SIMONARD & SOREL
AVOCATS

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Tax Talk 2015 ©

US Tax Law Developments

The Affordable Care Act

The Affordable Care Act (generally called Obamacare) requires that all Americans and US residents have sufficient health care coverage starting January 1, 2014. This coverage will be reported on this season's tax returns. If a US resident or non-resident US citizen does not have adequate healthcare coverage, they could be required to pay a penalty. US citizens and long-term residents living abroad will be exempt from the requirement if they qualify for one of two tests:

Physical Present Test
A U.S. citizen or resident who spent at least 330 full days in a foreign country during a period of 12 consecutive months

Bona Fide Residence Test
A U.S. citizen who establishes a bona fide residence in a foreign country

For any month that you qualify for one of the two tests above, you are exempt from the minimum essential coverage requirement. French social security and mutuelle insurances could be considered minimum essential coverage but the IRS has not yet provided a definitive opinion on this, therefore it is more certain to be exempt from the penalty through one of the tests than to take the position that French coverage is sufficient. If you are unsure of your health insurance coverage please contact us to discuss.

A taxpayer can also be exempt from the penalties under following conditions:

- You experienced general hardship that makes you unable to pay the coverage
- You cannot afford to pay the coverage based on your projected household income
- You are under the 2014 tax filing requirement thresholds (Single $11,700, Head of Household: $13,050 Married Filing Separately $3,950, Married Filing Jointly $20,300)

FATCA and Other Banking Woes

As many of our clients have experienced in the past few months, French banks are coming into compliance with FATCA by requesting information about their suspected "US person" clients. In the beginning of January 2015 the IRS launched its International Data Exchange Service which is where the information on US accounts will be sent by either the bank or the French government. Please let us know if you have any questions about what is being reported by your bank to the US authorities and if you have any accounts that might not have been previously declared.

On the other side of the ocean, US banks are continuing to close or refuse accounts to persons using an address outside of the US, regardless of US citizenship. Unfortunately, this is primarily because of regulations that require increased reporting to the foreign government and there is nothing illegal about this banking policy. Many banks are only refusing to allow non-US resident clients to purchase certain products, like mutual funds, but will allow direct purchases of stocks.

Income Tax Rates, Estate and Gift Tax Rates and Exemptions

There is a small adjustment for inflation, but otherwise the 2014 tax rates remain the same as tax year 2013 rates with a maximum ordinary rate of 39.6% and a maximum long-term capital gains and qualified dividends tax rate of 20%.

The exemption from Estate and Gift Tax is now $5.43 million for 2015 with a maximum tax rate of 40%. The annual exclusion for gifts from each taxpayer remains at $14,000; this allows a married couple to gift each year to each person $28,000 tax-free and have an estate of up to $10.68 million before paying any estate or gift taxes to the US. Please contact us before making any large gifts as there could be other (French or state-level) tax consequences.

Itemized Deductions and Personal Exemptions Phase-outs

The high income limitation of itemized deductions or personal exemptions starts at $309,900 for married filing jointly, $284,050 for heads of households, $258,250 for singles, and $154,950 for married filing separately. If income is above these amounts, some or all of the itemized or standard deduction and personal exemption will be reduced.

Foreign Earned Income Exclusion

The Foreign Earned Income Exclusion has been inflation adjusted for the 2014 and 2015 income tax years to allow maximum exclusions of $99,200 and $100,800, respectively, of Earned Income for those who are considered tax residents of a foreign country under either the Bona Fide Residence Test or the Physical Presence Test.

The IRS

The IRS announced in January 2015 that it will be closing all of its non-US offices because of budget cuts. There are a few local organizations in Paris that have begun letter-writing campaigns to stop the closures, but as of now the Paris office will be closing in October 2015. The IRS offices in the US are trying to keep up with the questions, calls, and letters they receive in a timely manner, but their means are limited. We've noticed a considerable increase in telephone wait times and longer letter response times. Unfortunately, it does not appear that the IRS will rectify this situation anytime soon.

