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GLOBAL TAX WEEKLY
a closer look

ISSUE 161 | DECEMBER 10, 2015

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

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

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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Internationally Mobile Employees – The New UK Tax Rules For Employment-Related Shares And Securities

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Introduction

With the increase in globalization comes change in the way multinational organizations manage their workforces. As new markets open up and as the brightest new talent demands the opportunity to gain international experience, the number of internationally mobile employees (**IMEs**) continues to increase.

While commentators are predicting 50 percent growth in mobile employees by 2020,[1] the type of assignee is changing with 56 percent of multinationals surveyed[2] expecting an increase in short-term assignments while only 44 percent predict an increase in the more traditional long-term assignments.

What this means in practice is a great deal more complexity in the way in which such employees are taxed and a potential minefield for employers trying to keep up with changing tax legislation and regulation in a variety of different jurisdictions.

In the UK, the law relating to the taxation of employment-related securities (**ERS**)[3] is complicated, and income tax and potentially National Insurance Contributions (**NIC**) (UK social security) may arise on gains arising from the acquisition, holding or disposal of ERS or on the exercise of certain options to acquire ERS (securities options, most typically being employee share or stock options). The relevant charging provisions for UK resident employees are found in section 62 of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA) or Part 7 ITEPA.

Historically, the tax treatment of such awards in the hands of IMEs had been governed by sections 423E and 474 of Part 7 ITEPA. The interaction of this legislation with the UK tax rules relating to residence and domicile, as well as the application of international tax treaties, led to a potentially convoluted route to the correct answer.

In recognition of this, new rules were introduced in the Finance Act 2014, and now form Chapter 5B Part 2 ITEPA which aims to simplify the taxation of ERS for IMEs. The aim of the new legislation is to tax the gains in the jurisdiction where the IME

was resident at the relevant time. This article considers these new rules and how they apply.

The rules apply from April 6, 2015, and due to the impact that an individual's particular circumstances may have on their tax treatment each arrangement should be considered on a case-by-case basis.

In determining the amount subject to tax in the hands of an IME, a four-step process should be followed:

1. Does section 62 ITEPA or Part 7 ITEPA apply?
2. Is the individual an IME (Chapter 5B Part 2 ITEPA)?
3. What is the "relevant period" (Part 7 ITEPA)?
4. What is the "taxable specific income" (section 41F ITEPA)?

Where the relevant charge arises under section 62 ITEPA (for example, the acquisition at undervalue of a very "plain vanilla" security which is not subject to restrictions or a right to convert *etc*.) then the new rules on ERS will not apply and similar provisions to a cash bonus should be considered – this is beyond the scope of this article.

However, where the charge arises under Part 7 ITEPA, we then need to determine whether the individual is an IME and hence whether Chapter 5B ITEPA applies.

Does Chapter 5B Apply?

If the employee meets one of the "internationally mobile conditions" in any part of the "relevant period" (see below) then Chapter 5B will apply. These conditions are as follows:

1. The employee is taxable on the "remittance basis" or is not resident in the UK for tax purposes in the UK in a UK tax year[4] in the relevant period; or
2. The overseas part of a UK tax year which is a "split year" falls in the relevant period.

What Is The Relevant Period?

The relevant period is important as it is the basis of determining which portion of the securities income is subject to UK income tax. The relevant period is determined by which Part 7 ITEPA charging provision applies. However, it will be subject to a "just and reasonable" override if a different period would be a better basis for the charging provisions (*e.g.*, if an award was made wholly in respect of prior UK service then the entire period might be treated as being UK and the entire gain will be subject to UK tax). It is also important to consider the potential interaction between the charging provisions.

Part 7 ITEPA Charging Provision	The Relevant Period
Restricted securities (Chapter 2)	Period from acquisition to the Chargeable Event (CE).
Convertible securities (Chapter 3)	Period from acquisition to CE.
Securities with an artificially depressed market value (Chapter 3A)	Tax year of acquisition (where acquisition is the CE) or otherwise the start of UK tax year to CE (except where a charge arises under section 446E(1)(a) ITEPA where the restricted securities rules would apply).
Securities with an artificially enhanced market value (Chapter 3B)	Start of the UK tax year of the valuation to valuation date.
Acquisition for less than market value (Chapter 3C)	Securities option – period from grant to vesting. Notional loan – normally the UK tax year in which the loan is made or, if the CE is in the same year, the period from the start of the UK tax year to the CE.
Securities disposed of for greater than market value (Chapter 3D)	The UK tax year of the CE.
Post-acquisition benefits (Chapter 4)	The UK tax year of the CE.
Securities options (Chapter 5)	Period from grant of the option until the CE or vesting if earlier (where options vest in tranches, each tranche is considered separately).

What Is Subject To UK Income Tax?

The amount subject to UK income tax is the "taxable specific income" which is calculated as follows:

> securities income – foreign securities income + chargeable foreign securities income = taxable specific income

Securities income is employment income calculated in accordance with the provisions of Part 7 ITEPA (*e.g.*, the spread or gains on exercise of a stock option).

Foreign securities income is made up of chargeable and unchargeable foreign securities income.

Securities income less foreign securities income will generally be subject to income tax in the UK under PAYE (unless certain exemptions apply). The employer should operate PAYE (where relevant) on their best estimate of the taxable securities income less foreign securities income. This means that it is not necessary for the employer to consider how much if any of the securities income has been remitted to the UK – chargeable foreign securities income must be declared on the individual's self-assessment tax return and will be taxed accordingly.

Chargeable foreign securities income means securities income which falls in any part of the relevant period in a tax year where:

(a) The individual has claimed the remittance basis (section 809B, 809D or 809E of the Income Tax Act 2007);

(b) The individual does NOT meet the requirements of section 26A ITEPA;[5]

(c) The relevant employment is with a foreign employer; or
(d) The duties of the relevant employment were performed wholly outside the UK in that year,

EXCEPT where there are restrictions on the remittance basis (under section 24A ITEPA),

OR, where the individual has claimed the remittance basis and does meet the requirements of section 26A ITEPA (contrasted with (b) above), then where the duties of employment are performed:
(a) Wholly outside the UK – securities income in that part of the relevant period is chargeable foreign securities income; or
(b) Partly outside the UK – the proportion relating to overseas duties is chargeable foreign securities income,

EXCEPT in a split year when the proportion relating to overseas duties in the split year is treated as unchargeable foreign securities income.

Unchargeable foreign securities income means securities income which falls in any part of the relevant period in a tax year where:
(a) The individual is not UK resident for tax purposes;
(b) The employee performed his duties outside the UK; or
(c) Where the employee performed some of his duties outside the UK, that part which is attributable to non-UK duties (on a just and reasonable basis).

Unchargeable foreign securities income is not subject to UK income tax.

Double Taxation

While the new rules are intended to bring a more appropriate proportion of ERS gains into the UK, there is still a risk of double taxation. Relief and how it is obtained will depend on the residence status of the employee at the date of the chargeable event and whether there is a double tax treaty in place:

1. Where the employee is resident in the UK at the time of the chargeable event, the amount will be subject to UK tax and the employee will normally be given credit for the foreign tax suffered;
2. Where the employee is not UK resident at the time of the chargeable event but is resident in a territory which has a double tax treaty with the UK, the gain will be apportioned in accordance with the tax treaty; and
3. Where the employee is not UK resident at the time of the chargeable event and is not resident in a territory which has a double tax treaty with the UK, the gain will be charged as above and tax relief given by the jurisdiction where the employee is resident.

National Insurance Contributions

Unlike the tax treatment, time apportionment and double tax treaties do not apply to NIC for IMEs.

The securities income as defined above will be treated as "earnings" and therefore subject to NIC in the UK. Statutory Instrument 2001/2004 Schedule 3

(as amended from April 6, 2015) aims to avoid a double charge and securities income is thereby disregarded for NIC purposes where EU social security rules or an international social security agreement mean that due to the IME's residence status, he is not subject to earnings related NIC. The relevant period is calculated as for tax purposes and gains are deemed to accrue evenly, but there is no just and reasonable override.

Double charges can arise; where the other charging jurisdiction is not an EEA member state or where there is no reciprocal arrangement in place, it can be difficult to obtain relief.

Moving Forwards

Now more than ever, IMEs and their employers will need to ensure they have records of the IMEs' movements, particularly where awards were made prior to April 6, 2015, as the old rules no longer apply and grandfathering has not been applied. Tax planning may also be difficult as certain actions are not available – for example, entering into a "section 431 election," which can reduce some tax charges arising on restricted securities, which cannot take place within the necessary 14 days of acquisition if that acquisition did not take place in the UK or at a time when UK duties were envisaged.

In the Chancellor of the Exchequer's 2015 Autumn Statement on November 25, it was recognized that the new legislation remains complex and further simplification is needed. We await further details in the Budget on March 16, 2016.

Endnotes

1. PWC, *Talent mobility: 2020 and beyond*.
2. Mercer UK,*Global Employee Mobility – Increased diversification across types of international assignments used*, December 1, 2015.
3. ERS include shares and other securities (such as debentures, loan notes *etc.*) acquired by reason of employment. Where such securities are made available by an employer, or person connected with the employer, then they will be deemed to have been acquired by reason of employment unless the person making available the right is an individual and it is in the normal course of a domestic, family or personal relationship.
4. A UK tax year, for individual tax purposes, runs from April 6 each year.
5. These are broadly the conditions for overseas workdays relief (known as OWR) to apply.

Recent Transfer Pricing Developments

by Duff & Phelps

Patent Box: New BEPS-Compliant Regime

The Organisation for Economic Co-operation and Development (OECD) released its final tranche of BEPS (base erosion and profit shifting) reports on October 5, 2015, including a final report on Action 5, Harmful Tax Practices. Chapter 4 of the Action 5 report introduces new rules in respect to the substantial activity requirement in the context of intangible property (IP) regimes, specifically the introduction of the "modified nexus approach," gearing qualifying benefits to physical research and development activities.

On October 22, 2015, the United Kingdom's tax authorities launched a public consultation on their proposed new regime with the aim of formulating proposed legislation for the 2016 Finance Bill. This should allow time to meet the Action 5 cut-off date of June 30, 2016 for withdrawal of old IP regimes to new entrants.

The consultation is available at https://www.gov.uk/government/consultations/patent-box-substantial-activities.

On the same day, the Irish Financial Bill 2015 was published. This bill proposes incorporation of the "nexus approach" applying the OECD's nexus formula as part of the new Knowledge Development Box (KDB), which is currently set to become effective on January 1, 2016. In addition to the updates to the KDB – an IP tax regime with an effective tax rate of 6.25 percent – the bill also includes country-by-country (CbC) reporting and other updates on Ireland's international tax strategy.

Finance Bill 2015 will now be debated in the Irish parliament and is expected to be passed, in some form, by year's end. For more details on Finance Bill 2015, the press release from the Minister is available at http://www.finance.gov.ie/news-centre/press-releases/minister-finance-publishes-finance-bill-2015.

Finally, with patent boxes in 11 European countries, Germany is now also considering the adoption of a patent box by the end of 2016 based on the "nexus approach" outlined by the OECD.

Decisions Made By The EC In State Aid Investigations Regarding Starbucks And Fiat

On October 21, 2015, the European Commission (EC) announced its final decision with regards to the formal state aid investigations into select advance pricing agreements (APAs). The EC found that two companies, Starbucks and Fiat, explicitly applied a method which allowed for their profit to be forwarded to the Netherlands (Starbucks) and Luxembourg (Fiat) in order to avoid paying tax in the countries where they earn the profit. Specifically, the EC concluded that the agreement between Starbucks and the Dutch government in 2008, which involved not collecting between EUR20m to EUR30m of tax from the high profile coffee chain, was illegal. In addition, the EC concluded that Luxemburg allowed Fiat to pay artificially low taxes by employing "an extremely complex and artificial methodology" that "cannot be justified by economic reality." Ultimately while the EC does not have direct control over national tax systems, the EC requires its member states to force companies to pay back any illegal tax reliefs granted over a period usually covering up to ten years – something that could severely impact these corporations depending on the outcomes of any appeals.

Furthermore, the EC's decisions on Starbucks and Fiat, together with the OECD BEPS initiative, clearly indicate that the global environment for international tax has changed. The decision has caused consternation among multinationals including Apple, which is currently under scrutiny with respect to its relationship with the Irish government. In the case of Apple, the EC has commented that the Irish tax administration has been discretely granting Apple a selective advantage by reducing its tax burden below the level where it should technically be. A final decision from the EC on this investigation is expected before the end of 2015.

Chevron Australia Intercompany Interest Case Decision

On October 23, 2015, the Australian Federal Court released its decision in a case involving intercompany interest paid by Chevron Australia Pty Ltd (Chevron Australia) to its US subsidiary. The case considered the Australian Commissioner of Taxation's disputed assessment that the interest rate paid under a Credit Facility Agreement by Chevron Australia exceeded an arm's length consideration for the purposes of Australia's former transfer pricing rules (*Income Tax Assessment Act 1936, Division 13*), and its recently enacted retrospective transfer pricing rules (*Income Tax Assessment Act 1997, Subdivision 815-A*).

