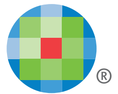

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a closer look

ISSUE 175 | MARCH 17, 2016

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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

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a closer look

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The Digital Revolution Accelerates Global Tax Frameworks And Cooperation

by Claudio Fischer, Senior Manager, Indirect Tax, EY, and Gijsbert Bulk, Global Indirect Tax Leader, EY

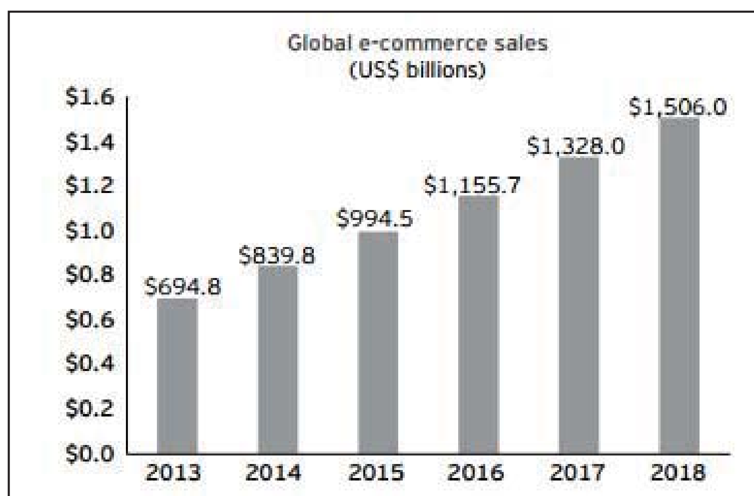
When the first VAT systems were implemented around 60 years ago, cross-border trade was not much of an issue. Goods were mainly produced and sold locally, and if goods were imported, it involved a few traders in large quantities. But globalization saw a massive expansion in cross-border trade. By 1990, the global trade of manufactured goods had increased tenfold from rates in 1960. And with the emergence of the internet in the 1990s, the first online shops came into being. What started as a niche business has evolved into a multibillion-dollar e-commerce trend over just a few years, with two-digit growth rates each year. By 2018, global e-commerce sales are expected to have passed the USD1.5bn mark (see Figure 1).

Nowadays, consumers order goods from almost anywhere in the world and have them shipped directly to their homes. As a consequence, millions of individual parcels, many with values below the thresholds for levying customs duties and taxes, cross borders every day. In many markets, these low-value consignments are giving foreign suppliers a competitive advantage over local suppliers, and they are causing significant losses of tax revenue (such as import duties and VAT/GST). As a result, customs authorities are taking steps to protect this source of revenue. In many countries, the threshold below which goods are free of import duties and taxes is declining toward zero. In theory, this makes every import taxable. But, in practice, it increases the administrative burden for customs authorities and slows down cross-border trade.

So should customs authorities look for new ways to tackle cross-border sales? Another approach has been chosen by Turkey, for example, which has announced new filing requirements, effective July 1, 2016, for carriers and logistics companies to report on the aggregate shipments from a supplier, regardless of the identity of the importers. In the EU, an extension of the Mini One-Stop-Shop (MOSS) system (see below) is being discussed for EU suppliers of goods that have to register

and pay VAT in the EU country of arrival if they sell goods to private consumers there. And Switzerland plans to implement such a procedure in 2017 – one of the first non-EU countries to do so.

Figure 1. Global retail sales are set to increase, although the rate of growth is anticipated to slow.



Source: "Global Retail E-Commerce Keeps on Clicking: The 2015 Global Retail E-Commerce Index," ATKearney website, www.atkearney.com/consumer-products-retail/e-commerce-index/full-report, accessed February 2, 2016.

Digitalization is forcing these developments to go even further. Increasingly, orders of physical goods are giving way to a simple download of data. Books are bought as electronic books; music and movies are streamed; and, with the development of 3D printers, consumers will create more and more goods on the spot and in real time, acquiring from the seller just the necessary data to program the printer.

All these developments could affect the revenues collected from indirect taxes. Revenues from taxing supplies of goods decrease (also because barriers to international trade continue to fall) and, at the same time, traditional VAT systems cannot tax cross-border supplies of services and intangibles or can do so only to a limited extent.

Many countries are developing rules to tax foreign providers of electronic services.[1] However, this is happening in a rather uncoordinated way, with most countries simply requiring foreign service providers to register in the country and pay VAT/GST. Some countries, such as Switzerland and Norway, have had such rules in place for years. The EU followed with a uniform system for all 28 Member States in 2015, introducing the MOSS concept as a single point of contact for taxpayers to declare tax charged on digital sales made to individuals. Most recently, Australia, Canada, Japan, New Zealand, Russia, South Korea, Thailand and Turkey announced that they will require

foreign e-service providers to register and pay taxes. At the same time, many countries are considering lowering or abolishing thresholds for the importation of low-value consignments, allowing them to tax physical cross-border e-commerce deliveries as well.

Although there may be progress for governments, this uncoordinated approach poses significant problems for online merchants. Just imagine a supplier of music downloads having to register for VAT/GST in 150 countries, to file VAT/GST returns in them all, and to apply the different local VAT/GST rules. Or think of a small start-up store selling goods online to customers in many jurisdictions and having to comply with all tax rules in foreign languages and exotic currencies. Both businesses also must be able to identify the place of residence of their customers to apply the correct VAT/GST treatment. But, in reality, it also seems questionable whether these new rules are manageable for tax authorities. They definitely come with an additional workload and – if a foreign merchant does not register – little or no means to collect the tax due.

We therefore need a shift toward a global framework for applying VAT or GST to cross-border flows of services and intangibles. The OECD has already started this work by issuing the Global VAT/GST Guidelines[2] in 2015, which recommend levying VAT or GST in the place where goods and services are consumed, not where they originate. However, the OECD has no solutions for how to enforce compliance. It simply recommends that countries adopt a simplified registration system and calls for stronger international cooperation in the exchange of information and the enforcement of taxes. Governments have an incentive to do so, given that they otherwise run the risk of having to rely on more difficult and costly enforcement and collection mechanisms.

A possible example of such a simplified system can be seen in the EU, where, as of January 1, 2015, a MOSS was established that not only invokes the destination principle for business-to-consumer (B2C) transactions, but also seeks to simplify the compliance burden for business across EU Member States. Beyond the EU, however, such common registration and collection systems are unlikely to become operable in the near future. That means providing services to consumers in other countries bears greater indirect tax risks for e-commerce businesses – which are rapidly becoming most businesses in today's economy.

Endnotes

1 "Digital tax developments," December 2015, EY website, www.ey.com/digitaltax, accessed February 2, 2016.

2 "A look at OECD's International VAT Guidelines," January 21, 2016, EY website, taxinsights.ey.com, accessed February 2, 2016.

Cheap Shelf Or Top Shelf? The OVDP v. The SFCP

by Mike DeBlis, DeBlis Law

Many people make purchase decisions based on cost, and little else. In the minds of many, it is pure folly to pay X dollars per month for a good or service when another company provides the same service for a mere Y dollars.

But cost is only one element in a purchase decision. As many of us know through bitter experience, for example, some insurance companies happily accept your monthly premium payments but strangely disappear when you actually have a claim.

Transposing this metaphor to the tax world: let's assume that our protagonist is something of a wheeler-dealer and he has some unpaid foreign taxes. He's heard good things about this Offshore Voluntary Disclosure Program (OVDP), but he soon learns about the mandatory 27.5 percent penalty, and the bloom goes off the rose in very short order that "ongoing cooperation" provision is also a concern.

After a few more clicks on Google, he stumbles across the Streamlined Filing Compliance Procedures (SFCP),[1] and he can hardly believe his eyes. No mandatory penalty? No ongoing disclosure requirement? Sign me up!

How It Works

As an initial note, understand that the IRS does not offer the SFCP to be merciful. Instead, this process is a vehicle to get as much money as possible as efficiently as possible, plain and simple. To qualify, the taxpayer must:

- Be an individual (no LLCs, partnerships, and so on);
- Not be the subject of an audit;
- Owe at least three years of FBAR taxes; and
- Not have "willfully" failed to pay them.

Willfulness – "ay, there's the rub," as Shakespeare put it. As a quick refresher, conduct is arguably not willful if it was based on an honest misunderstanding of the tax law or a good faith belief that no tax was due. Of course, the Service generally maintains that these arguments border on willful blindness.

But back to the process. The three years of new or amended returns must be filed, and the taxes, interest, and penalties must all be paid; these returns should include verbiage like "streamlined foreign offshore" at the top. FBARs for the last six years must also be on file, with the similar "streamlined" designations. Finally, the appropriate certification must be attached, and the IRS typically requires a wet-ink original signature.

Additional requirements apply if the asset is a retirement or savings account. In these situations, the taxpayers must normally submit written requests to elect income deferral, along with a summary of the circumstances.

If this process is not strictly followed, the Service typically throws the amended returns into the general submission bin, and the taxpayer receives no SFCP preferential treatment.

Impact

The IRS imposes a flat 5 percent penalty in these cases, using the asset's highest aggregate value during the three-year period, or whatever the disputed period may be. Effective January 1 of last year, the Service updated and clarified the 5 percent rule. It applies only to assets that the taxpayer personally controls, like a bank account with signature authority. Furthermore, any asset that was not included on the FBAR or other disclosure is not calculated. And, if there is a question as to residency, the SFCP regulations apply instead of the normal Section 911 test.

If you think that all sounds too good to be true and there must be a catch, you may be right. In a nutshell, there are several possible issues:

- *Loss of Foreign Earned Income Exclusion:* The Tax Court recently confirmed that late-filed returns often mean a FEIE forfeiture.
- *Foreign Tax Credit:* The same theory applies here. Remember that late-filed SFCP returns are still late-filed returns.
- *Future Action:* This is the big one. Whereas the OVDP basically ends the matter, SFCP participants are at risk for future audits and criminal investigations.

There may also be issues with gift recharacterizations, especially ones that come from a corporation or partnership.

The bottom line is that the SFCP is an ideal path for many taxpayers who simply have a few years of unfiled or incorrect returns. But if the issues go deeper, it may be better to look elsewhere.

Endnotes

1 *See* https://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures

Doing The Salsa

by Stuart Gray, Senior Editor,
Global Tax Weekly

The recent publication by the US Internal Revenue Service (IRS) of a Revenue Ruling on certain tax relief restrictions on income earned in Cuba [1] represents the latest step in the thawing of diplomatic and economic relations between these two ideological adversaries. But is the prospect of fully liberalized trade and investment between the US and Cuba a realistic proposition?

Ringing The Changes

There has been a buzz in the foreign investment community ever since Fidel Castro's younger brother, Raul, became the "Prince Regent" of Cuba, so to speak, in the period 2006–2008, following his sibling's decline into ill-health. Pretty soon, Raul began removing many of the restrictions impinging on the everyday lives of Cubans, including the purchase of certain consumer goods. He also set about decentralizing power in certain sectors of the economy, including agriculture, and set Cuba on the path towards normalizing diplomatic relations with the US.

