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# GLOBAL TAX WEEKLY

## a closer look

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

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

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## Refund Of Swiss Withholding Tax On Dividend Payments To Foreign Companies: Requirement Of Beneficial Ownership

by Jean-Frédéric Maraia, Partner, and Julien Witzig, Associate, Schellenberg Wittmer

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The Swiss Federal Tax Administration levies a withholding tax (at a flat rate of 35 percent) on income from investments in movable assets from a Swiss issuer (bonds, shares in a company, shares in a mutual fund, assets held with a bank). Therefore, as a rule, any dividend paid by a Swiss company is subject to withholding tax – a special tax, established to ensure that Swiss taxpayers report this income and to allow taxation of foreign taxpayers on Swiss income received.

The tax is withheld by the Swiss debtor of the taxable income. Swiss taxpayers are generally entitled to claim for a tax refund, while the refund of the withholding tax to a foreign resident is in principle excluded. However, a complete or partial reimbursement of the withholding tax may be granted when a foreign beneficiary is located (domicile or legal seat) in a country with which Switzerland has concluded a double tax treaty (DTT) (there are also other specific exceptions). Switzerland has concluded DTTs with more than 85 countries. Under specific conditions provided by DTTs and Swiss domestic rules



(and upon the request of the Swiss company), the Swiss Federal Tax Administration may grant the right to declare the income instead of the complete or partial payment of the withholding tax (mainly, when it is certain that the Swiss withholding tax will be wholly or partially refunded to the foreign beneficiary under the DTT's requirements).

The refund of Swiss withholding tax to foreign companies depends on the conditions listed in the DTT that has been concluded with the country of the beneficiary company's seat. The DTTs concluded by Switzerland are generally drafted on the basis of the OECD's Model Tax Convention on Income and on Capital (MC-OECD). The general conditions for refunds of withholding taxes on dividends paid by Swiss companies are listed under art. 10 MC-OECD.

In 1977, a requirement to be entitled to claim for a refund of the tax at source was added to the MC-OECD – the condition of "beneficial ownership". This condition is only included in DTTs that have been concluded or amended by Switzerland after this date.

As of today, the analysis of the necessary requirements for refunds of the withholding tax differs according to the content of the DTT.

When the beneficial ownership condition is not included in the DTT, the Swiss Federal Court considers that this requirement shall not be analyzed. In application of the case law, the analysis by Swiss authorities in such a case relates to the theory of abuse of rights. Such analysis shall be performed on the basis of all economic circumstances. An abuse of rights may be excluded when the foreign beneficiary company evidences that its main purpose is based on economic considerations, as well as the acquisition and holding of shares in the Swiss company (*i.e.*, the main purpose of the company is not to benefit from a refund provided by the DTT concluded by Switzerland).

In two cases, the Swiss Federal Court (Court of last instance) considered that a refund of the Swiss withholding tax was to be denied, on the basis of an abuse of rights, to companies located in countries with which Switzerland has concluded DTTs (Denmark and Luxembourg) but with shareholders domiciled in countries with which Switzerland has not concluded a DTT.

When the beneficial ownership condition is included in the DTT, the refund of the Swiss withholding tax can still be denied should the Swiss authorities consider that the foreign beneficiary of the dividend payment is not the beneficial owner of the shares.

The purpose of this requirement is to prevent the abuse of the DTT by defining the recipient of the dividend payment. According to the commentary of the MC-OECD, the term "beneficial owner" should be understood in its context and in light of the object and purpose of the DTT, including avoiding double taxation and the prevention of fiscal evasion and avoidance.

The beneficial owner requirement has been entered into the MC-OECD in order to prevent a specific case of misuse of DTTs – when a company (or a natural person) receives a dividend payment in order to transit the payment through a contracting state (with which Switzerland has concluded a DTT) towards a resident of a non-contracting state. In this situation, the "conduit company" may not qualify as the beneficial owner of the dividend payment and, therefore, the benefit of the DTT shall be denied.

In the OECD report *Double Taxation Conventions and the Use of Conduit Companies*, it has been concluded that "a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a particular matter, very narrow powers which render it, in relation to the income concerned, a mere fiduciary or administrator acting on account of the interested parties." We shall therefore consider that the beneficial owner is the one who is able to effectively control the use of the dividend paid by a Swiss company. In this context, an abuse involves an agreement between the beneficial owner and the "apparent

beneficiary." Therefore, this abusive structure requires that the apparent beneficiary is legally or economically obliged to transfer the dividend payments received to the beneficial owner residing in a non-contracting state.

When a foreign company requires a refund of the withholding tax on dividends paid by a Swiss company, the Swiss federal authorities usually require extensive information, such as the economic purpose of the establishment of the foreign company, the identity and address of its shareholders as well as a complete (up to the last shareholder) organizational chart of the structure, the annual accounts of the foreign and Swiss companies, the number of employees of the foreign company and its possession of office. The authorities also require information on how the acquisition of shares in the Swiss company has been financed.

The Swiss Federal Administrative Court (its decisions may be appealed before the Swiss Federal Court) considers that the requirement of the beneficial ownership formally constitutes a condition for the DTT's applicability, such as residence in a contracting state. In summary, this Court usually analyzes whether the recipient of the dividend

payment has the right to use it and whether the company owns some substance, which may consist of employees or offices in the state of residence or of holdings in companies or participation to the business activities in this state. The Court considers that this requirement does not contain a subjective component, *i.e.*, the reasons that led to the setting up of the holding structure are not relevant. When the Court considers that the foreign resident is not the beneficial owner, it does not analyze the condition of the abuse of right, *i.e.*, whether the holding structure is or not justified by subjective reasons. Conversely, when a foreign resident is considered as the beneficial owner of shares in a Swiss company, the subjective component of the holding structure shall also be analyzed and may lead to the refusal of the refund. To date, the Swiss Federal Court has not ruled on this subject.

The refund of the Swiss withholding tax on dividend payments therefore depends on the requirement of beneficial ownership of the shares in the Swiss company, when this requirement appears in a DTT. In such cases, analysis of the requirement would be performed by the Swiss Federal Tax Administration at the time of filing the request for the refund of the tax.

## Is The Justification For The United States' System Of Worldwide Taxation A Hoax (Part I)?

by Mike DeBlis, Esq., DeBlis & DeBlis,  
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The US is one of the only countries left in the world that still taxes its citizens and residents on their worldwide income, regardless of where it is earned. In order to understand the debate, some background information about the different forms of worldwide taxation is necessary.

There are two ways in which a nation may exercise jurisdiction to tax: (1) source and (2) political allegiance. Under the first category, a nation taxes income or assets located ("sourced") within its borders regardless of where the owner of such income or assets lives. This type of taxation is often referred to as a "territorial tax system."

Under a territorial tax system, taxation is limited to taxation of income from sources within a country's borders, no matter who derives it – a citizen, resident, or anyone else. Territorial tax systems accommodate other tax systems in the simplest way possible – by not extending their own.

The second tax system is based on "political allegiance." (*Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, Edward Zelinski, Iowa Law Tax Review, 2011, p. 1294) It is premised not on the source of income or assets



but upon the political allegiance of the taxpayer who owns such income or assets. How a country defines the phrase "political allegiance" leads to two different types of worldwide taxation: "based" and "residence-based." The poster-child for the former is none other than the United States. And for the latter, the United States' northern neighbor: Canada.

Let's begin with citizenship-based taxation. Taking a unique position, the US defines "political allegiance" as an individual's citizenship, regardless of his residence. (*Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, Edward Zelinski, Iowa Law Tax Review, 2011, p. 1295) Very succinctly, Treas. Reg. 1.1-1(b) states that all US citizens, regardless of whether they live in the US or not, must pay US tax on their worldwide income. This is a very rigid and strict interpretation of the phrase, not unlike the uncompromising parent that demands that his teenager be home by a certain hour, or be grounded.

Other nations define "political allegiance" for tax purposes on the basis of residence. (*Citizenship and*



*Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, Edward Zelinski, Iowa Law Tax Review, 2011, p. 1294) In so doing, they tax an individual's global income and holdings only if the individual resides in that nation. As the poster-child of residence-based taxation, Canada imposes worldwide taxation on all of its residents without regard to Canadian citizenship.

If you are curious about the chief difference between the US system of citizenship-based taxation and the Canadian system of residence-based taxation, look no farther. It's relatively simple: a non-resident Canadian citizen pays Canadian income tax only on his Canadian-source income, whereas a nonresident US citizen is liable for US taxes on his worldwide income. (*Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, Edward Zelinski, Iowa Law Tax Review, 2011, p. 1325)

No other topic generates more debate than the US policy of taxing its citizens and residents on their worldwide income. Have you ever stopped to think about what the justification is for the US's system of worldwide taxation? Does it make sense?

This article will reveal exactly what that justification is and evaluate whether it makes sense from the perspective of a US citizen who lives abroad.

What gives the United States the right to tax its citizens on a worldwide basis in the first place? As may come as a shock, it is not found in the Internal

Revenue Code. Nor is it found in any piece of legislation passed by Congress. Nonetheless, it has long been established that the US Constitution permits the federal government's worldwide taxation of nonresident US citizens. Who do we have to thank for that? None other than the US Supreme Court, in a little-known US Supreme Court case by the name of *Cook v. Tait*, 265 US 47 (1924). In an opinion that has been widely criticized as obscure and unintelligible, the Court upheld the federal income tax assessed by the IRS on a non-resident citizen's Mexican-source income. In so doing, it interpreted the US Constitution to allow worldwide taxation of nonresident US citizens.

What rationale lies at the heart of the Court's justification for worldwide taxation? Nothing less than the "public benefits" stemming from US citizenship.<sup>1</sup> Specifically, the Court reasoned that a citizen who lives abroad and whose property is located outside the US receives *benefits* from the federal government.<sup>2</sup>

Precisely what "benefits" was the Court referring to? According to T. H. Marshall, author of "Citizenship and Social Class," the Court viewed benefits as consisting of three distinct rights: "civil, political, and social rights."<sup>3</sup>

By civil rights, Marshall was referring to "the rights necessary for individual freedom – liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice."<sup>4</sup>

By political rights, Marshall was referring to "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body."<sup>5</sup>

And by social rights, Marshall was referring to those that were the most significant, namely "the educational system and the social services" available to members of a society.<sup>6</sup>

Against this framework, how did Mr. Cook stand? He fell woefully short of enjoying most, if any, of these rights. With respect to political rights, Mr. Cook lacked the most fundamental one: the right to vote. Why? Because back in 1924 when *Cook* was decided, a US citizen living abroad did not have the right to vote.<sup>7</sup> That's because such a person "did not live in any state and thus had nowhere to cast a ballot."<sup>8</sup>

However, that has long since changed. Since 1986,<sup>9</sup> a nonresident US citizen, like Mr. Cook, has the right to cast an absentee ballot in a federal election in the state where he "was domiciled before leaving the United States."<sup>10</sup> That does not mean that *every* nonresident US citizen can automatically vote. On the contrary, a nonresident US citizen who has not established residence in a particular state will not be able to vote in a US election.<sup>11</sup> Very simply, he is a nomad when it comes to having a "home" from which he can cast a ballot.

In terms of civil rights, Mr. Cook, not unlike any contemporary US citizen living abroad, could

"have called on the US for formal diplomatic protection, including representation in international negotiations or arbitration."<sup>12</sup> Mr. Cook could have also requested "less formal assistance" from the American Consulate in Mexico or, at the extreme, "military protection, including evacuation" by the US military.<sup>13</sup>

The problem, of course, is that there is no telling whether the US would have granted these requests. In other words, Mr. Cook "merely had the right to ask."<sup>14</sup> Beyond that, because Mr. Cook was a Mexican resident, his civil rights were guaranteed *not* by US law, but by Mexican law.<sup>15</sup> This is true today of *any* US citizen living abroad: it's the foreign government's responsibility.<sup>16</sup>

Perhaps the only remnant of US civil rights that Mr. Cook retained was the ability to return to the US at any time. In terms of this right, Mr. Cook had a "leg up" on a permanent resident. Very simply, permanent residents can be stripped of the right to permanent and continuous presence in the US if they commit any one of a number of certain types of crimes, aptly referred to as "aggravated felonies."

Consider a permanent resident who is arrested and charged with aggravated assault, a crime that has been designated as an "aggravated felony." If convicted, the person would be deported. While a US citizen who commits a crime faces punishment, he or she does not face the same draconian result as a permanent resident – outright "expulsion" through deportation.<sup>17</sup>

Therefore, a permanent resident does not have the same ironclad guarantee of permanent and continuous presence in the US as a nonresident US citizen does.

And let's not forget something even more fundamental when it comes to distinguishing between nonresident US citizens and permanent residents: freedom to travel and to move from place to place. While US citizens, resident and nonresident, have the absolute right to live outside the US for however long they wish, the same is not true of permanent residents.

Unlike a US citizen, a permanent resident cannot live outside the US for a continuous period in excess of 180 days. Such a person must "return to the US after spending 180 days abroad."<sup>18</sup> As a US citizen, Mr. Cook "faced no such requirement."<sup>19</sup> In other words, Mr. Cook could have spent 181 days or 181 years in Mexico. If he then decided to return to the US, he would not have encountered any barriers to re-entry. On a primitive level, while a permanent resident's ability to remain outside of the US might be restricted, one cannot overlook the fact that he still has the right to live in the US just like a US citizen does.

With respect to social rights, there are few US social benefits that the "contemporary Mr. Cook" would be entitled to while living in Mexico. For starters, unemployment insurance and Medicaid are state-run programs to which Mr. Cook would not be entitled to today since he has no state of residence.<sup>20</sup>

On the other hand, if the contemporary Mr. Cook was self-employed or worked for a US employer,

he would be eligible for US social security benefits, since there is no totalization agreement between the US and Mexico.<sup>21</sup>

If, however, Mr. Cook had lived in one of the 24 nations with which the US had a totalization agreement, then he would *not* be eligible for US benefits. Why? Under a totalization agreement, US citizens living abroad are exempted from paying US social security taxes.<sup>22</sup> And because they are exempted from making payments, they get absolutely nothing in return.<sup>23</sup>

However, that does not mean that Mr. Cook would be deprived of social insurance benefits altogether. On the contrary, to the extent that he paid into the social security system of the country in which he resided, he would be eligible for retirement benefits from that country later in life. Such would be the case if Mr. Cook lived in Canada, Japan, Australia, South Korea, or Chile, a few of the countries in which the US has a totalization agreement.<sup>24</sup>

In order to see how paltry a nonresident US citizen's rights actually are, it is helpful to compare the US legal rights of such a citizen with the US legal rights of a resident alien. If you thought that a nonresident US citizen enjoyed *more* rights than a resident alien, you'd be sorely disappointed.

