CHECKLIST OF

TAX PLANNING MATTERS FOR THE FOREIGN NATIONAL

By William K. Norman, Ord & Norman, Los Angeles, California

1. U.S. Federal Income Treatment of a Nonresident Alien

A. The following items of gross income of a non resident alien of the United States ("NRA") are subject to U.S. Federal income tax:

-- Items of passive income derived from U.S. sources (not attributable to the conduct of a trade or business within the United States as specially defined such as dividends, interest and royalties are generally subject to 30 percent Federal tax withheld at source unless the rate is reduced (or eliminated) by an applicable income tax treaty. *IRC § 87(a)(1)*

-- Under the U.S. Model Income Tax Treaty, dividends paid by a U.S. corporation to a foreign country resident (individual or corporation) are subject to 15 percent U.S. Federal tax withheld at source. A special five percent rate applies to dividends paid by a U.S. corporation to a foreign corporation which owns at least ten percent of the voting stock of the payor corporation. *Article 10.* Interest paid by a U.S. resident to a person resident in the other treaty country (individual or corporation) is subject to a 15 percent U.S. Federal income tax. *Article 11.* Royalties paid to a person resident in the other treaty country are exempt from U.S. Federal income tax. *Article 12.* Exemption or reduction in tax rate is claimed under a special form filed with the payor.

-- Gains from disposition of U.S. real estate held six months or more are treated as gross income from the conduct of a U.S. trade or business and subject to long-term capital gains tax at a maximum rate of 15 percent. Gain from disposition of a U.S. corporation 50 percent or more of the value of whose assets are U.S. real estate ("United States Real Property Holding Company") at any time within the preceding five years if all such real estate was not disposed of in one or more taxable transactions is also treated as gross income from the conduct of a U.S. trade or business and subject to U.S. federal income tax. *IRC § 897(a)(1)*

-- No exemption or reduction in U.S. Federal income tax is provided for gains derived from the disposition of "U.S. real property interest" under any treaty.

-- Gross income attributed to the performance of services within the United States is generally subject to graduated income tax at rates ranging from 15 to 35 percent with exception for certain de minimis amounts earned over periods not exceeding 90 days under the Code (present in United States for period or periods not exceeding 90 days and compensation not in excess of $3,000) and exemptions under an applicable income tax treaty.

-- Under the U.S. Model Income Tax Treaty, exemption from U.S. Federal income tax is available for income derived from the performance of services as an employee of a nonresident within the United States by a foreign country resident provided the individual is not present in the United States for more than 183 days in any twelve month period commencing or ending within the calendar year in which the services were performed. Article 14. An entertainer or sportsman who receives $20,000 or more in the taxable year is not eligible for the exemption. Article 16(1).

B. The following items of gross income among other items of an NRA are exempt from U.S. Federal income tax even without claiming the benefit of any U.S. income tax treaty:

-- Gains from the sale or other disposition of shares issued by U.S. corporations **other than** a corporation that is or was a U.S. real property holding corporation within the preceding five years and did not dispose of all of its U.S. real estate in taxable transactions.

-- Interest received from qualified "portfolio debt obligations" issued by U.S. persons who maintain a book entry register of holders and satisfy certain "foreign targeting" requirements. *IRC § 871(h)*

-- Interest received from U.S. bank accounts whose funds are not used in a U.S. trade or business. *IRC § 871(i)*

-- Interest in the form of original issue discount received with respect to obligations payable 183 days or less from the date of original issue. *IRC § 871(g)(1)(B)*

-- Dividends from a foreign corporation unless for the three years

preceding the year of distribution 25 percent or more of the gross income of the payor corporation was attributable to conduct of a trade or business within the United States. *IRC § 861(a)(2)(B)*

-- Interest paid by domestic corporation if 80 percent or more of the gross income of the payor corporation for the three years preceding the payment was from sources outside the United States. *IRC § 861(a)(1)(A)*

2. U.S. Federal Estate Tax Treatment of a Non-domiciled Alien

A. The following items of property of a non-domiciled alien ("NDA") are subject to U.S. Federal estate tax if held in his estate at death:

-- U.S. property transferred under "survivorship arrangements", revocable inter vivos trust, with retained life estate and certain transfers of insurance within three years of death may be included in a decedent's taxable estate. *IRC § 2104(b)*

-- Under a special situs rule, gratuitously transferred property is includeable in the U.S. taxable estate of the NRA as if the transferred property had a U.S. situs either at the time of the earlier transfer or at the time of death. *IRC § 2104(b)*.

