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a closer look

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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

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

In Part I, I argued that the benefits rationale – in terms of the public benefits received by citizens – was an unpersuasive justification for the US's system of worldwide taxation.

I continue my rant in Part II, examining the practical effects of worldwide taxation on nonresident US citizens. Through a labyrinth of "credits, deductions, exclusions, and non-deductibility," the Internal Revenue Code treats similarly situated US citizens who live abroad differently.[1] How so? Such persons pay *different* US taxes depending upon the types and amounts of the taxes imposed by the countries in which they live.[2]

This disparate treatment in tax liability is inconsistent with the benefits rationale for US worldwide taxation, not to mention the Equal Protection Clause. Why? Because such citizens receive the same benefits of US citizenship, yet pay different US taxes.[3]

In order to understand this argument, it is necessary to examine the ways in which the US government attempts to blunt the harsh effects of worldwide taxation. It makes three primary concessions:

(1) "the foreign tax credit"; (2) "deductions for foreign taxes paid in connection with a US taxpayer's trade, business, or investment activities"; and (3) the "exclusion under Section 911."[4]

Let's begin with the foreign tax credit. In the income tax setting, the most important accommodation made by the US to mitigate worldwide taxation is the foreign tax credit.[5] It lies at the heart of the system of outbound US taxation.

I want you to put off to the side what you already know about the foreign tax credit so that you can approach this topic with an open mind. The foreign tax credit rests on a simple idea. How simple? Income taxes paid to the US treasury are reduced (*i.e.*, credited) by the amount of income taxes paid by US persons to foreign governments. In so doing, the credit prevents double taxation of the foreign income of US persons.

Let me explain how a credit works. A credit is nothing more than "a dollar-for-dollar reduction of US income tax by the amount of foreign income tax."[6]

The tax savings from a credit is "the exact amount of the credit itself."[7]

Before giving "props" to the US government for passing the foreign tax credit, wait until you hear the rest of the story. Not satisfied with the existing system, in 1921 Congress limited the credit to the amount of US tax attributable to foreign-source income. The credit is available only to the extent that the taxpayer "pays foreign income taxes on foreign-source income *at* or *below* the rate at which the US taxes such income."[8]

The following two hypotheticals will drive home this point. Each appeared in a brilliant law review article entitled, "Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile," by Edward Zelinsky.[9] Let's assume that the US income tax rate and the foreign country's income tax rate are identical: each is 30 percent. Suppose that Adam is a US citizen. Adam owns a condominium in Country X that he rents out.

Suppose that Adam earns USD100 from renting his condominium in Country X. Adam properly reports his rental income as part of his worldwide income on his US tax return. Thankfully, there are no badges of fraud that might suggest that Adam is engaging in tax "hanky-panky."

Adam's income tax liability in Country X, the source jurisdiction, would be USD30 (30 percent of USD100). The US tax on that same income, pre-credit, would also be USD30 (30 percent of USD100). However, instead of paying USD30 to the US Treasury, Adam can credit the USD30 he paid to Country X against the tax he would otherwise owe to the US.

At the end of the day, Adam would not owe any tax to the US Treasury on his foreign-source rental income. Very simply, the income tax paid to Country X completely offsets Adam's US foreign-source tax liability. Instead of paying USD60 in taxes, Adam would pay only USD30.

Adam's effective tax rate would be 30 percent, the same as if that income had been earned by a US citizen living in the US.

What actually happened here? At a primitive level, the US surrendered the tax it would otherwise have collected from Adam, a US citizen with foreign-source income, to Country X, the foreign country from which the income was derived.

Now let's add a twist. Suppose that foreign country's income tax rate is *less* than the United States' income tax rate. For example, suppose that Country X's income tax rate was 20 percent instead of 30 percent. Would the result be the same? In that case, Adam would pay USD20 of tax to Country X.[10] He would "take a credit on his US tax return for that USD20 income tax payment."[11] After subtracting USD20 from USD30, Adam would pay "a net tax to the US of USD10 on his rental income from his condominium."[12]

From this example, we can formulate a simple rule: When the foreign income tax rate is "less" than the US rate, "foreign income taxes can be credited in full" and the IRS will collect a balance consisting of "the excess of the US rate over the foreign rate."[13] In the above example, the "excess" collected by the US Treasury was USD10.

The upshot of the credit coupled with the limitation (if there ever was one), is that the *effective* tax rate on a US person's foreign-source income is the *higher* of the US or the foreign rate.

The second accommodation that the US makes to mitigate the harsh effects of worldwide taxation is deductions for taxes paid to a foreign government.[14] Unlike a credit, a deduction is a reduction of taxable income by the amount of a given expense. The tax savings from a deduction is the amount of tax that would otherwise have been imposed on the deducted amount.[15]

Consider the following example, in which the US and foreign income tax rates are both 30 percent. For every dollar of foreign-source income, the foreign country would impose a tax of 30 cents.

Let's first examine the taxpayer's US tax liability. The US taxes its citizens and residents on their worldwide income, which includes both US-source and foreign-source income. Let's assume that the taxpayer only has USD1.00 of foreign-source income. A deduction of the foreign tax would reduce US foreign-source income by 30 cents, leaving 70 cents subject to US tax (USD1.00 minus 30 cents). At a 30 percent rate, US tax would be 21 cents (30 percent of 70 cents).

For every dollar of foreign-source income, the taxpayer would pay 51 cents of tax (30 cents to the foreign government AND 21 cents to the US). The taxpayer would have 49 cents left over after payment of all taxes.

When deducted (as opposed to credited), a payment of 30 cents of income tax to the foreign country reduces US income tax by only 9 cents (30 cents minus 9 cents = 21 cents).

The taxpayer would end up paying tax – to two different countries – at an overall effective rate of 51 percent.[16] For this reason, it's preferable to credit an amount against taxes than to deduct it from income.[17]

An important limitation applies to the deduction of foreign taxes for US income tax purposes. Foreign taxes may only be deducted if they bear some connection to a US taxpayer's trade, business, or investment activities.[18] For example, "foreign sales tax is not deductible for US income tax purposes."[19] The one exception is for foreign real property taxes.[20] A US taxpayer can deduct foreign real property taxes even if they have no connection whatsoever to trade, business, or investment income.[21]

Finally, the third major concession that the US makes to "tame" the beast of worldwide taxation

is the exclusion under Section 911 for "certain nonresident citizens' personal service income that is earned abroad" and for "housing cost amount[s]."[22] With respect to the former, a US citizen who satisfies the nonresidency requirements of Section 911 "may elect to exclude from his annual gross income up to a certain amount of income … earned abroad from performing personal services, including personal services rendered in connection with self-employment."[23] For 2013, that amount was USD97,600.

Nonresident US citizens who satisfy Section 911's nonresidency requirements may – "in addition to or instead" – be able "to exclude (or deduct) from their gross income some or all of their foreign housing expenses."[24] The justification for Section 911 is relatively simple: "it facilitates the ability of US citizens to work abroad."[25]

What are the requirements imposed by Section 911? The list might just as well be as long as a child's Christmas "wish list" to Santa. First, the taxpayer must have a "tax home" abroad.[26] And second, the taxpayer must be either (1) "a *bona fide* resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year"[27] or (b) "during any period of 12 consecutive months (been) present in a foreign country or countries during at least 330 full days in such period."[28]

How about self-employed US citizens who live abroad? Do they qualify for the Section 911 income tax exclusion? Absent a totalization agreement, the answer is "no."[29] Like the federal income tax, the federal self-employment tax "applies to US citizens on a worldwide basis."[30] Thus, "self-employed US citizens or residents who work abroad must pay federal self-employment tax on their foreign-source earned income,"[31] even if they would otherwise qualify for the Section 911 income tax exclusion.

There are differences between the Section 911 exclusion and the foreign tax credit that at first blush are not so obvious. First, the Section 911 exclusion is "only available to nonresident citizens."[32] The foreign tax credit, on the other hand, "is available to *all* US citizens"[33] – resident and nonresident alike – so long as they have "foreign-source income."[34]

Second, unlike the foreign tax credit, the Section 911 exclusion "does not depend upon a US citizen's payment of any income tax to the source jurisdiction."[35] The practical consequence of this is that "income covered by Section 911"[36] is rarely, if ever, "taxed … by the nation in which it is earned (or) by the US."[37]

With this background, you should find it easier to understand my argument. Let's take the following example, taken from Mr. Zelinsky's article entitled, "Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile."

Abe, Brian, and Carol are US citizens who reside in three different countries. Abe lives in Country X. Brian lives in Country Y. And Carol lives in Country Z.

Abe, Brian, and Carol each has total income of USD100, derived from sources within their particular country of residence.[38] They are each in a 30 percent income tax bracket in the United States.[39]

Country X imposes an "income tax at the rate of 30 percent," while Country Y levies a "property tax," and Country Z imposes a "general sales tax."[40]

For purposes of keeping this example as straightforward as possible, suppose that Brian pays "USD30 of property tax to Country Y" and Carol pays "USD30 in sales tax to Country Z."[41]

As a matter of US law, Abe, Brian, and Carol must pay US income tax on their respective worldwide incomes.[42] Practically speaking, however, the Internal Revenue Code treats Abe, Brian, and Carol "differently."[43]

Let's analyze this hypo as if it was a swinging pendulum in a grandfather clock. At one extreme is Abe.[44] Abe pays no US income tax whatsoever.[45] Why? Because Abe paid USD30 of foreign tax to Country X, which is credited against the USD30 of tax he would otherwise have had to pay to the US.[46] Thus, his USD30 income tax payment to Country X completely offsets his federal income tax obligation to the US.[47]

At the other extreme is Carol. Carol pays USD30 in sales tax to Country Z on USD100 of income, receiving "neither a credit nor a deduction" by the US government.[48]

In the center is Brian.[49] After deducting his USD30 property tax payment to Country Y, he "pays USD21 of income tax to the US Treasury."[50] No doubt Abe is the taxpayer who is in the most desirable position *vis-à-vis* his US income tax obligations.

You might criticize this example on the grounds that it manufactured a scenario that was bound to lead to divergent tax liabilities. After all, all three taxpayers lived in *different* countries, and variances are to be expected. Surely, this disparity wouldn't exist if all three lived in the *same* country. Or would it?

Let's explore that by examining a hypo involving two US citizens who reside in the *same* foreign country. Because we're feeling a little bold, not to mention daring, let's inject the Section 911 exclusion into the mix.

Suppose that Debra and Edward are both US citizens who live in the same foreign country, Country M. Assume the following additional facts:

1. Both Debra and Edward have income of USD100, derived from sources within Country M;[51]
2. Both Debra and Edward are in a "30 percent bracket for US income tax purposes;"[52] and
3. Country M imposes a 30 percent sales tax.[53]

While they share all of the above in common, there is one difference – their income is *not* derived from the same source. Debra works for a foreign corporation in Country M.[54] Because her income is

derived from her employment, Debra is eligible for the Section 911 exclusion.[55]

Edward's income, on the other hand, is not derived from employment, but instead from investments.[56] Therefore, Edward is *not* eligible for the Section 911 exclusion.[57]

What is the result? Debra "pays no US income taxes because of the exclusion."[58] Edward, on the other hand, pays US income tax of USD30.[59]

If the justification for worldwide taxation under the benefits rationale is woefully inadequate, then why do we continue to indulge in this fiction? In my opinion, if you scratch below the surface, you'll find that the single-most influential factor in the majority's decision comes down to one word: enforceability. While this word was not uttered once in the *Cook v. Tait* opinion, the fact remains that there are hints throughout that the majority was well aware of the popular belief – even back then – that residence-based taxation on worldwide income was the most efficient system to administer, and thus enforce.

Thus, I'd argue that the Court's justification for validating worldwide taxation in *Cook v. Tait* has more to do with "ability to pay considerations" than it does with "benefits of citizenship."

A simple comparison of a worldwide system of taxation to a source-based system of taxation reveals why the former is easier to administer than the latter. As a preliminary matter, at the heart of this is the deep-rooted belief held by tax scholars that the country of residence is better suited than the country of source to measure an individual's overall ability to pay tax.[60]

How so? By virtue of the "person's presence in his country of residence," that country is in the best position "to measure and tax an individual's overall ability to pay tax."[61] For example, the nation of residence is usually the country in which the taxpayer "works, earns at least some of her investment income, and maintains some (if not all) of her assets."[62] Thus, it can require the taxpayer to "aggregate and report her worldwide income from all sources"[63] and enforce any judgments against the taxpayer for any liability arising from that income and assets.[64]

By contrast, the source nation only has a claim to tax that part of a taxpayer's income arising within its borders.[65] Because taxing systems must consider a person's "overall ability to pay"[66] – which necessarily requires itemizing "all of a person's sources of income and wealth"[67] – residence-based taxation is more advantageous than source-based taxation.

Consider one final example, which again comes from the creative genius of Mr. Zelinsky. Alan is a businessman who is a resident of Country X.[68] He works for a company in Country X. Alan also owns property in two foreign countries: Country Y and Country Z, respectively.[69] He owns a condominium in Country Y, which he rents out during

the year.[70] Alan owns a second condominium in Country Z, which he also rents out.[71]

As the source countries in which the rent arises, Country Y and Country Z have the right to tax the rental incomes generated by Alan's condominiums, since they are located within their respective borders.[72] For example, Countries Y and Z can tax that rent by forcing Alan's tenant in each country to withhold tax from his rent payments, and send it to Country Y and Country Z's respective treasuries.[73]

While this might appear to be adequate, the problem is that Country Y and Country Z can only assess "that part of Alan's income that arose within their respective borders (*i.e.*, rental income)."[74] Thus, while Country Y can foreclose on Alan's condominium located within Country Y if Alan defaults, consider what would happen if the foreclosure sale fell short of covering Alan's Country Y tax deficiency. Could Country Y impose a lien for the balance of that deficiency on Alan's second condominium in Country Z?

Alan's Country Z condominium is unlikely to become encumbered by a Country Y lien for the balance of the deficiency. Why? Very simply, Country Y knows nothing about Alan's Country Z condominium.

On the other hand, Country X, as the country in which Alan lives, "has the strongest claim to tax Alan's overall income" because it is best positioned "to assess (his) overall ability to pay tax."[75] For example, Country X can demand information about all of Alan's income from sources within Country X, Country Y, and Country Z.[76] Armed with this information, Country X can then enforce its tax laws against Alan.[77]

Now you know the *rest* of the story, namely the true justification for the United States' system of worldwide taxation.

ENDNOTES

1 *Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, Edward Zelinski, Iowa Law Review, 2011, p. 1292.

2 *Id.* at p. 1298.

3 *Id.* at p. 1297.

4 *Id.* at pp. 1297–99.

5 *Id.* at p. 1297.

6 *International Taxation*, Joseph Isenbergh, Second Edition, Foundation Press, 2005.

7 *Id., supra*, Note 5.

8 *Id. supra*, Note 1, at p. 1297.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id. supra*, Note 6.

14 *Id. supra*, Note 1, at p. 1297.

15 *Id. supra*, Note 6.

16 *Id.*

17 *Id.*

18 IRC Section 164(a).

19 *Id. supra*, Note 1, at p. 1298.

20 *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at pp. 1298–99.

[25] *Id.* at p. 1299.

[26] Section 911(d)(1), (3).

