PRIVATE CLIENTS ALERT
May 2018

INTRODUCTION

We gladly present you the first newsletter on Private Clients and business entrepreneurs.

We are an expert group within Mazars with dedicated advisors focused on giving you the best advice. Our advisors are tax and business specialists with a broad knowledge who collaborate closely with each other on an intentional level with you as a client as their first priority and interest.

In this issue we discuss areas which our clients have shown interest in. We will continue to discuss questions and areas where our clients have asked us to give them an opinion.

We welcome all feedback, ideas and questions.

Kind regards,

Michael Asplund
Head of Mazars Private Clients Services

Content

- Taxation of excess executive compensation and equity grants under the tax cuts and jobs act in the USA
- Lump-sum taxation regime in Switzerland
- Tax strategy in Russia: 3 practical tips for business owners
- Introduction of a flat tax on investment income and scope of wealth tax reduced to real estate in France
- A favourable personal income tax framework: a very good reason to move to Portugal
- German tax changes due to the new government
TAXATION OF EXCESS EXECUTIVE COMPENSATION AND EQUITY GRANTS UNDER THE TAX CUTS AND JOBS ACT IN THE USA

Taxation of Excess Executive Compensation

The deduction for excessive employee remuneration has been modified by the Tax Cuts and Jobs Act ("TCJA"). Prior to the passage of the TCJA, the deduction for compensation paid to a “covered employee” of a publicly traded corporation was limited to $1,000,000 per year. However, there was an exception for excess amounts that were considered commissions or performance-based compensation (such as options and equity compensation). This exception has been repealed under the new law, and the definition of a “covered employee” has been expanded to include the CEO, CFO, and the three highest paid employees. Once an employee is considered a “covered employee”, they remain as such for any compensation provided in the future, including amounts paid to beneficiaries even after the covered employee’s death. Binding contracts in effect before 2 November 2017 are grandfathered in; however, they cannot be materially modified after such date.

Mazars Insight: An issue under the new law that needs clarification includes what exactly is covered under a “binding contract”. For example, would it include unvested options that were issued prior to the new law that will be exercised after December 31, 2017? Also, what constitutes a “material modification”?

The tax reform bill has also clarified and expanded the definition of what is an applicable employer. An applicable employer is one that is a publicly held corporation which is an issuer of securities required to be registered under Section 12 of the Securities Exchange Act of 1934 and which files reports under Section 15(d) of the Act. Companies falling under the definition of an applicable employer will have to reassess how to compensate their existing and new executives in order to maximize the amount deductible. A possible step would be to pay certain remuneration over a longer period of time to reduce the amount of yearly excess compensation.

The TCJA contains similar provisions that relate to tax exempt organizations. Under these provisions, an applicable tax-exempt employer is liable for an excise tax equal to 21% of the sum of the: (1) remuneration (not including any excess parachute payments) over $1 million paid to a covered employee, and (2) any excess parachute payment paid to a covered employee. Remuneration shall be considered paid when there is no substantial risk of forfeiture.

For purposes of the provision, a covered employee is an individual who was one of the five highest compensated employees of the organization for the tax year or were a covered employee of the organization (or a predecessor) for any preceding tax year beginning after 31 December 2016.

The provision would exempt compensation paid to employees who are not highly compensated employees from the definition of parachute payment, and also exempts compensation attributable to medical services of certain qualified medical professionals from the definitions of remuneration and parachute payment.

Treatment of Qualified Equity Grants

A provision in the TCJA provides employees who are granted stock options or restricted stock units (RSUs) the option to elect to defer gain recognition for a maximum of 5 years (“the inclusion deferral election”). The deferred income is includable at the earliest of:

1. The first date such qualified stock becomes transferable (including transferable to the employer),
2. The date the employee first becomes an excluded employee
3. The first date on which any stock of the corporation becomes readily tradable on an established securities market
4. The date that is 5 years after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture (whichever is earlier), or
5. The date on which the employee revokes the election under this subsection with respect to such stock.
This provision is specifically geared towards addressing the situation in which employees had to recognize income with respect to an exercised option or a vested RSU, but were not allowed to sell such stock in order to pay the associated tax bill.

