

# Non-US investors using US entities to hold their portfolios

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SCHWARTZ INTERNATIONAL

Sorry, but disclosure for *me* also applies.

While I am an attorney-cpa, Schwartz International is a CPA firm, so I am wearing my CPA hat today, *not* my attorney hat. This presentation does *not* constitute legal advice.



# Make sure you get the “residency” issue correct.

1. Who is a US resident and why do we care?
2. Countries typically tax residents on worldwide income, so there needs to be a strong connection.
3. US citizens are treated differently.



# It sounds odd, but the Code refers to Aliens.

1. Resident Alien and Nonresident Alien. §7701(b)
2. A Resident Alien is a US tax resident.  
§7701(b)(1)(A)
3. A Green Card holder is a US resident. [Lawfully admitted for permanent residence.]  
§7701(b)(1)(A)(i)
4. Substantial Presence Test – if you're in the US a certain number of days. 122 vs 183  
§7701(b)(1)(A)(ii)



# The phrase “International Tax” is a misnomer for most of us.

1. The Internal Revenue Code, Treasury Regulations and IRS guidance are domestic tax items.
2. So are US court cases.
3. How many people are putting together the global jigsaw puzzle to determine global cash flow *after* tax?



# Don't forget financial disclosure if a US resident.

1. If in doubt, disclose.
2. There's scary terminology.
3. Bank Secrecy Act (BSA).
4. Report of Foreign Bank and Financial Accounts (FBAR).
5. Financial Crimes Enforcement Network reports (FinCEN).



# Choose the entity that best fits your needs based on *possible US tax.*

1. Is there a US trade or business and effectively connected income?
2. FDAP? Your clients are probably here.
3. Inc. is a taxpayer – 21% federal. Withholding.
4. Flow-through (LLC / partnership). **Potentially no US tax.**



# Choose the entity that best fits your needs based on *possible US tax. [Inc. vs LLC]*



1. Presumably ForCo owns US securities.
2. ForCo:
  - a. Generally no US tax on cap gains if no US real estate; or on certain interest.
  - b. Dividends taxed via withholding.
3. Individual:
  - a. Generally no US tax if no US presence
  - b. CAREFUL: US trade or business issues.
4. Estate tax issues



## **Contact Information** –

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