UPDATES & OTHER TIDBITS

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BUSINESSMAN PLEADS GUILTY TO CONCEALING $8.4 MILLION

A Connecticut business executive, George Landegger, pled guilty to willfully failing to report $8.4 million held in Swiss bank accounts to the I.R.S.[1] During the early 2000's until 2010, Landegger maintained undeclared accounts which reached a maximum value of over $8.4 million at an unidentified Swiss bank.

While Landegger's defense attorney confirmed that Landegger has not been accepted to the Offshore Voluntary Disclosure Program ("O.V.D.P."), Landegger, according to the prosecutors, repeatedly rejected the possibility of disclosing his undeclared accounts to the I.R.S. through the O.V.D.P. and instead proactively took steps to conceal his accounts. Landegger held his undeclared accounts in a sham entity formed by a Swiss lawyer under the laws of Liechtenstein. In August 2013, the Swiss lawyer pled guilty to tax fraud conspiracy charges and has been cooperating with prosecutors.

Landegger agreed to pay a civil penalty of over $4.2 million and more than $71,000 in back taxes as part of his plea, entered on January 15, 2015. Landegger's sentencing will be held May 12. He faces a maximum sentence of five years in prison. In his statement, I.R.S. Acting Special Agent-in-Charge Thomas E. Bishop stressed that uncovering hidden offshore accounts and income is the Service's top priority and that it will continue working with the Department of Justice to do so. This case illustrustrates the importance of a timely O.V.D.P. submission.

OBAMA PROPOSES INCREASE IN CAPITAL GAINS TAX, ELIMINATION OF STEPPED-UP BASIS ON INHERITED ASSETS

President Obama has proposed a 28% tax rate on capital gains for couples with $500,000 in annual income and eliminating the stepped-up basis on inherited investments. Obama believes that these tax increases will help to pay for expanded benefits for middle- and low-income households. Congressional Republicans have indicated that they would not support Obama's proposal.

Obama's increase of the "step-up" basis rule mentioned in Code §1014(b)(9) might have consequences in the private client sphere. Under the gift tax regime, in general, the transferee receives a "carryover" basis from the transferor as opposed to a stepped up basis, which eventually may result in a higher capital gains tax on a gift

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1 *United States v. Landegger*, S.D.N.Y., No. 15-cr-00032, *guilty plea* 1/16/15

as opposed to an inheritance. Obama's rule change may result in planning where the gift of an asset is preferred over inheriting an asset, as it may avoid ancillary fees, such as probate. States which have their own estate tax but lack a gift tax might also oppose the bill, as they would face a loss of revenue if transfer of an asset is made during the individual's lifetime.

B.E.P.S. NEWS: COUNTRY-BY-COUNTRY REPORT THRESHOLD SET AT €750 MILLION

Multinationals who have annual gross revenue over €750 million in their country of residence will be required to report, on a country-by-country basis, information on revenues, profits, and taxes accrued and paid, along with some other activity indicators to other countries, through a reporting template. The reporting will begin in 2016 and administrators will begin exchanging the reports in 2017.

In order to protect confidentiality, the O.E.C.D. believes that the primary way of reporting this information should be done through a tax treaty or information exchange agreement, and that such information should be remitted automatically. However, in the event that a country that is entitled to receive a report does not due to administrative errors, a secondary method, such as a local filing, may be used instead.

The reporting requirements the O.E.C.D. has introduced under the B.E.P.S. action plan on transfer pricing have already raised concerns with respect to the amount of information that companies will have to share with tax authorities under the country-to-country reporting system. Setting the threshold at €750 million only addresses the concerns regarding the costs companies will be confronted with to comply with these requirements. It is yet to be seen how confidentiality of such information will be ensured across multiple countries.

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SHIFTING PROFITS OVERSEAS

In its latest report, the Congressional Research Service found that U.S. corporations have been increasingly shifting profits from high-tax to low-tax jurisdictions without any economic motive.

The multinational companies have used techniques such as debt shifting and earnings stripping to save on taxes. Foreign profits have resulted in low-tax jurisdictions that are considered tax havens in a greater proportion in relation to their gross domestic product.