-- Interest in a partnership is treated as located in the United States if the partnership is engaged (or treated as engaged) in the conduct of a trade or business with the United States or arguably not at all if the transfer at death does not cause a formal dissolution of the entity.

-- "Vested" property interests in a trust held by a decedent nonresident beneficiary of the trust will be included in the decedent's taxable estate if the property is located in the United States.

-- Only property situated or deemed situated in the United States at the death of a NDA is subject to U.S. Federal estate tax. *IRC § 2103.* Unless an applicable U.S. estate tax treaty provides special situs rules to the contrary, other assets deemed situated in the United States include:

i. Real estate located in the United States. Note: If the real property is held through a foreign corporation (other than as an agent), the real property is not deemed to be situated in the United States. Real property includes improvements, fixtures, unharvested crops and mineral interests. For this purpose leases,

livestock and equipment are of uncertain status.

ii. Shares issued by a U.S. corporation wherever its assets are located. *IRC § 2104(a)* Note: The shares of a foreign corporation are not deemed situated in the United States even if the physical share certificates are stored in the United States and/or the assets of the corporation are located in the United States.

iii. Bonds issued by a United States corporation except for bonds publicly issued by U.S. corporations as "qualified portfolio obligations" to foreign holders (nonresident aliens or foreign corporations) exempt from the 30 percent withholding tax are likewise exempt from U.S. federal estate tax in the hands of the estate of a deceased NRA, i.e., not treated as property located in the United States for federal estate tax purposes (Note the special tie to the income tax residency of the decedent). *IRC § 2104(c)*

iv. Cash (excluding U.S. bank deposits unless the funds are used for the conduct of a trade or business by a nonresident within the United States) (Note special tie to income tax residency).

v. Tangible personal property located in United States at time of death except for works of art solely in United States for public exhibition and property in transit. *IRC § 2105(c) and Treas Ress. §§ 20.2104-1(a)(2), 20.2105-1(a)(2)*

Special Note: A resident alien ("RA"), i.e., an alien who is domiciled in the United States is essentially treated for estate and gift tax purposes like a United States citizen - the value of his worldwide assets are included in his taxable estate. In general, an alien with a large accumulation of offshore wealth is better off as an NRA not domiciled. Becoming an RA for estate and gift tax purposes subjects the resident alien to tax on his worldwide assets and probably will subject him as well to U.S. federal income tax on his worldwide income.

B. The following special features of U.S. Federal estate tax treatment of an NDA should be noted:

-- Marital deduction is allowed to the NDA provided (i) the surviving spouse is a U.S. citizen or (ii) if survivor is a NDA, he or she takes through a "qualified domestic trust" (QDOT"). *IRC § 2056(d)*. A

resident survivor may qualify for a marital deduction even if there is no transfer or assignment to a QDOT provided the survivor becomes a U.S. citizen before the date the return is filed.

-- Conditions for treatment as a QDOT include: (i) the trust must be "maintained" and the administration "governed" under the laws of a state of the United States or the District of Columbia. (Note: a will or trust executed under a foreign law will qualify if the law of a state or the District is designated), (ii) a U.S. person (citizen or domestic corporation) is appointed, as at least one of the trustees, (iii) any distribution requires the approval of the U.S. person (iv) an election to be so treated is filed with the estate for estate tax return of the decedent, and (v) with exceptions, the instrument requires at least one trustee be a bank, a bond or letter of credit to be furnished, (vi) the transfer satisfies the other requirements for a marital deduction i.e. life estate with power of appointment, QTIP, estate trust, etc., but property must pass to a trust or the surviving spouse must actually transfer the property to a qualified trust. *IRC § 2056A(a) and Treas. Reg § 20.2056A-2(b)*

