DER ARAKELIAN-MERHEJE

ITSG 2022 Spring European Conference – Cyprus

Cyprus launches Incentive Strategy for International Businesses

Cyprus 19-20 May 2022

Nairy Merheje

2022
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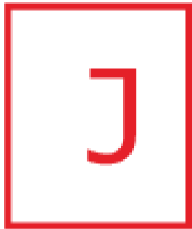

Cyprus tax in brief

Audit – Tax - Consulting

Cyprus tax in brief

TOPICS

- Corporation Tax
  - Notional Interest Deduction
  - IP Box
  - Audio Visual Industry Incentives
- Alternative Investment Funds
- Tonnage Tax – Shipping companies
- Capital Gains Tax
- Special Contribution for Defence
- Tax residence Tests

Cyprus tax in brief

TOPICS

- Personal Income tax
- Income Tax Exemptions
- Non – domiciled Individuals
- Social Insurance and General Health System
- Trusts
- VAT

Corporation Tax

MAIN FEATURES

- Companies are tax resident of Cyprus if managed and controlled in Cyprus
- Cyprus incorporated companies are Cyprus tax resident by default
- Corporation tax rate is 12,5% for all companies

Corporation Tax

EXEMPTIONS

- Profit from sale of securities (shares, bonds, debentures etc)
- Dividends
- Interest not arising from ordinary activities (subject to defence tax)
- Profits of a foreign PE (may elect to be taxed in Cyprus with tax credit for foreign taxes)
- Gains on foreign exchange differences unless trading in foreign currencies
- Profits from films and other audiovisual programs

Corporation Tax

DEDUCTIONS

- Generally expenses incurred wholly and exclusively in earning taxable income
- Notional Interest Deduction
- IP Box deductions

Corporation Tax

NOTIONAL INTEREST DEDUCTION - NID

- Available as alternative to debt finance
- Tax deduction is allowed on the application of the NID rate to the amount of new equity injected
- Available on share capital and premium
- NID rate is the yield on the 10 year government bonds of the country in which the new equity is invested plus 5% premium
- Deduction cannot exceed 80% of taxable profit before NID

Corporation Tax

IP BOX

- Tax deduction of 80% of qualifying profits earned from qualifying intangible assets
- Qualifying assets include patents, software but not trademarks
- Nexus approach will limit the deduction if development of the intangible asset is outsourced to related parties
- Capital allowances available for capital expenditure for IP development over life of the asset (maximum 20 years)
- Effective tax on income from IP could be as low as 2,5%

Corporation Tax

AUDIO VISUAL INDUSTRY INCENTIVES

- Cash rebate of up to 40% of eligible expenses incurred in Cyprus
- Alternatively, tax credit against the tax liability of the production company
- Investment in infrastructure by a Cyprus tax paying SME can be deducted from its taxable income
- VAT refund on qualifying production expenditure incurred in Cyprus

Funds and Collective Investment Vehicles

TAXATION

- Subject to corporation tax at 12,5%
- No tax on dividends received
- No tax on profit on sale of securities
- No capital gains on sale of property abroad
- No subscription tax on funds net assets
- No capital gains tax on sale or redemption of units in fund

Funds and Collective Investment Vehicles

TAXATION

- Fund managers may opt for 8% flat rate tax on variable employment remuneration
- Fund compartments treated as separate taxpayers
- Dividends and deemed dividends subject to 17% tax only for Cyprus tax resident and domiciled individuals – no tax for non residents
- No VAT on services in respect of investment management, administration and marketing supplied to funds carrying on business in Cyprus

Shipping companies

TONNAGE TAX

- Shipowners, charterers and ship managers are exempt from income tax as long as they are subject to Tonnage tax
- Tonnage tax regime is available to owners of Cyprus flag ships and non Cyprus flag ships under certain conditions.
- The Cyprus Tonnage tax regime is considered very advantageous

Capital Gains tax

- Imposed only on gains from sale of immovable property situated in Cyprus (and shares of companies holding immovable property)
- Capital gains tax rate is 20% on indexed gains
- No Inheritance Tax

Special Contribution for Defence Tax

- Imposed on dividend income, passive interest income and rental income
- Imposed on companies tax resident in Cyprus and individuals tax resident and domiciled in Cyprus

	Individuals	Legal entities
Dividend	17%	Nil
Interest ‘passive’	30%	30%
Rental income	3%	3%

Tax Residence Tests for Individuals

- An individual is tax resident in Cyprus if they:
  - Spend more than 183 days in Cyprus
  - Or under the ‘60 day rule’
    - Spend more than 60 days in Cyprus
    - Are not considered tax resident by any other jurisdiction
    - Are employed or hold an officer position with a Cyprus company

Personal income tax

- Imposed on worldwide income (dividends and interest exempt)
- Income tax rates:

Chargeable income (€)	Tax rate
0 – 19.500	Nil
19.501 – 280.000	20%
28.001 – 36.300	25%
36.301 – 60.000	30%
Over 60.000	35%

- Foreign pension income – election available for 5% flat rate

Income tax exemptions

RELOCATION INCENTIVES

- 50% exemption from income tax for the remuneration of an individual not resident in Cyprus before commencement of employment. Annual remuneration must exceed €55.000. Exemption available for 17 years.
- 20% exemption from income tax for the remuneration of an individual not resident in Cyprus before commencement of employment. Exemption available for 5 years.
- Remuneration from salaried services rendered outside Cyprus for more than 90 days in a tax year to a non-Cyprus resident employer or non Cyprus PE of a Cyprus company.

Non-domiciled Individuals

- Available for 17 years from the year of first becoming Cyprus tax resident
- No tax on dividend income (only 2,65% general health scheme GHS contributions – on max income of 180.000)
- No tax on interest income (GHS contributions apply as above)
- Rental income and other active income (salaries etc) subject to income tax at maximum 35%

Social Insurance and General Health System

- Contributions on employee emoluments are as follows:

	Employee	Employer
Social insurance	8,3%	8,3%
Other funds	-	3,7%
General Health System	2,65%	2,9%

Cyprus International Trusts

- Trusts are transparent for tax purposes and therefore will only be taxed in Cyprus if there are Cyprus tax resident beneficiaries

Value added tax

- VAT rates are as follows:
  - Zero rate
  - Reduced rate of 5%
  - Reduced rate 9%
  - Standard rate 19%

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Cyprus: A Sustainable Business and Trade Center

The Cyprus Government recently presented a new strategic plan for attracting investors and companies to the country, with particular emphasis on high-tech, shipping, innovation, research and development, biogenetics and biotechnology research.

The plan is in line with the guidelines of the European Commission and the Recovery and Resident Facility and will be implemented in January 2022.

The following, amongst other items, are included in this proposal.

Setting up a Business Facilitation Unit

The unit will operate as the primary point of contact for all foreign companies in Cyprus or those wishing to relocate to Cyprus. Its focus will be on businesses involved in the following areas:

- Shipping
- High-tech or innovation
- Pharmaceutical
- Biogenetics and/or biotechnology

The unit will provide assistance and guidance for:

- The establishment of a Cyprus company
- VAT and income tax registration
- Social insurance registration
- The issuance of employment and residence permits

Introduction of Digital Nomad Visa

Aiming to attract digital nomads, a new visa will be offered to a maximum of 100 third-party nationals who are employed by non-Cypriot companies, self-employed, or freelancers working remotely, who can further meet certain eligibility criteria.

The qualified individuals will be able to reside in Cyprus for up to one (1) year with the right to renew the visa for two (2) more years.

They will also be allowed to move their families to Cyprus.

The number of visas is expected to be increased.

Citizenship Incentives

- Employees who are third-country nationals will have the right to apply for naturalisation after five (5) years of residence and work in Cyprus, or after four (4) years if they hold a recognized certificate of strong knowledge of the Greek language.

- The transfer of social security contributions will also be ensured through intensified efforts to conclude bilateral agreements with third countries.

- All the above proposals will be implemented as of 1st January 2022, with the exception of the citizenship and tax incentives, which are pending the necessary approval of various amendments in the legislation.

Revised Policy for the Employment of Third-Country Nationals

- Applicable to employees of foreign companies operating in Cyprus or foreign companies wishing to establish a presence in Cyprus.

- Issuance of temporary residence and employment permits in Cyprus.

  - Applies to third-country nationals with minimum gross salary of €2,500, provided that they possess a university diploma or title, or equivalent qualification, or at least two years of relevant experience, and that they present a contract of employment of not less than two years.

- Employment of support staff (with gross monthly salary less than €2,500) provided that the third-country nationals do not exceed 30% of all support staff.

- Personal income tax as per applicable Cyprus income tax rates.

Revised Policy for the Employment of Third-Country Nationals
(Cont'd)

- Residence and employment permits will be issued within one (1) month of application and will last up to three (3) years.

