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**Overview of U.S. Tax Implications for non-U.S. Nationals Residing in the United States**

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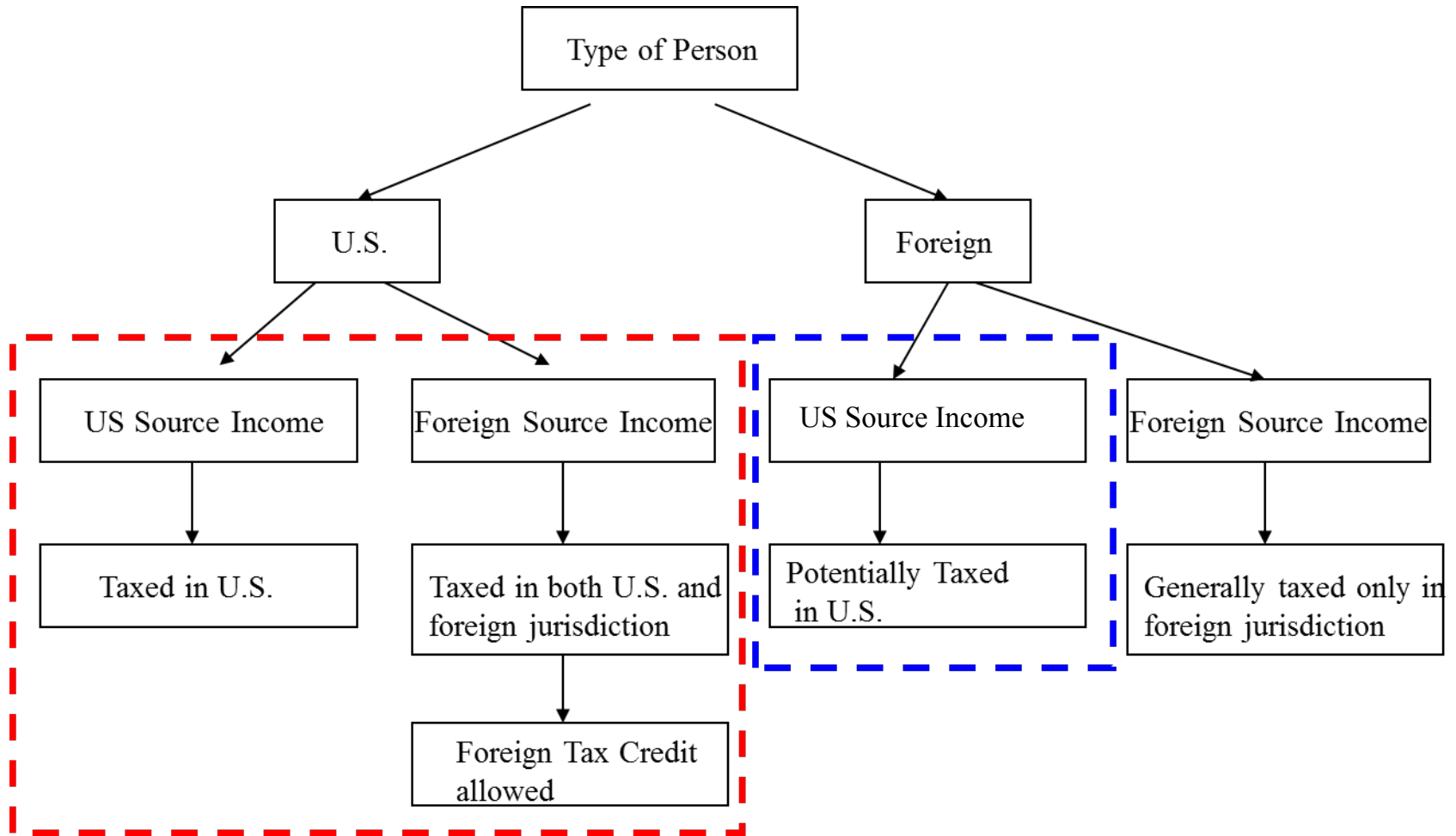


# A G E N D A

- 1) Income Tax / Residency
- 2) FATCA and Foreign Financial Assets
- 3) Common Foreign Compliance Obligations
- 4) Streamlined Procedures / Offshore Voluntary Disclosure Program

# INCOME TAX / RESIDENCY


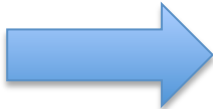
# INCOME TAX / RESIDENCY



# INCOME TAX / RESIDENCY

## ■ U.S. Residency

– U.S. residency may result from:

- Substantial Presence Test  Temporary Residency
- Green Card Test  Permanent Residency

– Tax Consequences are quite different:

- 1) Temporary worldwide taxation during residency period without and exit tax  
vs.
- 2) Permanent worldwide taxation & possible exit tax

