Wolters Kluwer
CCH

GLOBAL TAX WEEKLY
a closer look

ISSUE 111 | DECEMBER 25, 2014

SUBJECTS TRANSFER PRICING INTELLECTUAL PROPERTY VAT, GST AND SALES TAX CORPORATE TAXATION INDIVIDUAL TAXATION REAL ESTATE AND PROPERTY TAXES INTERNATIONAL FISCAL GOVERNANCE BUDGETS COMPLIANCE OFFSHORE

SECTORS MANUFACTURING RETAIL/WHOLESALE INSURANCE BANKS/FINANCIAL INSTITUTIONS RESTAURANTS/FOOD SERVICE CONSTRUCTION AEROSPACE ENERGY AUTOMOTIVE MINING AND MINERALS ENTERTAINMENT AND MEDIA OIL AND GAS

COUNTRIES AND REGIONS EUROPE AUSTRIA BELGIUM BULGARIA CYPRUS CZECH REPUBLIC DENMARK ESTONIA FINLAND FRANCE GERMANY GREECE HUNGARY IRELAND ITALY LATVIA LITHUANIA LUXEMBOURG MALTA NETHERLANDS POLAND PORTUGAL ROMANIA SLOVAKIA SLOVENIA SPAIN SWEDEN SWITZERLAND UNITED KINGDOM EMERGING MARKETS ARGENTINA BRAZIL CHILE CHINA INDIA ISRAEL MEXICO RUSSIA SOUTH AFRICA SOUTH KOREA TAIWAN VIETNAM CENTRAL AND EASTERN EUROPE ARMENIA AZERBAIJAN BOSNIA CROATIA FAROE ISLANDS GEORGIA KAZAKHSTAN MONTENEGRO NORWAY SERBIA TURKEY UKRAINE UZBEKISTAN ASIA-PAC AUSTRALIA BANGLADESH BRUNEI HONG KONG INDONESIA JAPAN MALAYSIA NEW ZEALAND PAKISTAN PHILIPPINES SINGAPORE THAILAND AMERICAS BOLIVIA CANADA COLOMBIA COSTA RICA ECUADOR EL SALVADOR GUATEMALA PANAMA PERU PUERTO RICO URUGUAY UNITED STATES VENEZUELA MIDDLE EAST ALGERIA BAHRAIN BOTSWANA DUBAI EGYPT ETHIOPIA EQUATORIAL GUINEA IRAQ KUWAIT MOROCCO NIGERIA OMAN QATAR SAUDI ARABIA TUNISIA LOW-TAX JURISDICTIONS ANDORRA ARUBA BAHAMAS BARBADOS BELIZE BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS COOK ISLANDS CURACAO GIBRALTAR GUERNSEY ISLE OF MAN JERSEY LABUAN LIECHTENSTEIN MAURITIUS MONACO TURKS AND CAICOS ISLANDS VANUATU

Wolters Kluwer
CCH

GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

Combining expert industry thought leadership and the unrivalled worldwide multi-lingual research capabilities of leading law and tax publisher Wolters Kluwer, CCH publishes Global Tax Weekly — A Closer Look (GTW) as an indispensable up-to-the minute guide to today's shifting tax landscape for all tax practitioners and international finance executives.

Unique contributions from the Big4 and other leading firms provide unparalleled insight into the issues that matter, from today's thought leaders.

Topicality, thoroughness and relevance are our watchwords: CCH's network of expert local researchers covers 130 countries and provides input to a US/UK team of editors outputting 100 tax news stories a week. GTW highlights 20 of these stories each week under a series of useful headings, including industry sectors (e.g. manufacturing), subjects (e.g. transfer pricing) and regions (e.g. asia-pacific).

Alongside the news analyses are a wealth of feature articles each week covering key current topics in depth, written by a team of senior international tax and legal experts and supplemented by commentative topical news analyses. Supporting features include a round-up of tax treaty developments, a report on important new judgments, a calendar of upcoming tax conferences, and "The Jester's Column," a lighthearted but merciless commentary on the week's tax events.

Wolters Kluwer
CCH

GLOBAL TAX WEEKLY
a closer look

ISSUE 111 | DECEMBER 25, 2014

CONTENTS

FEATURED ARTICLES

NEWS ROUND-UP

For article guidelines and submissions, contact GTW_Submissions@wolterskluwer.com

The Cross-Border Implications Of The UK Autumn Statement 2014

by David Klass and Sally Fildes,
Gide Loyrette Nouel, London

Whilst the Autumn Statement delivered on December 3, 2014 (and the draft Finance Bill 2015 that followed on December 10, 2014) contained some pleasant surprises for certain groups of taxpayers – including mid-sized companies and infrastructure projects seeking investment by way of private placements – this was countered by a number of significant anti-avoidance and revenue-raising measures.

We highlight below some of the announcements in the Autumn Statement that could have a material impact on globally active businesses in the corporate, finance and private equity sectors, and certain changes which may affect individuals who have been, or plan to be, tax resident but non-domiciled in the UK on a long-term basis.

Diverted Profits Tax

One of the biggest talking points arising from the Autumn Statement is undoubtedly the new "diverted profits" tax aimed at countering avoidance by multinational companies seeking to reduce their exposure to UK taxation by means of the diversion of profits to lower-tax jurisdictions.

The tax will apply at a rate of 25 percent from April 1, 2015 (5 percent higher than the standard rate of UK corporation tax that will apply from April 2015).

It will apply to business activities between connected entities that are set up to achieve an "unfair tax advantage."

The announcement is not surprising given the Government's statements in the months leading up to the Autumn Statement that it would tackle such avoidance by multinationals.

The Finance Bill 2015 contains extensive draft legislation in relation to the diverted profits tax and we set out some of the key points below:

Scope Of The Diverted Profits Tax:

The diverted profits tax will apply in two circumstances:

(1) The first (Section 2 cases) aims to combat avoidance of a UK taxable presence through exploitation of the permanent establishment ("PE") rules.

(2) The second (Section 3 cases) aims to catch arrangements that create tax advantages by using

transactions or entities that lack economic substance, and is designed to apply to entities which divert profits to low tax jurisdictions by way of payments (*e.g.*, royalties).

Section 2 Cases

Section 2 cases apply in relation to a non-UK resident company (the "foreign company") where:

(1) A person (the "avoided PE"), whether UK resident or not, carries on activity in the UK in connection with supplies of goods or services made by the foreign company to customers in the UK;

(2) It is reasonable to assume that any activity of the avoided PE or the foreign company (or both) is designed so as to ensure that the foreign company is not carrying on a trade in the UK through a PE; and

(3) It is reasonable to assume that:

    (a) it results in an effective mismatch outcome, provided that both of the following conditions are met:

        i. the "participation condition" (which will be met where, broadly speaking, one party has an involvement in the management or control of the other); and

        ii. the "insufficient economic substance condition" (which will be satisfied in cases where the transaction or entities involved lack economic substance); and

    (b) one of the main purposes of the arrangements is the avoidance of corporation tax.

Section 3 Cases

Section 3 cases apply in relation to a company that is UK resident, or a UK PE of a non-UK resident company where:

(1) provisions have been made between that company/PE and another person (whether UK resident or not) that results in an effective tax mismatch outcome; and

(2) the "participation condition" and the "insufficient economic substance condition" are both met.

Outside The Scope

There are some exceptions to the application of the diverted profits tax, with the most notable being where:

(1) all of the parties in question are small or medium-sized entities (within the meaning of s182 TIOPA 2010);

(2) with respect to Section 2 cases only, where the total sales revenue of the foreign company does not exceed GBP10m for a 12-month period; and

(3) with respect to Section 2 cases only, where the arrangements only give rise to loan relationships.

Collection Of The Diverted Profits Tax

The diverted profits tax will be imposed by a designated HM Revenue & Customs ("HMRC") officer (having reason to believe a company to be within the scope of the diverted profits tax) issuing a preliminary notice to the relevant company containing an "*estimate*" of the tax due. Upon receipt of the notice, the company will have 30 days to make representations to the HMRC officer.

Once any representations have been considered, the HMRC officer will then issue a charging notice (or a notice that no tax is due) and the company must pay the revised estimated amount within 30 days. A 12 month review period will run from the deadline for payment to calculate the final liability, whereupon any overpaid tax will be refunded and any underpaid tax will be collected.

Consultation

The Government is currently consulting on the draft legislation, although it is not expected that any significant changes will be made. However, one aspect of the draft legislation that may come under scrutiny from taxpayers and practitioners is the repeated use of the term "reasonable assumption"; it may be argued that this subjective determination could create uncertainty.

Two further questions also remain: First, will the UK's existing double taxation agreements apply to the diverted profits tax? HMRC have released guidance stating that as the tax is neither income tax, capital gains tax nor corporation tax, it does not fall within the UK's existing double taxation agreements. Arguably however, the diverted profits tax would be captured by those of the UK's double taxation agreements that have within their scope taxes that are "substantially similar" to existing taxes covered by those agreements. Secondly, there is the question of whether the diverted profits tax will be compatible with the fundamental EU freedom of establishment. On the one hand the diverted profits tax does not restrict freedom of establishment as it in no way prevents businesses from establishing in another Member State. On the other hand, if the diverted profits tax results in the profits of EU businesses based outside the UK being taxed at a higher rate than that of UK corporation tax, then one could say that the freedom of establishment has indeed been restricted.

Restricting Carried Forward Reliefs For The Banking Sector

Big news for banks (whether UK banks or overseas banks with a presence in the UK) – although not wholly surprising, given the political background and the other measures that have already been directed at the banking sector, such as the bank levy – is the announcement that the proportion of banks' taxable profit that can be offset by carried-forward trading losses (and certain other types of losses and expenses) will be restricted to 50 percent.

The restriction will apply from April 1, 2015, but only to reliefs accruing before that date.

This measure seeks to address what the Government perceives as the injustice of banks using losses accrued during the financial crisis to offset profits, in what would otherwise in some cases have been for many years to come.

However, the measure is not limited to banks. It refers to the concept of "banking company," which is an authorized person under the Financial Services and Markets Act 2000 that carries out regulated activities and is liable to UK corporation tax. Regulated activities for these purposes include accepting deposits, dealing in investments as principal, dealing in investments as agent, arranging deals in investments, and safeguarding and administering investments.

Certain categories of company are however excluded, such as insurance companies, pension scheme managers, investment trusts, asset managers, and commodities traders.

The restriction encompasses a targeted anti-avoidance rule (TAAR) that applies to arrangements entered into from December 3, 2014 that are designed to bypass the restriction and an anti-forestalling rule in an attempt to stop affected companies from accelerating the use of their losses between December 3, 2014 and April 1, 2015.

This has come as something of a shock to the banking sector where both UK banks and foreign banks with large amounts of deferred tax assets held in the UK will be affected. The one positive aspect of this is that the restriction will apply only to reliefs accruing before April 1, 2015, and will not apply to reliefs that arise in the first five years of a bank's beginning to carry out banking activities.

Disguised Fee Income Of Investment Managers To Be Subject To Income Tax

In another unanticipated move, legislation will be introduced with effect from April 2015 which will ensure that guaranteed fee income of investment managers is subject to income tax, rather than being treated as a capital gain and therefore subject to a lower rate of tax.

The new rules will target the annual management fees paid to managers of private equity funds, typically based on a percentage of assets under management. Amounts that are genuinely linked to the performance of the fund (such as carried interest returns and sums representing a commercial return on capital invested) are not intended to be caught by the new rules.

The reasoning behind this measure is the proposition that such fees represent work undertaken to manage the investment and are not dependent on investment performance.

The British Private Equity and Venture Capital Association (BVCA) has among others welcomed the clear statement from the Treasury that carried interest is specifically not targeted by this measure. However, among other things, the draft legislation currently states that for carried interest to fall outside the scope of the rules, it is required to be subject to a preferred return of not less than an amount to be calculated by reference to an interest rate of 6 percent, which has already caused some disquiet within the industry due to the fact that there are funds with arm's length commercial carried interest but having a lower preferred return than this; such carried interest would be taxed as income if the draft legislation remains unchanged in this respect.

The proposed changes will have widespread effects in the funds industry and will likely raise concerns for London-based fund managers. However, it is expected that the draft legislation may undergo considerable changes following consultation before coming into force. Comments on the draft legislation are invited until February 4, 2015.

Withholding Tax Exemption For Private Placements

The Government will provide for a new exemption from withholding tax on interest on qualifying private placements with the stated aim of unlocking finance for businesses and infrastructure projects, to encourage the growing private placement market in the UK and to facilitate wider access to funding for UK businesses.