- Application for family reunification for third-county nationals who are part of the third-country employment policy.

    - Immediate and free access to the job market for spouses whose partner has secured residence and work permit, and who earns at least €2,500 gross per month (excludes support staff).

DER ARAKELIAN-MERHEJE LLC – 25 YEARS
(Cont'd)

Our boutique Law Firm was established in 1997 by Nairy Merheje to provide legal and international transaction planning services to a wide portfolio of international clients. We pride ourselves in offering efficient, professional and personalized services with bespoke international structured planning adapted to the needs of each individual client. Our aim is to relieve our clients of the time consuming searches involved in setting up a business in a multi-national environment. To this end we have a wide international network of lawyers and tax consultants with whom we are personally acquainted and maintain close professional ties with.

We are very proud to be celebrating our 25th Anniversary this year!

For further information please contact our Firm:

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Use It or Lose It - ATAD 3 and the use of shell companies

PAUL KRAAN AND JOHN GRAHAM

ITSG 2022 Spring European Conference

Amathus Beach Hotel, Limassol, Cyprus

20 May 2022

Background

Gradual extension of the Anti-Tax Avoidance Directive (ATAD)

- ATAD III follows two previous iterations of EU anti-tax avoidance legislation
- Anti-Tax Avoidance Directive ("ATAD") was launched in January 2016, entering into effect as per 1 January 2019
  - Proposed by Commission in order to "create a level playing field for all businesses in the EU" and implement OECD's ‘BEPS’ actions across Europe
- ATAD II entered into effect as per 1 January 2020
  - Broadening scope of ATAD to “tackle the use of hybrid mismatches”
- ATAD and ATAD II are not considered to have adequately addressed the use of entities with minimal substance or economic activity, aka ‘shell companies’
- Extension of ATAD (hence: ATAD III) required (that is: in the Commission’s view) in order to "create a fair and effective taxation system in the EU”

Outline of Proposed Directive

- Proposal for a Council Directive
  1. laying down rules to prevent the misuse of shell entities for tax purposes (ATAD III)
  2. amending Directive 2011/16/EU on Administrative Cooperation (DAC)
- ATAD III addresses 'misuse' of investment structures that "do not perform any actual economic activity", commonly known as shell companies
- Proposed Directive:
  1. focuses on legal entities involved in cross-border activities "presumably engaged with an economic activity" (though in reality not conducting any economic activity)
  2. outlines 'gateway indicators' to determine whether entity is 'at-risk' of being a shell company
- If gateway indicators are met, entity is considered 'at-risk'
- Entity is subject to further reporting requirements to determine whether it meets minimum substance requirements

EU Objectives

- Fight against misuse of shell entities for improper tax purposes
- According to EU shell companies are often used for aggressive tax planning or tax evasion

Why does the EU think it is necessary?

- Current rules fragmented
- Ex post
- Not targeted
- Not identical

Scope of the proposed directive?

It covers:

- All EU tax resident entities
- Not just companies and other legal entities
- Also trusts and partnerships if considered a tax resident

If in scope

- Self-assess whether one meets each of three gateways

The three “gateways”

- Predominantly passive income or ownership of certain assets
- Considerable cross border element
- Corporate management and administration outsourced

- “Predominantly” means >75%
- “Considerable” means >60%

Carve-out

- Despite perceived need for targeted rules certain entities are excluded because
- They are highly regulated in other areas; or
- They are considered low risk

Carve-out 2

- Stock exchange listed companies
- Regulated financial undertakings
- Entities with a clear nexus in relevant member state
- Entities with at least five full-time employees carrying out activities that generate relevant income

Substance requirements if meet all three gateways

Entities ‘at-risk’ must report on their yearly tax return whether they have:

1. Individual premises in a Member State
2. An active bank account within the EU
3. At least:
   a) a local director exclusive to undertaking, or
   b) full-time local employees

Documentary evidence is required

Rebuttal

- If entity does not meet substance requirements it is presumed to be a shell
- Presumption can be rebutted

Possibility of rebuttal

- Need to produce and present additional evidence showing tax liability of structure with and without the entity
- If granted can be extended for 5 years if no change

Consequences of being a shell company

Aim to neutralize tax impact:

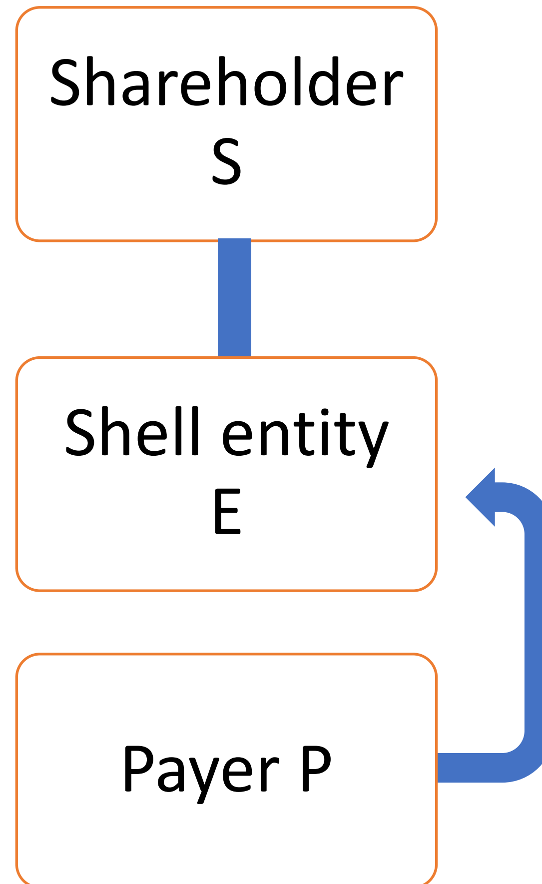
- No access to tax treaty network of member state or to PSD and IRD
- No residence certificate or one with warning
- Payments not treated as passing through shell entity for payer and shareholder
- Still considered a domestic taxpayer

Assets owned by shell

- Immovable property
  - Taxed where situated
  - Treated as owned directly by shareholder
- Movable
  - Treated as owned directly by shareholder and taxed in that state

Tax treaties still apply

Examples


Shareholder
S
Shell entity
E
Payer P

Non-EU to EU to EU

Non EU-payer /EU shareholder

- Country P outside scope
- Country E applies domestic law
- Country S treats shell entity as transparent and includes its income unless treaty with P determines otherwise. Possible relief for tax withheld in P or paid by shell in E.

EU to EU to EU

- Treaty between P and E does not apply: domestic WHT
- No entitlement to PST or IRD
- Country E taxes entity normally
- Country S treats shell as transparent and includes its income in tax base, deducting tax paid by shell or payer

What rate of WHT can shell deduct from its tax?

EU to EU to Non-EU

- Country P applies domestic tax provisions unless treaty with S provides otherwise
- Country E applies domestic law
- Country S outside scope. May provide relief for tax withheld by P

Non-EU to EU to Non-EU

- Country P applies domestic tax provisions or treaty **with E** unless it introduces a look through
- Country E applies domestic law
- Country S outside scope. May provide relief for tax withheld by P

Information and audit

- A member state can request another member state to carry out a tax audit to determine if entity is shell
- Obligation to carry out audit and notify outcome
- Information exchange among all member states

Penalties

- **At least** 5% of undertaking's annual turnover if fraudulent reporting or no reporting

Proposed timeline

- Adoption by Council expected 'early 2022'

- Directive to be implemented by Member States before 30 June 2023

- Legislation effective as from 1 January 2024
  - ➢ Substance test entails look-back period of preceding 2 tax years
  - ➢ In fact, retroactive effect to 1 January 2022
  - ➢ Any actions should be initiated already now to avoid future issues

- Proposed timeline is quite ambitious:
  1. EC's legislative agenda for 2022 is already packed
  2. International tax reforms proposed by OECD Inclusive Framework require time (see next presentation – lots of things to consider)

More coming!

- In course of 2022 rules covering non-EU entities expected to be announced

Comments

- Wide scope of proposed Directive implies impact on both MNEs and SMEs
  - Why no exclusion for large groups within scope of OECD's Pillar Two Model Rules?
  - Larger companies can better 'afford' to create additional substance
- Sanctions resulting from ATAD III may limit treaty benefits as well as use of Parent-Subsidiary Directive (PSD) and/or Interest and Royalties Directive (IRD)
  - Why not rely on existing case law (such as the Danish cases) and anti-abuse rules (notably LOB, GAAR and/or PPT)?
- Though having right to rebuttal is of course welcome, it also entails even more additional administrative burden - both for taxpayers and tax authorities

Is it needed?

We already have:

- GAAR
- MLI/PPT
- Anti-abuse provisions in PST and IRD
- DAC 6
- CbC
- CFC

How many more letter combinations do we need?

Compliant with EU law?

