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a closer look

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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The unacceptable face of tax journalism

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BEPS: The Final Reports

by Stuart Gray, Senior Editor, Global Tax Weekly

October 5, 2015, will be remembered as one of the most significant dates in the history of international taxation, for it was when the OECD concluded its two-year base erosion and profit shifting (BEPS) project with the publication of the final package of measures[1] which, in the words of OECD Secretary-General Angel Gurría, represent "the most fundamental changes to international tax rules in almost a century." This article summarizes these measures, and the steps that the OECD expects authorities around the world to take in order to ensure they are implemented successfully.

Introduction

According to the OECD, governments forgo USD100bn to USD240bn – or 4 to 10 percent of global corporate income tax revenues – annually due to BEPS. It claims that the final BEPS package provides governments with "comprehensive, coherent and coordinated" solutions for closing gaps that allow corporate profits to "disappear" or be artificially shifted to low- or no-tax jurisdictions.

The final package of BEPS measures includes new minimum standards on: country-by-country (CbC) reporting, which will attempt to give tax administrations a global picture of the operations of multinational enterprises (MNEs); treaty shopping, to put an end to the use of conduit companies to channel investments; curbing harmful tax practices, in particular in the area of intellectual property (IP) and through automatic exchange of tax rulings; and effective mutual agreement procedures (MAP), to ensure that the fight against double non-taxation does not result in double taxation. The package also revises the guidance on the application of transfer pricing rules to prevent taxpayers from using so-called "cash box" entities to shelter profits in low- or no-tax jurisdictions, and redefines the key concept of permanent establishment to curb arrangements which avoid the creation of a taxable presence in a country by reliance on an outdated definition.

In addition, the BEPS package offers governments a series of new measures to be implemented through domestic law changes, including strengthened rules on controlled foreign corporations (CFCs), a common approach to limiting base erosion through interest deductibility, and new rules to prevent hybrid mismatch arrangements from minimizing profits for tax purposes through the use of complex financial instruments.

Furthermore, it is intended that a new multilateral instrument will be developed capable of incorporating the tax treaty-related BEPS measures into the existing network of bilateral treaties. Almost 90 countries are working on the instrument, which will be open for signature by all interested countries in 2016.

Background

The BEPS project came into being at the behest of the G20 on February 12, 2013, when the OECD's first formal report on the subject, "Addressing Base Erosion and Profit Shifting,"[2] was published. It was noted in that report that due to imperfect interaction between nations' tax regimes, MNEs have been permitted to legitimately structure their tax affairs using profit-shifting arrangements to pay minimal rates of tax, limiting their exposure to corporate tax rates as high as 30 percent, faced by fiscally immobile businesses in some OECD member states. What's more, the rapidly evolving world of international commerce has made national tax codes, many of which are more relevant to business in the middle of the 20th century, rather than the 21st, increasingly outdated. Traditional tax concepts such as nexus and permanent establishment (PE) have become increasingly irrelevant in the fast-growing world of e-commerce and the "digital economy," where companies can do substantial amounts of business in some of the world's largest markets without ever touching the ground, so to speak, enabling them to book profits in jurisdictions where taxation is lightest. Therefore, to all intents and purposes, the report was a clarion call for the world's governments to come together and tackle the issue of aggressive corporate tax avoidance once and for all.

In July 2013, the OECD released the BEPS Action Plan,[3] consisting of 15 specific actions designed to give governments the domestic and international mechanisms to effectively close loopholes in the international tax system:

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

- Action 14: Make dispute resolution mechanisms more effective
- Action 15: Develop a multilateral instrument

The Action Plan called for the delivery of seven Actions by September 2014, and the remaining eight actions by September 2015.

The 2014 Outputs

The September 2014 BEPS "outputs," as the OECD termed these series of reports, were delivered in an interim form and, while agreed, were not finalized as they would probably be impacted by some of the decisions to be taken with respect to the 2015 "deliverables," with which they interact. The 2014 outputs have been consolidated with the remaining 2015 deliverables to ensure a coherent package, which will be delivered to the G20 finance ministers on October 8, 2015, together with a plan for follow-up work and a timetable for their implementation.

The September 2014 deliverables included proposals to:

- Address the tax challenges of the digital economy (Action 1);
- Neutralize the effects of hybrid mismatch arrangements (Action 2);
- Counter harmful tax practices more effectively, taking Into account transparency and substance (Action 5);
- Prevent treaty abuse (Action 6);
- Assure that transfer pricing outcomes are in line with value creation/intangibles (Action 8);
- Re-examine transfer pricing documentation (Action 13); and
- Develop a multilateral instrument (Action 15).

The 2015 Deliverables

The 2015 deliverables include measures to:

- Strengthen CFC rules (Action 3);
- Limit base erosion via interest deductions and other financial payments (Action 4);
- Prevent the artificial avoidance of PE status (Action 7);
- Assure that transfer pricing outcomes are in line with value creation/risks and capital (Action 9);
- Assure that transfer pricing outcomes are in line with value creation/other high-risk transactions (Action 10);
- Establish methodologies to collect and analyze data on BEPS and the actions to address it (Action 11);
- Require taxpayers to disclose their aggressive tax planning arrangements (Action 12); and
- Make dispute resolution mechanisms more effective (Action 14).

In February 2015, OECD and G20 countries agreed three key elements to enable implementation of the BEPS project, including:

- A mandate to launch negotiations on a multilateral instrument to streamline implementation of tax treaty-related BEPS measures (Action 15);
- An implementation package for CbC reporting in 2016 and a related government-to-government exchange mechanism to start in 2017 (Action 13); and

- Criteria to assess whether preferential treatment regimes for IP (patent boxes) are harmful or not (Action 5).

Overview Of Final BEPS Package

The OECD describes the level of interest and participation in its BEPS work as "unprecedented," with 60 countries directly involved in the technical groups and others participating through regional structured dialogues. In addition, organizations such as the African Tax Administration Forum (ATAF), Centre de Rencontre Des Administrations Fiscales (CREDAF), and the Centro Interamericano de Administraciones Tributarias (CIAT) joined international organizations such as the International Monetary Fund (IMF), the World Bank (WB) and the United Nations (UN) in contributing to the work. Importantly, businesses and non-government organizations contributed more than 12,000 pages of comments on the 23 discussion drafts published and engaged in discussions at 11 public consultations. This extensive consultation exercise with governments, plurilateral organizations and the private sector culminated in the final set of recommendations. Summaries of the 15 reports are provided in the Explanatory Statement[4] and are as follows:

Action 1: Address The Tax Challenges Of The Digital Economy

The Action 1 report concludes that the digital economy cannot be ring-fenced as it is increasingly the economy itself. The report analyzes BEPS risks exacerbated in the digital economy and shows the expected impact of the measures developed across the BEPS project. Rules and implementation mechanisms have been developed to help collect value-added tax (VAT) based on the country where the consumer is located in the case of cross-border business-to-consumer transactions.

These measures are intended to level the playing field between domestic and foreign suppliers and facilitate the efficient collection of VAT due on these transactions. Technical options to deal with the broader tax challenges raised by the digital economy such as nexus and data have been discussed and analyzed. As both the challenges and the potential options raise systemic issues regarding the existing framework for the taxation of cross-border activities that go beyond BEPS issues, OECD and G20 countries have agreed to monitor developments and analyze data that will become available over time. On the basis of the future monitoring work, a determination will also be made on whether further work should be carried out on the options discussed and analyzed. This determination should be based on a broad look at the ability of existing international tax standards to deal with the tax challenges raised by developments in the digital economy.

Action 2: Neutralize The Effects Of Hybrid Mismatch Arrangements

A common approach will facilitate the convergence of national practices through domestic and treaty rules to neutralize such arrangements. This will help to prevent double non-taxation by eliminating the tax benefits of mismatches and to put

an end to costly multiple deductions for a single expense; deductions in one country without corresponding taxation in another; and the generation of multiple foreign tax credits for one amount of foreign tax paid. By neutralizing the mismatch in tax outcomes, but not otherwise interfering with the use of such instruments or entities, the rules will inhibit the use of these arrangements as a tool for BEPS without adversely impacting cross-border trade and investment.

Action 3: Strengthen CFC Rules

The report sets out recommendations in the form of building blocks of effective CFC rules, while recognizing that the policy objectives of these rules vary among jurisdictions. The recommendations are not minimum standards, but they are designed to ensure that jurisdictions that choose to implement them will have rules that effectively prevent taxpayers from shifting income into foreign subsidiaries. It identifies the challenges to existing CFC rules posed by mobile income such as that from IP, services and digital transactions, and allows jurisdictions to reflect on appropriate policies in this regard. The work emphasizes that CFC rules have a continuing, important role in tackling BEPS, as a backstop to transfer pricing and other rules.

Action 4: Limit Base Erosion Via Interest Deductions And Other Financial Payments

A common approach will facilitate the convergence of national rules in the area of interest deductibility. The influence of tax rules on the location of debt within MNE groups has been established in a number of academic studies, and it is well known that groups can easily multiply the level of debt at the individual group entity level via intragroup financing. At the same time, the ability to achieve excessive interest deductions including those that finance the production of exempt or deferred income is best addressed in a coordinated manner, given the importance of addressing competitiveness considerations and of ensuring that appropriate interest expense limitations do not themselves lead to double taxation. The common approach aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased coordination of national rules in this space.

Action 5: Counter Harmful Tax Practices More Effectively, Taking Into Account Transparency And Substance

Current concerns on harmful tax practices are primarily about preferential regimes, which can be used for artificial profit shifting, and about a lack of transparency in connection with certain rulings. The Action 5 report sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the "nexus" approach.

This approach uses expenditures in the country as a proxy for substantial activity and ensures that taxpayers benefiting from these regimes did in fact engage in research and development and incurred actual expenditures on such activities. The same principle can

also be applied to other preferential regimes so that such regimes would be found to require substantial activities where they grant benefits to a taxpayer to the extent that the taxpayer undertook the core income-generating activities required to produce the type of income covered by the preferential regime. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange. The results of the application of the elaborated substantial activity and transparency factors to a number of preferential regimes are included in the report.

Action 6: Prevent Treaty Abuse

The Action 6 report includes a minimum standard on preventing abuse including through treaty shopping, and new rules that provide safeguards to prevent treaty abuse and offer a certain degree of flexibility regarding how to do so. The new treaty anti-abuse rules included in the report first address treaty shopping, which involves strategies through which a person who is not a resident of a state attempts to obtain the benefits of a tax treaty concluded by that state. More targeted rules have been designed to address other forms of treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. A clarification that tax treaties are not intended to be used to generate double non-taxation is provided through a reformulation of the title and preamble of the Model Tax Convention. Finally, the report contains the policy considerations to be taken into account when entering into tax treaties with certain low- or no-tax jurisdictions.

Action 7: Prevent The Artificial Avoidance Of PE Status

Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a state only to the extent that the enterprise has in that state a PE to which the profits are attributable. The definition of "permanent establishment" included in tax treaties is therefore crucial in determining whether a nonresident enterprise must pay income tax in another state. The report includes changes to that definition in Article 5 of the OECD Model Tax Convention, which is widely used as the basis for negotiating tax treaties. These changes address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.

Actions 8–10: Assure That Transfer Pricing Outcomes Are In Line With Value Creation

Transfer pricing rules, which are set out in Article 9 of tax treaties based on the OECD and UN Model Tax Conventions and in the Transfer Pricing Guidelines, are used to determine, on the basis of the arm's length principle, the conditions, including the price, for transactions within an MNE group. The existing standards in this area have been clarified and strengthened, including the guidance on the arm's length principle, and an approach to ensure the appropriate pricing of hard-to-value-intangibles has been agreed upon

within the arm's length principle. The work has focused on three key areas.

Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and are often hard to value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting.

Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks.

Action 10 has focused on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way that results in diverting profits from the most economically important activities of the MNE group, and the use of certain types of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation.

The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them.

The report also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services. As those two areas were identified as of critical importance by developing countries, the guidance will be supplemented with further work mandated by the G20 Development Working Group, which will provide knowledge, best practices and tools for developing countries to price commodity transactions for transfer pricing purposes and to prevent the erosion of their tax bases through common types of base-eroding payments.

Action 11: Measuring And Monitoring BEPS

There are hundreds of empirical studies finding evidence of tax-motivated profit shifting, using different data sources and estimation strategies. While measuring the scope of BEPS is challenging given the complexity of BEPS and existing data limitations, a number of recent studies suggest that global CIT revenue losses due to BEPS could be significant. Action 11 assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required.

Noting these data limitations, a dashboard of six BEPS indicators has been constructed, using different data sources and assessing different BEPS channels. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time. New OECD empirical analyses estimate, while acknowledging the complexity of BEPS as well as methodological and data limitations, that the scale of global corporate income tax revenue losses could be between USD100bn and USD240bn annually.

The research also finds significant non-fiscal economic distortions arising from BEPS, and proposes recommendations for taking better advantage of available tax data and improving analyses to support the monitoring of BEPS in the future, including through analytical tools to assist countries to evaluate the fiscal effects of BEPS and impact of BEPS countermeasures for themselves. Going forward, enhancing the economic analysis and monitoring of BEPS will require countries to improve the collection, compilation and analysis of data.

Action 12: Require Taxpayers To Disclose Their Aggressive Tax Planning Arrangements

The lack of timely, comprehensive and relevant information on aggressive tax planning strategies is one of the main challenges faced by tax authorities worldwide. Early access to such information provides the opportunity to quickly respond to tax risks through informed risk assessment, audits, or changes to legislation. The Action 12 report provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules, which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users.

The recommendations in this report do not represent a minimum standard, and countries are free to choose whether or not to introduce mandatory disclosure regimes. The framework is also intended as a reference for countries that already have mandatory disclosure regimes, in order to enhance the effectiveness of those regimes. The recommendations provide the necessary flexibility to balance a country's need for better and more timely information with the compliance burdens for taxpayers. It also sets out specific best practice recommendations for rules targeting international tax schemes, as well as for the development and implementation of more effective information exchange and cooperation between tax administrations.

Action 13: Re-examine Transfer Pricing Documentation

Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. The Action 13 report contains a three-tiered standardized approach to transfer pricing documentation, including a minimum standard on CbC reporting. This minimum standard reflects a commitment to implement the common template for CbC reporting in a consistent manner.

First, the guidance on transfer pricing documentation requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file" that is to be available to all relevant tax administrations.

Second, it requires that detailed transactional transfer pricing documentation be provided in a "local file" specific to each country, identifying material related-party transactions, the amounts involved in

those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.

Third, large MNEs are required to file a CbC report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued, and other indicators of economic activities. CbC reports should be filed in the ultimate parent entity's jurisdiction and shared automatically through government-to-government exchange of information. In limited circumstances, secondary mechanisms, including local filing, can be used as a backup. An agreed implementation plan will ensure that information is provided to the tax administration in a timely manner, that confidentiality of the reported information is preserved, and that the CbC reports are used appropriately.

Taken together, these three documentation tiers will require taxpayers to articulate consistent transfer pricing positions, and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries. By ensuring a consistent approach to transfer pricing documentation across countries, and by limiting the need for multiple filings of CbC reports through making use of information exchange among tax administrations, MNEs will also see the benefits in terms of a more limited compliance burden.

Action 14: Make Dispute Resolution Mechanisms More Effective

Countries recognize that the changes introduced by the BEPS project may lead to some uncertainty, and could, without action, increase double taxation and MAP disputes in the short term. Recognizing the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes.

In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the MAP. The commitment also includes the establishment of an effective monitoring mechanism to ensure the minimum standard is met and countries make further progress to rapidly resolve disputes. In addition, a large group of countries has committed to quickly adopt mandatory and binding arbitration in their bilateral tax treaties.

Action 15: Develop A Multilateral Instrument

Drawing on the expertise of public international law and tax experts, the Action 15 report explores the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. It concludes that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly. Based on this analysis, a mandate has been developed for an ad-hoc group, open to the participation of all countries, to develop the multilateral instrument and open it for signature in 2016. So far, around 90 countries are participating in the work on an equal footing.

Implementation

As was alluded to earlier in this article, formulating solutions to the problems posed by BEPS is one thing; implementing them is another challenge altogether, and a much larger one at that. Although aware of the scale of the changes that need to be made, the OECD is, nevertheless, bullish that its recommendations are achievable and can be acted upon in a relatively short space of time. Indeed, there are aspects of the package that can be implemented immediately, it says, such as revisions to the Transfer Pricing Guidelines.

Nevertheless, it is expected that more time will be required for governments, tax authorities, and national legislatures to implement many of the required measures, such as in the area of hybrid mismatches, CFC rules, interest deductibility, CbC reporting, and mandatory disclosure rules. In addition, domestic rules on preferential IP regimes may have to be aligned with the harmful tax practices criteria.

Just as important – if not more so – will be the consistent implementation of the required revisions at national level if the BEPS project is to lead to more coherent international taxation. Therefore, the OECD and the G20 have agreed to continue working together under the BEPS project framework to support, as the OECD puts it, "effective and consistent implementation" of the new standards. Quite what this entails is unclear, but as an example the OECD cites the European Commission's "Communication on a Fair and Efficient Corporate Tax System in the European Union," which aims to set out how the BEPS measures can be implemented within the EU.

