

International Executive Breakfast Forum
*Estate and Wealth Preservation Planning for
Multi-Jurisdictional Individuals*

Presented by:

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Chicago, IL

- > Breakfast and Networking – 7:30 a.m.
- > Presentation – 8 a.m. to 8:30 a.m.
- > Executive Discussion – 8:30 a.m. to 9 a.m.

Feel free to stay and network with attendees.

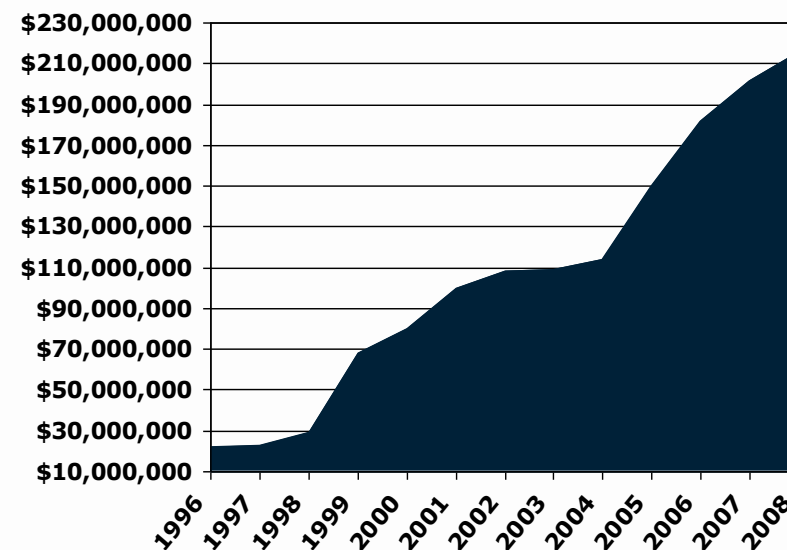
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About Baker Tilly Virchow Krause, LLP



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- > Established in 1931
- > 17th largest U.S. CPA and consulting firm*
 - > According to the 2008 Public Accounting Report's "Top 100."
- > More than 1,300 professionals with more than 150 partners and 486 CPAs
- > Expanded operations to New York City in May 2009
- > Clients served: Start-ups to Fortune 100
 - > Majority of clients are closely-held, middle-market businesses
- > \$216M FY08 revenue



Baker Tilly International

- > Baker Tilly Virchow Krause, LLP is the largest U.S. member
- > 8th largest network in the world by combined revenue
- > 110 countries worldwide
- > 25,000 people employed by member firms
- > U.S. \$2.95 billion combined revenue of member firms, a 9% year-on-year increase

Domestic and International Estate and Trust Planning: U.S. Has Three “Transfer Taxes”



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- > Estate tax
 - > Rates as high as 45% currently
- > Gift tax
 - > Gift tax is paid by donor
 - > Rates as high as 45% currently
- > Generation skipping transfer tax
 - > Source of tax depends upon type of transfer
 - > Rates as high as 45%

Difference In Worldwide U.S. Income Tax/Transfer Tax Nexus



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- > Worldwide income tax nexus
 - > Based on “residency”
 - > 183 day presence test
 - > Green card test
 - > First year election test
- > Worldwide transfer tax nexus
 - > Based on “domicile”

Conclusion: May be one and not the other

U.S. Transfer Tax Considerations for “Resident” Aliens (“Domiciliaries”)



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> Estate tax

- > Imposed on the worldwide assets of a decedent who was a domicile of the U.S. at the time of death

> Gift tax

- > Imposed on each lifetime, gratuitous transfer of property, wherever situated, by a person who was a domicile of the U.S. at the time of the transfer

> Generation skipping tax

- > Imposed on each transfer that is a direct skip, taxable distribution, or taxable termination where the transferor was a domicile of the U.S. at the time of the initial transfer of property (i.e. whether by death or lifetime gift) regardless of whether the beneficiary is a U.S. citizen, U.S. resident, or a non-resident alien
- > *Note:* Residence for transfer tax purposes is determined by where the person is “domiciled” at the time of the subject transfer (i.e. transfer by reason of death or gift). A person acquires a “domicile” in a place by living there, for even a brief period of time, with no definite present intention of later removing there from. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile.

