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Private Wealth Newsletter 2023

Third Edition

TAX FROM EVERY ANGLE

Editors' note

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It is our pleasure to share the Third Quarter 2023 issue of the Private Wealth Newsletter for our clients, friends, colleagues and global readership. As a longstanding publication of Baker McKenzie's Global Wealth Management Practice Group, we are particularly keen to publish a new feature of our newsletter designed to better connect our readership with our diverse and expansive worldwide team.

To headline this edition, we would like to present the first "PWN meets...," an ongoing series of video interviews showcasing our team members across offices and regions. First up are our colleagues in Dubai, Stephanie Samuell and Ben Phillips. You can find **Stephanie's and Ben's own introductions**, as well as their view on some of the current challenges and opportunities for family businesses and private wealth owning structures by visiting this **link** or turning to page 4 of this edition. We look forward to helping you get to know more of our team with each future issue of this newsletter.

On the print side, Michael Wong and Peggy Chiu of our Taipei office take us through the challenges facing clients and estate planners in addressing potential geopolitical risks in the region, offering us a look at the Taiwanese perspective. Clients and their advisers are confronting these issues irrespective of region, and we are honored to share Michael's and Peggy's take with our readership.

Our other articles focus on the challenges for and tools available to governments addressing the cross-border nature of the world economy and its interaction with individuals. We see in the United States and Argentina efforts to tackle perceived abuses of digital currency exchanges and so-called "low or null taxation jurisdictions," respectively. In Belgium, the legality of complying with FATCA's information exchanged pursuant to the intergovernmental agreement between the United States and Belgium has been called into question by the Belgian Data Protection Authority. Currently on appeal, the resolution of this development in Belgium and the potential ramifications in other jurisdictions will certainly be worth watching. For other developments, our "Around the world" section provides even more insight to help you stay on top of issues across the globe.

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PWN meets...

In the first of our series of interviews inviting colleagues to share their experiences of working at the Firm and involvement with Wealth Management, **Ben Phillips** and **Stephanie Samuell** discuss the current challenges and opportunities, particularly for family businesses and private wealth structures. Please find the link below to the full video interview.

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Article

Estate planning for political headwinds in Asia - a Taiwanese perspective

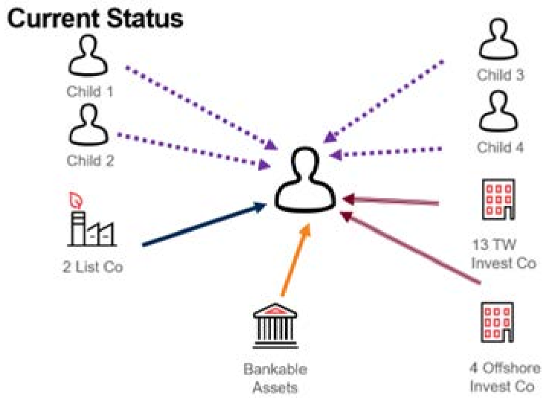
One of the main challenges facing the US and its western allies is forging a common front on China without it spilling over into direct confrontation. "Unlike the war in Ukraine, which must eventually reach some kind of messy conclusion, the rivalry between the US and China is a project without an end," stated a recent Financial Times article. This assumes in large part that the situation in Taiwan remains unchanged. For people in Taiwan, this perilous fate lies entirely in the hands of others, the US and China most prominently.

What then can wealth owners in Taiwan do affirmatively in a situation like this? Particularly when succession planning is already on the table. What additional factors should be reviewed in a timely fashion? Note that political instability is not unique to Taiwan. Even in Asia, there are potential flashpoints in many other locations.

To preserve client confidentiality, we draw from a number of actual client cases and set out the following hypothetical to illustrate the diversity of issues and planning that must be considered in today's environment:

Mr. Chen, a sprightly man in his early 80s, built a sizable fortune in the past 40 years. The core of the family wealth was in pharmaceuticals, with about a dozen companies in Taiwan and China selling medicine, medical supplies and equipment originating from leading US and European producers. The ownership structure of these companies was complex. Many were controlled by investment companies and nominee individuals (who were current or past business associates and employees of Mr. Chen). Over the years, Mr. Chen also amassed an impressive suite of real estate and shares in private and public companies. The real estate was all in Taiwan, ranging from properties used by the pharmaceutical business (such as offices and warehouses) to other commercial and residential properties that produced sizable income. The shares in which he invested were mostly held through investment companies (with the nominee structures like that of the business) and some in the individual name of Mr. Chen and his family members. They included companies listed in Taiwan and the US, and a number of start-ups that were moving to initial public offering in the next three to five years.

Mr. Chen was married with four grown children, each of them with their own families. Mr. Chen was a Taiwanese national and resident and lived in Taiwan for most of his adult life. His children were all educated in the West, some in the US and some in Canada. Many of the children were now living in the US and Canada and were not involved in the family business.



After an initial consultation with Mr. Chen to ascertain his overall objectives, we suggested that the family/ Mr. Chen consider prioritizing the following five goals/ workstreams:

Workstream 1 — Business restructuring
Workstream 2 — Assets diversification
Workstream 3 — Family migration
Workstream 4 — Overall succession considerations
Workstream 5 — Considerations in the event of political instability

Workstream 1 Business restructuring

We explained to Mr. Chen the apparent legal and practical risks associated with his current holding structure, which relied heavily on the use of personal nominees and special purpose vehicles (SPVs). In practice, these structures are often vulnerable to litigation risks, tax challenges, creditors' claims and, more recently, regulatory scrutiny arising from KYC/AML requirements and other concerns. In our meetings with Mr. Chen and company executives, we also learned that this holding structure was cumbersome to maintain as it required significant internal accounting adjustments to move revenues and expenses around SPVs. We proposed to the client that we should take the following steps to restructure the business:

- **Rethink how the businesses can be run more efficiently.** This required a deeper dive with the business executives now running the operating companies to understand the overall businesses, their current operations and future prospects, plus an understanding of how they were managed and the interplay between them now and in the future. The goal was then to come up with a pro forma business structure that makes commercial sense.
- Once the operating structures were mapped out, we needed to think through **how they should be owned and, ultimately, where the family control would come into play.** We explained to Mr. Chen and the family that to "unwind" the current nominee arrangements, these shares would need to be restructured. In the Taiwanese legal context, this would be accomplished either as a sale or a gift, each with different cash flow and tax implications. Through several meetings with the family's treasury and finance personnel, we determined the applicable fiscal and tax implications and proposed a number of alternatives for the family to consider.
- Ultimately, we needed to decide **how the shareholding of the various SPVs (given the final restructured organizational chart) should be held.** This was the most sensitive and private discussion we had with Mr. Chen and required us to understand his overall wishes in relation to family succession. This led naturally to Workstream 4 (overall succession considerations).