This election is time sensitive and would have to be made no later than 30 days after the earlier of the date the rights in the stock become transferable or are no longer subject to substantial risk of forfeiture.

In order to qualify, the employer must be an “eligible corporation”, which generally means a non-public company whose written plan would provide that at least 80% of the employees who provide services to the company in the United States would be granted stock options or RSUs (not a combination of both) in a given year. The election can only be made with respect to “Qualified Stock”. This is defined as stock received in connection with the exercise of an option or in settlement of a RSU, and that such options or RSU was granted by the corporation in connection with the performance of services in a year in which it was an eligible corporation. Furthermore, the election can only be applied to stock of an employee’s employer. Equity grants of stock of related companies and subsidiaries would not qualify for the election. The following are excluded from making the election:

1. Stock for which a Section 83(b) election is already in effect.
2. Excluded employees, which generally include 1% or more owners or the 4 highest compensated officers in a taxable year (or who fell into this category in the preceding 10 years) or anyone who is or has been at any prior time the CEO or CFO of the company, this includes the spouse, children, grandchildren, and parents of such CEO or CFO.

Mazars Insight: Employees must make careful consideration whether to make an election to defer gain or not, and should be done on a case by case basis based on individual tax circumstances.

It is important to note that the tax owed is calculated at the time the employee makes the election, and is due at the end of the deferral period regardless of whether the stock has appreciated or declined in value.

In addition, if an 83 (b) election is available, a calculation should be made as to which option is more beneficial from a tax standpoint.

Inclusion deferral elections made on Incentive Stock Options (ISOs) are treated as non-qualified options for FICA purposes.

Planning Point: When deciding whether to make the election or not, one should take into account that the gain will be subject to FICA and Medicare tax, whereas without the election, ISOs would not subject to FICA and Medicare tax even if there was a disqualifying disposition.

The employer is required to give notice to the employee about the ability to make the election and that it has satisfied the 80% requirement. Under a transition rule, until the Treasury issues regulations or other guidance, a corporation would be treated as complying with those requirements if it complies with a reasonable good faith interpretation as to what constitutes notice. Penalties to the employer apply for notices required to be issued after 31 December 2017.

How can Mazars help?

Mazars USA can assist with executive compensation issues. If you would like more information please contact your local advisor or:
Richard Tannenbaum
richard.tannenbaum@mazarsusa.com
+2123756545 or
Mark Tadros
mark.tadros@mazarsusa.com
+2123756830.
LUMP-SUM TAXATION REGIME IN SWITZERLAND

The Swiss lump-sum taxation regime is a privileged tax regime dedicated to foreign nationals who intend to elect tax domicile in Switzerland without performing a gainful activity in Switzerland. Beneficiaries benefiting from this regime are taxed on their expenses and not on effective global earnings and assets. This Swiss regime enables very attractive planning perspectives.

The choice of Switzerland and of its cantons

Before thinking about Swiss taxes, it should be pointed out that Switzerland is often chosen as a place for relocation for numerous advantages it offers. Indeed, for instance, the number of languages spoken (French, German, and Italian), the quality of life (proximity of lakes and mountains), the quality of private/boarding schools, the connections to and proximity of airports/public transports are often considered as good arguments to take residence in Switzerland.

Switzerland being a Federal country, large competencies are left to the Cantons (States) in terms of legislation and organization. In this respect, taxes are certainly an area where cantonal specificities have to be considered. Fortunately, most of those aspects are harmonized at Swiss level.

What is lump-sum taxation?

The lump-sum taxation is a simplified taxation process by which an eligible tax payer can be taxed on a yearly basis by means of a predefined amount of income and wealth. Such “lump-sum” is agreed upon with the tax administration upon arrival of the individual in Switzerland.

In this respect, the taxpayer then avoids having to declare one-by-one potentially multiple and complex sources of income as well as all world-wide assets and debts, by declaring only the lump-sum agreed.

Conditions to benefit from the lump-sum taxation regime

Foreigners are eligible to apply for the lump-sum taxation regime if they meet the following conditions:
- Taking up residence in Switzerland for the first time or after an absence of at least 10 years;
- Not performing a gainful activity in Switzerland (whether as an employee or self-employed). However, gainful employment abroad is not incompatible with the lump-sum taxation regime.

