

Should I stay, or should I go?
Issues related to changing tax residency

Session Co-Chairs

- **Kevin Lee**, *Partner, Stephenson Harwood, Hong Kong*
- **Kira Egorova**, *Of Counsel, ALRUD, Russia*

Speakers

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- **Ellen Kratzer**, *Managing Director, Fiduciary Trust International, USA*
- **Heiko Wunderlich**, *Partner, SKW Schwarz, Germany*
- **Dhruv Janssen-Sanghavi**, *Nishith Desai Associates, Netherlands*

General considerations why people decide to move

- Tax
- Family interests
- Business
- Politics (domestic or geopolitical)
- Safety
- Easy travel and mobility access

US perspective

Ellen Kratzer

Fiduciary Trust International, USA





Expatriation from the USA

- Includes both U.S. Citizens and Green Card Holders (Legal Permanent Residents) who meet the definition of a Long-Term Resident
- American citizens who move abroad still have a responsibility to file their taxes with the IRS, sometimes in addition to taxes paid in their place of residence.

Why Do Expats Want To Renounce?

42% find filing U.S. taxes too great a burden

12% have married a non-U.S. citizen abroad

11% are concerned about the current political climate

10% are disappointed in the direction of the U.S. government

8% don't have strong ties to the U.S.

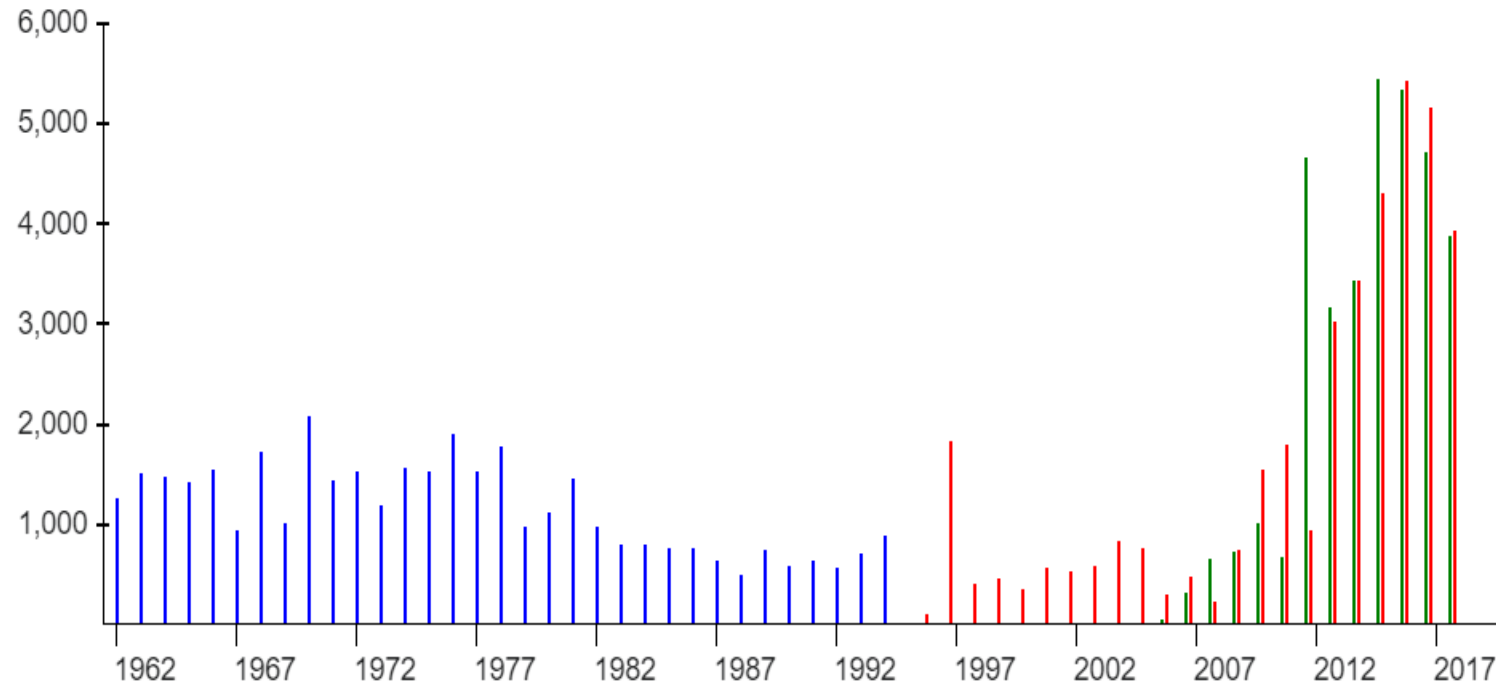
7% have difficulty dealing with foreign banks as a U.S. citizen

What Are They Giving Up?

Benefits of U.S. Citizenship:

- Protection of U.S. Citizens Abroad
- Consular Services Offered to US Citizens Abroad
- The Right to Vote in U.S. Elections
- Access to the U.S. Job Market
- Travel to the United States

How Many Americans Expatriate?



Blue: State Department Statistics from Joint Committee on Taxation

Green: National Instant Criminal Background Check System

Red: IRS Quarterly Publication of Individuals Who Have Chosen to Expatriate 1996-Present

Where Are They Going?