[27] Section 911(d)(1)(A).

[28] Section 911(d)(1)(B).

[29] *Id. supra*, Note 1, at p. 1300.

[30] *Id.* at pp. 1299–1300.

[31] *Id.* at p. 1300.

[32] *Id.* at p. 1299.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* at p. 1313.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.* at p. 1314.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.* at p. 1294.

[61] *Id.*

[62] *Id.* at p. 1323.

[63] *Id.* at p. 1294.

[64] *Id.* at p. 1323.

[65] *Id.* at p. 1294.

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.* at p. 1295.

[70] *Id.* at p. 1294.

[71] *Id.* at p. 1295.

[72] *Id.* at p. 1294.

[73] *Id.*

[74] *Id.* at p. 1295.

[75] *Id.*

[76] *Id.*

[77] *Id.*

Luxembourg Tax Administration Clarifies Tax Treatment Of Luxembourg Limited Partnerships

by Jean Schaffner, Tax Partner, Patrick Mischo, Tax Partner and Florent Trouiller, Tax Counsel, Allen & Overy, Luxembourg

Contact: Jean.Schaffner@AllenOvery.com, Tel. + 352 44 44 5 5613; Patrick.Mischo@AllenOvery.com, Tel. + 352 44 44 5 5233; Florent.Trouiller@AllenOvery.com, Tel. + 352 44 44 5 5233

Introduction

A circular dated January 9, 2015 (the **Circular**) clarifies the direct tax treatment of Luxembourg common and special limited partnerships. Most importantly, it confirms that non-regulated Luxembourg limited partnerships that qualify as alternative investment funds are never considered as carrying out commercial activities and may thus be fully tax transparent in Luxembourg. It further provides guidance regarding non-regulated limited partnerships not qualifying as alternative investment funds.

Background

With the adoption of the Luxembourg act of July 12, 2013 concerning alternative investment fund managers (the **AIFM Law**), Luxembourg took the opportunity to completely revamp the legal regime of the common limited partnership (*société en commandite simple*) and to introduce a new form of limited partnership without legal personality, the special limited partnership (*société en commandite spéciale*). However, the AIFM Law did not completely overhaul the tax regime of these limited partnerships (hereafter simply referred to as **LPs**).

An LP is transparent for Luxembourg income tax and net wealth tax purposes. However, the profits of the LP may be subject to municipal business tax (the rate varies from municipality to municipality – the rate applicable in Luxembourg City is 6.75 percent) if the LP carries out, or is deemed to carry out, business activities. If the LP is treated as a business undertaking for municipal business tax purposes, non-resident limited partners could potentially be considered as having a permanent establishment in Luxembourg, as a result of which they would be subject to personal or corporate income tax on their share of the business profits derived through the LP (subject to applicable double tax treaties).

An LP is treated as a business undertaking for municipal business tax purposes in the following two

circumstances: first, if one of the general partners is a Luxembourg joint stock company holding at least 5 percent of the interests in the LP, and second, if the LP carries out business activities (as opposed to private wealth management activities). While the first scenario is in practice not an issue in the context of alternative investment funds, as it is easily avoidable through appropriate structuring of the general partner interests, it was not always entirely clear under what circumstances an LP would fall within the second scenario given the general nature of the criteria of business activities and the lack of administrative guidance or case-law dealing specifically with LPs used as investment vehicles.

As also pointed out in the Circular, Luxembourg LPs set up as investment companies in risk capital (**SICARs**) under the amended act of June 15, 2004, as specialized investment funds (**SIFs**) under the amended act of February 13, 2007, or as investment companies with fixed capital (**SICAFs**) under Part II of the amended act of December 17, 2010, are not concerned by these issues as they benefit from specific exemptions. The same is true for foreign alternative investment funds (**AIFs**) within the meaning of the AIFM Law that are managed out of Luxembourg.

Guidance Provided By The Circular

Non-Regulated LPs That Are AIFs

The Circular clarifies that a Luxembourg non-regulated LP (*i.e.*, an LP not set up as a SICAR, SIF or Part II SICAF) that qualifies as an AIF within the meaning of the AIFM Law is as a rule not considered as carrying out business activities. According to the Circular, this is based on the fact that AIFs must have an investment policy in line with the AIFM Law and the guidelines issued by the European Securities and Markets Authority (ESMA). Consequently, the Circular considers that non-regulated LPs qualifying as AIFs have, by definition, not a business purpose, but rather an investment purpose.

A non-regulated LP qualifying as an AIF is thus completely tax transparent in Luxembourg, provided that none of its general partners is a joint stock company holding at least 5 percent of the partnership interests in the LP. Although this is not specifically clarified in the Circular, non-resident partners should, in these circumstances, not be deemed having a permanent establishment in Luxembourg by the mere fact of holding shares in the LP.

This is of course excellent news for the alternative investment fund sector.

Non-Regulated LPs That Are Not AIFs

As far as non-regulated LPs that do not qualify as AIFs are concerned, the nature of their activities still needs to be determined on a case-by-case basis in light of all the facts and circumstances, in particular the investment policy of the LPs.

Business activities are activities carried out (i) independently, (ii) on a permanent basis and (iii) with a participation in the general economy and (iv) for the purpose of realizing profits. Activities not

fulfilling these four criteria are not business activities but private wealth management activities (*i.e.*, activities the purpose of which is not primarily to generate profits through trading). The Circular contains extracts of relevant parliamentary works as well as of German and Luxembourg case-law. The Luxembourg case-law cited in the Circular focuses only on the boundaries between business undertakings and private wealth management in the context of real estate owned by individuals. However, the Circular indicates that the same principles are applicable for activities carried out by LPs. Most importantly, the Circular clarifies that neither the volume of the assets of the LP nor the disposal of certain assets within a short period of time are decisive factors on a standalone basis.

In light of the principles outlined in the Circular, non-AIF LPs (other than those set up as a SICAR, SIF or Part II SICAF) that hold their assets for extended periods of time, as is in general the case for private equity investment policies, should under normal circumstances not be treated as carrying out commercial activities. Consequently, such LPs should in most circumstances be completely tax transparent in Luxembourg, provided that they have not a general partner that is a joint stock company holding 5 percent or more of the partnership interests. Conversely, non-AIF LPs (other than those set up as a SICAR, SIF or Part II SICAF) with a hedge fund policy could potentially be treated as a business undertaking for municipal business tax purposes.

Topical News Briefing: A Fiscal Odyssey

by the Global Tax Weekly Editorial Team

The question on many people's lips now that the far left Syriza party has gained power in Greece is what happens next?

We do know of course the main strands of Syriza's policies: a renegotiation of the debt with the "troika" of lenders to the Greek bailout packages (the European Commission, the European Central Bank, and the International Monetary Fund) and the Greek Government's other creditors; and an end to the austerity policies that have strangled the life out of the Greek economy for the past four years.

What is significantly less clear is how the new Greek Government intends to go about achieving these two goals, if they are even possible at all. Syriza's youthful leader and the new Prime Minister, Alexis Tsipras, argues that it is simply not realistic to expect Greece to ever pay off its debts, to the troika or otherwise, given the scale of the debt (175 percent of gross domestic product and rising) and with the country locked into a recessionary downward spiral. And Tsipras does have a point. How can the Government generate the tax receipts needed to make inroads into the debt mountain when around one-quarter of the populace is unemployed and youth unemployment is a staggering 70 percent of the working population?

There is widespread sympathy for the plight of the Greek people caught up in a crisis not of their making. But Tsipras and his team are going to be up against formidable opponents reluctant to loosen the terms of Greece's debt and admit the bailout program, which has cost about EUR240bn so far, is failing. Chancellor Merkel in particular will be extremely reluctant to tell German taxpayers, who have underwritten a large chunk of these loans, that they have been chucking good money after bad for the last four years.

Syriza's second goal, to abolish austerity policies, is largely dependent on it achieving the first: that is, freeing up money that would otherwise have been spent on servicing debt to invest in the economy. And as we can see, that is by no means going to be a given.

So what does this mean for Greece in terms of taxation? Syriza hasn't gone into an awful lot of detail about its tax plans, but what the party has said has been fairly predictable. A priority is to lift the "monstrous" tax burden on the working and middle classes and restore the EUR12,000 tax-free allowance. It also wants to make the tax system more progressive so that those at the top pay more tax. And of course it wants to ensure that the wealthy actually pay the taxes they owe, for a traditionally lax attitude to tax compliance has been a problem that has bedeviled successive governments attempting to balance the budget.

Companies look to have been let off the tax hook by Syriza. Indeed, help has been pledged for small companies struggling to pay their bills. But what the private sector can expect is greater involvement by the state in the economy and a reversal of some of the structural economic reforms called for by the troika and which the New Democracy administration was in the process of implementing, especially in the area of labor; instead Syriza intends to create 300,000 new jobs, mostly in the public sector, and restore collective bargaining.

That's the plan at least. Whether Syriza is powerful enough to deliver it, without an absolute majority and with unlikely bedfellow the Independent Greeks party as its coalition partner, is an unknown.

Disposal Of Foreign Equity Shares – Proceed With Caution

by Bernard du Plessis and Peter Dachs, ENS Africa, Taxand South Africa

Contact: bduplessis@ENSafrica.com, Tel. + 27 11 269 7891; pdachs@ens.co.za, Tel. + 27 21 410 6620

When conducting international corporate transactions, taxpayers should dispose of their equity shares in foreign subsidiaries or equity investments resulting in a taxable capital gain – directly or indirectly through a foreign subsidiary. This is because what looks like a simple transaction, capable of being executed in a tax neutral manner, could very easily result in adverse tax implications for the disposing shareholder. Taxand South Africa illustrates the risks and pitfalls associated with disposing of foreign equity shares.

The case study below, used to illustrate the risks and pitfalls of disposing of foreign equity shares, involves a foreign holding company, A, which has two wholly owned foreign subsidiaries, B and C. The disposal of equity shares in A is subject to capital gains tax (CGT) in the hands of the disposing person, unless the participation exemption applies to any gain arising from the transaction, making it exempt from CGT. Broadly speaking, the participation exemption applies where the equity shares in A are disposed of for an amount equal to or exceeding market value, and the person disposing of these shares (whether alone or together with another group company):

- Held an interest of at least 10 percent of the equity shares and voting rights in that foreign company;
- Held the interest for at least 18 months prior to the disposal; and
- Disposes of the shares to a person that is not a resident (other than a controlled foreign company (CFC)) for South African purposes.

In assessing tax risk, taxpayers often stop at this point of the enquiry, assuming that if they comply with this exemption, the transaction will be tax neutral. There is, however, a second level of resultant disposals that need to be considered for CGT purposes and which could result in effective double taxation of any gain arising on the transaction. A company is a CFC for South African tax purposes if South African residents hold more than 50 percent of the participation rights and can exercise more than 50 percent of the voting rights in the foreign company.

Where A, B or C cease to be CFCs for South African tax purposes, each company is deemed to have disposed of all of its assets at market value on the day before the day it ceases to be a CFC. In this case study, this situation arises where, as a result of the disposal of shares in A to a non-resident, A, B and C cease to be CFCs as they are no longer controlled by South African residents. The resultant taxable capital gain of A, B and C must then be attributed to the controlling South African shareholders of A in accordance with the provisions of section 9D of the Income Tax Act.

The Income Tax Act, however, provides some relief. The deemed disposal rules (described above) do not apply if, in our example, a person disposes of an equity share in A (a CFC) – the capital gain is exempt under the participation exemption and, as a direct result (A) or indirect result (B and C) of this disposal, these foreign companies cease to be CFCs.

The result of the deemed disposal rules is an effective double taxation. In this case study, should the disposal of the shares in A not qualify for the participation exemption, the South African resident shareholders in A (who hold at least 10 percent of the participation and voting rights in A) will be subject to tax on both the gain arising from the disposal of the A shares, and the attribution of net income from A, B and C, on the gain resulting from the deemed disposal of these assets. Although these taxable amounts are derived from the same underlying economic value, they are included in the taxable income of the shareholders of A by way of different legal mechanisms. No credit mechanism exists to prevent this economic double taxation.

In planning the disposal of foreign equity shares, it is therefore essential to ensure that the disposal of the shares in A is exempt under the participation exemption, and that any foreign companies that cease to be CFCs do so directly or indirectly as a result of this tax exempt transaction.

Taxand's Take

Multinationals should note the disposal of shares in foreign companies requires detailed planning and the exercise of caution to prevent potentially nasty surprises. Piecemeal disposals in foreign companies are extremely risky.

Ruling Demonstrates Potential For Inversion Rules To Apply In Inbound Structures

by Jeffrey L. Rubinger, Partner, and Summer Ayers LePree, Partner, Bilzin Sumberg Baena Price & Axelrod LLP

Contact: jrubinger@bilzin.com, Tel. + 305 350 7261; slepree@bilzin.com, Tel: + 305 350 7274

In Private Letter Ruling 201432002 (the "PLR"), the US Internal Revenue Service ("IRS") ruled that a foreign-to-foreign "F" reorganization did not implicate the Section 7874 anti-inversion rules. As a result, a foreign corporation (that was 100 percent foreign owned) was not deemed to be a US corporation for US federal income tax purposes, despite the fact that it was deemed to transfer substantially all of the properties of a domestic subsidiary corporation to a foreign corporation that had no substantial business activities in its country of incorporation. The specific exception relied on by the IRS to reach this conclusion was the "expanded affiliated group ("EAG") rule."

In the wake of the PLR's publication, many commentators have cited the ruling for the proposition that, in an inbound situation, a foreign-to-foreign F reorganization would not trigger the Section 7874 inversion rules. This seems to be an overbroad reading of the PLR. In fact, the PLR seems to imply that, had the foreign target corporation not been more than 50 percent owned by another corporation, Section 7874 would likely have applied to the F reorganization at issue. This result is clearly at odds with the legislative intent underlying Section 7874 and could lead to some surprising results, as further discussed below.

Section 7874, Generally

To respond to perceived abuses associated with so-called "inversion" transactions, Congress enacted Section 7874 in 2004. The legislative history to this Section makes it clear that Congress was specifically concerned with the ability of a US corporation to reincorporate in a foreign country, thereby replacing a US parent of a multinational group with a foreign parent. Section 7874 was designed to eliminate some of the tax advantages sought by such transactions.

Under Section 7874, a foreign corporation will be treated as a domestic corporation for all purposes of the Code if, pursuant to a plan (or series of related

transactions): (i) the foreign entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation; (ii) after the acquisition, at least 80 percent of the stock (by vote or value) of the entity is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation ("Ownership Test"); and (iii) after the acquisition, the EAG which includes the foreign entity does not have substantial business activities in the foreign country in which, or under the laws of which, the entity is created or organized, when compared to the total business activities of the EAG.

For the purposes of determining post-acquisition ownership of the foreign corporation by the former shareholders of the US corporation, certain stock of the foreign corporation is not taken into account in determining ownership under Section 7874(a)(2)(B)(ii) ("Ownership Fraction"). Section 7874(c)(2) provides that such disregarded stock includes (i) stock of the foreign corporation held by members of the EAG that includes the foreign corporation, and (ii) stock of the foreign corporation sold in a public offering related to the acquisition.

