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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

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

COUNTRIES AND REGIONS EUROPE AUSTRIA BELGIUM BULGARIA CYPRUS CZECH REPUBLIC DENMARK ESTONIA FINLAND FRANCE GERMANY GREECE HUNGARY IRELAND ITALY LATVIA LITHUANIA LUXEMBOURG MALTA NETHERLANDS POLAND PORTUGAL ROMANIA SLOVAKIA SLOVENIA SPAIN SWEDEN SWITZERLAND UNITED KINGDOM EMERGING MARKETS ARGENTINA BRAZIL CHILE CHINA INDIA ISRAEL MEXICO RUSSIA SOUTH AFRICA SOUTH KOREA TAIWAN VIETNAM CENTRAL AND EASTERN EUROPE ARMENIA AZERBAIJAN BOSNIA CROATIA FAROE ISLANDS GEORGIA KAZAKHSTAN MONTENEGRO NORWAY SERBIA TURKEY UKRAINE UZBEKISTAN ASIA-PAC AUSTRALIA BANGLADESH BRUNEI HONG KONG INDONESIA JAPAN MALAYSIA NEW ZEALAND PAKISTAN PHILIPPINES SINGAPORE THAILAND AMERICAS BOLIVIA CANADA COLOMBIA COSTA RICA ECUADOR EL SALVADOR GUATEMALA PANAMA PERU PUERTO RICO URUGUAY UNITED STATES VENEZUELA MIDDLE EAST ALGERIA BAHRAIN BOTSWANA DUBAI EGYPT ETHIOPIA EQUATORIAL GUINEA IRAQ KUWAIT MOROCCO NIGERIA OMAN QATAR SAUDI ARABIA TUNISIA LOW-TAX JURISDICTIONS ANDORRA ARUBA BAHAMAS BARBADOS BELIZE BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS COOK ISLANDS CURACAO GIBRALTAR GUERNSEY ISLE OF MAN JERSEY LABUAN LIECHTENSTEIN MAURITIUS MONACO TURKS AND CAICOS ISLANDS VANUATU

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Global Tax Weekly – A Closer Look

Combining expert industry thought leadership and the unrivalled worldwide multi-lingual research capabilities of leading law and tax publisher Wolters Kluwer, CCH publishes Global Tax Weekly — A Closer Look (GTW) as an indispensable up-to-the minute guide to today's shifting tax landscape for all tax practitioners and international finance executives.

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Topicality, thoroughness and relevance are our watchwords: CCH's network of expert local researchers covers 130 countries and provides input to a US/UK team of editors outputting 100 tax news stories a week. GTW highlights 20 of these stories each week under a series of useful headings, including industry sectors (e.g. manufacturing), subjects (e.g. transfer pricing) and regions (e.g. asia-pacific).

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

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NEWS ROUND-UP

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Smooth Move: US Tax Tips Every Top Executive Should Know Before Moving To The United States

by Kathryn von Matthiessen, Cantor & Webb P.A.

If you are a foreign executive moving to the United States for work, not only do you have to consider practical concerns like moving your family and finding a new residence, but you also need guidance as to any US tax implications stemming from the move. One of the first tasks your US tax advisor should tackle will be to determine whether you will be a tax resident for US income tax purposes or transfer (*i.e.*, gift, estate and generation-skipping transfer) tax purposes based upon the amount of time you will spend in the United States.

There are different tests for tax residency for US income tax purposes and transfer tax purposes.

US Income Tax

A US income tax resident is subject to US income tax on worldwide income, which is often surprising for an executive moving to the United States from a different country. A green card holder is automatically a US tax resident when he enters the United States with the green card when he has received his green card abroad.

An individual who is neither a citizen nor a green card holder of the United States is treated as a resident of the United States for US income tax purposes if such person meets the "substantial presence test." The substantial presence test uses a weighted formula based on the number of days an individual has spent in the United States during the current calendar year and two preceding calendar years. The substantial presence test is met if an individual spends at least 31 days in the United States during the current calendar year and, based on the weighted average, is deemed to have spent 183 days or more in the United States during the current calendar year. In computing the weighted average, all of the days of US presence in the current calendar year are counted, one-third (1/3) of the days of US presence in the preceding year are counted, and one-sixth (1/6) of the days of US presence in the second preceding year are counted, and the three amounts are aggregated.

Certain exceptions to the substantial presence test may be relevant, such as the closer connection exception, which may apply if the individual spends less than 183 days in the United States in the current year but has met the substantial presence test for the current year based upon the weighted formula. To claim

the closer connection exception, an individual must show that she had a "closer connection" to a foreign country in which such person also maintained a "tax home" for the entirety of the year by filing IRS Form 8840. The residency "tie-breaker rules" of an income tax treaty if one exists between the United States and the individual's home country may also be helpful. A treaty-based position taken by filing IRS Form 8833 only applies, however, for purposes of determining an individual's US tax liability and not with respect to determining whether such person has reporting obligations in the United States (*e.g.*, with regard to reporting foreign bank accounts and determining whether a foreign company is a "controlled foreign corporation", discussed below).

The "tie-breaker rules" of many income tax treaties with the United States commonly provide that if an individual is a "resident," as that term is defined in the treaty, of both the United States and the treaty partner country, preference is given to the country where the individual has a permanent home available to him, or if one is available in both jurisdictions, then such person is considered to be a resident in the place where his personal and economic relations are closer ("center of vital interests"). If no determination can be made based upon an individual's center of vital interests, residence is usually determined by an individual's habitual abode in a real and meaningful sense.

US Transfer Tax

While there is a bright-line test for US income tax residency, for US transfer tax purposes, the determination of residency is a little more complicated. Residency in the US transfer tax context means domicile. Under the US rules, domicile is physical presence with the subjective intent to remain indefinitely. The subjective intent of the prospective taxpayer is measured by a series of objective factors.

While not exhaustive, significant weight has been given to the following factors, any combination of which has been used in favor of, and at times against, a US domicile:

- Family immigration history;
- Type of visa and duration held (including obtaining a social security number);
- Number, location and relative importance of business activities and interests;
- Residential properties in terms of value, location, size, how the property is maintained (meaning as a permanent residence versus vacation property), and personalty kept at each location;
- Location and significance of sources of income;
- Location and significance of investments;
- Location and registration of cars and drivers' licenses;
- Location of personal banking relationships;
- Statements on personal, official, legal or financial documents;
- Motivation for being in the United States;
- Travel and duration of stays in the United States;
- Location of family and friends;
- Community affairs and group affiliations;
- Government-related benefits;
- Where one is registered to vote; and
- Location of physicians.

It would be possible for a non-resident alien to move to the United States and establish domicile quickly if she did not have a specific intent to leave the United States. A green card is presumptive evidence of US domicile, but this presumption may be rebutted.

Objectives

Before the foreign executive moves to the United States, his US tax advisor should analyze whether he (or his family) will become a tax resident for US income tax purposes and for US transfer tax purposes. Below is a checklist of considerations for a wealthy foreign executive to discuss with her tax advisor before moving to the United States:

(1) Consider making a gift to a trust to shield assets from US estate tax to hedge against the possibility that the foreign executive may die while a domiciliary of the United States. The exemption against US estate and gift tax is USD5,430,000 for US citizens and domiciliaries in 2015, indexed for inflation. The exemption is USD10,860,000 for a married US domiciled or citizen couple. High net worth individuals with assets in excess of this amount should consider making a gift to a "drop-off" trust for their family before they become US domiciliaries. Ideally, the person funding the trust should not be a beneficiary of the trust, and he must have limited control over the trust.

(2) Make gifts to family members before becoming US domiciled. If the executive intends to make outright gifts to family members of assets that are not considered US situs for US gift tax purposes (*i.e.*, assets other than tangible or real property located in the United States), she should make the gifts before becoming a US domiciliary.

(3) Step-up the basis of assets to fair market value. Foreign executives should consult their US tax advisor as to how to step-up the basis for US tax purposes of assets that might be sold from historic cost basis to fair market value before becoming a US taxpayer.

(4) Review investments to harvest gain and see if they are appropriate and tax-efficient for US taxpayers. Foreign executives should consider selling their interests in passive foreign investment companies ("PFICs") unless certain US tax elections are available. A foreign corporation is a PFIC if 75 percent or more of its income is passive in nature or 50 percent or more of its assets are held for the production of passive income. The PFIC regime applies regardless of the percentage ownership of the US shareholder, and there is a back tax and an interest charge on dispositions of the stock and certain "excess distributions." Capital gains tax treatment is also lost on the sale, and the PFIC regime is extremely punitive when the back tax and interest charge are aggregated. Most foreign mutual funds are PFICs.

(5) Review ownership interests in offshore companies to see if US tax on income of these companies may be deferred offshore. Certain foreign corporations, known as "controlled foreign corporations," will have a deemed

flowthrough of passive income to US shareholders who own at least 10 percent of voting power of the corporation's stock ("US Shareholders"). A foreign corporation is a CFC if more than 50 percent of the foreign corporation is owned by vote or value by US Shareholders.

(6) Determine whether dividends from a foreign company which the foreign executive will receive once a US taxpayer will be qualified dividend income for US income tax purposes, and restructure the holdings if possible to ensure qualified dividend status. Also, if the foreign executive is moving from a lower tax jurisdiction, consider accelerating receipt of any dividends prior to the move if possible.

(7) Review foreign deferred compensation and other retirement plans as well as any applicable income tax treaties to see if they will provide deferral from US income tax.

(8) Review the intended activities of the foreign executive in the United States to make sure that these activities will not subject a foreign employer to US income tax.

(9) Determine whether the foreign executive and her spouse have community property prior to the move and sever the community property if necessary.

(10) Create a plan to maintain flexibility in the pre-residency planning if the foreign executive is only moving to the United States for a potentially discrete period of time.

Below are several other considerations for the foreign executive to discuss with his US tax advisor as well:

(1) *Time the arrival date.* If the foreign executive arrives in the second half of the calendar year, she may not become a US taxpayer under the substantial presence test until the following year.

(2) *Understand US reporting requirements.* Once the foreign executive becomes a US taxpayer, in addition to being subject to US income tax on worldwide income, he will have to disclose his worldwide assets due to extensive US reporting requirements of US taxpayers with foreign assets. It is important that the foreign executive understand the scope of this web of reporting before becoming subject to it.

(3) As discussed above, a *pre-residency plan should be flexible* to allow the foreign executive to leave the United States without triggering further US tax consequences. The client and her US tax advisor should have an exit plan in place to dismantle the structure shortly before or after the client leaves if necessary.

In summary, there are any number of issues for a foreign executive to consider when moving to the United States in addition to all of the practical minutiae stemming from a relocation, but he needs to discuss US tax planning with his US tax advisor well in advance of the actual move.

OECD's Proposed Changes To Cost Contribution Arrangements Generate Controversy

by Kurt Wulfekuhler, Peters Advisors

Contact: kurt.wulfekuhler@petersadvisors.com, Tel: +1 215 327 4928

In a webcast update by the Organisation for Economic Co-operation and Development ("OECD") on its Base Erosion and Profit Shifting ("BEPS") initiative on June 8, 2015, Andrew Hickman, Head of the Transfer Pricing Unit, acknowledged the numerous taxpayer comments received on the OECD's *Discussion Draft on Revisions to Chapter VIII of the Transfer Pricing Guidelines on Cost Contribution Arrangements* ("Discussion Draft").

The Discussion Draft proposes text for an updated Chapter VIII on cost contribution arrangements ("CCAs") in the OECD's *Transfer Pricing Guidelines*. The proposed text would require contributions to be measured at value rather than at cost so that the outcomes for participants in a CCA do not differ significantly from those for parties outside a CCA. While agreeing that any pre-existing intangible property should be transferred at value, a number of taxpayers raised concerns about requiring ongoing payments to be made at value instead of cost, citing third-party examples of CCAs done at cost to support their case.

The Discussion Draft defines a CCA as "a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create direct benefits for the businesses of each of the participants."[1] The draft also distinguishes between the two common types of CCAs:

- Development CCAs, and
- Services CCAs.

A development CCA is for the "the joint development, enhancement, maintenance, protection or exploitation of intangibles or tangible assets."[2] It tends to create ongoing, future benefits for its participants. A services CCA is for obtaining services. It often creates current benefits only. As such, allocations of contributions under a development CCA will generally consider future expected benefits, while allocations under a services CCA will likely be based on current measures of benefit.

The 2010 edition of the *Transfer Pricing Guidelines* does not require contributions to be measured based on value, but indicates that further guidance might be necessary on when cost or "market prices" are appropriate. The guidance in the Discussion Draft comes out clearly on the side of value. The authors of the draft consider contributions measured at value more likely to be consistent with the arm's length principle.

Indeed, a stated purpose of the Discussion Draft is to help ensure that "the outcomes for transfer pricing purposes for CCA participants should be consistent with those which would have arisen had the parties made similar contributions on similar terms outside of a CCA mechanism."[3] Yet, commentators pointed to evidence of third-party arrangements done at cost so CCAs among related parties may very well be wholly consistent with the arm's length principle.

As a practical matter, CCAs are generally based on costs (as the term "cost" contribution arrangement would suggest), so the proposed text would mark a significant departure from current practice. Some commentators appealed to the OECD for at least some type of grandfathering for existing CCAs. One exception made by the OECD is permitting contributions of low value-adding services under a CCA at cost.