- Does not include domestic situations, unlike pillar 2
- Tests too rigid and catch too many companies

Presumptions go further than Cadbury Schweppes

Exclusions also probably not compatible:

- Same state exemption: freedom of establishment and free movement of capital?
- Carve-outs do not apply to subsidiaries

  (this is being looked at and may be extended to 85% to 95% subsidiaries)
- Minimum employee numbers not proportional to business
- Exclusivity re office and staff too strict
- Does not take account of modern economy

EU Freedoms

- Directors must not be further from business than is compatible with proper performance of their duties, but this does not apply if they live in the member state concerned. Freedom of establishment?
- Requirement for active bank account in EU. Freedom of movement of capital?

More (or less?) EU Freedoms

- No clear idea on what will happen if different tax authorities take different views. Single market?
- Penalties can vary substantially. Single market?

Issues

- Cascade situations can result in excessive tax and difficult compliance
- Denial of residence certificate can result in non-applicability of treaty for other activities
- How is payer to know that a company is a shell company? Especially if an audit is in progress

More issues

- What happens when income actually remitted to shareholder? Is it taxed again?
- Terms often vague
- Terms not always the same as in other rules
- Revenue for ATAD3 is not IRFS revenue
- What about groups or parties filing a consolidated return?
- Backdated effect
- Compliance costs

Alternative

- Why not look at the TP situation? Where are risks run and where is income earned?

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ITSG
Qualifying Asset Holding Company rules

Gary Ashford, Tax Partner
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20 May 2022

Harbottle & Lewis

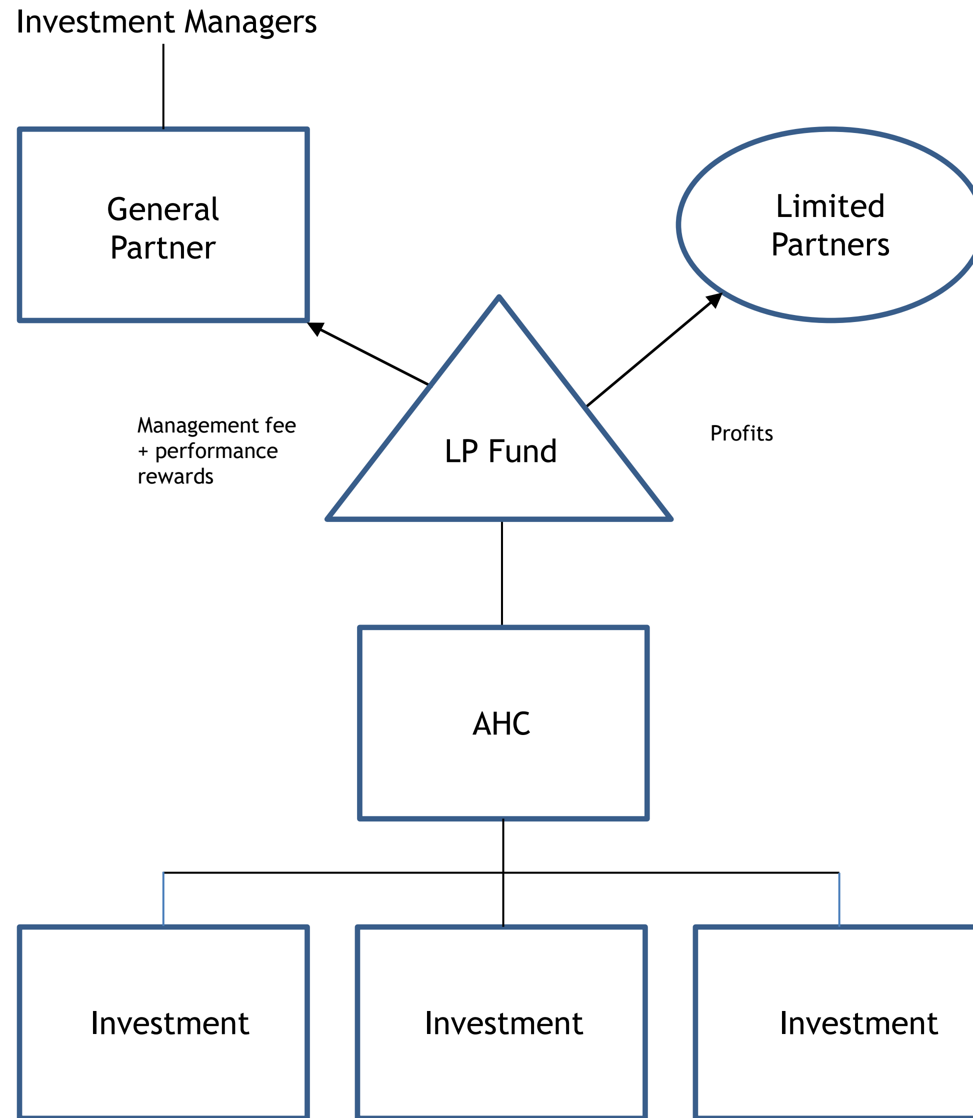
Qualifying Asset Holding Company rules

- HM Treasury Consultations- March 2020, December 2020 and July 2021

- Finance Act 2022- S14 and Schedule 2 (Royal Assent, 24 February 2022)

- Focused on Alternative Investment Industry and Collective Investment structures

- “The government has been made aware of concerns that the UK corporation tax rules act as a barrier to the establishment in the UK of holding companies within certain investment fund structures. It understands that these barriers may be leading these companies to be located outside of the UK, despite the UK’s wider strengths as a financial services location and the commercial benefit that funds see to locating these companies alongside UK fund management functions….”



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Key aspects of the regime

The regime for QAHCs will include:

- exempting gains on disposals of certain shares and overseas property by QAHCs;
- exempting the profits of QAHC's overseas property business, where those profits are subject to tax in an overseas jurisdiction;
- allowing deductions for certain interest payments that would usually be disallowed as distributions;
- switching off the late paid interest rules so that in certain situations interest payments are relieved in the QAHC on the accruals basis, rather than the paid basis;
- disapplying the obligation to deduct a sum representing Income Tax at the basic rate on payments of interest, where those payments are made to investors in the QAHC;
- allowing premiums paid, when a QAHC repurchases its share capital from an individual, to be treated as capital rather than income distributions where, broadly, these derive from capital rather than income from underlying investments; and
- exempting repurchases by a QAHC of share and loan capital which it previously issued from Stamp Duty and Stamp Duty Reserve Tax (SDRT).

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Qualifying Asset Holding Company

The company must:

- be tax resident in the UK;
- meet the ownership condition;
- meet the activity condition;
- meet the investment strategy condition;
- not be a UK real estate investment trust (REIT);
- not have any equity securities listed or traded on a recognised stock exchange or any other public market or exchange; and
- submit an entry notification to HMRC.

Qualifying Asset Holding Company

Ownership condition:

- The principle underlying the ownership condition is that no more than 30 percent of a QAHC must be held by non-category A investors.

Category A investors

- The following are category A investors—
  - a QAHC;
  - a qualifying fund;
  - a relevant qualifying investor;
  - an intermediate company; and
  - a public authority.

Qualifying Asset Holding Company

A qualifying fund means;

- A fund that meets the diversity of ownership condition.
- The diversity of ownership condition is met if:

(a)the fund is a collective investment scheme and—

(i) it meets the conditions in regulation 75(2), (3) and (4)(a) of the Offshore Funds (Tax) Regulations 2009 (SI 2009/3001) (genuine diversity of ownership condition), or

(ii) it would meet the condition in regulation 75(5) of those regulations, if regulation 75(4)(b) were omitted.

(b)the fund is not close (whether or not it is a collective investment scheme), or

(c)the fund is 70% controlled by category A investors.

Qualifying Asset Holding Company

The Activity condition and Investment Strategy condition

The activity condition is met if—

(a)the main activity of the company is the carrying on of an investment business, and

(b)the other activities of the company (if any)—

(i)are ancillary to the carrying on of that business, and

(ii)are not carried on to any substantial extent.

The investment strategy condition is met if the company's investment strategy does not involve—

(a)the acquisition of equity securities that are listed or traded on a recognised stock exchange or any other public market or exchange otherwise than for the purpose of facilitating a change in control of the issuer of those securities with the result that its securities are no longer so listed or traded, or

(b)other interests that derive their value from such securities.