In case of married couples, both spouses need to meet the eligible criteria for the lump-sum taxation regime.

Determination of the tax basis

**Income tax**

In Switzerland, income tax is levied at three levels: federal, cantonal and communal.

Based on the lump-sum taxation regime, income tax is calculated based on the total annual cost of living expended by the taxpayer and his family in Switzerland and abroad, which includes for instance: housing costs, costs for clothing, food, expenses for hobbies and sport activities, schooling costs and travel expenses.

At federal level, the total amount of annual living expenses should correspond to at least seven times the annual rental expense or rental value of the taxpayer’s principal residence in Switzerland, taking into consideration that a minimum taxable income of CHF 400’000 (minimum lump-sum) will be deemed to apply for the calculation of federal income tax.

At cantonal level, depending on the canton of residence, the minimum taxable income varies from CHF 200’000 (Jura canton) to CHF 600’000 (Schwyz canton and Lucerne canton).

Once the tax basis is determined, the taxpayer is subject to ordinary income tax rate applicable in the canton of residence. The determination of the tax basis is generally subject to an individual ruling by the competent tax authorities.

Also, please note that a control calculation is performed by the tax authorities in order to check that the tax liability computed with the lump-sum taxation regime is not lower than the ordinary tax liability computed with the ordinary tax rate on the following items:
- Swiss-sourced income in particular, deriving from Swiss real estate, securities issued by Swiss entities, Swiss-sourced pensions or royalties;
- Swiss-sourced income in particular, deriving from Swiss real estate, securities issued by Swiss entities, Swiss-sourced pensions or royalties;
Foreign incomes for which the benefits of a double tax treaty (DTT) are claimed. Kindly note that some DTT include tax restrictions for resident who benefit from lump-sum taxation (e.g. Germany or Italy).

**Wealth tax**
The wealth tax is not levied at federal level but only at cantonal/communal levels. The cantonal tax authorities are free in determining the wealth tax base, which will be subject to the ordinary wealth tax rates. The methods chosen by the cantons vary from one canton to another (e.g.: mark-up on the expenses used as lump-sum income tax base, multiplication of the lump-sum income tax base by 4, 8, or 20, value of the cantonal real estates owned by the lump-sum taxpayer, etc) . In any case, the lump-sum taxpayer does not have to declare its entire wealth, except from the one taken into consideration in the control calculation above mentioned.

**Cantons without lump-sum taxation**
The lump-sum taxation was abolished in the cantons of Appenzell Ausserrhoden, Basel Landschaft, Basel Stadt, Schaffhausen and Zurich. However, the lump-sum taxation remains available at federal level for taxpayers residing in the above-mentioned cantons.

**How can Mazars help**
For high net worth individuals who would like to take up residence in Switzerland, the lump-sum taxation regime is a useful compliant tax planning tool and a pragmatic approach for the taxation of foreign-source income and wealth. For more information please contact your local advisor or:
Charline Serre-Perez
charline.serre-perez@mazars.ch
+41799438058

**TAX STRATEGY IN RUSSIA: 3 PRACTICAL TIPS FOR BUSINESS OWNERS**

Normally owners of Russian businesses tend to pay minimal attention to elaborating and following a consistent tax strategy. However, at the stage when a decision is taken to sell a business or a part thereof, it could appear that business price is negatively affected by material tax risks and exit taxation is excessive.

In this regard we advise owners to bring tax strategy agenda into the board room and demand from management information relating to tax policies and tax implication of major business decisions on a regular basis.

1. **Define and timely communicate to management your appetite to tax risks**

Owners of business tend to change their appetite to risks during the business lifecycle: at the start-up stage minimal attention is paid to tax compliance, while its role becomes more important when business starts generating significant profits and owners seek to attract institutional investors. In order to adapt for such changes, management should constantly improve tax compliance and suspend aggressive approach to tax planning, if adopted. As practice shows, establishing the proper tax compliance for a small or medium entity (SME) could take up to two years as hiring of a new accounting team or a tax professional as well as changes in processes and document flows could require. Quick wins in this process are highly unlikely.

