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GLOBAL TAX WEEKLY
a closer look

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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NEWS ROUND-UP

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The Curious Incident Of The Personal Holding Company In The Nighttime

by William Weatherford, Alvarez & Marsal Taxand

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Everyone loves good surprises. Examples of good surprises include the following (not an all-encompassing list): surprise puppies, surprise gold, surprise unicorns, *etc*.

However, the same cannot be said for bad surprises. No one likes bad surprises. And do you know what an example of a truly bad surprise is? Personal holding companies (PHCs). PHCs are an obscure relic of the US Internal Revenue Code, an artifact from a time long ago when the perpetual war between Congress and taxpayers seeking to minimize their tax liabilities by any means necessary was embryonic in nature. Like Christopher Nolan's *Inception* (or *Interstellar*, for that matter), PHCs are so mysterious and incomprehensible by modern-day standards that they serve as an exemplar of a true trap for the unwary; arguably most, if not all, taxpayers subject to these rules do not realize they have been ensnared by them until it's too late.

This article explores the Kafkaesque nature of PHCs and recounts the story of how an antiquated law that was enacted to curtail certain long-abandoned tax avoidance transactions is, more than 80 years later, still wreaking havoc on the lives of modern-day taxpayers.

Fighting The Incorporated Pocketbook With Chaos

Believe it or not, corporations were the original tax shelter. This statement may sound insane, but it's true. For a long time, individual income tax rates were substantially higher than corporate income tax rates, and since corporations are viewed as separate and distinct entities for US federal income tax purposes (and taxed accordingly), this disconformity in the tax rates resulted in what is essentially tax arbitrage, whereby taxpayers would use corporations as a tax-planning tool to minimize their tax liabilities.

Most often, this manifested itself in the form of taxpayers contributing assets (*e.g.*, stocks, bonds, real estate, *etc.*) to corporations that generated various types of passive income, such as interest, dividends, capital gains, rents, royalties, *etc*. Again, this sounds insane by modern-day standards, because in today's world any tax advisor worth his salt will tell you that placing assets, appreciated or otherwise, that generate passive income into a corporation is almost never a good idea, specifically because any income or gains realized will be subject to two levels of taxation. As Bittker and Eustice so eloquently put it, "a corporation is like a lobster pot: easy to enter, difficult to live in, and painful to get out of."

But back in 1934, when the PHC rules were enacted, this is exactly what taxpayers were doing, specifically because the income and gains realized from the contributed assets were taxed at a substantially reduced rate, allowing the income to compound more quickly inside the corporation and greatly increasing the rate of return on such assets. Individual taxpayers were then able to delay the day of reckoning because they would be taxed on the income that had built up inside the corporations only when such corporations either liquidated or paid a dividend, or when they sold their stock, the timing of any of which was very much under the control of such shareholders.

Congress viewed this result as unacceptable because, in its opinion, taxpayers were using corporations to improperly obtain a deferral of tax. It could have easily solved this problem by equalizing the tax rates between individuals and corporations (which it did eventually, sort of, although it took almost a century). But, never being one to take the easy walking trail when the arduous, rockslide-prone mountain pass would just as well suffice, Congress instead chose to enact two complicated mechanisms, the accumulated earnings tax (AET) and the PHC rules, which, while different in their application, had the same ultimate goal: to incentivize corporations to pay dividends to their shareholders on a current basis by penalizing them for not doing so. The AET and the PHC rules are discussed further below.

The Accumulated Earnings Tax – Is That All There Is?

The AET is older than the PHC, having been enacted in its current form, more or less, in 1921, and is currently imposed at a rate of 20 percent on any corporation that is formed or availed of for the purpose of avoiding the income tax with respect to its shareholders by permitting earnings and profits to accumulate rather than be distributed.

As an aside, the statute references the accumulation of "earnings and profits," but that term is not defined in either the Internal Revenue Code or the regulations that have been issued by the Treasury Department. Over the years, case law has defined the term to describe a corporation's economic wherewithal to pay a dividend to its shareholders without returning its invested capital to them.

So if a corporation is formed or availed of for the purpose of avoiding the income tax with respect to its shareholders by permitting earnings and profits to accumulate rather than be distributed, it's subject to the AET. If the foregoing sounds somewhat flimsy, well, that's because it might very well be.

Unfortunately, the Internal Revenue Code does not provide much guidance on what constitutes a corporation being formed or availed of for the purpose of "avoiding the income tax with respect to its shareholders," merely stating in a somewhat oblique fashion that this occurs when the earnings and profits of a corporation are permitted to accumulate beyond the "reasonable" needs of the business, whatever that means (although it should be noted that Congress has generously allowed for most corporate taxpayers to claim a minimum reasonable need of USD250,000).

Indeed, there is a substantial body of case law that has developed as a result of taxpayers and the IRS arguing over whether and to what extent corporate earnings and profits are required to be accumulated for the reasonable needs of the business. While a detailed discussion of the AET is outside the scope of the article, a few key points should be made: (i) it applies to both publicly traded and private companies; (ii) whether the AET applies to a corporation or not is highly subjective and turns on intensely factual analyses; and (iii) it's asymmetrical in that it may only be asserted by the IRS upon audit (*i.e.*, taxpayers cannot self-assess the AET, not that they would want to). In the event the AET applies, although you must go through a specific calculation, the end result is that the corporation pays a 20 percent tax on the income that it theoretically should have distributed as a dividend, which is the same amount of income tax that the shareholders would have incurred had the corporation actually paid the theoretical dividend.

Note that the application of the AET essentially results in three levels of taxation, since the corporation is paying both the corporate income tax and the income tax that the shareholders would have incurred had it actually paid a dividend, and then the shareholders are taxed either when the corporation liquidates or pays a dividend, or when they sell their stock. Had the corporation actually paid a dividend, the income would have only been subject to two levels of taxation, hence the incentive to actually pay a dividend in the first place and dispense with all of this unpleasantness.

Congress has provided some fairly generous rules that give corporations the ability to pay dividends after the end of their tax years in order to avoid the AET or PHC rules, even allowing so-called "consent dividends," whereby the corporation is deemed to pay a dividend to its shareholders, who are then deemed to contribute the dividend back to the corporation in the form of a capital contribution, but no actual cash changes hands.

Nobody Expects The Personal Holding Company!

As noted above, the PHC rules were enacted in 1934 in response to the continued perception that individual taxpayers were using corporations to improperly obtain a deferral of tax. The PHC rules impose a 20 percent tax on a PHC's undistributed personal holding company income, and are similar to the AET in that they also result in three levels of taxation. Unlike the AET, which as described above is imposed only if certain subjective criteria are satisfied, the PHC rules are strictly objective in nature; if a corporation is classified as a PHC, then it's subject to a 20 percent tax on its undistributed personal holding company income regardless of the subjective intent of the owners to operate the business in corporate solution. In addition, taxpayers are required to self-assess the 20 percent tax on undistributed personal holding company income. One final point: to the extent a corporation is classified as a PHC, it is exempt from the AET because the PHC rules should, theoretically, reach the same result that the AET would if it were to apply (*i.e.*, the corporation is taxed on the income it *should* have paid to its shareholders as a dividend).

For a corporation to be classified as a PHC, it must satisfy the following requirements:

(a) **Ownership test:** At any time during the last half of the taxable year, more than 50 percent in value of its outstanding stock must be owned, directly or indirectly, by five or fewer individuals or certain trusts; and

(b) **Income test:** At least 60 percent of its income (as calculated under the statute) must consist of personal holding company income, which generally consists of the following (not an all-inclusive list): dividends, interest, certain royalties, annuities, rents, and personal service contracts.

Certain corporations are exempt from the PHC rules, including banks, life insurance companies, surety companies, foreign corporations, tax-exempt corporations, and corporations engaged in the business of lending or financing (among others). Also note that in the context of consolidated groups, the PHC rules are generally applied on a company-by-company basis, and only in certain limited circumstances are they applied on a consolidated basis.

Although foreign corporations are exempt from the PHC rules, foreign shareholders are not. Therefore, a domestic corporation with five or fewer individual shareholders that are not US citizens or residents for US federal income tax purposes would appear to satisfy the ownership test described above.

This can have far-reaching and non-obvious implications, such as if the corporation at issue makes a consent dividend to its shareholders (as described above), which includes non-US residents. Assuming such foreign shareholders are residents of a country that has not entered into a tax treaty with the United States, a 30 percent withholding tax may be due on the consent dividend, which would be payable by the corporation, notwithstanding the fact that cash was not actually paid to the shareholders.

With respect to the ownership test, the PHC framework contains a mind-bogglingly expansive attribution rule that is used in determining whether the shareholders indirectly own stock in the corporation at issue. This attribution rule is almost all-encompassing, even more so that the attribution rules that are used in other parts of the Internal Revenue Code. In particular, in the case where a partnership owns all of the stock of the corporation at issue, the attribution rule not only provides that all partners own their ratable share of the underlying stock, but that they own all of the other stock that their partners own.

So, as an example, assume that a partnership with 100 individual partners, each of whom owns 1 percent of the partnership, owns all the stock of a corporation that otherwise satisfies the income test. Under the attribution rule, all partners not only directly own 1 percent of the corporation that corresponds with their ownership in the partnership, but in addition they are viewed as owning the other 99 percent of the corporation that the other partners own. So each partner is deemed to own all of the stock of the corporation, obviously satisfying the ownership test many times over. While this sounds like a ridiculous result, that is how the statute operates.

This would be especially problematic for private equity, which frequently invests through partnership structures. Absent any mitigating circumstances, corporations that otherwise satisfied the income test might have difficulty receiving private equity funding, for fear that they would be classified as PHCs due to the attribution rule discussed above. However, the IRS has provided some surprising relief on this issue as discussed below.

The IRS Dons Its White Armor?

Private Letter Ruling 201208025 discusses a publicly traded company that owned certain subsidiaries that otherwise satisfied the income test when viewed on a separate company basis. The publicly traded company appears to have been owned by several private equity funds, and it sought a ruling from the IRS that the attribution rule discussed above would not cause the ownership test to be satisfied. The IRS granted such a ruling, notwithstanding the fact that a literal reading of the attribution rule might yield the conclusion that the application of it would cause the ownership test to be satisfied. Although the ruling is somewhat conclusory in nature, the IRS appears to have taken a rather relaxed view of the application of the attribution rule. This is a very taxpayer-friendly ruling, and should reduce the risk that an investment by a private equity fund would cause the ownership test to be satisfied.

Alvarez & Marsal Taxand Says:

The convoluted premise of the PHC rules and their utter inapplicability to modern-day transactions are irrational to the point that Roose Bolton would probably appreciate them, and King Aerys II Targaryen too, if he were able. However, if one looks at macroeconomic trends, corporate income tax rates may be reduced while individual income tax rates may stay the same or increase, leading to a situation not unlike 1934. These rules serve as nothing more than a trap for the unwary, and taxpayers need to be mindful of them when structuring their affairs so as to not inadvertently fall into them.

Simon Bernstein, Senior Associate, and Sean Wilson, Associate, contributed to this article.

Recent Tax Treaty Developments In Cyprus

by Philippos Aristotelous, Andreas Neocleous & Co LLC

Proposed Amendments To Cyprus's Assessment And Collection Of Taxes Law

The Cyprus Government has published a draft law amending the Assessment and Collection of Taxes Law (Law 4 of 1978) in order to facilitate implementation of agreements for automatic exchange of information with other countries.

When it is enacted, the Assessment and Collection of Taxes Law (Amendment) Law of 2015, which was published in the Official Gazette of the Republic No. 4159 on March 23, 2015, will add two new subsections, numbered 15 and 16, to Article 6 of the Assessment and Collection of Taxes Law. The new subsections regulate the arrangements under which the Commissioner of Taxation may provide information obtained from any person to implement agreements for automatic exchange of information between the Republic of Cyprus and another country, whether an EU member state or a third country.

The proposed provisions are similar to existing provisions relating to information exchange except in one important regard. The prior approval of the Attorney General is required for information exchange under double taxation agreements (DTAs) and existing legislation, but there is no requirement for prior approval under the new provisions.

Cyprus has not entered into any bilateral agreements for automatic exchange of information, but automatic exchange of information does take place already under the laws implementing the EU Savings Tax Directive (Council Directive 2003/48/EC of June 3, 2003), similar arrangements with Switzerland, the Channel Islands and other jurisdictions, and Council Directive 2011/16/EU as regards administrative cooperation in the field of taxation, which provides for mandatory automatic exchange of information between EU member states with effect from January 1, 2015, in respect of income from employment, directors' fees, life insurance products not covered by other Directives, pensions, and ownership of and income from immovable property.

In addition, under the Model 1 inter-governmental agreement between Cyprus and the US under the Foreign Account Tax Compliance Act (FATCA), which was signed in December 2014, the Cyprus tax authorities are responsible for forwarding information reported to them by Cyprus-based financial institutions subject to FATCA to the US Internal Revenue Service.

The New Cyprus–Iceland Double Taxation Agreement

Many DTAs seem to spend an eternity in limbo between signature and entry into force. With less than seven weeks between signature on November 13, 2014 and entry into force on December 22, 2014, the new DTA between Cyprus and Iceland set a new standard for timeliness.

Like most of Cyprus's recent DTAs, the Cyprus–Iceland DTA closely follows the form of the 2010 OECD Model Convention. Its key features are summarized and explained below.

Taxes Covered

The DTA covers the following categories of taxes:

- The Cyprus income tax, corporate income tax, the special contribution for the Defence of the Republic (commonly referred to as SDC tax), and capital gains tax;
- The Icelandic state income tax and municipal income tax.

It will also apply also to any identical or substantially similar taxes that are imposed in future in addition to, or in place of, the existing taxes.

Residence

Article 4, which deals with residence, replicates the provisions of the OECD Model. The residence of dual-resident individuals is settled by the closeness of an individual's ties to the respective states or, failing that, by agreement between the two states. Legal persons are resident in the state in which their place of effective management is situated.

Permanent Establishment

Article 5 contains the usual list of activities that do not give rise to a permanent establishment, namely storage and display of goods, maintenance of stocks for processing by a third party, maintenance of a purchasing or information-gathering facility, or for preparatory or auxiliary purposes.

A building site, a construction, assembly or installation project, or a supervisory or consultancy activity connected with it will be deemed to be a permanent establishment only if it lasts for more than 12 months.

If an enterprise has a representative in a contracting state that has, and habitually exercises, authority to conclude contracts in the name of the enterprise, the enterprise concerned is deemed to have a permanent establishment in respect of any activities which the person undertakes for the enterprise.

Taxpayers need to be aware of the potential adverse consequences of unintended creation of a permanent establishment. Particular care needs to be taken regarding the issuing of general powers of attorney.

Hydrocarbon Exploration And Exploitation

Most of the DTAs that Cyprus has concluded since gas reserves were discovered in its exclusive economic zone in 2008 have included an article dealing with offshore hydrocarbon exploration and exploitation activities, usually requiring a much shorter period (generally three months) than the usual 12 months to trigger the creation of a permanent establishment.

The Cyprus–Iceland DTA does not include a separate article of this kind, but instead adds exploration facilities to the standard list of locations giving rise to a permanent establishment. As noted above, it provides that a building site, construction or installation project or any supervisory activities in connection with such site or project constitutes a permanent establishment only if it lasts more than 12 months, but it does not set any minimum duration for exploration activities to constitute a permanent establishment. It is not clear whether this exclusion is intentional or whether exploration activities will be treated in the same way as others.

Income From Immovable Property

Income from immovable property may be taxed in the contracting state where the property is situated.

Business Profits

Profits are taxable only in the contracting state in which the enterprise earning them is resident unless it carries on business in the other contracting state through a permanent establishment there, in which case the profit attributable to the permanent establishment may be taxed in the contracting state in which it is located.

The agreement includes detailed rules for apportionment of profits to permanent establishments, which are to be applied on a consistent basis over time.

International Transport

Profits from the operation of ships (including ancillary equipment such as barges, containers, and trailers) or aircraft in international traffic are taxable only in the contracting state in which the enterprise is resident, determined by its place of effective management.

Dividends

Withholding tax on dividends paid by a company resident in one state to a company (but not a partnership) resident in the other is limited to 5 percent of the gross dividend as long as the recipient is the beneficial owner of at least 10 percent of the shares in the company paying the dividend. Otherwise, the maximum rate of withholding tax is 10 percent.

As Cyprus imposes no withholding tax on dividends paid to non-residents, in practice this provision applies only to dividends paid from Iceland to Cyprus.

Interest

Interest paid by a resident of one state to a resident of the other is taxable only in the state of residence of the recipient, subject to safeguards against abuse (*e.g.*, the exemption does not apply to any excessive interest above interest on an arm's length basis).

Royalties

The maximum withholding tax on royalties is limited to 5 percent.

Capital Gains

Gains derived by a resident of one contracting state from the alienation of immovable property situated in the other may be taxed in the contracting state in which the property is situated. Gains on disposal of shares or similar interests in a company or other entity deriving more than 50 percent of its value from immovable property may also be taxed in the contracting state in which the immovable property is situated. Gains arising from the disposal of immovable or movable property associated with a permanent establishment, or from the disposal of movable property used in connection with the performance of independent personal services, may be taxed in the contracting state in which the permanent establishment is located or the services are performed.

Gains derived from the alienation of all other property (including ships or aircraft operated in international traffic) are taxable only in the contracting state in which the alienator is resident. However, gains from the disposal of shares in a company resident in one contracting state derived by an individual who is resident in the other contracting state but who was a resident of the first-mentioned state in the course of the five years preceding the disposal may be taxed in the first state (the state in which the individual was previously resident).

Elimination Of Double Taxation

Elimination of double taxation is achieved by the credit method. The credit is limited to that part of the income tax in the state of residence as computed before the deduction is given that is attributable to income that is subject to tax in the state of residence.

The growing importance of substance over form also needs to be taken into account. While there is no explicit limitation of benefits or other anti-abuse provision, there are clear signals that artificial structures and transactions which have tax avoidance as their sole purpose will not be tolerated. Careful planning and implementation are essential in order to obtain the full benefits of the agreement.