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Non Domicile Remittance Basis

- General Rules
    - UK company (opaque) UK situs
- QAHC
    - Distributions paid to investment managers providing services in connection to the investment assets
    - Situs is linked to underlying assets, on a just and reasonable basis

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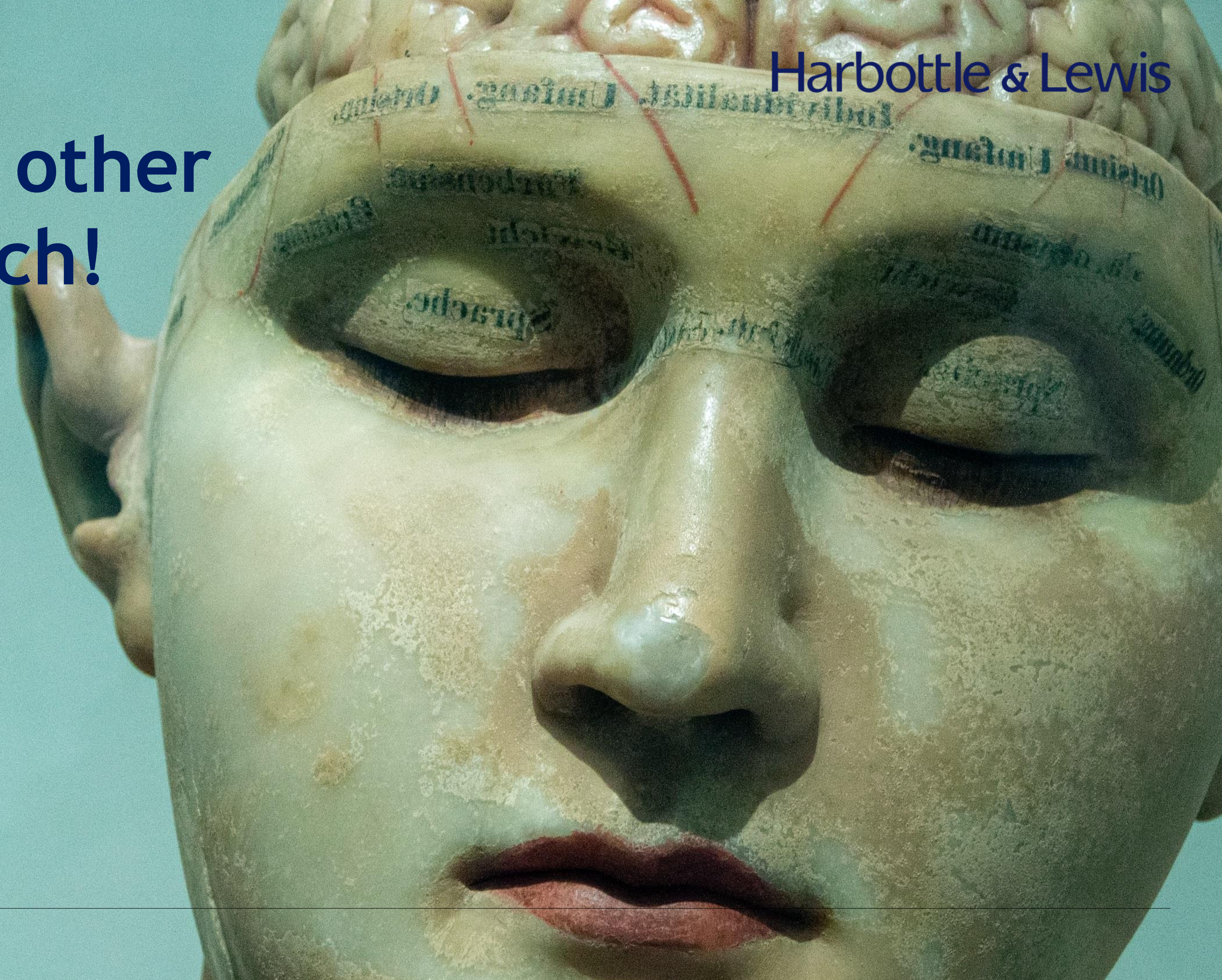
Reminder of other areas to watch!



“Recent” Changes to Funds tax rules

- Mixed Membership
- Disguised Investment Manager Fees (DIMF)
- Income Based Carried Interest
- Dual Contracts rules (Non Doms)

Additional developments for Funds

- Crypto Funds
  - Changes proposed to the UK Investment Manager Exemption (IME)

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T a v e c c h i o & A s s o c i a t i

Trust
Italian tax treatment

ITSG SPRING EUROPEAN CONFERENCE
-
May 20, 2022
Cyprus

Andrea Tavecchio

Tax treatment of trusts in Italy

- Italian civil law does not regulate trusts, but trusts regulated by foreign laws are recognized in Italy pursuant to the Hague Convention on the Law Applicable to Trusts and on their Recognition, which was ratified by Italy in 1989.

- From a fiscal point of view, the Finance Act 2007 introduced into tax legislation direct tax on trust income

- Distinguish between **resident** vs **non-resident** trust:
  - seat of management / main object
  - deeming rules may apply to trusts established in tax privileged jurisdictions

- Distinguish between:
  - **"opaque" trust**: discretionary and irrevocable trust
  - **"transparent" trust**: trust with identified beneficiaries, i.e. beneficiaries who holds a current unconditional right to claim a share of the income generated by the assets held in trust
  - **"disregarded" trust**: revocable trust or trust where settlor and/or beneficiaries have a power or de facto control or influence to manage the trust assets or dispose of either the assets held in trust or the income from such assets

Tax treatment of trusts in Italy

- As a general rule, **resident trusts** are subject to corporate income tax, applying the IRES tax rate of 24% on their worldwide income. There are some exceptions: for instance, in case of non commercial trusts, the majority of financial income (except dividends) are subject to 26% substitute tax.

- **Non-resident trusts** are subject to tax only on their Italian sourced income and business income related to a permanent establishment in Italy through which they carry on a trade or business there.

Income distributions to beneficiaries: income tax

- In principle, distributions of income from a trust to its beneficiaries are not relevant for income tax purposes to the extent that the trust is disregarded or transparent.

- However, the position is more complex in relation to opaque trusts.

  - In case of **Italian resident opaque trusts** (subject to Italian corporate income tax) **the distributions of income from the trust to the beneficiaries are not taxable**.

  - In contrast, with reference to **income distributions from trusts residing outside of Italy**, the Italian legislator has introduced (Law No. 157 of 19 December 2019) a new provision ('**New Provision**') according to which:
    i. distributions of income from trusts established in low-tax jurisdictions qualify as taxable income for the resident recipient.
    ii. distributions qualify as distributions of income, unless there is adequate evidence that the trust distributed capital.

Tax treatment of Italian tax resident beneficiaries of foreign opaque trusts

- On August 11, 2021, the Italian Tax Authority released a draft version of a new Circular Letter (the “**Circular Letter Draft**”) concerning trusts’ direct and indirect taxation in Italy.

- One of the main object of the Circular Letter Draft concerns the tax treatment of Italian tax resident beneficiaries of foreign opaque trusts provided by the New Provision.

- The New Provision stipulates that distributions of income from trusts established in “low-tax jurisdictions” qualify as taxable income for the Italian resident beneficiaries and taxed progressively (from 23 up to 43%) in the hands of the beneficiaries upon distribution.

- **N.B. The draft version of the Circular Letter has been made available for public consultation until 30 September 2021. Toda, the final version has not been published yet. Accordingly, some of the following clarifications might be sucbect to amendments**

Tax treatment of Italian tax resident beneficiaries of foreign opaque trusts

Main clarifications provided by the Circular Letter Draft:

- When referring to trusts "established" in low-tax jurisdictions, reference shall be made to the applicable criteria to identify tax residence set forth by the relevant local jurisdiction, as opposed to criteria set forth by Italian law.

- A relevant jurisdiction shall be considered as being a "low-tax jurisdiction" for the purpose of trusts' income distribution taxation in case the nominal level of taxation in such jurisdiction is lower than 50 per cent of the nominal level of taxation that would have applied if the trust had been a resident of Italy (24%/26% depending on the type of income).

- Special tax regimes applicable to the trust shall be considered in the context of assessing the nominal level of taxation.

- As the Italian level of taxation might change in the future, the Circular Letter Draft clarifies that the Italian tax rate to be taken into account is the one in force in the fiscal year in which the income distribution occurs.

- Taxpayers are not allowed to file advance tax ruling to the Tax Authority to disregard the law provisions at issue by demonstrating that the set-up of an opaque trust is not aimed at localizing a given income in a low-tax jurisdiction.

- Distributions of income made by trusts that are not established in low-tax jurisdictions shall not be taxable for the resident beneficiaries;

Tax treatment of Italian tax resident beneficiaries of foreign opaque trusts

Tavecchio & Associati

Main clarifications provided by the Circular Letter Draft (continue):

- With reference to the presumption according to which distributions qualify as distributions of income unless there is adequate evidence that the trust distributed capital, the Circular Letter Draft clarifies that:

    i. in order to disregard such presumption, the taxpayer shall provide specific accounting records which demonstrate whether the distribution is paid out of capital or income;

    ii. the accounting records aimed at distinguish income from capital must be kept according to the Italian tax rules applicable to trust (i.e. regardless of the accounting method applied by the trustee according to the rules of its Country of residence or the Country of residence of the trust)

Income distributions to beneficiaries: income tax

Unclear matters:

- It is not clear if the trusts that are tax resident in EEA/EU Member States (having an agreement with Italy ensuring an effective exchange of information) are automatically excluded from the application of the New Provision.

