

Tax Consequences of the EB-5 Immigrant Investor Visa



For foreign investors and entrepreneurs seeking to bring their business to the United States, the EB-5 Immigrant Investor Visa (or “green card”) may seem like the perfect fit. Looks, however, can be deceiving. On the first day that a green card holder enters the United States, he is subject to U.S. federal income tax on his worldwide income and informational reporting requirements for his foreign businesses, offshore companies and other assets abroad. This overnight fiscal transformation may surprise even those who have obtained the advice of U.S. immigration counsel before entering the United States. Foreign investors who obtain the advice of competent and qualified U.S. tax counsel can avoid mistakenly or unwittingly causing their foreign affairs to cross the border when they do. The following is a brief summary of what every foreign investor should know about the tax side of the EB-5 before *Coming to America*:

Worldwide Income Taxation. Fiscal residents of the United States are required to report (and pay United States income tax on) their worldwide income on an annual basis on IRS Form 1040, regardless of where they reside. Even if an EB-5 investor returns to his or her home country but keeps the green card, he or she remains subject to worldwide income tax in the United States as a fiscal resident.

Anti-Deferral Income Tax Regimes and Reporting Requirements. In general, U.S. taxpayers lose the benefit of income tax deferral normally associated with ownership of assets in corporate form. A U.S. shareholder of a “controlled foreign corporation” may be currently subject to U.S. federal income tax on the net profits of such company each year even if no profits are actually distributed. Regardless of whether the U.S. shareholder is taxed, he or she must disclose his or her ownership interest in the controlled foreign corporation on an annual basis on IRS Form 5471. Alternatively, a U.S. taxpayer may be subject to U.S. federal income tax with respect to his or her interest in a “passive foreign investment company” only upon a realization event, but nevertheless lose the benefit of income tax deferral after application of an interest charge attributable to the period of such income tax deferral. Additional U.S. tax compliance is required by U.S. owners of passive foreign investment companies, namely IRS Form 8621.

Foreign Bank Account Reports. Treasury Department Form TD F 90-22.1 (commonly known as the “FBAR”) must be filed by a United States person if he owns or otherwise has a financial interest in or signature authority over one or more foreign financial accounts if the aggregate highest balance in such accounts is more than US\$10,000.00 on any day during the year. The information required to be disclosed includes the name of the bank, the bank account number, the highest balance in the bank account during such year and the name of the country in which the bank account is located. A United States person is deemed to have a financial interest in an account owned by a corporation in which the United States person owns directly or indirectly more than 50% of the total value of the shares of such corporation.

Potential Exit Tax. If a long-term permanent resident (i.e., an individual who has held a green card for more than seven years) relinquishes his or her green card, such individual may be subject to significant and unfavorable U.S. tax consequences as a result.