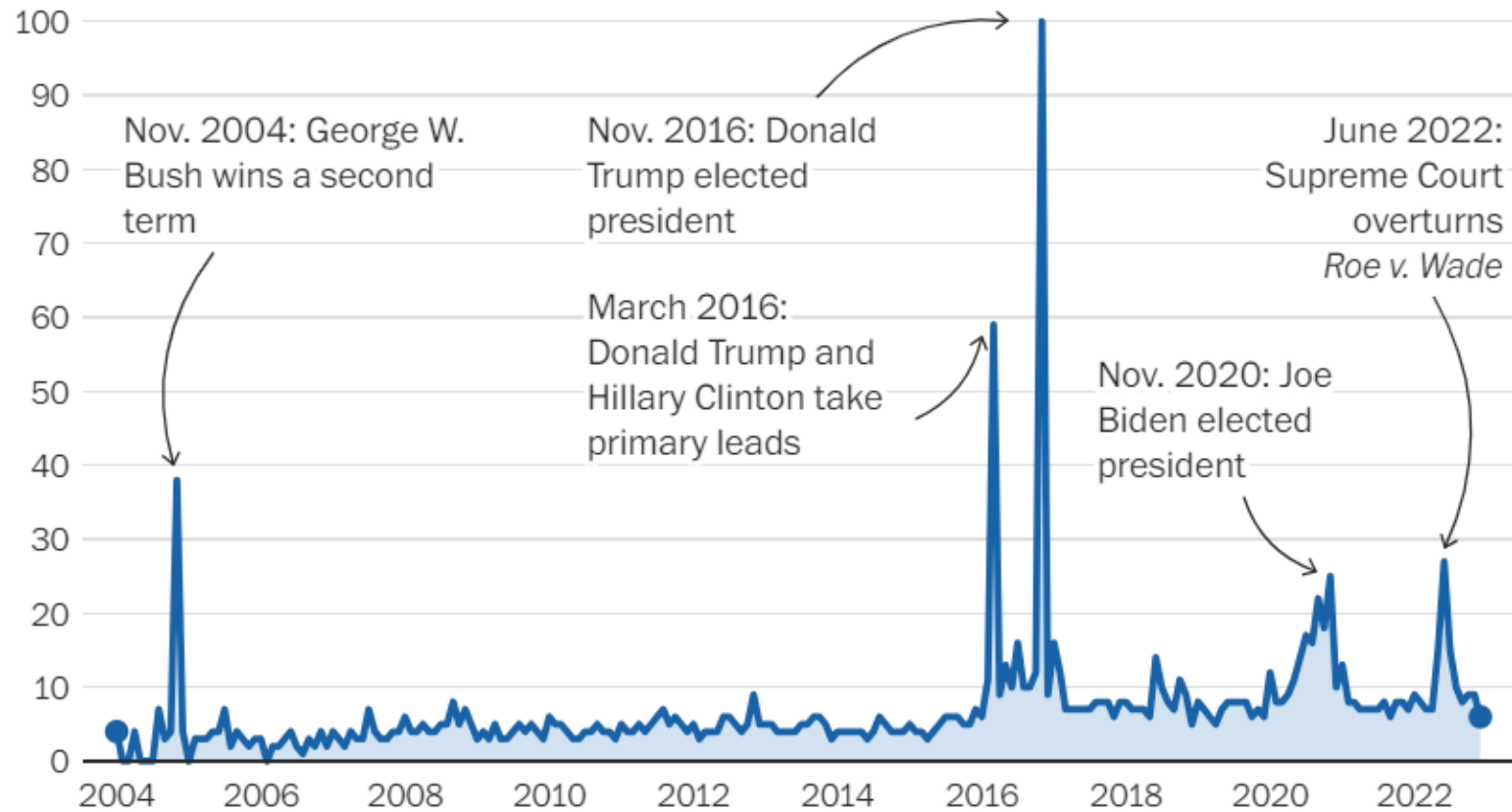
Where Do U.S. Expatriates Live?

| | Millennials | Professionals | Families | Retirees |
|-----------|----------------------|----------------------|-----------------|-----------------|
| 1 | Argentina | Nigeria | Finland | Ecuador |
| 2 | Estonia | Oman | Bahrain | Costa Rica |
| 3 | Ireland | Qatar | Cyprus | Philippines |
| 4 | Norway | Kazakhstan | Oman | Thailand |
| 5 | Germany | Kuwait | New Zealand | Portugal |
| 6 | United Arab Emirates | Bahrain | Chile | Mexico |
| 7 | Netherlands | Luxembourg | Qatar | Panama |
| 8 | Finland | Singapore | Denmark | Bulgaria |
| 9 | Poland | Kenya | Sweden | Spain |
| 10 | Oman | United Arab Emirates | Switzerland | France |

Source: InterNations • By The New York Times

Search interest in 'move to Canada'

Relative to its all-time peak, which is shown as 100



Source: [Google Trends](#)

DEPARTMENT OF DATA / THE WASHINGTON POST





How to Relinquish U.S. Citizenship

1. Swear an oath of renunciation at a U.S. embassy or consulate in a foreign territory or
2. During a state of war, swear an oath at a U.S. Citizenship and Immigration Services office in U.S. territory
3. Naturalize in a foreign country
4. Take an oath of allegiance in a foreign country
5. Serve in a foreign military
6. Serve in a foreign government
7. Commit treason, rebellion, or similar crimes

Primary Forms

- DS-4079: Request for Determination of Possible Loss of United States Nationality
- DS-4080: Oath of Renunciation of the Nationality of the United States
- DS-4081: Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of US Citizenship
- DS-4082: Witnesses' Attestation Renunciation/Relinquishment of Citizenship
- DS-4083: Certificate of Loss of Nationality of the United States

Oath of Renunciation of Nationality of United States:

I desire and hereby make a formal renunciation of my U.S. nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act of 1952, as amended, and pursuant thereto, I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties and allegiance and fidelity thereunto pertaining. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence.

Cost of Expatriation

- The State Department charges a flat fee for renouncing US citizenship, which is currently \$2,350. Depending on your tax status, you may also have to pay additional taxes when renouncing your citizenship.
- Renouncing US citizenship can trigger an Exit Tax under certain conditions. This tax applies if your net worth exceeds \$2 million or your average annual net income tax for the past 5 years exceeds a specified threshold.

Potential Planning Strategies

- Outright Gifts to Spouse and Others
- Gifts to Trusts/Transfer Tax Strategies
- Expatriation Trust
- Sale of Personal Residence
- Domicile Planning



Chilean perspective

Carolina Fuensilada
Fuensalida & Del Valle Abogados, Chile



Why high net worth individuals leave the country? Why are they incorporating/transferring their structures abroad?

