



International Fiscal Association



IFA 74th Annual Congress Berlin, Germany

OUTLINE

TAXATION OF FAMILIES; MOBILITY OF INDIVIDUALS

SEMINAR J | Thursday, 8 September 2022 | 13.30 – 15.30

Chair

Stéphanie Aufénil (France)

Panel Members

Maria Ines Assis (Portugal)

Seth Entin (USA)

Inbal Faibish Wassmer (Israel)

Nicola Saccardo (Italy)

Mark Summers (UK)

Claudia Suter (Switzerland)

Secretary

Stéphanie Sebbagh (France)



This session will focus on the relocation of the high-net worth individuals as a global trend of mobility of the families, and the competition between countries to attract the wealthy, notably with special tax regimes. We will discuss the tips and pitfalls of a multi-jurisdictional relocation planning, including the pre-immigration strategies, access to treaty network, in particular when attractive tax regimes are at stake, for both income tax and estate taxes, exit taxes... The debates will be illustrated with the input of experts from European countries (Italy, Portugal, United Kingdom), the United States and Israel.

Introduction (Moderator)

Purpose of the session, key considerations when dealing with mobility of families, methodologic and practical approach and presentation of the panelists.

I – Taxation of individuals based on tax residence, domicile, citizenship

We would start by raising the various tests for taxation depending on the jurisdictions.

The UK panel representative would explain the subtleties of the notions of residence versus domicile and consequences thereof, for income and estate taxes. The US panel member would supplement with the specifics of the US, the impacts of the acquisition of a US domicile, and how and when to become a US taxpayer (citizenship, long-term residence; tests for tax residence).

The Italian, Portuguese, Switzerland and Israeli panelists would briefly address the tests of tax residence in their jurisdictions, as well as the timing of acquisition of tax residence.

Then a discussion amongst the panelists on the potential overlap of tax residence, mainly on the year of relocation, when the timing of acquisition (destination country) and loss (departure country) of tax residence do not match.

Case study involving the UK and Italy

II - Attractive tax regimes

Each jurisdiction panel member would comment on the key aspects of the taxation for individuals (income and capital gains tax, wealth taxes, gift and inheritance/estate taxes) and highlight any favorable tax regime available to attract new taxpayers.

- Alyah tax incentives for Israel
- Italian Forfait tax regime for Italy
- Non-habitual resident régime for Portugal
- Swiss forfait for Switzerland
- Remittance basis for the UK



A discussion among the panel members would follow, on how such special tax regimes when available would affect the double tax treaties' access (articles 1 and 4 of the OECD Model tax convention), potentially preventing from the ties breaker rules on tax residency and provisions of double taxation avoidance to apply.

The discussion could be led by the moderator with the input of the Italian representative in the panel, to illustrate the potential tax pitfalls of the special tax regimes when cross-border assets and incomes are at stake, with the Tizianno Ferro decision. Each jurisdiction panel would comment on the approach of other jurisdictions with their own special tax regimes, together with the consequences of the potential disallowance of the double tax treaties to apply.

III – Anti-avoidance provisions and Exit taxes

Certain countries have implemented Exit taxes to preserve the right to tax capital gains accrued before tax exit, or to keep a continuous right over a certain period to tax certain transfers, e.g. gifts or inheritances/estates.

- No Exit tax for individuals in Italy, Portugal and Switzerland
- Introduction of an Exit tax Regime in Israel
- Exit tax on trusts in the UK

The France panelist would comment on the rules released by the 2004 ECJ case law *de Lasteyrie du Saillant* (re. the French exit tax) for the EU compatibility of European exit taxes. The combination of the local exit taxes and taxation in the destination countries would be illustrated with a case involving a French resident moving to the US.

The US panelist would explain the US exit taxes and right the tax estates and gifts of US citizen and former citizen, and how the double tax treaties concluded by the US tend to preserve the rights of the United States to apply their local anti-abuse provisions.

More generally, the panelists would discuss the anti-abusive provisions negotiated in their double tax treaties to preserve the taxing rights of the exit country (e.g. French – UK double tax treaty).

IV – Estate planning strategies and use of trusts

Multi-jurisdictional estate planning often involves the use of trusts, notably for US and UK families.

- Our US and UK experts would enlighten the audience on the benefits of trusts strategies, for tax and non-tax planning.
- The Swiss expert would further detail actual and future regulation regarding trusts in her country.

The other panelists would then each comment on the recognition of trusts in their jurisdiction (existing rules, necessity to file a ruling in absence of clear rules governing foreign trusts, etc.).

Case studies: the panelists would discuss the tax impacts of the following situations:

- *designation of beneficiaries residents or domiciled in their country,*
- *relocation of the settlor/beneficiaries in their country,*
- *what happens in case of death of the settlor when the settlor was tax resident of their country or when beneficiaries in place at that time are tax residents of their country.*

Q&A, conclusion and wrap-up