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## OBTAINING AN I.T.I.N. – BACK TO "GOOD OLD TIMES" FOR FOREIGN APPLICANTS

When claiming a refund of over-withheld tax, purchasing or selling real property, or complying with U.S. filing requirements, a non-U.S. individual is required to obtain an individual taxpayer identification number ("I.T.I.N.") from the I.R.S. Prior to late December 2016, certifying acceptance agents ("C.A.A.'s") could facilitate this process by verifying the accuracy of the information, authenticating the identity of the foreign applicant in the applicant's home country, and filing the application with the I.R.S. on the applicant's behalf. Effective December 19, 2015, the rules relating to foreign-based certifying acceptance agents were changed.[1]

Due to the change in law, which may have included a legislative error, all agreements with foreign C.A.A.'s were terminated by the I.R.S. effective January 1, 2017. At the same time, domestic C.A.A.'s were limited to assisting applicants that came to the U.S. Hence, I.T.I.N. applicants who resided outside the U.S. and were not in a position to provide official copies of identification documents were left without an option.[2]

By e-mail sent to foreign C.C.A.'s on April 17, 2017, the I.R.S. rescinded the termination of foreign C.A.A. agreements. From that point forward, foreign individuals may again file I.T.I.N. applications with foreign C.A.A.'s. A country-by-country list of foreign C.A.A.'s can be found on the I.R.S. website. At the same time, the I.R.S. introduced a new form effective April 17, 2017, requiring domestic C.A.A.'s to attest under penalty of perjury that an applicant was interviewed while in the U.S. (Form 15003, Attestation of Non-Resident Interviewed in the United States).

Although the rescission is welcome, its authority is unclear. The rule as amended by the P.A.T.H. Act (i.e., the legislation under which the issue arose) has not been changed.[3] Nonetheless, in an e-mail declaring Form 15003 obsolete as of May 3, 2017, the I.R.S. stated that U.S.-based C.A.A.'s were "allowed to continue to provide I.T.I.N. services to all applicants without additional form requirements."

It is also to be noted that individuals who were issued I.T.I.N.'s before 2013 are required to renew their I.T.I.N.'s on a staggered schedule between 2017 and 2020.[4]

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1 2015 P.A.T.H. Act 203(f)DivQ. See Beate Erwin et. al., "Updates and Tidbits," *Insights* 1 (2017).

2 The authority of consular posts or missions in this respect varied from country to country.

3 Code §6109(i).

4 See in detail Galia Antebi et. al., "Updates and Tidbits," *Insights* 7 (2016).

## NEW FRENCH PRESIDENT: WHAT DOES IT MEAN FOR TAXATION?

The French presidential campaign focused on the economy with proposals to lower the national debt and encourage employment. The newly-elected president, Emanuel Macron, seeks to boost French purchasing power and make the country more competitive in the global market by cutting taxes.[5] In light of the success of President Macron's party in the June elections, the proposals will likely be implemented.

**Individual Tax Proposals**

*Wealth Tax*

In France, a wealth tax is due annually by individuals with net assets in excess of €1,300,000. Currently, the tax base includes all assets whatever their nature – with few exceptions such as professional assets or works of art. The new president proposes to reduce the tax base by only including real estate.

***"President Macron plans to streamline the tax regime for passive income from movable property."***

*Salaries*

It is proposed that the implementation of withholding tax on salaries and revenues will be delayed by one year and will apply beginning from January 1, 2019 (instead of January 1, 2018).

*Passive Incomes*

President Macron plans to streamline the tax regime for passive income from movable property by establishing a flat tax rate of 30% to replace the multitude of taxes which currently apply. For example, under French tax law, dividends received from domestic or foreign companies are included in the taxpayer's global taxable income. They are subject to the following taxes:

- Progressive rates of income tax up to 45%
- Social charges levied at 15.5%, of which 5.1% is tax deductible in the subsequent year
- An additional 3% tax for individuals earning between €250,000 and €500,000 per year increased to 4% on income above €500,000

*Dwelling Tax Exoneration*

During the presidential campaign, Mr. Macron proposed to exempt from the dwelling tax roughly 80% of taxpayers. Under current laws, the exemption was available only to taxpayers with low revenues such as retired people.

**Corporate Tax Proposals**

*Corporate Income Tax*

French corporate income tax is generally imposed at the rate of 33.33%, and corporations that owe more than €763,000 in corporate income tax are subject to an additional 3.3% social charge on the amount of corporate income tax in excess of

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5 "Fiscalité et prélèvements obligatoires," En Marche!

€763,000. Corporations that have gross receipts below €7.63 million are subject to a reduced corporate income tax rate of 15% on taxable income up to €38,120.

President Macron has also announced that he intends to reduce the corporate income tax rate from 33.33% to 25%, which corresponds to the European average.[6]

## WILL THE U.S. IMPROVE F.A.T.C.A. RECIPROCITY OR JOIN THE C.R.S.?

The U.S. is facing increased pressure to exchange financial information after European politicians called on the European Commission to negotiate an accord making F.A.T.C.A. reciprocal. This latest move follows threats that the U.S. may be labeled a tax haven when the E.U. publishes its official "blacklist" (due to be finalized this year) and outcry from the European banking community.

Currently, the U.S. is not a participant in the Common Reporting Standard ("C.R.S."), an offspring of F.A.T.C.A. developed by the O.E.C.D. and endorsed by the G-20 countries. Rather:

> The United States has indicated that it is undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.[7]

Under these I.G.A.'s, U.S. reciprocity with respect to the disclosure of financial information will be implemented on a long-term basis. E.U. banks have expressed fears that this timeframe will offer U.S. banks a competitive advantage as money-flows from the U.S. from the E.U. increase.

Furthermore, without reforms that increase reporting by U.S. financial institutions for non-U.S.-owned accounts, or U.S. participation in the C.R.S., foreign countries that have entered into reciprocal I.G.A.'s will not receive the same type of information as is provided to the U.S.

In light of U.S. concerns over data sercurity and European demands for reciprocal, it is expected the U.S. will face strained negotiations with its counterparties.

## TRUMP'S TAX PLAN RELEASED

On Wednesday April 26, 2017, the Trump administration unveiled a one page tax

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6 The Finance Law for 2017 already provides for a progressive reduction of the corporate income tax rate from the current 33.33% to 28% over the period 2017 to 2020.

7 O.E.C.D., "AEOI: Status of Commitments," May 5, 2017.

plan designed to substantially cut U.S. tax rates and to simplify the tax code.

From an individual tax perspective, the current seven tax brackets would be reduced to three brackets – set at 10%, 25%, and 35%. Among other considerations, the President's plan would also double the standard deduction, repeal the alternative minimum tax, and eliminate most credits and deductions. Hence, a married couple will not pay any taxes on the first $24,000 of income they earn. While the charitable tax deduction would remain, the tax deduction for state and local taxes would be eliminated. This would actually increase taxes for residents of high-tax states, such as New York and California.

One of the key measures is a reduction of the corporate tax rate from 35% to 15%, which is intended to encourage the repatriation of earnings held outside the U.S. The plan also calls for the U.S. to move to a territorial tax system that would limit taxation to domestic profits earned in the country.

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