Dear Readers,

Welcome to our April 2019 Private Clients newsletter.

In this issue we outline the Belgian Cayman tax changes and whether a foreign legal structure can still be advantageous for estate planning. In the Netherlands the anti-abuse rules on foreign holding companies that own shares in a Dutch resident company are discussed and we outline why it is essential to review the structure. We also provide insights on the personal income tax advantages for tax residents of Portugal and how the favourable framework for private income taxation operates in Romania.

If you would like advice on any of these issues raised in this newsletter please contact your local advisor or our private client team.

Kind regards,

Michael Asplund
Head of Mazars Private Clients Services
**BELGIUM**

**THE BELGIAN CAYMAN TAX IMPACTS ON INTERNATIONAL TAX PLANNING FOR INDIVIDUALS**

**Individual income tax on the earnings of foreign constructions**

A so-called Cayman tax was implemented in 2013 in order to tax income that is artificially separated by a legal construction. This Cayman tax is the nickname for a set of rules on tax transparency and taxation of distributions by foreign legal structures. Individual tax residents of Belgium who are founders of foreign legal structures (trust, trust-like structures, low-tax companies, specific insurance products) are taxed on the income of those structures as if the structures did not exist.

The individual subject to this Cayman tax has also the obligation to report the existence of the legal construction in his tax return.

Qualifying “founders” are individuals who are residing in Belgium and have set up a trust or have transferred assets to a trust. Belgian individuals who are the heirs of a settlor of a trust qualify also as “founder” as from the date of the settlor’s death, irrespective where the settlor was tax resident.

Individuals who hold shares (or economic rights) in a low-tax company are also target by the Cayman tax.

Finally, certain insurance contracts can qualify as targeted legal constructions.

Since its implementation, the Cayman tax has been modified several times.

Below we provide you with an overview of a number of points of attention:

- Initially, (low-tax) companies established in the European Economic Area (EEA) were not targeted by the Cayman tax (besides some specific entities in Lichtenstein and Luxembourg). A Royal Decree of December 2, 2018 widens the scope of targeted EEA companies:
  - public and institutional undertakings for collective investments (UCIT) that are held by one person or a group of related persons;
  - EEA companies that are tax transparent according to the tax legislation of its country of establishment;
  - EEA companies of which the income is not effectively taxed.
- Double or multiple-layer structures are tackled. If a low-tax company holds shares or economic rights of another low-tax legal entity, the income of the “subsidiary” should be added to the parent company in proportion to the percentage of the participation and taxed accordingly in the hands of the beneficial owners.
- All distributions made by a trust will qualify as dividends regardless of their actual nature (intangible income, tangible income…) and taxed in the hands of the beneficiary.
- Distributions made out of qualifying insurance contracts are also treated as taxable dividend income.
- For dividend distributions made by a low-tax company, a seniority rule has been implemented:
  1. The income first received by the legal construction will be considered to be distributed first.
  2. The tax-free reimbursement of historically contributed assets only will occur when all retained earnings and income have been distributed by the legal construction.

The taxation of above-mentioned distributions can only be avoided, if the concerned income has already been taxed in the hands of the beneficiary according to the “look-through” rule.

- The Cayman tax can be avoided if the target foreign construction carries on a real economic activity. The exception clause of “carrying on of an actual economic activity” will be limited to:
  1. legal constructions whose income is mainly derived from economical activities (not being: management of private wealth of the founders); and
  2. legal constructions with sufficient substance (office space, employees and equipment).
- Under the following conditions a liquidation of the legal construction will be assumed and taxed accordingly:
  1. transfer of a legal construction or its assets to a State that does not exchange fiscal information; and
  2. contribution of economic rights, shares or assets of a legal construction into a new structure.

**Gift and inheritance taxes**

In Belgium, gift and inheritance taxes are ruled by the Regions. As the Cayman tax is a federal set of rules for income tax purposes, it does not apply to gift or inheritance taxes.
There is no regional legislation on the tax transparency of foreign legal constructions (either trusts or companies). Tax planning is still possible for gift or inheritance tax purposes, but which can have different consequences under the Cayman tax for income tax purposes.