FRENCH TAX NEWS

INCOME TAX RATES

The tax brackets and rates applicable per part to income and gains from financial assets have been revised as follows:

Income	**Tax Rate**
€9,691 to €26,7640% Up to €9,690	14%
€26,765 to €71,754	30%
€71,755 to €151,956	41%
From €151,956	45%

Pensions and salaried income still receive an allowance of 10% up to a maximum of €3,707 for pensions and €12,157 for salaried income.

WEALTH TAX (*Impôt de Solidarité sur la Fortune*)

There are no changes to the wealth tax. Therefore, taxpayers with net assets of at least €1.3 million will continue to be subject to wealth tax on assets exceeding €800,000, as follows:

Fraction of Taxable Assets	**Tax Rate**
Up to €800,000	0%
€800,000 to €1,300,000	0.50%
€1,300,000 to €2,570,000	0.70%
€2,570,000 to € 5,000,000	1%
€5,000,000 to €10,000,000	1.25%
From €10,000,000	1.5%

CAPITAL GAINS TAX – Real Property (*Plus Value Immobilières*)

The largest change concerns the rate of capital gains tax for non-residents. The gains were generally taxed at 19% for residents of EU/EEA countries and at 33.33% for non-residents living in other countries, except for those of 'non-cooperative territories' who had a 75% capital gains tax rate.

In October 2014, the French *Conseil d'Etat*, decided that the higher rate of capital gains tax for non-residents was illegal and the government decided to harmonize the capital gains tax rate at 19%. However, those residents of 'non-cooperative' States should remain at the 75% rate even though the French Constitutional Council ruled that a capital gains tax rate of 75% is excessive when taken into account with the social contributions of 15.5% and this is contrary to France's Constitution.

Moreover for those who are resident in the EU, it will no longer be necessary to appoint a tax representative in France to deal with the calculation of the capital gains tax when the property is sold.

Capital gains tax rates

Investment real property can be sold free of capital gains tax after 22 years of ownership (the abatement is equal to 6% for each year of ownership from the sixth year to the twenty-first year, and 4% for the twenty second).

Even though the investment property becomes free of capital gains tax after 22 years of ownership, it remains subject to social contributions (15.5%) if held for less than 30 years. The abatement is as follows:

- 1.65% for each year of ownership from the sixth year to the twenty-first year,

- 1.6% for the twenty second year, and

- 9% for each year of ownership beyond the twenty-second year.

There is an additional tax on property sales when the gain exceeds €50,000 ranging from 2-6%:

Amount of Gain	**Tax Rate**
€50,001 – €100,000	2%
€100,001 – €150,000	3%
€200,001 to €250,0004% €150,001 to €200,000	5%
€250,001 and over	6%

- An exceptional reduction of 30% of the taxable capital gain arising from the sale of building land only, has also been introduced, subject to the following two conditions:

- A *compromis de vente* has been signed between 1st September 2014 and 31st December 2015; and
- The completion of the sale of the land must take place by 31st December of the second year following the signing of the *compromis de vente*.

The exceptional reduction applies for both the capital gains tax and the social contributions due. However, it is not available for land transferred neither between spouses and PACS partners, nor to ascendants or descendants.

CAPITAL GAINS TAX – Financial Assets (*Plus Value Mobilières*)

The taxation of capital gains arising from financial assets remains the same. The gains arising from the disposal of financial assets will continue to be added to other taxable income and then taxed in accordance with the progressive rates of tax previously outlined.

The abatement for years of ownership will still apply for the capital gains tax (but not for social contributions) as follows:

- 50% for a holding period from two years to less than eight years; and
- 65% for a holding period of at least eight years.

In order to encourage investment in new small and medium enterprises, the higher allowances against capital gains for investments in such companies are also still provided as follows:

- 50% for a holding period from one year to less than four years;
- 65% for a holding period from four years to less than eight years; and
- 85% for a holding period of at least eight years.

The above provisions apply in 2015 in respect of the taxation of gains made in 2014.