Over the period 2004–2008, Chevron US lent funds to Chevron Australia under a Credit Facility Agreement. The interest rate applied on the AUD-denominated borrowings (approximately USD2.5bn) was AUD LIBOR plus 4.14 percent, reflecting a significant mark-up on the US-sourced funds obtained by Chevron US from a third- party bank at an interest rate of approximately 1.2 percent. The Commissioner argued that the intercompany interest rate charged was unsustainable from the perspective of an independent third-party

borrower and was not arm's length. The judge found in favor of the Commissioner, and applied a 25 percent penalty on the tax shortfall.

It is likely that Chevron Australia's transfer pricing approach for this transaction would have been accepted as adequate in 2003, when the Credit Facility Agreement was established. However, transfer pricing practices have evolved and such evolution, coupled with Australian legislative and case law developments, ultimately cast a different light on this transaction. Further, the resulting tax benefits from Chevron likely tainted the pricing of the controlled financing transaction, as well as the Commissioner's and Court's perceptions thereof.

The judgment is arguably dismissive of the taxpayer's benchmarking analyses, and of the limitations in the Commissioner's analyses that were raised by the taxpayer's expert witnesses. Ultimately, the court found that a key non-arm's length condition of Chevron Australia's Credit Facility Agreement was the lack of financial and operational covenants therein. However, this construct is common in intercompany agreements and adjustments during the benchmarking can account for this. The judgment arguably applies comparability standards too strictly, without regard to practical constraints on the availability of benchmarking data, as well as investment alternatives available to lenders.

Importantly, the Court held that "[t]he correct perspective is that of a commercial lender. A commercial lender would not approach the question of the borrower's credit worthiness in the same way as would a credit rating agency" (para. 503). Thus, the decision accepted that commercial lenders do not regard the views of credit ratings agencies, and that implicit parental support (upon which subjective notching is based) has "very little, if any, impact on pricing by a lender in the real world" (para. 606), in the absence of a binding parental guarantee. This aspect of the decision, if it survives appeals, will likely become embedded in the accepted transfer pricing precedents and practices specific to financial transactions.

Given the complexity of the case and the potential tax liability, approximately USD322m in penalties and unpaid taxes, it is generally expected that Chevron will appeal the decision.

For more information, a complete copy of the judgment is available at http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2015/2015fca1092.

Country-by-Country (CbC) Reporting Legislation

Also topical in Australia, on August 9, 2015, the Australian Government released an Exposure Draft containing new sections 815-350 to 815-365 for the *Income Tax Assessment Act 1997* and an explanatory memorandum, pertaining to CbC reporting. Specifically, Australian CbC reporting requirements would be effective for fiscal years

commencing on or after January 1, 2016. While the details of these reporting requirements have not yet been issued, the Australian Taxation Office may require the provision of three reports – the Master file, the Local file, and a CbC report. The applicable revenue threshold for a group (defined in the legislation as a "significant global entity") will be AUD1bn, determined based on annual consolidated global revenue.

The CbC requirements are part of a broader piece of legislation designed to combat multinational corporation's tax avoidance.

For more information on the specific changes related to CbC, see http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=LEGISLATION;id=legislation/bills/r5549_firstreps/0004;query=Id:"legislation/bills/r5549_first-reps/0000";rec=0.

Topical News Briefing: Digesting BEPS In Washington

by the Global Tax Weekly Editorial Team

One only has to look at the testimony produced by the recent US congressional hearing on international tax developments to realize that this is an extremely complex and politically sensitive area of policy making, and radical change to the US tax code isn't going to happen overnight as a result.

As much of the rest of the developed world sets about reacting to the OECD's recommendations to tackle base erosion and profit shifting – some might say overreacting – with new tax legislation and regulations, the US is still trying to take it all in and assess what BEPS means for the future of corporate taxation in the US.

There are a number of different forces at work here. First, there is a desire to ensure that the US Government and Congress are not dictated to by foreign powers under the BEPS project. As House Ways and Means Tax Policy Subcommittee Chairman Charles Boustany (R – Louisiana) remarked in his testimony, "The OECD's BEPS project recommendations are deeply troubling on a number of levels, not the least of which is the aggressive attempt to impose substantial tax policy changes on the international community under the guise of eliminating so-called 'harmful tax practices'."

Then there is the desire to protect the US tax base against tax planning techniques utilized by multinational companies, with the corporate inversion issue continuing to rumble on. However, as Robert Stack observed in an interview with Tax Analysts in 2013, Congress and the administration will need to ensure a level head on this issue, and not be swept away by the tide of public opinion. "The political overlay makes it particularly challenging, especially when a lot of well-known US companies become the global poster child [for BEPS]," he said.

These factors also feed into the ongoing debate about US tax reform, which most members of Congress believe is long overdue. As Paul Ryan (R – Wisconsin), the House of Representatives Speaker, said in a speech at the Library of Congress on December 3, "instead of a tax code that all of us can live by, we have a tax code that none of us can understand. We all know how hard it is to keep up with the competition overseas. … Well, the Canadians are taxing their small businesses at 15 percent. But our top tax rate on successful small businesses is effectively 44.6 percent."

Essentially, the debate boils down to this: does the US protect its corporate tax base by raising the defenses against tax avoidance, putting in place rules to limit BEPS by US and foreign companies; or does it protect the tax base by becoming much more competitive – essentially, removing some of the defenses – by, as Ryan hopes, cutting corporate

tax, removing loopholes and introducing special tax regimes to attract certain activities, such as the proposed "innovation box" for intellectual property income? This, proponents say, would encourage more profits to be taxed in the US.

With the Government anxious to at last be seen to be doing something to address inversions, Democrats largely favor restricting inversions. However, Ryan and most of his Republican colleagues would prefer the country take the latter path of comprehensive reform. But while this dichotomy exists, the most likely outcome for the foreseeable future is that the US corporate tax status quo will be maintained. However, next year's presidential election could, of course, have a significant influence on which direction the US travels.

Brazil Increases Its Capital Gains Tax

by Hermano A.C. Notaroberto Barbosa and
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2015 Developments

On September 22, 2015, Provisional Measure No. 692/2015 increased the income tax rate on capital gains on the sale of assets and rights of any kind attributed to individuals from a flat rate of 15 percent to progressive rates according to the following brackets:

- 15 percent on the amount of gains not exceeding BRL1m (USD261,237);
- 20 percent on the amount of gains between BRL1m and BRL5m;
- 25 percent on the amount of gains between BRL5m and BRL20m; and
- 30 percent on the amount of gains exceeding BRL20m.

Provisional measures are enacted by the President without the intervention of Congress. They are valid for 60 days, which may be extended for an additional 60 days. After this time lapse, if they are not approved by Congress and converted into law, they lose their effect.

Provisional Measure 692/2015, if converted into law before December 31, 2015, will be effective as of January 1, 2016. If the approval takes place after this date, the changes can only be effective as of January 1, 2017.

Capital gains realized by Brazilian individuals usually follow such rules, but there are exceptions such as gains derived from financial transactions and gains from transactions carried out on the Brazilian stock exchange.

Background

Since 1995, Brazilian tax law has provided that capital gains of non-resident investors upon disposition of assets and rights located in Brazil are subject to the same tax treatment applicable to capital gains on disposals made by Brazilian resident individuals.

As these rules have not established a specific rate for capital gains, in principle, the new brackets also apply to capital gains realized by non-resident investors. On the other hand, when the tax provisions expressly mention the tax rate, such as the zero tax rates for gains realized by non-resident investors in

transactions carried out on the stock exchange, the specific rate or exemption shall prevail.

If the sale or the disposition of the same asset or right is made in steps, capital gains are aggregated for purposes of application of the progressive rates. For purposes of this provision, stocks or shares of a legal entity are deemed as being part of the same asset or right.

Another relevant issue regards the existence of contingent payments (*i.e.*, subject to a condition), such as payments subject to earn out clauses, amounts held in escrow accounts, and payments in installments under agreements concluded before the new rules become effective, depending on the specifics of each transaction.

The analysis of the applicable tax treatment for transactions carried out in these circumstances should be made on a case-by-case basis, and alternatives may be viable to assure the lower tax treatment under the terms set forth by law.

Conclusion

Up to now, there have been more than 85 amendments proposed by Brazilian Congressmen to the new rules, providing for significantly different changes to the legislation proposed by the Executive Branch. Some of the proposals include altering the brackets and clarifying the treatment applicable to nonresident investors. These amendments are still pending discussion and approval by Congress; in the meantime, the tax treatment applicable to non-resident investors remains unclear.

It's All In The Name

by Mike DeBlis, DeBlis Law

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Introduction

Some events are so seminal that they need no explanation. When someone says "Holocaust" or "9/11" or "*Hindenburg*," no further explanation is needed. Some sports stars share similar fame. There is only one Michael, one LeBron, and one Wilt. While he admittedly does not rise to that level – some scouts shake their heads and say his left-handed layup needs work – James Moore's rather commonplace name may someday reach that upper echelon.

Part I

A few months ago, I posted on the curious case of *Moore v. United States*.[1] That article has an exhaustive discussion of the facts and also of FBAR. In a nutshell, Mr. Moore did not file an FBAR for 2003–2008; he filed late in 2009. The IRS conducted an investigation and sent Mr. Moore a memo in 2011 which curtly informed him that, after due consideration, the Service decided that he must pay the maximum USD10,000 civil penalty for each year.

The problem is that, under the Administrative Procedures Act (APA), the IRS must give taxpayers a rationale for the civil penalties that it imposes. This procedure is different from a criminal case, because the punishments involved in those matters are essentially presumed to be reasonable under the Eighth Amendment.

Although an agent prepared an extensive FBAR Penalty Summary Memo, Mr. Moore never saw it until after the case was filed and so, as far as he was concerned, the IRS basically threw darts at a board and sent him a bill. Furthermore, in a bit of "in your face," an agent told Mr. Moore that there would be an appeals conference before the penalty was assessed, but that meeting never took place. Ultimately, Mr. Moore agreed to pay the tax but balked at paying the penalties.

At trial, Judge Richard Jones refused to uphold the USD40,000 penalty because there was no evidence in the record to support it. So, he gave the IRS more time to comply with the APA and Due Process Clause and come up with some explanation for its action. The law doesn't require much: there just had to be some explanation for the penalties that was shared with Mr. Moore at some point in time.

Most observers – myself included – expected the IRS to come forth with the scintilla of evidence required (more on that in a minute), and that would be the end of that. Then, in a decision that frankly surprised me, Judge Jones ruled that he was not satisfied with the IRS's explanation and that these penalties were invalid.[2] Wow.

Part II

Judge Jones reviewed supplemental briefs from both sides and had another look at the evidence in the record. The IRS only needed to produce a scintilla of evidence, which is basically a tiny scrap. So, if an agent had uttered the words "penalty," "maximum," and "your" in the same sentence during a conversation with Mr. Moore, the Service probably would have met its burden of proof.

The IRS did produce the Penalty Summary Memo during discovery, but the court noted that it was only produced after litigation commenced. That will not do, because taxpayers should not be required to file suit to get an explanation of the charges. Judge Jones also chastised the Service for its conduct during the case; *viz*, fighting the disclosure of the Penalty Summary Memo tooth and nail (Mr. Moore had to file a motion to compel) and "disregarding its own promise" with regard to the Appeals conference.

Reading between the lines, the judge seemed a bit miffed about the whole thing, so much of the ruling is very much fact-based. But the key takeaway is that, if the IRS sends an FBAR penalty notice, you can legitimately ask "says who?"

Endnotes

1 *See* http://www.deblislaw.com/roll-on-one/

2 *See* http://www.journalofaccountancy.com/issues/2015/nov/fbar-penalties.html

The Inevitability Of Carbon Pricing

by Stuart Gray, Senior Editor, Global Tax Weekly

With the Paris climate talks underway, this article examines how a consensus is building among governments for the more widespread adoption of carbon pricing to reduce global greenhouse gas (GHG) emissions and fight climate change. It also looks at some of the challenges standing in the way of effective carbon taxation.

Introduction

In the modern era, taxes are no longer seen by governments purely as a means to raise revenue for public expenditure. Often, they are created with some specific policy intent in mind, such as cooling overheated asset markets, discouraging investment in certain areas, and influencing patterns of consumption. Now, it seems that the world's governments have decided that taxes are going to save the world.

Schemes which put a price on carbon, either by simply taxing emissions (usually by the tonne) or through market-based carbon trading schemes, are nothing new. The EU pioneered carbon pricing about ten years ago with the launch of its Emissions Trading Scheme (ETS). The Canadian province of British Columbia was also an early mover, introducing a carbon tax in 2008.

However, perhaps when we look back in ten or 20 years, by which time carbon pricing may be the norm rather than the exception, we could say that 2015 was the carbon tax tipping point, the year in which a critical mass of opinion among governments, business leaders and non-governmental organizations began to favor the idea. Indeed, in May 2015, upon the release of its Carbon Pricing Watch 2015 report, the World Bank said there was a "growing sense of inevitability" about carbon pricing.[1]

"Carbon pricing is clearly gaining traction," said Rachel Kyte, World Bank Group Vice President and Special Envoy for Climate Change. "In the last year, we've seen Chile and Mexico join the ranks of countries, cities and states putting a price on carbon. So it's no longer a matter of if or when to price carbon. With the focus now on action in the run-up to the Paris climate summit in December, business and governments have walked across the battle lines and are now working together on how and how fast to get prices right."

