General Overview of U.S. Tax Principles and International Tax Compliance Obligations

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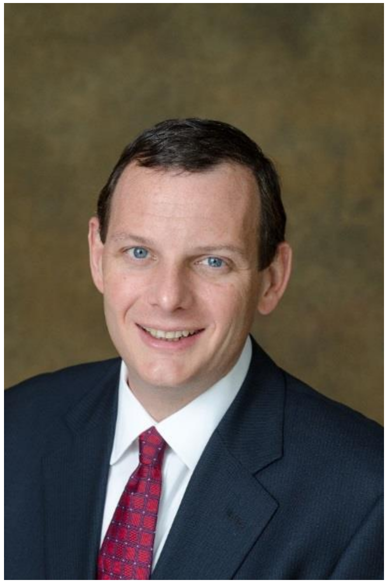

Mr. Henderson is a partner and co-founder with DUGGAN BERTSCH, LLC and practices in DUGGAN BERTSCH'S Private Client Practice Group. Mr. Henderson is a founding partner of DUGGAN BERTSCH where he focuses his time advising closely-held businesses and their owners. His extensive experience and education focuses on the interrelated disciplines of taxation, wealth planning and business law. Prior to joining DUGGAN BERTSCH, LLC, Mr. Henderson practiced as a senior associate with a Chicago based law firm and as a Certified Public Accountant in a Chicago based public accounting firm.

Mr. Henderson earned a Bachelor of Sciences degree with dual majors in Accounting and Finance from Indiana University, a certificate of Certified Public Accountant from the University of Illinois at Urbana-Champaign, a Juris Doctor degree from the John Marshall Law School (Cum Laude) in Chicago, Illinois while working full-time, and a Juris Doctor Certificate in Tax Law from the John Marshall Law School. Mr. Henderson was the sole recipient of the Dean's Award for outstanding academic achievement upon completion of his Juris Doctor degree. Mr. Henderson also completed his Masters of Law (LL.M.) (Highest Honors) in Taxation Degree with concentrations in Estate Planning at the John Marshall Law School. Mr. Henderson also holds a certified financial planner (CFP) designation from the certified financial planner board.

Mr. Henderson is an adjunct professor of law at the John Marshall Law School where he teaches in the Masters of Laws program courses in federal taxation and estate planning. Mr. Henderson serves as the committee chair for the estate planning committee of the American Association of Attorney-Certified Public Accountants. Mr. Henderson is also a member of the American, Illinois State and Chicago Bar Associations, the American Institute of Certified Public Accountants and the Illinois Society of Certified Public Accountants, where he currently serves as the chair of its international tax committee.

Mr. Henderson frequently presents to various organizations. Recently Mr. Henderson presented to the American Institute of Certified Public Accountants at their Tax Strategies for the High-Income Individual and appeared on WTTW's Chicago Tonight as well as ABC7 WLS's Chicago Sunday Morning. Mr. Henderson can be reached at either dhenderson@dugganbertsch.com or 312-263-8600.

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Nicholas J. Heuer, J.D., LL.M. est avocat à Duggan Bertsch où il intervient au sien du département de la clientèle privée. Il se spécialize dans les matières fiscales internationals, et souvent il assiste à la planification fiscal international, à la conformité fiscal, et à travailler avec les autorités fiscales pour corriger les problèmes de conformité fiscale. Il conseille des personnes américaines qui ont les entreprises and les investissements étrangers, ainsi que des personnes étrangères qui ont les entreprises et les investissement aux états-unis. De plus, il conseille les familles transfrontalières à la plannification fiscal successorale.

Mr. Heuer a maîtrisé en français à l'université de Lawrence à Wisconsin. Il a habité à Chicoutimi, Québec pendant cinq mois, à Nantes, France pendant quatre mois, et à Fes, Moroc pendant une année. Il aime la culture francophone.

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Are You Subject to U.S. Income and Transfer Tax?

- Income Taxation – U.S. Citizen/Resident v. Non-Resident
  - Residency
    - Green Card Test
    - Substantial Presence Test
  - Consequence if Citizen or Resident
    - Worldwide Income Taxation and Reporting

- Transfer Taxation – U.S. Citizen/Domiciliary v. Non-Domiciliary
  - Domiciliary
    - Subjective Test
  - Consequence if Citizen or Resident
    - Tax on transfer (by gift or at death) of worldwide assets

What are Some Examples of Taxable and Reportable Items that May Be Applicable to You?

- Taxable Items
  - Interest from bank accounts and dividends from stock holdings – “Assurance Vie” accounts
  - Income from investment accounts held through French brokers
  - Rent from property ownership

- Reportable Items
  - Foreign bank accounts
  - Interests in foreign companies, partnerships, and trusts
    - Interest in French SCI is reportable
  - Foreign life insurance contracts

NOTE: there are a variety of other forms that, if not filed, leave the statute of limitations open – the following are two common examples.

Common Reporting Example 1 - FBAR

- Report signature or other authority of foreign bank and financial accounts having $10,000 in aggregate at any time during calendar year
  - Financial account broadly defined and includes some unexpected arrangements
  - Signature or other authority includes powers of attorney

- Deadline and Statute of Limitations
  - June 30 deadline with no extensions for 2015 reporting
  - 6 year statute of limitations

- Penalties
  - Range from $10,000 to 50% of reportable account value per year per reportable account
  - Possible criminal penalties – time in prison and/or fine of up to $500,000

- This is not a tax form, so reporting required regardless of whether you owe tax

Common Reporting Example 2 – Form 8938

- Report interest in "Specified Foreign Financial Assets" with value exceeding a certain threshold
  - If single, \$50,000 at end of year or \$75,000 at any time during year (doubles if married filing jointly)
  - Generally includes interest in foreign corporations, partnerships, and trusts
  - Includes foreign bank accounts and securities accounts

- Deadline and Statute
  - Due date of individual taxpayer and filed with income tax return
  - Up to possible 12 year statute of limitations

- Penalties
  - Penalties of \$10,000 for failure to disclose; \$10,000 for each 30 days of nondisclosure up to \$60,000
  - 40% penalty on tax underpayment
  - Possible criminal penalties

How Do You Fix It?

- Programs to fix lack of compliance
  - Offshore Voluntary Disclosure Program (OVDP)
  - Streamlined Procedure
  - Delinquent FBAR Filings
  - Quiet Disclosure

- Summary of Programs
  - OVDP and Streamlined used when taxes due
    - OVDP provides certainty but is the most costly – generally 27.5% of highest account value in the last 8 years
    - Streamlined less costly but no certainty both civilly and criminally – 5% of highest account value in last 6 years
  - Delinquent FBAR Filings and Quiet Disclosure should only be used when no income tax due and no possible criminal issues
    - Quiet Disclosures *could* cause more audits
  - Choice of which program is largely risk tolerance

So You Want To Leave?

- Expatriation tax regime – an "exit-tax"
  - As if you sold all of your assets for fair market value on the date of expatriation (a certain amount is excluded)

- Only applies to U.S. citizens and "long-term residents"
  - "Long-term resident" means any individual who is a lawful permanent resident at least 8 out of the last 15 taxable years prior to expatriation

- Can avoid the "exit-tax" if:
  - Your average annual net income tax for the last five years is less than $124,000 (adjusted for inflation);
  - Your net worth at the time of expatriation is less than $2,000,000; <u>and</u>
  - **You met all of your compliance obligations for the last five years.**

- The point: if a U.S. citizen or "long-term resident" who expatriates and you are <u>not</u> tax compliant, the "exit-tax" applies.

Practical Experience Discussion by Dave

Questions?

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