



UnitedTaxNetwork

Newsletter

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Dear Sir, Madam,

United Tax Network is delighted to present you with our latest issue of our world newsletter.

Should you have any questions with regard to our newsletter or any related issues then please do not hesitate to visit our website www.unitedtaxnetwork.com where you can find your local United Tax Network office.

You can also refer directly to the authors of each article by clicking their name in the newsletter.

Yours Sincerely

Jan Dalgaard
United Tax Network

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Italy

Luca Valdameri, [contact](#) (click)

Stock options and bonuses

Bonuses and stock options granted to directors and executive managers in certain financial sector businesses will be subject to additional personal income tax (IRPEF) at a rate of 10% where the additional income exceeds three times base salary.

The additional tax must be withheld at source at the time of the payment of any bonus bonuses or receipt of the taxable benefits under stock option plans which are apparently paid on or after 31 May 2010.

Tax incentives for staff returning to Italy to work in scientific research

The Decree Law contains a proposal for a special Personal Income Tax regime for certain individuals fulfilling research functions in both public and private institutions based in Italy where the workers return to take up residence in Italy after working abroad for at least two years. Where available the regime will provide a 90% exemption from tax on the worker's income. The regime also contains provision for extending the current beneficial IRAP regime.

Harmonised tax regime for European companies

Companies resident in another EU Member State excluding Italy, which commence new business activities in Italy can, by filing a request for a tax ruling with the Italian Authorities, elect to apply the tax system in force in another EU Member States, in lieu of Italian tax regulations. The election can also be made to cover the tax regime applicable to employees of such companies.

The implementation of the regulation will be governed by a specific non-regulatory Decree of the Ministry of Economy and Finance. The short paragraph in the Decree Law opening the possibility of using another Member State's tax regime appears to be based on proposals at EU levels for two main comprehensive approaches to remove tax obstacles which companies face in the European internal markets, namely:

- a common consolidated tax base, and
- a scheme permitting small and medium sized enterprises to use "Home State" taxation principles.

It seems unlikely that any further Legislation will be forthcoming in Italy pending moves at EU level obliging Member States to introduce the common rules and regulations.

Alignment with OECD transfer pricing documentation guidelines

Italian taxpayers will no longer be subject to the normal penalties for transfer pricing adjustments (100% to 200% of the tax underpaid), if they are able to produce, during the Tax Authority audit and assessment procedures, documentation sufficient to support compliance checks of transfer prices policies with the arm's length rules. (In this regard please refer to the firm's Tax Flash News "Transfer pricing documentation" of June 2010).

The documentary will be identified in more detail by a specific enactment of the Director of the Tax Agency, to be issued within 60 days from the date of entry into force of the Law converting Decree Law no. 78/2010.

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Quick News

>>Portugal ([contact](#))

Non-habitual Residents Tax Regime

At any Tax Office, it is now possible to register as a “Non-habitual resident” and benefit from its special tax regime, introduced by the Decree-Law No. 249/2009.

The regime is applicable to taxpayers fiscally resident in Portugal, for a period of 10 consecutive years, as long as they have not been taxed as “normal” residents in Portugal, in any of the previous 5 years.

This regime offers a special tax rate of 20% levied over income derived from high added value professional activities, of scientific, artistic or technical nature.

These measures intend to attract more highly qualified human resources to come and develop their work in Portugal.

Ana Castro Gonçalves

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The Netherlands

Siegfried Jagga, [contact](#) (click)

Release of employee saving scheme

The State Secretary of Finance has decided that funds in an employee saving scheme (“spaarloonregeling”) accrued in the years 2006 to early 2009 can be released tax free as of September 15, 2010.

Based on this savings scheme (“spaarloonregeling”) employees can contribute a maximum of Euro 613 per year of their gross salaries. Employers, however, have to pay a final tax of 25%. These savings must be deposited in a separate savings account for at least four years before it can be taken out tax free. In some cases, e.g. purchasing of a home or starting an own business these funds can be invoked tax free without taking into account the four years period.

With this regulation the funds accrued during the above mentioned period, including the interest, can also be taken out tax free irrespective the occasion the funds will be used for and even if the four years period is not met. The Dutch government intends to stimulate the Dutch economy with this regulation.



Ongoing and planned (re)negotiations on tax treaties

In the second half of 2010, the Dutch government will start discussions with Australia, Belgium, Costa Rica, Germany, Indonesia, Kenya, New Zealand and Panama. The objective of these discussions are to (re) negotiate tax treaties with these countries. The Netherlands has concluded several tax treaties containing provisions for avoidance of double taxation, settling the rights of taxation on income, etc.