Mutual Agreement Procedure

The article replicates the corresponding article of the OECD Model, except there is no facility for unresolved issues to be referred to arbitration. They are therefore to be resolved by the contracting states.

Exchange Of Information

The exchange of information article reproduces Article 26 of the OECD Model Convention verbatim.

The usual Protocol that is included in many of Cyprus's recent agreements, which sets out detailed requirements regarding information exchange, is absent. However, Cyprus's Assessment and Collection of Taxes Law provides the same robust safeguards against abuse of the exchange of information provisions. Requests for exchange of information are dealt with solely by the International Tax Relations Unit (ITRU) of the Department of Inland Revenue. Exchange of information may take place only *via* the ITRU: direct informal exchange of information between tax officers bypassing the competent authority is prohibited.

A request must be much more than a brief email containing the name and identifying information of the individual concerned. Rather, a detailed case must be made, with the criteria set out in a lengthy legal document. In effect, this means that the authorities requesting the information must already have a strong case even before they request the information. Accordingly, it will not be possible to follow up a suspicion without first gathering significant evidence. As a final safeguard, Cyprus's Assessment and Collection of Taxes Law requires the written consent of the Attorney General to be obtained before any information is released to an overseas tax authority.

Entry Into Force And Termination

The agreement entered into force on December 22, 2014, and its provisions are effective in respect of amounts paid or credited on or after January 1, 2015 with regard to taxes withheld at source, and in respect of taxable years beginning on or after January 1, 2015 with regard to other taxes.

Termination of the agreement will require written notice by either contracting state given no later than June 30 in any year from 2019 onwards, whereupon the agreement will cease to have effect from the beginning of the following year.

Conclusions

The new agreement with Iceland completes Cyprus's double tax treaty coverage of the prosperous Nordic markets. Cyprus and Iceland share many common characteristics: both are islands; both have a relatively small population and a services-based economy; and both are recovering from a painful banking crisis.

The new agreement aims to strengthen their trade and economic relations, in line with the Cyprus Government's continuing efforts to update and extend its network of double taxation treaties so as to attract foreign investment and promote Cyprus as an international business hub.

Topical News Briefing: No BEPS Without US?

by the Global Tax Weekly Editorial Team

At times it's felt as if the US's participation in the OECD's base erosion and profiting shifting (BEPS) work has been less than whole-hearted. But perhaps that is a perception that is beginning to change.

As reported in this week's issue of *Global Tax Weekly*, on May 20, 2015, the US Department of the Treasury released for public comment draft updates to the US Model Income Tax Convention, including provisions to deny treaty benefits to companies in certain situations. And, as Deputy Assistant Secretary for International Tax Affairs Robert B. Stack explained, these situations include where a company is judged to be eroding tax bases or shifting profits. "Treaties exist to eliminate double taxation, not to create opportunities for BEPS," he said.

Although the US has been relatively quiet on the BEPS front since the project was initiated in 2013, President Obama's track record on proposals to crack down on corporate tax avoidance suggests that he would not be inclined to oppose any of the OECD's final recommendations when they emerge in late 2015. However, what America's stance on BEPS would be if a Republican occupied the White House is, at the moment, something of an unknown quantity, but given the statements and comments made by senior Republican figures in Congress over the last couple of years on this issue, it's probably safe to assume that it would be much more critical.

This was illustrated last year when then House of Representatives Ways and Means Committee Chairman Dave Camp (R – Michigan) and Orrin Hatch (R – Utah), the latter being the Senate Finance Committee's then Ranking Member (and now its Chairman), issued a statement arguing that the BEPS project is "now 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 long-standing principles that determine taxing jurisdiction in a quest for more revenue," they stated, "Americans are threatened with an un-level playing field."

It was a view supported by the Business Roundtable, an association of CEOs from leading US companies with USD7.4 trillion in annual revenues, which has said that the BEPS project is "being used by some governments for the purpose of imposing extraterritorial taxes on US business income."

However, even if President Obama wanted to transpose all of the OECD's recommendations into the US tax code, the chances of him succeeding would appear to be remote. This is partly because Congress remains at loggerheads on the issue of tax reform – the relatively simple matter of renewing the temporary research and development tax credit is seemingly beyond it at the moment, as also reported in this week's issue – and also because the US will be entering an election year, when it is hard to foresee major changes to tax legislation taking place.

In 2014, Pascal Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration, told the US Congress that the BEPS Action Plan should not be seen as a "revenue grabbing exercise." It is "intended to fix existing deficiencies of the current standards," he said. A skeptical US might need some convincing however, especially if a Republican wins next year's race for the White House.

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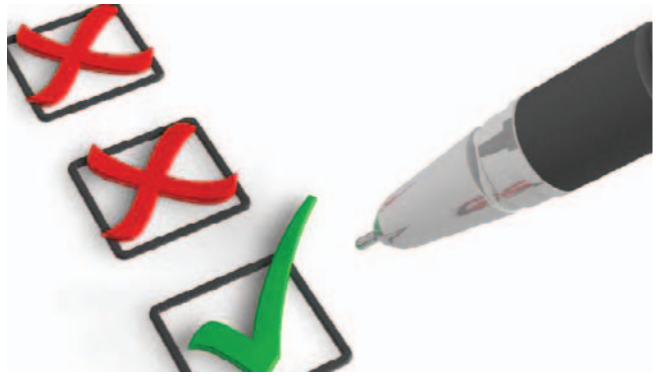
UK Tax Outlook Post-Election 2015

by Stuart Gray, Senior Editor, Global Tax Weekly



So, after all the pre-election anxiety about a politically rudderless United Kingdom – one ruled by a weak minority government, or a fractious coalition with a very different vision for Britain – the election result turned out to be reassuringly boring for those hoping for the *status quo* to continue, as the Conservatives were returned to power with a small parliamentary majority on May 8. The next few years, however, may be far from dull for those with a stake in UK PLC. This article summarizes some of the key issues facing business taxpayers in the UK.

Introduction

The election result was broadly welcomed by the business and investment community, which expects the Conservatives to largely stick with policies that have enabled the UK to grow faster than most other major economies in the past couple of years – corporate tax cuts key among them. However, the Conservatives' first term in office since 1992 as outright winners of a general election might not be the plain sailing that the party would have us believe.

Fiscal Policy

One of the most pressing issues is the budget deficit. At 5 percent of gross domestic product (GDP), the deficit is roughly half the level it was when the Conservative/Liberal Democrat coalition government took office in 2010, but is the highest in the EU. And the deficit was supposed to have been eliminated by now under the former coalition government's economic plan, meaning that some tough decisions will have to be taken to finally balance the budget.

Predictably, UK business leaders think deficit reduction should be achieved primarily through spending cuts rather than tax rises, as was confirmed by a recent Institute of Directors (IoD) survey. The survey of 1,211 IoD members conducted immediately after the general election revealed that 85 percent supported plans to run a surplus by the end of the 2015–20 parliament. More than half of respondents strongly opposed increases in income tax, National Insurance, value-added tax (VAT), and business rates (property tax). Just 1 percent strongly agreed that the Government's deficit reduction plans should be funded entirely through tax rises.

Judging by its manifesto commitments, this is much the way in which the Conservatives intend to eradicate the deficit. Just days before the election, Cameron announced a "five-year tax lock", and said that a Conservative Government would not hike income tax, National Insurance or VAT, or broaden the VAT base. The party has also pledged to legislate for a "tax-free minimum wage" to ensure that the personal income tax allowance rises automatically in line with increases to the UK's minimum wage, which is based on an individual working 30 hours per week. Its manifesto further pledged, by 2020, to raise the personal allowance to GBP12,500 (USD19,400) – which would equate to raising the hourly minimum wage rate for adults from the current GBP6.70 to over GBP8 – and the threshold for the 40 percent income tax rate to GBP50,000. The party also promised to effectively raise the inheritance tax threshold for married couples to GBP1m (from the current threshold of GBP650,000) and to introduce a new transferable "family home allowance" of GBP175,000 per person, which would be funded by new restrictions on pension tax relief for those earning over GBP150,000.

According to the Institute for Fiscal Studies (IFS), the Conservatives' tax plans amount to a net tax giveaway of about 0.1 percent of GDP.[1] And this means that the Government is going to be putting most of its deficit-reduction eggs into the spending cuts basket.

The party promised in its manifesto that a Conservative Government would "control spending, eliminate the deficit, and start to run a surplus." This, the Tories said, would require a further GBP30bn in fiscal consolidation over the next two years. Of this amount, GBP13bn and GBP12bn would be found from departmental and welfare savings, respectively, and at least GBP5bn raised from a crackdown on tax avoidance and evasion. The party says it would reduce government spending by 1 percent each year in real terms for the first two full financial years of the 2015–20 parliament. The manifesto added that the UK should move into surplus from 2018/19.

However, the Conservatives, like the other major parties that contested the 2015 general election, were rather vague about how they would go about achieving these ambitious public spending cuts, raising doubts about whether they are going to be achievable.

The IFS for one is somewhat skeptical about the Conservatives' plan for cutting the deficit, noting a few days before the election that: "None of [the] parties has provided anything like full details of their fiscal plans for each year of the coming parliament, leaving the electorate somewhat in the dark as to both the scale and composition of likely spending cuts and tax increases."

The IFS calculated that the Conservatives' plans for social security spending, although detailed, would only provide about 10 percent of the cuts that they have said they would deliver. Moreover, the party's commitments on international aid, health care, and education spending would increase spending in these areas. The Institute concluded therefore that the Government's deficit reduction plan hinges on GBP5bn of unspecified anti-avoidance measures, GBP10bn of social security cuts, and GBP30bn of undetermined cuts to unprotected departmental spending.

"The Conservatives have said they want to eliminate the deficit but provided next to no detail on how they would do it," observed Soumaya Keynes, research economist at the IFS and an author of the analysis of the parties' spending plans.

Carl Emmerson, IFS Deputy Director, added that the Conservatives' plans are "predicated on substantial and almost entirely unspecified spending cuts."

So will the Government have to raise taxes after all, if it can't find the hoped-for cuts in spending without causing a public uproar? Some of these questions will be answered by an interim budget due to be announced on July 8, 2015. However, the new Government will need to answer plenty of other questions in due course too.

Tax Reform

When the Conservatives became the senior partner in the former coalition government in 2010, tax reform was one of their top priorities, resulting in the formation of the Office of Tax Simplification. However, as the Government has legislated on an *ad hoc* basis to close what it views as tax loopholes and to crack down on aggressive tax avoidance, most people would probably agree that the tax system has got progressively worse – in administrative terms – than better.

Business taxpayers certainly think tax reform is necessary. For example, more than half (51 percent) of the small businesses in the UK surveyed by the Federation of Small Businesses (FSB) want the new Government to simplify the tax system. A similar percentage (53 percent) of the 2,327 companies responding to the survey said they wanted the new Government to focus on reducing the regulatory burden.

Indeed, the FSB's survey came to a similar conclusion as the IoD poll, that the UK's tax system is hindering companies of all sizes. Simon Walker, IoD Director General, said: "A hugely complex tax code remains a barrier to growth for many businesses. We welcome the Conservatives' manifesto pledges to raise the personal allowance and the 40 [percent income tax] threshold over this parliament, but much more fundamental reforms are needed. Businesses want National Insurance brought down, business rates reformed, and a tax code which encourages investment and entrepreneurialism. This will not be achieved by tinkering at the edges."

When asked which, if any, taxes should be cut, 31 percent of the respondents to the IoD survey said the basic rate of income tax should be lowered. One-quarter supported reducing employers' National Insurance, and 23 percent backed lower business rates. Just under one-quarter (24 percent) said there should be increased tax reliefs for investment by individuals in new business, while 22 percent agreed that more tax relief should be available for capital expenditure incurred by businesses.

One-in-five respondents said that the Government should prioritize corporate tax cuts. Only 15 percent said tax cuts should not be a priority.

Adding to business calls for tax reform, the British Chambers of Commerce called for "bold tax incentives for UK companies that make long-term investments in people, plant, premises, and export growth" in an open letter addressed to Cameron following his electoral victory. The letter added that Cameron should be ambitious and seek the lowest taxation and unemployment rates, and highest growth and investment rates among the UK's global peers. "Growth, not austerity, should be the watchword," and the Government should pursue "a plan for fiscal consolidation that is carefully balanced with the overriding need to nurture growth and investment."

While the former coalition government generally won plaudits from the business world for tax and wider economic policies that seem to have encouraged growth, there is clearly scope for further improvement, as the repeated pleas for tax reform show. And these grievances aren't necessarily without merit. According to research by accountants UHY Hacker Young, the UK is inhibiting its economy with a tax burden 18 percent heavier than the global average.[2] UHY's findings show that tax revenue in the UK represents a third (32.9 percent) of GDP, a fifth higher than the global average of 27.8 percent. The UK therefore lags behind the US, where the total amount of tax taken by its government is just over a quarter of GDP, at 25.4 percent. The UK also lags behind Ireland (28.3 percent), and even Japan (29.5 percent). Nevertheless, the UK tax burden does compare favorably with the average tax take across Western Europe, of 38.9 percent of GDP.

Roy Maugham, UHY Tax Partner, said: "Unless the UK addresses its weighty tax burden, the British economy could find itself under pressure from … lower tax Eastern European countries that are able to offer equally strong manufacturing skills bases, and global cities like Singapore, Dubai, and Qatar, that are consciously targeting the industries that create the most wealth."

However, after a five-year parliament in which the corporate tax rate fell by 8 percent to 20 percent, it is unlikely we will see anything as radical in the current parliament, if the Conservatives' manifesto is anything to go by. Ultimately, tax policy is probably going to be dictated by the success or otherwise of the Government's program of spending cuts.

English Votes For English Laws

One source of doubt hanging over the UK's future legal and taxation framework is the prospect of further devolution of tax powers to the constituent nations making up the UK, especially in Scotland after the Scottish National Party won almost every Westminster seat north of the border. Indeed, devolution may no longer be a process associated only with Scotland, Wales, and Northern Ireland, but England too, given Tory plans to give English Members of Parliament (MPs) increased say on English income tax policy matters, which were outlined in a speech by Prime Minister Cameron shortly before the general election.

Reflecting on the implications of further devolution to Scotland, Cameron observed: "English MPs will be unable to vote on the income tax paid by people in Aberdeen and Edinburgh [in Scotland], while Scottish MPs are able to vote on the tax you pay in Birmingham, Canterbury, Leeds, or Lincoln [in England]. It is simply unfair. And with English votes for English laws, we will put it right." The Conservative Party plans to give English MPs "the decisive say on matters affecting England, while preserving a central parity between all members of parliament," Cameron said.

He confirmed that, if re-elected as Prime Minister, he would bring forward legislation within the first 100 days of a Conservative administration with the aim of having the new arrangements in place in time for the 2016 Budget.

Furthermore, in his first post-election speech, Finance Minister George Osborne promised to deliver "radical devolution to the great cities of England." While initially this is to be restricted to housing, planning, transport and policing policies, future tax-raising powers for English regions and cities cannot be ruled out. Indeed, many local political and pressure groups in England have been agitating for this since tax-raising powers started flowing from London to Edinburgh.

The EU: In, Out, Or Half-in Half-out?

Another question – and a fundamental one as far as the UK economy is concerned – is the UK's future relationship with the EU. Cameron has promised voters a referendum on the issue by the end of 2017, and their options will include voting for the UK to remain in the EU, to exit the EU (the so-called "Brexit" scenario), or to have a different relationship with the bloc.

The latter of these three options depends on Cameron being able to negotiate a transfer of powers from Brussels to London. However, the renegotiation of the UK's European treaty obligations won't be straightforward, and will need the approval of all 28 member states, something that many commentators think is probably going to be nigh on impossible. What's more, Brussels fears that if Britain is permitted to pick and choose which bits of the EU it finds palatable, then other member states might follow suit, leading to an eventual unraveling of the Union. And the EU is certainly not going to allow that to happen!

With regards to tax, a "Brexit" could potentially give the UK Government much more policy flexibility in this area. First, presumably, the UK would no longer have to abide by the requirements of the EU VAT Directive, giving it more freedom to alter VAT rates and the VAT base. Second, the UK wouldn't be bound by EU state aid laws, which prevent member states from offering tax incentives to specific industries or geographical areas. Also, Britain wouldn't have to worry about tax harmonization initiatives, such as the common corporate tax base, which is back on the EU's tax agenda.

Then again, some warn that even if Britain did leave the EU, it will never completely escape its clutches; Norway, which is a member of the free trade area, but is not part of the EU, is said to be the bloc's 10th-highest contributor,[3] while Switzerland, which has the same status, was recently forced to change its company tax laws at the behest of the EU.

And this is what is worrying some business organizations in the UK: that Britain could end up getting the worst of both worlds by exiting the EU.

This was a warning sounded by Sir Mike Rake, President of the Confederation of British Industry (CBI), during a speech at the CBI's annual dinner on May 20.

"The question is not whether the UK would survive outside the EU, but whether it would thrive," he said. "No-one has yet set out a credible alternative future to EU membership. The current alternatives are not realistic options – little or no influence and the obligation to comply with EU principles whilst still paying most of the costs."

"Business must be crystal clear that membership [of the EU] is in our national interest," Rake added. "The EU is key to our national prosperity. Letting us set the trade agenda, be part of the biggest free trade deal ever negotiated – [the Transatlantic Trade and Investment Partnership] – and be able to properly compete with global giants like China and India."

Conclusion

The CBI President nevertheless welcomed the fact that several weeks of negotiations to form a new government were avoided by the Conservatives' unexpected election victory. However, rather like a game of whack-a-mole, just as one major source of uncertainty was hit on the head, several others popped up to the surface. Time will tell how these outstanding issues affect the UK business environment. But it would be ironic indeed if a government that put business growth at the heart of its agenda bequeaths a legacy whereby the UK will be a more difficult place in which to invest.