A gap in attitude towards tax compliance intrinsic to business on one hand, and those anticipated by strategic investors/partners on the other hand, could become a deal breaker for strategic investments and partnerships. To avoid such pitfalls owners should set transparent tax compliance goals to management in a timely manner and monitor the progress thereto.

2. **Drive to simple structures**

Nowadays complex group structures including several Russian legal entities engaged in material transactions with each other are a common practice in Russia.
For example, real estate and valuable intangible assets could be owned by one company of the group and leased (licensed) to another group company. One of the reasons for such structures could be protection of assets from commercial risks, including raider seizures.

However, complex structures could trigger a number of tax risks relating to non-arm’s-length pricing within the group, legal defects and lacking documentation of intergroup transactions. Additionally, in most cases tax management in Russian SME groups is decentralized: each group company has its own person responsible for tax compliance (normally, a chief accountant) and peculiar tax accounting policy. Therefore, in most cases both management and owners could only gain an overall understanding of tax risk and inefficiencies as a result of tax vendor due diligence. Consequently, material adverse effects to the business valuation resulting from tax risks and corresponding adjustments to the selling price of business are a common situation that owners of Russian groups of small and medium size face on exit.

It is advisable to simplify (to the extent possible businesswise) the group structure and avoid numerous companies being separate taxpayers, independently generating tax risk and duplicating tax compliance efforts. In case the reduction in number of legal entities is not feasible, the group may consider establishing a shared service centre responsible for statutory and tax accounting of all group companies.

3. Benefit from an early-bird exit planning

Selling business usually triggers taxation in the hands of shareholders (with regard to pre-sale dividend distribution and/or capital gain from sales of shares) and/or at the level of the group holding company being the seller for operational companies. Taxation at both levels could be legitimately reduced by applying tax deductions, exemptions and concessions established by the Russian tax laws. However, the tax legislation contains a number of conditions that should be fulfilled in advance to enjoy favourable treatment (for example, participation (365 days) or holding (5 years) periods, residency confirmation, etc.). It means that the business structure should remain unchanged for a rather long period to meet the above conditions and therefore, tax structuring efforts undertaken right before the sale of business could not help to achieve the desired tax effectiveness.

Summarizing the above, owners should think of exit implications as early as possible planning both personal tax implications (e.g., residency status and personal holding vehicles) and exit taxation at the corporate seller’s level.

How can Mazars help

Tax strategy is an important tool in preserving and enhancing value of business. Think of establishing the level of tax compliance that is acceptable for investors and strategic partners and also plan tax efficient exit scenarios in advance. For more information please contact your local advisor or:

Maria Semenova
maria.semenova@mazars.ru
+7 495 7925245

INTRODUCTION OF A FLAT TAX ON INVESTMENT INCOME AND SCOPE OF WEALTH TAX REDUCED TO REAL ESTATE IN FRANCE

Flat tax

Since 1 January 2018, investment income (including interest, dividends and capital gains from shares) are subject to a flat tax of 30%, including 12.8% of income tax (instead of the progressive rates up to 45%) and 17.2% of social surcharges. Income and capital gains from real estate are excluded from the flat tax.

Individuals that are non-resident of France for tax purposes are not subject to the 17.2% social surcharges, leaving the taxation of such income to only 12.8%.

Dividends and interest

The flat tax automatically applies at source (i.e. upon payment of the income) on the gross amount (i.e. without any allowance).

Taxpayers can, in the annual income tax return, opt for the progressive income tax rates, allowing esp. the application of the flat allowance on dividends (40% of the gross amount). Note that non-residents, as a general rule, are subject to a minimum tax rate of 20%.
Capital gains
In some cases, the application of the progressive income tax rates can be more favourable than the flat tax, flat allowances (of 50%, 65% or 85% depending on the conditions and the holding period) may apply on capital gains, provided shares have been purchased before 1 January 2018.

In any case, should the taxpayer opt for the application of the progressive income tax rates, taxation of all investment income within the scope of the flat tax shall be subject to those rates (no “selective” option possible).

Wealth tax limited to real estate assets
As from 1 January 2018, a tax on real estate assets replaced the former wealth tax. Thus, financial assets (cash, securities, life insurance contracts) and other moveable assets are excluded from the taxable basis, except if composed of real estate investments. These exceptions require to take a close look into the investment portfolio to identify such real estate investments.