Besides the negotiations with the above countries, the Netherlands will also discuss the tax impact of the constitutional reformation with Aruba, Curacao and St. Maarten.

Furthermore, the Netherlands intends to contact Angola, Brazil, Chile, China, Colombia, India, Poland and Singapore, which in the foreseeable future could lead to the start or continuation of (re)negotiations on a tax treaty or a protocol amendment.

Corporations and individuals may provide tax information that may be relevant for current or planned (re)negotiations in writing to the Ministry of Finance (Department of International Taxation, Department of Bilateral Affairs, PO Box 20201, 2500 EE The Hague).

Poland

Anna Biegańska, [contact](#) (click)

Amendments with respect to the employees' training

On 16 July 2010 the amendment in the Polish Labour Code came into effect regulating the main entitlements and obligations of an employer and employees connected with employees' trainings aimed at development of their qualifications. On the same date the change in the Polish Personal Income Tax Act regarding the tax exemption of benefits provided by the employer to employees for the trainings pursuant to the above Labour Law regulations (e.g. costs of participation in the training, etc.) came into force.

Electronic submission of application for binding ruling

Based on the amended Polish Ordinance Act which came into effect on 17 June 2010, the taxpayer applying to the Minister of Finance for a binding tax ruling (individual interpretation) may now submit the application (ORD-IN) in the electronic form via special electronic platform developed by the tax organ. Thus far, the submission of the application was possible only in the paper form (e.g. sent by post).

Germany

Jörg Assmann, [contact](#) (click)

Foreign social security contributions in German wage tax process

Social security contributions are not totally, but until certain limits deductible from the taxable income in Germany.

For employees who are member of the German social security system this deduction is automatically integrated in the wage tax tables. For employees who are members of a foreign social security system (i. E. French secondees or transferees with E101 membership in the French social security system) no such integration exists. This means that those employees have to pay more wage tax than German employees and that this disadvantage is not equalized until the German tax assessment for the employee is filed.

This makes also a net guarantee calculation complicated in those cases as the equalization of the disadvantage will take place not in the year of salary payment.

At present the responsible German tax authorities are discussing this problem which causes at present a discrimination for foreign employees. The decision had been announced for July 2010.



Quick News

>>Germany

Health Insurance

It is under discussion that the health insurance rates will be increased from 14,9% to 15,5%. However, this has not yet been finalised.

Annette Weinel

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Germany

Annette Weinel, [contact](#) (click)

Legislation relating to the implementation of EU legal guidelines and additional amendments

This law is now in force and two of the most important points are mentioned below:

1. Enhancement of deductions for donations

Up to now, only donations to corporate enterprises in Germany could be deducted as special expenses up to a certain amount. As a result of the new legislation, donations to corporate enterprises with registered offices in EU/ European economic states are now deductible, under the following conditions:

- The foreign corporation must be exempt from German corporate tax, should they generate domestic income. Important is that the objectives of the company are exclusively non-commercial, charitable or church-related. It is irrelevant whether the enterprise is recognised as non-commercial abroad.
- The EU/European economic state in which the foreign corporate enterprise is registered must be willing to offer administrative assistance, in accordance with an international agreement between Germany and the foreign state. In this way, the tax authorities can proof whether the foreign corporation actually pursues tax-privileged objectives.

Furthermore, donations in the capital reserve of a trust within the EU/ European economic

state can now also be claimed. Up to now, this was only limited to domestic trusts.

2. Reducing depreciation on real estate

Up to now, this was only possible if the premises were in Germany. However, reducing depreciation on real estate within EU/European economic state is now allowed. This is also valid for the assessment period before 2010, if the tax assessments are not already final.



Luxembourg

Stephan FALAGIARDA , [contact](#) (click)

Luxembourg Holding 1929: the end of an era

After several decades of existence, the Luxembourg Holding 1929 tax regime reaches its end. The transitory period provided by the EU Commission will expire on the 31st of December 2010. After this date, the remaining Holding 1929 will automatically be transformed into SOPARFI structures. This article aims to identify potential solutions for investors who currently hold Holding 1929 structures and are still looking for practical alternatives.

A piece of history

As its name points it out, the law introducing this regime was voted in 1929. At that time, neither Double Tax Treaties nor European Directives were in place to avoid the double taxation. The first purpose of the Holding 1929 was therefore to ensure an efficient management of the shareholdings and their financing by granting an exemption on the income derived from these activities. The taxation of the income was in fact deferred to a distribution in the hand of the beneficiary of the Holding 1929. It may be thus considered as a tax deferral regime.

