FYI

International Taxation

NEWS

SPECIAL EDITION

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Working Together to Optimise International Tax Compliance

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Editorial

Dear Reader,

I'm delighted the ITPG has produced this second special edition of the FYI – International Taxation Newsletter. This edition will provide the reader with key information on International Tax Compliance Regulations in different jurisdictions, an issue which is more important now than ever before as tax authorities around the world exchange information in an attempt to minimise any potential tax leakage.

The International Monetary Fund (IMF) has stated that billions of dollars of potential tax revenue remain uncollected each year in many countries around the world due to poor tax system design or weaknesses in tax administration.

A significant amount of uncollected tax revenue arises from practices that are facilitated by:

1. Lack of transparency of some countries' banking and regulatory systems that enable tax evasion through offshore concealment of income and assets.

2. Weaknesses in the international tax system that enables profit shifting between countries and other tax irregularities which is currently the subject of the OECD project on "base erosion and profit shifting" which is also known as BEPS.

Over the last few years the OECD has been working very closely with advanced and developing countries and their tax authorities to develop new rules and processes to strengthen the international tax system.

The International Tax Compliance Regulations govern the responsibilities of financial institutions to comply with FATCA and Common Reporting Standards (CRS). The policy objective, of which this instrument is part, is to increase co-operation between tax administrations in the fight against tax fraud and evasion.

This special edition covers foreign tax and financial reporting requirements in various jurisdictions and provides an insight into the tax treatment of various types of businesses as well as trusts and foundations. This edition also covers tax compliance requirements for estate and wealth planning matters as well as sale of real estate.

Tax authorities have tightened up their rules and will challenge those it perceives to have underpaid tax and undertake tax investigations, if deemed necessary.

As new technology has resulted in changes in business models, lifestyles, and working practices, it is important that the tax system also adapts to

Alan Rajah

these changes. Most governments are committed to ensuring that businesses and individuals pay the taxes that they owe and that the tax authorities have the tools needed to collect the revenues that fund the country's vital public services.

Most governments also strive to stop those who try to hide from their obligations.

There remains a minority who enter into avoidance schemes or aggressive tax planning arrangements which go far beyond what most governments intended.

Tax departments around the world intend to keep their tax administration framework under review, in consultation with interested external stakeholders, to ensure that it continues to strike the right balance between robustly challenging tax avoidance, evasion, and other forms of deliberate non-compliance, and treating all taxpayers fairly.

It is important for taxpayers to seek professional advice when embarking on cross-border work and I am pleased that members of GGI's International Tax Practice Group (ITPG) can provide the required advice. I also am pleased to note that members of GGI's ITPG have undertaken collaboration with other GGI members to provide an invaluable service to their clients.

We are currently living in a complex and challenging world and I am extremely grateful to all GGI ITPG members, who are international tax experts in their respective countries, who have contributed towards this special edition. I would also like to thank Kevin E. Thorn for initiating this topic as well as sponsoring this project.

I hope that you will be able to obtain an insight into how each country manages their tax compliance requirements and would encourage you to contact the respective authors if you have any specific question in any particular jurisdiction.

Should you have any questions on this subject, I would be delighted to answer them and can be contacted at: alan@lawrencegrant.co.uk.

Alan Rajah
Global Vice Chairperson of the International Taxation Practice Group (ITPG) and Responsible Editor in Charge for this publication

Contents

Introduction

By Kevin E. Thorn

In professional organisations such as GGI, there is a good amount of conversation focused on lofty topics such as "international intangible assets", "foreign multinational enterprises", and "the estate planning parameters of individuals with dual citizenship". Within this mix of complicated jargon is the phrase "international tax compliance". What exactly does this mean? Breaking it down, "international tax" is straightforward to understand; it refers to taxation policies worldwide.

However, the meaning of "compliance" is a little more difficult to describe. In the Merriam Webster dictionary, compliance is defined as "conformity in fulfilling official requirements". Combined then, "international tax compliance" is to be understood as the conformity of official tax requirements for those with tax responsibilities in multiple nations for businesses, foundations, and trusts.

International tax compliance is of the utmost importance to those who do business or who hold assets in more than one country, a sector of the worldwide population that is rapidly growing.

International tax compliance is important because our world of separate nations is becoming more intertwined with cross-border interactions. As companies, individuals, and other entities begin to transcend borders, they become beholden to the tax liabilities of several different territories. Therefore, in order to maintain international tax compliance, these businesses need guidance from experienced attorneys, accountants, and advisors who have expert knowledge in the tax codes of each region.

As firms that each practice in a specific country, or a few specific countries, it becomes impossible to become completely versed in the complicated taxation laws, codes, and amendments that every single country enforces, especially as they change rapidly and frequently. As member firms of GGI, we all have a unique advantage when it comes to ensuring that our clients are completely compliant with their international tax responsibilities. We have member firms and connections to use as resources and referrals.

For example, Alan Rajah, Partner of Lawrence Grant Charted Accountants, is a wonderful contact for understanding the UK's International Tax Compliance (Amendment) Regulations 2019. Oliver Biernat, Managing Partner of Benefitax, is a knowledgeable referral for those who have clients interested in starting business in Germany. And for those with clients with questions about the United States' international tax compliance legislation, Kevin E. Thorn, Managing Partner of Thorn Law Group can provide guidance and legal advice to ensure international tax compliance.

Within GGI's International Taxation Practice Group, we all have a common goal regarding our service to our clients: International Tax Compliance. This publication is to serve as a guide and directory for GGI members who must confront international tax compliance in their daily work. Thorn Law Group is proud to sponsor this publication and bring into fruition a collaborative work that will be relevant and topical for years to come. As champions of international tax compliance for both our domestic and international clients, we hope that our passion infuses this year's **ITPG: Special Topics Publication.**

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Australia

By Ross D. R. Forrester

Overview

The Australian government encourages businesses to operate in Australia and for Australian businesses to expand offshore. Honest resident taxpayers enjoy generous concessions on red tape and taxes. People who attempt to evade their compliance face significant penalties.

As a small country, many international companies approach Australia with a branch mentality. There is a significant focus on ensuring that Australian-sourced income is taxed in Australia and Australian residents pay tax on their worldwide income.

Our Commissioner of Taxation is currently the Sponsoring Commissioner of the Joint International Taskforce on Shared Information and Collaboration Network (JITSIC). The Australian Taxation Office is also a member of The Joint Chiefs of Global Tax Enforcement (J5) with includes the US, UK, Canada, and the Netherlands.

Our tax regulator is subject to strict accountability rules and is generally efficient and transparent. We have an independent Ombudsman to review inappropriate conduct by the ATO.

Types of Businesses

1. Companies

Small Australian companies (business turnover < AUD 50 million) incur tax at 27.5% of taxable income. Larger companies and investment entities incur tax at 30%. The small company tax rate is anticipated to fall to 25% by 2022.

2. Trusts

Australian trusts do not incur tax. Trusts are commonly used and convey advantages. The persons who receive allocations of trust income and capital suffer the tax burden. If a trust does not allocate income to a person, the trust incurs tax at 47%.

3. Partnerships

Partnerships are not taxed. The partnership income is taxed in the hands of the recipient.

4. Personal tax rates

There is a marginal tax rate Australian for residents. The rates are:

a. The first AUD 18,200 of taxable income is free of tax.
b. The next portion of income up to AUD 37,000 is taxed at 21%
c. The next portion of income up to AUD 90,000 is taxed at 34.5%
d. The next portion of income up to AUD 180,000 is taxed at 39%
e. The income beyond AUD 180,000 is taxed at 47%.

...next page

For people earning less than AUD 126,000 there are also tax rebates on the above amounts. The above tax rates include a contribution to the national health scheme. Non-residents do not pay the health scheme charge (2%). The first AUD 87,000 of income enjoyed by a non-resident incurs tax at 32.5%.

Types of Taxes

1. Goods and services tax

GST is levied at 10% for taxable supplies that are “necessarily connected to Australia”. There are GST exemptions for fresh food, exports, medical supplies, financial supplies (like interest), private residential rent, and established housing. GST applies to new residential housing and commercial property.

2. Capital gains tax

Australia applies a CGT regime on the sale of Taxable Australian Property (TAP) enjoyed by a non-resident. Australian residents pay tax on worldwide capital gains. A grandfathering clause applies to assets purchased before 1985. TAP includes Australian real estate, mining rights and assets used through a permanent establishment. Shares held in a company listed on the Australian Stock Exchange are not relevant for TAP.

An Australian natural resident enjoys a 50% GST discount on assets held for more than 12 months. Australian natural residents do not suffer capital gains tax on the family home. Where a non-resident sells Australian real estate for more than AUD 750,000, a 12.5% withholding tax is incurred on the sale. This tax acts as a CGT credit when in their income tax return.

3. Dividend imputation

Australia has an imputation system acknowledging the underlying company tax paid.

4. Withholding tax

A final withholding tax applies to interest (~10%) and royalty payments (~15%) remitted offshore. There is no withholding tax on franked dividends. Unfranked dividends suffer a withholding tax.

5. Thin capitalisation

Australia’s thin capitalisation rules do not apply for interest deductions of up to AUD 2 million.

6. Transfer pricing

Australian businesses are exempt from keeping transfer pricing documentation if turnover is under AUD 50 million and:

a. The business has not made sustained losses;
b. The business has not undergone a restructure;
c. The related party dealings for royalties, license fees and R&D do not exceed AUD 500,000;
d. The related party dealings are less than 15% of turnover; and
e. The business has self-assessed it has complied.

There are different rules for a distributor.

7. Fringe benefits tax

A comprehensive system applies to the payment of non-cash benefits to employees (47%).

8. Employment taxes

Every employer must contribute 9.5% of a worker’s wage to a private retirement scheme. Payroll tax applies depending on each state. The payroll tax rate ranges from 4.75% to 5.5% of wages paid.

There is an exemption for a small employer (with can be up to AUD 1.5 million in wages).

9. Wages costs

Every employer must carry workers’ compensation insurance for workers.

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Westcourt has one purpose: to make family-owned businesses great. They have deep technical expertise helping multi-generational global families create business wealth, grow locally and offshore, and transfer their business wealth successfully from one generation to the next.

Ross D. R. Forrester

Ross D. R. Forrester is the founder of Westcourt and regional vice chairperson, Asia-Pacific, of the GGI ITPG. He is also the WA Chair for The Tax Institute’s Technical Committee and sits on the National SME Committee. Ross is a frequent keynote speaker on taxation and has appeared across television, print media, and radio on taxation.

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The cost will vary. Every worker is entitled to 20 days of annual leave and 10 days of public holidays.

After 15 years of service a worker is due 90 days of long-service leave. Redundancy pay ranges from 4 weeks to 12 weeks depending on the length of employment. Smaller employers are exempt. Significant penalties apply for breach of safety regulations including criminal penalties.

10. Audit

Australian companies are not required to be audited unless they satisfy two of the three tests:

a. Turnover is more than AUD 50m
b. They employ more than 100 staff
c. The gross assets are more than AUD 25m.

Foreign companies can apply for an audit exemption shortly after they are incorporated.

11. Death, gift, and wealth taxes

Australia has no death, gift, or wealth taxes (other than a state-based land tax).

12. Retirement

An Australian couple can own AUD 3.2 million in a retirement (superannuation) fund and pay no tax at either the fund level or at an individual level.

13. Financial reporting

Australian companies are not required to disclose financial information unless they are required to be audited (see before). Trusts are not required to publicly disclose their financial information.

14. Property ownership

Different states have different rates of stamp duty applicable. Where a non-resident acquires property the **additional** stamp duty rate can be significant (7%). Non-residents can purchase new homes and vacant land with a new home build in four years. Land tax applies on property ownership. The family home is exempt from land tax.

GGI Collaboration

Western Australia is a world leader in mining and agriculture. The bulk of families we have helped internationally are engaged with mining services, food, or related technology. We help many global families invest in, or move to, Australia on a temporary or permanent basis. Many of our mining services families are focused on leveraging technology globally or exporting food.

Future developments

Taxation is subject to constant flux and change. And our government does not anticipate any major tax reforms in the near future.

Brazil

By Nidi Andreia da Cruz and Doriluzi da S. Borges

Quick Overview of the International Tax Compliance Regulations in Brazil

According to the World Bank's Doing Business report, Brazil has one of the most complex tax systems in the world.

Taxes are charged on three levels: federal, state and municipal. The federal constitution and laws set forth general rules for all taxes; however, each state and municipality have powers to enact their own laws and regulations for the collection of state and municipal taxes, respectively. In addition, there are almost daily changes in legislation in all three of these spheres, adding to the complexity and difficulty for the average business owner in keeping track of all the declarations and filings that need to be undertaken. Non-compliance of the ancillary obligations can lead to heavy fines, which increases the overall risk in running a business in Brazil. Finally, there is almost no uniformity between the state and municipal filing systems, meaning that the general complexity increases even more as a business expands into other regions/cities.

Foreign Tax and Financial Reporting Requirements for Brazil

1. Main types of business

Currently in Brazil there are two types of legal structures that are commonly used by foreign investors:

...next page

a. Sociedade Limitada (Ltda)

Similar to a limited liability company, its capital is divided into units of ownership (quotas) representing the interest of each member who owns the company's capital.

b. Sociedade por Ações – SA

Similar to a corporation, its share capital is divided into shares and it may be a privately held or publicly traded company. Publicly traded companies are subject to regulatory rules set by the Brazilian Securities Commission (CVM). Both entities can use real profit or presumed profit as a tax regime and can opt for one or the other at the beginning of each fiscal year.

The type of tax regime will define which types of ancillary obligations will be sent to federal, state, and municipal agencies, and which tax rates will be collected and credited accordingly.

2. Taxes for each entity

The main federal taxes collected from commercial entities are:

a. Corporate Income Tax (IRPJ)

Taxed at 15% of taxable income at the end of each fiscal year. A surcharge of 10% is charged on taxable income in excess of BRL 240,000 per year.

b. Social Contribution on Net Income (CSLL) is 9% and calculated on the net income before the provision for IRPJ.

c. Contribution to Social Security Financing (COFINS) and Social Integration Programme (PIS)

The tax rate charged is respectively 7.6% to 1.65% when the tax regime is real profit. For the presumed profit, the rate paid will be 3% (COFINS) and 0.65% (PIS). For the real profit system there is a credit/debit system, similar to VAT in other countries.

d. Industrial Goods Tax (IPI)

IPI rates vary by product, ranging from 0% to 330%. Currently, the highest rates are reserved for non-essentials such as cigarettes, alcohol, cosmetics, and similar products.

e. Import Tax (II)

Import duty rates range from 0% to 35%, depending on the nature of the products and the MERCOSUR Common Nomenclature (NCM).

f. Financial Transactions Tax (IOF)

The IOF rate for domestic credit transactions performed by legal entities is 0.0041% per day. In addition, individuals or corporations impose a surcharge of 0.38% on all credit operations performed.

Currently, some currency inflows and outflows are subject to the 0% IOF rate.

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PRA Global is an international business development firm that expands clients into new markets through its unique capabilities and assets. Their business model allows clients to mitigate risk and minimise investment, all while achieving global objectives. PRA Global is headquartered in the US with branches in India, China, Singapore, Poland, the United Arab Emirates, South Korea, and Brazil.

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g. Economic Intervention Contribution (CIDE)

Focuses on remittances abroad for payment of royalties, technical services, and administrative assistance and support. This tax is charged at a rate of 10% on the amounts remitted abroad and is paid by the Brazilian company.

CIDE tax is not charged on software license payments or trade/distribution rights.

The main state tax collected from commercial entities is **tax on circulation of goods and services (ICMS):**

Tax on goods and transactions within the state are taxed at a rate of 12% or 18%. Interstate transactions are subject to a 4%, 7%, or 12% rate, depending on the location of the buyer or recipient. ICMS is like VAT in other countries.

The main municipal tax collected from commercial entities is **service tax (ISS):** Taxes on services rendered vary from 2% to a maximum rate of 5%, depending on municipality and type of service.

3. Trusts, foundations and tax rates for each structure

Trusts are not recognised in Brazil, therefore, due to the legislative absence, it is not possible to establish a trust in Brazil. Foundations are non-profit legal entities intended to provide services to the community. Independent foundations that work with education, health, or social assistance are exempt from the payment of income tax and social contribution, provided that they meet the requirements established by law. Immune and exempt entities are subject to the payment of PIS on payroll at the rate of 1%.

4. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

Investment by non-resident investors in Brazil in the financial and capital markets in the country, and their financial transfers abroad, must comply with the provisions of Resolution 4373/2014 of the National Monetary Council. Taxes that may be levied on such transactions are IR and IOF.

Responsibility for complying with tax obligations lies with both the taxpayer and the paying source, who must be notified of the non-resident status of the income recipient.

5. Tax compliance requirements for estate and wealth planning matters

In Brazil, holding companies are used for estate and wealth planning, and are legal entities constituted to receive, generally, the entire capital of an individual or family.

A holding company should be constituted as one of the types already mentioned above, being commonly incorporated either as a limited company or as a corporation.

...next page

FYI

International Taxation

NEWS

6. Tax compliance requirements on sale of real estate

- **Real Estate Transfer Tax (ITBI):** levied upon transfer of title deeds and is paid by the acquirer. The tax rate ranges from 2% to 6% and the tax base is the sale price.
- **Urban Property Tax (IPTU):** property tax payable each year based on the fair market value of properties in urban areas. The rate varies from municipality to municipality and according to the location of the property. The maximum rate is 5% and in some cases tax exemption is possible.

