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a closer look

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

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Global Tax Weekly – A Closer Look

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Managing The Corporate Tax Consequences Of International Assignments

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Introduction

International assignments for employees can have complex individual tax implications. This is why many companies engage outside tax advisers to meet with the employees before they begin their assignment. However, these assignments can also create tax consequences for the companies involved in the transfer. With an increased focus by international tax authorities on the corporate tax consequences and permanent establishment (PE) risks of these assignments, it is important that the sending and receiving companies have also done their homework in advance of the assignment. For example, such advanced planning may involve more careful documentation of how the assignment economics will be shared between the sending and receiving companies. This documentation may also include the use of secondment agreements or other intercompany agreements, which create or preserve appropriate ties with the home and host country employers to support the desired corporate tax results.

Mitigating Permanent Establishment (PE) Risk

The presence of international assignees in a foreign country may give rise to a PE by the home country employer in that host location. The creation of a PE could lead to income arising in that country that is subject to corporate tax. The OECD (Organisation for Economic Co-operation and Development) model tax convention defines a PE as "a fixed place of business through which the business of an enterprise is wholly or partly carried on."[1] PE is more specifically defined within the tax treaties between member countries and, while there is a general agreement internationally on its definition, there is a great deal of discrepancy in the details of each country's interpretation of how a PE is established. These varying considerations as to how and when a

PE is created can be problematic for tax planning by home country companies, who are generally looking to avoid host country taxation at the corporate level and may be operating in multiple jurisdictions that have different interpretations of PE.

The OECD model convention also states that an individual person who is acting on behalf of a company may create a PE if that individual has and uses the ability to enter into contracts for the business.[2] A person is considered to have the ability to enter into contracts on behalf of an enterprise in a country if the person is authorized to negotiate all elements and details of a contract in a way binding on the enterprise, even if the contract is signed by another person outside the country. This rather narrow definition that a PE can be created by an individual person underscores the critical need for pre-assignment planning to avoid the inadvertent establishment of a PE by a single international assignee. Simply avoiding establishing a physical office in a country is not sufficient to avoid PE.

The OECD model convention serves as the starting point for treaties. However, variation may exist between an enacted treaty and the OECD model; a company must take care to understand the specific terms of the treaty for each country in which it is operating. For instance, in 2007 Canada and the US agreed to the Fifth Protocol of their treaty, which introduced two new conditions to the treaty regarding the establishment of a PE; under the protocol, a single employee may create a PE if his/her work generates a certain percentage of revenue for the business, or a group of employees may create a PE if they are performing services for a customer with a PE in Canada.[3] While these rules are unique to the US and Canada, they are illustrative of the types of specific requirements that may exist within a treaty that should be considered when analyzing PE risks for each location.

Supporting The Deductibility Of Compensation Costs

Another corporate issue related to international assignments is where the costs of that assignment are deductible. Since international assignments are typically more expensive than hiring local personnel in the assignment country, the sending and receiving companies need to be thoughtful on how much of these costs are allocated to each location. The two companies may enter into an agreement, either separate or part of the secondment agreement, which allocates the costs of the assignment between them. This agreement can address the benefits that each company receives from the employee's assignment. For example, the receiving company may benefit from the services of the employee, and the sending company may benefit from an employee who has additional training and skills due to the assignment. The allocation of costs between the two entities should support these assignment economics.

The Use Of Secondment Agreements

As noted above, intercompany agreements can address both the PE risks and allocation of costs associated with an international assignment. Most often, these agreements take the form of a secondment

agreement. A secondment agreement is an arrangement where an individual maintains some level of employment relationship with the home country employer while being assigned to work at an affiliated company in the host country. The secondment agreement is generally between the home and host country entities, rather than an agreement between the employee and the company, and is separate from the individual's letter of assignment. In a standard secondment agreement arrangement, the home company may continue to pay some or all of the individual's compensation and will receive appropriate reimbursement for the expense from the host company. This reimbursement may also include an additional fee or mark-up paid by the host company to compensate the home company for its help coordinating the assignment. The inclusion of a mark-up and the allocation of compensation expense should be addressed based upon specific guidance in the home and host countries.

A secondment agreement does not need to be unique to each individual assignment. Rather, it is common for the home country company to have one or more standard secondment agreements in place with each host country to which it assigns employees. Each secondment agreement should include a list of the applicable assignees for a given country combination that will be covered by that version of the agreement. Due to the specific requirements of each home and host country combination, and the different cost sharing arrangements that may be appropriate to reflect the benefits of the assignment, it is not advisable for a company to have only one version of a secondment agreement that it uses in all cases.

Benefits Of Secondment Agreements

Typically, the most desirable benefit of the secondment agreement is the potential for protection from host country entity-level taxation for the home country company. In general, there is a greater risk that the employee's work will give rise to a PE in the host country if that individual is considered employed by the home country company than if the individual is employed on a local contract. However, it is also typically desirable for the individual to maintain some level of employment with the home company to continue participation in home country benefit plans, among other factors. These competing needs may be mitigated through the use of a secondment agreement.

An employee on an international assignment often has roles and reporting responsibilities with both the home and the host companies, which may seem to indicate an employment relationship with both organizations. This confusion over employment status can be partially or wholly clarified by a secondment agreement. For example, the agreement may provide that the individual is still employed by the home country company, but is predominantly performing services for the host country. In this case, oversight and responsibility for the employee is temporarily transferred to the host country, often including supervision of the employee's day-to-day activities. However, the agreement may leave termination rights with the sending company. A

successful secondment agreement requires a careful balancing of direction and control over the employee between the two companies. This balance will support the relationships required to achieve the goals of the assignment and limit potentially adverse tax consequences.

It is also typical for a secondment agreement to include language limiting the individual's ability to conclude contracts on behalf of the company in the local jurisdiction, to further support that the individual is not acting as part of a PE in that country.

For the employee, the primary benefit of the secondment agreement is the ability to remain employed by the home country while still gaining the experience of working internationally. Employment by the home country typically allows the employee to continue participation in home benefit programs, such as a US 401(k) plan or company pension program. It also maintains the individual's record of years of service with the company, which may be considered in determining benefits upon retirement. Lastly, the individual can typically continue to contribute to the home country social security systems during the assignment. All of these factors are results of secondment agreements that are generally positive in the view of the employee and may be helpful in attracting top talent to international assignments.

Increasing International Focus On Secondment Agreements

It is not sufficient to simply have a secondment agreement in place; the substance of the international assignment must follow the terms outlined in the agreement. International authorities are taking a closer look at these arrangements and paying specific attention to how the employment arrangement is carried out in practice. There has also been a trend in recent years of pronouncements from tax authorities that serve to clarify the factors that they will consider in determining whether an arrangement is valid.

In 2013, the Chinese tax authorities issued Announcement 19, which provided clear guidelines as to when a seconded employee would be determined to be employed by the home entity, thus creating a PE in China for the home entity.[4] The announcement established a "fundamental criterion" based on whether the home country maintained all or part of the risks and responsibilities for the individual's work and was continually involved in the review of that individual's performance. In addition, the announcement established five factors related to the payments for the individual; if the fundamental rule and any one of the five factors are met, the individual is considered employed by the home country and that home country company will be deemed to have a PE in China.

In guidance issued in a 2005 information circular, the Canada Revenue Agency (the "CRA") defined a secondment agreement as "the temporary assignment of an employee from an entity [lending employer] in a foreign country to an entity [receiving employer] carrying on business in Canada, supported by the existence of an employer/employee relationship between the individual and the receiving

employer" and went on to clarify that the agreement may exist regardless of the location of the individual's payroll.[5] The CRA also provided further clarification in 2009 on its interpretation of secondment agreements in conjunction with the establishment of the Fifth Protocol to the treaty between the US and Canada, including several examples.[6] Clarifications of a country's interpretation of a secondment agreement, such as those provided by China and Canada, should be considered when drafting secondment agreements for each country, along with the general PE guidelines provided in the treaty.

In addition to specific guidance related to secondment agreements, there is a broader global trend of a significant rise in tax audits and disputes. Each year the OECD publishes statistics on mutual agreement procedure (MAP) cases between member countries; the statistics for 2013, the latest reporting period available, indicate a 12.1 percent increase in cases compared to the prior year and a 94.1 percent increase compared to 2006.[7]

Conclusion

The personal and corporate income tax implications of an international assignment can be incredibly complex and present many challenges to companies in planning for a mobile workforce. Secondment agreements are one solution to help in navigating the PE risks associated with these assignments, while also providing a benefit to the employee by maintaining employment with the home country company. With an increasing focus by international authorities on reviewing the validity of these arrangements, care should be taken now to review a company's current secondment agreements in light of legislative changes or establish new arrangements where none previously existed.

The author would like to acknowledge the assistance of Elizabeth McCoy in the preparation of this article.

Endnotes

1 OECD (2014), *Model Tax Convention on Income and on Capital: Condensed Version 2014*, OECD Publishing, Article 5, para. 1.

2 *Id*, para. 5

3 Protocol done at Chelsea on September 21, 2007, Amending the Convention Between the United States of America and Canada With Respect to Taxes on Income and on Capital Done at Washington on September 26, 1980, As Amended by the Protocols Done on June 14, 1983, March 28, 1994, March 17, 1995, and July 29, 1993.

4 SAT Announcement [2013] No. 19, *Concerning Levying Enterprise Income Tax on the Services Provided Within China by the Personnel Dispatched by Non-resident Enterprises*, April 19, 2013. Available online at: http://tax.mofcom.gov.cn/tax/taxfront/en/article.jsp?c=30115&tn=1&id=02a530f77667476ea62bab43ab3411c8

5 Info. Cir. 75-6R2, "Required Withholding from Amounts Paid to Non-Residents Providing Services in Canada," February 23, 2005, at ¶35.

6 The CRA's comments were presented as part of the "Canada Revenue Agency Roundtable" on November 24, 2009.

7 OECD, "Mutual Agreement Procedure Statistics 2006–2013," available at: http://www.oecd.org/ctp/dispute/map-statistics-2006-2013.htm

Supply Chain Planning In The Post-BEPS Era: Five Questions For MNEs

by Michael F. Patton and Oscar Burakoff, DLA Piper

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Introduction

As governments around the world establish austerity measures to compensate for decreases in tax receipts, a new catch phrase has emerged: double non-taxation.

Double non-taxation is the phrase used by governments to denote untaxed or lightly taxed profits that result from effective, legal tax planning techniques. These techniques include application of well-established transfer pricing strategies, such as structuring certain functions, risks and assets (including intangible assets) within a multinational enterprise (MNE) in tax-favored locations.

Transfer pricing issues have become a significant political issue, as the G20 nations focus on ways to combat double non-taxation. For instance, double non-taxation has increasingly been the subject of political agitation by non-governmental organizations (NGOs), resulting in reputational risks for MNEs that are the target of NGO actions – the LuxLeaks[1] disclosures exemplify this. In addition, the US and other countries are demanding greater transparency in taxpayer disclosures.

Double non-taxation is the principal focus of a fast-moving project at the OECD, referred to as Base Erosion and Profit Shifting (BEPS). At the heart of the BEPS project are efforts to align profits from controlled transactions with "commercial reality" and economic substance: concepts that appear sound, but that are ultimately only sound in the eye of the beholder.

The BEPS project has resulted in a crescendo of draft papers recommending changes to existing international norms, model tax treaty provisions, or domestic tax rules. Transfer pricing issues that are at the heart of the BEPS project include revisions to the rules regarding risk shifting within an MNE group, limitations on intercompany payments for interest, insurance or royalties, and revisions to the treatment of intangibles.

The OECD BEPS project encompasses efforts to revise the rules for defining and valuing intangibles

and for redefining the concept of a permanent establishment (PE), especially with regard to companies engaged in digital commerce.

The BEPS effort has been moving ahead for some times now, and 2015 is shaping up to be a watershed year for bringing it closer to fruition. In February, the finance ministers of the G20 reiterated their commitment to implementing key BEPS action items during 2015. In the offing are the following BEPS-related actions that will affect transfer pricing-based international tax planning:

- **Finalizing the template for country-by-country reporting** (CbCR) and establishing procedures for automatic exchange of CbCR templates among tax treaty or tax information exchange agreement partners. The first automatic exchanges are planned to take place in 2017 based on reporting by multinational companies for tax year 2016;
- **CbCR will enable countries to pinpoint double non-taxed or lightly taxed income** reported in jurisdictions with few employees or low local brick and mortar investment;
- **Finalizing the revised rules for evaluating returns to contractual assumption of risks** related to developing intangible property, as well as rules for recharacterizing transactions that are based solely upon contractual assumptions of risks;
- **Finalizing a multilateral instrument** (treaty protocol) that will potentially amend hundreds of existing OECD-based treaties. Amended treaty provisions would impose limitation of benefits provisions, place restrictions on the deductibility of interest in one jurisdiction that does not result in an income inclusion in the payee jurisdiction, and adopt changes to longstanding PE rules.

One general theme of the changes being considered is that taxable (or non-taxable) profits should follow economic substance.

In the case of risks, emphasis will be placed on the actual management of the functions that give rise to the reward that is inherent in the risk being assumed.

OECD BEPS proposals emphasize that *a rigorous functional analysis should be undertaken to justify returns to a controlled transaction and that the returns being allocated should reflect commercial reality*. In an environment that abounds with negativity, is tax planning possible to justify profits in tax-favored jurisdictions?

Post-BEPS Tax Planning And Tax-Efficient Supply Chains

After BEPS actions are incorporated into OECD documents and local legislation, tax planning opportunities will still exist, but realizing the benefits of tax planning will require a greater emphasis on economic substance supporting the profit generated around the world.

One often-overlooked area of opportunity is tax-efficient supply chain planning. For many companies, particularly in the consumer products industry, **an efficient supply chain is a critical value driver**.

The efficient management of a company's supply chain allows it to bring to market innovative

products of the right quality, at the right price, and at the right time. Failure to efficiently manage a supply chain can have drastic implications. In the apparel and footwear industries, for instance, the inability to meet a production schedule can lead to a brand missing a fashion season. It has been well documented that inefficient management of a supply chain can even lead to the collapse of a brand.

Conversely, an efficient supply chain enables the brand owner: to market products in a timely manner; to increase the number of product launches and offerings; to enhance the value of a brand through consistently high quality; to reduce costs; to better manage inventory levels; and to foster innovation.

Efficient supply chains allow a company to react to consumers in a more agile way. In fact, fast-fashion brands have supply chains that enable them to bring trends to store shelves with great speed and efficiency, thereby driving less agile companies into bankruptcy or leading to sales declines for competitors.

Efficient supply chain management, as a key value driver, is not limited to fashion or similar consumer goods companies. For example, while technology companies are justly proud of having leading-edge technology-driven products, their technological innovations need to be incorporated into products that are produced efficiently, at the right time, and at the right price.

The world's best leading-edge technology does not generate profits for the intangible property (IP) owner until that technology is incorporated into a product that is made, delivered and sold to the consumer. In short, turning leading-edge IP into globally realized profits requires a well-managed supply chain.