The Finance Bill 2015 introduces a new exemption from withholding tax on interest payable in respect of "qualifying private placements," which, generally speaking, comprises unlisted debt issued by a company representing a debtor loan relationship with a term of three years or more.

As the exemption aims to target mid-size companies and infrastructure projects, the regulations provide (among other things) that for the exemption to apply:

(1) The minimum issue by a company must be GBP10m and the maximum GBP300m;

(2) The security must be non-convertible "plain vanilla" debt with a maturity of between 3 and 10 years;

(3) The lender must be:

 (a) an unconnected UK-regulated financial institution (or equivalent entity authorized outside the UK); and

 (b) resident in a country with which the UK has a double tax treaty with a non-discrimination article.

OECD: Hybrid Mismatch Arrangements

Simultaneously with the Autumn Statement, the Government released a consultation paper on implementing the agreed G20-OECD approach for addressing hybrid mismatch arrangements in accordance with the Action 2 recommendations of the Base Erosion and Profit Sharing ("BEPS") project. The UK plans to introduce domestic legislation with effect from January 1, 2017 which will implement the Action 2 recommendations aimed at eliminating tax advantages (such as double deductions) that arise from the use by businesses of hybrid instruments and entities, being tax advantages that arise both within and outside the UK through the use of (i) financial instruments that are characterized differently by the tax jurisdiction of each party, and (ii) by way of using companies and partnerships that are treated differently under the rules of two tax jurisdictions.

Remittance Basis Charge To Increase

The annual charge paid by some non-UK domiciled, UK tax resident individuals who use the remittance basis of taxation is to increase from April 2015.

- The charge for those who have been UK resident for at least seven out of the nine tax years before the relevant tax year will remain at GBP30,000.
- The charge for those who have been UK resident for at least 12 out of the previous 14 tax years will increase from GBP50,000 to GBP60,000.
- There will be a new charge of GBP90,000 for those who have been UK resident for at least 17 out of the previous 20 tax years.

The Government will also consult on making an election to use the remittance basis effective for a minimum of three years, in order to prevent taxpayers from arranging their affairs so as only to pay the charge occasionally. Eligible taxpayers can currently make an election for a single tax year only.

There are, however, no changes to the remittance basis of taxation itself.

Comment

Arguably the most striking of the above measures are the restriction on the use of carry-forward losses by banks and the new diverted profits tax.

As regards the former, it is perhaps an indication of the perception of the banking industry, and in particular its role in the financial crisis, that the Government feels that it is justified to apply a restriction on a fundamental feature of the UK tax system to one category of taxpayer only.

Yet the announcement of the private placement withholding exemption is welcome news indeed and serves to demonstrate that the Government's commitment to building an internationally competitive tax system is still alive.

Recent Transfer Pricing Developments

by Duff & Phelps Corp.

OECD Releases Discussion Draft On Low-Value Intercompany Services

by Stefanie Perrella, Vice President, Duff & Phelps; and Patrick McColgan, Director, Duff & Phelps

The Organisation for Economic Co-operation and Development (OECD) issued a discussion draft on November 3, 2014, that proposes modifications to Chapter VII of the OECD Transfer Pricing Guidelines in relation to low-value intra-group services. The draft addresses item 10 of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), which seeks to develop rules to prevent base erosion through transactions "which would not, or would only very rarely, occur between third parties."

The revisions, as assembled by the Working Party No. 6 on the Taxation of Multinational Enterprises (MNEs), aim to balance appropriate charges for low-value intra-group services and head office expenses against the interests of payer countries. The revisions allow taxpayers to create a consistent allocation key for a wide category of common intragroup services which command a limited profit mark-up. Early respondents to the discussion draft noted that the revisions would look similar to the treatment of services under Section 482 of the US Internal Revenue Code (IRC), whereby some intercompany services are allowed to be charged at cost if they fulfill certain conditions.

The OECD will accept comments on the draft through January 14, 2015. The OECD plans to hold further public discussion on the draft (along with other topics) on March 19–20, 2015, at the OECD Conference Centre in Paris, France. The full discussion draft released by the OECD can be found here: http://www.oecd.org/ctp/transfer-pricing/discussion-draft-action-10-low-value-adding-intra-group-services.pdf.

Public Commentary On Developing Country Data Constraints Published By The OECD

On October 28, 2014, the OECD published the comments it received on its paper "Transfer Pricing Comparability Data and Developing Countries." For access to the complete set of comments on the OECD's website, click here: http://www.oecd.org/ctp/transfer-pricing/public-comments-received-tp-comparability-data-and-developing-countries.htm. For our overview of this paper, refer to Transfer Pricing Times: Volume XI, Issue 3 – OECD Publishes Paper on Data Comparability Issues here: http://www.duffandphelps.com/expertise/publications/Pages/ArticleDetail.aspx?itemid=339&list=Articles.

The UK Adopts Country-By-Country Reporting – Duff & Phelps Develops Tools To Assist Multinationals

by Shiv Mahalingham, Managing Director, Duff & Phelps

On September 20, 2014, the Financial Secretary to the UK Treasury (Her Majesty's Treasury) announced that "[t]he UK has been at the forefront of tackling international tax avoidance. We believe that country-by-country reporting (CBCR) will improve transparency and help identify risks for tax avoidance – that's why we're formally committing to it. In time, improved transparency between business and tax authorities will also help developing countries in dealing with compliance, as they often lack the capacity to collect this information themselves."

Duff & Phelps, LLC has had follow-up discussions with HMRC (Her Majesty's Revenue & Customs) officials following this announcement, who indicate that the adoption of CBCR is likely to take effect in 2015. MNEs with UK operations will have to report to HMRC where they make profits and pay taxes around the world. Early indications from HMRC are that the CBCR information will be part of UK transfer documentation, although a submission to HMRC with tax returns has not been ruled out.

A CBCR template could be used as an effective tax risk management tool for the businesses that have an open dialogue with HMRC and are looking to achieve certainty in the current environment. As a specific CBCR template has not been released by HMRC, Duff & Phelps transfer pricing professionals have generated an extended CBCR template to improve the risk management process and this effort has been met with a positive response from HMRC. (Contact your local Duff & Phelps transfer pricing professional for more information.)

Corporate Inversions And Their Impact On Transfer Pricing

by Mark Schuette, Managing Director, Duff & Phelps; Dan Nir, Vice President, Duff & Phelps; and Jarrod Hall, Analyst, Duff & Phelps

Corporate inversions by US MNEs have recently received a great deal of attention in the media. In the last year, more than a dozen inversions have been announced or completed by US-based firms. In a typical inversion, a US company, for example, will buy a foreign target and subsequently adopt the foreign target's home country as its own (incorporating in a third, unrelated country is also an option). The US company's change in legal residence as a result of the inversion may allow it to take advantage of lower tax rates on its future income, reduce US and non-US cash taxes through the issuance of intercompany debt, and avoid US tax on its deferred foreign earnings, thereby increasing its competitiveness.

In September 2014, the US Department of Treasury and Internal Revenue Service released *IRS Notice 2014-52 – Rules Regarding Inversions and Related Transactions*, outlining their intent to issue regulations restricting certain tax benefits for inverted companies and inhibiting future corporate tax inversions, when possible. Specifically, IRS Notice 2014-52 is focused on:

(a) eliminating techniques inverted companies currently use to gain tax-free access to the deferred earnings of a foreign subsidiary, significantly diminishing the ability of inverted companies to escape US taxation; and

(b) making it more difficult for US companies to invert by strengthening the ownership requirements of the former owners of the US company in the new combined foreign entity.[1]

On October 29, 2014, Brenda Zent of the Treasury's International Tax Counsel Office indicated that the Treasury has not yet decided upon the specific guidance to follow IRS Notice 2014-52, but that the Treasury is keeping its options open. (For a copy of the IRS Notice, click here: http://www.irs.gov/uac/Newsroom/Notice-2014-52-Rules-Regarding-Inversions-and-Related-Transactions.)

Companies who are still contemplating an inversion or who have recently completed one should note that, just like with any acquisition, the transfer pricing policies of the acquired company as well as the acquiring company need to be re-evaluated in light of the newly integrated structure. This involves identifying where significant functions, risks, and assets will reside within the newly created company and establishing consistent, defensible transfer pricing policies for future intercompany transactions. The review of existing transfer pricing policies should include an analysis of where intellectual property is developed, maintained, utilized, and (potentially after an acquisition) centralized within the organization. This may include valuing intellectual property contributions to existing cost sharing structures as a result of the acquisition and/or licensing arrangements between related companies owning intellectual property and those that will exploit them. The review will also likely require an analysis of headquarter service charges and a reassessment of the entity responsible for bearing stewardship costs or costs for non-beneficial services under the new structure.

Inland Revenue Authority Of Singapore Issues Public Consultation On Transfer Pricing Documentation

by Chris Newman, Managing Director, Duff & Phelps; and Sheetal Kumar, Vice President, Duff & Phelps

On September 1, 2014, the Internal Revenue Authority of Singapore (IRAS) issued a public consultation on transfer pricing documentation describing its intention to update Section 4 of its transfer pricing guidelines, which were initially issued on February 23, 2006. The public consultation was released shortly before the release of the first tranche of seven BEPS deliverables, including Action 13, "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting" by the OECD.

The IRAS paper provides detailed guidance on the following topics: objectives of preparing transfer pricing documentation, contemporaneous transfer pricing documentation, types of transfer pricing documentation, extent of transfer pricing documentation, and compliance matters relating to transfer pricing documentation. For access to the complete paper, click here: http://www.iras.gov.sg/irashome/uploadedFiles/About_IRAS/Public_Consultation/pconsult_IT_Transfer%20Pricing%20Documentation_2014-09-01.pdf.

Although Singapore is not an OECD member country, it will likely be affected by the recent BEPS deliverables, including those on documentation and country-by-country reporting. Combined with the new Singapore-specific guidance, this should motivate taxpayers to evaluate whether their current transfer pricing documentation in Singapore is adequate to local and international standards.

Endnote

1 http://www.treasury.gov/press-center/press-releases/Pages/jl2647.aspx

Topical News Briefing: A Chain Reaction

by the Global Tax Weekly Editorial Team

To use a scientific analogy, if the OECD's base erosion and profit shifting (BEPS) project was a nuclear reactor, it could be said that the core is going critical.

This is after the European Commission decided to widen its probe into tax ruling practices in all 28 member states of the European Union. That followed the earlier launch of in-depth investigations into so-called "comfort letters" given to certain multinationals by the tax authorities in Ireland, the Netherlands and Luxembourg to ascertain whether they accorded the companies in question a "selective advantage" and therefore breached EU state aid rules. These state aid investigations aren't directly linked to the OECD's BEPS work, but their timing strongly suggests that they are inspired by BEPS, and like the OECD, the EU has long been a standard bearer for international collaboration in the area of tax avoidance and evasion. It can be no coincidence either that the companies at the center of these investigations are frequently derided for their "aggressive" tax planning techniques.

Many might see these investigations as long overdue, and justified on the grounds that "sweetheart" deals between tax authorities and large companies are unfair on the vast majority of taxpayers who do not have recourse to such tax mitigation methods. However, there is a danger that by taking the initiative to curtail laws and practices that erode the tax bases of other jurisdictions and encourage profit shifting, the EU and individual countries within and beyond the bloc are undermining the principle of multilateralism upon which a successful BEPS outcome rests; there is still a year to go before the OECD releases its final set of recommendations. This is a concern which has been expressed by business groups with increasing regularity over the past few months as the list of unilateral BEPS-type measures grows. As reported in this issue of Global Tax Weekly, the latest and most obvious BEPS tax yet is the UK's Diverted Profits Tax, which has even attracted criticism from the OECD itself for being premature.

As to the EU tax ruling probe, it seems improbable that the European Commission will spend the time and resources exploring the intricacies of every tax ruling, formal or otherwise – which must number in the tens of thousands – granted to companies by EU tax authorities during the three-year period it has chosen to review. More likely is that the Commission will choose a select few of these rulings to build its case against the usual suspect companies and member states.

However, irrespective of whether these rulings have given certain companies a selective advantage or not, what such comfort letters are primarily designed to do is to give taxpayers a degree of certainty about tax positions which could otherwise be open to challenge, allowing them to plan their long-term investments accordingly.