Moreover, real estate used for business purposes is exempted. Unfortunately, with this exemption comes a quite complex set of rules defining the concept of “used for business purposes”.

The rules for deductibility of debt have significantly changed. Debt is only deductible if related to real estate. Some debt may not be deductible from the taxable basis if contracted towards family members or a company controlled by the taxpayer or family members. Shareholder accounts in real estate companies as well as bullet loans are also facing restrictions. Finally, an overall cap for debt deductibility has also been introduced (if the taxable value of the assets exceeds €5M and the amount of debt exceeds 60%, only 50% on the exceeding amount is deductible).

Interestingly, some debt limitations don’t apply if real estate is held via a company.

As the former wealth tax, the new tax on real estate applies if the net taxable value on 1 January exceeds €1.3M. Note that non-residents for tax purposes are also subject to the tax if their French located assets exceed the threshold value of €1.3M.

The new tax will be payable, in 2018, around May / June (deadlines are still to be published by the tax administration).

How can Mazars help
The new flat tax on investment income will convince some non-residents to move to France, requiring a prior global analysis of taxable income and estate planning. With the new wealth tax on real estate, an audit of the “professional use” of the real estate as well as the deductibility of debt is strongly recommended. Please contact your local advisor or:
Mike Hoffmann
mike.hoffmann@avocats-mazars.com
+33 3 88 24 74 57 or
Yves-Charles Zimmermann
yc.zimmermann@avocats-mazars.com
+33 49 97 35 15

A FAVOURABLE PERSONAL INCOME TAX FRAMEWORK: A VERY GOOD REASON TO MOVE TO PORTUGAL

The Portuguese tax framework foresees a very interesting regime in Portugal, the so-called non-habitual tax resident regime, created to attract foreign individuals to our country.

This tax regime was introduced in Portugal in 2009 and includes special tax conditions for overseas individuals who move to Portugal to work and / or live, namely (but not only) high-qualified professionals from the scientific, technical and artistic fields.

For a consecutive 10-year period, those individuals can benefit from a flat Personal Income Tax (PIT) rate – 20% – on employment and business / professional Portuguese source income. When compared with the Portuguese PIT progressive rates (that can go up to 53%), it can be easily understood why this regime is very interesting.

Moreover, under certain conditions, this regime also foresees Portuguese tax exemptions on several types of income of foreign source, such as investment income, rental income or pensions.
Therefore, the regime is not only attractive from a tax standpoint for highly-qualified professionals but also for pensioners or business men that carry investments in jurisdictions other than Portugal.

To benefit from the Portuguese non-habitual tax resident regime, some requirements should be met, namely that the individual who applies for the aforementioned regime has not been considered as tax resident in Portugal in any of the previous 5 years (before applying for this regime).

In addition, if all the requirements are met (to be properly validated by professionals of the area), the application shall be completed until the end of March of the year following the one in which they became tax resident in the Portuguese territory.

The key takeaway is that it is important to stress that this regime equates to the many reasons why Portugal can be a destination of excellence (others being safety, climate, development, good access to healthcare and, let’s not forget, our food) where more and more people consider moving to permanently.

How can Mazars help

Naturally, such kind of choice requires proper planning, in particular in what relates to tax matters. If you would need advice in this type of process please contact your local advisor or:
Sérgio Santos Pereira
ssperereira@mazars.pt
+351217210180

GERMAN TAX CHANGES DUE TO THE NEW GOVERNMENT

After the German federal elections in autumn 2017, a new coalition agreement was concluded between the parties forming the government in Germany in March 2018. This agreement includes, amongst others, changes planned in the area of German taxation – the most important measures are summarised in the following.

Tax implications are particularly expected in connection with the taxation of capital assets, digitalisation and tax incentives for sponsoring start-ups.

Many of the measures planned have the objective of fair and equitable taxation. Furthermore, the impacts of ever-increasing digitalisation and of an increased exchange of international tax data are to be considered in the tax law.