Tax Planning Opportunities

In the past, many consumer products companies have engaged in tax planning involving their supply chains. Typically, tax planning involved an intermediary entity located in a tax-efficient jurisdiction earning profit associated with supply chain transactions. In many cases, these entities lack sufficient economic substance to withstand scrutiny from a BEPS-type inquiry. With the implementation of BEPS-type provisions, these structures are no longer viable.

Opportunities exist, however, for companies to structure or restructure their supply chains in a tax-efficient manner.

The fact remains that, for most companies, a well-managed supply chain is a significant value driver. Particularly in the consumer products industry, companies have generally employed buying agents located close to the factory base producing the company's products. Historically, these agents were often based in Hong Kong, near production sites in China. However, as Chinese labor rates rise, and companies increasingly look to other countries for sourcing, opportunities exist to restructure the supply chain to centralize management of the production functions and enable efficient expansion of the supply base.

Because production involves company employees performing labor-intensive activities, supply chain management, through buying agents, contains the economic substance necessary to support tax planning in a post-BEPS era.

Buying agents generally earn a commission as compensation for the services they provide. The industry practice is that buying agent commissions are expressed as a percentage of the free-onboard (FOB) price of goods sourced through the buying agent.

A buying agent's commission rate depends on a number of factors, including the variety of goods that the agent handles, the complexity of the manufacturing process, the functions provided by the agent, and the size of the territory that the agent covers.

Based on extensive industry experience, there is a direct relationship between the number, type, and intensity of functions performed by buying agents and the commission rates they earn, with agents that perform more specialized, high-value-added functions earning higher commission rates.

According to US Customs, there are standard activities that buying agents characteristically engage in when acting as an intermediary between manufacturers and principals. These activities include (but are not limited to):

- Compiling market information;
- Gathering samples;
- Translating;
- Informing the seller of the desires of the buyer;
- Locating suppliers;
- Placing orders based on the buyer's instructions;
- Procuring the merchandise;
- Assisting in factory negotiation;
- Inspecting and packing merchandise; and
- Arranging for shipment and payment.

As compensation for providing these standard buying agent activities, agents generally earn average arm's length buying agent commission rates in the range of 5 percent to 10 percent.

In some cases, there is either a separate commission paid or a higher total commission rate charged for additional services performed by a buying agent that are beyond the scope of services typically provided by a buying agent.

High-value-added services justifying higher or additional commissions include the following:

- Product design and pre-production engineering services;
- Artwork;
- Additional quality control procedures; and
- Certain product testing.

Because of income sourcing rules that exist in many jurisdictions, high-value-added services can be performed in a tax efficient manner using arm's length transactions to support the fees charged.

These types of transactions are not the type for which the BEPS proposals are designed. Rather, such transactions reflect the economic substance-based

tax planning that should be acceptable in a post-BEPS environment.

What Companies Can Do Now: Five Questions

We recommend that companies review certain aspects of their supply chain, including the following:

1. Where are products sourced and what are the plans for expanding the supply base?
2. Are products sourced through company-owned facilities or unrelated manufacturers?
3. Which company employees are involved in performing supply chain activities close to the manufacturing source base, and where are these employees located?
4. Which headquarters employees are involved in performing supply chain activities?
5. Are internal or external buying agents used to assist with the sourcing of products?

The answers can help determine whether opportunities exist to structure or restructure the supply chain in a tax-efficient manner.

Endnote

[1] https://www.dlapiper.com/en/us/insights/publications/2015/03/global-news-mar-2015/luxleaks-challenging-the-challenges/

Topical News Briefing: Doing Nothing Is An Option!

by the Global Tax Weekly Editorial Team

In an era of "resource nationalism," where governments are cashing in on their mineral wealth by increasing extraction taxes, royalties and other fees, the Davis Tax Reform Committee's recommendation that the South African Government should refrain from following suit has come as something of a shock.

This conclusion must have raised a few eyebrows within the South African Government, which has been hinting fairly strongly for a number of years now that the mining industry could make a larger contribution to efforts to reduce poverty and inequality in the country by paying more in tax. What's more, with public spending outpacing tax revenue growth at an increasingly rapid pace, the Government needs all the additional revenue it can get to prevent an unfavorable fiscal position turning into a crisis.

The recommendation that the Government largely leaves the taxation of the resources sector alone, save for some minor changes, is all the more surprising given that a concurrent review of the South African tax regime by the International Monetary Fund (IMF) reached an altogether different conclusion. According to the IMF, revenues from mining activities have sunk to just 2 percent of overall tax revenue from nearly 29 percent in 1981. The Fund therefore suggests that there is plenty of scope for additional revenue to be raised from the mining sector without necessarily harming the industry.

The reason for the Davis Tax Committee's somewhat contrary decision is based on the fact that it is better to provide the resources sector with tax certainty. The existing system of royalties under the Mineral and Petroleum Resources Royalty Act has only been in place for five years. Changing things relatively suddenly, given the large amounts of time and money that mining companies are required to invest in extraction projects, would no doubt be frowned upon by the global investment community, as it has been in other resource-rich emerging economies.

On the face of it, the Committee's recommendations might seem the more suitable. However, it could be argued that at a time of so much pressure on the Government's budget, the mining industry's share of tax revenue would be a relatively painless way of getting more money into the coffers. This would reduce the risk of the Government raising the general corporate tax or other taxes, such as value-added tax and personal tax.

It remains to be seen whose advice the South African Government will take. However, given previous comments by senior government figures, don't be too surprised if the IMF's voice is the one that is listened to.

Brazil: Current Trends In International Cost Sharing

by Sergio André Rocha, Andrade Advogados Associados

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1. Introduction

Cost sharing arrangements are part of the business model of any multinational today. Competitiveness in a global scenario depends on the optimization of costs, which often can be pursued with centralization and the leverage it provides.

Multinationals operating in Brazil are no exception to this reality. Their headquarters located outside the country usually incur many expenses related to back-office operations and even technical activities that benefit the Brazilian subsidiary.

The same structure is used by Brazilian multinationals, when the headquarters located in Brazil centralizes activities that benefit its controlled companies located abroad. However, since this situation gives rise to a different set of issues, in this article we will only focus on cost sharing structures where costs are centralized by a foreign company.

Brazil's federal tax laws do not regulate the tax implications of cost sharing agreements. Neither the country's Income Tax Code nor any other tax law contains a single provision about the issue. As a consequence of this shortfall in legislation, there is a great deal of legal insecurity concerning this type of operation.

In view of this gap, the only guidance available to foreign multinationals operating in Brazil is the rulings issued by Brazil's Tax Office ("Receita Federal do Brasil"), which do provide some interpretation at least regarding the tax authorities' thinking.

This article will focus on Brazil's Tax Office's position in these rulings and their impact on cost sharing arrangements.

2. Major Challenges Of International Cost Sharing In Brazil

Before we comment in detail on Brazil's tax authorities' interpretations, we should point out the three main tax aspects related to international cost sharing. These are:

- Taxation of reimbursements paid to the foreign company;
- Deductibility of the expense for the Brazilian company; and
- Application of transfer pricing rules to intragroup transactions.

It is worth noting that, regarding Brazil's experience, these aspects are analyzed considering basically two different types of cost sharing:

- Sharing of costs related to activities executed directly by the foreign company in centralizing the costs – usually costs related to legal, marketing, finance and human resources matters;
- Sharing of costs incurred by third party suppliers.

3. Brazil's Tax Authorities' Interpretations Prior To November 2012

Prior to November 2012, when Brazil's Revenue Office issued Ruling No. 8 ("Solução de Consulta COSIT no. 8/12"), tax authorities' interpretation about international cost sharing was that reimbursements paid to the foreign company should be taxed as services and the corresponding expense would not be deductible for income tax purposes.[1] Since all expenses would be non-deductible, there were no transfer pricing concerns.

Given the relevance of Brazil's taxation on the importation of services – and the tax authorities' interpretation that reimbursements in the context of a cost sharing agreement are service payments – in the following section, we present an overview of Brazilian taxes levied on the importation of services.

4. Overview Of Taxes Levied On The Importation Of Services

As previously noted, one of the potential risks associated with an international cost sharing structure in Brazil is its taxation as the importation of a service. Therefore, it is worth presenting brief comments about taxes levied on such transactions.

4.1. Withholding Income Tax ("WHT")

This is a federal tax levied on the gross value of technical and professional services, at a rate of 15 percent – which may be increased to 25 percent in the case of payments for services to beneficiaries domiciled in low tax jurisdictions. Remittances for services not qualifying as technical services are also subject to a 25 percent WHT. According to the sole paragraph of Article 716 of Brazil's Income Tax Regulations, remittances to foreign beneficiaries depend on proof of payment of the WHT by the payor. The bank making the payment must confirm that the payment of the WHT was done correctly.

4.2. Contribution For Economic Intervention ("CIDE-Technology")

The taxable event of this contribution is the remittance, payment, credit, delivery or employment of funds to a non-resident service provider. CIDE-Technology is only levied on technical services, technical assistance, and administrative assistance. The tax is levied on the gross amount, and its rate is 10 percent. The taxpayer is the Brazilian source.

4.3. Contributions On The Importation Of Services ("PIS & COFINS On Imports")

The taxable event is the remittance, payment, credit, delivery or employment of funds to the non-resident provider as compensation for the services. The tax is levied on the gross amount plus the Service Tax as well as the contributions themselves (grossed up). The combined rate is 9.25 percent (7.6 percent COFINS and 1.65 percent PIS). The taxpayer is the Brazilian source.

4.4. Tax On Exchange Transactions ("IOF on Exchange")

The taxable event is the conversion of foreign currency into Brazilian reais or *vice versa*. The tax is levied on the total amount of converted funds. In most cases the IOF rate is 0.38 percent. The taxpayer is the buyer or seller of foreign currency.

4.5. Service Tax ("ISS")

The taxable event is the provision of a service. The tax is levied on the service fee. Rates vary from 2 percent to 5 percent. The taxpayer is the service provider. The Brazilian source is liable for withholding and paying the tax in Brazil.

Taxes listed in paragraphs 4.1 through 4.4 above are collected by the Federal Union. The ISS is, however, a municipal tax.

5. Interpretation Of Brazil's Revenue Tax Office In Ruling No. 8/12

Ruling No. 8/12 was the first broad interpretation issued by Brazilian tax authorities on the matter of international cost sharing. It dealt with the matters of: deductibility of the reimbursements at the Brazilian company level; transfer pricing; and taxation of remittances abroad in the case of third party services. We comment below on each one of these items.

5.1. Deductibility Of Expenses

According to Ruling No. 8/12, intragroup administrative expenses are deductible when all of the following five conditions are met:

1. They can be proved to correspond to goods or services actually paid and received;
2. They are necessary, common and normal expenses for the company;
3. The sharing is based on reasonable and objective criteria, previously adjusted, and formally decided in an instrument signed by the parties;
4. The criteria for the sharing is consistent with the actual expenditure of each company and with the global price paid for goods and services, according to the general principles of accounting;
5. The company centralizing the acquisition of goods and services appropriates as expenditures only its share, according to the sharing criteria;

Conditions 1. and 2. are standard deductibility requirements in Brazilian tax law. In the field of international cost sharing, particular importance must be given to demonstrating the actual activities performed by the non-resident and how such activities benefited the Brazilian company.

The need for a formal agreement, where objective and reasonable criteria for sharing costs are

established,[2] is a longstanding requirement of Brazil's tax authorities.

One final requirement is that the foreign company only records as its own expense, its portion of the shared activity. This requirement would demand the presentation, to Brazilian authorities, of the financial statements of the non-resident company – or some other document, such as an external auditor's report.[3]

5.2. Transfer Pricing

According to Ruling No. 8/12, transfer pricing adjustments apply only to cost sharing agreements when the contract is inconsistent with the common characteristics of cost sharing contracts. In the referenced ruling, such characteristics are:

1. Sharing costs and risks related to undertaking production and acquiring goods, services or rights;
2. Contributions consistent with the individually expected or actually received benefits;
3. Forecasting each individual benefit to each company of the group. (If it is not possible to show that the company will have any benefit by undertaking such activity, the company should not be considered as a part on the contract);
4. Reimbursing *(i.e.*, returning) the costs related to effort or sacrifice from an activity, without additional profits;
5. The collective aspect of the benefit offered to all companies of the group;
6. The compensation of activities, independent of their actual use, being sufficient to make the activities available for other companies of the group;
7. Assumption that any company, under the same circumstances, would be interested in acquiring the goods, services or rights.

Most of these requirements are related to the actual use of the activities performed by the foreign company for the Brazilian company. The last requirement is perhaps the most controversial, since the company centralizing the costs does not offer activities performed in the context of cost sharing agreements in the market.

5.3. Taxation Of Remittances Abroad

Ruling No. 8/12 also dealt with the taxation of payments abroad in connection with cost sharing arrangements. The tax authorities' interpretation was that such payments would be subject to the Brazilian WHT.

Two aspects of this interpretation should be pointed out. The first is that Ruling No. 8/12 did not make any reference to the other taxes levied on the importation of services, as listed in section 4 above. However, since this Ruling establishes that these payments would be treated as service payments, the conclusion would be that all other taxes would also apply.

The second aspect is that, in this section, Ruling No. 8/12 was clear that it was taking into consideration the cost sharing of third-party costs centralized by the parent company abroad. Therefore, there was no clear guidance in this ruling regarding the taxation of the cost reimbursements when the activity is performed internally by the parent company. One

can infer that the tax authorities' omission in respect to the taxation of reimbursements related to activities executed directly by the foreign company is the same as confirmation that such reimbursements were not subject to taxation.[4]

6. Proof Of Costs Incurred By The Foreign Company

Sharing of costs and expenses incurred directly by the foreign parent company poses a challenge: to prove to the tax authorities that that cost or expense was actually incurred by the foreign entity and that the amount recharged is the same as incurred by the foreign entity. Challenges involving the proof of such costs and expenses incurred by the foreign company are at the basis of the Revenue Office's previous interpretation that recharges related to international cost sharing should be non-deductible for tax purposes.

In 2013, Brazil's Revenue Office issued Ruling No. 13/13 ("Solução de Divergência COSIT no. 13/13"). This ruling was not related to cost sharing, but instead to transfer pricing. It basically establishes that, for purposes of applying Brazil's transfer pricing rules, a Brazilian company can use reports prepared by an external auditor to prove the legitimacy of such costs. These reports would have to be translated into Portuguese, notarized, registered at the Brazilian Consulate, and notarized in Brazil. (Reference is made to registry at the "Cartório de Títulos e Documentos.")

Even though there is no direct relation between this ruling and cost sharing, we believe that its general concept could be applied in this case, as a report issued by an external auditor could be used as proof of the costs incurred by the foreign company.

7. Ruling No. 23/13 And Domestic Cost Sharing

Another piece of the puzzle in defining the taxation of cost sharing agreements is Ruling No. 23/13 ("Solução de Divergência COSIT no. 23/13"), which established Brazilian tax authorities' interpretation regarding domestic cost sharing.