Bi-lateral U.S. Transfer Tax Treaties



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- > Australia
- > Austria
- > Canada
- > Denmark
- > Finland
- > France
- > Germany
- > Greece
- > Ireland
- > Italy
- > Japan
- > Netherlands
- > Norway
- > South Africa
- > Sweden
- > Switzerland
- > U.K.

U.S. Transfer Tax Considerations for Non-Domiciled Aliens



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> Estate tax

- > Imposed only on the property of a decedent who was not a domicile of the U.S. at the time of death to the extent any such property is situated within the U.S. under exceedingly complex situs determination rules.

> Gift tax

- > Imposed on each lifetime, gratuitous transfer of property by a person who was not a domicile of the U.S. at the time of the transfer to the extent the property consists of tangible personal property or real property that is situated in the U.S. at the time of transfer. Gift transfers of intangible property by non-resident aliens are not subject to the imposition of a U.S. gift tax. Determination of property situated in U.S. is subject to specific rules.

U.S. Transfer Tax Considerations for Non-Domiciled Aliens (cont')



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- > Generation skipping tax
 - > Imposed on each transfer that is a direct skip, taxable distribution or taxable termination where the transferor was a non-domicile of the U.S. at the time of the initial transfer and the property at the time of the initial transfer was situated in the U.S. regardless of whether the beneficiary is a U.S. citizen, U.S. resident, or a non-resident alien. For purposes of the GST tax, lifetime gift transfers of intangible property are not considered to be a transfer of property that is situated in the U.S.

Exclusions, Deductions and Credits Available to a Transfer by a Non-Domiciled Alien



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Such person may or may not be entitled to the same exclusions, deductions, and credits available to a citizen of the U.S. Certain modifications and general rules are as follows:

- > Annual exclusion from gift tax is allowed to NRAs
- > Intangible property is not subject to gift or generation skipping tax if transferred by NRA
- > No gift splitting with spouse unless both spouses are citizens or residents of the U.S.
- > Exclusion from gift tax for payment of education or medical expenses applies
- > NRAs are not entitled to unlimited marital deduction unless donee spouse is U.S. citizen. If donee spouse is not U.S. citizen, present interest exclusion is \$100,000 per year (indexed annually; i.e., 2006 amount was \$120,000 and so forth and current amounts in 2009 are slightly higher from indexing)

Exclusions, Deductions and Credits Available to a Transfer by a Non-Domiciled Alien (cont')



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- > Unlimited charitable deduction with restrictions relating to charity or use of property within U.S. and subject to certain worldwide asset disclosures under IRC Section 2106(b)
- > *Note: The rules stated above may be modified by tax treaties with the U.S. and the person's country of citizenship*
- > Limit on deduction for debts (including mortgage on U.S. situs real property) and expenses of estate in proportion to value of estate situated in U.S.
- > Reduced unified credit for NRAs for estate tax (applicable exclusion amount, presently \$60,000); no unified credit available for lifetime gifts of U.S. situs property made by NRA
- > No foreign death tax credit available to estates of NRAs
- > Credit for estate tax and gift tax on prior transfers under IRC Section 2012 and 2013 is allowed to estates of NRAs under IRC Section 2102
- > Generation skipping transfer tax exemption amount is allowed (same as estate tax exclusion amount)

Cross-Border Planning Example: French Inheritance Tax Update



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- > 1/1/08: French inheritance tax abolished between spouses and civil partners (i.e. Pacte Civil de Solidarite)
 - > Formerly as high as 40%
- > Increased exemptions for inheritances for various categories of family members
- > Euro 150,000 gift tax exemption for transfers from each spouse to a child every 6 years
- > Estimated that 95% of all French will be exempted from inheritance tax
- > Applies equally to expatriate residents of France

Cross Border Planning Example: Inbound Executives to France



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- > Five-year favorable treatment under Article 81B of the French General Tax Code if inbound executive was not a French resident during the prior five years
- > Workdays out of France exempt from French tax if exempted compensation does not exceed 20% of pay
- > Other main exemption from tax is for all reimbursements related to assignment such as relocation costs, expatriate premiums, and cost of living allowances which must be clearly stated in the contract. To qualify for exemption, salary must be on par (and not exceed) what similar workers in France make

Cross Border Planning Example: Outbound Executives From France



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- > Revision to Article 81A of the French Tax Code
- > Foreign income exempt from French tax if foreign tax is at least 2/3rds of the tax that would have been paid in France on the same amount
- > Benefit is extended to all French tax residents regardless of nationality
- > Travel abroad hardship allowances tax exempt capped at a maximum of 40% of compensation