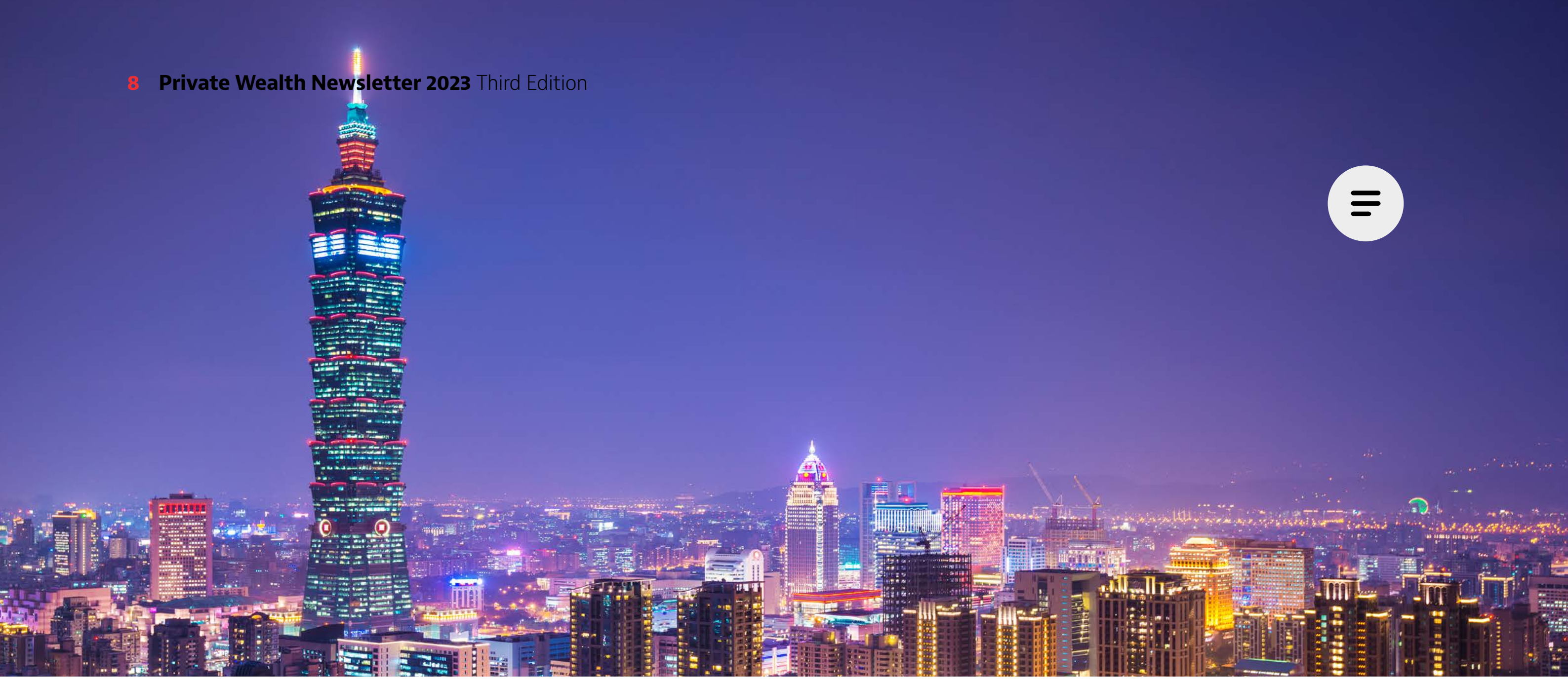
Workstream 2 Assets diversification

In addition to the operating companies, Mr. Chen and his family had significant personal assets both in Taiwan and offshore. As a complement to Mr. Chen's overall succession considerations, we shared with him our experience working with other Taiwanese families who diversified their assets in the recent past to maximize long-term return and minimize security risks. As part of that exercise, Mr. Chen could consider liquidating some of the assets (such as real estate) and diversify them across asset classes and jurisdictions. Informed by our experience working with families dealing with the recent Russian sanctions, we also discussed the importance of having multiple banking relationships in multiple jurisdictions.

Depending on where these assets were and the current ownership, there might well be foreign exchange regulations, personal tax implications and cash flow issues that needed to be considered. With the insight we have gained working with other families (and corporations), we were able to construct an overall action plan listing detailed steps to strike and balance between these myriads of considerations.

Workstream 3 Family migration

Mr. Chen, though only a Taiwanese citizen and resident, had an international family. This was quite common with similar Taiwanese clients with whom we work. The objective of this workstream was to work through the "people" aspect of the family tree, understanding the family members' current locations and where they envision themselves to be in the short-, medium- and long-term future. Integral to



the inquiry is to document the key family members' legal identifications, passports and permanent residencies. In the various discussions, we also gained an understanding of the key family members' current and future marital statuses to anticipate issues that may arise in connection with these "life events." We reminded Mr. Chen that there is no "right" or "wrong" answer to many of the choices that the family would make, including where the future generations will want to live and work, from which country or countries (if any) additional passports may be obtained, whether to use private contracts such as prenuptial agreement, etc.

In our discussion with Mr. Chen and the family members, personal safety was frequently raised as an issue. Often, we see this combined with the establishment of a family office or an (offshore) philanthropy vehicle.

Workstream 4 Overall succession considerations

This workstream lay at the core of his family planning. Like many of his contemporaries, Mr. Chen had not made a will and it was culturally difficult to discuss this subject openly within the family. Our strategy was to look at what was already there — here we see that, with respect to the holding companies in the various investments, Mr. Chen had over the years transferred partial ownership to the second generation by way of gift (with the requisite gift tax paid). Our strategy in moving the discussion forward was to understand the following:

- Did Mr. Chen have a different expectation in mind with respect to passive/investment assets and operating businesses? If Mr. Chen would be like many other clients with whom we have worked, he would likely want to have stronger "control" (that extends beyond his death) with respect to his operating companies but be more relaxed with respect to the passive investment assets.
- If our assumption above was generally correct, we would propose more long-term solutions for Mr. Chen in relation to his operating business. The tools that could be considered included trusts, charitable foundations, holding companies and insurance policies. For listed companies, we might use a combination of onshore and offshore planning techniques to mitigate risk under Taiwanese securities law and included both Taiwan trusts and offshore trusts. With respect to charitable foundations, we explored with him whether family members already had charities that they support, private charitable foundations that they had set up and run, and what other alternatives they might be open to. Here we will work with Mr. Chen by showing him how some of the well-known Taiwanese families had used Taiwanese charitable foundations as the cornerstone of their overall estate plan, and by showing the benefits and risks of these structures. We reminded Mr. Chen that, given recent changes in law, charitable foundations could be less suitable as a family holding vehicle.
- Regarding the more passive investments, one of the possibilities we explored with Mr. Chen was the use of a "family office" to centralize decision-making and ownership. We showed him examples of some family offices in Singapore, which had become popular with many Taiwanese and Chinese high net worth families in the past few years.
- Central to all these discussions was an understanding of what Mr. Chen believed his legacy would be. We tried to have an open and far-ranging discussion with him on the role of

wealth, the definition of "family," the expectation he had of his heirs and other more intangible topics. As such discussions could be long and evolving, with the implementation of his objectives to be accomplished in stages, we suggested that we would create more concise documents in the meantime to memorialize such discussions. As has been tested with other client families, our objective here was to develop a set of structures, activities and statements that help sustain the identity, direction and discipline of the Chen family and family businesses with the ultimate goal of their long-term success.

Workstream 5 Considerations in the event of political instability

Given the potentially fraught geopolitical environment surrounding Taiwan, we discussed with Mr. Chen and the family that additional planning should be considered. Although not an exact parallel, the lessons learned from the Russian invasion of Ukraine serve as a starting point. The issues to consider with the family were as follows:

- The possibility of sanctions on the Chinese economy and Chinese companies. As part of the family's business was in China and there were assets/income streams that were related to China, future sanctions could result in restrictions on trading, financial services and capital conversion. The family should consider the impact on its businesses if some of its financial accounts are temporarily frozen or blocked. Also relevant is the planning required when banks are sanctioned and the importance of "deposit rule" and where cash is kept.
- We reminded Mr. Chen that in the event of sanctions, the jurisdiction of the trust (as used in the family's overall planning in Workstream 4) would be critically important. As we have seen in the recent experience, there are only some offshore jurisdictions (where a trust is typically based) that did not apply sanctions.
- A review of the travel documents for Mr. Chen and the key family members, and an investigation of the possibility of obtaining additional passports and places of residency. While this is always an important consideration for long-term mobility planning, one lesson we have learned from the Ukraine example is that it was mandatory to have a residency in the US or Europe to avoid sanctions. We also discussed the potential issues when the concept of "in-scope Russians" may apply to "in-scope Chinese."