This ruling basically repeated the same deductibility requirements established in Ruling No. 8/12. However, the most important contribution of Ruling No. 23/13 was not on the deductibility side. In fact, its most relevant contribution was to establish, for the first time, that the recipient should not consider cost reimbursements in the context of cost sharing as revenues.

Even though this ruling was focused on domestic cost sharing, it seems that the rationale behind this interpretation could also be applied to international cost sharing. This could lead taxpayers to make strong arguments to support the position that, if all requirements established in Ruling Nos 8/12 and 23/13 are met, remittances abroad in the context of cost sharing agreements should not be taxed in Brazil by any of the taxes listed in section 4 above, except for the IOF, which is levied on the currency exchange.

8. Ruling No. 21/15 (SISCOSERV) And Cost Sharing

SISCOSERV is a digital online system in which Brazilian companies need to enter information

about the importation of services and intangibles. The focus of SISCOSERV is to monitor cross-border transactions involving services and intangibles.

Ruling No. 21/15 ("Solução de Consulta COSIT no. 21/15") deals with the need to register payments in SISCOSERV to a non-resident as reimbursement in the context of cost sharing.

According to tax authorities' interpretation, reimbursements to a non-resident in connection with services contracted with a third-party service provider abroad are service payments. Therefore, such reimbursements would be treated as service payments for tax purposes.

On the other hand, with respect to reimbursements related to activities performed internally by the non-resident parent company, according to Ruling No. 21/15 the entry in SISCOSERV is required. However, in the tax authorities' interpretation, cost sharing payments are not equal to service payments.

This interpretation was viewed as an indication that reimbursements paid to the foreign centralizing company would not be taxed in Brazil since they are not compensation for services provided, but only restitution of amounts paid by the foreign company on behalf of the Brazilian entity.

9. International Cost Sharing Prior To Ruling No. 43/15

In view of the previous comments, prior to Ruling No. 43/15 (see section 10 below) one could support the following conclusions about the tax treatment of international cost sharing in Brazil:

- Brazilian tax law does not establish any provision regarding cost sharing;
- Brazil's Tax Office's rulings are the only available source for trying to determine the federal tax implications of international cost sharing;
- Ruling No. 8/12, which dealt with tax implications of international cost sharing, set the requirements for a valid cost sharing structure;
- If all requirements established by Ruling No. 8/12 are met, payments abroad in connection with a cost sharing agreement should be deductible for the Brazilian company, and the application of transfer pricing rules would be avoided;
- However, Ruling No. 8/12 does not give clear guidance with respect to the taxation of payments abroad in connection with cost sharing agreements. This Ruling only establishes that the sharing of the cost of a third-party service should be treated as a service provision from a Brazilian tax perspective. However, it is silent about the tax treatment of the sharing of costs related to activities executed internally by the foreign company;
- Arguments to dispute taxation of cost sharing payments can be found in Ruling Nos 23/13 and 21/15. Ruling No. 23/13 concerned domestic cost sharing and was the first time that tax authorities agreed that reimbursements for shared costs are not revenues for the company receiving them;
- Based on these rulings, and also on the fact that Ruling No. 8/12 did not establish the taxation of reimbursements of costs related to activities executed by the foreign company itself, an

argument could be made to support payments of reimbursements to the non-resident company without taxation in Brazil;

- One of the great challenges of international cost sharing arrangements is that it is not easy to provide the Brazilian authorities with proof of the costs incurred abroad. One alternative to deal with this issue would be to use Ruling No. 13/13 to support the use of external auditors' reports as proof of the costs incurred outside Brazil.

In light of this summary, the following can be stated:

- Prior to Ruling No. 8/12, there was no clear guidance from Brazil's Tax Office regarding the tax treatment of cost sharing agreements;
- Between 2012 and 2015, Brazil's Tax Office's rulings were moving in the direction of recognizing the true nature cost sharing, which allocated deductibility in line with the provisions of the cost sharing agreement and also recognized that the reimbursement of expenses incurred by the centralizing company is not earned income. As noted by Bruno Fajersztajn and Ramon Tomazela, Ruling Nos 8/12, 23/13 and 21/15 "have been highly praised by tax practitioners because they are correct interpretations of Brazilian tax law."[5]
- However, after steady progress during the past three years, there was a setback in the most recent ruling enacted by Brazil's Tax Office.

10. Ruling No. 43/15 And The Levy Of CIDE On Cost Sharing Agreements

After enacting several rulings indicating that reimbursements of costs in the context of cost sharing agreements would not be subject to taxation in Brazil, the Tax Office issued Ruling No. 43/15 ("Solução de Consulta COSIT no. 43/15"). The interpretation in this ruling went in the opposite direction, as tax authorities concluded that such reimbursements should be treated as service payments.

As already pointed out, in our opinion Brazil's Tax Office had never explicitly stated anything different. Moreover, all decisions issued before Ruling No. 8/12 were in this same direction. In other words, Brazilian authorities had never clearly indicated that reimbursements to the foreign company should not be taxed in Brazil. However, this seemed to be the direction they were taking and, therefore, there was some expectation that this would be their position should a company request their interpretation in a private ruling request.

However, all expectations were frustrated when Brazil's Tax Office issued Ruling No. 43/15. In this ruling, Brazil's tax authorities analyzed whether CIDE-Technology should be levied on reimbursements of costs to a non-resident in the context of cost sharing.

The tax authorities' interpretation was basically that such reimbursements are, in fact, service payments – in each and all cases. Therefore, they should be taxed as an importation of services.

The consequence of this interpretation is that the reimbursement of a cost, under a cost sharing agreement, could be subject to a tax burden in Brazil

higher than 40 percent. And if taxes were grossed up, the total burden would be higher than 50 percent, per the table below.

Reimbursement with Gross-up			
Tax	**Nominal Rate**	**Amount**	**Effective Rate**
Amount Reimbursed		100,000	
Taxable Income		125,000	
ISS	5%	6,250	6.25%
WHT	15%	18,750	18.75%
CIDE	10%	12,500	12.50%
PIS	1.65%	2,267	2.27%
COFINS	7.6%	10,442	10.44%
IOF	0.38%	380	0.38%
Total Taxes	**39.63%**	**50,589**	**50.59%**
Reimbursement without Gross-up			
Tax	**Nominal Rate**	**Amount**	**Effective Rate**
Amount Reimbursed		100,000	
Taxable Income		100,000	
ISS	5%	5,000	5.00%
WHT	15%	15,000	15.00%
CIDE	10%	10,000	10.00%
PIS	1.65%	1,909	1.91%
COFINS	7.6%	8,793	8.79%
IOF	0.38%	380	0.38%
Total Taxes	**39.63%**	**41,082**	**41.08%**

Note that, in our interpretation, even though Ruling No. 43/15 refers only to CIDE-Technology, its rationale indicates all other federal taxes would apply to the reimbursements to the foreign entity.

This interpretation has already been the object of much criticism.[6] However, there is still some expectation that Brazil's Tax Office could review this position in a future ruling.

Notwithstanding this, even if Brazilian tax authorities stick to this interpretation, there are very good arguments to support that this position is not supported by the country's tax laws.

In fact, if all requirements established in Ruling No. 8/12 are met, it will be clear that a real cost sharing is in place. Accordingly, there is no service provision between the two companies. Hence, the reimbursement paid to the foreign company centralizing costs cannot be characterized as a service price or income earned by it.[7] As a consequence, no taxes should be levied in Brazil on such reimbursement.

Therefore, if tax authorities do not change their interpretation in the near future, it is likely that companies will challenge it in the courts. There are certainly good arguments to support the claim that no taxes should be levied on cost reimbursements to non-resident companies in connection with cost sharing.[8] In any event, Ruling No. 43/15 is a blow to the expectations of taxpayers, who had assumed that uncertainties regarding the taxation of cost sharing were close to an end.

Endnotes

1 *See* Ruling Nos 462/06, 23/08, 354/08, and 163/2012.

2 For examples of objective and reasonable cost sharing criteria, *see* Leonardo Freitas de Moraes e Castro, "The Brazilian Tax Implications of Cross-Border Re-

mittances Arising from International Cost-Sharing Arrangements," (2015) 69 (8) *Bulletin for International Taxation*, p. 460.

3 *See* section 6 below.

4 This appears to be the position of Bruno Fajersztajn and Ramon Tomazela in "Contradictory Brazilian Decisions on the Taxation of Cost-Sharing Agreements," (2015) 79 (6) *Tax Notes International*, p. 536.

5 Fajersztajn and Tomazela, *id*, p. 536.

6 *Id*.

7 *See* Leonardo Freitas de Moraes e Castro, *supra* Note 1, p. 452.

8 For a more detailed analysis of these arguments, *see* Leonardo Freitas de Moraes e Castro, *supra* Note 1, pp. 453–458. *See also* Sergio André Rocha and Ana Carolina Barreto, "Tributação do Reembolso de Despesas e do Compartilhamento de Custos e o CPC 30 (*transl.*: Taxation of Expense Reimbursement and Cost Sharing and CPC 30)," Sergio André Rocha (ed.), *Direito Tributário, Societário e a Reforma da Lei das SA Volume III* (São Paulo: Quartier Latin, 2012), pp. 585–606.

Can Renzi Fix Italy's Broken Tax System?

by Stuart Gray, Senior Editor, Global Tax Weekly

Italian Prime Minister Matteo Renzi recently pledged to bring about a revolution in the Italian tax system, transforming the country from one of the least competitive in Europe in tax terms to one of the most competitive. This article summarizes the state of the Italian tax system, outlines the Government's plans, and considers whether the Prime Minister's vision is achievable or over-ambitious.

High And Complex Taxes

It's probably fair to say that, on balance, we hear more bad things about taxation in Italy – its high tax rates, complex administrative system, and high costs of compliance, among other nasties – than we do good things.

It's surely never a good sign when taxes represent more than half the national economy. But this is now the case in Italy. According to recent figures issued by Istat, the Italian National Statistical Office, Italy's tax-to-gross domestic product (GDP) ratio nudged above 50 percent in the fourth quarter of 2014, to 50.3 percent, while the ratio of total government revenue-to-GDP reached 55.3 percent.

However, not only does Italy have one of the world's highest tax burdens, it costs the average company a small fortune to ensure compliance with the tax code. Earlier in the year, data provided by the ImpresaLavoro research center showed that a medium-sized Italian company spends on average EUR7,559 (USD8,330) every year to complete administrative requirements. This cost, said the researchers, represents "an amount that is without equal in the rest of Europe."

The World Bank, in its report on Doing Business, has noted that Italian businesses have to put in 269 hours to prepare and compile the necessary documents and returns regarding taxes relating to employees, value-added tax (VAT), and taxes on business profits. Meanwhile, Eurostat has estimated that the cost of that time is EUR28.1 per hour.

ImpresaLavoro has therefore declared Italy the winner in the "non-prestigious" classification of having the EU's most burdensome tax regime, beating Germany, in second place, by EUR736 (218 tax-compliance hours at a cost of EUR31.1 per hour, or EUR3 more). Even though France has a tax code as

complex as Italy's, it takes a French company only 137 hours to comply with their tax responsibilities each year, at a total cost of EUR4,699. That cost in the UK was found to be EUR2,299.

"When we analyze the total tax burden on Italian companies," observed ImpresaLavoro President Massimo Blasoni, "very often we forget that actual taxes do not represent the total weight that businesses have to endure. Bureaucracy is not only a noose that blocks business development and private investment, but is also a cost."

"In that respect, it becomes ever more necessary to act rapidly to simplify our tax system. That would be a reform that could be realized at zero cost."

One needs only to glance at PwC's Paying Taxes Index for 2015 to realize that Italy's tax system is one of the most uncompetitive in the world, let alone Europe. Placed 141st out of 189 countries, Italy has a total tax rate – defined as the total of all taxes borne as a percentage of commercial profit – of 65 percent.

High labor taxes are a particular problem for Italian businesses, an issue pointed out by the International Monetary Fund (IMF) in its 2015 Article IV Consultation report for Italy.[1] PwC's Paying Taxes report shows that, of Italy's total tax rate, 43 percent is accounted for by labor taxes.

The situation appears just as grim for micro companies and sole traders. CGIA Mestre, Italy's association of sole traders and small businesses, announced earlier this year that, according to its calculations, by June 16, Italian taxpayers were required to pay more than EUR56bn to the country's tax authorities, with a further EUR33.6bn due by July 16.

By June 16, businesses were required to pay corporate income tax worth EUR10.5bn (for the 2014 tax year and a payment on account for 2015); employees were required to pay EUR10.4bn in individual income tax (IRPEF); and households were required to pay the first installment of the tax on general local services (TASI), worth EUR1.65bn.

The association has previously pointed out that, as against the official level of 43.3 percent, the real tax burden in 2014 on compliant taxpayers (arrived at by subtracting Italy's underground economy from GDP) has been calculated at 49.5 percent.

Meanwhile, Italy's association of building constructors, ANCE, has calculated that revenues from taxes on property ownership in Italy have risen sharply by 143.5 percent in three years, yielding EUR9.8bn in 2011 and EUR24bn in 2014. The hike in property ownership taxes – largely the result of the replacement of ICI (local property tax) with the introduction of IMU and TASI from January 1, 2014 – was a major reason for the substantial rise in overall property taxes. Property owners are also subject to individual and corporate income tax on property income, local registry and transfer fees, and gift and inheritance taxes. In total, EUR39.38bn was collected under these levies in 2014, up from under EUR33bn in 2011.

ANCE said high levels of taxation on the property sector, and the uncertainty caused by constant changes, threatened to choke off the recent growth seen in the sector, at a time when that growth was needed to fuel a nascent recovery in the Italian economy overall. Paolo Buzzetti, ANCE's President, pointed out that "in Germany, the United Kingdom, France, and Spain, tax incentives for houses have boosted economic recovery. Why can we not encourage a similar effect in Italy?"

Employees in Italy are also wilting under a heavy tax burden, CGIA argues, with "tax freedom day" not arriving for middle-income Italians until June 23 this year, a date reflective of Italy's tax-to-GDP ratio of about 50 percent. CGIA's calculations covered those individuals earning an annual taxable salary of EUR44,658. Their tax payments were complete in exactly the same number of days as last year.

In comparison, CNA (the national association of artisans and small and medium-sized enterprises (SMEs)) calculated recently that Italian businesses had to work until August 14 to pay off all of their taxes. Although very late in the year, this was six days earlier than in the 2014 tax year.

CGIA says taxpayers could face even higher taxes this year, if local authorities feel they have to increase property or income taxes to shore up their finances, or if the Government is forced to hike VAT or excise duty rates to compensate for revenue lost in other areas.

A "Copernican Revolution" For The Italian Tax System

With the Prime Minister seemingly determined to change Italy's reputation as a high-tax, bureaucratic state, the balance may just be beginning to tilt towards a future of lower taxes, and perhaps light can be glimpsed at the end of the tunnel for Italy's long-suffering taxpayers.