- ❖ **“Social/Criminal Outbreak”** occurred in October 2019, where a series of widespread protests and vandalism acts took place in Chile. The latter resulted in political and economic instability, together with the proposal to reform the Constitution (rejected twice already).
- ❖ A Tax Reform Proposal introduced in 2022 aimed to establish a **wealth tax**. However, such Tax Reform Proposal was rejected in 2023.
- ❖ **Wealth protection** and search for robust jurisdictions where Chilean clients are able to diversify their investments.
- ❖ **Controlled Foreign Companies Rules (“CFC”)**



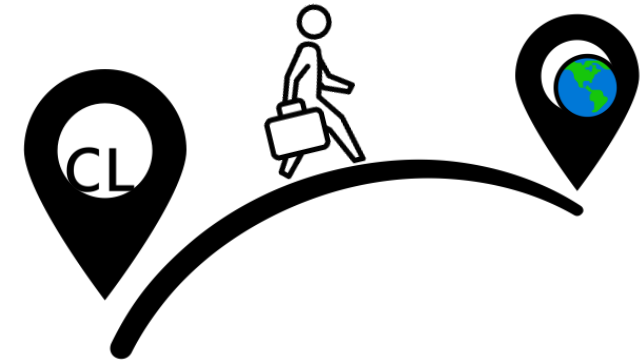
Main jurisdictions chosen by Chilean high net worth individuals who decided to leave the country

- ❖ In our experience, Chilean clients who have moved abroad have acquired residence and domicile in the following countries: **United Kingdom, Uruguay, Portugal, Italy and USA.**
- ❖ All these jurisdictions share that they have **robust legislations**, backed by **reputable institutions**, have limited political risk, and a **strong international reputation**.
- ❖ With regards to **Incorporation or migration of Chilean structures (not individuals)**, we have proposed United Kingdom, Canada/USA, Guernsey and Jersey.



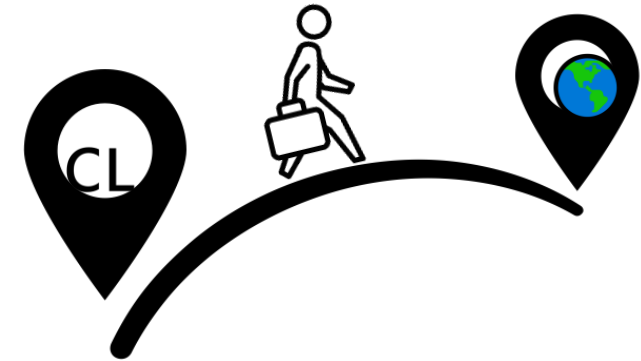
Brief overview of loss of Residency and Domicile of Chilean taxpayer

- ❖ **Residency** in Chile is acquired with the permanence (physical presence) in our country, whether uninterruptedly or not, for a period or periods that in total exceeds 183 days, within any twelve-month period.
 - Residence is **lost** if an individual remains outside of Chile for more than 183 days.
- ❖ The Tax **Domicile** corresponds to the residency (mentioned above) together with the intention to remain in Chile.
 - For tax purposes, the main place of business should be taken into account to determine an individual's domicile.
 - The tax domicile is **lost** when the main place of business is located abroad.



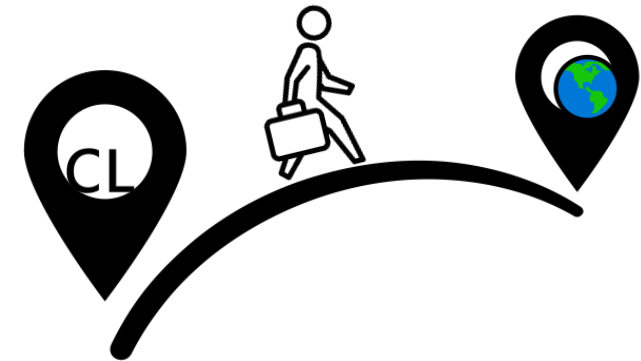
Tax Planning for Loss of Residence and Domicile – No Exit Tax

- ❖ In Chile, **tax pre-planning** is closely tied to the loss of domicile, as residency is merely a matter of fulfilling a time requirement.
- ❖ Tax advisory in this regard primarily aim to **relocate the main source of income and or outside of Chile** and/or **transfer the majority of assets abroad if possible**.
- ❖ Chile does **not have an Exit Tax** that must be paid upon leaving the country.



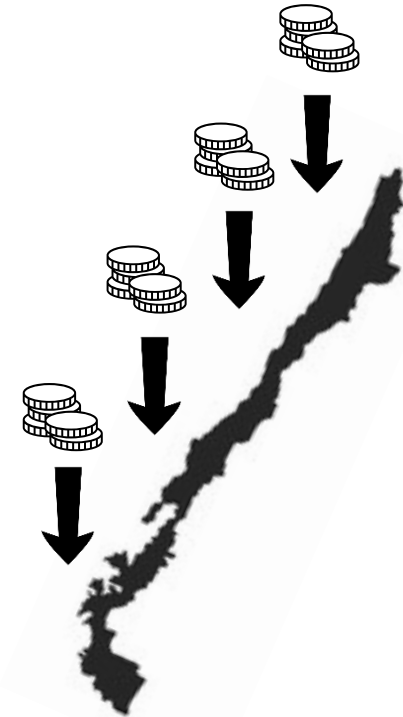
Assets leaving behind and relevant indirect taxes for non-residents

- ❖ The clients that lose domicile and residency in Chile will only be subject to taxation on **Chilean-source income** as a foreign taxpayer.
- ❖ As a general rule, Chilean legislation imposes a **35% Withholding Tax** regarding Chilean-source income (which is reduced if Tax Treaties are applicable and regarding certain special types of income). **Dividends** distributed by a Chilean company are always subject to a 35% Withholding Tax, even in cases where Chile has signed a double taxation agreement. (*“Cláusula Chile”*).
- ❖ Chilean legislation establishes a **capital gain tax (35%) to the indirect transfer of Chilean Assets**, if certain thresholds are met, which includes withholding obligations imposed to the purchaser.



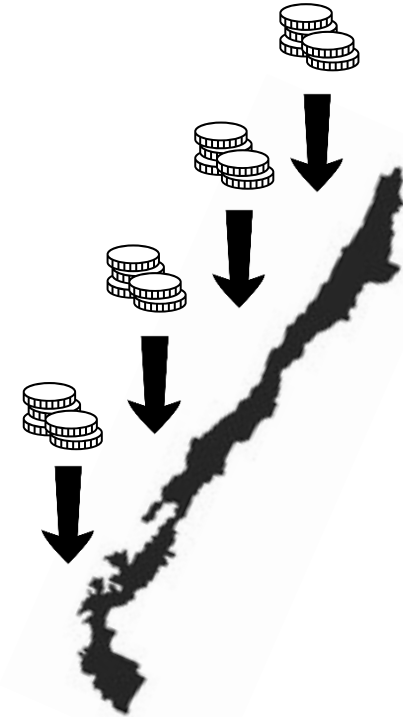
Management and control issues for business activities and structures from overseas location

- ❖ As a general rule, Chilean legislation **does not impose limits or prohibitions to the management and control** of Chilean entities from abroad. However, for practical issues, the ordinary business of a company shall be managed in Chile by a Chilean resident and, additionally, a Chilean resident must be appointed as legal representative before the Chilean IRS.
- ❖ Individuals and entities domiciled, and resident abroad **must appoint a Chilean resident/domiciled representative before the Chilean IRS**. If the Chilean representative carries out certain activities in Chile, there is a risk of creating a **permanent establishment** in our country.
- ❖ Entities domiciled and resident abroad must obtain a **Tax Identification Number** in Chile and for such purposes a series of information regarding the foreign entity and its partners are required.