A key moment in the thaw arrived when US President Barack Obama, a longstanding advocate for normalizing relations with America's southern neighbor, became the first President to visit the island for 90 years in late 2014. The White House stated ahead of his trip:

> "The President acknowledges the serious differences we have with the Cuban Government, and although the transformation of this new relationship will take time, the President noted that his visit to Cuba will advance the goals that guide us – promoting American interests and values, and assisting efforts to build a future of more freedom and more opportunity for the Cuban people." [2]

Shortly thereafter, the US relaxed certain longstanding travel and trade restrictions. Travel remains regulated, but in January 2015 the US Department of Commerce and US Department of

the Treasury announced that US citizens wanting to visit the country in any of the 12 existing categories of authorized travel no longer need to apply for a specific license. [3] Further, a per-day rate previously imposed on authorized travelers no longer applies, limits on authorized expenses have been removed, and it is now legal to use US credit and debit cards in the country. Insurers are also now able to include Cuba in global life, health, and travel insurance policies for US expats.

Meanwhile, the limit on licensed remittances to Cuban nationals has been raised from USD500 to USD2,000 per quarter. In some cases, including for family remittances, travelers may carry up to USD10,000 with them, and restrictions have in general been removed altogether for humanitarian projects or the development of private businesses. Banking institutions, including US-registered money transmitters, can process authorized remittances to Cuba without having to apply for a specific license.

Furthermore, travelers returning from Cuba to the US are now allowed to import up to USD400 worth of goods for personal use, but there is a restriction of up to USD100 in the case of alcohol and tobacco products. Other measures put an end to banking restrictions and make it easier to export communications technology, including computers.

A New Dawn In Relations

The relaxation of these restrictions seems to have had the desired effect. There was a 40 percent rise in the number of American tourists visiting Cuba in 2015, and the numbers could be bolstered substantially in future years after the US signed an agreement with the Cuban Government to reinstate commercial flights between the two countries in February this year. [4] The new arrangement provides each country with the opportunity to operate up to 20 daily roundtrip flights between the US and Havana. The arrangement also provides each country with the opportunity to operate up to ten daily roundtrip flights between the US and each of Cuba's nine other international airports, providing US carriers with the opportunity to operate up to a total of 110 daily roundtrip flights between the US and Cuba.

However, Cuba hasn't been completely isolated since the last scheduled flight traversed the 90 miles of ocean separating Cuba from the US over half a century ago. About 75 countries already trade with Cuba, and over the years the country has received much support from sympathetic nations, traditionally the former Soviet Union but more latterly Venezuela. Also, there have been limited opportunities for US investors in Cuba's agricultural, health care, and technology sectors

recently – for example, US agricultural exports to Cuba totaled USD288m in 2014. [5] However, as far as wider foreign investment is concerned, progress has been quite slow.

This is also beginning to change. Indeed, Raul Castro has set ambitious annual foreign investment targets, and is currently seeking funding of around USD8.2bn in 326 projects (which is about the same amount as Vietnam, another liberalizing communist state) received in the first half of 2015.

Indeed, some Cuba-dedicated closed-ended funds have already taken the plunge, including the CUBA Fund, otherwise known as the Herzfeld Caribbean Basin Fund Inc., the first fund formed to invest specifically in the Caribbean region, including Cuba; and CEIBA Investments Limited, the Channel Islands Stock Exchange-listed fund dedicated to investment in Cuba.

The US has also adjusted its own tax rules in order to facilitate investment in Cuba. Previously, while the US maintained its commercial, economic, and financial sanctions against Cuba, restrictions were imposed that denied a foreign tax credit for income taxes paid to Cuba and disallowed deferral on income earned in Cuba through a controlled foreign corporation. Those restrictions no longer apply as Cuba was removed from the countries listed under section 901(j)(2)(A) of the US Internal Revenue Code, with effect from December 21, 2015.

Tax Reform In Cuba

But what of Cuba's tax regime? How does this fit into the international tax system? A new tax code in Cuba became effective on January 1, 2013, introducing a total of 19 taxes in support of the Government's efforts to foster a partly free-market economy.

The new tax code [6] retained the progressive income tax regime in place since the 1990s for privately owned businesses, under which tax was paid at a starting rate of 15 percent on annual income up to CUP10,000 (USD432), increasing to 50 percent on earnings above CUP50,000.

It additionally introduced a number of permitted deductions; provided for the labor tax of 20 percent to be reduced to 5 percent by 2017; and loosened the ties for state-held enterprises which had previously turned all of their profits over to the authorities and then been allocated resources, instead subjecting them to a 35 percent tax on profits (again with a significant number of deductions available, in an effort to ease the transition).

However, realizing that the tax regime was not particularly attractive to foreign investors, the Cuban assembly approved Law 118, the Law on Foreign Investment (LFI) in 2014, which effectively cut corporate tax to 15 percent for foreign firms investing in Cuba. Oversight on such companies does, however, remain tight: foreign participation in Cuba must be authorized by the Council of State, the Council of Ministers, or another named body, with submissions to be made to the Ministry of Foreign Trade and Foreign Investment (MINCEX).

The new legislation expanded the areas in which foreign investors were permitted to participate (with only public health, education and the armed forces subject to exclusions). Permitted vehicles for foreign investment include the Joint Venture, the International Economic Association Contract and the Totally Foreign Capital Company, with the first of these benefiting from additional tax perks. Joint ventures are permitted an eight-year exemption for profit taxes (which can be extended by the Council of Ministers), with a 15 percent rate payable thereafter (except where natural resources are being exploited, when the rate can be increased by 50 percent). Profits tax is not levied on profits reinvested in Cuba, and exemptions from customs and wholesale and services taxes are also available for the first year of the investment period.

Labor taxes were also eliminated for foreign investors under Law 118; instead, with few exceptions (mainly key management positions and technical roles), the foreign investor is required to staff its venture in Cuba via a government agency, for a fee. The agency is then responsible for paying the employees' salaries, the amount of which is negotiated between the foreign investor and the agency. The foreign investor may lay off employees, but would be required to pay compensation to the agency.

In addition to officially permitting 100 percent foreign ownership in certain entities, the foreign investment law recognized IP rights of foreign investors, created greater freedoms regarding the sale and transfer of stocks (and the profits related to these activities), and permitted the transfer of profits related to investment in Cuba abroad.

In a further move to increase the country's attractiveness to foreign investors, plans are afoot to unify the two currencies currently in circulation – the Cuban Peso (CUP) and the Cuban Convertible Peso (CUC). The former is principally circulated domestically, while the latter is used in the tourism sector and by foreign companies operating and investing in Cuba. Unifying the two would grant foreign firms significant access to the domestic market.

An Uncertain Eye To The Future

So what does the future hold for Cuba and foreign investors? That depends on a number of variables. An important one is the pace at which Raul Castro, for however long he remains in power, is prepared to open up the economy and continue to introduce democratic-style reforms – there have been grumblings of discontent from sections of the foreign investment community that the Government continues to make life difficult for them. Dissatisfaction with the tax regime is one gripe that emerges at regular intervals.

For existing and potential US investors in Cuba, perhaps the most crucial factor is the continued support of the US Government of the normalization of economic and diplomatic relations. Had President Obama been able to serve an additional term, this would look very much assured, and would have been a question of "when" rather than "if" US sanctions would be completely lifted (with the consent of Congress of course). However, we can probably count on existing policies with regards to Cuba to be continued should another Democrat become President. The uncertainty lies in which candidate will be chosen from the Republican Party to contest the election. Donald Trump, currently leading the GOP pack, seems to have no problem with normalizing relations with Cuba, but Marco Rubio, himself with Cuban heritage, said in 2015 that he would "absolutely roll back" Obama's policy on the country. [7] November 8, 2016, could therefore mark a key date in Cuba's history.

But even if existing policy doesn't change, as the White House observed ahead of Obama's historical trip in 2014, this is a process that will take time.

Endnotes

1 https://www.irs.gov/pub/irs-drop/rr-16-08.pdf

2 https://www.whitehouse.gov/the-press-office/2016/02/20/weekly-address-new-chapter-cuba

3 https://www.commerce.gov/news/press-releases/2016/01/commerce-and-treasury-announce-further-amendments-cuba-sanctions and https://www.federalregister.gov/articles/2016/01/27/2016-01557/cuba-licensing-policy-revisions

4 https://www.transportation.gov/briefing-room/united-states-cuba-sign-arrangement-restoring-scheduled-air-service

5 https://ustr.gov/countries-regions/americas/cuba

6 http://www.cuba-economia.org/documentos/legislacion-economica/ley_113_del_sistema_tributario (in Spanish).

7 http://www.theguardian.com/us-news/2015/jul/10/marco-rubio-cuba-obama-policy-roll-back

Key Energy-Related Tax Provisions In The 2017 Budget Proposal

by Gale E. Chan, Madeline Chiampou Tully, Heather Cooper, Martha Groves Pugh, Philip Tingle and Justin Jesse, McDermott Will & Emery

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Introduction

As in previous proposed budgets, President Obama's recently released budget proposal for the 2017 fiscal year contains energy-related tax provisions that include a permanent extension of the renewable energy production tax credit (PTC) and a provision making it refundable. Making the PTC permanent and refundable signals the administration's continued strong support for renewable energy.

The Obama administration's budget proposal (Proposal) affects several energy-related tax provisions, many of which were also included in the revenue proposals from past years. However, there are two key differences from past proposals. Past proposals called for the permanent extension of the research and experimentation (R&E) credit and section 179 expensing. Last year, Congress made the R&E credit and section 179 expensing permanent. For more information, see McDermott's analyses of energy tax proposals in the 2011,[1] 2012,[2] 2013,[3] 2014,[4] 2015[5] and 2016[6] proposed budgets.

This article summarizes the key energy-related tax provisions contained in the Proposal and detailed further in the US Department of the Treasury's general explanation of the Proposal (Green Book).

Modify And Permanently Extend The Production Tax Credit

Last year, Congress enacted multi-year extensions of the PTC under section 45 of the Code for qualifying renewable energy facilities, such as wind, solar, biomass, geothermal, landfill gas,

municipal solid waste, hydroelectric, and marine and hydrokinetic facilities. To qualify for the PTC, construction of the qualifying facility for qualifying renewable energy resources (other than wind) must begin before January 1, 2017. For wind facilities to qualify for the PTC, construction of a qualifying facility must begin before January 1, 2020. However, the PTC for wind facilities phases out beginning in 2017. For wind facilities the construction of which begins after December 31, 2016, and before January 1, 2018, the PTC is reduced by 20 percent. For wind facilities the construction of which begins after December 31, 2017, and before January 1, 2019, the PTC is reduced by 40 percent. For wind facilities the construction of which begins after December 31, 2018, and before January 1, 2020, the PTC is reduced by 60 percent.