Setting out the Government's medium-term fiscal and economic plans in April 2014, Renzi pledged that there would be no tax rises in Italy for the next three years. The announcement came alongside the release of the Government's new Economic and Financial Document (DEF), which builds on the Government's 2015 Budget (Stability) Law.[2] The Budget (Stability) Law, intended to support the recovery in a revenue-neutral way, contained some EUR18bn (USD19.1bn) in tax cuts for businesses and low-income households.

Renzi emphasized that "there will be no new taxation; instead the period of increasing taxes has ended. … That is a fundamental tenet of the highest priority for Italy. We have to ensure that future sacrifices are not made by the country's citizens."

The DEF forecasts that Italian GDP will recover by 0.7 percent this year, after three consecutive years of recession, and will expand by a further 1.4 percent next year. Renzi suggested that, based on these assumptions, the Government may be able to reduce taxes in 2016.

In an indication of how high a priority tax reform has become for Renzi, by July 2015 he was promising a "Copernican Revolution" for the Italian tax system under which taxes will be reduced by around EUR45bn over the coming three years. At a party conference Renzi pointed out that the Government's 2016–18 plan follows the tax cuts that have already been achieved through the introduction of the EUR80 monthly tax bonus (income tax deduction) in 2014, and this year's inclusion of labor costs in the calculation of IRAP.

He disclosed that the Government intends to eliminate local property and service taxes on primary residences in 2016; reduce corporate income tax and IRAP (possibly through rate cuts) in 2017; and cut the individual income tax paid by those on lower and middle incomes "by modifying tax brackets" in 2018.

Indeed, by one measure, previous tax cuts are already starting to lower company taxation. According to a working paper by Istat, the tax burden on businesses in Italy fell by 9.9 percent in 2014, providing a saving of EUR2.6bn. Using a new statistical model to analyze the effect of recent measures on corporate tax receipts, Istat found that 57.3 percent of companies – mainly large companies – benefited from the lower tax burden.

Lower taxes during 2014 were found to be largely the result of the increased deductibility of labor costs in calculating the regional tax on productive activities, and a rise in the allowance for corporate equity that provides an extra annual deduction from taxable profits before calculating the amount of corporate income tax payable. However, Istat's analysis also discovered that those measures have had little effect on reducing taxes for commercial businesses and SMEs, for which tax burdens are said to remain highest.

However, Renzi wants to move beyond measures that tinker at the edges of Italy's uncompetitive business tax system and go right to the heart of the problem. During his speech to the Ambassadors' Conference at the Italian Ministry of Foreign Affairs on July 27, the Prime Minister disclosed that one of his objectives is to reduce Italy's headline corporate tax rate to 24 percent in 2017, well below the level in most European countries. He noted that the combined rate of IRES and IRAP reaches 31.4 percent, and claimed that lowering this burden to 24 percent would enable Italy to go from one of the most burdensome countries in the EU to one of the most competitive.

The Government is also keen to put words into action. In early August, Minister of the Economy and Finance, Pier Carlo Padoan confirmed that the Government is working on tax reductions for inclusion in its 2016 Budget, including those outlined by Renzi in July. Padoan disclosed that the 2016 Budget would eliminate property taxes on primary residences and include further business tax reductions.

Will The Revolution Be Postponed?

So, can taxpayers in Italy now look forward to a sustained period of falling taxes and less demanding tax procedures? If Renzi can be taken at his word, then

yes. However, cutting taxes isn't going to be easy – otherwise previous governments would surely have tackled the problem of high taxes years ago.

As well as taxing more than most nations, Italy spends more than most as a percentage of its economy. So, to balance the books, tax cuts are going to have to be offset by commensurate levels of reductions in public spending. The programmed changes would result in lower tax revenues of EUR5bn in 2016, EUR20bn in 2017, and another EUR20bn in 2018.

CGIA's former Secretary, the late Giuseppe Bortolossi, had argued that the best way to cover any revenue shortfall and to reduce tax burdens would be through a reduction in "unproductive public spending." But problematically for Renzi, spending cuts on the scale needed to reduce the tax burden in a meaningful way are going to be highly unpopular with swathes of the electorate.

What's more, Italy has a budget deficit that is close to the 3 percent maximum ceiling permitted under EU fiscal rules, has public debt of more than 130 percent of GDP (the fifth-highest in the world, according to IMF data), and has Brussels' fiscal monitors breathing down its neck at regular intervals. In other words, as in other EU countries, there is currently a tension between austerity and growth-orientated policies.

Padoan has revealed that funding for the tax cuts will be found through decreased public spending and increased tax revenue generated by growth in the economy. The Finance Minister pointed out that a certain amount of flexibility is allowed to an EU member state that is undertaking reforms, as long as its fiscal deficit remains within 3 percent of its GDP. Government forecasts indicate that the Italian deficit will total 2.6 percent of GDP in 2015, and 1.8 percent in 2016.

But the ever-vigilant CGIA Mestre is skeptical that the Government has the fiscal flexibility to achieve the aims of its ambitious tax-cutting agenda. The association has challenged Renzi to "indicate what government spending will be eliminated," warning that his plan "will not be credible" unless he does so. In addition, CGIA noted that, by the end of this year, the Government needs to find another EUR16.8bn to avoid the application of the budgetary safeguard clauses. This would avoid an increase in fuel excise taxes in October this year, worth EUR700m, and a further rise in VAT rates beginning from next year, which would be worth the remainder.

Renzi has insisted that the Government's underlying objective is to demonstrate that "Italy is no longer the country of high taxation." It is a laudable policy, but one senses that there will be a great deal of distance for the Government to travel before it reaches its objective, and there will doubtless be many obstacles on the road ahead.

Endnotes

1 http://www.imf.org/external/pubs/ft/scr/2015/cr15166.pdf

2 http://www.mef.gov.it/english-corner/documenti/DRAFT_BUDGETARY_PLAN_2015-_EN.pdf

Domicile Under Cypriot Tax Law

by Zoe Kokoni, Taxand

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Surprising as it may seem, most of the advantages of the Cypriot tax regime were, up until recently, mostly directed to non-Cypriot tax residents. This effectively meant that in order to enjoy the full benefits of the regime, one had to be a non-resident. The idea behind this was to have a two-fold regime, one for the Cypriot tax residents and one for the investors wishing to use Cyprus as part of their tax planning operations. This distinction at first seems logical and is actually a method applied in many jurisdictions with attractive tax regimes. The locals pay their taxes to the Government, while international investors are encouraged to bring new investments by specific tax incentives.

Over the years, the Cypriot Government realized that many individuals from abroad liked the Cypriot weather and lifestyle so much that they decided to make Cyprus their permanent home. The rule in accordance with the provisions of the Cypriot income tax law is that anyone residing for more than 183 days within a given tax year becomes a Cypriot tax resident. Many found the Cypriot tax regime attractive compared to their countries of origin even though there were still some taxes to be paid. While the Cypriot regime was advantageous for the average individual wishing to enjoy Cyprus on a daily basis, this was not the case for a high net worth individual. More specifically, up until recently, a Cypriot tax resident had to pay, on a worldwide basis, a 17 percent special defense contribution (SDC) on dividends, 30 percent SDC on interest on bank deposits, and 3 percent SDC on rental income.

In a bid to attract high net worth individuals, the Government has sought to create a further differentiation in the tax regime of Cyprus by introducing the legal concept of "domicile" as part of a series of amendments to the Cypriot tax legislation passed in July 2015. The concept of domicile was inserted in the provisions of the Law of SDC clearly aiming at creating a further differentiation in the Cypriot tax regime. The end result is that a Cypriot tax resident must also have its domicile in Cyprus in order to be required to pay SDC on dividends, interest on bank deposits and rental income.

The legal concept of domicile is not a new concept in Cypriot law. Domicile was already included in

the provisions of the Cypriot Wills and Succession Law and is very important for determining which jurisdiction shall govern and regulate the succession of a deceased person. Indeed the determination of domicile for succession purposes is based on a set of rules based on domicile of origin (*e.g.*, the place where someone was born) and domicile of choice (*e.g.*, the place where someone has decided to make his permanent home). It should be stated however that the determination of domicile should be seen as distinct from citizenship or residence. The determination of domicile for succession purposes is based upon specific legal rules, and specialist legal advice should be obtained.

The new amending provisions of the SDC law provide that a tax resident of the Republic for the purposes of SDC law (and not income tax law) shall be a person also having its domicile of origin in the Republic in accordance with the provisions of the Wills and Succession Law. Furthermore, the new provisions provide that there shall be an exemption from SDC obligations for persons having their domicile of choice in accordance with the Wills and Succession Law outside the Republic (provided these have not been tax residents in Cyprus under the 183 days rule for the last 20 years prior to the tax year in question) or simply a person who has not been a tax resident of Cyprus for 183 days a year in the last 20 years. It should also be noted that any person who has been a tax resident of Cyprus for 17 years out of the last 20 years prior to the tax year in question shall be deemed to have its domicile in Cyprus.

This new amendment will have profound effects in the area of tax planning and is expected to place Cyprus on the map as one of the best jurisdictions in the world for the establishment of residence for high net worth individuals. Obviously, specialist advice should be obtained from tax and legal experts in order to plan and achieve such tax migration exercises in accordance with the new provisions of the SDC law.

Topical News Briefing: World Wide Web Of Tax

by the Global Tax Weekly Editorial Team

It is undeniable that the internet has had a revolutionary effect on the world of business and commerce over the last two decades, allowing consumers to be reached all over the world. Not only this, consumers themselves have benefited from this revolution enormously in terms of more choice, while opportunities have been opened up for people to earn money by selling things they don't want or need to those who do. However, you can always trust the taxman to spoil the party.

The uncertainty over the tax treatment of income earned by Irish users from renting out accommodation *via* the website Airbnb, as reported in this week's issue of *Global Tax Weekly*, is a demonstration of how treacherous the digital economy has become. Indeed, the company itself devotes many words to this subject on its website to try to guide users through something of a tax minefield.

In the US, Airbnb has almost become a small extension of the Internal Revenue Service. As a US company, Airbnb is required by US law to collect taxpayer information from hosts that appear to have US-sourced income. In certain cases, these hosts may have to fill out a W-9 "Request for Taxpayer Identification Number (TIN)" form. At the end of January, Airbnb provides hosts who have submitted a W-9 with a Form 1099-K "Payment Card and Third Party Network Transactions," showing their reportable earnings from the previous year. Non-US persons who have a TIN (either a Social Security Number or Employer Identification Number) may have to fill out a W-8ECI "Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States." Airbnb provides hosts who submit a W-8ECI with a 1042-S "Foreign Person's US Source Income Subject to Withholding" form showing any US sourced earnings that they have.

Meanwhile, non-US persons who do not have a TIN may have to fill out a W-8BEN form to certify their foreign status. The company also warns that unless valid tax treaty benefits have been claimed, it is required to withhold 30 percent on all payouts from US listings hosted by non-US persons.

All of this is just for US federal tax purposes. We haven't even scratched the surface yet! Hosts and guests also have to consider taxes at state and local level, such as income, sales and occupancy taxes. Hosts located in other jurisdictions will, of course, also have to be mindful of possible tax obligations in their own countries. Airbnb, for example, points out that hosts in the EU may need to assess VAT on the provision of their services. Additionally, Airbnb is required to collect VAT on its service fees in

countries that tax electronically supplied services. Currently, that includes all countries in the EU, Switzerland, Norway, Iceland, and South Africa.

This maze of international tax rules is not unique to Airbnb and its users. Indeed, uncertainty regarding the tax treatment of services provided over web-based networks is particularly topical in the tax world at present, as taxi drivers attracting fares through Uber's online portal have found to their cost in Australia – and, last year, those in Vietnam. Both countries decided that such transactions are subject to sales tax.

It is ironic that, in many cases, companies operating at the cutting edge of technology are victims of tax systems that belong in the pre-digital age, and are often in a worse-off position than traditional firms with a physical presence in terms of tax risks and controversy. But this will continue to be the case until antiquated tax and legislative frameworks catch up, and that isn't going to happen overnight.

Focus On FBAR

by Mike DeBlis Esq., DeBlis Law

The short-term highway funding extension was passed by the Senate and the House of Representatives and was signed into law by President Obama on July 31, 2015. It contains several important tax provisions (H.R. 3236[1]). The bill changes the due dates for several common tax returns, overrules the Supreme Court's *Home Concrete* decision, mandates the reporting of additional information on mortgage information statements, and requires consistent basis reporting between estates and beneficiaries.

Broadly speaking, the act establishes new due dates for partnership and C corporation returns, as well as FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), and several other IRS information returns:

(1) With respect to the FBAR (a.k.a. FinCEN Form 114), the due date has been pushed up from June 30 to April 15, and for the first time, taxpayers will be allowed a six-month extension.

(2) The due date for Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, will be April 15 for calendar-year filers, with a maximum six-month extension.

For Partnership Returns

The new due date is March 15 (for calendar-year partnerships) and the 15th day of the third month following the close of the fiscal year (for fiscal-year partnerships). (Currently, these returns are due on April 15, for calendar-year partnerships.) The act authorizes the IRS to allow a maximum extension of six months for Forms 1065, US Return of Partnership Income.

For C Corporations

The new due date is the 15th day of the fourth month following the close of the corporation's year. (Currently, these returns are due on the 15th day of the third month following the close of the corporation's year.)

Corporations are permitted a six-month extension with two exceptions. First, calendar-year corporations are entitled to a five-month extension until 2026. And second, corporations with a June 30 year-end are entitled to a seven-month extension until 2026.

When Do These Changes Take Effect?

These changes take effect for due dates after December 31, 2015. However, for C corporations with fiscal years ending on June 30, the new due

dates will not apply until tax years beginning after December 31, 2025.

Matters To Consider

What are my options if I am fully compliant with my FBAR filing requirements but not compliant with my other international information returns?

Taxpayers who are fully compliant with their FBAR Filing Requirements but who are *not* compliant with their other international information returns, such as Form 3520, Form 3520-A, Form 5472, Form 926, and Form 8865, are *not* suitable candidates for the streamlined procedures or for the Offshore Voluntary Disclosure Program. Instead, they should file the appropriate delinquent information returns with a statement of all facts establishing reasonable cause for the failure to file.

Before doing so, such taxpayers must satisfy the following requirements:

(1) Have not filed one or more required international information returns;
(2) Have reasonable cause for not timely filing the information returns;
(3) Are not under a civil examination or a criminal investigation by the IRS; and
(4) Have not already been contacted by the IRS about the delinquent information returns.

Describe your situation in the reasonable cause statement

As explicitly stated on the IRS website section Delinquent Information Return Submission Procedures,[2] as part of the reasonable cause statement, taxpayers must certify that any entity for which the information returns are being filed was *not* engaged in tax evasion. In order to add some "teeth" to this process, the IRS threatens to assert penalties if the taxpayer fails to attach a reasonable cause statement to each delinquent information return filed.