The OECD states that it will continue to work "on an equal footing" with G20 countries to complete the areas that require further work in 2016 and 2017. These include finalizing transfer pricing guidance on the application of transactional profit split methods and on financial transactions; discussing the rules for the attribution of profits to PEs in light of the changes to the permanent establishment definition; and finalizing the model provisions and detailed Commentary on the Limitation on Benefit (LOB) rule with a continued examination of the issues relating to the broader question of treaty entitlement of investment funds. Other work will include finalizing the details of a group ratio carve-out and special rules for insurance and banking sectors in the area of interest deductibility.

The OECD stresses the need for the implementation phase to be monitored effectively to ensure consistent application of the new rules, an area where it also intends to work closely with the G20. In a similar vein to the way the OECD monitors compliance with international tax transparency standards, the monitoring will involve a system of assessing compliance with the minimum standards in the form of reports on what countries have done to implement the BEPS recommendations. This will entail some form of peer review mechanism. Also, proposed improvements to data and analysis will help support ongoing evaluation of the quantitative

impact of BEPS, and evaluating any "countermeasures" developed under the BEPS project.

So far, in the envisaged implementation phase, the other 150 countries of the world that are not members of the G20 or the OECD are conspicuous by their absence. However, the OECD has not forgotten them. Noting the "strong interest" shown by developing countries in the BEPS work, the OECD, in cooperation with the G20, will draw up an "inclusive framework" early in 2016 to support and monitor the implementation of the BEPS package in other countries. This framework will draw on the mandate from the G20 Finance Ministers and Central Bank Governors as included in their communiqué issued in Ankara on September 5, 2015, which states:

> "The effectiveness of the project will be determined by its widespread and consistent implementation. We will continue to work on an equal footing as we monitor the implementation of the BEPS project outcomes at the global level, in particular, the exchange of information on cross-border tax rulings. We call on the OECD to prepare a framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing."

In fact, the OECD and the G20 countries will extend their cooperation until 2020, meaning that the implementation phase is expected to last for at least five years.

So, all things considered, the hard work has only just begun.

Evaluating BEPS

The OECD is to be admired for completing this ambitious project on time in just over two years. But why the rush to finish this hugely demanding task so soon? According to the OECD, the consultative phase needed concluding quickly "chiefly because there is an urgent need to restore the trust of ordinary people in the fairness of their tax systems, to level the playing field among businesses, and to provide governments with more efficient tools to ensure the effectiveness of their sovereign tax policies."

However, by fast-tracking the BEPS work, some sections of the global business community fear that the OECD has been unable to fully think through the potentially far-reaching consequences of its proposals. By and large, businesses have expressed support for the broad aims of the BEPS project. But some critics contend that the BEPS package will put too much power in the hands of revenue authorities, heightening the risk that taxpayers will be audited more frequently and perhaps more aggressively than has traditionally been the case, especially if taxpayers fall short of extensive new transfer pricing reporting and documentation requirements. Indeed, some suggest that this is already happening. What's more, national tax authorities might now feel more justified in taxing an MNE's income where previously they hadn't, leading to more instances of double taxation. So the unintended consequences

of this could be reduced levels of global trade and investment, and lower levels of economic growth.

What's more, as the old saying goes, you can lead a horse to water but you can't make it drink. And this is the fundamental problem that the OECD faces as it begins its attempt to steer through the proposed measures: while many governments have issued fulsome praise of the OECD's BEPS work and the reasons why it has undertaken the project, this doesn't necessarily mean that every country will be willing or able to implement each measure as the OECD wishes.

The US is one glaring example of a horse that won't be pushed to drink, for while the US Government is cooperating with the OECD on BEPS, the mood music emanating from a Republican-led Congress which is determined to protect US business interests from what it sees as a foreign-led tax grab, is hardly very soothing. Then there are dozens of developing nations, most of which lack the resources and technical expertise to implement this comprehensive set of proposed reforms. And at the other end of the scale are countries that are a little over-eager to get stuck into the BEPS project, and have already implemented BEPS-inspired measures without waiting for the publication of the final recommendations. The UK, with its new Diverted Profits Tax, which is designed to prevent MNEs from artificially shifting profits from the UK to low- and no-tax jurisdictions, is one example that immediately springs to mind. In fact, about 20 countries have forged ahead with BEPS-like changes since the project commenced, which could put paid to the concept of a level international tax playing field.

Of course, it is impossible to say for sure how the project will pan out as it moves from the consultative to the implementation phase. But it is clear that it is entering perhaps its most critical phase. Given this represents the largest shake-up of international taxation in history, MNEs will therefore need to stay informed of developments at international level as never before.

Endnotes

1 http://www.oecd.org/tax/beps-2015-final-reports.htm

2 http://www.keepeek.com/Digital-Asset- Management/oecd/taxation/addressing-base-erosion-and-profit-shifting_9789264192744-en#page1

3 http://www.oecd.org/ctp/BEPSActionPlan.pdf

4 http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf

Recent Tax Developments In Cyprus

by Philippos Aristotelous, Andreas Neocleous & Co LLC

Amendments To Cyprus Tax Laws

In July 2015, the Cyprus Government submitted a package of proposed amendments to the existing tax laws to the House of Representatives. The amendments, which were summarized in an earlier article,[1] were aimed at encouraging economic activity, attracting inward direct investment and simplifying the tax regime in order to make it more attractive, fair, and effective. There was not sufficient time for all the changes to be considered before the summer recess, and consideration of certain proposals was deferred. This article gives a detailed description and analysis of the changes that have actually entered into force (in all cases with effect from July 16, 2015).

Amendments To The Income Tax Law

Notional Interest Deduction For New Equity Capital

In order to level the playing field between debt and equity finance, by amending the existing income tax legislation,[2] the Income Tax (Amendment) Law[3] introduces a notional interest deduction ("NID") on new equity capital (paid-up share capital and share premium) introduced into companies and permanent establishments of foreign companies after January 1, 2015, for the purpose of financing business assets. The NID will be allowed as a deduction against taxable profit, calculated by applying a reference rate to the new equity. The reference rate is the higher of the ten-year government bond yield of the country in which the assets funded by the new equity are utilized plus 3 percentage points, or the ten-year Cyprus government bond yield plus 3 percentage points. The bond yield rates to be used are as at December 31 of the year preceding the year of assessment.

New equity may be contributed in cash or in the form of other assets, in which case the amount of new equity will be the market value of the assets agreed with the tax authorities. No NID is available in respect of capitalization of reserves, revaluation of assets, or for companies benefiting from the reorganization exemptions included in the tax laws; NID may also be refused if the tax authorities deem that the transaction concerned has no economic or business purpose.

The NID is limited to 80 percent of the taxable profit before deducting the NID, and no NID will

be allowed in the event of losses. Unutilized NID cannot be carried forward to be offset against future years' profits.

Taxation Of Widows' Pensions

A further amendment addressed an anomaly in the taxation of widows' pensions, which had been exempt from income tax until the end of 2013. From the beginning of 2014, a special basis of taxation applied under which the first EUR19,500 (USD21,950) per year was tax-free and any amount above EUR19,500 was taxed at 20 percent.

The July amendment gives the taxpayer the option to elect on a year-by-year basis between the special basis described above or to be taxed under the general rules. The amendment is effective from the 2014 tax year onwards.

Amendments To The Special Defence Contribution Law

Up to and including July 15, 2015, Cyprus resident individuals, like Cyprus resident companies, were liable to pay Special Defence Contribution,[4] commonly referred to as SDC tax, on dividends, passive interest and rents received, at rates of 17 percent, 30 percent and 3 percent (applied to 75 percent of the rent), respectively. Dividends and passive interest (but not rents or active interest) are exempt from personal and corporate income tax.

With effect from July 16, 2015, the Special Defence Contribution (Amendment) Law[5] exempts individuals who are not domiciled in Cyprus for the year of assessment concerned from liability to SDC tax. Coupled with the income tax exemptions applying to such income, individuals who are resident but not domiciled in Cyprus are exempt from Cyprus tax of all forms on dividends and passive interest, regardless of source. Companies are not affected by the change.

For the purposes of determining liability to SDC tax, an individual has a domicile in Cyprus if he or she has a domicile of origin in Cyprus as defined in the Wills and Succession Law,[6] unless he or she:

- has acquired and maintains a domicile of choice outside Cyprus and was not a tax resident of Cyprus as defined in the Income Tax Law for any period of at least 20 consecutive years prior to the year of assessment, or
- was non-resident for purposes of the Income Tax Law for any of the immediately preceding 20 tax years.

In any event, an individual will be deemed to be domiciled in Cyprus if he or she has been a tax resident for 17 or more of the 20 tax years immediately preceding the year of assessment.

The principles of the Wills and Succession Law regarding domicile follow English law. In summary, an individual acquires a domicile of origin at birth. It is generally the same as the domicile of the father at the time of birth, and in exceptional cases that of the mother. A domicile of origin may be replaced by a domicile of choice if in actual fact an individual permanently establishes him- or herself in

another country with the intention of living there permanently and dying there.

The amendment includes an anti-avoidance provision restricting its applicability in cases where domiciled individuals transfer assets to related non-domiciled persons in order to take advantage of the changes. It inserts a new article 3(11) into the Special Defence Contribution Law allowing the tax authorities to disregard transfers of assets from any person domiciled in Cyprus to a spouse or relative within the third degree of kindred who is not domiciled in Cyprus.

SDC Tax: Anti-Avoidance

The SDC Amendment Law also introduces a new anti-avoidance measure to deal with a common device used to reduce or postpone the payment of SDC tax. It inserts a new article 3(4) into the Special Defence Contribution Law enabling the tax authorities to disregard the interposition of a company without any real business or economic purpose between an individual and a company making profits, if this has been done with the principal objective of reducing or deferring the payment of SDC tax.

Amendments To The Capital Gains Tax Law

Capital gains tax in Cyprus is charged only on disposals of immovable property situated in Cyprus and of shares in unlisted companies to the extent that their value derives from such property.[7] In order to stimulate the real estate market, the Capital Gains Tax (Amendment) (No. 2) Law[8] introduces a further exemption for immovable property acquired between July 16, 2015 and December 31, 2016, provided that the property was acquired on an arm's length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immovable Properties Law. Any gain on the disposal of the property will be exempt from capital gains tax, irrespective of the date of disposal.

As an added incentive, the normal transfer fee payable to the Department of Lands and Surveys on acquisition of immovable property will be discounted to 50 percent of the standard rate until December 31, 2016, provided that the property was acquired on an arm's length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immovable Properties Law. Alternatively, if VAT is payable on the purchase of the property, no transfer fee is payable at all, provided that the sale agreement is deposited with the Land Registry by December 31, 2016.

Endnotes

1. "Cyprus's New Package Of Tax Incentives And Technical Amendments," *Global Tax Weekly*, No. 141, July 23, 2015.
2. Law 118(I) of 2002.
3. The Income Tax (Amendment) Law, 116(I) of 2015.
4. Law 117(I) of 2002.
5. Law 119(I) of 2015.
6. Cap. 195.
7. Under the Capital Gains Tax Law, No. 52 of 1980.
8. Law 117(I) of 2015.

An Insight Into The New Tax Treaty Between Mauritius And South Africa

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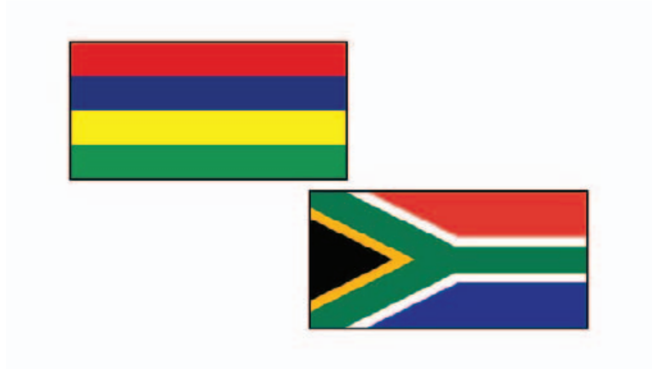

Introduction

The first double taxation agreement (DTA) between Mauritius and South Africa was signed on July 5, 1996. Since then, this DTA has been widely used for tax planning by companies using Mauritius as a base for investment in South Africa and elsewhere in Africa. This was due to the fact that most of the taxing rights were enjoyed by Mauritius. Mauritius has always been regarded as a low-tax jurisdiction, where capital gains on sales of shares are exempt from income tax and the level of tax is at most 3 percent for companies engaged in cross-border investments using special-purpose vehicles commonly known as global business companies. However, this will all change under the new DTA between these two countries, signed on May 15, 2013 and becoming effective on January 1, 2016, which introduces major changes in the way cross-border incomes are taxed (see Table 1).

A Memorandum of Understanding (MoU) was signed on May 22, 2015 to clarify matters relating to the residence article for companies. This is the most critical aspect of the new treaty. The old treaty relied heavily on the place of effective management to determine the residence of companies, which in most cases favored doing business through Mauritius. However, the new DTA makes reference to the MoU to determine the residence of companies where a person other than an individual is a resident of both countries. Article 4 ("Resident") clearly makes reference to future mutual agreement endeavor.

TABLE 1. KEY CHANGES BROUGHT IN BY NEW DTA		
Article	**DTA – 1996**	**DTA – 2016**
Dividends (Note 1)	WHT 5% or 15%	WHT 5% or 10%
Interest (Note 2)	Exempt	WHT 10%
Royalties (Note 3)	Exempt	WHT 5%
Capital gains on sale of shares (Note 4)	Taxing right to resident state	Taxing right to resident state (except if the shares derive >50% of their value directly or indirectly from immoveable property situated in other state on disposal)
Residence of company (Note 5)	Resident where place of effective management is situated	Determined by mutual agreement
Sparing tax relief (Note 6)	Applicable to both contracting states	Applicable in Mauritius
Assistance in collection of taxes	No article	Article 26

Notes:

1. Withholding tax (WHT) on dividend is reduced to 5 percent when the shareholding in the company is at least 10 percent.

2. WHT on interest is not applicable when it is paid on some government debts and quoted debt securities.

3. There is no WHT applicable in Mauritius on companies engaged in licensed global business activities when royalties are paid to residents of other contracting states.

4. The contracting state where the immovable property is situated may now exercise the right to tax gain based on the above criteria.

5. The following factors will be taken into consideration to determine residency for persons other than individuals where such person is regarded as resident in both contracting states and to allocate taxing rights which will be agreed on a case-by-case basis:

- Where the meetings of the person's board of directors or equivalent body are usually held;
- Where the Chief Executive Officer and other senior executives usually carry on their activities;
- Where the senior day-to-day management of the person is carried on;
- Where the person's headquarters are located;
- Which country's laws govern the legal status of the person;
- Where the accounting records are kept;
- Any other factors listed in paragraph 24.1 of the 2014 OECD Commentary (article 4, paragraph 3), as may be amended by the OECD/BEPS Action 6 final report;
- Any other such factors that may be identified and agreed upon by the competent authorities in determining the residency of the person.

In the absence of any such agreement, there will be no treaty benefits and this may lead to double taxation.

6. In Mauritius, domestic tax laws make provisions to allow such reliefs, and such reliefs do not rely on provision of any tax treaty signed by Mauritius.

The new DTA may lead to tax uncertainty due to the new tiebreaker rules where a company may be considered resident in both contracting states. It will be quite challenging for tax authorities to devote resources and time to resolve the issue of tax residency with a new set of rules for treaty purposes within a reasonable time frame, and this of course may have an adverse impact on cross-border business. We need to see how the effects will unfold over the next year, as African countries are in critical need of foreign investment to sustain their economic growth. Mauritius has been acting as a major gateway for these investments, and it remains to be seen whether some businesses may be forced to relocate their place of management and control in order to meet the more stringent eligibility criteria for tax treaty benefits, and of course to avoid double taxation.

Topical News Briefing: TPP: More Hurdles Ahead?

by the Global Tax Weekly Editorial Team

October 5, 2015, will go down in history as a highly significant date not only for international taxation, but also for international trade: on the same date, a gathering of trade ministers in Atlanta announced the successful conclusion of negotiations for the Trans-Pacific Partnership (TPP).

To recap, the TPP in its original form was signed by New Zealand, Chile and Singapore on July 18, 2005, and by Brunei on August 2, 2005. It entered into force on May 28, 2006, for New Zealand and Singapore, and on July 12, 2006, for Brunei, and on November 8, 2006, for Chile.

These original four members are known as the P4 bloc. However, it was always intended that further countries would be invited to subscribe to the agreement. In November 2008, Australia, Vietnam and Peru announced that they would be joining the P4 countries, followed crucially by the world's largest economy, the US, a year later. Malaysia came on board in October 2010, followed by Canada and Mexico in June 2012 and – quite controversially as it has transpired – Japan in July 2013.

The combined gross domestic product (GDP) of the 12 TPP members is USD28.1 trillion, representing almost 40 percent of total global GDP. Thus, the agreement, covering almost 800m consumers, is perhaps the most significant regional trade deal struck in modern times, and its proponents argue that the agreed cuts and reductions in tariff and non-tariff barriers (NTBs) to trade will have a transformative effect on the economies of the signatory countries.

According to an analysis supported by the Peterson Institute, by 2025, the TPP could generate an estimated USD305bn in additional world exports per year, including an additional USD123.5bn in US exports, and boost global income by USD223bn per year. Real income benefits to the US are worth an estimated USD77bn per year.