The above hypothetical case illustrates the challenge of estate planning in an age of uncertain political environment. We remember in the last century, when Hong Kong was reverting back to China, many estate planners at that time were devising structures with additional safeguards (such as an automatic redomiciliary provision in a trust that may be triggered by a force majeure event). However, since that time, this part of Asia has witnessed a few decades of relative peace and prosperity, and with it the creation of additional wealth and complacency. Today, instability is not limited to Europe and there are potential flashpoints in North Asia and Southeast Asia. Is now the time to be more vigilant than before?

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Article

Low or null taxation jurisdictions (LNTJs) and a recent Court precedent to take into account

1. According to the Argentine Income Tax Law, LNTJs are those jurisdictions that apply an income tax rate below 15%. The Federal Tax Authority (FTA) published a list of some LNTJs.

   You can access the LNTJs list at the following link: JBNT Listado TASA CORPORATIVA GENERAL menor al 15% MICROSITIO 08 06 2022.ods (afip.gob.ar).

   The list of LNTJs published by the FTA is illustrative and not exhaustive. With respect to the jurisdictions that are listed as LNTJs because they apply income tax rates below 15% are, among others, Ireland and the following cantons of Switzerland: Appenzell Ausserrhoden, Appenzell Innerrhoden, Basel-Stadt, Fribourg, Geneva, Glarus, Graubünden o Grisons, Lucerne, Neuchâtel, Nidwalden, Obwalden, Schaffhausen, Schwyz, St. Gallen, Thurgau, Uri, Vaud and Zug.

Main adverse tax consequences of operating with an LNTJ

2. Transactions with an LNTJ are not deemed arm's length for transfer pricing purposes. This means that the taxpayer has the burden of proof that the transaction is arm's length and not on the FTA to prove the opposite..

3. Amounts due to an LNTJ in consideration for transactions that trigger Argentine source income are deductible by the Argentine payor when the amounts are paid.

4. Transactions with an LNTJ must be declared to the FTA in those cases where one or more of the following situations are verified:

   i. Verification of a permanent establishment in Argentina.

   ii. Verification of double non-taxation.

   iii. Transfer of benefits to other jurisdictions.

   iv. Verification of a scheme or plan to exclude funds or assets from reporting under CRS or FATCA; (v) Verification of a restructuring to be out of the scope of the country-by country report for transfer pricing purposes.

   v. Sale of foreign companies that are, directly or indirectly, owners of Argentine companies or assets.

   vii. Economic transfer of capital.

   viii. International leasing resulting in a financial loan.

   ix. Payments made by a nonprofit entity.

   x. Other international tax planning structures.

5. In addition, the Tax Procedural Law sets forth a presumption by which funds sent to Argentina from LNTJs are considered an "unjustified increase" on the net worth of the Argentine recipient of such funds. The amount received plus 10% of such amount would be considered subject to a 35% Argentine income tax and 21% value-added tax, as it may correspond. This presumption does not apply if it can be demonstrated that (i) such amounts arise from activities effectively performed by the Argentine recipient of such funds or by a third party in such LNTJ that could justify the origin of such funds, or (ii) such funds were previously declared for tax purposes in Argentina.

6. Therefore, all funding (intercompany loans and/or capital contributions) provided by LNTJs could be deemed by the FTA as an "unjustified increase" on the net worth of the local company subject to the taxation mentioned in point 5 above. Although the local company would be entitled to file evidence demonstrating the origin of the funds providing grounds to reject any tax claim, in practice, the FTA often adopts an aggressive position, and this kind of tax claims ends up in judiciary litigation.

Court precedent in GeoPark Argentina Limited

7. In the case of GeoPark Argentina Limited, the FTA applied the adverse tax implications listed in point 5 above based on the following: (i) the funds received by GeoPark Argentina Limited came from GeoPark Holdings Limited, a legal entity located in an LNTJ (Bermuda); and (ii) GeoPark Argentina Limited failed — during the administrative stage — to demonstrate the origin of the funds.

8. Once GeoPark Argentina Limited appealed the assessment to the Federal Tax Court (FTC), it had the possibility to submit the evidence and supporting documentation to justify the origin of the funds.

9. Finally, the FTC understood that the evidence and supporting documentation filed by GeoPark Argentina Limited was conclusive to justify the origin of the funds.

10. In effect, from the analysis of the bank statements and additional documentation, it was evidenced that the funds sent by GeoPark Holdings Limited to GeoPark Argentina Limited originated in the placement of shares carried out on the London Stock Exchange, which were acquired by different investors.

Proposed course of action

11. To avoid the above-mentioned adverse tax implications, it is advisable that intercompany loans and/or capital contributions be granted by entities registered in a jurisdiction not considered as an LNTJ, preferably, in a jurisdiction that has entered into a treaty to avoid double taxation with Argentina (**"Tax Treaty"**). This would allow the Argentine recipient of such funds to be released from the obligations to justify the origin of the funds and be charged lower withholding tax rates than those provided for in domestic tax regulations if the Argentine recipient of such funds pays to such Tax Treaty jurisdiction any class of income covered by the Tax Treaty (interest, royalties, technical assistance fees, etc.).

You might also be interested in:

Italy: Switzerland has been removed from the blacklist for natural persons

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Article

District court grants in part enforcement of IRS summons on Kraken

Introduction

In *United States v. Payward Ventures, Inc.*,[1] the Internal Revenue Service (IRS) sought enforcement of a John Doe summons served upon Payward Ventures and its subsidiaries (referred to collectively as **"Kraken"**), which the court had previously preliminarily approved.[2] Following Kraken's refusal to comply with the summons, the IRS sought to enforce the summons. The dispute between Kraken and the IRS focused on whether the information sought by the IRS was relevant and imposed an undue burden of compliance upon Kraken.

Summary

The court granted in part and denied in part the enforcement of the summons on Kraken. The court ruled that the summons served a legitimate purpose and sought information relevant to that purpose. Nonetheless, the court did hold that the IRS' requests were in some instances overly broad and accordingly narrowed the scope of documentation Kraken was required to produce.

Kraken was ordered to produce certain information regarding users who had at least USD 20,000 in cryptocurrency transactions in any year between 2016 and 2020. The information Kraken had to provide includes user account information (name, date of birth, TIN, physical address, telephone number and email address) and certain transaction information, including transaction hash (ID) and blockchain addresses.

Background

Kraken operates one of the largest digital currency exchanges in the world, offering its services to users in the US and more than 190 countries. While there has been no allegation of wrongdoing on the part of Kraken itself, previous investigations by the US government have shown a large shortfall between digital currency transactions self-reported and the volume of known transactions. This has led to the expansion of the Electronic Payment Systems Initiative (EPSI) to address the situation where some US taxpayers may be utilizing digital currencies to move funds between onshore and offshore accounts without proper reporting. Thus, the IRS has pursed the John Doe summons to obtain customer and transactional history that can be used in conjunction with other publicly available blockchain information to adequately examine whether an individual has complied with internal revenue laws.

Kraken opposed the summons arguing, in large part, that it is overly broad, unduly burdensome and goes well beyond a similar John Doe summons approved against Coinbase. The IRS responded that the summons was narrowly tailored and designed to further its reasonable purpose. Furthermore, the government argued that the *Coinbase* [3] summons was irrelevant to the present case and that, in any event, certain limits placed by the court in that instance had unduly hampered the IRS' investigation.

In determining whether to enforce the IRS summons, the court needed to address the so-called Powell factors, to ensure that the summons: 1) is issued for a legitimate purposes; 2) seeks information relevant to that purpose; 3) seeks information that is not already in the IRS' possession; and 4) satisfies all of the administrative steps set forth in the Internal Revenue Code.[4] The court noted at the outset that it was satisfied that third and fourth Powell factors had been met and would focus its analysis on the first two — whether the summons serves a legitimate purpose and seeks relevant information. Furthermore, given both parties' criticism of the Coinbase summons, it would first address the holding and legal significance of that ruling. We address each of these points in turn.