The OECD's BEPS work, still in its middle stages, has already made the future international tax environment a very uncertain place. The European Commission has just ratcheted up the level of uncertainty for EU-based companies several more notches, in an environment which the UK's ill-advised Diverted Profits Tax has already turned into a minefield.

All Change Please: Global Tax Reform Takes Center Stage In 2014/2015

by Frederic Donnedieu, Chairman, Taxand

Contact: taxand@mhpc.com, Tel. +44 (0)203 128 8215

2014 has been a year of international tax upheaval. From the tax focused G20 meetings in Australia and the OECD's long awaited BEPS recommendations, to the recurring global topics of tax repatriation and holding cash offshore – tax has been high on the agenda. Taxand highlights the major changes over the past 12 months and looks ahead at what 2015 will bring.

2014 started with big claims from the G20 host, Australian Prime Minister Tony Abbott, who accused the G20 as merely being a "talkfest" on the issue of tax. During his presidency he vowed to keep international tax reform on the G20's agenda, and he has so far succeeded.

Tangible global tax change is underway, albeit slow in progress. The largest international development was the OECD's base erosion and profit shifting (BEPS) initiative, which remains "on track" after its first set of recommendations were published in September 2014. Although in its infancy, the OECD's BEPS initiative demonstrates a clear desire to establish new country-by-country reporting requirements to enable effective targeting of tax audits. How global implementation will work in practice has yet to be prescribed.[1] The next stage of OECD recommendations is scheduled for announcement in September 2015 – to include promised guidance around this implementation.

The cross-border automatic exchange of information initiative, which will be adopted by 44 countries by 2017, is another example of a multi-jurisdictional initiative awaiting a prescription to implement. While both this and the BEPS initiative are designed ultimately to help the fight against unlawful tax structures, they are also fuelling an escalating burden of compliance costs for multinationals who continue to fulfill their tax obligations.

At a regional level, in July, the European Commission (EC) announced measures to investigate the tax affairs of Starbucks, Amazon and Apple, following accusations of the violation of state aid. The EC declared a focus on the companies involved, rather than the countries in which they operate, calling into question the legitimacy of the multinationals themselves. In September, the preliminary findings from the EC's investigation claimed Apple had benefited from illicit state aid in Ireland. The results of these investigations are likely to have far-reaching consequences, not just for the multinationals or EU countries such as Ireland, Luxembourg and the Netherlands, but more generally for EU–US relations.

On top of heightened scrutiny at an international and regional level, this year, national tax authorities have increasingly and aggressively investigated resident businesses' tax structures. In April, the UK's HM Revenue & Customs claimed that its crackdown on corporate tax avoidance had recouped nearly GBP2bn in the last year. In China, following a similar public outcry, the State Administration of Taxation reported that they had brought in CNY46.9bn of additional taxes in 2012 – 38 times more than in 2008.

In the US, the debate around multinationals holding cash offshore in low-tax jurisdictions, such as Luxembourg and Ireland, came to the fore again this year. The response of US regulators has been to push for further transparency around offshore cash. The antiquated nature of US tax policy is further highlighted by the growing trend of tax inversions, where companies seek to re-domicile overseas to reduce their tax obligations. This was exemplified this year by Burger King's acquisition of Tim Horton's in Canada and most notably, in the pharmaceutical industry, by AbbVie's acquisition of Shire.

One country which is slowly rebuilding its reputation on tax issues is India. Narendra Modi, the newly elected Indian Prime Minster, has suggested big changes to rebuild India's reputation among the international business community. After recent cases involving multinationals such as Nokia and Vodafone, others will wait to see how quickly Modi's government can offer a fair and stable tax regime.

As we approach 2015, progress continues to be made on international tax reform, but uncertainty remains. While it is not yet clear how the BEPS measures will be implemented, the initiative has already impacted multinationals. With public discussions focusing on tax driven structures, authorities are obligated to threaten taxpayers with aggressive consequences. More updates relating to BEPS will be published in 2015.

The area of indirect tax will see change in both Europe and Asia too. On January 1, 2015, the EU value-added tax (VAT) place of supply of services rules involving business-to-consumer (B2C) supplies of broadcasting, telecommunications and e-services (digital services) will be enforced. In Asia, a goods and services tax (GST) of 6 percent will be adopted in Malaysia from April 1, 2015, to replace the current sales and services tax regime. China and India are also likely to continue their VAT pilot programs. Japan is still yet to decide on its mooted 10 percent sales tax hike, scheduled for November 2015.

As the world emerges slowly from economic recession, governments will be looking to evolve national tax policy for a changing world. But not all changes will be to the detriment of multinationals. In September 2014, Canada started offering businesses tax cuts, thanks to its first budgetary surplus since the global economic slump. A number of other governments announced plans to reduce corporation tax rates: Spain claimed that they will go from 30 percent to 25 percent; the UK will reduce its rate to 20 percent in 2015; and both Greece and Japan are pursuing a similar agenda. As more western markets show signs of a fragile recovery, the race to the bottom on corporate tax rates looks set to continue.

Taxand's Take

When planning ahead for 2015, multinationals should:

- Take note that tax has remained high on the agenda this year, due to G20 tax reform pledges and continued media scrutiny; multinationals should expect this trend to continue;
- Start preparations with regards to the OECD recommendations launched in September 2014. These are currently in the "middle of the road" with draft guidance, around what the new global tax environment will look like, to be implemented post September 2015;
- Monitor the world of indirect tax, particularly in the EU where VAT place of supply of services rules will come into play. Multinationals should ascertain if and how these new rules will affect their business;
- Expect an increase in competition for tax cuts, as governments encourage early signs of positive economic growth through lowering overall rates to encourage investment and job growth.

Endnote

1 See "UK becomes first OECD nation to formally commit to country-by-country reporting", available at http://www.taxand.com/taxands-take/news/uk-becomes-first-oecd-nation-formally-commit-country-country-reporting.

Topical News Briefing: That Familiar Feeling

by the Global Tax Weekly Editorial Team

The Oxford dictionary definition of Groundhog Day is as follows: a situation in which a series of unwelcome or tedious events appear to be recurring in exactly the same way. Which is a very apt description of the annual/biannual ritual of "tax extenders" legislation in the United States, as Congress is eventually forced to come together after months of wrangling about offsets and tax breaks for the well–connected, to renew a diverse set of temporary and expired tax measures.

Normally, Congress is able to extend these measures for at least one year, sometimes two, and this is usually done just before, or somewhat after, their expiry. But this is no ordinary situation, which is why incoming Senate Finance Committee Chairman Orrin Hatch, a Utah Republican, reasoned that the latest retroactive extension of the 50 or so measures until the end of this year, which comes almost a year after most of the tax provisions in question expired – effectively amounting to an extension of just two weeks – was the best that Congress could achieve in the current climate of partisan politics. It means that Congress will have to revisit this issue some time in 2015, meaning that Groundhog Day could come round again even sooner than before.

With the Internal Revenue Service (IRS) already preparing for the 2015 tax filing season, it is not clear yet how both business and individual taxpayers will be affected by the tardy renewal of the extenders legislation. However, it is almost certain that the impact will be felt to some order of magnitude. For example, with the wind energy production tax credit included in the package, the wind energy industry has complained, not surprisingly, that the one-year renewal gives investors hoping to benefit from the credit a tiny time window to get their projects up and running. Indeed, the IRS has already warned that the very late extension of these tax provisions will cause heightened uncertainty to taxpayers and raise operational and compliance risks. What's more, the IRS is already splitting at the seams as it prepares to administer key provisions of the Affordable Care Act and enforce the Foreign Account Tax Compliance Act with its budget frozen.

The vast majority of people, including those in Congress, would agree that this sticking plaster approach to tax law-making is highly undesirable, and a clean sweep of the tax code could do away with this practice once and for all. But what chance comprehensive tax reform in the 114th Congress? Even the most cavalier of gamblers would probably hesitate to place money on such a bet in 2015, given the energy that has been expended by Congress on the relatively simple matter of the tax extenders. Hatch and the retiring Chairman of the House tax-writing committee, Dave Camp (R – Michigan), remain optimistic, the former having published an analysis of the US tax code's main failings, and the latter having formally introduced his tax reform blueprint into Congress. And the Republicans will of course have a majority in both chambers for the next two years. But they won't have it all their own way. They still lack the voting firepower in the Senate to overcome its tougher procedural hurdles, and President Obama seems in no mood to compromise with the GOP on issues related to the economy. Not that Democrats are opposed to tax reform. Indeed, Ron Wyden (D – Oregon), who will become the senior Senate Finance Committee Democrat in the next Congress, has written legislation that will preclude the need for these temporary tax measures to be routinely extended. And he reacted angrily to the latest fudging of the tax extenders, comparing the bill's shelf life to a box of eggs. But there is little evidence to suggest that things will freshen up next year.

The Hunt For Snowbirds Is On – A Summary Of The IRS's FAQ On Amnesty Programs For Non-Compliant Taxpayers

by Mike DeBlis, Esq., DeBlis & DeBlis, Bloomfield, New Jersey

Since announcing its amnesty programs for non-compliant taxpayers, the IRS has received over 45,000 applications from those who wanted to fulfill tax filing obligations. According to the IRS, this meant USD6.5bn in taxes, interest, and penalties. With FATCA and global bank transparency also in action, the IRS is expecting even more moola from the pockets of expats with foreign accounts.

Why are so many US taxpayers willingly complying? Because the new streamlined program is broader than it was back in 2012. The revamped version even eliminates the necessary risk questionnaire and the rule that taxpayers have USD1,500 at most of unpaid taxes per year. Even "better" is the fact that taxpayers can provide a non-willful certification to justify their failure to report their foreign assets in the past. If a taxpayer is found eligible:

- for the Streamlined Foreign Offshore Procedures, the offshore penalty is automatically waived;
- for the Streamlined Domestic Offshore Procedures, he or she must pay an offshore penalty consisting of 5 percent of their foreign financial assets.

While the penalty structure is far more desirable than what can be expected under the offshore voluntary disclosure program (OVDP), qualifying for the streamlined procedures, on the other hand, is a "whole other story." To say that it was a tad difficult would be like saying that "Moaning Myrtle," the ghost who haunts the girls' bathroom at Hogwarts in "Harry Potter," is a little emotional.

Take, for example, the Streamlined Domestic Offshore Procedures. A person is ineligible for the Streamlined Domestic Offshore Procedures if they have not previously filed a US tax return for the last three years by the regularly scheduled due date (*i.e.*, April 15 of the following year) or by the extended due date which the taxpayer requested and the IRS granted.

In order to provide guidance on the eligibility requirements, back on October 8, 2014, the IRS issued some FAQs that addressed the amended streamlined filing compliance process as well as Foreign Bank Account Report (FBAR) submissions, delinquent information returns, and the OVDP. Unfortunately for snowbirds, the FAQs show that the IRS has started hunting them.

If you are a US citizen or a green card holder, have spent a little too much time "south of the border" in the US, and haven't filed your taxes during the three-year period covered by the streamlined procedures, your goose is plucked and ready to cook unless you find another way to catch up with your taxes.

A Look At The Hunter's Manual

According to the October 2014 FAQs, taxpayers must comply with one of two different versions of the streamlined filing procedures: one for non-US residents, aptly referred to as the "Streamlined Foreign Offshore Procedures," and the other for US residents, aptly referred to as the "Streamlined Domestic Offshore Procedures." Which category (and ultimately streamlined filing program) you fit in depends on your residency under what are some rather "odd" rules in the streamlined procedures.[1]

While the concept of "residency" might appear to be as straightforward as the story of "Humpty Dumpty," the streamlined procedures have contorted the definition of this four-syllable word to such an extent that it requires scribes to decipher its true meaning. Some have called it "a riddle wrapped in a mystery inside an enigma." Indeed, deciphering the true meaning of "residency" might be just as difficult as conquering the "Triwizard Maze," the third task of the "Triwizard Tournament" in "Harry Potter and the Goblet of Fire."

The source of this confusion lies in the fact that the definition of "residency" under the streamlined procedures is radically different than the general definition of "residency" in the Internal Revenue Code (IRC).[2] For example, while green card holders are classified as "US residents" under the Code, the same may not be true under the streamlined procedures.[3] Instead, they may be considered "non-residents."[4]

Adding to the confusion is the fact that there are two different non-residency requirements: "one for US citizens or green card holders, and the other for non-US citizens, non-green card holders."[5]

The non-resident dilemma rears its ugly head in the context of the Streamlined Foreign Offshore Procedures. In order to understand how, one must have a solid understanding of the non-residency requirement under the Streamlined Foreign Offshore Procedures.

