

GLOBAL HIGH NET WORTH INVESTORS: US INVESTMENTS, IMMIGRATION & TAX PLANNING

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THE WOLFE LAW GROUP

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THE WOLFE LAW GROUP

The Wolfe Law Group is an international array of legal and tax experts providing collaborative services for Global High Net Worth Investors on a per client basis.

Gary S. Wolfe, A Professional Law Corporation has over 35 years of experience providing clients with expertise for IRS Civil and Criminal Tax Audits, International Tax Planning, and International Asset Protection.

Awards

Since 2015 Gary have been the recipient of 29 separate international tax awards from 10 different global expert societies in London/UK including:

International Tax Planning Law Firm of the Year Award (2017) – International Advisory Experts.

International Tax Advisor of the Year (2017) - Global Business Magazine/Prof. Sector Network.

[Click here for complete list.](#)

Books

To date Gary has written 18 e-books [\(available on Amazon\)](#) regarding the IRS, International Tax Planning and Asset Protection. [Click here for complete list.](#)

Articles

To date Gary has published or been interviewed in 100+ separate articles published by 15 different US and International magazines. [Click here for complete list.](#)

Video

In December 2016 Gary was interviewed by California CEO Magazine and RCBNNNews.org on the subject of Criminal Tax Evasion and IRS Tax Audits: Civil and Criminal Issues. This 4 part series, which has been published by [Lorman Education](#), can be viewed below:

[Criminal Tax Evasion - Part 1](#)

[Criminal Tax Evasion – Part 2](#)

[Criminal Tax Evasion – Part 3](#)

[Criminal Tax Evasion – Part 4](#)

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Global High Net Worth Investors: ***US Investments, Immigration & Tax Planning***

For Global High Net Worth Investors who elect to immigrate to the United States, the pre-immigration planning is essential to minimize their tax implications. Under the current alternatives, an investor may gain a green card by an investment (\$500k-\$1m) and application for an EB5 Visa (which if in a regional center is a \$500k investment, if in private business is \$1m and the creation of 10 new jobs).

The EB5 Visa however subjects the investor to worldwide US income tax; US gift tax on gifts, and US estate tax on their death. In addition, the US income tax rules requires disclosure of foreign bank and financial accounts over \$10k (FinCEN form 114 known as an FBAR filing and foreign financial assets over \$50k (Form 8938 attached annually to Form 1040, known as a "FATCA Filing"). Failure to file the FinCEN form 114 has both civil and criminal penalties (as does Form 8938). In addition the incomplete tax filings suspend the IRS civil statute of limitations for IRS tax audit of taxpayer tax returns (normally 3 years from the date of filing).

A less expensive alternative may be an E-2 Visa which may require a minimum investment of \$150,000 and creation of 3 jobs. However, the Investor's home country must have an E-2 Treaty with the US (which includes approximately 80 countries who have US E-2 Treaties). Major countries: Israel, Brazil, Russia, India, China do not have E-2 treaties (although Israel's E-2 Treaty is currently pending).

Given the complexities of US civil and criminal tax issues for failures of tax compliance, a Global High Net Worth Investor should consider an L-1 Visa as an alternative. The L-1 Visa requires a foreign company (or its majority owner) to make an investment in a US business with no minimum or maximum investment required. If the L-1 Visa holder engages international tax advisors who are experts in US tax law they may prepare a tax planning strategy for their world wide assets which exempts them from US world-wide income, estate and gift tax.

The important tax issues are whether the investor is in the United States annually for less than 183 days per year, or 122 days per year over the current and two preceding tax years. These tests of physical presence known as the "substantial presence test" if properly complied will shield the investor from US worldwide income tax annually. The investor will then be subject to tax on income from US made investments which tax may be ameliorated or eliminated by internationally tax planning. For more on this please see my recent book, published on Amazon as an e-book "[International Tax Planning and Asset Protection for High Net Worth Investors](#)".

Mark Ivener, a pre-eminent world renowned immigration expert who is my co-author on books and articles has prepared the following summary of the requirements for L-1 Visas.

L-1A Visas For Intracompany Transferees can lead to a Green Card

Who is Eligible

Employees being transferred from a foreign company to a U.S. company require an L-1 visa. The employee must be an executive, manager or a person with specialized knowledge with at least one year of experience with a foreign company. The requirements for an L-1 visa include proof of continuous foreign employment for one year in the previous three years immediately prior to the application. The foreign employment requirement is satisfied even if there is a valid interruption in the performance of duties for the foreign company. If an L-1 beneficiary enters in the U.S. in his or her capacity as an employee of the organization on some other type of visa, the time spent working in the U.S. under a valid visa will not be counted as applicable to the one-year previous foreign employment.

L-1A Executives and Managers

An executive is one who directs the management of an organization or a major component or function of the organization. He or she establishes goals and policies and exercises wide latitude in discretionary decision making, receiving only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. A manager is one who has supervision and control over the work of other supervisors, professionals or managerial employees, or who manages an essential

function, department or subdivision of an organization. A manager has the authority to execute or recommend personnel actions if others are directly supervised. If no other employees are supervised, he or she must function at a senior level within the organization or with respect to the function managed, and must exercise discretion over the day-to-day operations of the organization or function managed. An L-1A employee can apply for an Intracompany Transferee Green Card (EB-1) after the US business has been operating with sufficient employees for at least 1 year. An EB-1 case takes approximately 1- ½ years to process for a Green Card.

The L-1 Employer

The petitioning employer must be a subsidiary, affiliate or branch office, and there must be a relationship between the foreign and U.S. companies in which there is either more than 50% stock control, or a 50/50 joint venture with joint veto power, or the same person owns over 50% of both companies. The relationship between companies is demonstrated either by showing that the corporations are the same or that one is a subsidiary, affiliate or branch office of the other.

Duration of the Visa

For a business that is just starting, an L-1 visa is valid for one year; for a business that has been doing business in the United States for a year or longer, the visa is valid for three years with two-year extensions available for a total of up to 7 years for an executive or manager. Any time out of the U.S. maybe added to extensions to get

more than 7 years. For example, if the L-1 executive is out of the U.S. for 3 years out of the 7, he can apply for 10 years. L-1 extensions have to be filed in the U.S. at the USCIS Regional Center serving the area where the business is located.

Where to Apply

An L-1 visa application for foreign nationals must be filed through an USCIS Regional Service Center except for Canadians who may file through an immigration Class A port of entry airport or land border a U.S. or pre-flight inspection airport in Canada. The USCIS for everyone except Canadians then sends the approval notice to a U.S. Consulate where the applicant obtains the L-1 visa.

Status of Spouse and Minor Children

The foreign national spouse or unmarried minor children of a foreign national with an L-1 visa are entitled to the same nonimmigrant classification, for the same length of stay, as the employee. The foreign national's spouse and children are admitted with L-2 visas. The employee's spouse may seek employment authorization from USCIS. Minor children cannot accept employment in the United States, but can attend school. Domestic workers of an L-1 visa holder can receive a B-1 visa with work authorization.

Make yourself at home.

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