1.1 *Coinbase*

The court first took exception to what it felt was a misunderstanding of the significance of the John Doe summons rulings in Coinbase. To the extent that Kraken attempted to argue that Coinbase established a limit on the number of cryptocurrency accounts that may be subject to a John Doe summons, the court was unconvinced. The court acknowledged that, as the IRS indicated, each class of John Does may vary dependent upon the specific investigation in question and, accordingly, ruled that the numerical limitations placed on the service in Coinbase were not binding on the court in the present case.

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1 *United States v. Payward Ventures, Inc.*, 23-mc-80029-JCS (N.D. Cal. 2023).
2 *In the Matter of the Tax Liabilities of John Does*, 21-cv-02201-JCS (N.D. Cal. 2021).
3 *United States v. Coinbase, Inc.*, No. 17-cv-01431-JSC, 2017 WL 5890052 (N.D. Cal. 2017).
4 *United States v. Powell*, 379 US 48, 57-58 (1964).

Conversely, the court found similarly unconvincing that the limitations placed in Coinbase hampered the IRS' investigation or were inconsistent with Powell. The court indicated that because the IRS might be required to issue a second summons in order to reach additional users or information does not show that the court had embraced a two-step review to the investigation that was incompatible with the relevant standard of review. The court further indicated that Coinbase represented persuasive authority not binding authority.

Having taken the parties to task regarding Coinbase, the court then turned its attention to the summons in question.

1.2 Legitimate purpose

The court addressed this factor quickly, ruling that the IRS had a legitimate purpose for the information sought by the summons. The summons was issued in connection with an investigation into the compliance or noncompliance of US persons with their income tax liability resulting from transactions in cryptocurrency. The court was satisfied that there was substantial evidence showing the under-reporting of income resulting from relevant property transactions, during the period in question, particularly where there was no third-party reporting.

Accordingly, the court found that the IRS had a legitimate purpose for its summons.

1.3 Relevance

Even if the summons has a legitimate purpose, however, it must still only seek relevant information and be narrowly tailored to obtain that information. The standard for relevance is not high ("[t]he Government's burden, while not great, is also not non-existent"[5]) but, as the court further stated, "the summons should be 'no broader than necessary to achieve its purpose.'"[6]

a. Definition of "user"

Kraken argued that the IRS' definition of "user" in the summons was overly broad. The summons set the definitional threshold considerably lower than in Coinbase, requiring information about account holders that had an aggregate of at least USD 20,000 in cryptocurrency transactions in any one year between 2016 and 2020, regardless of type. Kraken argued that this definition would: sweep up 59,331 unique accounts placing an undue compliance burden on Kraken; capture many users who have minimal transactions with little to no taxable gain; include users who had no taxable event but only bought and held crypto; and, potentially, cause Kraken to run afoul of foreign data privacy laws by requiring it to provide information regarding non-US citizens swept up in the search.

The IRS rejected Kraken's arguments, claiming that the summons was narrowly tailored to achieve its legitimate purpose. According to the IRS, it should not be required to utilize the same class definition for every cryptocurrency John Doe summons; there is no de minimis requirement regarding reporting gains/losses; there are several transactions that are taxable that might be similar in appearance to a buy-hold (e.g., payment of wages in crypto, a hard fork, etc.); and further, that "narrowly tailored" cannot be challenged on enforcement — arguing that in granting summons the court has already determined that the Powell factors are met, including narrowly tailored.

The court held that Kraken may challenge whether the summons is narrowly tailored at the enforcement stage, indicating that not only is the policy implication of such an inability untenable (thereby essentially depriving a party to a summons of the ability to dispute it) but that upon granting the summons, the court expressly did so without prejudice to any arguments that might be raised as to the validity of the summons. However, the court held that the inclusion of the above transactional situations in the IRS' definition of "user" was acceptable

b. User identity information

The next step is to determine what information regarding the identified users must be provided to the IRS. Here, too, Kraken argued that the summons was overly broad, going well beyond basic user information

5 *United States v. Goldman*, 637 F.2d 664, 667 (9th Cir. 1980).
6 *Coinbase*, at *6 (quoting *United States v. Bisceglia*, 420 US 141, 151 (1975)).

regarding the identified users must be provided to the IRS. Here, too, Kraken argued that the summons was overly broad, going well beyond basic user information and that responding would be overly burdensome. However, Kraken stipulated that it did not object to providing the following: name (including full name, any pseudonym or any user ID); date of birth; taxpayer identification number; physical address; telephone number; and email address of the summons class; but that the information beyond that, including historical user information and IP information, is unreasonable and disproportionate. Similarly providing information from the Know Your Customer (KYC) questionnaires, which include employment information, net worth, etc., is improper at the John Doe summons stage and goes beyond the IRS' investigatory purpose, as would the request for the Anti-Money Laundering (AML) exception reports.

The IRS argued that the identifying information sought was tailored to provide information as to the correctness of a return. Information regarding IP address, changes in usernames, payments methods, etc., could all be used to identify a particular taxpayer and further determine if they are compliant with their reporting requirements. The IRS indicated that the requested KYC/AML information would significantly help in identifying and determining the compliance of a specific taxpayer.

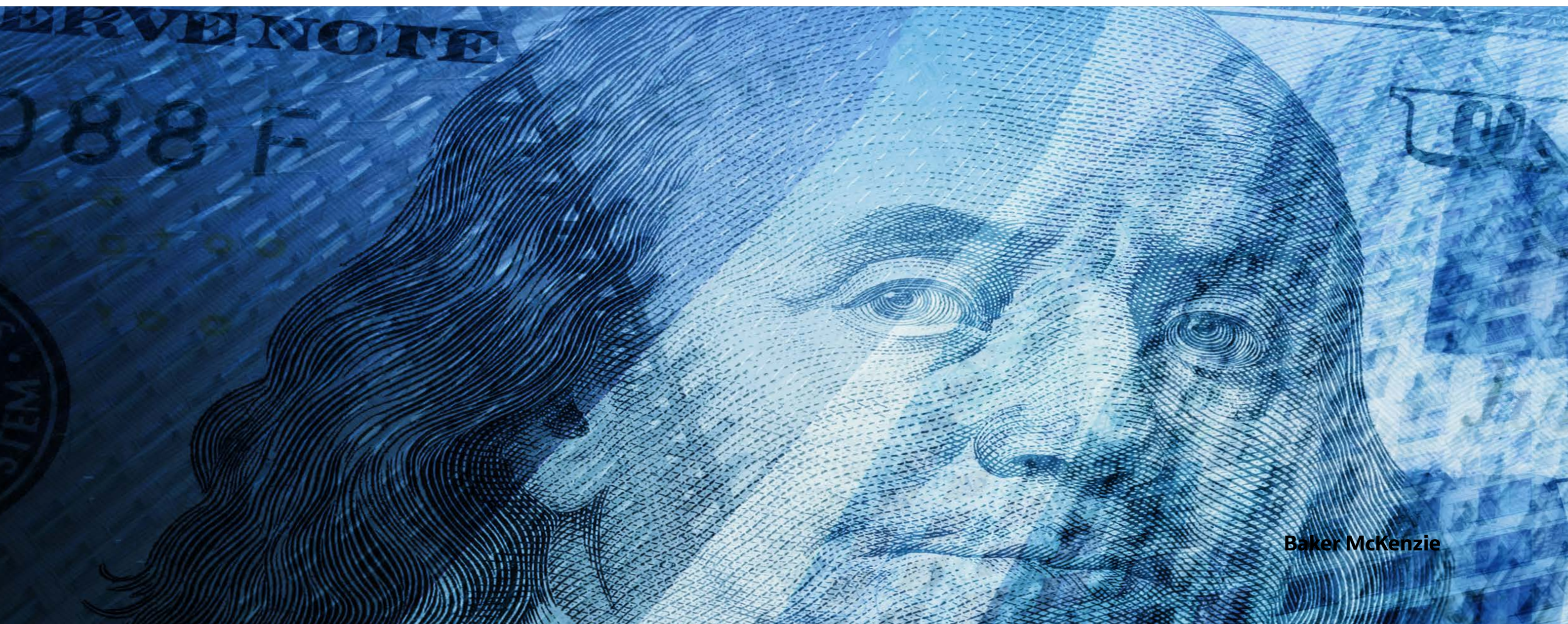
The court found that to the extent the requests are aimed at establishing the identities of taxpayers falling within the class, that the IRS' requests were overly broad and went beyond what is reasonably needed to accomplish this task. In addition, the stated need for the KYC/AML documentation was speculative and if the IRS determines it needs this information regarding a specific user, it may issue a second summons. The court ruled that the user identity information stipulated by Kraken above must be produced.

