INTRODUCTION

We hope you and your families are healthy and safe during these uncertain and unprecedented times.

Since the outbreak of COVID-19, Mazars worked with its people all over the world to gather and share insights and expertise to reassure and help you in these unprecedented times. Following this purpose, we launched the Covid-19 Global Resource Centre, a free-to-access online hub which contains content from our experts about the current issues.

In this newsletter’s edition, we take a look at the effects COVID-19 has on UK tax residence as well as the tax reliefs and incentives for succession planning in Ireland. We are also tackling the tax planning strategies under the “CARES” act in USA. Additionally, you can find updates from Portugal, and the Netherlands.

We hope you will find this issue helpful and interesting and we are here to help you deal with this fast-moving situation that impacted the modern world in an unprecedented way.

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
IRISH TAX RELIEFS AND INCENTIVES FOR SUCCESSION PLANNING

As the Covid-19 global crisis continues to impact businesses, it’s vital to ensure strategies for succession planning are kept up to date. Ireland offers a range of tax reliefs and incentives when building a strategy for succession. Clients passing on their business assets under a will means that there will be no capital gains tax or stamp duty to pay on the transfer. However, the beneficiaries may be subject to capital acquisitions tax.

If clients choose to pass on their assets now, there are various tax reliefs available which they may be able to utilize, subject to meeting certain conditions. For example, if a client is aged between 55 and 65, they may be able to pass on their business assets to children tax-free under retirement relief. The advantage of passing on assets now is that clients have certainty on tax costs, whereas should they wait and pass their business on under their will, or in ten years’ time, they are taking a gamble as the tax rules might change and the business could be worth much more in the future.

In Ireland, family partnerships are experiencing a resurgence. The advantage of using a family partnership is that it allows parents to transfer assets to their children now and pay tax at the current market values while still retaining control of these assets.

In addition to the lifetime tax-free thresholds in respect of gift and inheritances, the first €3,000 of a gift made to any individual in a calendar year is exempt from capital acquisitions tax under the small gift exemption. Spread over a ten-year period, this can add up to a substantial transfer from a parent to a child without impacting on a child’s tax-free threshold.

Plan early

It is never too early for family businesses to begin building a strategy for succession. Plans can be adapted, changed and refocused, but it is vital to make a will. A key question for the person making the plan is who gets what and when.

Family business assets are usually where most of the wealth is concentrated. With family businesses, succession planning can be especially complicated because of the relationships and emotions involved. For the future success of the family business it is important to consider who is the best person for this task. It is preferable that the family member who takes over the business has an interest in that business and that there are other assets available to compensate any other children who are not taking over the family business. Unfortunately, this scenario can sometimes lead to family disputes, so it is important to get it right.

It is critical that clients keep their will up to date. When a family event, such as a marriage or the arrival of a new grandchild, occurs, a will should be updated immediately. Clients taking a proactive approach to ensure that the provisions made in their will match their current circumstances.

With advances in health and technology we are now living longer, and these extra years need to be funded. When clients give assets away, it’s vital to remember they no longer own those assets. Also, their children’s focus in life can change over the years, so it is important not to give away all the assets too soon.

How can Mazars help?

If you have questions or need assistance please contact your local advisor, or contact:

Alan Murray
amurray@mazars.ie
Tel: +353 1 449 6480

Siobhán O’Moore
somoore@mazars.ie
Tel: +353 1 449 6418
The Portuguese State Budget for 2020, brought with it some relevant changes to the NHR tax regime, particularly for pensioners.

Since 2009, the NHR regime offers an attractive tax framework to individuals who have not been resident for tax purposes in Portugal during the five previous years. This framework gives tax exemption on the majority of foreign-sourced income, except for capital gains to which more rigorous requirements apply.

Until recently, pensions obtained by NHR individuals were generally exempt from taxation in Portugal and, in most cases, also exempt from taxation abroad resulting in a double tax exemption.

Due to increased political pressure by other EU governments, the Portuguese Government decided to introduce some amendments to the regime while maintaining most of the tax advantages.