To be eligible for the Streamlined Foreign Offshore Procedures, taxpayers must satisfy the IRS non-residency requirement. This is code for the following: (1) having a non-US abode; and (2) spending 330 full days or more outside the US in just one year during the three-year period that tax returns must be submitted under the streamlined procedures. Which year you crossed the 330-day threshold – whether it be the first year, the second year, or the third year of the look-back period – is meaningless so long as it happened during one of these years.

The practical implication of the second prong of the non-residency requirement is that taxpayers who otherwise hold green cards or satisfy the general rules for residency under IRC 7701(b)(1) of the Internal Revenue Code (*i.e.*, substantial presence test) might nonetheless be considered "non-residents" for purposes of the streamlined procedures. But this is not a bad thing. On the contrary, those taxpayers who satisfy the non-residency requirement might just as well be dancing to the tune of "Oh Happy Day," since their day has gotten a lot brighter with news that their offshore penalty has been waived.

Right about now, you might be asking yourself the question "Did I hear you correctly? There is no offshore penalty under the Streamlined Foreign Offshore Procedures? You must be pulling my leg!" No, you heard correctly. There is no offshore penalty. Nor are there any other "hidden" civil penalties. On the contrary, taxpayers enjoy absolute immunity from all civil penalties so long as: (1) the original tax non-compliance (for non-residents) or return (for residents) was not fraudulent and (2) the FBAR violation was not willful.[6]

But it is not all wine and roses. This is why it is always important to read the fine print. First and foremost, taxpayers must be reminded that there is no immunity from prosecution under the streamlined procedures. Second, in the event that the IRS rejects a streamlined submission, the taxpayer is ineligible from applying to its sister program – the OVDP – regardless of what that reason might be. Third, just as the non-residency requirement can be the cause for celebration for those who satisfy its rigid requirements, it can also be the cause of despair for those who don't. In that sense, it has been known to play the role of "spoiler" – not unlike the "… Mean One Mr. Grinch" – to well-intentioned taxpayers wanting to "get right" with the IRS.

There is no larger segment of the US taxpayer population that is directly impacted by the non-residency requirement (and that, incidentally, comes up on "the short end of the stick") than "snowbirds." By snowbird, I am affectionately referring to those individuals who hold dual-citizenship with the US and Canada (or merely green card holders) who like to migrate south during the unbearably cold and desolate months of winter to lie on a sun-drenched beach in Florida while kicking up their heels and sipping a Piña Colada.

If you are a self-proclaimed snowbird, you may no longer be singing along to the tune of "Hakuna Matata" after hearing this. Why? Because you've had the misfortune of being placed by the snarky "sorting hat" of the IRS (not of Hogwarts) in the first category of non-residency, the requirements of which are all but impossible to satisfy. Indeed, such a classification is just as undesirable to a taxpayer with unreported foreign assets as the label "Slytherin" is to a young wizard who had their heart set on being placed in "Gryffindor" house (but the sorting hat had something else in mind).

Below is a more detailed discussion of this dilemma, along with a summary of the streamlined procedures in light of the FAQs.

For Non-Resident Streamlined

To qualify for the Streamlined Foreign Offshore Procedures, a taxpayer must satisfy the following requirements: (a) the taxpayer must have passed the non-residency requirement (both spouses must satisfy this requirement if filing jointly); (b) the taxpayer must have failed to disclose income from a foreign financial asset and failed to file an FBAR or international information return relating to the asset in question; and (c) the taxpayer must have certified that the failure to file resulted from non-willful conduct.[7]

For a US citizen or green card holder to be considered a non-resident, they must satisfy two requirements. First, their "abode" (the aristocratic word for "home") must have been located outside the US. And second, they must have spent no more than 35 days in the US in each of the three years covered by the streamlined procedures.[8] In other words, a taxpayer can spend more than 35 days in the US in two of the three years of the look-back period and still satisfy the non-residency requirement of "streamlined foreign" so long as he spent 35 days or less in the US in just one year.

For example, a taxpayer who spends 35 days in the US in year one, 36 days in the US in year two, and 36 days in the US in year three satisfies the non-residency requirement of "streamlined foreign," albeit "by the hair of his chinny chin chin." On the other hand, a taxpayer who spends 36 days in the US in year one, 36 days in the US in year two, and 36 days in the US in year three fails the non-residency requirement. As you can see, this can be quite confusing since residency is defined in the negative.[9]

This is as good a time as any for a slight digression into the non-residency requirement. The requirement has its origin in § 911, the "foreign earned income exclusion," a web so tangled that it might just as well have been spun by the 800-pound flesh-eating tarantula named "Aragog" in "Harry Potter." Because the IRS kept on linking its streamlined processes with § 911, many believed that they could be eligible for the foreign earned income exclusion.

For those unfamiliar with the foreign earned income exclusion, it excludes from US taxation a limited amount of foreign earned income plus a housing cost amount. The foreign earned income exclusion is available only to US citizens or resident aliens who satisfy the following requirements:

- The individual is physically present in a foreign country for at least 330 full days during a 12-month period or, in the case of a US citizen, is a *bona fide* resident of a foreign country for an uninterrupted period that includes an entire taxable year, and
- The individual's tax home is in a foreign country.[10]

Whether a person is a *bona fide* foreign resident is determined by their intentions with regard to the length and nature of the stay. Factors which suggest that a person is a *bona fide* resident include the following: (i) the presence of family, (ii) the acquisition of a foreign home or long-term lease, and (iii) involvement in the social life of the foreign country.

With respect to the second requirement, an individual's tax home is their principal or regular place of business.[11] Fortunately, the definition of "non-US abode" under the streamlined non-residency requirement is identical to the latter definition.

A Word Of Caution

The unveiling of these new FAQs reveals that § 911's applicability to the streamlined procedures is limited. As discussed above, it can only be relied upon for purposes of determining the location of a taxpayer's abode. Stated otherwise, the *bona fide* residence test of § 911 cannot be used as a substitute for the 35-day test in order to save a "wounded" snowbird who has failed that test from a terrible fate: loss of eligibility for the Streamlined Foreign Offshore Procedures.

Another way of looking at this is that the IRS has been aiming at you for quite some time before allowing the black powder to bring you down. Some chalk up the IRS's rigid position to the fact that taxpayers who stay in the US for more than 35 days in any single year during the three-year period should be more aware of their tax obligations.

For Resident Streamlined

To qualify for the Streamlined Domestic Offshore Procedures, a taxpayer must satisfy the following requirements: (a) the taxpayer must have failed the non-residency requirement; (b) the taxpayer must have filed a US tax return for each year during the three years mentioned in the procedures; (c) the taxpayer must have failed to report foreign income and failed to file an FBAR; and (d) the taxpayer must have certified that the failure to file resulted from non-willful conduct.[12]

For a snowbird, requirement "(b)" is the most important. Why? Because *if you have not filed a US tax return* for the three-year period under the streamlined procedures, you will suffer a similar fate to the one suffered by Hagrid in "Harry Potter." The only difference is that instead of being banned from using magic, you will be banned from making a submission under the Streamlined Domestic Offshore Procedures.

Unfortunately, the resident streamlined procedures explicitly state that delinquent tax returns are not permitted.[13]

An Example To Drive It Home

To illustrate how the 35-day rule works in the "real world," as opposed to the wizarding world where we, muggles, are not welcome, consider the following.[14]

A hypothetical that deals with "extremes" is often times the best for driving home arcane principles. And tax is no exception. The following example is just such an example:

John is a dual citizen of the US and Canada whose permanent residence is in Canada. He is a small-business owner who conducts all of his business in Canada but who owns a piece of real estate in the United States: a vacation home in Florida. John has several bank accounts – both personal and business

– with Canadian banks, the maximum aggregate balance of which well exceeds USD10,000.

John was born on Canadian soil and, not unlike many snowbirds, obtained his US citizenship derivatively through his parents, who are US citizens. Because he only recently learned that he was a US citizen, John never filed any US tax returns.

Over the last three years, John spent the following time at his vacation home in Florida: 40 days in 2011, 50 days in 2012, and 30 days in 2013. John has decided to make a streamlined foreign offshore submission and does so on November 15, 2014.

Let's analyze this fact-pattern. As a preliminary matter, it is necessary to determine what the three-year period is for which tax returns must be submitted under the streamlined procedures. Because John made his submission before the due date for his 2014 tax returns (*i.e.*, April 15, 2015), the three-year look-back period for which he must file tax returns includes the last three tax years: namely, 2011, 2012, and 2013.

In order for John to satisfy the non-residency requirement, he must have spent a minimum of 330 full days in Canada in just one of the three years during the three-year look-back period. Any year is fine.

John does not satisfy the non-residency requirement in two of the three years – namely, tax years 2011 and 2012 – because he spent less than 330 days in Canada and more than 35 days in the US in each of these respective years. Specifically, in 2011, John spent 325 days in Canada, five less than the minimum amount required. And in 2012, he spent 315 days in Canada, 15 days less than the minimum amount required.

While things might appear as bleak for John as they would for a wizard who had the misfortune of being in the company of a soul-sucking "dementor,"[15] all hope is not lost. Just like Harry Potter, John can use his "Patronus Charm" to cast away the darkness. How you might ask? Because John spent 335 days in Canada in 2013 (five more than the 330-day threshold), he still satisfies the non-residency requirement and therefore is eligible for the Streamlined Foreign Offshore Procedures (assuming, of course, that John can legitimately certify that his conduct in failing to report his Canadian bank accounts was "non-willful").

This leads to an important point. A taxpayer could flunk the non-residency requirement – with flying colors – in two of the three years during the look-back period but still pass it so long as he spent at least 330 days abroad in just one of the three years. To simplify this, below is an easy formula:

> Up to 329 days abroad in one year + Up to 329 days abroad in one year + At least 330 days abroad in one year = Non-residency

Stated otherwise, a taxpayer can "get away" with spending more than 35 days in the US in two of the three years and still pass the non-residency requirement so long as he spent 35 days or less in the US in just one of the three years. Under these circumstances, the taxpayer would have made it to "the Promised Land," albeit by the hair of his "chinny chin chin." The hypothetical above is a perfect example.

At the same time, a far more sinister fate could have befallen John if he had spent just six more days in the US in year 2013. If so, his "Patronus Charm" would not have saved him from an outcome as bleak as the one suffered by the victims of a dementor: tortuous ruin. In that case, he'd have failed the non-residency requirement by virtue of having spent 36 days in the US in 2013 and 329 days in Canada, one day shy of the 330-day minimum. And if he fails the non-residency requirement, not only would John be ineligible for the Streamlined Foreign Offshore Procedures, he would also be ineligible for the Streamlined Domestic Offshore Procedures since he has never filed any US tax returns.

What does this mean? To the extent that John still wants to "come clean" through the IRS's voluntary disclosure program, he has only one remaining option: apply to the OVDP, where he must pay a draconian penalty of at least 27.5 percent on the maximum aggregate balance of his foreign assets over an eight-year look-back period.

It seems unfair that non-filers like John who spend such an insignificant amount of time in the US every year should be saddled with a 27.5 percent penalty merely because they spent the winter months in the US. The issue was best framed by Paul Barba in his blog, *Updated IRS streamlined filing program: snowbirds beware*: "Does physical presence exceeding 35 days every year justify the disqualification of non-compliant taxpayers who have spent relatively small amounts of time in the United States every year from streamlined … and the imposition of a 27.5 percent (or 50 percent) penalty under OVDP?"

Not surprisingly, this has been enough to start a fire under the goose of many a snowbird whose only shot at qualifying for the streamlined procedures was under the Streamlined Foreign Offshore Procedures.

There is an important lesson to be learned here, one that might be even more important than the lesson taught by Professor Snape in his "Defense Against the Dark Arts Class." And that lesson is that "non-filer" snowbirds who migrate south of the border for what might seem like an insignificant period of time (*i.e.*, 36 days every year for the last three years) will be ineligible for all forms of streamlined procedures, regardless of the type.

Aimed At, Fired At, But Still Escaped (Barely)

Before you become the next bird gracing the IRS's table, you need to know what you're up against. If you don't satisfy the 35-day rule and haven't filed returns, you are ineligible for either type of streamlined program. In that case, you should talk to your tax attorney about the 2014 OVDP or an alternative that would allow you to become compliant with your tax filing obligations.

