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a closer look

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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

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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.

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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).

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At The Intersection Of International Tax And Technology

by Channing Flynn, Stephen Bates and Jess Martin, Ernst & Young LLP, US

Tax update	Technology impact	Ask yourself
The UK proposes a "diverted profits tax" (DPT).	Global companies analyze implications for the movement and alignment of value-driving activities in their supply chains.	How could the DPT apply to your current tax position? Should you consider any restructuring of offshore arrangements?
OECD tax proposals proliferate.	A spate of new proposals includes draft VAT/GST tax policies for cross-border business to consumer (B2C) and business to business (B2B) services and intangibles.	Are you looking inside your own enterprises to be sure your continual business innovation can proceed in the most tax-effective manner and in alignment with the tax transformation all around you?
Mexico provides R&D tax accommodation.	Many countries have been introducing or updating R&D incentives, and technology companies increasingly see opportunities for their globalizing operations.	Are you thoroughly assessing the changing landscape of available R&D incentives?
The Korean Supreme Court exempts foreign patents.	Royalties paid to a US licensor for the use of a patent registered outside Korea are not subject to Korean withholding taxes.	Are there situations in which you should file for a refund?
Customs complicate cross-border e-commerce.	While B2C buy/sell transactions happen virtually, tangible products must then cross borders, introducing customs rules into the equation.	Are you doing the tax and customs planning needed for an efficient and compliant global e-commerce structure?
A growing number of governments try to clarify how export controls apply to cloud computing.	Risks fall primarily on cloud users, who have the ultimate compliance responsibility for their controlled technology.	Does your export controls program address your current and future exploitation of cloud computing?

Fielding Digital Tax Challenges From All Directions

The technology sector is the catalyst of the global digital economy, propagating new digital business models while providing the products and services driving transformation throughout other industries as well. And so technology companies also find themselves on the front lines of a global evolution in taxation, as governments seek to establish tax rules for the digital economy. For all its rewards, the forefront can be a risky place to do business.

Uncertainty prevails today in digital taxation. Technology and its taxation are both changing at an accelerating pace, at widely varying speeds worldwide, with business and policy innovation continuing from all directions. This creates an environment that has already seen its share of tension between borderless cloud computing models and sovereign tax administrations, between global mobile consumers and location-based sales taxes, and between flexible cross-border value chains and the calculation of their fair taxation.

Finance professionals cannot simply pause to look both ways at the intersection of international tax and technology. Right now, they must always be looking all ways. To stretch our column's metaphor, think of 2015 as rush hour at this intersection – itself a complicated urban crossroads of multiple streets and on-ramps, with a diversity of big and small vehicles converging at various speeds alongside pedestrians and bikers and, coming soon, a drone swooping over all.

This edition of our column looks at tax change coming from several directions – transactional as well as geographic – from taxation of the intangible to the tangible, profits to dividends, and global to local.

In this column:

Item 1: The UK has moved into the fast lane of global tax restructuring by proposing a "diverted profits tax" (DPT, effective April 1, 2015) even as the Organisation for Economic Co-operation and Development (OECD) continues work on its own approach to profit diversion within the multilateral project on base erosion and profit shifting (BEPS).

Item 2: When we talk about 2015 as rush hour at the intersection of international tax and technology, that is, in part, because the OECD has predicted completion of its BEPS work this year. Recent activity in various BEPS working groups addresses value-added tax/global sales tax (VAT/GST), permanent establishment (PE) and transfer pricing.

Item 3: Mexico provides R&D tax accommodation.

Item 4: On intangibles: Korean Supreme Court exempts foreign patents.

Item 5: On tangibles: Customs complicate cross-border e-commerce.

Item 6: In a related trade matter, a growing number of governments are working to clarify how export controls apply to cloud computing.

These local country and international dynamics present fundamental considerations for tax practitioners and international finance executives:

(a) They need to understand the level of uncertainty they face, as they monitor and prepare for ongoing change in technology taxation worldwide.

(b) They should always keep in mind the current context of potentially varying tax treatment from country to country.

(c) They should map the tax treatment of intellectual property (IP), transfer pricing, research and development (R&D), and other technology-related issues to their business

models from the very outset, as they first develop their strategies, and build in flexibility for the long term.

For the record

EY's tax and technology professionals from our member firms around the world bring a particular focus on today's technology megatrends of smart mobility, social networking, big data analytics, cloud computing and accelerated technology adaptation. Writing regularly for *Global Tax Weekly* is a great way to share our insight and experience with you, so we look forward to receiving your comments and ideas for future topics for this column. Please email your comments and suggestions to Jess Martin, Ernst & Young LLP (US), at jess.martin@ey.com.

We also invite you to explore EY's *Worldwide cloud computing tax guide* (100 + countries and growing), which shows where governments stand today with regard to many of the issues addressed in this column, at http://www.ey.com/cloudtaxguide.

Item 1: Global Companies And Policymakers Analyze UK's Proposed "Diverted Profits Tax"

by Ian Beer, Ernst & Young LLP, UK

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If the UK Government's December announcement of a new "diverted profits tax" (DPT) has stirred up global trade politics, lobbying pressures and media headlines, we will leave all that for other commentators to discuss. Better to ask, what is the potential impact of the UK's new tax on companies around the world?

The UK takes a stance

When is an international business entity or transaction structured more for tax avoidance than commercial objectives? The UK in December announced a policy for identifying just such instances and assessing a 25 percent penalty tax (rather than 20 percent corporate income tax) when they occur. The DPT was unveiled as the UK and other countries are still working together on a separate draft solution to the question, as part of the OECD's BEPS project to produce new global tax guidelines this year.

The DPT is intended to apply to those large multinational enterprises that do business in the UK and that enter into what are being called "contrived" arrangements to divert profits offshore. UK tax officials have underscored that the rules are intended to be closely targeted on what they perceive to be abusive arrangements and that the UK's overarching tax policy remains "open for business but tough on avoidance." However, the drafting of provisions is broad in places and could give rise to considerable uncertainty in the DPT's application in the short term.

Mechanisms under scrutiny include the avoidance of a taxable PE in the UK and hybrid mismatches exploiting differences in the tax treatment of entities or of transactions between UK operations and connected entities in one or more countries overseas.

The legislation is scheduled to take effect April 1, 2015. Although comments have been invited on technical details, the UK Government has asserted its commitment to introducing this legislation without significant changes of substance. Notably, for financial statement purposes, certain (mainly, publicly traded) companies may well have to assess the impact of this new UK penalty tax well before their fiscal year-end – especially in view of the DPT's upfront assessment and collection provisions.

IP example provides case in point

An example is IP, and a measure would be the actual control over IP ownership functions, including people controlling the development, enhancement, maintenance, protection and exploitation functions. Does the asset owning company have such control or does it simply provide a license while paying (lower) tax than otherwise might be charged on profits from the sale of related products or services in the UK?

Impact emanates from the UK

Uncertainty is the immediate impact of the UK's move, since it remains unclear how many companies in the UK might be affected, how many other countries might line up with its approach, and how much influence it will have on the OECD's BEPS process.

In the UK, many transactions may fall within the boundaries of the legislation as currently drafted. An example of the breadth of the legislation is that a company can be taxed merely because it is "reasonable to assume" that a particular activity is designed to avoid tax.

If the legislation remains wide-ranging, multinationals across the technology sector and other industries could be at risk of an upfront charge in the UK that they will have to contest to get their money back. On the other hand, the provisions could be refined to affect a narrow class of company. (Notably, the UK Government has tended in the past to draw the boundaries of its tax rules relatively narrowly, but the risk remains until the matter is clarified.) The prospect of court challenges has also been raised in the media, introducing another element of uncertainty.

Effects to reverberate overseas

While other countries have not responded publicly and specifically to the UK proposal, governments such as Australia and the US have also made high-profile statements against international tax loopholes in general and have proposed various solutions, some of which are said to be in line with draft OECD BEPS guidelines.

Regarding the BEPS process, the International Chamber of Commerce reacted to the UK's announcement by reiterating its support for multilateral over unilateral approaches to taxation, to reduce the potential for inconsistencies and conflicts among national tax laws around the world, and to avoid double taxation. Others say that if the UK's approach were widely copied, some changes being considered by the OECD for a more fundamental rewrite of the definition of a PE and transfer pricing rules might not be required or might be less extensive.

Considerations

The development of the DPT is something for all international tax practitioners to keep a very close eye on, whether or not they have an interest in the UK. The introduction of the DPT represents one of the boldest moves any major government has made since the OECD commenced its BEPS initiative. The UK Government is clear that it believes the policy of taxing profits diverted from the UK in contrived arrangements to be wholly consistent with the "tough on avoidance" component of its tax system. The responses of other major European governments will indicate whether the UK tax system remains comparatively attractive or whether the UK is considered an outlier that goes beyond historic nexus standards for taxing corporate profits.

Meanwhile, multinationals should also be reviewing their current tax positions *vis-à-vis* the DPT.

For those doing business in the UK, the DPT is likely to encourage greater transparency over the value chain as well as restructuring of low substance arrangements. Arm's length transfer pricing that is transparent to the UK tax authority (and to which it has agreed) could preclude DPT charges.

Worldwide, one thing is clear, as we pointed out in our 2014 *Global Transfer Pricing Tax Authority Survey*:[1] tax authorities are continuing to increase their focus on transfer pricing and adding resources to ensure the alignment of profits with economic substance, which is leading to an increase in the number of inquiries and audits.

Taxpayers should consider the following actions:

- Review that transfer pricing arrangements are leading to commercially realistic outcomes, in particular reflecting the location of the performance of key value-driving activities
- Conduct a risk assessment including possible scenarios and related remediation strategies
- Self-assess the ability to readily respond to changing transfer pricing rules and the increased likelihood of associated challenges
- Maintain adequate documentation and analysis as the first line of defense
- Make sure the tax function is part of any discussion regarding business change
- Become more proactive in seeking out advance pricing agreements with tax authorities
- Remain vigilant in monitoring the UK DPT and reaction to it around the world, as part of an ongoing survey of the global tax landscape.

Item 2: OECD Tax Proposals Proliferate

by Barbara Angus, Channing Flynn, Corin Hobbs and Jess Martin, Ernst & Young LLP, US

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As the OECD works to complete its BEPS project this year – and given its decision last year not to write digital-specific tax guidelines – proposals of particular interest to technology companies are emerging from various BEPS working groups. Recent items include a draft on preventing the artificial avoidance of PE status (see

above) and a draft on VAT/GST for cross-border services and intangibles.

Firm PE proposals promised soon

OECD options for preventing artificial avoidance of PE status (BEPS Action 7) would generally lower the threshold under which a country could assert that a company has a taxable presence. They would also limit exceptions.

A key technology concern raised during public consultation in January was whether taxable presence is warranted for activities related to the delivery, warehousing and collection of information. Work continues on the early draft under discussion at the meeting, with a revised draft due in the second quarter of this year.

VAT guidelines emphasize place of consumption

Draft guidelines for international VAT/GST provide separate treatment for B2C and B2B cross-border supplies of services and intangibles, particularly for nonresident suppliers. The main aim of the guidelines is to find a balance among VAT principles of neutrality, efficiency and fairness.

B2C registrations under consideration

The discussion draft provides guidance on taxation issues with respect to place in the B2C supply of services and intangibles. Nonresident B2C suppliers should be required to register for and remit VAT/GST in the jurisdiction of their customers, the draft says. It suggests implementing simplified registration and compliance regimes to facilitate compliance. In addition, the B2C guidelines provide recommendations for strengthening international administrative cooperation to ensure effective collection of VAT/GST on cross-border supplies of services and intangibles.

B2B taxation poses greater complications

In the B2B arena, the guidelines recognize that while rules should be aimed at identifying where businesses actually use the services or where final consumption takes place, it is not always possible for the supplier to know this at the time VAT is required to be charged. Therefore, VAT systems generally use proxies for the place of business use or final consumption to determine the place of taxation based on aspects of the supply that can be determined at the time the transaction occurs.

In this respect, the draft encourages taxing jurisdictions to provide clear practical guidance on how suppliers could establish the status of their customers. It says jurisdictions could consider, for example, a requirement for suppliers to provide a customer's VAT registration number, tax identification number or other such indicia to establish the customer's status.

Considerations

The OECD process is projected to wrap up this year, and the flow of output in recent months has also addressed such key areas as assuring that transfer pricing outcomes are in line with value creation (Actions 8–10) and that interest expense deductions also align with economic activity (Action 4). Those

international companies that have put off analyzing the BEPS output and preparing for the potential impact on their own tax positions should take note. Not only is time marching on, but the process has catalyzed local action by various countries as well.

Even those companies that have tracked the BEPS project closely should consider a second cautionary note: we encourage them also to look inside their own enterprises to be sure their continual business innovation can proceed in the most tax-effective manner and in alignment with the tax transformation under way all around them.

Item 3: Mexico Provides R&D Tax Accommodation

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The Mexican Government is providing tax relief to accommodate foreign investment in R&D. Specifically, foreign shareholders in Mexican R&D "special purpose entities" will be exempt from a new 10 percent withholding tax otherwise imposed on foreign shareholders' dividends. Foreign investors may also benefit from additional tax deferrals and tax treaty reductions.

Considerations

Many countries have been introducing or updating R&D incentives, and companies increasingly see opportunities for their globalizing operations. To benefit, companies should make a thorough assessment of the changing landscape of available R&D incentives as part of a holistic analysis, including such local factors as intellectual property regimes.

Item 4: Korean Supreme Court Exempts Foreign Patents

by Jeong Hun You, Ernst & Young Han Young, Seoul, and Hae-Young Kim, Ernst & Young LLP, US

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The Korean Supreme Court has held that royalties paid to a US licensor for the use of a patent registered outside Korea are not subject to Korean withholding taxes. Such royalties do not constitute Korean source income, the court ruled.

The case is particularly significant because Korean domestic tax law does deem such patent royalties as Korean source income if the patented property is used in manufacturing or sales within the country's borders.

Considerations

While Korea's National Tax Service may take a position that each case stands on its merits, the court decision sheds a very positive light on US taxpayers' attempts to request refunds of related taxes withheld in Korea. Under the Korean Supreme Court decision, US taxpayers affected may seek to file for refund of tax withheld or apply for competent authority relief under the US–Korea Income Tax Treaty.

Item 5: Customs Complicate Cross-Border E-Commerce

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Companies doing B2C e-commerce are encountering new cross-border customs issues in their sales channels. Problems can arise, as supply chains initially developed to swiftly and compliantly move large volumes of products across the globe now need to efficiently move one small box at a time.

While the B2C buy/sell transaction happens virtually, a tangible product must cross a border, introducing customs rules into the equation. Trade rules are relatively harmonized at a global level among World Trade Organization members, although countries have implemented the rules slightly differently. Often these differences have been worked through within larger, more robust supply chains, but the introduction of the one-off purchase presents operational and strategic considerations not previously contemplated. These considerations may vary, depending on what is being sold and in which industry, as well as such factors as a company's existing supply chain and trade flows.

Duties differ

A critical factor for a successful e-commerce structure is the acknowledgment that different commodities carry different duty rates. For example, networking items such as servers or routers move largely duty free among developed countries under the Information Technology Agreement. Footwear and apparel duty rates, on the other hand, average around 15 percent. Since the majority of duties are applied as a percentage of value, customs value also becomes an important factor when determining the e-commerce structure.

Who is the importer?

Another critical question with customs implications is who will be the importer of record (IOR), defined generally as the party responsible for filing the customs declaration and paying applicable duties and VAT.

Some B2C models, premised on the customer being the IOR, rely on small shipment or courier rules to minimize the administrative burden and in some cases eliminate import duties and/or VAT. These rules vary substantially by country, however, making this model difficult to apply to multi-country operations. For example, thresholds are often applied per importer per day, per week or per month and sometimes also depend on the method of shipment (courier vs. post). Assuming that these thresholds will automatically be applicable to the supply chain often results in unforeseen costs and operational delays.

Also noteworthy under this model is that when duty is due on imports, it is applied at the highest retail price, often resulting in materially higher duties than are paid under the existing supply chain.

Other B2C models leverage off traditional sales channel supply chain structures when convenient. For example, an existing entity may be used as the IOR, or existing warehouse capacity may be used.

Additional supply chains can pose risks

It is also important to consider whether the e-commerce structure introduces risk to the existing supply chain. Some businesses use third parties to facilitate the logistics and import process. In these models, care should be taken to avoid issues with the import process and authorities that can cause reputational risk. Valuations should be closely monitored. Consider, for example, a company selling products to a related entity in-country, with the related entity acting as importer. If, under the new e-commerce structure, the same seller now sells the same product to an unrelated entity, the appropriateness of the existing arm's length entity's pricing may be at risk. This is particularly important to consider in jurisdictions that use reference databases to track import value, such as Russia.

Considerations

Clearly, one size does not fit all, which is important to keep in mind when contemplating and operationalizing e-commerce structures. What may work for technology imports from a tax perspective may need to be considerably retooled to provide the same level of benefit to a consumer product import. While it is likely that an efficient and compliant structure can be developed, it takes careful tax and customs planning.

Item 6: Complying With Export Controls In The Cloud

by Angelica Tsakiridis, Ernst & Young LLP, US

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In an adjacent trade matter, regulatory agencies in a growing number of governments are working to clarify how export control laws, largely formulated and written for a physical world, apply to new technologies such as cloud computing.

In many jurisdictions, export controls restrict the export, re-export or transfer of controlled goods, software, technology or technical data. They apply equally to the exports of items through physical channels, such as shipment or freight courier, and virtual means such as transfer of data from one server to another or remote access. The non-physicality of cloud communication and data access can be challenging to control if not planned for properly upfront to specifically address export controls.