The 50 percent fall in global oil prices in little over a year should also be encouraging governments to

deter the use of fossil fuels as they strive to meet emissions reduction goals, the International Monetary Fund (IMF) has argued. Speaking on the topic at the IMF–World Bank Annual Meetings in Lima, Peru, in October 2015, IMF Managing Director Christine Lagarde observed that: "Fossil fuel energy is cheap, so it is just the right moment to introduce a carbon tax and just the right time to eliminate energy subsidies."

Martin Parkinson of Princeton University added that countries should be setting a carbon price equal to the cost of the "externality" – that is, a price equal to the damage that climate change is doing. "This is a good time to do it because energy prices are falling,"[2] he concurred.

Paris Climate Talks: The Carbon Pricing Turning Point?

The key moment seemed to arrive on October 19, 2015, when members of the new Carbon Pricing Panel, which includes Germany, Chile, France, Ethiopia, the Philippines, Mexico, the state of California, and the city of Rio de Janeiro, convened ahead of the Paris climate talks to urge countries and companies to put a price on carbon. "There has never been a global movement to put a price on carbon at this level and with this degree of unison," remarked World Bank Group President Jim Yong Kim. "It marks a turning point from the debate on the economic systems needed for low carbon growth to the implementation of policies and pricing mechanisms to deliver jobs, clean growth and prosperity. The science is clear, the economics compelling and we now see political leadership emerging to take green investment to scale at a speed commensurate with the climate challenge."[3]

Prior to the Paris talks, more than 90 developed and developing countries, including the EU, indicated plans to use international, regional, or domestic carbon pricing schemes for mitigation action. Then, in what the World Bank described as "a remarkable show of unity" on the first day of the summit itself, business leaders joined the Panel, the World Bank, and the IMF in calling for countries to adopt carbon pricing at another event in Paris to officially launch the Carbon Pricing Leadership Coalition. The Coalition includes nearly 90 global businesses and non-governmental organizations as well as the political representatives on the Carbon Pricing Panel, and will act as a forum for the assessment and discussion of carbon pricing systems and other measures to discourage GHG emissions.

The goal of carbon pricing, according to French President François Hollande, "is to gradually set a sufficiently high carbon price around the world to encourage better behavior."

"Very quickly, a company consuming less CO2 should gain a decisive competitive advantage," he added.[4]

Some progress has already been made to this end, and the number of implemented or planned carbon pricing schemes has almost doubled since 2012. But a scenario whereby carbon pricing is global is still some way off. In its Carbon Pricing Watch report,

the World Bank assessed that around 40 countries and 23 cities, states, and regions have introduced or are in the process of putting a price on carbon. Together, these countries represent about one quarter of all nations, but the pricing mechanisms cover only about 12 percent of global GHG emissions.

However, another announcement was made earlier this year that will lead to a substantial filling in of the existing blanks. That was in September, when China confirmed that it plans to launch carbon emission trading in 2017. And since the World Bank published its Carbon Pricing report, other governments, at national and subnational level, have also advanced plans to introduce carbon pricing. These are summarized in the following sections.

China

A national cap-and-trade system, China's scheme will target emissions reductions in the power generation, iron and steel, chemical, building materials (including cement), papermaking, and non-ferrous metals industries. These sectors together account for a significant chunk of China's carbon emissions. Under the scheme, a cap will be set on the total amount of GHGs that may be emitted. Companies will receive carbon credits, based on the emissions they are permitted to emit. Firms will receive the initial credits for free, but those who exceed the limits will need to purchase the credits from others, thereby incentivizing companies to make energy efficiency improvements.

China has previously looked at a carbon tax, either separately or as an adjunct to the emissions trading scheme, but, following opposition from businesses in a period of slower economic growth, this proposal appears to have been shelved in favor of the emissions trading market.

France

In July, France's National Assembly adopted a new energy bill which provides for increases in the *contribution climat énergie* (CCE). The tax is currently levied at EUR14.50 (USD15.40) per tonne of CO2 produced. This will be increased to EUR22 per tonne in 2016. Further significant increases will be imposed in subsequent years, with the aim of a hike to EUR56 per tonne in 2020 and EUR100 in 2030.

South Africa

On November 2, the South African Government published draft carbon tax legislation for public comment. It is proposed that an initial carbon tax rate of ZAR120 (USD8.35) per tonne of CO2 will be imposed. However, taking into account certain tax-free thresholds and allowances, the effective tax rate over the first phase of the carbon tax – from the eventual implementation date up to 2020 – is expected to vary between ZAR6 and ZAR48 per tonne of CO2. For example, a basic 60 percent tax-free threshold will be available during the tax's first phase, together with additional tax-free allowances of up to 10 percent for process emissions and for trade exposed sectors. Recognition for early action and/or effort to reduce GHG emissions that beat the industry average will result in a tax-free allowance of up to 5 percent.

It is also intended that carbon offsets will enable firms to cost-effectively lower their carbon tax liability by between 5 and 10 percent of their actual emissions, and will incentivize investment in GHG emission-mitigation projects that deliver carbon emissions reduction at a cost lower than the carbon tax. The combined effect of all of the tax-free thresholds will be capped at 95 percent. With the tax-free exemptions ranging between 60 and 95 percent of total GHG emissions, it is implied that the carbon tax will be imposed on only 5 to 40 percent of actual emissions during the tax's first phase.

Revenue recycling measures are also proposed. These will include funding for the energy efficiency tax incentive already being implemented; a reduction in the electricity levy; additional tax relief for solar energy as already provided for in the 2015 tax legislation; a credit for the premium for renewable energy; and additional support for free basic electricity to low income households.

Alberta

On November 22, the Government of the Canadian province Alberta announced that it is to phase in a "revenue neutral" price on carbon between 2017 and 2018. Under the Government's "Climate Leadership Plan," a CAD20 (USD15) per tonne carbon price will be introduced in January 2017. This will increase to CAD30 per tonne in January 2018. An overall oil sands emission limit of 100 megatons will be set, with provisions for new upgrading and co-generation.

The Missing Pieces

However, even when China and these other territories are added to the carbon pricing jigsaw, significant gaps in the puzzle remain. This is because not all politicians agree that carbon pricing is the way to go.

Australia

Australia is one such example, where the controversial carbon tax, which required large carbon emitters to purchase a AUD24.15 (USD17.50) permit for each tonne of pollution they released into the atmosphere, was scrapped last year on the grounds that it pushed up prices and made the country uncompetitive.

Indeed, according to the Australian Competition and Consumer Commission (ACCC), Australian households are saving an average of AUD550 (USD400) a year following the repeal of the carbon tax. In the final report into its formal carbon tax repeal monitoring role, the ACCC calculated direct cost savings, ranging from AUD153 to AUD269, that have been passed through to customers by electricity and natural gas retailers.[5]

The ACCC has also seen cost savings across sectors including landfill, council rates and charges, food manufacturing, water charges, aviation fuel, and liquid petroleum gas. The ACCC expects these cost savings will flow down the supply chain throughout the economy over time and be passed through to consumers as part of the normal market process.

Australia is now pursuing its emissions reduction target through the Emissions Reduction Fund (ERF), almost the opposite approach to traditional carbon pricing. The ERF will provide incentives for businesses and organizations to come forward with emissions reduction opportunities they have identified. Auctions will be held and the Government will enter into contracts to buy emissions reductions from successful bidders – from those that plan to achieve the greatest reductions in emissions at the lowest cost. The Clean Energy Regulator will administer the ERF and will be able to enter into contracts worth up to AUD2.55bn. Further funding will be considered in future budgets.

Legislation to implement the ERF came into effect on December 14, 2014, and according to Environment Minister Greg Hunt, "unlike the carbon tax, the [ERF] will achieve significant cuts in Australia's emissions because the Government will only pay on delivery of real and measurable cuts." [6]

Only time will tell of course, whether Hunt is proved to be correct.

United States

Then there is the US, the largest piece in the puzzle after China. While President Obama proposed a national cap-and-trade scheme early in his administration, it was quietly shelved thanks to hostility from the business sector and Congress, which argued that it would lead to skyrocketing energy prices, wreck the US economy, and cost jobs. As Chuck Grassley, the former Chairman of the Senate Committee on Finance observed at a hearing on Obama's cap-and-trade carbon reduction proposals in May 2009: "We are talking about a program that will raise hundreds of billions of dollars every year for the federal Treasury. What's more, the cost will be paid by every American in the form of higher prices for energy, services, and any product that takes energy to produce or transport to market."[7] Unsurprisingly then, Obama's climate change legislation, which included the planned cap-and-trade system, faltered in the Senate.

But this isn't the end of the story so far as the US is concerned. It is conceivable that the country could end up with carbon pricing legislation via the back door, so to speak, as state legislatures and governments step up to this particular plate. California has established itself as the carbon pricing first-mover, introducing a cap-and-trade system in 2013 covering large electric power plants and large industrial plants that emit 25,000 tonnes of CO_2 per year. In January 2015, the scheme was extended to fuel distributors that meet the 25,000 tonne threshold, and the state has also linked its cap-and-trade scheme with a similar system operating in the Canadian province of Quebec, with Ontario also set to join.

Other state governments are exploring the idea of introducing their own carbon trading systems, including New York, Oregon, and Washington State.

However, we will probably have to wait a long time before the US is covered by state-level carbon pricing schemes. The fact that only four states out of 50

have explored carbon pricing, and that only one of them has taken the plunge, suggests that many of the other 46 states are in no hurry to follow suit. As states continue to use their tax systems to compete for investment, many may view carbon taxes as detrimental to their economic health overall. What's more, a country covered by numerous differing carbon pricing regimes is hardly an ideal scenario, which is why this is probably best left to the federal Government to sort out.

The Challenges

Despite the emerging global consensus on carbon pricing, state governments might be justified in asking how effective such schemes actually are at cutting carbon emissions. The problem is, as yet, there is no definitive answer to that question, because carbon pricing is relatively new, and there is no way to know for sure whether there is a link between pricing schemes and emissions levels.

Naturally, in places where carbon pricing is well established, the authorities are keen to claim that they have been directly responsible for falling emissions. For instance, the Government of Canada's British Columbia has said that its carbon tax has reduced consumption of all fuel types in the province by 16 percent, at a time when consumption rose by 3 percent across the country.[8] And the European Commission reports that GHG emissions by installations covered by the ETS fell by at least 3 percent in 2013,[9] although it is difficult to know whether this constitutes success or failure.

Another crucial question is, how does one actually go about "pricing" carbon? From the schemes that have emerged over the last couple of years or more, it seems that governments have settled on a figure somewhere in the region of USD20 per tonne. But as can be seen from the pricing systems and taxes mentioned above, prices can vary widely from country to country, as can the regimes themselves, which range from relatively simple (British Columbia's, perhaps) to nightmarishly complex (South Africa's proposed scheme). As in the US, a patchwork of different national schemes is hardly the ideal scenario, and some policymakers fear it could lead to multinational companies indulging in carbon pricing arbitrage.

What's more, some carbon pricing schemes are going to be more effective than others, and it is probably going to take a number of years before lessons are learned and certain flaws are avoided. The EU's ETS provides a good lesson for designers of market-based mechanisms. From 2009, a huge surplus of emission allowances built up as economic growth slowed, leading to the proposal of a new law designed to create a system that automatically takes a portion of ETS allowances off the market and into a reserve if the surplus exceeds a certain threshold. In the opposite scenario, allowances could be returned to the market.

Another worry is that governments may be more interested in the revenue produced, rather than the amount of emissions that are reduced as a result of

carbon taxes and pricing schemes. The World Bank says that around USD50bn is being collected as a result of the pricing schemes already in existence. Many governments claim that their carbon pricing and tax schemes are "revenue neutral" or will be used to support the development of renewable energy and clean technology, and to clean up the environment. But there is no guarantee that this will actually happen, or, if it does, that the results will be positive.

So, while world leaders have come to the conclusion that carbon taxes can rescue the human race from climate catastrophe, there are clearly many issues for policymakers to ponder if they are to design the most effective schemes, including price, taxes versus market-based mechanisms, and how national and sub-national pricing regimes interact with each other. Not only this, some skeptical nations are going to have to be persuaded to come on board. It's all going to take a lot of time, when the time for change is running out.

Endnotes

1 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/08/26/090224b08309a09a/4_0/Rendered/PDF/Carbon0pricing0e0released0late02015.pdf

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8 *Supra*, note 2.

9 http://ec.europa.eu/clima/policies/ets/index_en.htm

UK Autumn Statement 2015 Analysis

by Tim George, Judith Ingham, Justine Markovitz, David McLellan, Katie Graves, Philip Munro, M. Ridgway Barker and Clyde Tinnen, Withers

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As far as tax changes are concerned, George Osborne's recent Autumn Statement lacked comedy or tragedy and was one of the most unremarkable Statements for many years. Clearly the preceding two Budgets of 2015 had robbed the Chancellor of any new inspiration. But for individual taxpayers an uneventful Statement, after the upheaval and uncertainty of the last few years, is really rather welcome.

Avoidance And Evasion Remain The Government's Primary Target

One of the central themes of the Statement of interest to our clients is undoubtedly the continued promise to combat tax evasion, although there is more focus on the "will" than precisely "how."