Tax administrations and taxpayers should be able to reach a compromise that preserves the commercial effectiveness of CCAs while addressing the OECD's greatest concerns about BEPS. One of the most important objectives of the BEPS initiative is to prevent the transfer of intangible property within a multinational enterprise at less than value. Taxpayers concur that any pre-existing intangible property should only be contributed to a CCA at value, even though there may be some disagreement on the methods for valuing such intangible property.

Requiring ongoing contributions to be made at value instead of cost, though, removes the commercial efficiencies of a CCA without furthering one of the principal objectives of the BEPS initiative. Greater emphasis should be placed on how to value the pre-existing intangible property instead of the ongoing development contributions.

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

Endnotes

1 OECD, *Discussion Draft on Revisions to Chapter VIII of the Transfer Pricing Guidelines on Cost Contribution Arrangements* (2015), p. 5.

2 *Id.*, p. 6.

3 *Id.*, p. 6.

Topical News Briefing: Not Another Blacklist!

by the Global Tax Weekly Editorial Team

If there were such a thing as "blacklist fatigue" in the area of international tax standards, then the world would surely be close to it, after the EU published its much-criticized list of non-cooperative tax jurisdictions.

Since the late 1990s, offshore financial centers and low-tax jurisdictions (usually pejoratively referred to as tax havens) have made great strides in making themselves more transparent to the world's law enforcement agencies and tax collectors, a process which has involved a not inconsiderable amount of cajoling by the OECD and other supranational organizations, and which has included the liberal use of the "blacklist" to shame governments into taking action.

The last major round of blacklistings by the OECD took place in the first half of 2009, when G20 nations gathered to consider their response to the global financial crisis, and decided that lightly regulated, low- and no-tax offshore financial centers should shoulder much of the blame. This placed the emphasis on minimum standards in tax transparency through having arrangements in place to exchange information with at least a dozen other jurisdictions.

As the world has grown increasingly intolerant with regard to tax avoidance and evasion, the transparency bar has been raised several times in the meantime. However, most major offshore financial centers remain compliant, and some are even ahead of the curve, having signed dozens upon dozens of tax information exchange agreements and committed to multilateral tax agreements such as the US Foreign Account Tax Compliance Act, the OECD Mutual Convention on Mutual Assistance in Tax Matters, and the more recent Common Reporting Standard on financial account information. So it wasn't surprising to see these jurisdictions reacting with exasperation at their naming on the EU blacklist last week (which is compiled from member states' own blacklists).

Some will argue that these jurisdictions are essentially still tax havens, sucking income and profits – and tax revenues – out of countries where the money-making activities actually take place, and therefore deserve to be blacklisted. However, putting aside the question of whether there is still room for offshore financial centers in a world determined to eliminate tax base erosion and profit shifting, there is an issue of fairness here.

As Bermuda's Government has pointed out, some of the EU member states that have blacklisted the island have done less to comply with current international tax transparent standards than Bermuda has, and several other OFCs have for that

matter. Indeed, even Pascal Saint-Amans, Director of the OECD's Center for Tax Policy and Administration, was reported to have said that the EU blacklist is unhelpful, because member states use different criteria and methodology to reach the conclusion that a territory is "non-cooperative" from a tax perspective, and the consequent EU list makes no distinction between the highly reputable jurisdictions and those still playing catch-up with the ever-evolving standards.

What's more, as Bermuda Finance Minister Bob Richards alluded to, some of the truly non-cooperative jurisdictions aren't offshore at all. This much was admitted by OECD Secretary General Angel Gurría in 2014, when he observed during a debate at the European Competition Forum in Brussels that some of the problems around a lack of transparency are "not in the [small] islands, but in the 'big islands' – in the UK and in the US."

There is of course context to the publishing of the EU blacklist. The European Commission has just released its new corporate tax action plan, which outlines a series of measures to be taken at EU level to tackle BEPS and strengthen the single market, of which the blacklist forms one part. However, it has been suggested that this is more of a political gesture than a serious attempt to renew pressure for legislative change in offshore jurisdictions, which now seems to be the remit of the OECD. And in any case, some of the blacklisted territories could be entitled to ask what more they need to do to avoid being serially blacklisted. They could also suggest that the "big countries" sort out their own back yards before passing judgment on other jurisdictions.

Four More Banks Reach Resolutions With US Government For NPAs

by Mike DeBlis Esq., DeBlis & DeBlis

On May 28, 2015, the Department of Justice announced the addition of four banks to its Swiss Bank Program. They are as follows:

- Société Générale Private Banking (Lugano-Svizzera)[1]
- MediBank AG[2]
- LBBW (Schweiz) AG,[3] and
- Scobag Privatbank AG.[4]

For those unfamiliar with the Department of Justice's (DoJ's) Swiss Bank Program, a slight digression may be in order. The Swiss Bank Program was unveiled on August 29, 2013. It provides a path for Swiss banks to resolve potential criminal liabilities in the United States. In order to participate, Swiss banks had to take the "bull by its horns" and notify the DoJ by December 31, 2013, that they had reason to believe that they had committed tax-related criminal offenses in connection with unreported US-related accounts. In other words, they had to "eat crow." Banks already under criminal investigation relating to their Swiss-banking activities (along with any individuals who work for such banks) are ineligible from participating in the Program.

According to the DoJ, in order to be eligible for a non-prosecution agreement (NPA), banks must satisfy the following requirements:

- Make a complete disclosure of their cross-border activities;
- Provide detailed information on an account-by-account basis for accounts in which US taxpayers have a direct or indirect interest;
- Cooperate in treaty requests for account information;
- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Agree to close accounts of account holders who fail to come into compliance with US reporting obligations; and
- Pay appropriate penalties.

According to the terms of the NPAs, signed on May 28, 2015, each bank agreed, albeit reluctantly, to each of the aforementioned requirements. First, they agreed to cooperate in any related criminal or civil proceedings. Second, they agreed to demonstrate their implementation of controls to stop misconduct involving unreported US accounts. And third, they agreed to pay penalties in exchange for the DoJ's agreement not to prosecute them for tax-related criminal offenses.

What does this mean for noncompliant US taxpayers with unreported foreign accounts at these banks? In accordance with the terms of the Program, each bank must encourage its US account holders to come into compliance with their US tax and disclosure obligations. While US account holders at these banks who have not yet reported their accounts to the IRS may still be eligible to participate in the IRS Offshore Voluntary Disclosure Program (OVDP),[5] the price of such disclosure has increased. And that increase is not just a "slight" one, but a "significant" one.

What do I mean by a significant increase in the price of such disclosure? And what the heck is the OVDP? For starters, the OVDP is an amnesty program operated by the IRS to help noncompliant taxpayers resolve their undisclosed offshore accounts with the least amount of risk possible. How so? Taxpayers who open up their financial Kimonos and are fully transparent when it comes to disclosing the subtleties and nuances of their foreign assets become virtually immune to criminal prosecution. If you're a Harry Potter fan, this is analogous to Harry snooping around (or, as Harry would put it, "exploring") the cavernous halls of Hogwarts in his "Invisibility Cloak" after hours.

In addition, the OVDP allows taxpayers to determine their miscellaneous penalty to the very penny, instead of being subjected to draconian FBAR penalties that could catapult their liability into the penalty stratosphere. The possibility of the IRS asserting the dreaded FBAR penalty is agonizing enough. But what is even more agonizing is the possibility that the IRS "stacks" them up – one on top of the other – like a short stack of pancakes. Unfortunately, this has become a reality in the current climate that we live in. One need only peruse the IRS's recent guidance pertaining to FBAR reporting to see it in "black and white."

Most US taxpayers who enter the IRS OVDP will pay a penalty equal to 27.5 percent of the high value of their accounts. On August 4, 2014, the IRS increased this penalty to 50 percent under certain circumstances. With the DoJ's recent announcement of the NPAs that it struck with these banks, noncompliant US account holders at each of these banks must now pay that 50 percent penalty if they wish to enter the OVDP.

If there is any doubt in your mind that the IRS will continue to play the role of Caesar when it comes to following the money trail to find those who evade offshore disclosure laws and hold them responsible, one need only read the comments of Richard Weber, Chief for the IRS-Criminal Investigation (CI). Mr. Weber said:

> "These four additional bank agreements signal a change in terrain for offshore banking. No longer is it safe to hide money offshore and expect that it will not be discovered. IRS CI Special Agents will continue to follow the money to find those who circumvent the offshore disclosure laws and hold them accountable."

Below are excerpts from the DOJ press release[6] pertaining to the details of the specific NPAs that the US Government struck with each bank:

"Société Générale Private Banking (Lugano-Svizzera) SA (SGPB-Lugano) was established in 1974 and is headquartered in Lugano, Switzerland. Through referrals and pre-existing relationships, SGPB-Lugano accepted, opened and maintained accounts for US taxpayers, and knew that it was likely that certain US taxpayers who maintained accounts there were not complying with their US reporting obligations. Since August 1, 2008, SGPB-Lugano held and managed approximately 109 US-related accounts, with a peak of assets under management of approximately USD139.6 million, and offered a variety of services that it knew assisted US clients in the concealment of assets and income from the [IRS], including 'hold mail' services and numbered accounts. Some US taxpayers expressly instructed SGPB-Lugano not to disclose their names to the IRS, to sell their US securities and to not invest in US securities, which would have required disclosure and withholding. In addition, certain relationship managers actively assisted or otherwise facilitated US taxpayers in establishing and maintaining undeclared accounts in a manner designed to conceal the true ownership or beneficial interest in the accounts, including concealing undeclared accounts by opening and maintaining accounts in the name of non-US entities, including sham entities, having an officer of SGPB-Lugano act as an officer of the sham entities, processing cash withdrawals from accounts being closed and then maintaining the funds in a safe deposit box at the bank and making "transitory" accounts available, thereby allowing multiple account holders to transfer funds in such a way as to shield the identity and account number of the account holder. SGPB-Lugano will pay a penalty of USD1.363 million."

"Created in 1979 and headquartered in Zug, Switzerland, MediBank AG (MediBank) provided private banking services to US taxpayers and assisted in the evasion of US tax obligations by opening and maintaining undeclared accounts. In furtherance of a scheme to help US taxpayers hide assets from the IRS and evade taxes, MediBank failed to comply with its withholding and reporting obligations, providing 'hold mail' services and offering numbered accounts, thus reducing the ability of US authorities to learn the identity of the taxpayers. After it became public that the [DoJ] was investigating UBS, MediBank hired a relationship manager from UBS and permitted some of that person's US clients to open accounts at MediBank. Since August 1, 2008, MediBank had 14 US related accounts with assets under management of USD8,620,675. MediBank opened, serviced and profited from accounts for US clients with the knowledge that many likely were not complying with

their US tax obligations. MediBank will pay a penalty of USD826,000."

"LBBW (Schweiz) AG (LBBW-Schweiz) was established in Zurich in 1995. Since August 2008, LBBW-Schweiz held 35 US related accounts with USD128,664,130 in assets under management. After it became public that the department was investigating UBS, LBBW-Schweiz opened accounts from former clients at UBS and Credit Suisse. Despite its knowledge that US taxpayers had a legal duty to report and pay tax on income earned on their accounts, LLB [*sic*] permitted undeclared accounts to be opened and maintained, and offered a variety of services that would and did assist US clients in the concealment of assets and income from the IRS. These services included following US account holders' instructions not to invest in US securities and not reporting the accounts to the IRS and agreeing to hold statements and other mail, causing documents regarding the accounts to remain outside the United States. LBBW-Schweiz will pay a penalty of USD34,000."

"Headquartered in Basel, Switzerland, Scobag Privatbank AG (Scobag) was founded in 1968 to provide financial and other services to its founders, and obtained its banking license in 1986. Since August 2008, Scobag had 13 US related accounts, the maximum dollar value of which was USD6,945,700. Scobag offered a variety of services that it knew could assist, and that did assist, US clients in the concealment of assets and income from the IRS, including 'hold mail' services and numbered accounts. Scobag will pay a penalty of USD9,090."

Endnotes

1 *See* http://www.justice.gov/opa/file/450621/download

2 *See* http://www.justice.gov/opa/file/450611/download

3 *See* http://www.justice.gov/opa/file/450606/download

4 *See* http://www.justice.gov/opa/file/450616/download

5 *See* http://www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program

6 Available at http://www.justice.gov/opa/pr/four-banks-reach-resolutions-under-department-justice-swiss-bank-program

Scotland: Treading A Path Towards Fiscal Autonomy

by Stuart Gray, Senior Editor, Global Tax Weekly

Traditionally, one of the advantages of doing business in the UK has been that, with its highly centralized system of government, taxpayers for the most part have had to contend with only one layer of tax administration and a single tax law framework, as opposed to potentially many under federalism. As Scotland agitates for more powers over tax and spending, this state of affairs is changing rapidly.

The Origins Of Devolution

The devolution of tax powers started gradually, beginning under a former Labour government with the Scotland Act 1998.[1] This created the Scottish Parliament and gave the new assembly very limited powers over income tax in Scotland. The Scottish Variable Rate, as this devolved tax power was known, allowed the Scottish Parliament the power to vary the basic 20 percent rate of personal income tax by plus or minus 3 percent. If used to the full, this would have changed the Scottish Budget by a little over GBP1bn (USD1.6bn), compared with total spending of approximately GBP30bn. The power has never been used however, because the so-called "block grant" that Scotland receives from the UK Government has thus far covered its spending needs, meaning that adjustments to the variable rate were not needed. In any case, the Scottish Variable Rate is soon to be superseded by new tax-raising powers for Scotland approved in the Scotland Act 2012.

