EWP & Tax Shield-Part 2

Expanded Worldwide Planning-EWP and Tax Shield

Private Placement Life Insurance (PPLI) in Action

The Hampton Freeze & Beyond--Part 2

The universality of Expanded Worldwide Planning (EWP) is not to be denied. This is objectified by *Wikipedia.* In the first sentence of their page on ***International Tax Planning***, Expanded Worldwide Planning (EWP) is featured.

We are taking a cue from *Wikipedia.* Over the next few weeks, we will feature one of the six principles of Expanded Worldwide Planning (EWP). The ***six principles*** are: privacy, asset protection, tax shield, succession planning, compliance simplifier, and trust substitute. Today we feature the tax shield.

PPLI Benefits Non-U.S. Persons with Real Estate

There are many obstacles that non-U.S. persons face in investing in U.S. real estate. The primary tax impediments to foreign investment in U.S. real estate in general and in real estate funds specifically are U.S. income, capital gains and withholding taxes. Adding ***Private Placement Life Insurance*** (PPLI) in combination with trusts and LLC elements eliminates or mitigates U.S., withholding taxes, U.S. income and capital gains taxes, and estate taxes.

Here is a list of the obstacles faced by non-U.S. persons investing in U.S. real estate:

✦Effectively Connected Income (ECI): Although non-U.S. investors' gains from U.S. stock are generally not taxable, income and gain from their real estate investments are generally taxable under the ECI rules. Specifically, rental income and/or gains from the sale of U.S. real estate are both generally treated as ECI. U.S. source rental income allocable to a foreign investor is typically not entitled to any treaty preferences. ECI is generally taxed to such foreign investors under the same tax rates that apply to U.S. taxpayers, and foreign investors that receive ECI are required to file U.S. federal and state income tax returns. Finally, the FIRPTA rules described below can also transform sales of stock (or other equity interests) and/or capital gain dividends from REITs into ECI.

✦FIRPTA: Enacted in 1980 to combat perceived unfair advantages for foreign investors in U.S. real estate, the Foreign Investment in Real Property Tax Act (FIRPTA) imposes significant taxes on dispositions of US real property interests. Specifically, Section 897 of the Internal Revenue Code of 1986, as amended, essentially treats such gain as ECI. In addition, as explained below, complicated withholding tax rules apply with regard to US counterparties in such transactions.

✦Non-US Regulatory Concerns: In addition to U.S. tax issues, non-US investors can have non-U.S. tax and regulatory concerns. For example, non-U.S. investors may need to comply with certain informational reporting requirements in their home jurisdictions.

Significant investment capital for U.S. real estate transactions and funds has been and will continue to be raised from non-U.S. investors. In light of this fact, it is important that real estate advisors, investors, and owners understand the tax challenges, as well as the potential solutions, involved when non-U.S. investors invest in U.S. real estate. PPLI is an integral element in these solutions.

Outstanding Results Realized

We will compare the various structures generally used by non-U.S. persons for investing in U.S. real estate with the addition of PPLI. Adding the PPLI advantage is a cost-effective way to give clients additional return on their investments and legitimate, enhanced privacy in their structures.

An insurance solution using PPLI or a ***Private Placement Variable Annuity*** (PPVA) contract can greatly simplify or eliminate many of these issues and make long term investing even more appealing.

All foreign Investors are exposed to a myriad of US tax consequences, including withholding taxes (30%), capital gains, and even U.S. Estate Taxes. Life insurance, and specifically Private Placement Life Insurance (PPLI), is a well-established tax and estate planning tool that many qualified investors utilize to mitigate and manage these exposures.

Most structures can remain intact with the simple addition of a compliant life or annuity policy. PPLI can accommodate most custodians, managers or funds, making the transaction as simple to set up as a trust or other less effective structures.

PPLI also provides simplified reporting and confidentiality. The policy is reported once, and not the assets held or underlying investments. The owner reports a life policy and not that they are investors or hold assets in the U.S.

The Summary Chart below compares using PPLI with other commonly used structures. The small additional expense of adding PPLI to a structure gives the non-U.S. person many additional benefits that cannot be achieved otherwise.

PPLI with IDF vs. Other Real Estate Structures

	Trust with LLC	Dual Corporation	Individual & LLC	PPLI with IDF
Capital gains tax on gain	20%	35%	20% (if over $400,000, 15% or less)	0%
Medicare tax at 3.8%	Not necessarily	No	No	0%
Files tax returns in personal name	Not necessarily	No, but need to disclose foreign shareholders and related party transaction	Always	No
Excess interest expense carries forward to offset gain from sale.	Yes	Yes	Yes, but limited	No
30% withholding tax on related party interest payments	No	Yes, unless treaty jurisdiction lender	No	No
Limits on deductibility of interest expense	Yes (90%)	Yes (60%)	Yes (80%)	No
Estate tax protection	Yes	Yes	No	Yes
Distribution creates additional withholding	No	Yes	No	No

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We learn much valuable knowledge from your questions and comments. Please give us your thoughts on using PPLI in real estate structures.

by Michael Malloy, CLU TEP RFC, @ Advanced Financial Solutions, Inc