The fact that the relevant section is entitled "avoidance and evasion" highlights the ongoing confusion between legal avoidance and illegal evasion.

Among the raft of new anti-avoidance rules is a new criminal offense for corporates failing to prevent their agents from criminally facilitating tax evasion by an individual or entity. Corporates continuing to engage contractors and consultants through service companies, ignoring IR35 and the Managed Service Company rules, should beware.

Entrepreneurs' Relief Is Safe (For Now)

It was widely anticipated that Entrepreneurs' Relief would be curtailed by the Statement. We speculated that this could be by way of a reduction of the lifetime allowance, an increase in the rate of tax, an increase in the required holding period, or complete removal. However, the relief was left intact.

Given that the cost of the relief has risen from GBP475m (USD718m) in 2007/08 to GBP2.9bn in 2013/14, we question whether this is only a short-term reprieve.

Business Investment Relief May (Finally) Become Useful And Useable

In 2012, the Government introduced business investment relief to encourage remittance basis taxpayers to invest in the UK. However, the relief has been fraught with difficulties, has been widely criticized, and as a result vastly underused. The Statement contains the welcome decision to consult on how to change the business investment relief rules to make them more attractive.

Higher Rates Of SDLT For Second Homes

Higher rates of Stamp Duty Land Tax (SDLT) will be charged on purchases of additional residential properties, such as buy-to-let properties and second homes, from April 1, 2016.

It will be interesting to see how a second home will be defined and how these rules will work. What about small overlapping periods of ownership? What about single properties with separate titles? What about people with overseas homes? Will married couples be entitled to one home or two? What about politicians with the need for homes in Westminster and their constituency? Unfortunately this will undoubtedly result in further incredibly complex legislation for a limited return.

The Government is also seeking to improve cash flow by requiring payments on account of any capital gains tax due on the disposal of residential property to be made within 30 days of completion from April 6, 2019, and reducing the filing and payment window for SDLT to 14 days from April 6, 2017.

A New Penalty For GAAR

The Government will introduce a new penalty of 60 percent of tax due to be charged in all cases successfully tackled by the General Anti-Abuse Rules (GAAR). Not that there have been any yet.

Deeds Of Variation Remain Valid

Following the review announced in the first Budget of 2015, the Government will not introduce new restrictions on how deeds of variation can be used for tax purposes, but will continue to monitor their use. It would seem that the main purpose of the review, to allow the Chancellor an opportunity to take a swipe at the then Leader of the Opposition, Ed Milliband, whose family was revealed to have used a deed of variation following his father's death, has been achieved.

Pensions

There was a welcome confirmation that inheritance tax will not arise when a pension scheme member designates funds for drawdown but does not draw all funds before death. But we will have to wait until the Budget in 2016 to know how the Government might change the current system on pensions tax relief.

Everything (Or Nothing) Else

Other announcements included the investment of GBP1.3bn to digitalize all tax affairs; the introduction of a new, simpler process for paying tax; and simplification of the rules for employee share schemes.

But, more importantly, no further statements were made in relation to the seismic shift in the

remittance basis of taxation for non-domiciliaries who have been resident in the UK for 15 out of 20 years, or the introduction of inheritance tax on indirectly held UK resident property, as announced in the second Budget of 2015. Details of these changes will emerge later this year and throughout the course of next year, and we will publish further commentary as information is released.

Topical News Briefing: I'll Believe It When I See It!

by the Global Tax Weekly Editorial Team

As reported in this week's issue of *Global Tax Weekly*, the governments of the Gulf Cooperation Council (GCC) group of countries – Kuwait, Bahrain, Saudi Arabia, Qatar, the United Arab Emirates, and Oman – have agreed on a loose timetable for the introduction of VAT across the GCC. However, the adjective "loose" is probably the operative word here.

Why is this development potentially significant? It's because the GCC area includes some of the most lightly taxed jurisdictions in the world. In the Paying Taxes 2016 league table published by PwC recently, the UAE and Qatar shared top spot (in terms of both ease of compliance and lightness of taxation), Saudi Arabia was 3rd, Bahrain was 8th, Oman was 10th, and Kuwait was close behind in 11th (out of 189 jurisdictions). So the imposition of a tax, which the majority of countries around the world have come to rely on for a substantial portion of tax revenue, would have a major impact on companies operating within the territory of the GCC, as well as consumers who would see prices rise to at least some degree.

VAT is seen as the most suitable method of replacing revenues lost from the abolition of internal GCC tariffs, as well as external import taxes as the bloc enters into more free trade agreements. However, perhaps because this would represent something of a departure from their traditional low-tax policies, a GCC VAT is proving to be very difficult to implement.

The problems seem to be as much practical as psychological. While certain members have the administrative and technical resources in place to introduce VAT in the relatively near future – notably the UAE – the smaller, less advanced GCC members are likely to struggle. What's more, getting six governments to agree on the scope of the GCC VAT, its rate structure, and numerous other parameters that go into a VAT regime is not going to be easy.

Those familiar with tax developments in the Gulf region will no doubt be aware that VAT has been on the GCC's agenda for over a decade, yet the bloc's leaders would appear no closer to agreeing its finer details or implementation date as they did back then. Indeed, it seems the VAT issue arrives on the GCC agenda every couple of years or so, only to quietly disappear until it is raised again in the regular meetings between ministers.

Nevertheless, this isn't the first time this year that VAT has made the headlines. Member states were said to have agreed a legal framework for the imposition of VAT at the 46th meeting of GCC finance and economy officials in May 2015. And this coincides with an increasing number of reports that the UAE is close to finalizing a new income tax law, which would see the introduction of a general corporate tax in the country. Perhaps what this says is that, as downward

pressure continues to be applied to global oil prices, these oil-rich states are beginning to feel the pinch of lower petroleum revenues, which has in turn increased the need for alternative sources of revenue.

So, perhaps we might just see a GCC VAT by 2020, as the latest announcement suggests – although a gambler wouldn't want to stake a fortune on this prediction.

EC Investigates Luxembourg's Tax Rulings For McDonald's

The European Commission has launched a formal investigation into Luxembourg's tax treatment of McDonald's, and said that its preliminary view is that a tax ruling granted to the company may have afforded it advantageous tax treatment in breach of EU state aid rules.

The Commission said that on the basis of two tax rulings given by the Luxembourg authorities in 2009, McDonald's Europe Franchising (MEF) has paid no corporate tax in Luxembourg in the years since. It has, however, derived profits from royalties paid by franchisees operating restaurants in Europe and Russia for the right to use the McDonald's brand and associated services. The company's head office in Luxembourg is designated as responsible for the company's strategic decision making, and McDonald's also has branches in Switzerland and the US. The royalties received by the company are transferred internally to the US branch, the Commission said.

In 2014, the Commission requested information on these rulings. It said that its assessment has so far shown that it has been possible for McDonald's to reduce its corporate tax liabilities in Luxembourg and the US because the first tax ruling (provided by Luxembourg in March 2009) confirmed that MEF was not due to pay corporate tax in Luxembourg on the grounds that the profits were to be subject to taxation in the US. This was justified by reference to the Luxembourg–US double taxation agreement. The ruling required McDonald's to submit proof every year that the royalties were declared and subject to tax in the US and Switzerland.

A second ruling was issued by Luxembourg in September 2009 after McDonald's clarified that MEF did not have a taxable presence in the US under US law and could not therefore provide proof that the profits were subject to tax in the US. Under the second ruling, McDonald's was not required to prove that the income was subject to taxation in the US.

According to the Commission, "with the second ruling, Luxembourg authorities accepted to exempt almost all of [MEF's] income from taxation in Luxembourg." It said: "As a result, the Luxembourg authorities recognized the [MEF's] US branch as the place where most of their profits should be taxed, whilst US tax authorities did not recognize it. The Luxembourg authorities therefore exempted the profits from taxation in Luxembourg, despite knowing that they in fact were not subject to tax in the US."

The Commission will now investigate further to see if its concerns are justified, in particular whether the second ruling provided McDonald's with a favorable tax treatment in breach of EU state aid rules. It will assess whether Luxembourg authorities selectively

deviated from the provisions of their national tax law and the Luxembourg–US double taxation treaty, and whether the Luxembourg authorities gave McDonald's an advantage not available to other companies in a comparable factual and legal situation.

Tax Commissioner Margrethe Vestager said: "A tax ruling that agrees to McDonald's paying no tax on their European royalties either in Luxembourg or in the US has to be looked at very carefully under EU state aid rules. The purpose of double taxation treaties between countries is to avoid double taxation – not to justify double non-taxation."

According to Article 107(1) of the Treaty on the Functioning of the European Union, state aid that affects trade between EU member states and threatens to distort competition by favoring certain undertakings is in principle incompatible with the EU single market.

In a statement, the Luxembourg Finance Ministry said: "The adoption of the opening decision is a procedural step that does not pre-judge the outcome of the investigation. This procedure is not related to any other case that is currently open. Luxembourg considers that no special tax treatment nor selective advantage have been granted to McDonald's. Luxembourg will fully cooperate with the Commission in the investigation."

In a statement provided to the BBC, McDonald's stated: "We are subject to the same tax laws as other companies and are confident that the inquiry will be resolved favorably. McDonald's complies with all tax laws and rules in Europe and pays a significant amount of corporate income tax. In fact, from 2010 to 2014, the McDonald's companies paid more than USD2.1bn just in corporate taxes in the European Union, with an average tax rate of almost 27 percent."

US Hearing Discusses Response To International Tax Developments

Those addressing the House Ways and Means Subcommittee on Tax Policy hearing on December 1 – on the US's response to the OECD's base erosion and profit shifting (BEPS) recommendations and the EU's state aid investigations – expressed concern about measures proposed or being implemented at international level that would damage US interests.

Opening the hearing, Senate Finance Committee Ranking Member Ron Wyden (D – Oregon) said: "This hearing will be the third time in 18 months that the Committee has examined the need for international tax reform. In that time, the Treasury Department has taken multiple steps to slow the spread of the inversion virus. But the fact is, Treasury can only do so much to quarantine the problem. There is only one solution to this crisis, and it is comprehensive tax reform."

He added: "I am also concerned about recent aggressive actions undertaken by the European Commission targeting what it has described as unlawful 'state aid' but look an awful lot like the tax planning

strategies our broken tax code drives multinational firms to pursue. But in my view, here's the bottom line: If you're a member of Congress with concerns about BEPS or the unprecedented actions taken by the European Commission, then comprehensive tax reform is your opportunity to design the tax system our nation needs. If you shudder at the mention of tax avoidance schemes like the 'double Irish with a Dutch sandwich,' comprehensive tax reform is the way to crack down. If you want to give companies a reason to invest, grow, and headquarter in the US, comprehensive tax reform is the only path to reach those goals."

In his testimony, Robert B. Stack, the Deputy Assistant Secretary (International Tax Affairs) at the Treasury, discussed the elements of the BEPS project that could be implemented to strengthen the US regime. He said: "First, the President's framework for business tax reform proposes a minimum tax on foreign earnings that represent excess returns, which typically arise from intangible assets. This would reduce the benefit of income shifting and impose a brake on the international 'race to the bottom' in corporate tax rates. Other recent tax reform plans have included similar proposals, which would improve on the current complex international tax rules by requiring that companies pay a minimum rate of tax (either to the United States or to a foreign jurisdiction) on all foreign excess returns."

"Second, as part of tax reform, we should also take a close look at interest deductibility, noting that our thin capitalization rules are inadequate and that our system actually gives an advantage to foreign-owned multinationals. These foreign-owned multinationals can lend funds to their US subsidiary to benefit from interest deductions against a 35 percent tax rate, while the related interest income is subject to significantly lower tax rates, or no tax at all, in the lending jurisdiction. It is especially disconcerting to observe that among the foreign multinationals that most aggressively take advantage of this strategy are so-called 'inverted' companies – that is, foreign-parented companies that were previously US-parented."

"The Administration's FY2016 Budget proposes to level the playing field by limiting the ability of US subsidiaries of a foreign multinational to claim interest deductions in the United States that greatly exceed their proportionate share of the group's global interest expense. Specifically, this proposal would limit a US subsidiary's interest expense deductions to the greater of 10 percent of the subsidiary's EBITDA or the subsidiary's proportionate share of worldwide third-party interest expense, determined based on the subsidiaries' share of the multinational's worldwide earnings. A related Administration FY2016 Budget proposal would limit a US multinational's ability to claim a US deduction for interest expense that is related to foreign subsidiary income. US multinationals typically borrow in the United States to benefit from interest deductions against a 35 percent tax rate, but they then use the borrowed cash throughout the multinational group, financing operations that may not be subject to current US tax. Indeed, we have

recently seen examples of US multinationals borrowing in the United States – rather than bringing back cash from offshore operations – to pay dividends to their shareholders. The proposal would align the treatment of interest expense deductions with the treatment of the income supported by the proceeds of the borrowing."

He said: "In addressing stripping of the US base, it is also important to consider so-called 'hybrid arrangements,' which allow US subsidiaries of foreign multinationals to claim US deductions with respect to payments to related foreign entities that do not result in a corresponding income item in the foreign jurisdiction. These arrangements produce stateless income and should be remedied. To neutralize these arrangements, the Administration's FY2016 Budget proposes to deny deductions for interest and royalty payments made to related parties under certain circumstances involving hybrid arrangements. For example, the proposal would deny a US deduction where a taxpayer makes an interest or royalty payment to a related person and there is no corresponding inclusion in the payee's jurisdiction."