The Scotland Act 2012

Once the Scottish nationalist genie was released from the bottle, the pace of devolution quickened. In 2012, the UK Parliament passed legislation described as the largest devolution of fiscal powers within the UK for 300 years. The Scotland Act 2012[2] gives the Scottish Parliament the power to set a Scottish rate of income tax from April 2016, to be administered by HM Revenue & Customs (HMRC) for Scottish taxpayers. The Act has also fully devolved the power to raise taxes on land transactions and on waste disposal to landfill, a measure which took effect in April 2015, at which point the existing UK Stamp Duty Land Tax and Landfill Tax ceased to apply in Scotland.

The New Scotland Bill

Shortly before the referendum on full Scottish independence from the UK, held in September 2014,

Prime Minister David Cameron promised even more fiscal powers for Scotland, in a last-minute bid to convince Scottish voters to keep the Union alive – a ploy that may have swung the balance in favor of the "No" campaign. This culminated in the new Scotland Bill,[3] introduced into the Westminster Parliament on May 28, 2015, which devolves substantial additional powers to the Scottish Parliament.

If enacted, the legislation will enable Edinburgh to set the thresholds and rates of income tax on earnings in Scotland and keep the revenue raised. The Scottish Parliament will receive the first ten percentage points of the standard rate value-added tax (VAT) revenue raised in Scotland (and 2.5 percent from reduced rates). It will gain responsibility for Air Passenger Duty and the Aggregates Levy. Additional borrowing powers will be agreed between the UK and Scottish governments. Around GBP2.5bn (USD4bn) worth of new welfare powers will be devolved. As a result, the Scottish Government will be responsible for raising around 40 percent of taxes and deciding around 60 percent of the country's public spending.

The Scottish Rate Of Income Tax

On June 12, 2015, the UK Government published draft guidance[4] on who will pay the Scottish Rate of Income Tax (SRIT) when new tax powers come into effect in April 2016.

The guidance explains that the main factor in determining liability will be whether someone lives in Scotland. Scottish taxpayer status will apply for a whole tax year; it will not be possible to be a Scottish taxpayer for part of a tax year.

Individuals who have more than one place of residence in the UK will need to determine which of these has been their main place of residence for the longest period in a tax year. Individuals who cannot identify a main place of residence will need to count the days they spend in Scotland and elsewhere in the UK. If they spend more days in Scotland, they will be a Scottish taxpayer.

The draft guidance is of a technical nature and intended for HMRC officials administering SRIT and the tax advisory and business community. HMRC is seeking views on whether this draft guidance provides clarity on the principles by which Scottish taxpayer status should be decided. The closing date for comments is July 31, 2015. A wider range of simpler, general guidance papers and advisory products will be published later this year. The Scottish Government must set the SRIT this year.

Fiscal Autonomy: The SNP's End-Goal

However, since the UK general election in May 2015, the Scottish National Party (SNP), which forms the government north of the border, has strengthened its political hand considerably, nearly achieving a clean sweep of the 60 Scottish seats in the Westminster Parliament to become the third-largest party in the House of Commons and gain considerable influence over national legislation. And it is clear that, if full independence can't be attained in

the foreseeable future, then full fiscal autonomy for Scotland is the SNP's immediate aim.

This was confirmed with the tabling of an amendment[5] to the new Scotland Bill on June 11, 2015, which, while weighing in at fewer than 80 words, would ultimately cut London out of all Scotland's fiscal decisions and give the Scottish Parliament responsibility for taxation, the minimum wage and welfare in Scotland.

The text of the amendment sounds fairly innocuous, and reads as follows:

> Clause 11, page 13, line 42, at end insert—
>
> "(2A) In paragraph 4 of Part I (The protected provisions, This Act) of Schedule 4 (protection of Scotland Act 1988 from modification), insert new sub-paragraph—
>
> "(5A) This paragraph does not apply to amendments to Schedule 5, Part II, Head A, Section 1A in so far as they relate to:
>
> (a) taxes and excise in Scotland,
>
> (b) government borrowing and lending in Scotland, and
>
> (c) control over public expenditure in Scotland."

Angus Robertson, the SNP's leader in the UK's Westminster Parliament, said: "The proposals in the Scotland Bill do not go far enough. That is why the SNP has set out priority changes to the Scotland Bill to devolve responsibility for taxes."

Scottish Taxes – Going Up Or Down?

So what would this mean for taxpayers in Scotland? Are they likely to pay more or less tax than at present?

Perhaps a Scottish Government delegation's recent fact-finding mission to the zero-tax Dubai International Financial Centre holds a clue. Is it too fanciful to suggest that the SNP foresees a low-tax future for Scotland? It's certainly true that, in the early stages of the general election campaign, the SNP were in favor of lowering the Scottish rate of corporate tax to attract foreign investment. However, the proposal was mysteriously left out of the SNP's final election manifesto. What's more, the signs are that, far from cutting tax, the Scottish Government would have to increase it in order to offset a proposed cut in the grant that Scotland currently receives from the UK Government. This much was confirmed by Scottish Finance Secretary John Swinney earlier this month, when he said that an increase in the rate of Scottish income tax was under consideration.

Some analysts have also concluded that there is likely to be upward pressure on taxation in Scotland if it separates fiscally from the rest of the UK. The Institute for Fiscal Studies (IFS), for instance, warned in a briefing paper released in March 2015[6] that full fiscal autonomy for Scotland would likely involve substantial tax rises or spending cuts.

The IFS projects that Scotland's deficit will be 8.6 percent of gross domestic product (GDP) in 2014/15, and 8 percent of GDP in 2015/16. The deficit for the UK as a whole is expected to be 5 percent in 2014/15, and 4 percent in 2015/16. The IFS anticipates that this gap would be larger if oil prices remain at current levels. The Institute points out that, as Scotland's onshore economy and tax base are much smaller than those of the UK as whole, a fall in North Sea revenue has a much larger impact on Scotland's fiscal position.

The IFS said that if Scotland were fiscally autonomous in 2015/16, its budget deficit would be around 4 percent of GDP higher than that of the UK as a whole. In cash terms, this is equivalent to a difference of around GBP6.6bn.

The Scottish Government has previously suggested policies to boost growth, including cuts to corporation tax and expanding assistance for working parents. According to the IFS, the immediate effect would be to weaken the Scottish Government's finances. In addition, it said it is not clear that in the longer term the effects on growth would be enough to pay for such tax cuts and spending increases.

In the same weeks as the IFS briefing paper was published, the Scottish Government released spending and revenue figures for 2013/14. It showed that Scotland's tax take for the last financial year was GBP400 per head higher than the rest of the UK. Total public sector revenue was estimated at GBP54bn, and the budget deficit was 6.4 percent of GDP.

First Minister Nicola Sturgeon rejected the IFS's analysis of Scotland's fiscal situation, arguing:

> "We have the capacity and the resources to grow our economy, address inequalities, grow small businesses, and put more people back to work. But to do that we need more economic powers and the ability to protect Scotland against the anticipated GBP14.5bn in cuts that Westminster plans over the course of the next parliament. Going forward, these figures illustrate once again the need for the Scottish Government to have full control of job-creating powers."

> "If we held the levers of our economy in our own hands and were able to invest according to our own priorities, we could make a very significant positive contribution to growing our economy."

UK Tax – More Complex?

Putting these budgetary concerns aside, perhaps a clean break between the tax systems of Scotland and the rest of the UK might actually be the best outcome for taxpayers in administrative terms, with clear lines of responsibility drawn between the two jurisdictions, instead of the hybrid system offered by the Scotland Bill. Then again, the "two systems, one country" approach might not be as simple as it sounds, with the potential for much uncertainty about where taxpayers are resident for tax purposes. Indeed, the draft guidance on which taxpayers will pay the SRIT runs to 19 pages, illustrating how complex this issue is.

The general sentiment among businesses operating in the UK, and especially those with a presence in Scotland, is that Scottish independence would be a bad thing because it would increase costs and reduce efficiency for those trading in both Scotland and the rest of the UK. It therefore follows that full fiscal autonomy for Scotland, whether constitutionally autonomous or not, would also be undesirable for business taxpayers. As John Cridland, Director-General of the Confederation of British Industry (CBI), commented following the referendum result: "Business has always believed that the Union is best for creating jobs, raising growth and improving living standards."

Furthermore, even though the independence question has been settled – for now at least – the outlook for investors remains uncertain, with the debate about tax devolution between Scotland and the rest of the UK continuing to rage.

John Howie, CBI Scotland Chairman, summarized the situation on New Year's Eve 2014 by observing that the year that had just passed was "a momentous year" for Scotland and the UK, as it faced the prospect of a potentially acrimonious constitutional divorce. In 2015, he said, Scottish firms and international investors "will want a period of stability and policy certainty, which will enable them to build on Scotland's steady economic recovery."

Unfortunately, stability and policy certainty can hardly be used to describe the time that has elapsed since Howie's comments. And with the SNP determined to use their newfound political clout in Scotland's interests and generally be a thorn in the side of the Conservative Government for the next five years, the path ahead looks similarly rocky.

Scotland And The EU

Another issue of fundamental importance for investors with a presence in the UK – and not just Scotland – is the country's future legal relationship with the EU. It is hoped that the question of whether the UK will remain an EU member state –potentially with renegotiated treaty terms – will be settled once and for all within the next two and a half years, with the UK Government having promised to stage a referendum on the issue by the end of 2017. However, ongoing uncertainty about Scotland's constitutional position within the UK complicates matters further.

The SNP Government in Scotland is pro-EU, and in a document entitled "Scotland in the European Union,"[7] published in November 2013, it put its case for an independent Scotland joining the EU as a full member state in its own right. Of course, the victory for the "No" campaign in the independence referendum put paid to these plans. However, with the SNP, which essentially exists to achieve Scottish independence, riding on the crest of a popular wave in Scotland at the 2015 general election, the referendum result hasn't put the independence debate to bed as decisively as the UK Government had hoped. A second referendum cannot therefore be entirely ruled out.

So how would an independent Scotland fare in its quest to join the EU as a sovereign nation? For a start, Scotland would have to renegotiate membership, which is unlikely to be either a smooth or quick process, with new terms potentially leaving it worse off.

Moreover, the EU is unlikely to just automatically grant Scotland permission to join. As CBI Scotland has observed, even if an independent Scotland did eventually re-join the EU – which European Commission President Manuel Barroso has said would be "extremely difficult, if not impossible" – there would be "significant business uncertainty and loss of trade in the interim period."

"Scotland will not be able to pick and choose the terms of its membership and is likely to be asked to commit to joining the Euro, the Schengen visa area, and play a full part in a Banking Union, which could undermine the stability of financial centers in Scotland and the UK – these terms do not apply to the UK," CBI Scotland warned.

Other UK protections at risk include VAT exemptions for products like children's clothes. Indeed, amid uncertainty about the impact on the Scottish VAT regime of Scotland's ambition to achieve greater fiscal autonomy from the UK, the European Commissioner for Enlargement, Štefan Füle, has said that an independent Scotland would be required to install a positive rate of VAT on certain goods that uniquely benefit from a concessionary zero rate in the UK, secured when EU VAT law was rewritten.

Scotland would no longer be allowed to apply the UK's zero rate on clothing and footwear for children, books, equipment for people with disabilities, and ship repairs and maintenance services, he said. It would instead have to follow EU rules set out in 1991 if it remained inside the EU VAT area. However, there is considerable uncertainty about whether Scotland would have to leave the Union and reapply, having a potentially considerable impact on its VAT policies. This would be dependent on whether the UK supports the nation's efforts, which seems unlikely; Prime Minister David Cameron has previously said that Scotland would have to act alone on its status with the EU if it were to break away from the UK.

So now Scotland faces a situation whereby it will have no choice but to leave the EU if that's what UK voters choose in the EU referendum.

Endnotes

1 http://www.legislation.gov.uk/ukpga/1998/46/contents

2 http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted

3 http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0003/cbill_2015-20160003_en_1.htm

4 https://www.gov.uk/government/publications/scottish-rate-of-income-tax-technical-guidance-on-scottish-taxpayer-status/scottish-rate-of-income-tax-technical-guidance-on-scottish-taxpayer-status

5 http://www.snp.org/media-centre/news/2015/jun/snp-table-amendment-scotland-bill

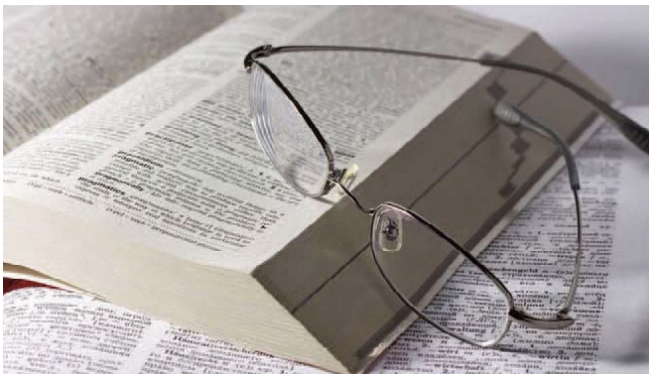
6 http://www.ifs.org.uk/publications/7637

7 http://www.gov.scot/Resource/0043/00439166.pdf

New Accounting Legislation Acts As Tax Catalyst In Switzerland

by Bernhard Madörin, artax Fide Consult AG, independent member of Morison International

Contact: Bernhard.Madoerin@artax.ch



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In tax proceedings, 95 percent of tax decisions are at the expense of the taxpayer – 90 percent in case of the Federal Supreme Court. This is not due to the formally or materially poor initial position of the taxpayer, it is an inherent failing in the system of tax proceedings and fiscal court proceedings. All public sector professionals at administrations and courts are public sector employees and thus, basically, have the state's interest at heart. The new accounting legislation will not make great inroads into this basic situation, and despite all noble claims of fiscal neutrality, it will cause all levies to go up.