Collaboration with Other GGI Members

PRA's business proposition is the growth and expansion of our clients into new, vibrant markets. These internationalisation services exclude public accounting and legal services, and, as a consequence, we rely on the assistance of GGI members to deliver these services to our clients.

Future Developments, Outlook, and Summary

The excessive number of taxes, fees, and contributions currently charged in Brazil complicates competitiveness in the domestic and foreign markets.

That said, the current government is working on a tax reform, which aims to replace five taxes (PIS, Cofins, IPI, ICMS and ISS) with the Tax on Goods and Services (IBS).

This should reduce complexity and improve the overall attractiveness of Brazil to foreign investors.

Cambodia

By Larry Shuen Fai Ng

Compared to its neighbouring countries, Cambodia is relatively new in opening itself to the global market. Therefore, there have been very limited regulations and policies addressing matters related to international tax compliance. However, this has not caused limitations in the investment activities of foreign investors. Except for the investment in immovable property such as land holding, in general, the country has no restrictions to the foreign participation and activities in investments.

This enables the establishment of 100% wholly foreign-owned limited companies, a form preferred by a large proportion of investors.

Forms of Investment in Cambodia

Wholly foreign-owned limited companies fall under the category of limited liability company, which is one of the main forms of entities available in Cambodia. Limited liability company is then classified into single member private limited company, private limited company, and public limited company. The other main forms of business include branch, and representative office, which is well known as a non-taxable legal entity.

Accounting and Tax Compliance

All entities established in Cambodia have the obligation to follow the Cambodia-International Financial Reporting Standards ("CIFRS") or the CIFRS for SMEs. They are wholly based on the International Financial Reporting Standards ("IFRS") and International Accounting Standards ("IAS") which, therefore, ease the understanding and application process of international citizens and foreign entities in Cambodia.

In respect of the tax system, various relevant policies and regulations have been structured to target tax

collection in different magnitudes. It is worth noting that the annual income tax declaration deadline is by the end of March of the following year. In some countries, such tax is referred to as the Corporate Income Tax ("CIT") while it is called Tax on Income ("TOI") in Cambodia. There are no individual income tax filings nor any tax obligations on trusts, foundations, and capital gains under the current taxation system.

TOI is imposed at the standard rate of 20%, except for oil and gas, and certain mineral exploitation activities, which are taxed at 30% on the total annual world-wide income of taxpayers that are considered as tax residents of Cambodia. The insurance sector is taxed at 5% on gross premium income. Qualified Investment Projects are exempted from TOI during the tax holiday period. The TOI rate for non-resident taxpayers is 20% on income derived in the Cambodia territory.

Cambodia has also introduced Minimum Tax ("MT"), which is taxed at 1% on total turnover, aside from TOI. Companies are subject to either the MT or TOI, whichever is higher. Certain companies which fulfil special conditions set by the tax department may be exempted from MT.

The most recent development on trusts is the promulgation of the new "Law on Trust" in early 2019. The law provides an introduction on trusts and its four categories, namely the commercial, public, social and private trust. However, tax implications on corporate trustees and beneficiaries have not yet been brought up at this point, not to mention the duties on individuals currently not liable to file income tax.

Although individuals are free from the annual TOI filing obligation, payrolls of residents and non-residents are subject to Tax on Salary ("TOS") at a rate starting from 0% up to 20%. Certain incomes will also be taxed and withheld by a registered taxpayer/entity then remitted to the tax department as Withholding Tax

...next page

("WHT"). Such incomes include rental income and service-related income like personal service.

Speaking of WHT, services rendered within the territory of Cambodia are subject to WHT at a standard rate of 15%, 14%, or 10%. Any service including, but is not limited to, managerial and technical service, interests, any rental of property, royalties, and others of similar nature provided by non-residents (both legal persons and physical persons), shall have 14% WHT of the total amount payable withheld on behalf of the income recipient before payment is made to the service provider.

The repatriation of profit to non-residents, for both legal and physical persons, are subject to WHT of 14% while such repatriation to residents is tax free.

Cross Border Taxation

With the ratification of the Double Tax Agreement ("DTA"), the standard rate of 14% WHT levied on non-residents (both legal and physical persons) shall be lowered to 10% in most cases. To be qualified for such tax relief, the aforementioned non-residents must be determined as a tax resident of the other contracting party of the agreement and are required to have sufficient documents of proof such as passport, certificate of residence, and so on. Depending on the relevant laws and regulations of the other jurisdiction, the amount of tax withheld and paid to the Tax Authority of Cambodia may be claimed as tax credits for the computation of income tax.

Up to the first quarter of 2020, eight countries and regions have entered and signed a DTA with Cambodia, seven of which have come into effect: the Republic of Singapore, the Kingdom of Thailand, Brunei Darussalam, the People's Republic of China, the Socialist Republic of Vietnam, the Republic of Indonesia, and the Hong Kong Special Administrative Region.

Apart from the tax relief for the residents of the treaty partners, the ratification of DTA helps in eliminating double taxation on the same income, limiting income shifting, and improving the transparency of cross-border transactions. This implies that an income recipient must be determined as the tax resident of one of the jurisdictions, thus the income derived must be declared and subject to tax under the relevant tax authority(s).

Anti-Money Laundering

The openness to international trading signifies that there will inevitably be flows of foreign currencies in and out of the territory. Although there is no strict control on the flow of foreign exchange transactions and capital movements, cross-border transactions of large figures or one considered abnormal or suspicious, are still subject to due diligence by the reporting entities in accordance with Cambodia's anti-money-laundering regulations. Such regulations also extend to the real estate industry with both the developers and the investors under the supervision of the competent authority.

Future Outlook

Despite being new to global integration and the rapid inflow of international citizens and investments, Cambodia is constantly putting effort into drafting new regulations and setting up systems to ease compliance in many areas, especially taxation. The Cambodia Authority announces that, in the near future, an online tax filing system will be released which would replace the current manual tax filing system to improve transparency and compliance procedures of resident and non-resident taxpayers. More tax and relevant regulations, as well as agreements between more countries and regions, are expected to be released to cope with the drastic change of Cambodia's economic environment.

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ALLNISON Auditing and Consulting Co., Ltd provides a full-range of sophisticated and personalised services in accounting, audit, taxation, transactions, and advisory. With a team of professionals equipped with broad industry-specific expertise, unrivalled knowledge, and business insights ready to assist clients meeting their business needs.

Mr Larry Shuen Fai Ng, Managing Director of Allnison Auditing and Consulting, has over 20 years of expertise in professional accounting, taxation, M&A, and advisory sectors. Acquired professional background from Canada, Hong Kong, China, and Cambodia, he is extensively experienced in counselling individual clients and corporates from national to international level.

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Canada

By Kanish A. Thevarasa and Joe Moëd

Introduction

Canada's tax system imposes reporting and compliance obligations on any entity or individual owning assets or operating businesses within Canada (whether or not they are Canadian-resident), as well as on Canadian-resident taxpayers with interests outside Canada.

This article touches on some of the main tax implications of non-residents doing business or owning assets in Canada, and Canadian residents owning foreign assets.

Types of Business and Taxes

Non-residents can do business in Canada mainly through the following structures:

1. Canadian-resident corporation

Corporations, the most common form of legal entity, are distinct taxable entities, i.e., not fiscally transparent. These can be federally or provincially incorporated. Federal corporations and most provinces require 25% of directors to be Canadian resident, but five provinces have no such requirements.

All Canadian corporations must file an income tax return. Combined corporate tax rates range from 26.5% to 31%, based on the province where the company earns income (not where it is incorporated). There are no restrictions on foreign ownership but withholding tax can apply on dividends leaving Canada, ranging from 5% to 25%, depending on bilateral tax treaties.

2. Branch (a permanent establishment of a foreign entity in Canada)

In general, a branch is taxed the same way as a corporation; it must file an income tax return reporting Canadian net income and pay tax at the same rates as above.

In addition, Canada applies a branch tax on net profits extracted from the branch ranging from 5% to 25%, depending on bilateral tax treaties, to mirror withholding which would apply to a dividend from a Canadian corporation. While a corporation is administratively simpler and has limited liability, if significant losses are expected, a branch may be attractive by allowing direct deduction of losses in the home jurisdiction.

3. Unlimited Liability Corporations (ULCs)

ULCs are a rarer form of corporation, existing in only three provinces. An ULC is taxed the same as other corporations,

...next page

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Kanish & Partners LLP provides audit, accounting, tax, and business advisory services. Their focus is on advising clients for success. They bring solutions to owner/managers, whether they're seeking growth opportunities, or looking for increased efficiency and long-term sustainability.

Kanish A. Thevarasa has been providing high-quality consulting and tax services to small and medium-sized, owner-operated businesses since co-founding the firm in 2000. He is actively involved in several non-profits and cultural groups and sits on the board of The Providence Healthcare Foundation.

Joe Moëd trained as a CA in the UK and qualified as a Canadian CPA upon moving to Toronto in 2014. He provides assurance and taxation services across a range of industries, with a focus on inbound business into Canada. When not at work he enjoys playing guitar and following every sport under the sun.

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and its shareholders are fully liable for the ULC's obligations. Foreign jurisdictions with the concept of a flow-through entity can treat ULCs as flow-through. ULCs can therefore be an attractive option for non-resident owners from such jurisdictions.

4. Other taxes

Most entities doing business and making taxable sales in Canada, regardless of the type of structure, will also be subject to sales taxes. These exist both federally and provincially, and most are VAT-style taxes.

Entities with employees rendering services in Canada will be subject to payroll taxes. Compliance requirements include calculating withholdings from pay, remitting these to the Canada Revenue Agency (CRA), and filing annual payroll returns.

Trusts and Foundations

A trust in Canada is created when a settlor transfers property to a trustee, to be managed on behalf of other persons (beneficiaries). The most common types are inter vivos trusts (settled during a person's lifetime) and testamentary trusts (created on a person's death).

A trust is principally governed by its trust deed, but tax laws impose certain general rules, such as deemed disposition of trust property every 21 years. This triggers capital gains, unless the property is rolled out to certain qualifying beneficiaries.

A Canadian-resident trust is taxed as an individual. Except for certain estates, income retained by a trust is taxed at the highest marginal tax rate, while income distributed to beneficiaries is taxable to them at their marginal tax rate.

Foundations in Canada must be registered as a charity and operate solely for charitable purposes. All registered charities are exempt from paying income tax and can issue donation receipts granting a tax credit for donations made.

Ownership of Foreign Assets

Canada imposes several reporting requirements on Canadian taxpayers (whether they are a Canadian-resident corporation, a branch, or an individual) which own foreign assets or trade with related foreign entities. While these do not generally involve a tax liability, compliance is key as the penalties for non-reporting are steep. The main requirements are:

1. T1134
to report ownership of a "foreign affiliate" (a non-resident company in which the taxpayer plus related persons own > 10%). This filing must include financial statements of the foreign affiliates.

2. T1135
to report ownership of other classes of foreign asset, if their total cost exceeds CAD 100,000 in the tax year.

3. T106
to report a breakdown of transactions and balances with non-arm's-length non-residents, if the total of the transactions exceeds CAD 1 million. This requirement commonly applies to Canadian subsidiaries of foreign entities.

Estate-Related Matters

In Canada, a beneficiary or estate does not pay inheritance tax on the value of assets received or bequeathed. Rather, assets are deemed disposed at fair market value on death, the estate pays tax on the resulting gain, and the beneficiaries have no further tax liability in Canada on receipts from the estate.

A non-resident inheriting Canadian property has no immediate Canadian tax consequences, but they may have reporting obligations going forward, depending on the type of asset received (e.g., real estate – see below).

Similarly, a Canadian resident inheriting foreign assets has no Canadian tax consequences, aside from the reporting obligations applicable to owners of foreign assets.

Sales of Real Estate

Non-residents are subject to 25% tax on gains from the sale of "taxable Canadian property", which includes real estate, business assets, and certain shares of private companies.

In some situations, the gain might be exempted from tax by a treaty. However, most of Canada's treaties permit Canada to tax the gain on Canadian real estate.

The vendor must notify CRA no more than 10 days after the sale, and pay the estimated tax owing or provide adequate security, to obtain a certificate of compliance. Without this certificate, the purchaser (including a non-resident) must withhold 25% of proceeds (50% on certain types of property), and remit this to CRA.

Finally, the vendor must file a tax return, even if no tax is owing, which is due April 30 of the year following the sale for individuals, and six months after its tax year end for a company.

Note that there are also reporting requirements for non-residents receiving rent from Canadian real estate, and compliance is critical for obtaining a certificate of compliance on eventual sale.

Collaboration with Other GGI Members

Our firm advises clients of partner GGI firms in setting up operations in Canada, from a wide variety of sectors including entertainment, manufacturing, fashion, and heavy machinery.

We have recently assisted several US-based fashion brands and equipment manufacturers to expand their operations into Canada, advising on the best structure for their planned level of activity, and setting up the relevant business registrations and compliance procedures.

Future Developments and Summary

At the federal level, there are no major changes on the horizon in the international aspects of the Canadian tax regime. However, a housing affordability crisis in major cities has led several provinces to levy foreign buyers' taxes on residential real estate, and expansion to other jurisdictions in the coming years is possible.

The above is a high-level overview of international tax compliance regulations in Canada; however, the devil is in the detail. It is therefore recommended to contact Kanish & Partners LLP or a local tax advisor well in advance of any planned activities in Canada, to ensure compliance and efficient tax planning.

Czech Republic

By Richard Jahoda

The Czech Republic is one of the most developed industrialised countries in Central and Eastern Europe. Its strong industrial tradition dates to the nineteenth century, when the region was the economic motor of the Austro-Hungarian Empire. Czechoslovakia was the most prosperous country in the Eastern Bloc and after its dissolution the Czech Republic continued achieving economic success.

The country has an excellent climate for foreign and domestic investment as the government actively encourages inward investment through several investment incentives. The Czech Republic has been one of the primary recipients of foreign direct investment among Central and Eastern European countries.

Tax System

The current tax system in the Czech Republic was established in 1993. Taxes are divided into 3 basic groups – direct taxes, indirect taxes and other taxes.

Since EU accession on 01 May 2004, the system has undergone a continuous process of harmonisation with European legislation. Four EU directives have been implemented in Czech income-tax law (parent/subsidiary directive, merger directive, royalties/interest directive, and savings directive). The VAT system of turnover tax and excise tax have been harmonised with EU directives since EU accession.

The Czech Republic also has a broad network of 88 effective double-taxation treaties with both EU and non-EU countries. These double-taxation treaties are based mainly on the OECD Model Tax Convention. The Czech Republic is party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Forms of Business

1. **Joint-stock company** *(akciová společnost* or *a.s.)* is a company form in which shares are freely transferable and may be established by one or more persons, resident or non-resident, who may be either legal entities or individuals. No permission is required to establish a joint-stock company. A joint-stock company constitutes a separate legal entity whose capital is divided into shares of a certain nominal value. A minimum share capital is CZK 2 million or EUR 80,000.

2. **Limited liability company** *(společnost s ručením omezeným* or *s.r.o.)* is the company form in which shares are not freely transferable and the registered capital consists of investment contributions, agreed to in advance, by the company's members.

A limited liability company may be founded by one or more resident or non-resident persons, who may be either legal entities or individuals.

3. **General commercial partnership** *(veřejná obchodní společnost,* or *v.o.s.)* is where the partners are liable for the obligations of the company, both jointly and severally with all their property.

4. **Limited partnership** *(komanditní společnost.* or *k.s.)* is where at least one of the partners bears unlimited liability for the obligations of the partnership and the liability of the remaining partners is limited to the amount of their capital contributions.

5. **Cooperative** *(družstvo)* is an association composed of an unlimited number of members (individuals and/or legal persons), established for a common undertaking or business activity, or to satisfy the economic, social, or other goals of its members.

6. **Trust** *(svěřenský fond)* is a vehicle through which its founder (who has the quality of a settlor) transfers a part of his or her property to be administered by another party. The legislation related to the Czech trust (also referred to as a trust fund) was modified in January 2014, when the Civil Code was amended to include in the national legislation new provisions related to the incorporation of a trust. The Czech Republic is one of the few jurisdictions located in the continental Europe in which investors may incorporate this vehicle.

Types of Tax

1. Corporate income tax

This includes joint-stock company, limited liability company, the income of limited partnership attributed to limited partners, cooperatives, and business income of a trust. Resident entities are subject to corporate income tax of 19% on their worldwide income and capital gains.

The Czech Republic applies a modified classical system of taxation of corporate profits. In principle, corporate profits are taxed both at the company level and at the shareholder level. At the shareholder level, dividends are not subject to corporate income tax but only to a lower final withholding tax of 15%. An exemption from the withholding tax is available with respect to certain qualifying distributions.

Companies are treated as non-residents for corporate income tax purposes if they do not have their legal seat or place of management in the Czech Republic. Non-resident companies are subject to corporate income tax on Czech-source income.

A special withholding tax system is applicable to certain types of income derived by non-residents (i.e., royalties, dividends, interest, rental payments, and service fees), unless such income is attributable to a Czech permanent establishment.

