Tax Residence; Domicile

- U.S. Citizens and residents (**domiciliaries**), subject to **tax on worldwide assets**
 - 40% highest marginal rate
 - 5.25M exemption, 10.50M with spouse (portability)
- **Non-US domiciliaries taxed on U.S. situated assets only (60K exemption on death)**
 - Real property or tangible personal property (art, cars, boats, planes) *located in the U.S.*
 - Transfer of U.S. situs intangibles subject to estate tax, but not gift tax
 - U.S. Corporate Stock
 - U.S. Partnership Interest arguable
 - U.S. LLC Interest treated as a disregarded entity for income tax purposes?
- Non-residents (**non-domiciliaries**) not U.S. citizens
 - Rate graduates from 26% over 60K to 40% over 1M

Withholding and Estate Tax Exempt Passive U.S. Investments for Nonresident Aliens

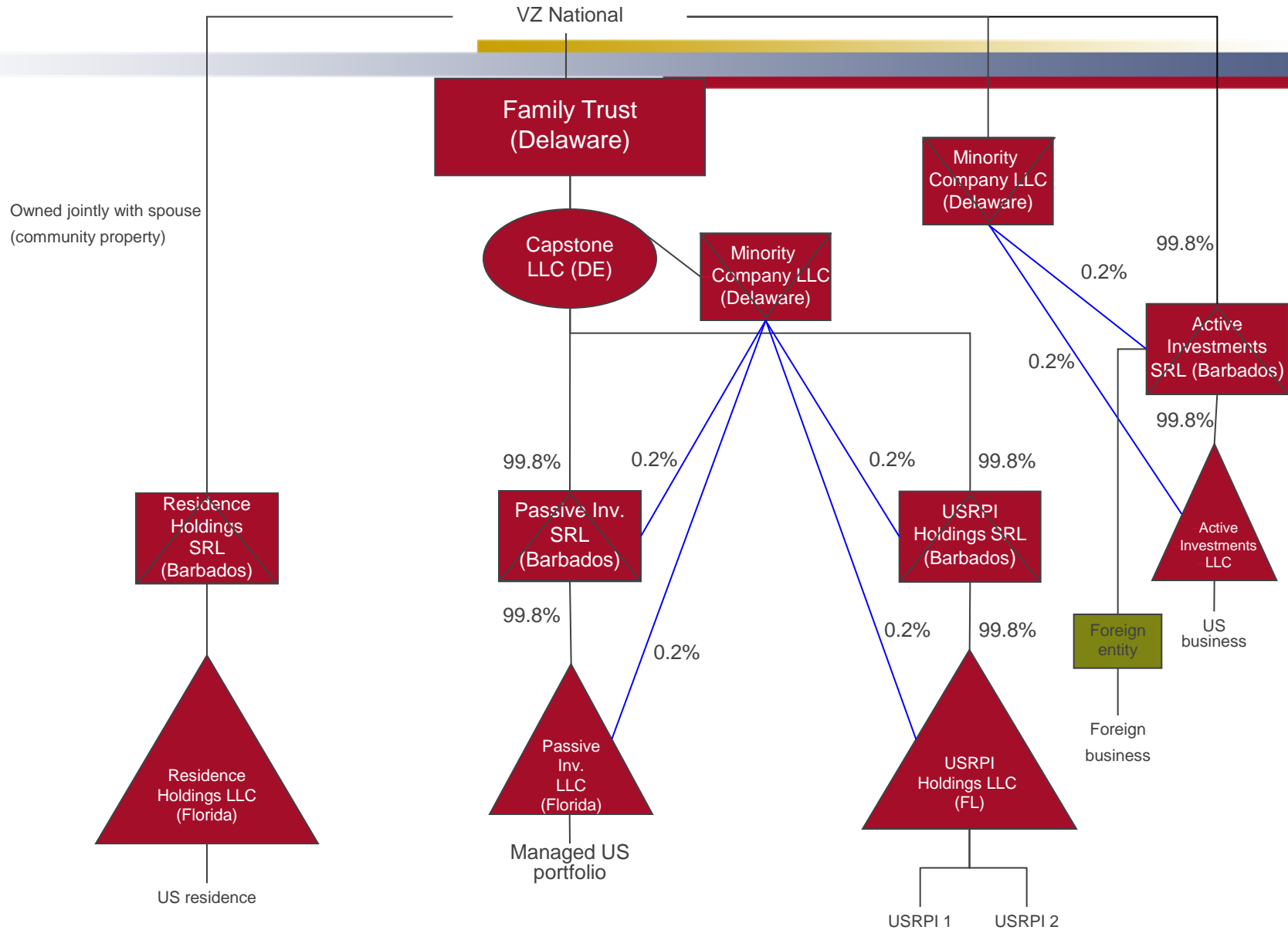
- Interest on bank deposits
- Certificates of Deposit
- Portfolio Debt Instruments (look out for related parties)
 - includes U.S. Treasury Bills that are registered

Pre-immigration Tax Planning; Step up Bases

- Pay capital gains tax only on appreciation post-immigration.
- Use foreign eligible entity treated as a corporation, then elect pass through treatment
 - Create factual relevance, then deemed liquidation by filing Form 8832
 - Open US bank or securities account and deliver Form W-8BEN to create relevance
 - otherwise, could be treated as initial election of irrelevant entity w/o step up

Pre-immigration Tax Planning; Drop Off Trust

- Irrevocable, discretionary.
- Completed gift, avoids U.S. federal estate tax exposures.
- Asset protection (choose jurisdiction, foreign or domestic).
- Grantor trust if foreign and funded within 5 years of residency starting date. IRC s. 679.
 - beware of other possibly applicable grantor trust provisions.
- Deemed sale of assets upon settlor's departure from US or death. IRC s. 684.
 - Use domestic trust to avoid IRC s. 684
 - leave domestication option open for foreign trusts
 - remove powers of settlor if no longer treated as US person for income tax purposes



Questions or Comments?

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