Baker McKenzie.

Private Wealth
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H2 Edition

TAX FROM EVERY ANGLE

Editors' note

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Dear clients, friends, colleagues and readers across the world, on behalf of Baker McKenzie's Global Wealth Management Practice Group, it is our pleasure to release our H2 2024 edition of the Private Wealth Newsletter.

With the year-end approaching and for many readers the festive season nearly upon us, we take this opportunity to thank our readers and clients for their continued support and engagement and wish them continued health, success, and prosperity for the year to come. To our colleagues, from contributing authors to our dedicated and resilient production team led by Laetitia Lory and Sinéad McArdle (without whom this newsletter would not be possible), we extend our sincere gratitude and thanks and look forward to our continued collaboration and friendship in 2025.

As we reflect on recent events, the end of October and November were important months in the US, European and likely global private client world, with the second term of President-elect Donald Trump now certain after a one term presidency for President Joseph Biden and the new UK prime minister's first budget having been announced on 30th October. We think it is not hyperbole to state that the impact of these developments are likely to be felt for a long time on both sides of the Atlantic. Top of mind will be how pervasive the exodus of prominent and successful families will be now that it has been confirmed unequivocally the centuries-old UK tax-resident, but non-UK-domiciled regime ends in April 2025. Our first feature article from Phyllis Townsend, Francesco Florenzano and Oliver Stephens looks at the apple of many soon-to-be UK leavers' eyes (Italy) and considers that country's own preferential tax regime and recent practical changes. The UK will also welcome newcomers under its replacement regime and others will be able to utilise transitional rules to maintain their UK residence." In our second feature article, Elliott Murray, Ivan Atochin and Martin A. Barillas Aragon consider what tax and tariff measures may be introduced by Trump in 2025 and the potential impact on US-connected wealth owning families and individuals.

Outside of residency and personal tax issues, wealth owners and family offices are being increasingly confronted and impacted by governmental and administrative decisions on sanctions. Marnin Michaels discusses the practical impact and whether families and individuals (even ones not currently affected) should be concerned with the recent developments. Often closely linked to potential sanctions issues, the UK's FCA published findings on financial firms' treatment of politically exposed persons. Caitlin McErlane and Kimberly Everitt highlight why this review is important for family offices and what actions they might take.

Turning to Taiwan, recent rulings by the National Tax Bureau have brought changes to the regulatory environment for offshore trusts and corporate structure — frequently used in estate planning for Taiwanese high-net-worth families. Our team in Taipei, led by Michael Wong, Peggy Chiu and Daniel Chou, provides us with clarifying updates following discussions with the National Tax Bureau.

Continuing our "PWN meets..." interview series, we introduce our partner from Mexico City, Javier Ordoñez-Namihira, who shares his thoughts. As always, our "Around the World" section helps us to stay up-to-date on relevant and important cases and legislative developments, so we encourage you to take a look.

We hope you find something interesting, informative or thought-provoking in this edition. You can contact our editors, Elliott Murray and Phyllis Townsend, or any of the authors listed throughout the newsletter with any feedback or questions. Until our next edition, we wish everyone an excellent year end and holiday season!

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In the latest installment of our series of interviews, Javier Ordoñez-Namihira talks to us about his experience of working at the Firm and involvement in Wealth Management.

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PWN meets...

PLAY VIDEO

TAX FROM EVERY ANGLE

Magnetic Milan – the allure of Italy for the UK's non-doms

Summary

With long-anticipated changes to the UK's preferential tax regime for UK tax-resident, non-UK-domiciled (RND) individuals, colloquially referred to as "non-doms", finally confirmed in the UK chancellor's Budget announcement on 30 October 2024, many RND individuals are exploring relocation options. For high-net-worth individuals looking to relocate to other European countries, Italy has emerged as one of the most desirable jurisdictions, with a competitively priced lump-sum tax regime (LSTR) for new arrivers being a key factor behind its appeal. Despite the recent doubling of the annual lump-sum payment, it is generally thought that the change will have minimal impact on those with higher levels of wealth and may be considered an endorsement of the regime more generally by the current Italian government. All RNDs still living in the UK and even some ex-RNDs with trusts who left the UK as early as 6 April 2023 are likely to be impacted by the Budget. UK tax mitigation strategies should therefore be explored as a matter of increasing urgency. Where relocation is concerned, it comes as no surprise that Italy, among other jurisdictions, continues to take the top spot on many RND individuals' shortlists.

Introduction

As the light and sunshine of the London summer transitions into the darkness of autumn and winter, so too has the mood of many in the RND community descended into gloom.

The Budget has confirmed the long-anticipated end to the RND regime in its present form. Under the current regime, those who are UK tax-resident but who are not considered domiciled (or deemed domiciled) in the UK (e.g., because they were born outside the UK and/or to foreign parents) have been able to elect to be taxed on the "remittance basis" of taxation. This meant that such RND individuals were only liable to UK income and capital gains tax on their UK-source income and capital gains, and not their foreign income and gains (FIG), unless such FIG were "remitted" to the UK. The current regime also permits RND individuals to use trusts to preserve the benefits of the regime with respect to UK income and capital gains tax, and to shield non-UK assets from UK inheritance tax (IHT), should they become "deemed domiciled" (i.e., resident in the UK for 15 of the prior 20 UK tax years).

Many of these benefits offered under the RND regime, particularly for those that have been in the UK for several years, are to be withdrawn from 6 April 2025. They are to be replaced with a regime that, very broadly, only protects FIG from UK income and capital gains tax for the first four years of UK tax residence and ends protection of non-UK assets from IHT after an individual has been a UK tax resident in 10 out of the prior 20 UK tax years, with extending this protection using trusts no longer an option.

As 10 years of non-UK tax residence is a prerequisite to qualify for these benefits, many high-net-worth RND individuals are getting advice on their options to reduce their UK tax exposure before 6 April 2025. In particular, many RND individuals that cannot reduce their UK tax exposure to an acceptable level are exploring whether to leave the UK altogether for sunnier, more tax-friendly climes.