2. Personal income tax

An individual is considered to be a resident of the Czech Republic if he has his permanent home in the country or he stays in the country for at least 183 days in the relevant calendar year, with the exception of stays for studies or medical treatment.

Taxable net income is computed separately for each category of income by deducting allowable expenses incurred in generating and maintaining the income and is subject to a flat rate of 15%.

Certain items of passive income, including ordinary domestic dividends and certain types of interest, are not included in the aggregation but are taxed separately by way of a final withholding tax of 15%.

Non-resident individuals are subject to the individual income tax only on their income from Czech sources, which is generally taxed according to the rules applicable to residents, unless a law or a tax treaty provides otherwise.

3. Anti-avoidance rules

These have been implemented in accordance with the EU ATAD directive: Interest limitation rule, exit taxation, GAAR, CFC, hybrid mismatches. Thin capitalisation rules valid for connected parties take place as well.

4. Transfer pricing rules

Czech tax legislation contains the general arm's length principle. It is compatible with the OECD Transfer Pricing Guidelines. The Czech tax legislation does not prescribe any obligation to maintain any transfer pricing documentation. Nevertheless, it is highly recommended that the documentation is prepared as it can be used as valuable evidence during a tax audit.

5. Investment incentive tax-relief

Investors may receive either partial (for investors who expand their existing business activities in the Czech Republic) or full tax relief (for investors who are newly commencing their business activities in the Czech Republic). Both kinds of tax relief can be utilised during ten consecutive tax periods.

6. Research and development cost allowance

Up to 100% or 110% of costs associated with the projects of research and development and incurred in a given tax year can be deducted from the tax base as a special tax allowance (this means that these costs are in fact deducted twice for tax purposes – once as a normal tax-deductible cost and then as a special tax allowance).

Czech Republic is the leading destination of foreign direct investments in the region of Central and Eastern Europe.

Grinex Czech Republic in cooperation with GGI fellow members provides services to foreign investors in doing business in the Czech Republic. The initial business environment guidance and tax and legal system overview is usually provided, together with feasibility study of the particular investment project.

The most suitable legal form is recommended and subsequently founded. The bookkeeping and reporting system is established and comprehensive tax compliance maintained. The modes of profit distribution and the eventual investment exit strategy is determined in cooperation with fellow GGI members.

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Grinex Czech Republic provides its clients with a wide range of professional services. The firm makes comprehensive evaluations of its clients' businesses and draws on the expertise of its professionals to offer the best solution available.

Richard Jahoda, Managing Partner at Grinex Czech Republic is a leading partner responsible for tax and transactional advisory. He has over 25 years' experience in tax, finance, and business development. He regularly lectures at a number of international conferences.

Grinex Czech Republic

France

By Prof Robert Anthony

France is a member of the OECD and has signed an exchange of information agreement and complies with base erosion profit shifting agreements, known as BEPS. It has transfer pricing legislation, anti-tax avoidance legislation, and, of course, a considerable number of tax treaties to avoid double taxation. This can apply to inheritance tax (which is less frequent) as well as corporate and personal taxation. France is a member of the European Union and complies with sales tax legislation as well as foreign-controlled corporation rules.

Main Types of Business and Taxes for Each Entity

In view of the double-taxation treaties, as well as European Union membership, France reports through the EU countries the revenue of gains to third-party jurisdictions and it freely exchanges information. The tax year in France is the calendar year and declarations are made in the following year at the appropriate times, depending on the nature of the tax declared. Non-fiscal residents (subject to any tax treaty) are obliged to declare French property assets subject to wealth tax if they are worth more than EUR 1.3 million at market value. Obviously, all permanent establishments must file tax returns, including registration with the tax authorities. The taxpayer must declare sales taxes if appropriate, taking into account that the obligation to file declarations is always on the taxpayer.

France has corporate taxes which will reduce to 28%. Sales tax is generally 20% although it can be at a reduced rate for certain types of income. For example, hotels are taxed at 10% for their guests and refurbishment of property, although new construction is at 20%. Dividends can be taxed at a flat rate of 30% for residents.

Types of Trusts and Foundations and Tax Rates for Each Structure

In France there exists a law known as the law of "Fiducie". This is the equivalent of a life interest trust. The tax is therefore the liability of the settlor. Foreign trusts with French-based property assets and/or beneficiaries, when the settlor has died, are required to file an annual declaration. Not filing declarations risks fines. The distribution of discretionary trusts is taxed at 60% if the beneficiary is fiscally resident in France. Loans could be considered as not distributed but care is needed. Foundations are treated as trusts for tax purposes. To be clear, any wealth taxes due are those of the settlor when alive. On death, this becomes the liability of the remaining beneficiaries that are French residents and/or where a trust asset is liable.

Tax Compliance Requirements for Owners of Foreign Assets such as Bank Accounts, Insurance Policies, Shares, etc.

French tax residents are obliged to declare their worldwide income. They

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As a Multi-Family Office (MFO), **Anthony & Cie** supports its wealthy clients in the management of their assets, in France and worldwide. In the past 40+ years, they have expanded into an international consultancy of tax analysts, financial advisors, wealth managers, and consultants. They specialise in advising on cross-border tax matters as well as on financial, real estate, financing, investment, and inheritance needs, and they act as an MFO for international clients.

Professor Robert Anthony is the Founder and Principal Partner of Anthony & Cie. He was formerly professor of international tax law at the Thomas Jefferson School of Law, California. He is a chartered certified accountant (UK) and certified financial planner (France).

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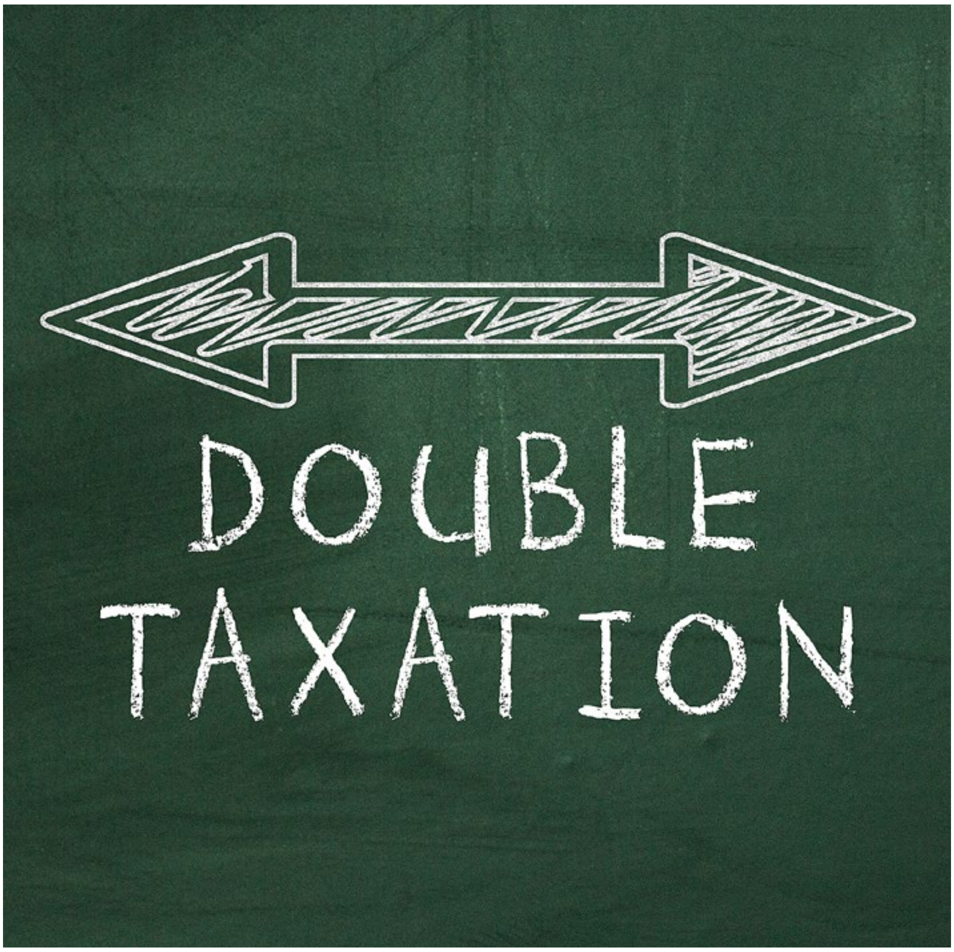
Financial Planning

also must declare on their tax return all insurance policies, together with bank accounts, even when the accounts are outside of France. Insurance policies are taxed on withdrawal on a reducing balance basis. As French law is not retrospective, taxation is based on the rules when the policy was subscribed. However, this is a complicated area and advice should be sought as to the appropriate rules that apply to each case. The current tax rate on withdrawals is 30% of the gain withdrawn and not on the capital. There are fines for non-declarations. After five years living in France, foreign property must be declared on a wealth tax return, noting that all income could be taxable here subject to tax treaties; although there can be exceptions depending on the tax treaty with the third-party jurisdictions. The USA, Switzerland, and the Netherlands are illustrations of this and should be examined on a case-by-case basis. There is a statute of limitations for tax and fraud.



Tax Compliance Requirements for Estate and Wealth Planning Matters

All assets should be declared for ownership and gains purposes. Insurance policies are often used for tax deferral and mitigation; likewise, pension plans, which also have certain tax advantages, along with certain tax breaks in real estate investment funds and capitalisation insurance investment funds.

Tax Compliance Requirements on Sale of Real Estate

People selling property who live fiscally outside the European Union are obliged to appoint a fiscal representative. This is a government-appointed, regulated person. The French notary calculates any taxes due and pays any taxes directly to the inland revenue, with their agreement. The fiscal representative is not necessary within the EU. However, the tax is still collected at the time of completion by the notary.

Collaboration with Other GGI Members

We have members that have used our services to deal with property purchases and sales, as well as estate planning and capital gains. We have also filed wealth tax declarations and managed contracts of employment, as well as administration. We have organised property finance and corporate incorporations. Other offices have used our services for trust declarations and certain tax and sales tax filings.

We have advised on international taxation and fiscal strategy on crypto/blockchain exchanges, as well as the place they should be established.

Future Developments, Outlook, and Summary

Currently, France is active in the implementation of digital taxes. It has pioneered this as well as trying to make itself an attractive country to be tax resident. It has lowered its corporate taxation and created a flat tax, as previously stated, for dividends of 30%.

The removal of wealth tax on all assets except for property has resulted in a slowdown in the expatriation of French tax residents and an increase in new residents immigrating to France.

Germany

By Oliver Biernat

Quick Overview of the International Tax Compliance Regulations in Germany

When foreigners want to do business in Germany, they have several possibilities. The basic form of doing business is to sell to German customers and meet the conditions to register for Value Added Tax purposes only. This may also apply to online sellers as operators of internet marketplaces have to provide information on companies whose turnover is subject to German turnover tax. Those affected need to apply for a VAT ID number and submit regular VAT declarations.

Foreigners that employ staff in Germany without creating a permanent establishment must register as employers in Germany. Monthly wage tax declarations must be submitted, and a part of the gross salary must be withheld and paid to the authorities directly.

Those who meet the conditions for creating a permanent establishment (e.g., by branch, place of management, office, factory, etc.) are liable to determine their "German" income and pay tax on their German profits. They must perform bookkeeping according to German tax rules and submit regular VAT, corporate income tax, and trade tax declarations.

Corporations with a legal seat or place of management must perform bookkeeping according to German GAAP and tax rules, prepare annual financial statements, submit regular VAT, corporate income tax, and trade tax declarations, and publish or deposit certain financial information. Foreigners who hold shares in German corporations are only liable to taxation if the corporation pays out dividends or liquidation profits. The normal tax rate on dividends is 25% + 1.38% = 26.38%, but may be reduced.

Foreign Tax and Financial Reporting Requirements for Germany

1. Main types of business and taxes for each entity

Foreign individuals pay income tax depending on their income from German sources. The top income tax rate of 45% + 5.5% solidarity surcharge on the income tax is only levied on income above EUR 530,000 p.a.

Tax rates for permanent establishments and corporations are generally the same. VAT is 19%. The reduced VAT rate is 7% and applies only to selected

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Benefitax GmbH Steuerberatungsgesellschaft Wirtschaftsprüfungsgesellschaft is a tax consultancy and public auditing company located in Frankfurt, which is widely recognised as the financial centre of Germany. Benefitax predominantly serves German entities of foreign multinational groups, mid-sized German companies with cross-border activities, and wealthy private individuals.


Oliver Biernat

Oliver Biernat is the Founder and Managing Partner of Benefitax. He is a German chartered accountant, certified tax advisor, and specialist advisor for international taxation, with more than 20 years of experience. Since 2008, he has chaired GGI's International Taxation Practice Group (ITPG), increasing its size to more than 570 experts from 90 countries in the process.

turnover. Corporate income tax is 15%. A solidarity surcharge of 5.5% of corporate income tax will be added. In addition, there is trade tax of 3.5%, multiplied by a local level that may vary from 200% to 400%, to 500% in larger cities. The total tax on income is often around 30% in larger cities.

2. Types of trusts, foundations and tax rates for each structure

There are no trusts under German law. Income from foreign trusts often creates problems as it must be decided according to German rules how the trust is looked at tax-wise, or if Germany will look through the trust and tax the (beneficial) owners instead.

Foundations do exist in German law but are not common. If created as charitable foundation they may be relieved from corporate income tax (except for any economic business operations). Donations to a charitable foundation may be tax deductible for the donor under certain conditions.

In contrast, family foundations use the assets of the foundation as far as possible for private purposes. A family foundation is assumed if the founder, his relatives, and their descendants are entitled to more than 50% of the benefits and the right to have a seizure. The tax authorities will assume a family foundation if the relatives and their descendants are entitled to more than 25% of the benefits but have additional influence on the management of the foundation.

Profits in family foundations are subject to corporate income tax, trade tax, and VAT. Family foundations are subject to inheritance tax. When created, normal inheritance tax is due if family members are beneficiaries. Personal allowances are granted for the family member with the smallest personal allowance. Foreign foundations will always be taxed in the highest tax class.

In addition, a substitute inheritance tax is levied. That means that

every 30 years a fictitious transfer is taxed in the amount of 50% of the net assets less EUR 800,000 threshold. The applicable tax rate depends on the taxable amount and may vary between 7% and 30%. Foreign foundations are not subject to substitute inheritance tax.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

Private individuals with a residence in Germany or those who stay in Germany for longer than 183 days per year are subject to unlimited taxation in Germany, and they must report their worldwide income to the German tax authorities. Foreign individuals with income from "German sources" must report such income to the German tax authorities. This also applies to foreign bank accounts, insurance companies, and shares. Non-compliance may be treated as tax fraud.

4. Tax compliance requirements for estate and wealth planning matters

Currently there is no wealth tax in Germany. It should be noted that real estate transfer tax is levied if real estate properties or a major part of corporations holding real estate are transferred. Tax rates range from 3.5% to 6.5%, depending on in which federal state the property is located.

5. Tax compliance requirements on sale of real estate

Profits from the sale of real estate property is generally taxable for foreigners. Since the sale of all real estate properties in Germany must be handled by a notary public who must report the sale to the tax authorities, it is wise to declare any profits from such sales to the tax authorities.

Collaboration with Other GGI Members

We collaborate with many GGI members abroad, on many clients. Examples are the determination of profits in case of permanent establishments or private individuals, identifying which country has the right to tax which income in case of cross-border operations, the treatment of foreign entities in another country (such as trusts or US LLCs), expatriates, or self-disclosure of so-far-undisclosed income in order to avoid tax fraud.

Future Developments, Outlook, and Summary

German tax law changes every year. Major changes expected soon are the part abolishment of solidarity surcharge, the implementation of the EU-DAC 6 directive (tax planning models must be reported) in national law, and a reform of the Real Estate Tax Act.

Hong Kong

By Ricky W. P. Wong

Quick Overview of the International Tax Compliance Regulations in Hong Kong

Hong Kong adopts a territorial basis for taxing profits derived from a trade, profession, or business carried on in Hong Kong under Section 14(1) of the Inland Revenue Ordinance ("IRO"). Profits tax is only charged on profits which arise in or are derived from Hong Kong. No tax is levied on profits arising abroad, even if they are remitted to Hong Kong.

A person (corporation, individual, or partnership) who carries on a business in Hong Kong but derives profits from places outside Hong Kong is not required to pay tax in Hong Kong on those profits.

There is no distinction made between Hong Kong residents and non-residents. A resident may derive profits from abroad without suffering tax in Hong Kong. Conversely, a non-resident may suffer tax on profits arising in or derived from Hong Kong.

Three kinds of income are taxable under the Hong Kong IRO:

1. Profits from trade, profession, or business carried on in Hong Kong (profits tax);
2. Income from office or employment in Hong Kong (salaries tax); and
3. Income from leasing lands and buildings in Hong Kong (property tax).

There is no distinction between residents and non-residents. A business is carried on in the location where the activities and/or assets comprising the business take place or are situated.

Three conditions must be satisfied before a profits tax liability arises:

1. The person must carry on a trade, profession, or business in Hong Kong;
2. The profits to be charged must be from such trade, profession, or business carried on by the person in Hong Kong; and
3. The profits must be profits arising in or derived from Hong Kong.