-- The security requirements (Item (v) above) generally apply only if the QDOT holds assets with a fair market value in excess of $2 million determined on the date of death of the decedent (or if applicable in the alternative valuation date) without reduction for any indebtedness. The Trust still must satisfy the security measures described in item (v) above. Even (a) the fair market value of the assets held in Trust are less than $2 million (b) more than 35 percent of the value of the trust asset consists of real property located outside the United States on the last day of the calendar year. Treas. Regs § 20.2056A-2(d)(1)(ii). For purposes of applying the more than $2 million threshold, only a personal residence (wherever located) and related furnishings may be excluded by election up to $600,000. The residence must be used or held for the use of the surviving spouse.

-- A non-qualifying trust may be reformed if the judicial proceedings are commenced before the date for the filing of return.

-- Transfer (or assignment) of an amount that would otherwise qualify for the deduction made to a QDOT before the return is filed is included in the estate of the first to die. The estate of the second to die is entitled to a credit.

-- Deductions, except for certain nonrecourse debts, are apportioned among the world-wide assets of the decedent. *IRC § 2106(a)(1)*

- -- Special use valuation rules are not available to the NDA.
- -- Unified credit is limited to $13,000.00 ($60,000 exemption equivalent) otherwise the same rate schedule used for estate of a resident or citizen is used. *IRC § 2102 (b)(1)*
- -- The rate schedule used ranges from 18 to 45 percent. *IRC § 2106 and 2101*

Note: Under a U.S. estate tax treaty, the rules described above may be varied.

3. U.S. Federal Gift Tax Treatment of a Non-domiciled Alien

A. The following items of property of an NRA are subject to the United States federal gift tax:

- -- Federal gift tax applies to gifts of any NDA who makes a gift of tangible property physically located in the United States at the time the gift is made. *IRC §§ 2501 and 2502*
- -- Federal gift tax applies to the gifts of any U.S. real estate held directly but gifts of shares of a corporation (foreign or domestic) or interest in a partnership that holds U.S. real estate made by an NRA are not subject to federal gift tax unless the contribution of the real property is treated as a step transaction, i.e., direct gift of real property followed by contribution to legal entity. *IRC §§ 2501* (a)(2)
- -- Federal gift tax applies to transfer of all non-transitory, tangible personal property including cash located in the United States at the time of gift.
- -- Transfer of funds held in U.S. bank accounts or payable at a U.S. bank by check, draft or otherwise may be treated as a transfer of cash within the United States subject to U.S. federal gift tax.

  Note: gifts of intangible property (wherever located) made by an NDA are not subject to U.S. federal gift tax.

B. Note the following special features of U.S. Federal gift taxation of NDAs

- -- An NDA is entitled to claim annual exclusion of $14,000 per recipient (amount subject to annual adjustment for inflation) provided the property given is a present interest and not a future interest.

-- If married, the NRA couple can give away each year $28,000 per recipient (amount subject to inflation adjustment) without incurring gift tax provided each NRA actually owns half of the property given. (No gift splitting unless both spouses are U.S. citizens or domiciliaries. *IRC § 2513(a)(1)*

-- A special $147,000 for 2015 lifetime marital gift exclusion (amount subject to adjustment for inflation) is available for gifts of a present interest (or property held in a QTIP) to spouse who is not a U.S. citizen.

-- The rate schedule applicable to gifts of NRA ranges from 18 to 40 percent. No unified credit is available to offset any gift tax liability.

-- Under a U.S. gift tax treaty, the rules of the Code may be varied.

4. U.S. Generation Skipping Tax Imposed on Transfers by a Non-domiciled Alien

A. The U.S. Federal generation skipping tax may apply as follows:

-- The generation skipping tax may apply to three types of generation skipping transfers by an NDA: (1) distribution from a trust established by NDA to a skip person essentially a grandchild (2) termination of a trust established by NDA where a nonskip person usually a child has an interest or (3) a direct transfer of property by NDA directly to a skip person (essentially a grandchild).