For this purpose, an EAG is an affiliated group of corporations as defined under Section 1504(a) but without regard to Section 1504(b)(3), except that Section 1504(a) is applied by substituting "more than 50 percent" for "at least 80 percent" in each place it appears.

Facts Of The PLR

Under the facts of the PLR, US Co was a US limited liability company that had elected to be treated as a corporation for US federal income tax purposes. All the shares of US Co were owned by Foreign Sub 2, a Country C entity classified as a foreign corporation for US tax purposes. All the shares of Foreign Sub 2 were held by Foreign Sub 1, a Country D entity also classified as a foreign corporation for US tax purposes. Foreign Sub 1 also owned all the interests in FDE3, a Country E entity that elected to be treated as a disregarded entity for US tax purposes. FDE2 was a Country C disregarded entity which held a majority interest in Foreign Sub 1. FDE1, also a Country C entity disregarded for US tax purposes, held all the interests in FDE2. Parent, a Country F entity classified as a foreign corporation for US tax purposes, held all the interests in FDE1.

US Co was constructing a facility in the United States in order to expand its business operations. In order to help fund the cost of the expansion, Parent decided to conduct stock offerings of Foreign Sub 2. After consulting with its financial advisors and analyzing its options, however, Parent determined that the stock offerings would be better effectuated under Country G law.

In anticipation of the stock offerings, Parent planned to cause FDE3 to form FA, a Country G corporation. Parent would then convert Foreign Sub 2 into FA through an F reorganization. Specifically, Foreign Sub 1 would first contribute all

its shares of Foreign Sub 2 to FDE3. FDE3 would then contribute all the shares of Foreign Sub 2 to FA in exchange for additional shares of FA. Lastly, Foreign Sub 2 would make an entity classification election pursuant to Treasury Regulation Section 301.7701-3(c) to be treated as a disregarded entity for US tax purposes.

After the F reorganization, Parent planned to initiate offerings of FA shares *via* a private placement with an unrelated private investor (of no more than a 20 percent interest) and an initial public offering on a Country G stock exchange. After the public offering, the private investor that acquired the FA shares in the private placement and the public shareholders would together hold no more than 49 percent of the outstanding shares of FA.

Under Section 1.367(b)-2(f), in the case of a foreign-to-foreign F reorganization, a deemed transfer of assets of the target occurs. More specifically, the Regulations deem: (i) a transfer of assets by the foreign target to the acquirer in exchange for stock of the acquirer and the acquirer's assumption of the foreign target's liabilities; (ii) a distribution of such stock by the foreign target to its shareholders; and (iii) an exchange by the foreign target's shareholders of their stock for stock of the acquirer.

Accordingly, in the F reorganization described in the ruling, Foreign Sub 2 would be deemed to transfer all of its assets, *i.e.*, the shares of US Co, to FA in exchange for stock of FA. The stock of FA would then be distributed to Foreign Sub 1. Finally, Foreign Sub 1 would be deemed to exchange its Foreign Sub 2 stock for the FA stock.

In the PLR, the first and third of the three conditions under Section 7874(a)(2)(B) were clearly satisfied. (In other words, it was clear that the transaction would cause FA, directly or indirectly, to acquire substantially all of the properties held, directly or indirectly, by a domestic corporation, in this case US Co. It also was clear that there were no substantial business activities in Country G.) Thus, the issue in the PLR was whether the second condition was satisfied, *i.e.*, the Ownership Test. Under this test, if, after the deemed transfer of US Co to FA, at least 80 percent of the stock of FA was held by former shareholders of US Co (*i.e.*, Foreign Sub 2), FA would be treated as a domestic corporation for US tax purposes pursuant to a literal reading of Section 7874.

The IRS ruled first that any FA shares treated as received by Foreign Sub 2 in connection with such an F reorganization would be shares described in Section 7874(a)(2)(B)(ii), *i.e.*, shares of the foreign corporation held by former shareholders of the domestic corporation. Thus, these shares of FA count toward the 80 percent threshold for purposes of the Ownership Test. The ruling specified that this is true even though those FA shares are then deemed to be distributed to Foreign Sub 2's shareholders (*i.e.*, Foreign Sub 1) as part of the F reorganization.

The PLR then went on to discuss the exceptions contained in Section 7874(c)(2), which allow

certain stock to be disregarded for purposes of the Ownership Fraction. In particular, these exceptions apply to carve out stock of the foreign acquirer held by members of the EAG that includes the acquirer (the "EAG exception"), and stock of the acquirer that is sold in a public offering related to the transfer by Foreign Sub 2 (the "public offering exception"). The IRS held in the PLR that, pursuant to the public offering exception, shares issued by FA pursuant to the private placement and the public offering would not be included in the denominator of the Ownership Fraction. Additionally, the IRS held that the FA shares treated as issued in exchange for the shares of US Co pursuant to the F reorganization would be excluded from both the numerator and the denominator of the Ownership Fraction pursuant to the EAG exception.

Consequently, the IRS ruled that the Ownership Fraction would be zero over zero and thus the ownership requirement of Section 7874(a)(2)(B)(ii) was not satisfied. As a result, FA was not treated as a domestic corporation under Section 7874.

Analysis And Implications Of The PLR

The PLR held that, because of the EAG exception (and the public offering exception), the ownership requirement was not met, such that there was no inversion for Section 7874 purposes.

Before reaching an analysis of the EAG exception, however, the IRS also ruled that the FA shares deemed received by Foreign Sub 2 will be counted for purposes of the Ownership Test. This suggests that, in the absence of the EAG exception that would permit these shares to be ignored, the Section 7874 inversion rules would apply to cause FA to be treated as a domestic corporation.

In the PLR, the shares could be ignored under the EAG (and public offering) exception(s). But in many other foreign-to-foreign F reorganizations, that may not be the case. For example, in a foreign-to-foreign F reorganization involving individual shareholders of a foreign target, rather than a "more than 50 percent" corporate owner, as was the case in the PLR, there would not appear to be any applicable exception to permit the shares deemed received to be disregarded. Thus, in such an example, the shares would seem to be counted for purposes of the Ownership Test, and an inversion could result. This can produce some very harsh and unanticipated consequences.

To illustrate, assume a foreign individual shareholder ("FI") wholly owns a foreign holding company ("Holdco"), which in turn owns the following: (i) 100 percent of the stock of a foreign corporation that conducts an active business in its home country; (ii) a 99 percent interest in a UK limited liability partnership; and (iii) 100 percent of a US corporation (US Sub) that conducts an active US business. Assume that for valid business reasons, the foreign shareholder desires to redomesticate Holdco to a different non-US jurisdiction. This transaction would be treated as an F reorganization under Section 368(a)(1)(F), which, based on the

IRS's literal reading of Section 7874 as set forth in the PLR, and the relative values of the respective entities, would seem to trigger an inversion.

This is because the Regulations under Section 367 cause a deemed transfer of US Sub stock by the target (*i.e.*, Holdco) in exchange for shares of the acquirer, followed by a distribution of the acquirer's shares to FI in exchange for his target shares. Because FI is an individual, he cannot be a "member of [an] expanded affiliated group," and therefore, his acquirer stock cannot be excluded under the EAG exception. Based on these facts, the outcome for FI may be quite different than the outcome for the taxpayer in the PLR. This may cause the wholly owned foreign subsidiary to become a controlled foreign corporation (CFC) for US federal income tax purposes and, as a result, cause the deemed US parent (Holdco) to include in its income any Subpart F income or Section 956 inclusions, to the extent relevant. It could also cause the UK LLP to be converted from a partnership to a corporation in an outbound Section 367 transaction since, prior to the "inversion", the UK LLP was never "relevant" for US tax purposes under the entity classification regulations. In addition, any distributions by Holdco (which is now treated as a US corporation) would be subject to a 30 percent US withholding tax, unless reduced by an applicable income tax treaty. Finally, under this fact pattern, there would be many potential US tax filing obligations of which the foreign shareholder is unlikely to be aware and, if not complied with, the IRS would seem to have an unlimited statute of limitations under Section 6501(c)(8) to assess any taxes, penalties and interest.

The above clearly is not what Congress had in mind when it enacted Section 7874. Nonetheless, based on a literal reading of the statute, this arguably is the technically correct result. Whether the IRS would ever attack such a transaction on inversion grounds is a separate practical issue, but such a result is not beyond the realm of possibility.

BEPS: A Journey Into The Unknown

by Stuart Gray, Senior Editor, Global Tax Weekly

As the OECD rattles out more response papers as part of its base erosion and profit shifting (BEPS) work, business groups around the world are becoming increasing worried that the outcome could be an international tax system that is further fragmented, as opposed to one that is more cohesive.

Background

The OECD published its report "Addressing Base Erosion and Profit Shifting"[1] on February 12, 2013, although the report was more a set of observations than potential solutions to the problem of BEPS. It was noted that due to imperfect interaction between nations' tax regimes, multinationals have been permitted to legitimately structure their tax affairs using profit-shifting arrangements to pay tax on their profits at rates as low as 5 percent, against the corporate tax rates of as high as 30 percent in place on fiscally immobile businesses in some OECD member states.

"Many of the existing rules which protect multinational corporations from paying double taxation too often allow them to pay no taxes at all," the report stated.

The report conceded however – amid widespread criticism of multinationals' tax affairs – that the blame may not lie with businesses. It acknowledged a prevailing sentiment among business leaders that they have a responsibility towards their shareholders to legally reduce the taxes their companies pay.

"Some of them might consider most of the accusations unjustified, in some cases deeming governments responsible for incoherent tax policies and for designing tax systems that provide incentives for base erosion and profit shifting."

Furthermore, the report pointed out that multinationals often suffer at the hands of inadequate global tax rules, paying a greater share of taxes than should be required of them.

However, the OECD's BEPS Action Plan[2], released in July 2013, concentrates almost entirely on perceived underpayment of tax by multinationals, rather than problems associated with possible over-taxation.

The Action Plan lists 15 specific actions designed to give governments the domestic and international mechanisms to prevent corporations from paying little or no taxes. They include:

- Action 1: Address the tax challenges of the digital economy
- Action 2: Neutralize the effects of hybrid mismatch arrangements
- Action 3: Strengthen controlled foreign company (CFC) rules
- Action 4: Limit base erosion *via* interest deductions and other financial payments
- Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance
- Action 6: Prevent treaty abuse
- Action 7: Prevent the artificial avoidance of PE status
- Action 8: Assure that transfer pricing outcomes are in line with value creation: intangibles
- Action 9: Assure that transfer pricing outcomes are in line with value creation: risks and capital
- Action 10: Assure that transfer pricing outcomes are in line with value creation: other high-risk transactions
- Action 11: Establish methodologies to collect and analyze data on BEPS and the actions to address it
- Action 12: Require taxpayers to disclose their aggressive tax planning arrangements
- Action 13: Re-examine transfer pricing documentation
- Action 14: Make dispute resolution mechanisms more effective
- Action 15: Develop a multilateral instrument

OECD Secretary-General Ángel Gurría said that the Action Plan "marks a turning point" in the history of international tax cooperation. "It will allow countries to draw up the coordinated, comprehensive, and transparent standards they need to prevent BEPS. International tax rules, many of them dating from the 1920s, ensure that businesses don't pay taxes in two countries – double taxation. This is laudable, but unfortunately these rules are now being abused to permit double non-taxation. The Action Plan aims to remedy this, so multinationals also pay their fair share of taxes."

However, as many commentators have observed, bringing about change to the entire international tax framework is a huge undertaking, leading to doubts over whether it is achievable at all and worries that it could make a bad system worse if only partly implemented.

After numerous consultations with affected parties, both at the OECD's headquarters in Paris and through the publication of several discussion drafts, including on the taxation of the digital economy, transfer pricing, hybrid mismatch arrangements, and tax treaty abuse, the OECD on September 16, 2014, released its first recommendations for "a coordinated international response" to BEPS.

This was heralded as a major milestone for the OECD on the path towards successful completion of the BEPS initiative. Gurría said: "The G20 has identified base erosion and profit shifting as a serious risk to tax revenues, sovereignty, and fair tax

systems worldwide. Our recommendations constitute the building blocks for an internationally agreed and coordinated response to corporate tax planning strategies that exploit the gaps and loopholes of the current system to artificially shift profits to locations where they are subject to more favorable tax treatment."

Seven "deliverables"[3] have been released, of a total of 15 that will be finalized by December 2015, which aim to:

- Ensure the coherence of corporate income taxation at the international level, through new model tax and treaty provisions to neutralize hybrid mismatch arrangements (Action 2);
- Realign taxation and relevant substance to restore the intended benefits of international standards and to prevent the abuse of tax treaties (Action 6);
- Assure that transfer pricing outcomes are in line with value creation, through actions to address transfer pricing issues in the key area of intangibles (Action 8);
- Improve transparency for tax administrations and increase certainty and predictability for taxpayers through improved transfer pricing documentation and a template for country-by-country reporting (Action 13);
- Address the tax challenges of the digital economy (Action 1);
- Facilitate swift implementation of the BEPS actions through the development of a multilateral instrument to amend bilateral tax treaties (Action 15); and
- Counter harmful tax practices (Action 5).

However, not all of the deliverables contain concrete recommendations. The 2014 BEPS package consists of two final reports (Action 1 and Action 15), one interim report (Action 5), and four reports containing draft recommendations (Actions 2, 6, 8, and 13) which are agreed, and which will be finalized with further work on implementation and interaction with the 2015 deliverables.

The OECD's Committee on Fiscal Affairs is also considering a draft mandate for an international conference in 2015 for the negotiation of a multilateral convention to streamline the implementation of the BEPS Action Plan. This responds to frequently aired concerns that unilateral policies from nations acting in their domestic self-interest could de-rail the success of the BEPS plan (see below).

In an information brief on the proposals, the OECD said implementation of the measures will go a long way in addressing some of the key BEPS challenges. It said that model rules to neutralize hybrid mismatches will put an end to costly multiple deductions for a single expense or deduction in one country without corresponding taxation in another.

Meanwhile, the OECD's proposed response to harmful tax practices would focus on the "distortionary influence" of tax on the location of service activities, with progress to be sought on the transparency of tax rulings and also the development of a methodology to assess substantial activity in intellectual property (IP) regimes and other preferential regimes.

Treaty shopping and other forms of treaty abuse will be countered by a global undertaking that anti-treaty abuse provisions should be included in tax treaties.

Further, Action 8 (on ensuring transfer pricing outcomes are in line with value creation) will seek to apply the correct amount of tax on value-creating activities under transfer pricing rules, beginning with a focus on intangibles. A consensus was reached among nations that the artificial shifting of profits to no- or low-tax jurisdictions, for example through cash boxes, "can no longer be tolerated."

The OECD said work on transfer pricing rules will continue, including under Actions 9 and 10, in 2015.

"These measures across seven areas of the Action Plan are an important step forward in fighting BEPS. Viewed together with the 2015 deliverables, and once implemented to double tax treaties and domestic laws, the measures will ensure the coherence of corporate tax systems in a cross-border environment, introduce substance requirements in the area of tax treaties and transfer pricing, and ensure transparency while promoting certainty and predictability," the OECD said.