The question of whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong is largely a question of fact. The broad guiding principle is to look at what the taxpayer has done to earn the profits in question and where he has done it.

Corporations having overseas assets and income would include those assets and income in its audited accounts. In filing the profits tax return, income earned outside Hong Kong would be adjusted and excluded from taxable profits. Individual taxpayers are not required to report their overseas assets and income in filing their individual tax returns.

Hong Kong and the US signed an Inter-Governmental Agreement on 13 November 2014 as a means of implementing the Foreign Account Tax Compliance Act ("FATCA") in Hong Kong. Hong Kong has opted for model II under FATCA, which establishes a framework of enabling financial institutions in Hong Kong to seek consent for disclosure

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Wong Brothers CPA Limited is one of the most reputable CPA firms in Hong Kong. The firm has five directors and approximately 80 staff, including professionals and support staff. It has two offices, one in Hong Kong and the other in Shenzhen, China. Clients of the firm include many international and local companies

Ricky W. P. Wong

engaged in different types of business.

Ricky W. P. Wong has been in public practice for more than 35 years and has extensive experience in tax consulting engagements in Hong Kong and China. He is a certified tax advisor in Hong Kong.

from specified US clients, and to report relevant tax information of those clients to the US IRS.

Under the Common Reporting Standard ("CRS"), a Hong Kong financial institution is required to carry out due diligence procedures to identify the jurisdiction of residence of an account holder and identify whether a financial account is a "Reportable Account". In respect of a Reportable Account, the financial institution will need to report relevant information to the Hong Kong Inland Revenue Department ("IRD") under section 50B of the IRO, which then exchanges the relevant information with the tax authorities of other reportable jurisdictions where account holders are tax residents when there is a double tax treaty or tax information exchange agreement in place. Financial institutions include banks, investment entities, insurance companies, and custodial institutions.

Foreign Tax and Financial Reporting Requirements for Hong Kong

1. Main types of business and taxes for each entity

a. Limited Company

The most common business form in Hong Kong is a limited company, which is a legal entity offering protection to shareholders from business risks and liabilities.

A limited company must prepare annual audited accounts and file annual profits tax return to the IRD for tax assessment. Profits of non-assessable nature are excluded from the company's net income. Examples are:

i. Profits not arising in or derived from Hong Kong;

ii. Capital gains on sales of capital or non-trading assets;

iii. Dividend income;

iv. Exempted interest income derived from deposits placed with Hong Kong financial institutions.

Hong Kong has adopted a two-tiered profits tax rates regime for the year of assessment commencing on or after 01 April 2018. The profits tax rate for the first HKD 2 million of profits is lowered to 8.25%. Profits above that amount continue to be subject to the tax rate of 16.5%. The two-tiered profits tax rates regime will benefit eligible taxpayers with assessable profits, irrespective of their size. The application of the two-tiered rates is restricted to only one entity nominated among connected entities.

b. Sole Proprietorship

A sole proprietorship is suitable for small-scale and low-risk businesses with a sole owner. The tax rate applicable to a sole-proprietorship business is 15%.

c.Partnership

This business structure allows two or more people to share ownership of a single business. Partnership enables a sharing of responsibility. However, partners are jointly and individually liable for the actions of the other partners. The tax rate applicable to a partnership business is 15%.

d. Foreign Branch

Instead of setting up a limited company, a foreign company can register a branch in Hong Kong to carry on trade, profession, or business in Hong Kong. The branch is not a legal entity but part of the foreign company.

A charge to profits tax only arises when the branch has carried on a trade, business, or profession in Hong Kong and has accrued profits from that trade, business, or profession which are Hong Kong sourced. The current profits tax rate for a branch is 16.5%.

2. Types of trusts, foundations and tax rates for each structure

Normally, a trust is set up by transferring property or assets from one person (the "settlor") to another person (the "trustee") to manage the property for the benefit of a specified list or class of persons (the "beneficiaries") based on a trust deed. The settlor would have reserved power in respect of investment or asset management functions of the trust.

There is no requirement to register a trust in Hong Kong. Assets and investment activities of a trust may be held and carried out by the trustee or through underlying vehicles such as limited companies specifically set up for the trust. The trustee and the underlying vehicles will be subject to profits tax on profits derived from activities carried out on behalf of the trust based on normal profits tax rules in Hong Kong. The current profits tax rates for a limited company is 16.5% and for an unincorporated business is 15%.

A trustee is taxable on its fees for acting as a trustee if such consideration is derived from the carrying on of the business or profession of a professional trustee in Hong Kong. Income derived from a trust's assets outside Hong Kong is not taxable. In addition, Hong Kong does not have estate tax, value-added tax, or capital gains tax.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, and shares

There is no tax compliance requirement for residents and non-residents in Hong Kong holding foreign assets, including foreign bank accounts, insurance policies, or overseas shares.

Interest income on foreign bank deposits and gains on disposal of overseas shares are offshore in nature

...next page

and not subject to Hong Kong profits tax. Proceeds received from insurance policies are not taxable in Hong Kong.

4. Tax compliance requirements for estate and wealth planning matters

The Revenue (Abolition of Estate Duty) Ordinance 2005 came into effect in February 2006. No estate duty is triggered in Hong Kong for inheritance of legacy.

A transfer of immovable properties or shares under the estate of a deceased person to the beneficiaries of the estate, pursuant to a will or in accordance with the law of intestacy, is not chargeable with stamp duty.

However, if a person transfers properties or shares to others without consideration, or the consideration for the transfer is being considered by the IRD as inadequate, stamp duty will be charged based on the fair market value of the immovable properties and the shares.

5. Tax compliance requirements on sales of properties

There is no capital gains tax in Hong Kong. Gains on sales of Hong Kong properties held for long-term investment are not taxable. Gains on sales of overseas properties are offshore sourced and not taxable.

Outlook/Summary

As Hong Kong is an international financial centre with the government's aim in attracting foreign investors, it is unlikely that the territorial basis of taxation will discontinue. Therefore, using Hong Kong companies to hold foreign assets or to receive offshore income is a favourable tax strategy for many international investors.

Hungary

By Dr Anita Ihász Kovácsné

Quick Overview of the International Tax Compliance Regulations in Hungary

The main international tax compliance act (Act XXXVII) shall be applied to certain matters relating to the assessment of taxes, the collection of taxes and other charges, and the avoidance of double taxation, between EU member states and other international administrative cooperation. Those legal EU acts which affect the taxation procedure and cooperation between the tax authorities of EU member countries are mainly regulated in Act CL of 2017 on the rules of taxation. Moreover, Hungary has concluded **international treaties for the avoidance of double taxation with more than 80 foreign countries** – including all countries of the EU. The EU directives on taxation are implemented regarding taxation of companies in the Act on Corporate Tax and Dividend, regarding private individuals in the Act on Personal Income Tax, and regarding VAT in the Act on Value Added Tax.

Foreign Tax and Financial Reporting Requirements

1. Main types of business and taxes for each entity. The most common business entities are the following:

a. General partnership joint and several liability for the partnership's obligations not covered by the assets of the partnership.

b. Limited partnership at least one of the partners undertakes joint and several liability while at least one other partner is not liable.

c. Limited liability company onsisting of capital contributions of a predetermined amount, in the case of which the liability of members extends only to the provision of their initial contributions, and to other contributions set out in the memorandum of association.

d. Limited companies founded with a share capital consisting of shares of a pre-determined number and nominal value, where the obligation of shareholders extends to the provision of funds covering the nominal value or the accounting par value of shares.

In Hungary there are not different taxation types for the different business entities. With regard to the size, the amount of annual revenues, or the number of employees, business entities can choose from different forms of taxation. The most widespread form of taxation among enterprises is the corporate tax. The 10% rate of corporate tax, along with the tax base deduction possibilities, provide a massive competitive advantage for Hungary Europe-wide.

2. Types of trusts, foundations and tax rates for each structure

The new Hungarian Civil Code introduced the fiduciary asset management contracts which are very similar to the trusts of the Anglo-Saxon legal system. With regard to the taxation of a trust fund, the fiduciary shall have competence. It must be highlighted that special tax rates don't apply to the trusts or foundations, only the calculation of tax base can differ. Besides the fiduciary asset-management contracts, from this year a special form of foundation, the so-called trust foundation can be established. **A trust foundation** may be established for the purpose of managing the assets assigned to it by the founder and for the purpose of carrying out the tasks specified in the articles of association and distributing the assets to the person(s) named as beneficiary(ies). In order to establish an asset-management foundation, assets worth at least HUF 600 million must be assigned to the foundation. With regard to the relevant regulation of personal income tax act, an individual is not liable to tax if he or she disposes of any income for a foundation purpose.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

If someone manages financial investments abroad but has a Hungarian tax identity, they must also declare to the Hungarian tax authorities their income from these investments unless the respective DTA instructs differently. In this case, the investor shall file a Hungarian tax return according to the statement provided by their investment service provider. However, this is not considered to be a solution in accordance with Hungarian tax law and could result in a tax investigation by the tax authorities and the imposition of sanctions.

The amount of dividends received from a controlled foreign partnership recognised as income does not reduce pre-tax profit.

Regarding incomes from interest from foreign bank accounts, it should be noted that interest income from abroad must always be declared in the Hungarian tax return. The actual rate of withholding tax depends not only on international law but also on obtaining the appropriate certificates. Income is always taxable in Hungary, but tax deducted abroad is subject to certain limits. In excess of the Hungarian tax liability, only the EU directive provides for set-off. EU member states automatically provide each other with information on payments, unless they have exercised their right to levy withholding tax permitted by the Directive. Member states divide the proceeds of any withholding tax 25/75 between the source and the country of residence.

4. Tax compliance requirements for estate and wealth planning matters

No tax liability shall arise if the total income of a private individual from the sale of movable property does not exceed HUF 200,000 in the tax year. The portion above HUF 200,000 will be subject to the 15% flat tax.

Regarding wealth planning, the Hungarian regulations providing tax exemption for all those transactions realised among family members and in

...next page

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KRS is a local Hungarian firm providing integrated international legal and tax advisory services in all fields of business law. They work as strategic advisory partners of their clients, supporting their daily business and project-based transactions under constantly changing legal and tax conditions. To answer these expectations, their commitment is effective, innovative, solutions-oriented advisory work and proactive, problem-preventing workflow. They're the first Hungarian law firm providing legal services on a digital platform: www.e-krs.hu.

Dr Anita Ihász Kovácsné is an economist, certified tax advisor, and specialist advisor for international taxation and has over 20 years' experience in business consulting. She joined the firm in 2004 to found the tax advisory department and to support the managing partner in managing and developing the law firm.

KOVÁCS RÉTI SZEGHEŐ
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a marriage provide again real tax haven conditions for Hungarian tax residents.

5. Tax compliance requirements on sale of real estate

The income of a private individual from the sale of real estate shall be based on the proceeds, taking into account the period of costs and ownership. Income arising from the redemption by the spouse of real estate, or movable property or rights or securities, following the termination of community property by marriage, shall be considered as tax exempt revenues. In case of normal real estate transaction, after five years from the date of acquisition the income deriving from the transfer of real estate is tax exempt; until then, considered income is decreasing from 100% to 30% and 15%, personal income tax is payable on the income arising from the transfer of real estate.

The general rate of duty regarding the transfer of ownership of real estate is 4%, which shall be ascertained after sale value of the real property and not after the purchase price which is mutually agreed in the sale and purchase contract.

Future Trends

Family-owned businesses provide a huge part of the Hungarian economy and most of them will face the difficulties of a first-generational transition process in the next five years. In order to enhance the survival of such companies, further favourable changes are predicted in wealth planning and succession. As part of the comprehensive family-support program of the government, further personal income tax reductions are forecast.

Nevertheless, the low 10% rate of corporate income tax, the low 15% flat rate of personal income tax, the tax exemption of inter-familiar transactions, and the fact that no wealth taxes are imposed, make the Hungarian tax system very competitive and attractive still today.

India

By Ashishkumar Bairagra

India is known for its strict international tax compliance applicable to residents as well as non-residents who are liable to file their tax returns in India. Landmark judgements include the case of Vodafone (on indirect purchase), Asia Satellite (on satellite charges), Formula One (on permanent establishment [PE]), Morgan Stanley (on dependent agent PE) and the most recent case of Master Card (on service PE).

As per the (Indian) Income-Tax Act 1961 (ITA) a tax resident in India is liable to tax on their global income and also liable to disclose their global assets in their annual tax return. A tax non-resident is liable to tax on income received or deemed to be received in India or income deemed to accrue or arise in India and, as one can imagine, it is the deeming fiction which has created most of the controversy. In addition, India has also introduced regulations for "Place of Effective Management" and "Equalisation Levy" to keep pace with the BEPS Action plan.

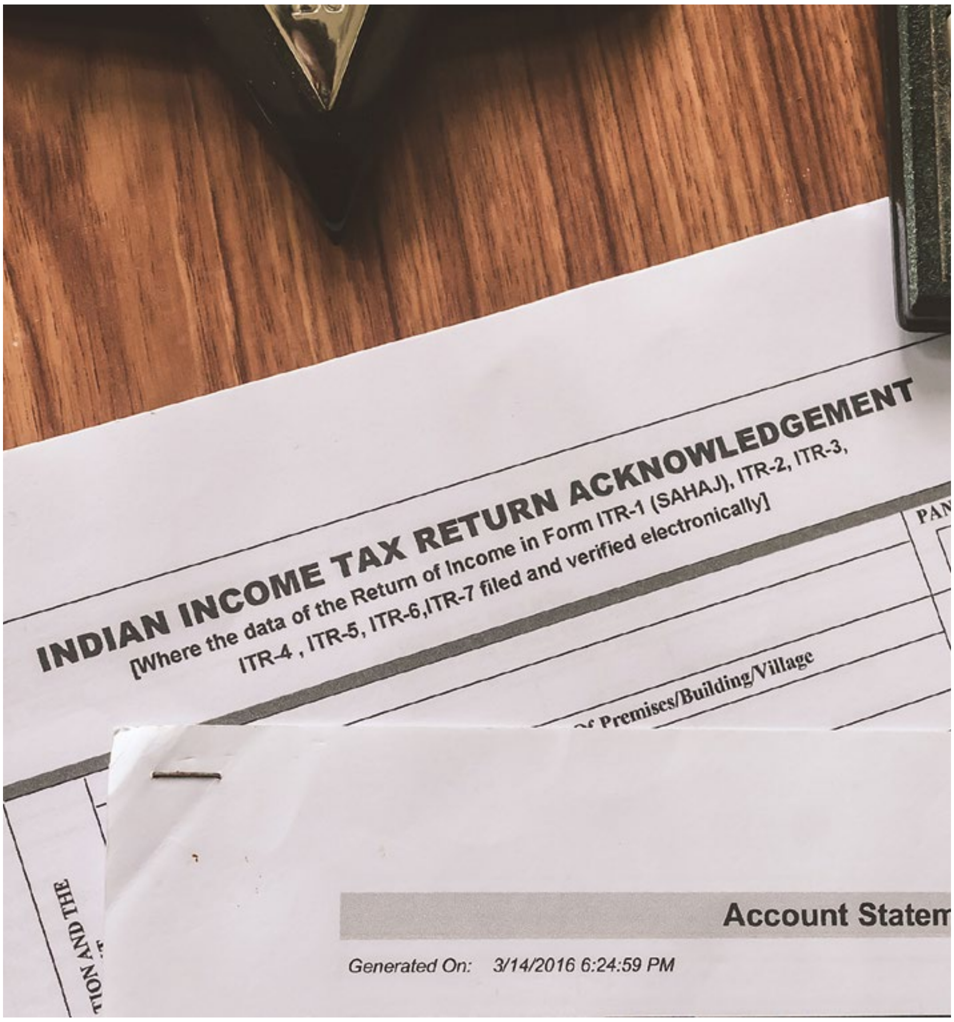
Main Types of Business and Taxes for Each Entity

For Individuals / Hindu Undivided Family Association of Persons / Body of Individuals:

Taxable Income	Rate of Tax	Notes
Up to INR 250,000	0%	Surcharge is levied on the amount of tax at the rate 10% / 15% / 25% / 37% if income exceeds INR 5 / 10 / 20 / 50 million respectively. Health and education cess (to be utilised by the government for setting up hospitals and schools for the under-privileged) at the rate of 4% is levied on the total of Tax + Surcharge.
INR 250,001 to INR 500,000	5%	
INR 500,000 to INR 1,000,000	20%	
Above INR 1,000,000	30%	

For others:

Types	Rate of Tax + Surcharge + Cess
Firms (Partnerships and LLPs)	30% + 0% / 12% + 4%
Domestic Companies	30% + 0% / 7% / 12% + 4% **OR** 22% + 10% + 4% if they comply with conditions
Domestic Companies (Small and Medium)	25% + 0% / 7% / 12% + 4%
Domestic Companies (New and Manufacturing)	15% + 10% + 4% if they comply with conditions
Foreign Companies	40% + 0% / 2% / 5% + 4%



India also has various other forms of taxes like dividend distribution tax, capital gains tax, and minimum alternate tax, and a wide-ranging withholding tax regime, along with various double-tax avoidance agreements (DTAA).