B. The following items of property of nonresident alien are subject to United States generation skipping tax:

-- For transfers made while the transferor is alive, only property treated as located at the time of the transfer in the United States for U.S. federal gift tax purposes should be subject to generation skipping tax.

-- For transfers made at the date of death of the transferor, only property treated as located in the United States for U.S. federal estate tax purposes will be subject to generation skipping tax. See *Treas. Reg. § 26.2663-2(b)*

5. U.S. Social Security Taxes Imposed on an Alien

A. FICA (employee payroll) taxation of aliens is summarized as follows:

-- FICA taxes are imposed on the wages of all NDA's working as

employees in the United States with exception for A, G, F and J Visa holders. *See Rev. Rul 92-106*.

-- For nonresident aliens who perform services both within and without the United States, only the wages attributable to work done within the United State are subject to FICA taxes.

-- Because there is no de minimis exemption, an employed nonresident alien who is in the United States for business purposes will be subject to FICA taxes.

-- Exemption from income tax under a U.S. income tax treaty does not necessarily mean exemption from FICA tax. Apparently, only two U.S. income tax treaties, the U.S.–Korea and U.S.–Canada treaties, provide any explicit exemption from U.S. social security taxes. Both exemptions are quite narrow and in the case of Canada is superseded by the terms of the U.S.-Canada Totalization Agreement.

B. SECA (self-employment) taxation of aliens is summarized as follows:

-- SECA tax is only imposed on aliens who are resident for U.S. income tax purposes.

-- SECA tax may be imposed on aliens who are exempt from FICA tax because of their status or nature of their work.

6. California Income Tax Treatment of a Nonresident

A. Residency for California tax purposes is determined under rules entirely different from those used for U.S. Federal income tax purposes and may be summarized as follows:

-- An individual is a resident if he or she is in California for other than temporary or transitory purpose.

-- An individual is also a resident if he or she is a domiciliary of California who is outside California for a temporary or transitory purpose.

-- Generally, a factor analysis is used to determine purposes of being within or without state.

- -- There is a rebuttable presumption of residence in California if an individual spends more than nine months physically present in California.

- -- There is a non-conclusive presumption of non-residence in California if an individual is physically present in California for six months or less in a given calendar year.

  Note: Eight states of the United States do not impose individual income taxes as follows: Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington and Wyoming. The provisions of U.S. income tax treaties do not limit the ability of a state to impose income taxes on income derived from sources within the state.

B. California income tax treatment of an NDA can be summarized as follows:

- -- Nonresidents of California generally are not subject to California income tax on income derived from personal services performed outside California.

- -- California does not impose income tax on gains from the sales of a partnership interest by an individual who is a nonresident of California.

- -- Income from stock, bonds and bank accounts owned by a nonresident of California are not subject to California income tax unless the income asset has a business situs in California. Business situs may be acquired if the asset is pledged as collateral for a loan made to finance a California business.

- -- California income tax rate ranges from 1% to 13.3%. Nonresidents of California use world wide net income to determine tentative taxable income and then multiply tentative taxable income times the ratio of California source adjusted gross income to world wide adjusted gross income.

- -- The distributive share of profits of a partnership attributable to California sources of a nonresident alien of the United States (the U.S. federal concept) is subject to tax that is collected through quarterly withholding.

- -- A separate withholding regimen is applicable to distributions made to partners who are residents or citizens of the United States but who are <u>not</u> California residents.

-- California imposes withholding tax on payments made to contractors who are nonresidents of California for services performed in California.

-- California imposes withholding tax on beneficiaries who are nonresidents of California of trusts deriving income attributable to California sources.