OECD working groups are now focusing on the eight remaining Action points, which the OECD has confirmed will be released in September and December, 2015:

- Action 3: on the design of effective CFC rules, to provide countries with tools to tackle the large amounts of untaxed profits booked offshore;
- Action 4: regarding rules that limit base erosion *via* interest deductions and other financial payments;
- Action 5: to continue work on preventing harmful tax practices, with a specific focus on preferential IP regimes;
- Action 7: on preventing the artificial avoidance of permanent establishment (PE) status – an issue highlighted by the OECD as of particular importance for developing and emerging economies;
- Actions 8–10: on ensuring outcomes from transfer pricing rules are in line with value creation, relating to intangibles, risks and capital, and other high-risk transactions;
- Action 11: on methodologies to collect data and carry out economic analysis on BEPS, including its spillover effects across countries;
- Action 12: on domestic rules requiring the disclosure of aggressive tax planning arrangements; and
- Action 14: on enhancing the effectiveness of dispute resolution mechanisms among tax administrations.

Business Concerns

Multinational businesses are mostly in favor of the general thrust of the BEPS project, supportive of improvements to the international tax framework and reductions to compliance risks for companies operating in more than one jurisdiction. However, with the way the project is unfolding, several business groups and advisory firms are warning that the outcome could be more chaos and uncertainty.

Following the release of response documents on four further areas of the BEPS Action Plan in the past couple of weeks, including on PE rules, the prevention of treaty abuse, dispute resolution mechanisms, and low value-adding services, the International Chamber of Commerce (ICC) reaffirmed its "active engagement" in the second phase of the BEPS project – but it also repeated its call for a coordinated and consistent approach to tax law changes 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 said it applauds the G20's approach to modernize international tax rules and strongly believes harmonized, transparent, and predictable tax regimes are key for economic growth. However, while the ICC agrees that tax fraud and tax evasion should be stopped, it contends that this should be clearly distinguished from legal tax management and planning. "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," the Chamber said.

The ICC also 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."

It isn't the first time that the ICC has issued such a warning. During meetings with officials from the United Nations towards the end of last year, members of the ICC Commission on Taxation said that, while they support the BEPS Action Plan, they are concerned that it may inadvertently bring about severe collateral damage for compliant tax-paying companies of all sizes as a result of well-meaning measures undertaken unilaterally by states to mitigate double non-taxation.

The ICC called for coordination between governments in implementing the BEPS project deliverables to avoid inconsistencies between national tax systems. Uncoordinated actions could lead to increased risks of double taxation, more unfair competition, and increased uncertainty over the tax consequences of cross-border transactions, the ICC said, noting that such would impede and distort international trade and investment decisions.

The ICC said that increased double taxation is unavoidable, but said that this foreseeable risk can be mitigated through a solid dispute resolution

mechanism, with mandatory agreements to force competent authorities to agree on how to tax certain transactions, or – as put simply by the ICC – how to split the "tax cake."

The ICC called on policymakers to clearly distinguish illegal activities from the use of lawful methods of tax planning and tax management, provided that they are aligned with commercial and economic activities. It said: "Because taxes can only be levied on the basis of laws and because countries design their own tax regimes in pursuit of differing macro-economic policy objectives, ICC underscores that companies are often encouraged to use the tax planning measures made available to them by individual governments and should not be condemned for choosing the least costly route."

And it is not just the companies under the ICC's umbrella that the OECD is facing an uphill battle to convince of the merits of its BEPS plan. Two global business surveys conducted by advisory firm Grant Thornton have revealed that businesses are skeptical about the success of the BEPS project and want greater clarity as to what is acceptable and unacceptable tax planning, even if this provides less opportunity to reduce tax liabilities across borders. The survey of 2,500 businesses in 34 countries revealed that only 23 percent of respondents think the BEPS project is likely to be successful.

Francesca Lagerberg, global leader of tax services at Grant Thornton, said: "Many of the objectives of the BEPS Action Plan are valid. … The concern is that the scope is so broad it touches almost every area of international taxation. It's as if in an attempt to get rid of some traffic black spots, the authorities have decided to overhaul the entire road network and require every driver to modify their car."

"Businesses need things in black and white," said Lagerberg. "They have a responsibility to their investors and shareholders to keep costs down. Simply telling them to pay their 'fair share' is not a viable alternative to a clear set of rules or principles."

"We applaud the OECD in taking on this much-needed project but we caution the business community that finding a global solution will be very difficult and will not be speedy," she concluded.

Unilateralism

The ICC has pointed to the UK Government's plans to introduce a 25 percent "Diverted Profits Tax"[4] (DPT) from April 2015 to tackle "artificial" profit shifting arrangements as a particularly glaring example of a Government jumping the BEPS gun. Paul Morton, Vice Chair of the ICC's Commission on Taxation, declared: "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."

Indeed, the UK Government's decision to create the DPT earned it a rebuke during a parliamentary debate earlier this month, with Members of Parliament (MPs) warning that the measure is premature and threatens to destabilize the UK corporate tax system.

MP Shabana Mahmood told the House of Commons on January 7: "We anticipated that [the Government's] preferred way of proceeding on BEPS would be to await the final reporting in September before thinking how to go further. They have of course moved a little more quickly with the [DPT]."

While welcoming the general aim of the measure, MP Ian Swales criticized the Government for bringing uncertainty in the tax system through its proposed DPT. "Certainty is one of the functions of a good tax system, but with the DPT we are straying into an area of high uncertainty about how the tax will be assessed and paid," he said.

MP Nigel Mills also raised the issue of the DPT potentially overriding the agreements the UK has secured on the avoidance of double taxation, although Economic Secretary to the Treasury Andrea Leadsom assured him that this won't be the case because the scope of the UK's tax treaties is limited to income tax, capital gains tax, and corporation tax, and asserted blandly that the DPT isn't any of these.

Businesses and international tax experts might need some more convincing that the UK Government's arguments are sound on this front, however. Indeed, the tax treaty issue was one of a number of points raised by the United States Council for International Business (USCIB) in a critique of the DPT last year. And ominously perhaps for the UK economy, the Council warned that the DPT would, if implemented, have a major impact on US-based multinational companies.

"The UK's proposal jumps the gun on ongoing discussions concerning the scope of taxation rights on non-resident companies," said USCIB Vice President and International Tax Counsel Carol Doran Klein. "USCIB believes that the UK's unilateral assertion of the right to tax so-called diverted profits is an undisguised attempt to bring more tax revenue into the UK, whether consistent with international norms or not."

"The goal of the multilateral discussions on BEPS is to reach consensus solutions to identified international tax issues," she stated. "Unilateral assertions of taxing jurisdiction by any country increase the risk that other countries will simply abandon the process and act unilaterally."

As the proposal would override existing tax treaties, she warned the measure would "increase the likelihood of double taxation on companies, which will have a negative effect on cross-border trade and investment."

"It is intended to apply when there is no PE under the relevant rules," Klein said. "Companies should be free to structure their affairs taking into account

the rules as they are. If they do not have a PE under those rules, then they should not be subject to tax on their business profits. Countries should not be able to disregard agreed-upon rules simply because they do not like the outcome."

The UK certainly isn't alone in attempting to legislate against BEPS before the OECD's recommendations are fully formed, which won't happen until the end of 2015 under the OECD's current timetable. Ireland famously dispensed with tax rules which facilitated the infamous "double Irish" tax arrangement in the last Government Budget, while France has issued guidance on new interest deduction rules. Both measures are thought to have been made in response to the ongoing BEPS project.

Action has also been approved at EU level to tackle the use of hybrid loan arrangements by corporate groups, with changes to the Parent-Subsidiary Directive formally adopted by the EU Council on July 8, 2014, to prevent the double non-taxation of dividends distributed within corporate groups deriving from hybrid loan structures.

Transfer pricing – a key plank of the BEPS Action Plan and a hugely complex area of international taxation – is another area where individual countries seem to be taking matters into their own hands before any firm recommendations and guidance on the issue have emerged from the OECD. A 2014 survey by Ernst & Young of at least 400 senior tax executives from large public and private companies across 29 countries found that the vast majority of companies headquartered in the US expected increased scrutiny of their transfer pricing practices in the short-term as a result of the BEPS plan.

Developing Countries

A major factor that could mitigate against the creation of a level playing field in international corporate taxation is the lack of administrative capacity in developing countries to introduce the necessary changes. Naturally, this is a scenario that the OECD is hoping to avoid, so resources and technical assistance are being provided to help developing nations meet the new requirements. As a result, the OECD has invited ten developing nations to participate in the meetings of its Committee on Fiscal Affairs and will establish five regional networks, in collaboration with regional tax organizations, to provide support and capacity-building during the development of BEPS proposals and to support the implementation of recommendations.

The OECD has confirmed that its new regional network in Africa will be established in close cooperation with the African Tax Administration Forum; in Latin America and the Caribbean, its regional network will be established with the support of the Inter-American Center of Tax Administration; its Asian regional network will be launched in cooperation with the Study Group on Asian Tax Administration Research; a regional network for Francophone countries will be established with support from CREDAF (*Centre de rencontre et d'études des dirigeants des administrations fiscales*); and a final regional network for Central Europe and the Middle

East will be supported by the IOTA (Intra-European Organisation of Tax Administrations).

The OECD said: "Not only will developing countries be able to directly input and gain an improved understanding of the BEPS process, but OECD members and BEPS Associates will also be exposed first-hand to accounts of the specific perspectives of, and challenges faced by, developing countries."

It said: "Supporting capacity building in developing countries on BEPS issues is a priority. The regional networks will play an important role in the development of toolkits needed to support the practical implementation of the BEPS measures and the other priority issues for developing countries (tax incentives and comparables) which are outside the BEPS project. Each will be a forum for interested developing countries to discuss participation in the work on the multilateral instrument under Action 15 of the BEPS project."

"In addition to the regional networks, the OECD Global Relations Tax Programme and the Tax and Development Programme provide additional platforms for engagement and dialogue on BEPS issues – through demand-led training events and bilateral country programs which help put in place stronger international tax rules and administrative processes. All these initiatives will be coordinated with the International Monetary Fund, the World Bank Group, and the United Nations to ensure effective and efficient support to developing countries."

Starting this month, developing countries' representatives will attend the meetings of the relevant subsidiary bodies, such as Working Party 1 on tax treaties, Working Party 2 on tax policy and statistics, Working Party 6 on transfer pricing, Working Party 9 on consumption taxes, Working Party 11 on aggressive tax planning, the Forum on Harmful Tax Practices, and the Task Force on the Digital Economy.

Regional network meetings are planned for February to May 2015, including the Global Forum on Transfer Pricing in Paris on March 16–18, followed by a plenary of the Task Force on Tax and Development, which will be entirely dedicated to BEPS issues in the context of developing countries. "By participating directly in the BEPS Project, developing countries will be able to present their perspectives, participate in the decision-making process [and] play a leading role in the regional networks and in the development of toolkits needed for the practical implementation of the BEPS outputs," the OECD concluded.

Time will tell whether these measures will be effective, but surely the fact that there are considerably more than ten countries classified as "developing," and that the OECD isn't helping all of them, might mean that significant holes will be left in the new international tax system post BEPS.

The United States

Then there's America's apparent reticence with regard to the BEPS project.

It is noticeable that the US Congress has been largely silent throughout the life of BEPS, but those statements that have been issued have tended to criticize the OECD rather than praise it. In June 2014, for example, as the OECD held a BEPS conference in Washington DC, Dave Camp (R – Michigan), then Chairman of the House Ways and Means Committee, and Orrin Hatch (R – Utah), the senior Republican on the Senate Finance Committee (and now its Chairman), expressed their concern that the project is "being used as a way for other countries to simply increase taxes on American taxpayers."

"When foreign governments – either unilaterally or under the guise of a multilateral framework – abandon longstanding principles that determine taxing jurisdiction in a quest for more revenue," they stated, "Americans are threatened with an unlevel playing field. Such actions put pressure on the US Government to respond by asserting taxing authority over foreign activity generating US-source income on similar grounds."

"In addition to the aggressive actions by some foreign countries to levy more taxes on US taxpayers before a consensus has been reached," Camp and Hatch added, "the process established by the OECD raises serious questions about the ability of the US to fully participate in the negotiations."

"The extremely ambitious time frame for conclusion of the 15 different work plans limits [Congress's] ability to review, analyze, and comment on the rules being proposed," they continued. "The issues under negotiation are complex and can have far reaching and negative consequences for the competitiveness of US workers. We are willing to work through these issues until an international consensus exists and we have achieved the right answer, but we will not be rushed into a bad outcome."

They gave their full support to the US Treasury in the BEPS negotiations, while looking for it to consult with Congress as the BEPS discussions proceed. However, they reiterated that "the focus needs to return to BEPS – not on ways foreign countries can raid the American Treasury."

It is the Democrats, rather than the Republicans, which are the party governing the US, and presumably the party line is one of support for BEPS. However, even the Democrats have not been very forthcoming on the subject, perhaps indicating a general level of ambivalence to it in Washington. Indeed, with the Republicans, who as the traditional pro-business party must be assumed to be hostile to BEPS, having gained a congressional majority, President Obama is going to have extreme difficulty passing pro-OECD policies over the remaining two years of his tenure even if he wants to.

Predictably, the leaders of America's largest companies are also afraid that BEPS could lead to a series of negative unintended consequences which could significantly outweigh any likely positive outcomes.

In a letter to Treasury Secretary Jack Lew on September 18, 2014, Louis R. Chênevert, the Chair

of the Business Roundtable's (BR's) Tax and Fiscal Policy Committee, confirmed that "the US business community has been particularly concerned that the BEPS project risks increasing costs, uncertainty, and barriers to trade and investment, such as duplicative taxation."

While Chênevert appreciated "the Treasury's willingness to listen to the concerns of the business community regarding key issues in the OECD's 2014 deliverables," he said that "the BR is aware that some of the more contentious issues of 2014 have been reserved and that these and a number of other contentious issues remain to be addressed in 2015."

"These issues present the same challenges for the US business community and again risk double taxation, increased compliance costs, and the disclosure of proprietary operating information to competitors," the BR added, "all of which result in greater uncertainty and lower returns to cross-border business investment."

To increase the likelihood of success, the BR believes it is essential that, for example, "there is a focus on improving dispute resolution mechanisms and obtaining adherence to them by all participants. Better dispute resolution mechanisms are not a panacea, however; the best dispute resolution is clear rules that prevent disputes from occurring."

It also particularly recommended that "the release of company-specific information provided under country-by-country reporting [which could obligate corporate taxpayers to disclose data by jurisdiction on the allocation of group profits] is controlled under treaty arrangements to maintain its confidentiality."

Conclusion

And what of the OECD's response to these anxieties? Is the Paris-based body similarly worried that unilateral moves to address BEPS has the potential to undermine the entire project? While it hasn't replied to the likes of the ICC, the BR, and Camp and Hatch directly, the answer to that must be yes, for, as the Director of the Centre for Tax Policy and Administration at the OECD, Pascal Saint-Amans said – as diplomatically as he could – in response to questions about the UK DPT, the whole "philosophy" of the BEPS project is based on multilateralism.

"I think the UK initiative of [DPT] is extremely interesting as it shows the relevance of the BEPS Action Plan," he observed. "What we wish, of course … is that this be addressed through multilateral action. So we hope that the UK move, which again shows a very strong political stake in these international tax topics, will be compatible [with the BEPS recommendations]."