A nonresident US citizen possesses more rights than a resident alien in just *one* respect: the right to vote. Very simply, resident aliens are *not* permitted to vote in US elections.<sup>25</sup>

Outside of the right to vote, the resident alien possesses substantially more rights than the nonresident US citizen. How so, you ask? By the mere fact that he lives on US soil.

Let's take civil rights for example. While a nonresident citizen "has the right to ask the US government for assistance" during a time of crisis, there is no guarantee that the government will "answer the call."<sup>26</sup> In stark contrast, a resident alien receives a plethora of civil rights, from "the protection of his person and property" by the US government to "the guarantees embodied in the Bill of Rights."<sup>27</sup>

The civil rights of a nonresident US citizen, on the other hand, are provided by the nation in which he resides, and *not* from the US.<sup>28</sup>

With respect to social rights, a nonresident US citizen derives few, if any, from the US government.<sup>29</sup> Because social security benefits tend to be one of the most cherished social rights of US citizenship, let's look at how a nonresident US citizen's claim for social security benefits would be viewed by the Social Security Administration.

Such a claim would be denied, unless the nonresident US citizen satisfies the following conditions:

- (1) There is no totalization agreement between the US and the nation in which he lives;<sup>30</sup>

AND

- (2) He works for a US or other employer covered by the US social security system (as a general rule, US citizens or residents employed outside the US by "an American employer" pay FICA taxes on their salaries);<sup>31</sup>

OR

- (3) If he is self-employed, he pays federal self-employment tax on his foreign-source earned income.<sup>32</sup>

On the other hand, a resident alien is entitled to a plethora of social services provided by the federal government and the states, from "public education for his children" to "welfare benefits such as unemployment compensation and income assistance."<sup>33</sup>

In summary, the citizenship-based benefits enjoyed by Mr. Cook and other US citizens residing abroad are minimal. These trifling benefits fall woefully short of justifying worldwide taxation of a US citizen's assets and income under a benefits theory.

While *Cook* might provide Constitutional validation for the US to tax its citizens and residents on a global basis, the benefits rationale that it relies upon as justification for that authority is unconvincing.

#### ENDNOTES

- <sup>1</sup> *Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, Edward Zelinsky, Iowa Law Review, 2011.

<sup>2</sup> *Cook v. Tait*, 265 US at 56 ("government by its very nature benefits the citizen and his property wherever found").

<sup>3</sup> T.H. Marshall & Tom Bottomore, *Citizenship And Social Class* 8 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id. supra*, Note 1, at p. 1308.

<sup>8</sup> *Id.*

<sup>9</sup> In 1986, the President signed the Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924 (codified as amended at 42 USC. Sections 1973ff to -6 (2006)).

<sup>10</sup> *Id.* Section 1973ff-6(5)(C).

<sup>11</sup> *Id. supra*, Note 1, at p. 1308.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id. supra*, Note 1, pp. 1308–09.

<sup>16</sup> *Id.* at 1309.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1309, citing 8 USC. Section 1101(a)(13)(C) (listing conditions under which a permanent resident alien shall be "regarded as seeking an admission into the United States for purposes of the immigration laws," including "absen[ce] from the United States for a continuous period in excess of 180 days").

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (citing US International Social Security Agreements).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> US International Social Security Agreements.

<sup>25</sup> *Id. supra*, Note 1, p. 1315.

<sup>26</sup> *Id.* at 1315–16.

<sup>27</sup> *Id.* at 1316.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

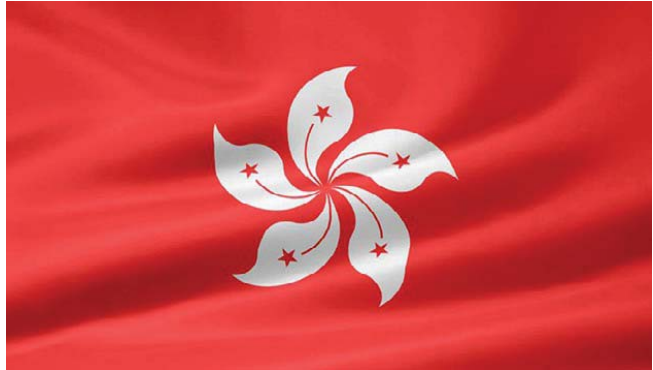
## Hong Kong: One Country, Two Systems Put To The Test

by Stuart Gray, Senior Editor, Global Tax Weekly

The pro-democracy demonstrations that erupted onto the streets of Hong Kong's financial district – and onto the world's television screens – last September may have largely fizzled out. But the problem – in summary, the Hong Kong people's hunger for true democracy, versus Beijing's extreme reluctance to give it to them – hasn't been fixed. So here, we attempt to answer the question that is on many people's lips: how much damage, if any, has this stand-off done to the economy of Hong Kong?

### **Introduction: Democracy (Or The Lack Of It) And The Occupy Central Movement**

The "Occupy Central With Peace and Love" (OCPL) movement – intended to do exactly as it suggests, occupy the central areas of Hong Kong city in a peaceful protest designed to paralyze the financial district – was actually established in 2013, well before people from all walks of life came streaming onto Hong Kong's best known thoroughfares on September 28, 2014. It could be said to be the culmination of years of frustration within Hong Kong's pro-democracy camp – which regularly polls around 60 percent of the votes in elections to the Special Administrative Region's (SAR's) Legislative Council – with the failure of the Chinese authorities to deliver true democracy, as practiced in most industrialized nations. In fact, democracy, or the lack of it, has been a hotly contested issue in Hong Kong



since its sovereignty was handed over by the British to the People's Republic of China in 1997.

Members of the democratic movement argue that universal suffrage was guaranteed by the "Basic Law," which serves effectively as Hong Kong's constitution. Yet there is sufficient ambiguity in the text of the Basic Law – some say put there deliberately by its drafters – to suggest that it is not incumbent on the authorities of the People's Republic and the SAR to deliver western-style democracy to the people of Hong Kong. As a result of electoral reforms, Hong Kong's Chief Executive, the SAR's political leader, will nevertheless be directly elected in 2017. However, one crucial caveat has been imposed by the People's Republic: that the candidates standing for election will be chosen by Beijing. This decision proved to be a flashpoint in 2014.

There have in fact been regular pro-democracy demonstrations in Hong Kong since its hand-over to the People's Republic. A march is organized annually to take place on July 1 – the date in 1997 when the hand-over formally took place, and the 2014 July 1

rally was said by its organizers to have been the largest in more than a decade in a demonstration of how the public are growing increasingly angry at having to kowtow to the wishes of China's Communist Party. The Government disputed this, saying that the number of people who turned out for the march was fewer than 100,000, and not the 500,000 claimed. Still, it was harder to deny the depth of feeling running through the SAR when events took their dramatic turn in late September, effectively resulting in a July 1 protest which lasted for two months, and turning increasingly violent as time went on as the authorities began to lose patience. The streets of the financial district may be largely back to normal, but tensions remain high and the SAR's Government is beginning to fear the cost in terms of lost investment if there is a repeat episode.

### **Hong Kong's Tax Advantages**

Now an SAR of the People's Republic of China, Hong Kong has thrived as a regional business hub because of low and simple taxation.

Hong Kong's corporate tax rate, at 16.5 percent for incorporated companies, is no longer as competitive as it would have been a few years ago, and is way above traditional "offshore" financial centers, where corporate income tax can often be as low as 0 percent, and usually no higher than 10 to 15 percent.

However, compared with the nightmarish tax codes now in place in some Western countries, Hong Kong's tax regime is a paragon of simplicity. It is one of the few major business jurisdictions to retain

a territorial tax system whereby only Hong Kong-sourced income is taxed. Furthermore there is an absence of a number of other taxes which are frequently found in other countries, including withholding taxes, sales taxes, value-added tax, capital gains tax, accumulated earnings tax, wealth taxes, and inheritance taxes.

Unlike many jurisdictions with corporate income tax, Hong Kong does not accord a special lower rate below a certain income threshold, although unincorporated businesses pay a slightly lower 15 percent rate of income tax. Elsewhere, such special rates are designed to give a helping hand to small businesses and start-ups. However, the Hong Kong Government has consistently argued that the administrative complications which come with "progressive" corporate taxes would outweigh the benefits of a reduced tax burden for a few firms.

For much the same reasons, Hong Kong does not tend to offer tax incentives to encourage investment in certain economic activities, because maintaining a low, stable and simple tax regime across the board is considered an incentive enough to establish a business in the territory. This policy marks it out in particular from Singapore, which offers a host of tax incentives to entice both large multinationals to establish a presence in the city-state, and to encourage small companies to invest for growth.

Nevertheless, special concessionary rates of profits tax do exist, and they apply to the following types of business or sources of income:

- Trading profits and interest income derived from debt instruments issued in Hong Kong with an original maturity of up to seven years are taxed at 50 percent of the normal profits tax rate, while those with a maturity period of seven years and above qualify for a 100 percent concession.
- The re-insurance of offshore risks is taxed at 50 percent of the normal profits tax rate.
- Life insurance businesses are assessed at 5 percent of the value of the premiums arising in Hong Kong.
- An entity whose business is to grant intellectual property rights pays an effective rate of profit tax of 4.95 percent (4.5 percent for an unincorporated business) on the payments received with all related expenses being non tax-deductible.
- Income from the international operations of shipping companies is exempt from tax unless the ships are operating in Hong Kong waters.
- The sale of goods on consignment from Hong Kong on behalf of a non-resident is subject to a tax of 1 percent of the turnover without any deductions unless the non-resident can produce accounts to show that he would have paid less profit tax than consignment tax, in which case a normal rate of tax will apply.

Compared to many other major trading nations, anti-avoidance legislation is relatively thin on the ground in Hong Kong. For example, there are no thin capitalization rules stipulating the minimum ratio between debt and equity for tax purposes. However, the territory does have a general anti-avoidance rule, and this can be used by the tax

authority to deem foreign source income as local income if it is adjudged that the underlying transactions have no economic substance. Hong Kong also enforces transfer pricing rules, and these are to be found in Departmental Interpretation and Practice Notes No. 45 and 46. While the territory is not an OECD member, the OECD transfer pricing guidelines are generally followed by the Inland Revenue Department. Advanced pricing agreements have been available under Hong Kong law since April 2012.

Because Hong Kong imposes taxation on a territorial basis, tax residents of Hong Kong normally do not suffer double taxation on income earned in a foreign jurisdiction. As a result, for a long time the territory did not tend to enter into any bilateral double taxation agreements. A few years ago however, the Government changed its policy, partly in recognition of the fact that double tax treaties could help provide certainty to investors with regard to taxing rights, and enable them to better assess potential tax liabilities on economic activities. The Government has also begun to expand its tax treaty network to comply with the OECD's new international standards on tax transparency, meaning that Hong Kong's latest tax treaties contain exchange of information clauses.

At a deeper level though, it is the Government's *laissez faire* attitude to regulation, and the stability of its legal system, based as it is on the familiar concepts of English common law, that ensures Hong Kong continues to thrive as a premier league



world financial center. It is a situation that endures under the sovereignty of China, and Beijing has guaranteed that the status quo will continue to exist in Hong Kong until at least 2047. Indeed, Hong Kong is now considered, unofficially at least, to be China's offshore financial center, and its position as the conduit for huge sums of investment flowing into and out of China's liberalizing economy ensures that Hong Kong is consistently near the top of the annual foreign direct investment (FDI) charts; according to the United Nations Conference on Trade and Development's World Investment Report 2014, Hong Kong was ranked fourth in terms of global FDI inflows in 2013, behind only the US, Mainland China, and Russia.

### **Investors Get The Jitters? The Government Certainly Does!**

Foreign investment, then, is very important to Hong Kong's economy. But the Government seems convinced that the increasingly ugly scenes played out on some of the city's most famous thoroughfares towards the end of last year will have had only a negative impact on investor sentiment. Hong Kong Financial Secretary John Tsang warned as much in an address last October, while acknowledging the fact that Hong Kong's stock market, foreign exchange market and financial system were still functioning normally. Shortly afterwards, these concerns were shared by the Secretary for Financial Services and the Treasury, K. C. Chan, who averred that the OCPL movement had caused considerable disruption to the economy.

"I am very concerned that the overseas investors are questioning the [future] stability of the financial market, given what's going on in the streets," Chan said.

"I don't want to overplay this worry," he added, "but indeed there are some investors who are asking these questions. Currently, it's not affecting the market per se, but we should be really concerned if the situation does not improve and leads to more investors questioning the situation in Hong Kong."

By December some evidence of the negative impact that the OCPL movement was having on the economy was offered up by the SAR Government. Although lacking concrete data to substantiate the claims, Tsang pointed out, in a press conference last month, that October retail sales growth had slowed and the business climate for SMEs had deteriorated. He also noted that the number of tourists arriving in Hong Kong from places other than Mainland China reversed its upward trend in the third quarter of 2014.

However, Tsang's biggest concern is the medium- to long-term impact of the protests on Hong Kong's economy: "If the occupation were to continue, no doubt our international image could be seriously damaged, which could lead to investment confidence running down."

The Government could also point to November's downgraded GDP-growth forecast for 2014, to 2.2 percent, as further proof of a link between the protests and slowing economic activity.

## Positive Investment And Trading Data

Yet, looking at a recent batch of reports about company formations in Hong Kong by both local entrepreneurs and overseas entities, FDI levels, and trading on the local stock market, one could be forgiven for thinking that it was business as usual in the city.

On January 11, the Companies Registry published figures showing that the number of local companies registered under the Hong Kong Companies Ordinance surpassed 1.2m for the first time in 2014, after year-on-year growth of 9.4 percent. Registrar of Companies Ada Chung attributed much of the rise in registrations to the commencement of the new and improved Companies Ordinance on March 3, 2014. There was also a notable spike in new registrations in March 2014, ahead of the expiration of a waiver on business registration fees on April 1, 2014.

Pertinently, 811 foreign companies were newly registered last year, an increase of almost 4 percent on 2013 levels. The total number of registered non-Hong Kong companies reached more than 9,600 by the end of 2014. The annual figures are unable to tell us, though, whether business registrations slowed down in the final quarter when the demonstrations were at their height. But if they had, 2014 registrations would surely not be so comfortably higher than the previous year's.