Profiling cloud risk

For example, the practice of outsourcing such infrastructure as storage space for controlled data may especially put a company at risk for unlawful exports that can occur when the cloud user is unaware of the location of the cloud provider's physical server. Often, cloud servers are located in a foreign country and may be moved without any notice to a consumer of cloud services. Hybrid public/private or community cloud models have additional export control risks, where the user may not have

the same degree of control over other community members' access and use as it would on its own private systems.

Addressing these and other risks is critical for cloud users, since currently they have the ultimate compliance responsibility for their controlled technology. While cloud service providers are not necessarily without risk, it is the users, particularly in global organizations, who must determine how to capitalize on the benefits of cloud computing while complying with global export control requirements.

Considerations

Companies should be able to answer the following questions:

- Does your export controls program address your current and future exploitation of cloud computing?
- Do you know where your controlled data is stored, what IT models are currently being used, where servers are located, and what support models/persons are used?
- Are you especially at risk because of a recent or upcoming transition (*e.g.*, IT transition, merger or acquisition, IPO, joint venture or partnership, change in product or service line, international expansion)?

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Note: The views expressed in this column are those of the authors and do not necessarily reflect the views of the global EY organization or its member firms.

Endnote

1 *2014 Global Transfer Pricing Tax Authority Survey*, EY, http://www.ey.com/GL/en/Services/Tax/VAT--GST-and-other-sales-taxes/EY-global-transfer-pricing-tax-authority-survey

Taxand's Take: Recent European Tax Developments – Part II

by Taxand Member Firms

Ireland's Budget 2015: The First Non-Austerity Budget In Recent Times

by Martin Phelan and Conor Bradbury, William Fry Tax Advisors, Taxand Ireland

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As Ireland's corporate tax regime has been under increasing scrutiny in recent times, it is not surprising that a "road map" containing ten key elements for Ireland's tax competitiveness was published along with the Budget 2015 (the Plan). The importance of real and substantive foreign direct investment is emphasized in the Plan. Taxand Ireland highlights the most significant developments for multinationals.

Corporation Tax Rate

A strong commitment to the 12.5 percent corporation tax rate was reiterated in the Plan.

Corporate Tax Residency Rules

Ireland's corporate tax residence rules are being amended so that an Irish incorporated company will be regarded as Irish tax resident, unless otherwise stated under the terms of a tax treaty. If a company is managed and controlled in Ireland it will be regarded as Irish tax resident notwithstanding that it is not incorporated in Ireland.

The amendment to the rules will not affect the majority of companies operating in Ireland. However, it will result in the phasing out of the controversial so-called "double-Irish" structure. From January 1, 2015, companies should no longer be able to avail of the structure as it currently exists. A grandfathering period will apply until 2020 to companies who have implemented the structure before January 1, 2015. Companies who are currently availing of the structure therefore have ample time to restructure their operations.

Intellectual Property (IP) Regime

To increase Ireland's competiveness and ability to attract high value research and investment from multinationals, an enhanced IP tax regime for companies has been introduced. The centerpiece of the new proposals is the introduction of a "Knowledge

Development Box" akin to a patent box. On Budget day it was announced that a consultation process would be launched to ensure it is "best in class." It will be legislated for in next year's Finance Act.

In addition, a number of improvements have been made to the current intangible asset regime which allows companies to claim capital allowances on specified intangible assets. Customer lists have been added to the list of qualifying intangible assets, and the 80 percent cap on the amount that can be claimed for the acquisition of a qualifying intangible asset in any one accounting period has been removed. These amendments come into effect for accounting periods on or after January 1, 2015.

In relation to the research and development tax credit, the 2003 base year will be removed so that the amount companies can claim will no longer be restricted to the expenditure incurred in excess of the 2003 expenditure. This is a hugely significant improvement for those companies carrying out R&D in Ireland since 2003.

Special Assignee Relief Programme (SARP)

The SARP relief is being extended to 2017. The SARP is a relief aimed at facilitating foreign employers who wish to relocate staff to their Irish operations. The SARP relief operates so that the taxable employment earnings of an individual assigned to work in Ireland is reduced in order to reduce their tax bill. Major improvements are being made to the SARP relief in order to enable a broader scope of people to qualify. The main amendment is that the upper salary threshold of EUR500,000 is being removed; this will make the SARP relief a very attractive relief for executives moving to Ireland.

In addition to Ireland's highly competitive corporation tax rate of 12.5 percent, the measures contained in the Budget will further advance Ireland as a leading destination for multinationals to set up operations. However, multinationals looking to set up operations in Ireland should fully investigate all regulations in order to keep afresh of any developments and in order to remain compliant.

New Spanish Corporate Governance Reform Includes Tax Obligations

by Jose Vicente Iglesias, Garrigues, Taxand Spain

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The law reforming the Spanish Corporate Enterprises Law for the improvement of corporate governance was published on December 4, 2014. This law is in response to the need to increase the application of international good governance standards in Spain, in compliance with EU recommendations and the OECD guidelines. Taxand Spain discusses how, for the first time, the reform introduces references to tax among the obligations and rules of good corporate governance set forth in the Corporate Enterprises Law.

Although the content of the Corporate Enterprises Law is predominantly corporate, for the first time specifically

tax-related obligations are included in connection with good corporate governance. These are rules for listed companies which, nonetheless and as we see it, may also be taken as a clear reference for other entities.

In general, the reform deals with two major issues:

- The regulation of the shareholders' meeting and shareholders' rights;
- The regulations on the board and board members.

It is in the area of the board and the audit committee of listed companies where the reform stipulates the new specifically tax-related obligations.

Most notable in this connection are the non-delegable decision-making powers attributed to the company's board. Therefore:

- The board is attributed with the function of determining the company's tax strategy;
- Tax risks are expressly included in the area of the design and configuration of the company's risk control and management policy (also a non-delegable power of the board);
- The board also has the power to approve all investments or transactions that, due to their amount or characteristics, have a marked strategic nature or entail a particular tax risk, unless their approval has specifically been attributed to the shareholders' meeting;
- The board is also entrusted with decision-making related to the creation or acquisition of holdings in countries or territories treated as tax havens.

Along these same lines, the following are stipulated among the minimum functions of the audit committee:

- The supervision of risk management and internal control systems, expressly including tax risks;
- The obligation to inform the board of the creation or acquisition of special-purpose entities or entities with registered offices in tax havens, as well as of all transactions carried out with related parties.

Lastly, there is now an obligation for the annual corporate governance report that must be issued and published by listed companies to refer expressly to the company's tax risk control systems.

Due to the newness of the provisions specifically referring to tax, the companies they affect are unlikely to have protocols and documents on internal policies which are in line with the new rules. For this reason (and given the fact that the law entered into force on January 1, 2015 and major changes must be adopted for the first shareholders meeting in 2015), such protocols and documents need to be prepared without delay.

Spanish listed corporations should:

- Review the company's current situation and analyze the principles, protocols and rules of conduct established in the area of tax;
- Based on the foregoing analysis, determine specific recommendations and actions to be taken to bring the company's situation into line with the new law;
- Prepare or review the tax strategy, as well as the tax-related policies, protocols and rules of conduct;
- Enforce and comply with the new rules, monitor and control such compliance, and verify effectiveness.

Topical News Briefing: Trade Promotion

by the Global Tax Weekly Editorial Team

It's probably fair to say that when Barack Obama became US President in 2009, he was skeptical about the merits of free trade.

Trade, the Obama administration repeated on a regular basis in its early period, should be "fair" as well as "free."

"If we work together, free and fair trade with a proper regard for social and environmental goals and appropriate political accountability will be a powerful contributor to the national and global well-being," stated President Obama's first trade policy document in 2009.

Pending free trade agreements (FTAs) with Colombia, Korea and Panama, negotiated during the administration of President George W. Bush, were held up while stronger labor and environmental provisions were added, and, in the case of the Korea FTA, stronger protections for the US auto industry were agreed. Furthermore, no new FTAs were to be negotiated unless they were "fair" – *i.e.*, they did not pose a risk to US jobs.

However, it's probably also fair to say that President Obama has changed his stance on the issue of international trade. The US is now playing a key role in the negotiations for the expanded Trans-Pacific Partnership Agreement (TPP), and the possibility of a free trade deal with the EU, talks towards which were launched in 2013, was almost unthinkable in 2009.

Another indication of how far the Obama Administration's trade policy has evolved is that the President is arguing for the restoration of Trade Promotion Authority (TPA), which will allow him to effectively "fast track" negotiated FTAs through Congress after consultations with lawmakers. The delays to the three pending FTAs inherited by the Obama administration probably wouldn't have been allowed to happen if TPA was in place. However, it expired in 2007, and hasn't been renewed. And the majority of Democrats and their supporters don't want it to be renewed.

Democrats argue that TPA won't give them enough latitude to challenge controversial provisions in FTA texts. They also say that some major trade talks, including the TPP, lack transparency. Most Republicans, on the other hand, believe that TPA is essential if the US is to expand its FTA network and open up new markets for US businesses. Unsurprisingly, business groups also strongly support restoration of TPA, as evidenced by the new report released by the US Chamber of Commerce, which points out that the US has a trade surplus with its 20 FTA partners as a group.

Ironically, the Republicans may come to the aid of the President now that they have a majority in

Congress, and the indications are that senior Democrats and Republicans on the congressional committees with oversight over trade issues are close to reaching a deal on the outlines of a new TPA bill, which could be introduced in the coming days. However, Democrat leaders have been quick to play this down, dismissing such talk as premature while key issues remain unresolved. Under pressure from their constituents and labor unions, Democrats want to ensure that a deal on TPA includes a commitment to renew trade adjustment assistance, which provides help to workers who lose their jobs due to trade agreements.

It remains to be seen whether the Democrats will be able to torpedo any new TPA legislation in Congress. But what seems apparent is that while the President has moved considerably on free trade, the majority of Democrats in Congress don't seem to have traveled with him.

The Greatness Of Mickey Mantle And Louis Kovel

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

Introduction

The 1961 Yankees[1] occupy a special place in team history because, in my humble opinion, they were the only truly transcendent Yankee team between Joe DiMaggio and Derek Jeter. Mickey Mantle could have been a hero in a Sophocles play. He could have easily broken every offensive record in the book, but a tragic flaw, or rather flaws, kept him from his full potential. Yet, even at half speed, he ran laps around everybody else. Fellow outfielder Roger Maris really only had two or three good years, but what years they were. This Yankee team also featured Hall of Famers Yogi Berra (at one time, my next-door neighbor) and Whitey Ford. These guys were essentially complementary players on that squad, which should tell you something.

If a bleary-eyed Mickey Mantle would have opened a lawyer or accountant trade journal in December of 1961 and flipped towards the back, just before the classifieds and obituaries, he may have found a write-up about a rather obscure Second Circuit case: *United States v. Kovel*.[2] Various courts and codes have whittled away at this decision over the years, but it still stands firm as a case that can extend the attorney-client privilege to an accountant or other financial professional. Very simply, any communication between an attorney and a taxpayer that is deemed privileged under the attorney-client privilege will also be deemed privileged if it is between a "federally authorized tax practitioner" and a taxpayer. If you think that's not a big deal, you've probably never been audited.

Background

Nothing occurs in a vacuum. Circuit Judge Henry Friendly, who sadly was a bit Sophoclesian himself,[3] did not simply roll out of bed one morning, rub the cobwebs from his eyes, take a few sips of Maxwell House, and decide to extend the attorney-client privilege. In decisions like 1954's *Brown v. Board of Education* and the limitation on search warrants in 1961's *Mapp v. Ohio*, the Supreme Court under Chief Justice Earl Warren was quite literally rewriting the law, to the delight of some and the chagrin of others.

Politically, Americans no longer liked "Ike." A brash Jack Kennedy declared in his 1961 inaugural

address that "[t]he torch has been passed to a new generation," and he was right. A still-expanding postwar economy was butting heads against a still-expanding postwar government, and something had to give.

The Case

Louis Kovel was, in Judge Friendly's rather understated terms, a former IRS agent who had some "accounting skills." Since leaving the Service in the mid-1940s, he had been something of an in-house expert witness with a prestigious tax law defense firm in New York City. The government was snooping around a client's records, and just two days before the statute of limitations would have expired, Mr. Kovel was subpoenaed to testify before a grand jury.

The next day, he refused to answer any questions, other than name, rank and serial number, on the grounds that the communications were privileged. A clearly irked federal judge, in something akin to a drumhead courts martial, sentenced Mr. Kovel to one year in jail for contempt.

Judge Friendly got right to the heart of the matter. On the one hand, "The investigation of truth and the enforcement of testimonial duty demand the restriction, not the expansion, of [evidentiary] privileges." On the other hand, "it is absolutely necessary that a man … should be able to place unrestricted and unbounded confidence in the professional agent, and that the communications he so makes to him should be kept secret."

The confidential communications privilege already applied to "ministerial" functions. For example, the Court recognized that in delivering legal services, an attorney relies upon non-lawyers, such as paralegals and secretaries. These individuals are regularly exposed to confidential information. If the information obtained by paralegals and secretaries as a result of their involvement in the case was not privileged, the government would have a "field day" subpoenaing them to come into court to testify about what they learned in "closed door" meetings. As Judge Friendly recognized, disclosure of information to these individuals does not constitute a waiver of the privilege.

The Court also recognized that there will be times when attorneys find it helpful to engage professionals from *outside* the firm, especially in an area as technical as accounting. Comparing an accountant with a foreign language interpreter, Judge Friendly made a shrewd observation shining the light on a major shortcoming of those in the legal profession: "Accounting concepts are a foreign language to some lawyers in almost all cases." This has been echoed by many a law professor, not the least of which was my evidence professor, who never missed an opportunity to complain about how hard it was to teach students about statistical evidence, since "most of [them] went to law school because [they] couldn't do math and science in the first place."

In applying this principal to accountants, an attorney may want the accountant to meet with his client and obtain information directly from him. In

these cases, the attorney needs reassurance that the information disclosed by his client will be cloaked in the attorney-client privilege just as if the attorney had obtained it directly from the client.

Judge Friendly reasoned that the only way this can happen – at least in a tax practice – was through an arrangement where the lawyer engages the accountant to become part of the legal team. This marked the "birth" of the *Kovel* accountant.

Judge Friendly went on to hold that the government had the burden to disprove the privilege, as opposed to the defendant having the burden of proof to establish it.

The Next Forty Years

The government grudgingly codified *Kovel* into Section 7525 of the Internal Revenue Code. More precisely, the government codified some of it and ignored the rest. Judge Friendly clearly envisioned the privilege extension as quite broad. But Section 7525 made some key limitations:

- The privilege is only as broad as the attorney-client privilege. And when it comes to tax matters, the attorney-client privilege isn't anything to write home about. The privilege only protects communications involving "tax advice." But remember, we're not talking about tax advice given by a *tax preparer*. Instead, we're talking about tax advice given by an *attorney*. Thus, before a court will find that a tax preparer's tax advice is protected by the attorney-client privilege, that tax advice must be "a matter that is sufficiently within the professional competence of an attorney. Tax matters that are outside the professional competence of an attorney are not privileged. One such example is the preparation of tax returns.
- The privilege applies only in noncriminal tax matters before the IRS and noncriminal tax proceedings in Federal court brought by or against the United States. Like the absence of police in a high-crime area after dark, the privilege is not available when it is needed the most: when an investigation is or is about to turn criminal. Under these circumstances, anything said by the taxpayer to his accountant is not privileged. Ironically, Mr. Kovel would not be entitled to the privilege that bears his name.
- The privilege applies only to communications between a "federally authorized tax practitioner" and the taxpayer. "Federally authorized tax practitioners" include those who are authorized to practice before the IRS, such as CPAs, enrolled agents, and enrolled actuaries. Arguably, if the lawyer gets involved, such involvement destroys the privilege.
- No protection exists for written communications between a tax practitioner and "a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter."

These limitations, along with subsequent case-law, place a great deal of uncertainty into *Kovel* agreements. For example, while some courts outright deny the privilege when it comes to communications

made solely for tax preparation, others acknowledge an element of legal advice in the preparation of returns. A case in point is the Ninth Circuit Court of Appeals. The Ninth Circuit extends the privilege to communications made to obtain legal advice about a reporting position on a return, such as whether a certain item can be claimed as a deduction.

As if that was not disturbing enough, there is also a great deal of uncertainty as to what communications are covered. So, the prophylactic nature of a *Kovel* agreement is directly proportional to your attorney's research and advocacy skills. The better he or she is, the better off you are.

What To Do

If you are an attorney and want to retain an accountant, you must tread very carefully. Current law requires strict compliance with Section 7525 and a well-documented paper trail. Unless you want the accountant spilling his guts to a grand jury, metaphorically speaking, a written *Kovel* agreement that is specific to the client and case needs to be consummated.

Second, the attorney should engage the *Kovel* accountant, rather than the client. This ensures that the accountant is working for the lawyer, and not for the client. It's nearly impossible to extend the attorney-client privilege to someone who is not employed by the lawyer or law firm. In addition, the lawyer should pay, or at least approve, the accountant's invoices.

Finally, a new accountant, rather than the client's existing accountant, should be hired. And the roles of the original accountant and the new accountant must be kept distinct so that the new accountant is cloaked in the attorney-client privilege. This strategy is designed to safeguard your client by preventing the IRS from obtaining information that might incriminate him.