7. Special U.S. Federal Transitional Income Tax Accounting Rules for an Immigrating Alien

A. For Federal income tax purposes, the year of change is divided into a period of residence and a period of nonresidence:

-- Individuals who change residency during a taxable year are commonly called "dual-resident aliens." This type of "dual resident" (resident in the United States for only part of any given tax year) is different from the dual resident found under U.S. income tax treaties, i.e., where an individual is a resident for tax purposes of two countries at the same time.

-- The dual-resident alien is taxed only on his or her United States source income (and net income effectively connected with the conduct of a U.S. trade or business) **received** during the period of nonresidency but on his or her worldwide income during residency.

-- Income from employment abroad is exempt from United States income tax only if the income is received before United States residency begins. Income from employment received after U.S. tax residency begins is subject to U.S. federal income tax regardless of whether or not the income was "earned" before U.S. tax residency was established.

-- Gains from the sale of property other than real property are taxed at the time of sale. For example, if, after becoming resident, the alien sells shares of stock at a gain, the United States will tax the entire gain, including the appreciation in value while he or she was a nonresident. The basis for purposes of determining gain or loss is the original cost basis in U.S. dollars terms with adjustments for depreciation as would have been allowed for U.S. tax purposes.

-- Being nonresident for part of a year does not necessarily result in lower United States taxes. An alien who elects resident status may have a lower United States tax burden because a resident alien can use the lower joint return rates (if married), itemized deductions and the foreign tax credit.

- -- A dual-status alien who is married to a U.S. citizen or resident is given two ways in the year of arrival to elect to be taxed as resident aliens for the entire taxable year of arrival. These special elections for dual status aliens may be revoked, but, once revoked, may not be made again.

  i. A dual status alien married to U.S. citizen or resident may elect under IRC §6013(h) to be treated as a resident of the U.S. for the entire taxable year.

     · The electing alien must report all income, both U.S. source and foreign source, which may include income that otherwise would have been exempt from U.S. taxation or subject to a reduced rate under a treaty.

     · The alien may claim itemized deductions as if an actual U.S. resident - *e.g.*, foreign real property taxes.

     · The alien may either credit or deduct foreign income taxes which, together with the joint return rates and itemized deductions, will frequently reduce U.S. tax liability from the amount due from filing as a nonresident for part of the year.

  ii. A dual status alien may also elect under IRC §6013(g) to be treated as a resident for the year and all subsequent years as long as both spouses are residents or citizens as the case may be.

     · The results in the year of arrival are the same as under the §6013(h) election except that the §6013(g) election remains in effect for all subsequent periods in which both the alien and the spouse meet the requirements.

B. For California personal income tax purposes, a number of special transitional accounting rules apply including the following:

- -- Income accrued before California residency of the recipient is established but received afterwards is subject to California income tax. *See Appeal of Money (SBE, 1983) interpreting Rev. and Tax Code, §17554.*

- -- Pension distributions received after becoming a California resident but attributable to contributions made while a nonresident for services performed outside California are subject to California income tax unless the right to receive accrued before California residency was established.

Appeal of Borden 151 Cal. App. 3rd 504 198 Cal. Reptr. 734 (1984).

-- For California income tax purposes, partnership income does not accrue until end of partnership year. Thus, an alien who established California residency before the end of the year of his partnership will be subject to California income tax on his entire distributive share of partnership income, deduction and credit items. *Appeal of Katleman (SBE, 1976).*

8. Pre-immigration Planning For a Nonresident Alien Intending to Become a U.S. Resident

A. To minimize future U.S. Federal estate and gift taxes, an immigrating NDA should minimize the value of the assets that will become subject to U.S. Federal estate tax:

-- Make all gifts to reduce estate **before** establishing "domicile" in the United States if the transfers are not subject to United States gift tax. Note: Any gifts made in trust should be made at least five years before the NDA becomes a U.S. resident for income tax purposes. Income from assets transferred to a trust within five years of immigrating to the United States may upon establishment of U.S. residency of the grantor be attributed to the grantor of the trust if the trust has U.S. resident or citizen beneficiaries.

