TAXUD D1 CONSULTATION DNT

From: Andrew Grossman <grace@grossman.biz>
Sent: 06 March 2012 20:58
To: TAXUD D1 CONSULTATION DNT
Subject: Factual examples and possible ways to tackle double non-taxation cases

Sirs,

For some years I have been looking at anomalies in cross-border taxation, both double taxation and avoidance of taxation.

Aside from "doing business in the EU" but residing outside (in the Isle of Man, say), something you obviously have been looking at, and really an issue that has existed for hundreds of years but has got worse since the advent of the Internet, many of the problems of double taxation or absence of taxation in fact relate to (1) characterisation or (2) anomalies of tax treaties.

Have a look at the article I wrote (circulated but not yet published), at
http://works.bepress.com/andrew_grossman/1/

You will see, for example, such issues as trusts which are otherwise characterised, thus leading to double taxation of the income. And, interestingly, to situations where income is assigned to be taxed solely by one country (typically the country of payment), and all or most other income of the taxpayer is assigned by the treaty to be taxed in the other country. As a result of progressive taxation and a zero-tax band, the taxpayer pays a lower rate or even zero tax on some of his/her income. See In re Estate of Haussmann http://tinyurl.com/7gj8eq8 (Belgian state pension not taxable in Canada, and free of tax in Belgium as well). That sort of issue occurs frequently; in fact my own diplomat service pension, paid by the U.S. State Department, is taxed only in the USA and not in the UK because of a treaty practice by the UK relating to its policy on government service pensions.

There are other issues, some of which also affect me (I am a Swiss citizen and am taxed in three countries). The imposition of "wealth taxes" in Switzerland, France and other countries means that income tax tends to be lower than it otherwise would be; yet such a tax is not creditable against the higher rate of income tax charged in the other country of taxation.

I have no complaints. I am sending this just because you asked for ideas and it's something I follow professionally.

Kind regards,
Andrew Grossman
LLB (Columbia), Dr en droit (Louvain)
Member, New York Bar
46A Markham Square, London SW3 4XA
Av des Planches 19, 1820 Montreux
Tel.: 020 7993 2939 (UK)
079 398 1634 (Switzerland)