Summing everything up, if you spent more than 35 days in the US in each of the years covered by the streamlined period, you'll fail the extremely confusing non-residency requirement of the Streamlined Foreign Offshore Procedures in the same way that Fleur Delacour, Viktor Krum, and Cedric Diggory went down in flames in the "Triwizard Tournament," in "Harry Potter." And if you haven't filed tax returns during that same period, you might just as well as had the misfortune of being hit by the "Cruciatus Curse," a curse that inflicts such excruciating pain on its victims that it tortures them into insanity.

Those taxpayers that find themselves in the untenable position of being ineligible for streamlined procedures are left with only three options: (1) filing amended returns along with delinquent FBARs, accompanied by arguments in support of reasonable cause, in what is referred to in tax jargon (and not "Parseltongue," the language of serpents and those who can converse with them) as a "quiet disclosure"; (2) seek shelter in the OVDP bunker where an onerous 27.5 percent penalty lies in wait like a piranha waiting in the shallows to devour the next unsuspecting fish that swims by; or (3) do nothing.

As tempting as it might be to choose option (1) or (3), be aware of the consequences. Indeed, while OVDP could leave you with nothing more than the shirt on your back, a quiet disclosure could be more painful than a root canal.

As discussed time and time again, the most serious risk of making a quiet disclosure is a referral to the Criminal Investigation Division of the IRS. While the likelihood of such a referral might be slim to remote, the likelihood of multiple FBAR penalties isn't. If recent cases are any indication, not only has the IRS been clamping down on those who have attempted to make quiet disclosures by asserting multiple willful FBAR penalties that would be enough to make Warren Buffet cry "uncle," but it has been doing so with impunity.

For those who might question the legality of this, unfortunately, for as malicious and mean-spirited as it might seem, the IRS has support for its position. Indeed, it has wrapped itself in the "invisibility cloak" (the magical garment which renders whatever it covers "unseeable") of recent circuit court decisions that have diluted the quantum of proof needed to establish "willfulness." Therefore, it should come as no surprise that the IRS has been asserting willful FBAR penalties more aggressively now than it has ever done so before.

Keep in mind, however, that should a taxpayer challenge such an assertion, it would be the equivalent of putting the IRS's feet to the fire. Why? At the end of the day, it is not the taxpayer who must prove that their conduct was non-willful in order to get out from under the onerous willful FBAR penalty. Instead, as was illustrated in the *Zwerner* case, it is the IRS that must prove willfulness. And while willfulness need only be proven by clear and convincing evidence in the civil context, the fact remains that proving the existence of a mental state is often times easier said than done. Moreover, that is an issue for the jury to decide.

Lastly, if you were thinking about misrepresenting your residency in order to qualify for the Streamlined Foreign Offshore Procedures, you best think twice. Why? Non-resident taxpayers must certify under penalties of perjury not only that their failure to report their foreign accounts was non-willful, but that they satisfy the eligibility requirements for the Streamlined Foreign Offshore Procedures.[16]

Because the eligibility requirements include the non-residency requirement, the certification applies just as much to non-residency as it does to non-willfulness. Therefore, a taxpayer who misrepresents their residency on their certification could potentially be prosecuted in the same way as a willful taxpayer who misrepresents non-willfulness in order to bootstrap themselves into the streamlined program.[17]

The lesson here is not to be as foolhardy as to attempt to fit a "square peg into a round hole." Instead, exercise prudence and caution before outright rejecting the only thing that might be standing between you and a cold, dank jail cell: OVDP. Needless to say, you don't want to be what's cooking next in the IRS's oven on Thanksgiving Day.

Endnotes

1 Paul Barba, *Updated IRS streamlined filing program: snowbirds beware* (pdf version), p. 1, Moodys Gartner, available at http://www.moodysgartner.com/updated-irs-streamlined-filing-program-snowbirds-beware/.

2 *Id*.

3 *Id*.

4 *Id*.

5 *Id*.

6 *Id*.

7 IRS, *Streamlined Filing Compliance Procedures* (October 9, 2014), available at http://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures; IRS, *US Taxpayers Residing Outside the United States* (October 9, 2014), available at http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States.

8 IRS, *Taxpayers Residing Outside the United States*, *supra*, note 7; § 911(d)(3) (last sentence); Treas. Reg. § 1.911-2(b); IRS Publication 54 (December 3, 2013), chapter 4. See also § 911(d)(1).

9 *See* note 1, *supra*, at p. 1.

10 § 911(a), (d)(1).

11 § 911(d)(3).

12 IRS, *US Taxpayers Residing in the United States* (October 9, 2014), *supra*, note 7.

13 *Id*.

14 This example is based on the one given by the author of the article cited in footnote 1, with some variations.

15 Dementors feed upon human happiness, and thus cause depression and despair to anyone near them. They can also consume a person's soul, leaving their victims in a permanent vegetative state, and thus are often referred to as "soul-sucking fiends" and are known to leave a person as an "empty self."

16 *See* note 1, *supra*, at p. 4.

17 *Id*.

Commission To Probe All EU Advance Tax Rulings

The European Commission has announced that its ongoing inquiry into advance tax rulings will be expanded to cover all EU member states.

The Commission said on December 17 that it will ask member states to confirm whether they offer tax rulings. If they do, they will be requested to list all companies that have received a tax ruling from 2010 to 2013 and will be asked to provide information on their tax ruling practices.

The announcement follows recent calls for more transparency on tax rulings in the EU. It has been proposed that EU states should automatically exchange information on tax rulings in cases where a ruling has an impact on the tax base of another state.

Margrethe Vestager, the European Commissioner for Competition, said: "We need a full picture of the tax rulings practices in the EU to identify if and where competition in the single market is being distorted through selective tax advantages. We will use the information received in today's inquiry as well as the knowledge gained from our ongoing investigations to combat tax avoidance and fight for fair tax competition."

The EC confirmed that, since June 2013, it has been investigating, under state aid rules, the tax ruling practices of seven member states. To date, the Commission has requested an overview of tax rulings provided by Cyprus, Ireland, Luxembourg, Malta, the Netherlands, Belgium, and the UK. The EU is also reviewing Gibraltar's rulings regime separately.

Additionally, the Commission has requested information about patent box regimes offered in ten member states (Belgium, Cyprus, France, Hungary, Luxembourg, Malta, the Netherlands, Portugal, Spain, and the UK).

UK Diverted Profits Tax 'Interesting' But Renegade: OECD

In what was the OECD's first response to the UK's plans, Pascal Saint-Amans, the Director of the Centre for Tax Policy and Administration at the OECD, said its plans for a diverted profits tax (DPT) are interesting but should only be undertaken at a multilateral level.

In the Autumn Statement, UK Chancellor George Osborne announced plans to levy a 25 percent DPT on profits "artificially" shifted out of the UK, as part of a package of anti-avoidance measures presented to discourage companies – and in particular multinationals – from avoiding UK taxes.

During the OECD's December 15 webcast on progress towards its BEPS Action Plan, Saint-Amans was asked whether he considers that the DPT is compatible with the Action Plan and the OECD's recommendations, to which he replied:

"We are still looking at the 18 pages of draft legislation which have been issued late last week. I think the UK initiative of [DPT] is extremely interesting as it shows the relevance of the BEPS Action Plan."

"It shows that there is a highly political concern about tax avoidance, and it shows that governments are not shy [about] taking action unilaterally."

"What we wish, of course – and that's the other philosophy of the BEPS action plan – is that this be addressed through multilateral action. So we hope that the UK move, which again shows a very strong political stake in these international tax topics, will be compatible with the development of Action 1, of the report on the digital economy, of the solutions which will be provided, so that at the end of the day we have a coordinated approach which is not detrimental to investment [or] detrimental to government revenues."

Saint-Amans' comments come after criticism by UK accountants and US businesses that the UK proposals are "jumping the gun" on tackling BEPS issues ahead of international consensus. They warned that the UK's competitiveness will take a hit, at a time when the nation is seeking to attract multinationals with the joint lowest corporate income tax among the G20 nations, due to be 20 percent from April 2015.

Japan Finalizes Plans For Corporate Tax Rate Cut

Following a significant parliamentary majority after the recent election in Japan, Prime Minister Shinzo Abe's Government is now to finalize its tax reform plans, including a corporate tax rate cut, by the end of this year.

Earlier this year, the Government took a decision to reduce the country's corporate income tax rate by at least 2.5 percent in the Budget for the next fiscal year, which begins on April 1, 2015. It was to represent a first step towards lowering the current high corporate tax rate of more than 35 percent to below 30 percent over the next few years, as part of Abe's promised growth strategies.

Following the election, discussions have already begun to agree the actual level of the planned corporate tax cut in 2015, and it is expected that the final proposal will concretize a 2.5 percent reduction, with further rate cuts expected for succeeding fiscal years.

The Government had also previously agreed that, even if the further 2 percent consumption tax increase was to happen as scheduled in October 2015, corporate rate cuts would only be possible with other measures to offset most of the consequent revenue losses, given Japan's fiscal deficit position. As that consumption tax hike will now be delayed until April 2017, such alternative revenue sources are seen as mandatory.

In fact, as only around 30 percent of Japan's companies presently pay corporate tax because of previous losses, it is being proposed that revenue can be raised by broadening the corporate tax base by changing, at least in part, from a profit-based system to a size-based system, possibly based on employee numbers or capital utilization.

On the other hand, small and medium-sized enterprises are likely to retain their reduced tax rates or exemptions, while companies that agree to increase employees' wages in compensation for the tax reduction could receive tax breaks.

Colombia's Congress Approves Tax Reforms

Colombia's House of Representatives, the lower house of Congress, approved a bill containing a number of tax regime changes on December 15, 2014.

The reform package seeks to boost Government revenue and plug an emerging budget deficit, but one of its key measures is the gradual elimination of the corporate wealth tax by 2018.

A tax on large companies with a turnover of COP800m (USD332,685) or more will be introduced. The tax, to be known as CREE, will be levied at a rate of 5 percent in 2015, 6 percent in 2016, 8 percent in 2017, and 9 percent in 2018. The tax will be levied in addition to the corporate income tax.

After a u-turn from the Government, the country will continue to impose a wealth tax on the nation's most affluent taxpayers. A rate of 1.5 percent will continue to apply to wealth exceeding COP5bn. A rate of 0.2 percent applies to wealth of between COP1bn and COP2bn, 0.35 percent on wealth between COP2bn and COP3bn, and 0.75 percent on wealth between COP3bn and COP5bn. The tax is paid on January 1 each year.

Colombia also intends to gradually phase out a levy on persons with assets worth COP1bn by 2018. In 2015, this tax will be levied at a rate of 1.15 percent, before falling to as low as 0.4 percent in 2017. The reform package also extends the 0.4 percent tax on banking transactions until 2019.

The package was approved by the Senate on December 10. The tax changes are intended to fund social programs, such as free education and care for the elderly.

Luxembourg To Be Compensated For EU VAT Change

Luxembourg has reportedly secured compensation worth USD1.375bn from EU states in return for its support for EU value-added tax (VAT) rule changes concerning broadcasting, telecommunications and electronic (BTE) services from next year.

From January 1, 2015, EU VAT place of supply rule changes will mean that supplies of BTE services by businesses to consumers will newly be taxable in the location of the consumer, rather than in the location of the supplier.

Luxembourg, which has the lowest EU VAT rates, is expected to be most affected by the changes. Its share of VAT revenues was expected to fall from EUR1bn (USD1.35bn) in 2014 to EUR338m in 2015.

Richard Asquith, Vice President of Global Tax at Avalara, said that, as many large US electronic services providers have their EU headquarters located in Luxembourg, there will be a big shift in tax receipts from Luxembourg to the other 27 member states. The UK, for instance, has estimated that it will receive GBP300m (USD468m) in extra revenues as a result of the change.

Asquith said: "To stop Luxembourg blocking the new digital VAT changes, the other EU member states have had to promise parachute payments of up to USD1.375bn over four years. It will mean Luxembourg will receive 30 percent of the VAT in 2015 and 2016, and then 15 percent in both 2017 and 2018."

In response to the changes, Luxembourg is to hike all rates other than its super reduced rate of VAT by 2 percent from January 1, establishing a headline rate of 17 percent and reduced rates of 8 and 14 percent.

The super reduced rate is to be unchanged at 3 percent, but its scope will change. The supply of alcohol and alcoholic beverages sold by pubs and restaurants will newly be subject to the 17 percent headline VAT rate, along with supplies of housing to third parties as a primary residence.