Now don't expect your client to embrace this strategy. He'll want to use his own accountant and he'll list a number of "good" reasons why – from budgetary concerns to relationship issues to comfort level. But using the original accountant is a recipe for disaster.

Why? Let's begin with the notion – widely held by tax lawyers – that the accountant-taxpayer privilege is narrow. As a result, it is not unreasonable to assume that the information and documents relied upon by the preparer to prepare the original returns will *not* be privileged. This could not be any more true than in the case of an examination that starts out simple enough but then takes a turn for the worse. You know the one I'm talking about. It's what causes tax professionals to wake up in the middle of the night with beads of sweat pouring down their foreheads and their hearts racing: a fraud referral specialist has referred the case to CI for investigation. In this nightmarish situation, information relied upon by the tax preparer is all but certain to make its way into the hands of the IRS.

Similarly, in preparing the amended returns, the preparer – regardless of whether he is the "original" preparer or a "new" one – is likely to uncover additional information that confirms that there were

serious problems with the original return and that might even provide a roadmap to the fraud.

And this is where things could go south fast. If the original preparer is used to amend the returns he may not be able to distinguish between what he learned prior to the time the *Kovel* agreement went into effect and what he learned after the *Kovel* agreement went into effect.

But only the latter – *i.e.*, that which was learned within the scope of the *Kovel* agreement – is protected by the attorney-client privilege. That which was learned pre-*Kovel* is, as they say, par for the course. The net effect is that if the defense cannot convince the judge that the information subpoenaed by the IRS was obtained within the scope of the *Kovel* agreement, the judge will order the defense to turn it over to the government. The danger, of course, is that it might just be the "smoking gun" that the government needs to convict your client.

This is not a risk worth taking. This is why you must overcome your client's objections and convince him that it is best to start out fresh and hire an independent accountant. But it does not end there. The roles of both accountants must be kept distinct to ensure that the *Kovel* accountant is cloaked in attorney-client privilege. This will eliminate the risk that information obtained by the *Kovel* accountant is misclassified and treated as if it was discovered by the original accountant, outside of the *Kovel* agreement. Because the information would be fully discoverable, the stakes could not be higher.

Recognizing that there will be times when the budget does not permit hiring a new accountant and that there is no choice but to use the existing one, precautionary steps must be taken to ensure that information obtained during the course of the *Kovel* engagement is kept separate and apart from information that was obtained prior to the engagement.

Properly executed, a *Kovel* agreement gives the preparer the freedom to communicate with the taxpayer and the taxpayer's attorney, ensuring that the taxpayer gets the best possible representation.

Work Product Doctrine

While Section 7525 does not provide any protection for tax practitioners' work product, thankfully there is the Work-Product Doctrine.

The Work-Product Doctrine is a judicially-created privilege that applies to materials prepared by an attorney acting for his client, or by another representative of the client (*e.g.*, an expert in analysis), in anticipation of litigation.

The Supreme Court first announced this doctrine in *Hickman v. Taylor*, 329 US 495, 510 (1947), and it was later codified in Federal Rule of Civil Procedure Rule 26(b)(3).

Material within the scope of the work-product privilege includes opinion work product (assessment of legal positions) and summaries of the testimony of potential witnesses.

The work-product privilege is similarly narrow. For reports, models, spreadsheets and other documents to be protected, they must have been prepared directly pursuant to legal advice. In other words, you cannot "cc" your lawyer on an e-mail and expect the privileges to apply. Nor are an accountant's work papers protected by the doctrine.

Endnotes

1. http://www.baseball-reference.com/teams/NYY/1961.shtml
2. http://openjurist.org/296/f2d/918/united-states-v-kovel
3. http://www.nytimes.com/1986/03/12/obituaries/henry-j-friendly-federal-judge-in-court-of-appeals-is-dead-at-82.html

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United States Taxation Of Income From The Provision Of Services On The Outer Continental Shelf – General Imposition Of US Tax

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This is the ninth article in a series of articles on US taxation of income from the transportation of cargo or passengers to or from the United States or from the provision of services on the US Outer Continental Shelf, and the compliance regimes that apply to companies that receive such income.

The previous articles in this series have focused on US taxation of income earned by oceangoing vessels that call to load or discharge cargo at US ports. The rest of the series will concentrate on income generated by the provision of services by foreign companies operating on the US Outer Continental Shelf ("OCS").

This article explains the scope of Section 638 of the US Internal Revenue Code ("IRC" or the "Code"). Subsequent articles will discuss the US tax implications for individuals and companies operating on the OCS. It should be noted that the Internal Revenue Service ("IRS" or the "Service") increased its enforcement of compliance with US taxation of activities on the OCS beginning 2009 when it issued its first Industry Director's Directive. This was followed by a second Industry Director's Directive in 2011. At some point prior to 2009, the IRS learned from US operators on the OCS that there was significant non-compliance with US tax laws by foreign companies operating in competition with them. As a result, the Service increased its enforcement resources devoted to companies operating on the OCS.

Section 638 was added to the IRC as part of the Tax Reform Act of 1969.[1] Section 7701(a)(9) defines the United States as the geographic area including only the "States and the District of Columbia." Section 638 expands that definition to include the areas with "respect to mines, oil and gas wells, and other natural deposits" that are located in "the seabed and subsoil of those submarine areas which are adjacent to US territorial waters and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources." This area is more commonly referred to as the OCS. Section 638 also

recognizes the exclusive rights of foreign countries to their respective OCS's and abjures any jurisdiction over the OCS's of any other countries.

To be subject to US tax under Section 638, a company must be engaged in a business "with respect" to mines, oil and gas wells and other natural deposits, including the exploration and/or exploitation of natural resources.

The definitions of exploration and exploitation in terms of mining and oil and gas are readily evident, but with respect to natural deposits are less so. Natural deposits are defined as "non-living resources to which Section 611(a) applies," but does not include sedentary species, "fish, or other animal or plant life." Section 611 references Section 613, which has a list of various minerals and other natural resources too long to include here, but also contains an exemption for any minerals derived from "sea water, the air, or from similar inexhaustible sources."

By way of illustration, a company mining salt from the seabed is engaged in the exploitation of natural deposits under Section 611 and is subject to US tax. In contrast, a company evaporating sea water to collect the residual salt and other minerals is not engaged in the exploitation of natural deposits, and accordingly is not subject to US tax under Section 638.[2] Extraction of resources from sea water is very rare. Thus, most OCS activity is most likely covered by Section 638.

The less obvious aspect of Section 638 is the requirement that activities engaged in be conducted "with respect" to exploration or exploitation. An oil platform is a good example of the complex ecosystem of activities that are used to operate and maintain it. The platform itself is likely owned by one company and leased to another which operates it.

The operator hires contractors to transport employees and goods to and from the platform, to repair or maintain the platform, to provide engineering services, to install pipes or telecommunication lines, and to survey the underwater integrity of the platform or pipes. These contractors in turn hire their own contractors to provide services or goods used in the performance of their own services. The above list of contractors just scratches the surface of the number of separate companies involved in keeping an oil platform in operation. However, under Section 638, only those companies engaged in activities "with respect" to the exploration and exploitation of oil and gas are subject to US tax.

Not surprisingly, what constitutes "with respect" to the exploration and exploitation of natural resources has been the subject of litigation. The most famous of these cases is *Ocean Drilling & Exploration Company v. United States* ("Ocean Drilling").[3] In that case, the United States Court of Appeals for the Federal Circuit considered whether a non-US insurer had US source risks because it insured exploration and exploitation activities in the OCS. The Court of Appeals adopted the opinion of the US Claims Court to the effect that Section 638 was not "intended to be so broad as to include any type of activity that relates to [mining]" and that the

insurance services were "more remote to mining activity than personal service activities conducted at the site of the exploration."

Although Ocean Drilling is still good law, Example 8 of Treas. Reg. 1.638-1, which was referenced in the court's opinion, lists the precise fact pattern in the case and concludes that it is US source income – quite the opposite of what the court found. The use of this example means either that the IRS has not taken the time to revise the examples used in its regulations, or that it intends to challenge future non-US insurers on the same subject.

Even if Ocean Drilling limited the scope of Section 638, it is still unclear what other services fall inside the scope of the section. Treas. Reg. § 1.638-1(c)(4) interprets the "with respect to" language to include all activities that are "related to" the exploration and exploitation of natural deposits. Since the two terms are synonymous, it is hard to understand why the IRS used the term "related to" in the regulations instead of "with respect to".

In a 2008 Private Letter Ruling (PLR), the IRS provides additional insight into how it interprets Section 638.[4] The company seeking the ruling provided diving and pipeline installation and repair services to oil companies on the OCS, and requested the ruling to establish if the non-US owned vessels it chartered to provide the services were subject to US tax under Section 638.

In the analysis, the IRS determined that the company's pipeline services were "necessary" for the "accomplishment of natural resource exploitation" and, therefore, that use of the vessels, which were vital to the company's operations, were also providing services related to the exploitation of the natural resource. Since the services were necessary, the non-US companies that owned the chartered vessels were subject to US tax under Section 638.

The PLR is useful but leaves many questions unanswered. Example 3 of Treas. Reg. 1.638-1 sets out the following facts: a doctor is contracted to make routine physical examinations of employees on an oil platform. The regulation concludes, without explanation, that the physicals "are related to the exploitation of the oil". The doctor's services, like those in Ocean Drilling, appear to be personal services far removed from the exploitation of oil. Nonetheless, currently the IRS position is that even these tangentially affiliated activities are related to exploration and exploitation. This example and the position it took in Ocean Drilling make it safe to assume that the IRS will treat any activity involving the OCS as subject to US tax.

However, there is a case now docketed in the US Tax Court regarding an assessment related to Section 638. This is the first of several that have resulted from the 2009 enforcement initiative. So far, the issues in the pending case are procedural, not substantive, so it is not clear how much guidance will result. However, as these OCS cases progress through examination and the Tax Court, we should expect greater clarification on the limitation of Section 638.[5]

Endnotes

[1] We wish to correct an arror in our first article when we inadvertantly referred to the Tax Reform Act of 1986 as the source of Section 638.

[2] *See Victory Sand & Concrete, Inc. v. Commissioner*, 61 TC 407 (1974).

[3] *Ocean Drilling & Exploration Company v. United States*, 988 F.2d 1135 (1993 4th Cir.).

[4] IRS Priv. Ltr. Rul. 200823005 (June 6, 2008).

[5] *See Adams Offshore Services, Ltd. v. Commissioner*, No. 5541-14 (TC, Dec. 9, 2014).

The World Of Offshore: Healthier Than Ever?

by Stuart Gray, Senior Editor, Global Tax Weekly

It was on April 9, 1998, that the campaign to thwart the "harmful" tax practices of offshore jurisdictions began in earnest, when the countries of the OECD Council adopted the report "Harmful Tax Competition: An Emerging Global Issue"[1] (bar Luxembourg and Switzerland, which both abstained). Clearly, given the length of time that has elapsed since that fateful day for the world of offshore, this is no longer an "emerging" issue. But given the way politicians continue to disparage tax havens and the investors who use them, one could be forgiven for thinking that it is. And that is because, far from withering on the vine, a certain number of offshore financial centers continue to help distribute hundreds of billions of dollars in investment all around the globe. And, as this article demonstrates, their roles on the world economic stage seem to have grown in stature lately, rather than diminished.

Offshore Incorporations

In fact, it is somewhat misleading to use the term "offshore" to describe all the territories targeted by the OECD's campaigns. For – directly as a result of that international pressure – a good many of them have abolished "offshore" legislation and have introduced very low (and in some cases zero) rates of tax across the board in their stead. But the word has stuck, and it is generally accepted that "offshore" applies to a territory that used to have offshore company and tax regimes, or one which has very favorable tax legislation for foreign companies, or both.

Whatever the terminology, a report published by offshore service provider Appleby in December 2014[2] showed strong company registration growth in several prominent "offshore" jurisdictions, including the British Virgin Islands (BVI), the Cayman Islands, Mauritius, and Jersey, in the first half of 2014. The figures show that the BVI continues to dominate offshore company registration, with 25,533 new companies formed in the first six months of the year, a 6 percent increase on the previous half-year period. The Cayman Islands boasted a 17 percent increase in new company incorporations over the previous six months – the largest percentage increase of all jurisdictions in the report. Mauritius followed with a 12 percent increase over the previous half. Jersey bucked the trend among the sterling offshore centers, with 1,385 new company incorporations in the first half of the year, representing a 6 percent increase over the second

half of 2013. This brings the total number of companies in Jersey to 33,207, up from 32,500, where it had remained for three years. Significantly, there has been a 5 percent increase in offshore incorporations between pre-recession 2008 and June 2014.

Guernsey and the Isle of Man both saw small dips in the number of new company incorporations, Appleby's data shows. However, anyone who suggests that these jurisdictions are in decline had better think again. Guernsey recently reported strong performance across a number of sectors of its finance industry, while the Isle of Man has enjoyed an unbroken period of economic growth stretching back to the 1980s and is now at the forefront of the digital revolution.

Guernsey

In late January, figures published by the Guernsey Financial Services Commission (GFSC) showed that the jurisdiction's insurance sector fared well in 2014, with 85 licenses newly granted to international insurers, bringing the total number of international insurers licensed in Guernsey at the end of the year to 797. The newly licensed entities mainly originated from the UK and Ireland (48 percent) and the Cayman Islands (29 percent). Insurance Linked Securities (ILS) was the most significant subsection of Guernsey's insurance industry (45 percent), followed by property insurance (13 percent), life/health insurance (8 percent), and After the Event (ATE) legal expense (7 percent).

The announcement coincided with the naming of Guernsey as the European territory of the year for captive insurance business for the third year running at the UK Captive Services Awards. Guernsey received the title at the Captive Live UK 2015 Conference, held on January 22–23, 2015, in London. Dublin placed second, followed by Gibraltar, Luxembourg, and Malta.

Dominic Wheatley, Chief Executive of Guernsey Finance, said: "These figures show that last year was very successful for Guernsey as an international insurance center. We continue to see growth in new entities related to ILS transactions but also a steady stream of more conventional captive insurance vehicles. Much of our business continues to originate from the UK, but the figures show the truly international nature of our client base, with a growing number coming from domiciles in Europe and much further afield."

Guernsey also has more non-UK entities listed on the London Stock Exchange (LSE) than any other jurisdiction globally, according to new figures from the market authority. LSE data shows that, at the end of December 2014, there were 122 Guernsey-incorporated entities listed on the three LSE markets: the main market, the Alternative Investment Market (AIM), and the Specialist Fund Market (SFM). After Guernsey, Jersey was in second place with 92, followed by the Isle of Man (54), Ireland (53), the Cayman Islands (50), the BVI (44), Bermuda (41), Russia (33), the US (32), and India (31). Of the 122 Guernsey companies on the LSE, 70 were listed on the main market, 37 on the AIM, and 15 on the SFM. Guernsey-based NB Distressed

Debt Investment Fund is the largest entity on the SFM by market capitalization.

The figures led Wheatley to conclude that Guernsey is the "jurisdiction of choice for listings on the LSE." However, he pointed out that companies incorporated in Guernsey can also list on the local Channel Islands Securities Exchange; Euronext; markets in Australia, Johannesburg, Toronto, and Frankfurt; and the Hong Kong Stock Exchange, among many other exchanges around the world. "This means that Guernsey provides an ideal gateway to global capital markets."

The banking and funds sectors are also performing well. According to the GFSC, the value of deposits held by banks in Guernsey grew by 3.5 percent during the final quarter of 2014. The GBP2.8bn (USD4.31bn) increase is the second consecutive quarterly rise, lifting the total value of Guernsey bank deposits to GBP83.7bn at the end of December 2014. The value of deposits will soon be boosted when South African banking group FirstRand establishes its Guernsey branch later this year. FirstRand was granted a license late last year, bringing the number of licensed banks in Guernsey to 31.

Fund managers are also looking to Guernsey and similarly placed jurisdictions to register their funds, and figures from the GFSC show that at the end of January almost 50 Guernsey alternative investment fund managers had used Guernsey's national private placement regime to market Alternative Investment Funds into Europe.

In response to the EU Alternative Investment Fund Managers Directive (AIFMD), Guernsey introduced a dual regulatory regime through which it is possible to continue to distribute Guernsey funds into both EU and non-EU countries. The existing regime, which continues to be on offer alongside an AIFMD-compliant route, may be used by investors and managers not requiring an AIFMD fund.

Sinead Leddy of Guernsey Finance said: "From the outset, Guernsey's response to AIFMD has been second-to-none, ensuring it is ideally placed to continue to provide access to Europe. The statistics show that [National Private Placement (NPP)] from Guernsey is being used to target the key countries which promoters wish to market into. A fund typically markets in between two to four countries and NPP is the ideal approach for this model."

"We continue to hear positive feedback from promoters and their advisers that Guernsey's regulatory environment is straightforward and, more importantly, things can progress in a timely manner. The turn-around times in Guernsey are held to be low compared with those of our competitor territories where delayed applications can cause issues when bringing a new product to market."

Isle Of Man

Moving from the English Channel to the Irish Sea, the Isle of Man economy is also strong, having experienced uninterrupted growth for 30 years, including during the global financial crisis. The Isle of Man's diverse economy, with niche sectors such

as e-gaming and aircraft and ship registration, has been credited as a key factor in the island's economic resilience. Indeed, growth was strongest in the e-gaming sector (up 49.9 percent) and the information technology sector (up 28.7 percent).

The Isle of Man was said to have received an extremely high number of inquiries from businesses following the ICE Totally Gaming event in London in 2014, and so this looks like a sector with a great deal of growth potential left in it.