When considering these options, the attraction of the Swiss forfait regime is somewhat tempered by the threat of the initiative submitted by the Swiss Young Socialists movement for the introduction of a federal gift and inheritance tax in Switzerland. This initiative would take effect on the date of the public vote, which is expected to take place sometime in 2026 or 2027. Although the general view is that the initiative is unlikely to pass, the potential magnitude of the tax implications on Swiss-resident high-net-worth individuals if the vote did pass cannot be completely ignored and may deter many considering relocation to Switzerland.

In this sense, the initiative is badly timed for RND individuals leaving the UK. Many RND individuals who are set on Switzerland as their ultimate relocation destination are getting advice on other jurisdictions (for example, Spain, Greece, Dubai, Jersey or Bahrain, to name a few) to use as "stepping stones" to Switzerland once the outcome of the public vote is secure.

Against this backdrop, Italy's preferential tax regime for new arrivers has emerged as an attractive, low-tax, low-risk alternative, making Italy the destination of choice for many RND individuals.

The "svuota Londra" offer — the Italian LSTR

Key to Italy's growing attractiveness for high-net-worth individuals is the Italian LSTR, once prophetically nicknamed the "svuota Londra" ("empty London") offer. This regime, which can be claimed for up to 15 years from and including the year of relocation by new foreign residents of Italy or returning Italians that have lived abroad for at least nine years, provides the option to pay a flat tax (originally EUR 100,000, though it recently increased to EUR 200,000 for new arrivers) annually on all foreign income and assets, with no further charge on remittance of such income or assets to Italy. Among other benefits, the regime offers an exemption from Italian gift and inheritance taxes on transfers of assets outside Italy and an exemption from reporting obligations with respect to non-Italian assets.

These benefits can be extended to cover certain close family members (e.g., spouse and children) for an additional annual flat tax payment of EUR 25,000 per family member.

This regime has proven highly attractive for internationally mobile high-net-worth individuals. Indeed, the Financial Times reports that, between 2017 to 2022, the Italian LSTR attracted 2,730 individuals, with around 1,000 individuals opting in to the LSTR in 2022 alone, a marked increase from previous years. It is speculated that the number of UK RND individuals included in these statistics is on the rise.

On 10 August 2024, Law Decree No. 113 of 9 August 2024 came into force, which doubled the EUR 100,000 flat tax on foreign income and assets to EUR 200,000. This has led to some clients voicing concerns about the regime's stability and longevity.

However, the Italian LSTR remains competitive among rival preferential tax regimes aimed at attracting wealthy investors. In addition, the tax rise only applies to individuals who transfer their residence (defined as the place where the individual has their "habitual abode") to Italy after 10 August 2024, and comes into effect for tax return filings for financial year 2024.

Although the Italian government has increased the annual fixed tax cost of the regime, the Italian LSTR itself has been stable since its introduction in 2016, and there are no signs that this is expected to change. The Italian LSTR has now outlived five different governments whose alignments ranged from the left to the right of the political spectrum, and the fact that the recent reform included no modifications of other terms of the Italian LSTR may be interpreted as an endorsement of the regime by the current government. The softening of the reform's impact on those already benefiting from the regime through grandfathering provisions is in stark contrast to the expected approach of the UK government to its own reforms affecting high-net-worth individuals.

Despite the recent doubling of the annual lump-sum payment, it is generally thought that the change will have minimal impact on those with higher levels of wealth.

The future shape of UK tax policy

Back in the UK, RNDs are seeking advice on what the Budget means for them. Contrary to the pre-Budget media speculation that the UK chancellor was intending to "water down" some of the proposed IHT reforms relating to trusts by grandfathering some existing "excluded property trusts" or phasing in the new rules over a period of time, the Budget has done quite the opposite, imposing a "tax trap" in the form of an IHT exit charge not only on some clients with existing trusts looking to leave the UK before 6 April 2025, but even on the trusts of some clients who have left as early as 6 April 2023.

Following the Budget, RND individuals who have either delayed pulling the trigger on preprepared tax mitigation strategies or who set these strategies in motion some time ago would be well advised to reevaluate these with the benefit of fuller information, particularly on those aspects of the Budget about which there was no warning. More urgently, now is the time for those RND individuals who have held off on exploring their options until the Budget to take stock of their planning options in good time before 6 April 2025. At the same time, those clients who have been considering coming to or are recently arrived in the UK after 10+ years of non-UK tax residence should feel emboldened to seek advice on how they might take advantage of the opportunities the Budget presents for them.

For those clients considering relocation or well on their way to relocating, whether from or to the UK, we as a firm are well-placed to advise on the UK regime and on several ordinary and preferential tax regimes available in other jurisdictions. Of those leaving the UK, after considering the options, some may find that a move for la dolce vita is calling.

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Article

Anticipating Donald Trump's tax proposals and initiatives during his second term

Introduction

Donald Trump's inauguration in January 2025 will mark the beginning of his second term as president of the US. President-elect Donald Trump has put forward a number of ideas for tax policies he intends to pursue during his second term.

This article will spotlight the key proposals promised by Trump and assess their feasibility and impact on wealth- and business-owning families and individuals. Under a second Trump administration, the Republican Party will control the White House and Congress, with a small majority in the Senate and a very slim advantage in the House of Representatives.

Thus, while the Republicans do have a majority in both houses, they will fall far short of a supermajority required in the Senate. Therefore, we expect any tax legislation to be passed using the budget reconciliation process, which is a procedurally streamlined process allowing for the passage of bills effecting budget reconciliation instructions and requiring only a simple majority in the Senate. For more information on the budget reconciliation process, please find our prior publication on this issue at: https://insightplus.bakermckenzie.com/bm/tax/united-states-reconciliation-refresher.

The incoming administration's ideas

1. **Extending certain TCJA provisions**

   The Tax Cuts and Jobs Act (TCJA) increased the existing estate/gift tax lifetime exemption for US taxpayers (currently USD 13.99 million for 2025). This increase was expected to sunset to USD 5 million (indexed for inflation) on 1 January 2026. Trump is likely to extend or make permanent the increased exemption amount, benefiting US taxpayers who stood to utilize the exemption in 2026 or future years.