In addition, FDI figures announced by investment promotion agency Invest Hong Kong earlier

this month showed that a record 355 overseas and Mainland companies were assisted by the agency to set up or expand in Hong Kong last year, a year-on-year increase of 5.4 percent. Furthermore, FDI came from a record 47 economies in 2014. And yet another record was broken last year when the number of companies with a parent overseas or in the Mainland that set up regional headquarters, regional offices, and local offices reached 7,585. These impressive figures were put down to Hong Kong's "enduring advantages and emerging business opportunities," by InvestHK's Director-General of Investment Promotion, Simon Galpin, who, unlike his political masters, made no reference to the protests.

New records were also set by Hong Kong's securities and derivatives markets in 2014. In particular, the market capitalization of HKEx's securities market exceeded HKD26 trillion (USD4.2 trillion) in 2014 for the first time, reaching its high for the year of HKD26.5 trillion on September 4. The turnover of exchange-traded funds also reached a record high, topping HKD1 trillion during the year; the turnover of HKEx's securitized derivatives ranked first in the world for the eighth consecutive year; and its various futures and options contracts reached new record highs in terms of open interest. The total of equity funds raised was a healthy HKD852.9bn (HKD168.4bn through IPOs and HKD684.5bn from post-IPO fundraising) and, in the period from January 1 to December 15, 2014, the average daily securities market turnover was HKD69bn.

The new Shanghai-Hong Kong Stock Connect (SHKSC) program also appears to have got off to a good start after its launch in November 2014, largely thanks to interest from foreign investors. The SHKSC's first 20 trading days saw the average daily turnover in "Northbound" trading (SSE listed stocks traded by Hong Kong and foreign investors through HKEx) total RMB5.8bn (USD946m).

"The launch of SHKSC has been a great success because it is a very important breakthrough, beginning a new era of the world's last major capital market opening," said HKEx Chief Executive Charles Li. "It also reinforces Hong Kong's position as a leading international financial center."

Obviously, we cannot read too much into the above statistics because they represent the whole of 2014, and most of the data refers to a period before the demonstrations started. But perhaps the recent investment decisions of some of Hong Kong's most prominent business people might provide some better clues as to how, or even if, investor sentiment is changing, for the worse or otherwise.

For example, one could easily interpret the decision by Li Ka-shing, reputed to be Hong Kong's wealthiest man, to reorganize his business empire into two separate companies registered in the Cayman Islands as a vote of no confidence in Hong Kong. However, other observers point out that the timing of this strategy coming to light was a coincidence, and that the transaction is a fairly normal play for a business with diverse international holdings to have made anyway.

Besides, having been a long time in the planning, this process began before OCPL made its mark.

Meanwhile, Edwin Leong, another Hong Kong billionaire who invests predominately in real estate, made seven major property purchases in the city during 2014, including the USD182m acquisition of a former industrial site in November, at a time when the situation was growing increasingly tense. In an interview with Forbes, Leong revealed that, in his view, Hong Kong's success has been built on the foundation of the rule of law, which the protests have undoubtedly damaged. Nevertheless, he remains optimistic about Hong Kong's economy because of its close ties to China.

In fact, Hong Kong's real estate boom, which is being driven to a large extent by foreign investors, continues apace, despite the Government's attempts to cool it with ever-higher transaction taxes; according to official figures, home prices increased 10 percent in the first ten months of 2014, and property transactions were up 25 percent compared with 2013.

## **Conclusion**

On balance then, there is not enough evidence to suggest that Hong Kong's economy is on the decline as a result of the activities of OCPL. Indeed, data for 2014 indicates that the financial center currently is in good health. But then perhaps it is still too early to say one way or the other with absolute certainty – data for the early part of 2015 will provide a more accurate picture of the situation.

All of which makes the Government's warnings of impending economic doom and gloom sound somewhat alarmist. Perhaps that is intentional, as a way of saying to the protestors that it would not be wise to bite the hand that feeds them. Then again, there might be some merit in claims that Hong Kong's medium- to long-term economic future is at risk if the simmering tensions keep exploding onto

Hong Kong's streets and the authorities deal with protestors in ever more Draconian ways, harming Hong Kong's reputation as a largely open and liberal society. Perhaps the only way to avoid this is for Beijing to give the citizens what they want, but unfortunately the People's Republic doesn't have a very good track record when it comes to listening to its people.

## Transfer Pricing And The Valuation Of Firms Within A Multinational Group

by Kurt Wulfekuhler, Partner, Peters Advisors

*The views expressed herein are those of the author and do not necessarily reflect the opinions of the Firm*

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### Introduction

Applying valuation methods uniformly across different members of a multinational group may not always produce reliable results. Affiliates generally perform different functions, utilize different assets, and may assume vastly different risks when compared to the consolidated group. The valuation methods and assumptions need to reflect those differences.

Most importantly, the appraiser also needs to evaluate whether the historical and projected financial results of the different affiliates reflect arm's length transfer pricing among members of the group, and whether adjustments to income and future cash flows need to be considered.

When valuing different legal entities, consider the following questions:

- (1) Are the results of related party transactions consistent with arm's length transfer pricing principles?



- (2) What is the appropriate discount rate?
- (3) What are appropriate guideline companies?

This article briefly addresses these questions and provides some practical advice.

### Arm's Length Pricing

Any valuation depends critically on financial measures such as free cash flow or earnings before interest and tax ("EBIT"). Without assurance that the terms of intercompany transactions are consistent with arm's length pricing, one cannot be confident that legal entity financial results – and thus the projections of future free cash flows – are reliable.

The extent and complexity of related party, or controlled, transactions will generally determine how important transfer pricing is to an entity's results. The financial results of an entity that has relatively few and less controversial controlled transactions will not be as dependent on transfer pricing as the financial results of an entity with extensive and complex controlled transactions. The valuation of the entity with extensive and complex intercompany

transactions will depend importantly on how those controlled transactions are transfer priced.

A useful starting point for evaluating the extent and complexity of controlled transactions and whether the results are arm's length is to review the entity's transfer pricing documentation. Most tax authorities require taxpayers to maintain documentation supporting the arm's length pricing of their controlled transactions. Carefully review the documentation to understand the extent of controlled transactions and how those transactions affect the overall results of the entity. Consider sensitivity testing to assess how the legal entity results could change with adjustments to the transfer pricing methods. For example, how would the value of the entity change if a return related to intercompany transactions were adjusted a few percentage points up or down? How would those changes affect the results of other affiliates and the distribution of profit within the multinational group?

If such transfer pricing documentation does not exist, consider other means of measuring the effect of transfer pricing on an entity's results. First, work to identify the material controlled transactions. Next, understand how those transactions are transfer priced and how they affect the results of the entity. Pay special attention to complex and controversial intercompany transactions like royalties and management fees to understand the nature of those transactions and to ensure that the transfer pricing is appropriately supported.

Lastly, be aware of potential controlled transactions that may not be explicitly transfer priced, but which are important to the results of the entity. For example, is the affiliate using valuable intangible property ("IP") that is owned by another affiliate without compensation? This valuable IP may be in the form of know how or trade secrets. If this intangible transfer is not recognized and transfer priced, then the affiliate using the IP may have greater profits than appropriate and the owner affiliate would have lesser profits than it would otherwise.

### **Discount Rates**

Even with arm's length pricing and an appropriate distribution of profit within the group, the valuation assumptions may need to be different when valuing specific affiliates. The projected earnings of the different affiliates may have different characteristics than the group as a whole. An entity with a higher projected return might have much greater volatility in earnings than a routine entity with a lower, steadier return. When valuing such entities using a discounted cash flow method, the discount rates should reflect such differences. The weighted average cost of capital ("WACC") of the overall group might not be the best discount rate for individual entities within the group.

When identifying an appropriate discount rate, consider the functions performed and risks borne by the particular entity. Although a multinational group may be fully integrated as a whole, the functions performed by a subsidiary may be more limited. For example, the local affiliate may perform

only distribution functions and have a relatively fixed operating margin. Thus beta, which measures the covariance of an asset with the overall market and is an important factor in determining the cost of equity, may differ considerably for this type of local affiliate when compared to the overall group.

The capital mix between debt and equity may also differ substantially between subsidiaries, which will, all other things constant, result in a different WACC. One should also consider local valuation considerations such as the risk free rate and the equity risk premium for the particular market.

### **Guideline Companies**

The same factors for identifying an appropriate discount rate apply to identifying guideline companies for determining multiples for valuing an entity. Companies that are comparable to the overall group might not be comparable to an individual member of the group. For example, a set of fully integrated manufacturers might not be the best set for identifying multiples for valuing a more limited distributor or service provider within the group.

The valuation multiples of these different types of companies can differ considerably.

### **Summary**

Three common valuation shortfalls when valuing affiliates within a multinational group are (1) assuming that the financial results of the different members within the group reflect arm's length transfer pricing; (2) applying the same discounted cash flow valuation assumptions across all members of the group, and (3) using guideline companies that are comparable to the consolidated group, rather than the affiliate being valued.

Transfer pricing issues in particular can have a large effect on the projected profitability and value of different affiliates, and it is important to ensure that the results are appropriate. Additionally, subsidiaries may differ considerably in the functions they perform and risks they assume. The valuation assumptions utilized should properly reflect those differences. The appraiser should critically assess the functional and risk profile, intercompany transactions, and projected financial results of each affiliate, and evaluate each affiliate separately.

## Topical News Briefing: Fairer Or Flatter?

by the Global Tax Weekly Editorial Team

With the US Congress back in business, leaders of its tax-writing committees have begun to talk seriously about delivering comprehensive reform of the US tax code. If you're feeling a sense of *déjà vu* then you're probably not alone.

The former chairmen of the House and Senate tax committees – respectively Dave Camp (R – Michigan), who has retired from Congress, and Max Baucus, who filled the post of US Ambassador to China last year – spent the previous three or four years and a considerable amount of their professional lives attempting to make the case for tax reform. Not that you'll find many taxpayers who need convincing of this anyway, with the 2015 tax filing season now underway and millions of taxpayers sweating to file their taxes correctly and on time.

That the amount of committee time spent on this endeavor – including numerous studies and dozens of hearings – did not result in one single tax reduction or simplification measure wasn't the fault of Camp or Baucus; they just happened to be working in a highly partisan congressional atmosphere in which the ideologically inspired red lines became fixed and entrenched. In a nutshell, in the area of taxation, this boiled down to the Republican desire for across-the-board tax cuts, versus Democrat demands that the wealthy (defined as those making

more than USD250,000 a year) at least pay the same as they do now, or pay more.

Now that Senators Orrin Hatch (R – Utah) and Ron Wyden (D – Oregon), the new Finance Committee Chairman and senior Democrat, respectively, have agreed to establish a new tax reform panel, the discussions start afresh. However, there is one key difference between the Camp–Baucus era and the Hatch–Wyden one: the Republicans have a majority in the Senate and have increased their majority in the House. Even so, with the GOP lacking the number of votes needed to overcome the Senate's higher procedural hurdles, and President Obama threatening to veto any legislation he doesn't like, the Republicans are unlikely to have it all their way.

In fact, it could be argued that little has changed. In his opening statement as Camp's replacement on the House Ways and Means Committee, Paul Ryan (R – Wisconsin) said that tax reform was his top priority, and that making the tax code simpler and flatter was the way forward. He also mentioned that the tax code should be "fairer." But there is a big difference between Ryan's vision of a "fair" tax code – essentially lower taxes for all – and the Democrat definition of "fair" taxation: lower taxes for the poor and middle class, but higher taxes for the wealthy and for multinational corporations. And the response of committee ranking member Sander Levin to Ryan's statement, that tax reform should not focus on tax cuts



for America's wealthiest, special interests, and big businesses, indicates that the chasm between the two parties is just as wide.

And what of Rep. Chris Van Holland's (D – Maryland) "paycheck bonus tax credit" (PBTC), introduced in the House on January 12? It's an interesting idea, but perhaps the last thing the US tax code needs is yet another tax credit. Tax credits take up a

lot of administrative resources and have a tendency to complicate rather than simplify the tax code. Besides, fiscal room would be made for the PBTC by reducing tax deductions for the wealthy – in other words raising their taxes – and applying a financial transactions tax, a proposal which President Obama has already largely ruled out. So it's probably back to the drawing board for Rep. Van Holland, as indeed it is for Congress at large.

## Update On APAs In India

by E. Miller Williams, US–India Transfer Pricing Coordinator, Ernst & Young LLP (US) and Vijay Iyer, India Transfer Pricing Leader, Ernst & Young LLP (India)

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*Ernst & Young LLP (India) hosted five Transfer Pricing Controversy seminars and a Tax Summit in India during the second and third weeks of December. Several of the conferences featured Kamlesh Varshney, APA Commissioner for the Indian Advance Pricing Agreement (APA) program. The Tax Summit on December 17, 2014, featured Akhilesh Ranjan, Joint Secretary and Competent Authority.*

### India's Unilateral APA Program

The Commissioner and Joint Secretary provided an update on the Indian APA program, which has over 370 cases pending. Five unilateral cases have been formally signed (March 31, 2014) and there are 80–90 cases pending review at the Central Board of Direct Taxes (CBDT). As many as 40 of these have been agreed to, but taxpayers are waiting for the APA roll-back rules to be finalized. It was announced in July 2014, by the new finance minister, that a four-year roll-back in coordination with an APA will be allowed and that the rules allowing for this should be issued sometime in January 2015. One of the topics discussed by the panel was how



the Indian APA program planned to handle the potential large number of APA pre-files for APA applications due by March 31, 2015. In the past, the Indian APA office was willing to schedule last minute pre-file conferences during March 2013 and 2014. However, it was announced that a cut-off date perhaps as early as the end of January may be established by the program in 2015. Miller noted that January is a busy month for tax and finance professionals in the US and that a date at the end of February seemed more reasonable. This change will mean taxpayers need to decide as early as January 2015 whether to pursue an Indian APA for the financial year starting April 1, 2015.

In another important discussion topic, the APA program plans to announce formally that the APA submission must be complete at the time of filing for the next tax year. In the past, taxpayers had filed scaled down or "bare bones" submissions and supplemented them later with more information. This practice will no longer be allowed and a full functional and economic analysis is required at the time of filing. This requirement will mean that taxpayers

need to determine well before March 31, 2015, if the company plans to seek an APA, to allow for preparation of a detailed functional analysis. This modification does not affect APAs already filed for the past two years.