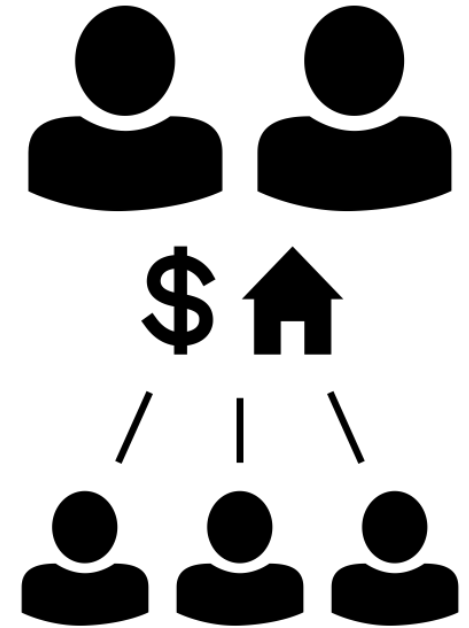
Reporting Obligations to be fulfilled

- ❖ Prior to leaving the country, individuals seeking to lose their tax domicile and residency shall **inform the Chilean IRS and declare and pay the personal income tax** owed by residents in Chile (accrued until the date of departure from the country).
- ❖ Investors benefiting from the Tax Treaties entered with Chile must provide a **residence certificate** and submit an **affidavit** stating that they do not have a permanent establishment in Chile and that they meet the requirements to be a beneficiary of the treaty.
- ❖ Foreign taxpayers receiving Chilean-source income whose taxation tax has not been withheld or who are entitled to a refund, must file an **annual tax return** in Chile.



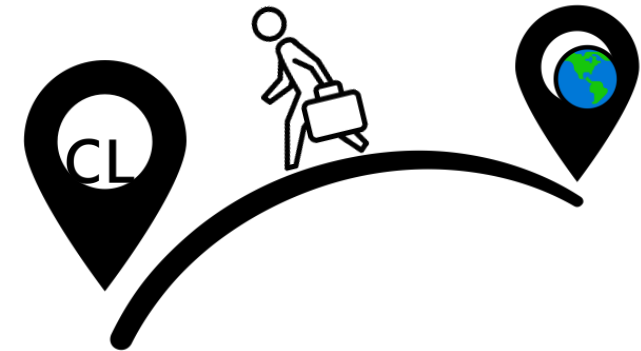
Relevant Inheritance Tax Issues applicable to Non-Resident Clients

- ❖ Chilean legislation imposes an **Inheritance Tax** to the assignments made because of the death of an individual who had their **last domicile in Chile**.
- ❖ In the case of a **deceased foreign individual**, the Inheritance Tax is applicable to assets located in Chile and to assets located abroad that were acquired with funds originating in Chile.
- ❖ **Lack of certainty** regarding the Inheritance Tax's connecting factors (whether domicile or nationality). Specially, it is not clear which assets are subject to Inheritance Tax in the case of the inheritance of a Chilean individual with its last domicile abroad.



Return to Chile from a Tax standpoint

- ❖ Upon leaving Chile, the **statute of limitation** for the Chilean IRS' assessment powers are suspended for the period of absence from the country, with a maximum of 10 years.
- ❖ **Tax Haven.** Foreigners acquiring residency and domicile in Chile are subject to a special statute during the first 3 years where they only pay taxes in Chile on their Chilean-source income. There is a lack of clarity if such Tax Haven is applicable to foreigners who regain domicile or residency.
- ❖ Chilean domicile/resident taxpayers must fulfil **information obligations** to the Chilean IRS, including the information of their investments held abroad.



German perspective

Heiko Wunderlich
SKW Schwarz, Germany



Selected aspects of German Exit Tax and German Foreign Tax Law

Overview:

1. German Foreign Tax Act and Exit Tax regarding natural persons – brief introduction;
2. Tax impacts for family members left in Germany / dual residence tax issues;

German Foreign Tax Law: natural persons

1. German Foreign Tax Act and Exit Tax regarding natural persons – brief introduction

- Exit tax (broader meaning):
 - Distinction between German citizens and others;
 - Taxation of German citizens moving abroad:
 - a) - **Income tax § 2 FTA: 5 within 10 years** unlimited taxation (i.e. being resident) as **German citizen** and moving to **low tax area: unlimited income taxation for another 10 years after leaving**;
 - special CFC rule (§ 5 FTA): for persons being subject to § 2 FTA;
 - b) **Inheritance and Gift Tax § 4 FTA**: refers to § 2 FTA for appliance;
 - not applicable if comparable foreign tax at least 30 % of German tax;
 - inheritance and gift tax as being subject to unlimited taxation (i.e. being resident) for German assets **for another 10 years** after exit;

German Foreign Tax Law: natural persons

- c) Exit Tax § 6 FTA (actual exit tax): details next page;
- d) CFC rules §§ 7, 8 to 13 FTA: classical cfc-rules;
- e) foreign family foundations § 15 FTA: special rule for attributing income of foreign family foundations to founders or beneficiaries being subject to German unlimited taxation (i.e. being German tax residents);

German Exit Tax

Exit Tax § 6 FTA at glance:

General idea: taxation of shares held in corporations (not partnerships!) according to

§ 17 ITA by German residents (i.e. unlimited taxation) when

- Moving abroad (ending unlimited taxation by giving up residence or habitual abode);
- Transfer of shares without valuable consideration to a person (including entities like foundations) not being subject to German unlimited taxation (i.e. not being German tax resident);
- Limitation of Germany's right to tax capital gain from shares;

Persons being subject to unlimited taxation according to § 6 FTA:

- within the last 12 years at least 7 years subject to unlimited taxation;
- In case of transfer without consideration: status of person transferring shares taken into account.