   Other provisions of the TCJA due to expire on 1 January 2026, such as the tax rates, brackets, standard deduction and personal exemptions for individuals, and the 20% deduction for certain qualified business income realized by pass-through businesses, should also fall within the scope of Trump's tax agenda and may also be extended or made permanent.

   Particularly, the continuation of the increased lifetime exemption amounts would directly benefit US families and international families with members who either have a US passport or are citizens of a jurisdiction that has an estate tax treaty with the US. Under the current US federal tax rules, the lifetime exemption is only available to US citizens or domiciliaries. Non-US citizens who are not domiciled in the US are afforded a much smaller lifetime exemption equivalent to USD 60,000, unless such amount is modified by an applicable estate tax treaty with the US. For

example, under the estate tax treaty between the US and Switzerland, Swiss citizens are afforded a proportionate lifetime exemption equal to the ratio of a decedent's US assets to their total worldwide assets at death multiplied by the existing lifetime exemption afforded to US citizens and domiciliaries.[1]

2. Creating new incentives for US production

Another major component of the TCJA was the lowering of corporate tax rates from a maximum of 35% to a flat 21%. Unlike some of the other provisions, the reduced corporate tax rate is not set to expire in 2026. Nevertheless, Trump has voiced his desire to further reduce the rate to 20% and install an even lower rate of 15% for corporations engaged in US domestic production operations.

In addition, Trump has proposed to reenact the Domestic Production Activities Deduction, which previously allowed for a 28.5% deduction on qualifying domestic production activities.

When coupled with the other business tax provisions that may be extended or reintroduced along with the extension of the TCJA provisions, the environment for businesses organized as corporations and operating in the US, particularly in manufacturing, is predicted to be quite favorable. Wealth-owning families with existing US operating businesses or potential investment and acquisition opportunities may wish to consider the potential impact of these proposed measures.

3. Imposing new tariffs

Trump has made clear his intention to use tariffs as a trade and fiscal tool. Unlike the implementation of changes to the tax regime, this form of US legislation includes provisions that would allow Trump to increase and impose new tariffs without requiring Congressional approval. As of the date of this article, Trump has proposed the following tariff measures:

1. 25% tariffs on Mexico and Canada:
   - 25% tariffs on all imports from Mexico and Canada unless these countries control the flow of illegal drugs, especially fentanyl, and illegal immigrants.
2. 10% tariff on China:
   - Trump has proposed a 10% tariff on imports from China due to concerns about fentanyl.
   - Note: During his campaign, Trump had threatened tariffs of 60% on Chinese goods. As of the date of this article, he has not expressly taken the 60% tariff off the table.
3. 100% tariffs on BRICS countries:
   - After announcing the 25% tariffs on goods from Canada and Mexico, Trump also threatened to levy tariffs of 100% ad valorem on all imports from the BRICS nations. This group was originally made up of Brazil, Russia, India, China and South Africa, and has been joined by Egypt, Ethiopia, Iran and the United Arab Emirates.
   - Trump noted that his proposal resulted from the efforts of India and other BRICS nations to replace the US dollar as the world's reserve currency.

Tariffs are a politically charged mechanism in global trade, and critics have voiced fears that the use of tariffs will lead to retaliatory and counterproductive trade dynamics between the US and its trade partners and competitors.

Although these tariffs are addressed specifically at countries, the tariffs directly impact businesses with operations in such countries and may have farther-reaching economic effects. As a consequence, business-owning families may feel the repercussions of Trump's tariffs even though they are not the intended target.

4. Ending worldwide taxation on Americans living abroad

Trump pledged on the campaign trail to "end double-taxation" on the income of US citizens living overseas. It remains unclear what was the intended scope of this statement and how Trump would implement such a pledge. However, the policy would garner support from certain members of Congress on both sides of the aisle, as well as presumably many of the US citizens residing abroad.

[1] To claim the increased lifetime exemption under the treaty, a US federal estate tax return must be filed and the decedent's worldwide assets must be reported on such return.

It remains to be seen whether and to what extent this pledge makes its way into the new administration's proposals and, ultimately, into legislation put before Congress.

Conclusion/summary

Campaign promises and proposals are not guarantees, and Trump's intended tax policies are certain to change, face scrutiny and resistance, or to simply be discarded in favor of other provisions as part of the legislative process. While certain provisions, such as the extension of the increased TCJA exemptions, seem likely to be adopted in the near term, other policies, such as tariffs, may require expending significant political capital with less certain appeal within Congress.

Some of the policies under a Trump administration may benefit wealth-owning families and individuals, in particular those with US operating and manufacturing businesses, while other proposals may be of less benefit or even detrimental. Regardless of how Trump's second term begins, we expect a significant focus of his first year in office to be the promotion and demotion of key tax proposals in order of priority, which should give more clarity on which campaign proposals may ultimately become law.

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Article

Sanctions: the newest concern for wealth owners

Over the last 30 years of my career, I have heard a litany of concerns from families other than tax: (1) political risk; (2) asset expropriation; and (3) currency controls, all being examples of issues that families have worried about. Ten years ago, had I mentioned sanctions concerns as an issue that families worry about, I probably would have been laughed out of the meeting. However, the Ukraine war has revamped this thinking. Historically, specific individuals have been concerned about sanctions, and they were often extremely high-profile individuals. In other situations, people resident in a country could face sanctions, but if they lived abroad, those rules typically did not apply.

