

Table of Contents

Part I — La Brienza Winery: Tax Trouble in Wine Country

| | | |
|------------------|--|----|
| Chapter 1 | Introduction: The Vital Role of Tax in Global Management | |
| | La Brienza Winery, Present Day | 3 |
| | The Two Objectives of International Tax Planning | 7 |
| | Introduction to Tax Treaties | 8 |
| | Overview of Book | 10 |
| Chapter 2 | Global Business Design: Tax Efficiency vs. Decimation by Taxation | |
| | Five Years Ago: The First Meeting | 13 |
| | Avoiding a Taxable Presence in Foreign Countries | 18 |
| | Tax Treatment of Foreign Branches and Partnerships | 22 |
| | Tax Treatment of Foreign Corporations | 23 |
| | Tax Treatment of Using Third Party Foreign Distributors | 26 |
| Chapter 3 | Global Corporate Finance: Tax and Managing the Bottom Line | |
| | Three Years Ago: Expanding Global Horizons | 29 |
| | Withholding Taxes on Cross-border Payments of Interest, Dividends, Royalties, Rents and Other Payments | 33 |
| | Tax Planning with Foreign Tax Credits | 37 |
| | Tax Planning with Cross-border Loans | 39 |
| | Other Aggressive Cross-border Tax Plans | 41 |
| | Measuring the Impact of Foreign Tax Burdens on Expected Investment Returns | 43 |
| Chapter 4 | Transfer Pricing Management: Avoiding Fiscal Crevices while Ascending Global Heights | |
| | One Year Ago: Trouble in Wine Country | 47 |
| | Overview of Transfer Pricing | 48 |
| | Choosing the Right Method to Calculate Transfer Prices | 50 |
| | Document the Chosen Transfer Pricing Method | 51 |

INTERNATIONAL TAXATION CORE CONCEPTS

| | |
|--|----|
| Penalties | 53 |
| Resolving Transfer Pricing Disputes | 54 |
| Chapter 5 Managing Global Intellectual Property | |
| Three Months Ago: Clash of the Titans | 57 |
| Transfers of Intellectual Property to Unrelated Parties..... | 58 |
| Transfers of Intellectual Property to Related Parties..... | 59 |
| Co-development or Cost-sharing of Intellectual Property with Related Foreign Joint Ventures | 60 |
| Holding Intellectual Property Offshore and Current Taxation of Passive Income Earned in Foreign Corporations..... | 61 |
| Transfer of Trademarks | 62 |
| Tax Havens and Bank Secrecy Laws | 63 |
| Tax Planning for Global E-Commerce Operations | 65 |
| Chapter 6 Global Tax Compliance: Mapping a Course around Fiscal Shoals and Icebergs | |
| La Brienza Winery, Present Day | 69 |
| Complying with International Income Tax Laws | 71 |
| Complying with Foreign Value-added Tax Laws | 73 |
| The Danger of Personal Tax Liability and Criminal Charges for Tax Evasion | 74 |
| Chapter 7 Epilogue: The Three Central Questions of International Tax Law | |
| The Three Main Questions of International Tax Law | 80 |
| Taxation of Residents and Non-residents | 81 |
| Taxation of Cross-border Active versus Passive Income | 82 |
| Using Tax Treaties to Reduce Global Taxes | 85 |
| Appendix A — Summary of International Tax Concepts | 89 |

Part II — Technical Notes

| | |
|---|-----|
| Chapter 1 How to Manage Global Tax Planning | |
| Feasibility | 103 |
| Design..... | 104 |
| Implementation..... | 104 |

TABLE OF CONTENTS

| | |
|---|-----|
| Cross-border Structures: The Basics | 105 |
| Chapter 2 Taxation of Business Profits under the Canada-U.S. Tax Treaty and Introduction to Classification of U.S. Business Entities | |
| Taxation of Profits of a Foreign Corporation or Person..... | 107 |
| Reporting Requirements | 108 |
| Treaty Protection under Article VII(1) — Taxation of the Business Profits of a Foreign Corporation (Person)..... | 109 |
| Article V — Definition of Permanent Establishment, General Rule..... | 109 |
| Agency Permanent Establishments..... | 110 |
| Service Permanent Establishments..... | 111 |
| Exempt Activities..... | 112 |
| Introduction to Classification of U.S. and Foreign Business Entities..... | 112 |
| Chapter 3 Tax and Cross-border Financial Issues | |
| United States | 117 |
| Critical Threshold Issues in International Financial Taxation | 117 |
| Debt vs. Equity..... | 117 |
| Definition of Interest | 118 |
| Source of Interest — Foreign or Domestic..... | 119 |
| U.S. Income Tax Withholding | 120 |
| Limitations on Interest Expenses | 121 |
| Foreign Tax Credit | 122 |
| Corporate Inversions..... | 124 |
| Canada | 124 |
| Dividends | 125 |
| Branch Profits | 125 |
| Interest..... | 126 |
| Thin Capitalization Rules | 127 |
| OECD Base Erosion and Profit Shifting (BEPS) Project..... | 128 |