The view that the TPP will be economically beneficial to those countries involved is not shared by all, however. This is especially the case in the US, where a number of civil society organizations, labor unions, and members of Congress have criticized the deal, on the grounds that the negotiating process has lacked transparency, and that the outcome of the agreed cuts in tariffs and NTBs will give some of America's competitors an unfair advantage in the US market. Significantly, this is a point of view shared by some members of both the main political parties, as also highlighted recently by Republican presidential hopeful Donald Trump's diatribe against Obama's trade policy.

As for the President himself, Obama must be mightily relieved – given a certain amount of political

hostility towards the TPP – that he was recently granted trade promotion authority (TPA) by Congress, enabling agreed free trade deals to be fast-tracked through the legislative process by a straight up-or-down vote.

But things might not be that simple. It is possible that Congress could challenge whether the TPP agreement follows the negotiation criteria set by Congress for TPA to become operable. So its approval is by no means guaranteed, and in little more than a year's time the US could have a new administration with completely different priorities. What's more, it shouldn't be forgotten that the TPP agreement will be subject to the legislative processes of the 11 other signatory countries in the months ahead.

So, in a similar vein to the OECD's BEPS project, the future of the TPP is not as cut and dried as it might appear on the surface.

BEPS Becomes A Reality In The 2016 Dutch Budget Measures

by Jos Hellebrekers and Rob Huisman, Otterspeer, Haasnoot & Partners

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1. Introduction

On September 15, 2015, the Dutch Government presented its budget for the year 2016, including a number of tax measures which are the result of the OECD, EU and G20 efforts to combat Base Erosion and Profit Shifting (BEPS), with effect from 2016. Once introduced, the landscape for transfer pricing documentation and international tax planning will never be the same. In this contribution we focus in particular on country-by-country (CbC) reporting, transfer pricing documentation, and the implementation of the anti-abuse clauses of the EU Parent-Subsidiary Directive.

By introducing these measures, the Dutch Government wishes to implement the new standards as laid down in Action Plan 13 of the BEPS project (2014),[1] as well as the CbC implementation package (2015)[2] of the OECD. The outcome of these ongoing discussions has been adopted by the G20.

Multinational enterprises (MNEs) will have no choice but to anticipate and develop a strategy on how to deal with the new worldwide CbC and transfer pricing documentation standards. The Netherlands may be one of the first jurisdictions where BEPS becomes a reality; although the BEPS discussion has not fully crystallized yet, the Dutch Government apparently wishes to be one of the first countries to adopt the new standards. If the MNE fails to do so itself, the management of many Dutch (holding) companies, which are part of an MNE, may find out that as directors they have to file a CbC report, or they will face criminal charges. According to our information, so far besides the Netherlands only the United Kingdom has published draft legislation, on December 10, 2014. Australia, Canada, China, Germany, Spain and the United States have expressed their intention to implement CbC reporting measures. No doubt the number of countries on this list will increase soon. If the Netherlands turns out to be one of the frontrunners, practitioners in many of these countries may benefit from the discussions in the Dutch Parliament and in Dutch tax literature.

2. Country-By-Country (CbC) Reporting

The implementation of the CbC reporting obligations in the Dutch domestic legislation[3] is in line with the above-mentioned reports of the OECD. According to the OECD reports, an MNE which, on a consolidated base, reports a group revenue of at least EUR750m (USD837.4m) in a certain year will be required to prepare and file a CbC report in the subsequent year.[4]

The OECD reports state that the *Ultimate Parent Entity* of an MNE is obliged to prepare and file the CbC report with the tax administration in its country of residence within 12 months after the last day of a fiscal year. According to proposed transitional law, the regulations shall apply for the first time in respect of fiscal years commencing on or after January 1, 2016. Among others, the CbC report should include information[5] regarding:

- Local income;
- Local profit before tax;
- Tax paid;
- Tax reported;
- Share capital of the group entity;
- Accumulated profit;
- Personnel employed;
- Available assets (especially cash and cash equivalents).

Additional rules regarding the minimum contents of a CbC report will be given in an administrative circular.

The Dutch domestic legislation applies if the *Ultimate Parent Entity*[6] is a resident of the Netherlands for tax purposes. If so, this Dutch *Ultimate Parent Entity* is obliged to file a CbC report with the Dutch Tax Administration, which will (automatically) share this report with the tax administrations of the states where the other group entities are subject to income tax, provided the relevant tax treaty permits (automatic) exchange of CbC reports. So far nothing spectacular. Preparing a list of MNEs with a Dutch *Ultimate Parent Entity* and a worldwide turnover exceeding EUR750m should not be a difficult job for a financial reporter.

What many people probably did not see coming is that also if the Dutch group entity is not the *Ultimate Parent Entity*, parts of the Dutch domestic legislation apply, whereby CbC reporting can only be avoided if another Dutch group entity or a (foreign) *Surrogate Parent Entity*[7] files a CBC report! In principle, each Dutch group entity is obliged to file a CbC report if one or more of the following requirements are met:

(a) In its state of tax residence, the *Ultimate Parent Entity* is not obliged to file a CbC report;

(b) Although a tax treaty is in force between the state of tax residence of the *Ultimate Parent Entity* and the Netherlands which permits (automatic) exchange of information, there is no such agreement which permits automatic exchange of CbC reports;

(c) The Dutch tax inspector has informed the Dutch group entity that a systematic failure occurs in the state of residence of the *Ultimate Parent Entity*.

In cases where the shares in a Dutch group entity have been transferred by one MNE to another during a year, the rules may imply that CbC reporting requirements in respect of both groups will apply.

Exceptions are made in three cases:

- Another Dutch group entity of the same MNE files the CbC report also on behalf of the Dutch group entities which do not file a report;[8]
- The CbC report is filed abroad by a foreign *Surrogate Parent Entity* with the local tax authorities and certain requirements are met, which imply that automatic exchange of the CbC report with the Dutch tax administration must effectively take place;[9]
- The group turnover for the year preceding the relevant fiscal year to be covered by the CbC report does not exceed EUR750m.[10]

Finally, each Dutch group entity belonging to an MNE with a turnover exceeding EUR750m should provide information regarding the *Ultimate Parent Entity* (*e.g.*, name and place of residence) to the Dutch Tax Administration before the end of 2016.

The purpose of the CbC requirements is not that the CbC report as such will enable the Dutch Tax Administration to make transfer pricing adjustments. Rather, it will enable the Dutch Tax Administration to assess risks of profits being shifted abroad (to low-tax jurisdictions) and allocate the capacity of its tax audit staff more efficiently. The consequences of not complying with the abovementioned legislation can be twofold:

- Potential shift in the burden of proof (which could mean that the taxpayer should prove that the transfer prices are at arm's length rather than simply demonstrate this);
- Substantial penalties if the lack of documentation is due to premeditation or gross negligence on the side of the taxpayer.[11]

3. More Detailed Transfer Pricing Documentation Required: Global Master File And Local File

MNEs which, on a consolidated base, report a group revenue of at least EUR50m (USD55.8m), have to make sure that the following documents are available in the administration of the Dutch group entities (detailed implementation rules will be published in a later stage):[12]

- A *Global Master File* (including *inter alia* an overview of the group, its activities, the overall transfer pricing policy, and the worldwide allocation of income and economic activities).
- A *Local File* (including *inter alia* a transfer pricing analysis of the related party transactions in which the Dutch group entity is involved).

Both files may be prepared in Dutch or in English. Upon request, the files should be shared with the Dutch Tax Administration, which may also exchange the reports with the tax administrations in other countries (if the relevant tax treaty permits this).

The main consequence of not complying with these requirements can be a shift in the burden of proof (which could mean that the taxpayer should prove

that the transfer prices are at arm's length rather than simply demonstrate this).

4. Implementation Of The Broader Scope Of The Anti-Abuse Provisions Of The EU Parent-Subsidiary Directive

As part of the 2016 Budget measures, the Dutch Government published its proposal for the implementation of the amendments to the EU Parent-Subsidiary Directive (EU Directive 2014/86 on hybrid mismatches, and EU Directive 2015/121 on general anti-abuse rules). It is anticipated that the proposed legislation will become effective as per January 1, 2016.

4.1. General Anti-Abuse Rules

Introduction

Under current Dutch tax law, anti-abuse rules are included both in the Dividend Withholding Tax Act (DWT Act) and Article 17 of the Corporate Income Tax Act (CIT Act). The DWT Act includes a beneficial ownership test, so-called earnings stripping rules and – regarding dividends payable to EU/EEA parent companies – an alignment with anti-abuse provisions of existing tax treaties. Article 17 CIT Act permits the Netherlands to tax the foreign parent company for dividends (and capital gains, although under most tax treaties the right to levy capital gains can not be effectuated) *only* if the shares do not belong to the assets of a business *and* the main purpose or one of the main purposes for holding the shares is the avoidance of Dutch income tax or Dutch dividend withholding tax.

Proposed legislation in the Netherlands

Effective 2016, the amended Article 1 EU Parent-Subsidiary Directive (EU PSD) contains controversial new and extended anti-abuse provisions. As part of the 2016 budget measures, the Dutch Government proposes to include this new anti-abuse provision in the Dutch tax legislation – although surprisingly not in the DWT Act, but (with the exception of rules applying to Dutch cooperatives, see below) only in Article 17 CIT Act, concerning non-resident tax liability in abusive situations.

As a result, the legislative proposal only impacts non-resident entities which hold a qualifying shareholding in a Dutch entity; it does not impact non-resident portfolio investors. Under the EU PSD, a parent entity holds a qualifying shareholding if it owns at least 10 percent of the shares in another company. For purposes of Article 17 CIT Act, however, a qualifying shareholding already exists if the parent entity owns at least 5 percent of the issued share capital in a Dutch company. In this respect, the legislative proposal goes even beyond the commitments of the Netherlands under Article 1 EU PSD.

The legislative proposal on general anti-abuse rules is not limited to profits distributed to parent companies in the EU/EEA, but has a worldwide scope. Following the BEPS discussions, the Dutch Government is of the opinion that anti-abuse rules should apply on a worldwide basis, in order to effectively combat treaty shopping and treaty abuse.

Under the legislative proposal, a non-resident entity which holds a qualifying shareholding in a Dutch entity will be subject to Dutch CIT if the qualifying interest is held with the purpose to avoid Dutch income tax or Dutch DWT by way of artificial arrangement.

The amendments in more detail

Under the legislative proposal, both criteria are replaced by the criterion of Article 1 Sections 2–3 EU PSD: CIT liability of the parent company arises if the parent company holds the qualifying interest for the main purpose or one of the main purposes of obtaining a tax advantage to avoid the levy of income tax or DWT at the level of another person, within the framework of an artificial (series of) arrangement(s).

According to the legislative proposal, a (series of) arrangement(s) cannot be considered artificial to the extent that it has been put into place for valid commercial reasons which reflect economic reality. This should be the case if there is sufficient substance at the level of the entity which owns the shareholding in the Dutch entity and/or if the shareholding is attributable to the capital of a business enterprise (*i.e.*, if the shareholding is not held as a passive investment). As from 2016, also the function of an intermediate holding company should be reflected in the substance of this company. This is an important change compared to the current practice.

Dutch cooperatives

Finally, Dutch resident cooperatives will be obliged to withhold DWT on profits distributed to their members if avoidance of Dutch DWT or foreign tax is the main purpose or one of the main purposes *and* an artificial (series of) arrangement(s) has been put in place. Compared with the current legislation, the proposed amendments are in line with the amendments to Article 17 CIT Act (please refer to our comments above).

4.2. Hybrid Mismatches

Introduction

In 2014, Article 4 EU PSD was amended with the aim to combat hybrid mismatches (EU Directive 2014/86 of July 8, 2014). Pursuant to this amendment, a parent company will be required to exempt profits paid by an EU subsidiary only to the extent that such profits are not deductible by the subsidiary, and tax such profits to the extent that such profits are deductible by the subsidiary. The current Dutch legislative proposal implements these measures into the Dutch tax legislation.

Proposed legislation in the Netherlands

According to the legislative proposal and in line with Article 4 EU PSD, the participation exemption shall not be applicable to payments received from a subsidiary to the extent that these payments are essentially deductible for CIT purposes in the other country. By adding the term "essentially" the Dutch Government accepts the possibility of double taxation: If the payments are deductible by their nature (essentially) at the level of the subsidiary, the payments will be taxed in the Netherlands only. But if the payments under the hybrid instrument are

legally deductible – but ultimately non-deductible under local restrictions of interest deductibility like thin capitalization rules – the participation exemption does not apply, resulting in double taxation. Such double taxation would infringe the right of free establishment and/or capital movement, and it is highly questionable whether such infringement could be justified.

The scope of the legislative proposal is not limited to payments received from subsidiaries based in the EU or EEA.

The legislative proposal does not apply to benefits received upon the alienation of shares in a subsidiary nor on currency exchange results. This makes sense, because these benefits will not result in a deduction at the level of the subsidiary.

According to the Parliamentary notes, payments received by the Dutch parent company, which are deducted from the acquisition price of a subsidiary – as they were in fact an element of the purchase price – will be qualified as (non-exempt) taxable income as well (again to the extent the payments were essentially deductible at subsidiary level).

4.3. Observations

It is remarkable that the legislative proposal extends the scope of the hybrid mismatch and general anti-abuse provisions beyond EU situations, when the amended EU PSD does not. In our view, this would only be effective if all EU member states adopted this approach, which may not be the case (some countries have not yet published new regulations).

It is also remarkable that the Dutch Government follows the European Commission by implementing a main purpose test with reference to artificial arrangements, while the current test applicable under primary EU law is still more narrow and refers to wholly artificial situations. This test was first introduced in the ECJ *Cadbury Schweppes* case, but has been repeated by the ECJ as the applicable test in recent case law. We sincerely doubt whether the broader anti-abuse test of the EU PSD and the legislative proposal would be upheld in the event of litigation before the ECJ.

5. Exchange Of Information, Substance Requirements

Prior to the Budget measures, the Dutch Government had already introduced measures to curb international tax evasion by extending the scope of information which can spontaneously be exchanged with foreign tax administrations, effective January 1, 2014. These measures mainly affect Dutch intermediary financing and licensing companies which do not meet the minimum substance requirements. These substance requirements have been laid down in the Executive Decree to the Act on International Assistance in the Levy of Tax. Also since January 1, 2014, Dutch intermediary companies will only be able to apply for an Advance Tax Ruling in relation to *holding activities* if they have sufficient nexus with the Netherlands. Sufficient nexus will be deemed present when, for example, the minimum substance requirements are met.

6. Summary

Following the OECD, EU and G20 efforts to combat BEPS, the Netherlands proposes to introduce legislation which will change the landscape for international tax planning as per January 1, 2016. In this article, we have summarized the Dutch proposals relating to BEPS measures.

In paragraphs 2 and 3 of this article, we set out the consequences for MNEs with a Dutch group entity. Such MNEs which, on a consolidated base, report a group revenue of at least EUR50m will be forced to review (or introduce) their transfer pricing policy and documentation. Furthermore, MNEs with a group revenue of at least EUR750m will be obliged to prepare and file a CbC report. Surprisingly, not only Dutch *Ultimate Parent Entities*, but all Dutch entities which belong to an MNE with a group revenue of at least EUR750m will be affected because they should send a notification to the Dutch Tax Administration and may even be obliged to file the CbC report with the Dutch Tax Administration if no other group entity does so.

In paragraph 4, we discussed the Dutch implementation of the amendments to the EU PSD, being the general anti-abuse clause and the clause which should neutralize hybrid mismatches in respect of financing. Following the BEPS discussions, the Dutch Government proposes that such anti-abuse rules should apply on a worldwide basis – not just within the EU or EEA – in order to effectively combat treaty shopping and treaty abuse.

Finally, in paragraph 5, we discussed measures, already effective as per January 1, 2014, by which the scope of information which can spontaneously be exchanged with foreign tax administrations was extended. These measures mainly affect Dutch intermediary financing and licensing companies which do not meet the minimum substance requirements.

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Endnotes

1 http://www.oecd-ilibrary.org/taxation/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting_9789264219236-en

2 http://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf

3 Proposed Arts 29b–29f and 29h CIT Act.

4 The same threshold is included in the proposed Art. 29c § 5 CIT Act.

5 The relevant requirements are listed in the proposed Art. 29e CIT Act.

6 The expression "Ultimate Parent Entity" is defined in the proposed Art. 29b(e) CIT Act as an entity belonging to an MNE (1°) which, directly or indirectly, holds an interest in one or more group entities of the MNE, either resulting in an obligation to file consolidated annual accounts under generally applicable reporting requirements of the state of which the entity is a resident for income tax purposes, or resulting in such an obligation if its shares were quoted at a public stock exchange, and (2°)

no other group entity of the MNE holds such an interest in the relevant entity.

7 The expression "Surrogate Parent Entity" is defined in the proposed Art. 29b(f) CIT Act as an entity belonging to an MNE which has been appointed by the MNE as the sole replacement of the Ultimate Parent Entity, to file on behalf of the MNE a CbC report in the state where it has its tax residence, if certain additional requirements are met.

