



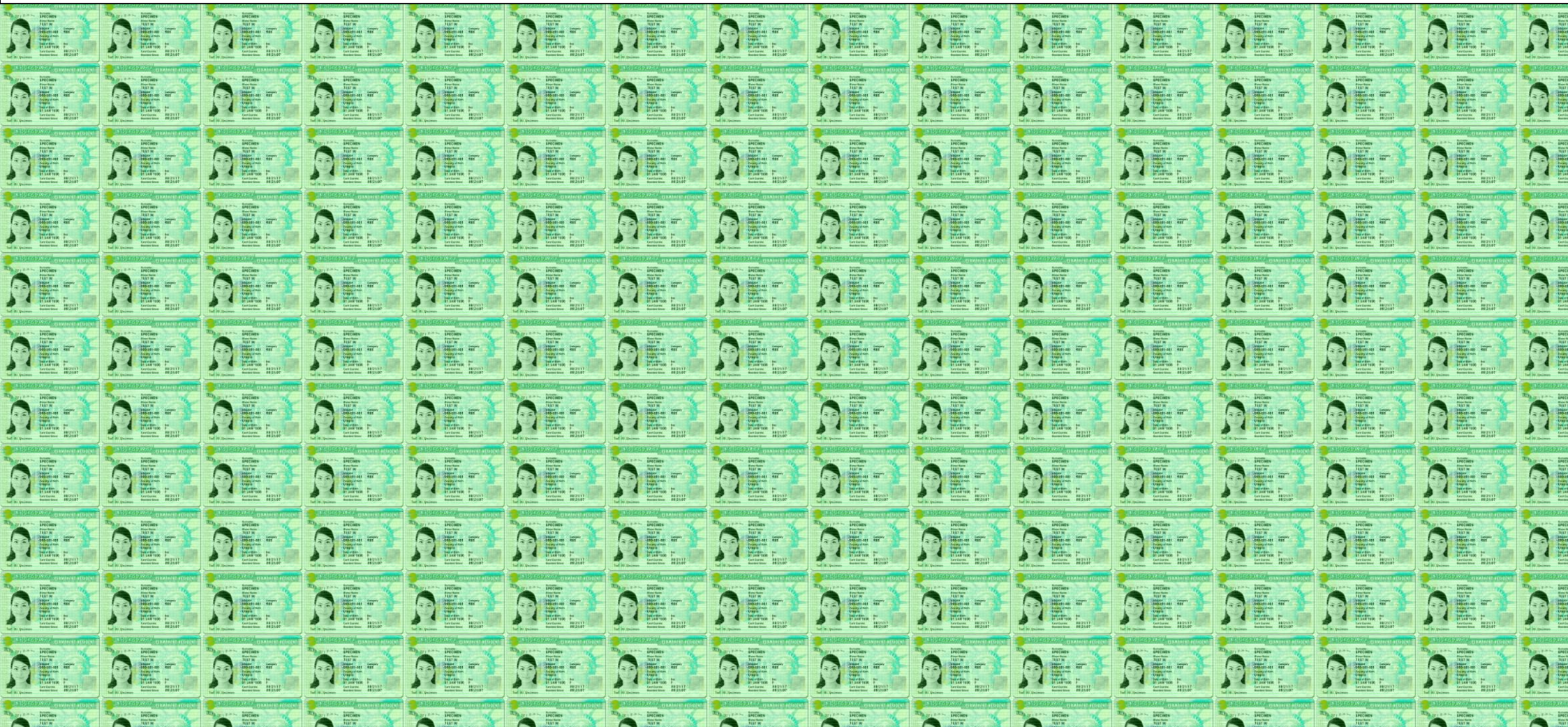
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德恒律师事务所
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LEGAL SOLUTIONS FOR US INTERNATIONAL TAXPAYERS

美国国际纳税人法律服务



US INTERNATIONAL TAXATION

“If you are a U.S. citizen or resident alien, the rules for filing income, estate, and gift tax returns and paying estimated tax are generally the same whether you are in the United States or abroad. Your worldwide income is subject to U.S. income tax, regardless of where you reside.”