INTERNATIONAL TAXATION CORE CONCEPTS

Chapter 4 U.S. Transfer Pricing Methodologies

| | |
|---|-----|
| The Arm's Length Standard | 131 |
| Transfer Pricing Methodologies, Best Method Rule | 131 |
| Methods to Determine Taxable Income in Connection with a Transfer of Tangible Property | 132 |
| The Comparable Uncontrolled Price (CUP) Method | 133 |
| The Resale Price Method | 133 |
| The Cost Plus Method | 134 |
| The Profit Split Method | 134 |
| The Comparable Profits Method | 135 |
| Services | 135 |
| Country-by-country Reporting | 136 |
| A Note on Canadian Transfer Pricing Rules | 138 |

Chapter 5 Outbound Transfer of Intellectual Property

| | |
|---|-----|
| United States | 141 |
| Taxation of Outbound Transfers of Intellectual Property | 141 |
| Transfer Pricing Considerations in Outbound IP Transfers | 142 |
| Sharing of Costs | 143 |
| U.S. Taxation of Foreign IP Income: The Anti-deferral Rules and Subpart F Income | 145 |
| Canada | 147 |
| Qualifying Cost Contribution Arrangement ("QCCA") | 147 |
| Canadian Anti-deferral Rules | 147 |

Chapter 6 Foreign Reporting under U.S. and Canadian Tax Law

| | |
|--|-----|
| United States | 149 |
| Tax Treaties | 149 |
| Foreign Corporations | 150 |
| Passive Foreign Investment Company ("PFIC") | 151 |
| Foreign Partnerships | 152 |
| Foreign Trusts | 152 |
| Foreign Bank Accounts and Financial Accounts Report ("FBAR") and Bank Secrecy Act ("BSA") | 153 |

TABLE OF CONTENTS

| | |
|--|-----|
| The FinCEN Form 114..... | 154 |
| Foreign Gifts and Inheritances | 155 |
| Transfer Pricing..... | 155 |
| IRS Voluntary Disclosure Initiatives | 156 |
| 2012 Offshore Voluntary Disclosure Program ("2012 OVDP")..... | 156 |
| Streamlined filing Compliance Procedures ("Streamlined Procedures" or "SP")..... | 157 |
| Foreign Account Tax Compliance Act ("FATCA") | 158 |
| United States-Canada Intergovernmental Agreement ("IGA") | 161 |
| Statement of Specified Foreign Financial Assets | 162 |
| Canada | 163 |
| Foreign Corporations | 163 |
| Foreign Trusts..... | 164 |
| Information on Non-arm's Length Transactions with Non-residents | 164 |
| Disposition of Taxable Canadian Property | 164 |
| Foreign Property Reporting | 165 |
| Information on Corporate Groups | 165 |
| Demands for Foreign-based Information..... | 165 |
| Demands for Foreign-based Information Through Bilateral Tax Treaties and Tax Information Exchange Agreements ("TIEAs") | 166 |
| Common Reporting Standard ("CRS") | 166 |
| Key Differences Between FATCA and the Common Reporting Standard | 167 |
| Global Mobility: The Tax Impact of Executive Relocation | 169 |
| Chapter 7 Key International Tax Issues | |
| Jurisdiction to Tax Income: Residence and Source | 171 |
| Residence | 172 |
| Individuals | 172 |
| Corporations | 173 |
| Source Jurisdiction..... | 173 |
| Source Rule for Business Income..... | 174 |

INTERNATIONAL TAXATION CORE CONCEPTS

| | |
|--|-----|
| Source Rule for Services Income | 174 |
| Source Rule for Capital Income | 175 |
| Division of Income Between Two Countries..... | 175 |
| Arm's Length Principle | 175 |
| Dividing Income between Corporations..... | 176 |
| Double Taxation: Causes and Methods of Relief..... | 177 |
| Causes of Double Taxation..... | 177 |
| Residence-Source Conflicts | 177 |
| Residence-Residence Conflicts..... | 177 |
| Source-Source Conflicts..... | 178 |
| Inconsistent Views of the Relevant Facts | 178 |
| Inconsistent Attribution Rules..... | 179 |
| Methods of Relief..... | 179 |
| Domestic Tax Law Relief | 179 |
| Relief of Double Taxation Provided through Tax Treaties..... | 180 |
| Dual Residence..... | 180 |
| Classification and Assignment of Income..... | 181 |
| Uniform Source Rules | 181 |
| Uniform Classification of Facts..... | 182 |