Endnotes

1 http://www.ifs.org.uk/uploads/publications/bns/BN170.pdf

2 http://www.uhy-uk.com/news-events/news/uk-economy-saddled-with-tax-burden-a-fifth-higher-than-the-global-average/

3 http://news.cbi.org.uk/index.cfm?LinkServID=0C9D1717-2D12-4CA6-9EE215A73A32C3F7

Tax Planning On The Edge – Ride Or Die In The International Tax Arena

by Mike DeBlis Esq., Deblis & Deblis

The US economy has become more global, lining up in the *race* to the top. However, with multinational economic activities *revving their gears*, some tax practitioners are growing *fast and furious*. To them, *it doesn't matter if you win by an inch or a mile; winning is* winning. As a result, some choose to violate US laws as long as their advice is legal abroad, while others evade taxes in foreign countries without breaking rules in the US. However, if you've been exploiting the legal arbitrage opportunities resulting from the gaps created by the interaction of different regimes, expect the IRS to go "*ejecto seato, cuz*" on you and your clients very soon.

Most tax practitioners who juggle differing tax regimes abide by the same rules they use for everyday planning. However, international tax planning has some gray areas where no clear, applicable legal standards exist. While there are certain established ethical standards, these apply to aggressive international tax planning. On the other hand, there are laws that can apply, but are avoided because they violate the laws of another country. Through the following lines, you're about to discover how practitioners can go against US criminal laws when their plans illegally reduce taxes both locally and internationally.

"You Might Wanna Keep Your Eyes On The Road."

Many question if the US cares about the evasion of a foreign country's taxes. The answer is traditionally "no" because of the Revenue Rule, which states that the US won't collect the taxes of a foreign nation. The Revenue Rule is a corollary of the Penal Rule, which indicates that "[t]he Courts of no one country execute the penal laws of another country." If you need more convincing, reflect on the Restatement (Third) of Foreign Relations §483, which confirms the fact that "[c]ourts in the United States are not required to recognize or to enforce judgments for the collection of taxes, fines or penalties rendered by the courts of other states."

Regardless, you need to take into consideration the scope of domestic US laws like mail and wire fraud statutes. According to these, individuals who devise or intend to devise plans to defraud someone out of money or property will be guilty of a felony. Under a broad reading of these statutes, a scheme or artifice to defraud can encompass schemes to defraud other countries out of their taxes. In fact, the Supreme Court endorsed such a broad reading in the case of *Pasquantino, et al*, where a group of Americans purchased liquor from Maryland, drove it across the border, and didn't declare it to avoid paying Canadian excise taxes.

According to the judge, they violated the wire fraud statute by engaging in a fraudulent scheme inside the US. Now the defendants argued that they hadn't broken any US rules and even quoted the Revenue Rule. However, the Supreme Court disagreed, stating that there's no limitation to the wire fraud statute and that it could cover any fraud schemes. The Court also held that another country's taxes included property within the ambit of the statute. As for the defendant's argument that the Revenue Rule should preclude the prosecution, the Court rejected it stating that it wasn't the reason they were under prosecution despite the Mandatory Restitution Act demanding that they pay Canada the evaded taxes. The reason the liquor smugglers were prosecuted because they violated the US wire fraud statute while paying Canadian taxes was an ancillary consequence rather than the purpose of the prosecution.

In short, if *you make choices and you don't look back*, reconsider your position since you may be prosecuted for mail or wire fraud if you knew or should have known that your tax planning affected another country's tax claims.

"And Your Mistake? Thinking You're In America. You're A Long Way From Home."

The other scenario is when tax practitioners in a foreign country construct a plan that's legal in a foreign country but evades US taxes. If you're concerned about the US trying to prosecute you, you may be on to something. The classic crime of tax evasion applies regardless of whichever way you decide to evade taxes. You may even be tried for conspiracy if you and at least another person conspire to defraud the US or commit an offense against it. The same applies if you or the other person doesn't act to prevent this conspiracy. In both cases, however, there isn't a need for additional US nexus.

The US Constitution permits the extraterritorial application of federal criminal law to non-citizens acting abroad if their aim is to harm the US, its citizens or interests. American prosecutors relied on this law to indict Wegelin & Co., the oldest private bank in Switzerland. The indictment alleged that Wegelin conspired to defraud the United States by helping US account holders hide assets from the IRS in undeclared accounts. How so? By allowing US taxpayers to open accounts in Switzerland despite knowing that they weren't reporting their income to the US Government. Claiming that this was a standard practice in the industry, Wegelin argued that it wasn't violating Swiss law. The fact that other Swiss banks did the same made it believe that it was beyond the US's abilities to prosecute it.

One issue which US prosecutors had to overcome was that the Federal Rules of Criminal Procedure didn't cover arrests in a foreign country. In fact, Federal Rule of Criminal Procedure 4 requires the arrest warrant or summons to be within the US unless authorized elsewhere. However, the Department of Justice stepped in and, using an international treaty, requested Switzerland to enforce a warrant against the bank.

Now not all treaties cover extradition for tax-related offenses or activities; but the Department of Justice can contact Interpol and ask it to post a Red Notice to arrest fugitives and imprison them in their own home country. In the end, Wegelin became the first foreign bank to be inducted into the Department of Justice's "hall of shame." Battered, beaten, and bruised, Wegelin threw in the towel, pleading guilty to felony tax charges and paying a whopping USD75m in fines. Due to the irreparable damage caused to its once stellar reputation, the bank was forced to sell its remaining business.

Wegelin's fall from grace had a ripple effect that affected more than just the bank itself. It was also felt by US taxpayers who held unreported accounts at Wegelin. Very simply, the federal district court gave the IRS permission to issue a "John Doe" summons that would allow the United States to determine the identity of any US taxpayer who had been suspected of opening an account at Wegelin for the purpose of evading federal income taxes.

"Maybe You're Not The Good Guy Pretending To Be The Bad Guy."

If you're intentionally violating a foreign country's taxation laws or willfully violating US tax laws, your race may come to an end soon. The law has evolved over the past decade, allowing US prosecutors to *tail* you and prosecute you according to different laws. So don't expect national borders to protect any illegal schemes you have in mind. Consult with our tax attorneys to find out where you stand; after all, *you don't know how much you appreciate something until someone takes it away*.

United States Taxation Of Income From The Provision Of Services On The Outer Continental Shelf – Creating A US Trade: Tax Implications For Employees

by Stephen Flott and Joseph Siegmann, Flott & Co

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

In the tenth article (see *Global Tax Weekly*, Issue 124, March 26, 2015), we explained the US income tax implications for foreign corporations operating on the US Outer Continental Shelf ("OCS"). This article discusses the US employment tax implications for foreign corporations operating in the OCS.

The general rule is that payment of US source wages, salaries, *etc.* made to non-resident alien employees is subject to a 30 percent withholding tax unless a tax treaty provides for lower rates. However, section 3402 of the Internal Revenue Code ("IRC") preempts the general rule. It provides that if the foreign corporation is a US employer, that is, it has a US trade or business (see *Global Tax Weekly*, Issue 124, March 26, 2015), the foreign corporation is required to withhold income tax at graduated rates for its non-resident alien employees.

The distinction is important. A foreign corporation that hires an independent contractor, who is a non-resident alien, to provide personal services on the OCS may be required to withhold 30 percent of the gross payments made to that contractor. On the other hand, it the foreign corporation uses a non-resident alien employee, section 3402 requires that it withhold tax at graduated tax rates, which are generally lower than the 30 percent withholding tax.

As explained earlier, a foreign corporation with a US trade or business is subject to a series of withholding taxes on the wages paid to employees working in the US. If the foreign corporation employs US persons, then it must withhold and remit all of the relevant income tax to the Internal Revenue Service ("IRS"). In addition to income taxes, the foreign corporation is required withhold the employee's share of the Federal Insurance Contributions Act

(FICA) taxes, contribute to the Federal Unemployment Tax Act (FUTA), and pay the employer's share of these FICA taxes.[1]

If the foreign corporation employs non-resident aliens, like foreign corporations, the employees may qualify for treaty benefits under a bilateral tax treaty, reducing or eliminating their US income tax liability. To qualify for the exemption, the employee must provide a completed Form 8233 certifying their exemption to their employer. Each bilateral tax treaty has different qualification requirements so an employee, seeking to use a tax treaty, needs to consult the specific treaty provisions to determine if he or she qualifies.

Like with the permanent establishment rules discussed in the previous article, some bilateral treaties have special provisions addressing wages and salaries earned from offshore activities that trump the general residency articles of the bilateral treaties. For example, Article 4A.4(a) of the US–Norway treaty preempts Article 14 and provides that a resident of one state shall not be taxable in the other treaty state if the compensation in the other treaty state is for "[l]abor or personal services performed in that other state for a period of 60 days in the taxable year."

If the non-resident employee does not qualify for a reduced rate or exclusion under a bilateral tax treaty, then the foreign corporation must withhold income taxes in accordance with IRS Notice 2005-76. Notice 2005-76 provides a specific formula for calculating the withholding rate of income taxes on non-resident aliens. The calculation depends on the payroll period, but the net effect is that a non-resident employee pays a slightly higher graduated tax rate than a similarly situated US person. In addition, non-resident aliens are generally limited to one withholding allowance, whereas US persons may claim multiple allowances. Withholding allowances reduce the amount of a person's gross income for purposes of calculating the amount of tax to be withheld, effectively lowering the amount of tax withheld.

Similar to the exclusion of income taxes from US taxes under a bilateral treaty, non-resident employees may qualify for exemption from FICA taxes under something called a totalization agreement. The US has such an agreement with 25 countries. Totalization agreements contain rules which dictate when employees and their employers must pay into the US social security system or into the other country's social tax system. Employees and employers do not get to choose. The agreements control into which social system taxes are paid. If the employee is not a resident of a country with a totalization agreement, he or she and his or her employer are subject to FICA taxes.

Unlike income and FICA taxes, FUTA contributions may not be reduced or exempted under bilateral tax treaties. In addition, unlike income and FICA taxes, the tax is completely borne by the employer, not the employee. Section 3301(2) imposes on the employer a tax of 6 percent on the total wages paid to the employee during the calendar year.

It should also be noted that if the employer fails to collect and remit or pay income, FICA and FUTA taxes, the IRS may assess Trust Fund Recover Penalties against officers and employers that are responsible persons of the corporations. Responsible persons are generally directors, officers and persons in charge of payroll. Unlike other US tax liabilities, Trust Fund Recovery Penalties are generally not dischargeable in bankruptcy and the IRS is very aggressive in attempting to recover such penalties from both the corporation and responsible persons.

Endnote

1 FICA taxes equal 7.65 percent of the employee's gross income which is withheld from the employee's pay. The employer's FICA tax is also 7.65 percent of the employee's gross income. Both amounts are paid by the employer at the same time to the IRS.

Topical News Briefing: Come Fly With Me, But Remember Your Wallet

by the Global Tax Weekly Editorial Team

There are few areas of modern life left where governments don't make their presence felt in the form of taxation. Even when we vacation abroad, it's almost taken for granted now that taxes, fees and surcharges of varying types will be paid by travelers as part of their air fare. However, these additional costs can mount up.

As reported in this week's issue of *Global Tax Weekly*, this topic was brought to the fore recently by the New Zealand Government's decision to impose a "Border Processing Levy" (BPL) on passengers departing from and arriving in New Zealand, forming part of the 2015/16 Budget announcement.

The levy is intended to fund the rising cost of screening incoming passengers and cargo to prevent the importation into New Zealand of potentially harmful materials and contraband. At NZD16 (USD11.7) for arriving passengers and around NZD6 for departing passengers, the charge is lower than similar levies charged by other territories, the Government says – and to a degree it's right. Australia's Passenger Movement Charge is imposed at a flat rate of AUD55 (USD43) on all passengers departing Australia. In the US, there is a multitude of charges added to the price of a flight ticket, which are then passed on to the Internal Revenue Service. Travelers departing from airports in the UK meanwhile face paying up to GBP194 (USD300) extra on their air fare, depending on how far they are flying and the cabin class they are using, as a result of the Air Passenger Duty (APD).

It is noticeable, however, that governments are careful not to call these extra charges "taxes," instead preferring to call them charges, levies, duties, or fees, presumably to avoid the impression that they are merely foisting yet another tax onto their citizens. However, it is hard not to see these euphemistically named surcharges as taxes, given the large amount of revenue they raise, and the fact that this revenue doesn't always seem to be ring-fenced.

New Zealand's BPL is expected to yield about NZD100m to fund the operations of the border security services. But what will happen if the levy raises more than the border police need? It's probably fair to say that passengers won't be getting a rebate!

We can see these travel levies turning into items of general taxation in other countries. In the US, for example, a study by the Tax Foundation concluded that air travel taxes raised just over USD12bn in revenue for the Airport and Airway Trust Fund in 2013, but subsequent federal grant spending on airport projects by the FAA did not match the distribution of tax revenue collected, with the larger airports missing out. Because those tax dollars have gone to the Federal Government, "the airport essentially has to wait for a ponderous political process to have its own tax dollars returned," the Foundation said.

The UK's APD is probably the most naked tax of them all however. Ostensibly an environmental tax designed to encourage travelers to find "greener" forms of transport (although, if you want to get off an island in a reasonable amount of time, the internal combustion engine pretty much remains your only option), the APD raised over GBP3bn for the Treasury in 2014, and there's not much evidence to suggest that the money was spent on improving the environment or funding alternative forms of transport.

The protestations of the travel industry and taxpayer groups against such taxes also tend to fall on deaf ears, probably because travel taxes are "stealthy" yet bring in healthy amounts of revenue that governments come to rely on. The prompt passing of New Zealand's BPL by the Parliament despite opposition to the proposal showed just that. So it looks like we're stuck with them.

Transfer Pricing In Africa

by Slim Gargouri

This article was published in 'Intertax', Volume 43, Issue 4.

Slim Gargouri is a chartered accountant and international tax specialist. He is the author of several tax news stories published with several magazines. He particularly focuses on the tax regulation of developing countries (Africa, Pacific Asia, East Europe and Latin America).

Abstract

While tax stakeholders are globally attentive to BEPS reforms, African countries don't seem to be actively involved in such process. Although civil society organizations are campaigning that any reform in the international taxation system shall be led by United Nations Committees rather than the OECD in order to involve developing countries to decide their destiny, African countries are themselves responsible of being excluded from an active involvement. In fact, a look on the current transfer pricing regulation within each African jurisdiction shows that only few countries have implemented detailed transfer pricing regulation and guidelines.

Introduction

Given that Africa is more and more targeted by multinational groups whatever would their industries be, moving into the transfer pricing age became a must for African countries. According to a

report issued by Europe Aid in 2011, *Transfer pricing and developing countries*, two-thirds of all business transactions worldwide take place between related parties. Lawmakers are highly recommended to implement a transfer pricing regulation that would prevent the national treasury tax incomes from profit shifting and would boost foreign direct investments. In fact, it is the uncertainty regarding the application of the tax regulation which curbs foreign companies and particularly those with a high added value to invest within African countries. Accordingly, the implementation of a stable transfer pricing regime would improve the investment climate and would enhance tax revenues recovery.

Developments below highlight the main transfer pricing rules in force in major African countries.

1. Angola

Published in the official gazette dated of October 1, 2013, Presidential Decree No. 147/13 implemented transfer pricing obligations on large taxpayers which were defined and listed through Order No.

472/14 issued by the Ministry of Finance of Angola on February 28, 2014.

Large taxpayers include financial institutions, hydrocarbon companies, diamond companies, telecom companies, and large public companies.

Any kind of commercial transactions carried out between related entities should comply with the arm's length principle. Otherwise, tax authorities may adjust taxable bases and claim the under-declared amounts.

Entities are considered as related parties when:

- Managers, their spouses, and/or their ascending or descending relatives own, directly or indirectly, at least 10 percent of the share capital or voting rights of the other entity;
- The majority of the board of directors is common between both entities (taking into consideration relatives' relationships as well);
- They are controlled through a subordination agreement;
- They have commercial relationships which represent more than 80 percent of the turnover of one of entities; or
- Debts owed by an entity to the other company represent at least 80 percent of its whole debts.

Taxpayers with annual incomes exceeding KWZ-7bn should prepare transfer pricing documentation which should include highlights on the main transactions performed with related entities as well as an economic analysis of these transactions.

Transfer pricing documentation should be submitted by the end of the sixth month following the closing date of the financial year.

The transfer pricing file should include the following:

- Executive summary;
- Macroeconomic environment;
- Presentation and description of the entity;
- Functional analysis of the entity;
- Identification of related-party operations; and
- Economic analysis of related-party operations.

The authorized transfer pricing methods are the comparable uncontrolled price method, the resale minus method, and the cost plus method.

2. Cameroon

Based on Article 19 of the Income Tax Act, profits indirectly shifted from domestic companies which are controlled by non-resident entities or which control other non-resident companies to the latter will increase the taxable base of the domestic companies. Such adjustments are to be introduced by tax authorities in cases of tax audit.

The same rules are applicable to companies which are under control of another company or a companies' group which controls other non-resident entities.

Failing to provide enough evidence supporting the arm's length value of transactions made by the taxpayer, adjustments will be introduced by tax authorities. The adjustments will be based on data resulting from comparison with similar entities operating in Cameroon.

Accordingly, transfer pricing documentation should be prepared by the taxpayer, including the following:

- Details on the control relationships between the taxpayer and non-resident companies;
- Transfer pricing methods (manufacturing, trading and financial transactions performed with such companies) and related supporting documents;
- Details of the covered transactions; and
- Tax treatment of the covered transactions.

Transfer pricing documentation should be valued and split by jurisdiction, by company.

According to the Budget Law 2014, large taxpayers must prepare and file, jointly with the corporate income tax return, a statement indicating all shares held in other companies where such participations represent more than 25 percent of the share capital value. The statement should provide all details on transactions performed with related entities whether based in Cameroon or abroad. Note that a large taxpayer is a company with a total annual turnover exceeding XAF1bn. Currently, there are no Advance Pricing Agreement (APA) rules in Cameroon.

3. Ghana

Transfer pricing regulations (L.I 2188) are effective from July 27, 2012 in Ghana, and transfer pricing guidelines were issued by the Ghana Revenue Authority in 2013. These guidelines indicate that commentaries in the OECD Transfer Pricing Guidelines may be used as reference to interpret transfer pricing rules.

