

","",
; ; ;

Staff Record | [My IBA home](#) | [Sign Out](#)

Thursday 16 April 2015

Wealth Management Workshop: Succession Planning Strategies for Closely Held & Family Businesses - Taxes Committee, October 2015

[Back to Taxes Committee publications](#)

Wealth management workshop: succession planning strategies for closely held and family businesses. 15th Annual Tax Planning Strategies US and Europe conference session

Dr Ruth Bloch-Riemer,
Baer & Karrer, Zurich
ruth.blochriemer@baerkarrer.ch

Session Chairs

Alan W Granwell *Sharp Partners PA, Washington, DC*
Dr Andreas Richter *Pöllath & Partners, Berlin*

Speakers

Dr Ruth Bloch-Riemer *Baer & Karrer, Zurich*
Bruno Gangemi *Macchi di Cellere Gangemi Studio Legale, Milan and Rome*
Line-Alexa Glotin *UGGC Avocats, Paris*
Eva Stadler *Wolf Theiss, Vienna*

Introduction

The session 'Succession Planning Strategies for Closely Held & Family Businesses' focused in its first part on the inheritance tax systems implemented by the United States, Switzerland, Italy, France, Germany and Austria. The comparison and discussion of the systems showed significant and important differences between the jurisdictions represented on the panel. The differences, on the one hand, originate from the two systems implemented among the jurisdictions (inheritance versus estate tax system). On the other hand, they also relate to relevant practical aspects such as, for example, the legal qualification and treatment of an estate, the inheritance/estate tax burdens for various categories of heirs, and the filing requirements. Furthermore, the existence and scope of bilateral double taxation treaties (DTT) in inheritance tax matters between the jurisdictions represented on the panel, particularly between the jurisdictions and the US, differ considerably. In view of today's modern family structures and the increasing tendency of high-net-worth families to relocate in the international context, careful and multinational planning and a regular review of estate planning solutions not only for tax but also for civil law purposes was recognised by the panellists as a crucial element of successful and sustainable support and advice of high-net-worth individuals (HNWIs) and their families.

The session's second part was dedicated to a case study outlining the key aspects to consider in the case of a deceased individual with last domicile in the US and heirs in the jurisdictions represented on the panel. For comparative purposes, the inverse situation of the same individual last domiciled in the represented jurisdictions with heirs in the other represented jurisdictions was analysed.

For comprehensive advice regarding the tax exposure and estate and succession planning solution options for each case, the panel highlighted that related taxes, in particular gift taxes, real estate transfer taxes as well as income and wealth taxes in the relevant jurisdictions, should be included in any analysis.

Overview of tax systems

In all the jurisdictions represented on the panel, inheritance tax is defined as a tax triggered by a transfer of assets *causa mortis* and levied on the level of the recipients (eg, heirs). The inheritance tax system takes into account, inter alia, the recipient's relationship to the deceased; for example, by way of tax-free or tax-exempt amounts, and/or reductions of the applied tax rates.

Under the estate tax system, the tax triggered by the transfer of assets *causa mortis* is assessed and levied on the

deceased's assets (the estate) and paid by or on the level of the estate prior to the distribution to the recipients. It does not generally take into consideration the recipients' relationship to the deceased individual.

	US	Austria	France	Switzerland	Italy	Germany
System	Estate tax (Estate treated as legal entity)	Inheritance tax (Abolished as of 1 October 2008)	Inheritance tax	Most Cantons: Inheritance tax Certain Cantons: Estate tax (Popular initiative on federal inheritance tax (popular vote was due mid-June 2015) would introduce estate tax system for Switzerland and abolish Cantonal legislation)	Inheritance tax	Inheritance tax

Full/unlimited tax liability for inheritance/estate tax purposes

The jurisdictions represented on the panel generally levy inheritance or estate taxes on the entirety of the distributed assets; that is, the entirety of an estate ('full tax liability' do /'unlimited tax liability', covering the deceased individual's worldwide assets) if the deceased individual was a resident or domiciled in the respective jurisdiction for inheritance/estate tax purposes. Exemptions apply due to international allocation rules (based on domestic law principles/jurisprudence or bilateral treaties) to specific types of assets situated outside of the jurisdiction: typically, the respective *situs* jurisdiction claims a 'limited tax liability' for real property or businesses. The principle applicable to the international allocation of debts is to be assessed on a case-by-case basis. Typically, an objective or proportional allocation method is applied based on domestic law principles/jurisprudence as the DTTs generally do not cover this question.