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GIFT TAX (*Droits de Mutation à Titre Gratuit*)

A temporary exemption from gift tax has been introduced to promote release of building land and encourage housing construction:

- For full transfers of building land (i.e. the donor cannot retain life use), when the *acte authentique* is signed between 1st January and 31st December 2015, and as long as the recipient builds a new property destined for housing, within four years of the date of receiving the gift.
- For full transfers of new residential properties, for which a building permit is granted between 1st September 2014 and 31st December 2016, provided the deed supporting the gift is signed within the three years of the building permit date and that the building has never been used or occupied at the time the gift is made.

In both of the above situations, the following exonerations from gift tax will be given, limited to the declared value of the asset:

- €100,000 for transfers between descendants or ascendants in direct line, or between spouses and PACS partners;
- €45,000 between siblings; and
- €35,000 between any other person

Finally, the total of the donations made by the same donor cannot exceed €100,000.

Charitable Donations or bequests to Charities:

Following a decision from the European Commission in July 2014, France no longer differentiates between charities registered in France and those in the rest of the EU/EEA which were previously subject to a 60% tax on the value gifts or bequests received.

Additional Tax on Secondary Homes in certain areas:

To reduce housing shortages, an additional tax of 20% could apply in certain areas, depending on the local municipal council. The rate has been fixed at 20% of the municipality's share of the *taxe d'habitation* and the revenue from the additional tax will be allocated to the municipality.

Tax relief should be given from the additional tax in the following situations:

- By those who need a second dwelling near to their place of work because their principal residence is too far away; and
- If the owner is living permanently in a nursing home or other care facility and the property was their former principal residence.

Others may also receive the tax relief where they can no longer designate the property as their principal residence for circumstances outside of their control.

Economic Forecast for 2015

2015 is off to a stellar start for both the bears and the bulls. The menacing Grexit, collapsing commodity prices, and decelerating growth in emerging markets, contrast sharply with roaring factory production in Europe, Japan's announcement that its recession is over, and 2.4 %

growth in American GDP. Viewed individually, each signal paints a clear picture, but taken together they amount to a mixed portrait with potential for collapse, growth, continuity, and both favorable and unfavorable surprises.

On the face of it, a strong dollar sounds like good news. What could be better than cheaper foreign goods, or buying foreign properties, and making foreign investments at lower prices? Seen from the perspective of US exporters and workers, a strong dollar is an unwelcome burden as earnings from abroad decline in value, and US exports are priced out of international markets. Competition between factories in the EU and Asia is already crushing margins. Add a currency subsidy on foreign goods and their consumption becomes tantamount to importing deflation. Whatever dim hope wage increases signaled at the end of 2014, a tough greenback will further widen America's unwieldy trade deficit to the detriment of much needed global rebalancing. A new bout of American-centered consumerism is a repeat of the run-up to the 2008 crisis. Promises by Japan, China, and Germany, to stimulate domestic consumption for the sake of sustainable growth in the global economy, ring as hollow today as they did seven years ago.

The underlying fear for financial institutions and governments is exposure of their insolvency due to a sudden cut off of funds, and that an interruption of short and mid-term credit streams will flush-out inadequate funding of their liabilities. The unprecedented insistence on avoiding historically accepted norms of default, in favor of indefinite evergreening and roll-over of debt reveals systemic apprehension. A rate hike on credit streams risks exposing balance sheets to dwindling margins, until the line between a lack of funds and funds which arrive late or whose rates readjust too quickly, is blurred. Increased vulnerability to the timing and volume of cash flow means that identifying a specific liquidity hole is more difficult than it is to avoid falling into one. The name and date of the next Cyprus and Lehman are irrelevant. It's their inevitability which counts. By destroying the savings necessary to generate financial liquidity in the first place, interminable negative rates inevitably result in bringing about the very liquidity crunch they were supposed to help avoid.