8 Proposed Art. 29c § 3 CIT Act.

9 Proposed Art. 29c § 4 CIT Act.

10 Proposed Art. 29c § 5 CIT Act.

11 Proposed Art. 29h CIT Act.

12 Proposed Art. 29g CIT Act.

Trouble In Paradise

by Mike DeBlis Esq., DeBlis Law

Former US Congressman Barney Frank recently remarked that the financial reform law that partially bears his name is in a unique position,[1] because "No program in American history could more clearly combine two elements: great success and absolute unpopularity." While the jury is still out on the "great success" of Dodd-Frank, there is no doubt that everyone hates it.

Many Democrats, especially progressives like Senators Bernie Sanders and Elizabeth Warren, don't think the law went far enough towards reining in the big banks. There is even talk in some quarters about blowing the dust off the Depression-era Glass-Steagall Act, which might effectively break up Wall Street banks the way the government broke up Ma Bell a generation ago.

For Republicans, Dodd-Frank fits squarely into the Reagan-esque theme of "business-killing regulations." The Internet is awash with stories like this one,[2] about the enormous compliance costs associated with Dodd-Frank. Many pundits claim that, as a result, smaller banks are simply giving up and closing their doors because they cannot, or will not, accept the increased cost of doing business.

That scenario is being played out overseas as well. Just recently, the Central Bank of Seychelles (CBS)

announced that it was discontinuing[3] its partnership with Barclays and will no longer provide account services to the 140,000 international business companies in its offshore sector. One anonymous former accountholder said the decision to pull the plug "has indeed shaken the industry," especially since it appears that CBS is one of the first dominos to fall, as opposed to a one-off situation.

The Announcement

First, a bit of background. CBS was the first offshore foreign financial institution to enter the Indian Ocean Archipelago way back in 1959. Now, its customers may have to turn to the nearby Republic of Mauritius. But, since that country also is a FATCA signatory, the relationship may be short lived there as well.

In fact, there are signs that other foreign financial institutions (FFIs) may follow CBS's lead. A joint statement issued by the bank and several government ministries cited "global tightening in the regulatory environment and large fines imposed on

international banks," and that can only mean FATCA. The statement added that "financial institutions [note the plural] are increasingly restricting business relationships with high risk clients or categories of clients to avoid the risk of sanction." The bank's decision goes into effect on October 31, 2015.

How FATCA Closures Affect The Economy

The Seychelles collects a 1.5 percent tax on foreign bank accounts, so the move may create a significant revenue shortfall for the island nation. This issue may come up again if FFIs continue to close, especially in places like the Bahamas, Panama, the Canary Islands, and other places with lots of banks but little else.

In other words, there may be some collateral damage that US Congress didn't foresee when it passed FATCA several years ago. Whether or not this new development is enough for the US Government to reconsider the law, or at least the way it is enforced, remains to be seen.

Effects On Accountholders

This is the big one, and an impact that many in the expat community foresaw happening. If FFIs do indeed throw up their hands and decide that foreign accounts simply aren't worth the regulatory hassle or potential financial costs, several things could happen.

Simply stated, fewer banks means less competition. That means higher fees, fewer perks, and fewer choices. Ultimately, if enough banks follow CBS's lead, that could mean no financial institutions for expats at all. Either way, FATCA may amount to an unconstitutional taking, at least on some level. Senator Rand Paul's suit to stop FATCA raises some of these same issues, but there's no telling how that lawsuit will end up.

And speaking of "no telling," it's also anybody's guess where the next domino will fall. The larger Swiss banks are probably immune, at least for now, but the smaller and more cost-conscious banks may soon start making some decisions, especially since the new fiscal year is about to start for many of them.

One thing is certain: the international banking world will never be the same, especially for American expats and their families.

Endnotes

1 http://www.nhbr.com/October-2-2015/Dodd-Frank-a-very-good-response-to-financial-collapse/

2 http://www.washingtontimes.com/news/2015/sep/24/eric-grover-dodd-frank-does-not-address-cause-of-f/

3 http://allafrica.com/stories/201509230956.html

Topical News Briefing: Changing The World Of Tax

by the Global Tax Weekly Editorial Team

Finally, after more than two years, 23 discussion drafts, 11 public consultations, 12,000 pages of comments, and the input of more than 60 countries and numerous regional and international organizations, the OECD's BEPS Project is complete – or, at least, the first phase of it is. In fact, it could be said that the final recommendations for unprecedented change of the international taxation system is just the prologue, and that the BEPS project has only truly just begun.

The final package of recommendations is spread across 15 reports. They seek to achieve the following: address the challenges of the digital economy; neutralize the effect of hybrid mismatch arrangements; strengthen controlled foreign company rules; limit interest deductions; counter harmful tax practices; prevent tax treaty abuse; strengthen permanent establishment rules; strengthen transfer pricing rules and transfer pricing reporting and documentation requirements; require the disclosure of aggressive tax planning arrangements; improve dispute resolution mechanisms; and develop a multilateral instrument to facilitate the amendment of bilateral tax treaties. In other words, the package is a comprehensive set of proposals that will close gaps in the international tax framework that permit multinational companies to minimize corporate and other taxes, and restore the link between taxation and economic substance. At any rate, this is the theory.

Whether these goals can be achieved in practice is the subject of much debate. Naturally, OECD Secretary-General Angel Gurría, and Director of the OECD's Centre for Tax Policy and Administration Pascal Saint-Amans, expressed much confidence in their presentations that what might have seemed impossible just a few years ago is now eminently possible because of the emerging consensus among governments that tackling aggressive cross-border tax avoidance is not only necessary, but vital, to bolster public finances, help emerging economies achieve their development goals, and restore public trust in corporations, tax authorities and tax systems in general. This may well be the case, but moving from theory to practice, and from paper to legislation at jurisdictional level, is surely going to be a huge challenge, and there are likely to be several bumps in the road along the way for taxpayers, and also for tax authorities.

There has been a fear all along about the dangers of unilateralism. Saint-Amans attempted to brush aside these concerns by saying that it would be impossible to expect all governments to implement the proposed measures simultaneously, and that safeguards have been built into the proposals to minimize problems associated with uneven application of the new measures in the implementation phase.

However, we have already seen a number of countries take matters into their own hands before the OECD has had a chance to build a level playing field. Many of the business organizations that have contributed to the debate also expect more compliance difficulties, particularly with respect to new transfer pricing requirements; they also expect tax authorities to be more opportunistic and aggressive with their audits. Anxieties that the pendulum may swing too far in the direction of governments were hardly assuaged by Saint-Amans' remark that there would "unambiguously" be an increase in double taxation and tax disputes. He attempted to justify this by arguing that the post-BEPS environment will represent a substantial improvement on the current broken system of international taxation, and that after the changes bed down, the tax environment will be a more certain, less confrontational place.

Multinational businesses, which have broadly supported the aims of the BEPS project, will be hoping that Saint-Amans is right. Nevertheless, such confidence will do little to dampen concerns that the journey towards the brave new world of international taxation could be fraught with traps and pitfalls.

Romania's New Fiscal Code

by Angela Rosca, Taxand

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Introduction

With effect from January 1, 2016, Law No. 227/2015 regarding the Fiscal Code will replace Law No. 571/2003. The new Fiscal Code brings a new structure, with the following distinct titles and chapters:

- Title I – General provisions
- Title II – Corporate income tax
- Title III – Tax on micro-enterprise's income
- Title IV – Personal income tax
- Title V – Mandatory social security contributions
- Title VI – Tax on income obtained from Romania by non-residents and tax on foreign representative offices established in Romania
- Title VII – Value-added tax
- Title VIII – Excise duties and other special taxes
- Title IX – Local taxes
- Title X – Construction tax
- Title XI – Final dispositions.

The new Fiscal Code brings multiple amendments to the existing provisions, as outlined below.

Overview Of Amendments

Amendments With General Character

1. Taxation principles: Amendments with regard to the taxation principles and introduction of the principle of taxation predictability.

2. Interpretation: Rephrasing of some terms' definitions, as well as introduction of new terms, *e.g.*, *tax transparent entities*, *stock option plan*, *withholding*, *withholding income tax and mandatory social security contributions*.

Amendments Regarding Corporate Income Tax

1. Rate changes: Decreased corporate income tax rate applicable to dividends to 5 percent, with effect from January 1, 2017; the current 16 percent rate remains applicable during the year 2016.

2. Sporting bets: Companies carrying on sporting bets activities are no longer included in the category of taxpayers falling under the minimum 5 percent tax applied to registered revenues.

3. Reinvested profits: Amendments and completions regarding the application of the corporate income tax exemption for reinvested profit, including extension of the category of assets eligible for the exemption.

4. Research and development (R&D) expenses: Introduction of more favorable conditions for the application of the additional deduction for research and development expenses.

5. Non-taxable income: Completion of the list of non-taxable income for corporate income tax purposes.

6. Deductibility of expenses: Amendments regarding the deductibility of expenses, including:

- Amendments to the general deductibility rule, according to which expenses are deductible if incurred for business purposes (and not for obtaining taxable income, as specified in the current provisions of the Fiscal Code);
- Amendments regarding the necessary conditions for deductibility of services expenses;
- Introduction of the possibility to deduct the expenses related to non-taxable income by using allocation keys or proportionally with the value of non-taxable income from total income registered by the taxpayer;
- Amendments regarding the computation of protocol expense and legal reserve deductible for corporate income tax purposes;
- Increased deductibility limit in case of social expenses from 2 percent to 5 percent of the salaries fund, as well as an updated list of expenses that qualify as social expenses;
- Decreased threshold applicable for the deductibility of interest expenses related to foreign currency long-term loans that are contracted from entities other than those specifically mentioned in the law, from 6 percent to 4 percent;
- Clarifications regarding the deductibility of interest capitalized in accordance with applicable accounting provisions;
- Amendments regarding the deductibility of expenses related to stocks or depreciable fixed assets either missing from inventory or damaged;
- Amendments and completions regarding the deductibility of provisions and depreciation adjustments;
- Extension of the situations in which losses from write-off of receivables are deductible for corporate income tax purposes;
- Increased limit applicable for reducing the corporate income tax with the value of sponsorship expenses, from 3 percent to 5 percent from the taxpayer's turnover;
- Amendments regarding the tax treatment applicable to expenses incurred with employees' optional pension schemes and voluntary health insurance premiums that exceed the amount of EUR400 per year.

7. Adjustments for corrected errors: Clarifications regarding the adjustment of the fiscal result in case of errors corrected, in accordance with accounting regulations, based on the profit and loss account or based on the retained earnings account.

8. Advance tax payments: In the case of taxpayers that apply the system of annual declaration and payment of the corporate income tax, with quarterly advance payments, the deadline for the advance payment related to the fourth quarter is modified and will be either December 25 or the 25th day of the last month of the modified fiscal year (as the case may be).

Amendments Regarding Tax On Micro-Enterprise Income

1. Oil and gas exploration, ***etc.*****:** Inclusion of companies who carry on activities of exploration, development, and exploitation of oil and gas deposits, in the list of taxpayers who do not fall under the provisions regarding the tax on micro-enterprise income.

2. Reduced rate for first-year trading: Introduction of a 1 percent income tax rate applicable to newly established legal entities that meet a number of conditions specified by law, for the first 24 months from incorporation.

3. Tax base: Amendments regarding the computation of the taxable base.

4. Profit tax due date: Amendments regarding the date on which profit tax is due, in case certain criteria for the application of the tax on micro-enterprise income are no longer met.

5. Notification: Amendments regarding the notification related to the application of the micro-enterprise regime.

Amendments Regarding Personal Income Tax

1. Rate changes: Decrease to 5 percent of the tax rate for dividend income, with effect from January 1, 2017; the current 16 percent rate remains applicable during the year 2016.

2. Loss carryforwards: Increased period available to carry forward fiscal losses incurred by taxpayers that derive income from independent activities, agriculture, sylviculture or pisciculture and the lease of goods, to seven years (under current provisions, the carry forward period is five years).

3. Non-taxable income: Completions and clarifications regarding non-taxable income.

4. Tax residence: Amendments and clarifications regarding the change of an individual's tax residence and the obligations of individuals in this respect.

5. Income from independent activities: In case of income derived from independent activities:

- Amendment of the definition of independent activities by including also production activities;
- Amendment and completion of the general conditions regarding the deductibility of expenses, by noting, among others, that expenses should be made with the purpose of carrying out the independent activity (and not with the purpose of obtaining income);
- Increased threshold applicable for the deductibility of social expenses from 2 percent to 5 percent applied to the salaries fund;

- Increased deductibility limit for voluntary health insurance premiums from EUR250 to EUR400 per year;
- Amendments regarding the deductibility of expenses with mandatory social security contributions due by individuals for income from independent activities, which according to the new provisions is granted by the competent fiscal authority upon the recalculation of annual net income/loss;
- Amendment of the deductibility limit applicable in respect of contributions paid to professional associations, from 2 percent of the computation base established according to the law, to EUR4,000 per year;
- Increase from 20 percent to 40 percent of the flat deductible rate applicable for computation of the net income derived from intellectual property rights;
- Amendments regarding the categories of income for which the income payers are required to compute and withhold personal income tax;
- If the taxpayer opts for the 16 percent withholding tax, the tax shall be applied to gross income minus the deductible share of expenses, as the case may be, and mandatory social security contributions.

6. Salaries: In case of income from salaries and assimilated to salaries:

- Amendments and completions of the list of income assimilated to salaries, as well as the list of non-taxable income, among which we note the exemption of gift vouchers granted to employees on various occasions, the possibility of granting *per diem* allowances also to administrators, and non-taxation of the personal use of vehicles for which the deductibility of the related expenses was limited;
- Amendments regarding the application of personal deductions and increase of the amounts granted as personal deduction.

7. Lease of goods: Increase from 25 percent to 40 percent of the flat deductible rate applicable for the computation of net income derived from lease of goods.

8. Investment income: Amendments and completions regarding the categories of income from investments considered taxable/non-taxable, as well as regarding the computation of the taxable base in case of the aforementioned income.

9. Pension income: Increased threshold for non-taxable pension income.

10. Transfer of assets: Amendments regarding the computation of personal income tax related to income derived from transfer of real estate from personal property, where the price set by the parties is lower than the minimum amount set by the chambers of public notaries; in this case, the public notary notifies the tax authorities in respect of the related transaction.

11. Other income sources: Extension of the list of examples of income that qualifies as income from other sources for personal income tax purposes.

Amendments Regarding Mandatory Social Security Contributions (SSCs)

1. Income subject to SSCs: Amendments and completions regarding income subject to mandatory SSCs, aiming also the alignment to the changes brought with respect to personal income tax.

2. Pension contributions: Amendments regarding social insurance contributions (pension) due in case of individuals who derive income from independent activities:

- According to the new provisions, the basis for the computation of the social insurance contribution is the difference between gross income and expenses incurred with the scope of carrying on the independent activities or the income norm (as the case may be), respectively the difference between the gross income and the flat deductible share of expenses for the income derived from intellectual property rights;
- The monthly computation base cannot be lower than 35 percent of the gross average salary, and cannot be higher than the equivalent of five times the aforementioned salary;
- The applicable contribution rate is the individual rate, but taxpayers may also opt to apply the full social insurance contribution rate for normal working conditions;
- The contribution is due irrespectively if the taxpayer obtained other income for which social insurance contribution was applied (*e.g.,* salaries income).

3. Social health insurance: Amendments regarding social health insurance contribution (SHIC) are as follows, with effect from January 1, 2017:

- The taxable base for the SHIC due for income derived from salaries, pension and independent activities, including income derived from intellectual property rights, agriculture, sylviculture and pisciculture, lease of goods, investments and from other sources, is capped at five times the gross average salary;
- Individuals who derive income from intellectual property rights, investments or other sources, owe SHIC in relation to such income even if they are obtaining other types of income for which SHIC is due, *e.g.*, salary income, pensions, and income from other independent activities;
- The competent tax authority will adjust on an annual basis the SHIC owed by individuals, computed by applying the individual SHIC to the calculation base, determined as the sum of the monthly base for which the SHIC is due (related to income, other than salaries), and which shall not be lower than 12 times the gross minimum salary per country nor higher than five times the gross average salary multiplied by 12 months.

Amendments Regarding Tax On Income Obtained From Romania By Non-Residents And Tax On Foreign Representative Offices Established In Romania

1. Rates changes: Decrease of the tax rate applicable to dividend income, to 5 percent with effect from January 1, 2017; the current 16 percent rate remains applicable during the year 2016.

2. Romania-source income: Amendments and completions regarding taxable income obtained from Romania as well as regarding the exemptions

applied in relation to income derived by non-residents from Romania.

3. Withholding tax: Inclusion of new provisions regarding withholding tax for income obtained from Romania by residents in an EU member state or in a country with which Romania has concluded a double tax treaty, for activities carried on by artists and athletes.

4. Intermediaries: Introduction of new provisions regarding the obligations of intermediaries through which non-residents obtain income from the transfer of securities issued by Romanian residents.

5. Entities without legal personality: Introduction of a chapter regarding associations/transparent fiscal entities with no legal personality that carry on activities/obtain income in/from Romania.

Amendments Regarding Value-Added Tax

1. Standard rate changes: Decreased standard VAT rate at 20 percent with effect from January 1, 2016, and then at 19 percent with effect from January 1, 2017.