Ameet Kapoor, APA Coordinator at Ernst & Young LLP (India) (Ex-US IRS APMA Team Leader), noted that taxpayers who filed for an APA for the term starting on April 1, 2014, had recently received initial questionnaires on the APA transactions. Commissioner Varshney confirmed that initial request for information and documents had been sent out by the Indian APA program to all of the taxpayers who recently filed in February and March 2014. In comparisons to other APA programs around the world, the sending out of the initial questionnaire within six months is considered to be a quick turnaround.

### **India Completes First Bilateral APA With Japan**

Competent Authority (CA) or Mutual Agreement Procedure (MAP) is a process under which countries agree in income tax treaties to come together and eliminate double taxation of the same profits when one country makes an adjustment to the transfer price of goods, services or intangibles. Minimizing or eliminating double tax is key to multinational companies transfer pricing strategies as it can mean tax in two countries or more on the same profits. The CA or MAP process is also the basis for bilateral APAs used by countries to resolve transfer pricing controversy on a going forward basis.

Joint Secretary Ranjan indicated that his colleague handling the Asia CA matters had met with the Japanese CA in Japan, in early September, and had continued to make progress toward reaching agreements on several bilateral APAs. It was formally announced on December 19, after a week of meetings in Delhi, that the two governments had reached an agreement on a bilateral APA. We understand this is a Japanese headquartered trading company with operations in India. The completion of this APA should allow for other similar APAs to be resolved in the near future.

### **Bilateral APAs With UK And Switzerland**

Miller and Ameet have learned about two additional significant updates regarding the Indian bilateral APA program with the UK and Switzerland.

In addition to the bilateral APA with Japan, India has verbally agreed to a bilateral APA with HMRC at a cost plus margin much lower than the margins outlined by the Safe Harbor guidelines. The Indian subsidiary involved in the APA performs Knowledge Processing Outsourcing (KPO) services on a contract basis for the UK parent. While the exact margin agreed by the two competent authorities is not yet known, it is widely expected to be significantly lower than the cost plus 25 percent for KPO services as prescribed in the Safe Harbor rules.

India and Switzerland have agreed, in principle, on a profit split APA. The final details of the agreement will need to be worked out, but this is encouraging. As a result of the progress on this first bilateral case,

three Indian unilateral APAs involving Switzerland have converted to bilateral APAs.

The consensus of the panel at the tax conferences was that the Indian APA program is doing well, with many companies having already filed and many more looking to file by the March 31, 2015 deadline. The initial five APAs were completed in about one year and there appears to be as many as 90–100 more cases that are in final negotiations. The completion of a number of these cases in the near future will be important to the success of the program.

### **US And India Competent Authority Negotiations**

The IRS Advance Pricing and Mutual Agreement (APMA) program has continued to maintain that it will not accept bilateral or unilateral APAs with India until a significant number of the over 225 competent authority cases pending between the US and India are settled. This announcement was made in January 2013, just after India announced the guidelines for their APA program. There have been at least two formal meetings between the two governments since that time. As a follow-up to the formal meetings, there have been informal meetings, discussions on developing a framework for settlement, and continued dialogue on various technical issues.

There is currently a "sense of change" in India on how government operates, based on the new government coming into power in the summer of 2014. Also, there have been changes at the IRS in the past six months with the prior US CA leaving and now the recent confirmation of Doug O'Donnell, as the new IRS CA. Ameet and Miller are hopeful that the two governments, with "change in the air," will now be able to seize the moment and reach agreement on most of the cases.

Miller and Ameet's experience is that, generally, competent authorities around the world have been willing to make significant compromises in their initial positions in order to provide double tax relief to taxpayers. Accordingly, competent authorities are an effective and efficient way to minimize double tax and resolve tax audit issues. Therefore, it is important for the two tax authorities to recognize the importance of reaching a timely settlement in order not to compromise the effectiveness of competent authority processes around the world.

*The views expressed in this article are those of the authors and do not necessarily reflect those of any member firm of the EY global organization. Moreover, they should be viewed in the context of the time they were expressed.*

## Nigerian Court Of Appeal Rules For Government On Deductibility Of Recharges By Non-Resident Companies

by Emuesiri Agbeyi and Gilles de Vignemont, United States; and Taiwo Oyedele, Moshood Olajide and Chukwuemeka Onuoha, Nigeria, PricewaterhouseCoopers Ltd

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### In Brief

The Nigerian Court of Appeal (CA) on December 2, 2014, reversing a Federal High Court (FHC) decision, ruled for the Federal Inland Revenue Service (FIRS) on the deductibility of recharges by non-resident companies filing income tax returns under the deemed profit regime. FIRS brought the case against an oil and gas servicing company (Respondent).

The FHC had set aside a Body of Appeal Commissioners (BAC) judgment in favor of the FIRS. The CA ruled that when a non-resident company is assessed tax on a deemed-profits basis, the FIRS can issue additional tax assessments following the discovery of new facts or previously undisclosed information.



### In Detail

#### Background

The FIRS in 2002 issued additional assessments against Respondent with respect to recharges to its Nigerian affiliate for services performed under various tripartite agreements.

Respondent appealed to the BAC, which ruled in favor of the FIRS. Respondent appealed the BAC ruling to the FHC, which ruled in its favor.

The additional assessments arose from a contractual arrangement between Respondent, a non-resident company incorporated in the Cayman Islands, and its Nigerian affiliate (NCo). Respondent and NCo had entered into a tripartite agreement to provide services to third parties in Nigeria. The parties agreed that Respondent would pay NCo 100 percent of its expenses in addition to management fees of 4 percent. Respondent failed to include the amount paid to NCo in its turnover, leading to the dispute with the FIRS.

In filing its self-assessment tax returns, Respondent had deducted the recharges to NCo to arrive at

a net turnover on which it computed its deemed profit under section 26 of the Corporate Income Tax Act (CITA).

Section 26 of the CITA provides that:

*"Where ... it appears to the FIRS that in any year of assessment, the trade or business produces either no assessable profit or assessable profits which in the opinion of the FIRS are less than might be expected to arise from that trade or business or ... the true amount of the assessable profits of the company cannot be readily ascertained, the FIRS may ... assess and charge that company for that year of assessment on such a fair and reasonable percentage of that part of the turnover attributable to the fixed base ..."*

In practice, in assessing non-resident companies to tax, the FIRS relies on this provision to deem a profit ratio of 20 percent of turnover derived from Nigeria (implying a cost ratio of 80 percent). The resulting amount is then taxed at the corporate tax rate of 30 percent, resulting in an effective tax of 6 percent of turnover.

Respondent had applied this rule but to its net turnover (after deduction of recharges to NCo), not gross turnover. The additional assessment issued by the FIRS therefore equaled 6 percent of the amount recharged to Respondent by NCo.

The BAC ruled that deducting the recharges was illegal because payments made to earn turnover

were either overhead or otherwise irrelevant to the implementation of section 26.

The FHC disagreed with the BAC. The FHC ruled that the additional tax amounted to double taxation because NCo would have already paid tax on the amount it received. The court held that Respondent was entitled to deduct recharges under a tripartite arrangement in arriving at its turnover for deemed profit purposes under section 26.

## **The CA Judgment**

### ***FIRS Position***

The FIRS appealed the FHC ruling to the CA. The FIRS raised the following issues for determination:

- Whether the FHC erred in setting aside a finding of facts by the BAC and whether Respondent could take advantage of an illegal contract. The BAC had opined that the tripartite contracts were illegal because Respondent was not incorporated in Nigeria, as required under section 54 of the Companies Allied Matters Act (CAMA);
- Whether the FHC erred in invalidating the additional assessment to tax and;
- Whether there was any legal basis for the FHC to hold that there was double taxation.

The FIRS argued that taxing the entire sum received by Respondent did not amount to double taxation and that there was no description of turnover split between the parties in the main contracts.

### ***Respondent's Position***

Respondent contended that it was entitled to deduct the recharges because both Respondent and NCo were contractors under the tripartite agreements and there was no evidence that the income would go entirely to Respondent.

Respondent also argued that under section 26 of the CITA, Respondent – a foreign company not registered in Nigeria – could legally do business in Nigeria through NCo.

Respondent also sought a ruling on whether a legitimate expectation had been created by the circular issued by the FIRS in 1993 as well as confirmation from senior FIRS officials regarding the proper treatment of the recharges that Respondent had relied upon in setting up its contractual arrangement with NCo.

### ***The Judgment***

The CA, ruling in favor of the FIRS, held that the FHC was wrong to rule that there was double taxation.

According to the judge, taxing the full income would amount to double taxation only if the same income is taxed more than once in the hands of a single taxpayer.

Since the main thrust of the FHC's decision was that the additional assessment amounted to illegal double taxation, the FHC's decision was set aside.

The CA also ruled that the legality of the tripartite agreement under section 54 of CAMA did not affect the taxability of the amounts in question and was irrelevant to the main dispute.

On the question of legitimate expectation, the court took the view that for a party to avail itself of the benefits of the legitimate expectation, the representation on which it seeks to place reliance must not be inconsistent with statutory provisions.

Further, the party seeking to place reliance on the doctrine of legitimate expectation must have disclosed all material facts to the tax authority making the representation.

### ***The Takeaway***

The ruling has far-reaching implications, especially for non-resident companies that had relied on the FHC's earlier judgment in planning their tax affairs and entering into tripartite arrangements.

The CA's decision that the recharges do not amount to double taxation leaves certain issues unresolved.

The question that should have formed the basis on which the additional assessment would be upheld or discharged is whether, based on the arrangement between the parties:

- The recharge was an expense or part of the 80 percent deemed cost to Respondent, in which case the additional assessment should be upheld; or

- The recharge was an allocation of revenue between the parties, in which case the assessment would be excessive and should be discharged.

The FIRS will seek to apply this decision to all cases in which there are "recharges," whether the facts are similar. Companies should reassess their tax exposures in accordance with the recent ruling and review their uncertain tax positions where necessary.

Affected companies should be prepared to initiate legal proceedings to challenge an assessment when the facts are distinguishable from those of this case. However, they must ensure that the issues in dispute are properly articulated in order to aid proper resolution.

It appears the FIRS may have sought to resolve the issue before this decision was handed down by insisting that non-resident companies file their tax returns showing actual income and expenses so that profits are no longer deemed in the first instance. However, the problem will persist if the FIRS seeks to impose tax on the higher of deemed or actual profit.

Taxpayers should consider other practical options to mitigate the tax risks created by this decision. One option would be to enter into split contracts,

to the extent possible, to clearly delineate revenues earned by each party. This approach would avoid the issue of recharges and reduce the potential exposure to transfer pricing adjustments associated with tripartite arrangements.

This split may affect the withholding tax rate applicable to the non-resident company, but it also may reduce tax compliance obligations for non-resident companies that may cease to have a taxable presence in Nigeria as a result of the split.

Another option would be to ensure that the revenue type due to each contractor is spelled out in the tripartite agreement and invoiced separately by the respective contractor.

Taxpayers also should be cautious when relying on a clarification, ruling, or circular issued by the FIRS. A taxpayer should rely on a representation from a tax authority only if the representation is consistent with statutory provisions.

Finally, while it is likely that Respondent will appeal this ruling to the Nigerian Supreme Court (SC), the precedent set by the CA will remain good law until the CA decision is overturned by the SC, should that ever happen.



## Topical News Briefing: Over A Barrel

by the Global Tax Weekly Editorial Team

With the world still reliant on fossil fuels for energy, it is not surprising that most governments impose taxes of one sort or another on oil and gas, from when it is extracted from the ground or sea bed, to when it is put to use by individuals and industry. However, the danger is that treasuries can become reliant on what is under normal conditions a stable source of revenue, and when global oil and gas prices fall, as is happening at the moment, those tax revenues, usually already budgeted for, suddenly begin to dwindle.

It can be no coincidence that since the back end of 2014 several governments have been scrambling to make up the difference, either by raising the various taxes that exist on hydrocarbon products or studying ways in which taxation of the sector can be reformed. In this week's issue of *Global Tax Weekly*, we see Vietnam increasing the rate of import tax on certain petroleum products, including gasoline, kerosene, and diesel. Likewise (as reported last week), China, one of the world's largest consumers of fossil fuels, has increased consumption taxes on a number of oil-based products.

If your country happens to have substantial hydrocarbon deposits in its own back yard, this can also be something of a blessing and a curse. Right now, with the oil price having fallen by more than a half

since the middle of last year, some governments are struggling to make ends meet. For example, the fall in global oil prices, and consequent fall in its revenue, forced the Nigerian Government to reinforce its 2015 Budget proposals with non-oil tax increases last month, including new luxury taxes. In December, Canadian Prime Minister Stephen Harper said the oil price plunge would not prevent the Government from achieving a balanced budget in 2015, although he acknowledged that oil prices will have an impact on the Government's position.

Some countries have also been warned to rely less on unpredictable oil and gas revenues. Norway, for instance, was urged by the International Monetary Fund (IMF) last year to restructure its tax system in order to diversify revenue sources away from oil and gas. And last month the IMF recommended a number of tax reforms to support Gulf Cooperation Council states' efforts to transition away from their heavy reliance on oil revenues. The IMF observed that a number of other countries, including Indonesia, Malaysia, and Mexico, have managed to ease their reliance on natural resources by attracting foreign investment through the provision of tax incentives, free trade zones, and tariff cuts.

Some governments, meanwhile, have been accused of killing the goose that lays the golden egg by levying prohibitively high rates of tax on extractors of hydrocarbons. The oil and gas industry in the United Kingdom, for example, has complained of facing a total tax rate of up to 80 percent at a time

when extracting hydrocarbons from the increasingly marginal North Sea fields is becoming more expensive, making it impossible for a profit to be made in certain circumstances. This has prompted the UK oil and gas industry to urge the Government to get on with the job of reforming the North Sea oil tax regime, although, with a huge budget

deficit to fill, Chancellor George Osborne seems in no mood to be generous.

One day, of course, the oil will run out and renewable fuels will take over, no doubt to be taxed in their turn, with the great advantage for governments of being a revenue stream that will last forever.

## US Bill Would Substitute Gas Tax With Carbon Tax

A new Bill that would provide longer-term funding for Highway Trust Fund (HTF) transportation projects through the imposition of a carbon tax on gasoline and diesel fuels has been introduced into the US House of Representatives.

Jared Huffman (D – California), a member of the House Committee on Natural Resources and its Budget Committee, has introduced the Gas Tax Replacement Act, which would replace federal gas taxes with a carbon tax that would "accurately reflect the carbon emissions of the fuels."

"While the strides we have made for vehicle fuel efficiency has saved consumers millions of dollars at the pump, the antiquated and inflexible federal gas tax has left our nation's transportation infrastructure demands unmet," Huffman said. "The Gas Tax Replacement Act would take our nation in a bold new direction and stabilize the chronically underfunded HTF."

