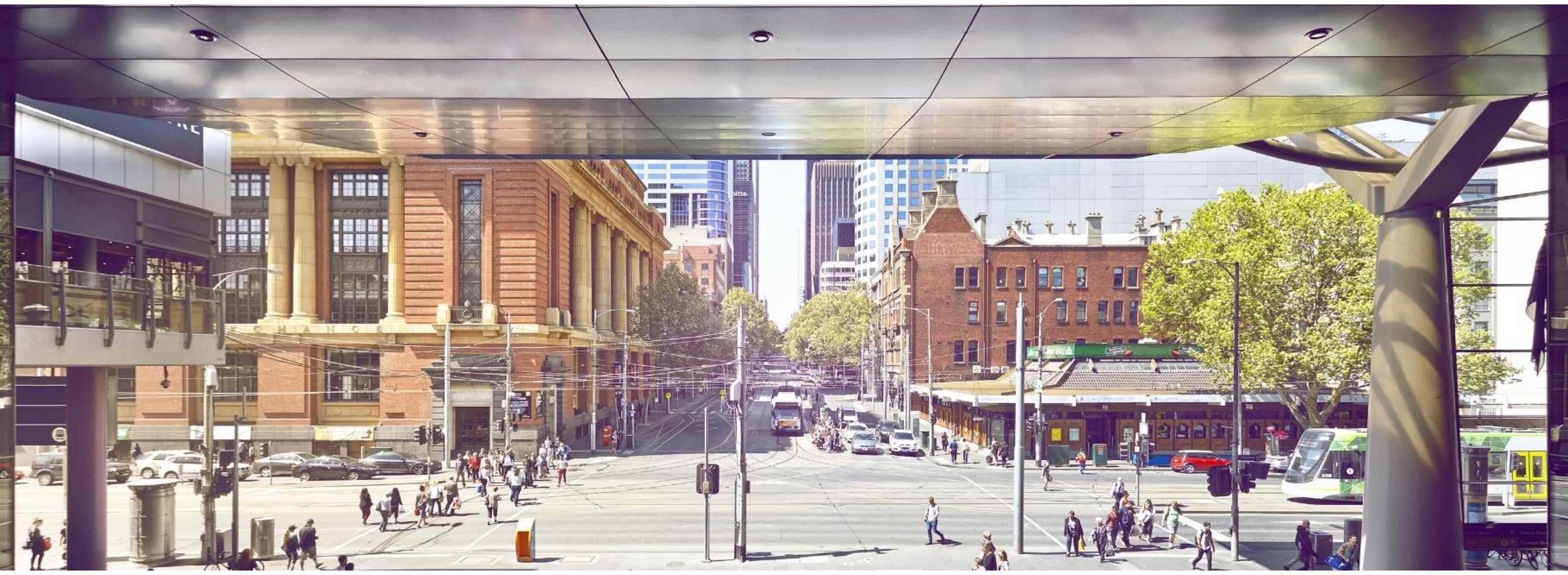

Private Clients Alert

May 2021

Introduction

We hope you and your families are well.

In this edition we bring you news from Australia, as the privately owned and wealthy groups are under the Australian Taxation Office review, we discuss about the taxation of foreign real estate in Belgium, about the Ultimate Beneficial Owner disclosure rules in Peru, and a new exit tax on retirement savings when ceasing to be tax resident in South Africa.

Additionally, our Alert includes an article on why is Romania an attractive tax regime for private clients.

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

Kind regards,

Michael Asplund

Head of Mazars Private Clients Services

High wealth taxpayers under review in Australia

The Australian Taxation Office (ATO) is renewing its focus on privately owned and wealthy groups under the Next 5,000 tax performance program, which will run for four years. Designed to ensure that privately owned and wealthy groups pay the right amount of tax, one of the areas of interest for the ATO is formal tax governance, which is not common for private groups. We encourage all wealthy private groups to understand what this new approach means and to be prepared for a review on these matters.

The ATO defines privately owned and wealthy groups as companies and associated subsidiaries with an annual turnover greater than AUD$10m that are not public groups or foreign owned; or resident individuals who, together with their business associates, control net wealth of over AUD$5m. The ATO has already reviewed the top 500 private groups in recent years and, under this new program, are now targeting the next largest 5,000 private groups ranked by size who control wealth of more than AUD$50m.