Congress also extended the investment tax credit (ITC) under section 48 of the Code for solar projects through 2022. For solar facilities, the ITC is reduced beginning in 2020, and is reduced to 10 percent for projects the construction of which begins before 2022 but which are not placed in service before 2024. In addition, qualified wind facilities may elect to claim the ITC in lieu of the PTC for facilities on which construction begins before January 1, 2020. For wind facilities, the ITC also phases out beginning in 2017 under the same phase-out schedule as for the PTC. For all other qualified facilities, the election to claim the ITC in lieu of the PTC must be made for facilities on which construction begins before January 1, 2017. *See* http://www.mwe.com/Extension-of-Renewable-Energy-Tax-Incentives/ for more information on the extension of the PTC and the ITC.

The PTC is a credit per kilowatt-hour of electricity produced from qualified energy facilities. The base amount of the PTC (indexed annually for inflation) is 1.5 cents per kilowatt hour of electricity produced from wind, closed-loop biomass, geothermal energy and solar energy, and 0.75 cents per kilowatt hour for electricity produced in open-loop biomass, small irrigation power, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities. In 2015, the credit was 2.3 cents per kilowatt hour for qualified resources in the first group and 1.2 cents per kilowatt hour for qualified resources in the second group.

The Proposal would permanently extend the PTC at current credit rates (adjusted annually for inflation) and would make the PTC refundable. Many renewable energy developers are new, growing firms that have insufficient tax liability to claim the PTC. As a result, these developers enter into joint ventures or other financing transactions with other parties to take advantage of the PTC. Making the PTC refundable might reduce transaction costs for developers, further incentivizing the production of renewable energy. The Proposal would also allow the PTC for solar facilities that qualify for the ITC and on which construction begins after December 31, 2016.

In addition to extending the general PTC, the Proposal would extend the credit to electricity consumed directly by the producer to the extent that the production can be independently verified. The Proposal would also allow individuals to claim the PTC for energy-efficient solar property installed on a residential dwelling unit before January 1, 2022, in lieu of the residential energy-efficient property tax credit under section 25D of the Code. The current energy-efficient property tax credit was extended by Congress last year and applies to residential solar systems placed in service before January 1, 2022, subject to the same phase-out schedule as the ITC. Individuals who install solar property on a dwelling unit after December 31, 2021, may claim only the PTC.

Under the Proposal, the ITC would also be permanently extended based on the availability of the credit under current law in 2017. The ITC currently provides a 30 percent credit for solar, fuel cell and small wind property, and a 10 percent credit for geothermal, micro turbine, and combined heat and power property placed in service by December 31, 2016 (December 31, 2021, for solar projects). However, beginning in 2017, the ITC for wind will be phased out and reduced by 20 percent. Thus, the Proposal would provide for a permanently reduced ITC for wind projects. The Proposal would make those credits permanent and would also make permanent the election to claim the ITC in lieu of the PTC for qualified facilities eligible for the PTC.

Enhance And Simplify The Research And Experimentation Tax Credit

Last year, Congress reinstated the R&E credit pursuant to section 41 of the Code retroactive to amounts paid or incurred during calendar year 2015, and made the credit permanent. The R&E credit had expired on December 31, 2014. The R&E "traditional" tax credit equals 20 percent of eligible costs for qualified research expenses above a base amount. The base amount is generally computed by looking at the ratio of the taxpayer's research expenses to its gross receipts for past periods. The base amount cannot be less than 50 percent of the taxpayer's qualified research expenses for the taxable year.

Taxpayers can also elect the alternative simplified research credit (ASC), which is equal to 14 percent of qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding taxable years. Under the ASC, the rate is reduced to 6 percent if a taxpayer has no qualified research expenses in any of the three preceding taxable years. An election to use the ASC applies to all succeeding taxable years unless revoked with the consent of the Secretary.

Qualified research expenses include both in-house research expenses and contract research expenses. Generally, only 65 percent of payments for qualified research by the taxpayer to an outside person is included as contract research expenses, except that in the case of payments to a qualified research consortium, 75 percent of the payments is included.

The R&E credit is a component of the general business credit under section 38 of the Code, but the R&E credit is not allowed to offset alternative minimum tax (AMT) liability, unless the taxpayer qualifies as an eligible small business. A qualified small business may also elect to claim up to USD250,000 of R&E credit as a payroll tax credit against its employer share of Social Security old age, survivors and disability insurance taxes. In addition, section 41(g) of the Code provides a special rule for owners of a pass-through entity, that limits the amount of the R&E credit to the amount of tax attributable to that portion of a person's taxable income that is allocable or apportionable to the person's interest in such trade or business or entity. Furthermore, although R&E costs are generally deductible in the taxable year in which they are paid or incurred, business owners of pass-through entities who do not materially participate in the conduct of a trade or business must capitalize and amortize R&E costs over ten years when calculating AMT for individuals.

As explained in the Green Book, the Proposal would repeal the traditional method and would make the following changes:

- Increase the rate of the ASC from 14 percent to 18 percent;
- Eliminate the reduced ASC rate of 6 percent for businesses without qualified research expenses in the prior three years;
- Allow the R&E credit to offset the AMT liability for all taxpayers;
- Provide that contract research expenses would include 75 percent of payments to qualified nonprofit organizations (such as educational institutions) for qualified research;
- Repeal the special rule for owners of a pass-through entity.

The Proposal would also repeal the requirement that R&E costs be amortized over ten years when calculating the individual AMT. These changes would apply to expenditures paid or incurred after December 31, 2016.

Provide Carbon Dioxide Investment And Sequestration Tax Credits

Under current law, a USD20 credit is allowed for every qualified metric ton of carbon dioxide (CO2) that is captured at a qualified facility and disposed of in secure geological storage. The credit is USD10

per metric ton if the CO_2 is used as a tertiary injectant in an enhanced oil or natural gas recovery. Credits will be allowed until 75 million metric tons of qualified CO_2 have been sequestered.

The Proposal would allocate USD2bn as a new refundable investment tax credit to projects that capture and permanently sequester CO_2. Credits would be available for investments in new and retrofitted electric generating units. Projects must capture and store at least one million metric tons of CO_2 per year. Projects that treat the entire flue gas stream from an electric generating unit or set of units must sequester at least 50 percent of the CO_2 in the stream. Projects that treat only a portion of the flue gas stream must capture at least 80 percent of the CO_2 stream.

The investment credit would equal 30 percent of the installed cost of eligible property, which includes CO_2 transportation and storage infrastructure, such as pipelines, wells and monitoring systems. Eligible property includes only property that is part of a new project or retrofit placed in service after December 31, 2015. Eligible taxpayers must apply for the credit within two years after enactment, and taxpayers would be able to apply an investment credit to part of or all of the qualified investment in the project. The Secretary of the Treasury would award credits based upon the following two considerations:

(1) The credit per metric ton of net sequestration capability; and
(2) The expected contribution of the technology and plant to the long-run viability of carbon sequestration from fossil fuel combustion.

In allocating credits, the Secretary would statutorily be required to allocate no more than USD800m of the credits to projects that capture and store less than 80 percent of their CO_2 emissions. At least 70 percent of the credits would be required to be allocated to projects fueled by more than 75 percent coal.

In addition to the investment credit, the Proposal would allow a new refundable sequestration tax credit for qualified investments. For CO_2 permanently sequestered and not beneficially reused, the credit would be USD50 per metric ton, and for CO_2 permanently sequestered but beneficially reused, the credit would be USD10 per metric ton. The credit would be indexed for inflation and allowed for a maximum of 20 years of production.

Provide Additional Tax Credits For Investment In Qualified Property Used In A Qualified Advanced Energy Manufacturing Project

Currently, a 30 percent tax credit is provided for investments in eligible property used in a "qualifying advanced energy project" pursuant to section 48C of the Code. A qualifying advanced

energy project is a project that re-equips, expands or establishes a manufacturing facility for the production of the following:

- Property designed to produce energy from renewable resources;
- Fuel cells, micro turbines or an energy storage system for use with electric or hybrid-electric vehicles;
- Electric grids to support the transmission, including storage, of intermittent sources of renewable energy;
- Property designed to capture and sequester carbon dioxide emissions;
- Property designed to refine or blend renewable fuels or to produce energy conservation technologies;
- Electric drive motor vehicles that qualify for tax credits, or components designed for use with such vehicles;
- Other advanced energy property designed to reduce greenhouse gas emissions.

Eligible property is property (1) that is necessary for the production of a qualified advanced energy project, (2) that is tangible personal property or other tangible property (not including a building and its structural components) that is used as an integral part of a qualifying facility, and (3) with respect to which depreciation (or amortization) is allowable.

Under the American Recovery and Reinvestment Act of 2009, total credits were capped at USD2.3bn, resulting in the funding of less than one-third of the technically acceptable applications that have been received. The Proposal would authorize an additional USD2.5bn of credits for investments in eligible property used in a qualifying advanced energy manufacturing project. Up to USD200m may be allocated to infrastructure projects that contribute to the network of refueling stations for alternative fuel vehicles. Taxpayers would be able to apply for a credit with respect to part or all of their qualified investment. If a taxpayer applies for a credit with respect to only part of the qualified investment in the project, the taxpayer's increased cost sharing and the project's reduced revenue cost to the government would be taken into account in determining whether to allocate credits to the project.

Applications for the additional credits would be made during the two-year period beginning on the date on which the additional authorization is enacted. Applicants allocated additional credits would have to show that the requirements of the certification had been met within one year of the date of acceptance of the application, and would have to place the property in service within three years from the date of the issuance of the certification.

Enhance And Make Permanent The New Markets Tax Credit

The new markets tax credit (NMTC) program pursuant to section 45D of the Code is a credit taken over seven years and is generally equal to 5 percent of the amount of the taxpayer's qualified investment for the first three years, and 6 percent of such investment for the last four years (for a total credit of 39 percent). The NMTC is available to offset regular federal income tax liability but cannot be used to offset AMT liability. Last year, Congress extended the NMTC through December 31, 2019.

The Proposal would permanently extend the NMTC and authorize the NMTC allocations with an allocation amount of USD5bn for each year after 2019. The Proposal also would permit NMTC amounts resulting from qualified investments made after December 31, 2019, to offset a taxpayer's AMT liability.

The Proposal would be effective after December 31, 2019.

Provide New Manufacturing Communities Tax Credit

Currently there is no tax incentive directly targeted at investments in communities that do not necessarily qualify as low-income communities, but which have suffered or expect to suffer an economic disruption as a result of a major job loss event, such as a military base or manufacturing plant closing. The Proposal includes a new allocated tax credit to support investments in communities that have suffered a major job loss event. For this purpose, a major job loss event occurs when a military base closes or a major employer closes or substantially reduces a facility or operating unit, resulting in a long-term mass layoff.