2. Reduced rate changes: Decrease from 9 percent to 5 percent of the reduced VAT rate applicable to the supply of educational publications, books, newspapers and magazines, as well as for access to castles, museums, memorial houses, historical monuments, archaeological and architectural monuments, zoos, botanical gardens, fairs, exhibitions and cultural events, and cinemas (unless exempted under the VAT rules).

3. Extension of reduced rate: Extension of the applicability of the reduced 5 percent VAT rate for access to sporting events (other than those exempted under the VAT rules).

4. Simplified measures: Extension of the application of simplified measures, with effect from January 1, 2016, for the local supply of:

- Buildings, parts of buildings and plots of land to which the taxation regime is applicable;
- Investment gold and gold raw material or semi-products, under certain conditions;
- Mobile phones, namely devices made or adapted for use in connection with a licensed network and which operate on certain frequencies;
- Integrated circuit devices, such as microprocessors and central processing units, prior to their integration in products destined for the final user;
- Games consoles, PC tablets and laptops.

5. Residential buildings: Increase from RON380,000 to RON450,000 of the value of residential buildings, to which the reduced VAT rate of 5 percent will apply, for the delivery of such residential buildings as part of a social policy initiative.

6. Interpretation: Amendments regarding the definitions of certain terms, including the definition of *new constructions* and *capital goods* which, according to the new provisions, include also fixed assets with a depreciation period lower than five years, as well as introduction of new terms, *e.g.*, *real estate operations*.

7. Pro rata: Completions with respect to the application of *pro rata* in some specific situations.

8. Deductions: Amendments regarding the exercise of the deductibility right; according to the new provisions, if during the audit of a supplier the tax authorities assess additional VAT for certain operations, the beneficiary of such operations is entitled to deduct the tax specified on the correction invoice issued by the supplier, within a maximum period of one year from the receipt of the corrected invoice, even though the limitation period has passed.

9. Liability: Elimination of the provisions regarding individual and joint liability for the payment of the tax.

10. Uncollected receivables: Completions regarding the adjustment of the taxable base in respect of uncollected receivables; according to the new provisions, the adjustment of the taxable base can be made also in the situation of implementing a reorganization plan, accepted and confirmed by a court decision according to which the creditor's receivable is amended or eliminated.

11. Payment to customs authorities: Elimination of the provisions according to which, with effect from January 1, 2017, taxable persons registered for VAT purposes were no longer required to perform the effective payment of the tax to the customs authorities; instead, the applicability of the provisions according to which the tax shall not be effectively paid to the customs authorities by taxable persons who have obtained a VAT payment deferral certificate, were extended.

Amendments Regarding Local Taxes

1. Hotel tax: Elimination of the hotel tax.

2. Exempt building categories: Amendments regarding the building categories for which the building tax is not due.

3. Computation of building tax: Amendments regarding the computation of the building tax, including:

- For residential buildings owned by individuals or legal entities, the tax is computed by applying a rate of between 0.08 percent and 0.2 percent on the taxable value of the building, determined according to the law;
- For non-residential buildings owned by individuals, the tax is computed by applying a rate of between 0.2 percent and 1.3 percent on the taxable value of the building (*i.e.*, the acquisition value for buildings acquired within the past five years preceding the reference year; the value of the construction works, in the case of new buildings constructed in the past five years preceding the reference year; or the value from the valuation report, as the case may be);
- In case of non-residential buildings owned by individuals, for which the value of the building cannot be determined considering the above (*e.g.*, no valuation report is available for the past five years), the building tax shall be determined by applying a 2 percent tax rate to the taxable base determined according to the law for residential buildings;

- For non-residential buildings owned by legal entities, the tax is computed by applying a rate of between 0.2 percent and 1.3 percent on the taxable value of the building (*e.g.*, the last taxable value registered in the fiscal authorities' records; the value from the valuation report; the acquisition value for buildings acquired during the previous year; or the value of the construction works, in case of new buildings constructed in the previous year);
- In case the building owner/legal entity did not update the taxable value of the building in the past three years, the building tax rate is 5 percent;
- Introduction of different computation methods in specific cases such as: buildings used in agriculture, mixed-use buildings, buildings used for provision of tourism services with a seasonal character, *etc.*

4. Period of ownership: The tax on buildings, land and vehicles is due for the entire fiscal year by the person who owns those assets at December 31 of the previous fiscal year, irrespective of whether these assets are alienated during the reference year.

5. Two or more buildings/land tax: Elimination of the provisions according to which individuals who have two or more buildings owe an increased building tax, as well as elimination of the provisions regarding which no land tax was due for the land under a building.

6. Local authority provision to increase local rates: Local authorities may increase local tax rates depending on certain criteria, but such increase shall not exceed more than 50 percent of the maximum levels established by the new Fiscal Code.

7. Abandoned/unkempt land and buildings: For agricultural land uncultivated for two consecutive years, as well as for untidy urban buildings and land, the local council may increase the land tax or the building tax by up to 500 percent, in accordance with the conditions established by the decision of the local council.

8. Declaration: In order to determine the building tax related to the year 2016, taxpayers, individuals and legal entities have until February 29, 2016, to submit a specific declaration regarding the buildings owned as of December 31, 2015.

OECD Presents Final BEPS Action Plan Reports

After two and a half years of preparation and consultation, the OECD has released its final reports on how to bring global tax rules into the modern age and tackle base erosion and profit shifting.

Immediately ahead of two webcasts that took place on October 5, the OECD released recommendations for "a comprehensive, coherent, and coordinated reform of international tax rules," to close loopholes said to cost nations up to USD240bn in corporate tax revenues each year.

The OECD's work centers on the taxation of profits where economic activities take place, to close gaps in existing international tax rules that allow corporate profits to "disappear" or to be artificially shifted to low- or no-tax territories.

According to Pascal Saint-Amans, speaking at the first of two webcasts on the matter, there is consensus among countries on the package as a whole and in particular on those BEPS Actions covering transfer pricing-related topics.

The BEPS package includes new minimum standards on: country-by-country reporting, to provide tax administrations with a global picture of the operations of multinationals; treaty shopping, to put an end to the use of conduit companies to channel investments; curbing harmful tax practices, in particular in the area of intellectual property and through the automatic exchange of information on tax rulings; and effective mutual agreement procedures, to ensure that the fight against double non-taxation does not result in double taxation.

In addition, guidance on the application of transfer pricing rules will be updated, including to prevent taxpayers from using so-called "cash box" entities and to redefine the concept of permanent establishment. The OECD is also encouraging governments to adopt stronger rules covering controlled foreign corporations, interest deductibility, and hybrid mismatch arrangements (which enable double non-taxation).

Finally, the OECD is continuing to lead talks between nearly 90 countries on the development of a multilateral instrument capable of incorporating the tax treaty-related BEPS measures into the existing network of bilateral treaties. The instrument will be open for signature by all interested countries in 2016, and Saint-Amans has newly disclosed that it will likely take just over a year for the changes to be introduced, subject to an agreement between states.

The package will repaint the tax landscape globally and, according to Saint-Amans, such fundamental changes would have not been possible before the financial crisis and the advent of tax information

exchange. He said recent international cooperation on tax matters has opened the door to extensive reforms previously thought impossible, such as during the work it attempted ten years ago to close the door on aggressive tax planning.

During the webcast, Saint-Amans was upbeat when asked whether the OECD is concerned that countries will act unilaterally or reject some measures. He admitted countries are unlikely to move to implement the recommendations all at the same time, but said the OECD has developed a flexible package, containing minimum standards, with recommendations that have been drafted to specifically complement one another, such that a country that adopts them will not be disadvantaged or left unprotected should another territory decide not to adopt a particular recommendation. In particular, he noted the convergence between the OECD's recommendations in the area of transfer pricing and those recommendations concerning cash boxes, CFC rules, and interest deductibility, among others.

Asked about the heightened risk of double taxation, Saint-Amans said there would "unambiguously" be an increase in double taxation and therefore disputes. However, he said rules as they stand are not fit for purpose. As a result, there have been numerous disputes concerning both double taxation and double non-taxation (statistics newly released by the OECD show the number of Mutual Agreement Procedure (MAP) cases increased from 1,341 in 2010 to 1,910 in 2013), but the OECD believes newfound international cooperation in tax matters will eventually lead to fewer disputes and more collaboration on tax administration and collection. Double tax issues will continue be resolved through the MAP, and taxing rights determined and enforced through domestic legislation, he said.

Saint-Amans disclosed that the USD750m threshold for the new transfer pricing documentation standards is indeed arbitrary. It will be in place until 2020 to allow for a few years of testing, after the first automatic exchanges in 2018. These requirements currently cover 90 percent of MNEs by activity and there is an expectation that the threshold will be revised downward, he said. It was agreed that groups should disclose eight pieces of information for each territory in which they have operations, to provide an appropriate amount of information as a risk assessment tool, without overburdening tax authorities.

Last, he discussed why the OECD had not pursued proposals for unitary taxation under the so-called the formulary apportionment approach. He said that while there are theoretical arguments for why unitary taxation would be more effective than the existing arm's length principle (ALP), unitary taxation is untested and not without its own deficiencies. While not ruling out such a move in the future, he said upgrading transfer pricing rules under the ALP is the only feasible approach for now, highlighting that the EU has been discussing a common consolidated corporate tax base and unitary taxation, with little progress, for almost two decades.

He concluded that the adoption of the BEPS recommendations will usher in a return to a commonsense approach to taxing multinationals, where tax authorities will be newly equipped to tackle transfer mispricing under the ALP. He also expressed hope that companies will recognize the tax risk involved – as well as the reduced benefits – with structuring their tax affairs without the underlying economic substance to back up their positions.

EU Reports On States' Anti-BEPS Measures

The European Commission has listed the international tax policy reforms recently implemented by member states.

Its new Tax Reforms in EU Member States 2015 report notes that member states have implemented various changes, including introducing strict interest limitation rules and legislating to close opportunities for the use of hybrid mismatch arrangements that lead to double non-taxation. The report notes that four states – the Czech Republic, Spain, Poland, and Slovakia – have made considerable improvements to their transfer pricing rules, in particular by extending reporting requirements.

Several member states have introduced or strengthened general or specific anti-avoidance provisions. Denmark announced the introduction of a general anti-abuse provision, while Ireland tightened its general anti-avoidance rule and its mandatory disclosure regime. Poland introduced new legislation on controlled foreign companies, and Spain broadened the scope of its existing legislation in this area. Spain also introduced new laws addressing hybrid mismatches. Slovakia introduced thin capitalization rules and a few member states (including Spain and Poland) have tightened the criteria for benefiting from interest deductibility, the report says.

As part of a broader review of its tax system, Italy issued draft legislation that redefines the concepts of abuse of law and tax avoidance, with the aim of increasing legal certainty for taxpayers.

Meanwhile, the UK has announced the introduction of a tax on diverted profit. This tax will be levied on profits generated by multinationals from economic activity in the UK, if these profits are then artificially shifted out of the country.

In addition, some member states have taken action to ensure that specific tax regimes are less vulnerable to tax avoidance, and have addressed mismatches that arose as a result of the interaction between different countries' tax rules. Ireland, for example, announced that it would amend its corporate residency rules, thereby scheduling an end to the possibility to apply the "double Irish" tax scheme. Other examples include two sets of measures introduced by the UK, the first preventing contrived loss arrangements, and the second restricting loss relief for banks.

Last, a number of reforms have been introduced or announced with the aim of improving transparency.

In the UK, for example, a clause was introduced in the 2015 Finance Act that gives HM Treasury power to set regulations introducing country-by-country reporting, as defined in guidance published by the OECD. Spain introduced a similar reform. Luxembourg adopted a Grand-Ducal Regulation that formalizes the practice of advance tax rulings and provides, among others, for the rulings to be publicized in an anonymized form.

UK's Gauke Defends Tax Decisions In Washington

David Gauke, the Financial Secretary to the UK Treasury, has spoken out in support of the international tax measures being adopted by the UK, and pushed the idea of diverted profits taxes.

Speaking at the American Enterprise Institute in Washington DC on September 29, 2015, Gauke said recent reforms have resulted in more inward investment and jobs for the UK; built a stronger, open economy; increased public confidence in the tax system; and brought benefits for businesses.

Gauke explained that a low corporate tax rate is a key feature of the UK's new regime, alongside a wide range of measures that the Government is putting in place to make the UK internationally competitive. Gauke said that the Government has introduced specific tax measures, including a patent box regime and "above the line" tax credit for research and development, and has modernized the country's controlled foreign corporation regime.

He stated the "[Government's] ambition is simple: an international system with coherent rules that ensures all companies pay their share – and that isn't open to abuse." He added that "the UK is not a jurisdiction which offers preferential deals," and that "it is possible to enter into advanced pricing agreements … based on a fair and consistent application of the law."

Gauke said: "Our tax policies stem from a very simple belief: that a low-tax and an efficient-tax economy are fundamental to growth, and that you can only get a functioning low-tax economy if you collect the taxes that are owed. We believe that this is what helps businesses prosper: the competitiveness of low taxes, and the certainty of having a properly working tax system in place."

"These are the two principles of taxation in the UK – and together, I believe they help make the UK one of the best places to do business in the world."

Gauke went on to add: "The OECD is due to report the final BEPS outcomes to G20 Finance Ministers at their meeting [on October 8]. Significant progress has already been made. We now have an internationally agreed template for businesses to report to tax authorities where they pay tax and where they make profits. This is a good initiative which will increase transparency – we strongly support it."

He noted that the recently introduced 25 percent Diverted Profits Tax is "not an attempt to tax profits that have been taxed elsewhere," but "it is simply a

tax designed to ensure fairness, and one which sends a powerful worldwide signal that we take this seriously – helping us lead the international debate."

Gauke concluded: "We will always be on the side of competition between countries. Our measures back that up. But we will be equally firm in demanding that that competition is fair and transparent. We take this seriously – because a stable, functioning tax system depends on everybody playing by the rules, and because operating in a system where the rules are clearly defined gives certainty to shareholders and investors. Sticking to the rules benefits everyone concerned."

EC Legislates For Automatic Exchange Of Tax Rulings

On October 2, 2015, the EU Council published draft amendments to Directive 2011/16/EU to provide for the automatic exchange of advance cross-border rulings and advance pricing arrangements (APAs).

The proposed amendments are aimed at removing obstacles that might hinder the effective and widest possible mandatory automatic exchange of information on advance cross-border rulings and APAs.

First, it is proposed that the Directive be amended to include an appropriate definition of an advance cross-border ruling and APA, and that the new definition be sufficiently broad to cover a wide range of situations. The proposal also seeks to explore ways in which member states can exchange information irrespective of whether the taxpayer abides by the terms of the advance cross-border ruling or APA.

Next, for reasons of legal certainty, it is proposed to exclude from mandatory automatic exchange bilateral or multilateral APAs with third countries following the framework of existing international treaties with those third countries, where provisions of those treaties do not permit disclosure of the information received under that treaty to a third party country.

The proposal states that the Commission should be empowered to adopt practical arrangements necessary to standardize the communication and exchange of advance cross-border rulings and APAs. It states that it would be appropriate to take account of work performed at the OECD's Forum on Harmful Tax Practices in the context of the base erosion and profit shifting project.

Last, it is proposed that the time frame for the submission of information, statistics and reports provided for under the Directive be extended. It states that the extension should apply both to the statistics and other information to be submitted by member states before January 1, 2018, and to the report and, if appropriate, the proposal to be submitted by the Commission before January 1, 2019.

The proposal states: "The efficient spontaneous exchange of information in respect of advance cross-border rulings and APAs is hindered by several important practical difficulties such as the

discretion permitted to the issuing member state to decide which other member states should be informed. Therefore the information exchanged should, where appropriate, be accessible to all other member states."

The proposal adds: "Rulings concerning tax-driven structures have, in certain cases, led to a low level of taxation of artificially high amounts of income in the country issuing, amending or renewing the advance ruling and left artificially low amounts of income to be taxed in any other countries involved. An increase in transparency is therefore urgently required. The tools and mechanisms established by the Directive need to be enhanced in order to achieve this."

TPP Negotiations Are Successfully Concluded

On October 5, the trade ministers of Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam announced the successful conclusion of negotiations for the Trans-Pacific Partnership (TPP), following meetings over five days in Atlanta.

Talks on the extended TPP (originally signed between only New Zealand, Chile, Singapore and Brunei in 2005) began officially in March 2010. Its new format will now cover some 40 percent of the global economy, a market of 800m people, and about one-third of all world trade.

A statement by the trade ministers confirmed that, "after more than five years of intensive negotiations, we have come to an agreement that will support jobs, drive sustainable growth, foster inclusive development, and promote innovation across the Asia-Pacific region."

While the text of the agreement remains unavailable, the US Trade Representative (USTR) has disclosed that the TPP includes 30 chapters covering such trade and trade-related issues as trade in goods; customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; investment and dispute settlement; services; electronic commerce; government procurement; intellectual property; and the environment.

According to the USTR, TPP countries have agreed "to eliminate and reduce tariffs and non-tariff barriers on industrial goods, and to eliminate or reduce tariffs and other restrictive policies on agricultural goods."

Most tariff elimination in industrial goods will be implemented immediately, although tariffs on some sensitive products will be eliminated over longer timeframes. The countries have also agreed not to impose World Trade Organization-inconsistent import and export restrictions and duties, and, if they maintain import or export license requirements, they will notify each other about the procedures so as to facilitate trade flows.