It is of utmost practical relevance that the concept of 'domicile' as defined under US law for estate tax purposes, and the concept of 'residency' (or 'tax residency') as used by the other jurisdictions (Italy, France, Germany, Switzerland and, in principle, also Austria) for inheritance/estate tax purposes (and mostly also for income and wealth tax purposes), are not fully congruent. Furthermore, the nexus to a jurisdiction based on 'residency' or 'tax residency' is not identical among the European jurisdictions represented on the panel. Due to diverging definitions among the jurisdictions, in practice, cases of double residency/double domiciliation for inheritance/estate tax purposes arise in the international context. Only a case-by-case assessment may show whether tiebreaker clauses are implemented in the relevant DTTs to determine a deceased individual's last domicile between two (or more) jurisdictions, or whether the respective DTT provides for the possibility to require a competent authority's agreement on the question of last domicile. In practice, it is frequently recommended that HNWI clients – after review and comparison of the financial exposures under the possible scenarios – actively decide on a place of residence/domicile for inheritance/estate tax purposes during their lifetime and discuss and implement estate and succession planning measures with the competent tax authorities in view of or based on such a decision. Furthermore, a comprehensive set of evidence on the place of residence/domicile for inheritance/estate tax purposes should be kept to gain planning security on the key aspect of tax (and often also civil law) residency/domiciliation and to avoid uncertainty with regard to the tax and possible further exposures in potentially involved jurisdictions.

	US	Austria	France	Switzerland	Italy	Germany

Nexus	Domicile for estate tax purposes of deceased individual		Residency of deceased (life in France, or principal abode and centre of vital interests)	Residency of deceased (physical presence with intention to stay for longer duration)	Residency of deceased (registration for the greater part of the relevant year in the Italian population register, or civil law residence in Italy)	Residency of deceased or heir (residence or habitual abode)
-------	---	--	---	---	---	--

Tax rates and tax exemptions (selection)

Practically, once the volume and components of an estate are determined, it should be examined under each of the involved jurisdictions' legislation whether estate or inheritance tax is triggered. Only then can the tax exposure in each jurisdiction and overall, that is, considering DTTs and unilateral allocation rules, be quantified. Significant differences with regard to the applicable tax rates as well as available exemptions and reductions can be discerned between the involved jurisdictions as follows:

	US	Austria	France	Switzerland	Italy	Germany
Tax rates (max)	Up to 40% of taxable assets over US\$1 million	n/a	Up to approx 60% of fair market value of transferred assets	Up to approx 50% of fair market value of transferred assets	Up to 8% of value of total assets	Up to 50% of value of assets
Exemptions	US\$1 million	n/a	Full exemption: spouses/civil partners Specific exemptions: inter alia, business assets	Full exemption: spouses, charities (caveat: domicile of charities!) and (in most Cantons) children	Italian state, recognised charities	Exemptions and tax rates depending on relationship to deceased individual ('tax classes') Specific exemptions: inter alia, business assets

Double taxation treaties on inheritance/estate tax matters

In order to reduce or mitigate double taxation in inheritance cases in the international context, the jurisdictions represented on the panel have entered into certain bilateral double taxation treaties with partner states as summarised below. The panel highlighted that despite a broad range of double taxation treaties in place on income and wealth taxation, the DTT network with regard to inheritance/estate and (in certain cases) gift taxation is limited with regard to the involved jurisdictions and the scope of the respective DTTs.

	US	Austria	France	Switzerland	Italy	Germany

DTT partner states	Approx 15 DTTs in place in estate and gift tax matters (scope to be analysed on case-by-case basis)	n/a	Approx 30 DTTs in place on inheritance tax matters and approx ten on gift tax Currently, no inheritance tax treaty in force with Switzerland	US, UK, Germany, Netherlands, Sweden, Finland, Denmark Scope: only on inheritance/estate tax Currently, the DTTs with France, Norway and Austria are not in force	Denmark, France, Greece, Israel, Sweden, UK and US	Switzerland, US, Denmark, France, Greece
--------------------	---	-----	---	---	--	--

As a key finding of the first part of the session, the panellists agreed that the inheritance/estate tax exposure under the domestic legislation in each of the jurisdictions represented on the panel has to be analysed in detail in cross-border cases. This holds true especially for estates including family businesses, for bigger and/or multi-layered family structures, if trusts or other estate and succession planning measures are in place or shall be established, and if relocations to/from a jurisdiction and/or the acquisition of real property in a jurisdiction is contemplated. In practice, in view of its significant tax implications, the international double taxation exposure is to be carefully reviewed on a case-by-case basis and in collaboration with local taxation law specialists to allow a proper planning, assessment and handling of the exposure in practice, ideally already during lifetime. The tax exposure and various practical aspects, for example filing and payment obligations, do not only affect recipients/heirs but also, in practice, executors. In particular in complex cases, it shows it is recommended that HNWIs choose executors experienced in complex, multijurisdictional cases. Such experience should not only include good connections to local legal and tax specialists for a state-of-the-art handling of the tax and legal aspects entailed by a complex estate, but will, in practice, also ensure the proper acceptance of the executor and their actions by the estate's recipients and authorities.