Types of Trusts and Their Taxability

The ITA does not have specific charging sections for trusts; hence taxability of the various forms of trusts has been determined through judicial rulings over the past decades. Taxability of a few common forms of trusts is briefly discussed as follows:

1. **Charitable/Public Trust** incomes and donations are not taxed if stringent conditions of utilising the donations towards the objective of the trusts are fulfilled.

2. **Private Trust** settlor is taxed if the trust is revocable.

3. **Discretionary Private Trust** the trustee is taxed as the representative since beneficiaries or their shares are unknown or undetermined.

4. **Specific Private Trust** beneficiaries are taxed since share of each beneficiary is known, but the tax can be paid by/recovered from the trustee.

5. **Foreign Trust** if the income of the trust is liable to tax in India, then it is taxable in India.

6. **Foreign Trust** if the settlor or trustee or beneficiary is tax resident in India, then the person is liable to tax in India. It may be noted that beneficiaries are liable only on any distribution by the trust.

7. **Foundations** similar principles as applicable to trusts are followed.

A trust is taxed at the maximum marginal rate of 30% + surcharge + cess if the trustee is liable to tax on behalf of the trust. If the income is taxed in the hands of the beneficiary or settlor, then the tax rate applicable to the beneficiary or settlor is applicable.

Tax Compliance Requirements for Owners of Foreign Assets

Tax residents in India are liable to disclose their global income and global assets, whether held directly or if they hold a beneficial interest, held at any time of the year in their annual tax return with details for each of the following:

1. Foreign Depository Accounts held;
2. Foreign Custodial Accounts held;
3. Foreign Equity and Debt Interest held in any entity;
4. Foreign Cash Value Insurance Contract or Annuity Contract held;
5. Financial Interest in any Entity held;
6. Immovable Property held;
7. Any other Capital Asset held;
8. Account(s) in which they have signing authority held which has not been included above;
9. Trusts, created under the laws of a country outside India, in which they are a trustee, beneficiary or settlor;
10. Any other income derived from any source outside India which is not included above or in other parts of the tax return.

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Tax Compliance Requirements for Estate and Wealth Planning Matters

Traditionally in India, a testamentary will has been the preferred route for estate and wealth planning since it is the most optimum route for tax purposes. In recent times, due to various litigations amongst legal heirs and claimants, family trusts are starting to become popular. There are also rumours that just like some of the developed economies, India may soon introduce "inheritance tax" and hence high net-worth individuals (HNI's) are scrambling to form trusts and plan their inheritance.

It is important to note that apart from income tax, there could be implications of stamp duty, state/local regulations requiring permissions/approvals, valuation norms, and other hindrances in estate and wealth planning matters which involve real estate or immovable assets. In recent years, FATCA has been a major concern while evaluating such planning situations, especially if one of the beneficiaries is covered by FATCA regulations. Similarly, while planning for foreign assets, adequate precaution should be considered if one of the beneficiaries is a tax resident of India.

Tax authorities will request detailed documentation for assets/gifts received as part of an estate/wealth from an individual, including for establishing the relationship. In most cases, the cost of the original holder is considered to be the cost of the new holder and the period of holding is considered to start from the date when the asset was acquired by the original holder; hence it is important to preserve the primary acquisition document of the original holder to claim maximum relief/deduction at the time of sale of the inherited asset.

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M L BHUWANIA AND CO LLP is a firm dedicated to offering professional services by employing the industry's brightest minds. They offer collaborative audit, consulting, financial advisory, risk management, and tax services to clients. The firm's diversified client profile across industries has helped it to improve its ability to advise clients on the dynamic and challenging environments in which they do business.

Ashishkumar Bairagra

Ashishkumar Bairagra has been in practice and a Partner of the firm since 2001. He handles international taxation matters, internal audits, management audits, and consulting assignments. His areas of specialisation include international taxation, transfer pricing, valuation, due diligence, cross border business structuring, and business consulting. Ashishkumar is the Global Vice Chairman of GGI's International Taxation Practice Group (ITPG).

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Tax Compliance Requirement on Sale of Real Estate

If a non-resident sells real estate in India, there are myriad regulations and compliances which they will need to fulfil. The most important one is the withholding tax obligation on buyers to deduct and deposit 20% + applicable surcharge + cess on the entire sale consideration with the tax authorities on behalf of the seller. These withholding tax regulations do not allow the buyer to consider the actual capital gain (if any) earned by the seller. The only option is for either of them to file an application to the tax authorities to determine the actual capital gain earned by the seller, derive the actual amount of tax payable by the seller on the sale of the real estate, and issue a certificate enabling the buyer to deduct the specific amount as withholding tax. This process is time consuming and requires planning in advance, which is rarely possible in such situations. In cases where the capital gain is significantly lower than the sale consideration, the non-resident must wait to file the tax return for that year to be eligible to obtain a refund of the tax withheld by the buyer.

In a recent case, we assisted a GGI member firm to assess whether their client (an international soccer coach) has become a tax resident in India or not, and the detailed tax implication on his global incomes if he was classified as a tax resident. The discussions also revolved around tax credit mechanisms available to him through the DTAAs between India and source countries.

In several other cases, we have assisted non-residents to obtain the certificate from tax authorities determining their capital gains tax liability on sale of real estate and several HNI tax residents with disclosure of their foreign assets.

Indonesia

By Jimmy Budhi

Overview of the International Tax Compliance Regulations in Indonesia

Indonesia entered into an international tax treaty taxation which required the country to participate in the implementation of the Automatic Exchange of Financial Account Information and established legal legislation concerning access to financial information for tax purposes prior to 30 June 2017.

On 08 May 2017, the Government issued a Regulation in Lieu of Law of the Republic of Indonesia regarding access of financial information for taxation purposes, which passed into Law (Law No. 9 Year 2017) on 23 August 2017.

Under Law No. 9 Year 2017, the Director General of Taxation shall be authorised to obtain access to financial information for tax purposes from financial services institutions carrying out activities in banking, capital markets, and the insurance sector, as well as other financial service institutions and/or other entities categorised as financial institutions in accordance with the financial information exchange standards based on international tax treaties (Financial Service Institutions/FSI).

The Director General of Taxation shall be authorised to request information and/or evidence or statements from the FSI. The financial information contained in the reports and the information and/or evidence or statements shall be used as a tax database of the Directorate General of Taxation.

Foreign Tax and Financial Reporting Requirements for Indonesia

1. Main types of businesses and taxes in Indonesia

The main types of businesses in Indonesia and taxes for each entity are as follows:

a. Resident individuals who run their own businesses are subject to individual income tax. The progressive rates are charged to taxable annual income (see table on the right).

Tax residents are those that live in Indonesia, stay in Indonesia for more than 183 days within a 12-month period, and intend to reside in Indonesia. Non-resident individuals are subject to a 20% withholding tax on Indonesia-sourced income.

b.Limited liability companies (Perseroan Terbatas or PT) and partnerships

Generally, a flat rate of 25% applies.

Small enterprises, i.e., corporate taxpayers with an annual turnover of not more than IDR 50 billion, are entitled to a 50% discount of the

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Taxable Income	Rate
Up to IDR 50,000,000	5%
Above IDR 50,000,000 up to IDR 250,000,000	15%
Above IDR 250,000,000 up to IDR 500,000,000	25%
Above IDR 500,000,000	50%

standard tax rate which is imposed proportionally on taxable income of the part of gross turnover up to IDR 4.8 billion. Certain enterprises with gross turnover of not more than IDR 4.8 billion are subject to final tax at 0.5% of turnover.

Public companies that satisfy a minimum listing requirement of 40% and other conditions are entitled to a tax cut of 5% off the standard rate, giving them an effective tax rate of 20%.

2. Types of trusts, foundations and tax rates for each structure

a. Trusts

Indonesian law does not allow the creation of trusts in Indonesia.

Indonesian residents acting as trustees in international trusts will be subject to taxation in Indonesia. These will be applied to the personal income tax for the duration of their services for the trust.

b. Foundations

There are three types of such foundations: (i) foreign foundations, (ii) Indonesian foundations founded by foreign nationals or by foreign nationals together with Indonesian citizens, and (iii) Indonesian foundations founded by a foreign legal entity.

Foundations are generally subject to income tax, with rates the same as corporate income tax rates. Donations, including religiously motivated donations and grants, are not taxed provided that there is no business or ownership relationship between the parties. In addition, the following types of income are tax-exempt: (i) income that a foundation uses to provide scholarship funds, and (ii) income of a foundation working in the area of education or research and development that is re-invested in its work within the period permitted by the income tax law (Law No.36 of 2008 on Income Tax, Article 4 Section 3).

Tax deductions for charitable contributions are available for natural disasters, research and development activities, development of social infrastructure, education facilities, and sport.

3. Tax compliance requirements for owners of foreign assets

Under Law No. 9 Year 2017, The Director General of Taxation shall be authorised to obtain access to financial information for tax purposes from financial services institutions carrying out activities in the banking, capital markets, insurance sector, as well as other financial services institutions and/or other entities categorised as financial institutions in accordance with the financial information exchange standards based on international tax treaties (Financial Service Institutions/FSI)

FSI must submit to the Director General of Taxation:

a. A report containing financial information in accordance with the financial information exchange standards under international tax treaties for each financial account identified as a financial account that must be reported; and

b. A report containing financial information for tax purposes.

The two reports shall be managed by FSI in one calendar year.

FSI shall apply the procedures for the identification of financial accounts in accordance with the financial information exchange standards based on international tax treaties. The procedures must at least include the activities of:

a. Verification to determine the domicile country for tax purposes for financial account holders, either individuals or entities;
b. Verification to determine that the account holders as

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KAP Jimmy Budhi & Rekan is a registered accounting firm serving businesses and non-profit entities in Indonesia. Since its foundation in 2003 the firm has been trusted to serve small to large businesses in Indonesia. The firm's team has served clients engaged in various industries, including financial, mining, hotel & hospitality, real estates, and many others.

Jimmy Surjanto Budhi

Jimmy Surjanto Budhi is the Founder and Managing Partner of the firm. He has over thirty years experience as auditor, accountant and internal auditor. Jimmy Budhi was also an audit committee member and chairman of several companies. His extensive experience includes working for large corporations, Government Institutions, public companies, as well as various international aid organisations.

Jimmy Budhi & Rekan
Registered Public Accountants

above are account holders that must be reported;

c. Verification to determine that the financial accounts held by the account holders as above are financial accounts that must be reported;

d. Verification of entities holding financial accounts to determine that the controllers of the entities are individuals that must be reported; and documentation of activities conducted in the context of the procedures for identifying financial accounts, including storing the documents obtained or used.

4. Tax compliance requirements for estate and wealth-planning matters

There are no net wealth/worth, inheritance, estate, or gift taxes in Indonesia.

5. Tax compliance requirements on sale of real estate

Capital gains are considered ordinary income and are taxed at the standard of corporate income tax or individual income tax rates.

Collaboration with Other GGI Members

The firm will collaborate with other GGI members in other jurisdictions in providing tax-planning structures.

Future Developments, Outlook / Summary

We believe the Indonesian tax legislation has created a huge tax-planning opportunity.

Italy

By Sergio Finulli and Andrea Angheleddu

A Brief Overview of the International Tax Compliance Regulations in Italy

Italian residents pay taxes on all their income, irrespective of where it is earned, on the basis of the worldwide taxation principle, while non-residents only pay taxes on the income earned by them in Italy.

In the case of private individuals, the place of residence for tax purposes is determined on the basis of their place of domicile.

In the case of companies and non-profit entities, the place of residence for tax purposes is determined on the basis of their registered office and operating office addresses and the places where they conduct their main business.

Taxpayers calculate the taxes payable by them on a self-assessment basis. There is no general ruling system, but rulings do apply in the case of companies conducting business at international level.

Foreign Tax and Financial Reporting Requirements for Italy

1. Main types of business and taxes payable by each entity

a. Private individuals are subject to personal income tax (IRPEF) and the additional local taxes applicable to them. The overall tax rates vary from 24% to 47%. Financial income such as interest, dividends, and capital gains are generally subject to a fixed rate of 26%.

b. Corporations are subject to corporate tax (IRES) at the rate of 24%, as well as regional productivity tax (IRAP) at 3.9%, although a higher rate may apply in some regions.

c. Partnerships are subject to IRAP. They allocate their income to their partners, who pay personal income tax, or IRPEF, on those earnings.

d. Non-profit entities are subject to IRES at 24%, in the same way as corporations, and to IRAP at 3.9% on any commercial business conducted by them. Financial earnings are generally subject to the same 26% rate as private individuals.

2. Types of trusts, foundations and tax rates for each structure

a. Foundations are set up in Italy only for purposes which serve the public interest, such as charity foundations, and are recognised as such by the relevant public authorities. They are subject to the same tax rates as non-profit organisations.

b. There are no Italian regulations on trusts, but those set up abroad are recognised. Trusts which are regarded as resident in Italy for tax purposes, on the basis of their operating office

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addresses or the places where they conduct their main basis, are subject to taxation on all their income, irrespective of where it is earned, in accordance with the worldwide taxation principle, in the same way as non-profit organisations.

Non-resident trusts are subject to the same system of taxation, but only on their income earned in Italy.

The income from "transparent" trusts is allocated to the beneficiaries, who pay tax at the rate applicable to private individuals on the earnings in question.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

Individuals resident in Italy, foreigners included, must declare the investments and financial assets held by them abroad each year, when they file their tax returns.

This obligation extends to virtually all kinds of asset, including real estate properties, financial assets, insurance policies, precious metals, the contents of safe deposit boxes, and so on.

Specific rules apply to the methods for the valuation of the assets held abroad, especially those in states which are not EU members and the countries defined as jurisdictions which do not cooperate with the Italian tax authorities.

There are two specific taxes which apply to such assets, the first on foreign real estate properties (IVIE), and the second on the value of financial assets (IVAFE). These are calculated in such a way as to subject foreign assets to the same rate of taxation which would have applied if they were located in Italy.

In the case of the tax on foreign real estate properties (IVIE), taxes paid abroad on those properties may be deducted, while taxes payable on the value of financial assets and the obligations to declare these may be reduced if they are held through an Italian trust company.

4. Tax compliance requirements for estate and wealth planning matters

For taxation purposes, foreigners resident in Italy are subject to obligations on their earnings and their assets.

As Italian residents are subject to taxation on the basis of their income, irrespective of where it is earned, all income from foreign sources has to be declared to the Internal Revenue Agency each year, and will be taken into consideration in the calculation of the total taxable income and the taxes payable on it in accordance with the Italian regulations. In this way, financial income is generally subject to taxation at the fixed rate of 26%.

When taxes are payable at the standard rate applicable in Italy, any taxes payable abroad on income earned in foreign countries may be deducted. As the tax rates on private individuals in Italy are of a progressive nature, the credit on taxes paid abroad is frequently insufficient to fully offset the taxes due in Italy.

There is no global tax on assets in Italy, and there is no obligation to declare global assets. Single assets such as real estate and financial assets are taxed on an annual basis and specific rules apply to each

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COMMA 10 is a firm built on the cornerstone of professional collaboration between chartered accountants and lawyers. The firm provides its clients with comprehensive accounting, corporate, and tax services, as well as legal support, corporate restructuring, and bankruptcy services in multiple industries. COMMA 10 is based in Milan and provides integrated services to individuals, private and public companies as well as non-profit organisations.

Sergio Finulli is a Founding Partner of COMMA 10 and a GGI member since 1997. He is a chartered accountant and legal auditor, and currently regional Vice Chairperson Europe of the GGI International Taxation Practice Group (ITPG).

Andrea Angheleddu is a Chartered Accountant and earned a LL.M in international tax law from Bocconi University. He has more than ten years of experience in international tax, advising large companies as well as family business, often with an international background.

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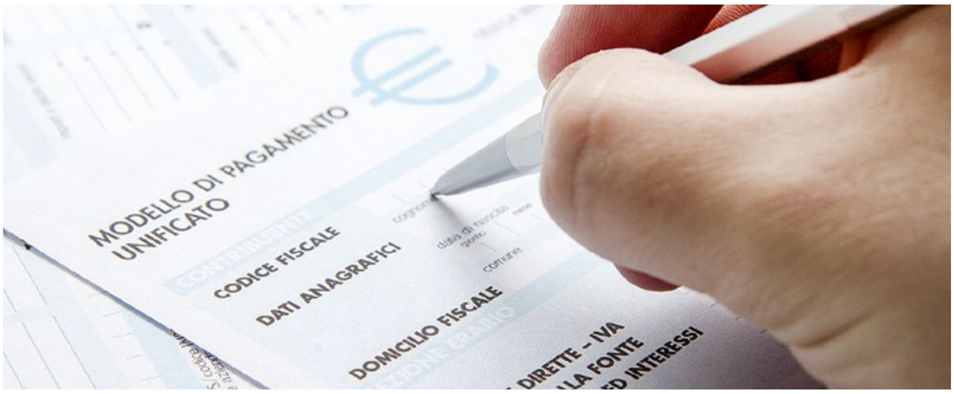


category of assets. Certain assets, such as works of art, are not subject to any form of asset tax in Italy.

5. Tax compliance requirements on sale of real estate

Real estate transfers in Italy are subject to a deed of notary, and registration tax is normally payable at the rate of 9%. If the seller is a corporation, VAT may also be due, in which case the taxes due on the deed of sale and purchase are reduced to 3%. Capital gains tax only applies for private individuals when a property is sold within five years of its purchase.