"Hope" being the operative word here, for there doesn't seem to be an awful lot that the OECD can do to prevent the spread of unilateral measures against BEPS, having no powers invested in it to compel nations to act in accordance with its recommendations. In which case, taxpayers' worst fears

– of a chaotic and unsolvable international tax jigsaw puzzle – may well be borne out.

Endnotes

1. http://www.oecd.org/tax/addressing-base-erosion-and-profit-shifting-9789264192744-en.htm
2. http://www.oecd.org/tax/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm
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4. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385741/Diverted_Profits_Tax.pdf

United States Taxation Of Income From International Shipping – Compliance For Filers Claiming An Exemption By Treaty Or Under Section 883

by Stephen Flott and Joseph Siegmann, Flott & Co

Contact: sflott@flottco.com, Tel. + 703-525-5110; jsiegmann@flottco.com, Tel. + 703-525-5110

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

As discussed in previous articles, any corporation earning US source gross transportation income (USSGTI) during a tax year is required to file a US tax return using Form 1120-F. The last article discussed US tax filings for corporations that pay tax under Section 887. This article discusses tax filings for corporations claiming exemption from the tax either pursuant to the terms of a bilateral tax treaty or the exclusion provided by Section 883.

The third article in this series (see *Global Tax Weekly*, Issue 105, November 13, 2014) explains the differences between what is considered transportation income subject to tax and what is qualified income for exemption purposes. Exempt filers use the qualified income rules to determine their USSGTI. Unlike taxpayers, treaty and Section 883 filers only calculate their USSGTI at the end of each tax year in preparation for filing their tax returns, not quarterly as those subject to tax do.

A Form 1120-F must be filed within five and a half months of the end of a corporation's tax year. Ordinarily, this will be June 15 of the following year. A corporation with a fiscal year end, say, of June 30, has to file its Form 1120-F by December 15 of the same calendar year. The corporation may file a Form 7004 to request an extension of time to file its Form 1120-F.

Those corporations taking advantage of a bilateral tax treaty for their exemption must include Form 8833, Treaty-Based Return Position Disclosure, with their Form 1120-F. This form is required to disclose the country whose tax treaty is relied on along with the article of the treaty that provides the exemption. The form also and most importantly requires the filer to

identify the limitation on benefits (LOB) article in the applicable treaty and explain how the corporation is entitled to claim benefits under the treaty.

LOB articles vary in complexity from the rather straightforward (*e.g.*, Cyprus) to the very complex (*e.g.*, the UK). They are designed to ensure that a corporation seeking to use a bilateral treaty is truly qualified by its ownership, operation or tax situation in the treaty country to benefit from it. Accordingly, Form 8833 requires the filer to identify the provision(s) of the LOB article on which it relies and the facts and circumstances that support its right to use the treaty. Lastly, Form 8833 requires the corporation to describe the nature and amount of income for which it claims a benefit under the treaty. There is a USD10,000 penalty for the failure to file Form 8833 with Form 1120-F when treaty benefits are claimed.[1]

Those claiming the exclusion pursuant to Section 883 must file Form 1120-F and include Schedule S, Exclusion of Income from International Operation of Ships or Aircraft Under Section 883. As stated above, the calculation of USSGTI will be the same for all claiming exemption from tax.

Schedule S requires the filer to identify the country and basis of the equivalent exemption being relied on (*e.g.*, domestic law, exchange of notes or income tax convention);[2] the gross income by category listed in Treasury Regulation §1.883-1(h)(2); and which of the stock ownership tests in Treasury Regulation §1.883-1(c)(2) the corporation satisfies.[3]

Corporations relying on qualified shareholders for their Section 883 exemption must disclose the number of qualified shareholders on which they are relying and the percentage of stock ownership by country of residence of the qualified shareholders. The total stock percentage owned by these qualified shareholders must exceed 50 percent of the corporation's stock. The identities of the qualified shareholders relied on for this test are not required, just the countries of residence and percentage of ownership.

All corporations relying on Section 883 must obtain and keep ownership statements that describe their ownership structure from the qualified shareholders who own more than 50 percent of their shares to the filing corporations, including intermediaries.[4] Ownership statements must be signed under penalties of perjury. In a simple example, a corporation organized in the Marshall Islands owns a ship that calls at the US during a tax year. It is owned in turn by another corporation which is in turn owned by one individual who is a qualified shareholder. The Marshall Islands corporation must obtain ownership statements from its shareholder corporation and from the qualified shareholder who owns the shareholder corporation.

Ownership statements are not filed with the Form 1120-F. They must be prepared and signed and placed in the corporation's records before the return is filed. The statements must be provided to the IRS within 30 days of being requested. Otherwise, they remain under the control of the filing corporation.

Ownership statements are valid for three tax years unless there is a change in ownership. If no change in ownership occurs, the statements have to be renewed every three years. New ownership statements must be prepared if there is a change in ownership. For example, assume the qualified shareholder in the previous example brings in a partner a year after he acquires the vessel. The new partner acquires 50 percent of the shareholder corporation. A new set of ownership statements must be prepared if the vessel calls at the US in a future year.

Ownership statements must list any intermediary entities and the number of shares owned by the qualified shareholder and each of the intermediary entities. Each intermediary entity must prepare an intermediary ownership statement signed by an authorized representative of the intermediary entity under penalties of perjury attesting to the intermediary entity's ownership interest in its subsidiary. For example, if there are five intermediary corporations between the ship-owning corporation and its qualified shareholders, five intermediary ownership statements must be obtained.

Publicly traded corporations have their own section of Schedule S in which to provide the details of their qualification for using this basis for exemption. Essentially, the Schedule requires them to report each of the elements required to satisfy the exemption. It is important to note here that the closely held rule that applies to publicly traded corporations (see the sixth article in this series (*Global Tax Weekly*, Issue 110, December 18, 2014) in which this rule was discussed in detail) requires ownership statements to be obtained from enough 5 percent or greater shareholders so that their shares combined with the total percentage of shares owned by less than 5 percent shareholders prevent non-qualified shareholders from controlling the corporation. These ownership statements are the same as described for corporations that are not publicly traded.

Endnotes

1 Section 6712 imposes the penalty for a taxpayer that fails to meet its obligation under Section 6114 to disclose a treaty-based tax position.

2 *See* the fifth article in this series (*Global Tax Weekly*, Issue 108, December 4, 2014) for a discussion of these two kinds of exemptions. It is not clear why Income Tax Convention is included as a category since if the corporation is taking a treaty-based exemption, it would file a Form 8833, not a Schedule S.

3 There are three stock ownership tests – the publicly traded test, the CFC stock ownership test, and the qualified shareholder test. The CFC stock ownership test, which only applies to foreign corporations controlled by US persons, has not been (and will not be) discussed in these Articles. The other tests were covered in the fifth and sixth articles in this series.

4 The regulations mandate that qualified shareholders own their shares for more than 183 days of the tax year for which an exemption is claimed. This applies to any intermediary corporations in an ownership structure and to the qualified shareholders.

Topical News Briefing: Overcoming The Barriers

by the Global Tax Weekly Editorial Team

Global trade is a hugely complex animal, and it is difficult to diagnose sometimes whether it is in good health, *i.e.*, largely free from restrictions, or ailing.

Judging by the number of trade spats that the US gets involved with over alleged restrictive or unfair practices on the part of foreign governments, you'd think that world trade was something of a jungle, to be negotiated at one's peril. The latest example, as featured in this issue of *Global Tax Weekly*, is the US Commerce Department's decision that anti-dumping and countervailing duties on imports of light trucks and tires from China, and solar cell products, also from China but from Taiwan too, are justified. Indeed, since the formation of the World Trade Organization (WTO) two decades ago, the US has been the complainant in 107 trade disputes, and the respondent in 123 cases – the most of any other territory on both counts.

The WTO itself certainly thinks that the free trade climate has deteriorated since the financial crisis began in 2008. Presenting his annual report, "Developments in the International Trading Environment," to the Trade Policy Review Body on December 8, WTO Director General Roberto Azevêdo said that "in a climate of economic uncertainty, the continued accumulation of trade-restrictive measures poses a clear risk." The report showed that, of the 2,146 trade-restrictive measures introduced by WTO members since October 2008, only 508 (24 percent of the total) have been removed. What's more, members applied 168 new trade-restrictive measures during the period between mid-November 2013 and mid-October 2014, or just over 15 new measures per month.

Then again, a retrospective look through the news archive over the same period suggests things aren't quite as bleak. In fact, quite a lot of progress towards dismantling trade taxes and other barriers to trade has been made recently. In this issue we see China, Japan, and South Korea attempting to make further progress on their proposed trilateral free trade agreement (FTA). South Korea's Deputy Prime Minister also revealed that utilizing the country's FTAs will help to secure future economic growth. The expanded Trans-Pacific Partnership, which includes the US, is a good way towards completion, and the proposed Transatlantic Trade and Investment Pact between the US and the EU, and work towards the ambitious Asian Economic Community, suggests that momentum is swinging towards more free trade, rather than more protectionism. Although, the preference for these regional super-agreements indicates, perhaps, that few believe a genuine global agreement is achievable – as evidenced by the lack of interest in finishing the Doha Round.

Furthermore, trade disputes are relatively rare given the mind-boggling number of products and services

traded around the world at any given moment and their value. The trading relationship between the US and the EU demonstrates this. Washington and Brussels constantly seem at loggerheads over one trade issue or another, the latest being tax breaks offered by Washington state to encourage Boeing to continue manufacturing aircraft in the state in the long-running dispute about subsidies granted to Boeing and its European rival Airbus. WTO figures say that the US has launched 19 complaints against EU trade practices, while the EU has complained about the US 33 times. These numbers sound quite high, until one realizes that total trade in goods and services between the two territories was just over USD1 trillion in 2013, or about USD2.7bn a day.

So, as anybody involved in the import/export business would no doubt say, the global trading system is far from perfect, but things do seem to be getting better by degrees.

Greek Voters Seek End To Austerity With New Gov't

The election victory of the Coalition of the Radical Left in Greece, commonly known as Syriza, has raised concerns that the Party may unwind a number of austerity policies that have been negotiated with international lenders over several years in an attempt to stabilize the nation's finances.

Syriza secured 36.3 percent of all votes, but failed to secure an absolute parliamentary majority by just two seats. Syriza became increasingly popular in 2012 on the back of discontent among taxpayers surrounding the tax and spending policies the nation has adopted in exchange for the financial assistance package from the troika of international lenders – the International Monetary Fund, the European Central Bank, and the European Commission.

Although the previous Government blocked many recommendations put forward by the troika (particularly in the area of value-added tax (VAT) reform), it has sought to deliver on the target of achieving a fiscal adjustment worth 10 percent of gross domestic product over the period 2009 through 2014.

Greece's 2015 Budget was hailed by the previous Government as the nation's first balanced budget in recent history, although this claim was later debunked by the European Commission. Nevertheless, with the additional inclusion of a VAT increase on hotel stays from 6.5 percent to 13 percent, the target is considered achievable and the nation was considered close to being allowed to exit the policy grip of the troika.

Concerns have now been raised that the election of Syriza could undo much of the fiscal consolidation progress of recent years. In an immediate response, the President of Germany's Bundesbank, Jens Weidmann, said: "I hope the new Government won't call into question what is expected and what has already been achieved."

UK Treasury May Push Back DPT Implementation

Speaking at a recent conference on the UK's plans for a Diverted Profits Tax (DPT), hosted by the Oxford University Centre for Business Taxation earlier this month, Mike Williams of the UK Treasury discussed the ongoing development of legislation for the new levy and speculated that the implementation date of April 2015 could be missed.

Williams, who is Director of Business and International Tax at the UK Treasury, began by outlining the efforts that the UK is undertaking in the area of base erosion and profit shifting (BEPS) and underscored the UK's continued commitment to supporting the OECD's work.

Turning to discuss the UK's plans to introduce a DPT to tackle activities that erode the UK tax base

through "artificial" arrangements, he said: "I think it's also clear as a result of our participation in the BEPS project that some countries maybe have more protection under their existing arrangements than we have. If you talk to the French about their work on transfer pricing (TP), as well as arguments based on the TP Guidelines, they have the ability under French law to claim that there may have been abuse of law and to use that as one of their challenges to [TP] arrangements they regard as offensive."

Williams noted the debate among UK Members of Parliament whether the UK Government had jumped the gun with its plans for a DPT, seen as the UK acting alone before the conclusion of the BEPS project. He said: "It has become evident that some countries have in a sense helped themselves more to provide domestic protection than we have, and against that background I think it's not surprising that the Government has decided to do the same. Equally, I think it's entirely appropriate here – as in other aspects of life – to try and help yourself, before you try through unilateral action to try to get others to help you. And I think by doing that you, indeed, perhaps you put yourself in a better position to justify asking others to work with you to solve a problem. So I think, in the Government's view, what we've done is very much consistent with the BEPS process."

He noted also that the UK had decided to hold off on action in other areas, such as waiting out the OECD's work on interest deductions (under Action 4). He added that, in designing the legislation for the DPT, the Treasury has been keen to ensure consistency with EU law; consistency with treaty law; and consistency with the Government's long-standing obligation to avoid double taxation. He pointed out that the UK Government had received expert advice on its plans, and, in fact, in a subsequent presentation, Philip Baker QC, of Field Court Tax Chambers, debunked claims that the DPT could be found unlawful.

Williams said: "We've been clear that at no point are we trying to tax what is beyond our fair share. We're not trying to say, for example, that profits from economic activities carried out in California are profits that should be taxed in the UK. Nor if you have a diversion of profits from the UK, which is accompanied by a diversion of tax in, say, France or Germany, are we saying we kind of … scoop the pool – we're not saying we got there first, or we got there in a different way from France and Germany and we therefore get the lot of the profits. All we're saying is we should get our fair share of those profits."

"In essence, we're focusing on UK activities, where, in effect, we're taking the view that the ability to tax those profits shouldn't be thwarted by what you might call 'contrivance.' … Equally, there are elements in the DPT that recognize that if you have got UK consumers you may need to do UK activities, and structuring those UK activities to fragment them or to put in contrivance may well then trigger the DPT."

In his concluding remarks, Williams said there are two areas that the Treasury is to make changes to the legislation, based on feedback received so far.

First, on the notification requirement he said: "Someone asked me yesterday had we included that as a deliberate attempt to enhance transparency in the general sense. The answer to that is no; that is there to generate information in relation to the possible charge of the DPT. I think it's reasonably clear that that is probably drawn too broadly. I don't think it's in anyone's interest that that is drawn too broadly. You know there is no advantage in businesses putting together a lot of information, which is sent to HMRC, for HMRC to look at and then decide there isn't an issue. We need to avoid that, just as we needed to avoid that when we introduced the disclosure of tax avoidance schemes (DOTAS) provisions. And again nor is this intended to be some sort of parallel DOTAS process; it's there to provide information to assist with the levying of [DPT]."

"Another area that we're looking at is the issue of interest. We have an exclusion for loan relations at the moment. I think that probably doesn't go far enough. On the other hand, clearly though, we can't say that any set of arrangements that has a loan relationship or two loan relationships in it is automatically excluded from the rules. So we need to find a way of addressing the exclusion of interest from this, in a way that doesn't provoke abuse, but, I think, given the time that we have, it's clear we can improve on that area." He concluded that "there are inevitably other areas that we're looking at."

