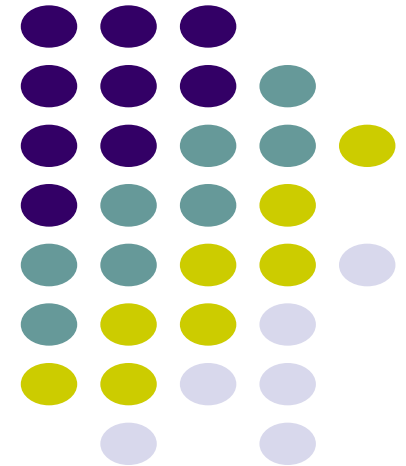


# FIRTPA

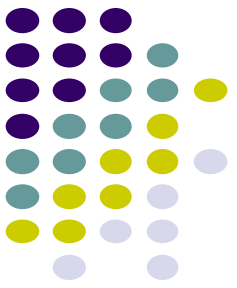
## Real Estate

### U.S. - Inbound and Outbound

*Presented by:*  
*Cecil Nazareth ACA, CPA, MBA*

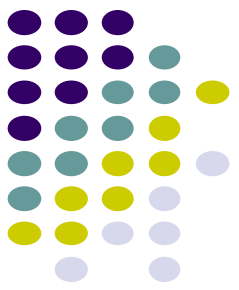


# Agenda

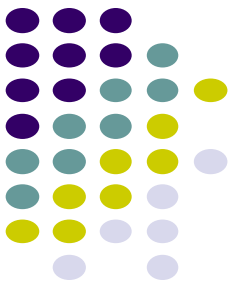


- Overview of Real Estate – Inbound/Outbound
- Purchase & Structure of Real Estate
- Managing Real Estate
- Selling Real Estate
- Taxes Consequences

# Overview

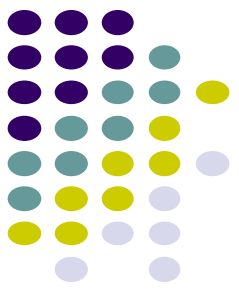


- Residential vs. commercial real estate
- EB 5 – invest more than \$500,000 and must employ more than 10 US people
- Inbound –  
U.S. nonresidents holding U.S. real property or real property interests. These transactions would fall under FIRTPA (Foreign Investment in Real Property Tax Act)
- Outbound –  
U.S. residents holding foreign real estate. These transaction could fall under FATCA (Foreign Tax Compliance Act)



# Entity Structure

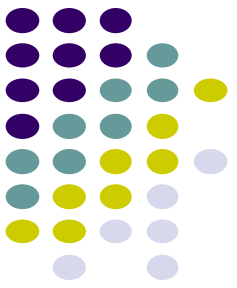
- Create an LLC – Limited liability company protect owners from liability
- Sole member – defaults to a Schedule E. NR Taxpayer must have a TIN number
- US domestic partnership – 2 or more persons - Pass thru entity - Form 1065 (one U.S. partner and one foreign partner)
- U.S. Corporation – Form 1120 and elect to be treated as a Disregarded entity



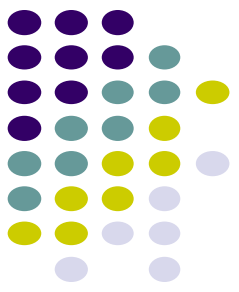
# Real Estate transactions

- Real estate owners can elect to be passive or active – i.e. Investment income or active income Effectively Connected Income (ECI)
- FIRTPA - Sale of U.S. Real estate – 15% WHT on the gross proceeds if seller is a U.S. nonresident

# FIRPTA



- Foreign Investment in Real Property Tax Act (section 897)
- USRPI – US Real Property Interest
- REIT – Real Estate Investment Trust
- RIC – Regulated Investment Companies
- WHT is 15 % of the gross proceeds
- Seller is a NR and tax must be withheld (escrowed) @ closing and sent to the IRS
- FIRTPA taxes could fall on the buyer if the seller defaults
- Information about the seller and seller is a foreign person

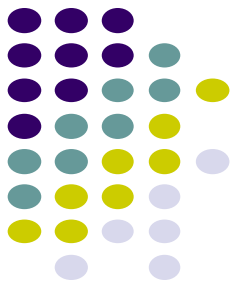


# Purchase of Real Estate

- US allows foreign persons to purchase US real estate e.g. Manhattan
  - Condo – Outright ownership
  - Coop – Ownership interest in the building
  - Coop board approval to buy, rent and sell

No tax consequences on buying property

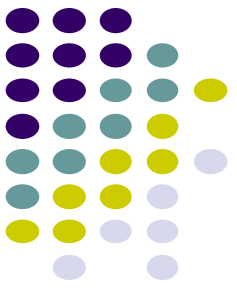
# Real estate (Sch E)



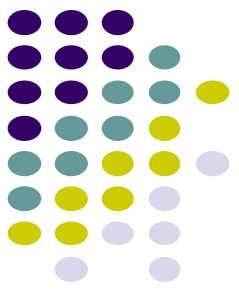
Gross rental	\$100,000	Cost 1,000,000 Land 200,000 Bldg 800,000
Mortgage Interest	(36,000)	
Real estate Taxes	(20,000)	
Depreciation	(29,000)	27.5 years
Other expenses	<u>(5,000)</u>	
Total expenses	(90,000)	
Net Income	\$10,000	
US partner 1%	\$100	
Chinese partner 99%	\$9,900	US WHT 30% of \$9900 = \$2970