- It is not clear if the New Provision applies from the date of its entry into force (25th of December 2019) or is a provision having interpretative nature and therefore retrospective effect.

Trusts and Inheritance and gift tax

Tavecchio & Associati

Previous interpretation:

- Since its re-introduction in 2006, inheritance and gifts tax applicable to trusts has not been a straightforward matter, especially with regards to the tax event which trigger the application of the inheritance and gift tax.

- According to the interpretation put forward by the Italian tax authorities since 2007, any trust deed providing for the transfer of assets to the trust was to be regarded as a gratuitous transfer, being therefore subject to inheritance and gift tax at proportional rates.

- In particular, the application of the tax at proportional rates was to be made on the basis of the relationship existing between the settlor and the identified beneficiaries of the trust (if any) at the time of the relevant transfer to the trust (from 4% up to 8% with some thresholds).

- As a consequence of the taxation at the moment of the transfer of assets to the trust, any subsequent transfer of the trust's assets to the beneficiaries did not trigger the application of inheritance and gift tax.

Trusts and Inheritance and gift tax

Recent Judgements of the Italian Supreme Court:

- The Italian Supreme Court, in several judgements released in the last years, pointed out that the transfer of the ownership of assets in favor of a trustee shall be regarded as having a mere "temporary nature", while the effective transfer of the ownership should occur solely at a later stage – i.e., when such assets are transferred to the beneficiaries.

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Trusts and Inheritance and gift tax

New Intepretation of the Tax Auhtority (Circular Letter Draft):

With the Circular Letter Draft, the Tax Authority - acknowledging and agreeing with the position of the Supreme Court – has now modified its previous interpretation stating the following:

- **Establishment of a trust** (without attribution of assets to the trust itself): the deed of trust with which the settlor set up the trust shall be subject to registration tax in a fixed amount equal to 200 Euro if drawn up by public deed or by authenticated private deed.

- **Transfer of assets to the trust**: differently from its previous interpretation, the Italian Tax Authority states that the transfer of assets to the trust is not subject to inheritance and gift tax at proportional rates but shall be subject to registration tax in a fixed amount equal to 200 Euro (if drawn up by public deed or by authenticated private deed).

- **Transfer of trust's assets to beneficiaries**: Italian inheritance and gift taxes shall apply at the moment of the transfer of the trusts' assets to the beneficiaries of the trusts as final transfer (in line with the position of the recent several judgments of the Supreme Court)

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He specializes in private clients, family business, estate planning and trusts.

He is a Trust and Estate Practitioner (TEP).

He has been appointed to expert committees reporting to the Ministry for Economic Development (from 2011 up to 2013) and the Prime Minister's office on economic and fiscal matters (2015 - 2016).

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KANANI AVOCATS

Swiss and International Tax

SPRING EUROPEAN CONFERENCE

SWISS TRUST LAW?

May 20, 2022

Limassol - Cyprus

Aliasghar Kanani
LL.M. in international taxation

Swiss Trust Law?

- **Currently in Switzerland**:
  - Hague convention signed and in force since July 1st, 2007 (RS 0.221.371) – Trusts are recognized under Swiss law
  - Swiss federal tax authorities issued the Circular 30, dated March 27, 2008

- **2022 Draft Law**
  - Draft law subject to consultation until April 30, 2022, results awaited
  - Modification of the Swiss Code of Obligations (new art. 529a to 529w) – 23 articles to cover the Swiss Trust

Swiss Trust Law?

- **Main features of the Swiss Trust**:
  1. Written and unilateral act from the settlor or disposal on account of death
  2. Effective once approved by the Trustee
  3. In principle irrevocable unless settlor keeps the right to revoke it (in such a case, becomes irrevocable upon death of the settlor)
  4. A settlor cannot contribute assets to the trust if it may cause any prejudice to the settlor's creditors or spouse or heirs
  5. Swiss Trust deed provide the Settlor with some rights that cannot be delegated, notably:
     - Revoke or dissolve the trust
     - Approval on certain acts of the Trustee
     - Replace the trustee

Swiss Trust Law?

- **Main features of the Swiss Trust**:

6. The trustee becomes the legal owner of the trust's assets and has to manage them separately from his personal assets

7. Beneficiaries' rights may be discretionary or fixed (fixed interest trust)

Swiss Trust Law?

- **Swiss Tax aspects:**
  - New rules = more or less, codification of the current practice of the tax authorities (Circular 30)
  - 3 categories of trust:
    - Revocable trust (RT) - TRANSPARENT
    - Irrevocable fixed interest trust (IFIT) - TRANSPARENT
    - Irrevocable discretionary trust (IDT)– NON-TRANSPARENT under conditions
  - New provision in the Swiss Constitution in order to allow the tax authorities to subject an IDT to tax? (currently only individuals and legal entities may be subject to tax)

Swiss Trust Law?

- **Swiss Direct Tax aspects**:

  - Update of the Federal Direct Tax Act
  - The income and wealth of the trust is added to the taxable income and wealth of the Settlor, provided the Settlor does not renounce definitively to the assets of the trust
  - The income and wealth of the trust is added to the income and wealth of the Beneficiaries if:
    - The settlor renounces definitively to the assets of the trust
    - The beneficiaries may have a direct claim against the trust
  - In other cases, the trust is taxed as a Swiss foundation:
    - if at least one beneficiary is fully subject to Swiss tax
    - If the settlor is subject to Swiss tax or was subject to tax before his death
  - In case the trust is domiciled outside Switzerland under a DTT, the income of the trust is added to the settlor's income (Canada, US, and NZ).
  - The establishment itself of a Swiss trust (transfer of assets) does not raise any income tax liability question

Swiss Trust Law?

- **Swiss Direct Tax aspects - comments**:
  - Irrevocable vs revocable – how to differentiate?
  - Irrevocable = when the settlor has no longer any "control over the trust assets by means of legal or legal or economic measures"
  - In line with the existing Circular 30 – but should have been updated:
    - The control is not lost if the settlor keeps the right to elect a new trustee or beneficiaries
    - Does not make sense to qualify a trust as revocable only because the settlor keeps a right to elect new trustee

Swiss Trust Law?

- **Swiss Direct Tax aspects - comments**:
  - Irrevocable Fixed interest trust:
    - The beneficiary is subject to tax on his part of trust's income and wealth
    - What if the beneficiary is not aware about his qualification as beneficiary?
    - Capital gains are exempt, in principle… not expressly mentioned in the draft law – need to keep trace of the initial capital of the trust, the taxable income and exempt capital-gains
    - "beneficiary's part of the trust" should be more precise and based on effective distribution or proportionally to beneficiary's right to the trust – may create unsecurity
  - Irrevocable discretionary trust:
    - Taxed as a foundation
    - Trigger a taxation at three different times:
      - Taxed at the transfer from the settlor to the trust (gift/inheritance tax) – at which rate??? (competence of each canton)
      - Taxed in the "hands" of the trust (income and capital tax)
      - Taxed in the hands of the beneficiary (income tax)

Swiss Trust Law?

- **Swiss Direct Tax aspects - comments**:

  – Swiss tax treatment of IFIT with no immediate distribution vs IDT is not equal…no reason to differ!

  – The taxation of an IFIT with no immediate distribution is differed until distribution (not clear!)

  – In case of an IDT, the beneficiary may receive less than in case of IFIT with no immediate distribution

  – A tax credit in favor of the beneficiary of an IDT would eliminate this inequality

Swiss Trust Law?

- **Swiss WHT aspects**:
  - Update of the Federal WHT Act
  - The beneficial owner of the income generated by a trust may request the refund of the Swiss WHT levied upon distribution of such income, provided the income was treated according to the abovementioned direct tax rules

Swiss Trust Law?

- **Federal Act on Financial Institutions - RS 954.1**
  - A trustee is anyone who, in a professional capacity, manages or disposes of a separate asset in favor of a beneficiary or for a specific purpose on the basis of the trust deed ;
  - Obligation to obtain a license from the Swiss Financial Supervisory Authority (FINMA) and to be affiliated to a Supervisory organization which are themselves subject to FINMA approval (list available – 5 organizations in total, 2 in Geneva; 2 in Zurich/Zug, 1 in Neuchâtel)
  - Trustees must meet a number of personal, financial and organizational requirements
  - Deadline: **December 2022**!
  - https://www.finma.ch/en/authorisation/portfolio-managers-and-trustees/trustees/

Swiss Trust Law?