"At ICE we met senior representatives of diverse businesses seeking to relocate to the island from all aspects of gaming ranging from potential licensees, software houses and software developers through to those with innovative, patented new ideas in standard sports book and casino models," said Peter Greenhill, CEO, e-Gaming, Department of Economic Development. "The Isle of Man already has 56 licensed e-gaming operators and my team is now working with around 15 businesses who are actively considering locating here. Our world class technology infrastructure, stable economy, internationally respected regulation and supportive government were quoted as reasons why we were being chosen, and of course a cost effective operating base that welcomes new companies, their staff and their owners."

In July 2014 the Isle of Man Aircraft Registry registered the 700th aircraft since it was established in May 2007, with the aviation sector one of the focus areas of the island's Vision2020 program for economy diversification. Brian Johnson, the Director of Civil Aviation, said: "Two new aircraft per week are being added on average, although in the first 15 days of May this year the registry team received 15 new aircraft applications for registration. Compared with our initial first year target of 12 aircraft registrations in 2007/08, we continue to exceed our expectations."

The Isle of Man has also experienced rapid growth in the maritime sector, despite recently having to introduce a ship registration fee for the first time, and the Isle of Man Ship Registry is ranked fourteenth in the world by tonnage having more than doubled its gross tonnage and increased the number of registered vessels by a third over the last ten years.

The Manx fleet comprises all types of modern merchant ships and also pleasure yachts. Vessel owners are based all over the world, and more than 40 percent of the tonnage on the Isle of Man register is now managed or controlled from Asia.

Jersey

As hinted at by Appleby Global's report, the finance industry in Jersey, the other British Crown Dependency, also had a good year in 2014, with the authorities there looking forward to a prosperous 2015.

In a similar vein to Guernsey, Jersey's fund industry fared well in 2014 bolstered by the introduction of its new regime to respond to the EU's AIFMD. Last year saw the number of new Jersey fund registrations more than double compared with 2013

and the value of assets under administration grew to its highest level in five years. In the asset management space, Jersey Finance reported that almost 300 Jersey foundations have now been formed.

The listing sector also performed well in 2014; the number of Jersey-incorporated companies listed on stock exchanges globally increased by 13 percent during 2014 to 110, and these companies' total market capitalization rose 62 percent to GBP269bn, according to new statistics from Jersey Finance. Of these 110 listed companies, 57 are quoted on the LSE AIM, with Jersey being home to the largest number of AIM-listed companies outside the UK. Further, 38 companies are listed on the LSE Main Market and one on the Specialist Fund Market. Jersey is also home to seven FTSE 100 companies and an additional eight FTSE 250 companies. The 96 Jersey companies quoted in London are valued at almost GBP146bn, while the Jersey companies listed on the Hong Kong Stock Exchange currently have a combined market capitalization of GBP40.6bn, and those listed on the Toronto Stock Exchange have a total market capitalization of GBP65bn.

Geoff Cook, Chief Executive of Jersey Finance, said: "The emphasis is very much on high-value listings, and this is reflected in Jersey having the largest number of FTSE 100 companies registered outside the UK, more companies listed on AIM than any other jurisdiction, and a combined market capitalization on exchanges around the world that has risen dramatically over the past 12 months to nearly GBP270bn. Jersey is really asserting itself as a key European center for high quality listings business and offers established and popular means for companies looking to access capital in major markets, particularly the UK."

Marketing To The Emerging Markets

Interestingly, given Jersey's diminutive geographical stature, a disproportionate number of Chinese companies listed on AIM – about one-fifth – are incorporated in Jersey. Indeed, the rising importance to the global economy of the emerging economies in Asia-Pacific, Africa, and Latin America is perhaps a major reason why international offshore financial centers (IOFCs) have managed to survive in an age when many countries have attempted to discourage their citizens from putting their money in them.

As Cook explained: "The capital markets and listings sector is rapidly cementing itself as a key pillar of our finance industry, and we are taking every opportunity to reinforce Jersey's appeal for listings and other such transactions. The inaugural Jersey Finance Asia Roadshows in November last year were a case in point, providing us with a real opportunity to present our capital markets offering to key markets in Hong Kong, Kuala Lumpur, and Singapore."

And Richard Corrigan, Deputy CEO of Jersey Finance, observed: "In 2015, following the recommendation of the Jurisdictional Review, we will look to maximize our additional resources in the Gulf region in order to capture significant private

wealth and – increasingly – funds opportunities there, whilst we will also be focusing more on targeting hedge and private equity fund managers in the US. In addition, in line with the findings of the Value to Africa report last year, we will also be increasing our efforts to build relationships with Sub-Saharan Africa where we see considerable outbound private wealth and inbound infrastructure investment opportunities."

China And The BVI

For a number of years, the BVI has benefited from huge sums of investment both originating from and destined for China, as annual foreign direct investment (FDI) stats regularly attest. In 2013, the BVI maintained fourth place in the global FDI league table, behind the US, China and Russia, with inflows of USD92bn recorded. That is more than FDI inflows into Brazil and India combined and represented a 40 percent increase compared with the previous year.

The fact that the BVI has benefited hugely from the liberalization of China's economy was acknowledged by the BVI premier, Orlando Smith, in a speech he made in September 2014 to build upon the launch of BVI House Asia, the territory's representative office in Hong Kong.

"BVI companies are used for a diverse range of purposes, such as listing vehicles, joint ventures, asset holding, and investment fund vehicles. They play a material role in providing diverse structures for wealth management and provide for the free and efficient movement of capital across borders, fueling global economic growth."

He discussed a number of international tax transparency and regulatory developments, which have required action from offshore financial centers: "The evolving global landscape and focus on international finance centers have given us an opportunity to present the facts concerning the vital role that centers like the BVI play in maintaining a stable and efficient global economy. We sincerely believe that it is vital for jurisdictions to be integrally involved in any emerging regulatory framework that affects them and their stakeholders, and that full engagement at the highest level is vital to ensure that we in the BVI continue to serve the needs of our clients and other stakeholders."

Looking ahead he said there is a great opportunity for offshore and "midshore" jurisdictions to work together creatively. He said all international finance centers must come up with new products and offerings that are well-suited to handle global economic shocks, suit new clients in new geographies, and suit the new global regulatory environment.

On the BVI's relationship with Hong Kong, he concluded: "A synergy has existed between the BVI and the Asia-Pacific region, and specifically Hong Kong, for more than a quarter of a century. During the global financial crisis, China continued to experience growth, and chose the BVI as a facilitator for this growth. Today, the exponential growth of the middle class in China undoubtedly creates the

greatest opportunities for us to work together for mutual benefit."

Despite concerns about China's cooling economy, Smith predicted that there will still be enough demand from China to sustain offshore financial centers like the BVI (and "midshore" ones like Hong Kong): "Demand from China and other emerging markets will ensure that offshore and midshore centers have a sustainable future in the global economy. The BVI is well-positioned to be part of and to facilitate this growth, and with a regional office now well established in Hong Kong, we look forward to forging even closer ties with the Asia region for many generations to come."

Jersey And London

However, the traditional onshore financial centers remain important sources of business for IOFCs – and vice versa. For it is an inconvenient truth for many politicians that billions of dollars in investment, in fact, flow from low-tax jurisdictions to the very countries that condemn their existence on a regular basis. For instance, a 2013 report by Capital Economics[3] showed that Jersey alone pumps around GBP500bn in investment into the UK economy, supporting more than 100,000 British jobs in the process.

A somewhat controversial finding, though, was that Jersey contributes more to the UK exchequer in tax revenues associated with investment in the UK than it takes away in the form of legal tax avoidance and illegal tax evasion on the part of British taxpayers.

The tax issue, the report observed, is the "elephant in the room."

"There is a widespread belief that Jersey, Guernsey, and the Isle of Man are tax havens and are used by businesses and individuals both legally and illegally to reduce the tax they pay to British authorities," the report states. "This belief appears to be based largely on impressions set during the Super Tax era of the 1970s and sporadic media exposés on the tax affairs of big companies and celebrities. The extent to which there are revenues rightfully due to the government that are leaking away has become a turbulent political issue in the current context of fiscal austerity."

However, the report went on to assert that there is little hard evidence about the actual scale of offshore tax abuse and almost none about the role of Jersey or the other Crown Dependencies. "This lack of evidence should be no surprise in itself. Those involved in tax avoidance and, especially, evasion will have little desire to publicize the activity, and every interest in hiding it. Meanwhile, those trying to demonstrate the 'cleanliness' of their jurisdictions find it almost impossible to prove that little or no such activity takes place there because you can't prove an absence of something simply by failing to find it."

Nevertheless, using "cautious" assumptions, the report judged that, on the basis of 2011 data, a maximum of GBP600m per year in British taxes can leak through avoidance or evasion using Jersey vehicles.

On the other hand, taxes levied in the UK on jobs and economic activity created through Jersey's economic and trade links with Britain could be in the order of GBP2.5bn, substantially outweighing any tax leakage.

The report also refuted the argument that without Jersey and the other Crown Dependencies, foreign investment routed through the islands would come to the UK regardless, describing this assumption as "dangerous complacency." This is because a substantial percentage of the investment arriving in the UK *via* Jersey originates from far-flung parts of the world, and such flows could easily gravitate to financial centers other than London.

"The wide geographical spread of Jersey's client base means that it is attracting investment from businesses and individuals who wouldn't necessarily see the City of London as their first choice of financial center," the report observed. "Around 30 per cent of the investment through Jersey originates from outside the London time zone, and would more likely have a locus around New York, Hong Kong or Dubai; this alone is worth an estimated 51,000 British jobs. Moreover, the results of our survey indicate that 84 per cent of the bailiwick's financial services business would be at risk of leaving the sterling zone if Jersey did not exist. This business (and the consequent investment) is likely to migrate to other offshore centers – and not London, and could cost the equivalent of around 150,000 British jobs."

Offshore: Perception Versus Reality

Perhaps another reason for the longevity of IOFCs is that most have come out of the OECD's campaign to "clean up" the world of offshore with their reputations intact and, arguably, even enhanced in some cases. Some offshore jurisdictions are considered to be more transparent than several OECD member states – a fact hinted at by OECD Secretary General Angel Gurría himself in 2014, when he said during a debate at the European Competition Forum in Brussels that the problem no longer lies with the "small islands" but with the "big islands."

Yet politicians continue to bash offshore. One of the more notable examples recently was Ed Miliband, leader of the UK opposition Labour Party, who wants the OECD to place offshore territories on a new "black list" if they fail to commit to placing corporate beneficial ownership information on public registries within six months of a new Labour Government taking office. Whether a Labour Government would commit the UK to the same requirement if it wins May's general election hasn't been made clear.

What such attacks illustrate is the gulf between political rhetoric on tax havens and the hard realities of global economics. As the Capital Economics study on Jersey's contribution to the UK economy concluded, "globalization means demand for offshore [is] here to stay."

That's not to say there won't be more challenges ahead for IOFCs. The world economy is slowing

down once again, international transparency standards are being raised at regular intervals, and the OECD's base erosion and profit shifting project – and governments' premature responses to it – will probably have some sort of impact on offshore.

However, what recent history shows is that offshore jurisdictions have been good at adapting to new circumstances. So, as much as some in politics would like to expunge these territories from the world financial map, they are going to find it difficult.

Endnotes

[1] http://www.oecd.org/tax/transparency/44430243.pdf

[2] http://www.applebyglobal.com/e-marketing/on-the-register-december-final-(15-dec).pdf

[3] http://www.jerseyfinance.je/media/JerseyBritian/Summary%20Report.pdf

Diverted Profits Tax: What Arrangements Could Be Caught?

by Paul Rutherford, Partner, DLA Piper, Mark Burgess, Partner, DLA Piper, David Thompson, Partner, DLA Piper

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Background And Introduction

The UK Government has announced the introduction of the Diverted Profits Tax (or "DPT") – a new tax which will have effect from April 1, 2015. The tax is intended to target two types of arrangements:

- A non-UK person may have an arrangement with another person which is intended to prevent the non-UK person from having a UK permanent establishment ("PE"). The new tax can apply where the arrangement is designed to avoid tax or creates a tax "mismatch." Where the tax applies, the non-UK person may be taxed as if it had a UK PE. In this article this will be referred to as the rules dealing with the "avoidance of a UK taxable presence"; and
- A person that is subject to UK corporation tax (*i.e.*, a UK company or a non-UK company with a UK PE) may have an arrangement with a connected person outside the UK where that arrangement has the effect of reducing UK taxable profits. The rules apply where there is insufficient "economic substance" in the arrangements. In this publication this will be referred to as the rules dealing with "**a lack of economic substance**".

Exemptions From The New Tax

The new rules will not apply in a number of situations:

- If both of the legal persons involved in the relevant arrangement are SMEs (*i.e.*, small or medium-sized enterprises under EU law) then the new tax will not apply to that arrangement;
- The rules dealing with the avoidance of a UK taxable presence will not apply in any 12-month accounting period during which the non-UK person (and other members of its group) has total sales revenue from UK customers of less than GBP10m;
- The rules dealing with the avoidance of a UK taxable presence will also not apply where the person who operates in the UK (and prevents the non-UK person from having a UK PE) is an agent of independent status that is not connected with the non-UK person; and

- The rules should not apply to any arrangements which solely result in the creation of debts (between the connected entities) which are subject to the UK's loan relationship rules.

Applying The New Rules

The new rules are complicated and, due to their nature, potentially apply to transactions which are not the primary target of the rules. There has been some recognition from HM Revenue & Customs ("HMRC") that certain parts of the rules require improvement so those aspects may need to be changed or further guidance issued. Accordingly, we are presently in a period of uncertainty.

In addition, there are concerns in the UK that:

- Parts of the rules may be contrary to EU law and inconsistent with a number of the UK's double tax treaties; and/or
- The UK Government has "jumped the gun" by trying to implement BEPS principles without first waiting for general consensus as to how the relevant BEPS issues should be tackled.

Despite these concerns, the rules appear to have the support of the main UK political parties and are likely to be enacted. It would be appropriate for substantial multinational groups to begin to consider how the rules may impact on their UK operations.

This article is not intended to provide a full and technical summary of the conditions that must be met for the new rules to apply and the way in which any tax liability may be calculated. Instead, the following sections provide headline comments as to the possibility of the rules applying to a number of standard arrangements operated within multinational groups. The list of arrangements below merely provides examples of where the new tax may apply – it is not intended to be an exhaustive list of arrangements that are at risk or tailored to any specific circumstances.

The Rules Dealing With The Avoidance Of A UK Taxable Presence

Sales and marketing support agreements

- A UK group entity may carry out sales and marketing support functions for a non-UK entity. The UK entity would not conclude any contracts but may negotiate contracts and carry out other functions. The non-UK entity would then enter into the contracts.
- These types of arrangements may be at risk under the new rules particularly if (a) the non-UK company carries out little activity, especially in relation to the negotiation of contracts; and/or (b) the non-UK company has little economic substance.

Undisclosed agent ("commissionaire') arrangements

- A UK group entity may operate in the UK as an undisclosed agent for a non-UK entity. The UK group entity may operate as an agent of independent status so as to avoid the creation of a UK PE for the non-UK entity.
- Under the new rules, no tax charge will arise if the agent is of independent status and is not connected with the non-UK entity. However,

if they are connected then the new rules will potentially apply.

UK distributor

- A non-UK entity may sell goods to a UK entity with the UK entity then on-selling to UK customers. The UK entity would operate on a limited risk basis and hence would receive only a small taxable margin from its activities.
- The new rules should not, generally, apply to this type of structure, although the position should be considered on a case-by-case basis.

The Rules Dealing With The Transactions Lacking Economic Substance

IP licensed to the UK where the UK company was involved in the creation of the IP

- A UK group entity may have a role in the creation of intellectual property ("IP") (or, indeed, may have previously owned the IP). The IP ownership is in a low-tax jurisdiction and is licensed to the UK entity. The UK entity pays royalties that are tax deductible.
- The new rules would appear to be targeting this type of arrangement and may apply. If the level of royalties payable is consistent with transfer pricing principles then the new rules may not result in any adjustment to the level of deductible expense (and hence taxable UK profits) unless HMRC apply the rules so as to treat the IP as owned in the UK. In this situation the new tax charge would apply to the additional UK profits that would arise if there were no deductible royalty expense (although the UK company may be given credit for tax amortization that would be available had it owned the IP in the UK).

IP licensed to the UK where the UK company was not involved in its creation

- IP is owned in a low-tax jurisdiction and is licensed to the UK entity. The UK entity pays royalties that are tax deductible. The UK entity had no involvement in the creation of the IP.
- The breadth of the new legislation would suggest that this type of arrangement may be caught unless the relevant IP owner has substance and carries on real activity in relation to the ownership and management of the IP. However, even if the rules were to apply, it is possible that no additional tax would be payable anyway if the royalties payable are consistent with transfer pricing principles.

Equipment leasing to UK company

- A UK group entity requires new plant and machinery. A non-UK group company in a low-tax jurisdiction is funded to purchase the plant and machinery which it then leases to the UK entity for leasing payments which are tax deductible in the UK company.
- The rules would appear to be targeting this type of arrangement and may apply. Unless there is real substance in the non-UK company (in terms of its activities relating to the plant and machinery) then HMRC may apply the rules so as to treat the plant and machinery as owned by the UK entity. In this situation the new tax charge would

apply to the additional UK profits that would be treated as arising if there were no deductible leasing payments (although the UK company should be given credit for tax depreciation allowances that would be available if it had directly owned the plant and machinery).