TPP members have agreed to eliminate tariffs on textiles and apparel, which are important contributors to economic growth in several TPP markets. Specific rules of origin are also included that require use of yarns and fabrics from the TPP region, which will promote regional supply chains and investment in this sector.

It appeared that the remaining elements that had held up the TPP's final conclusion were an intellectual property issue over the length of time protecting pharmaceutical companies' advanced medicines; more access for dairy products, particularly into Canada; and the rules of origin for auto manufacturers.

To formalize the outcomes of the agreement, negotiators will continue technical work to prepare a complete text for public release, including the legal

review, translation, and drafting and verification of the text. The deal will then need to be ratified by lawmakers in each country.

President Barack Obama obtained renewed trade promotion authority (TPA) earlier this year, which should allow completed trade treaties to be fast-tracked through the US Congress. However, there are still questions over whether US lawmakers concur that the TPP agreement follows the negotiation criteria set by Congress for TPA to become operable.

In his statement following the successful conclusion of negotiations, President Obama noted that the TPP "levels the playing field for our farmers, ranchers and manufacturers by eliminating more than 18,000 taxes that various countries put on our products. … It's an agreement that puts American workers first and will help middle-class families get ahead. I look forward to working with lawmakers from both parties as they consider this agreement."

EU Fully Ratifies FTA With South Korea

The EU Council on October 1 adopted a decision to conclude the free trade agreement (FTA) with South Korea, following its ratification by all EU member states.

The FTA, signed in October 2010, provides for the progressive liberalization of trade in goods and services.

Most of the accord has been provisionally applied since July 1, 2011. The two parties committed to eliminate 98.7 percent of import duties by trade value within five years. On July 1, 2016, import duties will be eliminated on all goods, except for a limited number of agricultural products.

At their summit meeting last month, South Korean President Park Geun-hye and European Council President Donald Tusk had urged full implementation of the FTA at the earliest date.

The leaders agreed that "the full implementation of the FTA and increase in trade volume between South Korea and the EU is important, in order to bring the expected benefits to both sides in a balanced way." As the existing FTA does not include provisions on investment protection, both sides also "agreed to explore ways to improve investment norms, while continuing discussion on other FTA improvements."

US Has World's Third-Highest Corporate Tax Rate

Not only does the US retain the dubious distinction of having the highest corporate tax rate in the OECD country grouping, it now has the third-highest rate of corporate tax in the world, according to the Tax Foundation.

The non-partisan tax policy think tank said in an article published on October 1 that America's highest marginal corporate tax rate of 39 percent (consisting of the federal tax rate of 35 percent plus the average tax rate among the states) is equaled by Puerto Rico, and is lower than just two other countries – Chad and the United Arab Emirates (UAE), which have corporate taxes of 40 percent and 55 percent, respectively (although, in the UAE, corporate tax applies only to the oil and banking sectors).

"It is well known that the United States has the highest corporate income tax rate among the 34 industrialized nations of the [OECD]. However, it is less well known how the United States stacks up against countries throughout the entire world," observed Kyle Pomerleauan, Economist for the Tax Foundation's Center for Federal Tax Policy.

While the US corporate tax rate has remained static over the last decade, with Congress unable to agree on competitiveness-enhancing tax reform, most other countries have been cutting corporate tax, leaving America with one of the highest rates in the world. The Tax Foundation says that the US tax rate is now 16 percent higher than the worldwide average of 22.8 percent and a little more than nine percentage points higher than the worldwide GDP-weighted average of 29.8 percent.

Somewhat surprisingly, the region with the lowest average corporate tax rate is Europe, at 18.7 percent (26.1 percent weighted by GDP). Nine European countries have top corporate tax rates of just 10 percent. Africa has the highest simple average, at 28.77 percent.

Larger, more industrialized countries tend to have higher corporate income tax rates than developing countries, and the US is joined by France (34.4 percent), Brazil (34 percent), and India (34 percent) in the top 20.

Pomerleauan concluded: "The corporate income tax rate is one of many aspects of what makes a country's tax code and economy attractive for investment. However, as the rest of the world's economies mature and their tax rates on corporate income continue to decline, the United States risks losing its competitive edge due to its exceptionally high corporate income tax rate."

IRS Starts FATCA Tax Information Exchange

The US Internal Revenue Service (IRS) has confirmed it succeeded in exchanging financial account

information with certain foreign tax administrations by September 30, 2015, thereby meeting a deadline related to the Foreign Account Tax Compliance Act (FATCA).

FATCA is intended to ensure that the US obtains information on accounts held abroad at foreign financial institutions (FFIs) by US persons. Failure by an FFI to disclose information on their US clients can result in a 30 percent withholding tax on payments of US-sourced income.

To address situations where foreign law would prevent an FFI from complying with the terms of an FFI agreement, the US has developed intergovernmental agreements (IGAs), through which their home tax authority helps FFIs exchange the required financial account information with the IRS.

"Meeting the September 30 deadline is a major milestone in IRS efforts to combat offshore tax evasion through FATCA and the intergovernmental agreements," said IRS Commissioner John Koskinen. "FATCA is an important tool against offshore tax evasion, and this is a significant step in the process. The IRS appreciates the assistance of our counterparts in other jurisdictions who have helped to make this possible."

It was noted that, to achieve the deadline, the IRS developed information system infrastructure, procedures, and data use and confidentiality safeguards to protect taxpayer data, while also facilitating the reciprocal automatic exchange of tax information with certain foreign tax administrators as specified under the IGAs.

The information now available provides the US and partner jurisdictions with an improved means of verifying the tax compliance of taxpayers using offshore banking and investment facilities. The IRS also stressed that it will only engage in reciprocal exchange with foreign jurisdictions that, among other requirements, meet its stringent safeguard, privacy, and technical standards.

Before exchanging with a particular jurisdiction, the US conducted detailed reviews of that jurisdiction's laws and infrastructure concerning the use and protection of taxpayer data, cyber-security capabilities, as well as security practices and procedures.

Puerto Rico Broadens Sales And Use Tax Base

Puerto Rico's Governor has signed legislation that, on October 1, introduced a 4 percent sales and use tax (SUT) rate on certain previously exempt professional and business-to-business services.

There are certain exemptions to the new tax rate, including services provided by businesses that total less than USD50,000 a year; legal services, including notary fees; advertising and promotional services; and maritime, air, and land transportation services.

Taxable services rendered to other businesses include those provided by a non-resident person to

a person in Puerto Rico. In that case, the legislation clarifies that the person responsible for the payment of the tax will be the person that uses the service in Puerto Rico.

Both the special 5 percent and normal 10.5 percent SUT rates are now intended to remain in effect until the advent, on April 1, 2016, of Puerto Rico's new value added tax (VAT), the first in the US.

All transactions subject to the SUT (including those newly subject from October 1) will then be subject to VAT at an expected overall rate of 10.5 percent. The additional 1 percent SUT currently imposed by municipalities will continue to apply after April 1, 2016.

India To Engage With Cairn To Resolve Tax Dispute

The Government of India has said that it will soon appoint an arbitrator in the USD1.6bn tax dispute with UK-based exploration and extraction company Cairn Energy, Indian reports said.

The announcement is a softening of India's position in the dispute, after several months of the Government refusing to appoint an arbitrator. The Government had previously challenged Cairn's decision to seek mediation from the International Court of Justice under the UK–India bilateral investment treaty.

Cairn is disputing a draft assessment order (plus interest and penalties) for the fiscal year 2006/07. The dispute stems from retrospective tax legislation introduced under the Finance Act 2012 by the former Indian government.

In a case with many similar characteristics to the Vodafone dispute, India says that Cairn failed to pay capital gains tax on a group restructuring in 2006. On March 10, 2015, Cairn received a draft assessment order from the Indian Income Tax Department in relation to the Cairn Group restructuring that was undertaken in 2006 prior to the Cairn India Limited (CIL) initial public offering. India is seeking tax worth INR102.4bn (USD1.6bn), plus any applicable interest and penalties. Cairn Energy said in August it will seek "restitution of losses resulting from the attachment of its CIL stake since 2014."

Earlier, Cairn stated that it "has been fully compliant with the tax legislation in force in each year and paid all applicable taxes. Cairn strongly contests the basis of the draft assessment and the Notice of Dispute [filed in March] is supported by detailed legal advice on the strength of the legal protections available to it under international law."

Indian Taxman Strikes Up Dialogue With Investors

The Indian Finance Ministry has announced that Revenue Secretary Hasmukh Aadhia has started holding "detailed" meetings with business associations and representatives of industry on tax policy with a view to improving India's investment environment.

The first meeting was held at the Finance Ministry on September 29 with a delegation from the Confederation of Indian Industry (CII), consisting of CII President designate Dr. Naushad Forbesand and ten other representatives from the confederation.

Similar meetings were scheduled with representatives of the Federation of Indian Chambers of Commerce and Industry on September 30, 2015, the Associated Chambers of Commerce of India on October 6, 2015, and with the PHD Chamber of Commerce on October 7, 2015.

Aadhia is also holding meetings with business and industry representatives in other cities, including in Bengaluru on October 1, 2015, and in Ahmedabad on October 10, 2015. Further meetings with representatives from a number of economic sectors are also scheduled, including electronics and information technology, telecommunications, the power industry, road transportation, and financial services. These meetings are due to take place from October 26 to October 30, 2015, and ministers from the relevant government departments will be present.

The Ministry of Finance said that it "is quite conscious of the fact that tax policy could be used as an important instrument of enhancing the speed of economic growth of the country and therefore, it is important to have proper stakeholder consultation out of box thinking. This is an attempt in that direction."

Greek Islands Lose Value-Added Tax Edge

The Greek Government on October 1 withdrew concessionary VAT rates for islands.

VAT rates on the islands of Rhodes, Santorini, Mykonos, Naxos, Paros and Skiathos were aligned with the mainland rates of 23 percent, 13 percent, and 6 percent.

The Government has confirmed that the change will be temporary, with a review to be carried out in 2016. Meanwhile, the islands will be allowed other tax concessions, such as personal income tax breaks, to cushion the impact of the change, which may impact their tourism industries.

Singapore Takes Up GST Recommendations

The Singapore Ministry of Finance has published a summary of responses to its public consultation on proposed changes to goods and services tax (GST) legislation.

The Ministry of Finance conducted the public consultation on the draft Goods and Services Tax (Amendment) Bill 2015 and related subsidiary legislation between July 13 and July 31, 2015. The amendments are intended to implement changes arising from the Ministry's review of the GST system and administration, which took place between 2014 and early 2015.

A total of 11 suggestions were received during the consultation exercise, and seven will be accepted and incorporated into the revised GST Bill and in the e-tax guides published on the website of the Inland Revenue Authority of Singapore. The remaining four suggestions were not accepted for implementation as they were said to be "inconsistent with the policy objectives of the proposed changes."

The changes covered in the July 2015 public consultation are as follows:

- *Allowing the Comptroller of GST to impose a Travel Restriction Order on a person who fails to repay a tourist refund wrongly claimed under the Tourist Refund Scheme.* Under the Scheme, only eligible tourists are allowed to claim a refund of the GST paid on goods purchased in and brought out of Singapore. Currently, the Comptroller of Income Tax and the Comptroller of GST have the power to impose a Travel Restriction Order on a person who fails respectively to pay income tax or GST that is due to the Government. Given that a wrongful tourist refund owed is no different from a tax due to the Government, the Comptroller of GST will be granted powers to impose a Travel Restriction Order on a person who fails to repay a tourist refund wrongly claimed under the Tourist Refund Scheme. This ineligible claimant will be allowed to leave the country after he repays the refund wrongly claimed;
- *Revising the definition of "aircraft" for the purpose of zero-rating supplies made in relation to an aircraft, and extending zero-rating to specific supplies made in relation to non-qualifying aircraft.* The policy intent

is to zero-rate supplies of and supplies relating to aircraft that are used for international travel and international transportation of passengers and goods. In line with the policy intent, the definition of "aircraft" will be revised to refer to any aircraft that is wholly used or intended to be wholly used for international travel, or any military aircraft. Zero-rating will also be extended to specific supplies relating to international flights made by a non-qualifying aircraft, as they are regarded as consumed outside Singapore; and

- *Clarifying the scope of zero-rating in relation to merchandise for sale on board an aircraft or ship.* This is a technical change to clarify that zero-rating applies to the supply of goods for use as merchandise for retail sale on board an aircraft or ship.

Thailand Extends Seven Percent VAT

The Thai Government has decided to extend a reduction in the standard rate of value-added tax for two more years in the hope that it will help to stimulate the economy.

According to an announcement by the Revenue Department on September 29, the current VAT rate of 7 percent will be continued for another year until September 30, 2016, through a Royal Decree issued under the Revenue Code.

"The main purpose of this extension is to promote consumption of businesses and consumers, which will eventually stimulate sustainable economic growth," the Revenue Department said.

Thailand's headline VAT rate is, in theory, 10 percent. However, a 7 percent rate has been in force since 1999. This rate was extended again in July 2014, until September 2015, on account of civil unrest and a slowing economy.

Renzi Criticizes EU For Meddling On Tax Policy

Italian Premier Matteo Renzi has again underscored that it is up to his Government to decide on tax policy, following a new report from the European Commission on tax reform.

Renzi has promised that local taxes on primary residences will be eliminated in 2016, before a cut in Italian corporate income tax in 2017 and a reduction in individual income tax paid by those on lower and middle incomes in 2018.

However, such a program appears to be contrary to the Commission's recommendations. Under EU rules, the Italian Government must present budget projections for 2016 to the Commission by October 15, and the Commission should then respond by November 30.

The Commission's report points out that "tax systems of EU member states tend to be heavily reliant on labor taxes, which can depress both the supply and demand for labor. Current discussions on policy in this area are therefore focusing on identifying appropriate ways to shift some of the tax burden away from labor and onto other types of taxation that are typically less harmful to growth and employment …"

In particular, it adds that certain member states, including Italy, with a relatively high tax burden on labor, "would have at least some scope for shifting the tax burden to less distortive taxes, such as consumption taxes, recurrent property taxes, and environmental taxes."

A month ago, following indications that the Commission was against the Italian policy of cutting property tax before income taxes, Renzi had refuted any idea that his Government would be constrained in its tax policy decisions by the Commission. Insisting that "individuals will pay the second 2015 installment of [local property and service tax] on December 16, and that will be the end of Italian taxation on homes," he had then emphasized that "we decide, not Brussels, how to cut taxes."

On September 28, during his visit to New York for the United Nations General Assembly, Renzi felt the need to reply immediately to the Commission report, stating that "the Italian Government decides which taxes to reduce, not a bureaucrat in Brussels."

He added that "it is not the job of the EU to comment on the fiscal choices made by any member state," and that "everyone has to do their own job, and we are doing ours."

Report Charts EU Tax Reform Direction

The European Commission has said that there is scope to shift labor taxes to more growth-friendly taxes in a number of EU member states.

The Commission has published a new report on the tax reforms undertaken by EU member states. It found that member states have made progress toward improving their tax systems, but still face important challenges.

The tax burden on labor is a particular concern for the Commission. In their foreword to the report, Heinz Zourek, Director-General, Taxation and Customs Union, and Marco Buti, Director-General, Economic and Financial Affairs, explained: "The tax systems of EU member states tend to be heavily reliant on labor taxes, which can depress both the supply and demand for labor. Current discussions on policy in this area are therefore focusing on identifying appropriate ways to shift some of the tax burden away from labor and onto other types of taxation that are typically less harmful to growth and employment. At the same time, labor tax reductions could usefully be targeted to those labor market segments that are the most reactive to tax reductions, such as low-income earners."

The overall tax burden as a percentage of gross domestic product has increased in recent years, but is expected to fall slightly in 2015. Indirect and direct taxes are forecast to remain broadly stable. There has been a minor decrease in labor taxes, but the Commission found little evidence of a "significant shift from labor towards less detrimental revenue sources." The Commission noted that member states have continued to introduce reforms designed to stimulate investment, and are taking determined action against tax fraud and evasion. A number of member states could take steps to improve tax collection and enhance the efficiency of their tax administration, it said.

According to the Commission, around a quarter of member states could improve the efficiency of their value-added tax (VAT) systems. Several states have numerous reduced rates and exemptions, which, according to the Commission, create economic distortions, raise compliance costs, and reduce revenues. The Commission hopes that the introduction last January of new EU rules on VAT on telecommunications, broadcasting and electronic services will have the effect of broadening the base, reducing economic distortions, and generating additional revenue.

The Commission also concluded that around a third of member states could improve the design of their environmental taxes. They could, in particular, consider restructuring vehicle taxation, indexing environmental taxes to inflation, and adjusting fuel excise duties to reflect the carbon and energy content of different fuels.

IMF Recommends Australia Shift To More Efficient Taxes

The International Monetary Fund (IMF) has recommended that Australia cut its company tax rate, take steps to address bracket creep in the personal income tax system, and broaden the goods and services tax (GST) base.

The IMF has concluded its 2015 Article IV consultation with Australia. It commended Australia's

strong economic performance over the past two decades, but noted that declining investment in mining and a sharp fall in trade pose macroeconomic challenges, while potential growth is likely to slow.

