October 2018
2.2018

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WTS Private Clients Newsletter

Editorial

Dear Reader,

It is our pleasure to present to you the second WTS Global Private Clients & Family Office Services Newsletter, issued in October 2018.

In 2017, WTS Global launched this new global Service Line with the aim of providing high-quality international advice to High Net Worth Private clients and to Family Offices. Private clients generally have very specific tailor-made demands when it comes to estate planning and consulting. HNWI and the family businesses they control need highly skilled multidisciplinary advisors, who give practical legal and fiscal guidance to estate planning with regard to national and cross-border matters. Their advisor should understand and respect the individual and long-term vision of the family as an entity and of the family business itself.

At WTS, we have established a particular service line for those family needs. Our private client experts support HNWI, their family businesses, family offices and non-profit organisations in dealing with all specialist questions. These include succession issues, complex civil law issues, the implementation of voluntary disclosures tax compliance matters, tax optimisation and/or mitigation of domestic and foreign investments resp. emigration and immigration. We also offer a sophisticated multi-asset-class online wealth controlling tool, WTS-QPLIX.

Therefore, in order to keep you up-to-date in this dynamically changing environment, our WTS Private Clients & Family Office Services Newsletter provides you with an update and overview on current developments in relevant tax and legal developments in 7 selected countries.

We hope you will find this newsletter useful and we would appreciate your feedback and suggestions.

If you have any questions regarding any aspects of this newsletter, our experts of the global WTS team will be happy to answer any questions you may have.

Yours sincerely,

WTS Global Private Clients & Family Office Services Team

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Austria

The transparent shareholder

Since 15 January 2018, all Austrian legal entities have to report their beneficial owners to a central register according to the Austrian Beneficial Owners Register Act (*Wirtschaftliche Eigentümer Registergesetz*, WiEReG). The purpose of the WiEReG is to prevent money laundering and terrorist financing in accordance with EU Directive 2015/849.

The Beneficial Owners Register Act addresses all relevant company structures in Austria, e.g. unlimited liability partnerships (OG), limited liability partnerships (KG), limited liability companies (GmbH), public limited companies (AG), Societas Europaea (SE), (European) cooperatives, insurance companies, private foundations, as well as trusts and trust-like agreements that are administered in Austria.

The addressed entities have to verify their beneficial owners and their identity. In general, all natural persons who own or control a legal entity are considered to be its beneficial owners and must be registered. With regard to companies, the law provides for three different approaches:

- → A natural person directly holds more than 25% of the shares or has a participating interest of more than 25%;
- → A natural person exercises control over the management of the company or partnership, meaning that more than 25% of the shares in an Austrian company are held by another legal entity that is controlled directly or indirectly by a natural person; control in this respect is indicated by directly or indirectly holding more than 50% of shares; or
- → A natural person has sufficient voting rights in the company or partnership, directly or indirectly.

In the case that no beneficial owner according to the above-mentioned parameters can be identified, the top-level management of the company shall be seen as the beneficial owner. There are a few exemptions from the reporting obligation. For example, limited liability companies are exempted from the obligation to transfer information to the registry if all shareholders are natural persons.

Specific provisions exist for foundations (e.g. private foundations according to the Austrian Private Foundations Act or foundations and funds according to the Federal Foundation and Fund Act 2015) and trusts (or agreements similar to a trust) that are domiciled in Austria or are managed from Austria. For private foundations pursuant to the Austrian Private Foundations Act, the following natural persons are defined as beneficial owners:

- → the founders
- → all potential beneficiaries
- → the group of beneficiaries (abstract notion of potential beneficiaries); if a person in the group of beneficiaries receives a donation amounting to more than €2,000 per calendar year, this person has to be reported for this specific calendar year
- → the members of the foundation's management board
- → all other natural persons who ultimately control the private foundation in some other way.

The term “beneficiary” is determined pursuant to the Austrian Private Foundations Act. If one of the above-mentioned functions is executed by a legal person, the beneficial owners of the legal person have to be identified and reported as those natural persons who ultimately control the private foundation. The private foundation itself has to take the necessary measures in order to fulfil the reporting obligation. Consequently, the members of the foundation’s management board – as the responsible body – have to make sure that the beneficial owners are identified and reported.