Intra-group funding to a UK company

- A UK group entity may borrow from a group company in a low-tax jurisdiction.
- If the arrangement solely results in the creation of a debt subject to UK tax under the UK's loan relationship rules then the new tax should not apply. Instead, the level of tax deductible interest would be subject to restriction under transfer pricing principles and under other existing UK tax legislation dealing with interest deductions (such as the world wide debt cap rules).

Captive insurance

- A UK group entity may insure (or if it is itself an insurer, reinsure) risks with a "captive" group insurance company in a low-tax jurisdiction.
- The breadth of the new legislation would suggest that this type of arrangement may be caught unless the captive has substance and carries on real activity in relation to its underwriting activities. However, even if the rules were to apply, it is possible that no additional tax would be payable anyway if the premium payable to the captive is consistent with transfer pricing principles.

Additional Points To Note

The rules have been designed to encourage relevant multinational groups to both (a) ensure full compliance with transfer pricing principles; and (b) disclose to HMRC arrangements that may fall within the rules.

In particular, the rate of tax will be 25 percent (rather than the standard 20 percent UK corporation tax rate applying from April 2015) and a penalty may be payable if the taxpayer has not notified HMRC of the potential liability within three months of the end of the relevant accounting period.

Overseas jurisdictions will need to consider whether credit will be given for payment of the new tax. For example, it is understood that the US Treasury is currently considering the creditability of the DPT for US foreign tax credit purposes.

To discuss this topic with a member of the DLA team please contact the authors.

Topical News Briefing: The Japanese Conundrum

by the Global Tax Weekly Editorial Team

Broadly speaking, by looking to cut corporate income tax and at the same time increasing the tax on consumption, Japan is following international trends in tax policy.

This twin strategy is being played out around the world as governments attempt to skew the tax burden towards indirect taxation – from which revenue streams are generally more reliable and predictable – and away from tax on corporate and individual incomes, which can fluctuate depending on how an economy performs.

The OECD Consumption Tax Trends 2014 report confirmed a strong increase in standard value-added tax (VAT) rates over the past five years. In this period, 21 countries raised their standard VAT rate at least once and the OECD average standard VAT rate reached an all-time high of 19.1 percent in January 2014, up significantly from 17.6 percent in January 2009. This increasing reliance on indirect taxes has coincided with a fall in corporate tax rates over the past few years, with the global average now approximately 24 percent.

However, in other respects, Japan is out of kilter with other industrialized nations, and this has caused (and still is causing) the Government major fiscal problems.

Deficits and debt are now a common problem all over the Western world. The US Government is running a debt equivalent to the size of the economy, while some European countries have seen public debt soar well above 100 percent of GDP.

The Western debt crisis pales into insignificance, however, compared with Japan's public debt mountain, which stands at about 230 percent of GDP.

Japan's economy certainly hasn't helped matters. While most major economies have experienced the usual peaks and troughs of the economic cycle, Japan has more or less flatlined over the last 25 years – a quarter-century interspersed with brief periods of growth and longer bouts of recession. This will have suppressed tax revenue and allowed public debt to grow.

This leads us on to a more fundamental issue, and that is the huge gap between what the Japanese Government spends as a percentage of the economy and what it taxes.

Japan's tax-to-gross domestic product ratio, at about 28 percent, is much lower than most of its peers in the G7, with the exception of the United States. Yet, public spending as a proportion of GDP is more than 40 percent, which puts it on a par with some high-spending European countries.

Yet, income taxes remain comparatively high for companies and for high-income individuals. Under

the corporate tax reform bill recently submitted to the legislature, the headline corporate tax rate will be cut by 2.51 percent to 32.11 percent in the fiscal year beginning in April this year and then to 31.33 percent in 2016. However, this is still the sort of level of corporate tax we saw in the OECD about 10 to 20 years ago.

The combination of high tax rates and a low overall tax burden points to a narrow tax base, which the Government will find difficult to solve without more comprehensive tax reform. Interestingly, the US could be said to be in a similar position. Statutory corporate tax in the US is now the highest in the OECD, but sales taxes – levied at state level – are relatively low. Hence, there is widespread support for base-broadening tax reform, not only to address the federal budget deficit, but also to spur business investment and economic growth.

The corporate tax cut is designed to give companies the opportunity to invest more of their profits or give their workers a pay rise and thus boost the economy. However, Japan has another set of fairly unique problems that could blunt the effectiveness of these reforms.

The corporate tax cut is expected to result in around JPY200bn (USD1.68bn) in savings for corporations in the first year. But only about 30 percent of companies in Japan are actually profitable, so the impact of the tax cut will be limited. Furthermore, the tax reform legislation also reduces the amount of previous losses that can be set off against declared business income – a measure which could turn a tax cut into a tax increase.

The pre-programed consumption tax increase is supposed to be the fiscally responsible side of the bargain, and it is hoped that the positive effects of the corporate tax cut will more than offset any negatives that could result from a dip in consumer spending. However, Japanese consumers' apparent aversion to consumption tax also has no international parallel.

Elsewhere in the world, consumption tax increases have made relatively little difference to consumer spending habits. In Japan, however, they have made a substantial impact on the economy, and not in a good way. As a consumption tax rise approaches, consumers tend to stock up on goods before abruptly reining in their spending when the higher rate takes effect. This phenomenon is common across the world but seems to be magnified in Japan. This pattern is thought to be largely responsible for a recession in 1997, when consumption tax was increased from three percent to five percent. The economy slipped into the red in the months after last year's tax rise too, and the shock was enough to scare the Government into an 18-month postponement of the next scheduled rise in consumption tax to 10 percent, which had been due to take place this October.

Significantly, the new tax law will remove the ability of the Government to further postpone the next consumption tax hike if the Japanese economy is

thought too fragile to absorb it. This could be a brave move, considering the toxicity of the consumption tax issue.

Nevertheless, given the seemingly endless deliberations on the consumption tax issue by both the main political parties, it wouldn't be entirely unexpected if, at some point between now and April 2017, legislation is passed to delay the tax hike or to cancel it altogether. For investors with an interest in Japan, it is an issue that will warrant close observation over the months ahead.

To a certain extent, postponing the consumption tax rise contradicts Abe's aggressive polices to deal with Japan's economic and fiscal difficulties, which contrast with the more conservative measures of previous administrations. Indeed, there are those in the Japanese Government who would like to see much more radical measures used to jump-start the Japanese economy. Some see the proposed corporate tax cut as trifling, that it will do nothing to address the deeper malaise caused by so-called "zombie" companies – firms that have been unprofitable for a number of years but are being kept afloat by cheap credit. Tax reform hawks would like to see competitive and profitable firms rewarded with a deeper tax cut into the mid-20 percents, a level on a par with the world average. Controversially, others want consumption tax increased to a much higher rate – closer to the rates of VAT we see in Europe – to make a meaningful dent into the debt mountain.

However, both scenarios would appear unlikely in a country where tax policy tends to change in small increments.

US Chamber Promotes More FTAs, TPA

The US Chamber of Commerce (USCC) has released a new report that highlights the successes of America's existing free trade agreements (FTAs) and makes the case for a swift renewal of Trade Promotion Authority (TPA).

"The benefits of these agreements for American workers, farmers, and companies are hidden in plain sight," said Myron Brilliant, Executive Vice President and Head of International Affairs at the USCC. "This report casts light on how these market-opening agreements have succeeded in boosting economic growth, ensuring accountability and fairness in our trade relations, and improving conditions for the creation of good US jobs."

The report notes that although "the US market is largely open to imports from around the world, many other countries continue to levy steep tariffs on US exports … US goods arriving in foreign markets face an average tariff of 5.9 percent, according to the World Economic Forum's Global Enabling Trade Report 2014. That's more than four times the US level, but tariffs often average in the double digits in emerging markets, particularly for key US manufactured goods and agricultural exports."

The report also points out that US exporters, on average, face the 130th highest tariff burden among exporters in 138 economies. "One major reason American exporters are often at a disadvantage in key foreign markets is that so many other countries have negotiated FTAs with one another," it adds. "According to the World Trade Organization, 398 bilateral or plurilateral FTAs are in force around the globe today, but the US has FTAs with just 20 countries. This means US exporters are often among a minority paying tariffs to sell their wares in key markets."

In that respect, the report also highlights that, although the US's 20 existing FTA partners represent only 10 percent of the world's economy, they buy nearly half of US exports. Under previous deals, US exports to new FTA partners grew by 18 percent during the first five years following an agreement's entry into force.

In addition, the US has a trade surplus with its 20 FTA partners as a group. This includes sizable trade surpluses in manufactured goods, services, and agricultural products, while FTAs have been seen "to get rid of trade barriers that are especially tough on the 300,000 small and medium-size companies that account for 98 percent of all US exporters and one-third of goods exports."

Imports also play a vital role for the US economy, the report continues. Imports of intermediate goods, raw materials, and capital goods account for more than 60 percent of all US goods imports and help US companies maintain their global competitiveness, the report says.

"Understanding the success of our trade agreements is more important than ever as the proposed Trans-Pacific Partnership, the Transatlantic Trade and Investment Partnership, and the Trade in Services Agreement come into sharper focus." Brilliant added. "However, none of these trade agreements will become a reality without renewal of TPA. This is why TPA is the USCC's top priority before Congress."

Renewing the TPA, which last expired in 2007, would require the White House to consult extensively with Congress during trade treaty negotiations with the objective of providing US trading partners with an assurance that concluded FTAs would then be fast-tracked through Congress.

"While foreign governments may initiate negotiations with the US without TPA in place," the report concludes, "they have historically proven leery of making the difficult political choices associated with the final stages of negotiations in its absence. In this sense, TPA strengthens the hand of US negotiators, helping them secure the best possible deal for US workers, farmers, and companies."

WTO Making Progress In Duty-Free Market Access For LDCs

The Director-General of the World Trade Organization (WTO), Roberto Azevêdo, has said that "good progress" is being made towards the implementation of specific measures for least developed countries (LDCs) agreed at the Ninth Ministerial Conference in Bali, including the increased provision of duty-free quota-free (DFQF) market access.

Most developed countries and some developing countries already provide a significant degree of DFQF market access to products from LDCs. At the Bali conference in 2013, those advanced nations that had yet to provide DFQF access to at least 97 percent of LDCs' exports committed to improve their existing DFQF coverage for LDCs by December. Developing countries were also encouraged to provide DFQF access.

Azevêdo said that "solid progress" on DFQF market access was made in 2014. "There were welcome announcements from Chile, India, and China. The Committee on Trade and Development's annual review revealed that exceptions to DFQF treatment remain in a small number of sectors and in a very limited number of developed markets," he said.

The Director-General also noted that progress is being made on implementing the WTO's Trade Facilitation Agreement. He called on members to ratify the agreement as soon as possible.

Japanese Tax Reform Legislation Before Parliament

The Japanese Government submitted legislation to Parliament on February 17 that would implement its tax reform proposals for the 2015 fiscal year, including the planned corporate tax cuts.

As part of Prime Minister Shinzo Abe's promised growth strategies, the Government plans to reduce the country's corporate income tax rate from its current rate of 34.62 percent to below 30 percent over the next few years, so as to lower it to a more internationally competitive level.

The first steps in that plan will involve a cut to the headline corporate tax rate by 2.51 percent to 32.11 percent in the fiscal year beginning in April this year and then to 31.33 percent in 2016.

The legislation also includes provisions to recoup much of the lost revenue from the rate reductions by broadening the corporate tax base. With only around 30 percent of Japan's companies presently paying corporate tax because of previous losses, the proposals include a reduction in the amount of previous losses that can be offset against declared business income.

At the same time, the legislation will modify the consumption tax law so that the programmed sales tax hike from 8 percent to 10 percent will be postponed by 18 months to April 2017. It will also eliminate a provision that would otherwise enable the Government to further postpone the hike depending on economic conditions.

Other measures have also been added to the tax reform package to encourage accumulated wealth to be passed down to younger generations. A gift tax exemption will be granted to parents or grandparents that provide funding for childcare, and the current exemption threshold for gifted housing will be expanded.

CPA Australia Investigates GST Reform Benefits

An overhaul of Australia's goods and services tax (GST) system could deliver tax cuts, improve household incomes, and boost economic growth, according to accounting body CPA Australia.

CPA Australia commissioned research from KPMG on four possible changes to the base and rate of the GST, accompanied by the abolition of a range of "inefficient" taxes.

The first scenario considered an extension of the current 10 percent GST to fresh food, health and education. The report said this could generate an additional AUD12.1bn in GST revenue in 2015/16. The second scenario considered a 15 percent GST rate and the continuation of current exemptions, which could generate AUD26bn in the first year of reform. A 15 percent GST applied to health and

education could raise an additional AUD36.8bn, while a 15 percent GST on fresh food, health and education could raise AUD42.9bn.

In each scenario, the additional revenue raised would be used to abolish insurance taxes and stamp duty on motor vehicles, and either cut or scrap conveyancing stamp duty. Any remaining additional revenue would be used to reduce the personal income tax burden and fund welfare reform.

In 2015/16, the average annual additional revenue raised across the four scenarios is estimated at between AUD12bn and AUD43bn. By 2029/30, the changes could generate between AUD21bn and AUD76bn annually.

The report notes that in the absence of other compensating measures, greater GST revenue would have a negative impact on gross domestic product (GDP). It would increase the average tax rate on the economy, along with prices for goods and services, and reduce real take home wages.

"However, by using the additional GST revenue to alter the tax mix toward comparatively low indirect taxes and away from relatively high direct taxes, and to abolish some relatively inefficient taxes, the economy can make an efficiency (and therefore output) gain on the same total revenue-take in the longer term," the report states.

According to CPA Australia Chief Executive Alex Malley: "It is the packaging of changes to the GST with the removal of other taxes that is critical, and is so often missing when it comes to the GST debate." He pointed out that, even with an increase to 15 percent, Australia's GST rate would remain low by global standards. The average rate across OECD countries is more than 19 percent.

"The net outcome in all the reform scenarios we've looked at is that households across the income spectrum can be better off. CPA Australia's report clearly shows that there is [a] considerable upside for both households and [the] broader economy to a calm and rational look at the GST. In all four of the scenarios, our GDP is bolstered over the medium to longer term which means more economy activity and growth," Malley added.

China Cuts SME Tax Burden By USD10bn In 2014

China's State Administration of Taxation (SAT) has disclosed that, in 2014, preferential corporate income tax rates, value-added tax (VAT) exemptions, and business tax concessions provided RMB61.2bn (USD9.8bn) in tax relief to small and micro enterprises.

Tax relief for China's small and micro enterprises is considered very important, as these entities account for more than 75 percent of the total number of businesses in the country and provide jobs for almost 80 percent of urban workers.

In a bid to support smaller firms, from January 1, 2014, the Chinese Government increased the scope

of a tax break for companies with annual incomes below RMB60,000 to cover those with annual incomes below RMB100,000. This tax break, which has been extended until the end of 2016, allows companies to reduce their taxable income by 50 percent.

In addition, the exemption from the imposition of VAT and business tax granted to businesses with monthly sales of up to RMB30,000 has been extended to December 31, 2015.

Other measures have included stamp duty exemptions and exemptions from certain registration and license fees.

According to the SAT, the corporate income tax rate reduction provided RMB10.1bn in relief to almost 2.5m taxpayers last year, while 22m taxpayers were exempt from VAT and business sales tax totaling RMB30.7bn and RMB20.4bn, respectively.

Thailand Considering Progressive CIT For SMEs

Thailand's Joint Public-Private Consultative Committee has agreed an overhaul of the tax structure for Thailand's small and medium-sized enterprises (SMEs).

SMEs are currently taxed at the corporate tax rate of 20 percent. A new special committee is to consider proposals for reduced rates to be applied on businesses with lower profits. The proposals involve the application of a 5 percent rate on SMEs with a net annual profit of up to THB5m (USD150,000), a 10 percent rate on those SMEs with profits up to THB10m, and a 15 percent rate on SMEs with profits up to THB20m. In Thailand, the term "SME" covers any business with an annual turnover of not more than THB200m.

An in-principle agreement was also reached on a proposal from the Federation of Thai Industries (FTI) for the Revenue Department to drop its retroactive audit for back taxes on SMEs registering for tax for the first time.

It has been reported that there are currently only around 700,000 tax-registered SMEs in Thailand, although it is estimated that 2.8m SMEs exist. The FTI said the proposal would encourage SME owners to become tax compliant. This could help broaden the tax base, alongside the Government's other proposals for an inheritance tax and a land and buildings tax.

Canada Announces Tax Breaks For LNG Industry

The Canadian Government has announced that it intends to establish a new capital cost allowance (CCA) for the liquefied natural gas (LNG) industry.

The CCA will be available at a combined rate of 30 percent for equipment used in natural gas liquefaction (Class 47 property) and at 10 percent for buildings used for LNG operations. The tax relief will be available for capital assets acquired after February 19, 2015, and will be offered until 2025.

Unlike current expenditures, such as wages, the cost of capital property generally cannot be fully deducted in the year the property is acquired. A portion of the capital cost of a depreciable property is deductible as CCA, with the CCA rate for each type of property set out in the Income Tax Regulations. CCA rates are typically set so that the cost of depreciable property is recognized over the useful life of the property. Accelerated CCA treatment allows taxpayers to more quickly recover the cost of their capital investment.

Equipment and structures used for natural gas liquefaction are generally included in Class 47 (with a CCA rate of 8 percent). The new accelerated CCA will take the form of an additional 22 percent allowance, which will bring the CCA rate up to 30 percent for Class 47 property.