- **Conclusion**
  - Current situation is not satisfactory from a tax point of view, as the Circular 30 leaves to much space to contradictory interpretation from one canton to the other. Difficult to qualify a trust as non-transparent as soon as the settlor keeps a single prerogative over the funds…
  - New tax rules especially re the IDT are not satisfactory or even worst then current practice and may reduce Swiss attractivity or even prevent the Swiss Trust to be enacted
  - VAT is not covered by the draft law
  - Hopefully, the result of the consultation process will either motivate the Swiss Government to review the draft or the Parliament will correct the tax provisions to make the Swiss Trust more attractive

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Kipling Avocats

WORKING FROM HOME:
FRENCH ISSUES FOR THE INDIVIDUAL AND THE EMPLOYER

Kipling Avocats

WORKING FROM HOME

Working from home raises numerous issues besides tax issues:

- Gender equality
- Notion of effective work, calculation of overtime, right to disconnect
- Flexibility and recruitment
- Management and motivation
- Ecology …

Kipling Avocats

WORKING FROM HOME
TAX ISSUES FOR EMPLOYEES

Professional expenses and allowances

- **Deductible expenses**

➢ Costs related to the use of an office space: electricity, water, heating, insurance, electrical compliance diagnosis …
➢ Communication costs: mobile, internet, teams, zoom …
➢ Supplies, furniture …

- **Either deducted for their real amount** with supporting documents or € 2,50 per day with a maximum deduction of € 580 per year **or lump sum deduction equal to 10%** of the remuneration

- **Employers' allowances**: tax exemption

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WORKING FROM HOME
TAX ISSUES FOR EMPLOYEES

Transfer of tax residence to France

- Determination of the tax residence: when does it actually start?
- French tax consequences for the employee: personal income tax, real estate wealth tax (five-year exemption for property located outside France), filing obligations for trust and foreign accounts ...
- Special tax exemptions for US citizens

Transfer of tax residence outside France

- Capital gain tax on the sale of the French home
- Exit tax
- Wealth tax for property located in France (subject to tax treaties)

WORKING FROM HOME
TAX ISSUES FOR EMPLOYERS

Withholding of personal income tax and social security contributions

- Where is the employee's tax residence located?
- Where does the employee effectively work ?

➢ article 15 of the OECD Model Treaty (income from employment): such income is taxable in the State where the employment is actually exercised / temporary assignment clause

➢ article 17 of the OECD Model Treaty (entertainers and sportspersons): taxation in the State where the personal activities are performed

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WORKING FROM HOME
TAX ISSUES FOR EMPLOYERS – RISK OF PERMANENT ESTABLISHMENT

Increasing number of non declared PE revealed by French tax audits and domiciliary visits with very heavy tax consequences:

- statute of limitations extended from 3 years to 10 years
- **80% or 40% penalty**, except if the taxpayer's good faith error is proved
- automatic assessment of the taxable basis: no formal notice to present the accounts, standard percentage of expenses applied to the turnover
- **deemed distributed income**
- **numerous taxes involved**: CIT, VAT, WHT, branch tax, social security contributions etc.
- **automatic transfer to the Public Prosecutor** when (i) a tax assessment of €100,000 or more and (ii) penalties of 100% (obstructing a tax audit) or 80% (concealed activities or fraud)

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WORKING FROM HOME
TAX ISSUES FOR EMPLOYERS – TRANSFER OF COMPANY TAX RESIDENCE

French definition of the effective place of management:

"the place where a person or a group of persons of the highest rank in hierarchy make decisions"

- Where are the decisions made e.g. when each Board member stays at home?
  - Where the Board members connect themselves from?
  - Where the majority of voters reside?

Consequences of the transfer of tax residence

Working from Home

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Agenda

- UK tax issues for:-
- Employees and Employers Expenses
- Capital Gains Tax (Employees)
- Residency
- Other issues

Extreme Working from Home

Employers and Employees

Before COVID :-

The rules on employment expenses are vast and complicated

- Homeworking was recognized in the tax system (s316A ITEPA 2003) and gave relief
- Employers' contribution, if non-specific was taxable
- Employee required to make specific claim in tax return
- Conditions must be met to qualify

Employers and Employees

The conditions are :-

- substantive duties of employment are performed at home, and
- the employee cannot perform their duties without appropriate facilities, and
- *appropriate facilities are not available to the employee on the employer's premises, and*
- *the employee does not have the option of whether to work at the employer's premises or from home.*

Employers and Employees

Equipment

- Normally a benefit in kind to allow private use of company assets
- Exempt if:-

- provided with the equipment solely to enable the performance of their duties
- has only insignificant private use of the equipment provided

Employers and Employees

Equipment provided which is not exempt EVER

- *cars*
- *aircraft*
- *Yachts, and*
- *home alterations*

COVID Rules

- Equipment exemption extended to all employees required to work from home
- Employees providing own equipment or being re-imbursed for purchase
- Retention of the equipment by employee after pandemic is a benefit
- Household expenses re-imbursed tax free up to £6 per week (€7 or $7.32) or employee may make a larger claim
- HMRC will be reviewing claims for the £6 contribution from 6 April 2022 and will only allow going forward claims where the worker is Contractually obliged to work from home 100%

COVID Rules

- Cost of COVID Tests and PPE provided by employer to employee are also exempt as a benefit until 6 April 2023
- Furlough scheme for Employers

1. Keep people employed
2. Must not do any work
3. Continue to pay up to the HMRC contribution
4. Furlough payment to employer taxable
5. Salaries tax deductible so Neutral

Capital Gains Tax (Employees)

- Employees working at home may trigger CGT problems
- UK has Main Residence Relief from CGT on disposal of own home
- Relief denied for periods of non-occupation unless in one of the three exempt circumstances, or
- If part of the premises are used for business purposes

Capital Gains Tax (Employees)

- So, if employee works from home on his employer's business is this business use?
- HMRC have an informal view on this.
- If the employee works at the kitchen or dining room table, then no issue
- If employee establishes a dedicated office, say by conversion of the spare bedroom then may be a problem.
- The result is that a proportion of the otherwise tax-free gain will be taxable at 28%

Residency

- Residency in UK can be on day count
- UK SRT has concept of exceptional days for exclusion in day count, usually through illness.
- Enforced stay in the UK or another country due to COVID can extend day count unintentionally and
- Lead to unintentional tax liabilities, so
- UK introduced relief for some COVID days

Residency

- UK Covid exceptional days if you:
- are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus
- find yourself advised by official Government advice not to travel from the UK as a result of the virus
- are unable to leave the UK as a result of the closure of international borders, or
- are asked by your employer to return to the UK temporarily as a result of the virus
- Other countries also introduced similar relief.
- CAH case in point.

Other issues

Non-tax issues for the employee

- Potential invalidation of home insurance for running a business at home.
- Requirement to report to local council to have business rates than domestic rates applied
- Security of employer's equipment and information
- Employees wanting more working from home contractually and Employers saving cost through more working from home.
- Probably many other matters

Thank You For Listening

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VAT and the One Stop Shop

Erik Herkströter

20 May 2022

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WHY IS THE ONE STOP SHOP RELEVANT?

- It can affect sellers of digital services both in the EU and outside
- It can affect those making distance sales of goods to consumers in the EU irrespective of where the seller is established
- It simplifies the task of complying with the rules