Applicants for the credit would be required to consult with relevant state or local economic development agencies (or similar entities) in selecting those investments that qualify for the credit. This credit could be structured similarly to the NMTC or as an allocated investment credit similar to the qualifying advanced energy project credit. The Proposal would provide about USD2bn in credits for qualified investments approved in each of the three years, 2017 through 2019.

Extend The Tax Credit For Second Generation Biofuel Production

In 2013, the "cellulosic biofuel producer credit" was renamed the "second generation biofuel producer credit." The credit is a nonrefundable credit of USD1.01 for each gallon of qualified second generation biofuel produced in the taxable year. Second generation biofuel includes any liquid fuel that (1) is produced in the United States and used as fuel in the United States; (2) is derived from

fiber-based sources (lignocellulosic or hemicellulosic matter) available on a renewable or recurring basis, or from cultivated algae or related microorganisms; and (3) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. Second generation biofuel cannot qualify as biodiesel, renewable diesel or alternative fuel for the credits relating to those fuels. This credit will expire on December 31, 2016.

The Proposal would extend the USD1.01 per gallon credit through December 31, 2022, and would then reduce the amount of the credit by 20.2 cents per gallon in each subsequent year, so that the credit would expire after December 31, 2026.

Impose An Oil Fee

Currently, oil and refined petroleum products are subject to several excise taxes. The Oil Spill Liability Trust Fund excise tax is 8 cents per barrel before January 1, 2017, and 9 cents per barrel after January 1, 2017. A motor vehicle fuel tax is imposed on gasoline and diesel fuels – 18.4 cents per gallon for gasoline (other than aviation gasoline) and 24.2 cents per gallon for diesel fuel or kerosene. Excise taxes on aviation fuel are 4.4 cents per gallon for commercial aviation fuel and 21.9 cents per gallon for non-commercial aviation fuel. An additional 14.1 cents per gallon surtax applies on general aviation fuel purchased and used in certain fractionally owned aircraft through September 30, 2021. There is also an excise tax of 29 cents per gallon on any liquid used as a fuel in a vessel in commercial waterway transportation.

To support critical infrastructure, fund investments in a cleaner transportation system, improve climate resiliency needs and reduce carbon emissions by shifting the market towards more sustainable technologies, the Proposal would impose a fee on a per barrel equivalent of crude oil. The fee would be collected on both domestically produced and imported petroleum products. Exported petroleum products would not be subject to the fee, and home heating oil would be temporarily exempted. The fee would be USD10.25 per barrel (adjusted for inflation from 2016) and would be phased in evenly over a five-year period beginning October 1, 2016. The fee would be fully phased in beginning October 1, 2021.

Require Derivative Contracts To Be Marked To Market With Resulting Gain Or Loss Treated As Ordinary Gain

Currently, derivative contracts are subject to the rules on timing and character depending on how the contract is characterized and, in some cases, where it is traded. The Proposal would require that

derivative contracts be "marked to market" – *i.e.*, that gain or loss from a derivative contract be reported on an annual basis as if the contract were sold for its fair market value no later than the last business day of the taxpayer's taxable year. Gain or loss from such contract would be treated as ordinary and attributable to the taxpayer's trade or business. The source of income associated with the derivative contract would continue to be determined under current law. However, transactions that qualify as business hedging transactions would not be required to be marked to market.

The Proposal would broadly define a derivative contract to include any contract, the value of which is determined, directly or indirectly, in whole or in part, by the value of actively traded property, and any contract with respect to a contract previously described. Under this broad definition, mark to market treatment would apply to contingent debt and structured notes linked to actively traded property. The gain or loss from a derivative contract would be required to be marked to market no later than the last business day of the taxpayer's taxable year and would be treated as ordinary.

The Proposal would eliminate or amend a number of Code provisions. Code section 475 (regarding mark to market accounting method for dealers in securities) would be amended, and Code sections 1256 (regarding marked to market treatment as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss) and 1092 (tax straddles) would be eliminated. In addition, the application of Code sections 1233 (short sales), 1234 (gain or loss from an option), 1234A (gains or losses from certain terminations), 1258 (conversion transactions), 1259 (constructive sales transactions) and 1260 (constructive ownership transactions) would be significantly curtailed.

The Proposal would apply to derivative contracts entered into after December 31, 2016.

Elimination Of Fossil Fuel Preferences

The Proposal's expenditures are to be funded in part by the elimination of many of the fossil fuel preferences under the Code. Specifically, the Proposal would take the following actions, among others:

- Repeal the enhanced oil recovery credit;
- Repeal the credit for oil and gas produced from marginal wells;
- Repeal expensing for intangible drilling costs;
- Repeal the deduction for qualified tertiary injectant expenses;
- Repeal the exception to the passive loss limitation for working interests in oil and natural gas properties;

- Repeal percentage depletion for oil and natural gas wells. Taxpayers would be permitted to claim cost depletion on their adjusted basis, if any, in oil and gas wells. A similar proposal would apply to coal and hard mineral fossil fuel production;
- Repeal the ability to claim the domestic production manufacturing deduction against income derived from the oil and gas production;
- Increase the geological and geophysical amortization period from two years to seven years for independent oil and gas producers;
- Repeal expensing, 60-month and ten-year amortization for exploration and development costs relating to coal and other hard-mineral fossil fuels. The costs would be capitalized as depreciable or depletable property, depending on the nature of the costs incurred, in accordance with the generally applicable rules;
- Repeal percentage depletion for hard mineral fossil fuels;
- Repeal capital gains treatment of coal and lignite royalties in favor of taxing those royalties as ordinary income;
- Repeal the ability to claim the domestic manufacturing deduction against income derived from the production of coal and other hard mineral fossil fuels.

The elimination of these preferences for fossil fuel would be effective for production or for costs incurred after December 31, 2016, and, in the case of royalties, for amounts realized after taxable years beginning December 31, 2016.

The Proposal also would repeal the corporate income tax exemption for publicly traded partnerships (*i.e.*, master limited partnerships) with qualifying income and gains from activities relating to fossil fuels for tax years beginning after December 31, 2021.

Endnotes

1 http://www.mwe.com/publications/uniEntity.aspx?xpST=PublicationDetail&pub=4629

2 http://www.mwe.com/publications/uniEntity.aspx?xpST=PublicationDetail&pub=5726

3 http://www.mwe.com/Key-Energy-Related-Tax-Provisions-in-the-2013-Budget-Proposal-02-17-2012/

4 http://www.mwe.com/files/Uploads/Documents/Pubs/ECA_Key_Energy_Related_Tax_Provisions.pdf

5 http://www.mwe.com/Comparison-of-Key-Energy-Related-Tax-Provisions-in-the-Presidents-2015-Budget-Proposal-and-the-Camp-and-Baucus-Proposals-04-14-20141/

6 http://www.mwe.com/Key-Energy-Related-Tax-Provisions-in-the-2016-Budget-Proposal-02-17-2015/

Topical News Briefing: Would You Like To Hear The Specials?

by the Global Tax Weekly Editorial Team

The free (trade) zone is not a phenomenon taking off only in the United Arab Emirates, even if the territory is becoming famous for them; there are now more countries with such fiscally privileged zones than there are without them. With credit drying up (and therefore investment) during the financial crisis, it was almost inevitable that more countries would look to these zones to drive investment to their shores. But why, when trade zones in Brazil and more recently Panama are reporting declines, are the zones in the UAE continuing to thrive?

It's no secret that there's a substantial tax advantage involved in investing in the UAE: talk to anyone about this subject, and it's probably the first thing to enter the conversation. But other factors are also at play. With more than 20 free zones keen to welcome companies in Dubai alone, each offering near identical fiscal benefits, perhaps the answer to each one's lasting appeal is more to do with their specific industry specialisms or, for some, their geographical advantage.

Indeed, despite fierce competition between them, the number of Emirati zones hasn't peaked by any stretch. In October 2015 there was a new kid on the block with the launch of the Abu Dhabi Global Market (ADGM), and on March 1, 2016, the launch of the Dubai Wholesale City was announced, to support the nation's aspirations of muscling in on a greater share of the USD4.3 trillion-and-growing global wholesale market.

The UAE's newest free zone, the ADGM, is keen to carve itself out as a leading force in the financial services and wealth management arena, announcing this month that it will seek to specialize in hosting financial technology companies.

Meanwhile, the Dubai International Financial Centre (DIFC), probably its closest competitor for financial services business, is perhaps showing its relative maturity: The DIFC's oversubscribed office space has always come at a premium, despite the continuous addition of new buildings since 2004, and so the launch of a property listings website on March 9 will further ease doing business for those landlords, existing tenants, and prospective investors keen to barter for office space.

While some zones are branching into niche industries, others are seeing investment expand on the back of their proximity to major infrastructure, such as the Dubai Airport Freezone, paired to Dubai International Airport, and the long-established Jebel Ali Free Zone (Jafza) on the banks of Jebel Ali Port.

As reported in this week's issue of *Global Tax Weekly*, the Dubai Airport Freezone saw a 22 percent increase in the number of companies setting up shop in 2015, driven by expansion at the Dubai International Airport, the world's busiest airport for international traffic last year, itself reporting this week a seven percent year-on-year increase in traffic in January. Jafza meanwhile reported on March 12 that it registered 52 new companies in the automotive and aeronautics industry in 2015, and highlighted the importance of that sector for future growth.

Investors in UAE zones can own 100 percent of their businesses (rather than having to have a majority Emirati shareholder), and businesses in the zones are neither subject to restrictions on the repatriation of capital and profits, nor exchange controls. That is of course served alongside an exemption from corporation tax, guaranteed for 50 years, and a customs duty exemption. Their workforces, too, are exempt from personal income taxes.

While the UAE has announced plans to introduce a value-added tax from 2018 and to broaden the corporate tax base, tax-free investment through these ringfenced zones is guaranteed. Unlike elsewhere, in the UAE, investors can be certain they will continue to benefit from the same tax and non-tax perks for years to come – a level of tax certainty unavailable elsewhere – and the Emirati zones' menus of what is on offer are getting more longer by the month.

Recent Tax Developments In Cyprus

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Rates For Calculating Notional Interest Deduction

As reported previously [1] in *Global Tax Weekly*, in July 2015 the Cyprus Government introduced a notional interest deduction ("NID") on new equity capital, aimed at leveling the playing field between debt and equity finance. For the 2015 tax year and future years, a deduction against taxable profits is available in respect of new equity (paid-up share capital and share premium) injected into companies and permanent establishments of foreign companies on or after January 1, 2015 for the purpose of financing business assets. The deduction, which can be up to 80 per cent of taxable profits before NID, is calculated by applying a reference rate to the new equity.

The reference rate is three percentage points above the higher of the ten-year government bond yield of Cyprus or of the country in which the assets funded by the new equity are utilized. The bond yield rates to be used are as at December 31 of the year preceding the year in which the new equity is introduced.