— US IRS

Kawashima v. Holder

- **Background:** an alien (a non-U.S. citizen) may be removed from the United States if he or she is convicted of an “aggravated felony” (this even applies to Green Card holding permanent residents, who can be removed from the United States). The term “aggravated felony” has a specific definition under immigration laws of the United States. That term includes crimes such as trafficking in firearms, murder, rape, certain crimes of violence, and theft offenses. And, after *Kawashima v. Holder*, the term “aggravated felony” also includes certain tax violations, perhaps even misdemeanors.
- In *Kawashima v. Holder*, Mr. and Mrs. Kawashima (who were both permanent residents of the United States) have pleaded guilty to violations under 26 USC §7206(1) and §7206(2), respectively. Mr. Kawashima pleaded guilty to one count of willfully making and subscribing a false tax return, and Mrs. Kawashima pleaded guilty to aiding and assisting in the preparation of a false tax return.
- On February 21, 2012, the Supreme Court decided that an alien becomes deportable when he or she is convicted of a tax violation, and that violation involved intentional fraud or deceit, and a loss to the government exceeding \$10,000. Because Mr. and Mrs. Kawashima’s actions were intentional and fraudulent, and resulted in the government’s loss in excess of \$10,000, the husband and wife were found to be deportable from the United States.
- This decision will probably have very important consequences for non-U.S. citizens such as EB5 green card holders. Specifically, if a person is found guilty of (or pleads to) a tax violation which entails fraud or deceit and a \$10,000 + loss to the government, he or she may be deported from the United States.

US INTERNATIONAL TAXATION

In addition to deportation, depending on a taxpayer's particular facts and circumstances, the following CIVIL and CRIMINAL penalties could apply:

CIVIL

- A penalty for failing to file the Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR").: up to over \$100,000;
- A penalty for failing to file Form 8938 reporting the taxpayer's interest in certain foreign financial assets: up to a maximum of \$50,000 per return;
- A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts: up to over \$10,000;
- A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner; up to over \$10,000;
- A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations: up to a maximum of \$50,000 per return;
- A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business: \$10,000, with an additional \$10,000 added for each month the failure continues;
- A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation: up to a maximum of \$100,000 per return;
- A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships: up to a maximum of \$50,000 per return.

CRIMINAL

- Fraud penalties imposed under IRC §§ 6651(f) or 6663: amount to 75 percent of the unpaid tax;
- A penalty for failing to file a tax return imposed under IRC § 6651(a)(1): up to 25 percent;
- A penalty for failing to pay the amount of tax shown on the return under IRC § 6651(a)(2): up to 25 percent;
- An accuracy-related penalty on underpayments imposed under IRC § 6662: a 20 percent or 40 percent penalty;
- Tax evasion (26 U.S.C. § 7201): a prison term of up to five years and a fine of up to \$250,000;
- Filing a false return (26 U.S.C. § 7206(1)): a prison term of up to three years and a fine of up to \$250,000;
- Failure to file an income tax return (26 U.S.C. § 7203): a prison term of up to one year and a fine of up to \$100,000;
- Willfully failing to file an FBAR and willfully filing a false FBAR (31 U.S.C. § 5322): a prison term of up to ten years and criminal penalties of up to \$500,000.

LEGAL SOLUTIONS

“Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one’s taxes.” — Judge Learned Hand

Working with trusted, best-in-class third-party providers, we provide practical, flexible, efficient, up-to-date solutions to US International taxpayers to help them:

- To be in compliance with US tax laws and regulations;
- To simplify the complicated requirements of US tax reporting;
- To maximize asset protection by developing and implementing legitimate tax deferral or tax free vehicles
- To obtain significant cost saving due to exposure to a variety of US taxes and cost

Our goal is to “maximize client’s new USA Person Status and let them enjoy the benefits of a Green Card while limiting the negative consequences of being USA persons.”

Insurance Solution

Tax / Exposure	Rate	Insurance Rate
Estate Tax	45%	0%
Capital Gains Tax	20%	0%
CFC ⁵	Variable	Not Applicable
PFIC ⁶	Variable	Not Applicable
Gift Tax	45%	0%
Corporate Tax	35%	Potentially 0%
Income Tax (Worldwide)	Variable	0%
Reporting	All Assets/Complex	Single Asset/Simplified
Civil Actions/Bankruptcy	Per Court Decision	Not Applicable

美国国际税务

“如果你是美国公民或外籍居民，不论你是在美国还是在国外，申报收入所得税、遗产税及赠与税和支付预估税额的税法规则是基本相同的。

无论你在哪里居住，你的全球收入均须缴纳美国所得税。”