However, in the context of the sanctions applied against Russia, the concept of an "in-scope Russian" became a unique concept. In Europe, for example, this applied to anyone who was a Russian national who was not a citizen or resident of the EU. Take the following example: Mrs. Y left Russia when she was two years old. She has lived in the US since the age of four. She is a naturalized US citizen living in Texas. Mrs. Y's US passport says that she was born in Samara. While Mrs. Y does not travel to Russia and the last time she was in Russia was in 2000, she never formally gave up her Russian passport. Under EU legislations, Mrs. Y is an "in-scope Russian" subject to sanctions that do not apply to a specific individual but apply to the class. The US had a similar, albeit more limited, definition. The consequences of being "in-scope" had the effect of everything from (1) the inability to make any further meaningful deposits into a bank account, (2) fiduciary structures being unwound and (3) the inability to get legal/tax/accounting services performed. Looking at world developments, the application of these other types of sanctions to other countries no longer seems like a hypothetical but has started to feel very real. Developments in Asia and the Middle East are just an example of the ways in which the situation may escalate.

In addition to formal sanctions, one also has to deal with the "I cannot be bothered" rules. These are informal prohibitions on working with or, performing services for sanctioned individuals. Take the following example: Mr. X was sanctioned by name in Australia. Mr. X has a bank account in New York. While there is no Australian nexus to the bank account, the New York bank demands an exit because it does not want the headache of the compliance issues.

Take this situation to the environment of global instability that now exists. I am aware that certain PE/VC funds will not take clients from certain regions of the world because of concerns that the sanctions might apply in the near future. More and more sovereign funds are discussing divestment for political reasons. Some academic institutions have already started discussing divestment. It is not a leap that one or more countries may apply additional sanctions against specific people, groups of people, residents or nationals.

These sanctions can range from blocking additional deposits, to prohibiting trusts with connections to that jurisdiction from being permitted to remain.

What can be done?

If your name gets put on a list, the only real option is a discussion with the actual sanctions regulator to find some form of license to allow you to operate.

In view of this, we see different options. These include the following:

a. Having multiple citizenships and residencies;
b. Having multiple bank accounts;
c. Decentralizing corporate structures; and
d. Moving trusts to jurisdictions that have not imposed sanctions on trustees.

Multiple citizenships and residencies

As learned from the "Russia Playbook," if someone is caught because they are a citizen, the only option is to have a citizenship in the jurisdiction that they now reside in. For example, the EU definition of an in-scope Russian was a Russian citizen or resident that was not an EU citizen or an EU resident. For example, I saw a situation where someone who left Russia at the age of five and lived in Israel was an in-scope Russian.

The only way to solve this issue is to look for established citizenships or residencies in relevant jurisdictions so as to avoid the "in-scope" definition applying.

Multiple banking relationships

In practice, an in-scope Russian cannot use a bank in the EU/Switzerland. I know this is an overstatement of the rule, but many felt this is what happened. The only solution is to have multiple banking relationships with different types of financial institutions — some small, some large — all over the world to operate.

Decentralize structures

The common thinking over the last 50 years has been to have simple and consolidated structures. The challenge with this (oftentimes very smart) approach is that when there is an issue, the entire structure is affected. We now see more and more families unlinking structures.

For example, if a family is in mining, the historical structure for corporate governance might need to be rethought. There is no right answer, but the topic needs to be considered.

Moving trusts to other jurisdictions

The US and the EU both applied a prohibition on providing fiduciary structures or trustee services to certain settlors of assets. Others have not. Perhaps moving the fiduciary structure to jurisdictions that do not have these rules is worth considering.

"I cannot be bothered"

Probably the worst type of issue to address is the statement "there is no legal prohibition to work with you, but you are not worth the headache." This is such a difficult concept because there is no way to fight it. It is completely subjective. The only way to address it is by diversifying the assets, institutions one works with, and currencies held. This has its cost, but it also has its benefit.

Conclusions

We may never see additional sanctions, and I may be claiming that the sky is falling when it is not. However, given some countries' very aggressive stances now, if you feel that the pressure is there, take it seriously. Do not wait until the problem materialises.

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Article

The FCA's PEP Review: Considerations for Family Offices

Summary

On 18 July 2024, the UK Financial Conduct Authority (FCA) published the findings of its multi-firm review on firms' treatment of politically exposed persons (PEPs). This review is likely to be of interest to family offices and their advisers for the following reasons:

- UBOs of family offices are often treated as being within scope of the PEP categorisation;
- An overly restrictive approach to KYC and AML controls on the part of financial institutions can create friction and delays for family offices and their UBOs, and the FCA's findings may provide some basis to push back on or query the approach on this point (see below); and
- Given the FCA's strong public stance on the PEP issue, we may see other global regulators following the UK's lead in the future.

What is the background to this review?

The treatment of PEPs by UK banks gained significant press attention after a politician (Nigel Farage) gained evidence demonstrating that a private bank (Coutts) took action to offboard him as a result of his political values. This ultimately led to wider questions over whether banks were treating politically exposed customers fairly, especially in relation to domestic PEPs. The FCA subsequently chose to take action as a result of concerns that PEPs may be being treated inequitably by banks and other financial services firms. We are aware, in particular, that the FCA is investigating PEP-related controls applied by certain major institutions in this respect.

Findings of the review

The FCA's findings are detailed, but some of the key points arising from the review are as follows:

- Some financial institutions were adopting definitions for PEPs and "RCAs" (i.e. relatives and close associates – in other words, individuals who are closely associated with a PEP) that are wider than those set out in applicable regulations.
- Some institutions did not have effective arrangements to assess if the PEP classification was still appropriate after the PEP had left public office. This includes a lack of suitable policies and procedures to appropriately review the classification after the individual ended their public function, as well as issues with timely declassification.

- A few firms did not consider the customer's actual risk in their assessment and rating, and did not give a clear rationale for their risk rating. In some instances the FCA found that firms failed to provide a clear rationale or narrative explaining the customer's risk rating in the customer files.
- Firms needed to improve the clarity and detail of their communications with PEP and RCA customers. Some firms had inadequate processes for customer information requests and did not make it sufficiently clear to customers why they were being asked for additional information (for example, referring simply to the need to satisfy regulatory obligations). In other instances some firms did not adequately communicate with customers about account rejections or closures.
- Some firms needed to update their policies to reflect recent UK regulatory amendments to treat UK PEPs and RCAs as having a lower level of risk than a foreign PEP, unless they have other risk factors.

What action should family offices take?