According to Code of Obligations Art. 958, accounting should represent the financial situation of a company in such a way that third parties can make a fair judgment. Thus "fair presentation" becomes the new fundamental standard. As a result, building hidden reserves is no longer possible.

In contrast to past practice, all written guidance stresses that the purpose of the new accounting legislation is to ensure fiscal neutrality.

From a tax perspective, a few preferential rights in tax proceedings exist that reduce profits significantly – hidden reserves on stocks, *del credere*, and immediate write-offs, to name just the most important. These preferences cannot be reconciled with the principle of "true and fair view."

Thus, the starting position for analysis is as follows: As previous accounting legislation was more open, fiscal accounting regulations could be applied to balance sheet and profit-and-loss accounts, with the framework set up by the tax authorities as a matter of course. According to the new Swiss law, however, the very same fiscal accounting regulations, strictly speaking, can no longer be applied even though the tax authorities are still entitled to accept them. At first glance it appears likely that all manifestations of fiscal neutrality will be implemented. However,

the extent to which fiscal neutrality is actually implemented is open to debate and depends upon the directives from the Swiss authorities.

Consider the example of equity securities. The value of these investments is calculated according to accounting regulations and various methods (first-in, first-out (FIFO); last-in, first-out (LIFO), *etc.*). Tax authorities allow the taking of one-third of the value as hidden reserves on the investment. Specifically, investments in equity securities with a market value of CHF9m (USD9.6m) can be entered into the balance sheet at CHF6m. Cost of goods can be raised by CHF3m – a pleasant preferential right of tax practice. Should it not be possible to build up reserves in the first year, these hidden reserves can be established gradually over the years. It is obvious that this considerably reduces tax before profit, but it also means a reduction of profits in the actual balance of trade and thus no longer corresponds with "fair presentation."

In practice, tax authorities are granting flat *del credere* on debtors: 5 percent on (domestic) debtors, 10 percent on foreign debtors, and 15 percent on foreign debtors with foreign currencies involved, with specific regulations varying from canton to canton. More often than not these flat depreciations are granted on the net amount loaned, after deduction of loans effectively at risk. This constitutes another case of building up hidden reserves that does not correspond with a "true and fair view."

Another obstacle in tax legislation on the way to "fair presentation" is the balancing (capitalization) of services that have not yet been billed. So far, small and medium-sized enterprises (SMEs) in the services sector have rarely added this provision to the balance sheet. It is, and has been, the custom to add up all debtors that have been billed during the financial year. A balance position for work commenced was unusual. Fiscally neutral entries require individual advice.

As the dilemma between fiscal neutrality and fair presentation has been demonstrated, the question arises as to how approaches in line with accounting regulations can be applied to achieve the desired fiscal neutrality which has been guaranteed in relevant written material. There are two approaches.

- In the first approach, anyone intending to claim previous preferential rights that deviate from the new accounting legislation needs to show this difference in an appendix to the tax statement. This implicitly allows a profit adjustment in the tax statement, but is a necessary consequence of correctly implementing regulations.
- A second approach lies with dual accounting. In this approach a balance sheet is created according to both tax law regulations and accounting regulations and without any hidden reserves.

Dr Bernhard Madörin is a partner and a longstanding member of the Board of Directors of artax Fide Consult AG, based in Basel. Beside his function as managing director he, as a tax and trust expert, has responsibility for the divisions taxes, law and management consultancy. With 30 years of professional experience as a trustee and independent contractor, Bernhard specialises in tax law for individuals and SMEs. He has also authored several scientific and practice-oriented books and essays, and is a regular speaker on tax topics.

Topical News Briefing: Requiem For Doha?

by the Global Tax Weekly Editorial Team

As seen in this issue of *Global Tax Weekly*, while there has been a slowdown in new trade-restrictive measures introduced by G20 countries and further progress made in key bilateral free trade negotiations, the Doha Round of world trade talks remains becalmed, with hopes that it will ever reach port fading rapidly.

The Doha Round (also known as the Doha Development Agenda, or DDA) of talks began back in 2001. It aims to cut trade-distorting agriculture subsidies, phase out tariffs on industrial goods, open trade in services, facilitate customs operations, open trade in clean technology, adjust anti-dumping rules, and offer duty-free and quota-free access to the exports of the world's poorest countries, among many other goals. However, some emerging and developing nations remain of the view that many of the proposals on the table will benefit the economies of the developed world to the detriment of up-and-coming nations. Broadly, this is the reason why talks broke down in mid-2008 and have remained more or less stalled ever since.

Specific disagreements center largely on agriculture. While the developed nations, in particular the United States and those in the EU, have pledged to liberalize still highly protected agricultural markets – for example, by reducing subsidies and removing quotas to allow developing nations to sell more products there – these commitments have not gone far enough.

Another major stumbling block is the issue of tariff-free zones for certain industries, or "sectorials" in the lexicon of world trade. The emerging economies contend that these would benefit mainly producers from the US and the EU, and that there is little in it for them.

WTO members committed in November 2014 that they would agree a work program by July this year as a springboard towards the WTO's 10th Ministerial Conference in Nairobi in December. However, an agreement has been elusive, prompting WTO Director General Roberto Azevêdo to pronounce last week that "it is hard to see a way forward" on the wider Doha Round. Given the tirelessness with which Azevêdo and his predecessor, Pascal Lamy, have pursued an agreement to close the Doha Round, the comment suggests that this time, the possibility of failure is very real.

Earlier this month, the International Chamber of Commerce unveiled a report that set out a roadmap for a "grand bargain" to bring the long-delayed Doha Round to a conclusion. It was proposed in the report that advanced economies should make "serious concessions" in the Doha Round talks to

forge a deal on farm reform and market access for manufactured goods.

However, there are few indications that the developed nations are about to make such a grand gesture. Indeed, as Doha has floundered, they have become much more interested in making deals between themselves, such as with the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership.

Perhaps it is too pessimistic and premature to pronounce the death of the DDA now. Perhaps Azevêdo's bleak assessment of the situation was intended to shock the participants back into action. However, judging by recent history, there are few signals pointing towards significant progress being made any time soon.

Budget Take Two: Will UK Election Promises Be Made A Reality?

by Sophie Dworetzsky and Christopher Groves, Withers

Income Tax

Income tax (along with National Insurance and VAT) is to be the beneficiary of the tax lock, so there will be no increases in tax rates over the course of this parliament. The most notable point of this legislation is what it leaves out, so there is no commitment to maintaining or raising the income tax thresholds. With the Government committed to raising the basic rate threshold, taxpayers in the higher bands should not be expecting any positive moves in that regard soon.

Pension Tax Relief

The problem with committing to not raising the headline rates of tax in an era of continuing austerity is that it leaves the Government with the question of how to increase tax revenues. The answer is likely to be the continued restrictions on tax relief for contributions for higher rate taxpayers, with those earning more than GBP150,000 being progressively restricted to an annual allowance of GBP10,000. Top rate taxpayers would be well advised to consider whether they should either top-up their pensions or bring forward regular contributions before the Emergency Budget.

Capital Gains Tax

Capital gains tax has been notably not included in the triple lock guarantee. Rates presently stand at 28 percent for higher rate taxpayers, and indeed were set at that rate in the then government's Emergency Budget held in June 2010 – increasing the rate from the previous 18 percent. So one might be inclined to think that there should be little temptation to play with the rate further, yet when the Chancellor's hands are tied on the other direct taxes as a result of the triple lock, this might suddenly look rather more likely.

Entrepreneur's Relief

Even if the headline rate of capital gains tax doesn't change, there can be said to be risk exposure around Entrepreneur's Relief. This is currently a popular and successful relief which effectively gives a GBP10m lifetime allowance for gains on certain types of active business investments to be taxed at the 10 percent rate – so sort of but not really like Business Asset Taper Relief. An easy way of saving the

Treasury money would be to reduce or restrict this – whether by reducing the lifetime allowance, increasing the rate at which it applies, or significantly reducing the extent of the relief. It is understood that it was estimated to cost GBP2.9bn in 2013/14 and had been estimated to cost GBP900m. So a GBP2bn additional cost (even if it is largely down to an increase in the headline capital gains tax rate) is likely to look rather obvious and pose a risk to Entrepreneur's Relief.

It is however to be hoped that sense will prevail and that the serious importance of a tax relief that encourages investments in active UK trading entities survives. On that note it would also be desirable to see the scope of business investment relief, which permits non-doms to invest in some onshore businesses tax efficiently, expanded, for the same reasons.

Non-Domiciliaries

George Osborne has been robust in his defense of the remittance basis regime, claiming in the General Election campaign that abolishing "non-dom status altogether … would cost our country hundreds of millions of pounds in lost tax revenues and lost investment." However, leaving the regime in its current form does not seem to be in the Conservatives' plans either. Indeed, we now know that the Labour Party was concerned that the last government's final budget might abolish the regime, stealing the thunder of one of Labour's main manifesto commitments. The Conservative manifesto promised to "increase the annual tax charges paid by those with non-domiciled status, ensuring that they make a fair contribution to reducing the deficit, and continue to tackle abuses of this status."

So the remittance basis charge, which was increased to a maximum of GBP90,000 in the April Budget, looks likely to increase further. The proposal to allow non-domiciliaries to elect for the remittance basis only on a triannual basis also looks likely to proceed.

Will there though be a more far-reaching reform of the non-domicile regime?

So How Might Domicile Be Changed?

Perhaps the first point to make is that it seems unlikely that the concept of domicile, which has implications far wider than simply an individual's tax profile, will itself be amended. Instead it is likely that only the basis for qualification for the remittance basis would be changed.

Politically the greatest pressure for reform seems to fall on three categories of non-dom:

(1) **The inherited non-doms** – there is an increasingly large category of "2nd generation" non-domiciliaries being born and brought up in the UK, but who retain a domicile outside the UK;

(2) **The long-term resident non-doms** – perhaps more colloquially described as "the ones who are never going to leave"; and

(3) **Returning non-doms** – UK domiciliaries who have left the UK and acquired a domicile elsewhere, only to return to the UK as non-doms.

A New Test For Qualification For The Remittance Basis

- In 1985, the Law Commission considered replacing domicile with the concepts of "habitual residence" or simply nationality, although neither found favor with the Commission. For current tastes, habitual residence, which is used already in determining the jurisdiction of the English divorce courts, is likely to be too vague a concept and therefore prone to abuse.
- Nationality by contrast has the benefit of being certain, but would have the effect of bringing into the scope of UK tax a large number of expats who for all other purposes had severed their ties with the UK. The position of dual nationals would be difficult to deal with.
- For inheritance tax, there is a concept of "deemed domicile," which provides that non-domiciliaries who have been resident in the UK in 17 of the previous 20 tax years will be treated as domiciled in the UK for inheritance tax purposes. This concept could be extended to income tax and capital gains tax, and would ensure that long-term residents of the UK would not be able to claim the remittance basis. Such an amendment would have the benefit of simplicity and clarity and would address the perceived injustice of the inherited and long-term non-doms, but depending on where the line is drawn George Osborne may consider that he is in danger of killing the golden goose.
- If one of the issues with the current state of the domicile regime is that it is too easy for non-domiciliaries to resist the acquisition of a domicile in the UK, a rebuttable presumption could be introduced so that after a certain number of years of residence a rebuttable presumption would arise. The effect of this would be that while long-term non-doms would be able to continue to benefit from the remittance basis, rather than for HMRC to have to show that they had acquired a domicile in the UK, the taxpayer would have to demonstrate that they had not done so. Such a presumption could also be combined with a deemed domicile threshold so that after, say, 12 years of residence, taxpayers would be presumed to be domiciled in the UK and after, say, 17 years, deemed conclusively to be so.

In recent years, the watchwords for new tax legislation have been simplicity and fairness. Of the proposals set out above, the extension of the deemed domicile rules is the most simplistic, but such simple rules can often lead to unfairness in individual situations and a more nuanced rebuttable presumption may be preferred.

Ultimately any decision to change the application of the remittance basis is likely to be taken more with political considerations in mind rather than fiscal ones. George Osborne, who does not seem to shy away from laying traps for the other parties, may therefore prefer to delay any substantive change to the regime until later in the Parliament with the intention of stealing the thunder of any party that wanted to make changes to the regime part of its manifesto in the 2020 election, as Labour did this year.

Tax Avoidance

Will we see further measures in the same tone as accelerated payment notices and an increase in tax controversy? Given the advent of the common reporting standard, HMRC are going to be getting reams of information rather soon, which will mean greater use of investigations and therefore potentially the introduction of further measures which will enable the Treasury to monetize that information without having to wait for an investigation to be concluded in the taxpayer's favor.