According to the Ghanaian rules, transactions between related parties should be performed in accordance with the arm's length value. The arm's length principle applies in the following cases:

- A transaction between persons who are in a controlled relationship;
- Dealings between a permanent establishment and its head office;
- Dealings between a permanent establishment and other related branches of that permanent establishment;
- A transaction between a taxpayer and another taxpayer who are in a controlled relationship; and
- A transaction between a taxpayer and another taxpayer who are in an employment relationship.

The transfer pricing practice note released by the Revenue Authority specifies that if a tax authority applies its transfer pricing regulations to make an adjustment to the taxable profit of one of its taxpayers, there will be the potential for double taxation. Where the other party to the transaction is located in another country, and there is a double taxation agreement between the two countries, the taxpayer in that other country may make a claim for a "corresponding adjustment" to relieve double taxation.

However, the appropriate adjustment is not automatic. The other contracting state can only make the adjustment to eliminate double taxation if it considers that the figure of adjusted profits correctly reflects what the profits would have been on an arm's length basis.

In other words, it has to be satisfied that the upward adjustment made by the first mentioned contracting state is justified both in principle and amount.

The transfer pricing regulation specifies that the "most appropriate" method should be used for transactions performed between related parties. Consistent with OECD Guidelines, transfer pricing methods allowed under the tax practice are as follows:

The Comparable Uncontrolled Price (CUP) Method

The Practice Note released by the Revenue Authority specifies that situations where it is most appropriate to apply the CUP method include, but are not limited to:

(a) Interest rate charged on borrowing between persons in a controlled relationship;
(b) Royalty charged on licensed intangible properties (*e.g.*, trademark, design, copyright *etc.*); and
(c) Price charged for the sale of listed securities.

The Resale Price Method

The resale price method is appropriate if an enterprise performs all the functions an independent distributor might be expected to perform.

The resale price method will be most useful where the reseller contributes little to the value of the product ultimately on-sold on an arm's length basis.

The method will be most reliable if the reseller on-sells within a short time because the more time that lapses, the greater the risks assumed in relation to changes in the market, in rates of exchanges, *etc.*

The Cost Plus (CP) Method

The CP method is particularly useful in transactions between related parties such as:

(a) Sale of manufactured goods; where the manufacturer does not use unique intangible;
(b) Joint facility agreements or long term buy and supply arrangements; and
(c) Provision of service.

The Transactional Profit Split Method

This method is suitable for situations when functions of group members are so intertwined that they cannot be evaluated separately, and the most appropriate way is to examine the whole process from initial manufacture to end sale and work out the real economic contribution made by each enterprise by way of a functional analysis.

The Transactional Net Margin Method (TNMM)

Multiple year data should be considered in the TNMM for both the person under examination and independent persons to the extent their net margins are being compared, to take into account the effects on profits of product life cycles and short-term economic conditions. The following ratios are useful for this purpose:

(a) Net profit before tax to sales;
(b) Net profit (before interest and tax) to sales;
(c) Gross profit to operating expenses;
(d) Net profit before tax to shareholders' funds;
(e) Earnings before interest and tax to assets.

However, tax authorities may authorize the use of a different transfer pricing method upon application submitted by the taxpayer with relevant arguments to select different methods.

Transfer pricing documentation should be prepared by taxpayers to support transactions with related parties. Such documentation should be provided to tax authorities upon request.

Also, an annual transfer pricing return shall be filed in a form prescribed by the Commissioner General and must be submitted jointly with the annual income tax return within four months after the company's financial year end. The transfer pricing form includes details relating to:

- Identity and country of residence of the parent company as well as direct and indirect subsidiaries;
- Related parties having performed transactions with the taxpayer during the year of assessment;
- A breakdown of intercompany transactions undertaken by transaction type, the value of the transactions and the contracting related party;
- Any change in the ownership structure;
- The list of companies in which the taxpayer holds shares whether directly or indirectly during the year of assessment.

Tax authorities have issued guidelines describing the main contents of the transfer pricing documentation. This includes:

- A general description of the organizational, legal, and operational structure of the group of associated enterprises of which the taxpayer is a member, as well as any relevant change therein during the taxable period;
- The group's financial report or equivalent annual report for the most recent accounting period;
- A description of the group's policy in the area of transfer prices, if any;
- A general description of the nature and value of the controlled transactions in which the taxpayer is involved or which have an effect on the income of the taxpayer;
- A description of the functions, assets and risks of group companies to the extent that they affect or are affected by the controlled transactions carried out by the taxpayer, including any change compared to the preceding period.

Additionally, the taxpayer is expected to demonstrate that the prices and other financial indicators associated with the transaction satisfy the requirements of the arm's length principle and a description of why such methods are the most appropriate transfer pricing methods. Further, a comparability analysis should support the taxpayer's application of the most appropriate transfer pricing method selected by him.

The transfer pricing guidelines indicate that being comparable means that none of the differences (if any) between the situations being compared could materially affect the condition being examined in the method (*e.g.*, price or margin), or that adjustments can be made to eliminate the effect of any such differences. If suitable adjustments cannot be made, then the transactions cannot be considered comparable.

The assessment of comparability takes into consideration, *inter alia*, the following items:

- Characteristics of goods, property and services transferred;
- Relative importance of functions performed;
- The terms and conditions of the relevant transaction;
- The assets used;
- The relative risk assumed by the persons in a controlled relationship and any independent party where the independent party is considered as a possible comparable;
- The economic and market circumstances in which the transactions take place; and
- The business strategies pursued by the related parties or affiliates in relation to the transactions.

Ghanaian tax authorities recognize within the transfer pricing guidelines that compiling and maintaining transfer pricing documentation is potentially costly and burdensome for the taxpayer. Accordingly, the depth and complexity of analysis that taxpayers must undertake to support their transfer pricing, and the amount of documentation to be maintained, should not be out of proportion to the size, value and complexity of the transaction: a relatively simple and low-value transaction between two related Ghanaian taxpayers subject to the same rate of tax may require relatively simple analysis and documentation, while large value and/or complex cross-border related-party transactions will require in-depth documentation and analysis.

4. Kenya

Kenyan transfer pricing regulation was implemented through the section 18(3) of the Income Tax Act with an effective date of July 1, 2006. The Ministry of Finance released the Income Tax (Transfer Pricing) Rules, 2006 on June 15, 2006, in order to detail further the transfer pricing measures.

The Transfer Pricing Rules provide that where a non-resident person carries on business with a related resident person and the course of that business is such that it produces to the resident person either no profits or less than the ordinary profits which might be expected to accrue from that business if there had been no such relationship, then the gains or profits of that resident person from that business shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length.

Transfer pricing guidelines shall apply to:

- Transactions between related enterprises within a multinational company, where one enterprise is located in, and is subject to tax in, Kenya and the other is located outside Kenya;
- Transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

Transactions covered by transfer pricing measures include:

- The sale or purchase of goods;
- The sale, purchase or lease of tangible assets;
- The transfer, purchase or use of intangible assets;
- The provision of services;
- The lending or borrowing of money; and
- Any other transactions which may affect the profit or loss of the enterprise involved.

Transfer pricing methods prescribed by the Kenyan regulation are:
- The comparable uncontrolled price (CUP) method;
- The resale price method;
- The cost plus method;
- The profit split method;
- The transactional net margin method;
- Such other method as may be prescribed by the Commissioner from time to time.

A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.

Transfer pricing documentation should be provided to the tax authorities upon request. It should include the following items:
- The selection of the transfer pricing method and the reasons for the selection;
- The application of the method, including the calculations made and price adjustment factors considered;
- The global organization structure of the enterprise;
- The details of the transaction under consideration;
- The assumptions, strategies, and policies applied in selecting the method; and
- Such other background information as may be necessary regarding the transaction.

Note that a new form detailing transactions with related parties is expected to be issued by the Kenyan Revenue Authority in order to be appended to the annual corporate income tax return.

Under the Kenyan regulation, APAs are not available.

5. Lesotho

According to transfer pricing measures under Lesotho's Income Tax Act (section 113 of the Income Tax Order of 1993, titled "Transfer pricing"), for any transaction between taxpayers who are associates, the Commissioner General may distribute, apportion, or allocate gross income, deductions, or credits between the taxpayers as is necessary to prevent the evasion of taxes or to clearly reflect the income of such taxpayers.

The Commissioner General may adjust the income arising in respect of any transfer or license of intangible property between associates so that it is commensurate with the income attributable to the intangible.

Also, the Commissioner General may recharacterize the source of income and the nature of any payment or loss as revenue, capital or otherwise.

6. Malawi

Transactions carried out with related parties (whether residents or non-residents) should be made in accordance with the arm's length principle. Otherwise, the tax commissioner will be entitled to introduce adjustments.

There is no formal requirement to submit transfer pricing documentation. However, upon request by the tax commissioner, accounts and other relevant data should be provided by the taxpayers.

There is currently no APA applicable in the Malawian transfer pricing rules.

7. Mozambique

A single article in the Income Tax Act relates to transfer pricing. Article 58 imposes the application of the arm's length principle in transactions between related parties (whether domestic or cross-border transactions). Otherwise tax authorities will be entitled to introduce such corrections as are required for determining taxable profit when conditions other than those that would normally have been agreed to between independent parties have been established, by virtue of a special relationship between the taxpayer and another person as a result of which the profit ascertained on the basis of accounting records differs from that which would have been ascertained in the absence of such relationship. In cases where such corrections are introduced, appropriate adjustments shall be made to the determination of taxable profit of the other related party in order to reflect the corrections made to the determination of taxable profit of the audited taxpayer. Note that there are no specific transfer pricing documentation requirements in Mozambique.

8. Namibia

Section 95A of the Income Tax Act implemented the Namibian transfer pricing rules, on May 14, 2005. Practice Note 2 of 2006 provided further guidelines to implement the transfer pricing measures.

The arm's length principle should be met with regards cross-border transactions performed between related persons. Determining the arm's length principle should be based on a comparison of conditions in a controlled transaction with the conditions in transactions between independent enterprises.

Factors determining comparability include notably:

- Characteristics of goods and services;
- Functional analysis;
- Terms and conditions of relevant agreements;
- Relative risk assumed by the taxpayer, connected enterprises and any independent party where such party is considered as a possible comparable;
- Economic and market conditions; and
- Business strategies.

The standard transfer pricing methods recognized by the OECD Guidelines are available under the Namibian practice note:

- The CUP method;
- The resale price method;
- The cost plus method;

- The transactional net margin method; and
- The profit split method.

The most appropriate of these methods depends on the particular situation and the extent of reliable data to enable its proper application. A taxpayer is required to be in possession of transfer pricing documentation, but the Practice Note does not prescribe to taxpayers what kind of documentation should be available. APAs are not available under the Namibian regulation.

9. Nigeria

Transfer pricing in Nigeria is regulated through the Income Tax (Transfer Pricing) Regulations No. 01, 2012. The scope of the transfer pricing rules covers transactions between connected taxable persons carried on in a manner not consistent with the arm's length principle, and includes:

- Sale and purchase of goods and services;
- Sales, purchase or lease of tangible assets;
- Transfer, purchase, license or use of intangible assets;
- Provision of services;
- Lending or borrowing of money;
- Manufacturing arrangement; and
- Any transaction which may affect profit and loss or any other matter incidental to, connected with, or pertaining to the aforementioned transactions.

Where the aforementioned transactions are performed between connected persons, the arm's length principle should be met. Tax authorities may introduce adjustments where necessary if they consider that the conditions agreed by connected taxable persons in controlled transactions are not consistent with the arm's length principle.

For the purpose of determining whether the pricing and other conditions of a controlled transaction are consistent with the arm's length principle, the taxpayer shall, in the first instance, ensure that the transaction is comparable with a similar or identical transaction between two independent persons carrying on business under sufficiently comparable conditions.

An uncontrolled transaction is comparable to a controlled transaction:

- Where there are no significant differences between the uncontrolled transaction and a controlled transaction under comparable circumstances which could materially affect the conditions being examined under the appropriate transfer pricing method; or
- Where such differences exist, reasonably accurate adjustments are made in order to eliminate the effects of such differences, or reduce the effects of such differences, to the extent that all material differences are eliminated.

Nigerian transfer pricing regulation refers to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. However, where any inconsistency exists between the provisions of any applicable Nigerian law, rules, regulations, the UN Practical Manual on Transfer Pricing, and the OECD guidelines of these regulations, the provisions of the relevant tax laws shall prevail.

Under the Nigerian regulation, the following transfer pricing methods shall be applied:

(a) The CUP method;
(b) The resale price method;
(c) The cost plus method;
(d) The transactional net margin method; or
(e) The transactional profit split method; and
(f) Any other method which may be prescribed by regulations made by the Federal Inland Revenue Service (FIRS) from time to time. A connected taxable person may elect other transfer pricing methods if he can establish that:
    - None of the listed methods can be reasonably applied to determine whether a controlled transaction is consistent with the arm's length principle; and
    - The method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions in comparable circumstances.

Transfer pricing documentation should be prepared including sufficient information or data with an analysis of such information and data to verify that the pricing of controlled transactions is consistent with the arm's length principle. Transfer pricing documentation should be made available to the tax authorities upon written request within 21 days, extendable on request by the connected taxable person. However, the Transfer Pricing Declaration Form shall be appended to the tax return for the year to which it relates. Although the regulation provides that transfer pricing documentation shall be in place prior to the due date for filing the income tax return for the year in which the documented transactions occurred, tax authorities are entitled to specify other items of documentation required to be provided to it upon request.

An APA may be concluded between the tax authorities and the connected taxable person. The APA is valid during a maximum period of three years. Nigerian tax authorities may enter into an APA with a taxable person either alone or together with the competent authority of countries of the connected taxable person. Thus, a taxable person may request either a unilateral, bilateral, or multilateral APA.

However, Nigerian tax authorities may, upon request by the connected taxable person subject to tax in Nigeria, determine whether an adjustment made by tax authorities of another country with which Nigeria has a double taxation treaty is consistent with the arm's length principle. In cases where it is determined to be consistent, a corresponding adjustment may be introduced to the amount of tax charged in Nigeria on the income in order to avoid double taxation.

A safe harbor rule is provided for under the transfer pricing regulation according to which a connected taxable person may be exempted from the transfer pricing documentation requirements where:

- The controlled transactions are priced in accordance with the requirement of Nigerian statutory provisions; or
- The prices of connected transactions have been approved by other government regulatory agencies or authorities established under Nigerian law and satisfactory to the FIRS to be at arm's length.

10. Republic Of Congo

The Budget Law 2012 introduced transfer pricing regulation in Republic of Congo. Under this regulation, profits indirectly transferred to related entities based in foreign jurisdictions as well as in Congo will trigger adjustments to bring taxable profits to their actual value.

Transactions with an entity based in a foreign jurisdiction with more favorable tax rates are subject to the same rule even though it is not a related entity.

Tax authorities are entitled to request evidence and other details supporting transactions with related entities (dates, amounts, payments, *etc.*). They are entitled to introduce adjustments in cases where they are not convinced the arm's length value was met in transactions between related parties. Adjustments will be based on available elements as well as on comparable transactions performed by Congolese entities.

Under the regulation in force, there are no prescribed transfer pricing methods.

With regards transfer pricing documentation, it should be prepared by companies with an annual turnover exceeding CDF100m. The transfer pricing documentation should cover transactions with non-resident related parties. It includes the following items:

- General data on the group of companies: description of the nature of various activities carried out by group member companies, the legal and operational structure, functions performed, risks assumed, and transfer pricing policy within the group;
- Specific data on the entity: description of the activity carried out by the entity, the nature and value of transactions performed with related parties including royalties, cost sharing agreements, prior agreements with regards transfer pricing concluded with tax authorities, transfer pricing methods, functions performed, risks assumed, and analysis of comparative elements.

Transfer pricing documentation should be provided to tax authorities upon request within 30 days.

APAs are available under the general tax code to agree on transfer pricing methods.

11. South Africa

Section 31 of the Income Tax Act 58 of 1962 provides for the main measures relating to South African transfer pricing regulation which became effective since 1995. Practice Note No. 7 dated of August 6, 1999 provides further transfer pricing guidance. New transfer pricing guidelines are expected to be released shortly.

Transactions with connected entities should be carried out in accordance with the arm's length principle. South African tax authorities are entitled to introduce adjustments to terms and conditions of transactions and schemes including financial assistance arrangements between South African branches of foreign companies and another foreign company in the group.

South African tax authorities accept the OECD Transfer Pricing Guidelines, and the tax practice is largely based on these guidelines.

Accordingly, the five methods provided for under OECD Guidelines are acceptable:

- The CUP method;
- The resale price method;
- The cost plus method;
- The transactional net margin method; and
- The profit split method.

There is no specific transfer pricing documentation to be prepared. However, Practice Note No. 7 of August 6, 1999 states that although there is no explicit statutory requirement to prepare and maintain transfer pricing documentation, it is in the taxpayer's best interest to document how transfer prices have been determined, since adequate documentation is the best way to demonstrate that transfer prices are consistent with the arm's length principle.

According to the Practice Note 7, transfer pricing documentation generally includes:

- Identification of transactions in terms of international agreements entered into with connected persons and the extent of any other commercial or financial relations with connected persons which fall within the scope of transfer pricing rules;
- Copies of the international agreements entered into with connected persons;
- A description of the nature and terms (including prices) of all the relevant transactions (including a series of transactions and any relevant off-setting transactions);
- The method that has been used to arrive at the nature and terms of the relevant transactions (including the functional analysis undertaken and an appraisal of potential comparables);
- The reasons why the choice of method was considered to be the most appropriate to the relevant transactions and to the particular circumstances;
- An explanation of the process used to select and apply the method used to establish the transfer prices and why it is considered to provide a result that is consistent with the arm's length principle;
- Information relied on in arriving at the arm's length terms, such as commercial agreements with third parties, financial information, budgets, forecasts *etc.*;
- Details of any special circumstances that have influenced the price set by the taxpayer.

Under the current regulation, APAs are not possible.