Collaboration with Other GGI Members

One increasingly important critical factor for foreigners with business interests in Italy regards withholding taxes applicable to dividends, interest, and royalties paid out abroad. By means of collaboration with another GGI member, it was possible to obtain certification from the relevant tax authority for the application of the EU Interest and Royalty Regime, as extended to Switzerland, to a Swiss permanent establishment.

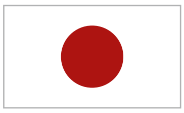
Future Developments, Outlook, and Summary

Italy is one of the founder members of the EU and one of the world's ten leading economies in terms of industrial production and exports. It has a network of consolidated international relations and has signed several treaties against double taxation. The country is open to international relations and investments, and the general principle adopted by it to detect any limitations is that of reciprocity.

Italy could potentially become an important location for high-net-worth individuals. In 2017, a non-dom system was introduced which lays down a tax of EUR 100,000 for all income of a foreign source.

Inheritance tax is limited (subject to a maximum rate of 8%) and in some cases no inheritance taxes are payable at all if the heirs continue to conduct a business inherited by them for a period of five years.

Significant tax reductions on income earned in Italy from self-employment and employment, with taxation on 30% of the income only, are possible for persons transferring their place of residence to Italy.



Japan

By Haruki Yoshida

Quick Overview of the International Tax Compliance Regulations in Japan

Japan is a member of OECD and Japanese tax law respects international rules. Arm's length transaction is the basis for transfer pricing, and tax law requires supporting documents to demonstrate that transactions are fairly performed. Tax haven protection law is implemented to prevent tax avoidance by setting up a corporation in tax haven countries.

Money laundering is not regulated by Japanese tax law; however, for foreigners and foreign corporations, it is difficult to open a bank account.

Withholding tax is assessed to foreigners and foreign corporations on cash dividends/loyalty (20.42%) and loan interest (15.315%). Real estate rent (20.42%) and capital gains of real estate sales (10.21%) are also subject to withholding tax. (Reduced tax rates may apply with tax treaties with many countries.)

VAT of 10% (called consumption tax in Japan) also needs to be paid

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by consumers when they purchase goods and services. (For food and drinks, except alcohol, dining out and newspaper subscriptions, an 8% reduced tax rate is applied.)

Foreign Tax and Financial Reporting Requirements in Japan

1. Main types of business and taxes for each entity:

a. Corporation and corporate income tax

If you set up a legal entity (corporation/Kabushiki Kaisha) in Japan, Japanese corporate tax is assessed for all income (Japan-source income and world income) generated by this entity. The effective corporate income tax rate is about 30% (including enterprise tax and corporate inhabitant tax.) There is no minimum share capital requirement. You will need to set up a year-end date, but it can be any month of your choosing. The financial statement and corporate income tax returns must be filed within two months after the financial year.

If you set up a branch in Japan, it is not considered an independent legal entity but a “Permanent Establishment” for the head office of your country. The scope of taxable income of corporate income tax is limited to the income from sources in Japan. Foreign income attributable to the branch operation is generally not subject to corporate income taxes; however, entirely Japan-source income (regardless of whether the income is attributable to the branch operation or not) is subject to Japanese corporate income tax.

If you are using an agent in Japan, again “permanent establishment” is important. An agent in Japan may be considered as “permanent establishment” and Japanese corporate income tax is assessed.

b. Individual person and individual income tax

An individual person is subject to individual tax, which is a progressive rate from 0% to 45% depending on income.

The concept of “residency” is important for individual persons. Foreigners doing business in Japan are classified in three types as follows, and the scope of tax assessment is different.

i. Non-Resident

A person who has lived in Japan for less than one year and does not have his primary base of living in Japan. Non-residents pay taxes only on income from sources in Japan, but not on income from abroad.

ii. Non-Permanent Resident

A person who has lived in Japan for less than five years but has no intention of living in Japan permanently. Non-permanent residents pay taxes on all income except on income from abroad that does not get sent to Japan.

iii. Permanent Resident

A person who has lived in Japan for at least five years or has the intention of staying in Japan permanently. Permanent residents pay taxes on all income from Japan and abroad.

2. Types of trusts, foundations, and tax rates for each structure

Japan has a structure for trusts and foundations; however, these entities are normally used for non-profit charitable activities. There is no special income tax rate for trusts/foundations, and if they have profit generating activities, corporate income tax is assessed.

3. Tax compliance requirements for owners of foreign assets

a. Bank account

Bank deposit interest rates are currently extremely low in Japan, so it is not recommended to invest in a Japanese yen bank deposit. Due to money-laundering issues it is difficult for non-resident foreigners (or foreign corporations) to open a bank account.

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Haruki Yoshi is the Managing Representative in the IDEA International Accounting Office and the managing partner in the IDEA Audit Firm. He received an MBA from Yokohama City University. He is a certified public accountant (CPA) and a certified information systems auditor (CISA).

IDEA International Accounting Office

b. Shares

Foreigners have already purchased more than half of Japanese shares. Ordinarily those foreign investors are entities outside Japan, such as foreign security trading corporations or financial institutions such as banks or pension funds. Foreigners can purchase Japanese shares by opening an account with a security broker.

Shares are mobile assets and all incomes (e.g., dividends or capital gains) related to share transactions are considered as non-Japan source income. Thus, Japanese tax is not assessed on non-resident foreigners or foreign corporations.

However, 20.42% withholding tax is assessed on cash dividends. (Reduced tax rates may apply with tax treaties depending on the foreigner's resident country). No withholding tax is assessed on capital gains from share sales transactions.

c. Real estate

Foreigners from many countries all over the world have come to Japan to buy real estate for investment purposes or for their private use. There are no distinctions between Japanese and other non-resident foreigners. The number of foreigners purchasing real estate such as condominiums and commercial buildings in Central Tokyo, as well as resort properties in Hokkaido, is increasing.

Real estate is land or property in Japan, so all incomes (e.g., rent/lease/capital gains) related to real estate transactions are considered as Japan-source income; thus, Japanese tax is assessed even if you are a non-resident foreigner or foreign corporation.

However, 20.42% withholding tax is assessed on real estate rent/lease. (If rent/lease is paid by relatives for residence, the withholding tax is exempted).

Withholding tax of 10.21% is assessed on capital gains from real estate sales transactions. (This does not apply, however, when the value of the real estate is JPY 100 million or less **and** the property is solely for the purchaser's residence or the purchaser's family's residence).

Both incomes (rent/lease/capital gains) are subject to Japanese tax and these paid withholding taxes will be settled by annual tax returns. You need to appoint a tax representative to handle Japanese tax returns.

4. Tax compliance requirements for real estate

There are compliance requirements for foreign owners to remit cash though banks to buy real estate for investment purposes if the amount exceeds JPY 100 million (because it is considered a capital transaction under the Japanese foreign exchange and foreign trade control act). Foreign owners (corporations or persons) need to submit an application for the cash remittance within 20 days from the purchase of real estate.

Foreign owners must also register the ownership of the real estate/building, although the registration will probably be done on the owner's behalf by a real estate trading corporation.

Collaboration with Other GGI Members

GGI members are working together to assist your wealth planning matters between countries. IDEA's accounting office is in Tokyo and assists GGI clients to establish company, tax filing, and accounting services.

Mexico

By Prof Sergio Guerrero Rosas

Quick Overview of the International Tax Compliance Regulations in Mexico

The Mexican tax system is one of the most complex and complete tax systems in the developing world, as it's composed of a diverse set of procedures, rules, and contributions that need to be complied with. The main institution responsible for controlling and supervising the fulfilment of these requirements is called Servicio de Administracion Tributaria (SAT).

Mexico divides its taxing methods in various ways. The first division concerns the type of taxpayer: corporations and individuals. Both corporations and individuals are taxed on their worldwide income; however, anti-deferral rules apply to both for income obtained outside of Mexican territory.

In other words, the way fiscal laws apply to taxpayers varies depending on whether the taxpayer is a legal resident in Mexico or a foreign resident with a source of income in the country according to the Ley del Impuesto Sobre la Renta (income tax law.)

Corporations are considered residents of Mexico when the main management office of their business, or their place of effective management, is located in Mexican territory. Individuals are considered resident in Mexico when their vital interests reside in Mexico.

Foreign Tax and Financial Reporting requirements for Mexico

1. Main types of business and taxes for each entity

Under Mexican law, the most common entities used by companies are the Sociedad Anónima (SA) and the Sociedad de Responsabilidad Limitada (S de RL); both are recognised as independent legal entities with limited liability. A different type of entity is the Sociedad Anónima Promotora de Inversión (SAPI); this one is used as a vehicle for private-equity investments.

The most relevant taxes in Mexico are the income tax and value added tax. These taxes are collected by the federal government.

According to the Mexican Income Tax Law, there are different fiscal regimes for taxpayers: nine regimes for individuals and three for corporations. Each regime comes with its own set of rights and obligations, such as exemptions and differing tax calendars.

In all nine fiscal regimes for individuals, income tax is calculated and paid at incremental rates; the minimum marginal rate being 1.92% and the maximum being 35%.

On the other hand, corporations have a fixed rate of 30% on all income, including capital gains.

Non-residents are subject to Mexican tax on their Mexican income, which is in many cases enforced through the withholding of certain taxes.

The value added tax is paid in most products and services and applies to corporations as well as to individuals. The general rate in most of the country is 16% of the cost of products or services and 8% for the northern border region of Mexico.

2. Types of trusts, foundations and tax rates for each structure

Trusts and foundations are very important to have in mind when undertaking international business; the most popular trust used by foreign companies to do business here in Mexico is called fideicomiso, which is a commercial contract governed by Mexico's General Law of Credit Instruments and Operations (LGTOC in Spanish).

One of the few "strategic activities", as defined by the Mexican constitution, is that fideicomisos can be used to have ownership of real estate along the coastline, which is prohibited to non-nationals by the constitution.

Mexicans are familiar with the use of both foreign trusts and domestic fideicomisos. In addition to their use in estate planning, both fideicomisos and foreign trusts may be used as tools to protect personal and a company's assets. Additionally, some tax benefits exist for qualifying real estate investment trusts in Mexico.

a. Administrative trusts

The function of this type of trust is to transfer the entitlement of assets and rights to the fiduciario so that this person can conserve, keep custody of, manage, and transfer them in his favour or in favour of a third party.

b. Investment trusts

In these trusts the fideicomitente

grants resources or cash to the fiduciario so that he may use them in economic transactions with the sole objective to obtain a monetary benefit.

c. Guarantee trusts

This is the most common type of trust used. Practically, the *fiduciary* acquires the rights and assets of the *fideicomitente* in order to guarantee the fulfilment of an obligation. The main benefit of this trust is that the *fideicomitente* can keep using and possessing the assets while still using them as a guarantee.

A primary benefit of using trusts is the possibility to defer the income tax payment. All types of trusts follow the same fiscal guidelines and regulations in Mexico. The *Ley del Impuesto Sobre la Renta* dictates that commercial trusts calculate their fiscal results via the *fideicomitente*. In other words, the *fideicomitente* will consider the revenue obtained from the trust, accumulate it with his own revenue, and pay taxes under the rate applicable which is generally 30% over said revenue.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

Mexican residents are taxed based on all income received, regardless of the origin of the income. Non-Mexican residents are taxed solely on the income that originates from Mexico.

4. Tax compliance requirements for estate and wealth planning matters

Most corporations and individuals have the obligation to present provisional tax statements, and other informative statements, on a monthly basis. In addition, they must file an annual tax return; individuals have until 30 April of the following year and corporations have until 31 March of the following year.

5. Tax compliance requirements on sale of real estate.

Regarding the sale of real estate, Mexican residents must calculate the fiscal profit over the estate, accumulate said profit to their other revenue for income tax purposes, and pay the applicable tax according to their fiscal regime.

Collaboration with Other GGI Members

We've supported Japanese, American, and European companies that are clients of other GGI members that initiate operations in Mexico by creating a subsidiary. In addition, we've developed various multi-country transfer-pricing studies jointly with South American members. Furthermore, we've collaborated with other members in the development of fiscal structures that have aided in the optimisation of the tax burden regarding intercompany operations.

Future Developments, Outlook/ Summary

The executive branch of the Mexican government introduced Mexico's tax reform for 2020, proposing changes to the Mexican Income Tax Law, Value Added Tax Law, and Federal Tax Code. Companies that will be particularly affected by the reform include those that receive payments from Mexico, such as interest, companies making payments to controlled foreign corporations, and structured companies that use tax-transparent entities. Businesses using digital platforms will also be required to register in the Mexican taxation program and must withhold taxes from users and pay as residents of Mexico.

Foreign companies doing business in Mexico must be aware of this new legislation and should study the current structures to avoid unpleasant surprises.

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Guerrero y Santana S.C. provides its clients with a wide range of tax, legal, and consulting services. The firm makes comprehensive evaluations of its clients' businesses and draws on the expertise of its professionals to offer the best solution available.

Prof Sergio Guerrero Rosas, Managing Director at Guerrero y Santana, has over 25 years' experience advising companies from SMEs to multinationals, as well as individuals, on tax and estate planning. He is also the Latin American Chairman of GGI's International Taxation Practice Group (ITPG) and Global Vice Chairperson of the Trust and Estate Planning Practice Group.

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New Zealand

By Stephen Rutherford

Overview of the International Tax Compliance Regulations in New Zealand

There are two components which establish the New Zealand tax jurisdiction:

1. A New Zealand resident is liable for tax on all assessable income, whether derived from New Zealand or overseas, and
2. A non-resident is liable for New Zealand income tax only on income that is derived from New Zealand.

New Zealand has rules for the taxation of Controlled Foreign Companies ("CFC") that may impute income in the hands of a New Zealand resident investor, even though the person has not actually derived the income. This occurs if the person has an ownership interest above the prescribed levels in a non-resident company earning passive income in the form of interest, certain dividends, royalties, and rent.

The CFC rules are supported by the thin capitalisation rules, which may prevent interest deductibility in New Zealand if the funding assists with the generation of active income that is not taxable under the CFC rules.

If the ownership interest in the non-resident company does not exceed the prescribed thresholds, the investment may be subject to taxation under the Foreign Investment Fund ("FIF") rules.

New Zealand also has rules for investment in Portfolio Investment Entities ("PIE"). Tax rates for these vehicles depend on the investor's residency and the resident's income levels. The foreign investments of a PIE are always subject to taxation under the FIF rules.

The New Zealand government has entered into a number of treaties with governments of other countries for the purpose of avoiding double taxation. These treaties are referred to as Double Tax Agreements ("DTA").

The regulation of foreign investment is liberal by international standards. However, the regime in relation to foreign investment in residential land was tightened in October 2018.

New Zealand's inbound investment rules regulate investments in New Zealand significant assets; certain types of sensitive land (including residential land and farmland) fall under these regulations. These rules govern who needs to obtain consent, when consent is required, and the process for obtaining consent.

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Blackmore Virtue & Owens (BVO) is an accounting practice located in Central Auckland which provides services to a range of New Zealand and overseas based clients.

Stephen Rutherford is the tax lead for BVO and provides taxation advice to BVO's clients. He has been a New Zealand tax adviser for the past 30 years and is a Chartered Accountant, a member of STEP and a member of the International Fiscal Association (IFA).

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Foreign Tax and Financial Reporting Requirements for New Zealand

1. Main types of businesses and taxes in New Zealand

a. Sole traders who run their own businesses as individuals and are self-employed.

Personal income tax rates for 2019/20 range from 10.5% to 33%. In addition, a separate levy for accident compensation is payable by individuals who work for themselves, which is levied on profit.

b. A partnership is a way for two

or more people to run a business together. A partner does not have to be an actual person. For example, a limited company counts as a "legal person" and can be a partner.

c. A limited partnership is a separate legal person, having a separate legal personality from its partners. This makes it more akin to a company. However, a limited partnership is also a flow-through entity for New Zealand income tax purposes (i.e., losses and gains are attributed to the partners directly).

As a result, limited partnerships are the preferred investment vehicle for some foreign venture-capital investors because they will allow investors to limit their exposure to liability, while at the same time providing a flow-through tax mechanism in relation to gains and losses. This allows them to recognise those gains or losses in their home country.

d. A limited company is a company "limited by shares''.

The current corporation tax rate is 28%. A full imputation regime applies to dividends. Income tax paid by a company which gives rise to imputation credits. The imputation credits may be attached to the dividends paid by the company. The shareholder's income includes the imputation credits but with a credit allowed for those credits against the income tax otherwise payable. Non-resident shareholders will be subject to non-resident withholding tax on any dividends paid with the rate modified by any applicable double tax treaty.

A person's Research and Development ("R&D") tax credits for a tax year are calculated as 15% of their total eligible R&D expenditure, subject to a minimum threshold and expenditure cap.

Public limited companies pay the same tax rates as private limited companies. However, certain sectors such as banks can apply different rules.

2. Types of trusts

At the time any distribution is made, a trust is categorised (for tax purposes only) as either a complying trust, a foreign trust, or a non-complying trust. This classification determines the tax treatment of any distribution, other than a distribution of beneficiary income, and the applicable tax rate.

Beneficiaries of foreign trusts and non-complying trusts may also be taxed on distributions of accumulated income and, in some cases, capital gains. These kinds of distributions are known as "taxable distributions".