Inheritance Tax

The Conservatives fought the election on the basis of adding a further GBP175,000 "transferrable main residence allowance" to the nil rate band. This proposal largely seems designed to allow the Conservatives to fulfill their long-stated desire to increase the (effective) IHT threshold for married couples to GBP1m without actually increasing the nil rate band.

It was announced in the April Budget that there would be a review of Deeds of Variation. Whether this was a genuine desire to review the law or a political stunt is unclear. In 1989, with Norman Lamont as Chancellor, a previous Conservative government proposed the abolition of Deeds of Variation for inheritance tax purposes because of a fear of avoidance. However, in the event, the proposal was dropped before it became law and it is to be expected that the wiser counsel that prevailed on that occasion will do so again.

Tax Policy

Finally, one of the first acts of the last government was to publish a policy paper entitled "Tax Policy Making: a new approach." This committed the government to greater stability and predictability in tax policymaking and was manifested in increased consultation with many (but certainly not all) measures introduced in the last Parliament. It is to be hoped that this approach will continue under the new Government.

EU Releases Corporate Tax Reform Action Plan

The European Commission has presented an Action Plan setting out a series of initiatives to tackle tax avoidance, secure sustainable revenues, and strengthen the Single Market for businesses.

The Action Plan, which was released on June 17, 2015, includes a strategy to re-launch the Common Consolidated Corporate Tax Base (CCCTB) and a framework to ensure effective taxation where profits are generated.

The Commission said: "The CCCTB can deliver on all fronts, significantly improving the Single Market for businesses, while also closing off opportunities for corporate tax avoidance. Negotiations are currently stalled on the Commission's 2011 proposal for a CCCTB. However, there is a general consensus that they need to be revived, given the major benefits that the CCCTB offers."

Work will begin immediately on a new proposal to introduce a mandatory CCCTB through a step-by-step approach. The Commission said: "This will allow member states to progress more quickly on securing the common taxable base. Consolidation will be introduced as a second step, as this has been the most difficult element in negotiations so far. The Commission will present this new proposal as early as possible in 2016."

The Action Plan includes the first pan-EU list of third countries deemed to be non-cooperative tax jurisdictions. The Commission has also launched a public consultation to gather feedback on whether companies should have to publicly disclose certain tax information, including through country-by-country reporting.

The Action Plan represents a second, more comprehensive step towards reforming corporate taxation in the EU. As a first step, the Commission proposed a Tax Transparency Package in March 2015 to enhance cooperation between member states on corporate tax issues. A key element in the Package was a proposal for the automatic exchange of information on tax rulings.

Welcoming the release of the Action Plan, OECD Secretary-General Angel Gurría said: "The Commission's initiative is another major step towards international cooperation in the fight against tax evasion and avoidance … Initiatives like the Commission's Action Plan will help foster a coordinated implementation of the measures developed in the course of the BEPS project. A globalized economy needs single global standards."

Commission Publishes Q&A On CCCTB Relaunch

The European Commission has published a question-and-answer document that provides further details on its June 17 proposal to re-launch

proposals for a Common Consolidated Corporate Tax Base (CCCTB) in the EU.

The CCCTB was first proposed by the Commission in 2011. However, after four years of technical discussions in Council, it was said that the original CCCTB proposal was too ambitious. Since then, member states have recognized the CCCTB's potential to improve opportunities for EU businesses and tackle tax avoidance. With the tentative support of member states, the Commission has therefore proposed a less ambitious schedule for the adoption of a CCCTB, in a revised proposal.

The CCCTB would establish a single set of rules for calculating cross-border businesses' income, harmonized rules on the levying of corporate income tax on that income, and improved rules on the allocation of that tax revenue.

The Commission believes that a CCCTB will unlock benefits for both companies and member states. For companies, it would reduce the obstacles to operating cross-border, remove distortions to competition, and ease the compliance burden. Companies will be able to file a single tax return for all their EU activities through one tax authority. In addition, multinationals will be able to offset losses incurred by connected parties against taxable income in another member state. A CCCTB would also reduce the high compliance costs of dealing with up to 28 different sets of rules.

For member states, the CCCTB is expected to contribute to efforts to tackle base erosion and profit shifting, consistent with the ongoing work of the OECD. In addition, it would no longer be possible for member states to have hidden elements in their tax bases. The CCCTB would also eliminate mismatches and loopholes in national tax systems and enable companies to adopt simpler transfer pricing approaches, thereby simplifying the administration and enforcement of transfer pricing rules for member states.

The re-launched CCCTB proposal, which is due to be presented in 2016, will contain two important changes. First, the CCCTB will be made mandatory for multinational companies because, according to the Commission, large companies that benefit from the current loopholes are unlikely to opt in. Second, the original proposal will be broken into smaller, more manageable stages to make it easier for member states to agree. As a first step, a common base will be agreed. As a second step, the Commission will seek to consolidate corporate tax rules, which will eventually allow companies to more comprehensively and simply offset losses in one member state against profits in another.

According to the Commission, the CCCTB reform will include changes to rules on permanent establishment – namely to ensure that companies with economic activities in one member state have a taxable presence there – and controlled foreign corporation rules will be improved. The Commission has emphasized that the reform is not about tax rates; member states will retain the right to decide their own corporate income tax rates.

Importantly for multinational companies, the Commission will propose cross-border loss offset for companies in the EU. With cross-border loss offset, a parent company in one member state would be able to receive temporary tax relief for the losses of a subsidiary in another member state. The Commission said this is particularly important to support start-ups and business expansion in the Single Market, as it would ensure that their cross-border activities enjoy the same loss offset treatment as purely national activities.

The rules would provide that, once that subsidiary became profitable, the member state in which the parent company is established would "recapture" the taxes that it relieved during the loss phase. As such, no member state would have to carry the long-term burden of an unprofitable company in another member state.

According to the Commission, "cross border loss offset would deliver many of the same benefits for businesses as the loss relief linked to consolidation in the CCCTB. However, consolidation is a much more substantial project, that would fundamentally change how corporate profits and losses are allocated between member states, with a definitive effect on Member States' revenues. As such, consolidation has been one of the most controversial aspects of the CCCTB for Member States, and will be postponed for the immediate future."

"Therefore, the purpose of the cross-border loss offset will be to allow businesses a basic system for loss relief – which is less contentious for Member States – until the ultimate goal of consolidation is achieved."

Ecofin Reviews Intra-group Royalties, Interest Proposals

The EU's Economic and Financial Affairs Council (Ecofin) met on June 19, 2015, to discuss a proposal to recast Directive 2003/49/EC, on the taxation of cross-border interest and royalty payments between associated companies.

The Interest and Royalties Directive was introduced to facilitate cross-border trade within the EU by removing withholding tax on interest and royalty payments between member states, and thereby avoiding double taxation where the recipient member state taxes the same income. In 2011, in response to concerns that the Directive was being abused, the Commission proposed to amend the Directive to provide that it would apply only where the recipient member state applies a certain level (minimum amount) of taxation to the interest and royalty payments.

The Latvian presidency has proposed that the Council adopt – as a first step – an anti-abuse clause to prevent the Directive from being used by multinational companies for tax avoidance and aggressive tax planning. The clause would include a *de minimis* rule, which would be aimed at preventing member states from granting the benefits of the Directive to arrangements that are not "genuine" (*i.e.*, those that have been put into place to obtain a tax advantage

without reflecting economic reality). The issue of minimum levels of taxation – believed to be a more contentious issue – will be tackled later.

According to a statement released after the meeting, while a broad majority of member states supported the presidency's proposal to split the two proposals, to move them forward, some member states said they preferred a more ambitious approach. An agreement was therefore not reached, as the Directive requires unanimity for adoption by the Council, after it has consulted the EU Parliament.

EU Aims For Tax Ruling Transparency This Year

"It seems to be realistic to finalize the file on the automatic exchange of information on tax rulings within this year," Valdis Dombrovskis, Vice President of the European Commission, has said.

Dombrovskis made the comment during a press conference after a meeting of the Economic and Financial Affairs Council (Ecofin). He said the Council was "encouraged by the progress made on our March proposals that tax authorities exchange information on tax rulings automatically."

Dombrovskis added that Ecofin hopes the incoming EU Presidency can finalize work on the project as soon as possible. Luxembourg will assume the Presidency of the EU from Latvia for six months from July 1.

Work will continue at a technical level to enable Ecofin to reach an agreement on the proposals in the autumn. The Council has produced guidance on the scope of the information to be exchanged, the timing of the first exchanges, and the role the Commission could play in the context of information exchanges between EU member states.

Crunch Time For WTO's Doha Round

The Director-General of the World Trade Organization (WTO), Roberto Azevêdo, has expressed disappointment with the lack of progress in negotiations on the work program to advance the remaining issues of the Doha Development Agenda.

The Doha Round, launched in 2001, seeks to achieve a global agreement on the reduction of tax and non-tariff barriers on international trade. WTO members committed in November 2014 that they would agree a work program by July this year as a springboard towards the WTO's 10th Ministerial Conference in Nairobi in December.

Azevêdo convened a meeting of all WTO members in Geneva on June 17, 2015, to report on the current state of play in the negotiations. He discussed in detail the consultations that have been held since the last meeting of all members on June 1.

"Taking an overview of all of these consultations, it is hard to see a way forward. There has been no progress on the gateway issues. We still have no convergence," he said. "As things stand I see very little prospect of delivering the substantive, meaningful work program which we have been aiming towards. That is the reality today. The question is whether we can change this situation by the end of July – and that is up to you."

The Director-General concluded: "Now it is time for the political calls to be made … We have a sense of what we can achieve, so now it's about making those tough political calls – just like we did in Bali. So this is the priority over the coming weeks. It's decision time."

States At Odds Over Doha Farm Tariffs

The chairman of the World Trade Organization's (WTO's) negotiating group on agriculture, John Adank, said on June 16, 2015, that WTO members are "still a long way from where they should be" in regards to finalizing a work program for the farm trade talks.

The farm talks are part of the Doha Round, a global agreement on the reduction of tax and non-tariff barriers to international trade. Members agreed at the WTO's December 2013 Ministerial Conference in Bali, Indonesia, to prepare a "clearly defined work program" for concluding the Doha Round of trade talks. They agreed to finalize the work program by the end of July. However, the talks have been held up by disagreements over tariff reductions, for farm imports in particular.

In a statement in May, the chairman highlighted a growing willingness among members to explore alternatives to the tariff reduction approach set out in the 2008 chairman's draft text on agriculture.

Adank said that concrete proposals regarding tariff reduction approaches have been put forward by Argentina, Paraguay, and Norway. Other approaches have also been suggested, although none has been outlined in a specific proposal at this stage. However, discussions on these alternative approaches over the past weeks "have not revealed any clear collective preferences," and a range of concerns have also been raised with respect to alternatives, he said.

"At the risk of stating the obvious, we are at the stage where members will need to make choices in order to achieve the objectives set out for us by Ministers," of securing a work program by the end of July for advancing the Doha Round talks, Adank said. "Discussions now need to move to a more decisive phase."

China, Australia Sign FTA

On June 17, Chinese Minister of Commerce Gao Hucheng and Australian Minister for Trade and Investment Andrew Robb signed a bilateral free trade agreement (FTA), after negotiations were completed in November last year.

Upon the FTA's entry into force, more than 85 per cent of Australian goods exports to China will be tariff free, rising to 95 per cent on full implementation. With regard to its agricultural sector, tariffs will be progressively abolished for Australia's dairy industry and its beef and sheep exports will gain from the phased abolition of tariffs ranging from 12 to 25 percent.

Tariffs will also be removed on almost all Australian resources and energy products. Duties on its aluminum oxide and coking coal exports will be removed on day one, with the tariff on thermal coal being phased out over two years. Tariffs will be also eliminated on a wide range of Australian manufactured goods, including pharmaceutical products and car engines.

The FTA has an in-built mechanism to allow for further liberalization and the expansion of market access over time. This includes a "first review mechanism," to be used within three years.

Bilateral trade in goods and services between the two countries was valued at more than AUD160bn in 2013–14, making China Australia's largest trading partner. China is also Australia's biggest goods export destination and its main source of goods imports.

The Australian Prime Minister said at the FTA signing ceremony that Australia is seeking to "seize this opportunity of more trade with China" alongside FTAs with Japan and South Korea – markets that account for more than 60 percent of Australia's export goods.

The FTA will enter into force after the completion of legal and parliamentary processes in China and Australia. Both countries are said to be working to complete those processes and bring the agreement into force as soon as possible.

WTO Notes Fall In G20 Trade Disputes

There has been a slowdown in the number of trade-restrictive measures introduced by G20 countries, according to a new report from the World Trade Organization (WTO).

The WTO's *Report on G20 Trade Measures*, released on June 12, 2015, covers the period October 16, 2014, to May 15, 2015. It said that, during the period, G20 economies applied 119 new trade-restrictive measures. An average of 17 new measures were applied per month, lower than at any time since 2013.

There was a slight decrease in anti-dumping investigations by G20 members during October 2014 to April 2015, compared with a year earlier. During the period, G20 members initiated 115 anti-dumping investigations, compared with 118 a year earlier. In the comparable period in 2012–2013, the G20 launched 88 anti-dumping investigations.

India initiated the most anti-dumping investigations (28), followed by Turkey (16), and the US (14).

The report said that G20 nations continued to adopt measures aimed at facilitating trade. The countries introduced some 112 new trade facilitating measures in the period, an average of 16 measures per month. When counted without trade remedy actions, G20 economies have adopted more liberalizing import measures than restrictive measures since the end of 2013.