Additional funding for the HTF was agreed by Congress in July last year, but only until May 2015, to give time for the new 114th Congress to work on an alternative longer-term solution. The HTF's estimated funding gap is expected to rise to almost USD20bn annually by 2023.

The HTF depends on federal gas taxes for its funding, but those taxes have remained unchanged since

1993. Tax and toll revenues currently pay for only about one-third of state and local spending on roads and mass transit programs, despite being exclusively dedicated to funding transportation projects.

It has been recognized that the simplest method to fund the HTF would be a hike in gas taxes, although lawmakers have long considered such a measure to be politically difficult. Although oil prices are at new lows and are currently providing significant financial relief to drivers, recent suggestions that now is the right time to raise gas taxes have still attracted Republican Party opposition.

Under the new Bill, the Environmental Protection Agency (EPA) would develop life-cycle assessments, also known as "well-to-wheel," for different sources of crude oil, biofuels, and other inputs into gas and diesel fuels for surface vehicle transportation. The life-cycle assessments would be used to calculate the total emissions, not just from fuel combustion within the vehicle but also during the production and extraction process.

Emissions would initially be taxed at USD50 per metric ton of carbon dioxide emissions, with the EPA allowed to adapt this rate to ensure sufficient funding in the future.

While the new carbon tax is unlikely to be more favorably received by the Republican Party than proposals to raise gas taxes, Huffman did conclude that "we cannot keep kicking the can down

the road. ... it's time for a new direction." The legislation would also "help spur advancements in clean energy technology, reduce carbon pollution, and fight climate change."

## **UK Urgently Reviewing Oil And Gas Tax Regime**

The UK's new Oil and Gas Authority (OGA) has been asked to undertake an urgent review of conditions for energy companies undertaking investments in the North Sea, prompting the industry to again call for radical tax reform.

UK Energy and Climate Change Secretary Edward Davey has asked Andy Samuel, CEO-designate of the OGA, to identify key risks to oil and gas production in the UK Continental Shelf and to determine what measures might be taken by the Government and industry to mitigate them. The move comes in the wake of recent falls in global oil prices.

Malcolm Webb, Chief Executive of industry association Oil & Gas UK, welcomed the announcement. He said that he hopes the OGA can be "a highly effective catalyst for improvement."

"Tax rates ranging from 60 percent and up to 80 percent are simply no longer sustainable; even upon a rate reduction to 30 percent, oil and gas producers will still be paying corporation tax at a rate 50 percent higher than the rest of British industry," he said.

Earlier this month, Oil & Gas UK warned that, with oil prices continuing to fall, the tax breaks

promised in last year's Autumn Statement are no longer enough to help the industry. Webb has called on the Government to implement the Treasury's pledge of a simplified tax allowance by Budget 2015 and recommended the abolition of the 30 percent Supplementary Charge (an additional charge on a company's ring-fenced profits, excluding finance costs). The Supplementary Charge was reduced from 32 to 30 percent from January 1, 2015.

## **Vietnam Hikes Fuel Import Duties**

With oil prices falling in global markets, Vietnam's Ministry of Finance has increased its import duty rates on certain petroleum products for the second successive month to raise additional tax revenue.

From January 7, 2015, the "most favored nation" (MTN) import duties on petrol (gasoline) and kerosene have been hiked by 8 percent and 9 percent, respectively, to 35 percent. The duty on diesel was raised by 7 percent to 30 percent.

These increases followed previous action taken by the Ministry on December 6, 2014, when duty rose to 27 percent from 18 percent for gasoline; to 26 percent from 16 percent for kerosene; and to 23 percent from 14 percent for diesel.

Despite the substantial duty hikes on some petrol products in the last two months, Vietnamese consumers are still seeing reduced retail prices due to even sharper falls in global oil prices. The

Ministry's tariff hikes have, however, shown that the Government remains intent on raising its tax revenues and reducing the country's fiscal deficit wherever possible.

## Bipartisan Working Groups To Agree US Tax Reform

On January 15, US Senate Finance Committee Chairman Orrin Hatch (R – Utah) and its Ranking Member Ron Wyden (D – Oregon) announced the launch of five bipartisan Finance Committee Tax Working Groups, with the intention of boosting congressional comprehensive tax reform efforts.

Each group will analyze current tax law and examine policy trade-offs and available reform options within its designated topic area – individual income tax; business income tax; savings and investment; international tax; or community development and infrastructure. Each group will be co-chaired by one Republican and one Democrat member.

In addition, each of the bipartisan groups will work directly with the nonpartisan Joint Committee on Taxation to produce an in-depth analysis of options and potential legislative solutions within its assigned area.

The goal is to have a final comprehensive report, featuring recommendations from each of the five categories, by the end of May this year. It is intended that the report's recommendations will then serve as a foundation for the development of bipartisan tax reform legislation.

"Republicans and Democrats agree the American tax system is too complicated, unfair, and is hurting

economic growth," said Hatch. "With the launch of these working groups, members will have an opportunity to thoroughly examine the code and put forward smart ideas that will help lay the groundwork for a bipartisan tax overhaul that will provide bigger paychecks, better jobs, and more opportunity for all Americans."

"We can all agree that that our broken tax code must be fixed in a way that makes it work for, not against, our country and economy," added Wyden. "We need a simple and fair system that helps both typical Americans and business alike. A lot of hard work has been done in recent years on tax reform creating a strong foundation to build upon."

He added that the Committee now has "a window of opportunity to make a run at modernizing our tax code and it's time to come together and deliver. It's going to involve a lot of hard work and compromise and I'm hopeful this bipartisan effort will move us in that direction."

## House Committee Lawmakers Prioritize US Tax Reform

Lawmakers at the first hearing of the 114th Congress of the House of Representatives Ways and Means Committee, headed "Moving America Forward: With a Focus on Economic Growth," prioritized progress on comprehensive tax reform, but there remains a divide between Democrats and Republicans on how to take forward changes.

In his opening statement on January 13, new Republican Ways and Means Committee Chairman Paul Ryan (R – Wisconsin) announced that tax reform is a "top priority" and that he wants to "start laying out solutions."

He stated: "[I]t's very clear our tax code is broken. We have the highest corporate tax rate in the industrialized world. We're one of the few countries that taxes companies when they bring money back home. And the tax code is so complex that Americans spend over six billion hours a year just filing their returns. ... We need to make the tax code simpler, fairer, and flatter, so more people can invest and create jobs right here in America."

Meanwhile, the Committee's Democrat Ranking Member Sander Levin (D – Michigan) agreed that "tax reform must be a central focus of this Committee."

However, he pointed out that "reforming the tax code should not center on rate cuts at the very top for the wealthiest Americans, but rather on creating a tax code that is fairer for working families, eliminating loopholes for special interests and ensuring that both individuals and businesses pay their fair share of taxes."

## **US Democrats Produce PIT Reduction Plan**

Chris Van Hollen (D – Maryland), Ranking Member of the House of Representatives Budget Committee, has introduced a plan to provide a "paycheck bonus tax credit" (PBTC) and other tax benefits

for employees, which would be counteracted by reduced US tax deductions for high earners and a financial transactions tax (FTT).

In presenting his proposals, which would amount to a fully funded USD1.2 trillion shift over ten years, Van Hollen stated: "This is a plan to grow the paychecks of all, not just the wealth of a few. This proposal attacks the chronic problem of stagnant middle-class incomes from both directions – it promotes bigger paychecks and lets workers keep more of what they earn."

In particular, he proposed that the new PBTC would amount to a credit worth USD1,000 per worker per year, or USD2,000 for a two-earner couple. It would phase out at an income of USD100,000 per individual (USD200,000 for couples), and would be indexed for inflation.

To build savings, a "Saver's Bonus" of USD250 would also be granted for each taxpayer applying at least USD500 of his or her USD1,000 PBTC (or Earned Income Tax Credit) toward a tax-preferred savings plan. The take-home pay of two-earner families would be increased through a tax deduction of 20 percent for second earners with dependents on up to USD60,000 of their annual income.

On the other hand, many tax breaks would be eliminated for the top 1 percent of earners, and large corporations would be prevented from claiming tax deductions for CEO and other corporate compensation over USD1m.

There would also be a new FTT amounting to a 0.1 percent fee on trading in stocks, bonds, and derivatives, which was immediately attacked by the Securities Industry and Financial Markets Association (SIFMA).

Kenneth Bentsen, SIFMA's President and CEO, issued a statement pointing out that the proposed levy, "effectively a sales tax on savers, mutual fund owners, pensioners, and investors, is neither new nor innovative. Rather it is an old idea with a

long history of negative consequences for savers and investors and for the efficient functioning of capital markets."

Van Hollen's overall plan is unlikely to be taken further in Congress, with both the House and the Senate being Republican-led. Republican spokesmen reportedly criticized the plan as a "tax hike," while concentrating instead on the prospects for comprehensive tax reform that could lower tax rates overall.



## Spanish FM Says Tax Reform Showing Positive Results

Spain's Secretary of State for Finance, Miguel Ferre Navarrete, has said that the tax reform package enacted at the start of this year is already boosting Spain's economic growth.

Navarrete said that the reform package, which included a reduction in the tax burden for low-income taxpayers and reductions in tax rates on savings income, will boost the disposable income of taxpayers by roughly EUR9bn (USD10.5bn) over two years. This will lead to higher consumption, which will in turn boost gross domestic product (GDP), he said.

The Secretary also said that the reform of the corporate income tax will create a more competitive business environment. He pointed out that Spain will have a lower rate of corporate income tax than some of its major trading partners, such as France, Germany, and Italy, as a result of the reform. The rate was reduced from 30 percent to 28 percent at the beginning of this year and is due to fall to 25 percent in 2016. A reduced rate of 15 percent applies to companies formed in 2013 or 2014, for two years.

The reform package also includes measures to help small and medium-sized enterprises to grow in size and improve their competitiveness by developing economies of scale, Navarrete said.

The tax reform is expected to boost Government revenue by 0.55 percent of GDP within two years of its implementation, and support economic growth of 2 percent this year.

## EU Not Pushing For Food VAT Hike In Greece

The European Commission is not leaning on Greece to hike its value-added tax (VAT) rate on food, the European Commissioner for Economic and Financial Affairs, Taxation, and Customs, Pierre Moscovici, has said in response to a question in the European Parliament.

Two questions were posed to the European Commission by Greek Member of the European Parliament (MEP) Kostas Chrysogonos, who drew attention to the rise in poverty levels in Greece, which he attributed in part to the deeply unpopular fiscal reforms that Greece has undertaken since requiring a financial assistance package from the troika of international lenders – the European Commission, the European Central Bank, and the International Monetary Fund.

More recently, the troika has called for Greece to significantly simplify its VAT regime, in particular by limiting the scope of reduced rates and reining in exemptions. Chrysogonos asked whether, as part of these calls for reforms, the troika is seeking a VAT increase on food in Greece, which he warned would exacerbate the hardship being felt by Greek taxpayers following the financial crisis.

In response, Moscovici confirmed that "the Commission is working with the authorities to improve VAT administration and enforcement as a key means to improve the efficiency of the VAT system. It is also working with the authorities to streamline the multitude of VAT rates and exemptions, but this has not included suggestions to raise the VAT rate on food."

He noted that the Commission's views with regards to VAT policy priorities for Greece are set out in pages 30 and 31 of the EU's fourth review of its financial assistance program for Greece. This report called on Greece to close the VAT gap, as historically the performance of the VAT system has been weak.

It said: "The overall VAT tax-efficiency ratio – the ratio between VAT tax revenue collected against what would be collected if all consumption was taxed at the standard VAT rate – is among the lowest in the EU. This reflects in part a multitude of VAT reduced rates and exemptions for certain product categories and regions. However, it also reflects widespread non-compliance with the current system (both under-declaration and under-collection). The VAT collection ratio is some 40 percent of total potential revenues, worth up to some EUR10bn (USD11.7bn) a year in non-collected revenues."

The problem of non-compliance has become especially acute during the crisis it says. "Tax efficiency has dropped visibly until 2012, likely reflecting the tight liquidity situation which has forced many companies and households to circumvent the taxation system."

Greece may introduce further reforms to its VAT regime this month, the report says, based on a review of the VAT reform options available by the Commission and Greek authorities in June 2014.

## Czech Republic Mulls Business Tax Hikes

The leading party in the Czech Republic's Coalition Government has said business taxes may rise by 1 or 2 percent unless alternative measures are put forward by the country's Finance Minister Andrej Babiš.

Milan Chovanec, the country's Interior Minister, told *Mladá fronta DNES* newspaper that large savings are needed in the next Budget. Chovanec explained that a 2 percent increase in corporate income tax rates would bring in an extra CZK24bn (USD1bn) in revenues, while higher income taxes on banks could raise a further CZK4bn. Improvements in tax collection, he said, could bring this total to CZK40bn.

Chovanec belongs to the center-left Social Democratic Party (CSSD), which formed a coalition government with two smaller rival parties a year ago. The head of the CSSD, Bohuslav Sobotka, is the Prime Minister, and Andrej Babiš, the leader of the center-right Action for Dissatisfied Citizens (ANO) party, is Minister for Finance.

Chovanec said Babiš had earlier given an assurance that fiscal consolidation measures would be put forward. Chovanec has put forward alternative

proposals, in the absence of a Budget outline, to urge Babiš, who opposes the business tax hikes, into action.

## **EU Study Released On Research And Development Tax Breaks**

The European Commission has published a new study on research and development (R&D) tax incentives, in Working Paper No. 52 of 2014, released on January 12, 2015.

The Commission points out that interest in the effectiveness of tax incentives for R&D activities has increased in the aftermath of the financial crisis. It says, first, the financial crisis obligated many governments to introduce tough fiscal consolidation measures, requiring that they review existing policies, and, second, governments are seeking new sources of growth.

The report adds that R&D incentives are widely adopted in advanced economies, including in highly innovative economies like the US and Japan. Within the EU, only Germany and Estonia currently do not have a tax policy aimed directly at stimulating innovation. The report identifies that, although tax incentives are common, R&D reliefs offered are far from homogeneous and differ substantially across the 33 countries it surveyed, with most countries offering more than one type of instrument.

R&D tax credits are the most popular type of incentive (present in 21 countries), followed by

enhanced allowances (16 countries), and accelerated depreciation (13 countries).