# INCOME TAX / RESIDENCY

## ▪ Strategy

- Inbound Planning
  - Assessment of current situation
  - Tax efficient structures for asset holding and acquisitions
  - Planned asset acquisitions and/or dispositions
  - Gift and Estate tax considerations
  
- First year of U.S. residency
  - Married Filing Joint (“MFJ”)
  - Election to file as a full year resident)
  
- Outbound Planning
  - Relinquishment of green card or abandoning citizenship
  - Exit taxation Dual Status-determined by date of entry

# FATCA AND FOREIGN FINANCIAL ASSETS

# FATCA AND FOREIGN FINANCIAL ASSETS

## ■ What is a Specified Foreign Financial Asset?

- Any foreign account maintained by a foreign financial institution - IRC Sec 1471(d)(5) including:
  - Stock or securities issued by a non-US person
  - Any financial instrument or contract held for investment that has an issuer or counter party other than a U.S. person
  - An interest in a foreign retirement plan or deferred compensation plan
  - Any interest in a foreign-issued insurance contract or annuity with a cash-surrender value
  - Interest in a foreign entity:
    - Foreign corporation
    - Foreign partnership
    - Foreign trust



# FATCA AND FOREIGN FINANCIAL ASSETS

- **Filing Thresholds for Form 8938 – Statement of Specified Foreign Assets** (to be included with annual U.S. income tax declaration):

Residence of Taxpayer	Filing Status	Asset value reporting threshold: Year end / maximum value during the year
United States	Married	\$100K / \$150K
United States	Other	\$50K / \$75K
Abroad	Married	\$400K / \$600K
Abroad	Other	\$200K / \$300K

- **Foreign Bank And Financial Account - Form FinCEN 114** (in addition to Form 8938):
  - Aggregate highest balance of foreign account >\$10,000
  - Due date June 30 – no extension

# COMMON FOREIGN COMPLIANCE FORMS (French Nationals)

# COMMON FOREIGN COMPLIANCE FORMS

- **Form 8621** – Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (“PFIC”)
  - Common PFIC vehicles include: SICAV accounts, foreign mutual funds, foreign life insurance contracts, personal holding companies with only passive investments
    - Possible elections:
      - QEF - taxed on proportionate share of income and capital gains
      - MTM - taxed on the difference of value at 12/31 vs. 1/1 . Taxed at ordinary rates.
        - Losses are allowed but only to the extent of the lesser of current MTM loss or the “unreversed inclusions”
    - No election - taxed on actual distributions, very costly if stock is not sold within the same year it was acquired (excess distribution regime)
  - Planning opportunities for foreign nationals who intend to return in their country of origin after U.S. temporary assignment

# COMMON FOREIGN COMPLIANCE FORMS

- **Form 8832** – Entity Classification Election
  - Taxed as a partnership where there are 2 or more members and 1 does not have limited liability
  - Taxed as a corporation if all members have limited liability
  - A disregarded entity if it has a single owner without limited liability
- **Form 8858** – Information Return of U.S. Persons With Respect to Certain Foreign Disregarded Entities (e.g. 1 member-SCI)
- **Form 8865** – Return of U.S. Persons With Respect to Certain Foreign Partnerships (e.g. 2+ member-SCI)
- **Form 3520** – Annual Return To Report Transactions With Foreign Trust and Receipt of Certain Foreign Gifts (receipt of >\$100K in value from non-U.S. person)

# COMMON FOREIGN COMPLIANCE FORMS

- **Form W-8BEN, W-8BEN-E and W-8IMY**

- Certification of foreign status

- **Form 8802 – Application for United States Residency Certification**

- To request U.S. certificate of residency to claim treaty benefits

For example:

- Preferential withholding rates on investment [interest and/or dividend] income (30% vs. 15%)
  - Country with right of taxation of pension distribution based on certain treaties with the United States
- IRS returns Form 6166
    - Letter with U.S. Department Treasury stationery certifying individual is U.S. tax purposes for purposes of relevant double-tax treaty

# IRS STREAMLINE PROCEDURES / OVDP

# IRS STREAMLINED PROCEDURES / OVDP

## ■ Foreign Offshore Procedures

- Must be a outside of the US
- 3 years of income tax returns (original or amended)
- 6 years of foreign bank and financial account reporting forms
- Non-willful statement
- No penalties

## ■ Domestic Offshore Procedures

- 3 years of income tax returns (original or amended)
- 6 years of foreign bank and financial account reporting forms
- Non-willful statement
- 5% penalty

# IRS STREAMLINED PROCEDURES / OVDP

- **Offshore Voluntary Disclosure Program**

- 8 years of income tax returns (original or amended)
- 8 years of foreign bank and financial account reporting forms
- 27.5% or 50% penalty

- **Delinquent International Information Return Submission Procedures**

- Taxpayers who do not need to use the OVDP or the Streamlined Filing Compliance Procedures
- Non-filing of international information forms
- Reasonable cause for not timely filing the information returns
- Not under a examination by the IRS



# QUESTIONS / CONTACT INFORMATION

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