Under this program, the ATO's focus is on establishing justified trust that each entity has paid the right amount of tax. Establishing justified trust involves a review of understanding the taxpayer's tax governance framework. The review involves identifying whether tax risks flagged by the ATO in their public pronouncements are present; understanding significant and new transactions undertaken by the group within the review period, together with the associated tax outcomes; and understanding the differences between accounting profit/loss and taxable income/loss.

Private group reviews focus on group structure, including financial connections between companies, trusts and individual taxpayers; tax governance framework including design and documentation; reconciliations of taxable income to accounting profit; and extraction of wealth for personal consumption.

While a detailed tax governance framework is commonplace among public groups, they are less common amongst private groups. The ATO has made it clear that they wish to see a detailed tax governance framework implemented and consistently applied by all private groups. An effective framework should demonstrate an understanding of tax obligations and appropriate controls and processes to identify, assess and mitigate tax risks. The framework should also show that proper advice was obtained, systems and controls to maintain integrity in reporting, effective record keeping and documentation, timeliness of tax lodgements and payments, and ethical and responsible behaviour.

The tax governance framework will be one of the first things that the ATO will ask about when beginning a review of a private group. Therefore, good preparation and effective implementation of a tax governance framework can result in a streamlined ATO review, saving a significant amount of time and cost.

As part of the preparation process, we recommend reviewing your tax audit insurance arrangements and that you consider taking out appropriate cover where such a policy is not already in place.

To ensure the tax audit insurance policy covers the review, the policy must be in place before the tax agent receives the letter from the ATO notifying which groups will be subject to a Next 5,000 tax performance program review.

How can Mazars help?

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

Jamie Towers

E: Jamie.Towers@mazars.com.au

Tel: +61 7 3218 3900

mazars

Taxation of foreign real estate revised in Belgium

Following criticism by Europe that the Belgian tax law treats real estate income differently depending on the location of the property, whether Belgium or abroad, foreign real estate owned by Belgian residents is revised as of assessment year 2022.

To eliminate this discrimination, an amendment to the law provides that all foreign immovable properties will be attributed a cadastral income and foresees that the income from real estate will be taxed in the same way as income from Belgian real estate.

The cadastral income will be based on the sales value of the property. The information will need to be provided to the General Administration of Patrimonial Documentation by 31 December 2021 if the rights ad rem were obtained before 1 January 1 2021. By 30 June 2021, if the taxpayer acquired or disposed of real estate between 1 January 2021 and 25 February 2021, or within four months from the purchase, sale, inheritance or a change in rights ad rem of a foreign real estate as of 25 February 2021.

Non-residents who become Belgian residents need to inform the Belgian tax authorities about their non-Belgian real estate within 30 days.

New annual tax on securities accounts

A new 0.15% annual tax on securities accounts came into force on 26 February 2021.

This new tax is applicable per security account with an average value that exceeds €1m, which means the number of account holders/value per person is no longer important. Securities accounts held by individuals, legal entities and even “legal arrangements” fall within the scope of this new tax.

Financial assets deemed taxable include shares, bonds, option contracts, turbos, trackers, and cash held in securities accounts. Please note that securities registered in a shareholders register are not subject to the tax insofar as they are not held in a securities account.

In addition, Belgian residents are taxable on securities accounts held in Belgium and abroad, while non-residents are only taxable on Belgian securities accounts. The €1m per securities account threshold is calculated over a reference period of 12 months, starting on 1 October and ending on 30 September, However, for 2021 an exception is applicable, meaning that the reference period starts on 26 February and ends on 30 September 2021. Also, if the average value of the securities account during the reference period exceeds €1m, the tax on the securities accounts is due.

To prevent abuse, there is an irrefutable presumption of abuse since 30 October 2020 if the targeted financial instruments on securities accounts are split up into several securities accounts with the same intermediary. It will be assumed that the financial instruments are nevertheless held in a single securities account, and tax will be levied. Against other transactions which have been carried out to avoid the new tax on securities accounts, the tax administration could also invoke the general anti-abuse measure.

Extension scope of Belgian donation tax

Movable assets

The option for Belgian residents to donate movable assets executed before a foreign notary without payment of donation tax is no longer possible.