World Bank Head Pushes Carbon Tax Policies

The President of the World Bank Group, Jim Yong Kim, has said that all countries should commit to placing a price on carbon emissions to prevent global warming from reaching dangerous levels.

Nations have agreed to implement policies to keep the average global temperature rise below two degrees Celsius, the limit agreed internationally to stave off irreversible climate change.

"Effective prices on carbon can be discovered by taxes, market mechanisms, or regulation," Kim said during a recent speech at the Council on Foreign Relations. "Whichever option a country, region, or city chooses, a carbon price makes the pollution we don't want more expensive and incentivizes efficiency and clean production."

"Carbon pricing can raise revenues, and these added resources can be used to generate more economic and social benefits," he added. "We can do this by, for example, moving from 'taxing the goods' to 'taxing the bads'; by using carbon tax revenue to reduce labor and investment taxes and to encourage job creation and economic development, or by supporting innovation and the development of green technologies through research and development subsidies."

Kim praised the carbon pricing mechanism adopted by the Canadian province of British Colombia. The carbon tax, which was introduced in 2008, has been offset by reductions in other tax rates, thereby avoiding an increase in the overall household tax burden. Since its introduction, the carbon tax has reduced emissions and provided a net benefit to taxpayers of CAD300m (USD258m) in personal and business tax cuts, Kim said.

On December 14, 2014, the governments of 196 countries agreed on a way forward in negotiations towards a multilateral agreement on climate change. Nations hope to have this agreement finalized by December next year.

Indian Cabinet Clears Bill To Introduce GST

At its meeting on December 17, India's Cabinet approved the Constitutional Amendment Bill that would allow for the introduction of a goods and services tax (GST) in India. The Bill will now be tabled before Parliament.

An amendment to the constitution is needed to allow States to levy taxes on services. It is proposed that the Amendment Bill would also permit GST to be levied on petroleum products and alcohol in the future, although neither will be subject to tax when GST is introduced. States will, however, be able to set their own rates of GST on alcohol.

India's Finance Minister, Arun Jaitley, has been holding intensive meetings with States in an attempt to secure support for the Bill by the end of the winter session of Parliament on December 23. For the GST plans to move forward, Jaitley requires support from two-thirds of lawmakers in both houses of Parliament and support from 15 of 29 states.

Jaitley has sought to sweeten the deal for States with a guarantee that the Center will make good any tax losses as a result of the introduction of GST for three years. Thereafter it would reimburse 75 percent and 50 percent of any loss to States' tax revenues for the fourth and fifth year, respectively, after the introduction of GST. This is in addition to compensation for earlier reforms that reduced States' share of Central Sales Tax.

Providing the Bill gets approval, India would introduce a dual GST regime from April 2016, featuring a Central GST (C-GST) and a State GST (S-GST).

US Congress Renews Tax Extenders For Two Weeks

Approving the bill sent from the House of Representatives earlier this month, the US Senate on December 16 passed, by a vote of 76-16, a retroactive one-year renewal for the package of "tax extenders" that expired at the end of 2013.

Following the failure of other more selective and longer-term proposals, the Tax Increase Prevention Act of 2014 takes in the 50-plus tax provisions for individuals and businesses and extends them until the end of this year. They will therefore need to be revisited by the next Republican-led Congress sometime in 2015.

The expired provisions, which have previously also been rolled forward annually, include, for individuals, mortgage tax relief, the deduction for state and local sales taxes, and education tax deductions.

For businesses, the package of measures includes increased expensing under Section 179; the 50 percent bonus depreciation; the work opportunity tax credit; the credit for research and development expenses; and tax breaks promoting renewable energy, such as the production tax credit relied upon by the wind power industry.

Renewal of the measures will mean that individual and business taxpayers who are affected by the expired provisions will now be able to compile their tax returns for 2014. However, it will obviously not provide any certainty that the tax extenders will be further renewed next year, particularly following this year's doubts over whether some measures should be discarded and others should be made permanent.

It is also not yet known whether the delays experienced in approving the package will have caused sufficient operational problems for the Internal Revenue Service to have to delay the upcoming tax filing season and the processing of taxpayer refunds.

Ron Wyden (D – Oregon), the outgoing Senate Finance Committee Chairman and the author of a previous proposal to renew the package for two years, was scathing in his comments. "With this stop-and-go tax extender bill, Congress is turning in its tax homework eleven months late," he said. "This package of incentives will last two more weeks before families and businesses will be thrown back into the dark about what taxes they owe. This tax bill doesn't have the shelf life of a carton of eggs."

However, while also disappointed at the lack of longer-term congressional action, Orrin Hatch (R – Utah), current Finance Committee Ranking Member and its incoming Chairman, is reported to have commented that the bill was the best that could be accomplished in the present political circumstances.

Hatch Outlines His Comprehensive Tax Reform Principles

Orrin Hatch (R – Utah), Ranking Member of the Senate Finance Committee and its incoming Chairman, made a speech in the Senate on December 16, during which he listed seven principles he said are needed to guide future comprehensive US tax reform.

Following publication earlier this month of his in-depth analysis, entitled "Comprehensive Tax Reform for 2015 and Beyond," which outlined the issues policymakers will have to confront in the effort to reform the US tax code, Hatch confirmed his hope is that, in the future, "a path toward real bipartisan tax reform will begin to take shape."

Of his seven-point approach, the first three principles – economic growth, entailing cuts in tax rates; fairness, through broadening the tax base; and a simpler tax code to reduce compliance costs – were set out by President Reagan the last time there was tax reform in 1986.

He then added four more principles "to address the needs of today." They included permanence, to avoid the large number of tax provisions that expire regularly; competitiveness, by reducing the high tax rates on businesses and reforming the US international tax system; and the promotion of savings and investment.

However, his final principle of "revenue neutrality," the same one as he also insisted on earlier this year regarding any legislative proposals to counter corporate tax inversions, is contrary to the ideas of many lawmakers, particularly Democrats and President Barack Obama.

Hatch admitted that he knows "this will be a sticking point for some, though, for the life of me, I can't see why. If we're scouring the tax code looking for ways to squeeze more revenue to fuel government spending, we're not reforming the tax code, we're raising taxes. It's as simple as that."

"Tax reform should not be used as an excuse to raise taxes on the American people or on US businesses," he insisted. "We can talk about shoring up deficits and paying for spending, but we shouldn't be looking to the tax code as a resource for additional revenue."

He hopes to start the tax reform effort "early next year," and confirmed that he is "willing to work with anyone – Republican or Democrat – to reform our nation's tax code. And, I look forward to continuing this effort in the 114th Congress and, if necessary, beyond."

UK Offshore United Against Beneficial Ownership Proposals

The UK's overseas territories have jointly rejected calls from the UK Government for them to introduce public registers with information on the beneficial ownership of companies.

The territories rejected the proposal at a recent Joint Ministerial Council meeting. Cayman Premier Alden McLaughlin echoed statements made earlier by Bermuda, arguing that none of the G20 nations has implemented a public registry and none look likely to.

The Joint Ministerial Council is the highest forum that brings together senior officials from the UK Government with the elected leaders and representatives of the Overseas Territories to discuss matters of mutual interest.

McLaughlin reported that the Cayman Islands had consulted with other UK territories, who had agreed that a public register is unnecessary and could be very damaging to the territories in the absence of a level playing field worldwide.

McLaughlin said after the meeting: "Unless such registers become the new global standard and are being used by all major players – including the UK – then neither we nor any other Overseas Territory or Crown Dependency intend to go first and have our economies experimented with and potentially damaged. We see no need for a central registry that would increase cost to business and the country and also create a potential single data source, which motivated and skilled individuals could hack into for gain."

He added: "So under the G20 principle, countries could opt for a central registry or use another appropriate mechanism that would provide the same outcome to quickly and efficiently provide law enforcement with information on beneficial ownership of entities that may be involved in criminal activity. Our systems do this now … and it works well, though we intend to improve on that system to further improve efficiencies."

The territories are to resume discussions on the collection of information on beneficial ownership with the UK in February.

Few Changes In British Virgin Islands' 2015 Budget

The Government of the British Virgin Islands has announced a number of measures in the 2015 Budget to expand the territory's revenue base.

The Government intends to: change the current work permit structure such that fees will be based on occupation type, with consideration given to average income by occupation type; introduce a tourist arrival levy from 2016; return to imposing import duties on a cost, insurance, and freight (CIF) value basis; adopt a more aggressive approach to the collection of taxes and fees and arrears by reviewing current legislation to give revenue collecting agencies greater authority to enforce compliance; and conduct an ongoing, comprehensive review of Government's tax and fee structures with a view to closing loopholes, to ensure that fees at least cover the costs of providing services.

Alongside the Budget, the Government reported that tax revenue in 2013 increased by 3.3 percent against the year before. Payroll taxes increased most significantly, by 8.5 percent year-on-year, while revenues from property tax, trade taxes, and other revenue sources declined.

United Arab Emirates To Review Its Tax Treaties

The United Arab Emirates (UAE) is reviewing its tax treaty network to ensure it will be compliant with the proposals of the OECD as part of its base erosion and profit shifting (BEPS) work.

The UAE recently held a workshop in Dubai, titled "Taking Tax Treaty Work Related To BEPS Forward," in collaboration with the OECD. The workshop covered the legal aspects of designing and implementing tax treaties. It also discussed how tax treaties exacerbate BEPS risks, developments concerning the attribution of profit to permanent establishments, proposed changes to the OECD model tax convention, and challenges related to the taxation of the digital economy.

The OECD is engaged in a number of initiatives concerning treaties, including its BEPS Action 6 work on preventing treaty abuse. Under this area of its 15-point Action Plan, the OECD aims to develop treaty and domestic law provisions that would deny treaty benefits in inappropriate circumstances and introduce best practice with regards negotiating tax treaties. Of particular relevance, this Action item reinforces that tax treaties should not give rise to double non-taxation or facilitate treaty shopping.

The UAE has signed almost 80 double tax agreements since it began to build a treaty network in 1987.

INDONESIA - BERMUDA

Ratified

Indonesia ratified its TIEA with Bermuda on September 12, 2014.

A guide to the next few weeks of international tax gab-fests (we're just jealous - stuck in the office).

THE AMERICAS

19TH TAXATION OF CORPORATE REORGANIZATION

Federated Press

Venue: Courtyard by Marriott Downtown Toronto, 475 Yonge Street, Toronto, ON, M4Y 1X7, Canada

Key Speakers: Mark Brender (Hoskin & Harcourt LLP), Firoz Ahmed (Hoskin & Harcourt LLP), Eric C Xiao (Ernst & Young LLP), Mitchell J Sherman (Goodmans LLP), among numerous others

1/20/2015 - 1/22/2015

http://www.federatedpress.com/pdf/TCR1501-E.pdf

4TH ANNUAL INSTITUTE ON TAX, ESTATE PLANNING AND THE ECONOMY

STEP

Venue: Newport Beach Marriott Hotel & Spa, 900 Newport Center Drive, Newport Beach, California, 92660, USA

Chair: Mark Silberfarb (Chapter Chair, STEP OC)

1/22/2015 - 1/24/2015

http://www.step.org/sites/default/files/STEP%20OC%20Conference%20Brochure%202015%20SCREEN%2026%20August%202014.pdf

16TH TAX PLANNING FOR THE WEALTHY FAMILY

Federated Press

Venue: Calgary Marriott Hotel, 110 9th Avenue, SE, Calgary, AB, T2G 5A6, Canada

Key Speakers: James Meadow (MNP LLP), Melanie McDonald (Borden Ladner Gervais LLP), Doris C.E. Bonora (Dentons Canada LLP), David N. Beavis (Counsel Financial), Michael J. Beninger (Bennett Jones LLP), among numerous others

1/27/2015 - 1/28/2015

http://www.federatedpress.com/pdf/TPWF1501-E.pdf

INTERNATIONAL TAX ISSUES 2015

Practising Law Institute

Venue: PLI New York Center, 1177 Avenue of the Americas, New York, New York 10036, USA

Chair: Michael A. DiFronzo (PwC)

2/11/2015 - 2/11/2015

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2015/_/N-4kZ1z12a24?ID=223914

INTERNATIONAL ESTATE & TAX PLANNING 2015

Practicing Law Institute

Venue: PLI New York Center, 1177 Avenue of the Americas, New York 10036, USA

Chairs: Dean C. Berry (Cadwalader, Wickersham & Taft LLP), Robert L. Dumont (Deloitte Tax LLP)