In principle, for every beneficial owner the following data have to be reported: first name and surname; place of residence (where there is no place of residence in Austria, the number and nature of an official photo identification); date and place of birth; nationality and nature and scope of the economic interest.

The required data concerning the beneficial owners have to be transmitted electronically via the Austrian Government’s Business Service Portal. It must be mentioned that also legal advisers (tax consultant, lawyer and notary) are entitled to undertake the notification. The initial registration in Austria is due no later than 16 August 2018. Newly established companies are obliged to register their ultimate beneficial owners within four weeks of incorporation. Moreover, if changes occur regarding registered data, entities are obliged to amend their registration accordingly within four weeks of the first notice. Furthermore, a verification of the data shall be undertaken once a year. The documentation and information required for these obligations must be stored for five years.

In case of non-compliance with registration duties, as of 16 August 2018 the Austrian tax authorities will automatically impose administrative penalties of up to €5,000 by default. Strong reporting violations carry a financial penalty of up to €200,000 in case of intentional infringement and up to €100,000 in case of gross negligence. These penalties primarily address entity representatives (e.g. the managing director). However, legal entities themselves can also be punished.

For the Beneficial Owners Register, the Federal Ministry of Finance acts as competent authority. The register is generally not open to the public (such as the Commercial Register), but it is accessible for several groups of persons and certain authorities. This includes all credit institutions, lawyers, notaries, auditors and tax advisers. Moreover, estate agents, business consultants and insurance intermediaries as necessary also have access in order to comply with their due diligence obligations as regards combatting money laundering and terrorist financing. Please note that an unauthorised access is subject to a fine of up to €10,000. Finally, tax inspectors, prosecutors of tax offences and supervisory authorities also have the right to inspect the register when carrying out their lawful duties.

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Brazil

Deadline to disclose the Ultimate Beneficial Owner to the Brazilian Federal Revenue Service

In 2016, in line with the international concern to prevent tax evasion, money laundering, terrorism and corruption, the Brazilian Federal Revenue Service (RFB) took a crucial step towards identifying the ultimate beneficial owners (UBO) of domestic and foreign entities registered with the Brazilian Corporate Taxpayers' Register (CNPJ). The deadline for disclosing the identity of the UBO of all domestic and foreign entities already registered with CNPJ expires on 31 December 2018. New entities must disclose their UBO within 90 days of its registration with the RFB.

Normative Instruction 1634/2016, issued by the RFB (IN 1634/2016) defines UBO as the natural person: (i) who, ultimately, directly or indirectly, owns, controls or significantly influences an entity; or (ii) on whose behalf a transaction is conducted. As per IN 1634/2016, such significant influence occurs when the natural person, directly or indirectly: (i) holds more than 25% of the entity's corporate capital; or (ii) exercises or holds the preponderant voting power in the entity's resolutions and elects the majority of the entity's managers.

The list of entities that must disclose their UBO is long, and it includes: (i) companies in Brazil; (ii) investment clubs and funds; (iii) non-resident entities that hold certain assets and/or rights in Brazil (such as, but not limited to, real properties, vehicles, vessels, aircrafts, bank accounts, investments in the financial and capital markets, equity interests, etc.) or that carry out certain transactions in Brazil (leasing, chartering of vessels, equipment rental, and the import of goods for capital contribution in Brazilian companies); (iv) foreign banking institutions carrying out transactions of purchase and sale of foreign currency with banks in Brazil, receiving and delivering Brazilian currency in cash; and (v) silent partnerships. IN 1634/2016 also provides a long list of entities that are exempt from identifying their UBO, such as, but not limited to: (i) publicly held companies in Brazil or in jurisdictions where the public disclosure of relevant shareholding structures is mandatory do not have to provide information about their UBO, except if such jurisdictions qualify as tax havens or are subject to a privileged tax regime; (ii) multilateral organisations; (iii) central banks; (iv) sovereign funds; (v) non-profit organisations, pension funds and investment vehicles, provided that certain requirements are met, etc.