The main change to the regime concerns the exemption applied to foreign-sourced pensions which are now subject to a flat tax rate of 10% in Portugal, instead of being exempt. NHR individuals already benefiting from this regime before 2020 keep the former framework and therefore should not expect any impact on their taxation.

These amendments also clarify that amounts paid by pension funds and retirement saving plans as lump-sums should be deemed as pensions. This framework was not clear in the past and led to tax disputes regarding the qualification of such income within the applicable Double Tax Treaties.

Individuals who are considering moving to Portugal should study the impacts of this regime by reviewing their sources of income, planning when and how the change should occur and structuring their wealth to take advantage of this regime.

Mazars can guide individuals through the entire process, assisting in obtaining tax identification numbers, applying to the regime and preparing annual income returns, as well as assisting in the process of deregistration in Portugal.

How can Mazars help?

If you have questions or need assistance please contact your local advisor, or contact:

Sérgio Santos Pereira
sspereira@mazars.pt
Tel: + 35 121 721 0180
FUTURE-PROOFING YOUR PERSONAL AND BUSINESS INTERESTS IN THE NETHERLANDS

With the COVID-1 outbreak continuing to impact health, your affairs must be well organized should you be temporarily or permanently unable to work. For entrepreneurs, in particular, a general power of attorney (living will) or depositary receipts for shares are solutions to consider.

Living Will

A living will is a registered notarial deed in which you make your wishes and instructions known when situations arise which temporarily or permanently prevent you from expressing instructions or looking after your interests. In a living will, you grant a power of attorney to one or more persons who may act on your behalf in such a situation. These are referred to as attorneys-in-fact.

The wishes and instructions in the living will can relate to various interests, including your interests, representation towards banks as well as medical matters, and your business interests. In respect of these different interests, you may appoint several persons as attorneys-in-fact. It is vital that any attorney-in-fact appointed is someone you trust unconditionally, as they are given far-reaching powers of representation.

Depositary Receipts for Shares and Successor Board

There are several restrictions on granting a legally valid power of attorney to a director of a company. It is, therefore, possible that the living will does not offer a suitable solution for the protection of your business interests. If your enterprise is a private company with limited liability (besloten vennootschap), the issuance of depositary receipts for shares may offer a more appropriate security mechanism. Depositary receipts lead to a division between economic entitlement and control over the shares. This division separates control over the shares from the right to their value.

Upon the issuance of depositary receipts for shares, the assets are transferred to a legal entity set up for that purpose. This is usually a trust office in the form of a foundation - the so-called Stichting Administratiekantoor, which is referred to as ‘STAK’. The STAK acquires control over the shares for which depositary receipts have been issued and is obliged to manage the assets. However, the STAK board does not manage the assets for its own account, but on behalf of the depositary receipt holder(s). As the holder of the depositary receipts, you remain economically entitled to the assets.

You may assemble the first STAK board yourself. Next, by appointing a successor board, the continuity of your company can be safeguarded if an unforeseen situation arises that temporarily prevents you from acting.

How can Mazars help?

If you have questions or need assistance please contact your local advisor, or contact:

Bianca de Kroon
bianca.deKroon@mazars.nl
Tel: +31 088 277 1010

Michelle Seijsener
michelle.seijsener@mazars.nl
Tel: +31 088 277 1014
The Covid-19 outbreak has resulted in many individuals having to remain in their current location, which may not necessarily be home. For some, this could have adverse tax implications as a result of spending additional days in the UK making them resident for tax purposes. The result is a potential liability to UK income and capital gains tax that would not otherwise arise.

UK residence

An individual’s residency status in the UK is determined by reference to the Statutory Residence Test (‘SRT’), which broadly considers the ties an individual has to the UK combined with the number of days spent here. Under the SRT, a day counts as spent in the UK if the individual is present in the UK at midnight. There are certain occasions where a day is not counted towards UK residence, up to a maximum of 60 days. These occasions are known as ‘exceptional circumstances’ and are days where the individual is unable to leave the UK for reasons beyond their control.

Examples of exceptional circumstances given by the UK tax authorities include natural disasters, sudden life-threatening illnesses and national emergencies.