German Exit Tax

Exit Tax § 6 FTA at glance:

- Intention of repatriating to Germany:
Repatriation to Germany as tax resident (i.e. unlimited taxation) within 7 years after leaving: exit tax ceases retroactively if:
 - shares not sold, transferred or contributed to a business in the meaning of ITA („steuerliches Betriebsvermögen“);
 - transfer due to inheritance not harmful if person receiving shares himself does fulfill criteria mentioned;
 - upon application GTA may enlarge 7 year period for a maximum of 5 years once if reasons and the intention to come back still exist;
- Triggering tax:

Please note that there is no exemption for moving to EU/EEC states any more!

Upon application GTA may grant a payment in 7 identical installments;

German Exit Tax

Exit Tax § 6 FTA at glance:

- For calculation of tax § 6 FTA refers to § 17 ITA: taxation of capital gain for shares in a corporation with at least 1 % held at least at one point in time within the last 5 years;
- shares held directly or indirectly taken into account;

One option to avoid exit tax:

- Contributing shares to partnership with business assets can avoid triggering exit tax, as partners do create PE in Germany; assets held in PE are subject to German Income Tax and Trade Tax;
- DTT to be taken into account;

Taxation of Family Members / Dual Residence

2. Tax impacts for family members left in Germany / dual residence tax issues

- generally tax assessment (e.g. income tax) separately to each natural person (e.g. family member);
- for spouses possible to apply for joint assessment separately each year; no binding for the next year;
- theoretically possible that only one spouse has German residence;
- However, in practice following principle applies:
 - „The centre of vital interests of a person is generally there where his wife lives and his children go to school“;
- substance over form principle applies and taxpayer will have to proof to GTA that he really has no residence in Germany;

Indian perspective

Dr. Dhruv Janssen-Sanghavi
Nishith Desai Associates, The Netherlands

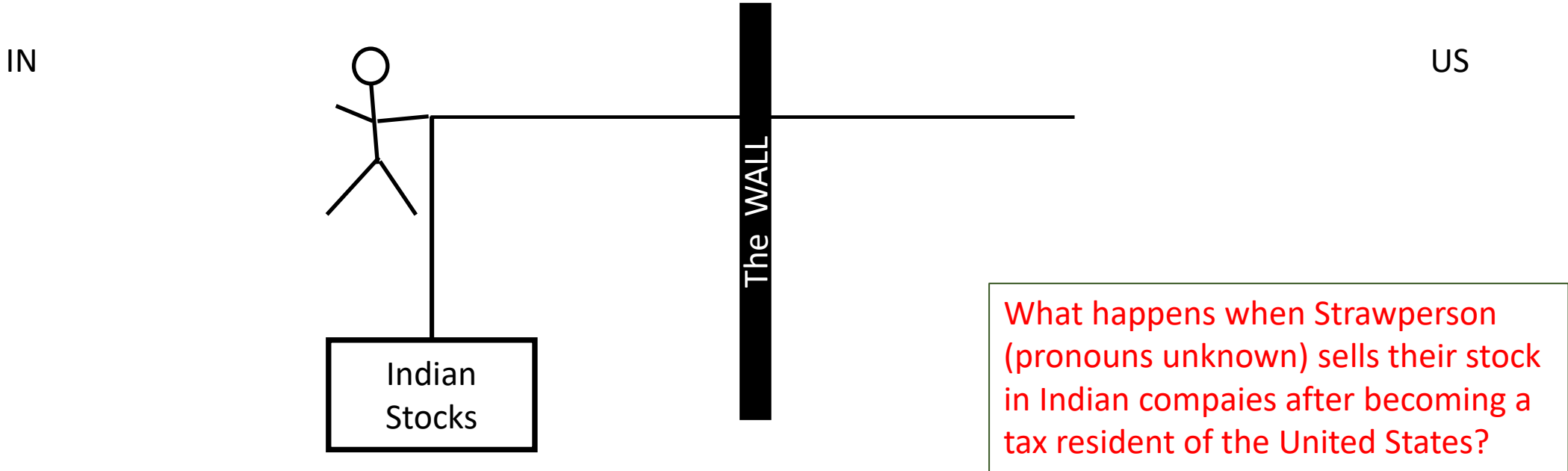


India has no exit taxes – what tax issues could arise for an Indian expatriate?

Some tax issues:

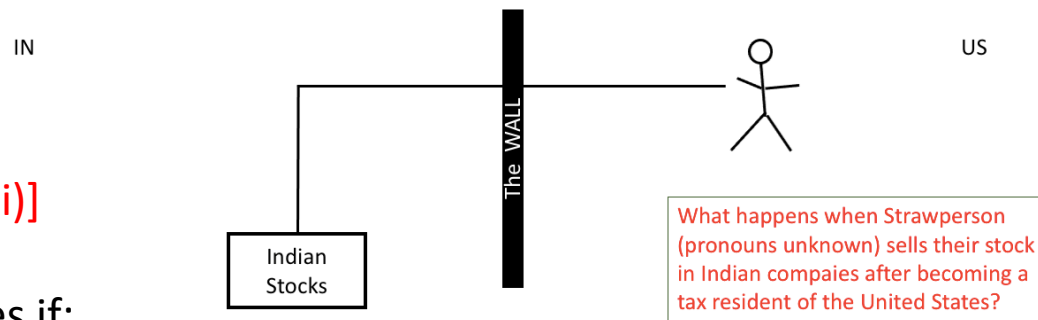
- Issues with double taxation between the United States and India
- Dual residence of privately controlled entities
- Exit taxes in the other state (for highly mobile individuals)