It is important to bear in mind that the procedure for identifying UBO can be long and bureaucratic. In addition to disclosing the complete UBO's identity, entities subject to IN 1634/2016 must provide copies of its corporate documents, and of all companies within its group up to the UBO level, as well as a copy of the ID or passport of the UBO(s). All documents issued abroad must be notarised and apostilled (or legalised, depending on the country where the document was issued), translated into Portuguese by a sworn translator in Brazil and registered with the Deeds and Documents Office before its presentation to the RFB.

Failure to comply with the obligation to inform and present documents to the RFB may result in the suspension of the CNPJ registration, and therefore the CNPJ's holder will be forbidden to negotiate with banks, including the handling of bank accounts, making financial investments and obtaining loans.

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France

2018 French finance bill – Individual tax: Main Provisions

The 2018 French finance bill was adopted by the Parliament, and the main provisions are as follows:

- the transformation of the wealth tax (ISF) into a real estate asset tax (IFI)
- the creation of the 30% Flat-Rate Tax (PFU)

The IFI replaces the ISF

As of 1 January 2018, the 2018 finance bill cancels the wealth tax (ISF) and replaces it with a wealth tax on real estate property (IFI), which is aimed only at these assets.

The IFI will apply to real estate property that is not attributed to the professional activity of the owner.

The threshold for taxation (€1,300,000), the tax brackets and the definition of taxpayers subject to the tax remain unchanged compared to the rules applicable to the ISF. Similarly, the flat 30% reduction applicable to the value of a principal residence is maintained.

The five-year exclusion of assets located outside of France from the taxable base for new French tax residents called "impatriates" is maintained.

The applicable range and the taxable base for the IFI are reduced significantly; only non-professional real estate property is taxable. In parallel, the rules regarding the exemption of professional assets are redefined and re-centred on real estate.

In addition to the real estate assets that are not attributed to the professional activity of the taxpayer, included in the assets subject to the IFI are stocks in companies or entities held by the taxpayer, but only up to the fraction of the value representing real estate property held directly or indirectly, without regard to the number of intermediate levels, by the company or entity.

The law provides for an exemption, under certain conditions that are similar to those applicable to professional assets for ISF purposes, for real estate properties that are attributed to the operational activity of the company holding them or to a company within the group.

Reduced deductible expenses

The deductible expenses are limited to the debt related to the taxable real estate property, excluding income tax.

A general ceiling applies to the deduction of debt when the value of the taxable assets exceeds €5 million and when the amount of debt is more than 60% of this amount. The debt exceeding this threshold is only deductible up to 50% of the excess.

Limitations and filing obligations

The limitations applied for ISF purposes are maintained for IFI. The mechanism aims to avoid having a total IFI plus income tax due in France and abroad on the income exceeding 75% of the income realised in the prior year.

Due to the unification of the declaration processes for IFI and income tax purposes, the IFI will be collected via the issuance of a bill.

Creation of a 30% flat-rate tax on investment income from 2018

Investment income is subject to a flat-rate tax (known as PFU and beginning 1 January 2018). The PFU rate is set at 30%, including income tax at 12.8% and social surtaxes at 17.2%.

Income items subject to the PFU are, notably, the following:

All investment income (interest, distributed income, dividends, directors' fees, and similar income), including interest earned on housing savings accounts open as of 2018. The tax regime applicable to PEA/PEA-PME is maintained, and interest from Livret A, LDD and LEP accounts is still exempt.

The flat 40% reduction applicable to dividends subject to the 30% PFU has been cancelled, unless the taxpayer chooses to be subject to the progressive tax rates. Capital gains from the sale of shares are subject to the PFU, but the taxpayer can elect for the former regime of the holding period reduction if the shares were acquired before 1 January 2018.

The application of the PFU to financial income gives rise to the following remarks:

The Exceptional Contribution on High Income (CEHR) applicable to a fraction of fiscal reference income at the 3% and 4% rates remains applicable.

Interest and dividends paid to individuals domiciled in France will be subject to withholding at source to be operated by the payers of the income (or by the individuals themselves in some cases). Earnings on contracts related to premiums paid as of 27 September 2017 will also be subject to the mandatory flat-rate withholding.