— 美国国税局

川岛诉霍尔德

- **背景知识：** 外国人(非美国公民)如果被判决犯恶性重罪，将被从美国驱逐出境（该规则同样适用于持有绿卡的永久居民，其同样能被驱逐出境）。在美国的移民法里面，恶性重罪有着特殊的含义。恶性重罪包括诸如贩运枪支、谋杀、强奸、某些暴力犯罪及盗窃犯罪。然而，从川岛诉霍尔德一案后，恶性重罪还包括了某些违反税法的行为，甚至可能包括轻微违反税法的行为。
- 在川岛诉霍尔德一案中，川岛夫妇（两人都是美国永久居民）认罪分别违反了 26 USC §7206(1) and §7206(2)。川岛先生承认蓄意制作、提交虚假纳税申报的一项指控，而川岛夫人则承认是制作虚假纳税申报的从犯。
- 2012 年 2 月 21 日，美国最高法院裁决，如果外国人被判决犯有违反税法的行为，且该违反税法的行为涉及故意欺骗或欺诈，并且造成美国政府超过 10,000 美元的损失，该外国人可被驱逐出境。由于川岛夫妇的行为是故意欺诈，且导致美国政府超过 10,000 美元的损失，川岛夫妇被认定可被驱逐出境。
- 美国最高法院的这一裁决将对非美国公民，如 EB5 绿卡持有人，产生非常重大的影响。尤其是，如果被认定（或认罪）犯有违反税法的行为，且该行为构成欺骗或欺诈，并且导致美国政府超过 10,000 美元的损失，该外国人将可以被从美国驱逐出境。

美国国际税务

除了被驱逐出境，根据纳税人的具体事实和情况，下列民事和刑事处罚可能适用：

民事

- 对没有提交 TD F 90-22.1 表(外国银行及金融账户的申报,通常称作“FBAR”)的处罚：可超过 100,000 美元；
- 对没有提交 8938 表申报纳税人的某些外国金融资产权益的处罚：每项最高可达 50,000 美元；
- 对没有提交 3520 表(与外国信托机构交易及收取某些外国赠与的年申报表)的处罚：可超过 10,000 美元；
- 对没有提交 3520-A 表(美国所有人外国信托申报信息)的处罚：可超过 10,000 美元；
- 对没有提交 5471 表(美国人涉及某些外国公司的申报信息)的处罚：每项最高可达 50,000 美元；
- 对没有提交 5472 表(外国人持有占 25%的美国公司或从事美国贸易或业务的外国公司的申报信息)的处罚：10,000 美元，额外对每个未申报月份加收 10,000 美元；
- 对没有提交 926 表(美国转让人向外国公司转让财产的申报)：每项最高可达 100,000 美元；
- 对没有提交 8865 表(美国人涉及某些外国合伙组织的申报)：每项最高可达 50,000 美元。

刑事

- 按照 IRC §§ 6651(f) or 6663 对欺诈的处罚：高达未付税额的 75%；
- 按照 IRC § 6651(a)(1)对没有报税的处罚：高达 25%；
- 按照 IRC § 6651(a)(2)对没有足额支付报税金额的处罚：高达 25%；
- 按照 IRC § 6662 对与精确相关的少支付税收金额的处罚：20%或 40%；
- 逃税(26 U.S.C. § 7201)：高达五年的有期徒刑和高达 250,000 美元的罚款；
- 提交虚假报税(26 U.S.C. § 7206(1))：高达三年的有期徒刑和高达 250,000 美元的罚款；
- 没有提交所得税纳税申报表(26 U.S.C. § 7203)：高达一年的有期徒刑和高达 100,000 美元的罚款；
- 蓄意没有提交 FBAR 表和蓄意提交虚假 FBAR 表(31 U.S.C. § 5322)：高达十年的有期徒刑和高达 500,000 美元的罚款。



法律服务

“任何人都可以安排他的事务以求尽可能地降低他的税收；他不必选择最大程度支付财政部的方式；增加一个人的税收甚至不是一项爱国义务。”

— 勒恩德·汉德法官

与深受信任的、第一流的合作伙伴一起，我们向美国国际纳税人提供实用的、通过保险的避税方案灵活的、高效的、最新的法律服务，帮助他们：

- 达到美国税务合规；
- 简化复杂的美国税收申报要求；
- 通过制定和实施合法的延期纳税或免税方案，最大限度的保护资产；
- 在各类美国税收和成本压力下，获取显著的成本节约。

我们的目标是“最佳化客户的‘新美国人士身份’，使他们既享受绿卡的好处，同时又减少作为‘美国人士’的消极后果。”

Tax / Exposure	Rate	Insurance Rate
Estate Tax	45%	0%
Capital Gains Tax	20%	0%
CFC ⁵	Variable	Not Applicable
PFIC ⁶	Variable	Not Applicable
Gift Tax	45%	0%
Corporate Tax	35%	Potentially 0%
Income Tax (Worldwide)	Variable	0%
Reporting	All Assets/Complex	Single Asset/Simplified
Civil Actions/Bankruptcy	Per Court Decision	Not Applicable