As of 15 December 2020, every notarial deed of donation, whether executed before a Belgian or foreign notary, must be registered in Belgium. This registration will result in the levying of gift tax at the rate applicable per region. From now on, it will be even more important to check whether a reduced rate or exemptions such as the 0% rate for active family businesses can apply.

Please note that a tax-free bank donation or manual donation, where the property is physically transferred without a notarial deed, remains possible at present. This donation is not subject to gift tax since it is not carried out by a notarial deed. However, inheritance tax may be due if the donor dies as a Belgian resident within three years of this unregistered donation.

Immovable assets

The rules for Belgian immovable property remain the same. Belgian residents will only pay Belgian gift tax on the donation of Belgian immovable assets. The donation of non-Belgian immovable assets will not be included in a Belgian notarial deed and will not be subject to Belgian gift tax.

Should you have any questions regarding the above, do not hesitate to contact us.

How can Mazars help?

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

Stéphanie Markey

E: stephanie.markey@mazars.be

Tel: +32 (0)9 265 83 20

Pierre Van Heuverswyn

E: pierre.vanheuverswyn@mazars.be

Tel: +32 (0)9 265 83 20

mazars

Ultimate Beneficial Owner Disclosure Rules in Peru

Non-compliance with the Ultimate Beneficial Owner (UBO) due diligence obligations and the disclosure to the Peruvian tax authorities could trigger high penalties. In addition, the legal representative or the manager of the obliged parties could be deemed as jointly liable. Legal entities and certain legal arrangements within the scope of the Peruvian Ultimate Beneficiary Owner Disclosure Rules are obliged to implement suitable mechanisms allowing the collection and storage of data relating to the UBO's identity. This information must be verified periodically to ensure that it remains updated, even if the obliged party is not yet subject to a due date for filing its UBO informative return via Virtual Form 3800 to the Peruvian Tax Authorities. Penalties for non-compliance could be very high considering that they are income-driven up to certain thresholds.

Scope of the rules

The UBO disclosure requirements have been effective in Peru since 2019 to fight tax avoidance and evasion and preventing money laundering and terrorist financing. The provisions are also intended to comply with mutual administrative assistance obligations in tax matters.

Under the scope of these rules, legal entities domiciled in Peru, as well as trusts, investment funds and consortiums established as legal arrangements, are required to gather information to identify the natural person(s) qualifying as the UBO(s) and disclose it to the tax authorities. Such an obligation also applies to non-domiciled legal persons that have incorporated a branch, agency, or other permanent establishments in Peru; to legal arrangements established abroad whose manager and administrator is domiciled in Peru; and to consortiums constituted abroad if there is a party domiciled in Peru.

A UBO is understood to be a natural person who effectively owns or controls the legal entity, directly or indirectly, based on owning 10% or more of the equity capital; is entitled to designate and/or remove the management bodies, board of directors or other supervisory bodies; has decision-maker power in financial, operational and commercial matters; or exercises any other form of control over the company. If no UBO is identified under these criteria, the obliged party must report the individual who occupies the highest hierarchy position in the legal entity.

In the case of legal arrangements, it would qualify the settlor, trustee, beneficiary, and any other natural person who, as a participant or investor, exercises effective control of the legal arrangement by having an influence on decision-making or is duly entitled to obtain profits.

The filing deadlines for the UBO informative return were due in December 2019 but only applied to certain companies that are main resident taxpayers. Other parties must comply with this obligation based on a calendar approved by the Tax Authorities, although Covid-19 may have caused a delay in the implementation process.

Due diligence obligations in preparation of a tax inspection

Legal entities and legal arrangements within the scope will have to demonstrate to the tax authorities proper compliance with these obligations during a tax inspection. In preparation for this event, affected parties must obtain from the UBOs the default form approved by the tax authorities, fully completed with a certified signature.

Documentation and other information provided by the UBO must be stored and proof of validating the above-mentioned documentation and other information against trustable public databases and other sources of information obtained.

Also, proof of the communication, or attempted communication, with the UBO or with the individual must be obtained as well as proof that the UBO is unknown despite all efforts to identify someone that meets the conditions to qualify as such. This situation must be permanently posted on the affected party's web page. The individual having the highest administrative position, such as general manager or board member, will be deemed the UBO.

Finally, a procedure must be implemented to confirm the status of the UBO(s) at least annually and to adjust the forms and related supporting documentation when applicable. If changes are identified, a new Virtual Form 3800 must be submitted to the tax authorities.