The Cyprus Tax Department has recently announced the ten-year government bond rates at December 31, 2014 on which the NID for the 2015 tax year will be based, for the following countries:

- Cyprus: 5.037 percent
- India: 7.860 percent
- Russia: 13.730 percent
- Romania: 3.570 percent
- Germany: 0.540 percent

After applying the uplift of three percentage points, the NID for equity introduced during 2015 in order to fund assets used in India will be 10.86 percent of the amount of new equity introduced, and for equity introduced in order to fund assets used in Russia it will be 16.73 percent of the amount introduced. For equity used to fund assets used in Cyprus or in the other countries, whose rates are lower than the Cyprus rate, the NID will be 8.037 percent, three percentage points above the Cyprus bond rate.

Amendments To Promote Restructuring

In December 2015, further amendments to the Cyprus tax laws were made in order to exempt loan restructurings carried out in 2016 and 2017 from tax. The exemptions were aimed at facilitating and encouraging the restructuring of non-performing debt, which is the biggest issue currently facing Cyprus banks, and the greatest obstacle to economic recovery. The laws affected are the Income Tax Law, the Capital Gains Tax Law, the Special Defence Contribution Law, the Stamp Duty Law, the VAT Law, the Collection of Taxes Law, and the Department of Lands and Surveys (Fees and Charges) Law. [2]

In all of these laws a new definition of the term "restructuring" has been introduced, referring to:

- The direct or indirect sale and transfer of immovable property and transfer of rights;
- Under a sale contract deposited with the Department of Lands and Surveys;
- Between one or more borrowers, debtors or guarantors regarding the same credit facility or debt on the one hand, and one or more creditors on the other;
- That takes place in 2016 or 2017 in order to reduce or repay credit facilities or loans or debts granted by one or more licensed credit institutions operating in Cyprus.

The effect of the amendments is to exempt from income tax any benefit, profit or gain arising in the context of restructuring, and to exempt any gain arising from the disposal of property in the context of a restructuring from capital gains tax. In the context of restructuring, a lender disposing of a property or taking possession of it for the lender's own use is deemed to acquire it at the value attributed to it for the purpose of the restructuring, and the disposal proceeds in the hands of the lender are reduced by any amount returned to the borrower. In the event of part of the proceeds subsequently being returned to the borrower, any tax exemption granted to the borrower may be liable to clawback: the lender is responsible for withholding the appropriate amount and paying it to the tax authorities.

The amendment to the Special Contribution for Defence Law provides that accounting profits arising in the context of restructuring are not subject to the deemed distribution provisions of the law, which require Special Contribution for Defence tax to be paid on undistributed profits after a specified period. However, in the event of any part of the disposal value being refunded to the borrower, then this amount is included in the accounting profit of the borrower in the tax year in which the amount was refunded, and is subject to the deemed distribution provisions.

The amendments to the Stamp Duty Law provide that any contracts, mortgages or other documents created within the context of a restructuring are exempt from stamp duty.

The amendments to the VAT Law and the Collection of Taxes Law provide that any property acquired by a lender in the context of a restructuring remains subject to any existing charges or encumbrances, and that the tax authorities may require the borrower to replace any such encumbrances with equivalent security over another property. The tax authorities are given discretion to enter into a negotiated agreement with the borrower to settle any outstanding taxes in order to allow the discharge of any security.

The Department of Lands and Surveys (Fees and Charges) Law already provided that no fees or charges should be levied for transfer or registration of immovable property in the context of a restructuring and the only change to that law is the insertion of the new definition.

Endnotes

1 "Cyprus's New Package Of Tax Incentives And Technical Amendments," *Global Tax Weekly*, No. 141, July 23, 2015.

2 Laws 208(I) and 209(I) of 2015 amending the Special Defence Contribution Law 117(I) of 2002; Law 210(I) of 2015 amending the Department of Lands and Surveys (Fees and Charges) Law Cap 219; Law 211(I) of 2015 amending the Stamp Duty Law 19 of 1963; Law 212(I) of 2015 amending the Income Tax Law 118(I) of 2002; Law 213(I) of 2015 amending the Capital Gains Tax Law 52 of 1980; Law 214(I) of 2015 amending the Collection of Taxes Laws 31 of 1962 and 80(I) of 2014; and Law 215(I) of 2015 amending the Value Added Tax Law 95(I) of 2000.

ISSUE 175 | MARCH 17, 2016

Final Regulations Issued On Requirements For Certain Domestic Entities To Report Specified Foreign Financial Assets

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The IRS has issued final regulations requiring certain domestic corporations, partnerships, and trusts to file Form 8938 to report specified foreign financial assets. The regulations went into effect on February 23, 2016, and apply to taxable years beginning after December 31, 2015. Failure to file Form 8938 in a timely fashion may result in a maximum penalty of up to USD60,000.

Section 6038D of the Internal Revenue Code, which was enacted in 2010 as part of the Foreign Account Tax Compliance Act (FATCA), requires individuals to report to the IRS interests in specified foreign financial assets by attaching Form 8938 to their annually filed federal income tax returns. Under Section 6038D(f), the Department of Treasury and IRS are authorized to extend the Form 8938 filing requirements to "any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets." Proposed regulations were published in December 2011; however, until now, only individuals were required to file Form 8938.

After consideration of various comments from practitioners, the Treasury Department and the IRS adopted proposed Regulation Section 1.6038D-6 with few modifications. Most significantly, the final regulations simplify the process for determining which domestic entities must report specified foreign financial assets on a Form 8938. A brief summary of the changes adopted in the final regulations is provided below.

Clarification Of Application Of Reporting Threshold

Under the proposed regulations, a multi-prong test was used to determine if an entity was a "specified domestic entity" subject to a potential filing obligation. Under the test, in addition to satisfying other factors, an entity must have an interest in certain specified foreign assets that exceeded a reporting threshold. Once it was determined that an entity satisfied the definition of specified domestic entity, the same reporting threshold was applied to determine whether the entity had a filing obligation. That is, the reporting threshold was applied twice in determining an entity's Section 6038D reporting responsibilities. The final regulations eliminate the application of the reporting threshold in determining whether an entity is treated as a specified domestic entity.

Elimination Of The Principal Purpose Test

The proposed regulations provided that a corporation or partnership is treated as formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets if either: (1) At least 50 percent of its gross income or assets is passive; or (2) At least 10 percent of its gross income or assets is passive and the entity is formed or availed of by a specified individual with a principal purpose of avoiding Section 6038D.

The new rules make it simpler to determine if an entity is a specified domestic entity by eliminating the principal purpose test for determining whether a corporation or partnership is a specified domestic entity. The "principal purpose" was a subjective test determined by the facts and circumstances. The final regulations allow taxpayers to rely on the objective 50 percent passive income or assets test to determine their reporting requirements under Section 6038D.

Defining Passive Income

The final regulations also clarify the definition of passive income. The proposed regulations listed specific items that were defined as passive income for purposes of Section 6038D. The final regulations are intended to define passive income consistent with the definition found in IRC Section 1472, which was also enacted as part of FATCA. Both Section 1472 and Section 6038D use the definition of passive income to identify entities that have a high risk of being used for tax evasion and to reduce the compliance burden for active entities. Accordingly, the final regulations found in Regulation Section 1.6038D-6(b)(2) largely mirror the definition of passive income set forth in Regulation Section 1.1472-1(c)(1)(iv).

More specifically, final Regulation Section 1.6038D-6(b)(2) adopts the following modifications of the definition of "passive income" from the Section 1472 regulations:

1. Clarifies that "dividends" includes substitute dividends, and expands "interest" to cover income equivalent to interest, including substitute interest;
2. Adds a new exception for certain active business gains or losses for the sale of commodities;
3. Defines notional principal contracts by adding a reference to Regulation Section 1.446-3(c)(1); and
4. Excludes from the definition of passive income rents or royalties derived in the active conduct of a trade or business conducted at least in part by employees of the entity.

Additionally, the final regulations adopt a rule found in the Section 1472 regulations to provide guidance concerning how to determine whether 50 percent of an entity's assets are passive assets. Under the regulations, a weighted average test is used, and an entity may use the fair market value or of book value to determine the value of its assets.

Trusts

Under the final regulations, a trust is a specified domestic entity if the trust has one or more specified persons as a current beneficiary. A current beneficiary is defined as any person who at any time during the taxable year is entitled to, or may receive, a distribution from the principal or income of the trust. The final regulations clarify that the term current beneficiary also includes any holder of a general power of appointment – whether or not exercised – that was exercisable at any time during the taxable year, but does not include any holder of a general power of appointment that is exercisable only on the death of the holder.

EU Invites Feedback On Double Tax Resolution Mechanisms

The European Commission has launched a three-month consultation on improving double tax dispute resolution mechanisms.

The current mechanisms (Mutual Agreement Procedure or arbitration) are provided by the bilateral tax treaties entered into by member states and, specifically, by the EU multilateral Arbitration Convention (Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises). The scope of the Arbitration Convention is limited to transfer pricing and the allocation of profits to permanent establishments.

The consultation forms part of the EU's response to base erosion and profit shifting, as set out in part in its June 2015 Action Plan towards a fair and efficient corporate tax system in the EU. The general objective of that initiative is to create a more attractive investment and business environment and to achieve greater legal certainty at a time where recent significant changes to increase tax transparency and fight against tax fraud and tax evasion may contribute to an exponential increase of disputes.

This consultation aims at gathering all stakeholders' views in particular on:

- The relevance of removing double taxation for enterprises operating cross border;
- The impact and effectiveness of the above-mentioned double taxation dispute resolution mechanisms for business and enterprises established in the EU;
- How these mechanisms can be improved; and
- Feedback on the solutions discussed.

Responses are being welcomed until May 10, 2016.

CIT Reform, BEPS Top Concerns For US Tax Directors

With eight months before the 2016 presidential election, one in five public sector tax directors say that planning for reform under the next president is their primary tax concern, according to BDO's second annual Tax Outlook Survey.

When asked if the outcome of the presidential election will or will not result in significant tax code changes, 77 percent of public company tax directors indicated they believe tax reform will pass if the next president is a Republican, and 33 percent believe tax reform will pass if the next president is a Democrat.

Topping tax directors' reform wish lists is reducing the corporate tax rate (41 percent), followed by a shift to a territorial tax system (20 percent), and a simplified tax code (19

percent). Just 2 percent cite lowering the tax burden on capital gains as a high priority.

Matthew Becker, Partner in the National Tax Practice at BDO USA, LLP, said: "The real challenge for businesses in an election year is planning for uncertainty. The recent vacancy on the Supreme Court has only heightened the partisan divide; however, the compromise to make permanent a number of important tax extenders reached at the end of last year may portend additional opportunities to find common ground."

Major tax reform efforts on the international stage are also a source of anxiety for tax directors as they look to optimize global growth, with 55 percent saying they plan to enter or expand international markets in 2016, according to BDO.