The gravest changes concern private persons in Germany owing to the coalition agreement providing for changes not only in income taxation, but also in the levying of the solidarity surcharge. A particular highlight in income taxes is the abolition of the flat rate withholding tax on interest income. Since the reform of corporate income taxation in 2009, a flat rate withholding tax of 25% has in particular, been levied on interest and investment income. The idea behind this special tax on investment income was to strengthen Germany as being a more attractive tax location for investment income and to prevent the flight of capital. Another benefit of the flat rate withholding tax has been the exempting of numerous private investors from the duty to file a German income tax return. Owing to abolishing the flat rate withholding tax on interest income, the duty to file a German income tax return will, however, remain in the future because interest income will be taxed at the personal progressive income tax rate of up to 45%. Consequently, primarily wealthy private individuals will be affected by this change. This could lead to capital flight from Germany. The exact wording on abolishing the flat rate withholding tax on interest cannot be discerned from the coalition agreement. A precise definition of what type of interest income will be affected and the point in time when the tax will be abolished was also not written in the agreement. However, the flat rate withholding tax of 25% is to be retained for other investment income, such as dividends or gains from the sale of investments in corporations.
In Germany, the so-called solidarity surcharge tax rate of 5.5% is levied on income and corporate income taxes. Originally the solidarity surcharge was levied to finance the cost of German reunification. For many years it has been viewed critically so the coalition agreement therefore stipulates that low and middle incomes will be relieved from paying the solidarity surcharge in the future. Staggered exemption is to begin from 2021 onwards.

On the other hand, hardly any changes are to be made in the area of corporate income taxation. No concrete measures have been mentioned for corporate income tax and merely minor changes can be noted for trade tax in the energy sector. With regard to value-added tax (VAT), only minor changes are to be made.

**How can Mazars help**

If you are interested how the changes may affect your situation please contact your local advisor or:

Christina Vosseler
christina.vosseler@mazars.de
+4930208881208
## CONTACTS MAZARS

### Belgium
Pierre van Heuverswyn  
T: +3292658320  
E: pierre.vanheuverswyn@mazars.be

### Czech Republic
Gabriela Ivanco  
T: +420224835911  
E: gabriela.ivanco@mazars.cz

### France
Mike Hoffmann  
T: +33388247457  
E: mike.hoffmann@avocats-mazars.com

### Germany
Christina Vosseler  
T: +4930208881208  
E: christina.vosseler@mazars.de

### Ireland
Alan Murray  
T: +35314496480  
E: amurray@mazars.ie

### Luxembourg
Aude-Marie Breden  
T: +35227114609  
E: aude-marie.breden@mazars.lu

### Portugal
Sérgio Santos Pereira  
T: +351217210180  
E: sspereira@mazars.pt

### Russia
Maria Semenova  
T: +7 495 7925245  
E: maria.semenova@mazars.ru

### Sweden
Michael Asplund  
T: +4687963725  
E: michael.asplund@mazars.se

### United Kingdom
Paul Barham  
T: +442070634866  
E: paul.barham@mazars.co.uk

### Switzerland
Deborah Joye  
T: +41213104924  
E: deborah.joye@mazars.ch

### United States
Richard Tannenbaum  
T: +2123756545  
E: richard.tannenbaum@mazarsusa.com
MAZARS

Mazars is an international, integrated and independent organisation specialising in audit, accountancy, tax and legal services. As of 1 January 2018, Mazars operates throughout the 86 countries and territories that make up its integrated partnership. Mazars draws upon the expertise of 20,000 women and men led by 980 partners working from 300 offices worldwide. We assist clients of all sizes, from SMEs to mid-caps and global players as well as start-ups and public organisations, at every stage of their development, that make up our integrated partnership.

Mazars Private Clients Services consist of a worldwide group of international advisors, specialising in advising business owners and/or high net-worth individuals. Our services include structuring capital properly, identifying personal, family and patrimonial situation, assist with tax efficient solutions or establish a full diagnosis of tax positions.
DISCLAIMER

Although the greatest possible care has been taken with this publication, there is always the possibility that certain information may become out of date or no longer be correct after publication. Neither publisher nor compilers can therefore be held liable for the consequences of activities undertaken on the basis of the publication. Readers are advised to consult their tax advisors before making any business decisions.

CONTACT

Mazars
Private Clients Services
Michael Asplund
Head of Private Clients Services
+4687963725
michael.asplund@mazars.se

More information on
www.mazars.com