c. Transactional history

The final information requests in the summons are aimed at certain transactional records. These include: the date/time/amount of any transaction in or out of fiat currency; date/time/amount of any lending, borrowing or margin positions entered; the transaction hash (ID) and blockchain address of any cryptocurrency transactions between Kraken accounts or outside Kraken; any cryptocurrency received due to a hard fork or like event; and, finally, the requested specific information related to funding the particular accounts, including all deposits, withdrawals and documentation memorializing such funding transactions.

Kraken objected based on the fact that the requests did not contain temporal limitations and that the provision of transaction hash (ID) and blockchain addresses is overly broad and unduly burdensome. Similarly, Kraken objected to the account funding requests as overbroad, while indicating that the transactional records kept for each account should be responsive to this request but that providing anything beyond this ledger information would be unduly burdensome.

The IRS indicated that while the request does not contain specific temporal limitations, it is only seeking information covered by the summons (2016-2020). Further, the transaction hash (ID) and blockchain address are needed to help the IRS more accurately determine taxpayer compliance, while the account funding information is required to most accurately determine taxpayer reporting compliance.



The court ruled that Kraken's temporal objections were moot as the IRS stipulated it was seeking only information covered by the summons. The court further found that the IRS had supported its request for the transaction hash (ID) and blockchain addresses requested and that providing such would not be unduly burdensome, to the extent Kraken had already begun backfilling this information and that it would not need to be manually retrieved from each individual account. As to the account funding information, to the extent that the information is contained in Kraken's transactional ledgers, the request is neither overly broad nor burdensome and must be provided to the IRS.

Takeaways

The main takeaway is that the IRS has found an effective tool in the form of a John Doe summons to obtain information on classes of taxpayers that the IRS believes may be evading their tax obligations.

It should be noted that the utility of this tool is limited. As with all summonses, the John Doe summons must be narrowly tailored to achieve its legitimate purpose — namely, identifying taxpayers that fall into the specific class. Upon identifying a specific taxpayer, the IRS would then need to potentially pursue enforcement down the more traditional and individually tailored path.

US taxpayers would be well advised to remain cognizant that this is a main area of focus for the IRS and to ensure they are complying with applicable reporting requirements governing cryptocurrency.

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Article

The cautionary case of Zhang Lan

Bad facts make bad law, so they say. Nevertheless, bad facts can provide valuable lessons. The Zhang Lan case provides valuable lessons. The case is a reminder to analyze the implications of retained powers and to observe formalities in private client structures.

On 3 March 2023, a federal judge in New York pierced the veil of a company that held a Manhattan apartment. In La Dolce Vita Fine Dining Company v. Zhang Lan, Judge Kaplan awarded the proceeds from a foreclosure sale of the apartment to Ms. Zhang's creditors.

Ms. Zhang founded the well-known South Beauty restaurant chain in China. In 2013, she sold more than 80% of the group to La Dolce Vita. Shortly after closing, the La Dolce Vita parties (referred to collectively as La Dolce Vita for ease of reference) alleged that Ms. Zhang fraudulently misrepresented South Beauty's financial condition and claimed that she violated various warranties in the acquisition agreement.

La Dolce Vita brought arbitration proceedings before the China International Economic and Trade Commission (CIETAC). The CIETAC arbitration panel awarded La Dolce Vita more than USD 142 million. The Second China International Commercial Court confirmed the award, and La Dolce Vita took action in Singapore, Hong Kong and New York to enforce the award.

La Dolce Vita filed in the US District Court for the Southern District of New York to (i) confirm the arbitral awards under the Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), (ii) obtain a judgment against Ms. Zhang based on the court's quasi in rem jurisdiction, and (iii) appoint a receiver to effectuate the sale of the Manhattan apartment and distribute the net proceeds to La Dolce Vita.

Ms. Zhang did not hold title to the apartment. The apartment was owned by a New York limited liability company(LLC) called Metro Joy International LLC (**"Metro Joy"**). The petitioners claimed that Ms. Zhang effectively controlled Metro Joy even though Metro Joy was apparently held in an offshore trust that Ms. Zhang established.

The court found that Ms. Zhang's control over the structure allowed for the attachment of the property regardless of the legal structures based on her "effective ownership" of the property. The court highlighted the flow of funds from Ms. Zhang to purchase the property and communications between the real estate broker and insurance broker that referred to Ms. Zhang as the owner of the property. Judge Kaplan noted that Ms. Zhang did not provide evidence to rebut the evidence presented by La Dolce Vita that demonstrated her interest in the apartment.

It is a common practice for clients to acquire US real estate through one or more entities for legal and tax reasons. It is important to observe the formalities of companies and trusts involved in structures. The court in the Zhang Lan case noted the third-party communications (such as those with the brokers) as supporting the finding of quasi in rem jurisdiction.

Private clients and their advisers should ensure that communications are consistent with the legal structures used and properly refer to owners as such. Advisers should also consider whether to instruct third parties involved in a transaction to properly and accurately refer to parties.

The Zhang Lan case is a reminder of the importance of proper execution and governance from planning and implementation all the way through transactions.

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Article

United States and Belgium: Indiscriminate obligation to report US taxpayers under FATCA challenged under EU law

On 24 May 2023, the Belgian Data Protection Authority (DPA), the authority responsible for enforcing the EU's General Data Protection Regulation (GDPR) in Belgium, issued a major decision (**"Decision"**) concerning information exchanges pursuant to the US Foreign Account Tax Compliance Act (FATCA). The Decision declares the information reporting required of the Belgian tax authority and Belgian financial institutions under FATCA to be unlawful because it violates the privacy rights and protections afforded to Belgian residents under the GDPR, as well as the rights to a private life and protections of personal information guaranteed by the Charter of Fundamental Rights of the European Union.

The Belgian government timely appealed the Decision to Belgium's Market Court, which has jurisdiction over disputes concerning the GDPR. Pending resolution of the appeal on its merits, the Market Court suspended the Decision with immediate effect so that the Belgian tax authority and Belgian financial institutions may continue to comply with FATCA, given the importance of Belgium honoring its pre-existing international commitments and reciprocal obligations.

It is anticipated that the Market Court will submit a request for a preliminary ruling to the Court of Justice of the European Union (CJEU), the EU's highest court. A CJEU decision would be binding (i.e., precedential) on the authorities of all EU member states and would, as a rule, be followed by the authorities of the European Economic Area (EEA) member states.

