



# International Tax Evasion, Money Laundering and U.S. Real Estate - Part 4

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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.

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## **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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*Written by Gary S. Wolfe*

Now (2017 forward) the new Form 5472 filing requirements for the LLC requires the reporting company (25% foreign investor) to report all transactions between the LLC and its foreign owner.

To “ensure that reporting companies” report all transactions with related party foreign investors the IRS created a new reportable category for any transaction described under Treas. Reg. 1.482-1(i)(7) that includes any sale, assignment, lease, license, loan et al.... It also includes “a right to use real or personal property”).

Taxpayer criminal felony exposure for assets of questionable origin for tax and related crimes for the foreign investor is magnified by the intersection of multiple tax filings due and the new global digital transmission of taxpayer information between signatory governments under either or IRS/FATCA, or OECD/CRS.

Now for 2017 forward the foreign investor must have filed the Form 5472 for the foreign investor’s 25% ownership in the U.S. LLC whether or not there is any income subject to tax.

The same foreign investor, if they have funds under U.S. wealth management or other U.S. source income and it exceeds \$10,400 per year they are required to file Form 1040 NR and pay U.S. income tax due on U.S. source income.

As for offshore accounts, the foreign investor whose U.S. LLC interest is held thru an offshore company (e.g. BVI Co.) which is disclosed by the Form 5472 filing now faces the risks of the “excavation” and “public identification” of the foreign vehicle they use to hold U.S. assets. Under the 9<sup>th</sup> Circuit case (which applies to California) in re: grand jury investigation MH, 648 F 3d 1067 (9<sup>th</sup> Cir 2011) cert denied 133 S. Ct 26 (2012) in which the court compelled “an offshore account holder to produce data even if it was self-incrimination. This exception, under the 5<sup>th</sup> Amendment for “required records” exception, risks additional jail time under court order for failure to comply with a court order.

The real world repercussions of Treas. Reg. 1.6038A and the related Form 5472 filing requirements are still unknown. The 2017 forward risk of imposition of new civil and criminal penalties imposed is a “brand new” problem for those with foreign owned single member LLCs. Those who relied on the “IRS information filing loophole” allowed prior to 2017 to hide ownership of U.S. assets may well consider another tax strategy forward.

Under Treas. Reg. Sec. 1.6038A-1 the LLC must maintain books and records and furnish tax information on demand from the IRS. For those clients in the past who refused to disclose records they now have a “nightmare compliance scenario” in which they are obligated to disclose U.S. LLC assets to the IRS, the fact of their LLC investment under Form 5472 tax returns both of which may be digitally transmitted to their home country since U.S. based assets may be subject to reciprocal taxpayer information exchange with the foreign investor home country under the IRS/FATCA signatories worldwide.

For U.S.-based assets where the source or origin of funds cannot be confirmed there is great risk of civil tax penalty and as of 12/13/16

criminal prosecution under related Treas. Reg. 1.6038-2 (k) (4) which imposes criminal prosecution for not filing Form 5472 (IRC 7203), filing a false return (IRC 7206) or False Statement (IRC 7207).

The IRS Civil Penalty is \$10 for every 30 days Form 5472 not filed without a cap (so for every 12 months not filed penalty is \$120k plus any compounded tax, penalty & interest accumulation).

Taxpayers are well advised that what the IRS has accomplished under Treas. Reg. 1.6038A is to both add expensive civil and criminal penalties to foreign 25% owned U.S. LLC for noncompliance with Form 5472 effectively revoking their prior exemption.

The IRS "stealth" attack under TR 1.6038 A is that by "treating domestic disregarded entities that are wholly owned as separate and apart from their owners (for Form 5472 purposes solely) it eliminates the confidentiality of disregarded status by requiring the LLC 2017 forward to have filed Form 5472 (filing due by the reporting corporation; under IRC 6038 A either 1) A 25% foreign owned U.S. corporation (and now LLC) or foreign corporation that is 25% foreign-owned and engaged in a U.S. trade or business.

The U.S. owned LLC 2017 forward will now be the "reporting corporation" and will be responsible for filing the Form 5472 (along with Form 1120). The foreign investor's 25%+ investment in a U.S. LLC, once totally secret is now "public record".

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