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GLOBAL HNW INVESTORS: STOCK/BOND INVESTMENT PORTFOLIOS

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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 RCBNNews.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 HNW Investors:
Stock/Bond Investment Portfolios

In my recent article Global High Net Worth Investors: US Investments, Immigration & Tax Planning I cited the L-1 Visa US immigration strategy as explained by my colleague, and co-author Mark Ivener, Esq. (pre-eminent US immigration attorney) as a tax efficient immigration and investment strategy (I have redacted Mark's immigration explanation of the L-1 Visa, and include herein, see below).

Global High Net Worth Investors who are considering immigration to the US should carefully review US tax issues as part of their US Pre-Immigration Planning otherwise they may be in for a rude awakening since many countries have a "Territorial Tax-Based System" which exempts tax on foreign income (assets) which are taxed where earned. In contrast, the US has a worldwide tax system where income is taxed no matter where it is earned (as well as estate and gift taxes on assets worldwide for those investors who establish a US domicile i.e. they intend to live in the US permanently).

Many investors who immigrate to the US are unaware that once they get a green card, or an EB5 Visa (with a conditional green card) that they are not only subject to worldwide income tax but also US estate and gift tax on their worldwide holdings (in 2017 they have $5.49m exempt from estate/gift tax with a 40% tax for amounts over that threshold amount).

The income tax is not only potentially very expensive (in CA/US the top blended tax rate for high earners may be 55%), but subjects them to invasive asset reporting worldwide (under the annual filed FinCen Form 114 known as the “FBAR filing”, US income taxpayers must disclose all foreign bank and financial accounts over $10k or risk civil penalties which may be up to 50% of account balance per year; up to 300% of account balance for the 6 year statute of limitations.

In the case of Florida taxpayer, Carl Zwerner who failed to file the FBAR and wound up go to trial with the IRS, lost and was assessed a nearly 150% penalty on his unreported Swiss bank account i.e. penalty of nearly $2.4m on account with $1.6m). In addition there are severe criminal penalties of 10 years in jail per each year of non-disclosure for “willful failure to file the FBARs” (in addition to the 50% civil penalty for willful failure to file the FBAR).

Under the Foreign Account Tax Compliance Act (“FATCA”, enacted March 2010, effective for tax years thereafter starting with tax reporting in 2011, all foreign financial assets over $50k must be reported on Form 8938 (attached to Form 1040, filed annually) or risk additional civil and criminal penalties.

In addition, the failure to file these tax forms (Form 8938, FinCen form 114), or disclose the foreign accounts (or formation of foreign trust or foreign trust distributions received) may suspend the IRS statute of limitations for civil tax audits (normally 3 years from the date of filing unless 25% of gross income omitted/or more than $5000 of foreign income omitted then 6 year statute).

So what should the foreign investor do for US tax planning for their investment portfolios prior to immigration to the US:

1. Establish an irrevocable trust offshore and transfer all assets over $5.49m (2017); $10.98m Husband and Wife. These assets if transferred pre-immigration will be exempt from US Estate and Gift Tax (at 40 % Tax Rate). Otherwise, at death a 40% US Estate and Gift Tax may be imposed and assets may have to be sold (at depressed prices) to pay the estate tax. In addition, once the foreign investor move to the US although the assets in the Irrevocable Trust may be excluded from the 40% US Estate and Gift Tax the trust will be classified as a US Grantor trust and the income will be taxed to the foreign investor who becomes a US taxpayer;
2. The assets in the irrevocable offshore trust may not be subject to 3rd party creditor attachment, absent a fraudulent conveyance (keep in mind that annually over 1 million lawsuits are filed in California and another nearly 300,000 lawsuits are filed in Federal Courts throughout the United States);
3. For the investment portfolio assets (stocks/bonds) use the Private Annuity/Private Placement Life Insurance Policy investment tax planning which is fully described in my article for Lorman Education; Doubling Net ROI on Investments (see link). This type of tax planning (endorsed by METLIFE who does similar planning but with a restricted menu of investments) uses a private annuity to fund life insurance premiums. As described in the article, this type of planning may either defer (or completely exempt tax on the investment earnings) minimize risk of tax audit (since income is not reported when earned, not until later upon distribution), and provide “bullet proof asset” protection

(under the recommended governing law, Puerto Rico, annuities and life insurance are exempt from 3rd party creditor attachment).

The value of the L-1 Visa is multiple:

1. No minimum or maximum investment thresholds;

2. Initial 3 year immigration for investor (and family) may be extend well past ten years based on the following scenario: under US immigration rules, on which Mark Ivener, is a nationally recognized expert and may confirm upon e-mail request, there is a pro-ration for the length of the L-1 Visa. The total time for the L-1 Visa is 7 years, however, if it is extended to 14 years if the investor is in the US for ½ of each year, and may be up to 21 years if the investor is in the US for 1/3 of each year.

   The 1/2 year and 1/3 limitations are the key to the US income tax planning. Under the substantial presence test as long as an investor is not in the US for over 183 days in one year, or 122 days per year over 3 years there is no US income tax imposed or worldwide disclosure of foreign/offshore income or assets.

   As long as the investor and family maintain a foreign domicile (either in their country or other country which is nearby but not in US e.g Canada, Mexico or the Caribbean) there is no US estate and gift tax due.

3. The investor's family may stay in the US, the investor limits their time in the US and the spouses file separate tax returns (the non-working spouse may file a US tax return if in the US for more than ½ the year or 1/3 the year for 3 year period declaring minimal income) while the investor income may be not be subject to US income tax. These tax rules are quite intricate and should be both carefully investigated and researched on a case by case basis before the immigration is complete. I recommend both a review of all relevant US-Investor Home Country Tax Treaties, thorough research of the applicable US tax laws and a tax opinion citing the relevant legal authority upon which the investor relies for their tax planning pre-US immigration.

   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.