In his final remarks, he said: "Equally … the start date from April 2015, I wouldn't be surprised if ministers change that. But again we're hoping to be quite clear, given the limited time, in signaling where we think there is scope for significant change – and where frankly we are doubtful as to whether ministers will feel change is appropriate."

France, Austria Seek EU FTT Breakthrough

France and Austria have proposed the adoption of a broader financial transaction tax (FTT) with a lower rate, in an attempt to push forward delayed plans for an EU FTT with eight other member states.

Eleven member states had committed to develop an FTT, but Slovenia is thought to have dropped out of the talks, having not signed a joint statement in May 2014. This statement committed to the implementation of the levy, which was to be limited to shares and some derivatives, from January 1, 2016. The EU 11 group, however, missed a self-imposed deadline at the end of last year, and the Finance Ministers of France and Austria have sought to spur efforts to agree a revised levy.

Michel Sapin, France's Finance Minister, and Hans Jörg Schelling, his Austrian counterpart, have addressed the other member states in a letter that calls for the appointment of one member state to steer the talks towards a consensus. "This fresh direction would be based on the assumption that the tax should have the widest possible base and low rates," the two ministers wrote.

Scottish Tax Devolution Legislation Unveiled

The UK Government has published draft legislative clauses that would give the Scottish Parliament powers over income tax, air passenger duty (APD), and the Aggregates Levy. The deal would also include a value-added tax (VAT) revenue-sharing arrangement.

The clauses are the result of the recommendations made by the Smith Commission, a group set up by UK Prime Minister David Cameron in the wake of the "no vote" in the September 2014 Scottish independence referendum. Chaired by Lord Smith of Kelvin, the Commission was tasked with brokering a cross-party deal on devolution.

Lord Smith's report, issued in November 2014, recommended that the Scottish Parliament be given control over income tax rates and bands. Under the draft clauses, the UK and Scottish Parliaments would share control of income tax policy. Members of Parliament (MPs) representing constituencies across the whole of the UK would continue to decide the UK's Budget, including income tax. Within the new framework, the Scottish Parliament would have power to set the rates of income tax and the thresholds at which these are paid for the non-savings and non-dividend income of Scottish taxpayers. There would be no restrictions on the thresholds or rates the Scottish Parliament could set.

All other aspects of income tax would remain reserved to the UK Parliament at Westminster, including the imposition of the annual charge to income tax, the personal allowance, the taxation of savings and dividend income, the ability to introduce and amend tax reliefs, and the definition of income. HM Revenue & Customs (HMRC) would continue to collect and administer income tax. The Scottish Government would be required to reimburse the UK Government for additional costs arising as a result of the implementation and administration of these powers. The Scottish Government would receive all income tax paid by Scottish taxpayers under this scheme, and there would be a corresponding adjustment in the block grant (the portion of revenues provided by the UK Treasury each year to fund Scottish Government operations).

The power to charge tax on passengers departing from Scottish airports would likewise be devolved. The Scottish Government would be free to make its own arrangements with regard to the design and collection of any tax intended to replace the APD. Once a number of legal issues in relation to the Aggregates Levy have been resolved, the UK Government would also devolve the power to charge tax on the commercial exploitation of aggregate in Scotland. In both cases, the block grant would be adjusted, and the Scottish Government would be required to reimburse the UK Government for any costs incurred in "switching off" the charges.

Also proposed is that the receipts raised in Scotland from the first 10 percentage points of the standard VAT rate be assigned to the Scottish Government's budget. These receipts would be calculated

on a verified basis, to be agreed between the UK and Scottish Governments, with a corresponding adjustment to the block grant. The UK would also assign 2.5 percentage points of the revenue attributable to Scotland from the 5 percent reduced VAT rate. VAT rates would continue to be set at a UK-wide level.

According to Cameron, the upcoming UK general election will not affect the implementation of the Smith Commission clauses. "Be in no doubt, whoever forms the UK government after the May 7 [election], these new powers are guaranteed: the Scottish Parliament will have more control of its tax and spending, making it one of the most powerful devolved parliaments in the world," he said.

The UK's Scottish Secretary, Alistair Carmichael, commented: "The UK Government has kept its end of this historic bargain and delivered the next chapter in devolution for Scotland. For the first time, it has backing across the political spectrum with all of Scotland's main parties committed to the package of new powers for Scotland. That means this is an agreement which is truly built to last. It also strikes the right balance of powers for Scotland as part of the UK."

Scotland's First Minister, Nicola Sturgeon, said that while the legislation published does not represent the views of the Scottish Government, it does represent some progress. She criticized the proposed welfare provisions in particular as a "significant watering down" of what was put forward by the Smith Commission.

Reflecting on the proposals, Hugh Aitken, CBI Scotland Director, said: "Scottish businesses want to see devolution that supports a strong business environment and encourages growth for everyone. Business leaders are pragmatic about these new powers and want to work with both governments on the technical details to make the changes easier to manage. It is encouraging that the process has so far hit its milestones, and businesses will now want to see clear timetables for implementation to help commercial planning and provide investment certainty."

US Announces New Duties On Chinese Products

In two concurrent decisions affecting China, the US Department of Commerce (USDOC) has confirmed preliminary anti-dumping duties (ADs) on Chinese passenger vehicles and light truck tires, and the US International Trade Commission (USITC) has affirmed injury to domestic manufacturers from Chinese and Taiwanese solar product imports.

In relation to solar products, last month the USDOC announced its affirmative final determinations that imports of solar products from China have been sold in the US at dumping margins ranging from 26.71 percent to 165.04 percent, while the same products from Taiwan have also been sold in the US at dumping margins from 11.45 percent to 27.55 percent. In addition, it was decided that imports of those products from China have received unfair subsidies that should be subject to countervailing duty (CVDs) ranging from 27.64 percent to 49.79 percent.

As a result of the USITC's new affirmative determinations, it has been confirmed that the USDOC will now issue final CVD orders on imports of the products from China, as well as final AD orders on imports from China and Taiwan.

US investigations had already led to rulings in December 2012 for duties averaging about 31 percent on panels made from Chinese solar cells but, at the end of last year, it was alleged that Chinese companies were avoiding those duties by assembling panels from solar cells produced elsewhere, especially in Taiwan, even if those cells are put together from components originating in China.

The value of US imports of solar products from China had increased from USD639.5m in 2009 to some USD3.1bn in 2012, but, in 2013, after the introduction of the duties, such imports from China and Taiwan were still valued at a total of USD2.15bn.

A petition by SolarWorld America Industries, Inc., the largest manufacturer of solar power systems in the US, stated that China is continuing to sell below US market prices to seize market share, and it has commended the USITC decision, saying that it will allow the industry "to move forward with additional certainty and will likely mean additional investment and hiring in the future."

However, others are not convinced and have pointed to the future effect on the US solar market. Environmental organizations are concerned that the decisions will prevent a reduction in the cost of solar panels and slow the move away from the use of fossil fuels.

Jigar Shah, President of the Coalition for Affordable Solar Energy, feared that the AD and CVD decision

"will raise the price of solar power for American consumers and hurt American solar companies. It's particularly troubling that US trade policy is working to increase the cost of solar products through tariffs when we know that more affordable solar energy creates more American solar jobs."

Meanwhile, China's Ministry of Commerce (MOFCOM) reiterated its belief that the US has disregarded the facts and legal precedent on country of origin trade rules, is abusing trade remedy measures, and will cause serious damage to the interests of Chinese companies in the sector and US downstream users. MOFCOM said that the US had further exacerbated the trade dispute and confirmed that China will consider the further exercise of rights at the World Trade Organization (WTO) to safeguard its interests.

Separately, the USDOC has also announced that it will place preliminary ADs on imports of Chinese passenger vehicle and light truck tires, in addition to the preliminary CVDs it had announced last November.

In a case involving imports estimated to total USD2.1bn in 2013, up from only USD968m in 2011, the USDOC began AD and CVD investigations in July last year. These investigations were instigated by the United Steelworkers Union (USW), which represents tire workers, and follow a previous USW complaint and the US imposition of ADs and CVDs on similar Chinese tires, which expired in 2012.

In November 2014, the USDOC issued a preliminary finding that Chinese tire producers were receiving subsidies from the Chinese Government and imposed CVDs ranging from 12.5 percent to 81.29 percent depending on the Chinese tire manufacturer. It has now also made a preliminary decision that Chinese tire imports have been sold in the US at AD margins ranging from 19.17 percent to 87.99 percent.

The USDOC is set to announce final CVD and AD determinations in April and June this year, respectively. The USITC also needs to make rulings on the case, and its final CVD and AD determinations are expected in May and July.

MOFCOM expressed "serious concern" over the US action, stating that it is unjustified and is, again, contrary to WTO rules. It hoped that the US would "carefully handle the case," and learn from the damage caused by the similar measures it took in 2009. Those measures had "seriously affected US–China trade relations and damaged industrial cooperation between companies in both countries," it said.

China, Japan, S Korea Continue Trilateral FTA Talks

The recent sixth round of trilateral free trade agreement (FTA) negotiations between Japan, China, and South Korea featured intensive discussions on market access for goods and services and on investment.

Tripartite FTA negotiations were launched in November 2012, and from the outset the challenge

of lowering tariffs on sensitive goods and services (particularly agricultural products for South Korea and Japan, and manufactured goods for China) was acknowledged by all three countries.

A joint statement, issued after the Tokyo meeting, confirmed the matters discussed, but no further details on progress towards a deal were released.

Although little progress has been reported to date, the successful conclusion in November last year of FTA terms between South Korea and China appears to have convinced all three parties that a comprehensive tripartite FTA deal is still possible.

The three countries have announced that a seventh round of negotiations will be held in South Korea in April.

South Korea To Use FTAs To Boost Growth In 2015

South Korea's Deputy Prime Minister and Minister of Strategy and Finance, Choi Kyoung-hwan, has confirmed that South Korea will use its free trade agreements (FTAs) with other countries to shore up the nation's economic growth potential.

During a recent meeting of foreign economic ministers, Choi emphasized the need for domestic companies to make better use of Korea's FTAs, which have unlocked duty-free access to overseas markets. He also highlighted the urgency of ratifying the treaties already agreed with China, Vietnam, and New Zealand. He confirmed that the FTA with China is seen as particularly important, with the Government promising to produce a comprehensive plan to support companies to take advantage of the agreement.

Choi added that South Korea will also have to decide whether to take part in the US-led negotiations for the Trans-Pacific Partnership. It is feared that non-participation could stymie the country's ambitions on regional economic integration. South Korea is, however, already a participant in talks on the Regional Comprehensive Economic Partnership between the Association of Southeast Asian Nations and the nations with which the members have bilateral FTAs – South Korea, Australia, New Zealand, China, India, and Japan.

Korea is also to endeavor to conclude further FTAs in the Middle East, South America, and Central Asia, and the nation is, in general, seeking to extend agreements to developing countries.

US Ratifies WTO Trade Facilitation Pact

The US has taken the final step to implement the World Trade Organization's (WTO's) Trade Facilitation Agreement (TFA), according to an announcement from the Office of the United States Trade Representative (USTR).

The head of the USTR, Michael Froman, formally delivered the US's letter of acceptance of the TFA to WTO Director General Roberto Azevêdo in Davos, Switzerland, on January 23, 2015.

The US is the third WTO member to complete its domestic procedures. Singapore and Hong Kong have also submitted their letters.

The TFA will create binding commitments across all WTO members to expedite the movement, release and clearance of goods; improve cooperation among WTO members in customs matters; and help developing countries fully implement the TFA's terms. It is estimated that the agreement can cut trade costs by almost 14.5 percent for low-income countries, and by 10 percent for high-income countries, adding to reforms – and in particular the proposed Doha Round – to cut tax barriers to trade on a global basis.

Froman noted the importance of working towards timely entry into force of the TFA and moving quickly so that its benefits begin to flow. "The [TFA] will unlock immense commercial opportunities for all developing and developed countries alike," he said. "These benefits can only be fully realized with implementation of [the TFA]. We all want to start enjoying the benefits and we hope other members will take this crucial next step as soon as possible."

Froman also outlined efforts underway to implement the TFA. "We are working with developing countries to help support effective implementation of [the TFA]," he said. "In fact, we are already considering how to best support countries who are committed to implementation – teaming up with other governments and the private sector."

Last November, WTO members adopted a protocol to add the TFA to the WTO Agreement, opening the process for individual WTO members to formally accept the TFA.

The TFA will enter into force once two-thirds of the WTO's 160 members have completed their domestic legal procedures and submitted instruments of acceptance to the WTO.

Romania To Lower VAT Rate In 2016

Romania's Prime Minister Victor Ponta has said that the Government is considering lowering the value-added tax (VAT) rate by up to 3 percent from 2016.

The announcement marks a part reversal of the VAT hike introduced in 2010, to 24 percent from 19 percent. Ponta said that either the main rate will fall by up to 3 percent to 21 percent, or the scope of the 9 percent reduced rate will be expanded to include a greater number of basic items.

The tax cut would be effective from January 2016, he said, which would be ahead of elections in Romania.

EU Rules Out Digital De Minimis Threshold

Pierre Moscovici, the European Commissioner for Economic and Financial Affairs, Taxation, and Customs, has confirmed that EU member states are opposed to the introduction of a *de minimis* threshold for suppliers of digital services to EU consumers, in a response to a question from a UK Member of the European Parliament (MEP) concerning the January 1 change to EU value-added tax (VAT) place of supply rules.

Since the start of this year, business-to-consumer (B2C) supplies of broadcasting, telecommunications, and electronic services have uniformly been taxable in the location of the consumer, rather than the location of the supplier. For non-EU businesses, rules in place since 2003 required suppliers to account for VAT in the location of the consumer, but this requirement is now expected to be more strictly enforced.

In more than one question, the European Commission has been asked whether there will be an EU-level response to the concerns raised by small businesses about the cost of complying with the new requirements. UK MEPs in particular have asked whether there was a prospect of a minimum threshold below which small businesses would not need to account for VAT on digital supplies to EU consumers.

Indeed, of all the EU member states, the UK has been the most responsive to concerns from small businesses about the compliance burden associated with the changes, announcing days before the entry into force of the new regime that it would exempt small suppliers from the customer identification requirements, allowing suppliers to instead rely on information from payment processing firms to determine where their customers are located. The arrangement is due to expire on June 30, 2015, however, and other member states have not introduced similar arrangements.

According to Moscovici, the chances of further concessions being announced for small businesses,

either from the EU as a whole or member states unilaterally, are very slim. He said: "The idea of having a minimum threshold was discussed in Council at the time these rules were negotiated but this was firmly rejected by member states."

He told the UK MEP: "Micro-businesses can still enjoy the benefit of their VAT exemption threshold for domestic supplies, and this is the case in the United Kingdom where businesses with turnover below the threshold of GBP81,000 [USD123,000] can still enjoy the VAT exemption benefit for their domestic supplies."

More generally, on the impact on small businesses, he said: "The Commission believes that the change foreseen by the new VAT rules concerning the place of supply will bring important benefits. Firstly, it will ensure fairer competition between domestic and non-domestic businesses selling the same services. Secondly, it will create a level playing field for micro-businesses and other companies that cannot relocate to a lower-tax member state and who, up to now, may have lost out to more mobile competitors."