We have found that – despite the increasingly significant role that family offices play in the financial markets – their structure and risk levels can be poorly understood by others in the market. In particular, banks and other industry stakeholders (including supervisory authorities) do not always assess risk levels inherent in family offices, or their UBOs, on a proportionate basis. The FCA's guidance is a helpful reminder that, whilst financial institutions are required to view effective AML and KYC controls as business critical, they must ensure that these controls are applied in a proportionate manner. In particular, UBOs who may be classified as PEPs and find that banks are attaching a disproportionate level of risk to this status should work with their advisers to ensure that the following points are addressed:

- Individuals should ensure that they are clearly in fact within scope of the definition of a PEP (or a close associate / family member of a PEP). The definition applied by the financial institution should simply be "the minimum required by law" (as per the FCA's guidance) and should not go beyond this.
- The financial institution should clearly justify why it is making any data requests, particularly more intrusive requests. This reflects FCA guidance that firms should ensure that communication with customers is clear and effective when requesting information (i.e. so that PEPs and connected persons can understand what information is being sought and why the requests are being made).
- It should be possible to push back on data requests that are clearly disproportionate; the FCA has noted, for example, that financial institutions should consider the actual level of risk posed by a client, and ensure that information requests are proportionate to those risks.
- If a UBO has previously been categorised as a PEP but has since left public office, or they believe that there has been some other relevant change to their status, they should ensure that any such change in their status is communicated to relevant financial institutions.
- If a financial institution is unwilling to provide financial services either to an individual it has classified as a PEP or to that individual's investment vehicle, this may be open to challenge more generally given the FCA's comments.
- Finally, jurisdictional factors may be relevant, depending on where the UBO and the financial institution itself are based (as noted above, UK PEPs may be treated by UK institutions as lower risk).

Family offices and their UBOs can continue to expect financial institutions to apply enhanced levels of due diligence both during onboarding processes and periodically throughout the relationship. Nonetheless, family offices should work with their external advisers to ensure that restrictions and due diligence requests have a clear basis in applicable regulations across all jurisdictions. The FCA's comments demonstrate that there is room to challenge disproportionate or intrusive requests, or outright refusals to provide services to PEPs and their connected persons.

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Article

Dear Trustees, the CFC reporting form for trustees is ready, but are you ready?

Summary

In accordance with the July 10 Ruling, offshore trustees must fulfill reporting obligations to the National Taxation Bureau (**NTB**) under specified conditions, irrespective of their physical presence in Taiwan. The NTB has recently issued a reporting form for offshore trustees (the **Reporting Form**)[1], delineating the reporting requirements as stipulated by the July 10 Ruling.

The Reporting Form consists of eight sections.[2] Notably, this Reporting Form introduces an additional section 'CFC Income Calculation Form', distinguishing it from those used by Taiwanese trustees. Certain sections of the Reporting Form may appear misaligned or unusual as they are originally designed for Taiwanese trustees, resulting in requirements that may not directly apply to offshore trustees.

Six Tips/Questions for Offshore Trustees:

1. **Disclosure of Trust Income:**

   While the Reporting Form does not mandate offshore trustees to provide financial statements, Section I requires the disclosure of all trust-related income and expenses. This includes annual income, costs, expenses, and distributions, and extends to offshore income. Additionally, any income derived from CFCs must also be reported.

   Query whether distributions made can make the disclosure different? The answer is yes.

2. **Disclosure of Trust Assets:**

   Section II requires trustees to disclose all trust assets and their values.

   Query whether the assets can be assessed at book value? Yes, it is possible, but not always recommended.

[1] The full forms can be viewed on the official website: https://www.ntbt.gov.tw/multiplehtml/2370082b3cf34f5ca0165e08312ac92e
Currently, the form is only available in Chinese. We can assist in providing an English translation if needed.

[2] The Reporting Form consists of eight sections:
Section I: "Trust Property Income and Expense Statement"
Section II: "Directory of Trust Property"
Section III: "Detailed Statement of Beneficiaries' Incomes"
Section IV: "Detailed Statement of Beneficiaries' Incomes – Overseas Income Part"
Section V: "Detailed Statement of Beneficiaries' Incomes – Income from Mainland China"
Section VI: "Private Securities Investment Trust Fund Beneficiary Certificate Transfer Notification Form"
Section VII: "CFC Income Calculation Form"(two separate forms for individual and corporate CFC)
Section VIII: "Attachment Table"(including but not limited to the CFC shareholding and structure)

3. **Disclosure of Beneficiaries:**
    a. General Beneficiary Disclosure:

    Section III requires the listing of beneficiaries and the trust assets' Taiwanese source income incurred during the fiscal year. If the beneficiaries are unspecified or do not yet exist, it should be noted as "Beneficiaries Unspecified" or "Beneficiaries Not Yet Existing." Despite offshore trusts typically not generating Taiwan source income, beneficiary disclosure remains compulsory.

    Query whether the disclosure is different if beneficiaries are named in the trust deed or the letter of wishes? The answer is possible, but amendment of the trust deed is also a reportable item, including both the original and amended trust deeds. Then the next question is what if such disclosure is prohibited by local laws?

    b. CFC Income Beneficiary Disclosure:

    In Section IV, if the beneficiary is specific and confirmed, then the beneficiary should be listed as the income beneficiary of the CFC. Conversely, if the beneficiary is not specific or confirmed, then the settlor should be listed as the income beneficiary in this section.

    Query whether it is still reportable if the sole beneficiary is not a Taiwan resident? Another question is whether the CFC reporting requirement extends to a trust that has no CFC income / issue, and what is the legal basis for that reporting if the whole reporting requirement is a result of the application of the CFC regime?

4. **Disclosure of CFC Information:**

    If a trust underlying company is a CFC and qualifies under the January 4 Ruling (i.e., the settlor has placed the CFC shares as trust assets), Section VII should include comprehensive information about the CFC. This encompasses basic company details, earnings for the current year, profit distribution status, shareholder details, and a structural diagram illustrating the relationships between beneficiaries/settlors and related parties.