12. Tanzania

Tanzania's Transfer Pricing Regulations were issued through Government Notice No. 27 published on February 7, 2014, with immediate effect. Also, in May 2014, the Tanzania Revenue Authority released transfer pricing guidelines.

The transfer pricing scope covers both cross-border transactions and domestic transactions between associated persons, which should be performed in compliance with the arm's length principle. Otherwise, adjustments will be introduced by the tax authorities.

With regards the arm's length definition, the guidelines refer to the definition provided for by paragraph 1 of Article 9 of the OECD Model Tax Convention, which indicates that:

> [Where] conditions are made or imposed between two [associated] enterprises in their commercial or financial relations which differ from those which would have been made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

In order to determine the arm's length price, and based on the transfer pricing guidelines, the followings should be considered:

Analysis of transactions, functions performed, risks assumed, and assets employed: Functions are activities performed by each person in business transactions such as procurement, marketing, distribution and sales. The principal functions performed by the associated person under examination should be identified first. Any increase in economically significant functions performed should be compensated by an increase in profitability of the person.

Profitability of a company should rightfully increase with the increase in the amount, as well as the degree, of specificity of assets employed. Also, controlled and uncontrolled transactions are not comparable if there are significant differences in the risks assumed, for which appropriate adjustments cannot be made. The following risks should be taken into consideration:

- Operational risk (including risks for manufacturing liability, systems failure, reliability of suppliers, inventory and carrying costs, environmental and other regulatory risks);
- Market risk (including industrial risks, country political risks, reliability of customers, and fluctuation in demand and prices);
- Product risk (including product liability risk, warranty risk/costs, and contract enforceability);
- Business risks related to ownership of assets or facilities;
- Financial risk (including currency, commodity, interest rate, and funding risks);
- Credit and debt collection risks (including delay or default in payment of trade receivables, default on guaranties, loans and other receivables); and
- Risks of the success or failure of investments in research and development.

Characterization of business: For example, manufacturing, distribution, services provider.

Identification of comparable transactions: This is so as to compare results at gross margin level or at net margin level; or results by reference to some other measures, such as return on capital, ratio of costs to gross margin, *etc.*

Tested party: As a general rule, the tested party is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found. The Revenue Authority gives priority to the availability of sufficient and verifiable information on both tested party and comparables. Thus, the authority does not accept foreign tested parties where information is neither sufficient nor verifiable.

Selection and application of transfer pricing methodologies: Transfer pricing methods are detailed below.

Profit level indicator (PLI): The PLI measures the relationship between profits and sales, costs incurred, or assets employed. PLI is presented in the form of a ratio, *i.e.*, financial ratios or return on capital employed. Some of the more commonly used PLI include:

(a) Return on costs: cost plus margin and net cost plus margin;
(b) Return on sales: gross margin and operating margin;
(c) Return on capital employed: return on operating assets.

The following transfer pricing methods are recommended in determining the arm's length price:

- The CUP method;
- The resale price method;
- The cost plus method;
- The transactional net margin method (TNMM); and
- The profit split method.

The first three methods are commonly known as "traditional transactional methods"; although the taxpayer is given the right to choose any method, the emphasis should be on arriving at an arm's length price.

The guidelines advise that the TNMM and the profit split method, commonly referred to as "transactional profit methods," be used only when traditional transactional methods cannot be reliably applied or exceptionally cannot be applied at all. This will depend heavily on the availability of comparable data.

In order to determine the most appropriate transfer pricing method, the following must be considered:

- The nature of the controlled transaction, determined by conducting a functional analysis;
- The degree of actual comparability when making comparisons with transactions between independent parties;
- The completeness and accuracy of data in respect of the uncontrolled transaction; the guidelines indicate that an uncontrolled transaction may be:
  (a) A transaction between the tested party and an independent party conducted under terms and circumstances similar to the controlled transaction (internal comparable); or

(b) A transaction between two independent parties under similar terms and circumstances (external comparable).

- The reliability of any assumptions made; and
- The degree to which the adjustments are affected if the data is inaccurate or the assumptions are incorrect.

Where both the traditional transactional methods and the transactional profit methods cannot be applied at all, the Commissioner General may allow the application of other methods provided the prices arrived at are in accordance with the arm's length principle.

Transfer pricing documentation should be prepared but there is no obligation to submit it to the tax authorities jointly with the corporate income tax return. Transfer pricing documentation should be submitted to the tax authority within 30 days following the request date.

Transfer pricing documentation includes the following items:

(a) **Organizational structure:** The taxpayer's worldwide organizational and ownership structure covering all associated persons whose transactions directly or indirectly affect the pricing of the documented transactions.

(b) **Group financial report:**

- Nature of the business/industry and market conditions;
- Controlled transactions: this includes the disclosure of the identity of all associated persons, with details of the relationship with each such associated person as well as the nature, terms (including prices) and conditions of international transactions (where applicable) entered into with each associated person and the quantum and value of each transaction.

(c) **Pricing policies:** Assumption, strategies and information regarding factors that influenced the setting of pricing policies (*e.g.*, intentional set-off transactions, market share strategies, distribution channel selection and management strategies that influenced the determination of transfer prices);

(d) **Comparability, functional and risk analysis:**

- **Selection of transfer pricing method:** The analysis performed to determine the arm's length price and the rationale for the selection of this methodology, including reasons for its use in preference to other transfer pricing methodologies;
- **Application of the transfer pricing method:** Documentation of all calculations made in applying the selected method, and of any adjustment factors, in respect of both the tested party and the comparable;
- **Other relevant documents:** These include official publications, reports, studies and databases, reports of market research studies carried out by recognized institutions, technical publications brought out by recognized

institutions, agreements and contracts entered into with associated persons or with unrelated persons, which may be of relevance to the international transactions, letters and other correspondence documenting any terms negotiated between the person and the associated person, *etc*.

With regards special consideration for intangible property, the Tanzanian transfer pricing guidelines refer to the guidance provided in Chapter VI of the OECD Guidelines which deals specifically with intangible property and recommends that taxpayers and officers follow the guidance provided therein in establishing arm's length conditions in agreements with associates involving intangible property.

Multinational groups arrange for a wide scope of services to be available to their members, in particular administrative, technical and commercial services. Such services may include management, coordination and control functions for the whole group. The cost of providing such services may be borne initially by the parent, by a specially designated group member, or by another group member. The guidelines indicate that the CUP or cost plus method would be the most appropriate methods for pricing intra-group services.

In cases where transfer pricing adjustments are introduced by inspectors during a tax audit, penalties equal to 100 percent of the underpaid tax will be applicable.

Further, for failure to comply with transfer pricing documentation, imprisonment sanctions for a maximum period of six months and/or a fine of not less than TZS50m will be applicable.

APAs are available under the Tanzanian regulation upon request formulated by the taxpayer and subject to the approval of the Commissioner.

An APA determines in advance an appropriate set of criteria to ascertain the transfer prices of specified related-party transactions over a specified period of time.

The APA may be unilateral, bilateral and multilateral. A unilateral APA may not achieve the same level of certainty for taxpayers as in a bilateral/multilateral APA, since the other competent authorities or tax authorities may dispute the unilateral APA given that it is reached in the absence of their agreement. Notwithstanding, a taxpayer is free to choose between requesting a unilateral or bilateral/multilateral APA.

The APA is valid for a maximum period of five years.

The Tanzanian regulation implemented a mechanism to avoid double taxation in cases of transfer pricing adjustments involving cross-border transactions and made by tax authorities of a jurisdiction with which Tanzania has a double taxation treaty.

13. Uganda

The Income Tax (Transfer Pricing) Regulations 2011 came into force on July 1, 2011.

The scope of transfer pricing regulations cover controlled transactions if a person who is a party to the transaction is located in and is subject to tax in Uganda, and the other person who is a party to the transaction is located in or outside Uganda. Transactions under the transfer pricing scope should be made in accordance with arm's length principle. Otherwise, the Commissioner may make the necessary adjustments to ensure that the income and expenditures resulting from the transaction or transactions are consistent with the arm's length principle.

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations shall be used as reference to interpret Ugandan transfer pricing measures. However, where there is any inconsistency between the Ugandan laws and the OECD documents, Ugandan laws shall prevail.

Transfer pricing methods include the following:

- The CUP method;
- The resale price method;
- The cost plus method;
- The transaction net margin method; and
- The transactional profit split method.

A person may apply a transfer pricing method other than those prescribed by the transfer pricing measures, in cases where the person can establish that:

- None of such methods can reasonably be applied to determine whether a controlled transaction is consistent with the arm's length principle; and
- The method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions in comparable circumstances.

Transfer pricing documentation should be prepared. The documentation for a year of income shall be in place prior to the due date for filing the income tax return for that year. However, there is no obligation to submit it jointly with the corporate tax return. The Commissioner may, by notice, specify the items of documentation that a person is required to keep for the purposes of this regulation.

A person who fails to comply with this regulation is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding 25 currency points or both.

An APA may be put in place between the taxpayer and tax authorities.

The Commissioner may enter into an APA with the person either alone or together with the competent authorities of the country or countries of the person's associate or associates. Thus, the APA may be unilateral, bilateral, or multilateral.

In order to avoid double taxation, the Commissioner shall, upon request by the person subject to tax in Uganda, determine whether the adjustment introduced by the competent authority of another country with which Uganda has a double taxation treaty is consistent with the arm's length principle and, where it is determined to be consistent, the Commissioner shall make a corresponding adjustment to the amount of tax charged in Uganda on the income or profits so as to avoid double taxation.

14. Zambia

The Zambian transfer pricing rules are regulated by the Income Tax Act (Chapter 323) of the laws of Zambia. The OECD Transfer Pricing Guidelines are applicable as well where no specific measure is available under the Zambian laws.

Transfer pricing scope covers cross-border transactions made between related parties in addition to those performed between domestic related companies. These transactions should be performed in accordance with the arm's length principle. Otherwise, adjustments are to be introduced by tax authorities.

Transfer pricing documentation is required by the Zambia Revenue Authority, but there is no guidance on the content of the documentation. When the Commissioner General requires a company to submit information, a deadline of 30 days following the request's date applies.

Further, APAs are not available under the Zambian regulation. OECD transfer pricing methods are to be used under the Zambian transfer pricing rules.

Conclusion

The lack of domestic comparables and of expertise are the main problems faced by African countries with regards transfer pricing matters.

Few African countries have already put in place a transfer pricing regulation. These countries should be aware that transfer pricing rules should be updated and improved on a continuous basis. Improvements should aim to tackle uncertainty of their transfer pricing rules through measures relating to APAs and safe harbor rules. Also, the tax treaties network should imperatively be enlarged. This will ease the tax information exchange between tax authorities and would allow double taxation avoidance.

With regards jurisdictions that have not implemented a transfer pricing regulation yet, they should be aware of the importance of transfer pricing challenges.

Campaigners from several global organizations (such as Tax Justice Network, and Action Aid) are struggling to emphasize the developing countries' right in a fair share of taxation which can be reached only through transparency in financial reporting and particularly country-by-country reporting.

US Model Tax Convention Changes To Tackle Inversions

On May 20, 2015, the US Department of the Treasury released for public comment draft updates to the US Model Income Tax Convention, including provisions to deny treaty benefits to companies that change their tax residence *via* inversion transactions.

The Treasury said other changes are intended to ensure that the US is able to maintain the balance of benefits negotiated under its treaty network as the tax laws of its treaty partners change over time.

Introducing the changes, Deputy Assistant Secretary for International Tax Affairs Robert B. Stack said: "The draft provisions we are releasing for comment today reflect the fact that the tax regimes of our treaty partners are more likely to change over time than they have in the past, and that they sometimes change in ways that encourage base erosion and profit shifting or BEPS, by multinational firms. Treaties exist to eliminate double taxation, not to create opportunities for BEPS, and today's updates fully take account of the new international tax environment. The draft provisions also articulate steps that would help prevent our treaty network from encouraging inversion transactions."

One set of draft provisions addresses issues arising from "special tax regimes," which provide very low rates of taxation in certain countries in particular to mobile income, such as royalties and interest. The Treasury identified that this income can easily be shifted around the globe through deductible payments that can erode the US tax base. The proposals are intended to avoid instances of "stateless income" or double non-taxation, whereby a taxpayer uses provisions in a US tax treaty, combined with special tax regimes, to pay no or very low tax in the treaty partner countries.

The second set of draft provisions is aimed at reducing the tax benefits from a corporate inversion by imposing full withholding taxes on key payments such as dividends and base stripping payments, including interest and royalties, made by US companies that are "expatriated entities" as defined under the Internal Revenue Code.

Last, revisions are proposed to prevent residents of third countries from inappropriately obtaining the benefits of a bilateral tax treaty. These include more robust rules on the availability of treaty benefits for income that is not subject to tax by a treaty partner because it is attributable to a permanent establishment located outside the country, and the ability of a company to make "excessive base eroding payments."

Recognizing that multinationals often have global operations dispersed through many subsidiaries around the globe, the Model Convention for the first time contains a so-called "derivative benefits" rule. The rule is an additional method of qualifying for treaty benefits based on a broader concept of ownership that includes certain third-country ownership.

While not among the draft treaty provisions released, the next US Model will include a new Article to resolve disputes between tax authorities through mandatory binding arbitration.

The Model Convention is the baseline text used by the Treasury when negotiating tax treaties and was last updated in 2006.

US House Backs Permanent R&D Tax Credit

The US House of Representatives has passed legislation that would simplify and strengthen the research and development (R&D) tax credit and permanently enshrine it in the US tax code.

The American Research and Competitiveness Act of 2015 (HR 880) was approved by the House by a vote of 274–145 on May 20. The bill's sponsor, Kevin Brady (R – Texas), said of the legislation: "America's future depends on innovation occurring here in the US. Without the right permanent [R&D] incentive, we will continue to fall behind our global competitors and watch good paying research jobs go overseas. A permanently strong economy requires a permanent [R&D] tax credit."

The R&D credit has been temporary since 1981. It is one of the largest of the more than 50 tax relief provisions known as tax extenders that expired at the end of last year.

The vote was welcomed by the Biotechnology Industry Organization (BIO), which said that a permanent R&D tax credit is needed to help companies plan their investments more effectively.

"By making this tax credit permanent, companies conducting their development programs will be able to estimate their tax liability and will not be burdened by the constant uncertainty regarding whether or not the R&D Tax Credit will be extended," said Jim Greenwood, BIO's President and CEO.

However, the chances of a permanent fix to the R&D tax credit being enacted in the current congressional session are extremely remote, because the White House insists that the measure should be offset with tax hikes elsewhere in the system.

In a Statement of Administration Policy released on May 19, the Government said that it "strongly opposes House passage of HR 880, which would permanently extend and expand the R&D credit without offsetting the cost, adding to long-run deficits. By making the R&D credit permanent without offsets, HR 880 would add USD180bn to the deficit over the next ten years."

"HR 880 violates the very standard that House and Senate Republicans approved less than a month ago in their concurrent budget resolution, which requires offsetting the cost of any tax extenders that are made permanent with other revenue measures," the Statement continues. "If the House passes HR 880, it will have approved nearly USD600bn in deficit-increasing tax cuts mainly for corporations and wealthy estates this year – none of which are provided for in the Republicans' own budget."

Brady responded to that Statement, asking: "Why does the President want to ship America's research jobs overseas? He knows both parties in Congress have supported this measure on a temporary basis without raising taxes. So stop making excuses and stand up for American jobs and American innovation, Mr. President."

New Zealand Announces 2015 Budget Measures

New Zealand's Finance Minister, Bill English, outlined a number of tax measures contained in the 2015 Budget during his presentation speech on May 21, 2015.

The Budget targets a deficit of NZD684m (USD500m) for 2014/15 and a surplus of NZD176m in 2015/16. The surplus is expected to grow to NZD3.6bn in 2018/19.

The measures contained in the Budget include NZD500m worth of cuts to Accident Compensation Corporation (ACC) levies in 2016 and 2017.

The Government is also taking extra steps to bolster and enforce the tax rules on property. The changes include a requirement that non-residents have a New Zealand bank account and Inland Revenue Department (IRD) number in order to buy and sell property. Subject to consultation, these changes will enter into force on October 1 this year. The Government also aims to introduce a withholding tax for non-residents selling residential property around the middle of 2016.

English said that modest reductions will be made to income taxes from 2017 should fiscal and economic conditions allow.

He also said that the Government will impose a new levy on travelers to fund passenger-related biosecurity and customs activities at the border. Currently, the cost of these activities – which protect New Zealand from imported pests, diseases, illegal drugs, and other threats – are met by taxpayers. The new Border Clearance Levy is expected to take effect from January 1, 2016, and, subject to consultation, will be around NZD16 for arriving passengers and around NZD6 for departing passengers. It will raise around NZD100m a year.

The Budget also provides the IRD with a further NZD74m for additional enforcement efforts, including NZD29m allocated specifically for property tax compliance.

The Finance Minister said that tax revenue is expected to be NZD4.5bn lower over this year and the next three years compared with what was forecast in last year's Budget as nominal gross domestic product is not rising as quickly as previously expected.

Kiwi Taxpayers Challenge Government On New 'Travel Tax'

New Zealand's Taxpayers' Union has launched a campaign challenging plans for a new levy on travelers, which was announced by Finance Minister Bill English in his 2015 Budget speech on May 21.

English said in his speech that the Government will introduce a Border Clearance Levy to fund passenger-related biosecurity and customs activities at the border. The new levy is expected to take effect from January 1, 2016, and, subject to consultation, will be around NZD16 (USD11.7) for arriving passengers and around NZD6 for departing passengers. It will raise around NZD100m a year.

Currently, the cost of these activities – which protect New Zealand from imported pests, diseases, illegal drugs, and other threats – are met by taxpayers, English said.

The Taxpayers Union said in a statement that the new levy will "clip the wings of Kiwi families." It said that a family of four from New Zealand will have to pay NZD80 more for a ticket to the Gold Coast in Australia as a result of the levy.

"With the economy recovering and the surplus just out of reach, why are the Government taxing the aspirations of working New Zealanders rather than cutting Government waste?" the Union said.