2/13/2015 - 2/13/2015

http://www.pli.edu/Content/Seminar/International_Estate_Tax_Planning_2015/_/N-4kZ1z1297k?ID=222616

AMERICAS TRANSFER PRICING SUMMIT 2015

TP Minds

Venue: Biltmore Hotel, Miami, Florida, 1200 Anastasia Ave Coral Gables, FL 33134, USA

Key Speakers: Samuel Maruca (IRS), Michael Lennard (United Nations), Mayra Lucas (OECD), David Ernick (PwC), Sergio Luis Pérez (SAT Mexico), among numerous others

2/19/2015 - 2/20/2015

http://www.iiribcfinance.com/event/Americas-Transfer-Pricing-Conference

Advanced International Tax Planning

Bloomberg BNA

Venue: Treasure Island Hotel, 3300 S. Las Vegas Blvd, Las Vegas, NV, 89109, USA

Chair: TBC

2/23/2015 - 2/24/2015

http://www.bna.com/advanced_lasvegas.aspx

THE 4TH OFFSHORE INVESTMENT CONFERENCE PANAMA 2015

Offshore Investment

Venue: Hilton Panama, Esquina de Avenida Balboa y Aquilino de la Guardia, Av Balboa, Panama

Chair: Derek R. Sambrook (Trust Services)

3/11/2015 - 3/12/2015

http://www.offshoreinvestment.com/media/uploads/Panama%20Brochure-%20Final.pdf

INTRODUCTION TO US INTERNATIONAL TAX

Bloomberg BNA

Venue: Morgan Lewis Conference Center, 1 Market Street, Spear Street Tower, San Francisco, CA 94105, USA

Chair: TBC

3/16/2015 - 3/17/2015

http://www.bna.com/intro_SF2015/

INTERMEDIATE US INTERNATIONAL TAX UPDATE

Bloomberg BNA

Venue: Morgan Lewis Conference Center, 1 Market Street, Spear Street Tower, San Francisco, CA 94105, USA

Chair: TBC

3/18/2015 - 3/20/2015

http://www.bna.com/inter_SF2015/

INTERNATIONAL TAX ISSUES 2015 - CHICAGO

Practicing Law Institute

Venue: University of Chicago Gleacher Center, 450 N. Cityfront Plaza Drive, Chicago, Il 60611, USA

Chair: Lowell D. Yoder (McDermott Will & Emery LLP)

9/9/2015 - 9/9/2015

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2015/_/N-4kZ1z12a24?ID=223915

ASIA PACIFIC

THE 3RD OFFSHORE INVESTMENT CONFERENCE SINGAPORE 2015

Offshore Investment

Venue: Raffles, 1 Beach Rd, 189673, Singapore

Chair: Nicholas Jacob (Wragge Lawrence Graham & Co)

1/21/2015 - 1/22/2015

http://www.offshoreinvestment.com/media/uploads/The%203rd%20OI%20Conference%20Singapore%202015%20pgs%207-10%20(2).pdf

2015 FINANCIAL SERVICES TAXATION CONFERENCE

The Tax Institute

Venue: Surfers Paradise Marriott Resort & Spa, 158 Ferny Avenue, Surfers Paradise QLD 4217, Australia

Key Speakers: Rob Colquhoun, ATI (Australian Financial Markets Association), Dr Stephen Kirchner (Australian Financial Markets Association), Rob McLeod (EY), Greg Fitzgerald (Macquarie Group), Robert Gallo (PwC), Warren Dunn (EY), Patrick Grob, CTA (Suncorp), among numerous others

2/18/2015 - 2/20/2015

http://eportal.taxinstitute.com.au/StaticContent/Download/1150202M1WD.pdf

INTERNATIONAL CORPORATE TAX PLANNING ASPECTS

IBFD

Venue: Conrad Centennial Singapore, Two Temasek Boulevard, 038982 Singapore

Key Speakers: Chris Finnerty (ITS), Julian Wong (Ernst & Young), Tom Toryanik (RBS)

4/20/2015 - 4/22/2015

http://www.ibfd.org/Training/International-Corporate-Tax-Planning-Aspects-0

CENTRAL AND EASTERN EUROPE

CIS WEALTH MOSCOW 2015

CIS Wealth

Venue: Renaissance Moscow, Monarch Centre Hotel, 31A bld.1 Leningradsky prospect Moscow 125284, Russia

Key speakers: TBC

2/16/2015 - 2/17/2015

http://cis-wealth.com/files/1411641516.pdf

WESTERN EUROPE

EMPLOYMENT TAX PLANNING CONFERENCE

IIR & IBC Finance Events

Venue: etc. Venues, The Hatton, 51-53 Hatton Garden, London, EC1N 8HN, UK

Key Speakers: Patrick Way QC (Field Court Tax Chambers), Teresa Payne (BDO), Nick Wallis (Smith & Williamson), Rosemary Martin (Deloitte), Jenny Wheater (Duane Morris), among numerous others

1/20/2015 - 1/20/2015

http://www.iiribcfinance.com/event/Employment-Tax-Planning-Conference/dates-venue

PRIVATE CLIENT PROPERTY TAXATION 2014

IBC

Venue: Radisson Blu Portman Hotel London, 22 Portman Square, London W1H 7BG, UK

Key Speakers: Robert Smeath (Clarke Wilmott LLP), Michael Thomas (Gray's Inn Tax Chambers), Emma Chamberlain (Pump Court Tax Chambers), Marilyn McKeever (Berwin Leighton Paisner LLP), among numerous others.

1/22/2015 - 1/22/2015

http://www.iiribcfinance.com/event/private-client-property-taxation-conference

EMPLOYMENT TAX PLANNING CONFERENCE 2015

IIR & IBC Financial Events

Venue: etc. Venues, The Hatton, 51-53 Hatton Garden, London, EC1N 8HN, UK

Key Speakers: Patrick Way QC (Field Court Tax Chambers), Teresa Payne (BDO), Nick Wallis (Smith & Williamson), Rosemary Martin (Deloitte), Jenny Wheater (Duane Morris), among numerous others.

1/28/2015 - 1/28/2015

http://www.iiribcfinance.com/event/Employment-Tax-Planning-Conference

4TH IBA/CIOT CONFERENCE: CURRENT INTERNATIONAL TAX ISSUES IN CROSS-BORDER CORPORATE FINANCE AND CAPITAL MARKETS

International Bar Association

Venue: Holborn Bars, 138-142 Holborn, London, EC1N 2NQ, UK

Chair: Jack Bernstein (Aird & Berlis)

2/9/2015 - 2/10/2015

http://www.int-bar.org/conferences/conf618/binary/London%20Tax%20Issues%202015%20programme.pdf

20TH INTERNATIONAL WEALTH TRANSFER PRACTICE LAW CONFERENCE

International Bar Association

Venue: Claridges Hotel, 49 Brook St, London, W1K 4HR, UK

Chairs: Leigh-Alexandra Basha (Holland & Knight), Gerd Kostrzewa (Heuking Kühn Lüer

Wojtek), Christopher Potter (Sete), Rashad Wareh (Kozusko Harris Duncan)

3/2/2015 - 3/3/2015

http://www.int-bar.org/conferences/conf603/binary/London%20IWTP%202015%20programme.pdf

INTERNATIONAL TRANSFER PRICING SUMMIT 2015

TP Minds

Venue: Millennium Gloucester Hotel, 4-18 Harringdon Gardens, Kensington, London, SW7 4LH, UK

Key Speakers: Samuel Maruca (IRS), Joseph Andrus (OECD), Michael Lennard (United Nations), Peter Steeds (HMRC), Ian Cremer (WCO), among numerous others

3/10/2015 - 3/11/2015

http://www.iiribcfinance.com/event/International-Transfer-Pricing-Summit/speakers

INTERNATIONAL TAX ASPECTS OF CORPORATE TAX PLANNING

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: Jeroen Kuppens (KPMG), Boyke Baldewsing (IBFD), Frank Schwarte (Abel Advisory), Luis Nouel (IBFD)

3/18/2015 - 3/20/2015

http://www.ibfd.org/Training/International-Tax-Aspects-Corporate-Tax-Planning-0

THE 37TH ANNUAL OFFSHORE TAXATION CONFERENCE

IIR & IBC financial Events

Venue: TBC, London, UK

Key Speakers: Emma Chamberlain (Pump Court Tax Chambers), Patrick Soares (Field Court Tax Chambers), Giles Clarke (Offshore Tax Planning)

3/24/2015 - 3/24/2015

http://www.iiribcfinance.com/event/offshore-tax-planning-conference

THE 9TH ANNUAL FORUM ON COLLECTIVE INVESTMENT SCHEME (CIS) TAXATION

Infoline

Venue: TBC, London, UK

Key Speakers: Malcolm Powell (Investec Asset Management), Kevin Charlton (KPMG), Teresa

Owusu-Adjei (PWC), Lorraine White (Bank of New York Mellon), Jorge Morley-Smith (Investment Management Association), Christopher Mitchell (BNY Mellon)

3/25/2015 - 3/25/2015

http://www.infoline.org.uk/event/Collective-Investment-Scheme-Taxation

SPRING RESIDENTIAL CONFERENCE 2015

Chartered Institute of Taxation

Venue: Queens' College, Silver Street, Cambridge CB3 9ET, UK

Chair: Chris Jones (Chartered Institute of Taxation)

3/27/2015 - 3/29/2015

http://www.tax.org.uk/Resources/CIOT/Documents/2014/11/v4Spring%20Conference%202015%20-%20brochure.pdf

INTERNATIONAL TAX ASPECTS OF MERGERS, ACQUISITIONS AND CORPORATE FINANCE

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: Jan-Pieter Van Niekerk, Daan Aardse (KPMG), Rens Bondrager (Allen & Overy LLP), Marcello Distaso (Van Campen Liem), Piet Boonstra (Van Campen Liem), Paulus Merks (DLA Piper LLP)

3/30/2015 - 4/1/2015

http://www.ibfd.org/Training/International-Tax-Aspects-Mergers-Acquisitions-and-Corporate-Finance

PRINCIPLES OF INTERNATIONAL TAXATION

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: Laura Ambagtsheer-Pakarinen (IBFD), Roberto Bernales (IBFD), Piet Boonstra (Van Campen Liem), Marcello Distaso (Van Campen Liem), Carlos Gutiérrez (IBFD)

4/20/2015 - 4/24/2015

http://www.ibfd.org/Training/Principles-International-Taxation-1

INTERNATIONAL TAXATION OF E-COMMERCE

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: Bart Kosters (IBFD), Tamas Kulcsar (IBFD)

5/11/2015 - 5/13/2015

http://www.ibfd.org/Training/International-Taxation-e-Commerce#tab_program

PRINCIPLES OF INTERNATIONAL TAX PLANNING

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Chair: Boyke Baldewsing (IBFD)

6/1/2015 - 6/5/2015

http://www.ibfd.org/Training/Principles-International-Tax-Planning-0

INTERNATIONAL TAXATION OF EXPATRIATES

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: Bart Kosters (IBFD)

6/10/2015 - 6/12/2015

http://www.ibfd.org/Training/International-Taxation-Expatriates

INTERNATIONAL TAX ASPECTS OF PERMANENT ESTABLISHMENTS

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: Andreas Perdelwitz (IBFD), Bart Kosters (IBFD), Hans Pijl, Roberto Bernales (IBFD), Walter van der Corput (IBFD), Madalina Cotrut (IBFD), Jan de Goede (IBFD)

6/16/2015 - 6/19/2015

http://www.ibfd.org/Training/International-Tax-Aspects-Permanent-Establishments

INTERNATIONAL TAX SUMMER SCHOOL

IIR & IBC Financial Events

Venue: Gonville & Caius College, Trinity St, Cambridge, CB2 1TA, UK

Key Speakers: Timothy Lyons QC (39 Essex Street), Peter Adriaansen (Loyens & Loeff), Julie Hao (EY), Heather Self (Pinsent Masons), Jonathan Schwarz (Temple Tax Chambers), among numerous others

8/18/2015 - 8/20/2015

http://www.iiribcfinance.com/event/International-Tax-Summer-School-2015

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: TBC

9/16/2015 - 9/18/2015

http://www.ibfd.org/Training/International-Taxation-Banks-and-Financial-Institutions

ASIA PACIFIC

A listing of key international tax cases in the last 30 days

India

The Mumbai Income Tax Appellate Tribunal heard the case of an Indian company which was part of a group offering both international and domestic delivery services. In the report detailing its transactions with an associated enterprise (AE), the company suggested that the prices were at arm's length, having been calculated using the Transactional Net Margin Method (TNMM), but the Transfer Pricing Officer (TPO) believed that the "assessee's margin with the AE and the allocation of costs are not at arm's length" based on a number of factors, including the comparables used to calculate the margin, the allocation of expenses, and the fact that certain deliveries were provided free of charge in both India and the Middle East as part of a reciprocal arrangement with the AE. A transfer pricing adjustment was therefore imposed.