-- With respect to any United States real estate or United States property, the NDA should first contribute assets to partnership and then make a gift of the partnership interest before becoming a domiciliary of the United States. Each step must be independent to avoid challenge.

-- If property is situated in a country which has a low death tax or none at all, NDA should transfer property to non-immigrating spouse or other family member(s) prior to establishing domicile in the United States.

-- General powers of appointment held by an NDA over property held in trust should be renounced or exercised before the NDA becomes a domiciliary of the United States.

Note: Pre-immigration gifts to a relative who in turn establishes a foreign grantor trust for the benefit of the original donor will not be advantageous. Under current law, the original donor is treated as the grantor of the foreign trust for U.S. income tax purposes. *Section 672(f).*

B. To minimize his future U.S. Federal income tax, an immigrating NDA should consider the following:

-- Accelerate the collection of income including dividends from any foreign corporations controlled by the alien and salary. The funds distributed may be lent or contributed back to the company. Each "leg" must be "independent" to avoid being challenged as a sham.

-- If the alien is receiving payments under an installment note, he should, upon becoming a U.S. resident, make an election in his first U.S. tax return not to use the installment method of reporting.

-- Sell appreciated assets before becoming U.S. resident. After U.S. residency is established, reacquire the assets by purchase to obtain a higher tax basis for United States. NDA may want to consider taking up residence, (temporary) in a tax haven before selling his assets.

-- Personal assets purchased with foreign currency that have depreciated vis-a-vis to U.S. dollars, but the property itself has appreciated solely in foreign currency terms, should be sold prior to the establishment of U.S. residency to avoid recognition of capital gain using foreign currency basis and sales proceeds translated at current rates without offset for personal foreign currency loss due to depreciation in U.S. dollars exchange value of the historic foreign currency basis.

-- Appreciated foreign currency holdings should be converted to U.S. dollars before becoming a U.S. resident.

-- Transfer income producing assets to a "decontrolled" foreign corporation which will not be a passive foreign investment company, i.e., a company more than 25% of whose gross income is "active and more than 50% of whose assets are "active".

-- Decontrol all foreign corporations by gifting or selling shares.

-- Assemble documentation to evidence all amounts due under loans to avoid treatment of loan repayments received as a U.S. resident as an item of taxable income.

-- Check the box.

9. Planning for Aliens Who Intend to Remain Nonresidents for U.S. Tax Purposes

A. Alien must establish nonresidency (and nondomiciled) status for U.S. federal income, estate, gift and generation skipping taxes as well as nonresidency status for California income tax purposes.

-- To maintain nonresidency for U.S. federal income tax purposes an alien may either

a) not obtain a green card (U.S. permanent residency visa) and not be present in the United States for more than 182 days in a given calendar year while maintaining a closer connection to a foreign country or

b) obtain a green card but structure personal life to qualify as "dual resident" under an income tax treaty and under "tie breaker" treated as resident of a foreign country.

Under the "tie breaker" found in typical U.S. income tax treaties works for an alien of the United States who is resident for tax purposes without application of the treaty in both the United States and other treaty country as follows:

First, the alien would be deemed a resident of the country in which he has a permanent home available to him.

Second, if he has permanent homes available to him in both countries, he is a resident in the country where his personal and economic relations are the closest, so-called center of vital interests. There is no clear test as to how you would determine the center of vital interests. Basically, the alien looks at where his immediate family is located, his spouse and dependent children, where his job is performed, where he spends the most time and where he has personal connections such as clubs and churches, social organizations, etc.

Third, in those situations where the alien cannot determine the location of his center of vital interest, he is deemed resident in the place which is his "habitual abode", essentially where he spends most of his time.

Fourth, if residence cannot be determined under any of the above rules, the alien is deemed a resident of the place where he is a citizen.

Article 4(3)

Any person claiming benefits under an income tax treaty will need to file a

special form with the IRS on an annual basis.

B. An NDA who intends to remain a nonresident (nondomiciled) for U.S. transfer tax purposes should consider the following plans:

-- Obtain life insurance coverage for projected U.S. estate tax liability not avoidable through other planning steps,

-- Mortgage out equity on a nonrecourse basis of all U.S. situs real property that cannot be practically transferred to foreign holding corporation.

