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**Hedon Sulimani**

Tax Assistant

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## USA claim billions from European subsidiary companies

Dear Sir or Madam,

The tax reform imposed by US president Donald Trump has unexpected consequences for American companies with European subsidiaries. While previously only the dividends collected from subsidiary companies had been taxed, at a high rate, henceforth all profits made by these subsidiaries worldwide, owned by the American parent company, will be taxed. And this is to be applied retrospectively since their set-up, regardless of periods of limitation. Therefore, the US tax authority, Inland Revenue Services, will now be demanding billions in payment for tax arrears.

On 22 December 2017 Trump put his signature to the new Tax Cuts and Jobs Act. This new act fundamentally outlines the taxation of individuals, companies, partnerships and any other multinational corporations which invest in foreign companies.

With this new law the US tax reform is saying farewell to the previous practice of, barring a few exceptions, taxing revenue made abroad only on reception of dividends. From now on a significant part of any revenue made abroad will be included in the US tax declaration and taxed accordingly. This happens by applying the so-called "transition tax" which is required to enable a smooth crossover to the new system.

Due to this new transition tax, many US companies with a share of at least 10% in foreign subsidiaries are liable to tax, at a reduced rate, on all yet untaxed revenues made by their subsidiary companies since 1986. The tax rate is 15.5% for cash and cash-equivalent investments, plus 8% on all other forms of investments, like fixed assets, for example. It should be noted that taxes already paid where the subsidiary company is domiciled can be deducted from the tax amount due in the USA in order to avoid double taxation.

We give you an example which we have previously illustrated at an international tax conference: A company set up with an international company structure has an American parent company plus operational subsidiary companies in Europe. The idea behind this structure was that the parent company would one day float on the US Stock Exchange. Although the American parent company can hardly be called a very active company, according to the new tax reform the profits made by all its European companies will be taxed anyway – and this dating back to their inception. If all relevant documents are at the parent company's disposal, then any tax on profits already paid can be exempt from this transitional tax. However, the crux of the matter could be the fact that in

Switzerland taxes and the retention obligation come under the statute of limitations after 10 years; and it is sometimes extremely difficult or even impossible to present proof of having paid taxes in the years prior to this period.

In this regard it has been important since the announcement of the reform that correspondingly large accruals are made, or it could lead to severe financial consequences.

Should your company be affected by this issue, then action is necessary. Artax and our US partner will be able to support you in this matter.

Kind regards  
**artax** Fide Consult AG

Member of Morison KSi

Gartenstrasse 95, Postfach, 4002 Basel  
Tel: +41 61 225 66 66, Fax: +41 61 225 66 67  
[info@artax.ch](mailto:info@artax.ch), [www.artax.ch](http://www.artax.ch)