Non-residential buildings at a facility that liquefies natural gas are currently eligible for a CCA rate of 6 percent (4 percent under Class 1, plus an additional 2 percent allowance for non-residential buildings). A second additional allowance will bring the CCA rate up to 10 percent for buildings that are part of facilities that are used to liquefy natural gas.

Consistent with the current CCA rules, the additional allowances will be calculated on a declining-balance basis.

It is estimated that the provision of accelerated CCA treatment to the LNG industry will reduce federal corporate income tax revenues by less than CAD50m (USD39.8m) over the 2015/16 to 2019/20 period.

Prime Minister Stephen Harper said: "Our Government is committed to providing the right conditions so that industries and businesses can succeed and compete in the global economy, by lowering taxes, cutting red tape, and encouraging entrepreneurship. [This] announcement builds on our low tax plan for jobs and growth, strengthening the already strong case for business investment in Canada."

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EU Seeks Transparency On Corporate Tax

The European Commission has decided upon a list of tax reform priorities to lay "the foundation for a fairer and more transparent approach to taxation in the EU," focusing on the taxation of companies.

At a recently concluded orientation debate on the issue, the European Commissioners from the 28 member states agreed that the Commission's work should focus on ensuring that companies are taxed where economic activities are performed. They agreed rules should be strengthened to ensure companies cannot avoid paying a "fair share," and this will require improved transparency.

The Commission said it will present a Tax Transparency Package in March 2015, and, shortly thereafter, a second package of measures will be announced that will deal with corporate taxation, taking into account the OECD's work on base erosion and profit shifting (BEPS).

Pierre Moscovici, EU Commissioner for Economic and Financial Affairs, Taxation and Customs, said: "It is time for a new era of openness between tax administrations, a new age of solidarity between governments to ensure fair taxation for all. The Commission is fully committed to securing the highest level of tax transparency in Europe."

Valdis Dombrovskis, EU Commissioner for the Euro and Social Dialogue, said: "A prosperous Europe needs fair, transparent and predictable tax systems for businesses to invest and for consumers to regain confidence. As part of our work for a deeper and fairer internal market, we want to establish greater tax transparency and ensure fairer tax competition, within the EU and globally. It is not acceptable that tax authorities have to rely on leaks before they enforce tax rules."

UK Confirms New Air Passenger Duty Structure

The UK tax authority, HM Revenue & Customs (HMRC), has released an information brief on plans to substantially reform the structure of the UK's air passenger duty (APD) from April 1, 2015.

As announced in the 2014 Budget, the number of APD destination bands will be reduced to two by merging the three bands for medium and long distance flights, Bands B, C and D. The higher rates that apply to aircraft with an authorized take-off weight of 20 tonnes or more and with fewer than 19 seats – aimed at business jet travel – will be set at six times the reduced rates.

From April 1, 2015, Band A (for flights of up to 2,000 miles) will feature a GBP13 (USD20) charge for economy class; GBP26 for all classes other than economy class; and a higher rate (for business jets) of GBP78.

Band B, which applies to flights of over 2,000 miles, will be levied at a rate of GBP71 for economy class and GBP142 for other classes. The higher rate will be GBP426.

According to Government estimates, the changes will reduce the APD tax burden by over GBP200m each year, beginning with a fall of GBP215m in the fiscal year 2015/16.

The measure will reduce the tax paid on flights to many destinations. A family of four visiting relatives in the Caribbean or India flying in economy class will pay GBP56 less APD. A person flying business class to China or Brazil will pay GBP28 less.

Switzerland, Italy In Landmark Tax Deal

Switzerland and Italy have signed a protocol to their double tax agreement (DTA) and have agreed a roadmap on tax cooperation – deals that the Swiss Government says will improve relations after years of controversy.

The DTA protocol was initialed on December 19, 2014, and signed on February 23, 2015, by Swiss Federal Councilor Eveline Widmer-Schlumpf and the Italian Finance Minister Pier Carlo Padoan.

The Protocol will add provisions to incorporate the OECD standard for the exchange of information upon request. Once it enters into force, the information exchange provisions will apply retrospectively from the signature date, in recognition of the fact that it could take up to two years for the protocol to be ratified by both sides.

A roadmap signed by the two ministers establishes that, in principle, financial institutions and their employees are not responsible for the tax offenses of their clients. It stipulates that an agreement on cross-border commuters should be finalized by mid-2015, and that Italian taxpayers with an account in Switzerland should be able to take part in Italy's voluntary disclosure program under the same conditions as those for disclosures concerning assets in Italy and other countries. Group information exchange requests will be permitted, and the roadmap also paves the way for Switzerland's removal from Italy's "black list."

The Swiss Federal Council said that these initiatives lay "new foundations that will make it possible to strengthen cooperation, improve relations between the two countries, and develop bilateral economic relations in a constructive atmosphere."

"The agreement will facilitate the processing of the Italian voluntary disclosure program recently adopted by Italy's Parliament and will considerably increase legal certainty for Italian taxpayers who have an account in Switzerland. This will enable an orderly transition to the future automatic exchange of information in accordance with the OECD standard without massive outflows of capital. In this way, Switzerland's financial center, and particularly Ticino's financial center, will continue to enjoy good prospects," the Council added.

Special Extension To Obamacare Enrollment Period

On February 20, the US Centers for Medicare and Medicaid Services (CMS) announced a special Affordable Care Act (ACA) enrollment period in 2015 for individuals who are subject to the shared responsibility payment – or tax penalty – when they file their 2014 taxes.

The ACA's provisions impose penalties on individuals who do not obtain "minimum essential" health care coverage for themselves or their families, administered through the tax code on their tax returns each year.

As many people will wait until the end of the tax season in April to file their 2014 tax returns, an estimated 3m to 6m taxpayers may only find out that they are subject to a tax penalty at that time. In addition, many of these individuals may want to enroll in coverage to avoid the penalty again in 2015, only to find that open enrollment for 2015 coverage closed on February 15.

The CMS's special enrollment period will now provide those individuals with an opportunity to purchase health insurance coverage from March 15 to April 30 this year. If consumers do not purchase coverage for 2015 during this special enrollment period, they may have to pay a fee when they file their 2015 income taxes.

Those eligible for the special enrollment period will need to live in states with a federally facilitated marketplace (FFM) for ACA health coverage. Consumers in states with their own marketplaces will need to rely on separate extensions given by each of those states.

In addition, participants will need to attest that when they filed their 2014 tax return they paid the fee for not having health coverage in 2014; and that they first became aware of, or understood the implications of, the shared responsibility payment after the end of open enrollment on February 15, 2015, in connection with preparing their 2014 taxes.

"We recognize that this is the first tax filing season where consumers may have to pay a fee or claim an exemption for not having health insurance coverage," said CMS Administrator Marilyn Tavenner. "Our priority is to make sure consumers understand the new requirement to enroll in health coverage and to provide those who were not aware or did not understand the requirement with an opportunity to enroll in affordable coverage this year."

The CMS's action followed requests from Democrat lawmakers, including the Ways and Means Committee Human Resources Subcommittee Ranking Member Lloyd Doggett (D – Texas), for such a special enrollment period. "Now, thanks to the change I sought," he stated, "taxpayers seeing the financial consequences of being uninsured will

be able to enroll for coverage sooner instead of being forced to wait for the next enrollment period."

UK Launches Tax Break For Married Couples

Registration has opened for the UK's new Marriage Allowance, a tax break the Government says will help married couples save up to GBP212 (USD326) a year.

The Allowance will enable a spouse or civil partner who does not pay tax (those with income below the GBP10,600 tax-exempt threshold applicable from April 2015) to transfer up to GBP1,060 of their personal tax-free allowance to a spouse or civil partner, providing the recipient does not pay more than the 20 percent basic rate of income tax, applicable on income up to GBP31,785.

The Allowance will be available from April 6, 2015. Couples can register their interest to receive the Allowance online. From April, HM Revenue & Customs (HMRC) will contact couples who have already registered to invite them to apply for the Allowance.

One person in a couple will need to apply online to transfer the allowance to their spouse or civil partner. HMRC will tell the recipient about the change to their Pay As You Earn (PAYE) tax code.

Prime Minister David Cameron said: "I made a clear commitment to the British people that I would recognize marriage in the tax system – so I am delighted that we're just a little over a month away from it coming into effect. We can afford to do it because of the growing strength of the British economy. As a result, it means families up and down the country can get a little bit of extra support and more financial security."

Chancellor George Osborne added: "Our new Marriage Allowance means saving GBP212 on your tax bill couldn't be simpler or more straightforward."

India Issues 39 New Accounting Standards

India has released a new roadmap for the application of 39 new corporate Indian Accounting Standards (Ind AS), which are intended to be largely in line with International Financial Reporting Standards (IFRS).

On the basis of a proposal in the 2014/15 Budget statement in July 2014, the Ministry of Corporate Affairs has confirmed that, with the exception of insurance, banking and non-banking finance companies, large companies may comply with the Ind AS on a voluntary basis in their financial statements for accounting periods beginning on or after April 1, 2015.

However, Ind AS will be mandatory for accounting periods beginning on or after April 1, 2016, for companies with a net worth of INR5bn (USD80m) or more whose equity and/or debt securities are listed, or are in the process of being listed, on any stock exchange in or outside India. These standards will also apply to their holding companies, subsidiaries, joint ventures, and associated companies.

Furthermore, the new Ind AS will be mandatory for accounting periods beginning on or after April 1, 2017, for listed companies having a net worth of less than INR5bn, as well as for unlisted companies having a net worth of at least INR2.5bn but less than INR5bn.

However, an exemption will apply for companies who are covered by the aforementioned listing criteria but whose equity or securities are listed – or in the process of being listed – on the SME Exchange, or on the Institutional Trading Platform without an initial public offering. However, once a company has opted to apply the Ind AS, it will be required to use it for all subsequent financial statements.

All other companies will be required to continue to comply with existing accounting standards, as prescribed in the Companies (Accounting Standards) Rules, 2006.

UK Accounting Rules Eased For Small Firms

Following the Government's decision to implement the EU Accounting Directive and maximize the number of companies classified as small businesses, the UK Financial Reporting Council (FRC) has issued its proposals to amend accounting rules.

The FRC confirmed that the proposals will benefit 1.5m of the smallest "micro-entities" in the UK by simplifying their reporting requirements, and there will also be changes for another 1.5m companies that fall within the "small" company size threshold.

Melanie McLaren, Executive Director of Codes and Standards, said: "Our proposals support the implementation of the new Accounting Directive in the UK and the Republic of Ireland. They simplify

reporting for some entities and are intended to assist the directors of small entities in applying their judgment to the new presentation and disclosure requirements of the Accounting Directive."

"Overall, we believe our proposals provide a consistent framework for reporting by all entities in the UK and Republic of Ireland, building on the legal framework and proportionately tailored to the size of the entity and users' information needs," she said.

The proposals include the withdrawal of the previous Financial Reporting Standard for Smaller Entities; a new accounting standard for micro-entities, offering some accounting simplifications; new recognition and measurement requirements for other small companies aligned with new UK Generally Accepted Accounting Principles; and greater flexibility in relation to the format of profit and loss accounts and balance sheets.

The EU Accounting Directive sets thresholds for micro, small, medium and large companies on the basis of the size of a company's workforce, the balance sheet total, and the net turnover on the date the balance sheet is prepared. The UK Government has decided, for accounting purposes, to apply the maximum thresholds for all sizes of companies.

For micro-entities and small companies, respectively, the maximum thresholds are up to GBP632,000 (USD971,400) or GBP10.2m in turnover, a balance sheet total of up to GBP312,000 or GBP5.1m, and no more than 10 or 50 employees.

Danielle Stewart, Head of Financial Reporting at chartered accountants Baker Tilly, said: "The significance of the latest proposals from the FRC should not be underestimated. If these proposals are adopted in their current form, around 1.5m of the smallest companies in the UK will benefit from a dramatic simplification in their accounting requirements."

"Many micro-business owners and freelance workers operating through 'lifestyle companies' with turnovers of less than GBP632,000 a year will stand to benefit, as they will be released from the most complex aspects of the accounting requirements of the current reporting regime," she added. "Once adopted, these proposals will end a long period of uncertainty for smaller businesses and bring the UK fully into line with the presentation and disclosure requirements of the new EU Accounting Directive."

Multinationals Report Increased Int'l Tax Scrutiny

Multinational corporations' (MNCs') corporate tax planning arrangements, and in particular their transfer prices, are facing increased scrutiny as a result of ongoing international work to reform global tax rules, according to a recent survey.

Taxand's annual Global Survey 2015 – *Caught in the crossfire: MNCs prepare for the post-BEPS world* – reported that MNCs' chief financial officers (CFOs) are increasingly wary about the potential reputational impact of tax planning decisions and in particular the disclosure of tax strategies. 40 percent said increasing tax scrutiny has made them change their corporate growth strategy in particular countries.

60 percent said they have seen an increase in the number of audits undertaken by tax authorities in the past year, and transfer pricing is said to be a key area of focus for tax authorities.

Despite concern that the changes are increasing tax risk and uncertainty, 83 percent of CFOs feel that tax competition will increase over the next five years, with 76 percent of the belief that the OECD's base erosion and profit shifting (BEPS) project will make countries more competitive from a corporate tax rate perspective.

There was a mixed response on whether the BEPS project will create a more sustainable tax system, although there is a clear appetite for reform, with 80 percent stating that initiatives to fundamentally reform the international tax architecture are desirable. 67 percent of respondents said tax issues – particularly those linked to reputational considerations – are discussed at board level.

Taxand Chairman Frederic Donnedieu de Vabres commented: "As governments and politicians continue to – very publicly – shake up tax reform, multinationals remain an easy target. With this in mind, it has never been more important for multinationals to be confident in their tax planning and to demonstrate that their activities are founded on commercial and business substance."

US Report Criticizes Repatriation Tax Proposals

A repatriation holiday would have a minimal economic impact and would be the wrong way to pay for the Highway Trust Fund (HTF) or any other project, according to a new report by the Heritage Foundation (HF).

There have been differing congressional proposals recently to change the tax treatment of the USD2 trillion in untaxed foreign income that American companies have accumulated overseas. The US corporate tax code currently uses the "worldwide" approach, with a deferral system for the active earnings of foreign subsidiaries of US multinational companies, as long as the profits remain abroad.

Tax is only payable when these profits are repatriated as dividends to the US.

While the HF pointed out that, as the US is effectively the only country that still taxes its businesses' foreign earnings, "fixing that glaring flaw by instituting a 'territorial' system is a major objective of tax reform," the goal of achieving a territorial system should, however, not be "confused with changes to repatriation policy that would not have similar economic benefits."

In its opinion, a repatriation holiday – involving the provision of a concessionary corporate tax rate for repatriated earnings – "would not create jobs by boosting investment domestically because businesses' incentives for investing would not increase, [and] it is questionable whether a holiday would lower or raise revenues in the traditional ten-year budget window."

"Whether it does or does not depends almost entirely on how much foreign income the Joint Committee on Taxation (JCT) anticipates businesses will repatriate over the next decade under current law," the HF noted. "However, given a one-year or two-year span, there is little doubt that a holiday would shift revenue forward to those years."

In fact, the JCT recently estimated that a preferential tax rate for repatriated foreign corporate earnings would have a negative fiscal impact over the long term. It said that if corporations believe that further tax reductions will occur in the future and become a regular part of the tax system, it would create an incentive for businesses to retain more earnings overseas, rather than encourage them to repatriate income, and encourage businesses to locate more income and investment abroad.

The HF also examined the idea of "deemed" repatriation, involving the immediate application of a tax on accumulated foreign earnings, even if the company has no intention to repatriate the profits.

Such a policy, it said, would be a "tax hike, because a portion of the income that would be taxed would be money that businesses decided to permanently invest offshore." It said it would be a move in the wrong direction as "Congress should be working to eliminate tax on businesses' foreign earnings through tax reform."

Overall, the HF stressed that, "even if changes in repatriation policy provided an economic boost or did not raise taxes, it would still be the wrong choice for funding the HTF. Highways have traditionally been funded on the user-pays principle, as exemplified by the gas tax. Congress should not break that commonsense policy by tapping the foreign incomes of multinational businesses."

"Changes to repatriation policy are best left to tax reform," it concluded. "Taking changes to policy on previously earned foreign income off the table by misguidedly using them to pay for transportation would make achieving tax reform more difficult."

New Zealand Plans Debt Remission Tax Relief

The Government of New Zealand has released a paper seeking public feedback on proposed changes to debt remission rules.

Debt remission – the extinguishing of a borrower or debtor's liability – often causes the borrower to derive taxable income on their gain, covering the amount they no longer have to repay. In this context the debt remission is usually associated with the debtor's inability to repay their loan and the creditor remits the loan.

Under the current rules, however, when the creditor is associated with the debtor (a related party), the creditor is denied a bad debt deduction. The result is one-sided taxation – income accruing to the debtor, but with no deduction allowed for the creditor.

Minister of Revenue Todd McClay said that the proposed changes to the rules are aimed at providing greater certainty and fairness for taxpayers. McClay said that the Cabinet had endorsed the paper's two key conclusions – that over-taxation in such circumstances should be addressed and that the proposed change should be retrospective.

"The issues paper follows on from an Inland Revenue technical interpretation. This interpretation found that where related-party debt was capitalized into shares this could sometimes [lead to] tax avoidance. If it is tax avoidance the capitalization is reassessed as being a debt remission. Debt capitalization is becoming more commonplace. Tax law needs to provide certainty and this proposal will address a situation where over-taxation is taking place," he said.