Exceptional circumstances – Covid-19 guidance

With the outbreak of coronavirus in the UK causing many to fall ill or unable to travel due to travel bans, it would seem reasonable to assume that these are exceptional circumstances falling under the ‘national emergency’ definition.

However, with uncertainty over whether this position would be challenged by the UK tax authorities, HM Revenue & Customs (HMRC) has issued guidance which states that a day will fall within ‘exceptional circumstances’ where the following applies:

- You are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus,
- You find yourself advised by official government advice not to travel from the UK as a result of the virus,
- You are unable to leave the UK as a result of the closure of international borders, or
- You are asked by your employer to return to the UK temporarily as a result of the virus.

Working in the UK during the outbreak

On 9 April 2020, the UK Government also announced that they would be making changes to the SRT in relation to ‘highly skilled’ individuals who come to work in the UK to help tackle the coronavirus outbreak.

For these individuals, any days spent in the UK during the period between 1 March to 1 June 2020, subject to extension if required, will not count under the SRT.

While further guidance is still to be published on the definition of a ‘highly skilled’ worker, it is expected to cover doctors, nurses as well as engineers whose skills are desperately needed in the fight against Covid-19.

This important amendment to the SRT allows qualifying individuals to spend time in the UK without the risk of inadvertently acquiring UK residence and falling within the UK tax net.

How can Mazars help?

If you have questions or need assistance please contact your local advisor, or contact:

Sadie Harrison
sadie.harrison@mazars.co.uk
Tel: +44 190 825 7184

Sean Cockburn
sean.cockburn@mazars.co.uk
Tel: +44 131 313 7922
TAX PLANNING STRATEGIES UNDER THE “CARES” ACT IN USA

On March 27, President Trump signed the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”), which is the Government’s third response to the COVID-19 crisis. These new tax laws and provisions, along with the current economic environment, significantly change the tax planning landscape and create benefits for individual taxpayers and corporations.

Required Minimum Distributions & Roth IRA Conversions

The CARES Act waives required minimum distributions (“RMDs”) from certain defined contribution plans and individual retirement accounts (“IRAs”) for the 2020 tax year. This would not only give your portfolio the potential to grow but will also lower your taxable income and related tax liability for the 2020 tax year. Another opportunity to consider in conjunction with the waiver of 2020 RMDs is the conversion of a traditional IRA to a Roth IRA.

Roth IRA Conversion

This is a particularly beneficial strategy now, as it would reduce taxpayers’ 2020 taxable income due to the absence of the 2020 RMD, along with other potential losses as a result of the current environment. Also, the tax effect of the conversion would be lower when the value of the assets in the account being converted is depressed due to the stock market declines.

The long-term advantages of a Roth IRA include no RMDs, which allows taxpayers to leave assets in the account to continue to grow tax-free and potentially leave those assets to their heirs if the cash flow is not needed. Also, any withdrawals taxpayers do take in the future would be tax-free, unlike traditional IRAs which are subject to ordinary income rates in the year of withdrawal.

Exercise of Non-qualified Stock Options

Non-qualified stock options (“NSOs”) are a benefit that many companies include in employee compensation packages. When NSOs are exercised, taxpayers must include the difference between the exercise price and the fair market value of the stock at the date of exercise in their taxable income for that year. Any income is then subject to ordinary income rates. However, the decline in many stock prices means there is an advantage in exercising NSOs in the current environment. Specifically, the taxable ordinary income is reduced if the spread between the exercise price and value of the stock has decreased. Of course, taxpayers would not want to exercise the options if the value of the stock is “underwater” or has declined below the exercise price.

Diversifying Concentrated Positions & Wash Sale Rules

During these times of uncertainty, there may be an opportunity to sell concentrated stock positions that, while the stock price may have recently declined, would still generate capital gains. These gains may be offset by other realized losses that may have been generated due to the economic downturn. In contrast, if the concentrated position has declined to the point that it would generate losses, taxpayers may find it beneficial to get out of the concentrated position, and also harvest those losses to offset other capital gains that may be recognized elsewhere.

Another opportunity is to diversify the portfolio and decrease the risk associated with owning one single security. The advantage in the current environment is, again, that any gains recognized on the sale of the concentrated position may be offset by other realized losses. The taxpayer may be able to maintain their exposure by purchasing similar securities at a lower price.