    Query whether the tax authority could ask more for clarification? The answer is yes and very likely it will happen.

5. **Disclosure of Trust Deed:**

    According to Section VIII, the trust deed must be attached as an appendix. According to our verbal discussion with the NTB, no additional documents are required unless the NTB identifies a need for further verification.

    Query whether the definition of Trust Deed can be expanded to not only all the amendments but also the various instruments related thereto?

6. **If the Trust is Terminated or the Trust Agreement is Amended During the Year:**

    Section VIII specifies that if a trust is terminated or if there is any amendment to the trust agreement within the year, relevant documentation, including details before and after the changes, must be submitted. This implies that even if the trust is terminated during any reportable year or transferred to another trustee, the reporting obligation still applies.

    Query how a terminated trust should be reported and on what basis a trustee can report something that is not covered by its contractual relationship. Additional question is whether the settlor's consent of disclosure is still valid after the contractual relationship ends, and not to mention the beneficiary's consent which likely was never given.

Risks of Non-Compliance with Reporting Obligations

Although Taiwan is not a full participant in the Common Reporting Standard (CRS) network, it currently relies on bilateral negotiations to facilitate information exchange. To date, such arrangements have been established only with Japan, the United Kingdom, and Australia. However, in recent years, the NTB has intensified its tax audit efforts. It now occasionally requests information from Taiwanese shareholders of CFCs, including those holding less than a 50% stake. Required information may include shareholder registers, minutes of shareholder meetings, director registers, and financial statements. This means that even if an offshore trustee opts not to report, there is still a risk of exposure during audits.

Query what would be the consequence if an unreported trust is under audit, and whether a reported trust will guarantee an audit.

Actions to Take

Offshore trustees with trusts that meet the criteria of the July 10 Ruling should apply for registration of a tax ID and appoint a Taiwanese agent to handle the submission of the Reporting Form by the end of January 2025. We currently offer local agent services solely for existing trustee clients, but we welcome all inquiries. As the local agent, we believe the first move is to ask for extension as we suspect very few trustees are ready for reporting by the end of January 2025.

We also believe it is appropriate for the trustee to analyze the Taiwan reporting in the overall context of is fiduciary duties, and to examine the impact of the reporting (including what to report, how to report, and actions that can be legitimately undertaken by the trustee in consultation with the settlor/beneficiaries) to ensure consistency with the original intent of the settlor in setting up the trust and to minimize any risks of potential disputes with the settlor and/or the beneficiaries in the future.

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Article

New Criteria from the Spanish Central Economic Administrative Court on tax advantages and fraud in restructurings: Implications and Recommendations

It is common for family groups to engage in operations involving the contribution of their shares in operating companies to holding entities. These operations can benefit from the tax neutrality regime as long as the transaction do not primarily aim at tax fraud or evasion.

The Spanish Central Economic-Administrative Tribunal (TEAC) has recently issued several resolutions, which constitutes doctrine and therefore, will bind the tax administration, that significantly impact these kind of transactions made by individuals. These resolutions removes the effects of the tax advantage in cases of inappropriate application of the tax neutrality regime in restructuring transactions.

How does the tax neutrality regime work in Spain?

The Special Regime for Mergers, Spin-offs, Asset Contributions, and Share Swaps (FEAC Regime) allows the deferral of taxation on latent capital gains in restructuring operations, provided that valid economic reasons exist and the reorganization is not a tax driven decision. This regime is essential to facilitate corporate restructurings without immediate tax burdens. In this regard, this special tax regime was implemented so that taxation is neither a stopper nor an incentive to proceed with restructurings.

The FEAC Regime applies automatically and only needs to be notified to the Spanish Tax Authorities when a restructuring transaction is carried out. The existence of valid economic reasons does not need to be proven before applying the FEAC Regime, but this requirement can be revised in case of tax audit and it is an essential aspect of the restructurings.

What is the new interpretation from the TEAC in order to apply the FEAC Regime?

The TEAC resolutions focus on non-monetary contributions of shares from an operating company, where undistributed profits (reserves) were accumulated, by an individual (the shareholder) to a holding company (normally, the family business) applying the FEAC Regime. In the cases analysed by the TEAC, it was observed that there were no clear valid economic reasons to carry out these transactions.

The primary presumption is that the main objective behind these restructurings is to obtain tax advantages. Specifically, the distribution of dividends from the operating entity to the holding entity, or the future sale of shares of the operating entity, would qualify for the participation exemption regime. This regime allows for significant tax benefits, as both capital gains and dividends distributed would

be 95% exempt from taxation in the holding entity. Therefore, the application of the participation exemption regime results in a substantially lower effective tax rate. Under this regime, all capital gains and dividends are taxed at an effective rate of 1.25%. This is in stark contrast to the maximum tax rate of 28% that would apply if the sale or distribution of dividends were made directly by the individual shareholder, rather than through the holding entity.

When it comes to the facts surrounding these cases, the holding companies incurred into extraordinary expenses for the benefit of their sole shareholder and made investments into financial products for the benefit of their sole shareholder. Additionally, these holding companies did not engage in any different business activities where they could reinvest the dividends received from the operating companies.

Given these circumstances, the TEAC has determined that the FEAC Regime is not applicable. Instead of regularizing the deemed capital gain on the contribution of shares to the holding company in the fiscal year of the contribution, the TEAC calculates this capital gain and attributes it to the shareholder as the tax benefit from the contribution materializes. For example, when the operating company distributes reserves generated prior to the contribution as exempt dividends to the holding company, this amount is taxed at the shareholder's level as part of the capital gain on the contribution. If the tax benefit arises from the sale of shares, the capital gain is taxed in the fiscal year of the sale, always limited to the amount of the tax benefit obtained under the Spanish participation exemption regime.

Following these new resolutions, the Spanish Tax Authorities have adopted a very restrictive interpretation. They have initiated tax audits to scrutinize these non-monetary contributions and aim to tax the deferred capital gain based on the tax advantages obtained post-contribution, thereby overriding the application of the Spanish participation exemption regime.