"Additionally, shifting intangibles outside the United States is a key avenue through which US base erosion occurs. The principal means of shifting intangible income is to undervalue intangible property transferred offshore or to take advantage of the uncertainty in the scope of our definition of intangibles. Once this intellectual property is located offshore, the income that it produces can accrue in low- or no-tax jurisdictions. The Administration's FY2016 Budget contains a number of proposals that would discourage the corporate tax base erosion that occurs via intangibles transfers. In addition to our proposal to impose a minimum tax on excess returns, the FY2016 Budget would explicitly provide that the definition of intangible property includes items such as goodwill and going concern value and would also clarify the valuation rules to address taxpayer arguments that certain value may be transferred offshore without any US tax charge. Another proposal would update subpart F to currently tax certain highly mobile income from digital goods and services."

Moving on to discuss the European Commission's investigations into tax rulings provided to multinationals, Stack said: "Treasury has followed the state aid cases closely for a number of reasons. First, we are concerned that the EU Commission appears to be disproportionately targeting US companies. Second, these actions potentially undermine our rights under our tax treaties. The United States has a network of income tax treaties with the member states and has no income tax treaty with the EU because income tax is a matter of member state competence under EU law. While these cases are being billed as cases of illegal state subsidies under EU law (state aid), we are concerned that the EU Commission is in effect telling member states how they should have applied their own tax laws over a ten-year period. Plainly, the assertion of such broad power with respect to an income tax matter calls into question the finality of US taxpayers'

dealings with member states, as well as the US Government's treaties with member states in the area of income taxation. Third, the EU Commission is taking a novel approach to the state aid issue; yet, they have chosen to apply this new approach retroactively rather than only prospectively."

"While in the Starbucks case, the sums were relatively modest (EUR20–30m), they may be substantially larger – perhaps in the billions – in other cases. The retroactive application of a novel interpretation of EU law calls into question the basic fairness of the proceedings. Fourth, while the IRS and Treasury have not yet analyzed the equally novel foreign tax credit issues raised by these cases, it is possible that the settlement payments ultimately could be determined to give rise to creditable foreign taxes. If so, US taxpayers would wind up footing the bill for these state aid settlements when the affected US taxpayers either repatriate amounts voluntarily or Congress requires a deemed repatriation as part of tax reform (and less US taxes are paid on the repatriated amounts as a result of the higher creditable foreign income taxes)."

"Finally – and this relates to the EU's apparent substantive position in these cases – we are greatly concerned that the EU Commission is reaching out to tax income that no member state had the right to tax under internationally accepted standards. Rather, from all appearances they are seeking to tax the income of US multinational enterprises that, under current US tax rules, is deferred until such time as the amounts are repatriated to the United States. The mere fact that the US system has left these amounts untaxed until repatriated does not provide under international tax standards a right for another jurisdiction to tax those amounts."

"We will continue to monitor these cases closely," he concluded.

In his testimony, House Ways and Means Tax Policy Subcommittee Chairman Charles Boustany went further, expressing deep concerns about these international tax issues' impact on the US. He said: "The OECD's BEPS project recommendations are deeply troubling on a number of levels, not the least of which is the aggressive attempt to impose substantial tax policy changes on the international community under the guise of eliminating so-called 'harmful tax practices' to ensure multinational companies pay their 'fair share' of taxes owed in the jurisdictions in which they operate. This is a highly subjective standard set by the OECD that seems to unnecessarily target American companies, while also disregarding the detrimental impact these recommendations will have on US companies that currently operate under the worldwide system of taxation observed in the US."

"The BEPS project may have been motivated by an underlying belief that creating a business-friendly tax regime to attract business investment to one's country is itself an illegitimate and harmful practice that must be eliminated; but the BEPS project ended up making recommendations that will achieve the opposite result by encouraging countries

to create patent boxes, which will effectively force worldwide companies to shift their business operations out of the United States. Moreover, the exposure of American companies' highly sensitive information through the country-by-country reporting requirements within the BEPS recommendations are not constrained by any rationale for the breadth of information required, and also lacking appropriate protections for the highly sensitive nature of this information."

"The BEPS project final recommendations issued this year, coupled with the present European Commission investigation into the alleged receipt of illegal state aid by mostly American companies, expose what appears to be an extremely disturbing and multi-faceted attack, targeted specifically at American companies."

"Ladies and gentlemen, we are out of time; we have had nearly three decades of procrastinating on tax reform. This must be the Congress of action that takes the tough, but necessary steps to reform our tax code for the sake of American families, American companies, and regaining our standing as the world's leader in fostering innovation and business growth."

In his earlier testimony, Senate Finance Committee Chairman Orrin Hatch (R – Utah) emphasized that "it is Congress – and Congress alone – that has the ultimate authority to make changes to the US tax code."

He said: "Throughout this process we have heard concerns from large sectors of the business community that the BEPS project could be used to further undermine our nation's competitiveness and to unfairly subject US companies to greater tax liabilities abroad. Companies have also been concerned about various reporting requirements that could impose significant compliance costs on American businesses and force them to share highly sensitive proprietary information with foreign governments."

"In addition, throughout the BEPS negotiations, I urged the Obama Administration to both acknowledge the limits of their authority under the law and to cooperate with Congress on any and all efforts to implement the recommendations. While the US was a party to the BEPS negotiations, Congress had neither a seat at the negotiating table nor a meaningful opportunity to weigh in with the administration on the substance of the proposals. Even in those areas where authority clearly exists for the administration to promulgate regulations, it is virtually always better if Congress is viewed as a partner in this process rather than an adversary. And, in those instances where the regulatory authority is less clear, congressional involvement and approval is even more important to ensure that policy changes are viewed by the public as legitimate."

Corporates' Tax Contribution Falling, Says OECD Report

Corporate tax revenues have been falling across OECD countries since the global economic crisis, putting greater pressure on individual taxpayers to ensure governments meet financing requirements,

according to new data from the OECD's annual Revenue Statistics publication.

Average revenues from corporate incomes and gains fell from 3.6 percent to 2.8 percent of gross domestic product (GDP) over the 2007–14 period. Revenues from individual income tax grew from 8.8 percent to 8.9 percent, and VAT revenues grew from 6.5 percent to 6.8 percent over the same period.

"Corporate taxpayers continue finding ways to pay less, while individuals end up footing the bill," said Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration. "The great majority of all tax rises seen since the crisis have fallen on individuals through higher social security contributions, value-added taxes (VATs), and income taxes. This underlines the urgency of efforts to ensure that corporations pay their fair share."

The OECD said its base erosion and profit shifting (BEPS) project could provide answers, as it puts forward solutions for closing the gaps in existing international rules that allow corporate profits to "disappear" or be artificially shifted to low- or no-tax environments, where little or no economic activity takes place.

Revenue Statistics shows that the average tax burden across OECD countries increased to 34.4 percent of GDP in 2014. The increase of 0.2 percentage points in 2014 continues the recent upward trend, as the OECD average tax burden has increased in every year since 2009 when the ratio was 32.7 percent. The tax burden is measured by taking the total tax revenues received as a percentage of GDP.

While the increase in tax ratios between 2009 and 2014 is due to a combination of factors, the largest contributors have been increases in revenue from VAT and taxes on personal incomes and profits, which combine to account for around two-thirds of the increase. Revenues from social security contributions and property taxes account for the majority of the remainder.

Discretionary tax changes have played an important role, as many countries have raised tax rates or broadened tax bases or both. The OECD average standard VAT rate has increased to a record high, rising from 17.7 percent in 2008 to 19.2 percent in 2015. Of the 34 OECD countries, 22 raised top personal income tax rates between 2008 and 2014.

The average OECD tax-to-GDP ratio in 2014 was 0.3 percentage points higher than the pre-crisis level of 34.1 percent in 2007, and has surpassed the previous high of 34.2 percent, which was recorded in 2000. The average revenues from corporate incomes and gains fell from 3.6 percent to 2.8 percent of GDP over the same period. This decline was offset by an increase in social security contributions, from 8.5 percent to 9.2 percent of GDP, and a smaller increase in revenues from VAT.

This year's edition also includes a special chapter on the impact on the measurement of tax-to-GDP ratios of the move to the 2008 System of National Accounts.

The report's key findings include that:

- Compared with 2013, the average tax burden in OECD countries increased by 0.2 percentage points to 34.4 percent in 2014. This followed a rise of 1.5 percentage points between 2009 and 2013, reversing the decline from 34.1 percent to 32.7 percent between 2007 and 2009. The 2014 figure is the highest ever recorded OECD average tax-to-GDP ratio since the OECD began measuring the tax burden in 1965.
- The ratio of tax revenues to GDP rose in 16 of the 30 OECD countries for which 2014 data are available, compared with 2013, and fell in 14. Between 2009 and 2014, there were increases for 22 of these countries, a decline in seven, with one unchanged.
- About 80 percent of revenue increases over the 2013–14 period are attributed to a combination of consumption taxes and taxes on personal incomes and profits. This combination also accounts for two-thirds of the rise in revenues between 2009 and 2014.
- The largest tax ratio increases between 2013 and 2014 were in Denmark (3.3 percentage points) and Iceland (2.8 percentage points). Other countries with substantial rises were Greece (1.5 percentage points), Estonia (1.1 percentage points), and New Zealand (1 percentage point).
- The largest falls were in Norway (1.4 percentage points) and Czech Republic (0.8 percentage points). Luxembourg and Turkey showed falls of 0.6 percentage points.
- Denmark has the highest tax-to-GDP ratio among OECD countries (50.9 percent in 2014), followed by France (45.2 percent) and Belgium (44.7 percent).
- Mexico (19.5 percent in 2014) and Chile (19.8 percent) have the lowest tax-to-GDP ratios among OECD countries. They are followed by Korea, which has the third lowest ratio among OECD countries at 24.6 percent, and the US at 26.0 percent.

Australian Senate Passes Multinational Anti-Avoidance Law

The Australian Senate has passed legislation that will require companies that "avoid" taxes to pay back double what they owe, plus interest.

The new Multinational Anti-Avoidance Law will cover all multinationals operating in Australia with global revenues of more than AUD1bn (USD730.7m). Approximately 1,000 companies will be affected.

The Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill also provides for the implementation of the country-by-country reporting requirements developed by the OECD, and the introduction of new transfer pricing documentation standards.

The Government has consulted with both the Australian Taxation Office (ATO) and the Board of Taxation in the preparation of the package, and made a number of amendments to reflect the recommendations of the Green Party in the Senate. Treasurer Scott Morrison and Finance Minister

Mathias Cormann added that, as a result of discussions with a number of the affected companies, the ATO "now has additional detailed information of how many of these companies structure their tax affairs to avoid paying their fair share."

EU TAXE Committee Given Another Six Months

The European Parliament has decided that the work of the Special Committee on Tax Rulings (TAXE Committee) should be continued by a new, temporary committee under a new mandate for six months, starting on December 2, 2015.

This was decided by the Conference of Presidents on December 2, and endorsed by a European Parliament plenary by 561 votes to 69, with five abstentions.

The new committee will focus on harmful corporate tax regimes and practices at European and international level. Among other tasks, the committee will look into the work of the Commission in the areas of state aid and taxation, examine member states' compliance with tax legislation, and identify aggressive tax planning techniques. The committee will look closely at how EU member states and institutions follow up on the TAXE Committee's recommendations.

The TAXE Committee's final report was approved by a European Parliament plenary on November 25, 2015. In the resolution which went with the report, the European Parliament set out its ideas on how to make corporate taxes fairer across Europe and urged EU member states to agree on mandatory country-by-country reporting by multinational corporations of profits and taxes, a common consolidated corporate tax base, common definitions for tax terms, and more transparency and accountability with regards to their national tax rulings for companies.

The TAXE Committee was established in February 2015 in the wake of the leak of confidential tax rulings provided by EU member states. The TAXE Committee's probe, sanctioned by members of the European Parliament, is taking place alongside the Commission's investigations into potential illegitimate state aid granted as part of those rulings, and of member states' tax ruling practices in general.

Leaders And CEOs Call For Price On Carbon

Business leaders have joined political leaders, the World Bank, and the International Monetary Fund (IMF) in calling for governments to put a price on carbon emissions.

In what the World Bank described as "a remarkable show of unity" on the first day of the Paris climate summit, heads of state from a number of countries called on the world to start pricing carbon pollution to help combat global climate change, including French President François Hollande, German Chancellor Angela Merkel, Mexican President Enrique Peña Nieto, Canadian Prime Minister Justin Trudeau, Ethiopian Prime Minister Hailemariam Dessalegn, and Chilean President Michelle Bachelet.

"The goal is to gradually set a sufficiently high carbon price around the world to encourage better behavior," said Hollande.

"Very quickly, a company consuming less CO2 should gain a decisive competitive advantage," the French President added.

Under the Energy Transition Act, France is planning for a substantial increase in the price of carbon, to EUR22 (USD23.30) per tonne next year and a projected EUR100 by 2030.