According to the IMF, one of the Government's goals should be to review the effects of bracket creep – where inflation rises faster than income tax thresholds – which, according to the IMF, is affecting those on low and middle incomes most. In addition, the Government should seek to reduce corporate tax in line with international levels, and eliminate stamp duties and minor taxes.

These reforms could be paid for by broadening the GST base, and possibly by increasing the GST rate. The IMF noted that GST receipts are low by international standards. The IMF argued that, were the Government to reform the GST, it should compensate those on lower incomes by reducing income taxes, and increasing its reliance on broad-based real estate taxes and excise duties.

The IMF also found that Australia's system of superannuation tax concessions is complex and disproportionately benefits higher-income earners. It suggested that the Government more closely align tax rates on superannuation contributions with personal income tax rates, to reduce concessions for higher earners and enhance revenue. The Government could also reduce the concessional treatment of capital gains and the deductibility of housing investment losses from other taxable income.

UK Restrictions On Travel Tax Relief 'Will Hit Freelancers'

The Association of Independent Professionals and the Self-Employed (IPSE) has warned that 45,000 freelancers could be driven out of business if the UK Government proceeds with plans to restrict tax relief for work travel.

The Government has proposed the abolition of the home-to-work travel and subsistence tax relief in the case of workers employed through an employment intermediary and under the supervision, direction or control of any person. According to an HM Revenue & Customs (HMRC) consultation document: "These proposals are part of a strategic approach to clarify the differences between employment and self-employment, and the use of employment intermediaries. [They] will ensure those who are in an employment relationship are taxed as employees, on a fair and consistent basis."

IPSE Chief Executive Chris Bryce said: "IPSE is deeply concerned about the damage removing tax relief on travel and subsistence from limited companies could cause the self-employed community. We've been flooded with emails from freelancers worried they'll have to fold their business because of these changes. [The] Government must rethink this harmful proposal."

According to an IPSE survey, 17 percent of freelancers using limited companies would have to stop taking contracts altogether if the tax relief was restricted. Of the respondents, 85 percent said they would be forced to charge more for their services.

Of business owners who participated, 76 percent said they fear they will be unable to take on contracts that are not near their home or office. IPSE said this would put businesses that operate through limited companies at a disadvantage, as larger competitors would still be able to claim tax relief.

Bryce added: "Mobility is key to creating a thriving freelance economy and we're worried that people who run their own companies will suddenly find themselves unable to take on jobs that aren't near their home. It makes one-person businesses less able to compete with big competitors. Ultimately if businesses are closing, it will have the opposite effect of reducing HMRC's revenue creating a lose-lose situation."

Prism Criticizes Plans To Cut UK Workers' Travel Tax Relief

Trade body Prism has warned that the UK Government's plan to restrict tax relief for home-to-work travel threatens 1.6m temporary workers with a 20 percent pay cut and could cost UK employers nearly GBP7bn (USD1.6bn).

Crawford Temple, Chief Executive Officer of Prism, said: "The taxman is going to war on temporary workers and contractors. These are people for whom there is no normal commute as they move

around different workplaces, sometimes working for dozens of companies a year over a wide area. These workers have always been able to rely on claiming travel expenses from home to temporary workplaces and that has been one of the few benefits of being a contractor.

"We estimate a 20 percent shortfall in take-home pay if HMRC brings these changes in. The burden will be borne by Britain's employers and the lowest paid as a gap in pay emerges overnight. The most flexible part of our workforce will become the worst off with the fewer benefits and the least protection."

According to Prism, the proposals will mean that permanent employees are still able to claim travel expenses, while the contractors who work alongside them are not. It estimates that employers will need to spend 25 percent more on contractors to maintain rates of take-home pay. It calculates that, based on average UK earnings, this could cost employers GBP6.9bn.

Temple added: "These changes are cynical because they are totally unfair to the contractor who has fewer employee benefits, no job security, no sick or holiday pay, and no company pension. Rules to tackle workers who do not deserve travel expenses already exist but HMRC find it easier to penalize everyone rather than go to the trouble of enforcing them. UK Plc overall will become less competitive, struggling workers will pay more tax, and employers will face higher costs at a time when budgets are under severe pressure."

"We are not defending people who behave like employees but disguise themselves as contractors. Travel expenses for itinerant workers are a huge and unpredictable expense. Ministers are reaching into the pockets of those with the least job security and cutting the amount they take home by 20 percent overnight. It's an utter shambles at a time when the most flexible section of our labor force are key to the economic recovery. When you risk disposable incomes or burdening industry with colossal costs you put that recovery at risk."

France Presents Draft 2016 Budget

France's Finance Minister, Michel Sapin, and Secretary of State for the Budget, Christian Eckert, have presented the draft Finance Bill 2016.

The Budget increases the income tax-exempt threshold to EUR9,700 (USD10,840). On income above this threshold, rates of income tax will fall. Income above the tax-exempt thresholds up to EUR26,791 will be subject to a rate of 14 percent. Above that, income up to EUR71,826 will be subject to a 30 percent rate. The next threshold, on the portion of income up to EUR152,108, will feature a 41 percent rate, while income over this amount will be subject to a 45 percent rate.

The Government has said that the changes will reduce the income tax burden on households by an average of EUR252.

Taxpayers with an income exceeding EUR40,000 will newly be required to file personal income tax

returns online, ahead of a move to a deduction-at-source income tax regime. This threshold will fall to EUR28,000 in 2017 and to EUR15,000 in 2018. It will become mandatory for all taxpayers from 2019. The Government will legislate for exceptions for taxpayers with legitimate reasons for having no access to the internet, mirroring a move by the UK.

To help micro-enterprises and small and medium-sized firms, the scope of payroll and corporate income tax breaks will be broadened and credits will be expanded for staff training. For SMEs who begin hiring more than 50 employees before the end of 2018, they will be allowed a three-year grace period to continue availing themselves of the tax concessions (the year in which they fell outside the 50-employee threshold and two subsequent years).

The wording concerning the thresholds for micro-enterprises is proposed to be changed. It will now state that a micro-enterprise is a company that employs no more than 11 employees and has a turnover not exceeding EUR2m. It also states that micro-enterprises will also benefit from the three-year grandfathering period, described above, providing they employ no more than 20 employees during that three-year period.

France will lower the distance selling VAT registration threshold from EUR100,000 to EUR35,000, from January 1, 2016. All VAT registered businesses will be required to use recognized accounting software, and there will be stricter rules on the use of sales tracking software. A transitional period – to run until January 1, 2018 – will be allowed for businesses to make necessary changes to their systems and accounting practices, after which stringent penalties will apply.

An exemption from property rates for buildings used in biogas production, introduced as an emergency aid measure in July 2015, is to be extended until the end of 2016. France will also extend tax credits and interest-free loans for energy efficiency improvements in homes.

ANDORRA - PORTUGAL

Signature

Andorra and Portugal signed a DTA on September 27, 2015.

ANDORRA - VARIOUS

Negotiations

Andorra has indicated its desire to negotiate DTAs with Lithuania, Latvia, and Estonia at recent meetings, the Government announced on September 16, 2015.

AUSTRALIA - ISRAEL

Negotiations

The Australian Government announced on September 17, 2015, that it intends to launch DTA negotiations with Israel.

AZERBAIJAN - SAN MARINO

Signature

Azerbaijan and San Marino signed a DTA on September 8, 2015.

CAMEROON - VIETNAM

Negotiations

Cameroon and Vietnam indicated on September 27, 2015, that they will negotiate a DTA.

CAPE VERDE - GUINEA-BISSAU

Forwarded

According to preliminary media reports, Cape Verde's Government has approved the text of a DTA with Guinea-Bissau.

ESTONIA - VIETNAM

Signature

Estonia and Vietnam signed a DTA on September 28, 2015.

HONG KONG - AUSTRALIA

Negotiations

Hong Kong's Chief Secretary for Administration, Carrie Lam, called for the conclusion of a DTA between Hong Kong and Australia during a recent event on September 18, 2015.

IRAN - IRAQ

Signature

Iran and Iraq signed a DTA on September 6, 2015.

ISLE OF MAN - CAYMAN ISLANDS

Signature

The Isle of Man and the Cayman Islands on September 22, 2015, completed the signing of a TIEA, after its signature earlier in the Cayman Islands on September 10, 2015.

ITALY - ANDORRA

Signature

Italy and Andorra signed a TIEA on September 22, 2015.

GEORGIA - LATVIA

Signature

Georgia and Latvia signed a TIEA on September 29, 2015.

GUERNSEY - KOREA, SOUTH

Signature

Guernsey and South Korea signed a TIEA on September 23, 2015.

JERSEY - RWANDA

Ratified

Jersey ratified its DTA with Rwanda on September 22, 2015.

NETHERLANDS - CURAÇAO

Forwarded

Both houses of the Netherlands' Parliament have now approved new DTA arrangements with Curacao, after the upper house's approval of the deal on September 29, 2015.

SAN MARINO - LATVIA

Negotiations

San Marino and Latvia are engaged in negotiations towards a DTA, it was confirmed following a bilateral meeting on September 25, 2015.

SAUDI ARABIA - GABON

Forwarded

According to preliminary media reports, Saudi Arabia's Council of Ministers has approved the signing of a DTA with Gabon.

SPAIN - BELGIUM

Forwarded

Spain's Council of Ministers on September 11, 2015, approved a law to ratify a Protocol to the 1995 DTA with Belgium.

SPAIN - UZBEKISTAN

Ratified

Spain has ratified the DTA signed with Uzbekistan, publishing a notice in its September 10 edition of the Official Gazette.

SWEDEN - UNITED KINGDOM

Forwarded

The Swedish Government forwarded a new DTA with the United Kingdom to Parliament for its approval on September 22, 2015.

SWITZERLAND - NORWAY

Signature

Switzerland signed a DTA Protocol with Norway on September 4, 2015.

UKRAINE - LUXEMBOURG

Initialed

Ukraine's Deputy Minister for Finance, Olena Makeeva, on September 22, 2015, confirmed the initialing of a DTA Protocol with Luxembourg.

VIETNAM - ESTONIA

Signature

Vietnam and Estonia have signed a DTA, Vietnam's Foreign Ministry confirmed on September 27, 2015.

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

THE AMERICAS

INTERNATIONAL TAX CONFERENCE

BNA

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

Key speakers: TBC

10/14/2015 - 10/14/2015

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

THE 22ND WORLD OFFSHORE CONVENTION CUBA 2015

Offshore Investment

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

Key speakers: TBC

10/14/2015 - 10/15/2015

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

GLOBAL TRANSFER PRICING CONFERENCE

BNA

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

Key speakers: TBC

10/15/2015 - 10/16/2015

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

CAPTIVE INSURANCE TAX SUMMIT – WASHINGTON, DC

BNA

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

Key Speaker: TBC

10/26/2015 - 10/27/2015

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

INTERMEDIATE US INTERNATIONAL TAX UPDATE – CHICAGO, IL

BNA

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

Key Speaker: TBC

10/28/2015 - 10/30/2015

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

4TH FATCA AND GLOBAL TAX COMPLIANCE

Marcus Evans

Venue: TBC, New York, USA

Key Speakers: Kevin V Sullivan (BNP Paribas S.A.), Méhul Thakkar (BNY Mellon), Nicole M. DeSantis (Rabobank, N.A.), Dana Flynn (UBS AG), among numerous others.

11/4/2015 - 11/6/2015

http://www.marcusevans-conferences-northamerican.com/marcusevans-conferences-event-details.asp?EventID=22353&SectorID=37&utm_source=PB&utm_medium=Banner&utm_campaign=22353_PB_Banner#.Ve2z3RFVikr

PRINCIPLES OF INTERNATIONAL TAXATION

Bloomberg BNA

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

Key Speakers: TBC

11/16/2015 - 11/18/2015

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

ANNUAL CONFERENCE ON TAXATION

National Tax Association

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

Key Speakers: TBC

11/19/2015 - 11/21/2015

http://ntanet.org/events.html

INTERNATIONAL TAX PLANNING

IBFD

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

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

11/25/2015 - 11/27/2015

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

INTRODUCTION TO US INTERNATIONAL TAX – ARLINGTON, VA

Bloomberg BNA

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

Chairs: TBC

11/30/2015 - 12/1/2015

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

US INTERNATIONAL TAX COMPLIANCE WORKSHOP

Bloomberg BNA

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

Key speakers: TBC

11/30/2015 - 12/1/2015

http://www.bna.com/intlcomp_nyc/

THE NEW ERA OF TAXATION

International Bar Association

Venue: TBC, Mexico City, Mexico

Key speakers: TBC

12/3/2015 - 12/4/2015

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

ACCOUNTING FOR INTERNATIONAL OPERATIONS

ACS

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

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

12/8/2015 - 12/9/2015

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

2015 CORPORATE TAX DEVELOPMENTS – THE YEAR IN REVIEW – CHICAGO

BNA

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

Key speakers: TBC

12/14/2015 - 12/15/2015

http://www.bna.com/2015yearinreview/

2015 CORPORATE TAX DEVELOPMENTS – THE YEAR IN REVIEW – SAN FRANCISCO

BNA

Venue: Morgan Lewis LLP, 1 Market Street, Spear St Tower, San Francisco, CA 94111, USA

Key speakers: TBC

12/16/2015 - 12/17/2015

http://www.bna.com/yearend_sf/

INTERNATIONAL TAX ISSUES 2016

PLI

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

Chair: Michael A. DiFronzo (PwC)

2/9/2016 - 2/9/2016

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2016/_/N-4kZ1z11j97?ID=259129

THE 5TH OFFSHORE INVESTMENT CONFERENCE PANAMA 2016

Offshore Investment

Venue: Hilton Panamá, Avenida Balboa and Aquilino de la Gua, 00000, Panama

Chair: Derek Sambrook (Trust Services)

3/9/2016 - 3/10/2016

http://www.offshoreinvestment.com/pages/index.asp?title=The_5th_Offshore_Investment_Conference_Panama_2016&catID=12383

ASIA PACIFIC

INTERNATIONAL TAX AT CROSSROADS – PLOTTING THE FUTURE

Taxsutra

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

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

10/16/2015 - 10/17/2015

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

JUBILEE CONFERENCE

Foundation for International Taxation

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

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

12/3/2015 - 12/5/2015

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

THE 4TH OFFSHORE INVESTMENT CONFERENCE SINGAPORE 2016

Offshore Investment

Venue: Raffles Hotel, 1 Beach Rd, 189673, Singapore

Chair: Nicholas Jacob (Wragge Lawrence Graham & Co)

1/20/2016 - 1/21/2016

http://www.offshoreinvestment.com/pages/index.asp?title=The_4th_Offshore_Investment_Conference_Singapore_2016&catID=12382

INTERNATIONAL TAX PLANNING – POST BEPS

IBFD

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

Key speakers: TBC

2/24/2016 - 2/26/2016

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

CENTRAL AND EASTERN EUROPE

THE TRANSFORMATION OF TAX SYSTEMS IN THE CEE AND BRICS COUNTRIES

IBFD

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

Key Speakers: Mr Porus Kaka (President of the International Fiscal Association), Prof. Frans Vanistendael (Katholieke Universiteit Leuven, Belgium), Prof. Jan de Goede (International Bureau of Fiscal Documentation)

10/9/2015 - 10/10/2015

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

THE OFFSHORE INVESTMENT CONFERENCE CYPRUS 2015

Offshore Investment

Venue: Amathus Beach Hotel, Amathountos St, Mesa Geitonia 4005, Cyprus

Chair: Christos Mavrellis (Chrysses Demetriades)

11/18/2015 - 11/19/2015

http://www.offshoreinvestment.com/pages/index.asp?title=The_Offshore_Investment_Conference_Cyprus_2015&catID=12288

MIDDLE EAST AND AFRICA

MENA Tax Forum

International Tax and Investment Center

Venue: TBC, Doha, Qatar

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

11/10/2015 - 11/12/2015

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

TRANSFER PRICING SUMMIT AFRICA

IIR & IBC

Venue: TBC, Cape Town, South Africa

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

11/24/2015 - 11/25/2015

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

INTERNATIONAL TAX ASPECTS OF CORPORATE TAX STRUCTURES

IBFD

Venue: Radisson Blu Gautrain Hotel, Sandton Johannesburg, Cnr Rivonia Road and West Street, Postnet Suite 2010, Private Bag X9, Benmore 2010, Johannesburg, South Africa

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

4/13/2016 - 4/15/2016

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

WESTERN EUROPE

INTERNATIONAL TAX PLANNING ASSOCIATION MONTE-CARLO MEETING

ITPA

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

Chair: Milton Grundy

10/11/2015 - 10/13/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – CAMBRIDGE

CCH

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

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

10/13/2015 - 10/14/2015

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

10TH INTERNATIONAL CORPORATE TRANSFER PRICING CONFERENCE

IQPC

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

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

10/19/2015 - 10/20/2015

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

WHERE ARE WE NOW: PRIVATE CLIENT POST BUDGET TAXATION UPDATE

IIR & IBC

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

Key Speakers: Ian Maston (Mastoni Tax), Etienne Wong (15 Old Square), Elizabeth Wilson (Pump Court), Lisa Vanderheide (BDO), Mark Davies (Mark Davies & Associates Ltd), Adrian Mee (Mattioli Woods PLC), Jolyon Maugham QC (Devereux Chambers), among numerous others.