# WHT

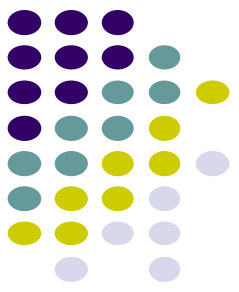


- Foreign Corporation that distributes US real property interests must withhold 21% of gain on distribution to shareholders
- Domestic corporation 15% of FMV of the property distributed to foreign shareholders Form 8288 or 8288A
- Must remit withholding to IRS at the time of closing
- Property sales below \$300,000 not subject to these rules
- Individuals would need a TIN number to file a NR return and get the excess withholding back
- Transferor can apply for a withholding certificate in some circumstances.
- The IRS requires 90 day turn around time.



# Sourcing rules

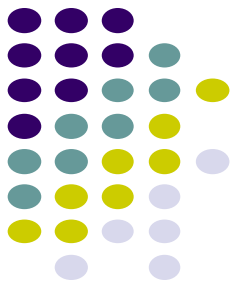
- The country in which the property is located has the first right to tax real estate transactions
- Rental Income - where is the property located?
- Capital Gains – different rates in different countries and different holding periods
  - e.g. India – long term is 2 years US is 1 year holding period



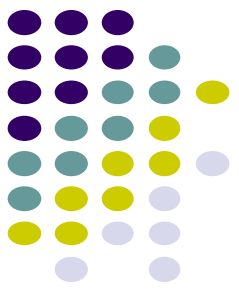
# Withholding

- U.S. taxpayers need to withhold 30% of the payments made to U.S. nonresident shareholders/owners, e.g. Dividends
- Remit the tax to the IRS with Form 1042-s

# Sale of Real Estate By Nonresident



Sale Price	\$1,200,000	US WHT 15 % =\$180,000
Cost + improvements	\$1,000,000	
Capital Gain	\$200,000	
US Tax - Fed 23.8%	\$47,600	
NYS (approx 6%)	\$12,000	
NYC tax (approx 4%)	\$ 8,000	
Recapture tax on Depreciation (25%)	\$ 7,250	Depreciation is \$29,000 @ 25% = \$7250
Total tax	\$ 74,850	
Refund	\$105,150	\$180,000 - \$74,850
After-tax return (12.5%)	\$125,150	\$200,000 - \$74,850

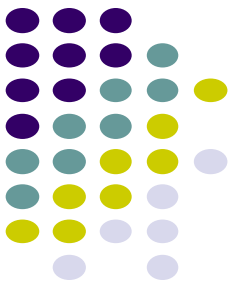


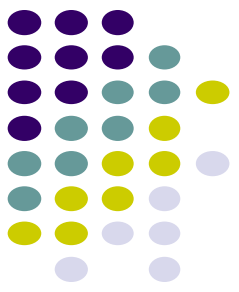
# WHT and Filing US taxes

- WHT is \$180,000
- File a form 1040 NR or 1120 F and get back refund
- Tax on the sale (Fed only) = \$ 47,600
- Recapture tax \$ 7,250
- Total US Federal tax \$54,850
  
- Federal refund  $\$180,000 - \$54,850 = \$125,150$

# Gross Proceeds

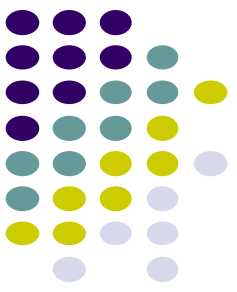
- Cash paid
- FMV of the other property
- Liability assumed





# Form 5472

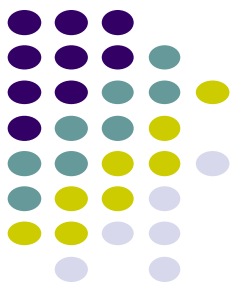
- Form 5472 A U.S. NR holding more than 25% of the US domestic company/entity must file this form with the corporate or individual return.
- Penalty for not filing is \$25,000 per year



# Form 5471

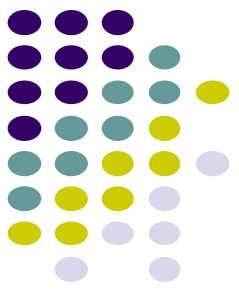
- If a US taxpayer Director and owns more than 10% of the foreign entity they have to file form 5471 with their individual return
- Failure to file this form results in a penalty of \$10,000 per year





# Sale of Foreign Real Estate & FTC

- US taxpayer sells foreign real estate
- The taxpayer first pays tax in the foreign country as the real estate is located in the foreign country
- FTC – The US taxpayer can get credit on the US tax return for foreign tax paid (Form 1116)
- E.g. US taxpayer sells property in India for a gain of \$100,000 the capital gains rate in India is 20%. Resulting in foreign tax paid in India of \$20,000
- Assuming the rate is same capital gains rate (20%) then the FTC will also be \$20,000 (so indirectly - no U.S. tax on this transaction)
- There will be however state taxes due. E.g. taxpayer is CT resident the tax will be approx. 6.7%. State taxes on the gain will be \$6,700



# Depreciation Recapture

- Rental foreign real estate - taxpayers can claim depreciation over a 40-year period.
- Depreciation needs to be recaptured in the year of sale @ 25% tax rate