The company approached the Dispute Resolution Panel to argue against both the TPO's contention that the transactions had not been undertaken at arm's length and the subsequent transfer pricing adjustment, but again its arguments were rejected, and so it brought its case before the Tribunal. The company also disputed the imposition of interest on the adjusted amount.

The company stated that although transactions under two of the company's business aspects, express and freight services, had been found to be at arm's length, the TPO had taken issue with the domestic comparable transactions due to the losses incurred from competing with other Indian delivery businesses. The TPO had decided to reject the segregation of transactions between the types of business activity for the sake of the transfer pricing report because he was of the opinion that "the assessee had suffered losses in the Indian operations and from this he inferred that the profits have been shifted to the international transaction with the AEs", which the company disagreed with. The Tribunal sided with the company on the basis that the TPO's reliance on the domestic losses was not in itself a good enough reason to reject the company's segregated report and to suggest that the transactions had not been made at arm's length.

With regard to the services provided free of charge in the Middle East, the Tribunal accepted the validity of the arrangement between the company and its AE. The unallowed expenses in the company's report were also accepted by the Tribunal, given the accuracy of the company's calculations, and therefore the company's transactions were deemed to have been undertaken at arm's length, and the adjustment was disallowed.

Regarding the consequent imposition of interest, the Tribunal found that interest should be imposed only on the correctly assessed income amount.

The judgment was delivered on November 28, 2014.

http://www.itatonline.in:8080/itat/upload/294771765856287082313$5%5E1REFNO798_Aramexs_India_Private_Limited.pdf

Income Tax Appellate Tribunal: *Aramex India Private Limited v. DCIT (ITA No.798/Mum/2014)*

WESTERN EUROPE

Italy

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning an Italian company that failed to follow domestic value-added tax (VAT) invoicing requirements for intra-community acquisitions from two other companies, which were established in France and the Netherlands.

The tax authority imposed a VAT assessment and a penalty on the company for failing to register the VAT invoices concerned – being a monthly requirement under Italian law.

On appeal, the District Tax Court dismissed the assessment, but the Regional Tax Court ruled in favor of the authority, stating that "the failure to register was a breach which was not formal but substantive in nature and that it constituted an infringement such as to warrant a notice of reassessment and/or recovery." The company further appealed to the Court of Cassation, arguing that its failure to register the VAT invoices was not a substantive breach and argued that the tax authority had erred in assessing the company's VAT liability. The ECJ was approached for an interpretation of provisions regarding a company's right to deduct VAT in circumstances where that company had failed to register VAT invoices following intra-Community acquisitions.

The ECJ said, according to case law, that the right to deduct VAT "is an integral part of the VAT scheme and in principle may not be limited." It said the reverse charge mechanism applies because the transactions were between two member states and the recipient should therefore be entitled to deduct the input tax it incurs for receiving the supply.

The ECJ further stated that EU law allows member states to create requirements for the application of the right to deduct VAT, but they must be not go beyond what is necessary to ensure that the reverse charge procedure has been correctly applied.

In addition, it said member states may impose obligations together with the obligations under EU law for the sake of collecting taxes and preventing fraud, as long as they do not interfere with the principle of neutrality.

Drawing on previous rulings, the ECJ said, with regards the reverse charge procedure, that fulfillment of the substantive requirements may be enough to allow the right to deduct VAT, even if the more formal requirements were not satisfied by the company. A tax authority which identified evidence that the company complied with the substantive requirements cannot therefore prevent the company from applying the right "for practical purposes."

The ECJ concluded that the company in the present case fulfilled all the necessary substantive requirements and should be eligible for an input tax credit on VAT incurred under a reverse charge on goods acquired for use in making taxable supplies. The ECJ concluded that EU law precludes a tax authority from denying the company the right to deduct VAT if that company has fulfilled the most necessary requirements, despite its failure to register its VAT invoices.

The judgment was delivered on December 11, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=160567&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7842

European Court of Justice: *Idexx Laboratories Italia Srl v. Italy (C-590/13)*

Spain

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning Spain's national law stating that a Spanish tax representative is required when pension funds and insurance services based in other EU member states provide services (for example occupational pension schemes) in Spain. The European Commission was of the opinion that the law was incompatible with European legal provisions with regard to freedom to provide services, and brought an action against Spain when it failed to implement measures to change the law; Spain then approached the ECJ for a ruling.

The Commission argued that requiring a tax representative only in the case suppliers of pension funds and insurance based in other member states was an infringement of the freedom to provide services available under EU law, because it imposed an additional burden on such companies providing services in Spain and therefore discouraged them from doing so. Spain admitted that the law was affecting the freedom to provide services of non-resident companies, but argued that the measure was "justified by the need for effective fiscal supervision and the prevention of tax evasion."

Spain believed that appointing a tax representative in the case of non-resident suppliers reduced the possibility of tax evasion occurring since the representative could be more easily contacted by the

Spanish tax authority in case they required more information. In addition, the requirement under Spanish law for the representative to withhold tax on non-resident pension fund and insurance services meant that foreign companies could fulfill the same obligation under EU law to withhold tax as resident companies.

France argued (in support of Spain) that the tax representative law was "justified by the need to ensure the effective collection of tax, which the Court has recognized as an overriding reason in the public interest." A representative meant that the receivers of the services did not have to withhold tax themselves, which would have made foreign companies less attractive since business with resident companies did not carry the same burden, France claimed. The Commission rejected the arguments of both Spain and France on the basis that appointing a tax representative was not necessary to ensure the efficient collection of tax from the provision of non-resident services.

The ECJ pointed out that EU law prevents the application of any national law that makes foreign provision of services more difficult than the domestic provision of services, or impedes "the activities of a provider of services established in another Member State where he lawfully provides similar services."

Spain argued that the ECJ had stated in the past that the prevention of tax evasion was a legitimate reason for restricting the freedom to provide services according to past cases. The ECJ agreed for the most part that a tax representative was an appropriate measure to ensure effective tax collection; however, exchange of information between tax authorities of different member states for the sake of accurately collecting income tax is permitted under EU law, and although Spain attempted to argue that a tax representative was necessary because the relevant EU legal provisions were ineffective, it failed due to a lack of supporting evidence.

The fact that the tax representative was intended to withhold tax on behalf of the foreign service providers, which the ECJ had held to also be a legitimate reason, was not deemed relevant because the main issue according to the Commission was the obligation to appoint a tax representative rather than the tax withholding method itself.

The ECJ ruled that Spain had failed to adhere to EU law by enacting legislation which restricted foreign companies' freedom to provide services in Spain by requiring them to appoint a tax representative.

The judgment was delivered on December 11, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=160569&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=121573

European Court of Justice: *Commission v. Spain (C-678/11)*

Dateline December 25, 2014

Love it or loathe it, Google is now almost as ubiquitous as the Internet itself – I frequently find myself "googling" something (that is, searching for something on the "net"), even though I might not be using that particular search engine. Google's business model is one of the major reasons why the Internet remains largely free to use, and the vast majority of us probably want it to stay that way. The free Internet has its losers, as well as its winners, though. And the publishers of traditional newspapers see themselves as one of the biggest losers of the digital revolution, with few people prepared to pay to receive quality journalism any more. But that is just a fact of life these days, and the newspapers would do well to adapt to the new environment. Some have accepted this reality in the knowledge that Google's news aggregation service drives huge amounts of traffic to their websites, bringing in bountiful advertising revenues. Others have erected their own pay walls so that users must subscribe to their content, which is also fine if one is loyal to a particular publication, and by and large these models seem to be working, even while most of their rivals' content remains unlocked. There are some though who continue to hold out against the tide, arguing that Google must compensate publishers for placing headlines and news snippets from their publications on free-to-use Google News. Germany tried a so-called "Google tax" last year, and Google's reaction was simple but very effective at changing the Government's mind: it just pulled German publications from Google News, after which traffic to these sites plunged. More or less the same thing happened in Belgium. So when Spain approved its own Google tax, at the behest of the Spanish media association AEDE, the result was entirely predictable. I have seen figures that suggest traffic to Spanish media sites fell by 15 percent within hours of their removal from Google News. One suspects that Canon AEDE, the Spanish legislation in question, will have a similarly brief life.

From one type of tax error to another now. I praised the UK Government's Autumn Statement last week for its long overdue reform of stamp duty land tax on property purchases – but against my better judgment as it turned out. They often say that the devil is in the detail of Government Budget statements, and it transpires that the Autumn Statement is home to a particularly ugly demon taking the form of the so-called "diverted profits tax." One can see why people get hot under the collar about corporate tax avoidance, when most individual taxpayers see a quarter to a half of their pay taken by the Government before it even hits their pockets and with few legal avenues open to reduce individual tax liability for most salaried workers. But it's one thing for a Government to talk tough on multinational tax dodging, and quite another to destroy a carefully cultivated reputation as a friend to business with the stroke of a pen. Actually, it's more than one stroke, as OECD Secretary General Pascal Saint Amans observed last week. The draft DPT legislation stretches to 18 pages, and it's certainly saying something when the OECD appears bamboozled by a tax measure. Which is, indeed, one of the problems with the proposal. I'm not sure what the worst thing about the DPT is – the tax itself, or the fact that others are keen to ape it. Australia's Finance Minister Joe Hockey, prominent among them, doesn't seem to realize how bad an idea it is; not only does it undermine the OECD's BEPS work – with Saint Amans, too, criticizing the UK for jumping the gun – it is also riddled with flaws. It's aggressive and punitive in nature, and the proposal, as drafted, once again stacks the dice against the taxpayer by handing sweeping powers to HMRC to determine who is playing by the rules and who isn't, with few rights of appeal built in. It's also at odds with the UK's obligations under its vast network of double tax treaties, the result of which could be a cornucopia of tax litigation. I'm willing to give Osborne the benefit of the doubt that he hasn't completely taken leave of his senses. Perhaps this is a calculated move – a suitably timed piece of multinational bashing with a general election six months down the line – rather than an attempt to curry favor with Gurría and Saint Amans *et al*. The UK is banking on the fact that by next year it will have the lowest corporate tax rate in the G20, and so multinationals will no longer be tempted to shift profits to tax havens, but perhaps the stick now outweighs the carrot.

It would be all too easy to execrate the United States for yet another fine mess Congress has made of the tax code, after the House of Representatives and Senate managed to agree an effective two-week renewal of a ragbag of around 50 tax provisions. (Most expired at the end of 2013 and have been renewed retrospectively to the end of 2014.) Yes, it's bad, but we all expect it now, and in a way things can only get better. It's the season of goodwill, and I want to be optimistic that Congress, with its Republican majority for the next two years, will really grasp the nettle and consider some radical tax reform proposals, like a federal consumption tax or value-added tax, as Senator Ben Cardin (a Democrat) has. Some might question whether such outlandish proposals are really necessary. The US economy is ticking along quite nicely, despite the mangled state of the tax code. However, with most arguments against a federal sales tax being that it would be regressive and would risk dampening consumer sentiment, Senator Cardin's proposal tries to make things more progressive, albeit through a consumption tax rebate for low- and middle-income earners that to my mind introduces complexity into a system meant to be simpler. So, certainly, there are plenty of problems with a new consumption-based tax system, and it will probably never happen in my lifetime. But the likes of the IMF keep telling Governments not to rely so much on taxing incomes, and to tax consumption instead, so there has to be some merit in it; anything has to be better than the dog's breakfast we are presented with now. I have a friend who frequently complains to me about the amount of time he spends with his CPA in order to make sure his tax affairs are in order – time he'd rather spend running his company. His company's tax return now resembles a book, yet he still lives in fear of an IRS audit. How did we get to this? Tax is now almost a science, but scientists don't generally get fined, bankrupted, or thrown in jail if they get their equations wrong. Just imagine the restorative effect that a completely new way of taxing – and one that doesn't rely on incomes – could have on the economy. The US political system can be maddening at times, but at least Congress has the ability to think out of the box: a world without tax returns – now I'm dreaming, but wouldn't that be something?

The Jester