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## **International Tax Planning**

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I am often asked questions about taxes and estate planning by those who wish to move abroad. The questions clients ask are usually on the “tip of the tongue” of everyone in the same scenario. For example, the following are commonly asked by Americans wanting to move to Mexico:

Q: Are there wage & housing exclusions for U.S. citizens working in Mexico?

A: Yes, wage exclusion (up to \$80K) & housing exclusion (for expenses over \$32/day) apply for employees working abroad.

Q: Can one invest in Mexican real estate in a U.S. retirement plan?

A: Yes, with restrictions (annual appraisal/audit, bond coverage).

Q: A person selling a Mexican property (not a primary residence) for a gain, is he liable for both U.S. & Mexican capital gain taxes?

A: Generally, a person will get tax credits on his U.S. tax return, for Mexican taxes paid (no double taxation).

Q: Can a Mexican property be bought as a second home? What is deductible for tax purposes?

A: Yes, Mexican property can be considered a second home, thus interest & property taxes are deductible on U.S. returns.

In addition, there is a universal issue of how you are going to purchase the property of your dreams. Many individuals have wealth and can pay cash for their property. A lot of individuals in the U.S.A., need to access the money in their retirement plan, or mortgage the property. Of course, the mortgage interest in a foreign country can be deducted as a second home in the U.S.

If the dreams are larger and there is a need for larger sources of capital to developers, there are also larger sources available.

Each situation needs to be analyzed to determine which country’s deductions are to be taken, especially if the property is to be used as rental property.

In a USA pension or IRA account you can have real estate. However, you have to be careful of unrelated business tax in the trust. Investing out of your retirement plan is very difficult especially if you are going to convert the property to a personal residence at a later date.

The following facts and questions are important when real estate is a plan investment:

- Investing in real estate within a qualified retirement plan is a nontraditional investment that requires careful consideration.
- Some issues do not take into account issues such as changes in law or government policy, or unforeseen events
- Real estate includes but is not limited to Limited Partnerships, land, building, etc.
- Plan Document Language – Does the Trust Document allow investment of Plan assets in real estate?
- Valuation – At least annually, all plan assets must be valued at their fair market value.
- Valuation requires an independent, third-party appraisal
- Prudence and Diversification – Do Real estate investments impact prudence and
- Diversification requirements
- If the investment constitutes 20% or more of the total plan assets you have to disclose the amount of the investment
- Liquidity – Are plan assets tied up in real estate
- Fiduciary Bond Coverage – Does the Fiduciary Bond cover real estate investments
- Benefits, Rights & Features – Do all Participants have the right to invest in real estate
- In-Kind Distributions – Does the plan document allow in-kind distributions? If not, the plan can be amended
- Debt Financed Income – Income earned by a trust as a result of debt-financing, could be
- Taxable to the Trust at trust rates as high as 35%
- However, Mexico does not make qualified plans pay capital gains tax on sells of property, or income tax on rent income
- Unrelated Business Taxable Income – Does the investment in real estate result in unrelated business income tax? If the trust has so many real estate investments that it is deemed to be operating as a business rather than investing assets for retirement, the earnings become subject to unrelated business taxable income tax
- Mortgage – Can the trust obtain one if needed

Prohibited Transactions – Does the real estate investment benefit a “party-in-interest” (as defined by the Internal Revenue Code)? The fiduciaries are obligated to maintain the plan and trust solely for the exclusive benefit of participants and their beneficiaries.

One of the major reasons for relocating to a foreign country like Mexico is the cost of living. In Canada and the U.S. an individual easily can spend \$2,000 or more per month in after-tax dollars. In Mexico, your monthly cost of living expenses can be half that amount.

If you have to pay tax in another country you would receive a foreign tax credit against your home country’s tax.

Next month we’ll talk more specifically about taxes in Mexico.