10/21/2015 - 10/21/2015

http://www.iiribcfinance.com/event/Post-Budget-Taxation-Update-Conference

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – LEEDS

CCH

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

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

10/27/2015 - 10/28/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – SOUTHAMPTON

CCH

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

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

11/10/2015 - 11/11/2015

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

PRIVATE WEALTH EASTERN EUROPE

IIR & IBC

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

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

11/12/2015 - 11/12/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – GATWICK

CCH

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

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

11/17/2015 - 11/18/2015

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

2ND ANNUAL CORPORATE TAX SUMMIT

Uniglobal

Venue: TBC, Vienna, Austria

Key speakers: Georg Gam-Jensen (Lego), Peter Hordijk (Unilever), Clive M. Baxter (Maersk), Sabine Bernegger (KPMG), Rod Sayers (Petrofac Services Limited), among numerous others.

11/19/2015 - 11/20/2015

http://www.ibfd.org/sites/ibfd.org/files/content/pdf/Corporate_Tax_Summit_2015.pdf

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – BIRMINGHAM

CCH

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

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

11/24/2015 - 11/25/2015

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

EU FINANCIAL ACCOUNTING IN INTERNATIONAL COOPERATION AND DEVELOPMENT PROJECTS

European Academy

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

Key Speakers: TBC

11/26/2015 - 11/27/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – GLASGOW

CCH

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

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

12/1/2015 - 12/2/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – LONDON

CCH

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

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

12/8/2015 - 12/9/2015

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

INTERNATIONAL TAXATION OF OIL AND GAS AND OTHER MINING ACTIVITIES

IBFD

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

Key speakers:TBC

12/9/2015 - 12/11/2015

http://www.ibfd.org/Training/International-Taxation-Oil-and-Gas-and-Other-Mining-Activities-0#tab_program

5TH ANNUAL IBA TAX CONFERENCE

IBA

Venue: TBC, London, UK

Key speakers: TBC

2/8/2016 - 2/9/2016

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=e4f0bf6f-997e-470b-971f-c884539fb93b

21ST ANNUAL INTERNATIONAL WEALTH TRANSFER PRACTICES CONFERENCE

IBA

Venue: Claridge's Hotel, Brook St, London W1K 4HR, UK

Key speakers: TBC

2/29/2016 - 3/1/2016

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=db061854-33d1-4297-b9bc-6058df392231

PRINCIPLES OF INTERNATIONAL TAXATION

IBFD

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

Key speakers: Bart Kosters (IBFD), Carlos Gutiérrez (IBFD), Boyke Baldewsing (IBFD)

2/29/2016 - 3/4/2016

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

THE AMERICAS

Canada

The Federal Court of Canada has denied a request for an injunction to prevent the collection and disclosure of Foreign Account Tax Compliance Act (FATCA) information to the United States regarding American citizens living in Canada.

Under the terms of the intergovernmental agreement (IGA) implementing FATCA between Canada and the United States, the Canada Revenue Agency (CRA) will now be able to disclose to the US Internal Revenue Service (IRS) the personal bank account information of US citizens in Canada for 2014, from September 23, 2015.

The case was filed by two American-Canadian dual citizens living north of the border, but was prepared by the Alliance for the Defense of Canadian Sovereignty (ADCS).

The lawsuit challenged the constitutionality of the country's involvement with FATCA, arguing that the FATCA IGA violates provisions of the Canadian Charter of Rights and Freedoms, which guarantees life, liberty, and security of person; security against unreasonable search and seizure; and equal protection of law without discrimination. The complaint suggested that FATCA goes against the principle "that Canada will not forfeit its sovereignty to a foreign state."

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

It also alleged that the provisions of the IGA for the automatic collection and disclosure of taxpayer information to the US are contrary to the provisions of the existing Canada–US double taxation agreement (DTA), "as the information is not relevant for carrying out the provisions of the DTA, or the domestic tax laws of Canada or the US."

In addition, it was argued, the provisions of the IGA subject US citizens resident in Canada to taxation and requirements that are more burdensome than the taxation and requirements to which Canadian citizens resident in Canada are subjected.

The Federal Court concluded, on the contrary, "that the collection and automatic disclosure of account holder information about US reportable accounts contemplated the IGA is legally authorized in Canada by the provisions of the IGA Implementation Act." Moreover, it found that the collection and automatic disclosure of any such information is not inconsistent with the provisions of the Canada–US DTA.

However, as the Court also declared that its decisions were "without prejudice to the plaintiffs' right to pursue their claim that the impugned provisions are *ultra vires* or inoperative because they are unconstitutional or otherwise unjustifiably infringe Charter rights," the ADCS subsequently declared that the ruling does not mean the end of the case, which it believes will eventually be heard by the Supreme Court of Canada.

In the meantime, however, the CRA will proceed to fulfill the disclosure requirements for Canadian financial institutions (FIs) under the FATCA IGA. Failure by FIs to disclose information on their US clients can result in a requirement to withhold 30 percent tax on payments to them of US-sourced income.

This judgment was delivered on September 16.

http://cas-ncr-nter03.cas-satj.gc.ca/rss/T-1736-14%20decision%20sept-16-2015.pdf

Federal Court of Canada: *Virginia Hillis et al v. the AG Canada, the Minister of Revenue*

United States

The US Court of Appeals for the Second Circuit has confirmed that the "economic substance doctrine" may apply to transactions involving foreign tax credits.

This ruling upheld a previous US Tax Court judgment and an opinion and order of the US District Court for the Southern District of New York, regarding two cases taken together: *Bank of New York Mellon Corporation v. Commissioner of Internal Revenue*, and *American International Group (AIG) v. United States of America* (Nos. 14-704-ag(L), 14-1394-ag(XAP), 14-765-cv).

AIG and Bank of New York Mellon claimed USD306.1m and USD215m, respectively, in tax credits associated with foreign transactions that the Internal Revenue Service disallowed. These were denied because the agency contended the transactions lacked economic substance.

The economic substance doctrine allows courts to question the validity of a transaction and to deny taxpayers benefits to which they are technically entitled under the US tax code, if the transaction at issue "cannot with reason be said to have purpose, substance, or utility apart from their anticipated tax consequences."

The plaintiffs argued that the economic substance doctrine could not be applied to disallow foreign tax credits that comply with all statutory and regulatory requirements. However, the District Court

decided that the "doctrine applies to transactions involving foreign tax credits generally."

The Appeals Court confirmed that the doctrine exists "to provide courts a 'second look' to ensure that particular uses of tax benefits comply with Congress's purpose in creating that benefit."

"It is entirely appropriate," the Appeals Court added, "for a court to ask whether a taxpayer's claim to foreign tax credits is tied to true 'business abroad,' or whether its claim to a tax credit derives from sham transactions devoid of a business purpose beyond exploiting differences among foreign tax codes."

It found "no support for the contention that foreign tax credits, by their nature, are not reviewable for economic substance. … We thus hold that the doctrine can, as a general matter, be applied to disallow foreign tax credits."

This judgment was released on September 9.

http://www.ca2.uscourts.gov/decisions/isysquery/83f4a88b-cb82-4deb-bbff-065eb4015779/1/doc/14-704_14-765_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/83f4a88b-cb82-4deb-bbff-065eb4015779/1/hilite/

United States Court of Appeals for the Second Circuit: *The Bank of New York Mellon v. Commissioner of Internal Revenue (14-704-ag(L), 14-765-cv).*

WESTERN EUROPE

Italy

The European Court of Justice (ECJ) has set out the conditions that must be satisfied for Italy to remove time limitation provisions under its law for value-added tax (VAT) fraud cases that could otherwise be too drawn-out to pursue.

The case related to individuals in Italy that had formed and organized, between 2005 and 2009, a criminal conspiracy in which fraudsters had put in place fraudulent "VAT carousel" arrangements.

Through the use of shell companies and false documents, they are alleged to have acquired bottles of champagne VAT-free through a company, "Planet." The shell companies did not submit any annual VAT returns or, where they did submit returns, they did not actually pay the corresponding VAT, the ECJ said. Planet, on the other hand, entered the invoices issued by the shell companies in its accounts, wrongly deducting the VAT recorded in each of them and submitting fraudulent annual VAT returns, the ECJ added.

The ECJ further noted that some of the charges against the individuals are now time-barred, whereas the remainder of the charges will be time-barred by February 8, 2018, at the latest. It is anticipated that this will be before a final judgment can be delivered, due to the complexity of the investigation and the duration of procedures in Italian courts.

The individuals "may therefore enjoy *de facto* impunity as a result of the expiration of the limitation period," the ECJ said.

Recognizing that fact, the Italian District Court in Cuneo sought clarification from the ECJ whether Italian law, by effectively granting impunity after a certain period to persons and undertakings that commit criminal offenses, contravenes EU law by effectively creating a new VAT exemption.

In its judgment, the ECJ pointed out that, under Article 325 of the Treaty on the Functioning of the European Union (TFEU), member states "must counter illegal activities affecting the financial interests of the EU through effective deterrent measures and, in particular, take the same measures to counter fraud affecting the financial interests of the EU as they take to counter fraud affecting their own financial interests."

The ECJ identified that there is a direct link between the collection of VAT revenue and the financial interests of the EU. It asked the Italian court to determine "whether the Italian law at issue allows the effective and dissuasive penalization of cases of serious fraud affecting the financial interests of the European Union."

It said that Italian law could said to be contrary to Article 325 if the Italian court were to conclude that, in a considerable number of cases, the commission of serious fraud would escape criminal punishment because the rules on limitation periods generally prevent the imposition of final judicial decisions.

Likewise, the Italian law would be contrary to Article 325 TFEU if it provided for longer limitation periods in respect of cases of fraud affecting Italy's financial interests than in respect of those affecting the financial interests of the European Union. It opined that "that seems to be the case, since Italian law does not lay down any absolute limitation period in respect of the offense of conspiracy to commit crimes in relation to import duties on tobacco products."

The ECJ concluded that if the national court decides Article 325 is infringed, it must then ensure EU law is given full effect, if necessary by disapplying the rules on limitation periods in question.

This judgment was released on September 8.

http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-09/cp150095en.pdf

European Court of Justice: *Ivo Taricco and Others (C-105/14)*

Poland

Delivering a preliminary ruling in a case referred to it by the Polish Supreme Administrative Court, the European Court of Justice (ECJ) has ruled that the EU VAT Directive must be interpreted as meaning that municipal budgetary entities, such as those at issue in the case, cannot be regarded as taxable persons

for VAT purposes in so far as they do not satisfy the criterion of independence set out in Article 9(1).

The request stemmed from proceedings between the municipality of Wroclaw and the Minister of Finance regarding the status for VAT purposes of municipal budgetary entities (such as schools, cultural centers, district inspectorates, and police services) linked to the municipality.

Article 9 provides that the term "taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or the results of that activity. Thus, for a body governed by public law to be regarded as a taxable person within the meaning of the VAT Directive, it must, in accordance with Article 9(1), independently carry out any economic activity.

In derogation from that general rule on treatment as taxable persons laid down in Article 9(1), Article 13(1) of the VAT Directive excludes bodies governed by public law from the capacity as a taxable person in respect of activities or economic transactions in which they engage as a public authority, unless their treatment as non-taxable persons leads to significant distortions of competition.

It was noted that a municipality, as a basic unit of local government, has legal personality and has rights of ownership and other property rights, whereas a municipal budgetary entity is an organizational structure without legal personality. A municipal budgetary entity does not own its own property but manages certain assets of the property owned by the municipality, which the latter has entrusted to it. Any activities which may be subject to VAT are carried out in the name and on behalf of the municipality, within the limits of the resources which it allocates to the municipal budgetary entity in a given year in the budgetary decision.

The ECJ noted that the economic nature of the activities concerned was not disputed. It was also common ground that the economic activities at issue do not fall within the exception laid down in Article 13(1) of the VAT Directive. The question was simply whether municipal budgetary entities, such as those at issue in the main proceedings, independently carry out the economic activities concerned and must as a result be made subject to VAT.

In this respect, the ECJ pointed out that it is necessary to check whether the person concerned performs his activities in his own name, on his own behalf and under his own responsibility, and whether he bears the economic risk associated with carrying out those activities. It observed that, "in the present case, it is apparent from the order for reference that the budgetary entities at issue in the main proceedings carry out the economic activities which are entrusted to them in the name and on behalf of the Municipality of Wroclaw and that they do not bear liability for damage caused by those activities; that liability is borne solely by that municipality."

"It is also apparent from the order for reference that those entities do not bear the economic risk associated

with carrying out those activities since they do not own their own property, do not generate their own earnings, and do not bear the costs of those activities; any earnings generated are assigned to the budget of the Municipality of Wroclaw and expenses are directly attributed to the budget of that municipality."

"Therefore, as the Supreme Administrative Court (extended composition) also found, a municipality, such as the Municipality of Wroclaw, and its budgetary entities must be regarded, in a situation such as that at issue in the main proceedings, as one and the same taxable person within the meaning of Article 9(1) of the VAT Directive … [B]odies governed by public law, such as the municipal budgetary entities at issue in the main proceedings, cannot be regarded as taxable persons for the purposes of value-added tax."

This judgment was released on September 29, 2015.

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d545d57ca634754a638199ca5da977ec22.e34KaxiLc3eQc40LaxqMbN4ObNyNe0?text=&docid=168801&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=107561

European Court of Justice: *Gmina Wroclaw v. Minister Finansów (C-276/14)*

Dateline October 8, 2015

Apparently, the numerous consultations that the OECD undertook with businesses and other stakeholders as part of the BEPS project generated some 12,000 pages of comment. I do wonder, however, how much of this verbiage the OECD actually took on board when formulating the final BEPS reports, which were announced, in that most modern of ways, via a webcast from OECD HQ in Paris, on October 5.

In reality, the content of the 15 reports, filled as they are with jargon, official-speak and complex tax concepts, is what most of us were expecting. What's really quite worrying me is that the OECD seems to be utterly in denial that the BEPS recommendations, when (and if) implemented, could do any harm to businesses, investment, and economies. Indeed, I was astonished to hear Saint-Amans admit in his presentation that more double taxation is going to be inevitable, at least in the early phases of implementation of the BEPS measures. But he said it would be worth it in the long run because we will have a better tax system overall. Hmm. That will depend, of course, on 200 countries interpreting and implementing the proposals in the same way. And let's hope that some of them don't jump the gun. What's that? They already have? Oh dear.

So why is it that the OECD doesn't appear to be taking the concerns of businesses seriously? In my view, it's probably because the authors of the reports aren't business people themselves. Take a look at Saint-Amans' resume for example. After graduating from France's National School of Administration in 1996, he spent almost ten years as an official in the French Finance Ministry where he oversaw legislation and policy on wealth tax, headed up tax treaty negotiations and mutual agreement procedures, participated in and chaired the OECD Working Party No. 1 of the Committee on Fiscal Affairs, and served as Deputy Director in charge of litigation at the Direction Générale des Impôts. He joined the OECD in September 2007 as Head of the International Cooperation and Tax Competition Division before becoming Director of the Centre for Tax Policy and Administration in February 2012. In other words, he's a career bureaucrat. And judging by his previous jobs, he might know an awful lot about tax administration, but it looks like he's never been near a business in his life, at least from the point of view of forming one, running one, or even working for one.

Sure, the time has come for some kind of new contract between multinationals and governments with regard to tax – I get that – but it's becoming all too obvious that not enough thought is being given by those driving the BEPS project to the economic consequences of its proposals. So how ironic would it be if, in the almost borderless age of digital innovation, governments conspire, as a result of BEPS, to effectively shut down parts of the world economy to investment. That's not going to help foster growth and technological progress, especially in the developing world. And this is beginning at

a time when the world economy is growing slower than at any time since the nadir of the financial crisis. Talk about shooting yourself in the foot!

To the UK now, and on the face of it, George Osborne has had a good record as Chancellor of the Exchequer as he approaches his sixth year in the post. He has slashed corporate tax; business that fled the erratic tax policies witnessed at the end of the previous Labour administration is coming back; and he has presided over some of the strongest – and most surprising – rates of economic growth seen in the G7. He's also been a very canny Chancellor and hasn't been too proud to lift popular policies previously espoused by opposition parties, thereby enabling the Tories to outflank their opponents and consolidate power.

Yet, I think his record has been mixed. Interspersed with these achievements are some tax measures that wouldn't have looked out of place had François Hollande presented them. Some of these have been quite anti-small business, which is odd considering the Government in general likes to champion the "kitchen table" CEO.

The latest of these is the idea to restrict the amount of expenses that self-employed contractors can claim for travel, subject to a test based around whether contractors are directly supervised while they work in an office. Why? Because HMRC is cracking down on "false" self-employment as part of its wider anti-avoidance and anti-evasion work. Which is all well and good, but self-employed groups are warning that thousands of genuine contractors, many of whom earn quite modest incomes, will be scooped up in HMRC's dragnet, and won't have the financial means to challenge any tax punishments meted out to them.

What will the result of this be? Contractors will probably have to increase their charges, to cover travel costs. But then companies might decide it's cheaper to keep things in-house. Or contractors might think it's not worth the hassle or the risk to be self-employed anymore. Indeed, the Association of Independent Professionals and the Self-Employed has already warned that 45,000 freelancers could be driven out of business if the UK Government proceeds with these plans.

So much for the flexible UK workforce that Osborne likes to take credit for!

The Jester