Earnings stripping is when profits are shifted by borrowing more in high-tax jurisdictions and less in low-tax areas, allocating more interest to the high-tax jurisdiction. Since interest expense is deductible, the interest paid back from a high-tax jurisdiction will bring down the overall tax consequence. In addition, interest income may receive favorable treatment if it meets the conditions set forth under both domestic law as applicable income tax treaties, if any. This is seen when a foreign parent lends to its U.S. subsidiary.

The Congressional Research Service report publishing these findings was released on the same day as the Stop Corporate Inversions Act of 2015 ("the Proposal") was proposed by Senate Minority Whip Dick Durbin (D-IL), House Ways and Means Committee Ranking Member Sander Levin (D-MI), Senator Jack Reed (D-RI), and Representative Lloyd Doggett (D-TX). The Proposal was originally introduced by Levin and three dozen other Democrats in May 2014 and addresses U.S. companies inverting by shifting their parent entity to a tax haven. It aims at reducing the incentive to invert by treating the combined foreign corporation as a domestic corporation for tax purposes if the historic shareholders of the U.S. corporation own more than 50% of the combined foreign corporation, or if the affiliated group is managed and controlled in the U.S. and engaged in significant U.S. business activities. The proposed legislation is said to save the U.S. nearly $34 billion in revenue, according to a recent estimate from the Joint Committee on Taxation. Inversions have been on the legislative radar since 2004 and have been heavily targeted in various drafts the past few years, most recently, prior to this Proposal, in Notice 2014-52, 2014-42 IRB 712. It is notable that, if enacted, the proposed legislation would be effective for any inversion transactions completed after May 8, 2014.

‘THE WHOLE TRUTH’ – I.R.S.

The latest forms 14653 and 14654 for the Streamlined Offshore Voluntary Disclosure Program require a “narrative statement of facts” explaining the taxpayer’s failure to disclose offshore assets. Without a detailed explanation certifying that the taxpayer’s conduct was non-willful, penalty relief will not be granted. Under the Streamlined Domestic Offshore Procedure, the penalty is 5% of the foreign assets giving rise to the tax compliance issue, and as low as 0% under certain circumstances for the Streamlined Foreign Offshore Procedure. On June 14, 2014, the I.R.S. announced changes in its offshore voluntary compliance program. These changes included an expansion of the streamlined filing compliance procedures announced in 2012 by eliminating the following requirements:

- That the taxpayer have $1,500 or less of unpaid tax per year; and
- The completion of the risk questionnaire.

However, it also introduced a requirement for the taxpayer to certify that previous failures to comply were due to non-willful conduct. While practitioners were already aware of the explanation requirement to be met or access would be denied by the I.R.S., the new forms have made it official: the easing of some of the requirements is not to be construed to mean that access to the Streamlined Offshore Procedure will be granted without adequate explanation for non-willful failure to comply.

U.K. NON-DOMICILED REMITTANCE CHANGES PROPOSED

In order to attract foreign-domiciled individuals to U.K. residency, the U.K. allows a non-domiciled resident individual to pay tax on the remittance basis rather than the arising basis. As a result, U.K. tax on non-U.K. source income is deferred until the income is brought into the country. This enables wealthy persons from outside the U.K. to fund living costs in the U.K. exclusively from accumulated capital, leaving offshore income untouched and untaxed.

This benefit is obtainable free of any compensating charges for seven years. Thereafter, the U.K. imposes a "remittance basis charge." The charge for non-domiciled U.K. residents who have been resident for more than seven of the most recent nine prior years is £30,000. The charge is £50,000 for those who have been U.K. resident for 12 out of the most recent 14 tax years.

The U.K. government has proposed modifications to the way the remittance basis charge is imposed.

- The charge for individuals who have been resident 12 out of the last 14 years will be increased to £60,000.
- The charge for, for individuals who have been resident for 17 out of the last 20 years will be increased to £90,000.
- For those individuals who are subject to the charge, remittance basis taxation must be elected in three-year tranches in order to eliminate the opportunity to elect in and out of remittance taxation in a way that takes advantage of bunching income in a year in which remittance taxation is elected so that there is little taxable income reported in a year when no election is made.