France Will Not Merge Income Tax, Social Security

France's Finance Minister Michel Sapin has stated that there will be no immediate move to combine income tax and social security.

The merger of these two charges was one of the steps proposed in President François Hollande's 2012 election manifesto, but it has now been effectively mothballed by Sapin. Speaking on BFM TV, he stated that the move would result in an overall increase in taxes, when what is needed currently is a reduction in the tax burden.

Sapin did not reject the idea totally. He said that the Government is in the process of a progressive program of tax reform and that it has laid the foundations for the proposed changes. He said that radical reforms in tax are not possible, and change should be made in small incremental steps.

UK Tax Freedom Day To Fall Two Days Later

UK taxpayers will work two days longer on average this year before they have finished paying their tax dues and start earning income for themselves, the Association of Chartered Certified Accountants (ACCA) has said.

In 2015, tax freedom day – calculated annually by the Adam Smith Institute – falls on May 31. On average, UK taxpayers will have to pay all their income in tax until May 30 in order to pay off their UK tax liabilities.

According to ACCA, the overly complicated nature of the UK tax system and the large number of indirect taxes mean that UK households are now left with less money and are paying more to the Government.

Chas Roy-Chowdhury, ACCA Head of Taxation, said that recent increases in the personal income tax allowance have created a "huge amount of fiscal drag."

The allowance is currently GBP10,600 (USD16,418). In 2014/15, it was GBP10,000; in 2013/14, it was GBP9,440; and in 2012/13, it was GBP8,015. Income above the threshold is taxed at 20 percent. A higher rate of 40 percent is paid on income over GBP31,786 and an additional rate of 45 percent applies to income over GBP150,000.

Roy-Chowdhury explained: "More and more people are being caught in the 40 percent tax bracket. At the end of the 1980s only 500,000 people were paying the higher rate of tax, now that is more than four million people. So despite all the Government hype on increasing the personal allowance, we are actually two full days worse off this year before our income is ours to keep."

India Adopts Place Of Effective Management Concept

India has amended section 6 of the Income Tax Act to introduce place of effective management (POEM) as the test to determine the place of residence of companies in the country.

The change was included in Finance Act, 2015, which received the President's assent on May 12, 2015. The change will take effect from April 1, 2016, and will, accordingly, apply from the 2016/17 year of assessment.

Under the amended law, a company shall be considered resident in India in any previous year if it is an Indian company; or if its POEM, in that year, is in India. POEM has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity, as a whole, are in substance made.

Under the existing provisions, a company is said to be resident in India in any previous year if it is an Indian company; or if, during that year, the control and management of its affairs are situated wholly in India. Due to the requirement that whole control and management should be situated in India, and that too for the whole of the year, these conditions are seldom met and easily avoided.

A Memorandum published by the Ministry of Finance alongside Budget 2015 explained: "A company can easily avoid becoming a resident by simply holding a board meeting outside India. This facilitates creation of shell companies which are incorporated outside but controlled from India."

"POEM is an internationally recognized concept for determination of residence of a company incorporated in a foreign jurisdiction. Most of the tax treaties entered into by India recognize the concept of POEM for determination of residence of a company as a tie-breaker rule for avoidance of double taxation. Many countries prefer the POEM test to be [the] appropriate test for determination of residence of a company."

"The modification in the condition of residence in respect of [a] company by including the concept of [POEM] would align the provisions of the Income Tax Act with the Double Taxation Avoidance Agreements entered into by India with other countries and would also be in line with international standards. Since POEM is an internationally well accepted concept, there are well recognized guiding principles for determination of POEM, although it is a fact-dependent exercise. However, it is proposed that in due course, a set of guiding principles to be followed in determination of POEM would be issued for the benefit of the taxpayers as well as [the] tax administration."

CIOT Responds To UK Investment Scheme Reforms

The Chartered Institute of Taxation (CIOT) has warned that changes to business investment schemes could deter some investors from taking advantage of the reliefs available.

Reforms to the Enterprise and Seed Enterprise Investment Schemes (EIS/SEIS) and Venture Capital Trusts (VCT) were announced at the Budget in March. They include the introduction of requirements that all investments are made for the purpose of "business growth and development" and that all EIS investors are independent from the company at the time of the first share issue (excluding founder shares). There will also be a general GBP15m cap on the total EIS/VCT investment an individual company can receive, and a GBP20m cap for "knowledge-intensive" companies.

The CIOT has now released its submission to the Government's consultation on the proposed changes. Andrew Gotch, Chairman of the Institute's Owner Managed Business Sub-Committee, pointed out that the reliefs are already subject to a large number of qualifying conditions which can be off-putting to potential investors. The professional advice and time needed to navigate the associated legislation can be disproportionate to the expected tax relief.

Gotch added: "The proposed measures include the expectation that potential investors are 'independent' from the company at the time that their first share was issued. However, this may act as a disincentive because it would deny relief where a prospective investor already holds shares in the company."

"We believe a carve out for existing shares obtained from personal relationships and a *de minimis* threshold to enable qualification for smaller investment holdings would help to mitigate this restriction on the category of investor who can take up EIS relief."

Turning to the proposed caps, Gotch said: "We are not sure why a growing manufacturing company, for example, should have a GBP15m cap while a 'knowledge intensive' company, such as a one in the IT or biotech sector, might be able to qualify for GBP20m, whilst arguably both could bring benefits to the economy overall."

The CIOT also regards as problematic the stipulation that all investments under EIS are made for the purposes of promoting "business growth and development." According to Gotch, "this vague definition adds little to our understanding of what the new restriction is aiming at compared to the existing legislation."

EU Tax Committee Hears From Switzerland

A delegation from the European Parliament's Special Tax Rulings Committee visited Switzerland on May 22.

The delegation was received by Switzerland's State Secretary for International Financial Matters, Jacques de Watteville. According to the Swiss Federal Council, talks focused on international corporate tax reform efforts and Switzerland's work in this area.

De Watteville pointed out that Switzerland is actively contributing to the OECD's base erosion and profit shifting (BEPS) project. He emphasized the need to create a level playing field and fair competitive conditions for all jurisdictions through the development and implementation of new international standards on corporate taxation.

De Wattevillle added that standard setters should take account of the problems caused by state aid granted by EU member states to companies, which can distort competition.

The Committee was set up by Members of the European Parliament in February, in the wake of investigations by the Commission into tax rulings granted to multinational corporations by certain EU countries and third countries. It is reviewing the way the Commission treats state aid in member states, how transparent member states are about their tax rulings, and the impact of aggressive tax planning on public finances. While Switzerland is not an EU member state, it does have agreements with the EU under which Switzerland is required to meet certain principles of EU law.

Decision Urged On Northern Ireland Tax Rate

The Northern Ireland (NI) Chamber of Commerce and Industry has called for clarity from the Government on its plans for a lower rate of corporation tax. In a new report, "Growing Something Brilliant," the NI Chamber stresses the importance of setting a rate and date for corporation tax reform. It points out that Northern Ireland is competing for foreign direct investment with the neighboring Republic of Ireland, which has a corporation tax rate of 12.5 percent. Northern Ireland currently ranks 42nd out of 145 countries in terms of competitiveness, behind the UK (8th) and Ireland (27th).

The UK Government passed legislation in March that provides for the devolution of corporation tax powers to the NI Executive. However, it has made clear that the powers will be commenced only if the Executive parties "put their finances on a long-term sustainable footing."

The report states: "Reducing costs and the amount of tax that firms pay will boost business competitiveness, investment, and jobs."

The NI Chamber would like the Executive to proactively engage with businesses and accountants to raise awareness of research and development tax credits, and provide tax breaks for small and medium-sized businesses that make a significant investment in training. It anticipates that the demand for office and industrial space will intensify as a result of the devolution of corporation tax powers.

China To Cut Taxes On Imported Consumer Items

The Chinese Government has confirmed that import taxes will be cut on a range of consumer items in a move intended to help support the economy.

The Ministry of Finance announced in a statement released on May 25 that import taxes will be reduced by at least 50 percent on certain goods in order to help "create stable growth and push forward structural reform."

Under the changes, import tariffs for Western-style clothing will be cut to between 7 and 10 percent from 14 and 23 percent, and taxes on certain footwear including sports shoes will be reduced to 12 percent from 24 percent. The tariff on skin care products will fall from 5 percent to 2 percent. The tariff on imported diapers will also be lowered to 2 percent, from the existing level of 7.5 percent. The new rates are due to take effect on June 1, 2015.

The Government hopes that by reducing the price of consumer goods in the domestic market, Chinese shoppers will be less inclined to travel abroad to stock up on popular brands, where they are generally cheaper than in China.

As part of this policy, the Government announced last month that more stores will be allowed to offer value-added tax refunds to tourists, with eased conditions and more categories of products becoming eligible. Easier tax refund procedures will also be promoted and accompanied by reinforced efforts to curb smuggling.

Slovak Republic May Reduce VAT On Food

Slovakia's Prime Minister, Robert Fico, has announced his intention to slash value-added tax (VAT) on basic foods.

The standard rate of VAT in Slovakia is 20 percent, with a reduced 10 percent rate applying to books, medicines, and medical supplies. Fico has proposed to extend that 10 percent rate to a specified list of staple foods, such as bread, milk, and butter.

The measure is included in Fico's second "social package," which he has outlined ahead of elections scheduled for March 2016.

The package would also introduce a reverse charge on the supply of workers to companies in the construction industry, in a bid to tackle VAT fraud. The reverse charge would shift the obligation to charge and account for VAT from the supplier to the recipient, preventing missing trade intra-Community fraud in particular.

Vietnam To Increase Tax On Imported Cars

Vietnam's Ministry of Finance has drafted a plan to increase the special consumption tax (SCT) on imported cars by changing the basis on which the tax is calculated.

The new calculation method is expected to cause an average 5 percent rise in imported car prices. Domestic sale fees, which cover the cost of services such as advertising, displays, transportation, and warranties, will be added to the total value of cost, insurance, freight, and import tariff costs that currently forms the SCT's taxable basis.

According to the Ministry, the current methodology for calculating SCT on imported cars has created competitive advantages for importers.

The current SCT rates on cars with fewer than nine seats range from 45 percent to 60 percent, depending on engine capacity.

The Ministry has invited stakeholders to give their opinion on the draft plan. The final version is expected to be submitted to the Prime Minister for approval next month, and if approved the plans would be effective from January 1, 2016.

South Korea Confirms Electronic Services VAT

South Korea's National Tax Service (NTS) has issued a notification confirming the introduction of value-added tax (VAT) on supplies of electronic services by foreign operators from July 1, 2015.

The notification confirms that, from this date, any supplies of electronic services rendered by a foreign business operator to Korea are deemed to be supplied within Korea.

Foreign suppliers are required to account for VAT from this date, under Articles 53(2), 66(2), and 96(2) of the VAT Act.

The change covers services supplied *via* ICT networks, including game files, voice files, video files, electronic documents and software, among other items.

Taxpayers will be required to register with the NTS and account for VAT *via* its website. Tax returns are required by the 25th date in the month following the end of a quarterly tax period.

Taxpayers are required to register within 20 days from the first day of business; or by July 20, 2015, for existing businesses.

Trade Promotion Authority Bill Clears US Senate

The US Senate has approved legislation restoring trade promotion authority (TPA) which, if enacted, should significantly improve America's chances of ratifying key multilateral free trade deals.

With the objective that US trading partners can be assured that concluded trade agreements would be fast-tracked through Congress, TPA sets negotiation goals for the President but then prohibits amendments to implementing bills for trade treaties and imposes a timetable for their consideration. Renewing TPA, which last expired in 2007, would therefore allow the US Administration to submit trade deals that are in line with those goals for a yes-or-no vote.

TPA passage is considered to be a necessity prior to President Obama's conclusion of further trade deals, particularly the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). There is still, however, a large body of Democrats within Congress that strictly opposes TPA, despite the strong support from President Obama for its approval.

The legislation now goes to the House of Representatives, where it could be voted on as early as next month.

Senate Finance Committee Chairman Orrin Hatch (R – Utah) welcomed the Senate vote, noting that free trade agreements such as the TPP stand little chance of being ratified by the US without TPA.

"No complex, economically significant trade agreement has ever been negotiated by any administration and approved by Congress without [TPA]," Hatch said.

"It's a pivotal moment for Washington," he added. "The world won't wait on us. Now that the Senate has acted, our colleagues in the House must work to push this legislation through their chamber."

The bill's passage through the Senate was also welcomed by the Administration, with Secretary of State John Kerry stating: "This bipartisan action was a major step that will enable our county to complete the two most significant trade agreements in a generation. Those agreements, the [TPP] and the [TTIP], are essential to America's economic security."

China, Colombia Launch Free Trade Talks

China and Colombia have expressed an interest in signing a bilateral free trade agreement (FTA).

Chinese Premier Li Keqiang visited Bogotá, Colombia, on May 21, 2015, to explore opportunities to deepen trade ties with the South American nation.

Following a meeting with Colombian President Juan Manuel Santos, the Chinese Premier told reporters that the two countries have agreed to conduct a feasibility study on an FTA.

The Colombian President pointed out that trade between Colombia and China reached USD17bn last year. He said that bilateral trade volumes have increased 15-fold over the last decade.

Colombia is part of the Pacific Alliance trade bloc, which also includes Chile, Mexico, and Peru. The bloc was established to lower tariffs on trade in goods and services between its members.

Li's visit to Colombia was part of a Latin America tour, which also included visits to Brazil, Peru, and Chile. The Chinese Premier said earlier this year that China is seeking to expand its network of free trade deals with the region.

Armenian Firms Seek End To US Treaty Void

The Armenian National Committee of America (ANCA) has welcomed the signing of the US–Armenia Trade and Investment Framework Agreement (TIFA), but has said that a renegotiated double tax agreement (DTA) is a priority in order to fully realize the two nations' bilateral trade and investment potential.

The TIFA was signed on May 7 and was immediately welcomed by the House Foreign Affairs Committee Chairman Ed Royce (R – California) and Congressional Armenian Caucus Co-Chair Frank Pallone (D – New Jersey). Pallone said: "the [TIFA] signed between the Republic of Armenia and the United States represents our shared commitment to mutual prosperity. With this agreement, I am certain that the United States and Armenia will continue to focus on our shared trade and investment interests. Armenia has always been a proud ally of the United States and I am pleased that we have made progress that will support workers in both of our nations."

The ANCA welcomed the move and called for further expansion of US–Armenia economic relations through the negotiation of a bilateral treaty ending double taxation on businesses and investments. In a fact sheet shared with Congressional leaders, the ANCA outlined the benefits of a US–Armenia tax treaty, as well as the costs of the *status quo*, of having "an outdated and obsolete Soviet-era agreement."

The fact sheet pointed out that a US–Armenia DTA would establish a clear legal framework for investors and individuals that have business activities in both jurisdictions, preventing double taxation and facilitating the expansion of economic relations. It said the lack of a working US–Armenia DTA hinders the growth of US–Armenia economic relations, creating legal uncertainty that deters investment and diverts investment flows.

The outdated 40-year-old 1973 US–USSR tax treaty is recognized by the US, but not by Armenia. The fact sheet says, even by 1970s standards, the Soviet tax treaty was a limited agreement between two hostile superpowers. "Its current legal status remains unclear and its terms are inadequate to the needs of present-day US–Armenia relations. While investors have found ways to adjust to its inadequacies, the existing system of foreign tax credits and deductions is not consistent with any accepted tax or accounting system," the ANCA said.

It added that "negotiating a double tax treaty between the US and Armenia should be relatively straightforward. It would be, in great measure, an 'off the shelf' treaty, not requiring a great deal of time or effort to research, tailor, negotiate, or implement. A US–Armenia double tax treaty would likely largely follow the US Model Income Tax Convention of 2006, updated by more recent features of US tax treaty policy such as provisions for mandatory arbitration."

Mercosur To Prioritize FTA With EU

The member states of the Latin American trade bloc Mercosur consider a free trade agreement (FTA) with the EU a matter of priority, the Presidents of Brazil and Uruguay said recently.

Brazilian President Dilma Rousseff and Uruguayan President Tabaré Vazquez made the comments following a meeting in Brasília on May 21, 2015.

Mercosur, which consists of Argentina, Brazil, Paraguay, Uruguay, and Venezuela, has been negotiating an FTA with the EU for 15 years. In February last year, Rousseff said the agreement was close to completion.

Mercosur is expected to present an offer that would cover 87 percent of products. Argentina, however, has demanded a seven-year transitional period for about half of these products.

EU To Implement New 'Ultimate Owner' Rules

The European Parliament has endorsed plans to require the listing of the "ultimate owners" of companies on central registers in EU countries, open both to the authorities and to people with a "legitimate interest," such as investigative journalists.

The pending Fourth Anti-Money Laundering Directive will oblige EU member states to keep central registers containing information on the ultimate beneficial owners of corporate and other legal entities, such as trusts. The requirement was not included in the European Commission's initial proposal, but was inserted by Members of the European Parliament (MEPs) during negotiations. MEPs voted in favor of the revised Directive on May 20.

The registers will be accessible to the authorities and their financial intelligence units, to "obliged entities" (such as banks carrying out customer due diligence duties), and to the public. Those requesting public access may have to register online and pay a fee to cover administrative costs. They will have to demonstrate a "legitimate interest" in suspected money laundering, terrorist financing, and in "predicate" offenses that may help to finance such activity, such as corruption, tax crimes, and fraud.

Where a request is successful, access could be given to the beneficial owner's name, the month and year in which they were born, and their country of residence, and to details about the entity's ownership.

Information on trusts will be accessible solely to the authorities and obliged entities. Where there are high-risk business relationships with "politically exposed persons" (people at a higher than usual risk of corruption due to the political positions they hold), it was agreed that additional measures should be put in place to establish the source of wealth and the funds involved. A transfers of funds regulation will improve the traceability of payers, payees, and their assets, it was said.

Once the Directive is formally adopted, member states will have two years to transpose the new Directive into their national laws. The transfers of funds regulation will be directly applicable in all member states 20 days after its publication in the EU Official Journal.