What do these new resolutions from the TEAC imply?

The novelty of these resolutions lies in their allowance for the Spanish Tax Authorities to regularize the capital gain obtained from the contribution based on the tax advantages derived from these operations (dividend distributions or sales) indefinitely. This approach disregards the Spanish statute of limitations of four years, meaning that operations can be reviewed indefinitely, regardless of whether they are statute-barred due to the focus is the year when the tax advantage is obtained instead of the year of the share´s contribution. This creates significant legal uncertainty for taxpayers.

In addition, the Spanish Tax Authorities have adopted a very strict and aggressive approach of these new resolutions. They are even regularizing non-monetary contributions where valid economic reasons were double-checked through a Binding Ruling with the Spanish Directorate of Taxes and which have no connection to the background of the TEAC resolutions. This includes situations where the holding companies had a different business purpose than the operating company and no expenses or investments were made in favour of the sole shareholder.

Strategic Considerations

This new interpretation from the TEAC of restructuring transactions and the application of the FEAC Regime has important implications:

1. **Review of Structures:** It is crucial to review current structures and be conservative with dividend distributions post non-monetary contributions of the shares until this aggressive interpretation from the Spanish Tax Authorities on the TEAC's resolutions is assessed by Spanish Courts.
2. **Economic Justification:** Ensure that all restructuring operations have a solid economic justification to apply the FEAC Regime and keep sufficient documentary support to build the arguments in case of a potential tax audit. It is crucial to ensure that these transactions are backed by valid economic reasons to withstand scrutiny from tax authorities.

3. **Litigation:** We are taking numerous cases to court to appeal against the disproportionate interpretation of the Spanish Tax Authorities, which undermines the FEAC Regime.
4. **European Legislation:** There is even a complaint filed by the Spanish Association of Tax Advisors (AEDAF) at European level, arguing that Spanish legislation contravenes the European Directive because of the broad concept of tax fraud or tax abuse in the context of this special regime, making it difficult for taxpayers to apply the FEAC Regime and creating legal uncertainty.

To conclude, The TEAC resolutions underscore the need for careful planning and justification of non-monetary contributions of shares within family businesses. As such, we must be prepared to build a solid defence on the FEAC Regime application and adapt to an increasingly complex and scrutinized tax environment in the context of Spanish tax audits and subsequent litigation.

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Article

US Corporate Transparency Act Implementation Put On Hold

Introduction

The US Corporate Transparency Act (CTA) and regulations thereunder went into effect January 1, 2024. Passed back in January 2021, the CTA requires "reporting companies" to file a report regarding their "beneficial owner" information and "company applicants" (BOIR). More than 32 million entities are expected to file BOIR to the Financial Crimes Enforcement Network (FinCEN) of the US Department of the Treasury (US Treasury).

In a "last minute" December 3, 2024 decision, the US District Court for the Eastern District of Texas in Top Cop Shop, Inc., et al. v. Garland,[1] issued an order (Court Order) temporarily enjoining the US government from enforcing the CTA and CTA regulations. Specifically, the Court Order:

- stayed the CTA's January 1, 2025 filing deadline for BOIR required filed by domestic and foreign reporting companies that were formed or registered before 2024, and
- enjoined the US government from enforcing the CTA and the implementing regulations as promulgated by FinCEN.

Observation

Based on the plain language of the decision, while FinCEN's enforcement of the CTA against all reporting companies is preliminarily enjoined, the BOIR filing stay does not appear to apply to the 90-day BOIR filing deadline for reporting companies formed or registered during 2024. However, FinCEN's alert posted on its website on December 6, 2024 (FinCEN Alert) states that in light of the Court Order, reporting companies are not currently required to file BOIRs with FinCEN and will not be subject to liability if they fail to do so while the Court Order remains in force. The implication of the FinCEN Alert is that CTA penalties will not be imposed as long as the Court Order remains in effect to reporting companies:

- formed or registered before 2024 that had a January 1, 2025 filing deadline,
- formed during 2024 that had a 90 day filing deadline, or
- that had a 30-day deadline to file a corrected or updated BOIR.

Nevertheless, FinCEN confirmed in the FinCEN Alert that reporting companies may continue to submit BOIR voluntarily.

Under these circumstances, officers of such companies responsible for BOIR, in particular foreign reporting companies, should consider applicable duty of confidentiality under contractual arrangements or foreign privacy laws before filing with FinCEN its BOIR or before obtaining FinCEN identifier voluntary.

[1] Texas Top Cop Shop, Inc. v. Garland, No. 4:24-cv-00478 (E.D. Tex. Dec. 3, 2024).

In any case, it would be prudent for reporting companies to continue to gather their beneficial ownership information for filing of FinCEN identifiers or for the initial, correct, or updated BOIR, as applicable. In this manner, the reporting companies will be prepared to make the filings if or when again required to do so.

In more detail

As background, FinCEN released the final regulations regarding BOIR requirements on September 29, 2022 and regarding access to BOIR by individuals and entities other than FinCEN on December 22, 2023, both of which were effective as of 1 January 2024. The CTA regulations require domestic and foreign reporting companies formed or registered before 2024 to file their initial BOIRs by January 1, 2025, and domestic and foreign reporting companies formed or registered during 2024 to file their initial BOIRs within 90 days after formation or registration.

The Court Order imposes a preliminary injunction, and the *Top Cop Shop* Court has not issued a final decision as to the constitutionality of the CTA or its implementing regulations as promulgated by FinCEN. However, the Court found that the CTA and its implementing regulations are "likely unconstitutional" for purposes of issuing the preliminary injunction. The preliminary injunction should remain in place until further order of the Court. An appeal by the US government has been filed.

Reporting companies appear to continue to have a legal obligation to file their BOIRs. However, due to the Court Order stay of the January 1, 2025 deadline and FinCEN confirmation that it will not enforce any of the CTA compliance deadlines, reporting companies may wait to file BOIR until further guidance is issued by FinCEN or the Court Order is overturned.