Taxpayers with low income may, if they choose, opt to tax all of the income subject to the PFU at the progressive income tax rates. In this case, the 40% reduction related to dividends still applies. It should be noted that this option is applicable to all of the income subject to the PFU without the possibility of a partial option. It will be up to the taxpayer to determine the impact of the PFU on their fiscal situation before opting for the application of the progressive rates, keeping in mind that the option for the PFU should be more favourable for taxpayers whose income reaches the 14% tax rate bracket.

The rate of withholding tax applicable to dividends and interest paid to individuals fiscally domiciled outside of France is set at 12.8%.

Equity compensation

"Macron" free shares

For attributions of free shares from 1 January 2018, a flat 50% reduction will be applicable to the fraction of the acquisition gain which does not exceed an annual ceiling of €300,000 (value of the shares at their final acquisition date), without the need to meet a minimum holding period, contrary to the current regime. Finally, capital gains from the sale of free shares (difference between the sale price and the value at the final acquisition date) are subject to the PFU.

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BSPCE (Company creation warrants)

With the creation of the PFU, the tax rate applicable to BSPCE is aligned with the PFU income tax rate of 12.8% (plus the social surtaxes), or upon opting for the progressive income tax brackets, when the beneficiary has exercised their professional activity for at least three years in the company.

When the beneficiary has exercised their professional activity for less than three years, the whole gain realised at the sale of the shares subscribed to in the BSPCE will be taxed at the flat rate of 30% (plus social surtaxes).

These new provisions are applicable to BSPCE attributed as of 1 January 2018.

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Germany

Planned limited taxability on the sale of shares in foreign corporations holding German real estate

At present, a foreign resident individual or company that is invested in German real estate via a foreign holding company may sell the shares in the foreign holding company without triggering any German income tax charges. According to Article 13, paragraph 4 of the OECD Model Tax Convention, gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. The German legislator now has concrete plans to implement new wording in German law so that the treaty rule may become effective in German domestic law also with regard to foreign corporations holding German real estate.

The draft law which has already been passed by the German government foresees that Germany will implement a domestic taxing right for capital gains arising from the sale of shares in domestic or foreign corporations when the shareholder owns at least 1% of the shares and the value of the corporation consists of more than 50% of German real property once within 365 days before the sale. The new rules shall become effective as of 1 January 2019, and only with regard to increases in value after 31 December 2018. Therefore, it will become important to assess the value at year-end with respect to possible future taxable capital gains.

However, since existing tax treaties take priority over the new domestic rules and many treaties deviate from the OECD-Model Convention, one must look at each specific case to find out whether the new rules lead to taxation or not. Only looking at the domestic rules there is still much uncertainty in their interpretation, e.g. for a foreign two-tier structure, where the top-holding sells its shares in the real estate holding company, the application of Section 8b of the German Corporate Income Tax Act might lead to an overall avoidance of the taxation. When an individual holds the foreign shareholding and the applicable treaty allows for the German taxation, it is still unclear how the German authorities will be made aware of the tax event in many cases, especially when the individuals only have a minority shareholding. Another unsolved question is what happens if the value of the domestic real property within the company falls below 50%? Would that also be a taxable event, and if so what would happen if the domestic property portion subsequently rises above 50% again?

Certainly, foreign resident individuals who hold German real property via a foreign corporation should consider their actions before year-end. For example, making sure that the domestic property portion stays below 50%, and if it does fall below 50%, avoiding a sale within 365 days (however, most treaties will not have such a retroactive period and therefore one should be fine if the real property portion is below 50% at the date of sale) or interposing a top-holding to make use of the participation exemption provided by Section 8b of the German Corporate Income Tax Act. Moving to a country with favourable tax treaties before the new rules take effect might also be a solution.

In conclusion, foreign holders of German real property via a foreign corporation should at least monitor the developments closely.

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Mexico

Bill of amendments to the Mexican federal income tax law inheritance, bequest and gift tax

Particularities of the Bill

A bill to amend some of the provisions of the Mexican Federal Income Tax Law was submitted on August 8th, before the Permanent Commission of the Federal Congress, intending to modify some income tax provisions, to create an inheritance tax applicable to Mexican resident individuals who receive an inheritance or bequest in excess of 10 million Mio. Mexican pesos, which are currently exempt of income tax. Additionally, the bill aims to repeal the exemption on gifts between spouses, lineal ascendants or descendants, also in amounts exceeding 10 million Mio. pesos.