"This will be welcomed by group companies in corporate New Zealand as well as smaller [family] partnerships or businesses," he said. "It's my expectation that this consultation will lead to legislative change which is now overdue."

McClay highlighted that the paper does not consider the issue of inbound investment, as this is being covered by the OECD's base erosion and profit shifting project.

Tax Hikes In Bermuda's Latest Budget

Bermuda has published its 2015/16 Budget, which includes proposals for a number of tax increases to balance the territory's books.

The Budget notes that Bermuda's tax base is narrow compared with other international financial centers, with its tax burden amounting to just 19 percent of gross domestic product (GDP). Presently, the territory is heavily dependent on revenues from the financial services and tourism sectors.

As well as proposing a number of tax hikes, Bermuda is seeking technical assistance from the International Monetary Fund's Caribbean Regional Technical Assistance Center to study measures that would broaden Bermuda's tax base, with a view to balancing the territory's finances within three years.

The 2015/16 Budget includes the following measures:

- An increase to the payroll tax rate on employers by 0.5 percent to 14.5 percent. Payroll concessions currently in place for the hospitality, restaurant and retail sectors will be partially rolled back in 2014/15, with businesses in these sectors to pay a rate of 5.5 percent;
- An increase to the payroll tax rate on employees by 0.25 percent to 5.5 percent;
- The duty on fuel will be raised by 5 cents per liter in April;
- The land tax on commercial properties, which is based on rental values, will be increased from 4.4 percent to 5.5 percent;
- The corporate services tax rate will be raised from 6 percent to 7 percent; and
- The Airport Departure Tax will be raised from USD35 to USD50 per passenger.

Singapore's Budget Includes Higher Income Tax Hike

On February 23, Singapore's Deputy Prime Minister and Finance Minister, Tharman Shanmugaratnam, issued his 2015/16 Budget, including measures to support both middle- and lower-income taxpayers.

While granting a personal income tax rebate of 50 percent – capped at SGD1,000 (USD736) per taxpayer – to all resident individual taxpayers against income tax for this current year of assessment (YA), the Budget also intends to make the personal income tax regime more progressive.

There will be additional bands with higher tax rates on incomes above SGD160,000 from the 2017 YA, including a 22 percent top rate for incomes above SGD320,000 – an increase from the current highest rate of 20 percent.

To support businesses, the 30 percent corporate income tax rebate will be provided for another two YAs (YA 2016 and YA 2017), with a cap of

SGD20,000 per company per YA (reduced from SGD30,000 this year).

In addition, while the productivity and innovation credit (PIC) cash bonus will be allowed to lapse this year, businesses will continue to benefit from the PIC scheme itself, which has already been extended until YA 2018, as well as the PIC+ scheme that was introduced in last year's Budget.

Among other tax measures, the carbon emissions-based vehicle tax scheme, which encourages consumers to shift to low emission car models, has been extended by two years from July 1, 2015, to June 30, 2017. The scheme's surcharge and rebate bands have been updated to reflect improvements in vehicle engine technology and the highest rebate and surcharge amount has been increased from SGD20,000 to SGD30,000.

Petrol duty rates will also be increased, but a one-year road tax rebate will be given to petrol vehicles to ease the transition to the higher rates.

The Approved Headquarters tax break has been withdrawn with effect from October 1 this year, but the 10 percent concessionary tax rate for insurance companies and the package of tax concessions (except for the stamp duty exemption) for listed real estate investment trusts have been extended to March 31, 2020.

Overall, for FY2015, Singapore's overall budget deficit is projected to be 1.7 percent of gross domestic product, or SGD6.7bn. This was mainly due to SGD6bn being set aside for future investments in the Changi Airport Development Fund, the Special Employment Credit Fund, the National Productivity Fund, and the National Research Fund.

Tharman pointed out that the FY2015 Budget would otherwise be "quite close to balance." He confirmed that the Government has sufficient surpluses from its previous years to fund the overall deficit without drawing on past reserves.

Isle of Man Announces Balanced 2015/16 Budget

The Isle of Man has presented proposals to raise the personal income tax-exempt threshold and remove the 10 percent income tax rate in its 2015/16 Budget.

Eddie Teare, the island's Treasury Minister, announced the Government intends to increase the personal income tax exempt threshold to GBP14,000 (USD21,628), removing more than 10,000 people from the tax net. The proposal, which will be subject to consultation, would be implemented alongside the introduction of a single rate of income tax for individuals of 20 percent.

Other key measures in the Budget include:

- An increase to the minimum amount of individual income tax payable under the "Tax Cap" special scheme to GBP125,000 for new entrants from GBP120,000;
- An income tax rate increase from 10 percent to 20 percent on companies deriving income from local land and property;

- A cut to the Personal Allowance Credit from GBP500 to GBP400 and new restrictions limiting eligibility to the elderly and people with disabilities with a taxable income of no more than GBP9,500; and
- The introduction of a new National Insurance "holiday" scheme for employers taking on a person who has been long-term unemployed, long-term sick, or recently released from prison.

BARBADOS - ISRAEL

Into Force

Barbados and Israel are engaged in negotiations towards the conclusion of a DTA, it was confirmed at a meeting on January 22, 2015.

COLOMBIA - CZECH REPUBLIC

Ratified

Colombia approved a law ratifying the DTA with the Czech Republic on February 11, 2015.

CROATIA - UNITED KINGDOM

Forwarded

According to preliminary media reports, the Croatian Government on January 21, 2015, approved a law that would ratify the DTA signed with the UK on January 15.

GERMANY - NORWAY

Into Force

The protocol amending the existing DTA between Germany and Norway entered into force on February 3, 2015, and is effective retroactively from January 1, 2015.

ITALY - LIECHTENSTEIN

Initialed

Italy's Ministry of Economy and Finance announced on February 13, 2015, that a TIEA with Liechtenstein had been initialed.

ITALY - LUXEMBOURG

Effective

The DTA Protocol between Italy and Luxembourg came into effect on January 20, 2015.

JAPAN - QATAR

Signature

Japan signed a DTA with Qatar on February 20, 2015.

MACAU - SWEDEN

Into Force

The Macau Government announced on February 18, 2015, that the TIEA with Sweden entered into force and became effective on January 15, 2015.

SOUTH AFRICA - BARBADOS

Into Force

A notice was published in the South Africa official gazette on February 17, 2015, reporting that the TIEA with Barbados entered into force on January 19, 2015.

TAIWAN - BRUNEI

Negotiations

Taiwan and Brunei agreed to launch negotiations towards a DTA at a meeting on January 27, 2015.

TURKEY - MEXICO

Ratified

Turkey approved a law ratifying the DTA with Mexico on February 4, 2015.

UNITED KINGDOM - ALGERIA

Signature

The UK signed a DTA with Algeria on February 18, 2015.

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

THE AMERICAS

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://go.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/inter2015_sanfrancisco/

4TH FATCA COMPLIANCE FORUM

The Canadian Institute

Venue: One King West Hotel and Residence, 1 King St W, Toronto, ON, M5H 1A1, Canada

Key Speakers: TBC

3/25/2015 - 3/26/2015

http://www.c5-online.com/2015/283/4th-fatca-compliance-forum

US INTERNATIONAL TAX COMPLIANCE WORKSHOP

BNA

Venue: Bloomberg BNA, 1801 South Bell Street, Arlington, VA 22202, USA

Key Speakers: Jon Brian Davis (Ivins Phillips & Barker Chtd), Adam Halpern (Fenwick & West LLP), Matthew Harrison (PwC LLP), Meg Hogan (KPMG LLP), Josh Kaplan (KPMG LLP), among numerous others

5/4/2015 - 5/5/2015

http://www.bna.com/uploadedFiles/BNA_V2/Professional_Education/Tax/Live_Conferences/IntlTaxWorkshopDynamicsEPMay2015.pdf

4TH CROSS BORDER PERSONAL TAX PLANNING

Federated Press

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

Chairs: Jonathan Garbutt (Dominion Tax Law), Martin J. Rochwerg (Miller Thomson LLP)

5/26/2015 - 5/27/2015

http://www.federatedpress.com/pdf/HGLegal/CBP1505-E.pdf

14TH ANNUAL INTERNATIONAL MERGERS AND ACQUISITIONS CONFERENCE

International Bar Association

Venue: Waldorf Astoria New York, New York, NY 10022, USA

Key Speakers: TBC

6/10/2015 - 6/11/2015

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=7ca03d57-41c9-44ba-b1a4-7434572160e9

GLOBAL TRANSFER PRICING CONFERENCE

BNA

Venue: Fairfax Embassy Row, 2100 Massachusetts Avenue Northwest, Washington, DC 20008, USA

Key Speakers: TBC

6/11/2015 - 6/12/2015

http://go.bna.com/transfer-pricing-conference-primer/

U.S. INTERNATIONAL TAX COMPLIANCE WORKSHOP

BNA

Venue: Manchester Grand Hyatt, One Market Place, San Diego, CA 92101, USA

Key Speakers: TBC

6/15/2015 - 6/16/2015

http://www.bna.com/compliance_sd/

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

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

THE 6TH OFFSHORE INVESTMENT CONFERENCE HONG KONG 2015

Offshore Investment

Venue: Conrad Hong Kong Hotel, One Pacific Place, Pacific Place, 88 Queensway, Hong Kong

Chair: Michael Olesnicky (KPMG China)

6/17/2015 - 6/18/2015

http://www.offshoreinvestment.com/pages/index.asp?title=The_Offshore_Investment_Conference_Hong_Kong&catID=12190

WESTERN EUROPE

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

PLANNING FOR THE INTERNATIONAL OLDER CLIENT

IIR & IBC

Venue: Grange City Hotel, London, 8-14 Cooper's Row, London, EC3N 2BQ, UK

Chair: Chris Belcher (Mills & Reeve)

3/12/2015 - 3/12/2015

http://www.iiribcfinance.com/event/Planning-International-Older-Client

BERLIN WORKSHOP MARCH 2015

ITPA

Venue: Hotel Adlon Kempinski, Unter den Linden 77, 10117 Berlin, Germany

Chair: Milton Grundy

3/15/2015 - 3/17/2015

https://www.itpa.org/?page_id=9801

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%20 2015%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

GLOBAL TAX POLICY CONFERENCE

Maastricht University

Venue: Royal Netherlands Academy of Arts and Sciences, Kloveniersburgwal 29, 1011 JV Amsterdam, Netherlands

Chair: Prof. Dr. Hans van den Hurk (Maastricht University)

4/9/2015 - 4/9/2015

http://www.ibfd.org/sites/ibfd.org/files/content/pdf/INVITATION-Global-Tax-Policy-Conference-2015.pdf

15TH ANNUAL TAX PLANNING STRATEGIES - U.S. AND EUROPE

American Bar Association

Venue: Hotel Bayerischer Hof, Promenadeplatz 2-6 80333 Munich, Germany

Chairs: Carol P. Tello (Sutherland Asbill & Brennan LLP), Pia Dorfmueller (P+P Pöllath + Partners)

4/15/2015 - 4/17/2015

http://www.ifcreview.com/eventsfull.aspx?eventId=242

STEP TAX, TRUSTS & ESTATES CONFERENCE 2015 - EXETER

STEP

Venue: Sandy Park Conference & Banqueting Centre, Sandy Park Way, Exeter, Devon, EX2 7NN, UK

Key Speakers: Helen Clarke, George Hodgson (STEP), Helen Jones (BDO LLP), Lesley King (LK Law Ltd), Lucy Obrey (Higgs and Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Chris Whitehouse (5 Stone Buildings).

4/16/2015 - 4/16/2015

http://www.step.org/tax-trusts-estates-step-conference-2015

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

DIVERTED PROFITS TAX

IBC

Venue: Millennium Hotel London Knightsbridge, 17 Sloane Street, Knightsbridge, London, SW1X 9NU, UK

Key Speakers: Philip Baker QC (Field Court Tax Chambers), Timothy Lyons QC (39 Essex Street), Steve Edge (Slaughter and May), Jonathan Schwarz (Temple Tax Chambers), among numerous others.

4/21/2015 - 4/21/2015

http://www.iiribcfinance.com/event/Diverted-Profits-Tax-Conference

PRIVATE WEALTH CYPRUS 2015

IBC

Venue: Four Seasons Hotel, Limassol, 3313, Cyprus

Speakers: Andrew Terry (Withers), Rose Carey (Charles Russell Speechlys), Theo Parperis (PwC Cyprus), Celia Pourgoura (CA Advocates), among numerous others

4/22/2015 - 4/23/2015

http://www.iiribcfinance.com/event/Private-Wealth-Cyprus-Conference

INTERNATIONAL BUSINESS TAXATION: INCREASING TRANSPARENCY

ERA

Venue: ERA Conference Centre, Metzer Allee 4, Trier, Germany

Key Speakers: Raquel Guevera (MNKS), Howard M. Liebman (Jones Day), Prof. Jacques Malherbe (Liedekerke Wolters Waelbroeck Kirkpatrick), Alain Steichen (Bonn Steichen & Partners)

4/23/2015 - 4/24/2015

https://www.era.int/upload/dokumente/16950.pdf

STEP TAX, TRUSTS & ESTATES CONFERENCE 2015 - BIRMINGHAM

STEP

Venue: Crowne Plaza Birmingham City Centre, Central Square, Birmingham, B1 1HH, UK

Key Speakers: Helen Clarke, George Hodgson (STEP), Helen Jones (BDO LLP), Lesley King (LK Law Ltd), Lucy Obrey (Higgs and Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Chris Whitehouse (5 Stone Buildings).

4/24/2015 - 4/24/2015

http://www.step.org/tax-trusts-estates-step-conference-2015

STEP TAX, TRUSTS & ESTATES CONFERENCE 2015 – LEEDS

STEP

Venue: Hilton Leeds City, Neville Street, Leeds, LS1 4BX, UK

Key Speakers: Helen Clarke, George Hodgson (STEP), Helen Jones (BDO LLP), Lesley King (LK Law Ltd), Lucy Obrey (Higgs and Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Chris Whitehouse (5 Stone Buildings).

4/29/2015 - 4/29/2015

http://www.step.org/tax-trusts-estates-step-conference-2015

STEP TAX, TRUSTS & ESTATES CONFERENCE 2015 - LONDON

STEP

Venue: The Queen Elizabeth II Conference Centre, Broad Sanctuary, London, SW1P 3EE, UK

Key Speakers: Helen Clarke, George Hodgson (STEP), Helen Jones (BDO LLP), Lesley King (LK Law Ltd), Lucy Obrey (Higgs and Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Chris Whitehouse (5 Stone Buildings).

5/8/2015 - 5/8/2015

http://www.step.org/tax-trusts-estates-step-conference-2015

INTERNATIONAL CROSS BORDER ESTATE PLANNING

IBC

Venue: Grange Tower Bridge Hotel, 45 Prescott Street, London, Greater London, E1 8GP, UK

Key Speakers: Steven Kempster (Withers), Michael Wells-Greco (Speechly Bircham), Dominic Lawrence (Speechly Bircham), Edward Stone (Collas Crill), Jon Edmondson (Mourant Ozannes), Richard Dew (Ten Old Square), among numerous others.

5/15/2015 - 5/15/2015

http://www.iiribcfinance.com/event/International-Cross-Border-Estate-Planning

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

TAX PLANNING WORKSHOP

IBFD

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

Key Speakers: Shee Boon Law (IBFD), Tamas Kulcsar (IBFD), Boyke Baldewsing (IBFD), Carlos Gutiérrez (IBFD)

7/2/2015 - 7/3/2015

http://www.ibfd.org/Training/Tax-Planning-Workshop

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - LONDON

CCH

Venue: Sofitel St James Hotel, 6 Waterloo Place, London SW1Y 4AN, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

7/8/2015 - 7/9/2015

https://www.cch.co.uk/AIC

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - BRISTOL

CCH

Venue: Aztec Hotel and Spa, Aztec West, Almondsbury, Bristol, South Gloucestershire BS32 4TS, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

9/9/2015 - 9/10/2015

https://www.cch.co.uk/AIC

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MILTON KEYNES

CCH

Venue: Mercure Abbey Hill Hotel, The Approach, Milton Keynes MK8 8LY, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

9/15/2015 - 9/16/2015

https://www.cch.co.uk/AIC

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

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

Key Speakers: Ronald Aw-Yong (Beaulieu Capital), Peter Drijkoningen (French BNP Paribas bank), Francesco Mantegazza (Pirola Pennuto Zei & Associati), Omar Moerer (Baker & McKenzie), Pedro Paraguay (NautaDutilh), Nico Blom (NautaDutilh)

9/16/2015 - 9/18/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MANCHESTER

CCH

Venue: Radisson Blu Hotel Manchester, Chicago Avenue, Manchester, M90 3RA, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among numerous others

9/22/2015 - 9/23/2015

https://www.cch.co.uk/AIC

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - OXFORD

CCH

Venue: Oxford Thames Four Pillars Hotel, Henley Road, Sandford-on-Thames, Sandford on Thames, Oxfordshire OX4 4GX, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among numerous others

10/6/2015 - 10/7/2015

https://www.cch.co.uk/AIC

INTERNATIONAL TAX STRUCTURING FOR MULTINATIONAL ENTERPRISES

IBFD

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

Key Speakers: Boyke Baldewsing (IBFD), Tamas Kulcsar (IBFD)

10/21/2015 - 10/23/2015

http://www.ibfd.org/Training/International-Tax-Structuring-Multinational-Enterprises#tab_program

THE AMERICAS

United States

The US Tax Court heard the case of a (deceased) US taxpayer who resided and submitted tax returns in the US Virgin Islands after becoming a consultant with, and a limited partner of, a company established there.