The G20 members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the UK, the US, and the EU.

Tanzania's New VAT Act In Force From July

Tanzania's new value-added tax (VAT) law, the Value Added Tax Act 2014, which was published in the Official Gazette on May 16, 2014, will enter into force on July 1, 2015.

The new law will limit the number of items exempt from VAT. As compared with the current law, the new Act broadens the tax base by introducing VAT on gaming activities, insurance other than life insurance, and employee benefits in kind. Electronic services supplies to persons in Tanzania – including websites, software, access to a database, music, sports, and television broadcasting – will be newly subject to tax, and the law changes rules on the tax treatment of the transfer of a going concern. The Act also contains provisions to ensure exports are zero-rated.

According to the Act, exemptions will be provided for supplies of agricultural implements, agricultural inputs, basic agricultural products, food for human consumption, medicines and pharmaceutical products, articles designed for blind or disabled persons, health care, immovable property, education, intermediary services, non-profit organizations, and petroleum products.

In addition, payment of tax on imported capital goods will be deferred, to speed up refund processing, address traders' cash flow concerns, reduce compliance and administration costs, and tackle abuse.

The Act removes the Finance Minister's powers to grant tax exemptions, to provide for more stable revenue.

A new section in the Act requires taxable persons to display tax-inclusive prices transparently, and the Act retains the 18 percent headline rate.

Romania To Introduce New Reduced VAT Rate

Romania's lower house of Parliament has approved plans to introduce a new reduced rate of VAT for cultural services, lower value houses, and printed media.

The new 5 percent VAT rate would apply to books, newspapers and magazines, and to tickets to museums, monuments, cultural events, cinemas, and sporting events.

The rate would also be applied to sales of private dwellings with a value not exceeding RON450,000 (USD113,800), excluding VAT, where the house is at least 120 square meters and the plot is not more than 250 square meters.

The upper house had earlier proposed that cultural services be subject to a rate of 9 percent.

HMRC Continues Littlewoods Ruling Challenge

The UK's HM Revenue & Customs (HMRC) has released Brief No. 9 of 2015, which details the agency's response to the Court of Appeal's May 21 judgment against it, in *Littlewoods Retail Ltd and others* ([2015] EWCA Civ. 515).

Littlewoods claimed a refund of overpaid value-added tax (VAT) in respect of commissions from third party purchases from 1973 until October 2004. This VAT was repaid together with simple interest due under the VAT Act (VATA) 1994. The company then argued that the interest already paid was inadequate and that it was entitled to compound interest both as a matter of European Community law and also as a matter of English domestic law.

The High Court ordered a reference to the European Court of Justice (ECJ) for a decision on whether community law required payment of compound interest. It was heard on November 22, 2011, and the ECJ's judgment was delivered on July 19, 2012. The ECJ said that there is no EU law right to compound interest, but returned the matter to the UK courts to determine whether the UK's interest provisions comply with general EU principles by providing the claimants with an adequate indemnity.

The Court of Appeal found against HMRC, deciding that Littlewoods's claim for additional interest succeeded in full. Like the High Court's earlier ruling, this finding was based on the "exceptional" circumstances specific to the Littlewoods claimants, HMRC said. "It does not provide a clear basis that could be applied to other claimants or a formula for doing so," HMRC added, confirming that no payments are due to other VAT compound interest claimants at this stage.

In Brief No. 9, HMRC said the its view is that there is no community law right or domestic law right to compound interest and that section 78 of VATA 1994 provides an exhaustive and adequate statutory scheme by which only simple interest is payable. It said it does not agree with the judgment and considers it to be at odds with the requirements of European law and how Parliament intended VAT law to work. Accordingly, HMRC is seeking permission to appeal to the Supreme Court. It may, however, be a number of months before HMRC will know the outcome of its application for permission to appeal.

In the Brief, HMRC stated: "HMRC's view is that this ruling does not provide a clear method for calculating the level of interest which provides adequate indemnity to claimants. The Court of Appeal followed similar reasoning to the High Court, ruling that the claimants had a right to adequate indemnity, and this was not met by the statutory interest already paid. This was based on the facts and circumstances of those claimants. The litigation is not yet final so, given the Court of Appeal did not change the High Court judgment, the position taken by HMRC is unchanged."

"The Court of Appeal, like the High Court, ruled that in many cases the statutory interest paid would be adequate and no further payments would be due. For any other claimant to succeed, the details of their claim would have to be considered in similar detail in a separate court hearing. The Court of Appeal provided no further guidance on how claims to compound interest made through the Tribunal appeals process should be treated. Nor did it alter the earlier finding of the Upper Tribunal that compound interest is not available consequent to an appeal to the Tribunal. Further, in relation to a number of other claims, there are other significant strands of litigation still to be resolved before these claims can be examined and concluded."

"As HMRC is seeking leave to appeal to the Supreme Court, the availability of compound interest in any circumstances remains in dispute."

IMF Welcomes Dutch Tax Reforms

The International Monetary Fund (IMF) has welcomed the Dutch Government's plan to levy the headline value-added tax (VAT) rate on a broader range of goods and services.

The Government said that it hopes to generate additional revenues worth EUR5bn (USD5.6bn) by limiting the scope of the reduced VAT rate. Currently, the headline rate is 21 percent, and a reduced rate of 6 percent is levied on water and basic foodstuffs; some pharmaceuticals; books, newspapers, and periodicals; admissions to cultural services and amusement parks; agricultural inputs; hotel accommodation; restaurant and catering services; bicycles; clothing; and hairdressing services.

Under recently announced plans, the reduced rate would only be levied on basic foodstuffs.

The IMF also welcomed reduced tax incentives for real estate, and a reduction in labor taxes. It said in a statement following a staff mission to the country that these and other reforms could potentially increase the efficiency of the tax system and promote higher employment.

The IMF encouraged the authorities to simplify areas of taxation that have become complicated and burdensome for both the tax administration and taxpayers.

IMF Report Looks At Tax And Wealth Distribution

High-income households and corporations now face lower effective rates in some advanced economies, and this has contributed to an increase in net income inequality, according to a new International Monetary Fund (IMF) report entitled *Causes and Consequences of Income Inequality: A Global Perspective*.

The report says that when the income share of the top 20 percent increases, gross domestic product growth actually declines over the medium term, suggesting that the benefits of tax savings do not trickle down.

The report calls on governments to use fiscal policy to tackle inequality. The IMF said fiscal redistribution that is carried out in a manner that is consistent with other macroeconomic objectives can help raise the income share of the poor and middle class, and thus support growth.

The IMF says that fiscal policy already plays a significant role in addressing income inequality in many advanced economies, but the redistributive role of fiscal policy could be reinforced by countries relying more on wealth and property taxes, more progressive income taxation, and by removing opportunities for tax avoidance and evasion.

In addition, reducing tax expenditures that benefit high-income groups most and removing tax relief – such as reduced taxation of capital gains, stock options, and carried interest – would increase equity and create space for growth-enhancing cuts to marginal labor income tax rates in some countries, the report says.

Ecuador Delays Tax Bills After Protests

The President of Ecuador, Rafael Correa, announced on June 15, 2015, that he has temporarily withdrawn two controversial tax bills following several days of protests.

Correa earlier proposed a "wealth redistribution law," which would increase taxes on a sliding scale for inheritances worth more than about USD35,000. The rate would range from 2.5 percent to 47.5 percent for direct heirs, but in the case of indirect recipients it could be as high as 77.5 percent. Currently the inheritance tax is levied only on sums larger than USD68,800. He also intends to hike the tax on capital gains.

The proposals were originally expected to be debated by the National Assembly next month. However, Correa said on June 15 that he has decided to put the tax bills on hold in order to allow time for public debate. He also said that he wants to ensure a peaceful environment during Pope Francis's visit to the country between July 5 and 8.

There have been reports of clashes between opponents and supporters of the tax bills. The opposition has demanded Correa's resignation.

UK's Cameron Pledges Lower Tax For Workers

The UK needs to "move from a low wage, high tax, high welfare society to a higher wage, lower tax, lower welfare society," Prime Minister David Cameron has said.

In a speech, Cameron said that policymakers must deal with the "ridiculous merry-go-round" of the tax credits system, under which "people working on the minimum wage [are] having that money taxed by the government and then the government [is] giving them that money back – and more – in welfare."

Cameron added that the welfare system should encourage well-paid work and no longer merely "present the veneer of fairness." He said the new Conservative Government will reform what Cameron described as "the damaging culture of welfare dependency" and ensure that "work pays," as part of a broader mission to "make Britain fit for the future."

The Government intends to further roll out the Universal Credit, which is intended to soften the impact of earning more income for those receiving welfare; lower the maximum amount of welfare that households can receive; and increase the personal tax-free allowance to GBP12,500 (USD19,761).

In a joint article for the *Sunday Times* on June 21, Chancellor George Osborne and Work and Pensions Secretary Iain Duncan Smith confirmed that GBP12bn in welfare cuts, announced ahead of last month's general election, will go ahead this year.

On July 8, Osborne will deliver the first Conservative-only Budget in 18 years. The party's pre-election manifesto included plans for a five-year freeze on income tax, National Insurance and value-added tax rates, and a pledge to increase the threshold for the 40 percent rate of income tax.

Bermuda Dumbfounded By EU Blacklist Inclusion

Bermuda's Minister of Finance, Bob Richards, has called the territory's inclusion on a new EU tax blacklist "unjustified and baseless."

The EU tax blacklist was included in the European Commission's new Corporate Tax Reform Action Plan released on June 17, 2015. It is a list of those territories that feature on ten or more EU member state blacklists.

Richards said that many of the EU member states that have deemed Bermuda to be non-cooperative have not concluded as many tax treaties as Bermuda and some have lesser frameworks for tax transparency. He called the selection process arbitrary.

He said: "Bermuda has signed a large number of tax information exchange agreements with countries around the world and today has 80 treaty partners because of signing the Multilateral Tax Convention. Those 80 partners include all G20 countries, all OECD countries except for one, and all EU countries except for two, because those three countries have not yet signed the international standard on tax matters, the Multilateral Convention."

"At least five of those 11 EU member states that have us on their national blacklist have not performed their obligations in one way or the other. Two of the five were to give beneficial recognition to the Multilateral Tax Convention in their blacklist criteria; one is still in the process of considering recognition of the Multilateral Convention; one has not kept their promise to send Bermuda documents to sign to take us off their list; … one of the two EU member states I earlier mentioned has not even signed up to the Multilateral Tax Convention, and one publicly announced earlier this year that it had taken Bermuda off its blacklist."

Caymans Note OECD Response To EU Tax Blacklist

Cayman Finance has responded to the recent publication by the EU of a tax blacklist of territories seen to be non-cooperative in tax matters, and noted support from the OECD for territories included on that list.

Cayman Finance, the promotional agency on behalf of the Cayman financial services industry, said that it had received an email from the OECD stating that the OECD had sought to distance itself from the EU's blacklist.

The agency said the email had been sent to all 126 members of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and was signed jointly by the Director of the OECD Center for Tax Policy and Administration and the Head of the Global Forum Secretariat.

According to Cayman Finance, the email said: "As the OECD and the Global Forum, we would like to confirm that the only agreeable assessment of countries as regards their cooperation is made by the Global Forum and that a number of countries identified in the EU exercise are either fully or largely compliant and have committed to the Automatic Exchange Of Information, sometimes even as early adopters."

"Without prejudice to countries' sovereign positions, we are happy to confirm that these jurisdictions are cooperative and we would like to commend the tremendous progress made over the past years as well as the cooperation and integrity of the Global Forum process."

"We have already expressed our concerns and stand ready to further clarify to the media the position of the affected jurisdictions with regard to their compliance with the Global Forum standards."

Monaco Responds To EU Blacklisting

Monaco's Government has set out its objections to its inclusion on the EU's recently issued tax blacklist, stating that it does not reflect the Principality's policies.

In a June 22 statement, the Government said that the list is flawed. It noted that certain territories have been included on the EU's list if they feature on ten or more EU member states' own blacklists. It noted the difficulty of being removed from these lists, as the member states have different criteria for a territory's removal; some are based on effective tax rates, and others are dependent on the signing of an agreement with tax information exchange provisions.

Monaco highlighted that in many instances its tax rates are equal to or exceed those of some EU member states, taking the example of France in its statement.

In addition, the Government noted that, since 2009, Monaco has signed 32 exchange of information agreements based on the OECD standard, and was recognized as "largely compliant" with international standards at the Sixth Meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes held in Jakarta in November 2013.

The Government went on to note ongoing efforts to pursue removal from EU member state blacklists, noting ongoing negotiations for exchange of information agreements, in particular with Italy, Spain, and Portugal.

US House Backs Medical Device Tax Repeal

The US House of Representatives has passed, by a bipartisan vote of 280-140, a bill to repeal Obamacare's 2.3 percent medical device tax, which is imposed on manufacturers and importers of devices such as artificial hips, MRI scanners, and cardiac defibrillators.

The medical device tax was included in the Affordable Care Act (ACA) to finance part of President Barack Obama's healthcare reforms, and went into effect on January 1, 2013.

While it is projected to raise nearly USD28.5bn in net additional revenue over the ten years to 2022, the tax is said to be a heavy burden for the 8,000 companies in the USD140bn US medical devices industry.