The individual taxpayers would be required to make advance tax payments within the 15 days following receipt of this kind of income, which should be calculated on any amount exceeding 10 million Mio. pesos; in other words, the inheritance and gift tax exemption would amount to $10 million Mio. pesos (as long as complying with applicable requirements such as reporting such income in the corresponding annual income tax return).

The advance payment would be calculated (i) at a 10% rate applicable on any amount exceeding $10,000,001.00 and up to $ 50,000,000.99, (ii) at an additional 20% rate in case of any amount that exceeds $50,000.001.00 and up to $ 100,000,000.99, or (iii) also in addition to the payment calculated by applying the aforementioned rates, at a 30% rate on amounts that exceed $100,000.001.00.

In addition, such income should be included in the corresponding annual income tax return of each heir, legatee or donee, and would be taxed at the annual tax rate applicable to each one of them (currently ranging from 1.92% to 35%).

According to this bill, persons with disabilities under the General Act for the Inclusion of Persons with Disabilities would be tax exempt.

The preamble to the bill points out serious problems of inequality and lack social mobility in our country, also stating that the purpose of the proposed tax amendment is "to build a highly mobile society" aiming to "social justice, efficiency and cohesion, that is, social economic progress ".

It is important to note that a similar bill of amendments had already been submitted before the Chamber of Representatives in September 2016 and rejected in July 2017.

Comments

This document does not intend a detailed analysis of these kinds of taxes; however, we can affirm that the rationalizations adduced to justify the enactment of these new taxes are incorrect.

The preamble of the bill implicitly attempts to equate the concepts of "inequality" and "lack of well- being", the latter being the relevant one for measuring progress (and not the former). Under the Gini coefficient measuring wealth's distribution and inequality, referred to in the bill's preamble, Mexico and the United States of America are in neighboring positions, which demonstrates that such criterion does not justify the enactment of these taxes.

Another inappropriate consideration intending to justify these new intended taxation rules, is that they would generate economic progress; we do not see how this conclusion can be achieved in a reasonable way.

Finally, we believe that the intention to apply these taxes exclusively to the members of the economic elite (as expressed in the bill's preamble) would not be achieved given that a relevant segment of individuals not pertaining to such elite would be taxed.

From a fiscal policy standpoint, we consider that in the event that the Federal Congress ponders the enactment of these taxes, it should consider the inclusion of clear rules on the determination of the tax basis, the possibility of deducting certain debts, cases in which installments would be authorized, an in-depth analysis of the amount of authorized exemptions, as well as applicable rates, among other cardinal points that are not covered by the above referred Bill.

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Spain

Spanish Supreme Court ends overt discrimination against non-EU/EEA tax residents subject to Spanish Inheritance/Gift tax

A set of sentences issued by the Spanish Supreme Court in the first half of 2018 (STS242/2018, STS488/2018 and STS492/2018) paves the way for non-EU/EEA residents to obtain access to regional benefits in the case of a succession or donation involving assets located on Spanish territory, or assets abroad transferred to a Spanish resident.

Background

Looking back over the years, Law No. 22/2009 partially transferred legislative powers concerning Inheritance and Gift tax to the Spanish regions. Unlike federal rules, most Spanish regions provide for important reductions to free transfers between close relatives (mainly spouses, ascendants and descendants). These benefits were historically denied to donations and inheritances involving cross-border elements (assets located in Spain inherited by non-residents and/or assets abroad inherited by a Spanish resident).

This situation was appealed at the European Court of Justice (ECJ), which ruled against the Spanish Inheritance and Gift tax legislation (Law No. 22/2009) on 3 September 2014. The Court specifically argued that Spanish legislation constitutes an obstacle to free movement of persons and capital, in breach of Article 63 of the Treaty on the Functioning of the European Union (TFEU) and the Agreement on the European Economic Area.

Shortly after, Law No. 22/2009 was amended to comply with the aforementioned ECJ judgment. The modification was implemented by means of Law No. 26/2014, having effect as of 1 January 2015, and enabled EU/EEA residents to benefit from Spanish regional regulations for donations and inheritance. However, the Spanish legislator interpreted the ECJ judgment restrictively, so that successions and gifts involving cross-border elements outside the EU/EEA could not benefit from the regional regulations. Consequently, in those cases the federal law for inheritance and gift tax still had to be applied, which in most cases is less favourable to the taxpayer.