The US Internal Revenue Service (IRS) contended that the taxpayer was not a *bona fide* resident of the Virgin Islands for tax purposes, and therefore accused him of failing to file US tax returns for the 2002–2004 tax years.

In addition to arguing that the defendant had fulfilled his tax obligations under existing arrangements between the US and the US Virgin Islands, counsel for the taxpayer claimed that because the accusation against him was made by the tax authority more than three years after the tax returns were filed, it was not valid and could not be enforced.

The IRS countered that if he was not a *bona fide* resident, then he did not file the proper tax returns and therefore the time limit could not apply. The Tax Court found from the facts of the case that the taxpayer had correctly and accurately submitted his Virgin Island tax returns, and therefore if indeed he was a *bona fide* resident of the Virgin Islands then he would have completely fulfilled his tax responsibilities.

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

Conditions for determining whether a claimed residency is *bona fide* have been established from a variety of past US court judgments and "grouped into four broad categories: intent; physical presence; social, family, and professional relationships; and the taxpayer's own representations." The Tax Court ruled that because the taxpayer intended to live in the Virgin Islands for a long period of time, was employed and married in the Virgin Islands, and considered himself a Virgin Islands resident taxpayer, he was a *bona fide* resident for tax purposes, and therefore the claim made by the IRS that he was required to submit US tax returns was invalid.

The judgment was delivered on January 29, 2015.

Tax Court: *Estate of Travis L. Sanders et al. v. Commissioner (144 T.C. No.5)*

http://www.ustaxcourt.gov/InOpHistoric/EstateofSanders.Div.Kerrigan.TC.WPD.pdf

WESTERN EUROPE

Ireland

Ruling on February 5, the General Court of the European Union delivered a partial annulment of a European Commission decision to recover state aid deemed incompatible with the EU internal market from Irish airlines.

In March 2009, the Irish Government introduced a two tier Air Travel Tax (ATT) regime, to be imposed on "every departure of a passenger on an aircraft from an airport" in Ireland, with a lower rate of EUR2 applying to short domestic flights (to no more than 300km from Dublin Airport), with a higher rate of EUR10 applying to all other flights. Transit and transfer passengers were exempted from the tax. Following a complaint by Ryanair and an investigation by the Commission on the grounds of infringement of the freedom to provide services, the tax was subsequently adjusted, such that from March 2011, a single rate of EUR3 was imposed on all departures.

Ryanair also filed complaints to the Commission on the following grounds:

- That the lower rate of EUR2 mainly benefited those domestic airlines the majority of whose flights were within 300km from Dublin airport
- That the flat rate was discriminatory as it represented a significantly higher proportion of the ticket price for low-fare airlines than for traditional airlines, and
- That the exemption for transit and transfer passengers constituted unlawful state aid to two other airlines that had a relatively higher proportion of passengers and flights in those categories.

In July 2011, the Commission declared that the flat rate and the exemption for transit and transfer passengers did not constitute state aid; however, it stated that the lower EUR2 rate did look to constitute state aid, and that it would investigate further.

In July 25, 2012, the Commission found that the lower rate did constitute illegal state aid, and ordered Ireland to recover that aid from those airlines deemed to have benefited from it, at a rate of EUR8 per passenger, representing the difference between the two rates. Ryanair (as applicant) and Aer Lingus (as intervener), both named as beneficiaries of the aid in question, applied to the General Court to plea, among other aspects, that "neither the EUR2 rate nor the EUR10 rate could be regarded as the 'normal' rates of the reference system … the appropriate reference rate as regards the ATT was the EUR3 rate adopted by the Irish authorities in March 2011."

The General Court observed that while the Commission had not erred in applying the higher rate as

the reference rate, or in its decision that the imposition of the lower rate on shorter flights constituted incompatible state aid, it was in error regarding its contention that an economic advantage was unfairly enjoyed by the airlines and therefore that the amount to be recovered was automatically, and in every case, EUR8 per passenger. It further argued that the extent to which the airlines subject to the lower rate had passed the advantage on to their customers should have been taken into account, as this would affect the amount that they had benefited.

Annulling the European Commission decision, the General Court argued:

> "… the Commission has not established to the requisite legal standard, in its decision, that the recovery of EUR8 per passenger was necessary in order to ensure the re-establishment of the *status quo ante*, that is to say the restoration, as far as possible, of the situation which would have prevailed if the operations in question had been carried out without the tax reduction or, in other words, if the flights subject to the rate of EUR2 per passenger had been subject to the rate of EUR10 per passenger."

It went on to state:

> "The recovery of an amount of EUR8 per passenger from the airlines could not ensure the re-establishment of the situation which would have prevailed if the operations in question had been carried out without the grant of the aid concerned, since it is not possible, for the airlines, to recover retroactively from their customers the EUR8 per passenger which should have been collected. The recovery of an amount of EUR8 per passenger from the airlines is therefore not necessary in order to eliminate the distortion of competition caused by the competitive advantage which such aid affords … On the contrary, the recovery of such an amount would be liable to create additional distortions of competition, as the applicant rightly notes, since it could lead to the recovery of more from the airlines than the advantage they actually enjoyed."

The judgment was delivered on February 5, 2015.

General Court of the European Union: *Ryanair v. European Commission (T-500/12)*

http://curia.europa.eu/juris/document/document.jsf?text=&docid=162087&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=17867

Poland

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning a Polish company which imported lubricating oil from within the EU to sell in Poland. The company asked the tax authority for an interpretation of national legislation regarding whether its products were subject to the excise duty imposed on energy products, and the authority confirmed that they were.

However, the company argued before an Administrative Court that this decision was in violation of EU law that provides for exempt treatment for "energy products used for purposes other than as motor fuels or as heating fuels," which it said should include lubricating oils.

After the court agreed with the company's argument and the tax authority appealed, the second court deliberated over whether Poland could choose to impose a tax on lubricating oils that is similar to the excise duty laid out in the relevant EU law. The court decided to approach the ECJ for an interpretation of EU law regarding whether or not excise duty could be levied on lubricating oils as an energy product that is not used as a motor or heating fuel.

The ECJ stated that, under the relevant EU legal provisions, lubricating oils are considered energy products but are specifically excluded from the application of the excise duty. However, member states are permitted to levy a tax on products that fall outside the scope of the relevant provision as long as the tax "does not, in trade between member states, give rise to formalities connected with the crossing of frontiers."

The ECJ looked at the Polish legislation and, although the final decision was left to the national court, stated that the provisions applying to the domestic purchase and importation of lubricating oils appear not to give rise to a formality connected with the crossing of frontiers. In addition, it said that the obligation on importers to declare the transaction and guarantee payment of excise duty is proportionate to the EU rules for excise duty, which are intended to ensure tax payment.

The judgment was delivered on February 12, 2015.

European Court of Justice: *Poland v. Oil Trading Poland sp. z.o.o. (C-349/13)*

http://curia.europa.eu/juris/document/document.jsf?text=&docid=162248&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=33047

Portugal

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning a group member company, Surgicare, which constructed and fitted out a hospital (activities that are not taxable under Portuguese VAT law, which resulted in the company accumulating a VAT credit), and then transferred the operation of the hospital to another company in the group, Clínica.

Surgicare regarded the transaction to Clínica to be subject to VAT, and offset the VAT due on the rent paid by Clínica against the VAT credit accumulated from the construction and fitting out. Following a review of Surgicare's activities, the tax authority regarded the company had abused the right to a VAT refund.

The authority was of the opinion that the hospital had been constructed so as to be transferred to Clínica for the sole aim that Surgicare could establish the existence of a right deduct the input VAT it had paid during construction and fitting out, even though Surgicare would not have been able to benefit from making such deductions had it operated

the hospital (which is exempt from VAT) itself. The authority therefore raised a notice of assessment against Surgicare for the VAT deducted, plus interest for late payment. Following two appeals by Surgicare against the assessment, the Supreme Administrative Court referred the case to the ECJ on the basis of whether the procedure that must be followed by the tax authority when abuse of the rules is suspected (as laid down in Article 63 of Portugal's Code of Taxation Procedure and Proceedings) complies with EU VAT law. The ECJ, in determining whether the referral was admissible, stated:

> "By its question, the referring court asks, in essence, whether Directive 2006/112 [on the common system of VAT] precludes the mandatory preliminary application of a national administrative procedure, such as that laid down by Article 63 …, in the event that the revenue authorities suspect the existence of an abusive practice."

The ECJ held that, "to adopt the measures necessary to ensure the correct collection of VAT and to prevent evasion, the directive does not lay down any provision specifying in concrete terms the contents of the measures that must be adopted by Member States for that purpose." Therefore, it is for each member state's legal system to lay down detailed procedural rules to combat VAT fraud, "provided that such rules are not less favorable than those governing similar domestic actions (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by EU [law] (principle of effectiveness)." Therefore, the referring court should "determine whether the national measures are compatible with those principles, having regard to all the circumstances of the case."

Regarding the principle of effectiveness and the special procedure laid down by Article 63 of the Portuguese Code, the ECJ considered that it allowed the accused their rights including the right to be heard due to the requirements for evidence and reasons for the accusation, and therefore the company's access to fundamental rights under EU law had not been made more difficult by application of that special procedure.

As regards the principle of equivalence, because the Article 63 special procedure applied to accusations of tax abuse no matter the method, the ECJ decided that it did not unfairly distinguish between infringements of EU law and domestic law, and therefore it adhered to the EU objective of preventing tax abuse while ensuring that the accused has access to their rights. Although the ECJ could not decide the lawfulness of the VAT deduction from the tax paid on the hospital transaction, it ruled that Directive 2006/112 does not preclude the Article 63 special procedure being employed by the Portuguese tax authority during accusations of abuse involving VAT.

The judgment was delivered on February 12, 2015.

European Court of Justice: *Surgicare – Unidades de Saúde SA v. Portugal (C-662/13)*

http://curia.europa.eu/juris/document/document.jsf?text=&docid=162245&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=250010

United Kingdom

The European Court of Justice (ECJ) on February 3 ruled that the UK Government had not breached EU legislation on freedom of establishment with changes made to its group tax relief rules in the wake of the ECJ's ruling in *Marks and Spencer* (C-446/03).

Following the delivery of the ruling in that case, the UK changed its laws to permit cross-border loss relief, subject to certain restrictions, namely that the non-resident member of the group had exhausted all possibility of the loss being taken into account in either the present, past, or future accounting periods. It also required the determination of the latter prospect to be made "immediately" after the end of the accounting period in which the losses were sustained.

The European Commission argued that the new rules on cross-border group tax relief contained in the Corporation Tax Act (CTA) 2010 were unnecessarily restrictive, and in contravention of EU legislation on freedom of establishment.

The Commission's claimed that under the updated UK law, cross-border relief could only be claimed where (1) the legislation in the EU member state in which the subsidiary in question was resident made no provision for losses to be carried forward, or (2) the subsidiary was liquidated prior to the end of the accounting period in which the losses were sustained.

The ECJ argued:

"With regard to the conditions laid down in the CTA 2010, the Court finds the first situation referred to by the Commission is irrelevant. In a situation where the legislation of the Member State in which the subsidiary is based precludes all possibility of losses being carried forward, the Member State in which the parent company is resident may refuse cross-border loss relief without thereby infringing freedom of establishment."

Regarding the second situation, the ECJ observed that the Commission had "not established the truth of its assertion that the CTA 2010 requires the non-resident subsidiary to be put into liquidation before the end of the accounting period in which the losses were sustained in order for its resident parent company to be able to obtain cross-border loss relief."

The Commission's action was therefore dismissed.

The judgment was delivered on February 3, 2015.

European Court of Justice: *European Commission v. United Kingdom of Great Britain and Northern Ireland (Case C-172/13)*

http://curia.europa.eu/juris/document/document.jsf?text=&docid=162042&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=239270

Dateline February 26, 2015

Many people, including increasing numbers in government, are convinced that discouraging environmentally harmful activities with taxes, and encouraging environmentally virtuous deeds with tax breaks, will go a long way towards saving the planet. I'm not so sure. For starters, we are going to have to wait quite a long time before there is enough evidence to show that carbon taxes and carbon trading schemes have resulted in meaningful cuts to emissions. If the majority of climate scientists are to be believed, this might be time we haven't got. But there is a more fundamental problem. A bit like the OECD's BEPS project, surely there is going to have to be a global level playing field on carbon taxation if companies aren't going to indulge in carbon tax arbitrage, moving their operations to those countries with the lightest tax burdens, or those with no carbon taxes at all. Let's remember that, while a handful of US states are introducing carbon taxes, there is no real desire to introduce one at federal level.

The trouble is that – despite their good intentions – governments tend to put their own self-interest first, and revenue production, rather than carbon reduction, is often the primary motive for "green" taxation. The UK's air passenger duty (APD), hiked massively during the financial crisis, is probably the best example of a revenue-raiser masquerading as an environmental tax. The major flaw in the APD is that it is essentially a ticket tax, which is charged on a per-passenger basis, with the amount payable varying depending on distance and class of travel. This leads to some perverse results, the most obvious of which is that less tax may be paid by the passengers of a half-empty plane than a full one, despite the fact that the former may be emitting considerably more carbon per passenger than the latter. The banding system also seems to have been designed by someone with a limited grasp of geography; passengers flying to the Caribbean, for example, pay more APD than those bound for Florida, despite the two destinations being roughly equidistant from the UK. Somehow, Hawaii is also deemed nearer the UK than the Caribbean. APD has also done damage to the UK's aviation and travel industry, and at least one airline has scaled down its UK operations in response to swingeing increases in the tax in recent years. Yet, at the same time, the Government's avowed policy is to ensure that London remains Europe's major aviation hub. Go figure! At long last though, the UK Government appears to be listening, and confirmation of plans to overhaul the structure of APD just about merits an encomium from me this week. A complete rethink might have been a better idea though; surely, the way forward is to encourage research into clean-burning fuels and to reward the companies investing in them, not clobbering a family going on its annual vacation.

Offshore financial centers are often cast as the villains in the seemingly endless debate about tax avoidance. Except that it isn't really a debate

anymore, is it? Tax evasion is universally condemned, and rightly so. And it is almost a heresy these days to say that there is nothing wrong with avoiding tax. But perhaps the real rogues in the piece are the "big islands", as OECD Director-General Angel Gurría recently described the large and not-so-transparent countries, which like to sit in judgment over supposedly opaque low-tax jurisdictions. Never mind the Cayman Islands and its famous (or infamous, depending on one's point of view) Ugland House. If you want anonymity, you could do much worse than incorporate a company in Delaware or Nevada. Granted, for the most part, we also don't know who the ultimate beneficiaries of offshore companies are, because such information is not public knowledge. But at least in the most reputable international offshore financial centers (IOFCs), by law, this information is collected and held in a systematic way, and it is there for law enforcement authorities to scrutinize should they need to. This is more than can be said for a number of the holier-than-thou rich countries. The irony in all this is that politicians enter this territory thinking that they can't lose by vilifying tax avoiders and tax havens. Yet, often, it isn't the safe, high moral ground they think it is, as the UK's Labour Party has found to its cost. In fact, the tactic seems to have backfired spectacularly amid allegations that some of Labour's major donors have indulged in tax avoidance. Even the Miliband family themselves are under the spotlight. Depressingly predictable stuff. Meanwhile, the IOFCs have quietly got on with business, and it could be argued that some of them are now indispensable components of the world financial machine, directing investment between the major onshore economies, which in turn support taxable economic activity and jobs. (Read the 2013 Capital Economics report about Jersey's contribution to the UK economy if you're skeptical.) After another successful year for its finance industry in 2014, low-tax Jersey is now home to the largest number of non-UK companies listed on the FTSE 100 index. However, across all three of the LSE's markets, low-tax Guernsey has more non-UK entities listed than any other jurisdiction globally. It's been more than 15 years since the OECD turned its ire on the world of offshore, but pockets of it seem stronger than ever, which stands as a testament to the willingness of IOFCs to adapt to new political and economic realities. In fact, there were 5 percent more offshore companies in the world in 2014 than on the eve of the financial crisis. Offshore is dead; long live offshore!

The distorted debate about tax avoidance and tax havens leads me conveniently on to the next subject, which is the European Commission's renewed mission to ensure companies pay their "fair share" of tax. You hear the phrase a lot nowadays, uttered by politicians of all colors – that everyone must pay their "fair share." But what exactly is a "fair share" of tax? No one ever seems to say. And if anyone did, people would inevitably disagree. But we can safely assume that when politicians (or in this case Commission bureaucrats) say that someone should pay their "fair share" of tax, what they mean is "more" tax. That's fine, but what this discussion needs is a good dose of honesty. The tax-paying public, I

believe, are not so much fed up with multinationals and wealthy individuals because they reduce their tax liabilities (often substantially through legitimate tax planning) but because they are unable to also cut their tax bills to the same extent. I think this is an indictment of the behavior of governments, as much as anything else. People are exasperated at watching something like a quarter to a half of their salaries taken by avaricious tax authorities with virtually no say about how the money's spent. However, for governments, the tax avoidance issue is a convenient smoke screen, allowing them to invoke the morality card, outstretch their hand for more tax, and forget about the need for their own spendthrift ways to be reformed.

I dread to think what new ideas will be dreamed up by Brussels for its impending Tax Transparency Package, but you can almost guarantee it won't be in the EU's economic interests. I sometimes doubt the wisdom of the UK's euro-skepticism. But perhaps, Britain, you're better off out of it.

The Jester