The IRS also makes the following points:

(1) All delinquent international information returns other than Forms 3520 and 3520-A should be attached to an amended return and filed according to the applicable instructions for the amended return.
(2) All delinquent Forms 3520 and 3520-A should be filed according to the applicable instructions for those forms.
(3) A reasonable cause statement must be attached to each delinquent information return filed for which reasonable cause is being requested.

Now we get down to brass 'tax'. Are information returns filed with amended returns automatically subject to audit? The answer is "no," but that comes with the following caveat: such returns may be selected for audit through the existing audit selection processes that are in place for any tax or information returns. The lesson here is not to take anything for granted and always err on the side of caution.

Answers to the most frequently asked questions regarding the delinquent international information return submission procedures are available *via* the IRS website.[3]

Endnotes

1 https://www.congress.gov/114/bills/hr3236/BILLS-114hr3236ih.pdf

2 http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures

3 http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures-Frequently-Asked-Questions-and-Answers

South African Review Against Higher Mining Taxes

The first report of the Davis Tax Committee (DTC) on taxation in the South African mining sector has disagreed with the preferred recommendation of a concurrent report from the International Monetary Fund (IMF) and concluded that a new mining tax is not required.

In the interests of neutrality, the DTC is broadly in favor of retaining the *status quo* of taxing mining taxpayers' income at the same rate as non-mining taxpayers.

However, it said that the tax incentives currently exclusively available to miners, such as upfront capital allowances for exploratory and developmental expenditure, should be discontinued and replaced with an accelerated depreciation regime in parity with the write-off periods provided for in the manufacturing sector.

The report notes that the Mineral and Petroleum Resources Royalty Act, which provides for a royalty to be charged on the transfer of mineral resources, was only enacted in 2010, and that it is "reasonably new and needs to be given a chance to prove itself."

While various aspects of the mineral royalty regime "still need to be clarified and improved, particularly in relation to determination of the gross sales tax base," the DTC takes the view that the royalty scheme has been "carefully designed" and ensures "a measure of cover (for the fiscus) in the form of a minimum revenue stream during weak economic cycles and low commodity prices."

The Committee therefore rejects calls to "introduce new tax instruments to the mining tax system, such as windfall taxes, rent resource taxes, surcharges based on cash flows, and separate flat royalty charges."

With regard to the special taxation of the gold mining sector, the DTC would prefer that its additional annual tax incentive and special income tax rates are eliminated in the interest of tax neutrality. However, it also recognizes that gold mining remains a major contributor to employment, and that jobs should not be jeopardized by immediately removing that tax framework for existing gold mines.

It has therefore recommended that, while the existing tax framework should not apply to newly established gold mines, it should only be phased out for all gold mines "over a reasonable period of time."

The report does not deal with the offshore and onshore oil and gas sectors, which are to be dealt with in separate reports. The closing date for comments on this report is October 31, 2015.

At the same time as the DTC's mining report, the South African Ministry of Finance also released an IMF report on the country's mining tax regime.

The IMF points out that tax collections from the mining sector are low. The sector's contribution to government revenue is down from a peak of nearly 29 percent in 1981 – of which nearly 93 percent came from gold – to just 2.5 percent in 2013/14, with a negligible contribution from gold.

It would therefore prefer more substantial corporate tax and royalty reforms than contemplated by the DTC, with an additional cash flow tax or resource rent tax applicable to highly profitable mining operations.

Chile Eases Burden Of New Tax Reforms

Chile's Finance Minister, Rodrigo Valdés, submitted legislation to Congress on August 10 to ease the administrative burden after tax reforms introduced earlier this year.

Valdés said the revenue-neutral proposals will ease the payment of taxes, reduce the risk of avoidance and evasion, and streamline the collection process.

The tax reform package was approved at the end of last year and came into effect at the beginning of this year. It includes a number of measures, such as a hike in the corporate tax rate, to raise revenue to fund free education for all and other social projects.

The Finance Minister's announcement follows a report released this month by the International Monetary Fund that said the complexity of Chile's new tax regime is likely to have a negative effect on economic activity in the short term.

Valdés pointed out that the new proposals do not affect the underlying goal of increasing tax revenue by 3 percent of gross domestic product.

SARS Revises Guide On New Hire Tax Incentive

The South African Revenue Service (SARS) has circulated for additional comment a revised draft guide on the employment tax incentive (ETI) on offer since January 1, 2014.

The ETI is a temporary tax incentive to encourage employers to hire workers between the ages of 18 and 29, or those of any age in special economic zones.

The incentive will end on January 1, 2017. It applies to qualifying employees employed on or after October 1, 2013.

The ETI functions by decreasing the amount of pay-as-you-earn tax that is payable to SARS for every qualifying employee that is hired by the employer. Employers can claim the (maximum 50 percent) ETI on a sliding scale for any employee receiving a monthly salary that is less than ZAR6,000 (USD470) per month.

The incentive's value decreases by half during the second year of employment. An employer may only claim the incentive for a two-year period for each employee.

The guide emphasizes that, in order to be eligible for claiming the ETI, it is crucial that the employer complies with all its tax obligations. An employer

will not be eligible to claim the ETI in any month in which it has outstanding tax returns or an outstanding tax debt.

Comments on the revised guide are due by no later than October 16, 2015.

UK Tax Breaks Boosting SME Investment: Report

UK taxpayers are expected to reduce their inheritance tax (IHT) bills by a record GBP565m (USD881m) this tax year by investing in unlisted companies, according to private equity investment firm Radius Equity.

The firm noted that the UK Government permits those who have inherited shares in unlisted businesses to exclude the value of these assets from the estate's IHT bill.

The value of business property relief claimed by investors in small businesses has also increased considerably in the last two years, up 5 percent on the GBP540m invested in 2013/14 and 47 percent on the GBP385m invested in 2012/13. Business property relief allows investors to benefit from 100 percent IHT relief on the value of unlisted shares after two years, provided the investments are still held at the time of death, the firm said. Business property relief is available on almost all investments that qualify for Enterprise Investment Scheme tax reliefs, it added.

Radius Equity said the value of business property relief has not kept pace with the surge in IHT receipts. It suggested that there are therefore more families who could benefit from lower tax bills by investing in small and medium-sized enterprises (SMEs).

HMRC collected GBP3.8bn in IHT receipts in 2014/15, up 23 percent on 2013/14.

Gary Robins, Director at Radius Equity, explained: "The increased take-up of tax reliefs emphasizes the growing investor appetite for investing in ambitious SMEs. The large increase in the amount of inheritance tax collected by HMRC shows that there is still more capacity for more investors to take advantage of the generous reliefs on offer. These reliefs not only minimize investors' inheritance tax bills, they also unlock a wider range of funding opportunities for SMEs – vital for their growth as many still find it difficult to secure lending from banks."

Cairn Energy Wants Swift End To Indian Tax Dispute

The Chief Executive of UK-based oil and gas exploration and extraction company Cairn Energy has urged the Indian Government to send a signal to foreign investors that the country is open for business by seeking to resolve a long-running tax dispute with the company.

Speaking to the Press Trust of India news agency, Simon Thompson said: "Our expectation is that the government responds quickly to send a message to the international investor community that it is for resolving tax issues through the judicial progress quickly."

Cairn is disputing a USD1.6bn draft assessment order for the fiscal year 2006/07, which the company has received from India's Income Tax Department. The dispute stems from retrospective tax legislation introduced under the Finance Act 2012.

In a case with many similar characteristics to the Vodafone dispute, India says that Cairn failed to pay capital gains tax on transactions undertaken to effect the group reorganization that was required to enable the Initial Public Offering of Cairn India Limited in 2007.

In March 2015, Cairn confirmed that it had been in talks with the Indian Government since 2014 and would attempt to engage in negotiations with India under the framework of the UK–India Investment Treaty to resolve the dispute. If these talks fail, the case may be heard by an international arbitration panel.

The company stated at the time: "Since the original contact from the Income Tax Department in January 2014, Cairn has continued to confirm with its advisers that throughout its history of operating in India, the company has been fully compliant with the tax legislation in force in each year and paid all applicable taxes."

"Cairn strongly contests the basis of the draft assessment and the Notice of Dispute is supported by detailed legal advice on the strength of the legal protections available to it under international law."

Airbnb Hosts Could Face Irish Tax Bills

Airbnb, a community temporary-accommodation marketplace, has confirmed that it is to disclose transaction data to the Irish tax authority but said it questions its users' treatment under Irish tax law.

Airbnb last week wrote to Irish customers who have used its online platform to rent out properties, or rooms within their properties, to inform them that it would supply Revenue with details of income generated by them since May 1, 2014.

Airbnb held a meeting with stakeholders on August 11 to further explain the situation. Speaking after the meeting, Airbnb's Head of Global Consumer Experience, Aisling Hassell, said the company was legally required to report host earnings to the Office of the Revenue Commissioners because Ireland is Airbnb's base for all transactions outside the US. She added that there were grounds for a challenge to Revenue's position on the application of the rent-a-room relief to Airbnb hosts.

She was quoted by the *Irish Times* as saying: "We will be actively working with our community to see how we can advocate on their behalf with the Revenue and with the Government prior to the next Budget. We are going to seek advice and we are going to be working with the community to see how we can support them in terms of challenging that clarification."

Under the rent-a-room relief, an individual who lets a room (or rooms) in their sole or main residence as residential accommodation may be exempt from tax on the income generated, where the aggregate of the gross rents and any sums for services supplied in connection with the letting does not exceed the threshold for the year in question.

In February, Revenue issued updated guidance on the scheme that clarified its application to holiday rentals. The brief states: "The relief does not apply to rooms that are used for the provision of accommodation to occasional visitors for short periods, including, for example, where the accommodation is provided through online accommodation booking sites."

ATO Explains New Tax Rules For 'Ride-Sourcing'

The Australian Taxation Office (ATO) has published an e-brief on the tax consequences of taxi travel through "ride-sourcing."

In May, the ATO confirmed that ride-sourcing services, such as those facilitated by Uber, are considered "taxi travel" for the purposes of the goods and services tax (GST) law. This is because a car is made available for public hire and used to transport passengers for a fee. If a taxpayer supplies "taxi travel," they are required to be registered for GST and GST is payable on the full fare.

The ATO gave affected taxi drivers until August 1 to register for GST and obtain an Australian Business Number. Since that date, drivers have been obliged to pay the GST to the ATO. For instance, a fare of AUD110 would include an amount of AUD10 GST, which must be paid to the ATO by the driver through monthly or quarterly business activity statements, after any GST credits have been claimed.

The ATO said it is aware that drivers are concerned that this change may result in a reduction in their payment. It explained that while it has no role in commercial arrangements between ride sourcing facilitators and drivers, to recognize the driver's obligation to pay GST, a facilitator may consider options such as only charging their commission on the GST-exclusive fare, reducing their commission on the full fare, or increasing fare rates.

Passengers using ride-sourcing services can claim an input tax credit for the fare charged if they are registered for GST and the travel was business-related. If the fare is more than AUD82.50 (USD60.64), the driver must give the passenger a tax invoice.

IMF Calls For Single VAT Rate In China

The International Monetary Fund (IMF) has recommended that China introduce a single rate of value-added tax (VAT), during recent talks on the rapid progress China is making on fiscal reform.

The IMF said China is continuing to make progress on extending the VAT to a broader range of services, as part of its plans to replace the business tax with VAT. Authorities plan to complete implementation of the VAT by the end of the year, by introducing VAT on the financial services industry.

Railway transportation services, postal services, and telecom services sectors were added to the VAT base in 2014. As a result of the transition from business tax to VAT, businesses have saved some CNY191.8bn (USD30bn).

The IMF said that minimizing the number of VAT rates – ideally to a single rate – would have significant administrative benefits. It said the policy objectives of having multiple rates could be more efficiently achieved with other fiscal instruments.

Discussing recent tax policy changes, the IMF welcomed recent increases to tax on petrol and ongoing natural resource tax reforms. It said that these measures will promote more environment-friendly growth. The IMF concluded that the national rollout of a property tax, by 2017, will provide an important source of local government revenue.

NZ Seeks Feedback On Online GST Proposals

New Zealand's Revenue Minister, Todd McClay, has released a discussion document on the collection of goods and services tax (GST) on online purchases.

The paper, *GST: Cross-border services, intangibles, and goods*, contains proposals to require overseas suppliers to register for, collect, and remit GST

when they sell services (including online products such as e-books, music, and videos) to New Zealand consumers. It also outlines the way forward for improving the collection of GST on all goods, including low-value imported goods.

"This document is an important first step in dealing with the increasing volume of purchases that should, under New Zealand's tax rules, be subject to GST," McClay said. "It is about creating a level playing field for collecting GST and putting New Zealand businesses and jobs ahead of the interests of overseas retailers, but it must be done with the least possible inconvenience to New Zealand consumers."

He said that the volume of services, online downloads, and goods purchased by New Zealanders from overseas suppliers on which no GST is paid is an increasing concern for the Government. "Current estimates put the amount of GST foregone on these purchases at approximately NZD180m (USD119m) a year, and growing at around 10 percent each year. That is revenue that would otherwise be available to the Government to help fund essential services like health care, education, and safer communities in New Zealand," he said.

"It is not just about the loss of revenue on these purchases, it is also about fairness. We recognize that New Zealand suppliers, including retailers, must charge GST on goods and services they supply to their customers, whereas offshore suppliers currently do not," McClay said.

Proposals released for public feedback would cover a wide range of services purchased by New Zealand residents from overseas suppliers. They include both digital services such as internet downloads and online services, as well as more traditional services such as legal and accounting services supplied remotely.

McClay said the proposals are consistent with draft OECD guidelines due to be finalized and released later this year as part of the organization's wider recommendations on base erosion and profit shifting.

He said that while the discussion document primarily focuses on services, the fact that GST is not charged on low-value imported goods, below the Customs *de minimis* threshold, is also of concern for the Government. The growing volume of imported goods means the amount of forgone GST is continuing to increase and raises concerns for domestic suppliers. "For that reason, the consultation document raises the matter for discussion. Customs is currently reviewing how the collection of GST on imported goods can be improved and is due to report to Ministers on the findings by October. This is expected to be followed by a consultation process on the issue of *de minimis*," he said.

The deadline for submitting feedback on the proposals is September 25, 2015.

Vietnamese Firms Happy With Tax Admin Reforms

Over 70 percent of businesses in Vietnam are satisfied with recent administrative reforms that have simplified tax compliance procedures, according to an August 12 survey from the Vietnamese Government and the Vietnam Chamber of Commerce and Industry (VCCI).

Among the 2,500 surveyed companies, 58 percent considered information about tax procedures to be simple and understandable, said Dau Anh Tuan, Head of the VCCI's Legal Department.

Nevertheless, 70 percent of respondents reported that they still encounter difficulties in learning about tax-related policies and laws, while just under half (49 percent) of those surveyed said they met certain obstacles in registering for taxes or adjusting tax registration information.

Around 50 percent found tax department staff to be helpful and professional. Worryingly however, the survey also uncovered a culture of bribery in the interactions between business taxpayers and tax officials, with 32 percent of respondents admitting that they have paid "unofficial" fees to staff. Four-in-ten companies said they would be discriminated against if they did not pay these additional fees.