BDO highlighted that, now the OECD has finalized its recommendations under the Base Erosion and Profit Shifting (BEPS) initiative, tax directors will need to prepare their organizations to meet new global tax rules and requirements. Nearly half (48 percent) of respondents said international tax planning, including BEPS, is their biggest tax issue for 2016. Of the 15 items listed in the BEPS Action Plan, the recommendations on transfer pricing (Action Items 8–10 and 13) pose the greatest concern, according to BDO, with these recommendations being identified as the most troublesome by 54 percent of survey participants. 81 percent of tax directors say their organization's current tax strategy includes transfer pricing mechanisms.

BEPS has reporting implications as early as this year, with country-by-country reporting rules (Action Item 13) taking effect for tax years starting on or after January 1, 2016. Most tax directors (87 percent) said they expect to have completed the country-by-country analysis by the December 31, 2017, deadline for the first report.

While much of the BEPS agenda still awaits implementation, more than half (52 percent) of respondents are proactively taking steps based on the Action Item drafts. Another third are waiting for individual countries to implement BEPS measures before taking any action, says the survey.

"BEPS is one of the most ambitious reform initiatives ever undertaken on an international scale," said Paul Heiselmann, National Managing Partner of Specialized Tax Services at BDO USA, LLP. "Between the election in November and BEPS implementation in the US and overseas, the tax regulatory and reporting environment is in a state of major flux. The BEPS recommendations may be applied differently by different countries, which is creating more uncertainty and confusion for multinational businesses. As we wait to see how implementation unfolds, businesses should closely monitor

the adoption of BEPS to determine the potential tax consequences and review their internal compliance controls and procedures."

European Insurers Urge Limits To EU BEPS Response

Tax measures that go beyond the OECD's recommendations under its base erosion and profit shifting (BEPS) project may potentially harm the EU's competitiveness, Insurance Europe (IE) said on March 7, in response to the Commission's Anti Tax Avoidance Directive.

IE said that the outcome of the BEPS Action Plan should be implemented in the EU in a coordinated fashion through the Directive, to avoid unilateral differentiation between member states. It added that requirements that go beyond the OECD's recommendations would not necessarily combat aggressive tax planning, harmful tax regimes, and tax fraud.

IE further pointed out that "the EU proposals should be in line with the OECD outcomes, which will be implemented in other (non-EU) jurisdictions, to ensure that there is consistency in the scope and timing of proposed measures. A competitive disadvantage would otherwise exist compared to non-EU jurisdictions; this would penalize European companies and be harmful for future investments in the EU."

Next, IE reiterated strong concerns against proposals for mandatory publication of country-by-country (CbC) reports, stating: "Insurance Europe understands that the Commission is considering a separate proposal that would require the publication of CbC reports. Insurance Europe questions the incremental benefits of such a proposal and remains of the opinion that there is no need for the EU to introduce additional transparency requirements that go beyond the OECD's BEPS recommendations."

It added: "This would not combat aggressive tax planning, harmful tax regimes, and tax fraud but will potentially harm the competitiveness of the EU. Working towards a greater degree of harmonization and offering guidance and tools to enable the effective implementation of international standards in the EU would be a far more effective way to achieve these objectives than reporting CbC information to the public."

Finally, IE commented on various tax issues concerning the insurance sector, including the treatment of hybrid regulatory capital and rules for controlled foreign companies.

Dutch Tax Advisers Call For Government To Reject BEPS Plan

The Dutch Association of Tax Advisers has called on Dutch lawmakers to reject the EU's proposed Anti Tax Avoidance Directive, saying

that the proposals go beyond what is necessary to address base erosion and profit shifting and that they threaten Dutch fiscal sovereignty and the nation's competitiveness.

The EU Directive: The Anti Tax Avoidance Directive contains a number of international tax proposals. First, the Commission has proposed a controlled foreign company (CFC) rule to discourage multinationals from shifting profits from their parent company in a high-tax country to controlled subsidiaries in low- or no-tax countries. The rule will allow the EU member state where the parent company is located to tax any profits that the company "parks" in a low- or no-tax country. It will be triggered if the effective tax rate in the third country is less than 40 percent of that of the member state in question. The company will be given a tax credit for any taxes it paid abroad. The aim is to ensure that profits are effectively taxed, and at the tax rate of the member state in which they were generated.

The second measure outlined in the Directive is a switchover rule, whereby a company would have to inform the relevant EU tax authority when it received a dividend from a non-EU country and explain whether it had paid tax on the dividend elsewhere. The tax authority would then be able to deny the company tax exemptions if the dividend income had been taxed at a very low or zero rate in a third country. If the member state determined that the dividend had been properly taxed in the third country, it could give the company a credit for the tax it had paid.

Third, the Directive proposes that all EU member states apply an exit tax on assets moved from their territory. It would be based on the value of the assets at that point in time. The Commission said that as companies are obliged to send tax authorities their balance sheets (containing information on their taxable assets), member states would be able to determine when an asset such as intellectual property had "disappeared."

The Commission has also recommended that member states limit the amount of net interest that a company can deduct from its taxable income, based on a fixed ratio of its earnings. Interest payments are generally tax deductible in the EU. The Commission said that a group can currently seek to reduce its overall tax burden by arranging intercompany loans that ensure their debt is based in a company in a high-tax country where interest payments can be deducted. Meanwhile, the interest on the debt is paid to the group's "lender" company, based in a low-tax country. The Commission said its proposal should make it less attractive to companies to artificially shift debt in order to minimize their taxes.

The fifth proposal seeks to prevent companies from exploiting mismatches in national rules to avoid taxation. The Commission said that some companies take advantage of the fact that EU member states treat the same income or entities differently for tax purposes, to deduct their income in both countries or obtain a tax deduction in one country on income that is exempt from tax in the country of destination. It recommended that, in the event of such a mismatch, the legal characterization given to a hybrid instrument or entity by the member state where a payment originates should be followed by the member state of destination.

Finally, the Directive contains plans for a General Anti-Abuse Rule (GAAR), which would tackle an artificial tax arrangement if there is no other anti-avoidance rule that specifically covers such an arrangement. The Commission said the GAAR would act as a safety net in cases where other anti-abuse provisions cannot be applied and allow tax authorities to ignore wholly artificial tax arrangements and tax on the basis of the real economic substance.

The Dutch Association's Response: The Association said the following measures are "overkill," in going beyond what is necessary to tackle abuse, specifically noting two proposals: the proposed generic interest deduction measure, insofar as it concerns external interest for non-international groups or individual companies if there is no artificial allocation of external interest to member states; and the use of the switch-over clause and the CFC measure on foreign activities that are not artificial, do not involve mobile income, and which have high substance (*e.g.*, genuine operational activities).

Further, it pointed out that, in many areas, binding legislation is proposed in the EU, while the OECD only makes recommendations that do not bind states so extensively. For example, it pointed out that the OECD recommendations for taxing CFCs are "suggestions" – "guidance based on best practices."

"Going further than the OECD hard requirements has negative consequences for the competitive position of the European Union as a whole, and therefore indirectly for the Netherlands," the organization said. Meanwhile, in other areas, such as general anti-avoidance rules and other anti-abuse measures, a more joined up approach is required, the Association said.

"The Association concludes that in its current form the Draft Directive should not be accepted by the Netherlands because on a large number of points it would cause a serious infringement on fiscal policy … If the Netherlands accepts its relinquishment of fiscal sovereignty and gives up a number of crown jewels of the Dutch fiscal policy this will potentially have irreversible

and major negative consequences for specific parts of the Dutch business sector and for the investment climate in the Netherlands in general. If, despite this, the Netherlands decides to accept for political reasons, choices must be made during implementation that cause the absolute minimum amount of damage to the bona fide business sector."

White House Opposes Patent Box Calls

Jason Furman, Chair of the White House's Council of Economic Advisers, has strongly advised against the creation of an "innovation box" regime in the US, opining that expanding the existing research credit would be a more "cost effective way" of encouraging US investment in research and development (R&D).

He concluded that introducing an innovation (or patent) box "would move tax policy in the wrong direction, increasing complexity and cost without a commensurate boost to innovation. … [It] would entail joining in a race to the bottom."

A proposal put forward last year by two senior members of the House of Representatives Ways and Means Committee, Charles Boustany (R – South Louisiana) and Richard Neal (D – Massachusetts), would set up an innovation box – like those in several European countries whose rates range from 5 to 14 percent – to "provide a lower effective tax rate for most corporations across many industries, encourage greater investment in R&D, and attract R&D jobs back to the United States from overseas."

Within the Boustany-Neal discussion draft, a company's eligibility to tax breaks would be calculated by taking qualifying intellectual property gross receipts, deducting the cost of goods sold and expenses, and multiplying that value by the fraction of a company's budget spent on US R&D. That amount would be subject to a tax rate of 10 percent, rather than the general corporate rate of 35 percent.

However, during a recent speech to a tax policy forum, Furman confirmed his belief that efforts to reduce any relocation of R&D away from the US "are best addressed with a broader tax reform that establishes a uniform lower rate, not a patchwork of rates that would be difficult to define and difficult to patrol."

Describing the research credit as the "cost effective way to promote innovation," he said that, "by subsidizing research investment directly, [it] likely has a greater impact in boosting research." He has previously noted that the research credit has the "best bang-for-buck" in encouraging R&D spending.

"In contrast," he added, "an innovation box primarily creates an incentive for engaging in research that is highly profitable for the firm because the tax benefits are proportional to the income generated by the innovation."

Furthermore, Furman noted that the research credit "focuses its entire subsidy on new research, while shifting to an innovation box would, depending on how it is structured,

confer a windfall subsidy on research that has already been undertaken."

The research credit can, he continued, "improve cash flow while an innovation box does not. A small business, for example, may not be able to access capital markets to finance an R&D investment. The research credit, however, reduces the firm's tax liability today, which may free up capital that enables the firm to make the investment. In contrast, an innovation box that increases the potential future benefit from research investments will not help this firm find the financing to make the investment."

He also questioned the tax revenue cost of an innovation box, which would be "highly uncertain, potentially large, and depend not just on the amount of innovation that takes place but also the amount of luck, market power, and especially the degree to which it facilitates tax planning by multinationals."

US Chamber Ranks Singapore Highly As IP Domicile

The US Chamber of Commerce has released its 4th annual International IP Index report, "Infinite Possibilities," highlighting the robust framework for protecting intellectual property in Singapore in particular.

The report has been released amid debate in the US on research and development (R&D) tax incentives and whether to introduce a patent box regime.

It was released days before the publication of a report from the US Joint Economic Committee of the House and Senate, which examined US R&D tax incentives' competitiveness compared with the offerings of other territories. That report found that although the US has attractive "front-end" tax incentives, which incentivize initial and ongoing investment, many jurisdictions, including those in Europe, are bolstering their domestic regimes. It concludes that without reform, the US will continue to face fierce competition for businesses considering where to locate their innovative activities.

The US Chamber said that Singapore serves as a model for IP protection in Southeast Asia. Its Index, produced by the Chamber's Global Intellectual Property Center (GIPC), highlighted Singapore's strong IP system, and noted that it will be further strengthened – particularly in the pharmaceutical IP sector – should the standards enshrined in the Trans Pacific Partnership (TPP) be ratified and implemented. The US ranked first out of the 38 economies studied, while Venezuela finished last.