-- Hold all U.S. situs asset directly or indirectly through a foreign holding company.

-- Use partnerships (including LLC's) holding U.S. situs assets to create "frozen interests", i.e., all future value shifted to other owners.

-- Transfer of major assets to a foreign holding company with emergency features such as:

i. Transfer of assets from corporation through foreclosure of a mortgage or exercise of option on its assets held by yet another company.

ii. Use stock redemptions to withdraw assets in an emergency.

iii. Transfer of corporate domicile of a holding company upon occurrence of triggering event.

-- Create a fail-safe foreign trust to hold shares of holding company. The trust should have a "flee clause" to minimize the risks in the original country of administration.

-- An NDA who has U.S. resident children should consider a private placement life insurance as an alternative to a foreign trust or alternative establishing a foreign trust to hold solely private placement life insurance with right to borrow against the cash surrender value to finance distribution of corpus to U.S. resident or citizen beneficiaries.

-- An NDA who has children likely to remain NDAs themselves should consider a family mutual fund.

-- Establish residency in favorable estate tax environment countries such as Australia (no estate tax) or Canada (landed basis) and no estate tax.

10. Tax Planning and Compliance for the Departing Resident Aliens

A. A departing alien should consider the following tax planning matters:

-- A resident alien planning to terminate residence in the United States who has substantial unrealized profit in non-real estate property, such as stock or securities, ought to defer the sale to the year following the year of departure.

-- An alien should consider prepaying state and local income taxes before departure to obtain a federal income tax deduction.

-- If he or she sells the residence after termination of United States residence, the postponement of gain requires the purchase of a new principal residence within the United States which is not likely.

-- If a sale of a residence (or any other U.S. real estate) by a nonresident alien is taxable, the Foreign investment in Real Property Tax Act (FIRPTA) requires any purchaser to withhold 10% of the gross sales price (not the gain) if the sales price is more than $300,000. Since standard real estate purchase contracts almost always refer to FIRPTA withholding is likely.

Note: United States law, imposes taxes deferred bonuses or other payments, such as tax equalization, paid after cessation of residence for services performed in the U.S. as "effectively connected" income subject to normal U.S. tax brackets. The deferred payment might be taxed at a lower tax bracket although the joint return rates would not be available if, as is likely, the spouse in nonresident. Sometimes an alien from a country that taxes on a "territorial" basis (i.e., only income arising with the country) may successfully have significant income free of tax by any country.

B. United States law contains a three-year rule designed to reduce the advantage of alternating periods of U.S. residence, as follows:

-- An interruption of U.S. tax residence is fully effective for federal income purposes only if it lasts at least three years.

-- If an individual who has been a U.S. resident for a least three years once

again becomes a resident before the third full calendar year after the end of his residence, the interim period of nonresidence becomes subject to taxation only on United States source income as if a resident during that period.

-- However, if this rule produces less tax than taxation as a nonresident (say, U.S. losses become usable), the alien is taxed as a nonresident.

C. United States law applies a special exit tax regime to certain long term lawful permanent residents (green card holders):

-- Regime is applicable to persons who have been lawful permanent residents for at least eight years out of a period of fifteen years ending in the years the residency is given up.

-- Certain limited categories of persons are exempt from the regime as described in regulations.

-- The special exit tax regime treats the alien surrendering his green card (if either a net work or average Federal income tax liability test is satisfied) generally as having sold his assets at fair market value.

D. An alien planning to move his residence from California needs to consider several special rules:

-- Since states (and California in particular) use domicile concepts to define income tax residency, a state tax residency is not lost until a new one is acquired.

-- Note that it is possible for an alien to be domiciled in California but have a tax home in another state with a resulting inability to claim away – from – home expenses.

-- Pensions distributions received after California residency is terminated are subject to California income tax if the pensions distributions received are attributable to contributions made for services performed by recipient while a California resident.

* * *