Last September, the Ministry of Finance issued Circular No. 119/2014/TT-BTC, which aims to cut the number of hours needed for businesses to comply with tax obligations by over 200 hours per year. The reforms are part of the Ministry's efforts to cut the time taken for enterprises to prepare and pay their taxes by a total 300 hours each year.

OECD Tracks Tax Admin Changes In 56 Countries

The OECD said in a recent report that improving taxpayer services, while making non-compliance harder, is helping revenue bodies increase their efficiency and allowing governments to finance important programs that will further benefit their citizens.

According to *Tax Administration 2015*, which looks at 56 advanced and emerging economies, tax administrations continue to face the challenges of improving their performance while reducing costs, decreasing compliance burdens for taxpayers, and tackling non-compliance.

The report examined key performance trends, recent innovations, and examples of good practice across the 56 jurisdictions.

The OECD found that revenue administrations have invested significantly in digital on-the-go services. Average IT expenditure as a percentage of the total budget remained constant at 9.5 percent.

Notable exceptions were Austria, Finland, Singapore, and Norway, where approximately 25 percent of the total budget is spent on IT. The report said that 95 percent of all revenue bodies offer the opportunity to file returns electronically, and over two-thirds achieve usage over 75 percent.

Total tax debt for OECD member countries rose marginally in 2011–2013, from around 22 percent to just over 24 percent of net annual revenue collections, the report said. This ratio is, however, significantly impacted by two abnormal "outliers" which, when removed, change the results for OECD countries to show a decrease from 12.7 percent in 2011 to 11.1 percent of annual net revenue collections in 2013. Notably, seven revenue bodies – Estonia, Ireland, Japan, Korea, Norway, Sweden, and Switzerland – have a collection-to-debt ratio of less than 5 percent.

The OECD attributed improvements in collection performance to:

- Strong management information systems;
- Well-developed analytics tools to guide use of extensive enforcement powers;
- Extensive use of tax withholding at source arrangements;
- Wide use of electronic payment methods; and
- Significant investment in information technology.

IRS To End Automatic Extension For Information Returns

The US Internal Revenue Service (IRS) has issued temporary regulations that will eliminate the automatic 30-day extension for filing the W-2 Wage and Tax Statement series of information returns.

Currently, an additional 30-day, non-automatic extension to file these information returns is usually allowed after the expiry of the automatic extension. The proposed regulations will instead allow for a single 30-day, non-automatic extension only in exceptional circumstances, such as where records are destroyed in a fire or in the case of a natural disaster.

Paper information returns for the previous calendar year are generally due to be filed by February 28. An automatic extension of time to file may currently extend due dates until the end of March or, if a non-automatic extension is also granted, to the end of April.

E-filed information returns are generally due by March 31. An extension of time to file may extend due dates until the end of April or, if a non-automatic extension is also granted, to the end of May.

The IRS hopes that the receipt of information returns earlier in the filing season will improve its ability to identify fraudulent refund claims.

While the temporary regulations are slated to be effective on July 1, 2016, it has been indicated that the change for all forms in the W-2 series, except Form W-2G Certain Gambling Winnings, will not be effective any earlier than the 2018 filing season.

The IRS is proposing that a similar change (to replace the automatic 30-day extension with a

single non-automatic extension) could also be introduced for other information forms listed in Section 1.6081-8 of the Code of Federal Regulations, including Form 1042-S – Foreign Person's US Source Income Subject to Withholding.

Terex Goes On US Inversion Trail

US-based crane manufacturer Terex Corporation and its Finnish competitor Konecranes Plc have agreed a merger that will entail the incorporation of a new holding company in Finland.

The merged company – to be called Konecranes Terex, with listings in both New York and Helsinki – will have total annual revenues of USD10bn. It is said that the result will be "a stronger, more competitive global lifting and material handling company" that will be "more able to compete with rival low-cost emerging market rivals," particularly from China.

The deal, which is being seen as a corporate inversion by Terex, will increase the group's exposure to the Finnish corporate tax rate, which is currently 20 percent, as against the US headline federal corporate tax rate of 35 percent. In its second quarter 2015 results, Terex disclosed that its effective tax rate for the second quarter of 2015 was 27.7 percent.

Under US law, at least 20 percent of a new group's shares have to be held by the foreign company's shareholders after a merger for US multinationals to be able to move their tax residence abroad. Under the merger, Terex shareholders would own approximately 60 percent of the combined company and Konecranes shareholders would hold approximately 40 percent.

Half Of Large US Firms Anticipate 'Cadillac' Tax Liability

According to a survey, nearly half of large employers in the US expect at least one of their employee health insurance plans will face the "Cadillac" excise tax under the Affordable Care Act (ACA) in 2018.

The ACA provides for a 40 percent tax on the "excess benefit" of high-value health insurance plans paid for by employers in tax years beginning after December 31, 2017. The tax kicks in when a plan's annual premium cost exceeds USD10,200 for individuals and USD27,500 for families, after a "health cost adjustment percentage."

Following the annual survey released on August 12 by the National Business Group on Health, an association of 425 large US employers, its President and CEO, Brian Marcotte, pointed out that "employers only have two more years before the excise tax goes into effect in 2018. And while employers are pursuing several strategies to keep their plans under the excise tax threshold, they estimate their actions will only delay the impact by two to three years."

Of the employers surveyed, 48 percent expect at least one of their benefit plans to hit the excise tax threshold in 2018 if they do not take action to reduce costs, and almost three-quarters (72 percent) expect one of their plans will trigger the tax by 2020.

House Committee Underlines Importance Of US Patent Box

A House of Representatives Ways and Means Committee blog post on August 13 stated that new OECD international tax rules will give US companies new incentives to move their operations abroad.

It pointed out the importance of the "patent box" frameworks being introduced by many countries that offer a lower corporate tax rate on income tied to intellectual property (IP).

The Committee's staff noted that, "although they do most of their research and development [R&D] in the United States, many American companies have taken advantage of these innovation boxes by placing their IP assets in one of these low-tax jurisdictions, like Ireland or the United Kingdom."

However, under the OECD's base erosion and profit shifting guidelines, it is expected that, "to receive the benefit of an innovation box, a company must actually do its R&D in the country that is offering the lower rate."

"That means American companies are going to face enormous pressure to send their research facilities – and good jobs – overseas so they can keep their low rate," the blog concluded. "That's why, as part of international tax reform, members of the Ways and Means Committee have also proposed an innovation box for the United States."

Foreigners Contribute EUR6.8bn In Italian Income Tax

Research institute, Fondazione Leone Moressa has calculated that non-native Italians paid individual income tax to the Italian Revenue Agency worth EUR6.8bn (USD7.5bn) in 2014.

Of the five million "new Italians," 3.5 million declared taxable income worth a total of EUR45.6bn last year. The most tax was paid by those who have emigrated from Romania (EUR6.4bn), followed by those from Albania (EUR3.2bn), Switzerland (EUR2.8bn), and Morocco (EUR2.4bn).

Despite the continued recession in Italy, the taxable income declared by those born abroad increased by 1.8 percent in 2014. The greatest increase in income was declared by persons from China (+8 percent) and Moldova (+7.3 percent).

UK Think Tank Calls For Ride Sharing Tax Breaks

UK think tank, Policy Exchange has called for the introduction of tax breaks for ride-sharing commuters.

The recommendation is made in a new report, "On the Move," which considers how access to major UK cities can be improved. The report points out that the Government already helps workers with the costs of getting to work through the Childcare Vouchers Scheme, and incentivizes asset-sharing through schemes such as the rent-a-room allowance. The introduction of analogous commuter tax benefit schemes could be of particular benefit in cities like Birmingham, Leeds, Hull and Blackpool, which have a higher than average number of commuters who ride share, Policy Exchange said.

The report suggests that the Government examine the case for allowing employers to give employees travel vouchers or credits for ride-sharing services through a salary sacrifice scheme. It states that these credits would have a fixed value and be paid before income tax and National Insurance contributions are taken. An individual would elect to participate in the scheme and nominate a portion of their pre-tax income to cover the costs of ride-sharing trips to work.

Policy Exchange alternatively recommends that the Government consider permitting drivers who ride share to keep a portion of their earnings tax free, provided that taking passengers is not the primary reason for their journey.

"Both of these commuter tax benefits would cost the Government money in terms of foregone tax revenue and reduced fuel consumption. But given the cost benefits to commuters from car-sharing, particularly for people on low incomes, tax schemes that incentivize the growth in car-sharing should be explored by the Government in more detail," the think tank said.

Progressive UK Tax System 'A Myth,' Says TPA

Almost half the income of the UK's lowest paid workers is paid to the UK Exchequer in tax, according to research by the Taxpayers' Alliance (TPA) on the progressivity of the UK's tax system.

Using Office of National Statistics data, the TPA concluded that the poorest 10 percent of households paid an average of 45 percent of their gross income in taxes in 2013/14, the highest percentage of any income group. This figure is down slightly from the 47 percent recorded by the TPA in 2012/13.

According to the TPA, the burden of indirect taxes such as value-added tax (VAT), council tax, and duties on fuel, alcohol and tobacco is pushing up families' tax bills. It found that VAT is the most burdensome tax for households in the lower half of the income scale, while income tax is the most burdensome levy for those on higher incomes.

The TPA has called on the Government to reduce VAT rates and broaden the VAT base, and to lower "sin" tax levies. It has also recommended that the Government harmonize income tax and National Insurance contribution thresholds.

At the other end of the spectrum, the TPA noted that the top 10 percent of earners pay far more in tax than they receive through state services. Noting the already high income tax burden, the TPA recommended that the Government resist calls for further taxes on the highest earners.

The TPA concluded that its study "demonstrates that much of the rhetoric around 'lifting people out of taxation' or 'ensuring that those with the broadest shoulders bear more of the burden' is based more on perception than reality."

No Plans To Harmonize EU CIT Rates, Says Moscovici

EU Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici has confirmed that the European Commission has no plans, formal or informal, to harmonize corporation tax rates across the European Union.

In a written question to the Commission, Jonathan Arnott, a UK Member of the European Parliament, asked the Commission to confirm its latest position on tax harmonization and the status of any proposals in this regard, in view of the announcement that proposals for a common consolidated corporate tax base (CCCTB) are to be relaunched.

Arnott asked: "Given that Britain has the lowest rate of corporation tax in the G7, at 20 percent, is the Commission aware of the significant difficulties that [harmonizing corporate tax rates] would cause for the British economy?"

Answering on behalf of the Commission on August 12, Moscovici pointed out that the CCCTB initiative is "aimed at aligning the tax base, which is to say the rules governing the calculation of taxable profits. Even upon adoption of the final stage, the CCCTB would not harmonize the tax rate, which would remain the responsibility of member states."

Moscovici added that "member states should initially focus on elements relating to agreement at the OECD's base erosion and profit shifting project, before moving on to other elements of the tax base and finally to consolidation. The international elements of the CCCTB are currently under discussion in Council, and the Commission is working on a new proposal."

On June 17, the Commission adopted a Communication on *A Fair and Efficient Corporate Tax System in the EU: 5 Key Areas for Action*. The first area for action related to the CCCTB, which it said offers a holistic solution to the problem of profit shifting in the EU.

Under the CCCTB, multinationals might eventually be taxed under a formulary apportionment method, as an alternative to the arm's length principle. Under such an approach, tax would be levied, and the revenues allocated to states, based upon a multi-factor weighted formula (using factors such as property, payroll and sales, for example) where a group's income-generating activities are located.

"The CCCTB would eliminate the mismatches between tax systems … and transfer pricing rules would no longer be used to shift profits. The CCCTB would deliver significant benefits to companies operating cross-border in the EU, as they would only have to follow one set of tax rules, and would be able to offset profits made in one area with losses made in another," Moscovici explained.

Greece's Third Bailout Measures Agreed

Greek lawmakers and EU finance ministers have signed off on a third bailout deal, including a diverse range of tax increases and commitments to curtail spending.

A memorandum between the two parties, released on the blog of the former Finance Minister Yanis Varoufakis, acknowledges that the Greek Government has recently adopted a reform of VAT and a first phase of the reform of the pension systems; raised the corporate tax rate; extended the implementation of the luxury tax; taken measures to increase the advance corporate income tax in 2015 and require 100 percent advance payments gradually for partnerships, *etc.*, and individual business income tax by 2017; and raised the solidarity surcharge.

In the agriculture sector, the new package of measures will require Greece to gradually abolish the refund of excise tax on diesel oil for farmers in two equal steps in October 2015 and October 2016; and phase out the preferential tax treatment of farmers in the income tax code, with rates set at 20 percent in 2016 and 26 percent in 2017.

Greece will also be required to phase out special tax treatments for the shipping industry. The tonnage duty rate will be increased by 4 percent during the years 2016 to 2020.

A tax will be introduced on television advertisements and Greece will extend Gross Gaming Revenues taxation, at a rate of 30 percent, on video lottery terminal games. Greece will increase the tax rate on income from rents for annual incomes below EUR12,000 (USD13,250) to 15 percent (from 11 percent) and for annual incomes above EUR12,000 to 35 percent (from 33 percent).

By September 2015, Greece will be required to adopt outstanding reforms on the tax procedures codes, including introducing a new Criminal Law on Tax Evasion and Fraud; issue a circular on fines; and increase enforcement concerning the non-issuance or incorrect issuance of retail receipts for VAT purposes.

By October 2015, the Government will be required to simplify the personal income tax credit schedule; redesign and integrate into the income tax code the solidarity surcharge for income as of 2016 to more effectively achieve "progressivity" in the income tax system; and identify all business income tax incentives and integrate the tax exemptions into the income tax code, eliminating those deemed inefficient or inequitable. The Government will also be required to ensure the revenue administration can access taxpayers' premises to conduct timely audits.

By March 2016, Greece will be required to codify and simplify the VAT legislation, aligning it with the tax procedure code, eliminating outstanding loopholes and shortening the VAT payment period; simplify the income tax regime and ensure consistency of the income base for income tax and social security contributions of small businesses below the VAT registration threshold; and modernize the corporate

tax law in the income tax code covering mergers and acquisitions and corporate reserve accounts, and implement income tax code provisions concerning cross-border transactions and transfer pricing.

In the area of property tax, Greece will be required to review property tax rates in 2016 and align property assessment values with market prices with effect from January 2017.

BARBADOS - CYPRUS

Negotiations

The Government of Barbados has announced that it will begin DTA negotiations with Cyprus in the near future.

BARBADOS - ITALY

Signature

The Government of Barbados said on August 10, 2015, that it expects to sign a DTA with Italy in the near future.

BRAZIL - VIETNAM

Negotiations

Representatives from Brazil agreed to launch DTA negotiations with Vietnam, during a visit to Vietnam on July 27, 2015.

CYPRUS - IRAN

Signature

Cyprus and Iran signed a DTA on August 4, 2015.

HONG KONG - ITALY

Into Force

The DTA between Hong Kong and Italy entered into force on August 10, 2015.