Overall, half of the 38 economies improved their total score from last year's Index, indicating increased recognition of the benefits of IP and a strong IP system. The 38 economies

benchmarked in the 2016 Index accounts for nearly 85 percent of global gross domestic product (GDP). The index is based on 30 measurable criteria critical to innovation, including patent, copyright, and trademark protections, enforcement, and engagement in international treaties, among other things.

"This year's Index illustrates that many countries embraced the upward momentum in the global intellectual property environment, and continued to take steps to improve their IP systems. The Index provides policymakers on nearly every continent with an important tool to grow their economy and attract foreign business," said David Hirschmann, President and CEO of GIPC. "IP underpins the innovation we have come to expect – the new cell phone to connect with loved ones, the medical treatment to save a life, and the creative content we crave. IP creates the infrastructure to deliver new innovative technologies to markets around the world, and the US Chamber Index provides economies with a roadmap to furthering this legal framework."

"The Index was created so that countries around the world, such as Singapore, can hear directly from the business community on the IP-related issues important to them when considering investing in new markets," said Mark Elliot, Executive Vice President of GIPC. "Now in its 4th edition, the Index has become a must-read for government officials in countries near and far who recognize the important connection between IP and innovation, and who wish to grow their countries' knowledge-based economies. We hope that policymakers and stakeholders will agree that when it comes to strengthening innovation-based opportunities, there truly are infinite possibilities."

In the 2014 Budget, Singapore extended both the additional 50 percent tax deduction for R&D projects for ten years until the year of assessment (YA) 2025, and the tax deduction for Economic Development Board-approved R&D projects until the YA2020. The Writing Down Allowance on a straight-line basis for the acquisition of qualifying IP rights was also made available for a further five years until YA2020.

In addition, R&D claims for qualifying activities can be made under Singapore's Productivity and Innovation Credit (PIC) Scheme. The PIC Scheme was also been extended for three years until YA2018, and a PIC+ Scheme introduced, under which qualifying small and medium-sized enterprises can claim a 400 percent tax deduction for up to SGD600,000 (USD481,000) of expenditure per qualifying activity per year of assessment.

Meanwhile, the US provides "front-end" tax incentives, such as an immediate deduction of R&D expenses and an R&D tax credit, which are applied when a firm invests in R&D. In

May 2015, senators Rob Portman (R – Ohio) and Chuck Schumer (D – New York), the co-chairs of a US Senate Finance Committee working group responsible for examining international tax reform, backed proposals for a patent box regime in the US, which would unlock a concessionary rate of income tax on income from IP. And, in the House of Representatives, Ways and Means Committee members Charles Boustany (R – Louisiana) and Richard Neal (D – Massachusetts) introduced an innovation box discussion draft in July 2015 to "start the conversation." The draft outlines a plan that would tax domestic IP profits at a 10 percent rate through a 71 percent deduction, while allowing companies to repatriate IP from foreign subsidiaries on a tax-free basis.

According to the US Joint Economic Committee's report, the greatest tax benefit from this regime would go to companies with high IP profits, high domestic R&D costs, and relatively low total costs.

Sri Lanka To Hike VAT To 15 Percent

Sri Lanka has announced a substantial 4 percent hike to the headline value-added tax (VAT) rate, to establish a rate of 15 percent, rather than introducing a split-rate system.

The announcement from Prime Minister Ranil Wickremesinghe comes as a surprise after the nation's 2016 Budget included proposals to shake up the structure of the VAT regime. The Budget included proposals to replace the 11 percent rate with three rates: a zero rate on exported goods and the provision of services for consideration in foreign currency outside Sri Lanka; a 12.5 percent rate on the services sector; and an 8 percent rate on the manufacturing sector and on imported goods. In addition, the VAT registration threshold was proposed to be increased to LKR12m (USD83,000).

Instead, the Government has now announced that it will establish a single positive 15 percent headline VAT rate, rather than the two positive rates. In addition, Sri Lanka will also introduce a capital gains tax and abandon plans to introduce a concessionary rate of corporate income tax for some companies of 15 percent. Current building tax arrangements will be retained.

Norway Introduces VAT Zero Rate For Electronic News

Norway has introduced a zero rate of value-added tax (VAT) on electronic news services from March 1, 2016.

The measure was approved by the European Free Trade Association's Surveillance Authority in January. Norway proposed the measure to bring the VAT treatment of electronic news into line with that for printed newspapers.

Approving the measure, Sven Erik Svedman, President of the Authority, said: "The new zero VAT rate makes it possible for news media, including the large number of local and regional newspapers in Norway, to publish and sell their content electronically without being disadvantaged by the VAT system. This will promote the consumption of news and current affairs media published in electronic form, which is of increasing importance for customers in Norway."

That approval came despite different policy from the EU, which has so far blocked appeals from member states to grant equivalent treatment to the digital economy – most notably e-books *vis-à-vis* tangible books – although changes are expected.

While the Authority found that the measure provided an indirect advantage to companies

selling electronic news services, it considered that advantage would be compatible with the state aid rules of the European Economic Area (EEA) Agreement because it promoted "media pluralism and diversity," and is therefore in the common interest. The measure is valid until March 1, 2022.

Puerto Rico Defers VAT Plans

Puerto Rico's Treasury announced on March 7, 2016, that the territory has decided to defer until June 1, 2016, the replacement of the sales tax with a value-added tax (VAT).

Treasury Secretary Juan Zaragoza Gomez said: "The Internal Revenue Code gives me the power to extend the term of [the sales tax], for a period not exceeding sixty days from March 31, 2016. Following numerous complaints [they have received from] traders seeking to postpone the effective date of VAT, and in consideration of the proposals being considered, both the Executive and the Legislature [have agreed to] extend the effective date of VAT …"

"The Department of Finance is ready to start the VAT from April 1, 2016, however we understand that the postponement until June 1, 2016, as established by Law," will allow more time for businesses to prepare for the transition, he said.

He explained that the Government has sought to make the transition to VAT as "less invasive and [as] simple as possible."

Puerto Rico's sales and use tax is levied at a combined 11.5 percent rate, comprising a 10.5 percent federal element and a 1 percent municipal element. A tax on certain professional services was introduced, with a 4 percent rate, on October 1, 2015. The Government has confirmed that this will continue to be levied. The VAT, which will apply to a broad range of goods and services, will feature the same 11.5 percent rate, to prop up the Government's finances.

CBI Calls For Eased Business Taxes In UK Budget

The Confederation of British Industry (CBI) has called on the UK Government to reform the "outdated" business rates (property tax) regime, improve corporation tax reliefs, and maintain existing pension tax reliefs.

Ahead of Chancellor George Osborne's March 16 Budget, the CBI said that the Government should focus on making the UK tax and regulatory system more competitive, and avoid increasing the burden on businesses. According to CBI analysis, recent policy changes, including the introduction of an Apprenticeship Levy and a National Living Wage, coupled with continued inaction on business rates, will cost businesses around GBP9bn (USD12.9bn) a year by 2020/21.

The CBI recommended that Osborne improve the business rates regime by switching the multiplier by which business rates are uprated from the Retail Price Index to the Consumer Price Index. It added that there should be more frequent revaluations of business properties, and that the smallest businesses should be lifted out of the tax altogether.

The CBI also called for the scope of capital allowances to be increased to better support investment, and for the Government to ensure that the UK's interest deductions for corporation tax remain competitive. It argued that access to existing research and development (R&D) incentives should be improved, and a payroll incentive introduced to cut the cost for small firms of recruiting high-skilled employees.

The CBI warned that scrapping upfront National Insurance contribution tax relief on pensions and the current marginal rate relief system would be a false economy. It said such changes would damage pension saving and increase the fiscal load on the Government in years to come.

Finally, the CBI urged the Government to set a clear direction on energy policy and support investment in low-carbon energy. It said the Budget should simplify energy-efficiency taxes, set out the future of the Carbon Price Floor, and provide clarity on the Levy Control Framework.

Rain Newton-Smith, CBI Director of Economics, said: "Many sectors continue to feel the pinch as a result of global headwinds to the UK economy. At home, the Chancellor faces tough choices to continue the important job of balancing the public finances. But the UK needs to be able to grow its way out of the deficit – the Government must send a clear signal that it stands behind business in driving jobs and prosperity."

"Businesses will want to see concrete action to reform the UK's business rates system, support investment through the capital allowance system, and equip our world-class innovators with the tools they need to compete globally. Growth in the UK economy does continue to hold up, but with the policy costs to business creeping up, the Government must show that it is serious about supporting UK companies to invest and prosper."

Northern Ireland Ministers Promote Corporate Tax Plans

Northern Ireland's First and Deputy First Ministers have been in the US promoting the Government's plan to cut the corporate tax rate.

Under a settlement reached by the UK Government and Northern Ireland's power-sharing parties in November 2015, the Northern Ireland Executive will set its own corporate tax rate from April 2018, at 12.5 percent, in line with that applied by the neighboring Republic of Ireland. The UK rate is 20 percent, which will fall to 19 percent in 2017 and again to 18 percent in 2020.

First Minister Arlene Foster and Deputy First Minister Martin McGuinness are in the US on a trade mission.

Speaking at a breakfast meeting in New York, Foster said: "A reduced rate of corporation tax will significantly add to the attractiveness of Northern Ireland as an investment location for existing and potential new investors, as well as bringing benefits to our local business base. No region in Western Europe will have a lower rate of corporation tax. Coupled with government support for job creation, training, and research and development (R&D), Northern Ireland will be one of the most attractive propositions in Western Europe."

According to McGuinness, a reduced corporate tax rate will mean that Northern Ireland can "bid for projects with companies that previously would not have considered us."

Invest NI, the government body tasked with promoting inward investment in Northern Ireland, has launched a new advertising campaign, designed to increase awareness of Northern Ireland as an investment location.

Abu Dhabi Tax-Free Zone To Focus On Fintech

The Abu Dhabi Global Market (ADGM), a new free zone in the United Arab Emirates (UAE), aims to become a regional hub for financial technology, or "fintech," its chairperson, Ahmed Al Sayegh, said during the Global Financial Markets Forum 2016.

Al Sayegh said that investment in the global fintech sector grew three-fold between 2008 and 2014, reaching USD3bn, and could double again by 2018. "However, presently we have not seen deeply established fintech ecosystems among the Gulf Cooperation Council (GCC) countries."

The chairman said that the ADGM is committed to working with key stakeholders to develop an environment that fosters the fintech sector in Abu Dhabi.

During his speech, Al Sayegh also highlighted some of the recent developments at the ADGM. These include its Financial Services Regulatory Authority being recognized as a member of the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, and the Basel Consultative Group of the Basel Committee on Banking Supervision.