These characteristics made it particularly interesting among 2 types of well separated investors as follows:

The first category within which the Holding 1929 met a large success was logically formed by multinational groups which were using the Holding 1929 as a centralisation platform for treasury management and top holding for their shareholdings.

High net worth individuals also found the Holding 1929 an ideal vehicle to administrate their estate.

This second category of investors may find today an appropriate alternative with the Private Wealth Management Company. This solution is not a viable one for the first category of investors noted above, namely the multinational groups.

Before considering the various options, the let's go back to the tax consequences of the transformation into a SOPARFI structure are reviewed below:

Tax consequences of the transformation into a SOPARFI

As from the 1st of January 2011, Holding 1929 structures will automatically become fully taxable entities. They will be subject to IRC and ICC at a combined rate of +/-29%. They will also be liable for net wealth tax computed on the "corrected net asset value" at a rate of 0,5%. This latter could be particularly relevant for Holding 1929 which have generally accumulated a lot of equity during their existence.

At the time of this change of tax regime, Holding 1929 are also entitled to a step up on certain assets providing that it is economically justified. This tax step up is likely to reduce the potential capital gain to be derived from a later disposal of the said asset. Among the other advantages is the access to the Double Tax Treaty network concluded by Luxembourg and the European Directives.

The benefit of the Double Tax Treaty also means a potential extension of the obligations in the matter of the exchange of information.

Potential solutions

Two alternatives have been identified with regard to the purposes of the Holding 1929 and which could be interesting substitutes:

A Securitisation vehicle

The Specialised Investment Fund.

(continued...)

(Luxembourg Holding 1929, continued...)*The Securitisation vehicle*

In 2004, Luxembourg introduced a law with regard to a Securitisation Regime. A securitisation transaction is an operation by virtue of which an entity acquires or assumes risks as diversified as varied by issuing securities whose return will depend on such risks.

For groups of companies, an alternative could therefore be to transform a Holding 1929 into a securitisation company. This latter would assume the risks deriving from intra group loans and/or from the treasury management of the group. The relatively broad scope of the law would also allow the transformed Holding 1929 to acquire and centralise a portfolio of bad or less liquid receivables. The Holding 1929 could thus use part of its cash to replace some commercial assets less liquid in subsidiaries by treasury that it holds. The securitisation company could consequently not only provide intra group financing and petty cash management but also serve as a centralisation point for receivables.

Properly structured, the securitisation vehicle could assume these different responsibilities in a scheme of tax deferral or even tax exemption. The securitisation company is a fully taxable company which has the possibility to deduct from its tax base any commitment taken or assumed towards third parties or its own investors. It is not subject to net wealth tax. In addition, there is also an option to create compartments which are completely independent and segregated from one another.

The Specialised Investment fund

In 2007, the parliament introduced a law with regard to the Specialised Investment Fund. Some groups of companies might also consider this vehicle as an alternative to the Holding 1929. Similar to the Holding 1929, the SIF is subject to a subscription tax but based on its net asset value and at a rate of 0,01%. The distribution of the SIF is not subject to withholding tax.

This type of entity is perfectly adapted to structure the management of a portfolio or intra group loans. One must pay attention to comply with the risk diversification rule which requires for a SIF not to have an asset exceeding 30% of its total balance sheet.

It is also possible to create compartments similar to with the securitisation vehicle. The share capital of the SIF must be a minimum of 1.250.000 EUR and the structure must be approved by the CSSF. For Holding 1929 which generally have a large equity, this threshold should be reached easily.

Quick News

>> **United Arab Emirates** ([contact](#))

Signing of Double Tax Treaty

U.A.E Ministry of Finance has announced its signing of a DTA with Venezuela in early June, this is significant as is the first tax treaty UAE has with any Latin American country and also signals negotiations with other countries in the region. The Netherlands treaty with the UAE (signed in May) is now also in force.

Dominic Treays

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(Luxembourg Holding 1929, continued...)Conclusion

There are only few months remaining before that the Holding 1929 regime disappears. Accordingly, this inevitable change in the tax regime does require some analysis with regard to the best strategy to adopt. Adopting a *status quo* stance may be an option in certain circumstances while in other cases, the consequences of not undertaking any action may be considerable.

While the Private Wealth Management company could be a logical choice for individuals, this regime is however not available to group of companies.

If no action is undertaken with regard to the equity structure in these Holding 1929, the upcoming date of 1st of January could trigger a significant net wealth tax charge for 2011.

Securitisation vehicles or a SIF may be an appropriate answer to the needs of given groups. It should be noted that there are however other solutions which have not been covered in this article.