IRAQ - QATAR

Forwarded

According to preliminary media reports, Iraq's Council of Ministers approved the negotiation and signing of a draft DTA with Qatar on July 21, 2015.

IRELAND - SAINT KITTS AND NEVIS

Signature

Ireland and Saint Kitts and Nevis signed a TIEA on July 20, 2015.

IRELAND - TURKMENISTAN

Negotiations

According to a recent update from the Irish revenue authority, Ireland and Turkmenistan will shortly sign a DTA after concluding DTA negotiations.

JAPAN - UNITED KINGDOM

Effective

Through an exchange of notes on July 22, 2015, Japan and the United Kingdom agreed that their DTA will become effective from April 1, 2016, in both the UK and Japan with respect to corporate tax, and from April 6, 2016, for UK income tax or capital gains.

JERSEY - KOREA, SOUTH

Legislation

Legislation was tabled before Jersey's Parliament on August 12, 2015, to ratify the DTA with South Korea.

JERSEY - VARIOUS

Legislation

Legislation was tabled before Jersey's Parliament on August 11, 2015, that would ratify the territory's DTAs with Rwanda and Seychelles.

LUXEMBOURG - SPAIN

Into Force

The Luxembourg Government published a notice on July 21, 2015, stating that the DTA between Luxembourg and Spain has been revised on the basis of an earlier exchange of notes.

NETHERLANDS - INDONESIA

Signature

The Netherlands and Indonesia signed a DTA Protocol on July 30, 2015.

SOUTH AFRICA - BRAZIL

Signature

South Africa and Brazil signed a DTA Protocol on July 31, 2015.

SOUTH AFRICA - URUGUAY

Signature

South Africa and Uruguay signed a DTA on August 7, 2015.

SOUTH AFRICA - ZIMBABWE

Signature

South Africa and Zimbabwe signed a new DTA to replace their 1965 agreement on August 4, 2015.

SWITZERLAND - BELIZE

Signature

Switzerland and Belize signed a TIEA on August 10, 2015.

UNITED ARAB EMIRATES - URUGUAY

Ratified

According to preliminary media reports, the United Arab Emirates on July 23, 2015, completed its ratification procedures in respect of the DTA signed with Uruguay.

UNITED KINGDOM - BRAZIL

Legislation

The UK Government has tabled the International Tax Enforcement (Brazil) Order 2015, which would bring the TIEA signed with Brazil into effect.

UNITED KINGDOM - ZAMBIA

Into Force

The UK Government has recently confirmed that the new DTA with Zambia entered into force on July 20, 2015.

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

THE AMERICAS

INTERNATIONAL TAX ISSUES 2015 – CHICAGO, IL

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

ADVANCED INTERNATIONAL TAX PLANNING – CHICAGO

Bloomberg BNA

Venue: Baker & McKenzie, 300 E Randolph Street, Chicago, IL 60601, USA

Key Speakers: TBC

9/28/2015 - 9/29/2015

http://www.bna.com/advanced_chicago/

BASICS OF INTERNATIONAL TAXATION 2015 – SAN FRANCISCO, CA

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

12TH TAXATION OF FINANCIAL PRODUCTS AND DERIVATIVES

Federated Press

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

Chairs: Ryan L. Morris (WeirFoulds LLP), David P. Stevens (Gowling Lafleur Henderson LLP)

9/28/2015 - 9/29/2015

http://www.federatedpress.com/12th-Taxation-of-Financial-Products-and-Derivatives.html

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

INTERNATIONAL TAX CONFERENCE

BNA

Venue: Park Hyatt Toronto Yorkville, 4 Avenue Rd, Toronto, Ontario M5R 2E8, Canada

Key speakers: TBC

10/14/2015 - 10/14/2015

http://www.bna.com/agenda-m17179927392/

THE 22ND WORLD OFFSHORE CONVENTION CUBA 2015

Offshore Investment

Venue: Meliá Cohiba, Calle 1ra, La Habana, Cuba

Key speakers: TBC

10/14/2015 - 10/15/2015

http://www.offshoreinvestment.com/pages/index.asp?title=The_22nd_World_Offshore_Convention_Cuba_2015&catID=12287

GLOBAL TRANSFER PRICING CONFERENCE

BNA

Venue: Park Hyatt Toronto Yorkville, 4 Avenue Rd, Toronto, Ontario M5R 2E8, Canada

Key speakers: TBC

10/15/2015 - 10/16/2015

http://www.bna.com/agenda-m17179927386/

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, IL

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/

ANNUAL CONFERENCE ON TAXATION

National Tax Association

Venue: Boston Park Plaza Hotel, 50 Park Plaza, Boston, MA 02116, United States

Key Speakers: TBC

11/19/2015 - 11/21/2015

http://ntanet.org/events.html

INTERNATIONAL TAX PLANNING

IBFD

Venue: Av. das Nacoes Unidas, 12901, Sao Paulo, SP 04578-000, Brazil

Key Speakers: Shee Boon Law (IBFD), Boyke Baldewsing (IBFD)

11/25/2015 - 11/27/2015

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

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/

THE NEW ERA OF TAXATION

International Bar Association

Venue: TBC, Mexico City, Mexico

Key speakers: TBC

12/3/2015 - 12/4/2015

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=bf91caa6-9df6-454b-a682-8b57c7bf9209

ACCOUNTING FOR INTERNATIONAL OPERATIONS

ACS

Venue: Hyatt Santa Clara, 5101 Great American Parkway, Santa Clara, CA 95054, USA

Key Speakers: Cody Smith (Radius), John Benedetti (PricewaterhouseCoopers), Usha Francis (Deloitte & Touche), Ron Kiima (Kiima Inc.), Mark Webster (Treasury Alliance Group LLC), Steve DiPietro (Deloitte & Touche), among numerous others

12/8/2015 - 12/9/2015

http://www.acslive.com/events/international_santaclara_2015.html

ASIA PACIFIC

4TH INTERNATIONAL TAX CONFERENCE

IBFD

Venue: JW Marriott, No. 83 Jian Guo Road, China Central Place, Chaoyang District, Beijing, China

Key speakers: TBC

9/10/2015 - 9/11/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/4th-International-Tax-Conference#tab_program

INTERNATIONAL TAX AT CROSSROADS – PLOTTING THE FUTURE

Taxsutra

Venue: The Oberoi hotel at Gurgaon, No. 443, Phase 5, Beside Trident Hotel, Udyog Vihar, Gurgaon, Haryana 122016, India

Key Speakers: Justice Mohit Shah, Harish Salve, Philip Baker, Akhilesh Ranjan, Grace Perez-Navarro, Marlies de Ruiter, among numerous others.

10/16/2015 - 10/17/2015

http://www.ibfd.org/sites/ibfd.org/files/content/img/event/Taxsutra_Conclave_brochure.pdf

JUBILEE CONFERENCE

Foundation for International Taxation

Venue: ITC Maratha Hotel, Sahar Tower, Andheri East, Mumbai, Maharashtra 400099, India

Chairs: Sohrab Dastur, Girish Vanvari (KPMG), Dinesh Kanabar (Dhruv Advisors), Nishith Desai (Nishith Desai Associates), Vipul Jhaveri (Deloitte), Kiran Umrootkar (Jacobs Engg.), V. Lakshmikumaran (Lakshmikumaran & Sridharan), Mukesh Butani (BMR Legal), Pranav Sayta (E & Y), Rohan Shah (ELP), Ajay Vohra (Vaish Associates), Gautam Mehra (PwC), Richard Vann (Challis Professor)

12/3/2015 - 12/5/2015

http://www.fitindia.org/downloads/FIT_flier.pdf

CENTRAL AND EASTERN EUROPE

THE TRANSFORMATION OF TAX SYSTEMS IN THE CEE AND BRICS COUNTRIES

IBFD

Venue: Faculty of Law and Administration, University of Lodz, 8/12 Kopcinskiego st., 90-232 Lodz, Poland

Key Speakers: Mr Porus Kaka (President of the International Fiscal Association), Prof. Frans

Vanistendael (Katholieke Universiteit Leuven, Belgium), Prof. Jan de Goede (International Bureau of Fiscal Documentation)

10/9/2015 - 10/10/2015

http://www.cdisp.uni.lodz.pl/images/konferencje/TaxTransformation/Transformation_of_Tax_Systems_CEE_and_BRICS_-_agenda.pdf

MIDDLE EAST AND AFRICA

MENA TAX FORUM

International Tax and Investment Center

Venue: TBC, Doha, Qatar

Key Speakers: Doctor Ibrahim Abdul Aziz Al Assaf, Sir Mark Moody-Stuart (ITIC), Mr. Robin Walduck (KPMG UK)

11/10/2015 - 11/12/2015

http://www.qfc.qa/news-and-events/Pages/MENA-Tax-Forum.aspx

TRANSFER PRICING SUMMIT AFRICA

IIR & IBC

Venue: TBC, Cape Town, South Africa

Key Speakers: Mayra Lucas (OECD), Ian Cremer (WCO), Ilka Ritter (United Nations), Samuel Ogungbesan (Federal Inland Revenue Service of Nigeria), Lucia Hlongwane (Barclays), among numerous others

11/24/2015 - 11/25/2015

http://www.iiribcfinance.com/event/TP-Minds-Africa-conference

WESTERN EUROPE

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

CO-ORDINATED EUROPEAN PLANNING & TAXATION

IIR & IBC

Venue: TBC, London

Key speakers: Filippo Noseda (Withers), Timothy Lyons QC (39 Essex Street), Beatrice Puoti (Burges Salmon), Jonathan Burt (Harcus Sinclair), Line-Alexa Glotin (UGGC Avocats), among numerous others

9/23/2015 - 9/24/2015

http://www.iiribcfinance.com/event/Co-ordinated-European-Planning-and-Taxation

PRIVATE EQUITY TAXATION PRACTICES 2015

IIR & IBC Finance

Venue: The Kensington Close Hotel, Wrights Lane, Kensington, London W8 5SP, England

Key speakers: Mark Baldwin (Macfarlanes), Paul McCartney (KPMG), Gareth Miles (Slaughter & May), Patrick Mischo (Allen & Overy), Jenny Wheater (Duane Morris), Sandy Bhogal (Mayer Brown), among numerous others.

9/29/2015 - 9/29/2015

http://www.iiribcfinance.com/event/Private-Equity-Tax-Practices-Conference

TAXATION OF COLLECTIVE INVESTMENT SCHEMES CONFERENCE

IIR & IBC

Venue: TBC, London

Key speakers: Malcolm Richardson (M&G), John Harpur (Aberdeen Asset Management), James Willson (KPMG), Lorraine White (Bank of New York Mellon), Tim Lewis (Travers Smith), Ali Kazimi (Mazars), among numerous others

9/30/2015 - 9/30/2015

http://www.iiribcfinance.com/event/Taxation-of-Collective-Investment-Schemes

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – OXFORD

CCH

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

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

10/6/2015 - 10/7/2015

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

INTERNATIONAL TAX PLANNING ASSOCIATION 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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – CAMBRIDGE

CCH

Venue: Cambridge City Hotel, Grand Arcade, Downing St, Cambridge CB2 3DT, UK

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

10/13/2015 - 10/14/2015

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

10TH INTERNATIONAL CORPORATE TRANSFER PRICING CONFERENCE

IQPC

Venue: Hilton Hotel, Georg-Glock-Straße 20, Duesseldorf, 40474, Germany

Key Speakers: Johannes Schimmer (Adidas AG), Sandip Garg (Government of India), Ami Goldenstein (Takeda Pharmaceutical Int'l), Jadwiga Latawiec (Carlsberg Polska Sp. z o.o.), among numerous others.

10/19/2015 - 10/20/2015

http://www.global-transferpricing.com/

INTERNATIONAL TAX STRUCTURING FOR MULTINATIONAL ENTERPRISES

WESTERN EUROPE

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – LEEDS

CCH

Venue: Thorpe Park Hotel and Spa, 1150 Century Way, Leeds, West Yorkshire LS15 8ZB, UK

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

10/27/2015 - 10/28/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – SOUTHAMPTON

CCH

Venue: Grand Harbour Hotel, W Quay Rd, Southampton SO15 1AG, UK

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

11/10/2015 - 11/11/2015

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

PRIVATE WEALTH EASTERN EUROPE

IIR & IBC

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

Key Speakers: Andrew Terry (Withers), Kamal Rahman (Mishcon de Reya), Egor Noskov (Duvernoix Legal), Piers Master (Charles Russell Speechlys), Damian Bloom (Berwin Leighton Paisner), Claire Gordon (Farrer & Co), among numerous others

11/12/2015 - 11/12/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – GATWICK

CCH

Venue: Sofitel London Gatwick, Gatwick Airport North Terminal, Crawley, West Sussex, RH6 0PH, UK

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others

11/17/2015 - 11/18/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – BIRMINGHAM

CCH

Venue: Marriott Forest of Arden, Maxstoke Lane, Meriden, Birmingham, CV7 7HR, UK

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others

11/24/2015 - 11/25/2015

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

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – GLASGOW

CCH

Venue: Hilton Glasgow Hotel, 1 William St, Glasgow, G3 8HT, Scotland

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others

12/1/2015 - 12/2/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – LONDON

CCH

Venue: Jumeirah Carlton Tower Hotel, On Cadogan Place, London, SW1X 9PY, UK

Key Speakers: Chris Burns, Louise Dunford, Paul Gee, Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others

12/8/2015 - 12/9/2015

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

THE AMERICAS

Guyana

The Caribbean Court of Justice (CCJ) recently held a hearing on Guyana's non-compliance with its ruling in *Rudisa Beverages and CIDI v. Guyana* ([2014] CCJ 1 (OJ)), concerning the territory's contentious environmental tax.

Since 2001, Caribbean International Distributors Inc. (CIDI) and Rudisa Beverages and Juices NV had been seeking a legislative change and compensation from Guyana for its decision to levy its environmental tax on their imports of non-returnable beverage containers, charged under section 7A of its Customs Act. The tax was levied at a rate of GUY10 (USD0.05) per container and was not applied to domestic producers.

The matter was raised before numerous meetings of the Council for Trade and Economic Development. It was agreed that the measure was discriminatory and contravened provisions in the Revised Treaty of Chaguaramas – which established the Caribbean Community including the CARICOM Single Market and Economy – on the free movement of goods and the principles of trade liberalization. Despite it being agreed several years earlier that a change to Guyana's legislation was necessary, the law remained in place and the tax continued to be levied. Guyana then missed a final May 29, 2009, deadline to revoke the tax. In 2013, Guyana attempted to resolve the issue by proposing an amendment to its legislation. However, this amendment was rejected by Parliament.

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

After several years without progress, a case was brought before the CCJ by the two companies in an attempt to finally settle the matter. The CCJ ordered that Guyana cease the collection of the environmental tax immediately; pay CIDI the sum of USD6m, together with any additional tax paid since the last estimates of tax paid; pay interest on that amount at a rate of 4 percent; and pay the cost of the court proceedings.