How can Mazars help you?
From an individual income tax perspective, the Belgian resident individual has to determine whether or not he is a beneficial owner of a legal structure tackled by the Cayman tax as the law has widening the scope of targeted foreign legal structure. From a gift of inheritance tax perspective, different rules apply. Although this set of rules can have adverse income tax consequence, a foreign legal structure can still be advantageous for estate planning. Mazars assists individuals who own foreign legal structures and who might be impacted by the Cayman tax.

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NETHERLANDS

ANTI-ABUSE MEASURES IN THE DUTCH CORPORATE INCOME AND WITHHOLDING TAX

Traditionally, the Netherlands has been used by multinationals to structure their business. It is not uncommon that a Dutch B.V. appears somewhere in the group. Apart from its political stability and good infrastructure, tax elements such as the broad participation exemption and the vast array of tax treaties could be reasons to settle in the Netherlands.

Over the last years, initiatives and directives such as the Base Erosion and Profit Shifting action plan and the Anti-Tax Avoidance Directive have left their mark on national tax legislation. With respect to Dutch tax legislation, this has led to the anti-abuse measures in the Dutch corporate income tax (CIT) and dividend withholding tax (WHT), which already have been tightened up since last year.

In addition, the Netherlands are planning to introduce a withholding tax on certain interest and royalties flows from 2021 onwards.

The aforementioned measures could have an impact on certain structures that include a Dutch company and will be described separately in the following.

Anti-abuse measure in the Dutch CIT
A foreign entity that owns at least 5% in a Dutch resident company could become liable to Dutch CIT for the proceeds that it receives from or with the Dutch company. This is the case when the anti-abuse provision applies which combats the interposing of letterbox companies. The current maximum rate is 25% and will gradually be lowered to 20.5% in 2021.

In order to determine whether the anti-abuse provision applies, a comparison must be made between the actual situation and the situation that the ultimate beneficiary would hold the shareholding directly. If the Dutch effective income tax burden would be higher in the situation in which the substantial shareholding in the Dutch company would be held directly by the individual, the anti-abuse provision could apply. For these purposes, any foreign holding company in the structure that does not carry on an actual business is fictitiously ignored.

For the anti-abuse provision to apply, the holding structure should however also qualify as an artificial arrangement or a series of arrangements, i.e. not based on valid business reasons that reflect the economic reality.
Anti-abuse measure in the Dutch WHT
A similar anti-abuse measure can be found in the Dutch WHT. Generally, dividends from a Dutch company are exempt from Dutch WHT if certain conditions are met. However, if the anti-abuse measure applies, Dutch WHT is levied nonetheless over the proceeds at a current tax rate of 15%.

This anti-abuse measure is applied in the same manner as described above, but then focused on whether the Dutch dividend withholding tax burden would be higher in the situation in which the substantial shareholding in the Dutch company would be held directly by the individual.

If both measures apply, the overall tax burden is extensive since both taxes cannot be offset. It is important to note that the applicable tax treaty could provide relief for the aforementioned. However, if the Multilateral Instrument (MLI) applies between the Netherlands and the country in which the foreign holding is located, this relief may no longer apply in the near future.

Dutch withholding tax on interest and royalties from 2021 onwards
Moreover, the Netherlands is planning to introduce a withholding tax on interest and royalties from 2021 onwards. This withholding tax (at a rate of 20.5%) will only be due if there is an interest or royalty payment from a Dutch entity to certain low-taxed foreign group entities.

How can Mazars help?
The anti-abuse rules on foreign holding companies that own shares in a Dutch resident company are complex and the tax consequences can be significant.

To minimize the impact, it is essential to review the structure as soon as possible and take the necessary measures this year.

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PORTUGAL
PERSONAL INCOME TAX ADVANTAGES FOR TAX RESIDENTS IN PORTUGAL

The Portuguese State Budget for 2019 offered a new tax opportunity for individuals that decide to return to Portugal and have been residents for tax purposes herein prior 31st December 2015, allowing such individuals to be taxed for Personal Income Tax purposes in only 50% of their employment and self-employment income during a 5-year period.