	Holding 1929	Securitisation	SIF
Tax regime	Subscription tax @0,2%	Corporate income tax @ 28,59% but any commitment is tax deductible Tax Base = 0	Subscription tax @0,01%
Corporate object	Management of shareholdings and portfolio of securities Intra group loans No real estate	Loans Receivables Risk linked to portfolio management Holding of real estate	Management of financial assets and of real estate
Diversification rule	NA	NA	An asset cannot exceed 30% of the total assets
Withholding tax on distribution	NA	NA	NA
Auditor requirement	Not mandatory	Mandatory	Mandatory
CSSF supervisory	NO	NO if less than 4 issues per year	Yes
Min share capital	12.500 € / 31.000 €	12.500 € / 31.000 €	1.250.000 €



USA – Feature Article

Brent Bergan, [contact](#) (click)

New U.S. “Exit Tax” takes Shape

Ensnare many unsuspecting Foreign Nationals

Many foreign nationals returning permanently to their home countries after long stays in the U.S. were no doubt made aware of the new U.S. tax law possibly impacting their expatriation. However, the provisions which became law in 2008, replacing similar provisions and subsequent IRS guidance, have proven to be misunderstood or misjudged by taxpayers seeking a clean exit from the U.S. Tax Regime. This article serves to identify and clarify some of the more important provisions that extend from this legislation.

A Brief Intro to New Section 877A

As part of the Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008, Congress once again amended the expatriation provisions by enacting new §877A, applicable to individuals expatriating on or after June 17, 2008. Old Section 877 does not apply to expatriations on or after this date. New Section 877A stipulates that all property will be deemed sold at its fair market value (FMV) on the day before the expatriation/residency termination date for certain U.S. citizens who relinquish citizenship and “green card” holders who relinquish that status and leave the U.S. after having been a green card holder for at least 8 of the last 15 years. In addition, the expatriate must meet one of the following legislative requirements: (1) average annual U.S. income tax liability of at least \$145,000 (as of 2009, adjusted for inflation in future years) over the last 5 years; (2) net worth of at least \$2 million; or (3) fail to certify on IRS Form 8854 that all U.S. tax obligations for the last 5 years have been resolved. This last requirement seems to trap many unwary foreign nationals, who erroneously believe they are not required to furnish any documentation upon permanently exiting the U.S., regardless of income or net worth levels.

The new provisions impose an “exit tax” on any net gain on deemed sales to the extent the gain exceeds \$600,000 (increased by cost of living adjustments for post-2008 years). §877A excludes from this tax: a) certain deferred compensation items; b) specified tax deferred accounts; and c) nongrantor trust interests. A 30% withholding tax also applies to eligible deferred compensation items and nongrantor trust distributions. For ineligible deferred compensation items and specified tax deferred accounts, the statute treats the expatriate as receiving the present value of said items or distributions on the day prior to the expatriation date. In addition, §2801 requires the imposition of a transfer tax on specific transfers to U.S. persons from covered expatriates or their estates.

(New U.S. “Exit Tax” takes Shape, continued...)Subsequent IRS Guidance

IRS guidance implementing the statutory provisions produced Notice 2009-85 on October 15, 2009, providing interim guidelines pending the issuance of Final Treasury Regulations. The “Notice” provides detailed guidance on the income tax issues while guidance as to transfer tax issues was postponed. Here are some of the highlights covered by this most recent IRS Notice:

“Covered Expatriates”

The new expatriation provisions apply only to “covered expatriates.” As stated above, “covered expatriates” are those who exceed the 5-year annual net income tax thresholds or net worth threshold or who haven’t certified compliance with U.S. federal income tax obligations for the 5 years preceding the expatriation year. The Notice states that taxpayers who are not covered expatriates under the net income/net worth tests will still be regarded covered expatriates until they meet the federal tax compliance certification requirements on a timely filed Form 8854 for their expatriation year.

“Deemed-Sale” Concept

Covered expatriates are treated as having sold all of their property for FMV on the day before the expatriation date. The statute never did define which property is considered “property of the expatriate”, but The Notice does address this issue. The Notice clarifies that “any interest in property” of the covered expatriate is subject to the deemed-sale treatment. The Notice uses the federal estate tax rules to define an “interest in property” as property which would be part of the expatriate's taxable gross estate. The gross estate cannot be offset by federal estate tax credits. The Notice also utilizes estate tax principles in calculating “fair market valuation.”