Taxpayers must keep the wash sale rules in mind when selling securities that constitute a concentrated position or otherwise. The wash sale rule is intended to discourage taxpayers from selling securities at a loss for tax purposes, then repurchasing the same or “substantially identical” securities within 30 days before or after the date they sold the stock.

Taxpayers can avoid the wash sale rule by selling security to recognize the loss, then buying an investment in the same sector that suits their investment and portfolio allocation goals. Examples include selling Coca Cola and buying Pepsi Co stock or selling Vanguard Index 500 fund and purchasing the Vanguard Total Market Index ETF.
A riskier strategy is to simply purchase additional shares of the depressed security and then wait 31 days to sell the originally held shares at a loss. This strategy, however, increases the taxpayers’ sector exposure for some time. Any decision regarding investments should take into consideration the risk and reward of the investment strategy and be discussed with an investment advisor.

**Net Operating Losses (“NOL”)**

As a result of stay at home orders, social distancing and forced closures instituted to minimize the spread of COVID-19, many businesses are expected to suffer significant losses in 2020. Many of these businesses are structured as pass-through entities and therefore, these losses are reported on the business owners’ tax returns. In order to help these taxpayers (individuals and corporations), the CARES Act reinstated the five-year NOL carryback for losses arising in any taxable year beginning after December 31 2017 and before January 1 2021. In addition, any NOLs that were generated after December 31 2017 are subject to a taxable income limitation. The CARES Act temporarily suspends this rule until after December 31 2020 to allow an NOL to fully offset income.

These changes will allow taxpayers to carry back previous years’ losses they have been carrying forward by amending prior year returns to recognize additional losses. This will provide critical cash flow and liquidity during the Covid-19 emergency. When carrying back federal losses, taxpayers should also review the applicable state rules to determine if the losses can be carried back at the state level.

**Excess Business Losses (Section 461(l))**

The Tax Cuts and Jobs Act (“TCJA”) of 2017 limited taxpayers’ ability to deduct excess business losses for tax years beginning after December 31 2017 and before January 1 2026. Excess business losses are the amounts by which the total deductions attributable to all taxpayers’ trades or businesses, including pass-through entities, exceed their total gross income and gains attributable to those trades or businesses in any given year. The At-Risk and Passive Loss rules are applied before determining excess business losses. A single taxpayer can take excess business losses up to $250,000 ($500,000 married filing jointly) with any excess over that amount carrying forward to be applied against income in future years.

The CARES Act amended this limitation for tax years beginning after December 31 2017 through December 31 2020, by reinstating taxpayers’ ability to deduct excess business losses that would have otherwise been disallowed. Taxpayers who had losses limited in 2018, 2019 or both should consider amending their returns to take advantage of the losses to their fullest extent and generate refunds to obtain the cash flow that is especially essential during the Covid-19 crisis.

These are just a few of the tax planning strategies that taxpayers should consider in the current environment as a result of the CARES Act and other relief efforts in reaction to the Covid-19 global crisis. It remains to be seen what other coronavirus-relief packages may be passed by Congress to assist taxpayers, as talk has already begun on “Phase IV” of the stimulus.

How can Mazars help?

If you have questions or need assistance please contact your local advisor, or contact:

**Richard Tannenbaum**

richard.tannenbaum@mazarsusa.com

Tel: +1 212 375 6545

**Rachel Efthemes**

rachel.efthemes@mazarsusa.com

Tel: +1 212 375 6545
CONTACT

MAZARS
PRIVATE CLIENTS SERVICES

Michael Asplund
Head of Private Clients Services
michael.asplund@mazars.se
Tel: +46 879 637 25

More information:
www.mazars.com

ABOUT MAZARS

Operating in 91 countries and territories around the world, we draw on the expertise of 40,400 professionals – 24,400 in the Mazars integrated partnership and 16,000 via the Mazars North America Alliance.

Mazars Global Mobility Services consists of a worldwide group of international advisors, specialising in advising employers on the international mobility of their employees. Our services include global tax compliance and optimisation, international payroll services, social security administration, shares schemes planning, and immigration services.

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