The vast majority of tax incentives are based on corporate income taxes, while eight countries have (additional) incentives that apply to social contributions and/or wage taxes. Tax benefits applying to income from innovation (mostly patent boxes) are proliferating, the report says. In all, 11 EU member states offer corporate tax reduction for income resulting from intellectual property, and Ireland is currently developing plans for a Knowledge Development Box regime.

The study also notes that in the past 15 years, countries have shifted from tax incentives that apply only to increments in a firm's R&D expenditure (incremental schemes) towards incentives that apply to total R&D expenditure (volume-based schemes). Currently, only seven countries have incremental tax incentives, usually in combination with a volume-based scheme, and for two of them – Ireland and the United States – this design element is in the process of being phased out.

The study also considers the targeting of these nations' regimes. The report says ten countries explicitly target small and medium-sized enterprises (SMEs), six countries target young companies, and in ten countries tax incentives are also differentiated according to the legal status of firms. For example, some schemes have smaller tax benefits for foreign-owned companies, as is the case in Canada. Most countries put a ceiling on the amount that

firms can receive, and in five countries the generosity of the scheme decreases with the size of a firm's R&D expenditure.

The study then analyzes the effectiveness of different types of R&D tax incentives, acknowledging however that data is scarce and there have been few prior analyses. One of its key findings is that volume-based R&D tax credits are preferable compared with incremental ones. "Incremental R&D tax incentives may trigger firms to change the timing of their R&D investment plans. For example, incremental schemes make it more attractive for firms to gradually increase their R&D investment than to do a single large investment now if profits from these investments will materialize later in time," it says.

"Also, incremental schemes result in higher administrative and compliance costs. As incremental schemes probably are not more effective than volume-based schemes, the higher costs of incremental schemes make volume-based schemes a better practice. The vast majority of instruments are volume-based."

Finally, the report provides a ranking of R&D tax incentives, based on 20 best practice principles. The instrument that has the highest overall benchmarking score is the French tax credit for young innovative enterprises (*Jeunes Entreprises Innovantes*). It provides generous support to young SMEs for which R&D expenditure represents at least 15 percent of total costs. The novelty requirement of R&D

is said to be according to best practice. The Norwegian SkatteFUNN tax credit is placed second, and the Accelerated Amortization in Denmark is third.

## **New Swiss Rules On Tax Deductions For Expats Confirmed**

Switzerland's Federal Department of Finance (FDF) has announced that revised rules on tax deductions for expatriates will apply from January 1, 2016.

Under the amendments to the Expatriates Ordinance, the definition of "expatriate" will be made narrower. To be classified as an expatriate for the purposes of the Ordinance, the person must be a senior employee or a specialist, with special professional qualifications, who is sent to Switzerland temporarily by their foreign employer.

In future, expatriates' housing costs will be tax-deductible only if a dwelling abroad is permanently maintained for their use. Moving costs will remain deductible if they are directly related to the move.

School fees will be tax-deductible for minors, providing that the costs relate to education received in a foreign-language private school. Costs relating to food, transport, and supervision before and after classes will not be deductible.

The changes are the result of a lengthy debate on the viability of the Expatriates Ordinance. In 2009, a parliamentary initiative (09.3528) called for an investigation into its legality. In a legal opinion, the Federal Office of Justice confirmed the Ordinance's

constitutionality and legality, but it recommended that the provisions on deductions relating to private school and removal costs be made more precise.

Two further parliamentary initiatives (12.3510 and 12.3560) urged the abolition of the deductions, but the Council of States rejected the proposals. The Federal Council instructed the FDF to examine the prerequisites and procedures for the individual deductions. The FDF recommended a number of clarifications to the Ordinance, and these were widely accepted in a three-month hearing conducted in spring 2014.

## **Estonian SMEs Challenge VAT Anti-Fraud Measure**

A body representing small and medium-sized enterprises (SMEs) in Estonia has secured nearly 2,000 signatures for a petition calling for the repeal of new reporting requirements for high-value transactions that are subject to value-added tax (VAT).

A new rule was introduced last year as an anti-VAT fraud measure. Buyers and sellers undertaking

transactions subject to VAT of over EUR1,000 (USD1,172) must now include additional information on these transactions in their VAT declarations.

The Estonian Association of SMEs (EVEA) argues that the requirement creates an unreasonable administrative burden on businesses. In a statement, the EVEA complained that business organizations had repeatedly explained during 2013 and 2014 why it would not be wise to adopt the law and had proposed alternative measures.

The petition, launched by EVEA and the Estonian Taxpayers' Association (EML), was presented to the Chairman of the Parliament, Eiki Nestor, on January 14.

The law was temporarily blocked in December 2013 on constitutional grounds, before being passed in revised form in May 2014.

Tax officials have defended the new reporting rule, saying that disclosures have revealed undeclared sales transactions that would otherwise have been missed.

## ICC Calls For Unified BEPS Response

The International Chamber of Commerce (ICC) has called for a coordinated and consistent approach to tax law changes under the OECD's base erosion and profit shifting (BEPS) project to prevent disparate rules and double taxation.

The ICC said: "It will be crucial for both OECD member states and non-members to reach agreement on the [BEPS] project's outcomes to avoid inconsistencies and conflicts between the national tax legislation of different countries and to reduce double taxation. ICC encourages the OECD to engage with non-OECD members to obtain further commitment on a common approach in order to not stifle cross-border trade and economic growth."

The ICC condemned the UK Government's plans to introduce a 25 percent Diverted Profits Tax (DPT) from April 2015 to tackle "artificial" profit shifting arrangements. Paul Morton, Vice Chair of the ICC's Commission on Taxation, said: "ICC strongly cautions against countries taking unilateral action before the BEPS project has successfully been concluded and consensus has been reached. ICC therefore shares the concerns expressed by many stakeholders that the proposed DPT in the UK, for example, seems to have been put forward at a rather early stage in the process."

The ICC said it applauds "the G20 approach to modernize international tax rules and strongly

believes harmonized, transparent, and predictable tax regimes are key for economic growth. While ICC fully concurs that tax fraud and tax evasion should be stopped, it contends that this should be clearly distinguished from legal tax management and planning. Moreover, businesses fear that governments might be too focused on combating tax evasion while losing sight of the fact that the wider business community is not engaged in abusive practices and may suffer collateral damage."

Last, the ICC expressed concerns about the insufficient attention being given to "the necessary analysis and study of the repercussions of potential changes to the international tax infrastructure," adding that the failure "to conduct the necessary due diligence and dialogue with stakeholders will result in faulty rules, creating difficulties for businesses and significantly hampering cross-border trade and economic growth."

## Ireland Consults On Knowledge Box Plans

Ireland has confirmed that it will offer a tax rate below 12.5 percent on intellectual property (IP) income under plans for its new Knowledge Development Box (KDB).

Launching a new public consultation on the plans, the Finance Department said that, while new to Ireland, the KDB will be based in part on similar patent box measures in place in countries that compete with Ireland for foreign direct investment (FDI).

Plans for a KDB were first unveiled by Finance Minister Michael Noonan in his Road Map for Ireland's Tax Competitiveness, which was published as part of Budget 2015 in October 2014. At the time, Noonan said that an Irish KDB would be "best in class" and would offer "a low, competitive, and sustainable tax rate."

Noonan has pledged that the KDB will comply with the base erosion and profit shifting (BEPS) recommendations being finalized by the OECD. As the consultation document points out, the OECD discussions on BEPS, and also negotiations at EU level, are moving towards an agreement on a "modified nexus approach," which would link the tax benefits arising under IP regimes to the amount of research and development (R&D) expenditure incurred in that territory by companies in developing eligible IP. The consultation material includes an annex that provides an in-depth summary of the modified nexus approach proposals.

"The BEPS project may ultimately affect the location in which multinational enterprises opt to develop their IP, as one of the key elements of the project is to align taxing rights more closely with substance. This should result in a greater need for companies to be able to demonstrate real substance in specific jurisdictions in order to be able to qualify for tax benefits," the consultation paper states.

The Government is seeking views on a number of design elements associated with the proposed new regime. It would like feedback on the definitions

of IP income, qualifying expenditure, and overall expenditure, and on how the KDB could interact with the R&D tax credit, capital allowances for intangible assets, double taxation relief provisions, and loss relief legislation.

The consultation is open until April 8. The Finance Department intends to propose meetings with key stakeholders during the consultation process.

## **Japanese Firms Welcome OECD Action 14 Proposals**

Keidanren, the Japanese Business Federation, has welcomed the proposals included in the OECD's discussion draft on base erosion and profit shifting (BEPS) Action 14, on improving the effectiveness of dispute resolution mechanisms.

The discussion draft presents options to increase tax certainty for businesses by supporting countries to resolve disputes through the mutual agreement procedure (MAP) included in double tax agreements. The MAP is intended to provide businesses with an avenue to resolve double tax issues, but requires cooperation and consensus often between two or more states.

The Federation said: "We totally endorse these options raised by the OECD in this discussion draft, as it intends to make a MAP work more effectively by removing various obstacles which have been preventing utilization of [the] MAP. Especially as other BEPS Actions except for Action 14 are expected to increase disputes and associated double taxation, it is imperative

that, prior to those Actions being implemented, a more efficient MAP will be achieved as envisaged by Action 14 by securing strong political commitment."

"International double taxation puts a huge economic burden on taxpayers and therefore should be resolved promptly. Especially taxation not in accordance with tax treaties in transfer pricing [matters] happens, and bilateral MAPs under tax treaties – which should contribute to eliminate such taxation – are not working in many countries, and, thus, a lot of taxpayers are forced to seek to resolve issues by way of prolonged domestic litigation."

The Federation urged the OECD to push for the creation of an international arbitration organization. It said such an entity, which would act as an arbiter in MAP cases, could expedite case resolution and increase predictability.

"We believe that resolving double taxation disputes through arbitration will benefit governments, including developing countries, to obtain a neutral view towards the issues disputed."

It concluded: "We also hope that the OECD overcome the challenge that there is no consensus among the countries participating in the [BEPS] project on the introduction of a mandatory and binding arbitration provision due to a matter of national sovereignty to which treaty provisions relate."

Among other countries, India has expressed its reservations over proposals to introduce compulsory

and binding arbitration to resolve international tax disputes. At the November 2014 meeting of the G20 Finance Ministers in Cairns, Australia, India's Minister of State for Finance, Nirmala Sitharaman, said the proposal not "only impinges on the sovereign rights of developing countries in taxation, but [also limits] the ability of the developing countries to apply their domestic laws for taxing non-residents and foreign companies."

"While we support the BEPS project, it is necessary to underline that the concerns of developing countries regarding BEPS may be different from those of developed countries. These concerns are required to be taken on board in a more consultative manner, while developing consensus on the various issues," she said.

## **EC Publishes Luxembourg State Aid Probe Letter**

On January 16, 2015, the European Commission published the non-confidential version of its decision to open an investigation into a tax ruling for online retailer Amazon in Luxembourg.

The Commission's decision was handed down on October 7, 2014. As the Luxembourg Finance Ministry has pointed out, the January 2015 publication "is a mere formal step in the procedure," and the text published "contains no new elements."

The Commission's investigation concerns a 2003 tax ruling relating to Amazon's operations in Luxembourg. The decision notes that Amazon EU Sàrl,



a Luxembourg commercial company, functions as the head office of Amazon for Europe and is the principal operator of the retail and business services offered through Amazon's European websites.

Amazon Europe Technologies Holding SCS (Lux SCS), a Luxembourg limited liability partnership (*société en commandite simple*), holds all the shares in Amazon EU Sàrl, and it licenses the Amazon group's intellectual property (IP) rights to Amazon EU Sàrl to operate the European websites in return for a tax-deductible royalty payment.

Under the ruling, it was agreed that Lux SCS would obtain the right, in the context of the reorganization of the Amazon group, to exploit intangibles owned and developed in the US in exchange for a buy-in license and a cost-sharing agreement. Although not determined at the time of the ruling request, the terms and conditions of those agreements would be, according to Amazon's tax advisor, at arm's length. Lux SCS would consequently license the Amazon group's IP rights to Amazon EU Sàrl.

The transfer pricing arrangement for the payment of the license fee by Amazon EU Sàrl to Lux SCS for the use of the Amazon group's IP was established in a letter to Luxembourg authorities dated October 23, 2003. This license fee is being contested by the Commission.

In October, the Commission said that it considers the amount of the tax-deductible royalty "might

not be in line with market conditions," and that the ruling could underestimate Amazon EU Sàrl's taxable profits. It could thereby "grant an economic advantage to Amazon by allowing the group to pay less tax than other companies whose profits are allocated in line with market conditions."

The Commission's decision, published in the form of a letter to Luxembourg, explains that it is the Commission's preliminary view that the contested tax ruling constitutes state aid, and that the Commission has doubts as to the ruling's compatibility with the internal market, on the grounds that it may offer a selective tax advantage to Amazon in Luxembourg.

Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) stipulates that any aid granted by an EU member state or through state resources that distorts or threatens to distort competition by favoring certain undertakings or the provision of certain goods will be deemed incompatible with the common market.

The letter adds that the ruling "appears to result in a reduction of the charges that should normally be borne." The ruling does not meet the criteria for exemption from state aid rules, because it does not appear to promote an important project of common European interest, remedy a serious disturbance in the Luxembourg economy, or promote culture or heritage conservation, it said.

The Commission asked Luxembourg to provide the documentation necessary for its investigation, and

to submit its comments within one month of receipt of the letter.

On January 16, 2015, the Luxembourg Finance Ministry confirmed: "Luxembourg has submitted all requested information to the Commission and is fully cooperating with the Commission in the investigation. Among others, the detailed transfer pricing reports requested by the Commission have also been provided."

"Luxembourg is confident that the allegations of state aid in this case are unsubstantiated and that it will be able to convince the Commission in due time of the legitimacy of the tax ruling and that no selective advantage has been granted," the Ministry added.

## **US FTC Seeks Info On Steris, Synergy Merger**

The US Federal Trade Commission (FTC) has requested more information on the proposed USD1.9bn tax inversion deal between medical technology company Steris Corp. and UK-based Synergy Health. The move could delay the transaction.

The merger was disclosed in October last year, despite the non-legislative measures taken by the Treasury Department in the previous month to deter the inversions that are being used by US multinationals when merging with an overseas counterpart

to enable them to move their tax residences abroad and away from the US corporate tax rate.

It was announced that the new entity, New STERIS, will be incorporated and tax resident in the UK, while its operational and US headquarters will remain in Mentor, Ohio, where most of its executive staff will be located.

Steris has said that the effective tax rate of New STERIS will fall from 31.3 percent to about 25 percent. The UK levies a corporate income tax rate of 21 percent (falling to 20 percent from April 2015), substantially lower than the US headline tax rate of 35 percent, and also offers concessionary treatment for income from patents under its patent box regime.