France joins a group of about 40 nations and 23 cities, states and regions that have implemented or are in the process of putting a price on carbon. These carbon pricing mechanisms cover about 12 percent of global greenhouse gas (GHG) emissions, a percentage that is expected to rise significantly when China's carbon tax is introduced in 2017.

A recent World Bank report shows the number of implemented or planned carbon pricing schemes around the world has almost doubled since 2012 and are now worth about USD50bn.

The call by heads of state and government was echoed by ministers and CEOs from around the world at another event in Paris to officially launch the Carbon Pricing Leadership Coalition. The Coalition includes governments such as Mexico, Germany, France, Chile, and California, and nearly 90 global businesses and non-governmental organizations, and will act as a forum for the assessment and discussion of carbon pricing systems and other measures to discourage GHG emissions.

"These statements of support from leaders today are critically important, as is the work of the Carbon Pricing Leadership Coalition," said World Bank Group President Jim Yong Kim. "We must ensure that this momentum for carbon pricing translates into impact on the ground."

IMF Managing Director Christine Lagarde added: "The right carbon price should be at the center of this effort. Indeed, given the slump in energy prices, there has never been a better time to transition to smart, credible and effective carbon pricing. Policy makers need to price it right, tax it smart, and do it now."

EU Extends Measures Against Chinese Solar Imports

On December 5, the European Commission extended existing EU trade defense measures against Chinese solar imports, which were due to expire this month.

Currently imports of Chinese solar products into the EU are subject to price and quota restrictions, based on a framework put in place in July 2013. This involves both a minimum price undertaking and a cap on Chinese supplies.

Chinese exporters agreeing to the minimum import price in 2013 have avoided EU anti-dumping duties (ADs) and countervailing duties (CVDs) of up to 47.6 percent. The agreement was intended to resolve dumping – where products were being sold in the EU at below Chinese market prices – while ensuring a stable supply of solar panels to the EU market.

At the request of EU ProSun, an association of European producers, the Commission has opened expiry reviews covering the ADs and CVDs and the minimum import prices on Chinese solar products. The existing measures will remain in force during these investigations, which can take up to 15 months.

In a December 5 statement, China's Ministry of Commerce highlighted the importance of solar products in combating climate change and addressing emission targets. It said the EC's decision to extend the existing minimum price framework will reduce growth in the European solar market and cause harm to the Chinese solar industry.

India Signs A Further 11 APAs

India's Central Board of Direct Taxes (CBDT) has signed a fresh batch of unilateral advance pricing agreements (APAs), a move aimed at providing certainty to foreign investors in the area of transfer pricing.

In a press release issued on November 27, 2015, the CBDT announced that it has signed 11 new APAs with Indian subsidiaries of foreign companies operating in various sectors such as investment advisory services, engineering design services, marine products, contract research and development, software development services, information technology-enabled services, and cargo handling support services.

While seven of these APAs have "rollback" provisions contained in them, the other four are agreements covering just the future five years.

Under a change introduced through the Income Tax (Third Amendment) Rules, 2015, an APA entered into for future transactions may now also apply to international transactions undertaken during the previous four years in specified circumstances.

With this round of signing, the CBDT has so far entered into 31 APAs (30 unilateral APAs and one bilateral APA), and aims to finalize another 30 to 40 APAs before March 2016.

India is also seeking to add provisions to its double tax avoidance agreements with France, Germany, Italy, Singapore, and South Korea to allow compensatory or corresponding adjustments under bilateral APAs.

"It has been the endeavor of the Government to foster an environment of cooperation in matters of taxation through predictability of laws and reduced litigation," the CBDT said.

Taiwan Looks At Restructuring Tax Breaks

Taiwan's Ministry of Finance has announced that it is undertaking a comprehensive review of the numerous tax credits and deductions in the country's tax code.

In a statement, the Ministry indicated that, as Taiwan's tax deductible items have remained unchanged for a number of years, their restructuring is required to ally them more closely to "the current needs of society."

Minister of Finance Chang Sheng-ford said that tax credits and deductions should now take into account, for example, long-term care for an aging population and increasing education expenses. He suggested that his Ministry will therefore propose individual income tax measures targeted at reducing the tax burden on low- and middle-income employees and their families.

At the same time, however, given that credits and deductions already reduce the tax paid on declared income by about 62 percent, the Ministry has decided that Taiwan's tax base will have to be protected by limiting and reducing the tax breaks currently available to individuals on higher incomes – *e.g.*, investment tax credits, and the tax breaks for charitable contributions and mortgage interest.

The Ministry plans to have its proposals ready early next year. However, with presidential and legislative elections due in January, and with a probability that the main opposition party, the Democratic Progressive Party, will then gain power, the proposals are unlikely to pass through the Legislative Yuan.

EU, Vietnam Agree Free Trade Agreement

The EU and Vietnam have concluded negotiations for a free trade agreement (FTA) that will remove most tariffs on goods traded between the two parties.

The talks were finalized on December 2, 2015. This follows the conclusion in August of an agreement in principle.

According to a joint statement, the new FTA "will remove nearly all tariffs on goods traded between the EU and Vietnam. It covers sanitary and phytosanitary measures, customs and trade facilitation, services and investment, government procurement, intellectual property rights, including geographical indications, state owned enterprises, trade and sustainable development, cooperation, and capacity building. It also includes a new and reformed approach on investment protection and investor dispute resolution."

Commenting on the agreement, EU Trade Commissioner Cecilia Malmström said: "Today's completion of the negotiations is good news for both the EU and Vietnam. Vietnam is a vibrant economy of more than 90 million consumers with a growing middle class and a young and dynamic workforce. Its market has great potential and offers numerous opportunities for the EU's agricultural, industrial and services exports."

"This FTA is also significant because of its strong focus on sustainable development. It will support Vietnam's efforts to further enhance economic growth and development for its people in the years to come. This agreement provides a new model for trade policy with developing countries."

A legal review of the agreement will now be launched, and the text will be translated into the EU's official languages and Vietnamese. The Commission will then present a proposal to the Council of Ministers for the approval and ratification of the agreement.

Hong Kong Gazettes International Tax Changes

On December 4, 2015, Hong Kong's Government gazetted the Inland Revenue (Amendment) (No. 4) Bill 2015, which aims to enhance the existing

interest deduction rules for the intra-group financing business of corporations and introduce a concessionary profits tax rate for qualifying corporate treasury centers (CTCs).

The Bill proposes to adjust Hong Kong's interest deduction rules to allow a corporate borrower carrying on in Hong Kong an intra-group financing business to deduct interest payable on money borrowed from a non-Hong Kong associated corporation under specified conditions. These include that the interest income arising from the same loan transaction is subject to tax in a jurisdiction outside Hong Kong, to forestall aggressive tax avoidance schemes creating interest expenses to reduce assessable profits in Hong Kong.

Correspondingly, in respect of the symmetric tax treatment for interest income as deemed trading receipts, the Bill seeks to clarify that the "operation test" applies in the determination of the source of interest income, as well as relevant gains or profits, arising from the carrying on in Hong Kong by a corporation (other than a financial institution) of its intra-group financing business. That is to say, if a corporation (other than a financial institution) lends money to a non-Hong Kong associated corporation in the course of its intra-group financing business carried on in Hong Kong, the relevant interest income is regarded as trading receipts derived from Hong Kong, and hence chargeable to profits tax, even though the loan is made available outside Hong Kong, a Legislative Council Brief issued by the Government notes.

The Bill also proposes to provide for a regime in which the tax rate on qualifying profits of a qualifying CTC derived from specified lending transactions, or from specified corporate treasury services or transactions, is 50 percent of the corporate income tax rate (*i.e.*, 8.25 percent).

The Bill contains relevant anti-avoidance provisions to ensure that the proposals are consistent with the latest international standards to combat base erosion and profit shifting.

To prevent taxpayers from shifting non-CTC incomes into the half-rate regime, the Bill proposes that a qualifying CTC which elects to enjoy the half-rate should be a standalone corporate entity engaging only in corporate treasury activities; and proposes a safe harbor rule to allow corporations having income and assets primarily for corporate treasury activities to enjoy the half-rate. Moreover, the Bill prescribes anti-avoidance provisions to ensure that the half-rate concession will apply to assessable profits in respect of which the corresponding payments made are not tax deductible in Hong Kong, so as to prevent revenue loss in the circumstances where there is half taxation of qualifying profits by qualifying CTCs but full deduction of the corresponding payments by associated corporations.

"We are satisfied that the proposed tax scheme for CTCs would not be labeled as harmful tax practices by the international community under the BEPS regime and action plans as promulgated by the

[OECD] and endorsed by the [G20] in November 2015," the Government said.

The Secretary for Financial Services and the Treasury, K. C. Chan, said: "As announced by the Financial Secretary in his 2015/16 Budget, our legislative proposals will provide a conducive environment for attracting multinational and Mainland corporations to centralize their treasury functions in Hong Kong, thereby enhancing the competitiveness of our financial markets."

The Bill will be introduced into the Legislative Council for first reading on December 16, 2015.

Italy Issues Patent Box Guidance

On December 1, the Italian Revenue Agency issued a guide delineating how companies can take advantage of Italy's "patent box," together with a circular containing the answers to questions arising out of the new regime's operation.

With effect from the present 2015 fiscal year, the patent box offers an optional preferential tax regime for income derived from the use or licensing of qualifying intangible assets (such as patents, trademarks, processes, and other intellectual property) that are linked to research and development (R&D) activities carried out in Italy. Businesses will be able to exclude up to 50 percent of their income derived from such assets from income taxes (either corporate or individual) and the regional tax on production.

The five-year income exclusion will amount to 30 percent in the first year of its operation, 40 percent in the second year, and reach 50 percent from the third year. Based on current corporate tax rates (including the regional tax on production), the scheme will result in an overall corporate tax rate that will fall to as low as 15.7 percent, for eligible income, from as early as 2017. If Italy's corporate tax rate is reduced to 24 percent as planned in 2017, the lowest total patent box rate would then be cut to 13.95 percent.

In addition, the profit derived by a business from the sale of the qualifying intangibles is not subject to tax if at least 90 percent of the proceeds are reinvested into similar investments before the end of the second fiscal year following the date of sale. Foreign residents with a permanent establishment in Italy may also benefit from the patent box if they are resident in a country with which Italy has an effective tax information exchange agreement.

In the guide, it is confirmed that access to the patent box regime is only available after the prior completion of an agreement between the company and the Revenue Agency regarding the calculation method for determining the R&D income available for exclusion.

The calculation method to be utilized is to be based on OECD global transfer pricing standards. Before taking a decision, the Revenue Agency will be able to utilize a wide range of information, including that derived from cooperation with tax agencies in other jurisdictions.

Japan Looks At Fixed Asset Tax Relief

During an interview on December 6, Economy Minister Akira Amari said that the Japanese Government is considering giving a fixed asset tax break to companies investing in new machinery and equipment.

Fixed asset tax is payable to municipalities by individuals and companies owning real property, such as land, buildings, and assets depreciable for income tax or corporate tax purposes. The standard annual tax rate is 1.4 percent, with an upper limit of 2.1 percent.

Amari pointed out that next year's planned reduction in Japan's corporate tax rate, possibly to below 30 percent, would not help the country's loss-making companies or its small and medium-sized enterprises.

A fixed asset tax cut for purchases of new machinery and equipment, to be included in the Government's proposed 2016 tax reforms, could benefit all firms looking to expand or upgrade their businesses, and boost industrial investment in the economy overall, he told public broadcaster NHK.

Australian Government Unveils Business Investment Tax Package

The Australian Government has announced plans to provide tax breaks for early-stage investors, relax the "same business test," and remove rules that limit depreciation deductions for some intangible assets.

The reforms are being introduced as part of the Government's National Innovation and Science Agenda (NISA). Treasurer Scott Morrison said: "The Turnbull Government is committed to building an innovative and more agile economy through strong growth policies that will boost growth and jobs. Innovation is critically important to every sector of the economy and the Government's tax and business incentives under the NISA will encourage smart ideas to encourage innovation, risk taking, and build an entrepreneurial culture in Australia."

As part of the package, those investing in innovative start-ups will receive a 20 percent non-refundable tax offset based on the amount of their investment, along with a capital gains tax exemption. The Government will introduce a 10 percent non-refundable tax offset for capital invested in new Early Stage Venture Capital Limited Partnerships (ESVCLPs), and increase the cap on committed capital from AUD100m (USD73m) to AUD200m for new ESVCLPs.

The Government will also relax the "same business test," which denies tax losses if a company changes its business activities. This will be replaced with a more flexible "predominantly similar business test." Morrison said that this will allow start-ups to bring in new equity partners and secure new business opportunities without the fear of tax penalties.

Finally, the Government will scrap rules that limit depreciation deductions for some intangible assets (such as patents) to a statutory life. It will instead allow them to be depreciated over their economic life, as occurs for other assets.

Singapore Homeowners Will Pay Less Tax In 2016

After a revaluation of property prices based on rental market trends, 93 percent of residential property

owners will pay lower property tax in 2016, the Government of Singapore has announced.

According to the Inland Revenue Authority of Singapore (IRAS), Housing Development Board (HDB) flat owners will pay lower or no property tax next year, while eight in ten private residential property owners will pay lower property tax in 2016. Indeed, all one- and two-room HDB flat owner-occupiers and 28,200 three-room HDB flat owner-occupiers will not have to pay any property tax when the revised annual values take effect from January 1, 2016.