This incentive was added to the existent Non-Habitual Resident (“NHR”) special tax regime, which already had several advantages for tax payers who decide to reside in Portugal.

Both regimes, however, have different requirements to apply, offer different tax advantages and are exclusive (i.e. a tax payer cannot benefit from both). Taking such into consideration, one should carefully analyse the regimes to optimize tax efficiency.

Tax regimes in overview
The NHR special tax regime is applicable for 10 consecutive years to an individual who qualifies as resident for tax purposes in Portugal and has not been considered as such in the five previous years to the application to the regime.

This special tax regime allows a flat taxation of employment and self-employment income, which is considered to have a high added-value nature (such as architects, engineers, tax consultants, medical doctors, professors, board members, etc.), at a rate of 20%.
In case such income arises from abroad and is taxed in the country of source, it should be possible to exempt it from taxation in Portugal.

Furthermore, this regime also allows one to apply the exemption method for Personal Income Tax purposes on most of the income sourced outside of Portugal (such as dividends, interest, royalties, etc.) and can be taxed in the country of source.

As for the former tax resident regime, it allows one to obtain a relief of 50% of taxation of income derived from employment and self-employment, for five years, for individuals who decide to return to Portugal and have been resident for tax purposes herein prior to 31st December 2015, among other requirements.

This tax regime is more appealing to individuals that develop an activity that cannot be considered as an activity of high added-value nature under the NHR special tax regime, such as lawyers, economists, traders or even football players.

This regime, however, does not offer any advantage regarding income sourced abroad in the form of dividends, interest, royalties or others.

How can Mazars help?
Mazars is available to assist individuals who consider moving to Portugal, in the analysis between the NHR special tax regime and the former tax resident regime, to assess which one is most beneficial for the individual from a tax perspective.

Furthermore, Mazars will be available to proceed with the applications to the regime chosen and support the individual along the process.

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ROMANIA
FAVORABLE FRAMEWORK FOR PRIVATE INCOME TAXATION

“Split year” residency
Given the membership to the European Union, Romania has a fully integrated employment market within the Single EU market and, as such, citizens of EU countries can freely come to Romania, reside here and perform activities, either as freelancers or employees. Such movements in the Romanian labor market might lead, under certain conditions, to changes on the fiscal residency status, which have a direct impact on your private worldwide income.

Considering the dynamic business environment, your activity might start any day during the year. For such cases, the Romanian tax authorities implemented a new solution in order to increase the flexibility in determining the residency status – “split year” residency. This means that you can be declared (if some conditions are met) fiscal resident in Romania only for a part of the fiscal year (starting with the effective date of arrival in Romania), having a full tax liability in Romania only for the period of the fiscal year when you were considered Romanian tax residents.

Favorable tax regime for investment income
As a fiscal resident in Romania, a Unique Statement should be annually filed to the relevant authorities which includes the private worldwide income. The taxable investment income (i.e. interests, capital gains) is subject to the personal income tax of 10% and to health insurance contribution of 10% if the level of the income derived from all these types of activities exceeds 12 times the national minimum wage (RON 1,900 per month in 2018). Dividend income received by a Romanian resident is taxable at a special individual tax rate of 5%.

Self-taxation system. Reducing bureaucracy.
A unique statement was introduced by the Romanian tax authorities by aggregating seven different tax forms in order to simplify the reporting and payment process of the private income derived by the taxpayers.
Starting with 2018 obligations, the reporting and payment process of the Romanian personal income tax liabilities derived by the taxpayers become straightforward and simplified as the process is based on a self-imposed taxation system, in which the taxpayer should perform an assessment in order to establish the personal income tax and the social security contributions due. Starting with 2019, no tax decisions will be issued by the Romanian tax authorities. The annual private income tax derived from 2018 must be reported and paid by 15th of March 2019 with the submission of the tax return being required electronically.

**How can Mazars help?**
Our colleagues within the Private Clients Services team will be pleased to assist you with preparing the Annual Statement for the worldwide income as well with any additional matters in this respect.

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MAZARS

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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.
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