Things An Internationally Situate Executive Should Never Do Without Consulting A U.S. Transfer Tax Planning Expert

- > Move to the U.S. for any length of time for any purpose
 - > Domicile issues?
- > Obtain a U.S. Green Card
 - > 50% the way there to being a domicile!
- > Obtain U.S. citizenship
 - > De jure domicile status
- > Give up a Green Card
 - > Special transfer tax and income tax expatriation rules may catch you
- > Give up U.S. citizenship
 - > Can be banned permanently from U.S./special expatriation rules
- > Marry a U.S. person
 - > Special will and trust provisions required for proper transfer tax planning

- > Create a non-U.S. situs trust for U.S. person beneficiaries
 - > U.S. tax rates can be 100% on distributions
 - > Create any trust anywhere in the world without considering the potential that U.S. person beneficiaries may materialize
 - > Loss of planning opportunities to avoid 100% tax potentials
- > Make gifts from anywhere in the world to U.S. persons anywhere in the world
 - > U.S. situs property and subject to 46% rates
 - > Penalties for failure to adequately report (35%)
- > Invest in U.S. stocks or other U.S. situs property
 - > Maybe subject to U.S. transfer tax but U.S. income tax.
 - > Need pre-mortem planning to “unload” U.S. estate tax liability

Executive International Assignment Contracts: Your Bridge to Success In A Far Away Land



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Purposes:

- > Define Direct International Relocation Benefits
- > Tax Totalization Formulas
- > Determination Eligibility for Incentives and Tax Treatment of the Same
- > Miscellaneous Issues Treated and Finalized

Direct International Relocation Benefits: Get the Standard Package



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- > Furnished Western Style Secure Housing w/maid service, full utilities paid, and secure parking garage
- > Company Car (of suitable impression) and Driver w/furnished gas and repairs and maintenance at least five days per week
- > Educational Assistance for Children at “American School” or Equivalents
- > Four flights home for family per year
- > Reimbursement of all moving and storage expenses and house hunting expenses and help with sales expenses of U.S. home if such a home is sold/purchase package

- > Short-term and long-term disability policies paid for by employer or salary continuation plan offered by employer
- > Directors and Officers liability coverage
- > All personal legal fees (and associated governmental or regulatory fees) incurred by the Employee directly related to the foreign assignment to be directly paid by the Company (i.e., employment contract legal drafting fees, visa fees, work permit fees, etc)
- > All tax consulting fees related to the overseas assignment and all initial and annual tax compliance fees to be fully paid directly by the Company

Tax Totalization Formulas: Get Tax Equalized!!!!



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- > Role of Hypo Tax
- > Role of Actual Cross-Border Taxes
- > Reimbursement of difference to Employee following year through CPA prepared reconciliation
- > Calculation incorporates all benefits and cross-border taxes
- > Importance of CPA as neutral manager of cost of equalization: CPA determines eligibility of 911 foreign earned income exclusion and foreign tax credits and employee compliance with foreign tax reporting and compliance

- > Loss of Existing Commissions or Compensation Rights
- > Social Security Totalization/Potential Loss of Social Security Service Credits and Contributions
- > Retirement Plans and Allowances and Cross-Border Treatment of Same
- > Apportionment of Salary: Who pays you and when and in what currency and at what bank? What is Secondment? Who is your employer?
- > Length of Foreign Assignment and Getting Back in Style (i.e., what do you come home to?)
- > Unexpected Severance Provisions

- > Understand your role as a resident of a foreign country
- > Foreign Reciprocity of Wills: U.S. is signatory to international treaty on reciprocal recognition of wills (President Nixon) but Senate never ratified
- > Unique role of community property or Dutch Roman Law community of property concepts vs. English common law
- > Absent diplomatic or quasi-diplomatic status, no immunities under local law
- > Cross-cultural and local integration issues
- > Worldwide nature of local taxation and role of treaty tie breaking and impact of absence of tax treaty
- > Subject to other foreign taxes besides income tax and payroll taxes (i.e., wealth taxes, gain taxes, death taxes)
- > Personal Security and Political Instability

Questions

Thank you for attending our International Executive Breakfast Forum!

For further information, please contact:

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