Trustees are taxed at the flat rate of 33% on trustee income. The same rate applies whether the trustee is a trustee of a complying trust, foreign trust, or non-complying trust. A beneficiary is liable to tax on beneficiary income at the beneficiary's marginal tax rate. The same treatment applies whether the beneficiary is a beneficiary of a complying trust, foreign trust, or non-complying trust. Foreign beneficiaries may need to file a New Zealand tax return.

A unit trust is deemed to be a company for tax purposes. The unit holder is deemed to be a shareholder, the units are deemed to be shares and distributions are deemed to be dividends

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

There have been changes for overseas owners of New Zealand real estate including holding entities and funds over the past few years. Changes involve rate of tax and withholding tax requirements on sale of real estate. Other changes are anti-money-laundering requirements for advisors and bankers. These include identification details for individual clients and sources of funds from overseas legal entities with details of their owners.

New Zealand has no Capital Gains Tax ("GCT"). The debate of whether to implement one was put to rest earlier this year.

4. Tax compliance requirements for estate and wealth planning matters

New Zealand has no estate taxes, inheritance taxes, or death duties, nor are there any gift duties.

5. Tax compliance requirements on sale of real estate

An objective bright-line land sale test for residential land requires income tax to be paid on gains from the disposal of certain residential property acquired and disposed of within five years (two years for land acquired before 29 March 2018), with the exception of the main family home. The purpose of the bright-line test is to supplement the

...next page

purpose or intention test. The bright-line test applies only where none of other land taxing rules apply. The bright-line test came into force on 01 October 2015. It only applies to a person's disposal of land if the person acquired their estate or interest in the land on or after 01 October 2015. All non-residents and New Zealanders buying and selling any property other than their main home must provide a New Zealand IRD number as part of the usual land-transfer process with Land Information New Zealand.

In addition, all non-resident buyers and sellers must provide their tax identification number from their home country, along with current identification requirements such as a passport.

To ensure that our full anti-money-laundering rules apply to non-residents before they buy a property, non-residents must have a New Zealand bank account before they can get a New Zealand IRD number.

A residential land withholding tax ("RLWT") regime was introduced to ensure the collection of income tax from foreign investors who dispose of New Zealand residential property that is subject to a modified form of the bright-line test.

Collaboration with Other GGI Members

The firm has worked together with a number of GGI members in multiple jurisdictions. There is always the opportunity to mitigate tax and ensure that your client only pays the appropriate amount of New Zealand tax in accordance with New Zealand tax laws.

Appropriate structuring can always help and working with other GGI members to ensure that whatever structures are implemented provide the most tax efficient situation for both jurisdictions.

Future developments, Outlook / Summary

Although the capital gains tax debate has been put to bed, the New Zealand government is fully supportive of the OECD BEPs actions and has implemented measures in accordance with the OECD's action points. However, the New Zealand government has noted that if they deem it appropriate, they will enact rules to protect the New Zealand tax base even if these rules conflict with the OECD's recommendations.

Despite New Zealand being a small economy in a worldwide perspective it still has complex tax and compliance rules that can cost the unwary additional time and cost. To limit such cost and to ensure compliance with New Zealand regulations we are always willing to assist GGI members and their clients to further their business goals.

South Africa

By Graeme Saggers

Quick Overview of the International Tax Compliance Regulations in South Africa

South Africa, as a developing country, regards foreign direct investment as a key economic driver and thus is committed to putting measures in place to ensure the ease of doing business in the country.

The international tax compliance regulations are therefore designed to be simple and efficient whilst protecting the country's tax base. The South African Revenue Service (SARS) has a sophisticated IT infrastructure and regularly performs well under peer reviews conducted by the OECD. All persons who are not residents (non-residents) are subject to tax in South Africa on their income from a source within or deemed to be within South Africa, subject to certain exemptions on, for example, interest and capital gains. Additional to tax compliance regulations, South Africa has a formal exchange control regime which regularises the flow of funds in and out of the country.

Thus, any inward or outward flows are required to be reported before the South African Reserve Bank (SARB) will authorise the release of funds.

Foreign Tax and Financial Reporting Requirements for South Africa

1. Main types of business and taxes for each entity

The main types of business can be summarised as follows:

a. Individuals (sole proprietors and partnerships): taxed at an increasing marginal rate with a maximum tax rate of 45% for taxable income that exceeds ZAR 1.5 million. Capital gains are included in taxable income at an inclusion rate of 40% (effective max CGT rate of 18%).

b. Corporations (companies and close corporations): taxed at a flat rate of 28% on net income. There are incentives in place to reduce this tax rate for companies that qualify as either small businesses or micro businesses. Capital gains are included in taxable income at an inclusion rate of 80% (effective CGT rate of 22.4%).

c. Trusts: taxed at a flat rate of 45%. Capital gains are included in taxable income at an inclusion rate of 80% (effective CGT rate of 36%). Trusts that qualify as "special trusts" are taxed on the same basis as individuals).

d. Other taxes that may affect non-residents include the following (rates are quoted before any possible reduction in terms of a double-taxation agreement [DTA] with other countries):

i. Dividends withholding tax: 20%
ii. Interest withholding tax: 15%
iii. Royalties withholding tax: 15%

South Africa does not impose withholding tax on service or management fees. Despite certain of these withholding taxes being exempt in terms of a DTA, the payer of the amount must submit a return to report said payment to SARS.

2. Types of trusts, foundations and tax rates for each structure

There are many broad ways in which a trust can be classified in South Africa. The most common distinctions are:

a. The way in which they are formed:

i. Inter vivos trust is created during the lifetime of a person; and
ii. Testamentary trust is created in terms of a will on death of a person.

b. The rights afforded to beneficiaries:

i. Vesting trusts give the beneficiaries vested rights to the income and capital of the trust; and

ii. Discretionary trusts give the beneficiaries a contingent right to the income and capital of the trust at the discretion of the trustees.

c. The tax types:

i. Trusts are treated as separate persons from a tax perspective and taxed accordingly at a flat rate of 45%; and

ii. Special trusts are trusts set up to manage finances on behalf of a disabled person or a minor who is the recipient of an inheritance. Special trusts are taxed in the same manner as natural persons.

South Africa has codified the conduit principle and therefore, in most cases, where income or capital gains are distributed to beneficiaries in the same year as they are earned by the trust, the beneficiary is taxed as if it is earned by them. A consideration on this aspect is situations where capital gains are vested in non-resident beneficiaries. Currently SARS treats these gains as being taxable in the trust (effective tax rate of 36%); however, there are differences in opinion in the industry on this interpretation and it is expected that there will be a court case soon that will clarify the position. South African trusts cannot, without specific approval, invest in foreign assets due to exchange control restrictions.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

Foreign owners of South African assets are subject to domestic legislation in

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the financial services industry. South Africa has a highly regulated banking system with an extensive KYC process involving, amongst other aspects, proof of source of funds, FATCA declarations, and CRS declarations.

South Africans who wish to invest in foreign assets must obtain approval from the SARB in order to allow the flow of funds out of the country. South African individuals can invest up to ZAR 1 million per calendar year offshore with little regulatory approval. South African individuals can invest an additional ZAR 10 million per calendar year offshore after getting SARB approval, which includes a tax compliance certificate.

4. Tax compliance requirements for estate and wealth planning matters

South African individuals who are ordinarily resident in the country are subject to estate duty on their worldwide assets. Non-residents are subject to estate duty on their South African situs assets only. Estate duty is levied at a rate of 20% for the first ZAR 30 million of a dutiable estate and 25% on anything above ZAR 30 million. There is an abatement for the first ZAR 3.5 million of an estate and certain assets are not dutiable. Deceased estates are administered through the Master of the High Court and included in this process is the submission of an estate duty return with SARS. Furthermore, the executor of the estate is required to submit a date of death tax return wherein a capital gain is recognised on a deemed disposal of all assets owned by the deceased, except those assets that are bequeathed to a surviving spouse. Donations by non-residents to residents in South Africa are not subject to donations tax. Donations by residents to anyone are subject to donations tax at a rate of 20% for the first ZAR 30 million of donations (in a lifetime) and 25% for donations exceeding ZAR 30 million.

5. Tax compliance requirements on sale of real estate

The transfer of ownership of real estate is administered by a conveyancing attorney. As non-residents are required to pay capital gains tax on the sale of South African property, attorneys are required to withhold a portion of the selling price of the property in lieu of CGT. The rates of withholding tax on the proceeds of property transfers by non-residents are:

a. 7.5% where the seller is a natural person;
b. 10% where the seller is a company; and
c. 15% where the seller is a trust.

If the seller believes the actual CGT incurred is lower than the withholding tax, they can apply to SARS for a directive to withhold a lower amount.

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Nolands is an international auditing firm located in 11 offices in all major centres in Africa. Nolands employs almost 200 people and focuses on providing the best possible solutions for its clients. The company prides itself on being "not ordinary" and on its ability to integrate services and respond rapidly to clients' needs.

Graeme Saggers is the Tax Director for Nolands. He holds a BCom (Hons) degree from Rhodes University and an MCom (Tax) degree from the University of Cape Town. Graeme qualified as a chartered accountant in 2009 after completing his articles at KPMG. He joined Nolands in 2011 as an audit manager and was appointed as a tax partner at Nolands in September 2014.

Graeme Saggers

Collaboration with Other GGI Members

An example of a collaboration with another GGI member involves the assistance in South Africa of the setup of a subsidiary of a Dutch holding company. The Dutch company was the client of a fellow GGI firm. Our services included consultation on South African tax compliance requirements, as well as the inputs into the remuneration package and employment contract of a director who served in an executive capacity on both the Dutch company and the South African subsidiary company.

Future Developments, Outlook, and Summary

South Africa, and SARS specifically, is consistently looking for ways in which to make the country more investor friendly. South Africa has recently voted in a new president who has appointed a new commissioner of SARS. Both have indicated their commitment to use technology to facilitate the ease of doing business in South Africa.

Spain

By Santaiago Lapausa

Quick Overview of the International Tax Compliance Regulations in Spain

The Code of Good Tax Practice, released by the State Tax Agency in 2010, sets out a series of recommendations and guidelines to enhance transparency and mutual trust. Law 31/2014 amending the Capital Companies Law, established specific tax responsibility for the managing bodies and introduced obligatory tax governance rules.

Law 34/2015, partially amending Spanish General Tax Law 58/2003, provided for the obligation to identify the residence of persons holding or controlling certain financial accounts and the reporting obligations of such accounts in the context of mutual assistance. Spain has fully adopted the provisions of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and the OECD CRS for the automatic exchange of financial account information, as of January 2016.

Spanish law 10/2010, on prevention of money laundering and financing of terrorism, is an adaptation of the EU law 2005/60/CE. The obligation to disclose the ultimate beneficial owner (UBO) in front of a notary when signing any document related to a corporate structure started in 2012. Notaries make this information available to the authorities, as part of the fight against money laundering.

A new quality standard from the Spanish Association for Standardisation, UNE 19602 “Tax compliance management systems: Requirements and guidance”, was released in February 2019, offering a model of best practice in tax compliance (much like ISO), helping organisations to prevent and effectively manage their tax risks.

Foreign Tax and Financial Reporting Requirements for Spain

1. Main types of business and taxes for each entity

a. **SA (Sociedad Anónimia),** with a minimum capital of EUR 60,000 divided into shares or **SRL (Sociedad de Responsabilidad Limitada)** with a minimum capital of EUR 3,000, divided in quotas. A shareholder’s liability to third parties is limited to face value of its shares or quotas. The management body of the company must prepare annual accounts, duly approved and signed by its members, within the first three months after the end of the financial year (normally the calendar year). Such accounts must be approved by the shareholders’ meeting within the first six months. Since 2017, it is compulsory to disclose the UBO who directly or indirectly holds more than 25% of the corporate structure, so this information is now public.

b. **Branch** of a foreign corporation. A non-resident company may operate in Spain through a branch rather than a subsidiary. A branch is not a legal entity separate from its head office, but it does have certain autonomy; arm’s length principles apply, and separate accounts must be kept. It is considered a permanent establishment (PE) and taxed under

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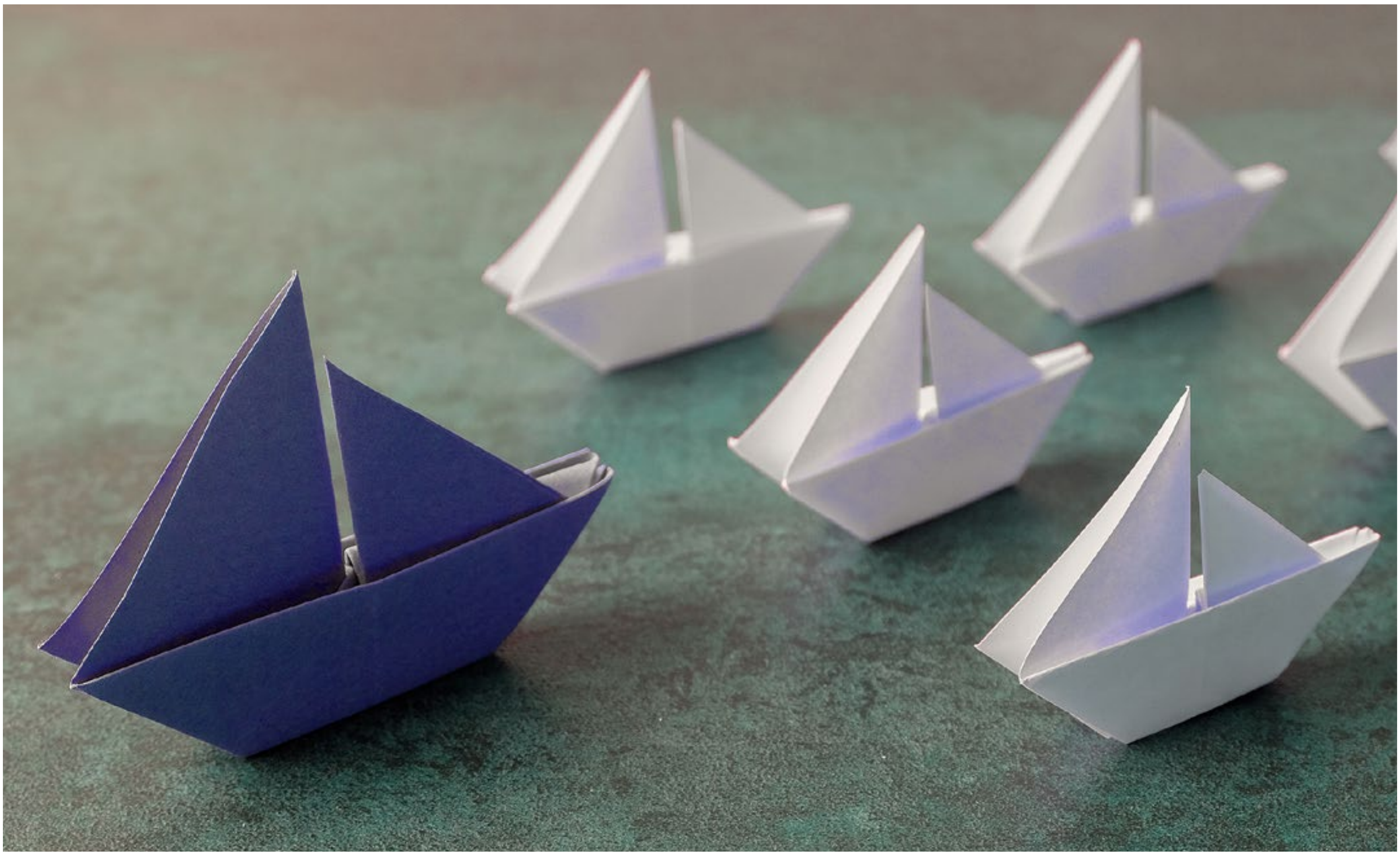
JC&A Abogados is a firm based in the city of Marbella, Spain, comprised of lawyers and economists aimed at providing local, national, and international professional advice. They speak Spanish, English, French, Russian, German, and Dutch.

Santiago Lapausa is Partner of JC&A Abogados. With a BA in economics and business studies, he joined the firm in 2003 to found and develop the tax department. Santiago is involved in all areas of general tax practice and specialises in non-residents and international tax planning.



the same rules of subsidiaries (corporate income tax [CIT]). It is subject to a branch profits tax on the remittance of profits to the foreign head office, unless located in an EU member state. It requires a notary deed and registration at the Mercantile Registry.

c. A **representative office** is not a separate legal entity and has no power to conclude contracts with clients in Spain.

d. A **company** is resident in Spain if it is incorporated in Spain, has its registered office in Spain or its effective management.

Tax havens may be presumed to be tax resident if main assets consist of real estate property or rights located or executed in Spain or the main business activity, unless it can demonstrate effective management there and valid business reason.

e. **ETVE ("Entidad de Tenencia de Valores Extrajeros")** is a special tax regime on foreign securities for Spanish holding companies.

The standard CIT rate is 25%. Companies are taxed on worldwide income except of branches. The tax period is the calendar year by default. Companies have unlimited loss carryforward. Participation exemption, transfer pricing rules, CFC rules, and BEPS measures are applicable.

2. Types of trusts, foundations and tax rates for each structure

Trusts are unusual structures for Continental Civil Law and Spain has not subscribed to or ratified the Hague Trust Convention 1985 on the Law Applicable to Trusts and on their Recognition.