In its judgment, the CCJ required CIDI to notify the CCJ whether, and if so to what extent, Guyana had complied with the orders of the CCJ. In case of non- or partial compliance, Guyana was ordered to file a report.

Upon notification of Guyana's initial non-compliance by the attorney for CIDI, the CCJ ordered the parties to appear before it, and a hearing was held by the CCJ on July 31, 2015. However, rather than discussing Guyana's non-compliance with its ruling, the CCJ heard that Guyana's Parliament on July 30, 2015, passed an amendment to the Customs Act to cease the collection of the disputed environmental tax.

At the hearing, the parties reported to the CCJ that they had reached a full and final settlement with regard to Guyana's compliance with the CCJ's judgment. It was agreed that Guyana will pay CIDI the amount of USD6.2m on or before January 31, 2016. It was further reported that the collection of the environmental tax would cease as of July 31, 2015.

At the hearing, the CCJ expressed its satisfaction with the progress made and adjourned the matter until February 26, 2016, to allow the parties to provide proof of complete compliance with the judgment.

The judgment in this case was issued on May 8, 2014. The follow-up hearing was held on July 31, 2015.

http://www.caribbeancourtofjustice.org/wp-content/uploads/2015/07/MEDIA-RELEASE-23-2015.pdf

Caribbean Court of Justice: *Rudisa Beverages and CIDI v. Guyana ([2014] CCJ 1 (OJ))*

United States

The US Tax Court has delivered a landmark ruling concerning US tax code section 482, which requires controlled parties entering into qualified cost-sharing agreements (QCSAs) to share stock-based compensation (SBC) costs.

The case concerned an affiliated group of corporations that filed consolidated federal income tax returns for the years at issue. During all relevant years, Altera Corp., the parent company, was a Delaware corporation, and Altera International, a subsidiary of Altera US, was a Cayman Islands corporation.

During the 2004 to 2007 taxable years, Altera US granted stock options and other stock-based compensation to certain of its employees, who performed research and development (R&D) activities pursuant to an R&D cost-sharing agreement between Altera US and Altera International. The employees' cash compensation was included in the cost pool under the R&D cost-sharing agreement. Their stock-based compensation was not included. Altera US did not share the cost of the stock-based compensation with Altera International.

The issue presented by the parties' cross-motions was whether section 1.482-7(d)(2), Income Tax

Regs (the final rule) – which the US Treasury issued in 2003 and which requires participants in QCSAs to share stock-based compensation costs to achieve an arm's length result – is arbitrary and capricious and therefore invalid.

The Court agreed that it was. It pointed out that in *Xilinx Inc. v. Commissioner* (125 TC 37 (2005)), the Tax Court had held that, under the 1995 cost-sharing regulations, controlled entities entering into QCSAs need not share stock-based compensation (SBC) costs because parties operating at arm's length would not do so.

In arriving at its ruling, the Tax Court said that Treasury had failed to: (i) support its belief that unrelated parties would share SBC costs with any evidence in the administrative record; (ii) articulate why all QCSAs should be treated identically; and (iii) respond to significant comments.

Additionally, the Tax Court said Treasury's "explanation for its decision runs counter to the evidence before [it]."

In its ruling, which is expected to have a broad impact on US multinationals with similar cost-sharing agreements, the Tax Court said the application of section 482, in the circumstances at hand, results in a non-arm's length outcome and its application can be said to be "arbitrary and capricious and therefore invalid."

This judgment was released on July 27, 2015.

https://www.ustaxcourt.gov/InOpHistoric/AlteraCorporationDiv.Marvel.TC.WPD.pdf

US Tax Court: *Altera Corporation and subsidiaries v. the IRS (145 TC No. 3 (2015))*

WESTERN EUROPE

United Kingdom

The UK tax authority, HM Revenue & Customs (HMRC), has won a challenge concerning the legality of its accelerated payments regime.

HMRC began sending Accelerated Payment Notices (APNs) to UK users of certain tax avoidance schemes in August 2014. The notices give recipients 90 days to pay the tax in question. APNs may be received by taxpayers who use a tax avoidance scheme disclosed by the promoter under the UK's disclosure of tax avoidance schemes (DOTAS) rules. Disclosed schemes are assigned a scheme reference number (SRN), which can be used by the taxpayer to check HMRC's online list of schemes to determine whether they could be liable to pay tax upfront while the scheme is challenged by HMRC.

A number of users of an avoidance scheme claimed that HMRC's action in issuing APNs was unreasonable; breached natural justice; and represented an abuse of their rights, under the European Convention on Human Rights, to a fair trial and the protection of property. They also alleged that the issuance of APNs removed the legitimate expectation they had when they joined the scheme that

they would not have to pay tax until the dispute had been resolved.

The High Court ruled that APNs were lawfully issued and the principles of natural justice (the right to a fair hearing) had been adhered to. The court said there had been no breach of the claimants' procedural or substantive legitimate expectations, and the decision to issue APNs was neither unreasonable nor irrational. Lastly, it ruled, there had been no unlawful interference with the claimants' possessions, and the claimants have had access to an independent and impartial tribunal on judicial review.

David Richardson, HMRC Director of Counter Avoidance, welcomed the ruling, stating: "This is an important result, and good news for the vast majority of taxpayers who do not try to avoid paying their fair share of tax. Those who use tax avoidance schemes need to know they can no longer hold on to the money while their affairs are investigated. They have to pay their tax up front like everybody else."

"We expect to complete the issue of around 64,000 notices tax by the end of 2016 bringing forward GBP5.5bn [USD8.6bn] in payments for the Exchequer by March 2020. HMRC wins 80 percent of all avoidance cases that people litigate, and many more are settling before things get to that stage."

This judgment was released on July 31, 2015.

http://www.bailii.org/ew/cases/EWHC/Admin/2015/2293.html

UK High Court of Justice: *Nigel Rowe and others v. HM Revenue and Customs ([2015] EWHC 2293)*

United Kingdom

The UK Supreme Court has ruled in a case concerning whether HM Revenue & Customs (HMRC) was entitled to levy a one-off tax charge of 40 percent on a tax avoidance scheme where it had acted more than six years after the abuse in applying new anti-avoidance provisions.

Until 2006, pension schemes could be approved by the Inland Revenue (now HMRC, but hereinafter referred as "the Revenue"). Taxpayers who paid contributions into approved pension schemes received relief from income tax on their contributions (and from capital gains tax on gains paid on assets within the scheme). With limited exceptions, assets could only be withdrawn from an approved pension scheme on retirement (or death, if earlier,) and then had to be used to purchase an annuity.

A practice arose under which small pension schemes would be formed to gain approval and the consequent tax advantages, and then subsequently changed to lose their approval, so that the scheme funds could be withdrawn free of the restrictions.

Parliament enacted anti-avoidance legislation to prevent this practice. The Income and Corporation Taxes Act 1988 (as amended) set out three scenarios

where a scheme's approval may cease: (i) approval is withdrawn automatically where the scheme fails to comply with regulations, in which case its approval automatically ceases 36 months after the introduction of the regulations (s. 591A(2), a transitional provision); (ii) where the Revenue considers that the facts cease to warrant the continuance of approval, the Revenue may withdraw approval by notice from a date specified in the notice, which must not be earlier than the date when the facts first ceased to warrant the continuance of approval (s. 591B(1)); and (iii) approval is withdrawn automatically where an unapproved and unauthorized alteration is made to the scheme (s. 591B(2)).

This case concerned the second scenario.

Under section 591C of the Act, once approval "ceases to have effect," the scheme is liable to a 40 percent tax charge on an amount equal to the value of the scheme assets immediately before the date of the "cessation of approval" of the scheme. The question arising in this appeal was when the charge is incurred, where approval is withdrawn following the giving of notice by the Revenue under section 591B(1).

The Court considered whether approval "cease[s] to have effect" at the date of the notice itself, or at the date from which the facts of the scheme cease to warrant the continuance of approval, as specified in the notice.

The Revenue notified the administrator of the appellant pension scheme on April 19, 2000, that approval was withdrawn under section 591B(1) with effect from November 5, 1996. The Revenue said that the 40 percent tax charge fell to be assessed in the 2000/01 tax year, when the withdrawal was notified. The taxpayer said that it fell to be assessed in the 1996/97 tax year when the scheme ceased to be eligible and withdrawal of approval took effect under the Revenue's notice. This would mean that the Revenue would be out of time to impose the assessment.

The First-tier Tribunal, Upper Tribunal and Court of Appeal all considered that the tax charge fell in the 2000/01 tax year. However, the Supreme Court, by a 3:2 majority, ruled in favor of the appellant – that the tax charge fell to be assessed in the 1996/97 tax year, and that therefore the six-year period for bringing the assessment had expired.

The Court agreed that the date of "cessation of approval," immediately before which the fund is valued, is the date specified in the notice. It said the conditions for liability to the tax charge in section 591C(4)-(6A) "make sense only on the footing that the 'cessation of the approval of the scheme' is the effective date of the withdrawal of the approval, and not the date of the Revenue's notice of withdrawal."

Those voting in favor of the appellant observed in the press summary of the case: "This is also the outcome which makes most sense as a matter of language and of principle: it avoids double taxation, and ensures that the fund is valued while it is still intact … The date of cessation of approval is obvious in the case of automatic withdrawal under

ss. 591A(2) and 591B(2): it is the date when the scheme ceases to qualify for approval. The functional equivalent in the case of withdrawal by notice under s. 591B(1) is the date specified in the Revenue's notice. This is the natural result of the language of these provisions, and also reflects their common purpose."

They added that this is confirmed by section 591D(7), which equates "approval of the scheme being withdrawn" with its "ceasing to have effect" and "cessation of approval."

The Court said the Revenue's concern that it will often take more than the six-year time limit to identify abusive schemes and issue the requisite notice would be better addressed through the Revenue's power to make regulations requiring the provision of information relating to any approved scheme. It added that accepting the Revenue's argument would effectively mean that there would be no time limit and that it could choose the chargeable period at its discretion.

This judgment was released on July 29, 2015.

http://www.bailii.org/uk/cases/UKSC/2015/56.html

UK Supreme Court: *John Mander Pension Scheme Trustees Ltd v. HMRC ([2015] UKSC 56)*

Dateline August 20, 2015

I like Chile. It's one of those pleasingly unconventional countries. For a start, it must be the most bizarrely shaped nation on the world atlas; resembling a fully uncoiled snake, it spans almost 2,500km of South America's Pacific coastline, yet is only 170km wide on average. But Chile is far more than just a strip of dry desert wedged between the Andes and the ocean.

While countries like Brazil and Colombia bathe in the limelight with their membership of the BRICS and CIVETS clubs of top emerging economies, Chile has quietly got on with the business of growing its trade and economy. The country has been fully democratic for over 20 years, and sound economic and fiscal policies have given it the highest sovereign debt rating in the region. Chile has 22 trade agreements covering 60 countries, and exports now account for one-third of GDP. It also sits at the Trans-Pacific Partnership negotiating table with the US and other key Pacific Rim economies. And I bet you didn't know that Chile was the first South American nation to join the OECD, the club of rich nations? (You can keep your BRICS and CIVETS, Brazil and Columbia!)

However, as you might have guessed, having built Chile up, I'm going to give it a little reality check. While most countries have cut corporate taxes over the last decade or so, Chile is going to raise corporate tax. The rationale behind the move is a noble one: President Michelle Bachelet wants to reduce inequality and improve access to education and health care.

However, perhaps this isn't the right way to go about it. Chile has already been criticized by the IMF, of all institutions, for confusing companies with its tax reform plans. And like two magnets set to the same polarity, investors tend to be repelled by legislative confusion. The tax reforms are intended to raise additional revenue equivalent to 3 percent of the economy – that's a fair whack of money. I read recently that Chile has more than USD20bn stashed in a sovereign wealth fund, equal to about 5 percent of GDP. Maybe it's time to raid the piggy bank, instead of taxpayers.

Speaking of the CIVETS grouping (which, in case you didn't know, stands for Colombia, Indonesia, Vietnam, Egypt, Turkey, and South Africa), Vietnam made the news recently as a result of recent reforms to tax administration procedures, which business taxpayers really rather like, according to a survey by the Government and the Vietnam Chamber of Commerce. These changes are designed to substantially reduce the amount of time and money that firms spend on filing their tax returns and paying their taxes, which can only be a good thing, can't it?

But a quite startling finding was also published as part of the survey result: one-third of the businesses

questioned felt the need to give their contacts at the tax department an extra little something for themselves in order to avoid being "discriminated" against. Although it was quite shocking to see this finding as part of an otherwise mundane survey, it's not really all that surprising.

According to the Heritage Foundation, corruption is rife at all levels of the Vietnamese Government and judiciary, and "factionalism, bureaucratic rivalries, nepotism, and a lack of accountability" in the ruling Communist Party ensure that many agencies are run as fiefdoms, perpetuating a culture of backhanders. No doubt foreign investors operating in Vietnam and other states where bribery is accepted see the practice as just an extra tax, and perhaps a small price to pay to ensure that everything runs smoothly.

Still, 30 years have passed since the Communist Government embarked on its "doi moi" economic liberalization plan, and progress seems slow. I find it hard to see how Vietnam will fulfill the economic potential suggested by its CIVETS accreditation unless there is a drastic change in the culture of government. But before that can happen, there probably needs to be a change of government.

One reason given for the speed and scale of the UK's surprising economic recovery is its flexible labor force. Not only are the UK's employment laws more favorable for employers than those of other western European countries, but a vast army of self-employed persons have joined the workforce in recent years, reflecting changing working practices and the prevalence of new communication technologies. HM Revenue & Customs, however, seems to be stuck in another age. At least, that's the only way to explain its obsession with enforcing the "intermediaries" legislation.

The legislation, generally referred to as IR35, was introduced in April 2000 and was designed to combat the avoidance of tax and national insurance contributions (NICs) through the use of intermediaries in circumstances where an individual would otherwise, for tax purposes, be regarded as an employee of the client.

However, despite taking hundreds of contractors and freelancers to court for being 'falsely' self-employed, HMRC has collected next to nothing in revenue from these enforcement actions. Data disclosed under the Freedom of Information Act shows that IR35 raised just under GBP9.2m (USD14.3m) in six years of operation. In fact, according to the UK Association of Independent Professionals and the Self-Employed, of the over 1,500 IR35 investigations and cases it has been involved with, HMRC has been successful in just ten.

How much HMRC spent on administration and litigation in these cases remains a mystery, but it wouldn't be outlandish to suggest that these costs substantially outweighed revenues. When the government changed in 2010, the new coalition pledged to review IR35, leading to hopes that it would be scrapped. But that turned out to be a

false dawn, and the freelance community remains as confused as ever over the application of the law, and HMRC's intentions.

What really grates here is not just the apparent lack of common sense being displayed within HMRC in pursuing these cases – presumably at not inconsiderable cost to the taxpayer – but that this policy goes against everything the Conservative Party has been preaching, both in the former coalition government and now as the party in power – that individuals prepared to take the risk of starting a business and going it alone should be empowered rather than encumbered. Go figure!

The Jester