Judgments recently issued by the Spanish Supreme Court

The judgments issued by the Spanish Supreme Court in the first half of 2018 have stated, clearly and firmly, that Law No. 22/2009 must not, in any way, differentiate between residents inside and outside the EU/EEA when granting the benefits laid down in the regional regulations applicable to inheritance and gift tax. Furthermore, those judgments sentence the Spanish government to reimburse the claimants on taxes paid in excess of what they would have had to pay if they had access to the regional regulations.

The Supreme Court makes it very clear that the ECJ decision of 3 September 2014 also protects non-EU/EEA residents from any infringement to the free movement of capital, and consequently, that the current Spanish law, which sets out the rules to determine which law is applicable to a specific succession or donation, is contrary to the EU regulations. Furthermore, the Spanish Supreme Court considers that the violation of the EU-legal frame is adequately characterised in the present case, namely it is manifest and severe, otherwise it would not have sentenced the Federal State to pay compensation to claimants.

Therefore, we expect that in the short to medium term the Spanish Inheritance and Gift tax legislation will finally be modified, so that the rules for the application of regional benefits in cross-border donation and succession cases are applicable regardless of the jurisdictions involved. In the meantime, due to the binding decisions from the Supreme Court, we strongly believe actions should already be taken by heirs and donees involved in cross-border estates and donations having non-EU/EEA elements.

What now?

Taxpayers (donees or heirs) who filed and settled Spanish Inheritance/Gift tax on the basis of Spanish federal rules which are not yet covered by the Spanish statute of limitations (generally speaking, returns filed in the past 4-5 years) are now entitled to appeal against the return filed at the time. Therefore, they can request the application of the regional benefits that would have corresponded to them, and also claim the refund of the amount paid in excess due to the new assessment that includes the regional benefits, which are now granted by the new jurisprudence of the Supreme Court.

Furthermore, although the law determining which rule is applicable to inheritances or donations has not yet been modified to comply with the new jurisprudence issued this year, we recommend that heirs involved in future estates with elements outside the EU/EEA assess their Spanish inheritance tax following the regional rules, in case they are more advantageous than federal ones. For the moment, the National Tax Office in charge of inheritance tax for non-residents is raising objections to forms submitted this way, but it is possible to force the tax offices to accept this kind of submission. The jurisprudence of the Supreme Court should be observed by a tax authority, so we deem it unlikely that a reassessment note applying federal rules to inheritance tax returns filed in this way will be obtained. However, in the event that this does occur, an appeal against the reassessment note should result in a favourable resolution from the corresponding court, although in this case, tax liability resulting from a reassessment note will have to be settled or guaranteed before appealing the tax authority's decision.

A less aggressive strategy for estates with non-EU/EEA elements that may occur in the near future would be to submit an inheritance tax form following the federal rules, and consequently, to pay the higher liability resulting thereof. Then, proceed to amend the assessment of inheritance tax filed, requesting the application of regional rules and the refund of tax paid in excess following the jurisprudence of the Spanish Supreme Court. In this case, we also consider an adverse decision from the tax authority unlikely due to the new jurisprudence issued by the Supreme Court. However, if this does happen, we firmly believe that the taxpayer will receive a favourable resolution from the courts.

Conclusion

As long as Law No. 22/2009, the object of this controversy, is not modified in accordance with the new jurisprudence of the Spanish Supreme Court, estates and donations with non-EU/EEA elements are under legal uncertainty, which arises from the different interpretation of the ECJ judgment of 3 September 2014 made by the legislator and the Spanish Supreme Court to this date.

Legal complexity and uncertainty may lead to unfair situations, so we recommend that readers affected by this situation seek qualified professional assistance in this regard in order to avoid overtaxation, in particular, to those who filed their Spanish Inheritance tax three or four years ago, since they are also affected by the Spanish statute of limitations period.