One of the problems seen with the tax is that it is levied on gross sales receipts in excess of USD5m, rather than on business profits, meaning that the tax is due regardless of whether the company is profitable.

A survey by the Advanced Medical Technology Association of its members in 2014 found that almost one in three (30.6 percent) companies had reduced research and development spending, and almost 10 percent said they had relocated manufacturing operations outside the US or expanded manufacturing abroad because of the tax.

The tax has therefore attracted much opposition, both from the industry and also in Congress, where there has been bipartisan lobbying for its repeal.

The bill's author, Erik Paulsen (R – Minnesota), Co-Chair of the Congressional Medical Technology Caucus and a Ways and Means Committee member, stated: "We take great pride in our ability to create, invent, and innovate – especially when it comes to products that improve people's lives. The medical device tax stands in direct contrast to this ideal, which is why you've seen Members of Congress from across the political spectrum support its repeal."

Similarly, Ways and Means Committee Chairman Paul Ryan (R – Wisconsin) pointed out that "taxing medical devices not only stifles innovation and threatens American jobs, but drives up health care costs and makes treatments less accessible for those who need them most. By repealing this tax, American medical innovation can refocus on encouraging discovery and finding solutions for the health challenges."

Nevertheless, there were still voices against the repeal legislation, particularly as it does not include revenue offsets. Ways and Means Committee Ranking Member Sander Levin (D – Michigan) warned that "what the Republicans are aiming to do is to unravel the ACA. Furthermore, this bill is unpaid for."

The legislation can now proceed to the Senate, where repeal of the medical device tax also has

bipartisan support. However, the White House remains implacably opposed to the measure.

A Statement of Administration Policy said repeal of the tax "would increase the deficit to finance a permanent and costly tax break for industry without improving the health system or helping middle-class Americans. If the President were presented with [it], his senior advisors would recommend that he veto the bill."

US Congress Holds Hearings On HTF Funding

The main tax-writing bodies in the US Congress – the House of Representatives Ways and Means Committee and the Senate Finance Committee – have recently held hearings in an attempt to identify possible measures for the long-term funding of the Highway Trust Fund (HTF).

The HTF mainly depends on the federal fuel tax, otherwise known as the gas tax, that has remained at 18.4 and 24.4 cents per gallon for gasoline and diesel, respectively, since 1993. As a consequence, revenues from the US gas tax and tolls are presently paying for only about a third of state and local spending on roads, despite being solely dedicated to funding transportation projects.

It has been pointed out that the problem will not correct itself, as gasoline sales are projected to decline as a result of the increased use of alternative fuels. According to the Congressional Budget Office (CBO), a funding shortfall of USD92bn would emerge at present spending levels over the period 2015–2020.

The impending expiry of short-term funding for the HTF, in place only until the end of July, has again led to calls for more stable sources of funding to be found.

However, no solution emerged from both congressional hearings, with the obvious (but politically difficult) solution of hiking gas taxes still being ruled out by leading lawmakers.

In his opening statement, Senate Finance Committee Chairman Orrin Hatch (R – Utah) said that, "while I know the idea has some support, I don't think a massive increase in the gas tax could be enacted into law."

Ways and Means Committee Chairman Paul Ryan (R – Wisconsin) went further, stating: "I want to make very clear: I'm against raising the gas tax. There's not much happening in this economy to help it grow, but lower gas prices is one of them. Working families have been struggling for years to get by. It would be downright unfair to take that away from them. So we are not raising gas taxes – plain and simple."

The CBO, in its testimony, noted that, "if lawmakers chose to meet the obligations projected for the trust fund solely by raising revenues, they would need to increase motor fuel taxes by roughly 10 cents per gallon, starting in fiscal year 2016."

Earl Blumenauer (R – Oregon), who is a member of the Ways and Means Committee, drew attention to a bill he has introduced that would phase in a 15 cents per gallon gas tax increase over three years and provide USD210bn in HTF funding over the next decade.

In his testimony, the President and CEO of the American Trucking Associations, Bill Graves, supported an increase in the gas tax as a viable revenue source for the HTF, today and for the foreseeable future. He also voiced support for a new annual flat registration fee that could be levied on all vehicles, but voiced opposition to increases in the heavy vehicle use tax, the federal excise tax, and the tire tax. He also said that a transition to a vehicle miles traveled tax "faces many obstacles" at this time, including high administrative costs.

ANDORRA - ITALY

Forwarded

Andorra's Cabinet on June 17, 2015 approved the signing of a TIEA with Italy.

AUSTRALIA - GERMANY

Negotiations

Australia and Germany are to negotiate a new DTA, the Australian Government announced on June 16.

CANADA - COOK ISLANDS

Signature

Canada and the Cook Islands signed a TIEA on June 15, 2015.

CHINA - ANGOLA

Negotiations

China and Angola agreed to soon begin DTA negotiations, the Chinese Ministry of Foreign Affairs confirmed on June 9, 2015.

GIBRALTAR - GUERNSEY

Ratified

Gibraltar on June 4, 2015 ratified the TIEA signed with Guernsey, publishing a notification in its Official Gazette.

GUERNSEY - BULGARIA

Signature

Guernsey and Bulgaria completed the signing of a TIEA on June 11, 2015.

IRAN - HUNGARY

Negotiations

According to preliminary media reports, Iran and Hungary completed a first round of DTA negotiations on June 17, 2015.

LIECHTENSTEIN - ANDORRA

Initialed

Liechtenstein and Andorra initialed a DTA on June 9, 2015.

TAIWAN - NIGERIA

Negotiations

Taiwan and Nigeria have expressed interest in negotiations towards a DTA, Nigerian state media reported on June 3, 2015.

TURKS AND CAICOS ISLANDS - SOUTH AFRICA

Signature

According to preliminary media reports, the Turks and Caicos Islands signed a TIEA with South Africa on May 27, 2015.

SINGAPORE - THAILAND

Signature

Singapore and Thailand signed a DTA on June 11, 2015.

SOUTH AFRICA - MAURITIUS

Ratified

South Africa completed its domestic ratification procedures on June 17, 2015 in respect of the DTA signed with Mauritius, publishing a notification in its Official Gazette. The DTA entered into force on May 28, 2015, and it will be effective from January 1, 2016.

SOUTH AFRICA - TURKS AND CAICOS ISLANDS

Signature

According to a June 8 update from the South African Revenue Service, South Africa signed a TIEA with the Turks and Caicos Islands on May 27, 2015.

SOUTH AFRICA - VARIOUS

Into Force

According to a June 8 update from the South African Revenue Service, South Africa's TIEAs with Belize and Liechtenstein entered into force on May 23, 2015.

UNITED ARAB EMIRATES - UGANDA

Signature

The United Arab Emirates and Uganda signed a DTA on June 9, 2015.

UNITED KINGDOM - KOSOVO

Signature

The United Kingdom and Kosovo signed a DTA on June 4, 2015.

ZAMBIA - NETHERLANDS

Forwarded

According to preliminary media reports, Zambia's Cabinet has approved the signature of a DTA with the Netherlands.

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

THE AMERICAS

BASICS OF INTERNATIONAL TAXATION 2015 – NEW YORK

PLI

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

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

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GLOBAL TAX TRANSPARENCY FOR LATIN AMERICA & THE CARIBBEAN 2015

Hanson Wade

Venue: Conrad Miami, 1395 Brickell Avenue, Miami, Florida, 33131, USA

Key speakers: Alfredo Revilak (Servicio de Administración Tributaria), Neil M. Smith (Ministry of Finance Government of the Virgin Islands), Álvaro Iván Revelo Méndez (Secretaría Distrital de Hacienda), Nadja Ruiz (Servicio de Administración Tributaria), Miguel Zamora (Noguera, Larraín & Dulanto), among numerous others

8/4/2015 - 8/5/2015

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Practicing Law Institute

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

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

9/9/2015 - 9/9/2015

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

BASICS OF INTERNATIONAL TAXATION 2015 – 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/

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/

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

ASIA PACIFIC

3RD GLOBAL CONFERENCE ON FINANCE & ACCOUNTING

Asia Pacific International Academy

Venue: Concorde Hotel, 100 Orchard Rd, 238840 Singapore

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

7/29/2015 - 7/30/2015

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

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

WESTERN EUROPE

TAX PLANNING WORKSHOP

IBFD

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

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

7/2/2015 - 7/3/2015

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

SUMMER COURSE ON EU TAX LAW

ERA

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

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

7/6/2015 - 7/10/2015

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

PRIVATE CLIENT INTERNATIONAL TAX UPDATES

IBC

Venue: TBC, London

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

7/7/2015 - 7/9/2015

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

PRIVATE WEALTH AFRICA 2015

IIR & IBC

Venue: TBC, London

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

7/8/2015 - 7/8/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – LONDON

CCH

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

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

7/8/2015 - 7/9/2015

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

OFFSHORE TAXATION – A BRAVE NEW WORLD

IIR & IBC

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

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

7/14/2015 - 7/14/2015

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

INTERNATIONAL TAX SUMMER SCHOOL 2015

IIR & IBC Financial Events

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

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

8/18/2015 - 8/20/2015

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

THE 25TH OXFORD OFFSHORE SYMPOSIUM 2015

Offshore Investment

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

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

9/6/2015 - 9/12/2015

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

DUETS ON INTERNATIONAL TAXATION: GLOBAL TAX TREATY ANALYSIS

IBFD

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

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

9/7/2015 - 9/7/2015

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

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

IBFD

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

Key Speakers: TBC

9/8/2015 - 9/8/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – BRISTOL

CCH

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

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

9/9/2015 - 9/10/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – MILTON KEYNES

CCH

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

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

9/15/2015 - 9/16/2015

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

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

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

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

9/16/2015 - 9/18/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – MANCHESTER

CCH

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

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

9/22/2015 - 9/23/2015

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

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

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

INTERNATIONAL TAX STRUCTURING FOR MULTINATIONAL ENTERPRISES

IBFD

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

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

10/21/2015 - 10/23/2015

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

EU FINANCIAL ACCOUNTING IN INTERNATIONAL COOPERATION AND DEVELOPMENT PROJECTS

European Academy

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

Key Speakers: TBC

11/26/2015 - 11/27/2015

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

WESTERN EUROPE

France

The European Court of Justice (ECJ) has provided a preliminary ruling that could spell the end for French group tax provisions that offer concessionary treatment limited to domestic group entities.

French legislation on corporation tax stipulates that distributions of profits from a subsidiary to a parent company are not, in principle, taxed at the parent. Excluded from this, however, is a 5 percent proportion, which represents the charges incurred by the parent company in connection with its holding in the subsidiary. These charges are not to be deductible because they serve the realization of non-taxable income by the parent company, namely the distribution of profits from its subsidiaries.

This (effectively partial) taxation of profit distributions does not occur, however, if the parent company and the subsidiary are taxed jointly under a regime known as *intégration fiscale*. Since foreign companies are not allowed to take part in this form of group taxation, the Court had been asked to examine whether such a regime is consistent with the freedom of establishment and the corporation tax legislation of the EU.

The case concerned Groupe Steria, which was seeking to deduct the 5 percent proportion for costs and expenses, which is non-deductible under point 1 of Article 216 of the General Tax Code (CGI), in

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

respect of revenue that one of its French subsidiaries received from its holdings in companies established in other EU member states.

The French authorities had refused this deduction because it is only possible under paragraph 2 of Article 223B of the CGI if the holdings' revenue originates from a member of the tax group. Under paragraph 2 of Article 223A of the CGI, however, companies resident abroad may not be members of a tax group.

Groupe Steria in fact accepted the exclusion of foreign companies from group taxation. However, it took the view that the French legislation is

inconsistent with the freedom of establishment in so far as it refuses to allow deduction of the 5 percent proportion in respect of holdings that could be part of the tax group were they not resident abroad.

In its ruling in the case, the ECJ agreed with the taxpayer that the regime is contrary to the EU law of freedom of establishment.

The ECJ recommended that the referring court, the Administrative Court of Appeal of Versailles (*Cour Administrative d' Appel de Versailles*) answer as follows:

> "The freedom of establishment under Article 43(1) EC and Article 48 EC precludes legislation of a member state which under a special rule on group taxation available only to domestic companies allows group companies to deduct the charges relating to holdings in other group companies when this deduction is otherwise excluded."

This judgment was released on June 11, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164945&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=223500

European Court of Justice: *Groupe Steria SCA v. French Finance Ministry (Case C-386/14)*

Germany

The European Court of Justice (ECJ) has ruled that Germany's duty on nuclear fuel is compatible with EU law.

In 2010, Germany adopted a law on excise duty on nuclear fuel (*Kernbrennstoffsteuegesetz*). That law introduced, for the period from January 1, 2011, to December 31, 2016, a duty on the use of nuclear fuel for the commercial production of electricity. The duty in respect of 1 gramme of plutonium 239, plutonium 241, uranium 233, or uranium 235 is EUR145 and is payable by nuclear power station operators.

Kernkraftwerke Lippe-Ems, which operates the Emsland nuclear power station in Lingen (Germany), challenged the duty before the *Finanzgericht Hamburg* (Finance Court, Hamburg, Germany). It took the view that the German duty on nuclear fuel is incompatible with EU law. The Finanzgericht decided to submit questions to the ECJ concerning the compatibility of the duty with EU law.

The ECJ replied that EU law does not preclude a duty such as the German duty on nuclear fuel.

