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GUEST ARTICLE: The US As A Haven For The UHNW Foreign Family - Friend Or Foe?

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This article notes that for intended and unintended reasons, the US has become one of the most effective places to park assets for wealthy people seeking secrecy.

In this instance, a HNW family from Venezuela concerned about losing their wealth can invest in various assets in the US without providing disclosure to their government. Because these investments and assets may not require filing US tax returns, there's no information to exchange.

No tax law is broken, but the HNW family has a secure investment vehicle to ensure the certainty of a store of value, denominated in a stable currency, and the generational transfer of their wealth.

The major factors that we see driving the purchase of US assets by HNW foreign families include:

-- *Secrecy:* This includes the desire for many families to avoid the transparency associated with CRS-like regulations that expose wealthy families to the criminal element. Ironically, the US which gave birth to information-sharing FATCA-types of laws to go after foreign secrecy jurisdictions, is now an attractive haven for families needing to avoid such disclosure. Both the Federal government and many states provide very scant information in return to these jurisdictions;

-- *Asset protection and stability:* HNW families seek the stability of the US to escape the political, social and economic uncertainties back home. This includes deleterious impact of a depreciating currency and inflation back home;

-- *Preservation of settlor intent and property protection:* One key area that we see developing is the desire for many patriarchs/matriarchs to avoid the application of forced heirship rules. Here, many settlors wish to control the way assets are managed and transferred across multiple generations. US-situs trusts have become key vehicles that can guarantee such results.

-- *US Trust law developments:* No discussion of foreign HNW families in the US is complete without discussion of the use of US-situs assets. For HNW families investing in the US, a US-situs trust can be the optimal structure for holding these investments. If a family maintains a non-US situs trust, a US-situs trust can complement the family's existing vehicles for managing its wealth, or can domesticate or on-shore these non-US trusts to US trusts for beneficial tax reasons. A properly-structured US-situs trust is a tax-efficient way through which to hold US passive investments and real estate, which can help minimize the family's exposure to US income, gift, and estate taxes;

Moreover, we have seen many states develop their trust laws to accommodate the desire for families to achieve such objectives as: avoiding state income/estate taxes, enhanced asset protection benefits, and provide additional privacy protections. Additionally, the US maintains the most lenient and seamless regulations for opening and starting shell companies;

-- *Favorable Tax Treatment of U.S. Passive Investments:* Foreign investors are not taxed on U.S. capital gains or portfolio interest. Dividends are quite often taxed at favorable Tax Treaty rates. There are also clear and distinct was to structure vehicles in the US to own foreign assets to be estate and gift tax effective;

-- *US property ownership:* This includes the ability to access US real estate, insurance products, business interests, and the widest selection of the most cost-effective passive investments. Additionally, the wide availability of offshore vehicles for US-based alternative investments (i.e., hedge funds, private equity, and venture capital) have also facilitated the investment by foreigners of some of the more sophisticated US investments.

Trump change

The US is one of the few places left globally where financial advisers actively promote accounts that will remain secret from overseas authorities. This is particularly true in some states, such as South Dakota and Alaska through the use of US-situs trust structures. Under the new US President and Republican-controlled Congress, we expect this trend to grow as regulations are changed, or even eliminated, in favor of freeing up investment.

One of the first changes that President Trump has called for is the elimination of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Under this regulation, foreign investors in US real estate are subject to taxation on these holdings at ordinary rates and other complications. Under current proposals, a Trump presidency would eliminate FIRPTA and the IRS's ability to tax foreign investment in US real estate. This will surely open the floodgates for the foreign purchase of US property, particularly for Asian investors.

High-end real-estate is already one of the most popular vehicles for foreign investment in the U.S. elimination. Loosening FIRPTA regulations would result in a huge influx of international money flowing into the US to buy real-estate. We think that will act as a powerful "put option" on the prices of US real estate, particularly in major metropolitan areas, where the stability of US real estate, strong cash flows, and a favorable tax regime, coupled with an ironclad currency, will prove Herculean.

However, for HNW individuals and families, this is a huge opportunity with a window that may close simply by the sheer volume of investment.

Trump's proposals with respect to international taxation includes an incentive program to repatriate assets by US multi-nationals. We believe this should provide a strong catalyst for further strength of the dollar, making US investments all the more attractive to foreign investors. However, this has to be balanced with some of Trump's countervailing policies that appear to have a xenophobic and anti-globalist taint.

Conclusion

For years, all we read about the establishment of the infamous Swiss bank accounts as a means for global investors to hide assets and evade taxes. After years of mounting pressure, the US was the first to adopt mandatory information sharing legislation, which created a global tidal wave of such laws across countries and regions. Ironically, the US has become among the worst violators.

With the onset of the technological revolution and the improving flow of electronic information at digit speed, as well as with one of the worst global financial crisis since the Post-WWII period, the US suddenly became one of the most attractive places to park assets in secrecy for the foreign high net worth family.

Riding on the tailwinds of its Exorbitant Privilege, the US offers political certainty, a stable currency, a well-established rule of law, and unmatchable access to the global markets and products foreign investors have come to envy and desperately desire.

Whether this trend remains in place or whether the US eventually becomes a woe remains to be seen, although we see Uncle Sam extending his friendly hands for quite a bit longer.