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Ukraine

Non-resident individual income taxation: recent trends

In Ukraine, non-resident individuals are subject to personal income tax (PIT) in respect of their Ukrainian-source income. According to the Tax Code of Ukraine, Ukrainian-source income means any income attributable to Ukraine, not limited to the income paid in/from Ukraine. For example, the remuneration of an employee earned due to any of their activities in Ukraine, including remuneration received from a foreign employer, shall be considered as Ukrainian-source income. Furthermore, Ukrainian-source income includes interest, dividends, royalties and other passive income, paid by residents of Ukraine, income from the leasing of property located in Ukraine, etc.

The standard PIT rate is 18%. With few exceptions, it is applied to all payments made by an employer (including foreign) in relation to employment exercised in the territory of Ukraine. With regard to dividends, the tax rate differs depending on the status of a payer. Thus, dividends paid by residents/payers of corporate income tax (except joint investment institutions) are taxed at a rate of 5%, while dividends paid by non-residents, joint investment funds and non-payers of corporate income tax are subject to a rate of 9% PIT. All other passive income is taxed at the standard rate of 18%.

In addition to the PIT, in August 2014 a temporary military tax was introduced in Ukraine. It is accrued at a rate of 1.5% to the same taxable base as the PIT. Thus, non-residents' income, originating from Ukraine, is subject to the military tax.

It is worth mentioning that the legitimacy of the military tax is rather controversial. However, in order to avoid disputes with tax authorities the military tax is assessed and paid in most cases. As to the "temporary" nature of the military tax, it will be effective as long as the reformation of the Ukrainian Military Forces lasts. At the same time, the legislation does not determine the period of reformation or when it should be completed.

The procedure for the assessment and payment of the PIT and the military tax depends on the status of the income payer, as well as the type of income paid. For example, if remuneration for activities performed in Ukraine is paid to a non-resident by a resident (e.g. a Ukrainian legal entity employs a foreigner), then taxes are assessed and paid on behalf of the non-resident by the Ukrainian resident. If a salary is paid to a non-resident by another non-resident, then an annual declaration procedure has to be applied. In such cases the non-resident is obliged to submit an annual tax return by 1 May of the year following the year in which the PIT and the military tax should be accrued. The respective self-assessed taxes shall be paid no later than 1 August of the year following the reporting year.

Nevertheless, at this stage (once the tax return is submitted and taxes are paid) the taxation issues may not be over for the taxpayer. Thus, submitting the tax return is followed, firstly, by the tax authorities' audit, during which the accuracy of the calculation of self-assessed taxes is checked as well as the correct completion of the tax return. Furthermore, the tax authorities can ask a taxpayer to provide documents and information related to the occurrence of income, calculation and the payment of taxes. Documents confirming the authenticity of other information specified in the tax return (in particular regarding available movable and immovable property) might also be requested by the tax authorities. In 2018, an increase of individuals' tax audits is being observed.

Regarding the retention of documents, according to the Tax Code of Ukraine a taxpayer is obliged to retain tax-related documents for 1,095 days following the deadline for submission of the tax return for the reporting year (and if it was filed later, following the day of its actual submission). If the tax return was not submitted in breach of the provisions of the Tax Code of Ukraine, then the specified period of 1,095 days shall not apply, and the documents must be kept regardless of this period.

In practice there are many issues, since not every taxpayer has the required documents, or their documents are not completed correctly (e.g. notarisation of documents and other requirements concerning their form prescribed by the legislation). In the latter case, there is

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a risk that such documents will not be recognised by the tax authorities as proof of the occurrence of income, the authenticity of other information specified in the tax return, etc.

If the tax authorities find a violation based on the analysis of the documents provided, an audit in respect of a taxpayer may trigger negative consequences. According to Ukrainian legislation, a taxpayer can be held financially responsible (tax liabilities and penalties are assessed), and subject to administrative and criminal charges. As to criminal liability, it is stipulated for the tax evasion in the amount of UAH 881,000 (approximately €28,500) as of 2018. 'Tax evasion' includes actions such as the failure to submit documents related to the calculation and payment of taxes (tax returns, etc.), concealment of taxation objects (non-declaring of the received income in whole or in part, etc.), undervaluation of taxation objects, or the submission of false information or documents certifying the right of an individual to a tax credit or tax social benefit.

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