THE PROBLEM

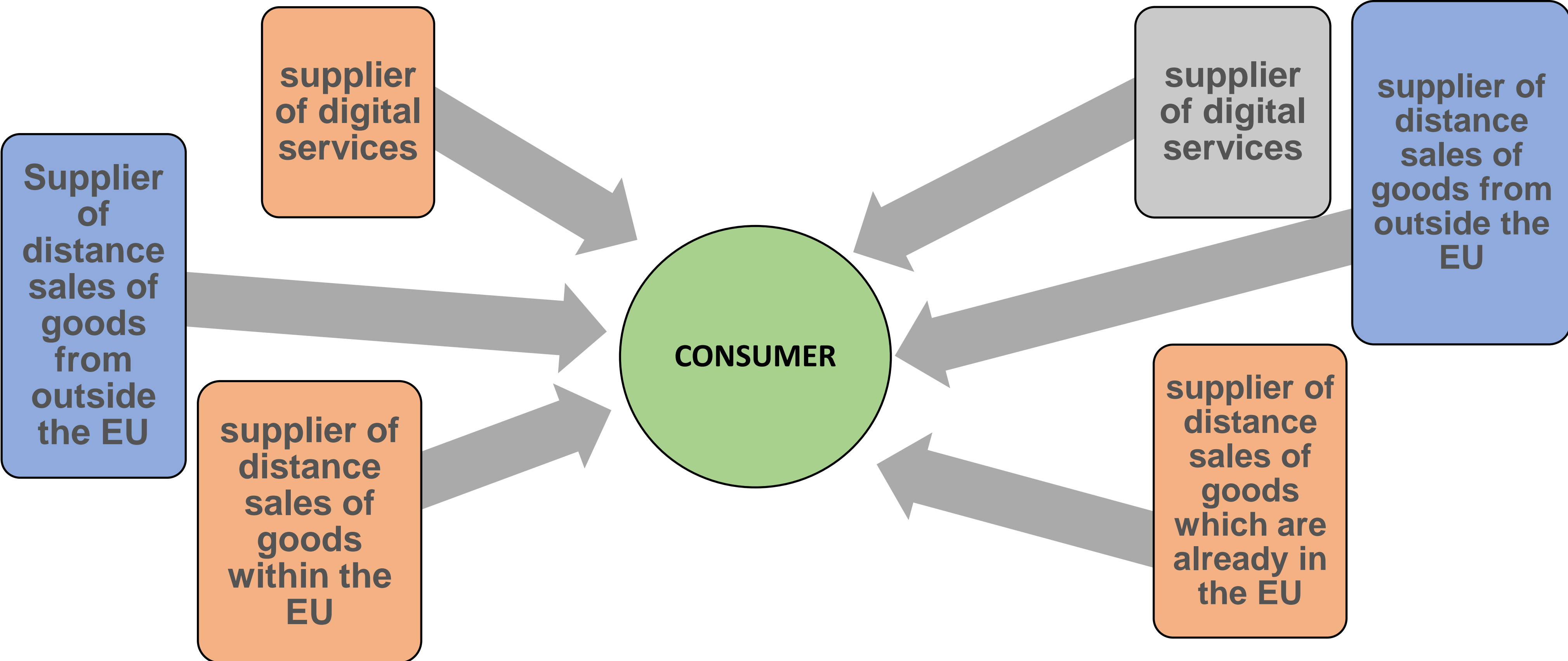
- Digital sales to consumers in the EU are subject to VAT in country of consumer. “Consumers” includes exempt businesses
- Distance supplies of goods to consumers in the EU are subject to VAT in country of consumer
- Registering in every EU country is complex and time consuming

THE SOLUTION

The One Stop Shop

- OSS is optional. Separate registration in each country always possible
- Sales up to € 10,000 per annum by EU supplier can be subject to VAT of country of supplier. When exceeded it also applies for the year after. The limit applies to the entire EU (previous limits were on a per country basis).
- There are different One Stop Shops

SUPPLIES TO CONSUMERS



UNION SCHEME

For services:

- From EU supplier to EU consumer customer

For goods which are already in the EU (they do not cross an external EU border):

- From EU supplier to EU consumer customer
- From non-EU supplier to EU consumer customer

Quarterly filing

UNION SCHEME

EU supplier for services and for goods from EU warehouse:

- Still file domestic return in country where established and countries where warehouse located for non-distance sale activities
- Must register for OSS in country where established

UNION SCHEME

Non-EU supplier (goods within the EU):

- Can choose EU country of registration

NON-UNION SCHEME

Only for services:

- Only for non-EU supplier to EU consumer customer
- Not for goods

Non-EU supplier:

- Can choose country of registration

Quarterly filing

NON-UNION SCHEME

Examples of services covered:

- Accommodation
- Admission to cultural, artistic, sporting events
- Valuation of movable property
- Hiring means of transport
- Services relating to real estate

IMPORT OSS

Available to EU and non-EU businesses

- Can be used for goods from outside the EU, currently for consignments under €150
- €150 excludes transport, import VAT and import duties
- Non-EU entities need to file through a VAT intermediary who is responsible for payment (but generally not liable)
- Not for excise goods

Monthly filing

IMPORT OSS

- Also makes live easier for buyer who do not face surcharges anymore;

MARKETPLACES

Sales through websites such as Amazon, BOL.com

- Facilitates distance sales of goods from outside the EU or within the EU for non-EU seller
- Through electronic interface
- Involved in payment procedure and ordering and delivery
- Have standard terms and conditions

MARKETPLACES

Types of transaction covered

- B2C sales of goods from outside the EU to consumers in the EU not exceeding €150 per consignment
- Goods from a warehouse in the EU by a seller established outside the EU. No limit on transaction size

MARKETPLACE FICTION

- Seller deemed to sell goods to marketplace outside the EU or within EU under 0% rate
- Marketplace deemed to sell to customer as if it were the seller, charging VAT in the country concerned and paying the VAT to the authorities
- Actual movement of goods not relevant
- Marketplace can use the iOSS and the Union scheme if it qualifies
- Marketplace is thus liable for the tax

REGISTRATION

Two registrations are normally required

- A regular VAT registration in the country where the OSS is obtained
- An OSS registration

- Where appropriate a business may register for different types of OSS

ADMINISTRATION

- Invoices to consumers are not required
- Payment of tax within one month after end of period
- Filings must show figures per country with relevant tax rate and whether it is normal rate or reduced rate
- Records to be kept for 10 years

WHEN CAN YOU NOT USE THE OSS?

- To reclaim VAT in the country of the consumer. Non-EU businesses must file a claim in each country
- Sales to businesses with an EU VAT number: within EU this is an intracommunity supply, services from outside EU are reverse charged.
- Supplies where the deemed country of supply is that of the supplier
- Special types of supply (e.g. second-hand goods under the margin scheme)
- Sales which do not cross a border

WHEN CAN YOU NOT USE THE OSS?

- Distance sales of goods coming from outside the EU in excess of the EUR 150 limit. Can be resolved by a warehouse arrangement in the EU, preferably in a country allowing deferral of VAT on import

SOME ISSUES

- Sales in foreign currency
- Split consignments for €150 limit
- Exchange rates for determining €150 limit
- May need to check nomenclature for VAT rates on particular goods
- Fraudulent use of marketplace number

QUESTIONS?

EUROPEANS LIVING IN THE U.S. & AMERICANS LIVING IN EUROPE – COMMON TAX ISSUES

ITSG 2022 SPRING EUROPEAN CONFERENCE

Galia Antebi

Limassol, Cyprus

Agenda

- Becoming a U.S. Taxpayer
- Tax Implications of Becoming a U.S. Taxpayer
  - General consequences
  - Collateral damage
  - Stock Options and employee mobility
- U.S. Estate and Gift Tax
- Relinquishing Green Card and U.S. Citizenship
- Questions

BECOMING A U.S. TAXPAYER

U.S. Residency rules

U.S. Resident – Income Tax

- U.S. citizens
- “Green Card” holders
- “Substantial Presence Test”

The Substantial Presence Test

- At least 31 days of presence in the current year

Plus

- 183 days or more during a 3-year period, based on a weighted average formula
- The formula counts:
  - 100% of the days of presence in the current year, and
  - 1/3rd of the days of presence in the first year before the current year, and
  - 1/6th of the days of presence in the second year before the current year
- Rule of thumb to avoid status: keep days to 120 or less
- Part days count, except for presence for less than 24 hours in transit between two places outside the U.S.

Residency Starting Date

- Substantial presence test: the first day of presence in the U.S. during the year
  - May "push" starting day by up to 10 days if had a closer connection to a foreign country in those days, and the tax home was in that foreign country
  - Can't exclude any days in a period of days of presence unless all the days in that period can be excluded (10 max)
  - Days excluded from starting date still count for the substantial presence test
  - Meant for short trips of arrangements prior to official move (housing, school, etc.)
- Green Card test: first day of presence in the U.S. after receiving the green card
- If Green Card obtained while in the U.S., first day of presence in the U.S. during the year if also resident under the substantial presence test, or the day the green card was granted, otherwise

The Closer Connection Exception

- An individual who meets the Substantial Presence Test can still be treated as a nonresident alien if he:
  - Was present in the U.S. for 182 days or less during the year,
  - Had a closer connection during the year to a foreign country than to the U.S.,
  - Maintained a tax home in that foreign country during the entire year, and
  - Had not taken steps toward, and did not have an application pending for, Green Card
- Must timely file Form 8840, Closer Connection Exception Statement for Aliens

Closer Connection Determination

- A facts and circumstances determination that includes, but is not limited to, the following:
  - The country of residence designated on forms and documents,
  - The location of a permanent home,
  - Where family members are located,
  - The location of personal belongings (car/s, furniture, clothing, and jewelry),
  - Current social, political, cultural, or religious affiliations,
  - Business activities (other than those that constitute an individual's tax home),
  - The jurisdiction that issued a driver's license,
  - The jurisdiction where an individual votes, and
  - Charitable organizations to which contribution are made

Other Exceptions

- Medical Exception:
  - If unable to leave the U.S. because of a medical condition that is developed while are in the U.S.
- Student Exception:
  - A student temporarily present in the U.S. under an "F," "J," "M," or "Q" visa, who substantially complies with the requirements of the visa
  - A teacher or trainee, including research positions, temporarily present in the U.S. under a "J" or "Q" visa, who substantially complies with the requirements of the visa
  - Limitations apply on the number of years an individual can be an exempt individual under these rules
  - Special exception to prolong exempt period under F visa available
- Must file Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition

Treaty Tie-Breaker

- Available for dual residents under domestic laws of the U.S. and a treaty country
- The tie breaker tests are applied in the order they appear:
  1. The existence and location of a permanent home
  2. Center of vital interests;
  3. Habitual abode; and
  4. Nationality
- Once residency determined, no need to continue
- If an individual remains a resident of both countries after the 4th test - the individual may apply for a mutual agreement procedure of the competent authorities
- Must file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)

Green Card & Treaty

- Green card holder living “at home” is likely a dual resident of the home country and the U.S.
- Can consider claiming to be a non-U.S. resident under a treaty tie breaker provision for purposes of calculating his/her income tax in the U.S.
- Such year does not count for purposes of “long term resident” (“LTR”) status
- This can trigger an “expatriation event” so should not be done if the taxpayer is already an LTR
- U.S. resident status remains for other purposes of the Code
  - Determination of a non-U.S. company’s status as a controlled foreign corporation and filing Form 5471
  - Form 3520

U.S. TAX CONSEQUENCES OF BECOMING A U.S. TAX RESIDENT

U.S. Income Tax

Non-U.S. Resident	U.S. Resident
U.S. tax on U.S. source income only: • F.D.A.P. income • Effectively connected income (“ECI”) • U.S. Real Estate / Holding companies	U.S. tax on worldwide income

	C.F.C.’s
	• Attribution rules
	• Form 5471
	• Subpart F/GILTI
	    • High tax exemption (effective rate)
	    • 962 Election
	    • C corp holding company
	    • Check the Box

	P.F.I.C.’s
	Non-U.S. trusts and throwback rules
	Form 3520 • for gifts/inheritance over $100k • For distributions from foreign trusts
	F.A.T.C.A.; F.B.A.R.; Form 8938

Stock Options

- Potential for double taxation when employees move
  - Timing of tax event
  - Source of gain at disposition
  - Compensation? Time-based allocation? Sale or capital asset?
- Qualified Stock Option:
  - No tax on the grant or vesting
  - Exercise is generally not taxable, but AMT payment may be due
  - Tax on the sale on the excess of the selling price over the exercise price
  - Capital gain treatment if qualified disposition (1 year from exercise + 2 years from grant); Nonqualified disposition taxed as compensation but no payroll taxes

Stock Options – Cont'd

- Non-Qualified Stock Option:
  - Many non-US plans
  - No tax is imposed on grant, unless the option has an ascertainable value (generally, when traded)
  - Tax can be imposed in each of the vesting years if the exercise price is lower than the F.M.V. at the grant (409A problem)
  - Tax on exercise on the excess of the F.M.V. over the exercise price, compensation and payroll taxes
  - Tax on the sale on excess of selling price over F.M.V. at the exercise

Collateral Damage?

- Withholding obligation on Employer
- P.E. for employer?
  - Office in the U.S. that is available for the employer
- Independent contractor
  - Common law employment
- Owner/Employee
- Transfer pricing for non-U.S. business and U.S. presence

Residency Ending Date

- Under the substantial presence test: your residency ending date is your last day of presence in the U.S. provided that
  - following such date, a closer connection to a foreign country is established,
  - The induvial has a tax home in such country, and
  - The individual is not a resident of the U.S. in the calendar year following that of the last day of presence
- Otherwise, U.S. residency continues through December 31 of the calendar year of presence
- Under Green Card test: residency for U.S. income tax purposes continues until
  - voluntarily renounce the status, or
  - have the status administratively revoked by USCIS officer or judicially revoked by a U.S. federal court
- Turning in the green card is possible now by mail only
- Statement relating to termination of residency required
- Under a treaty: the first day the individual satisfies the treaty requirements
  - Treaty position disclosure on Form 8833 required

Transitory Non-U.S. Residency

- If an individual was a U.S. resident for at least 3 consecutive calendar years, in which he was present in the U.S. for at least 183 days during each of the years, and
- Then ceases to be a U.S. resident
- But re-establishes U.S. residency before the close of the 3rd calendar year from departure
- Result is being taxed on a net income basis on U.S.-source income and gains earned during the interim period of non-residency
  - Special source rules apply during this transitory period so that capital gains from the sale of U.S. shares are fully taxed, as are dividends from U.S. companies and interest

ESTATE AND GIFT TAX

Estate Tax

- Imposed on world-wide assets for U.S. domicile individuals
- Domicile looks to subjective intent to return to an individual's "true home"
- U.S. Tax resident for income tax not necessarily a domicile
- U.S. citizens are always domicile in the U.S.
- For non-U.S. domicile individuals, U.S. estate tax imposed only on U.S. situs assets

Estate Tax

- Imposed on the F.M.V. of the property
- 40% flat rate over $1m of taxable estate (the first $1 million is taxed at a blended rate of 34.5%)
- U.S. domiciled individuals allowed a lifetime credit to transfer up to $12.06 million of wealth during life or at death
- Non-U.S. domiciled individuals allowed credit that shields $60,000 worth of wealth.
- Estate Tax treaty
  - May allow a proportional credit against U.S. estate tax based on the lifetime exemption available to U.S. domiciled
  - May change the situs of assets
  - Only 14 treaties
- Step up in basis to F.M.V. for recipient of inheritance

Gift Tax

- Imposed on the donor if the donor is a U.S. domiciliary
  - Gifts from a “covered expatriate” are taxed in the hands of a U.S. donee
- Non-U.S. domiciled taxed on gift of only tangible assets located in the U.S.
  - Jewelry
  - Art
  - Real property
  - Cash versus wires/checks
  - Condo versus Co-op
- Many estate treaties don’t apply to gifts

Gift Tax

- Same rates as estate tax and same lifetime exclusions for residents
- Residents also allowed annual amounts
  - $16,000 per person
  - $164,000 to non-U.S. citizen spouse
  - Unlimited to U.S. citizen spouse
- No lifetime exclusion for non-U.S. domicile individuals
- But no gift tax on intangible assets, even if located in the U.S.
  - U.S. Stock can be gifted without tax

GREEN CARD & CITIZENS: THE EXIT TAX

Green Card

- A Green Card holder is a U.S. income tax resident no matter where he lives
  - Domicile depends on facts and circumstances
- Green Cards don’t “expire” ever
  - Its only the travel paper/card that may expire
- Formal act required to change the status for U.S. tax purposes
  - Voluntarily turn in green card to U.S.C.I.S. and renounce U.S. immigrant status
  - Have immigrant status administratively revoked by U.S.C.I.S., or
  - Have immigrant status judicially revoked by a U.S. federal court

Giving Up Green Card

- As long as the individual is not a “Long-Term Resident,” no problem (“LTR)
- LTR obtained after holding the card for 8 years out of the 15 years ending with the year of relinquishment
- Years in which treaty tie-breaker was invoked to claim non-U.S. residence status do not count
- But invoking the treaty tie-breaker triggers the same tax consequences as relinquishment of the card

Covered Expatriate

- A LTR and a citizen may be a "Covered Expatriate" if meets one of the following tests:
  - Net Worth Test - $2,000,000 or more on the date of expatriation,
  - Average Tax Liability (after foreign tax credit) - over $178,000 (indexed for inflation) in average for the 5 tax years before the year of expatriation, or
  - Tax Noncompliance - noncompliance with tax obligations for any period in the five tax years before the expatriation year. Certification under penalty of perjury is required

Exceptions for Citizens

- Not Covered Expatriate if
  - Renounce before the age of 18½ years; but only if:
    - Was never a resident of the U.S., or
    - If treated as resident under the Substantial Presence Test - for not more than 10 years before the renunciation
  - Done by a dual citizen by birth; but only if:
    - Was a resident under the Substantial Presence Test for no more than 10 of the last 15 years
    - Will continue to be a citizen of that foreign country after renunciation, and
    - That foreign country would tax him as a resident
- The exceptions override the net worth and average tax liability tests but not the tax compliance test

Consequences of Relinquishment

- Form 8854, Initial and Annual Expatriation Statement, must be filed
- Exit Tax for Covered Expatriates:
  - A mark-to-market regime
  - All property of a covered expatriate is deemed sold for F.M.V. on the day before the expatriation date
  - Tax is due on gain in excess of $767,000 (indexed for inflation)
    - Can be deferred if agreement reached with the I.R.S., and interest is imposed
- Succession Tax:
  - Tax will be imposed on U.S. persons receiving gifts or bequests from covered expatriates
    - Regardless of whether the property transferred was acquired by the covered expatriate before or after expatriation

QUESTIONS?

Important Notice

This presentation is not intended to be legal advice. Reading these materials does not create an attorney-client relationship. The outcome of each case stands on its own merits.