No details have been given regarding the scope of the FTC's request to both companies for additional information and documentary material, often referred to as a "second request."

Issuance of the second request generally extends the waiting period for an FTC reply until 30 days after both parties have substantially complied with it. Both companies confirmed that they are cooperating with the FTC, but, although they continue to work toward closing the merger in the first quarter of this year, as previously anticipated, the second request may extend the transaction timing beyond March 31, 2015.

## IRS Opens US Tax Filing Season

The Internal Revenue Service (IRS) has announced the on-time opening of the US 2015 filing season and highlighted a growing array of online services, including help for taxpayers to understand how the Affordable Care Act (ACA) will affect them and the availability of the Free File program.

The IRS will begin accepting and processing all tax returns on January 20, and taxpayers will have until April 15, 2015, to file their 2014 tax returns and pay any tax due. The IRS expects to receive about 150m individual income tax returns this year, with more than four out of five returns being filed electronically.

The IRS confirmed that, although 2014 tax returns will include new questions to incorporate provisions of the ACA, the majority of taxpayers – more than three out of four – will simply need to check a box to verify they have health insurance coverage. For the minority of taxpayers who will have to do more, its website features useful information and tips regarding the premium tax credit, the individual shared responsibility requirement, and other tax features of the ACA.

IRS Commissioner John Koskinen said: "We encourage people to use the tools and information available on the IRS website, particularly given the long wait times we anticipate on our phone lines. As always, taxpayers can benefit by filing electronically."

Koskinen announced that the IRS Free File program, available on the IRS website, was to be open from January 16 for taxpayers to begin preparing their returns. Free File offers two filing options – brand-name software, offered by IRS's commercial partners to about 100m individuals and families with incomes of USD60,000 or less; or online fillable forms, the electronic version of IRS paper forms available to taxpayers at all income levels.

The IRS expects to issue more than nine out of ten refunds within 21 days. E-filing, when combined with direct deposit, is the fastest way to get a refund. More than three out of four refund recipients now choose direct deposit, and taxpayers who e-file make fewer mistakes.

It takes longer to process paper returns; in light of IRS budget cuts resulting in a smaller agency workforce, it was disclosed that it will likely take an additional week or more to process paper returns, meaning that those refunds are expected to be issued in seven weeks or more.

## Switzerland, Italy Reach Agreement On Tax Treaty

Italy and Switzerland have agreed an amendment to their double tax agreement (DTA) to enhance tax information exchange provisions. It is hoped that the agreement will be signed before the March 2 deadline set by Italy's new voluntary disclosure program to enable Switzerland's removal from Italy's "black list."

After three years of talks, the conclusion of the agreement follows a recent push by Italian lawmakers to approve the voluntary disclosure program, which will allow Italian residents to regularize undeclared capital held abroad. There is a 60-day deadline, from the date of its entry into force, for countries that have not yet signed an adequate tax information exchange provision with Italy to do so. These countries otherwise risk inclusion on the Italian black list.

It is expected that the protocol to the DTA, which will incorporate the OECD global standard for the exchange of information upon request, and a roadmap covering other bilateral tax matters will be signed by the end of February 2015. The agreement's provisions on the exchange of information will apply from the date of signing, in recognition that it could take up to two years for the protocol to be ratified by both states.

Through its negotiations with Switzerland, the Italian Government is hoping to establish a "pincer" movement, whereby it can flush out Italians with undeclared assets in Switzerland, whose details may be disclosed under the revised treaty, while also offering them a voluntary disclosure program to pay reduced fines.

Vieri Ceriani, Secretary for Fiscal Affairs within the Italian Finance Ministry, described the new agreement as "unthinkable several years ago," and said it marked "the beginning of an epoch that provides measures against tax evasion."

Italian Premier Matteo Renzi also strongly welcomed it and emphasized that "now would be a good time for the return of large amounts of funds to Italy, because of the approval of the voluntary disclosure program, together with recent exchange rate movements."

Removal from the Italian black list for Switzerland would lead to a substantial improvement in market access for Swiss financial service providers. Swiss financial institutions and their employees will not, in principle, be held responsible for the tax offenses of their clients, although their cooperative behavior with the regularization of their clients will be looked upon favorably.

The negotiations have included a roadmap with future commitments to make reductions to withholding tax rates on dividends and interest payments and to modify the taxation of cross-border workers.

The latter issue had previously been a sticking point in the DTA negotiations. Under an existing agreement, cross-border Italian workers employed in Switzerland are exempt from taxation in Italy, but Switzerland is required to transfer 38.8 percent of the Swiss fiscal revenue collected from them to Italy. The cantonal government in Ticino has long complained of "wage dumping," involving the supply of less than market rate labor from Italy, and has sought a revision to this percentage.

It has now been proposed that, in the future, cross-border workers should be subject to reduced

taxation in the state where they work as well as regular taxation in their country of domicile. The portion retained in the state where the person works will be a maximum of 70 percent of the total income tax withheld. A new agreement on the taxation of cross-border commuters will be the subject of an agreement to be negotiated in the first half of 2015, with both sides undertaking to ensure its swift conclusion.

## **Ukraine Launches Lenient Tax Amnesty**

Ukraine began offering a generous tax amnesty covering corporate income tax and value-added tax (VAT) from January 17, 2014.

The three-month amnesty covers any tax period up to April 1, 2014, and also covers illegitimate VAT refund claims and wrongly claimed expenditure deductions against income tax liability. It will offer taxpayers making a full declaration a waiver from financial, administrative, and criminal penalties, providing the taxpayer pays 5 percent of the outstanding tax amount. The remaining 95 percent will be waived and there will be no penalties or interest.

The head of Ukraine's State Fiscal Service (SFS), Igor Bilous, said: "This Bill came in response to

requests from businesses that want to turn the page and start working transparently. Due to the Association Agreement with the EU and the opportunities it opens for Ukrainian businesses, I believe that this tool will be used by lots of companies."

The SFS said that it would respond to declarations within ten days of receipt if it requires further information or considers that an investigation is necessary into the accuracy of amounts declared.

The Government said that the amnesty presents a unique opportunity for companies to regularize their tax position, thereby enabling them to operate legitimately in future. It is intended to usher in an improved tax culture in Ukraine and enable businesses to obtain financing more easily.

The terms of the amnesty are more lenient than was originally planned. The Government had announced plans for the amnesty in early 2014, when it said payment of 15 percent of outstanding tax dues would be required.

The amnesty was approved in Law No. 63-VIII of December 25, 2014, "On Amendments to the Tax Code of Ukraine to clarify the features of the tax liabilities of corporate income tax and value-added tax in the case of tax compromise."

## IRELAND - DENMARK

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### Effective

The protocol amending the DTA between Ireland and Denmark came into effect on January 1, 2015.

## ISLE OF MAN - LESOTHO

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### Into Force

The TIEA between the Isle of Man and Lesotho entered into force on January 3, 2015.

## LITHUANIA - UNITED ARAB EMIRATES

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### Effective

The DTA and an accompanying protocol between Lithuania and the United Arab Emirates entered into force on December 19, 2014, and became effective on January 1, 2015.

## MAURITIUS - SWAZILAND

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### Signature

Mauritius signed a renegotiated DTA with Swaziland on November 11, 2014.

## NORWAY - HONG KONG

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### Ratified

According to preliminary media reports, Norway ratified its TIEA with Hong Kong on December 15, 2014.



## NORWAY - VARIOUS

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### Ratified

According to preliminary media reports, Norway ratified its DTA with Bulgaria and the protocol amending its DTA with Brazil on December 4, 2014.

## PORTUGAL - CROATIA

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### Ratified

Portugal's DTA with Croatia has been ratified by Decree 6/2015, signed by the Portuguese President on January 5, 2015.

## SOUTH AFRICA - COOK ISLANDS

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### Into Force

The TIEA between South Africa and the Cook Islands came into force on January 8, 2015.

## **SPAIN - ANDORRA**

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### **Signature**

Spain signed a DTA with Andorra on January 8, 2015.

## **TAIWAN - IRELAND**

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### **Negotiations**

According to preliminary media reports, the Taiwanese President announced that negotiations were underway towards a DTA with Ireland on January 13, 2015.

## **UNITED ARAB EMIRATES - VARIOUS**

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### **Ratified**

According to preliminary media reports, the DTA with Lithuania and the protocol amending the DTA with Greece have been ratified by Federal Decrees 127 and 130, respectively, issued by the United Arab Emirates President on January 14, 2015.

## **UNITED KINGDOM - ICELAND**

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### **Into Force**

The DTA between the United Kingdom and Iceland entered into force on November 10, 2014.

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

**THE AMERICAS**

**16TH TAX PLANNING FOR THE WEALTHY FAMILY**

Federated Press

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

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

**1/27/2015 - 1/28/2015**

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

**INTERNATIONAL TAX ISSUES 2015**

Practising Law Institute

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

Chair: Michael A. DiFronzo (PwC)

**2/11/2015 - 2/11/2015**

[http://www.pli.edu/Content/Seminar/International\\_Tax\\_Issues\\_2015/\\_/N-4kZ1z12a24?ID=223914](http://www.pli.edu/Content/Seminar/International_Tax_Issues_2015/_/N-4kZ1z12a24?ID=223914)

**INTERNATIONAL ESTATE & TAX PLANNING 2015**

Practicing Law Institute

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

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

**2/13/2015 - 2/13/2015**

[http://www.pli.edu/Content/Seminar/International\\_Estate\\_Tax\\_Planning\\_2015/\\_/N-4kZ1z1297k?ID=222616](http://www.pli.edu/Content/Seminar/International_Estate_Tax_Planning_2015/_/N-4kZ1z1297k?ID=222616)

**ADVANCED INTERNATIONAL TAX PLANNING**

Bloomberg BNA

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

Chair: TBC



**2/23/2015 - 2/24/2015**

[http://go.bna.com/advanced\\_lasvegas.aspx](http://go.bna.com/advanced_lasvegas.aspx)

## **AMERICAS TRANSFER PRICING SUMMIT 2015**

TP Minds

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

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

**2/24/2015 - 2/25/2015**

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

## **THE 4TH OFFSHORE INVESTMENT CONFERENCE PANAMA 2015**

Offshore Investment

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

Chair: Derek R. Sambrook (Trust Services)

**3/11/2015 - 3/12/2015**

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

## **INTRODUCTION TO US INTERNATIONAL TAX**

Bloomberg BNA

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

Chair: TBC

**3/16/2015 - 3/17/2015**

[http://www.bna.com/intro\\_SF2015/](http://www.bna.com/intro_SF2015/)

## **INTERMEDIATE US INTERNATIONAL TAX UPDATE**

Bloomberg BNA

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

Chair: TBC

**3/18/2015 - 3/20/2015**

[http://www.bna.com/inter\\_SF2015/](http://www.bna.com/inter_SF2015/)

## **INTERNATIONAL TAX ISSUES 2015 - CHICAGO**

Practicing Law Institute

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

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

**9/9/2015 - 9/9/2015**

[http://www.pli.edu/Content/Seminar/International\\_Tax\\_Issues\\_2015/\\_/N-4kZ1z12a24?ID=223915](http://www.pli.edu/Content/Seminar/International_Tax_Issues_2015/_/N-4kZ1z12a24?ID=223915)

### **ASIA PACIFIC**

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## **2015 FINANCIAL SERVICES TAXATION CONFERENCE**

The Tax Institute

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

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

**2/18/2015 - 2/20/2015**

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

## **INTERNATIONAL CORPORATE TAX PLANNING ASPECTS**

IBFD

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

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

**4/20/2015 - 4/22/2015**

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

### **CENTRAL AND EASTERN EUROPE**

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## **CIS WEALTH MOSCOW 2015**

CIS Wealth

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

Key speakers: TBC

**2/16/2015 - 2/17/2015**

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

## WESTERN EUROPE

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### **EMPLOYMENT TAX PLANNING CONFERENCE 2015**

IIR & IBC Financial Events

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

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

**1/28/2015 - 1/28/2015**

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

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

International Bar Association

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

Chair: Jack Bernstein (Aird & Berlis)

**2/9/2015 - 2/10/2015**

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

### **20TH INTERNATIONAL WEALTH TRANSFER PRACTICE LAW CONFERENCE**

International Bar Association

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

Chairs: Leigh-Alexandra Basha (Holland & Knight), Gerd Kostrzewa (Heuking Kühn Lüer Wojtek), Christopher Potter (Sete), Rashad Wareh (Kozusko Harris Duncan)

**3/2/2015 - 3/3/2015**

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

### **INTERNATIONAL TRANSFER PRICING SUMMIT 2015**

TP Minds

Venue: Millennium Gloucester Hotel, 4-18 Haringdon 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>

## **INTERNATIONAL TAX ASPECTS OF CORPORATE TAX PLANNING**

IBFD

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

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

**3/18/2015 - 3/20/2015**

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

## **THE 37TH ANNUAL OFFSHORE TAXATION CONFERENCE**

IIR & IBC financial Events

Venue: TBC, London, UK

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

**3/24/2015 - 3/24/2015**

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

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

Infoline

Venue: TBC, London, UK

Key Speakers: Malcolm Powell (Investec Asset Management), Kevin Charlton (KPMG), Teresa Owusu-Adjei (PWC), Lorraine White (Bank of New York Mellon), Jorge Morley-Smith (Investment Management Association), Christopher Mitchell (BNY Mellon)

**3/25/2015 - 3/25/2015**

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

## **SPRING RESIDENTIAL CONFERENCE 2015**

Chartered Institute of Taxation

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

Chair: Chris Jones (Chartered Institute of Taxation)

**3/27/2015 - 3/29/2015**

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

## **INTERNATIONAL TAX ASPECTS OF MERGERS, ACQUISITIONS AND CORPORATE FINANCE**

IBFD

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

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

**3/30/2015 - 4/1/2015**

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

## **PRINCIPLES OF INTERNATIONAL TAXATION**

IBFD

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

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

**4/20/2015 - 4/24/2015**

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

## **INTERNATIONAL TAXATION OF E-COMMERCE**

IBFD

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

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

**5/11/2015 - 5/13/2015**

[http://www.ibfd.org/Training/International-Taxation-e-Commerce#tab\\_program](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 Kusters (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 Kusters (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](http://www.ibfd.org/Training/Tax-Planning-Workshop)

## **INTERNATIONAL TAX SUMMER SCHOOL**

IIR & IBC Financial Events

Venue: Gonville & Caius College, Trinity St, Cam-  
bridge, 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](http://www.iiribcfinance.com/event/International-Tax-Summer-School-2015)

## **INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS**

IBFD

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

Key Speakers: TBC

**9/16/2015 - 9/18/2015**

[http://www.ibfd.org/Training/International-  
Taxation-Banks-and-Financial-Institutions](http://www.ibfd.org/Training/International-Taxation-Banks-and-Financial-Institutions)

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

## THE AMERICAS

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### Canada

The Tax Court of Canada heard the case of a company which provided management services to mutual fund trusts, and charged Goods and Services Tax (GST) on the cost of the services. In order to attract the business of larger investors the company occasionally reduced the management fees included in the costs of its services, resulting in a special distribution from the funds to the investors equal to the reduced amount called "Management Fee Distributions."