Case Study

In the session's second part, the situation of a demised US national, tax resident and last domiciled in the US, was examined. The deceased individual held stock in US, Austrian, French, German, Italian and Swiss corporations conducting the family business and left the stock in equal portions to his children, all US citizens but domiciled in Austria, Germany, France, Switzerland and Italy.

	Deceased domiciled for estate tax purposes in	Recipients (heirs) resident in				
		US	Austria	Switzerland	France	Italy
Inheritance/estate taxes triggered in decedent's/recipient's jurisdiction?	Yes	No	No	No	No	Yes
DTT in place?			DTT would be in place between the US and Switzerland	DTT would be in place between the US and France	DTT would be in place between the US and Italy	DTT in place between the US and Germany

The inverse case with the deceased individual resident/domiciled for inheritance tax purposes in the jurisdictions represented on the panel would trigger the following inheritance/estate tax consequences in the deceased's respective countries of last residence:

	Deceased resident in				
	Austria	Switzerland	France	Italy	Germany
Inheritance/estate taxes triggered?	No (inheritance tax abolished)	Yes (on cantonal/communal level)	Yes	Yes	Yes

Planning techniques discussed on the panel to avoid or mitigate the tax exposure and/or double taxation in the international context include, inter alia:

- lifetime gifts;
- lifetime planning/change of tax residency/domicile for inheritance/estate tax purposes;
- the use of trusts;
- corporate restructurings (in particular in view of the Italian inheritance tax legislation);
- in certain cases, life insurance solutions; and
- shareholders' agreements with regard to business assets.

Typically, the key measures to avoid or mitigate inheritance/estate tax exposures and/or double taxation in the international context may only be taken during the deceased's lifetime. Under most legislation, the cited measures may, furthermore, only be validly implemented insofar as the (future) deceased is still mentally capable of undertaking financial transactions of a certain importance. Further limitations as to the (future) deceased's ability to implement planning measures may arise from the applicable matrimonial property and inheritance law framework. The panel agreed that a diligent and successful estate and succession planning requires the deceased's and ideally also the key recipients' awareness with regard to the relevant issues during lifetime. This can be achieved by a comprehensive, multijurisdictional analysis and advice on exposures and available measures as well as a careful implementation and regular review and update of the measures. In view of the past and upcoming changes, in particular in the respective jurisdictions' tax, civil law and banking/compliance legislation, a collaboration with experienced counsel is recommended not only for HNWIs and their future heirs but also for executors and, if applicable, trustees and further involved parties.

International Bar Association 2007

Our other websites

- [Rule of Law Directory](#)
- [Regulation of the legal profession](#)
- [IBA Anti-Money Laundering Forum](#)
- [IBA International Pro Bono](#)
- [Anti-Corruption Strategy for the Legal Profession](#)
- [IBA ICC Programme](#)
- [International Human Rights Fact-Finding Guidelines](#)
- [Managing Partners Toolkit](#)



Twitter updates



IBA News @IBANews

UK counter-terrorism watchdog
@terrorwatchdog: Europe 'getting act
together' w national security & #terrorism
laws ibanet.org/Article/Detail...

4h

IBA News Retweeted



IBAHRI @IBAHRI

.@MarkEllisIBA's expert reaction to the
judgement against Radovan #Karadzic. In
full: ibanet.org/Expert_Reactio...

"Today's verdict against Radovan Karadžić will hopefully help bring justice and accountability for the more than 100,000 people who died during the Bosnian war, and their surviving loved ones. However, the sentence of 40 years is disappointing. Sentencing practices at international criminal tribunals tend to suffer from a lack of consistency and transparency. Today's judgment against Radovan Karadžić is an example of such practices, complicated to understand and undoubtedly difficult to accept from the point of view of the victims. The Prosecution should appeal."

24 Mar

Our London office

International Bar Association
4th Floor, 10 St Bride Street
London, EC4A 4AD
United Kingdom

Tel: +44 (0)20 7842 0090
Fax: +44 (0)20 7842 0091

[Our other offices](#)