The Court Order's BOIR filing stay arguably applies only to the January 1, 2025 compliance deadline for reporting companies formed or registered before 2024. The plain language of the decision does not appear to apply to the 90-day BOIR filing deadline for reporting companies formed or registered during 2024 or to the 30-day deadline to correct previously filed BOIRs. However, based on the FinCEN Alert, as long as the preliminary injunction under the Court Order remains in effect, FinCEN will not impose the daily monetary penalties to reporting companies that do not file their initial, corrected or updated BOIR.

As a reminder, the CTA imposes criminal and civil *penalties* for *willfully* providing false or fraudulent beneficial ownership information, or *willfully* failing to report complete or updated beneficial ownership information. A violation may result in a civil penalty of $500 per day for each day that the violation continues or is not remedied, or a criminal fine of not more than $10,000, imprisonment for not more than two years, or both. A safe harbor (i.e. no civil or criminal penalties) may apply if a person has reason to believe a submitted report contained inaccurate information and within 90 days "voluntarily and promptly" submits a corrected report. However, the safe harbor is not available if the person knowingly submitted false information in the first report.

Reporting companies should continue to monitor any guidance from the Court in *Top Cop Shop*, US Treasury, and FinCEN to confirm any updates to their filing obligations accordingly. As an observation, even if the current Department of Justice seeks to overturn the *Top Cop Shop* decision on appeal, it is noteworthy that in 2021, then-President Trump vetoed the CTA. His veto was ultimately overridden by a two-thirds vote in both the House and the Senate. This may be an indication that new Department of Justice leadership would not seek to defend the CTA.

As a reminder, as posted on the FinCEN website, among other pending lawsuits, on March 1, 2024, the US District Court for the Northern District of Alabama, Northeastern Division, entered a declaratory judgment, determining that the CTA violates the Constitution's limits on Congress's power and enjoining US Treasury and FinCEN from enforcing the CTA *against the specific plaintiffs*, namely: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association (NSBA) and NSBA members.[2] FinCEN has stated in a prior notice posted on its website that it will comply with the court order for as long as it remains in effect in respect of the plaintiffs in the case, currently pending on appeal by the US government.

- The FinCEN Alert as well prior alerts can be found at https://fincen.gov/boi

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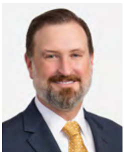

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Around the world

EMEA

Italy - Italian government doubles the flat tax on foreign-sourced income for new residents

By Law Decree No. 113 of 9 August 2024, published in the official gazette on 10 August 2024, the Italian government doubled the "flat tax" on foreign-sourced income for new residents from EUR 100,000 to EUR 200,000, introduced by the previous government to attract wealthy investors.

READ MORE

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Italy - The Parliament confirms the increase of the flat tax on foreign-sourced income for new residents introduced in August by the Government

The increase of the flat tax on foreign-sourced income for new residents from EUR 100,000 to EUR 200,000 decided by the Italian government through Law Decree No. 113 of 9 August 2024, has become definitive, as a result of the conversion into Law no. 143 of 7 October 2024.

READ MORE

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United Kingdom - Autumn Budget 2024: Overview of announcements

On 30 October 2024, the Chancellor of the Exchequer delivered the UK government's annual Budget. This is the first budget from the recently elected Labour government, and follows months of speculation around tax increases, reforms to the taxation of UK resident non-domiciliaries (RNDs or non-doms), and UK inheritance tax (IHT) reform.

READ MORE

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AMERICAS

Argentina - Fiscal Package Regulation

On 12 July 2024, Decree 608/2024 ("Decree") was published in the Official Gazette, by which the executive branch regulated certain aspects of Law 27,743 of "Palliative and Relevant Tax Measures" ("Fiscal Package").

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United States - IRS to stop automatic penalties for late-filed Forms 3520

On October 24, 2024, IRS Commissioner, Daniel Werfel, announced that the IRS will stop assessing penalties immediately for late-filed Forms 3520/3520-A, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts/Annual Information Return of Foreign Trust With a US Owner, relating to a US Person's receipt of foreign gifts and bequests and certain foreign trust reporting.

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United States - Public hearing to determine future of proposed foreign grantor trusts and large foreign gifts regulations

On May 8, 2024, Treasury and the IRS issued proposed regulations regarding reporting of transactions with foreign trusts and the receipt of foreign gifts ("Proposed Regulations") with requests for comments and a notice of public hearing.

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United States - Reporting burdens increase for foreign trusts and gifts from non-US persons under proposed rules

Treasury and the IRS recently issued propose regulations regarding reporting of transactions with foreign trusts and the receipt of foreign gifts ("Proposed Regulations"). These rules are the most significant development regarding reporting for US persons with interests in foreign trusts since 1997, and they raise many questions for foreign trusts with US-connected persons.

READ MORE

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United States - Supreme Court addresses business succession

The Supreme Court, in Connelly v. United States, 602 U.S. 146 (2024), held that a company's contractual obligation to redeem the shares of a deceased shareholder did not reduce the value of those shares for estate tax purposes.

READ MORE

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APAC

Malaysia - Forest City Special Financial Zone - New family office incentive scheme

On 20 September 2024, the Minister of Finance II announced a new single family office incentive scheme ("FO Scheme") as part of the broader incentive packages aimed at boosting the economic activities in the Forest City Special Financial Zone ("SFZ"). Forest City SFZ is the first location in Malaysia to offer the FO Scheme. The FO Scheme is designed to attract family offices to the Forest City SFZ, positioning the area as a significant financial and economic hub in Southeast Asia.

READ MORE

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Taiwan - New CFC taxation ruling that impacts offshore trustees – a backdoor to CRS?

In an unprecedented move, Taiwan's Ministry of Finance (MOF) issued a new ruling on 10 July 2024 that requires offshore trustees to register with Taiwan tax authorities when a Taiwan tax resident settler transfers the shares or capital of a Controlled Foreign Corporation located in a low-tax countries or regions outside of Taiwan (CFC) as trust assets.

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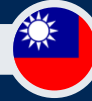

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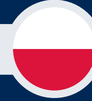

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