The Decision calls into question to what extent compliance with FATCA, as currently implemented in local laws, and similar automatic exchange of information laws will be required in the EU and EEA and how compliance may be implemented in the future. In what follows, we consider background to the Decision and FATCA, take a closer look at the analysis made in the Decision, and consider possible future implications for the compliance and enforcement framework of the Agreement between the Government of the Kingdom of Belgium and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA (**"Belgian IGA"**).

Background on the Decision

In response to a complaint by a Belgian resident with dual (Belgian-US) citizenship and the Belgian Association for Accidental Americans, the Belgian DPA ruled that the GDPR prohibits the Belgian tax authority from transferring personal information to the US Internal Revenue Service (IRS) as required by FATCA. This is because the conditions set out in the GDPR for lawful transmission of data have not been met.

The complaint was submitted in 2020 after the Belgian tax authority transferred to the IRS personal information concerning the Belgian resident pursuant to FATCA, the Belgian IGA and Belgium's domestic law implementing the Belgian IGA requirements. The information concerned Belgian bank accounts held by the Belgian resident.

Since 2014, FATCA requires certain foreign financial institutions (FFIs), such as Belgian banks, to report to the IRS certain data of US citizens. These US citizens include not only persons physically resident in the US, but also nonresident US citizens, including dual nationals who may have little connection to the US (e.g., "accidental" Americans).

The US concluded similar FATCA IGAs with many jurisdictions to make FATCA compliance a matter of local law in many financial institutions' jurisdiction of residence, effectively shifting the enforcement burden to these other jurisdictions and making FATCA compliance a requirement for their financial institutions. The consequences for failure to comply with FATCA include the levying by the IRS of a 30% withholding tax on certain US-source income.

In a nutshell, the Decision states that FATCA violates various articles of the GDPR because it (i) does not provide sufficiently specific objectives for transfers of data, as required by the GDPR, and (ii) requires generalized and systematic transfer of data, which is incompatible with the GDPR's principles of proportionality and minimization of data (i.e., more information is shared than necessary).

In particular, the Decision notes that the obligations introduced by the Belgian IGA appear, at this stage and in certain circumstances, to go beyond what is necessary and proportionate, as they do not restrict reporting obligations to individuals suspected of tax fraud or evasion. It further indicates that the obligations would constitute "necessary and proportionate measures" if the US provided, on a case-by-case basis, evidence that the relevant US citizens are using the EU's financial system to evade taxes in the US. In addition, the Decision concludes, as did a prior independent report commissioned by the European Parliament, that FATCA and the Belgian IGA do not contain sufficient safeguards for the protection of information transferred to the IRS. On that basis, the Decision also finds that the Belgian tax authority breached the GDPR. The Decision notes that, while there are appropriate safeguards laid

down by Belgian domestic law, these safeguards are not provided for in the Belgian IGA (as required by the GDPR) and do not apply to the IRS.

In 2021, Slovakia's data protection authority also expressed concern over the information-sharing required under Slovakia's own FATCA IGA with the US implementing FATCA. It claimed the agreement "[did] not contain even the minimum safeguards to transfer personal data to third countries" as required by the GDPR. It called for an assessment of the compliance of international agreements on exchanging tax information with the GDPR. Cases are also pending and doubts have been cast (such as in France, the Netherlands and other EU member states) on the sufficiency of US data safeguards in the context of transferring FATCA information, indicating that other EU member states are awakening to the GDPR considerations in this context. However, Belgium appears to be the first EU member state to declare such systematic and general information-gathering and transmission to the IRS unlawful.

FATCA requirements

1 July 2023 marked the nine-year anniversary of FATCA's entry into force.

FATCA was enacted by the US Congress in 2010 as part of the Hiring Incentives to Restore Employment Act (the HIRE Act) with the primary goal of preventing tax evasion by US persons who hold accounts in FFIs and fail to pay US income tax on income earned in those accounts.

The principal purpose of FATCA is to provide the IRS with information on US persons (including US citizens, resident aliens and entities resident in the US) holding financial accounts outside the US. Such information is to be used for the prevention of tax evasion in connection with unreported income or assets involving foreign financial accounts. To accomplish this purpose, FATCA requires FFIs to actively review customer accounts to identify those held by US persons and report the accounts either (a) directly to the IRS or (b) in the case of most jurisdictions with a FATCA IGA in effect, to the tax authorities in the FFI's jurisdiction of residence, which then exchanges such information with the IRS. FATCA also requires certain nonfinancial foreign entities (NFFEs) to disclose US persons who own or control such entities to FFIs for reporting purposes. There is hence a transfer of data to be made as soon as it is established that the financial accounts or NFFEs are held/owned by a US person.

An FFI that fails to perform the required due diligence and reporting of US account holders, or an NFFE that fails to provide adequate information to an FFI, faces a 30% withholding tax on payments of specified US-source income.

To facilitate the implementation of FATCA and enlist the cooperation of tax authorities in other countries around the globe, the US has entered into bilateral FATCA IGAs with over 100 other governments, including EU/EEA states to which the GDPR applies.

Under Model 1 IGAs, which represent approximately 90% of FATCA IGAs signed or currently deemed to be in effect, FFIs are required to report certain reportable US accounts to the relevant jurisdiction's tax authority, which will in turn exchange the required information with the IRS. The requirement to report is implemented according to local regulations, and the account holders' consent is generally not required.

As Belgium has a Model 1 IGA in effect, financial institutions in Belgium are required to report FATCA information to the Belgian tax authority, which exchanges such information automatically with the IRS.

The personal data to be transmitted to the IRS automatically includes the account holder's name, address, US taxpayer identification number and account number, as well as the identification of the reporting financial institution, account balance and payment amounts attributable to the account for the relevant year.

There are, however, no provisions on the protection of personal data in the Belgian IGA (as in other such FATCA IGAs), other than by reference to the protections afforded by the Convention on Mutual Administrative Assistance in Tax Matters, signed in Strasbourg on 25 January 1988, a multilateral agreement authorizing exchanges of information for tax purposes by its signatories, including the US and Belgium.

Thus, from the beginning, FATCA raised significant privacy and security concerns for reportable US account holders holding financial accounts in other jurisdictions and other reportable US persons owning or controlling certain entity account holders. When reporting, FFIs are required to disclose sensitive financial information to the US or, perhaps even more importantly, to local competent authorities where data protection and confidentiality standards may vary considerably, in some cases being stricter and in others more relaxed.

A closer look at the Decision: incompatibility of the FATCA requirements with the GDPR

25 May 2023 marked the five-year anniversary of the GDPR's entry into force.

The GDPR replaced Data Protection Directive 95/46/EC. Because it strengthens and harmonizes personal data protection in the EU, the GDPR is considered a global standard for the protection of personal information. Unlike the directive, which only took effect once EU/EEA states transposed it into national law, the GDPR became directly applicable to all EU/EEA states after its entry into force.

The GDPR is designed to strengthen individuals' ability to exercise their data protection rights, in particular to protect themselves against unlawful use or disclosure of their personal information.

As noted in the Decision, from the outset, European legislators expected data processing going forward to comply with all of the GDPR's provisions. The Decision shows how the pre-existing duties imposed by FATCA are incompatible with various requirements of the GDPR.

Lack of minimum guarantees and safeguards

Absent an applicable decision by the European Commission covering the transfer of data to the IRS, GDPR Article 46 allows the Belgian tax authority to transfer data to the IRS on the condition that the IRS provide certain safeguards and the person to whom the data relates has enforceable rights and effective remedies, either through "a legally binding and enforceable instrument between public authorities or bodies" or by "provisions to be incorporated into administrative arrangements between public authorities or bodies which provide for enforceable and effective rights for data subjects."