Trusts are not regulated by Spanish private international law or domestic law.

Trusts are disregarded for tax purposes in Spain (look-through regime) and the settlor remains as the owner, as in Spanish domestic civil law it is not accepted that the ownership has really been transferred from the settlor to the trustee, as the trust itself is not recognized. The new UK-Spain tax treaty includes UK trusts (resident of the UK under its domestic law) in the definition of "persons" to benefit from the tax treaty provisions when the income is taxed either in Spain or in the UK.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc. (for residents in Spain)

a. **ETE:** Survey for the Central Bank of Spain. This form should be filed when the value of foreign financial assets exceeded EUR 1 million at the beginning or the end of tax year, or when transactions to and from abroad of more than EUR 1 million are made.

b. **D-6:** Declaration of ownership of foreign marketable securities for the Ministry of Economy, Industry and Competitiveness. The value of the securities at the end of the year should be declared and there is no minimum amount to be held for being obliged to declare.

c. **Form 720:** Informative tax return for the tax authorities on foreign assets. There are three blocks to report on accounts, securities, and real estate, considering the value at the end of the year and the average balance of the last quarter. This should be reported if this is your first year as tax resident in Spain and the global value of any of the three blocks exceeds EUR 50,000, or the value has increased by more than EUR 20,000 compared to previous tax returns, or when assets previously reported are no longer held. The settlor of a trust must declare it, as well as beneficiaries of an irrevocable trust. This tax form has been denounced to the European Commission, opening an infringement procedure.

4. Tax compliance requirements for estate and wealth planning matters

Spain is divided into 17 autonomous regions. Wealth tax is shifted to regional governments and taxation varies substantially, starting from zero tax in Madrid. Wealth tax liability is limited to the amount of income. Residents declare worldwide assets, non-residents only assets located or executable in Spain.

5. Tax compliance requirements on sale of real estate

Non-residents (individuals and corporations) pay capital gains tax at 19% of the difference between sale value (sale price minus sale costs) and purchase value (purchase price plus taxes and costs). Residents (individual) integrate capital gains as part of the saving taxable income of the annual personal income tax (marginal tax rate of 23%). Spanish companies and branches integrate capital gains as part of the yearly corporate income tax.

Collaboration with Other GGI Members

The core business of our firm is about tourism-related residential properties in the south of Spain. We have helped clients of GGI members to invest privately or through corporate structures in holiday homes or real estate development.

Future Developments, Outlook, and Summary

2020 has started with a new Government after four general elections in four years. Spain will have its first coalition government since 1978, when our Constitution was approved, with a thin margin of two votes. With just 155 seats over 350, the new government of a strong leftist character will face an uphill struggle to implement its planned reforms.

Unlike 2019, a year with little legislative development due to the impossibility of forming a government, 2020 appears to be a year full of new regulations and from a very different angle and perspective.

UK

By Alan Rajah

Quick Overview of the International Tax Compliance Regulations in the UK

The International Tax Compliance (Amendment) Regulations 2019 came into force in the UK on 16 May 2019. This instrument amends the International Tax Compliance Regulations 2015 (SI 2015/878) ("principal regulations"), which came into force on 15 April 2015 and require financial institutions in the United Kingdom to report information on certain non-resident account holders to Her Majesty Revenue & Customs (HMRC) for exchange under international arrangements.

This instrument brings into scope international exchange arrangements equivalent to those included in the principal regulations which the United Kingdom has entered into since May 2018. The principal regulations impose obligations on UK financial institutions to carry out due diligence procedures to identify account holders that are resident overseas, to maintain a record of relevant information, and to report accounts identified as reportable to HMRC.

This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act.

The legislation applies to activities that are undertaken by small businesses.

...next page

The approach to monitoring of this legislation is that HMRC and HM Treasury will continue to liaise with stakeholders from time to time to discuss the implementation of the regulations as part of continuing engagement with industry.

Foreign Tax and Financial Reporting Requirements for the UK

1. Main types of businesses and taxes in the UK

The main type of businesses in the UK and taxes for each entity are as follows:

a. **Sole traders** run their own businesses as an individual and are self-employed. Personal Income Tax rates for 2019/20 range from 20% to 45%. In addition, a separate tax known as National Insurance is payable by individuals who work for themselves, which is dependent on profit.

b. A **partnership** is the simplest way for two or more people to run a business together. A partner does not have to be an actual person. For example, a limited company counts as a "legal person" and can also be a partner.

c. There are different rules for **Limited Liability Partnerships.** An LLP can be set up ("incorporated") in order to run a business with two or more members. A member can be a person or a company, known as a "corporate member". Each member pays tax on their share of the profits, as in an "ordinary" business partnership, but isn't personally liable for any debts the business can't pay. Partnerships are taxed in the same way as sole traders. There are exceptions to the rules where the partnership or LLP has a corporate member (a limited company) in which the tax rules are extremely complex.

d. A **limited company** is a company "limited by shares" or "limited by guarantee".

The current corporation tax rate is 19%. There are special tax treatments to plant and machinery which allows 100% tax allowance known as the annual investment allowance. Any dividends received by a company are usually non-taxable and are known as franked investment income.

Disposals of assets are subject to corporation tax at 19%. Another exemption is known as Substantial Shareholding Exemption (SSE). The SSE allows a gain on a disposal of shares by a company to be exempt from corporation tax on the capital gain. There are certain criteria to be met in order to qualify for this exemption.

Research and development refers to the activities companies undertake to innovate and introduce new products and services. Certain expenditure and capital items may qualify for enhanced deduction, therefore SMEs would get an extra 130% on their qualifying costs from their yearly profit, as well as the normal 100% deduction, to make a total 230% deduction.

The patent box enables companies to apply a lower rate of corporation tax to profits earned and will allow the lower rate of corporation tax, at 10%, to be applied.

Most companies that are limited by guarantee are not usually liable to corporation tax and no corporation tax return is usually due.

Public limited companies pay the same corporation tax rates as private limited companies. However certain sectors such as banks are taxed differently.

2. Types of trusts, foundations and tax rates for each structure

There are a number of trusts in the UK, including bare trusts, interest in possession trusts, discretionary trusts, accumulation and maintenance trusts, mixed trusts, settlor-interested trusts, and non-resident trusts.

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Lawrence Grant, Chartered Accountants celebrates its 50th anniversary this year. Based in North London, they have over 30 staff, three partners and two tax consultants providing well-respected accountancy, business support, and cross-border tax advice. They also offer a selection of cloud and digital software solutions using AI technology.

Alan Rajah joined Lawrence Grant in 1994 and became Partner in 2001. He is involved in all areas of general practice, specialising in valuations of business, due diligence, and mergers and acquisitions. His client portfolio includes UK and overseas companies and individuals as well as medical professionals. Alan is Global Vice Chairperson of the GGI International Tax Practice Group.

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Trustees of non-resident trusts do not pay UK tax on foreign income they receive. There are different tax rules for each type of trust and tax rates range from 7.5% to 45%. Non-resident trustees do not usually pay UK capital gains tax.

Instead, the settlor or the beneficiaries may have to pay tax on gains made by the non-resident trustees.
Trusts, including non-resident trusts, may have to pay inheritance tax on assets in the trust. Non-resident trusts will only have to pay it on assets situated outside the UK if the settlor was domiciled (or deemed domiciled) in the UK when the assets were put into the trust.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

There are new changes for overseas owners of UK real estate, including holding entities and funds. The first change is a tax charge on capital gains on disposals, and the others are anti-money-laundering proposals. These include the registration of overseas legal entities and some trusts holding UK real estate with details of their owners.

There is now legislation to bring non-residents within the scope of UK tax on gains on investment in UK real estate. The change came into force on 06 April 2019 and any gain is based on increased value as calculated from that date.

The change impacts non-resident owners, although those with a general exemption from UK tax, such as certain overseas pension funds and sovereign wealth funds, are outside direct scope.

All other disposals of residential property are chargeable to capital gains tax from 05 April 2015.
Annual Tax on Enveloped Dwellings (ATED) is an annual tax payable mainly by companies that own UK residential property valued at more than GBP 500,000 and the charges depend on the value of the property.
Non-resident property collective investment vehicle (CIV) may be subject to UK property taxes with effect from 06 April 2019, which may have an adverse impact on pension funds.

4. Tax compliance requirements for estate and wealth planning matters

All UK-domiciled individuals and UK residents who have been in the UK for 17 of the last 20 years are subject to inheritance tax (IHT) on worldwide assets that exceed GBP 325,000 and are taxed at a rate of 40% . Non-UK-domiciled individuals are subject to IHT only on UK-situated assets.

5. Tax compliance requirements on sale of real estate

The EU's Fifth Anti-Money Laundering Directive (MLD5) extends the existing trust registration requirement to all non-UK trusts that own UK real estate.

...next page

HM Treasury brought in the Fifth Anti-Money Laundering Directive on 09 July 2018 and the text of the directive was transposed by EU member states on 10 January 2020. On this date, the Fourth Anti-Money Laundering Directive (MLD4) was amended.

Capital gains tax (CGT) may need to be paid if a person makes a profit ("gain") when they sell or gift a property that's not their home. The CGT rate for individuals ranges from 18% to 28%.

Collaboration with Other GGI Members

The firm has developed a number of onshore and offshore structures by working closely together with other GGI members in multiple jurisdictions. The UK tax legislation has presented a huge tax planning opportunity for foreign companies to set up holding company structures in the UK with the shares owned by offshore trusts.

The main benefits of such structures include the following:

1. No capital gains tax on the sale of subsidiary;
2. No tax on dividends received by subsidiary companies; and
3. No withholding taxes on dividends distributed by a holding company.
4. The extension of the period from 12 months to 36 months for the holding company to be liquidated to take advantage of the tax benefits of having a holding company.
5. Protection of family assets and creation of a long-term legacy for the family heirs.

Future Developments, Outlook, and Summary

It is widely accepted by most tax planners around the world that the days of complex and aggressive offshore tax planning may be numbered due to the pressure exerted by various governments around the world. The introduction of the exchange of information legislation has resulted in a number of offshore structures being closed or under review.

However, there are still a few tax-planning opportunities that are available in order to avoid unnecessary tax leakage, but taxpayers must seek appropriate professional advice before embarking on any offshore tax planning.

USA

By Kevin E. Thorn

The United States has long been known as The Land of Opportunity. Indeed, the US is filled with opportunities for people around the globe looking to do business. The requirements to conduct business in the US are the same for foreigners as for US citizens; however, there are extra considerations to which non-US persons must pay attention. There are seemingly limitless numbers of returns and reports that US businesses must file, and often dire consequences for not meeting them. Filing obligations are determined by multiple factors, such as the business's structure, location, and operations conducted. It is imperative to consult with experienced US counsel to ensure you do not run afoul of the diverse and complex rules for businesses.

Taxes in the US

There are many types of taxes that effect businesses in the US. Aside from income tax, US businesses are also subject to sales and use taxes, transfer pricing, and excise taxes. Employers must also meet strict employment tax laws, which require the employer to withhold and pay to the IRS and state taxing authorities a portion of each employee's salary. Additionally, certain industries are subject to industry-specific taxes. This applies to taxes at the federal and state levels. Compliance with the myriad business tax laws is critical. Compliance means not only paying the taxes, but filing numerous information returns as well. The IRS and state taxing authorities are particularly aggressive in enforcing these laws.

Failure to comply can subject a business, its owners, and its officers not only to large monetary penalties, but also to criminal investigation and prosecution.

Experienced tax professionals know what to look for and how to achieve compliance. US tax counsel can help keep your business compliant with its reporting obligations and help it to operate in the most efficient tax manner, so you keep as much of your hard-earned income as possible.

1. Employment taxes

When hiring employees for a US enterprise, businesses must be compliant with employment-specific laws. Federal and state laws establish many requirements employers must meet. Businesses must be sure to follow federal, state, and local labour laws which control the employer-employee relationship. These laws are typically enforced by the IRS and the Department of Labor, and their state counterparts.

Employment laws typically address minimum requirements for hiring an individual, employee documentation, professional licensing requirements, and employee termination rules. Also, depending on the size of the business, companies in the US are expected to provide benefits to their employees, including time off for illness and certain family events, disability accommodations, and retirement savings options. The Employee Retirement Income Security Act of 1974 ("ERISA") is a complex set of rules governing employee retirement options and requirements.

2. Healthcare taxes

Under current US law, businesses with 50 or more full-time employees are expected to provide health insurance to their employees. This law is monitored and enforced by the Internal Revenue Service. Any business that fails to provide health insurance is subject to a steep penalty that will be subject to collection by the IRS, which is often considered the nation's most powerful and successful collection agency. Also, many states have their own health insurance requirements that employers and employees must follow.

3. Immigration issues and taxes

A foreign business will likely have legitimate reasons for wanting to employ non-US persons for certain roles in its US operations. However, just because the business is located in the United States does not guarantee the right to live in the United States. It also does not mean the business has a license to hire foreign individuals.

Fortunately, US immigration laws offer a range of options for employing foreign individuals in the US. There are numerous types of visas for individuals looking to work in the US. Options range from short-term visas to permanent legal residence (a.k.a., the "Green Card"). Often, the visa type is determined by the type of work the employee will be performing. In addition, options exist for family members of foreign employees to live in the US.

US immigration laws and policies are complex and often changing. It is critical to work with US counsel to understand the immigration rules.

4. Import taxes in the US

A business may require you to import goods into the US. Counsel can help the business understand and

...next page

meet the ever-changing customs, licensing, permitting, and tariff laws affecting importing goods into the US, as well as how those laws interact with taxes and other areas of the business. The interaction of these laws and regulations are extremely complex and US counsel will be of great help in avoiding any trip wires that could invoke penalties.

5. Foreign reporting

Of course, as a non-US person, there may be extra reporting requirements. Just as with individuals, US businesses are required to file FBARs if they have financial accounts outside of the US. This requirement may affect the business and employees. Also, US businesses with foreign shareholders and partners have extra reporting requirements. Similarly, foreign ownership of businesses in certain industries are subject to additional requirements and limitations. US counsel is necessary to ensure these reporting requirements are met.

Foreign Tax and Financial Reporting Forms

Given that the IRS is focused on offshore compliance, as well as how to track the flow of funds from businesses from around the world, they have developed a number of forms that must be filed to stay in compliance and stay out of trouble with the US tax authorities.

With so many specific requirements, it can be difficult to determine which foreign reporting form should be used at any given time. While each individual form is designed to address a specific set of circumstances and to satisfy taxpayers' reporting obligations under separate provisions of the Internal Revenue Code, it will not always be clear what filing (if any) is required.

The following are a list of forms and IRS considerations to keep in mind as a company begins to examine its reporting obligations for clients, trusts, foundations, and/or companies:

1. FBAR

An FBAR (Report of Foreign Bank and Financial Accounts) must be submitted by taxpayers (for individuals, companies, trusts, and foundations) with an interest in or signature authority over a foreign bank account/accounts with an aggregate value of over USD 10,000.

2. 3520

If a US individual or corporate taxpayer has received a gift from a foreign individual, estate, trust, foundation, or business entity. This includes gifts of money or other forms of tangible or intangible property; however, it is subject to thresholds of USD 100,000 for gifts from foreign individuals, trusts, foundations, and estates.

3. FORM 3520 A

An interest in a foreign trust or foundation that has at least one US owner. While the foreign trust is primarily responsible for filing Form 3520 A, if the trust fails to do so, each US owner must complete Form 3520 A and include it with their Form 3520 filing.

4. FORM 5471

It is possible for a company to fall into one of the four "categories of filers" listed above with respect to a role with or ownership interest in a foreign business entity. Filing is generally (though not exclusively) required with respect to entities in which a US person (individual or business entity) owns a 10% or greater interest during the tax year.

5. FORM 5472

An interest in a foreign corporation that owns a 25% or greater interest in a domestic business entity or that has engaged in US trade or business during the tax year. However, before you prepare Form 5472, check to see if one of the statutory exceptions to the filing requirement applies.

6. FORM 8938

An individual taxpayer who owns certain foreign financial assets, such

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Kevin E. Thorn, Managing Partner of the Thorn Law Group, is well known throughout the United States and around the globe. He has been practicing tax law for over 20 years and is skilled at resolving complex tax disputes, and executing complicated tax planning for businesses, insurance companies, banks, trusts, foundations, and estates.

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as foreign financial assets (such as bank accounts) held at foreign financial institutions or securities held outside of a foreign financial account.

If there is a need to file a Form 8938, make sure to review all FBAR filings procedures.

7. FORM 926

This form is used for a taxpayer who holds an interest in a domestic corporation, estate, foundation, or trust, and is engaged in an exchange or transfer involving a foreign business entity. If the exchange was conducted or the transfer was done using a foreign financial account, make sure to review the FBAR filing requirements.

Future Developments of Reporting Requirements

Reporting obligations with respect to financial assets, entities, and transactions are complicated in the US, and, in some cases, the estate, trust, foundation, or company will need to examine multiple transactions to determine if they have an obligation to file one or more financial reporting forms with the IRS.

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Let us know what you think about this special edition of the ITPG newsletter on Working Together To Optimise International Tax Compliance; we welcome your feedback. If you wish to be removed from the mailing list, please send an email to info@ggi.com.

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