Since these special distributions were not included by the company in GST calculations, the tax authority objected to them and assessed the company for the GST amounts based on the assumption that the distributions were part of the consideration paid by the funds to the company for its managerial services.

The company argued that the special distributions represented transactions between the funds and the larger investors who received them, which meant they were separate from the consideration for the services, but the tax authority maintained that rather than reducing the management fees, a portion of them was paid not to the company but to the investors and that therefore the special distributions remained part of the consideration for the services. The argument was also made that "there is both a legal and an economic link or connection between



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

the unreduced gross management fee and the supply of management services to the Funds."

The Tax Court first stated that according to national legislation tax shall be charged on the amount of consideration paid for the supply of taxable services, which in the present case were the managerial services, and that "there must be a link or connection between the consideration and the supply itself." The company, while referring to legislation under which consideration must be either expressed as monetary value or fair market value, contended that the tax authority had not offered evidence for the fair market value of the legal obligation to pay the special distributions to the investors which was



also part of the consideration for the managerial services as per the authority's argument. The authority countered with the opinion that the market value of the obligation was equal to the value of the special distributions.

With regard to the tax authority's contention that the funds continued to pay the gross amount of managerial fees following the introduction of the special distributions and therefore they made up the consideration already being paid for the company's services, the Tax Court disagreed, observing that the reduced managerial fees were paid weekly and monthly while the special distributions were made monthly and quarterly.

As a result of its interpretations of the Management Agreement and the accompanying correspondence as evidence, the Tax Court ruled that the Management Fee Distributions were not part of the consideration paid for the supply of managerial services but were separate payments made by the funds to the large investors. The reduced amount of managerial fees remained subject to GST and the monetary value was the only consideration involved, it concluded; the tax authority had failed to argue that the distributions had value which should have been included as part of the consideration for the services. The company's appeal against the re-assessment for GST purposes was therefore allowed, with costs payable by the appellant. Both the company and the taxpayer contended that even if the tax authority had found that the authorisation was no longer valid, the decision should not affect past

tax returns; however the Federal Court insisted that the taxpayer bring their case to the Tax Court.

The judgment was delivered on December 23, 2014.

<http://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/100158/index.do>

Tax Court: *Invesco Canada Ltd v. The Queen* (TCC 375)

## Canada

The Tax Court of Canada heard the case of a taxpayer who received an automobile benefit from his employer. The employing company in 1981 took issue with the Canadian Government's revised legislation which increased the cost of providing the benefit, but instead of addressing the company's issue the tax authority, Revenue Canada, authorized the company to calculate the benefit using a simplified method.

When the tax authority audited the company in 2010 it ruled that present circumstances invalidated the authorization and therefore made assessments to employees for tax on the full amount of their automobile benefits, which the taxpayer in the present case argued against to the Federal Court. Both the company and the taxpayer contended that even if the tax authority found that the authorization was no longer valid, the decision should not affect past tax assessments; however, the Federal Court insisted that the taxpayer bring their case to the Tax Court.

The Tax Court reviewed the relevant legislation and stated that both (i) a percentage of the cost of the automobile to the company as a standby charge, and (ii) an operating expense that applies when the employees pay the operating costs of the automobiles themselves, must be included in an employee's income tax return.

The taxpayer's arguments were that the authorization was provided under the assumption that the company would not be assessed for tax on the unpaid costs of providing the benefit, and that the tax authority's reasons for invalidating the authorization were not based in fact and simply intended to receive more taxes; the tax authority maintained that it was bound by the legislation to assess the company for the unpaid costs, and that the calculation method could not be misinterpreted or manipulated.

The Tax Court agreed that the authorization issued by the tax authority was a reasonable course of action at the time as, owing to the difficulty of assigning operating costs to personal and business use, the simplified method – which based the standby charge around the average cost of all automobiles provided by the company and the operating costs on a 50/50 split between personal and business use – allowed the company to determine the employee benefits more easily without violating the law.

However, the legislation in 1981 referred only to general employee benefits, and therefore when new

legislation which specifically mentioned operating costs became effective from 1993, the law that the authorization was abiding by had changed, thereby invalidating it.

Despite the ruling, the taxpayer successfully disputed the assessment of the tax authority with regard to its calculation of the amount of standby charges he should be liable for, owing to the fact that it had failed to provide evidence supporting any assumed amount of personal use of the automobiles that had been assigned to the taxpayer. With regard to this aspect, therefore, the appeal was allowed, with the proper amounts to be recalculated in line with the appellant's income tax returns.

With regard to the operating expenses benefit, the Minister's determination in this matter was upheld.

The judgment was delivered on December 30, 2014.

<http://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/100176/index.do>

Tax Court: *Richard Szymczyk v. The Queen (TCC 380)*

## WESTERN EUROPE

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### European Union (EU)

The European Court of Justice (ECJ) has issued a new ruling on the conditions under which national authorities and courts may refuse a taxpayer's rights to exemption from and deduction of VAT in the event of VAT fraud.

The ECJ provided a preliminary ruling in just one of three cases referred by the Dutch Secretary of State for Finance, in joint cases C-131/13, C-163/13, and C-164/13. Two cases (C-163/13 and C-164/13) were deemed inadmissible, as the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) had failed to provide evidence that there had been evasion of VAT.

The ECJ did, however, provide a ruling in the case of *Staatssecretaris van Financiën v. Schoenimport "Italmoda" Mariano Previti vof* (C-131/13), which concerned a company, governed by Dutch law, that between 1999 and 2000 traded in computer hardware. The hardware was acquired in the Netherlands and Germany and supplied to customers in Italy. The goods originating in Germany were purchased by Italmoda under its Dutch VAT identification number, and the transactions were intra-Community acquisitions subject to VAT in the Netherlands. The goods were subsequently transported directly from Germany to Italy.

VAT fraud was found to have been perpetrated in Italy, but, in the Netherlands, Italmoda made all the necessary declarations, and had also sought to deduct input tax in its Dutch VAT returns. By contrast, for the goods originating in Germany, Italmoda did not declare either their intra-Community supply in that member state or their intra-Community acquisition in the Netherlands, even though that transaction had been exempted in Germany. In Italy, none of those intra-Community acquisitions was declared by the purchasers concerned,

and VAT was not paid. The Italian tax authorities refused the purchasers' right to deduct and proceeded with recovery of the tax due.

As the Dutch tax authorities took the view that Italmoda had knowingly participated in fraudulent activity designed to evade VAT in Italy, they refused exemption for the intra-Community supplies, the right to deduct input tax, and the right to a refund of the tax paid in respect of the goods originating in Germany, and consequently issued three additional assessments to Italmoda.

Eventually the case was referred to the ECJ by the Dutch Supreme Court, with a request for the ECJ to expand on its previous judgments in this area, with clarification in particular sought on authorities' right to refuse exemption, a deduction or a refund in cases, first, where national law does not explicitly make provisions for such in cases of VAT fraud; and, second, where the evasion occurs in a member state other than that in which the benefit of those rights has been sought (in the Netherlands), where Italmoda had complied with the formal requirements in that state to benefit from those rights.

In its introductory remarks, the ECJ pointed out that it has repeatedly held that EU law cannot be relied upon by individuals for fraudulent ends, including in cases where a taxable person knew, or should have known, that the person with whom they were transacting was participating in evasion of VAT – in this case through carousel fraud.

Addressing the broader questions referred, the ECJ said that it is for the referring Court to ascertain whether there are, as the Dutch Government maintains, Dutch law provisions that prohibit abuse of rights, or other provisions relating to tax evasion or tax avoidance that would enable refusal in cases of VAT fraud and evasion.

However, the ECJ added that even if domestic law contains no such provisions, "it cannot nevertheless be inferred from this that the national authorities and courts would, in circumstances such as those at issue in the main proceedings, be prevented from satisfying those requirements and, accordingly, refusing a benefit derived from a right laid down by the Sixth Directive in the event of fraud."

"Consequently, the present case concerns rather the impossibility for the taxable person to claim a right under the Sixth Directive, the objective

criteria for the granting of which have not been satisfied either because of fraud affecting the transaction carried out by the taxable person itself or because of the fraudulent nature of a chain of transactions as a whole... Contrary to what Italmoda has claimed, a taxable person who has created the conditions for obtaining a right only by participating in fraudulent transactions is clearly not justified in invoking the principles of protection of legitimate expectations or legal certainty in order to oppose the refusal to grant the right in question."

The judgment was delivered on December 18, 2014.

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0131>

European Court of Justice: *Staatssecretaris van Financiën v. Italmoda (C-131/13)*

### Dateline January 22, 2015

All in all, it's been a pretty bad couple of weeks for the United States if you believe, as I do, that small government is preferable to big government. On January 12, the Internal Revenue Service (IRS) announced that foreign financial institutions and national tax authorities could begin enrolling in its International Data Exchange Service (IDES), the mechanism through which information on the bank accounts of US citizens will be transmitted to the IRS under the insidious FATCA legislation. "But why are you so against FATCA?" I hear you ask. "FATCA will root out tax dodgers, therefore, you must support tax dodging!" No, I don't condone tax dodging at all. But I certainly do value individual privacy, and FATCA tramples all over it to find what is likely to be a relatively small handful of Americans who forgot, couldn't be bothered, or willfully neglected to fulfill their tax obligations to Uncle Sam. At any rate, don't you think that those who fall into the third category and are determined to remain there saw FATCA coming (they had plenty of warning) and have made alternative financial arrangements? We might not ever know, but I'll bet they have.

A few days earlier, on January 8, the Treasury Department and the Department of Health and Human Services (HHS) announced that they will provide individuals with additional information and resources to help them report their health insurance status for the first time on their 2014

tax returns. On their tax returns? This sounds all very nice of people at the Treasury and the HHS, but it's starting to look like the IRS is staging a gradual takeover of US Government functions after having had its remit expanded massively by Congress in recent years. "Mission creep," they call it in bureaucratic circles. Or in the case of the IRS, "mission leap" might be a more appropriate description of the moment when the agency was tasked with administering large swathes of the largely tax-funded Affordable Care Act (ACA). With its 50 or so revenue provisions, the ACA is as much a piece of tax legislation as it is a reorganization of the US health care industry. And the taxes range from the whacky (the belly button tax?) to the sinister (the Orwellian-sounding "shared responsibility payment"). Nevertheless, I'm not really sure what to make of Obamacare yet. Something needed to be done to lower the cost of healthcare, but the ACA just feels messy, with its 1,000 pages of legislation and tentacles stretching into all sorts of unlikely places. Free marketers point to the failings of the UK's NHS as an example of why governments should butt out of health care. But, funnily enough, the Brits, who by and large are very proud of their health service, point to the failings of the almost-totally-private system that operated in the US pre-Obamacare to justify massive government spending on health. I suppose somewhere in between the two the answer must lie. Although, to be perfectly honest, I'd prefer to keep the taxman out of matters to do with my health.

Well, it looks like crunch time is approaching for Greece. Again. Voters go to the polls on Sunday in a snap election called by Prime Minister Antonis Samaras late last year which the left wing anti-austerity party Syriza looks set to win, according to opinion polls at the time of writing. What does this mean? Well, nobody knows for sure. Syriza's leader, Alexis Tsipras, thinks he can put an end to the four years of crushing austerity policies which have stifled Greece and locked it into a long-term recession while keeping Greece's international creditors happy and ensuring the country remains in the eurozone. This is probably music to the ears of a former public sector worker who lost her job as a result of spending cuts, or the small business owner facing a daily battle against the odds to stay afloat, and who can blame them? However, Syriza's platform sounds to me like the sort of "all things to all people" approach to government that helped to get Greece into this mess in the first place. And perhaps it is equally criminal to offer the people false hope. As a result, Samaras and his ministers have been filling the airwaves with warnings of Syriza's dangerous complacency with regards to the crisis. It is a strategy that is backfiring, however, as it has merely drawn attention to the precariousness of Greece's situation. Questions are being asked about how the Government, whoever is in charge of it, will meet EUR4.3bn of debt due in early this year, with threadbare reserves and without the support of new funding from the "troika." Syriza thinks it can bridge the gap by getting local banks to buy short-term bonds. Really? Apparently, about EUR3bn has been withdrawn from

Greek banks by nervous depositors in the last two months alone, and last week it emerged that two of Greece's largest institutions have requested access to the ECB's "emergency liquidity assistance" program *via* their Central Bank. So Tsipras might have to think again. What's more, clearly spooked, the markets are speaking, and their prognosis isn't good, with the cost of Greek Government debt once again on the rise. However, it's Samaras and his Government that get the condemnation here, with a promise to cut taxes if voters reward them with another term. If it sounds unrealistic it's because it probably is. What a very dangerous time to be playing politics!

The award for silliest tax so far in 2015 must surely go to Hungary, and it's going to take some beating I think. Most countries now provide tax incentives in one form or another to the renewable energy industry, while simultaneously increasing or creating new taxes on the use of fossil fuels. Yes, the jury is still out as to what the perfect environmental tax policy should be to reduce emissions of greenhouse gas, or, indeed, whether taxes work at all. But it's still an eminently sensible policy you might think, when you're trying to save the world. Hungary thinks rather differently, and in its wisdom has slapped an environmental levy on solar panels. This is because, says the Government, solar cells contain hazardous materials and are therefore difficult to dispose of at the end of their lives. The solar industry counters that panels are actually recyclable, and in any case, have very long lives, in the order of 40 years. This move says more about Hungary's desperation

to tax anything it can get away with, in view of its fragile fiscal situation, than it does about its ministers' apparent lack of common sense. I refer you to the equally daft attempt last year to tax internet usage, which was quickly slapped down by the EU

and brought Hungarians out on to the streets in protest. An environmentally unfriendly solar panel indeed. I think I've heard it all now.

The Jester