Countries such as Greece cannot be allowed to default because this would imply losses for French and German banks. Deliberately conflating a Greek default with an exit from the Eurozone helps convince French and German taxpayers that their money needs to be proffered to the Greeks if Europe is to remain intact, although the only real issue is the safety of their deposits at home. The circuitous route, by which French and German money has to pass through Greece in order to prop up insolvent French and German banks, is astonishing.

The refusal to clear bad debt exacerbates the need for capital controls on the part of weaker players, and encourages a generalized state interventionism in markets. With shrinking trade, an ordinary moral hazard provided by one government to its banks, incites reciprocal protectionism by another. Defaults become politicized. The seduction of tampering with loans is as intense in Athens and Kiev, as it is in Paris and Washington. Were this tampering to take a route in which debt collection is subject to nationality clauses, new geopolitical conflicts may result or expand across their present borders.

Fifteen years ago, global debt stood at 87 *trillion* dollars, and aside from minor regional conflicts, there were no wars of note. Today, this debt is at 200 *trillion* dollars, 20 % of it added in the last 7 years, its government share doubling, and there are at least 3 wars without counting the dozen smaller conflagrations which accompany them. That a tight relationship exists between military conflict, the normal clearing of debt, and the political refusal to allow it to take place, may be counter-intuitive, but it may not be false. Our previous predictions have been consistently bearish, and occasionally materialized in the worst possible manner in the form of social instability, and geopolitical tension. Good economic decisions will determine whether 2015 sees an intensification of political conflict, or its roll-back.

Two years ago we noted that leaked financial information from Caribbean tax havens inscribed itself in a general thrust across both sides of the Atlantic to improve tax collection. We understood FATCA was here to stay, because of its importance to the Federal budget. Even if the initial zeal to tax the rich out of oblivion based on the insipid notion of enriching the poor by impoverishing the wealthy has subsided, and an appreciation for the limits of taxation appears to have taken root across all social strata, negative interest rates are a form of taxation by subterfuge. In a partly nationalized financial system, financial repression amounts to a "liquidity tax", because when central banks use negative rates to backstop the financial system they extract liquidity from nominally "private" deposits taxpayers hold in commercial banks.

When banks abroad began encouraging FBAR reporting for US clients, we quickly grasped that this was no anomaly. Facing budgetary constrains, governments rightfully leveraged their taxpayer financed bail-outs of banks and insurers, into greater private sector compliance with their budgetary needs. Swissleaks reminds banks about the costs of asking for such taxpayer hand-outs. Information once private, requires only one government prosecutor when it goes public to bring in settlements worth billions of dollars into government coffers.

In 2015, Uncle Sam isn't about to let up on taxes and their collection, or on tax law enforcement for the sake of unlocking the entrepreneurial talents of Americans at home or abroad. Back in 2001, the newly inaugurated George Bush revised the outgoing president's target date for reducing federal debt to zero. The curves of the Clinton/Bush forecast slope down from 4 trillion dollars in federal debt in 2000 to zero dollars by 2013 and 2011, respectively. Superimposed on presidential fantasy is the curve of reality. It diverges from White House dreams precisely on the date from which the chart starts, and it shoots straight through the roof in 2008, to a total of 13 *trillion* dollars by 2015. If the steepness of the curve and the degree of forecasting error are any guide to the probability of the government understanding the diminished returns on tax compliance, accommodative change in tax policy is improbable. The hunt is on for every penny; even the cumulative costs of finding it add up to a dollar.

Reforms remain possible and necessary, but the work needed for their conceptualization and successful implementation is intimidating. Decision makers can choose to move away from politicization and get back to the basics of building a global commons in which everyone enjoys equal creditor and debtor rights. The next 24 months may be frightening and dreadful where reform is concerned, but hope has the advantage of being infinitely supple and encouraging good decisions which can still go a long way in the international system. The key attribute of hope is that it never seeks to come to terms with the odds; instead, it is bent on overcoming them. Like 2014, 2015 has plenty of risks both for the downside, and upside, and the results are up for grabs. Taxes, as always, remain the only certitude.