"Finally, it will ensure fairer distribution of tax revenues between member states, as they will receive the tax on the services consumed by their own residents. Such a system is not completely new to digital micro-businesses, as it has been in place since 2003 for non-EU e-service suppliers selling to EU consumers, including micro-businesses, and has been very effective in simplifying their VAT obligations. To ensure a fair collection of VAT also from non-EU business, the Commission is planning to negotiate agreements on administrative cooperation with third countries."

Malaysia Confirms Scope Of New GST

Malaysia's Customs Department has released a comprehensive list of goods that will be either subject to goods and services tax (GST) or exempt from GST, with effect from April 1, 2015.

Malaysia is to introduce GST at a rate of 6 percent, the lowest rate among the Association of Southeast Asian Nations (ASEAN) countries. The GST will replace the sales and services taxes.

The list, published on January 15, sets out the rates on basic commodities, food and drink, cosmetics, medicines, household items, hardware, kitchenware, clothes, books and stationery, and recreational items. According to the guidance, the 6 percent rate will be applied very broadly, with exemptions mainly for purchases of fruit and vegetables.

The GST is being introduced to strengthen Malaysia's international competitiveness and fund personal income tax cuts.

Exports will be zero rated and special schemes to support exporters' cash flow will be introduced. These will allow exporters to defer accounting for

GST on temporarily imported goods for re-export. Under the current regime, exporters are unable to secure refunds of input tax, resulting in a competitiveness gap in the price of Malaysian goods of about 10 percent, the Government has said.

In the 2015 Budget, the Government confirmed that, with the introduction of GST, income tax cuts will lift 300,000 taxpayers out of the income tax net and reduce effective tax rates for other taxpayers by 1 to 3 percent.

Obama's Proposed Tax Hikes Raise Republican Hackles

In his State of the Union address on January 20, US President Barack Obama outlined a plan to impose higher taxes on the nation's wealthiest individuals and on financial institutions, and to use the revenue to provide tax benefits for families.

Obama said the changes would impact the wealthiest top 1 percent "almost exclusively," and said there would be protections for middle-class families and small businesses. The President proposed to raise the top rate of tax on capital gains and dividends (for couples with incomes over USD500,000) to 28 percent from 23.8 percent, while also making changes to ensure that the heirs of large estates would have to pay capital gains tax on assets they inherit.

However, no tax would be due from couples until the death of the second spouse, and capital gains of up to USD200,000 per couple (USD100,000 per individual) could still be bequeathed free of tax. Extra protections would also be included to ensure that "no small family-owned business would ever have to be sold for tax reasons."

In addition, the President would introduce a tax on heavily leveraged financial firms to "reduce the incidence of major defaults." The 0.07 percent fee would be levied on the borrowed capital of those with assets over USD50bn.

The additional funds from those tax-raising policies, estimated to be around USD320bn over ten years, would be used to provide a new USD500 second-earner tax credit to help cover the additional costs faced by two-worker families; streamline and expand child care tax benefits by up to USD3,000 per child; and simplify, consolidate and expand education tax benefits to provide more students up to USD2,500 in tax relief each year for five years.

Retirement savings would be boosted. For example, every employer with more than ten employees that does not currently offer a retirement plan would be required to automatically enroll their workers in an individual retirement account (IRA). To minimize the burden on small businesses, any employer with 100 or fewer employees that offers such an IRA would be given a USD3,000 tax credit.

On the other hand, to prevent the use of tax-preferred retirement plans to accumulate huge retirement benefits, contributions and accruals would be prohibited once balances reach some USD3.4m.

In presenting his proposals, Obama reiterated his call on Congress to "close the loopholes that lead to inequality by allowing the top 1 percent to avoid paying taxes on their accumulated wealth." However, in doing so, his proposed measures led to comments that were distinctly partisan. This was despite recent indications that US tax reform was an area

where the Administration and the Republican-led Congress could find some common ground.

Although House of Representatives Ways and Means Committee Ranking Member Sander Levin (D – Michigan) stated that "the President's tax proposals focus right where we need to, … by seeking to address economic inefficiencies, including in our capital gains structure, and targeting these revenues toward investment in education and support for working parents," the Committee's Chairman, Paul Ryan (R – Wisconsin), called the measures "a USD320bn tax hike on savings and investment, largely to fuel more Washington spending – and make the tax code even more complex."

Orrin Hatch (R – Utah), the Senate's Finance Committee Chairman, added that the President's proposed tax hikes "would be particularly damaging, undoing tax policies that have been successful in helping to expand the economy, promote savings, and create jobs. … The plan appears to be more about redistribution – with added complexity and class warfare directed at job-creating small businesses – than about tax reform."

In addition, the Securities Industry and Financial Markets Association (SIFMA) pointed out that the imposition of the proposed "bank tax on the vast array of financial institutions captured by the President's proposal under the guise of further limiting excessive risk completely ignores the changes this Administration, Congress, regulators, and industry have implemented over the past six years."

SIFMA concluded: "This USD110bn targeted tax increase on America's most productive financial institutions could have far-reaching unintended consequences that will curtail economic growth and job creation, while negatively impacting the allocation of credit and the provision of financial services to individuals and institutions."

Tax Foundation Skeptical Of Obama's CGT Plans

The Tax Foundation (TF) has said US President Barack Obama's plans to expand personal income tax credits are without funding, as it considers that higher receipts from capital gains tax (CGT) hikes will not materialize.

In his 2015 State of the Union address, Obama proposed raising the top rate of tax on capital gains and dividends (for couples with incomes over USD500,000) to 28 percent from 23.8 percent, while also making changes to ensure that the heirs of large estates would have to pay CGT on assets they inherit.

Part of the proceeds would be used to provide a new USD500 second-earner tax credit to help cover the additional costs faced by two-worker families; streamline and expand childcare tax benefits by up to USD3,000 per child; and expand education tax benefits to provide more students up to USD2,500 in tax relief each year for five years.

However, after analyzing the tax measures' impact on the economy's performance using a "dynamic"

model, the TF found that the President's higher CGT rates would discourage business investment, cut productivity, and reduce jobs and wages for American workers at all income levels.

"Long term, the reduced gross domestic product (GDP) and personal incomes due to the tax increase would result in lower total federal tax receipts," the TF pointed out. "In addition, the rate hike would slow the pace at which people trade assets and realize capital gains, at least for several years, which would actually reduce revenue in the short term as well. Thus, the proposal would lose revenue in the short run and the long run."

Its analysis of raising CGT discovered that, over ten years, US GDP would fall by 0.8 percent; the stock of business capital assets would fall by 2.29 percent; and a family earning USD50,000 would lose about USD345 in income.

"Estimated by conventional method, [the measures] appear to raise about USD19.9bn a year in 2015 dollars, if no change in realized gains and dividends were triggered and ignoring economic effects," the TF noted. However, "estimated on a dynamic basis, [they] reduce revenue by about USD11.8bn a year after the slower growth."

"The apparent 'static' revenue gains from the proposed tax hikes on capital would never occur," it concluded. "The reduction in national income and output would lower total tax collections, giving the President no additional revenue to pay for the expanded tax credits he has proposed, leading to a rise in the deficit."

The TF's model also showed that the proposed tax credits would not rescue the White House plan, as they "are not the sort that would raise GDP or employment by any significant amount." While the tax credits could provide some income relief, they would produce limited GDP growth due to a lack of effect on work incentives, it said.

Democrats Reintroduce US Bill To Curb Tax Inversions

Leading Democrat lawmakers have reintroduced the Stop Corporate Inversions Act into the Senate and House of Representatives, in a legislative attempt to discourage US multinational companies from undertaking corporate tax inversions.

Corporate inversions are being used by multinationals to move their tax residences abroad – away from the high 35 percent US federal corporate tax rate – and to unlock unrepatriated earnings held offshore.

Non-legislative measures put forward by the US Treasury Department in September last year tried to prevent the methods by which inverted companies access earnings held offshore while continuing to defer US tax. However, it has generally been agreed that only Congress can fully deter tax inversions.

In particular, Democrat lawmakers have looked to change the current law, under which a

company that merges with an offshore counterpart can move its residence abroad, even if its management and operations remain in the US, so long as at least 20 percent of its shares are held by the foreign company's shareholders after the merger.

The proposed legislation would therefore include a plan made last year by President Barack Obama to restrict corporate inversions by putting the minimum foreign shareholding cap at 50 percent.

The Stop Corporate Inversions Act of 2015 would treat a combined foreign corporation as a domestic corporation under two circumstances: if the shareholders of the former US corporation own more than 50 percent of the new combined foreign corporation; or if the affiliated group that includes the combined foreign corporation is managed and controlled in the US and engages in significant domestic business activities in the US.

The legislation would apply to inversions completed after May 8, 2014, and the Joint Committee of Taxation has indicated, in an updated estimate last month, that the measure could save USD33.5bn over the next ten years.

The Act has been reintroduced in the House by Ranking Member of the Ways and Means Committee Sandy Levin (D – Michigan) and Lloyd Doggett (D – Texas), and in the Senate by Minority Whip Dick Durbin (D – Illinois) and Jack Reed (D – Rhode Island).

Levin said that "this is clearly a problem that is not going away – it cannot wait for tax reform. The Treasury Department's proposal was an important step, but legislative action is necessary to stop the ongoing flood of inversions."

There remains a political divide, however, about the right course of action to tackle inversions, and the Stop Corporate Inversions Act will still need to progress through the Republican-led Congress. Other leading Democrat and Republican lawmakers appear to have decided that tax reform, to cut the corporate tax rate and change the way the US taxes foreign earnings, will be the only real long-term solution for halting inversions.

South Korean Government Agrees PIT Changes

South Korea's Government and its ruling Saenuri Party have agreed changes to the personal income tax (PIT) code, as a reaction to the outcry over the reduced tax refunds that followed changes introduced in the 2014 Budget.

While pointing out that both the ruling and opposition parties had almost unanimously passed the Budget changes in the National Assembly, it was decided that by the end of March 2015 the Government will introduce a Bill that will increase tax refunds for families with children and for single individuals. Tax credits for retirement account contributions and on education spending may also be boosted.

The 2014 Budget changes were intended to raise the tax burden on Korea's wealthiest individuals. It imposed South Korea's highest 38 percent PIT rate, which was previously payable on income over KRW300m (USD278,300), on income of more than KRW150m. It had been estimated that the tax band change would only increase the tax burden on about 100,000 individuals.

However, in addition, there was a change in PIT collections, which treated an individual's tax benefits as tax credits during the 2014 tax year, rather than the previous method of accounting for them as deductions at year-end. As a consequence, South Korea's National Tax Service collected less tax during the year, but the significant tax refunds, which it had previously paid to taxpayers after the processing of their tax returns, were also significantly reduced.

Protests against the perceived additional tax burden led to recent interventions by both President Park Geun-hye and Finance Minister Choi Kyoung-hwan. Both confirmed that there had been no intention to collect more taxes from those on middle and lower incomes and promised further adjustment to tax credits in recompense.

The Government has now said that legislation to make the necessary retrospective PIT changes and pay additional tax refunds for 2014 should be approved by May this year.

Mexican Taxpayer Base Expands By 20 Percent

Mexico's taxpayer base grew 20 percent in the last two years, President Enrique Peña Nieto said at a recent event.

The number of registered taxpayers in the country reached 46.2m by the end of 2014, up from 38.4m at the end of 2012.

The President attributed most of this growth to the "Let's Grow Together" program, an initiative launched in September 2014 that seeks to curb the informal economy.

Mexico's non-oil tax revenue reached MXN1.65 trillion (USD112bn) between January and November 2014, representing an increase of 6.3 percent from the same period of 2013. The country's Undersecretary of Finance and Public Credit, Fernando Aportela, said recently that the Government aims to balance the federal budget by 2017.

Kenyan Tax Reforms In Medium-Term Budget Plan

Kenya's National Treasury has released a Budget Policy Statement setting out tax reform plans for the next three years.

The Treasury has proposed measures to simplify compliance with the tax regime, enhance tax administration, and broaden the tax base. The Treasury said that while a "reasonable degree of predictability with respect to the level of tax rates and tax bases" is to be maintained, extra revenues will be needed to fund increased spending on economic development.

Kenya has already taken a number of measures to broaden the tax base, including the enactment of an income tax regime for the mining sector and the reintroduction of capital gains tax with effect from January 2015.

The adoption of new modern tax administration systems is proposed to improve the efficiency of tax collection and cut compliance costs for businesses. These systems will also support tax audit efforts and risk profiling to tackle the informal sector.

The National Treasury will submit to Parliament a Tax Procedure Bill for possible enactment in 2015, along with a new Excise Duty Bill. A review is also to be undertaken of the Income Tax Act, which will be completed by the end of 2015 and submitted to Parliament in early 2016.

The Government also plans to remove "distortionary" tax incentives, thereby expanding the income tax base. Last, the Government has said it will fast-track the creation of Special Economic Zones in Kenya to attract foreign direct investment.

Kenya's overall fiscal balance (after grants) is projected to decline from 8.8 percent of gross domestic product (GDP) in the 2014/15 fiscal year to a more sustainable level of about 4.1 percent of GDP over the medium term. This would include a fall in public debt, from around 43.8 percent of GDP in 2014/15 to about 41.2 percent of GDP by 2017/18.

Zambia's New President To Retain Mining Royalty Hikes

Edgar Lungu, Zambia's new President, confirmed at his inauguration on January 25 that he would maintain the previous Government's sharp hike in mining royalties that was introduced at the beginning of this year.

Despite threats of reduced production and employment in the mining sector, and the suspension by Canada-based Barrick Gold of its operations at the Lumwana copper mine, the Zambian Government went ahead, from January 1, with the increased royalties, which were first announced in the 2015 Budget in October last year.

From the beginning of the year, the previous 6 percent royalty for all mines was replaced by split levels of 8 percent and 20 percent on underground mining and on open cast mining operations, respectively. Royalties now operate as a final tax, such that mining companies will no longer be subject to corporate income tax.

However, despite forecasts that the increased royalties will result in the closure of some mines that have become unprofitable, and an indication before his election that he might be willing to discuss changing them, Lungu has now said that the new rates will remain to ensure that mining companies pay "the right taxes."

Germany Says India Must Protect Exchanged Tax Data

Speaking at an event hosted by the Federation of Indian Chambers of Commerce and Industry, Germany's Finance Minister, Wolfgang Schäuble, underscored the importance of India respecting provisions in their double tax agreement on the confidentiality of exchanged data.

Schäuble was asked about the confidentiality clause in relation to calls from Indian civil society organizations for the public disclosure of the identities of persons who have been found to have untaxed assets held offshore.

Schäuble said: "We have a secrecy of information on taxation only for tax administration. … [If] we exchange information between the administrations it must be granted that the secrecy on this information is respected."

He said that international efforts, centered on the automatic exchange of information, rely on trust between tax authorities that the information will be used explicitly for the purposes for which it is shared and it should not be made public. Without that trust, the information exchanges that have put an end to banking secrecy will be jeopardized, he said.

HMRC Must Prepare For IT System Switch, Says PAC

HM Revenue & Customs (HMRC) faces an enormous challenge in switching suppliers of its online tax collection systems by 2017, according to the UK's Public Accounts Committee (PAC), which has said the agency "appears overly complacent given the scale of the transformation required."