Double taxation between the United States and India



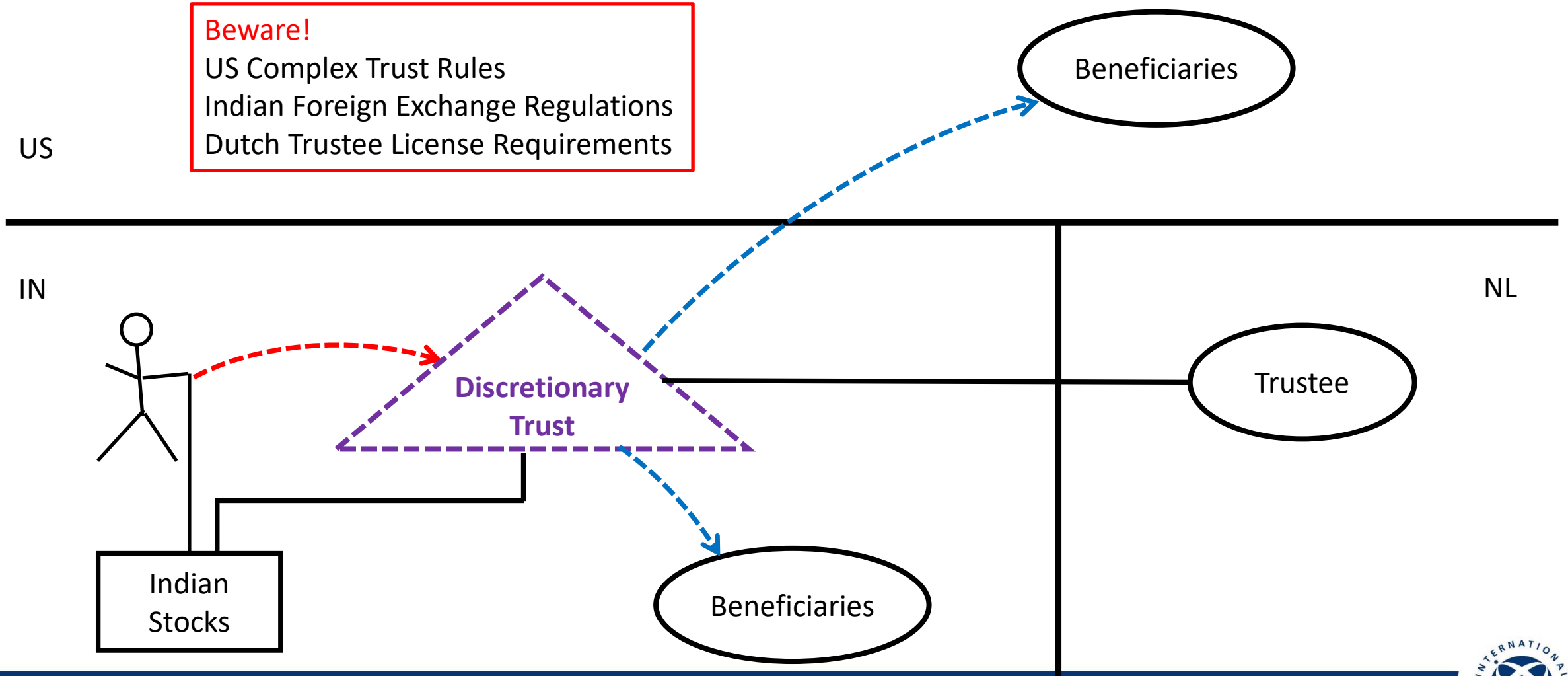
Double taxation between the United States and India

- India wants to tax capital gains as the **source state** [S. 9(1)(i), ITA]
- US wants to tax capital gains also as **source state** [US Code S. 865(a)(i)]
- Code section 865(h)(2)(A)(ii) – gain sourced outside the United States if:
 - “**under a treaty obligation** of the United States (applied without regard to this section), **would be sourced outside the United States**”
- Article 13 of the US-India tax treaty:
 - “**each Contracting State may tax capital gains in accordance with the provisions of its domestic law.**”
- Article 25(3) of the US-India tax treaty:
 - “...the determination of the source of income for purposes of this article **shall be subject to such source rules in the domestic laws** of the Contracting States as apply for the purpose of **limiting the foreign tax credit**”
- Double taxation in the US and India a result of a **source-source conflict**
- **Relief doubtful!**



Double taxation between the United States and India

A potential solution



Article 4(1) of the MLI → New Article 4(3) OECD Model

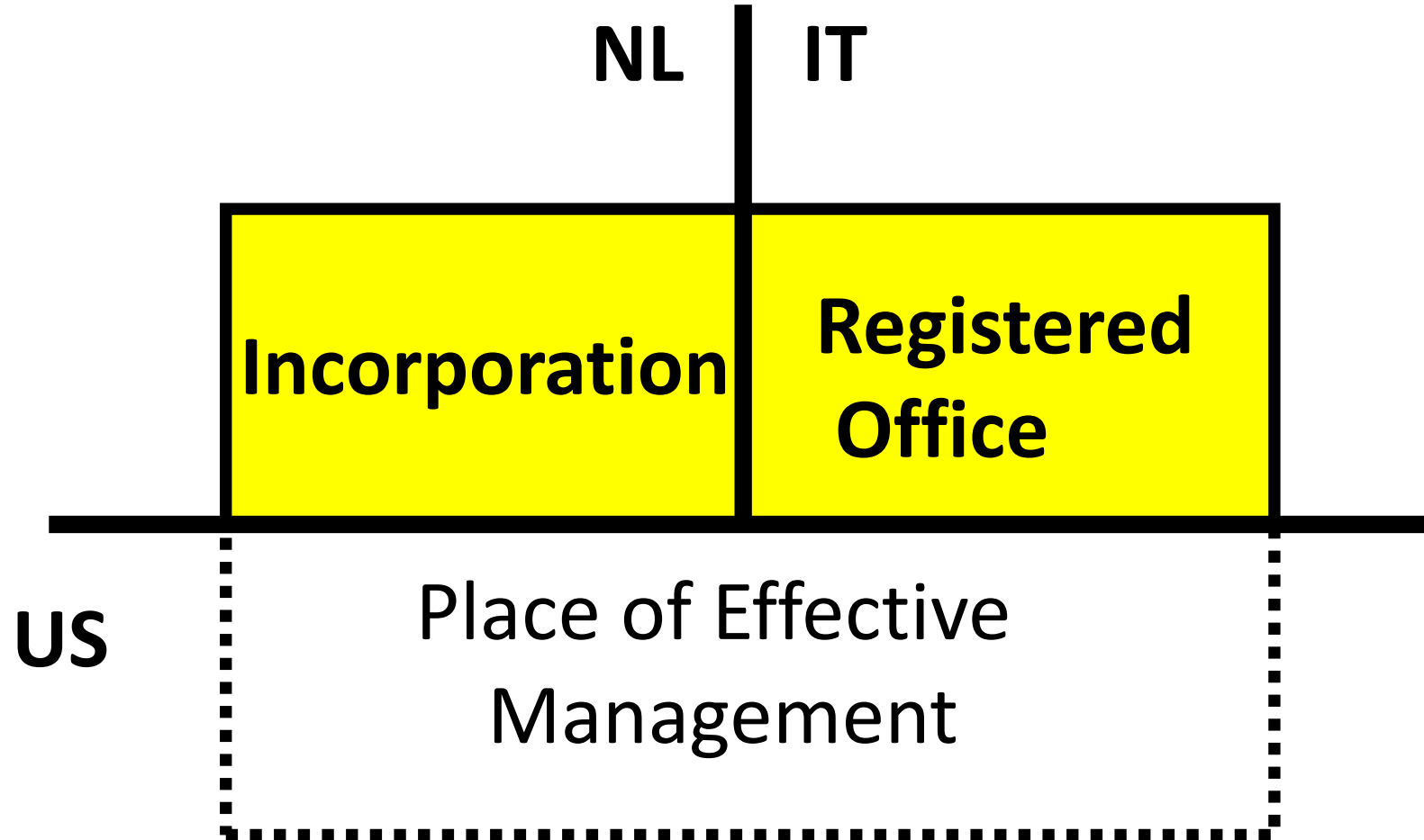
1st sentence:

“Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, ~~then it shall be deemed to be a resident only of the State in which its **place of effective management** is situated~~ the **competent authorities** of the Contracting States **shall endeavour to determine by **mutual agreement**** the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors.”

2nd sentence:

“**In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention** except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”

Why was this change made?



New Article 4(3) - motive



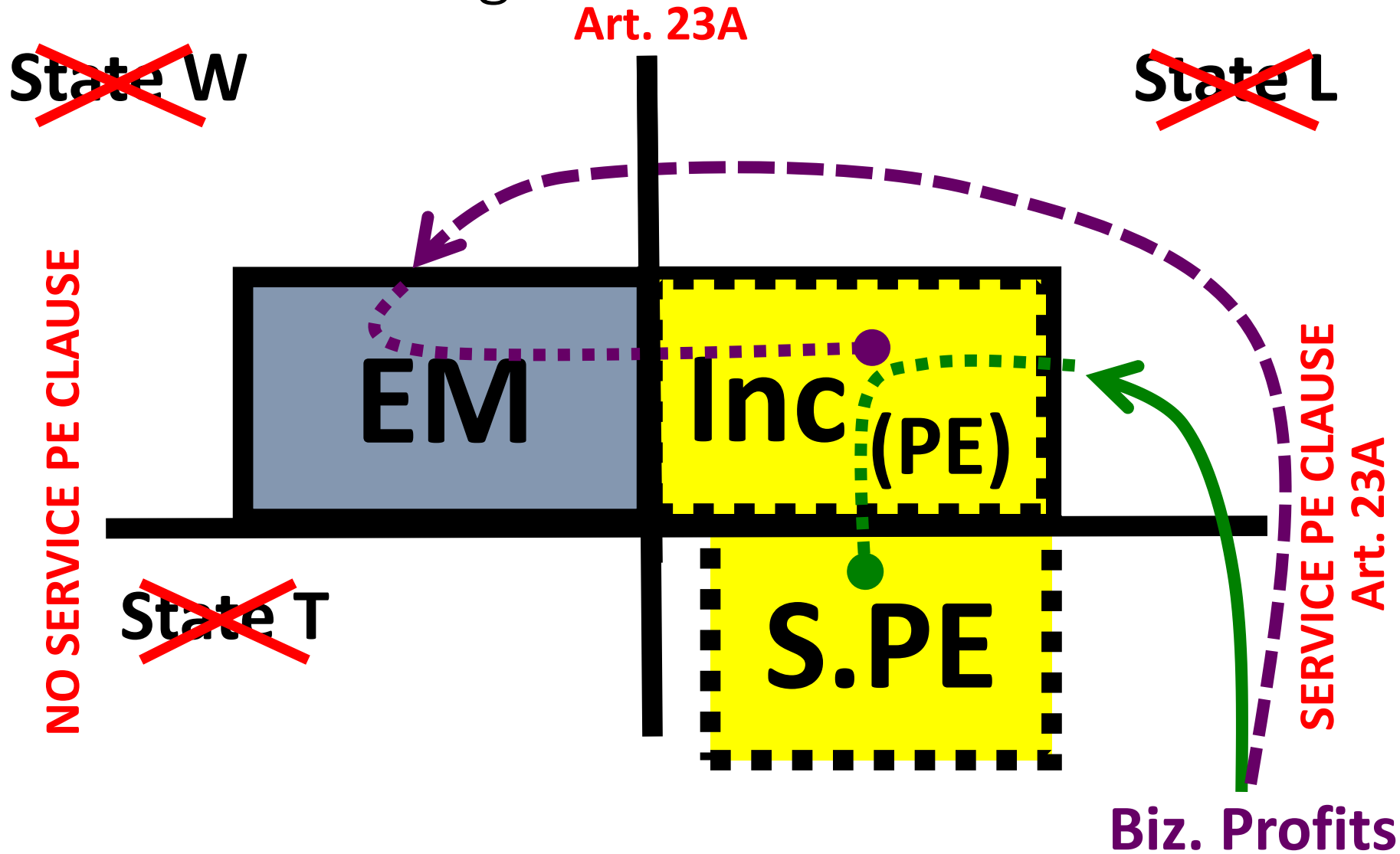
OECD/G20 Base Erosion and Profit Shifting
Project

Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

ACTION 6: 2015 Final Report



Motive for change



The New Article 4(3)



Exit taxes in the other State (for example, the Netherlands)

- A foreign person (say a fund manager) may become a resident of the Netherlands
- A resident is subject to a full exit tax (subject to EU law requirements), should they leave the Netherlands (not currently applicable to taxpayers with the 30% ruling until 1 January 2026)
- An Indian or US citizen may have migrated to the NL temporarily
- Important to maintain dual-residence for the entire period of the Dutch adventure such that the tie breaks in favour of home state!