- Here, the Belgian DPA concluded that this condition was not met because, based on a plain reading of the GDPR, these guarantees and safeguards must be expressly included in the agreement giving rise to the authority to transfer data so that they will be fully enforceable against the IRS. As the safeguards and guarantees could only be found in reference to other agreements or laws, and not in the Belgian IGA itself, the Belgian DPA deemed this condition to be unsatisfied. It also concluded that Article 49 (which provides certain exceptions to the aforementioned requirements, e.g., transfers in the public interest) is inapplicable in the context of automated and annual (repetitive) information exchanges, such as those required by the Belgian IGA.

Noncompliance with the general principles governing transmission of personal data

For transferring personal data to the IRS under FATCA to be lawful, it must comply with the general principles of GDPR Article 5.

The **principle of finality** requires that data be collected for specified, explicit and legitimate purposes, and not further processed in a way incompatible with these purposes. This requirement exists so that the transmitter may determine that the data processed is actually necessary to achieve the purpose.

- The Belgian DPA concluded that the purposes expressed in the Belgian IGA (i.e., improving international tax rules and combatting tax evasion committed by US citizens) are not sufficiently defined, in that they do not make it possible to assess the extent to which the data processed is necessary to achieve the stated purposes (and thereby leave too much latitude to the Belgian tax authority).

The **principle of proportionality** and data minimization requires that data processing be strictly necessary to achieve the purpose and that it cover the minimum amount of data required to achieve the desired objective.

- In this regard, the Belgian DPA opined by analogy to recent decisions of the CJEU that an individual's nationality without any other indication of tax evasion or avoidance is an insufficient criterion in view of the purpose of identifying tax evasion and is disproportionate. The DPA noted further with regard to that purpose that many such individuals would not be subject to taxation in the US under the exemptions authorized by US law.

In general, the **principle of limited retention** requires that data be retained for no longer than is necessary.

- The Belgian DPA noted that FATCA contains no commitment by the IRS as to the limited retention of data transferred to it by the Belgian tax authority. While Belgian domestic law provides for a retention period that is binding on the Belgian tax authority, it does not bind the IRS to a limited data retention period under the Belgian IGA.

Violation of the data subjects' rights

The GDPR affords certain rights to individuals when they are the subject of a data transfer.

Article 12 provides that an individual has the right to be informed by the data transmitter of the transfer of their data to the IRS. Article 14 provides additional information that needs to be communicated to the data subject when the personal data is not obtained directly from them.

- In this regard, the Belgian DPA concluded that, having received information from the bank, the Belgian tax authority was obligated to actively communicate to the Belgian resident concerned information about the data transmitted to the IRS in a clear, simple and easily accessible manner.

  The Belgian DPA noted that some, but not all, of the information regarding the data to be transferred to the IRS had been communicated by the bank. The Belgian tax authority's website, which informs on "more theoretical explanations, news, links to relevant documents and an FAQ," is inadequate. The DPA found that the information is inaccessible, as it is both too general and technical, often in English, and in large part aimed at financial institutions rather than individuals.

  Because the information provided on its website was neither easily accessible nor comprehensible, and was not actively communicated to the Belgian resident, the Belgian DPA concluded that the Belgian tax authority did not comply with its obligations under Articles 12 and 14.

Absence of data protection impact assessment

GDPR Article 35 provides that when data transmission is likely to put the rights and freedoms of natural persons at high risk, the data controller is required, prior to transmission, to conduct a data protection impact assessment (DPIA). This is an analysis of the impact of the processing operations envisaged on the protection of personal data.

- Here, the Belgian tax authority argued for an exception to the requirement to conduct a DPIA on the basis that the transmission was previously authorized by a competent authority in accordance with prior law and the implementation of the transmission process had not changed. However, the Belgian DPA concluded that the prior authorization was insufficient because its analysis did not focus on the existence of appropriate safeguards within the meaning of the GDPR and because the implementation of the transfer to the IRS had in fact changed since the prior authorization. The Belgian DPA hence concluded that a new DPIA was required as there are minimum indications of risk to the individual, and the transfer involves the US, whose level of data protection is not considered adequate and has been the subject of ongoing controversy for many years.

No escape on the basis that the Belgian IGA is a previously concluded agreement

As a final provision, Article 96 of the GDPR governs the relationship of the GDPR (which came into force in 2018) with previously concluded agreements, such as the Belgian IGA (which came into force in 2014).

In particular, this article provides an exception according to which international agreements existing before the implementation of the GDPR may nevertheless remain in force as is, provided that they complied with the EU law applicable at the time they were concluded.

- The Belgian DPA interprets Article 96 as essentially providing for a transitional regime subject to conditions, the objective of which is "to ensure comprehensive and consistent protection of personal data in the Union" while protecting the rights of third parties (e.g., the IRS) acquired under international agreements concluded prior to the enactment of the GDPR (e.g., the Belgian IGA). Specifically, the DPA concludes that data transmitters that transmit data pursuant to international agreements concluded before 24 May 2016 are not totally exempt from the GDPR because EU/EEA states have a duty to (re)negotiate, in fulfillment of their duty of loyalty to the laws of the EU, a FATCA IGA in line with the GDPR. The more time passes, the less acceptable the lack of a renegotiated FATCA IGA becomes.

  The Decision further notes that, as early as 2021, the data protection authorities of EU/EEA states, including the Belgian DPA, invited EU/EEA states to review their international agreements in the light of the GDPR, in particular agreements related to automatic exchanges of information for tax purposes.

  The Decision concludes that the Belgian IGA is now invalid (considering the violations of the GDPR) and cannot benefit from the protection of this rule.

Note, however, that the Belgian Market Court acknowledged the ambiguity in temporal scope of this exception and suspended the Decision to prohibit transfers of data pending an appellate decision on the merits.

FATCA reporting remains in force pending further developments

Basing its decision partly on the ambiguity in temporal scope of the Article 96 exemption, but also the political interests of the Belgian state, the Belgian Market Court suspended the Decision pending a decision on the merits of the appeal. The Belgian tax authority has confirmed in the meantime that it will proceed with the transfer of data under FATCA for 2023 under the usual conditions and timeline.

The Belgian Market Court could refer the case to the CJEU for a preliminary ruling (the CJEU's subsequent ruling will be binding in the EU and will have quasi-binding effect in the EEA). In this context, it is interesting to see that CJEU jurisprudence indicates a willingness to strengthen data protections, and not only in the FATCA (or GDPR) context. See, for example, our article on the CJEU's decision to invalidate a Luxembourgish law granting unlimited access to Luxembourg's register of beneficial owners to the general public.

As recently as 22 June 2023, the CJEU ruled in favor of greater GDPR protections in a case also originating in Luxembourg and involving a Finnish bank. The ruling concluded that a bank customer — who also happened to be a bank employee — had a right to discover (a) why their personal data was accessed by other employees, and (b) these employees' identities if needed to determine the lawfulness of that access, while balancing the employees' rights to privacy.

Potential consequences and the future of FATCA IGAs

While the Belgian tax authority and Belgian financial institutions are obligated to comply with the Belgian IGA pending the appeal of the Decision, the dispute raises some questions for both financial institutions conducting FATCA reporting and account holders across the EU potentially subject to reporting.

The Belgian IGA is similar to other bilateral agreements signed by the US with other EU/EEA states. Data transfers' compliance with the GDPR based on these agreements, even if bilateral (and supplemented by national legislation), must be assessed as consistently as possible in these states.

On the one hand, it seems unlikely that the Decision will put an end to the burden for non-US jurisdictions and their financial institutions to comply with the extraterritorial reporting FATCA regime. More likely, however, is that existing agreements will be adapted to comply with the terms of the GDPR, at least in the EU/EEA and perhaps with spillover effects into other jurisdictions.

The Belgian Market Court has suspended the Decision so that Belgian financial institutions are, as a rule, required to continue to comply with the Belgian IGA. In the absence of information-sharing under a FATCA

IGA with Belgium, Belgian financial institutions could be subject to the punitive 30% withholding tax on all "withholdable payments" derived from US sources.