Most of HMRC's major tax collection systems are provided under one contract, the Aspire contract. When the current contract ends in June 2017, HMRC intends to move from the single contract to a new model, which will involve several shorter contracts with multiple suppliers. The current contract accounts for 84 percent of HMRC's total spend on information and communications technology (ICT).

In 2014, the Cabinet Office announced new rules to limit the value, length and structure of ICT contracts. These state that no contract should exceed GBP100m (USD150m); that no single supplier should provide both services and systems integration to the same area of Government; and that existing contracts should not be extended without a compelling case.

In a new report, the PAC pointed out that although HMRC decided three years ago to move in

principle to a new contracting model, HMRC has made little progress in defining its needs and has still not presented a business case to the Government. HMRC says that it is confident of meeting the 2017 deadline and hopes to publish the business case in the spring. However, as the PAC notes, this would leave HMRC just two years to procure and manage the transition of the services it will need before the existing contract expires.

Introducing the report, Richard Bacon, a member of the PAC, said: "HMRC's record in managing the Aspire contract and other ICT contractors does not inspire confidence in the Department's ability to manage the proposed model effectively and maximize value for money." Meanwhile the report warned: "HMRC has demonstrated insufficient appreciation of either the scale of the challenge it faces or the risks to tax collection if the transition fails."

The report also criticized HMRC for failing to provide the PAC with an estimate of the cost of moving staff, equipment, and office space. In its evidence to the PAC, the Cabinet Office agreed that it would be better to delay the project and negotiate an extension to the Aspire contract than risk a failure in tax collection.

The PAC recommended that HMRC move quickly to develop a coherent business case, which should include details of the commercial and operational model it intends to put in place to replace the Aspire contract, and a robust transition plan and budget. As part of its business case, HMRC should identify key risks to tax collection and customer service – both during the transition phrase and once the new model is in place – and develop a strategy to mitigate them, the PAC said.

HMRC should likewise produce a realistic recruitment plan and develop a clear view of how the new model will support its long-term vision for tax collection. The PAC recommends that HMRC and the Cabinet Office jointly agree key milestones and warning flags leading up to the end of the contract, with contingency plans that manage the risks to value for money should these milestones be missed. HMRC has been asked to provide a note to the PAC by the end of next month which sets out what plans, including contingencies, it has put in place.

Bacon said: "The Aspire contract has provided stable systems to support the collection of taxes. The provision of all government services depends on the continued stability of tax collection, which yielded more than GBP500bn in the last completed financial year and, on the same trend, would be expected to yield around GBP5 trillion over the next ten years. There are substantial risks to tax collection if the transition fails, which would create havoc with the public finances."

FIJI - SRI LANKA

Negotiations

According to preliminary media reports, Fiji and Sri Lanka began negotiations towards a DTA on January 22, 2015.

GUERNSEY - SLOVAKIA

Into Force

The TIEA signed between Guernsey and Slovakia came into force on January 26, 2015.

ISLE OF MAN - SWAZILAND

Ratified

The TIEA with Swaziland was ratified by the Isle of Man according to a Statutory Document issued by the Council of Ministers on December 12, 2014.

MALTA - OMAN

Negotiations

According to preliminary media reports, officials from Malta and Oman have met in Malta to negotiate a DTA between the two countries.

SINGAPORE - VARIOUS

Signature

Singapore signed DTAs with Uruguay and France on January 15, 2015, and January 16, 2015, respectively.

SOUTH AFRICA - GRENADA

Signature

South Africa signed a TIEA with Grenada on December 10, 2014.

UNITED KINGDOM - CROATIA

Signature

The United Kingdom and Croatia signed a DTA on January 15, 2015.

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

THE AMERICAS

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2/11/2015 - 2/11/2015

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

INTERNATIONAL ESTATE & TAX PLANNING 2015

Practicing Law Institute

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

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

2/13/2015 - 2/13/2015

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

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

AMERICAS TRANSFER PRICING SUMMIT 2015

TP Minds

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

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

2/24/2015 - 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/

INTERNATIONAL TAX ISSUES 2015 - CHICAGO

Practicing Law Institute

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

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

9/9/2015 - 9/9/2015

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

ASIA PACIFIC

2015 FINANCIAL SERVICES TAXATION CONFERENCE

The Tax Institute

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

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

2/18/2015 - 2/20/2015

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

INTERNATIONAL CORPORATE TAX PLANNING ASPECTS

IBFD

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

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

4/20/2015 - 4/22/2015

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

CENTRAL AND EASTERN EUROPE

CIS WEALTH MOSCOW 2015

CIS Wealth

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

Key speakers: TBC

2/16/2015 - 2/17/2015

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

WESTERN EUROPE

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

International Bar Association

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

Chair: Jack Bernstein (Aird & Berlis)

2/9/2015 - 2/10/2015

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

20TH INTERNATIONAL WEALTH TRANSFER PRACTICE LAW CONFERENCE

International Bar Association

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

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

3/2/2015 - 3/3/2015

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

INTERNATIONAL TRANSFER PRICING SUMMIT 2015

TP Minds

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

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

3/10/2015 - 3/11/2015

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

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%20 2015%20-%20brochure.pdf

INTERNATIONAL TAX ASPECTS OF MERGERS, ACQUISITIONS AND CORPORATE FINANCE

IBFD

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

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

3/30/2015 - 4/1/2015

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

PRINCIPLES OF INTERNATIONAL TAXATION

IBFD

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

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

4/20/2015 - 4/24/2015

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

INTERNATIONAL TAXATION OF E-COMMERCE

IBFD

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

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

5/11/2015 - 5/13/2015

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

PRINCIPLES OF INTERNATIONAL TAX PLANNING

IBFD

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

Chair: Boyke Baldewsing (IBFD)

6/1/2015 - 6/5/2015

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

INTERNATIONAL TAXATION OF EXPATRIATES

IBFD

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

Key Speakers: Bart Kosters (IBFD)

6/10/2015 - 6/12/2015

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

INTERNATIONAL TAX ASPECTS OF PERMANENT ESTABLISHMENTS

IBFD

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

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

6/16/2015 - 6/19/2015

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

TAX PLANNING WORKSHOP

IBFD

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

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

7/2/2015 - 7/3/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - LONDON

CCH

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

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

7/8/2015 - 7/9/2015

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

INTERNATIONAL TAX SUMMER SCHOOL

IIR & IBC Financial Events

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

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

8/18/2015 - 8/20/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - BRISTOL

CCH

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

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

9/9/2015 - 9/10/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MILTON KEYNES

CCH

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

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

9/15/2015 - 9/16/2015

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

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

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

Key Speakers: TBC

9/16/2015 - 9/18/2015

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

THE AMERICAS

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.

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

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)*

United States

The US Tax Court heard the case of a taxpayer who during his career stayed in Russia for regular periods over the course of 2007–2010 while maintaining ownership of a home in the US. When the taxpayer submitted his income tax returns in the US, he claimed that his tax home was in Russia because he spent so much time working there, and therefore he applied for the income earned there to be excluded from the calculation of his gross income for tax purposes; however, the Commissioner of Internal Revenue disagreed and adjusted the tax returns in order to tax the income he received in Russia. The taxpayer brought a case against the adjustment to the Tax Court.

In order to qualify for the foreign income exclusion, the taxpayer must have a tax home in a foreign country and either be a foreign resident or stay in a foreign country for at least 330 days during any 12-month period, according to the national legislation.

However, the Tax Court pointed out that a taxpayer who has an "abode" in the US cannot have a tax home in another country, and that following past case law, it is possible for an employee working abroad to have stronger ties with the US than with the country where they are conducting their business.

The Tax Court was mainly of the opinion that the taxpayer had an abode in the US, due to his family residing there, his ownership of a property, and his spending time there when he was off duty, and because his ties to Russia "did not extend much

beyond the bare minimum required to perform his duties there."

The taxpayer attempted to argue that because his time spent in the US was divided between his parents' property and his own property it was unclear which one was meant to be his abode, but the Tax Court reiterated that the issue was whether his abode was in the US or Russia, rather than which property was considered to be his abode.

The Tax Court ruled that the taxpayer's abode was in the US, which prevented him from having a tax home in Russia, and therefore concluded that he was not eligible for the foreign income exclusion. The fact that his family and his property were in the US, while the company paid for his residence and meals in Russia, meant that he had stronger ties with the US.

However, because the taxpayer prepared his tax returns by following the advice of a competent tax professional (albeit later proven to be incorrect), he had acted in good faith and therefore was not subjected to an accuracy-related penalty relating to the underpayment of tax.

The judgment was delivered on January 20, 2015.

http://www.ustaxcourt.gov/InOpHistoric/Evans-Memo.Lauber.TCM.WPD.pdf

Tax Court: *Joel B. Evans et ux. v. Commissioner (T.C. Memo. 2015-12)*

WESTERN EUROPE

Belgium

The European Court of Justice (ECJ) heard the case of a corporation which owned a stadium and contracted with a football club to let them use it. The corporation deducted the entire amount of VAT due on the payment received under the contract; however, the Belgian tax authority identified several aspects of the transaction which were either exempt from or outside the scope of VAT, and therefore informed the corporation that it could deduct only 36 percent of their input VAT liability. The corporation took issue with the amount of VAT and the subsequent late fee demanded by the tax authority and, following a court decision against them at the Court of First Instance, argued to the Court of Appeal, which considered the application of the EU Sixth VAT Directive (concerning the creation of a uniform basis of assessment within the EU in this area) and therefore approached the ECJ for an interpretation of the relevant EU legislation.

The ECJ deliberated over whether the contract, under which the stadium and various services including cleaning and maintenance were made available to another party, represented "letting of immovable property" according to the assertion made by the tax authority, and resolved to take into account "all the characteristics of the transaction and the circumstances in which it takes place."

Letting of immovable property is exempt from VAT under EU law, and therefore the definition of the

term and the relevant provisions of the law must be strictly interpreted and precisely adhered to, the ECJ stated. The corporation remained responsible for a number of services when it provided access to its stadium to the football club, and given the extent of those services, the ECJ suggested that the corporation's efforts might have exceeded simply letting of property. It also observed that given the amount paid for the services (80 percent of the fee, according to the contract), the transaction should be considered a supply of services rather than a letting of immovable property.

However, ultimately the national court was responsible for assessing all the facts and deciding whether the services provided were necessary to fulfill the purpose of the contract, which was for the club to be able to play football. The ECJ added that were the length of time allocated for use of the stadium found to be occasional and temporary given the facts, this would be further evidence of the transaction being a supply of services.

The judgment was delivered on January 22, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=161607&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1702

European Court of Justice: *Régie communale autonome du stade Luc Varenne v. Belgium (C-55/14)*

Dateline January 29, 2015

The United Kingdom has been getting a lot attention in this column lately, and not a lot of it has been very kind. But it's hard to avoid the temptation to give Her Majesty's Government the treatment when it behaves so stupidly on such a regular basis. This time, it's the Government's plans for transparency of beneficial ownership of companies registered in the UK. I thought that the coalition might quietly shelve these proposals in the melee of the upcoming general election campaign but apparently not, for the Government confirmed on January 15 that companies will need to keep a register of people with "significant control" from January 2016, and file such information with Companies House from April next year, provided such legislation is approved. "Ah, here she goes again" some of you might say. "Last week she defended tax dodgers by attacking FATCA, now she's defending criminals by opposing public beneficial ownership registries." But as I pointed out in my previous blog, a determined tax evader will just find another way to hide his money. Similarly, money launderers, terrorists and other undesirables aren't going to be scared by these plans either. They will just go deeper to ground, making the paper trail even more difficult for law enforcement authorities to chase. Or they could just set up a series of companies outside the UK's jurisdictional reach, because few other countries have expressed the slightest bit of interest in this idea, beyond the usual lip service at the G8; even the EU has backtracked on this. In fact, why would anyone want to have a company in the UK at all, if every Tom, Dick and Harry can know your business? I've yet to see a really convincing argument in favor of this. Prime Minister Cameron said in 2013 that "for too long a small minority have hidden their business dealings behind a complicated web of shell companies." But, David, they will just continue to do so with or without a beneficial ownership registry. Just like FATCA, compromising the privacy of the vast majority seems like a very high price to pay to punish a small minority. At all events, it is a junior minister in the Department for Business, Innovation and Skills, who goes by the official title of "Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs," who seems to have been given the unenviable task of pushing through these proposals. The minister, whose resume does not display any obvious direct business experience, has been sent on a fool's errand indeed. Cameron and Chancellor Osborne should know better.

Nobody is pretending that Spain is out of the woods yet after getting sucked into the eurozone crisis. But the way the economy is performing compared to the rest of the eurozone suggests that the Government must be doing something right in the area of economic policy. Last month, the Bank of Spain said that improving domestic demand was helping to sustain a recovery, and that the eurozone's fourth-largest economy would grow by 1.4 percent in 2014 and possibly by as much as 2 percent in

2015. Given anemic growth elsewhere in the eurozone, especially in France (predicted 0.5 percent growth this year) and Italy (probably even slower 2014 growth than France) – the second- and third-largest economies in the single currency area – it almost looks like boom time in Spain. Why is this the case? Well, economies are complicated things, and there are countless variables coming into play here. But I think the fact that Spain's conservative Government has managed to pass structural economic reform, perhaps the most important part of which was loosening up the labor market, something neither France nor Italy has managed to do, is one of the main reasons for the three countries' contrasting fortunes. Spain has also reformed and cut taxes, a policy that is reaping dividends, according to Secretary of State for Finance, Miguel Ferre Navarrete. You might have noticed that taxes have got rather high in France lately. QED. Spain's fate is of course still tied to the fortunes of the eurozone, which is currently staring over the precipice of a deflationary sinkhole. What? You think my language a little hyperbolic? Well, the fact that the European Central Bank has been permitted to print money like there's no tomorrow is an indication of how seriously the deflationary threat is being taken in Brussels and Berlin. But Spain must nevertheless try to keep up the good work.

Well it was fairly predictable wasn't it? The Brazilian Government cut a lot of taxes last year. Then there was an election in October, and President Dilma Rousseff won another four years in power. But guess what. Conditions seem to have changed so much since the election that the Government thinks taxes will have to rise. Credit is due to new Finance Minister Joaquim Levy for breaking the news gently to the Brazilian people, though. First, there was the hint of tax rises, with Levy telling taxpayers in early January that the country needs some "fiscal rebalancing." Levy laid the ground further a few days later by suggesting that tax rises, should they be needed, would have no effect on the economy. Then came the sucker punch: the finance ministry's announcement on January 19 of approximately USD7.8bn in tax increases for 2015. Who'd have thought it? The reality is that Brazil's economy has been unbalanced for a number of years, and it is largely the Government that is to blame. As has become customary in such situations however, taxpayers pay the heaviest price. The Government has turned to that familiar fiscal lever, the IOF tax on financial transactions, which will result in the doubling of the tax on personal loans. It must be almost impossible to try to work out how much tax is payable on a financial transaction in Brazil, as the rates seem to change by the week. Indeed, Brazil's tax code is now so nightmarish that comparisons to a dense and impenetrable jungle akin to something you'd encounter in the farthest reaches of the Amazonian rainforest spring easily to mind. No wonder the economy is faltering. The average firm is spending almost a third of the year filling in tax forms.

The Jester