Russian perspective

Kira Egorova
ALRUD, Russia



Russia: Taxation and Reporting Obligation

- No direct exit tax connected to relocation
- Taxation of non-residents:
 - 30% personal income tax on proceeds from the sale of assets (prohibition on deduction of expenses by non-residents except for expenses on shares; tax exemption on ownership for at least 3 or 5 years)
 - Obligation to pay property taxes
 - 13/15% personal income tax for Russian companies' remote workers (regardless of tax residency)
- Possible reporting obligations in the year of leaving Russia and in the year of possible return:
 - Notification on controlled foreign companies
 - Reporting on foreign accounts
 - Tax return on the world-wide income

More things to consider

- Russian countersanctions – cash flow restrictions (affect all Russian citizens)
- Currency control rules and limitations for Russian citizens
- Partial suspension of certain Russian Double Tax Treaties
- Proper reporting, payment of relevant taxes, currency regulation compliance to save come-back option
- Compliance on source of funds, review and checkup on title documents
- Inheritance and family law implications for those who have Russian connections

Chinese perspective

Kevin Lee

Stephenson Harwood, Hong Kong

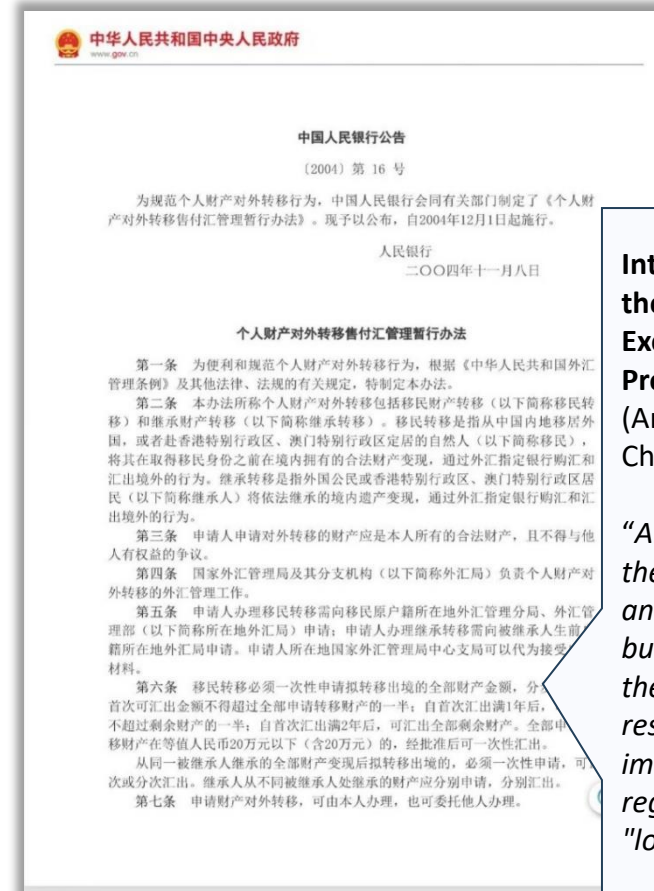


China: Taxation and Reporting Obligation

- Current motives and reasons for the clients and their families to leave
- Application under the Interim Administrative Measures for the Purchase and Payment of Foreign Exchanges Due to Transfer of Individual Properties outside Mainland China

China: Money Transfer due to Immigration

- Understanding the application
 - Cash Only
 - Single opportunity
 - A clear source of funds and tax compliance
 - Involvement in criminal or civil litigation can lead to the rejection of an application
- Issues related to existing domestic enterprises which are no longer controlled by a PRC resident after the departure



Interim Administrative Measures for the Purchase and Payment of Foreign Exchanges Due to Transfer of Individual Properties outside Mainland China
(Announcement of the People's Bank of China [2004] No. 16)

"Article 5 An applicant that applies for the transfer due to emigration shall file an application to competent local branch bureau of foreign exchange control or the office of foreign exchange control responsible for the region where the immigrant's former household is registered (hereinafter referred to as "local foreign exchange bureau")."

Canadian perspective

Kevin Lee

Stephenson Harwood, Hong Kong

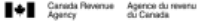


Canada: Taxation and Reporting Obligation

- Current motives and reasons for the clients and their families to leave
- Departure Tax
- Existing businesses: small business corporation may face higher tax rates if no longer Canadian Controlled Business Corporation

Canada: Deemed Disposition

- Deemed to have disposed of certain types of property at fair market value when you left Canada and to have immediately reacquired them for the same amount
- Most properties included, exceptions for “excluded right or interest”
- Filing specific forms with the Canada Revenue Agency
- Payment date of 30 April of the year after departure, unless elected to defer the departure tax
- Issues to consider

 Canada Revenue Agency / Agence du revenu du Canada Protected B when completed

Deemed Disposition of Property by an Emigrant of Canada

| | | |
|-----------------|--------------------------------|-------------------------------|
| Last name | First name | Social insurance number (SIN) |
| Mailing address | Date of emigration from Canada | Year Month Day |

Complete this form if you are an individual who ceased to be a resident of Canada in the year and you were deemed to have disposed of property when you left Canada, **excluding** properties such as:

- 1) Canadian real or immovable property, Canadian resource property, and timber resource property
- 2) Canadian business property (including inventory) if business is carried on through a permanent establishment in Canada
- 3) pension plans, annuities, registered retirement savings plans, pooled registered pension plans, registered retirement income funds, registered education savings plans, registered disability savings plans, tax-free savings accounts, deferred profit-sharing plans, employee profit-sharing plans, employee benefit plans, salary deferral arrangements, retirement compensation arrangements, employee life and health trusts, rights or interests in certain other trusts, employee security options subject to Canadian tax, interests in certain personal trusts resident in Canada, and interests in life insurance policies in Canada (other than segregated fund policies). (For a complete list, refer to the definition of "excluded right or interest" in Subsection 128.1(10) of the Income Tax Act)
- 4) property you owned when you last became a resident of Canada (or property you inherited afterward) if you were an individual who was a resident of Canada for **60 months or less** during the 10-year period before you emigrated and you are not a trust

Note: If you ceased to be a resident of Canada and you elected to declare the deemed disposition of properties listed in item 1 or item 2 above, include those properties when calculating your deemed dispositions and complete Form T2061A, Election by an Emigrant to Report Deemed Dispositions of Property and Any Resulting Capital Gain or Loss.

Use the table on the next page to calculate your capital gains (or losses) for the properties you were deemed to have disposed of. Enter "C" for Canadian properties or "F" for foreign properties (outside Canada). If some or all of your investments are in a portfolio, provide a complete breakdown and include those capital gains (or losses) on your Schedule 3, Capital Gains (or Losses). Also complete Form T1161, List of Properties by an Emigrant of Canada, if applicable.

To defer the payment of tax on income relating to the deemed disposition of property, complete Form T1244, Election, under Subsection 220(4.5) of the Income Tax Act, to Defer the Payment of Tax on Income Relating to the Deemed Disposition of Property.

Attach a copy of this form, and Schedule 3, if applicable, to your return.

T1243 Deemed Disposition of
Property by an Emigrant of Canada

Thank you for your attention!





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the legal profession®