First, the ECJ rejected the argument that nuclear fuel must be exempt from taxation under the Directive on Taxation of Energy Products and Electricity (the Directive which lays down a mandatory exemption for, among other things, energy products subject to harmonized excise duty and used to produce electricity). With the fuel not appearing on the exhaustive list of energy products set out in

the Directive, nuclear fuel cannot be covered by the exemption provided for some of those products, the ECJ said. According to the Court, nor can the exemption in question be applied by analogy. In essence, the ECJ rejected the idea that a duty cannot be levied at the same time on the consumption of electricity and on the sources from which that energy is produced, which are not energy products within the meaning of the Directive.

Next, the ECJ found that the Directive concerning the general arrangements for excise duty does not preclude the German duty on nuclear fuel. As it is not levied (directly or indirectly) on the consumption of electricity or that of any other product subject to excise duty, that duty does not constitute excise duty or "other indirect taxes" on that product within the meaning of the Directive. In that connection, the ECJ observed in particular that it is not apparent that a direct and inseverable link exists between the use of nuclear fuel and the consumption of electricity produced by the reactor of a nuclear power plant. Nor can the duty in question be regarded as being calculated directly or indirectly on the quantity of electricity at the time of release for consumption of that product.

Moreover, the German duty on nuclear fuel does not constitute state aid prohibited by EU law, the ECJ said, as methods of producing electricity, other than that based on nuclear fuel, are not affected by the rules introduced by the law on duty on nuclear fuel.

The ECJ considered next that the Treaty establishing the European Atomic Energy Community (Euratom Treaty, or EAEC), which covers nuclear fuel, does not preclude the German duty either. That duty does not constitute a charge having equivalent effect to a customs duty. It is levied not because nuclear fuel has crossed a frontier, but because it is used for the commercial production of electricity, irrespective of the source of that fuel. The ECJ also observed that the attainment of the Euratom Treaty's objectives does not require member states to maintain or increase their level of use of nuclear fuel or prevent them from taxing such use, which would make such use more costly and, therefore, less attractive. Furthermore, as it is levied not on the purchase of nuclear fuel but on the use of such fuel, the German duty does not jeopardize the fulfillment of the EAEC's duty to ensure that that community's users receive a regular and equitable supply of ores and nuclear fuels, the ECJ said.

This judgment was released on June 4, 2015.

http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-06/cp150062en.pdf

European Court of Justice: *Kernkraftwerke Lippe-Ems GmbH v. Hauptzollamt Osnabrück (Case C-5/14)*

Hungary

The European Court of Justice (ECJ) has provided a preliminary ruling concerning Hungary's decision to substantially increase tax on amusement arcades in 2011. It said Hungarian legislation which

prohibits the operation of slot machines outside casinos may be contrary to the principle of freedom to provide services.

Up until October 9, 2012, slot machines could be operated in Hungary either in casinos or in amusement arcades. Until October 31, 2011, the flat-rate tax on the operation of slot machines amounted to HUF100,000 (USD361) per playing position per month. As from November 1, 2011, that amount was increased to HUF500,000. From that date, the operation of slot machines in amusement arcades was also subject to a proportional tax which, for each playing position, amounted to 20 percent of the net quarterly revenue from the machine in excess of HUF900,000.

The operation of slot machines in casinos was subject to a separate system of taxation, which was not changed in the fall of 2011.

Under a law adopted on October 2, 2012, the operation of slot machines was restricted to casinos, with effect from October 10, 2012. Since that date, such activity can no longer be carried out in amusement arcades.

Several companies that operated slot machines in amusement arcades brought an action before the Hungarian courts, claiming that EU law precludes measures which initially drastically increased their tax burdens and then, at a later stage, prohibited, with almost immediate effect, the operation of the machines concerned. Those companies are seeking compensation for the damages they claim to have suffered as a result of those measures.

The ECJ found that, first of all, national legislation which authorizes the operation and playing of certain games of chance only in casinos constitutes a restriction on the freedom to provide services. Likewise, a measure that drastically increases the amount of taxes levied on the operation of slot machines in amusement arcades can also be considered restrictive if it is liable to prohibit, impede, or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades. In that regard, the ECJ observed that that would be the case if the national court found that the tax increase prevented profitable operation of slot machines in amusement arcades, thereby effectively restricting it to casinos.

The ECJ referred a number of other matters to the national court for it to decide upon. It said the national court must decide whether the objectives pursued by the contested measures, namely the protection of consumers against gambling addiction and the prevention of crime and fraud linked to gambling, are, in principle, capable of justifying restrictions on gambling. Those restrictions must, however, pursue those objectives in a consistent and systematic manner, it argued.

The ECJ did note, however, that Hungary seems – subject to verification by the referring court – to be pursuing a policy of controlled expansion of gambling activities, which included the issuing of new casino operating licenses in 2014.

It observed that such a policy can only be regarded as pursuing the abovementioned objectives if, first, it is capable of remedying in Hungary a real problem linked to criminal and fraudulent activities concerning gambling and addiction to gambling, and, secondly, it is not on such a scale as to make it impossible to reconcile with the objective of curbing addiction to gambling, which it stated is for the national court to determine.

The ECJ also announced that it is for the national court to determine whether the measures at issue comply with the principles of legal certainty and the protection of legitimate expectations and the right to property of amusement arcade operators. In that context, the ECJ noted that, when the national legislature revokes licenses that allow their holders to exercise an economic activity, it must provide a reasonable compensation system or a transitional period of sufficient length to enable that holder to adapt.

Finally, the ECJ pointed out that, if it is found that there is an unjustified restriction of the freedom to provide services, the operators of amusement arcades could obtain from the Hungarian state compensation for the damage suffered as a result of the infringement of EU law, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage suffered. This latter point was also left for the national court to determine.

This judgment was released on June 11, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164955&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=297553

European Court of Justice: *Berlington Hungary and Others v. Hungary (Case C-98/14)*

United Kingdom

The UK cannot apply, with respect to all housing, a reduced rate of value-added tax (VAT) to the supply and installation of energy-saving materials, since that rate is reserved solely for transactions relating to social housing, the European Court of Justice (ECJ) ruled on June 4.

The UK applies a reduced rate of VAT to "energy-saving materials" that are installed in housing or that are supplied for installation in housing. The European Commission had challenged the measure, arguing that it contravenes the EU VAT Directive.

According to the Commission, a reduced rate of VAT can be applied only to supplies of goods and services specified in Annex III to the Directive. That annex refers to the "provision, construction, renovation, and alteration of housing, as part of a social policy" and to the "renovation and repairing of private dwellings." The Commission considered that the supply and installation of "energy-saving materials" in the housing sector do not fall into either of those two categories.

The Commission said – and the ECJ agreed – that even if such a supply or installation were to

be regarded as falling under the second category ("renovation and repairing of private dwellings"), under the actual provisions of the VAT Directive, a reduced rate of VAT cannot be applied to that category where the materials account for a significant part of the value of the service supplied. The Commission stated that the energy-saving materials covered by the UK legislation extend to materials that account for a significant part of the value of the service supplied.

In its judgment, the ECJ stated that, with regard to the first category ("provision, construction, renovation, and alteration of housing, as part of a social policy"), Annex III to the VAT Directive permits the application of a reduced rate of VAT solely to the provision, construction, renovation, and alteration of housing which relate to social housing or to services supplied as part of a social policy. It follows that the VAT Directive precludes national measures that have the effect of applying the reduced rate of VAT to the provision, construction, renovation, and alteration of any housing, irrespective of the social context in which such operations take place.

Further, the ECJ stated that, while it is true, as asserted by the UK, that a policy of housing improvement may produce social effects, the extension of the scope of the reduced rate of VAT to all residential property cannot be described as essentially social.

By providing for the application of a reduced rate of VAT to supplies of energy-saving materials and installation of such materials, irrespective of the housing concerned and with no differentiation among people living in that housing, the ECJ concluded that the UK measures cannot be regarded as having been adopted for reasons of exclusively social interest or even for reasons of principally social interest.

This judgment was released on June 4, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164731&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=41944

European Court of Justice: *Commission v. United Kingdom (C-161/14)*

Dateline June 25, 2015

If the EU put as much effort into making taxes more competitive as it does to enforcing those tax laws, surely it would be the most powerful economic area on the planet. But it hasn't. And while it is true that the EU economy is the largest in the world in nominal GDP terms, the recent economic travails of some of its constituent parts have exposed many of the failings of the European system. Yet it continues to be one-way traffic. The recently announced corporate tax plan was dressed up by the European Commission as a series of measures to strengthen the single market for businesses, but in effect it will merely serve to stifle tax competition further, with this being increasingly frowned upon in Brussels.

The central pillar that the plan seems to rest on is the proposed Common Consolidated Corporate Tax Base, or CCCTB for short. As the name suggests, this would harmonize the 28 disparate tax bases of EU states into a single tax base. At first glance, the CCCTB appears a sensible measure that could save companies hundreds of millions of euro in compliance costs (EUR700m, according to the Commission, and a further EUR1.3bn through consolidation).

Predictably, though, there are many drawbacks. Getting the technical design right is going to be a near-impossible task for the EU. For example, member states have differing interpretations of what constitutes business and non-business income, and a requirement to segregate business and non-business income and costs would introduce subjectivity and uncertainty into the determination of taxable income. And how will income and tax be apportioned between member states? A complex allocation mechanism could heighten the risk of more regular transfer pricing disputes occurring, defeating the purpose of the CCCTB, which is to reduce to compliance costs and increase tax certainty.

Also, let's not forget that some corporate tax regimes in the EU are considerably better than others, and the better ones are going to lose their advantage as a result of this. But then the CCCTB isn't really about saving companies money anymore, is it? It's more about trying to stop them from avoiding tax, regardless of whether it makes a member state's corporate tax regime better or worse. One country can't erode another's tax base if there is only one tax base!

Having said all of this, the CCCTB has been a tough sell for the European Commission. It was first proposed in 2001, but the idea has largely lain dormant. BEPS may have breathed new life into the proposals, but as long as Ireland, the UK, and a select few other member states continue to jealously guard their tax sovereignty, there won't be a CCCTB.

The Affordable Care Act – or Obamacare, as it is more popularly known these days (I suspect more

disparagingly rather than affectionately) – is still a hugely divisive piece (or, to be more accurate, pieces) of legislation that highlights the ideological schism separating most Democrats from most Republicans in the US, probably more than any other. It's something I'm not going to pass judgment on here directly, except to say that the health care reforms are hugely expensive, involve a lot of taxes (about 50 of them), and perhaps could have achieved the same goals in a less clumsy way.

One particularly ill-thought-through measure is the medical device tax. Obamacare's supporters might argue that it is only right that big pharmaceutical companies pay a small portion of their mega profits to help the needy access health care. Except that the medical device tax isn't a tax on profit; it's a tax on revenue. And small companies pay it too, regardless of whether they're profitable. It can't be very helpful to the cause of innovation in the health care sector, or the advancement of medical science, if companies are forced to use money earmarked for the research and development of new medical devices to pay this tax. It's also encouraging US medical device makers to – using one of President Obama's favorite phrases – "ship jobs overseas," with numerous firms said to have already established operations in lower-tax jurisdictions, or to be now actively considering such a move.

According to Senator Patrick Toomey (R – Pennsylvania), the Chairman of the Senate Finance Committee on Health Care, 55 percent of clinical trials are now being conducted overseas, and most novel medical devices are now launched outside the US. The fact that Democrats have in the past joined Republicans to seek repeal of the tax suggests that it's not just the medical device industry that thinks it was a bad idea. So I suppose the House of Representatives deserves an encomium for voting to scrap the tax, if only because it shows that the two sides can agree on something. Unhelpfully, the authors of the bill have neglected to say how the lost revenue will be offset. And this will give President Obama further justification for wielding the veto over this particular law.

In the beginning, when the internet broke out from its traditional role as a communications device for academics, college nerds, and the US military, offshore was predicted to be the center of the e-commerce universe. By locating websites offshore and in low-tax jurisdictions to carry out functions previously based in high-tax jurisdictions, businesses would be able to take advantage of low rates of taxation for increasingly substantial parts of their operation, or so the theory went. Indeed, in many cases, there'd be no need to have a presence "onshore" at all.

Obviously, most internet-based businesses have taken full advantage of their almost ethereal presence to pay less tax in places like the US and Europe, and the world's governments are only now starting to catch up. However, while many offshore jurisdictions talked the talk during the early phases of the growth in e-commerce and the digitalization of services, announcing grandiose plans to become the next e-commerce

hub, very few actually walked the walk, and only a select few have been prepared to back up words with solid investment in telecoms infrastructure.

The Isle of Man can be considered part of this offshore e-commerce elite group. Indeed, the jurisdiction's telecommunication systems are probably among the most advanced in Europe, if not the world. I bet you didn't know that Manx Telecom was the first European operator to launch a 3G mobile service and the first in the world to launch a 3.5G mobile service? And the island's telecoms infrastructure is now so resilient it has almost magical "self-healing" properties in the event of a failure somewhere in the system (called the Tolkien-esque "self-healing ring" by the Government). It's certainly an investment that has paid off, for the e-business sector now accounts for 20 percent of the Manx economy.

The island isn't resting on its laurels either, having announced its new digital strategy, which, appropriately enough, was published online last week. It remains to be seen how BEPS affects places like the Isle of Man. Nevertheless, the island is showing the world what can be achieved in the area of technology with a well-thought-out digital strategy backed up by serious investment.

The Jester