Vera Jourová, EU Justice Commissioner, welcomed the vote in Parliament: "Serious and organized crime is driven by profit – tracing the illicit proceeds of crime back to the criminal networks is essential both to detect, prosecute, and dismantle those networks and to seize and confiscate their criminal wealth. The new anti-money laundering rules adopted today will help us follow the money and crack down on money laundering and terrorist financing."

Swiss Bankers Respond To Privacy Initiative

The Swiss Bankers Association (SBA) has published a new report on the "Yes to the protection of privacy" initiative, which criticizes plans to enshrine bank-client confidentiality in the federal constitution.

The "Yes to the protection of privacy" initiative was launched in March 2013 by a cross-party committee headed by banker and Member of Parliament Thomas Matter. The popular initiative was filed with 117,596 signatures in September 2014. The aim is to ensure citizens' privacy in Switzerland, but would not impact Switzerland's commitments on the automatic exchange of information.

Bank-client confidentiality is provided for in the Banking Act and Stock Exchange Act, which establish professional confidentiality comparable to that between doctors and their patients, lawyers and their clients, and priests for disclosures during confessions. According to the SBA, this legislation is designed to protect personal privacy, not to protect assets from the tax authorities.

The SBA commissioned René Matteotti, Professor for Swiss, European, and International Tax Law at the University of Zurich, to draft an in-depth report on the initiative's potential impact. According to the report, the initiative would shield delinquent taxpayers, creating an incentive for those who behave in a dishonest manner.

Matteotti said that the initiative would increase the burden of responsibility and liability for banks and their employees. The SBA maintains that banks are not "the tax police," and are not responsible for their clients' tax situations.

The SBA said that it therefore rejects the initiative in its current form.

The SBA has previously said that the insertion of a separate bank-client confidentiality article into the constitution is unnecessary, because the protection of privacy is already sufficiently enshrined.

ARMENIA - SLOVAKIA

Signature

Armenia and Slovakia signed a DTA on May 15, 2015, Armenia's Ministry of Foreign Affairs has confirmed.

BELARUS - AUSTRIA

Forwarded

Belarus's House of Representatives on May 6, 2015 endorsed legislation to ratify the DTA with Austria, the state news agency reported.

CHINA - RUSSIA

Signature

China and Russia signed a DTA on May 8, 2015.

ETHIOPIA - MOROCCO

Negotiations

Ethiopia and Morocco are engaged in DTA negotiations, it was confirmed on May 12, 2015.

GEORGIA - VARIOUS

Signature

Georgia signed DTAs with Iceland, Liechtenstein, and Cyprus on May 13, 2015.

GERMANY - JERSEY

Signature

Germany and Jersey signed a DTA on May 7, 2015.

GUERNSEY - MONACO

Into Force

Guernsey's DTA with Monaco entered into force on May 9, 2015.

HONG KONG - JAPAN

Ratified

Hong Kong gazetted an order on May 15, 2015 to ratify the TIEA signed with Japan.

HONG KONG - SAUDI ARABIA

Negotiations

Hong Kong and Saudi Arabia held a third round of DTA negotiations on May 12-14, 2015.

HONG KONG - VARIOUS

Ratified

Hong Kong gazetted two orders on May 15, 2015 to give force to the comprehensive DTAs signed with South Africa and the United Arab Emirates. They were tabled before the Legislative Council on May 20, 2015.

INDIA - KOREA, SOUTH

Forwarded

India's Cabinet on May 6, 2015 approved the pending DTA with South Korea.

INDIA - MONGOLIA

Initialed

India and Mongolia initialed a DTA during Indian Prime Minister Narendra Modi's two-day visit to Mongolia, which began on May 17, 2015.

PHILIPPINES - VARIOUS

Forwarded

The Philippines' pending DTA with Germany and a Protocol with Italy were discussed at the May 20, 2015 subcommittee meeting of the Philippines Committee of Foreign Affairs, as part of the nation's domestic ratification procedures.

SOUTH AFRICA - VARIOUS

Forwarded

Reports concerning South Africa's pending DTAs With Lesotho, Cameroon, and Qatar, and a Protocol with Cyprus, were tabled before South Africa's Parliament on May 12, 2015, as part of the nation's domestic ratification procedures.

SWITZERLAND - GRENADA

Signature

Switzerland and Grenada signed a TIEA on May 19, 2015.

TURKMENISTAN - AUSTRIA

Signature

The Government of Turkmenistan on May 12, 2015 confirmed the recent signature of a DTA with Austria.

UNITED KINGDOM - UNITED ARAB EMIRATES

Negotiations

The United Kingdom and the United Arab Emirates committed to continuing DTA negotiations at a meeting on May 14, 2015.

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

THE AMERICAS

IADC INTERNATIONAL TAX SEMINAR

IADC

Venue: Hyatt Regency Austin, 208 Barton Springs, Austin, TX 78704, USA

Chair: Aidan Arney (Nabors Drilling)

6/4/2015 - 6/5/2015

http://www.iadc.org/event/2015-iadc-international-tax-seminar/

TAX PLANNING FOR DOMESTIC & FOREIGN PARTNERSHIPS 2015 - SAN FRANCISCO

PLI

Venue: PLI California Center, 685 Market Street, San Francisco, California 94105, USA

Co Chairs: Stephen D. Rose (Munger, Tolles & Olson LLP), Eric B. Sloan (Deloitte Tax LLP), Clifford M. Warren (Internal Revenue Service)

6/9/2015 - 6/11/2015

http://www.pli.edu/Content/Seminar/Tax_Planning_for_Domestic_Foreign_Partnerships/_/N-4kZ1z129zc?ID=223947

14TH ANNUAL INTERNATIONAL MERGERS AND ACQUISITIONS CONFERENCE

International Bar Association

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

Key Speakers: TBC

6/10/2015 - 6/11/2015

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

GLOBAL TRANSFER PRICING CONFERENCE

BNA

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

Key Speakers: TBC

6/11/2015 - 6/12/2015

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

INTRODUCTION TO US INTERNATIONAL TAX - BOSTON

Bloomberg BNA

Venue: Morgan Lewis, 225 Franklin Street, Boston, MA 02110, USA

Chair: TBC

6/15/2015 - 6/16/2015

http://www.bna.com/intro2015_boston/

US INTERNATIONAL TAX COMPLIANCE WORKSHOP - SAN DIEGO

BNA

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

Key Speakers: TBC

6/15/2015 - 6/16/2015

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

THE 6TH ANNUAL PRIVATE INVESTMENT FUNDS TAX MASTER CLASS

Financial Research Associates

Venue: Princeton Club of New York, 15 W 43rd St, New York, NY 10036, United States

Chairs: Elaine B. Murphy (Ropes & Gray), Jay G. Milkes (Ropes & Gray), Anthony Tuths (Withum Smith+Brown)

6/15/2015 - 6/16/2015

https://www.frallc.com/pdf/B957.pdf

INTERMEDIATE US INTERNATIONAL TAX UPDATE - BOSTON

Bloomberg BNA

Venue: Morgan Lewis, 225 Franklin Street, Boston, MA 02110, USA

Key Speakers: TBC

6/17/2015 - 6/19/2015

http://www.bna.com/inter2015_boston/

BASICS OF INTERNATIONAL TAXATION 2015

PLI

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

Chairs: Linda E. Carlisle (Miller & Chevalier Chartered), John L. Harrington (Dentons US LLP)

7/21/2015 - 7/22/2015

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2015/_/N-4kZ1z129zs?ID=223955

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

BASICS OF INTERNATIONAL TAXATION 2015

PLI

Venue: PLI California Center, 685 Market Street, San Francisco, California 94105, USA

Chairs: Linda E. Carlisle (Miller & Chevalier Chartered), John L. Harrington (Dentons US LLP)

9/28/2015 - 9/29/2015

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2015/_/N-4kZ1z129zs?ID=223955

INTRODUCTION TO US INTERNATIONAL TAX - LAS VEGAS, NV

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Chairs: Bart Bassett (Morgan Lewis LLP), Doug Stransky (Sullivan & Worcester LLP)

9/28/2015 - 9/29/2015

http://www.bna.com/uploadedFiles/BNA_V2/Professional_Education/Tax/Live_Conferences/IntroIntermediateJuneAugSept2015.pdf

INTERMEDIATE US INTERNATIONAL TAX UPDATE - LAS VEGAS, NV

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Chairs: Bart Bassett (Morgan Lewis LLP), Doug Stransky (Sullivan & Worcester LLP)

9/30/2015 - 10/2/2015

http://www.bna.com/uploadedFiles/BNA_V2/Professional_Education/Tax/Live_Conferences/IntroIntermediateJuneAugSept2015.pdf

CAPTIVE INSURANCE TAX SUMMIT - WASHINGTON, DC

BNA

Venue: McDermott Will & Emery, 500 North Capital Street, NW, Washington, DC 20001, USA

Key Speaker: TBC

10/26/2015 - 10/27/2015

http://www.bna.com/captive_dc2015/

INTERMEDIATE US INTERNATIONAL TAX UPDATE - CHICAGO

BNA

Venue: Baker & McKenzie LLP, 300 East Randolph Drive, 50th Floor, Chicago, IL 60601, USA

Key Speaker: TBC

10/28/2015 - 10/30/2015

http://www.bna.com/inter_chicago2015/

PRINCIPLES OF INTERNATIONAL TAXATION

Bloomberg BNA

Venue: Bloomberg LP, 731 Lexington Avenue, New York, NY 10022, USA

Key Speakers: TBC

11/16/2015 - 11/18/2015

http://www.bna.com/principlesintltax_NYC/

INTRODUCTION TO US INTERNATIONAL TAX - ARLINGTON, VA

Bloomberg BNA

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

Chairs: TBC

11/30/2015 - 12/1/2015

http://www.bna.com/intro_va/

ASIA PACIFIC

THE 6TH OFFSHORE INVESTMENT CONFERENCE HONG KONG 2015

Offshore Investment

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

Chair: Michael Olesnicky (KPMG China)

6/17/2015 - 6/18/2015

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

3RD GLOBAL CONFERENCE ON FINANCE & ACCOUNTING

Asia Pacific International Academy

Venue: Concorde Hotel, 100 Orchard Rd, 238840 Singapore

Chairs: Dr Raymond KH Wong (The Chinese University of Hong Kong), Prof. Dan Levin (Wharton Business School, University of Pennsylvania)

7/29/2015 - 7/30/2015

http://academy.edu.sg/gcfa2015/

MIDDLE EAST AND AFRICA

TRENDS IN INTERNATIONAL TAXATION: AN AFRICAN PERSPECTIVE

IBFD

Venue: Zambezi Sun, Mosi-oa-Tunya Road, Livingstone 20100, Zambia

Key Speakers: Prof. Annet Wanyana Oguttu (University of South Africa), Antonio Russo (Baker & McKenzie), Belema Obuoforibo (IBFD), Eleni Klaver (Carrara Legal), Fredrick Omondi (Deloitte), among numerous others

6/18/2015 - 6/19/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/Trends-International-Taxation-African-Perspective

WESTERN EUROPE

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

VAT UPDATE CONFERENCE 2015

MBL

Venue: TBC, London

Chair: Etienne Wong (Tax Chambers, 15 Old Square)

6/5/2015 - 6/5/2015

http://www.mblseminars.com/Outline?progid=5788

THE INTERNATIONAL TAX PLANNING ASSOCIATION 40TH ANNIVERSARY CONFERENCE

ITPA

Venue: Sofitel Legend The Grand Amsterdam, Oudezijds Voorburgwal 197, 1012 EX Amsterdam, Netherlands

Chair: Milton Grundy

6/7/2015 - 6/9/2015

https://www.itpa.org/?page_id=9907

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 VAT CONFERENCE 2015

IBFD

Venue: Seehotel Überfahrt, Überfahrtstraße 10, 83700 Rottach-Egern am Tegernsee, Munich, Germany

Key speakers: Donato Raponi (European Commission), Dermot Donegan (Irish Revenue Commissioners), Prof. Dr Ben J. M. Terra, Ferdinand Huschens (German Federal Tax Administration), among numerous others

6/10/2015 - 6/12/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/International-VAT-Conference-2015#tab_program

TAX EXECUTIVES INSTITUTE EMEA SUMMER CONFERENCE

TEI

Venue: Starling Hotel Conference Center, Route François-Peyrot 34, 1218 le Grand-Saconnex, Geneva, Switzerland

Key Speakers: TBC

6/11/2015 - 6/12/2015

http://www.tei-europe.org/events/agenda.html

TAX FOR OFFSHORE SHIPPING

Informa

Venue: Bonhill House, 1-3 Bonhill Street, London, EC2A 4BX, UK

Key Speakers: Harrie van Duin (KPMG Meijburg), Dorte Cock (EY), Jurjen Bevers (Baker & McKenzie), Gavin Stoddart (Moore Stephens CIS), among numerous others

6/16/2015 - 6/17/2015

http://www.lloydsmaritimeacademy.com/event/offshoretax

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

TREASURY FOR TAX PEOPLE

IBC

Venue: etc Venues - Marble Arch, Garfield House, 86 Edgware Road, London, W2 2EA, UK

Chair: David Hill (Grant Thornton)

6/18/2015 - 6/18/2015

http://www.iiribcfinance.com/event/treasury-for-tax-people-event

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

SUMMER COURSE ON EUROPEAN TAX LAW

ERA

Venue: ERA Conference Centre, Metzer Allee 4, 54295 Trier, Germany

Key speakers: Fatima Chaouche (Luxembourg University), Dr Charlène Herbain (Luxembourg University), Miriam Keusen (KPMG Luxembourg), Ine Lejeune (Advocaat/Avocat), Prof Jacques Malherbe (Liedekerke Wolters Waelbroeck Kirkpatrick), among numerous others

7/6/2015 - 7/10/2015

https://www.era.int/upload/dokumente/17230.pdf

PRIVATE CLIENT INTERNATIONAL UPDATE

IBC

Venue: TBC, London

Key speakers: Ian Maston, Suzanne Willis (Westleton Drake), Daniel Sopher (Sopher & Co), Patricia Garcia Mediero (Avantia Asesoramiento Fiscal y Legal), among numerous others

7/7/2015 - 7/9/2015

http://www.iiribcfinance.com/event/International-Private-Client-Tax-Seminars/speakers

PRIVATE WEALTH AFRICA 2015

7/8/2015 - 7/8/2015

IIR & IBC

Venue: TBC, London

Key speakers: Richard Howarth (African Private Office LLP), Chris Moorcroft (Harbottle & Lewis LLP), Camilla Dell (Black Brick Property Solutions), Jonathan Burt (Harcus Sinclair), Liam Bailey (Knight Frank)

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - LONDON

7/8/2015 - 7/9/2015

CCH

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

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

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

OFFSHORE TAXATION - A BRAVE NEW WORLD

7/14/2015 - 7/14/2015

IIR & IBC

Venue: TBC, London

Key Speakers: Emma Chamberlain (Pump Court Tax Chambers), Patrick Soares (Gray's Inn Tax Chambers), Simon McKie (McKie & Co LLP), Giles Clarke (Author - Offshore Tax Planning)

http://www.iiribcfinance.com/event/offshore-taxation-budget-special

INTERNATIONAL TAX SUMMER SCHOOL

8/18/2015 - 8/20/2015

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

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

THE 25TH OXFORD OFFSHORE SYMPOSIUM 2015

Offshore Investment

Venue: Jesus College, Turl Street, Oxford OX1 3DW, UK

Chairs: Nigel Goodeve-Docker (Down End Office), Peter O'Dwyer (Hainault Capital), Richard Cassell (Withers LLP), Nick Jacob (Wragge Lawrence Graham & Co), Andrew De La Rosa (ICT Chambers)

9/6/2015 - 9/12/2015

http://www.offshoreinvestment.com/pages/index.asp?title=Programme_Ox_2015&catID=12148

DUETS ON INTERNATIONAL TAXATION: GLOBAL TAX TREATY ANALYSIS

IBFD

Venue: IBFD Head Office Auditorium, Rietlandpark 301,1019 DW Amsterdam, The Netherlands

Key Speakers: Richard Vann, Pasquale Pistone, Marjaana Helminen, Peter Harris, Adolfo Martin Jimenez, Scott Wilkie

9/7/2015 - 9/7/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Global-Tax-Treaty-Analysis-1#tab_program

DUETS ON INTERNATIONAL TAXATION: SUBSTANCE AND FORM IN CIVIL AND COMMON LAW JURISDICTIONS

IBFD

Venue: IBFD Head Office, Auditorium, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key Speakers: TBC

9/8/2015 - 9/8/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Substance-and-form-civil-and-common-law

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - BRISTOL

CCH

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

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

9/9/2015 - 9/10/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MILTON KEYNES

CCH

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

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

9/15/2015 - 9/16/2015

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

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

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

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

9/16/2015 - 9/18/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MANCHESTER

CCH

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

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

9/22/2015 - 9/23/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - OXFORD

CCH

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

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

10/6/2015 - 10/7/2015

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

THE ITPA MONTE-CARLO MEETING

ITPA

Venue: Hôtel Hermitage Monte-Carlo, Square Beaumarchais, 98000 Monaco

Chair: Milton Grundy

10/11/2015 - 10/13/2015

https://www.itpa.org/?page_id=9909

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

EU FINANCIAL ACCOUNTING IN INTERNATIONAL COOPERATION AND DEVELOPMENT PROJECTS

European Academy

Venue: Arcotel John F, Wederscher Markt 11, 10117, Berlin, Germany

Key Speakers: TBC

11/26/2015 - 11/27/2015

http://www.euroacad.eu/events/event/eu-financial-accounting-in-international-cooperation-and-development-projects.html

THE AMERICAS

United States

The US Supreme Court has ruled against Maryland's personal income tax, in a case concerning the taxation of the interstate commerce activities of a company.

Maryland's personal income on state residents consists of a "state" income tax and a "county" income tax. Residents who pay income tax to another jurisdiction for income earned in that other jurisdiction are permitted a credit against the "state" tax but not the "county" tax. Nonresidents who earn income from sources within Maryland are required to pay the "state" income tax; and nonresidents not subject to the county tax must pay a "special nonresident tax" in lieu of the "county" tax.