Allocating the \$600k Exclusion

§877A excludes from income arising on the deemed sale up to \$600,000 (adjusted for inflation). The Statute does not stipulate how to allocate this exclusion amongst deemed sale gains. However, The Notice does allocate the \$600k exclusion amongst the gain assets, in proportion of each gain asset to total asset gains. This is important for purposes of identifying the character of each gain. As such, an expatriate will no longer be able to allocate the exclusion solely amongst ordinary income assets to maximize lower capital gain tax rates.

Tax Deferment

§877A provides for a covered expatriate to defer U.S. taxes on the deemed sale until the property is sold. The Notice provides rules on how an expatriate can obtain this tax deferral. The expatriate will need to elect to defer tax by filing a deferral request with the IRS by the due date of the return (plus extensions) for the expatriation year. This application must include the following: (1) two signed copies of the tax deferral agreement; (2) a description of the elected assets; (3) a calculation of the tax relating to the assets; (4) documentation regarding the offered security; (5) a copy of the agreement with a U.S. agent; and (6) a copy of the tax return for the expatriation year. Note that the election is made on an asset-by-asset basis. The taxpayer also attaches a copy of the request with the tax return for the expatriation year. If the IRS accepts the security, it will sign the agreement. Finally, the expatriate can pay & settle the deferred tax plus interest at any time.

Deferred Compensation

§877A defines the taxation of deferred compensation items under the mark-to-market (MTM) rules. These provisions also impose a 30% withholding tax on distributions from “eligible deferred compensation items”. If the payor does not withhold this 30% tax, the expatriate must report the distributions on a U.S. tax return and pay the tax. The Notice provides additional guidance including identifying the specific deferred compensation items. These rules further state that they will not apply to any deferred compensation item to the extent attributable to non-U.S. services while the covered expatriate was no longer a U.S. citizen or resident. The Notice also provides that taxpayers may use any reasonable method for making this determination, consistent with existing guidance, based on a reasonable, good faith approach.

(New U.S. “Exit Tax” takes Shape, continued...)Tax Return Compliance

The Notice generally requires the covered expatriate to file a dual-status tax return for the expatriation year. This means the expatriate files a Form 1040NR (for the period the taxpayer is taxed as a nonresident alien) with a Form 1040 attached as a schedule (for the period the taxpayer was taxed as a U.S. resident). In future years, the Notice requires the covered expatriate to file a Form 1040NR. Under these provisions, if the covered expatriate has full withholding at source in a taxable year with no effectively connected U.S. income, then no Form 1040NR is required.

Form 8854

A crucial element of the §877A provisions is that a covered expatriate MUST file Form 8854 with Form 1040 or 1040NR for their expatriation year. It will be considered timely if filed by the due date (plus extensions) with the applicable Form 1040 or 1040NR. Absent a Form 8854 certification, the taxpayer will be treated as a covered expatriate. Form 8854 covers many other areas including: making a treaty benefits election for nongrantor trusts, electing not to apply the in-bound basis step-up rule, and electing to defer tax on deemed sales. Some of these items require subsequent Form 8854 filings in future years.

Form W-8CE

A covered expatriate with either a deferred compensation item, a specified tax deferred account, or a nongrantor trust interest is required by the Notice to deliver a Form W-8CE to the applicable payor. The Form must be delivered by the earlier of: (1) the day before the first distribution on or after the expatriation date; or (2) 30 days after the expatriation date. Certain specified tax deferred accounts are not subject to the MTM rules. The Notice requires the custodian of the specified tax deferred account to advise the expatriate of the amount of the expatriate's entire interest in the account within 60 days of receiving Form W-8CE from the expatriate.

The §877A provisions are extensive and have far-reaching effects, not only for expatriating U.S. Citizens, but also for certain departing long-term U.S. residents. With careful planning, the tax costs associated with expatriation may even result in lower overall taxes than under earlier provisions. However, all expatriating taxpayers should be wary of the potential pitfalls of noncompliance with these new provisions.

Quick News

>>Denmark ([contact](#))

Proposed changes to the Inbound tax Regime (working from 2011)

The Danish Inbound tax regime has been suggested to undergo changes that will result in a possibility to undergo a five year period of 26 % taxation in stead of previously 25 % in a 3-year period or 33 % in a 5-year period. There is naturally a list of demands, which the individual must qualify for in order to be accepted under the regime. One of the demands is currently that the individual cannot have been taxable to Denmark within a 3-year period prior to entering the regime. If the proposed changes carries this requirement is lifted to a 10-year period narrowing the field of potential candidates and creates and even greater necessity to investigate the potential candidates Danish tax “history” before entering the regime.

Jan Dalgaard

A word from the editors...

Dear Reader

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More than 80 countries...

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