Affected parties must now implement adequate internal procedures in preparation of a tax inspection, enabling the ability to monitor the accuracy of the data that has to be reported to the tax authorities in the UBO informative return and avoid high penalties being triggered.

How can Mazars help?

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

Ana Bandini

E: ana.bandini@mazars.pe

Tel: +51 (1) 4210299

mazars

Romania: An attractive tax regime for private clients

In comparison with other countries, Romania does not have certain taxes imposed by legislation. Also, it provides reduced tax rates for various types of income, making it an attractive destination from a business perspective for private clients.

For example, the income tax rate of 10% is the lowest in the EU and only 5% on dividends. Also, for certain types of income such as rental income, a 40% deduction is applied when computing the taxable base. For investments, personal income tax and health fund contributions are due under certain conditions. Nevertheless, social security contributions are capped, offering an attractive and favourable tax regime from a social security perspective.

In addition, Romania offers a tax-free regime on gifts, inheritance, donations, transfers and does not have a wealth tax. As a result, there has been a growth in interest in the last years from private clients looking to invest in Romania and become tax resident.

While Romania does not impose an exit tax on individuals before leaving the country, individuals must notify the National Agency for Tax Administration of their departure date to determine the date and year from which the individual will no longer qualify as a tax resident in Romania.

From a compliance perspective, the annual filling system is constantly being improved to ease the process of tax return submission and tax payments due. In Romania, a self-assessment system is currently applied, which is a significant improvement on annual filing obligations comparative with previous years.

How can Mazars help?

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

Edwin Warmerdam

edwin.warmerdam@mazars.ro

Tel: +40 31 229 260

mazars

New exit tax on retirement savings in South Africa

One of the key announcements in the 2021 Budget on 24 February 2021 is a proposed exit tax on retirement savings where the individual ceases to be resident for tax purposes in South Africa. Currently, your interest in a South African retirement fund is not subject to this exit tax. When you cease to be a tax resident in South Africa, you are deemed to have disposed of your worldwide assets on the day before you cease to be a tax resident. This triggers a capital gains tax (CGT) event, often referred to as "exit tax".

The proposal is motivated by the fact that individuals who cease to be South African tax resident often become tax residents of another country where a tax treaty provides the taxing right to the foreign resident country. This results in South Africa forfeiting its taxing rights, in this case, on the withdrawal from a retirement fund.

To address this anomaly, it is proposed that an exit tax be calculated on an interest in a South African retirement fund when the member ceases to be resident for tax purposes. It is proposed that an individual will be deemed to have withdrawn from the fund on the day before they cease to be a South African tax resident while retaining their investment in the South African retirement fund.

The withdrawal tax payment, including associated interest and calculated in terms of the withdrawal lump sum table, will be deferred until payments are received from the retirement fund or as a result of retirement. When the individual eventually receives payments from the fund and South Africa has the right to tax the payments, the tax will be calculated based on the prevailing tables. A tax credit from the deemed withdrawal tax calculated when the individual ceased to be a South African tax resident will be set off against any taxes due at the time funds are received from the fund. It should also be taken into account that the January 2021 Taxation Laws Amendment Act locks in benefits from preservation and retirement annuity funds for a minimum period of three years, with effect from 1 March 2021.

As a result of the changes, where a South African is contemplating emigrating from South Africa and considering retaining their investment in a preservation or retirement fund until retirement, the individual needs to factor in the new tax treatment on their retirement fund. Tax will be calculated at the withdrawal lump sum table on cessation of tax residency on the full value of the interest in the fund as opposed to the retirement lump sum table. When an individual is considering whether to access the funds after the three year lockin period, they need to be mindful of the punitive withdrawal tax, irrespective of whether they opt to wait for retirement or not.

This proposal is unwelcome news for South African emigrants relying on their retirement savings being tax-free.

How can Mazars help?

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

Elzahne Henn

Elzahne.Henn@mazars.co.za

Tel: +27 21 818 5057

Contacts

Michael Asplund, Mazars
Michael.Asplund@mazars.se

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in over 90 countries and territories around the world, we draw on the expertise of more than 42,000 professionals – 26,000+ in Mazars' integrated partnership and 16,000+ via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.
*Where permitted under applicable country laws

www.mazars.com

mazars