The respondents (Maryland residents) earned pass-through income from a Subchapter S corporation that earned income in several states. The respondents claimed an income tax credit on their 2006 Maryland income tax return for taxes paid to other states. The Maryland State Comptroller of the Treasury, the petitioner in the case, allowed the respondents a credit against their "state" income tax but not against their "county" income tax and assessed a tax deficiency.

That decision was affirmed by the Hearings and Appeals Section of the Comptroller's Office and by the Maryland Tax Court, but the Circuit Court for

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

Howard County reversed on the ground that Maryland's tax system violated the Commerce Clause of the Federal Constitution. The Court of Appeals of Maryland affirmed and held that the tax unconstitutionally discriminated against interstate commerce.

Before the Supreme Court, it was highlighted that the Commerce Clause, which grants Congress power to "regulate Commerce … among the several states," also has "a further, negative command, known as the dormant Commerce Clause," which precludes states from "discriminat[ing] between transactions on the basis of some interstate element." Therefore, *inter alia*, a state "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the state [or] impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, or by subjecting interstate commerce to the burden of 'multiple taxation'."

The Supreme Court said this case was all but dictated by its dormant Commerce Clause cases, particularly *J. D. Adams Mfg. Co. v. Storen* (304 U.S. 307, 311), *Gwin, White & Prince, Inc. v. Henneford* (305 U.S. 434, 439), and *Central Greyhound Lines, Inc. v. Mealey* (334 U.S. 653, 662), which all invalidated state tax schemes that might lead to double taxation of out-of-state income and that discriminated in favor of intrastate over interstate economic activity.

Ruling against Maryland's personal income tax regime, the Supreme Court said this conclusion is not affected by the fact that these three cases involved a tax on gross receipts rather than net income, and a tax on corporations rather than individuals.

It observed that:

> "This Court's decisions have previously rejected the formal distinction between gross receipts and net income taxes. And there is no reason the dormant Commerce Clause should treat individuals less favorably than corporations; in addition, the taxes invalidated in *J. D. Adams* and *Gwin, White* applied to the income of both individuals and corporations. Nor does the right of the individual to vote in political elections justify disparate treatment of corporate and personal income. Thus the Court has previously entertained and even sustained dormant Commerce Clause challenges by individual residents of the state that imposed the alleged burden on interstate commerce."
>
> "Maryland's tax scheme is not immune from dormant Commerce Clause scrutiny simply because Maryland has the jurisdictional power under the Due Process Clause to impose the tax. While a state may, consistent with the Due Process Clause, have the authority to tax a particular taxpayer, imposition of the tax may nonetheless violate the Commerce Clause."

The Supreme Court concluded that Maryland's income tax scheme discriminates against interstate commerce. The "internal consistency" test, which helps courts identify tax schemes that discriminate against interstate commerce, assumes that every state has the same tax structure. Maryland's income tax scheme fails the internal consistency test because if every state adopted Maryland's tax structure, interstate commerce would be taxed at a higher rate than intrastate commerce.

This judgment was released on May 18, 2015.

http://www.supremecourt.gov/opinions/14pdf/13-485_o7jp.pdf

US Supreme Court: *Comptroller of the Treasury of Maryland v. Wynne et ux.*

WESTERN EUROPE

Bulgaria

The European Court of Justice (ECJ) has released a ruling in a case between GST – Sarviz AG Germania (GST-Sarviz) and tax authorities in Bulgaria concerning the latter's refusal to refund VAT.

From February 15 to December 29, 2010, GST-Sarviz, established in Germany, provided technical and consultancy services to GST Skafolding Bulgaria EOOD (GST Skafolding), established in Bulgaria.

Proceeding on the basis that GST-Sarviz did not have a fixed establishment in Bulgaria when it supplied its services during the period at issue, GST Skafolding paid the VAT due on the supply of those services under the reverse charge procedure provided for in Article 82(2) of the Bulgarian VAT law, the ZDDS.

By a tax adjustment notice of March 12, 2012, the Bulgarian tax authorities found that GST-Sarviz had a fixed establishment within the meaning of paragraph 1(10) of the additional provisions of the ZDDS throughout the period, and that GST-Sarviz was liable for payment of the VAT in respect of those services. It concluded that GST-Sarviz should have applied to be registered for VAT by February 15, 2010, at the latest. Consequently, the tax authorities considered that GST-Sarviz was liable for the payment of VAT of BGN224,915 (USD128,290), together with interest on the late payment.

GST-Sarviz paid the sum claimed by the tax authorities on March 26, 2012, and on September 5, 2012 submitted an application for the tax paid to be offset or refunded on the basis of Article 129(1) of the Code of Tax and Social Security Procedures.

In October 2012, the tax authorities refused the refund on the ground that the legal conditions for a refund of the VAT were not satisfied.

GST-Sarviz challenged that decision. In December 2012, the Director of the Appeals and Tax/Social Security Directorate at the Central Administration of the National Revenue Agency dismissed that challenge, finding that the contested act was lawful and, on appeal, the Administrative Court, Plovdiv, also ruled against the taxpayer for the same reasons. GST-Sarviz lodged an appeal with the Supreme Administrative Court, which referred the case to the ECJ.

The referring court pointed out that the tax authorities refused GST Skafolding the right of deduction in respect of the VAT which it had paid, because it did not have the corresponding tax document required by Article 71(1)(1) of the ZDDS. Under Bulgarian legislation, the existence of a tax adjustment notice, such as that at issue, makes any adjustment of tax documents impossible. GST Skafolding therefore found itself without the valid tax document that would confer the right of deduction.

The referring court noted the fact that VAT was paid twice – once by the supplier and once by the recipient – and that the supplier was denied a refund, and the recipient a deduction of that tax, contrary to the principle of the neutrality of VAT. It asked the ECJ about the treatment of the two taxpayers and also about the legality of the national provision.

First, the court asked whether Article 193 of the VAT Directive precludes the imposition of such double taxation. The ECJ observed that were the supplier not established in Bulgaria, the authorities could have required VAT payment from the recipient. However, in the circumstances of the present case, it may only be the supplier of the services that is liable for VAT (GST-Sarviz).

Answering a second question, the ECJ said that it is not possible for authorities to shift the liability to the recipient in the present circumstances.

On the legality of the national provision, the referring court asked, in essence, whether the principle of the neutrality of VAT must be interpreted as precluding a national provision which permits the tax authorities to refuse to grant the supplier of services a refund of the VAT which the supplier has paid, when the recipient of those services, who has also paid the VAT in respect of the same services, is refused the right of deduction on the ground that that recipient did not have the corresponding tax document.

The ECJ said it is for the member states to provide, in their domestic legal systems, for the possibility of adjusting any tax improperly invoiced where the person who issued the invoice shows that he acted in good faith.

However, where the issuer of the invoice has, in sufficient time, wholly eliminated the risk of any loss of tax revenue, the principle of the neutrality of VAT requires that VAT which has been improperly invoiced can be corrected without such adjustment being made conditional by the member states upon the good faith of the issuer of the relevant invoice, the ECJ said. Citing the ECJ judgment in *Rusedespred* (Case C-138/12), the ECJ pointed out also that the adjustment cannot be dependent upon the discretion of the tax authority.

The ECJ concluded that a national provision may not have the effect of undermining the neutrality of VAT. The ECJ pointed out that the supplier duly paid the VAT claimed in the notice, and since the tax authorities definitively denied the recipient of those invoices the right to deduct the VAT which it had paid, the risk of any loss of tax in connection with the exercise of that right had been wholly eliminated. Such treatment is not necessary in order to ensure the collection of VAT and for the prevention of fraud, it concluded.

Noting the double taxation that occurred in the present case, the ECJ concluded that the principle of the neutrality of VAT must be interpreted as precluding a national provision which permits the tax authorities to refuse to grant the supplier of services a refund of the VAT which the supplier has paid, when the recipient of those services, who has also paid the VAT in respect of the same services, is refused the right of deduction on the ground that that recipient did not have the corresponding tax document, any adjustment of tax documents being precluded under national law where a definitive tax adjustment notice exists.

The judgment was released on April 23, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=163873&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=116708

European Court of Justice: *GST – Sarviz v. Bulgarian National Revenue Agency (Case C-111/14)*

Germany

The European Court of Justice (ECJ) was asked to consider a dispute between Verder LabTec, a partnership established in Germany, and the Finanzamt (tax office) in Hilden concerning the taxation of the transfer of unrealized capital gains to its Dutch permanent establishment (PE).

From May 2005, Verder LabTec dealt exclusively with the administration of its own patent, trademark and model rights. The Finanzamt said the transfer of those rights to the Dutch PE had to take place with disclosure of the unrealized capital gains pertaining to those rights at their arm's length value at the time of the transfer.

The Finanzamt considered that the gains (the amount of which was agreed by all parties and not under dispute) should not immediately be subject to taxation in full, and instead the amount should be incorporated in profits on a straight-line basis over a period of ten years, for German tax purposes.

Verder LabTec brought an action against the authority's decision to bring forward the taxable event before the Finanzgericht (tax court) in Düsseldorf, arguing that the decision undermines the freedom of establishment guaranteed by Article 49 of the Treaty on the Functioning of the EU (TFEU). The recovery of that tax at the time of the realization of those capital gains would be a less restrictive option, it argued.

The Finanzamt said any infringement of the freedom of establishment is justified by overriding reasons in the public interest related to the preservation of the allocation of powers of taxation as between member states, and that its treatment of the unrealized gains was proportionate to achieve that objective.

Considering whether this was the case, the ECJ agreed that the taxation of the unrealized capital gains did constitute a restriction to freedom of establishment, as the taxation of unrealized gains – effectively an exit tax – would not take place in relation to a similar transfer within the national territory, with those capital gains not being subject to tax until they have actually been realized.

However, the ECJ then went on to consider the Finanzamt's justification of "overriding reasons in the public interest."

The ECJ said, first, that it should be borne in mind that the preservation of the balanced allocation of powers of taxation between member states is a legitimate objective recognized by the Court, and that, in the absence of any unifying or harmonizing measures of the EU, the member states retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation, with a view to eliminating double taxation.

Second, a member state is entitled, in the case of a transfer of assets to a PE located within another member state, to impose tax, at the time of the transfer, on the capital gains generated on its territory prior to that transfer (according to the fiscal principle of territoriality) – a measure intended to ensure the member state of origin may exercise its powers of taxation in relation to activities carried on in its territory.

Recalling its decision in *DMC* (C-164/12), the ECJ said that member states are entitled to tax capital gains generated when the assets in question were on their territory and have the power, for the purposes of such taxation, to make provision for a chargeable event other than the actual realization of those gains, in order to ensure that those assets are taxed.

Accordingly, it observed:

> "It is proportionate for a member state, for the purpose of safeguarding the exercise of its powers of taxation, to determine the amount of the tax due on the unrealized capital gains that have been generated in its territory pertaining to the assets transferred outside its territory, at the time when its powers of taxation in respect of the assets concerned cease to exist, namely, in the present case, at the time of the transfer of the assets at issue outside the territory of that member state."

It also said it was appropriate to give the taxable person the choice between, on the one hand, immediate payment of that tax, and, on the other hand, deferred payment of that tax, together with, if appropriate, interest in accordance with the applicable national legislation. It cautioned, however, that account should also be taken of the risk of non-recovery of the tax.

It noted that in its ruling in *DMC*, the ECJ had held that requiring the payment of tax on unrealized capital gains within a period of five years had been found to be a proportionate measure. A staggered recovery of tax on unrealized capital gains over ten annual installments, such as that at issue in the main proceedings, can only therefore be considered to be a proportionate measure to attain that objective, the ECJ concluded.

This judgment was released on May 21, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164355&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=104339

European Court of Justice: *Verder LabTec v. Finanzamt Hilden (C-657/13)*

Switzerland

In two judgments announced simultaneously, the Swiss Supreme Court ruled in favor of the Federal Tax Administration (FTA) in respect of its decision to deny two Danish banks their right to a refund of withholding tax in respect of dividend arbitrage trades.

The case concerned two banks that had fully hedged their short-term investments in Swiss equities with counterbalancing investments in either total return swaps or index futures. The FTA had levied withholding tax of 35 percent on the dividends and rejected the banks' respective claims for a refund under the former Danish–Swiss double tax agreement, which provided for a full refund of dividend withholding tax.

Supporting the FTA's decision, the Supreme Court said that the banks were not effectively the beneficial owners of the dividends and were therefore not entitled to reimbursement of withholding tax under the treaty. Despite there being no explicit provisions on beneficial ownership in that double tax agreement, the court said that, even in treaties without such provisions, there is an implicit beneficial ownership requirement in treaties to prevent treaty abuse.

In particular, the Court said that in order for the banks to have been the beneficial owner, they must have had the right to use, enjoy, or dispose of the dividends, and they must have borne the associated risks concerning the potential non-payment of the dividends. Instead, under the derivatives contracts, the dividends received were agreed to be passed on to the banks' counterparties, which were situated outside Switzerland and Denmark.

The rulings were despite earlier judgments from the Supreme Court being centered on whether the arrangements were contrived – that is, whether they exclusively targeted a tax benefit – and whether the entity claiming a refund had sufficient activity in the treaty state. Interestingly, in these cases, the two banks had substantial activities in Denmark.

The judgment was released on May 5, 2015.

http://www.bger.ch/fr/press-news-2c_364_2012-t.pdf

Swiss Federal Supreme Court: *(2C_364/2012, 2C_377/2012, and 2C_895/2012)*

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Following the Conservative Party's somewhat surprising victory in the UK general election, business groups, including the Federation of Small Businesses, have been quick to offer the new Government their vision of a tax system for the future. Now, they say, is the time for the Government to really take the bull by the horns, finish the job it started in 2010, and deliver comprehensive, pro-growth tax reform. Well, I wouldn't hold my breath. The previous coalition government, within which the Tories had the largest say on policy, got off to a good start by establishing the Office of Tax Simplification (OTS) five years ago. As its name suggests, this independent body was charged with recommending ways of simplifying the British tax system, which, just like many other country's systems, has become a byzantine maze that confounds most taxpayers, and sometimes even the tax authority itself. But what has the OTS achieved? Absolutely zip.

But, actually this isn't really the OTS's fault. It has been reporting regularly since 2010 and come up with lots of useful ideas. It's just that the Government has ignored them. And will probably continue to do so. Indeed, there's nothing really in the Conservative manifesto to suggest anything remotely radical is going to happen to the tax system. But then the UK is not the first country to fail at tax reform. And it won't be the last. For a government, bringing about comprehensive change to the tax framework is probably akin to rebuilding a vehicle while it's still moving. It's not that it can't be done – it's just that as long as the money keeps rolling in, governments care little about how long it takes an individual or company to complete a tax return.

One organization that would probably benefit greatly from comprehensive tax reform is the US Internal Revenue Service, which seems to be in a right old mess at the moment. It's almost taken for granted now that there is a chronic problem of fraudulent and erroneous tax credit payments, something which the IRS seems almost powerless to prevent, despite regular rebukes from the Treasury Department's watchdog, the TIGTA, and from various Congressmen. Shockingly, the IRS itself has admitted that over a quarter (27 percent) of Earned Income Tax Credit payments were made improperly in fiscal year 2014. These credits were worth almost USD18bn. On top of this, TIGTA recently found that the IRS also paid an estimated 3.6m taxpayers more than USD5.6bn in potentially erroneous education credits in the 2012 tax year. Not only this, but the IRS sometimes has trouble collecting tax even from some of its own employees. And when those IRS workers seem to have been treated much more leniently than you or I would be if we decided not to pay our taxes, it's easy to see why the institution's stock has probably never been lower with the American public.

Still, I can't help thinking that if the IRS had made just a small dent into the erroneous payment problem, there might not be any need for FATCA, which is projected to raise less than USD1bn per year in revenue (although given the money spent on implementing FATCA, the agency is probably facing a net loss). But it is because of initiatives like FATCA that the IRS is struggling so badly. The crux of the crisis at the IRS is that it is being asked to do too much while its budget is effectively being cut. And it's a bit rich of Congress to criticize the agency's performance when it is entirely responsible for cluttering the tax code with a multitude of tax credits, and for making the IRS almost the go-to government department for new welfare initiatives, such as Obamacare. Increasing the IRS budget would help, but if this is the cure, when will it ever stop? Surely this is only going to fuel the agency's seemingly inexorable mission creep. Only a radical re-think of the IRS's role can really arrest the tide, and I'm not sure those in the Washington bubble are capable of it.

Most large companies started life as small companies. But not all small companies are destined to become large ones. This doesn't make them any less important however. On the contrary, in most market economies, the vast majority of the workforce is employed by small firms. They are said to account for about 90 percent of employment in the US for example. But despite the fact that SMEs are the lifeblood of most economies, the failure rate of companies started from scratch is still tragically high. It's hard to put a precise figure on how many new companies go to the wall, but it seems to be widely accepted that about half of start-ups will fail within the first two years. This isn't necessarily a bad thing. Learning from one's mistakes is a healthy part of life, and many successful entrepreneurs had to start all over again – often more than once – before they achieved their goals. Indeed, it would be more worrying if people weren't bothering to start businesses in the first place. Having said this, governments, despite their frequent assertions to the contrary, often don't make things easy for small business owners.

Yes, in most jurisdictions, small companies pay lower rates of tax, and there are various incentives available, like Ireland's newly announced "SURE" scheme for start-ups, to tempt people to take the plunge into business. However, it is often said that tax and regulatory requirements burden small companies disproportionately, forcing owners to spend time and money on compliance when it could be spent on growing the business. Indeed, even the tax incentive schemes themselves can require small firms to jump through various bureaucratic hoops in order for them to be claimed, often making them not worth the hassle. It remains to be seen how many firms take advantage of Ireland's SURE scheme. But at first glance at least, the incentive looks particularly generous. Remarkably, considering the state the country was in five years ago, the Irish economy grew by 5 percent last year, which indicates that its government must be getting some things right on the economic front.

The Jester