It remains to be seen whether the US Treasury Department would take the radical step of threatening to list a jurisdiction's financial institutions as nonparticipating for FATCA purposes based on a data privacy challenge to the exchange of FATCA information, especially in the present situation where the Decision has been suspended. It is after all in the economic interests of both the US and its EU trading and financial partners to find a sustainable solution to this issue in the near future, whether through amended FATCA IGAs or protocols to such FATCA IGAs (i.e., on a state-by-state basis), a memorandum of understanding (i.e., on a one-size-fits-all-states basis), enhanced data protection standards in the US, or some combination of solutions.

With respect to data protection standards in the US, for example, recent reports of the US Treasury Inspector General for Tax Administration (TIGTA) criticized the IRS for failing to adequately protect sensitive taxpayer information. In the context of transferring such taxpayer information among various IRS divisions, the IRS in some cases ships requested information using a private delivery carrier. TIGTA has raised concerns that the IRS has not taken appropriate actions to account for and control sensitive taxpayer information. TIGTA also reported recently that the IRS inexplicably was unable to account for thousands of microfilm cartridges, each holding up to 2,000 images of individual and business tax records.

The IRS expects to address such information security weaknesses by modernizing its operations using funding from the Inflation Reduction Act of 2021, in particular by introducing more digital systems and processes to transmit taxpayer information, increasing IT personnel, and improving IT leadership. While not directly linked to FATCA, such issues plaguing the IRS' handling of taxpayer data could be reflected in a review of the IRS' data protection standards with respect to GDPR compliance of FATCA IGAs.

Ultimately, the solution(s) will depend, in part, on whether the Decision is referred to the CJEU and what the CJEU's assessment will be, noting that the CJEU is quite protective of personal data and its decision would be binding on all EU/EEA states.

Beyond FATCA, a CJEU ruling in this case could also impact other automatic exchange of information laws imposed in EU/EEA states, including the Common Reporting Standard.

To be continued...

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Around the world

France - BSPCE and tax deferral: no tax deferral in the case of contributing securities subscribed to in exercising BSPCE

On 25 May 2023, the French tax authorities (FTA) published a tax ruling in the administrative guideline (BOI-RES-RSA-000127) specifying that gains resulting from "bons de souscriptions de parts de créateurs" (BSPCE) cannot benefit from the tax deferral mechanism provided for under Section 150-0 B of the French Tax Code (FTC) in the case of contributing securities subscribed to in exercising BSPCE[1].

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Italy - Switzerland has been removed from the blacklist for natural persons

Pursuant to Law No. 83 of 13 June 2023 (which ratified the protocol signed in Rome on 23 December 2020 between Italy and Switzerland related to the income taxation of cross-border workers) the ministry of finance issued the decree of 23 July 2023, which removed Switzerland from the blacklist contained in the decree of 4 May 1999. The blacklist is aimed at tackling fictitious transfers of residence abroad by Italian citizens. The removal reflects a political agreement formalized on 20 April 2023 between the finance ministers of Italy and Switzerland and it will be effective from fiscal year 2024.

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France - Employee in Dubai and French tax resident: Compensation income taxable in France with a notional tax credit (French Tax Supreme Court, 20 March 2023, No. 452718)

The French Tax Supreme Court clarified the concept of "resident" under the France and United Arab Emirates (UAE) tax treaty (**"Tax Treaty"**) and the application of the treaty provisions aimed at eliminating double taxation.

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1 BSPCE are a stock options which can be granted and issued, under several conditions, by new companies (i.e. companies set up less than 15 years ago) to the benefit of employees and managers.

UK - Mandatory annual updating of the Overseas Entities Register

Overseas entities which own freehold or registrable leasehold land interests in the United Kingdom are legally required to register in the Overseas Entities Register at Companies House, and to disclose their beneficial owners. That registration must be updated annually to confirm all, or no, changes within the preceding 12 months. Failure to update may result in financial or criminal penalties, and block disposals of the entity's UK property interests.

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Spain - Royal Decree on Ultimate Beneficial Ownership Registry

The Government of Spain approved the creation and operating regulation of the Ultimate Beneficial Ownership Registry (**"UBO Registry"**), by means of Royal Decree 609/2023 of 11 July 2023. This registry is configured as a central and public registry, through which information on ultimate beneficial ownership of Spanish legal entities and other entities or structures without legal personality can be generally accessed.

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Germany - Substantial changes proposed to German corporate taxation

During the last few weeks, the German government has issued two draft bills that may have a substantial impact on German corporate taxation. Each of the draft bills is more than 280 pages long. Furthermore, recently the German Federal Ministry of Finance issued drafts of two long-awaited circulars. This client alert provides an overview of some of the most significant proposed changes.

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United Arab Emirates - Conditions for investment funds to claim exemption from UAE corporate tax clarified

Investment funds, including Real Estate Investment Trusts (REIT), have been provided with additional clarity through the issuance of Cabinet Decision No. 81 of 2023 on Conditions for Qualifying Investment Funds for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (**"Decision"**) for clarification as to whether they can apply to be exempted from UAE corporate tax (at the discretion of the UAE tax authority). This Decision applies equally to all investment funds, including REITS, regardless of their place of incorporation (i.e., ADGM or DIFC).

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Singapore - MAS consults on proposed framework for single-family offices

On 31 July 2023, the Monetary Authority of Singapore (MAS) published a Consultation Paper setting out a proposed regulatory framework for Single Family Offices (SFOs) in Singapore. The new measures under this proposed framework allows MAS to enhance its surveillance and defence against money laundering risks within the SFO sector.

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Australia - Register of Foreign Ownership – 1 July 2023 commencement confirmed

Australia's new Register of Foreign Ownership of Australian Assets took effect on 1 July 2023.

Our **previous alert** outlines the new requirements and their implications. The final regulations were published on 23 June 2023. This alert provides a brief update in relation to the final form of the regulations.

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Brazil - Provisional Measure No 1,184 - Taxation of financial applications in investment funds

On 28 August 2023, Provisional Measure No. 1,184 (MP) was published, which provides for the taxation of investments in investment funds in Brazil.

The MP enters into force on 1 January 2024, provided that the MP is converted into Law in 60 days, extendable for another 60 days. However, the articles proving the taxation of the retained earnings (i.e., "inventory") of an investment fund and the corporate reorganization implemented by 31 December 2023 enter into force immediately.

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Brazil - Government sends Bill that proposes to tax income earned abroad by individuals resident

On 28 August 2023, the federal government submitted to the National Congress the Bill of Law n. 4.173/2023 (PL) that provides for the taxation of income earned by individuals residing in the country in financial investments, controlled entities and trusts abroad.

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United States - Crypto regulations proposed by Treasury

On 25 August 2023, the United States Treasury Department issued a notice of proposed rulemaking regarding tax reporting by brokers of transactions involving the sale or exchange of digital assets (**"Proposed Regulations"**). These long-awaited Proposed Regulations are in response to section 80603 of the Infrastructure Investment and Jobs Act of 2021, which expanded the scope of information reporting obligations for brokers under Code section 6045 to cover transfers of digital assets.

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United States - IRS issues guidance on staking

In Revenue Ruling 2023-14, issued 31 July 2023, the IRS ruled that a cash-method taxpayer that receives additional units of cryptocurrency as rewards for validating transactions on a proof-of-stake blockchain must recognize the fair market value of the validation rewards as income in the taxable year in which the taxpayer gains dominion and control over the validation rewards.

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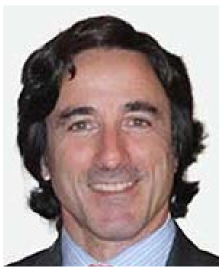

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