The HDB is Singapore's public housing authority and was set up with the goal of providing affordable homes for low-paid Singaporeans. Now, about 80 percent of Singapore's population live in HDB homes, and 80 percent of these are owner-occupiers.

The IRAS said the tax savings for HDB flats will range from 9 percent to 24 percent, compared with their property tax liability in 2015. Of the private residential properties with reduced annual values, more than 80 percent will see tax savings of between 3 percent and 20 percent.

Property tax is payable by the owner on all properties regardless of whether the property is rented out, owner-occupied, or left vacant. Property tax is computed on annual values, by multiplying the annual value of the property with the relevant set of progressive property tax rates for residential properties.

IRAS reviews the annual values of properties annually to ensure that they reflect prevailing market rental rates.

Canada Legislates For Middle-Income Tax Cuts

Canada's new Finance Minister, Bill Morneau, has tabled a Notice of Ways and Means Motion to cut the 22 percent income tax rate and introduce a new rate for incomes over CAD200,000 (USD148,028).

Under the current system, tax is paid at 15 percent on the first CAD44,700 of taxable income, 22 percent on the portion between CAD44,701 and CAD89,401, and 26 percent on the portion between CAD89,401 and CAD138,586. Income over CAD138,586 is taxed at 29 percent.

Morneau's motion provides for the implementation of key Liberal Party election pledges. If passed, the 22 percent rate will be cut to 20.5 percent, and a new rate of 33 percent will apply to individual taxable income in excess of CAD200,000. In addition, the motion reduces the Tax-Free Savings Account annual contribution limit from CAD10,000 to CAD5,500. The measures are intended to apply from January 1, 2016.

According to the Government, the income tax cuts will save a single individual an average of CAD330 a year, and couples will benefit to the tune of CAD540.

The Government also intends to introduce a single, tax-free Canada Child Benefit as part of next year's

Budget. It plans to repeal the income splitting rules introduced by the previous Conservative Government, with effect from the 2016 taxation year.

Morneau said: "Our Government made a commitment to invest in growing our economy, strengthening the middle class, and helping those working hard to join it. We committed to provide more direct help to those who need it. Today marks an important first step towards meeting these commitments. We will continue to work together with Canadians to implement our platform for real change, which includes investing in our economy, our communities, and in Canadians themselves. That means transformative investments in infrastructure and a new plan for a strong middle class."

US Highway Bill Passed With Contentious Tax Measures

On December 3, the US Congress passed a USD305bn bill to fund the Highway Trust Fund (HTF) over five years, and included two contentious tax measures that involve the use of private debt collectors to recover unpaid taxes and the denial of passports to individuals with tax debt.

The HTF has depended on the federal fuel tax, otherwise known as the gas tax, that has remained unchanged since 1993. As a consequence, revenues from the US gas tax and tolls have recently been covering only about a third of state and local spending on roads, despite these revenues being solely dedicated to funding transportation projects.

The Fixing America's Surface Transportation (FAST) Act, which cleared the Senate by an 83-16 vote after an earlier 359-65 vote in the House of Representatives, has had to include a USD70bn package of miscellaneous federal budgetary measures that move the funding of US transportation away from the "user pays" principle. This was necessary as a result of lawmakers ruling out the politically difficult solution of hiking gas taxes.

The requirement for the Internal Revenue Service (IRS) to use private collection agencies (PCAs) to recover unpaid taxes is expected to raise USD2.4bn over a ten-year period. It would apply to accounts that have been designated as "inactive" by the agency for lack of resources or ability to locate the taxpayer; on which more than 365 days have passed without interaction with the taxpayer; or where more than one-third of the applicable statute of limitation period has lapsed.

Some tax accounts have been excepted from private debt collection – *e.g.*, if they are being paid by installments; if they are subject to litigation; or if the taxpayer is deceased, under 18 years old, a victim of tax-related identity theft, or an innocent spouse.

In his speech in the Senate on the FAST Act, Ben Cardin (D – Maryland) pointed to the previous failures in the use of PCAs by the IRS: "Twice before, from 1996 to 1997 and from 2006 to 2009, Congress required [the IRS] to turn over some tax collection efforts to PCAs, with miserable results."

"The first attempt resulted in the loss of USD17m, and contractors participating were found to have violated the Fair Debt Collections Practice Act. … While the [2006–2009] program was supposed to bring in up to USD2.2bn in unpaid taxes, data from the IRS showed that the program actually resulted in a net loss of almost USD4.5m."

Cardin also commented that the policy "puts a target on the back of low-income and middle-class families," while the National Treasury Employees Union stated that "turning over tax

collection work to the most complained about industry – private debt collectors – makes no sense. The Federal Trade Commission and state authorities recently launched sweeping new investigations to stop these companies from hurting vulnerable Americans."

The second tax measure in the FAST Act, to deny or revoke passports for individuals with assessed unpaid tax of more than USD50,000 (which is not being repaid in installments or appealed), is only expected to gather an additional USD395m in the next ten years.

It has been strongly opposed by American Citizens Abroad (ACA). "This provision is way too harsh and dangerous a remedy, especially for American taxpayers residing abroad who absolutely must have their US passport at hand," commented Jonathan Lachowitz, ACA's Chairman. "In many situations, they cannot do things like open a bank account, arrange for direct debit of utility bills, travel, or do many other everyday things, without their passport."

"Enactment of this legislation would come at a time when the IRS's, including Collections', ability to render services to taxpayers overseas and, in effect, help them 'work out' their collection problems, are severely reduced," he said. "IRS offices overseas have been closed. The ability of revenue officers in Collections to meet with taxpayers outside the US, as a practical matter, is non-existent."

Ryan Continues Call For US Tax Reform

During his speech at the Library of Congress on December 3, Paul Ryan (R – Wisconsin), the House of Representatives Speaker and former Ways and Means Committee Chairman, reiterated his call for business tax reform in the US that would create jobs and increase wages.

Ryan noted that "instead of a tax code that all of us can live by, we have a tax code that none of us can understand. We all know how hard it is to keep up with the competition overseas. … Well, the Canadians are taxing their small businesses at 15 percent. But our top tax rate on successful small businesses is effectively 44.6 percent."

"The only way to fix our broken tax code is to simplify, simplify, simplify," he added. With the vast majority of small businesses in the US being subject to individual income tax, Ryan confirmed that he would "close all those loopholes and use that money to cut tax rates for everybody. Take the seven tax rates we have now and collapse them to two or three." He has previously suggested rates of 10 percent and 25 percent.

He said he knows that "people like many of these loopholes, … [and] many of these loopholes will be fiercely defended," but said he looks forward to "a tax code that rewards good work instead of good connections. When people know they will keep more of their hard-earned money, they will work more, save more, invest more – and create more jobs for all of us."

The present House Ways and Means Committee Chairman Kevin Brady (R – Texas) welcomed Ryan's call for tax reform. "It's exciting that we have a Speaker who is absolutely committed to fixing this broken tax code," he said. "I intend to marshal the resources and ideas of the House to create a fairer, flatter, and simpler tax code that is built for growth."

Gulf States Taking Forward VAT Talks

Younis Haji al-Khouri, the Undersecretary at the United Arab Emirates (UAE) Ministry of Finance, has announced that Gulf Cooperation Council (GCC) member states have agreed that a regional value-added tax (VAT) could be in place by 2020 or sooner, if states can agree on a framework for the regime within two to three years.

Proposals for a low-rate pan-GCC VAT regime have been under discussion for more than a decade. However, in recent years negotiations stalled. It is anticipated that, if adopted, the GCC states – Kuwait, Bahrain, Saudi Arabia, Qatar, the UAE, and Oman – would levy a rate of between 3 and 5 percent. The levy would help GCC states diversify their revenue streams away from oil. It would also offset the lower customs revenues that GCC states would receive if they go ahead with proposals to remove internal customs duties between members.

Al-Khouri told reporters on December 7 that GCC states had agreed to exempt some food items under the VAT, and zero rate health care and education. Implementation would take one-and-a-half years to two years, he said.

Indian Committee Recommends 15 Percent RNR GST Rate

A Committee tasked with proposing a revenue-neutral rate (RNR) for India's proposed goods and services tax (GST) regime has recommended a rate in the region of 15 to 15.5 percent, in a report submitted on December 4.

The executive summary to that report said: "Getting the design of the GST right is … critical. Specifically, the GST should aim at tax rates that protect revenue, simplify administration, encourage compliance, avoid adding to inflationary pressures, and keep India in the range of countries with reasonable levels of indirect taxes."

"There is first a need to clarify terminology. The term revenue-neutral rate will refer to that single rate, which preserves revenue at desired (current) levels. In practice, there will be a structure of rates, but for the sake of analytical clarity and precision it is appropriate to think of the RNR as a single rate. It is a given single rate that gets converted into a whole rate structure, depending on policy choices about exemptions, what commodities to charge at a lower rate (if at all), and what to charge at a very high rate. The RNR should be distinguished from the 'standard' rate defined as that rate in a GST regime, which is applied to all goods and services whose taxation is not explicitly specified. Typically, the majority of the base (*i.e.*, majority of goods and services) will be taxed at the standard rate, although this is not always true, and indeed it is not true for the states under the current regime."

The eventual structure of the GST regime will be decided by the GST Council, representing the center Government and states.

While putting forward several additional rates in its recommendations, the report said, in line with growing international practice and with a view to facilitating compliance and administration, India should strive toward a one-rate structure as the medium-term goal.

CANADA - SPAIN

Into Force

A Protocol between Canada and Spain will enter into force on December 12, 2015.

CANADA - UNITED KINGDOM

Forwarded

Canada and the UK have agreed to amend the arbitration provisions of their DTA in an exchange of notes.

CZECH REPUBLIC - CHILE

Signature

The Czech Republic and Chile signed a DTA on December 2, 2015.

GUERNSEY - SPAIN

Signature

Guernsey and Spain signed a TIEA on November 17, 2015.

INDIA - JAPAN

Forwarded

India's Cabinet on December 2, 2015 approved the signing and ratification of a DTA Protocol with Japan.

ISLE OF MAN - SPAIN

Signature

The Isle of Man and Spain signed a TIEA on December 3, 2015.

JAPAN - TAIWAN

Signature

Japan and Taiwan signed a DTA on November 26, 2015.

MALTA - CURAÇAO

Signature

Malta and Curaçao have signed a DTA, the Maltese Government announced on November 18, 2015.

MAURITIUS - MOROCCO

Signature

Mauritius and Morocco signed a DTA on November 25, 2015.

NIGERIA - KOREA, SOUTH

Forwarded

The speaker of Nigeria's House of Representatives has said to South Korea that the nation's lawmakers will swiftly adopt the DTA, following delays in the lower house.

QATAR - JAPAN

Into Force

The Qatar-Japan DTA will enter into force on December 30, 2015, Japan's Ministry of Finance has announced.

SWITZERLAND - ARGENTINA

Into Force

The Switzerland-Argentina DTA entered into force on November 27, 2015.

SWITZERLAND - BRAZIL

Signature

Switzerland and Brazil signed a TIEA on November 23, 2015.

SWITZERLAND - VARIOUS

Into Force

The Swiss Government on November 24, 2015, announced that four DTAs recently entered into force: the agreement with Cyprus on October 15; with Uzbekistan on October 14; with Estonia on October 16; and with Iceland on November 6.

ZIMBABWE - CHINA

Signature

Zimbabwe's tax authority announced the signing of a DTA with China on December 1, 2015.

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

THE AMERICAS

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

INTRODUCTION TO US INTERNATIONAL TAX – LAS VEGAS

Bloomberg BNA

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

Chair: TBC

2/22/2016 - 2/23/2016

http://www.bna.com/intro_vegas2016/

AMERICAS TRANSFER PRICING SUMMIT 2016

TP Minds

Venue: Eden Roc Resort, 4525 Collins Ave, Miami Beach, FL 33140, USA

Key speakers: Garry Stone (PwC), Mike Danilack (PwC), David Varley (IRS), Kenneth W. Wood (IRS), Michael Lennard (United Nations), Mayra Lucas (OECD), Carlos Perez-Gomez (SAT), George Georgiev (Siemens Corporation), among numerous others

2/23/2016 - 2/24/2016

http://www.iiribcfinance.com/event/Americas-Transfer-Pricing-Conference

ADVANCED INTERNATIONAL TAX PLANNING – LAS VEGAS

Bloomberg BNA

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

Key speakers: TBC

2/24/2016 - 2/25/2016

http://www.bna.com/ITP_vegas2016/

INTERMEDIATE US INTERNATIONAL TAX UPDATE – LAS VEGAS

Bloomberg BNA

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

Key speakers: TBC

2/24/2016 - 11/26/2015

http://www.bna.com/inter_vegas2016/

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

8TH REGIONAL MEETING OF IFA LATIN AMERICA

IBFD

Venue: JW Marriott Hotel Lima, Malecón de la Reserva 615, Lima, Peru

Key speakers:TBC

5/4/2016 - 5/6/2016

http://www.ibfd.org/IBFD-Tax-Portal/Events/8th-Regional-Meeting-IFA-Latin-America

US INTERNATIONAL TAX COMPLIANCE WORKSHOP - SAN DIEGO

Bloomberg BNA

Venue: Marriott San Diego Gaslamp, 660 K Street, San Diego, CA 92101, USA

Key speakers: TBC

6/20/2016 - 6/21/2016

http://www.bna.com/compliance_sandiego2016/

ASIA PACIFIC

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

MIDDLE EAST AND AFRICA

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

TREATY ASPECTS OF INTERNATIONAL TAX PLANNING

IBFD

Venue: Hilton Dubai Jumeirah Hotel, Jumeirah Beach Road, Dubai Marina, Dubai

Key speakers: Bart Kosters (IBFD), Ridha Hamzaoui (IBFD)

5/22/2016 - 5/24/2016

http://www.ibfd.org/Training/Treaty-Aspects-International-Tax-Planning-1

WESTERN EUROPE

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

ITPA LUXEMBOURG WORKSHOP – MARCH 2016

International Tax Planning Association

Venue: Le Royal, 12 Boulevard Royal, 2449 Luxembourg

Chair: Milton Grundy

3/13/2016 - 3/15/2016

https://www.itpa.org/?page_id=10132

INTERNATIONAL TRANSFER PRICING SUMMIT 2016

TP Minds

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

Key Speakers: TBC

3/15/2016 - 3/16/2016

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

INTERNATIONAL TAX ASPECTS OF PERMANENT ESTABLISHMENTS

IBFD

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

Key speakers: João Félix Pinto Nogueira (IBFD), Carlos Gutiérrez P. (IBFD), Bart Kosters (IBFD), Tamas Kulcsar (IBFD).

4/19/2016 - 4/22/2016

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

CURRENT ISSUES IN INTERNATIONAL TAX PLANNING

IBFD

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

Key speakers: TBC

5/25/2016 - 5/27/2016

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

ASIA PACIFIC

Australia

The High Court of Australia has dismissed an appeal stemming from a decision of the Full Court of the Federal Court of Australia. The High Court held that a former officer of the International Bank for Reconstruction and Development (IBRD) was not entitled to an exemption from taxation in respect of monthly pension payments he had received.

Section 6(1)(d)(i) of the International Organisations (Privileges and Immunities) Act 1963 (IOPI Act) and regulation 8(1) of the Specialized Agencies (Privileges and Immunities) Regulations (SAPI Regulations) confer upon a person who holds an office in an international organization to which the IOPI Act applies an exemption from taxation on salaries and emoluments received from the organization. The exemption is set out in Item 2 of Part 1 of the Fourth Schedule to the IOPI Act. The IBRD is an international organization to which the IOPI Act applies.

The appellant, Mr. Macoun, a former sanitary engineer with the IBRD, received monthly pension payments from a Retirement Fund established under the IBRD's Staff Retirement Plan (SRP) in the 2009 and 2010 income years, when he no longer held an office in the IBRD. The Commissioner – the respondent – included the monthly pension payments in Macoun's assessable income for the 2009 and 2010 income years.

A listing of recent key international tax cases.

Macoun sought review of the Commissioner's decision in the Administrative Appeals Tribunal (AAT). The AAT set aside the decision and substituted the decision that the monthly pension payments did not form part of Macoun's assessable income and were exempt from Australian income tax.

The Commissioner appealed to the Full Court of the Federal Court of Australia. The Full Court allowed the appeal, holding that regulation 8(1) of the SAPI Regulations confined the privileges specified in Part 1 of the Fourth Schedule to the IOPI Act to persons currently holding an office in an international organization to which the IOPI Act applied. As Macoun did not hold such an office in

the IBRD in the 2009 and 2010 income years, the exemption from taxation was not available to him. By grant of special leave, Macoun appealed to the High Court.

The High Court unanimously held that Macoun was not entitled to an exemption from taxation for the relevant part of his monthly pension payments because he had ceased to hold an office in the IBRD when he received them, and because he received them from the Retirement Fund established under the SRP rather than from the IBRD. The High Court also held that Macoun's monthly pension payments did not fall within the phrase "salaries and emoluments" in Item 2 of Part 1 of the Fourth Schedule to the IOPI Act, and that Australia's international obligations did not require Australia to exempt the monthly pension payments from taxation.

This judgment was released on December 2, 2015.

http://eresources.hcourt.gov.au/showCase/2015/HCA/44

Australian High Court: *Commissioner of Taxation v. Macoun ([2015] HCA 44)*

India

The Mumbai bench of India's Income Tax Appellate Tribunal has delivered a landmark ruling on the application of Income-tax Act 1961 provisions in relation to transfer pricing adjustments.

The case related to expenses for software imported by the taxpayer for its own use and for trading. The provisions of the Act relevant to the case were sections 40 (Amounts not deductible), 10A (Special provision in respect of newly established undertakings in free trade zone, *etc.*), and 80HHE (Deduction in respect of profits from export of computer software, *etc.*). Central to the case was whether a transfer pricing adjustment could be made where the taxpayer enjoys the benefit of sections 10A and 80HHE.

The assessing officer (AO) had, having disallowed a deduction for the expenses and relying on the information supplied by the taxpayer in the transfer pricing report, transferred the matter to a transfer pricing officer (TPO) without having regard to other data that would have a bearing on the information so provided by the taxpayer.

The Tribunal held that the AO erred in not himself examining the transfer pricing issue and, with the approval of the Commissioner of Income Tax (CIT-A), making a reference to the TPO under section 92CA(1) of the Act.

The Tribunal ruled:

> "The AO as well as the CIT-A failed to apply their mind to the transfer pricing report filed by the [taxpayer], or to any other material or information or document furnished. The TPO made an adjustment which was incorporated by the AO in the assessment order. Thereby,

> the AO as well as the CIT-A did not discharge necessary respective judicial functions conferred on them under sections 92C [Computation of arm's length price] and 92CA [Reference to Transfer Pricing Officer] of the Act."

Section 92CA of the Act provides that the AO may, if he considers it necessary or expedient to do so and with the previous approval of the CIT-A, refer the computation of the arm's length price in relation to an international transaction to the TPO.

The Tribunal accepted the taxpayer's contention that "no transfer pricing adjustment can be made in a case like the present one, where the [taxpayer] enjoys benefit under section 10A or 80HHE of the Act, or where the tax rate in the country of the associated enterprises is higher than the rate of tax in India, and where the establishment of tax avoidance or manipulation of prices or establishment of shifting of profits is not possible."

This judgment was delivered on November 4, 2015.

http://www.itatonline.in:8080/itat/upload/-577886394211149562913$5%5E1REFNOITA-7513-MUM-2010_DCIT_VS_TATA_CONSULTANCY.pdf

Income Tax Appellate Tribunal, Mumbai: *DCIT v. Tata Consultancy Services Ltd*

WESTERN EUROPE

Switzerland

Hervé Falciani, who leaked details of accounts held by his former employer HSBC Private Bank in Switzerland to foreign tax authorities, was convicted while absent for economic espionage by the Swiss Federal Criminal Court.

The Court sentenced Falciani to five years in prison. He was cleared of other charges of data theft and violating commercial and banking secrecy. As a French (and Italian) citizen residing in France, however, he cannot be extradited to Switzerland.

HSBC welcomed the judgment stating that the ruling demonstrated that the leak of the data was for the "sole purpose of reselling them for his own enrichment." Adding: "The evidence received by the Court show that the intentions of Hervé Falciani were not those of a whistleblower."

The ruling, announced on November 27, may be appealed before the Federal Court.

The Court's written opinion has yet to be published.

Swiss Federal Criminal Court: *Swiss Government v. Falciani*

Dateline December 10, 2015

Well the plot just thickens, doesn't it?

Last week we learned through the work of the European Commission and its investigations into "sweetheart deals" between national tax authorities and multinational companies that, as a result of two tax rulings issued in 2009, fast food chain McDonalds was permitted by Luxembourg to not pay any corporate tax there at all. And on whose watch was this allowed to happen? Why, only Jean Claude Juncker's, the current President of the European Commission!

In fact, not only was Juncker Prime Minister of Luxembourg at the time of the ruling, he also held the Finance Ministry and Treasury Ministry portfolios during 2009, albeit successively rather than concurrently. Still, in the language of law enforcement, you could say that Juncker's fingerprints were all over Luxembourg's economic and tax policy during the period in question. So why didn't he know anything about this and other rulings? And, if he did, why is he now suddenly diametrically opposed to these so-called comfort letters?

Perhaps it's best not to try and ask the man himself. I suppose the answer has something to do with the fact that he is a senior politician. Being a Prime Minister or President is a demanding job (no, I'm not being sarcastic – I wouldn't want to do it!), and unless you plan to spend four or five years or more without sleep, there just aren't enough hours in the day to do everything yourself, which is why leaders delegate.

But by delegating they often lose touch with what's happening on the ground, and sometimes when their subordinates screw up, they are the ones left with egg on their faces. So I can understand why Juncker would be largely in the dark about these tax rulings. And, no matter how principled one is, politics is almost the dictionary definition of compromise. As the Oxford English Dictionary defines it, "politics" is: "(Of an action) seeming sensible and judicious in the circumstances." The EU's approach to tax rulings, and indeed corporate tax in general, might not appear "sensible" and "judicious" to some of us, but Juncker is probably being a sensible and judicious politician for the role he now plays.

From judiciousness to matters judicial, we now come to the case of Hervé Falciani, who was jailed, in absentia, by the Swiss Federal Court last week. He's the one who gathered (some say stole) information on 130,000 clients of HSBC bank in Switzerland while he was a systems engineer for the firm, before passing it on to the French Government, claiming that the individuals he exposed were dodging taxes. France then forwarded the information, pass-the-parcel fashion, to other governments. Some, including HSBC, allege that he did this for personal profit. Others, including the man himself, say that

it was a selfless act designed to bring wealthy tax evaders to account. So is he a hero or a villain?

I suppose that depends on what the man's true motives were, and I suspect we'll never quite get to the truth on this matter. Either way, in my view, he deserves to be punished, even if he's unlikely to ever to receive said punishment. Because, surely, a crime has taken place here, right? I find it very unlikely that HSBC gave Falciani permission to copy those files and pass them to a third party.

As I've said before, tax evasion is wrong and deserves to be punished. Equally, receiving stolen goods is also a crime, especially if one has knowledge of their criminal provenance, and no matter how much governments attempt to dress up their dealings with the Falcianis of this world as being for the greater good (let's not forget that money has exchanged hands between those accused of data theft and tax authorities in previous similar cases), two wrongs don't make a right.

What's more, how does Falciani know that all 130,000 are guilty of something? How many innocent people have had their private financial information proffered around Europe — and to who knows how many other countries too? So well done Switzerland for keeping your head when all those about you seem to be losing theirs. And another thing, the EU will bend over backwards in an attempt to force its will on sovereign states when it suits it, especially in the area of tax – but there's currently no legal arrangements in place to extradite criminals from France to Switzerland? I find that strange.

Now, I have a question. How come corporate tax receipts in Ireland account for roughly the same percentage of overall revenue – about 8 percent in 2014 – as they do in the United Kingdom (just under 10 percent in 2012) and the United States (also just under 10 percent in 2010), when corporate tax in Ireland was half the UK rate in 2012, and about a third of the US's? I could direct that question to the Chancellor of the Exchequer in London, and the Treasury Secretary or any number of senior Congressmen in Washington, but I think they get it already.

High corporate tax rates don't necessarily produce high levels of revenue, because they encourage avoidance and discourage investment. Which is why corporate tax rates have been steadily falling all over the world in the last ten years or so. And which probably accounts for yet another corporate tax windfall for the Irish Exchequer. I think even François Hollande gets it now. But I think the "high tax good, low tax bad" brigade in Brussels will take some convincing.

Talking of *paradis fiscal*, in the early days of the internet, many offshore jurisdictions talked the talk with their aspirations to be at the forefront of the e-commerce revolution. But not many of them walked the walk, as evidenced by the relatively small number of offshore e-commerce hubs in existence today. Perhaps when it came down to it, some of

these isolated rocks just didn't have the resources needed to build the necessary telecommunications infrastructure, nor the skills base to operate it.

However, there are a number of jurisdictions, most of which can still be classed as "offshore," which have quietly gone about the business of carving out their own niche in an increasingly digitalized world. Antigua and Barbuda, Gibraltar, and Malta stand out as having made a success of their e-commerce strategies, with all three now by-words for the offshore e-gaming and internet gambling industries (although in poor old Antigua's case, its industry has been hobbled by US legislation and Washington's indifference to numerous WTO rulings in the Caribbean jurisdiction's favor, but that's a story for another time!) The Isle of Man is arguably the most successful offshore e-commerce jurisdiction, with the sector now accounting for almost one-quarter of the island's gross domestic product, according to the Government.

Given that economic diversification is so important for these small territories, most of which lack natural resources and are highly exposed to external economic shocks, an encomium goes to Jersey this week, which has decided to proceed with its plans to develop an e-gaming industry. Although, it's a qualified encomium in a way: Jersey must be careful that it's not coming too late to the party. Its competitors, including the Isle of Man, are well established, and the regulatory and tax currents aren't exactly favorable for offshore e-gaming at the moment. Still, recent history suggests that the authorities in Jersey – and the other Crown Dependencies for that matter – seem much abler in responding to their territory's economic needs than most other countries.

The Jester