The ADGM became fully operational in October 2015. It offers firms a number of benefits, including exemption from taxes guaranteed for 50 years and relaxed rules on the repatriation of profits. The zone permits 100 percent foreign ownership.

Surge In Interest For Dubai Airport Freezone

There was a 22 percent increase in the number of companies registered in the Dubai Airport Freezone (DAFZ) in 2015, according to new figures from the DAFZ Authority.

The Authority announced on March 13, 2016, that total revenues for firms in the tax-free zone increased by 7 percent in 2015, and total assets were up 3 percent.

Middle Eastern companies accounted for 40 percent of all companies registered in DAFZA last year. Meanwhile, companies from the US and Europe accounted for 36 percent of all registered companies, followed by Asian companies (18 percent), and companies from the rest of the world (6 percent).

Leasable office spaces across the zone increased by 11 percent year-on-year in 2015, DAFZA said.

DAFZA offers a number of tax incentives to businesses, including 100 percent exemption

from corporate tax and from import and export tax, and allows 100 percent foreign ownership.

Dubai To Set Up Free Zone For Wholesalers

Dubai is planning to launch a new free trade zone called Dubai Wholesale City, according to a statement from the Vice President and Prime Minister of the United Arab Emirates (UAE) and Ruler of Dubai, Mohammed bin Rashid Al Maktoum.

The zone is intended to help the UAE diversify its economy away from oil by increasing its share of the global wholesale trade sector, which is valued at USD4.3 trillion and is expected to grow to USD4.9 trillion in the next five years, the statement said.

The zone will cover 550m square feet and will comprise specialized integrated trading parks intended to meet all the requirements of wholesale traders under one roof, as well as an international trade exhibition facility. It will be located close to Al Maktoum International Airport and the Jebel Ali Port.

Dubai is home to a number of free zones, including the DIFC, the Dubai Multi Commodities Centre (DMCC), and the Dubai Airport Freezone (DAFZA). The business incentives offered by these free zones include exemptions from corporate tax and from import and export duties.

Slump For Panama's Colón Free Trade Zone

The revenue of Panama's Colón Free Trade Zone in 2015 totaled USD114m, lower than the targeted USD121m, and down 7.6 percent from the previous year, according to a statement from the country's National Assembly.

The statement said that the reason for the poor performance is a decline in trade with two of the zone's main trading partners, Colombia and Venezuela. A weakened currency in Colombia and economic contraction in Venezuela have affected both countries' international trade activity.

Surse Pierpoint, the General Manager of the Colón Free Trade Zone, said that the zone is seeking to boost investment from other countries, including the US, to offset the decline in investment from Colombia and Venezuela.

Pierpoint noted that 16 new companies have expressed an interest in launching operations in the free zone this year.

In a separate statement, the National Assembly said that a package of proposals to increase the competitiveness of the Colón Free Trade Zone has been approved in an initial debate. The proposals, which include new tax breaks, will cost the Government USD25m in lost revenue.

Currently, the benefits of operating in the Colón Free Trade Zone include zero percent import and export duties, and zero percent income tax.

IRS Holding Refunds Worth USD950m For 2012 Non-Filers

The US Internal Revenue Service (IRS) has announced that tax refunds totaling some USD950m are waiting for an estimated one million taxpayers who have not yet filed a 2012 federal income tax return.

In cases where a tax return is not filed, the law provides most taxpayers with a three-year window of opportunity for claiming a refund of taxes withheld or paid. Therefore, to collect a refund, taxpayers must file a 2012 tax return with the IRS no later than this year's tax deadline, which is April 18, 2016 (or April 19 for taxpayers in Maine and Massachusetts).

"A surprising number of people across the country overlook claiming tax refunds each year," said IRS Commissioner John Koskinen. "But the clock is ticking for taxpayers who didn't file a 2012 federal income tax return. There's no penalty for filing a late return if you're due a refund."

The IRS estimates the midpoint for potential refunds for 2012 to be USD718, but also reminds taxpayers that, by failing to file a tax return, many low- and moderate-income workers may also not have claimed the earned income tax credit, which, for 2012, was worth as much as USD5,891.

Indonesia To Crack Down On PIT Evasion

Indonesia's Finance Minister has tasked several thousand tax officials with boosting personal income tax compliance rates in 2016.

Bambang Brodjonegoro highlighted that there are far fewer personal income tax payers in Indonesia than in developed nations, where personal income tax is a significant part of the tax base. Currently personal income tax revenues make up a meager portion of the nation's total tax receipts.

He said that the Ministry is seeking to substantially increase the number of taxpayers this year, by increasing the number of tax officials engaged in auditing the tax affairs of individuals, in cooperation with other law enforcement agencies.

In November 2015, it was confirmed that Indonesia will offer an amnesty this year – one of a number offered in recent years – to encourage taxpayers to regularize their tax affairs.

Vietnam Planning Taxpayer Database

Vietnam is to create a database to support tax enforcement efforts, noting transfer pricing abuse in particular.

The Deputy Minister of Finance, Do Hoang Anh Tuan, said in a recent webinar that the database will require cooperation from a number of organizations and different industries. He indicated that the database will likely carry transaction data and help the Government better estimate budget performance.

During the webinar, tax officials discussed the current difficulties the tax agency faces with collecting tax debts and paying refunds in a timely manner.

It was said that the central Government is seeking the support of provinces and cities to improve its ability to challenge tax fraud and transfer pricing abuses.

These efforts are intended to support the objective of raising tax revenue by 10 percent over the next five years, it was said.

MEPs Back Tax Info Agreement With Andorra

Members of the European Parliament (MEPs) have approved an agreement between the EU and Andorra on the automatic exchange of information relevant for the collection of tax.

The agreement was approved on March 9 by 647 votes to 29, with 21 abstentions. Under the agreement, EU member states and Andorra will begin collecting data from January 1, 2017, with the first exchanges taking place in 2018.

The agreement was signed on February 12, 2016. It replaces a previous agreement, signed in 2004, which ensured that Andorra applied measures equivalent to those in the EU Directive on the taxation of savings income. The Directive was repealed in November 2015, to avoid overlap with a separate directive on the exchange of information on request.

Under the new agreement, member states will automatically receive the names, addresses, tax identification numbers, and dates of birth of their residents with accounts in Andorra and vice versa, along with other financial and account balance information.

According to the European Parliament, the agreement will allow tax authorities to identify correctly the taxpayers concerned, administer and enforce their tax laws in cross-border situations, assess the likelihood of tax evasion being perpetrated, and avoid unnecessary further investigations.

IRS Highlights Free Filing Support For US Taxpayers

The Internal Revenue Service (IRS) has issued a statement reminding taxpayers that they may be eligible to receive free tax help at more than 12,000 preparation sites nationwide.

These sites, generally located at community and neighborhood centers, provide tax

assistance to taxpayers with low or moderate incomes and to the elderly.

Other support is also available, the agency highlighted. The IRS Volunteer Income Tax Assistance (VITA) program offers free tax help to individuals who generally make USD54,000 or less, persons with disabilities, the elderly, and individuals with limited English proficiency who need assistance in preparing their taxes.

Meanwhile, the Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 and older. VITA and TCE volunteers are trained and certified by the IRS to help with many tax questions, including credits such as the Earned Income Tax Credit (EITC) and the Child and Dependent Care Credit.

In addition, the military also partners with the IRS to provide free tax assistance to military personnel and their families. The Armed Forces Tax Council (AFTC) consists of the tax program coordinators for the Army, Air Force, Navy, Marine Corps, and Coast Guard. The AFTC oversees the operation of the military tax programs worldwide, and serves as the main conduit for outreach by the IRS to military personnel and their families. Volunteers are trained and equipped to address military-specific tax issues, such as combat zone tax benefits and the effect of the EITC guidelines.

Taxpayers that prefer to file their own tax returns electronically have the option of using IRS Free File. This offers brand-name tax software to taxpayers who earned USD62,000 or less in 2015 to file their returns for free. Taxpayers who earned more can use Free Fillable Forms, the electronic version of IRS paper forms. IRS Free File is only available through the IRS website.

ARMENIA - SWEDEN

Signature

Armenia and Sweden signed a DTA on February 9, 2016.

CYPRUS - ETHIOPIA

Ratified

According to a February 1, 2016 update from the Cypriot Ministry of Finance, Cyprus on January 18, 2016, completed its domestic ratification procedures in respect of the DTA with Ethiopia.

EGYPT - INDIA

Negotiations

According to preliminary media reports, Egypt has expressed interest in launching negotiations towards the signing of a DTA with India.

EUROPEAN UNION - MONACO

Initialed

The European Union and Monaco have initialed an automatic information exchange agreement.

FINLAND - GERMANY

Signature

Finland and Germany signed a DTA on February 19, 2016.

FINLAND - UZBEKISTAN

Signature

Finland and Uzbekistan signed a DTA Protocol on March 8, 2016.

GHANA - TURKEY

Negotiations

According to preliminary media reports, Ghana and Turkey completed a third round of DTA negotiations on February 19, 2016.

HONG KONG - VARIOUS

Effective

Hong Kong's new DTAs with South Africa, the United Arab Emirates, Vietnam, Japan, and Italy will be effective for Hong Kong taxes from April 1, 2016.

IRELAND - BOTSWANA

Effective

The DTA between Ireland and Botswana will become effective from January 1, 2017.

KAZAKHSTAN - CZECH REPUBLIC

Ratified

According to preliminary media reports, Kazakhstan on February 18, 2016 ratified the DTA with the Czech Republic.

KENYA - ITALY

Signature

Kenya and Italy signed a DTA on March 3, 2016.

NEW ZEALAND - SAMOA

Effective

The DTA between New Zealand and Samoa will become fully effective from April 1, 2016.

NIGERIA - QATAR

Signature

Nigeria and Qatar signed a DTA On February 28, 2016.

PAKISTAN - CZECH REPUBLIC

Effective

The DTA between Pakistan and the Czech Republic will become effective on July 1, 2016.

PORTUGAL - SENEGAL

Into Force

According to preliminary media reports, the DTA between Portugal and Senegal will enter into force on March 20, 2016.

SINGAPORE - RWANDA

Into Force

A new DTA between Singapore and Rwanda entered into force on February 15, 2016.

SINGAPORE - THAILAND

Into Force

A DTA Protocol between Singapore and Thailand entered into force on February 15, 2016.

SOUTH AFRICA - QATAR

Ratified

South Africa completed its domestic ratification procedures in respect of the DTA with Qatar on February 11, 2016, publishing the text of the agreement in the Official Gazette.

SWITZERLAND - LIECHTENSTEIN

Forwarded

The DTA between Liechtenstein and Switzerland has been approved by Swiss lawmakers and is awaiting final approval from Liechtenstein's legislature. It is expected to become effective from January 1, 2017.

TAIWAN - ITALY

Signature

Taiwan's Foreign Affairs Ministry on February 15, 2016 announced the signing of a DTA with Italy.

UNITED KINGDOM - URUGUAY

Signature

The United Kingdom and Uruguay signed a DTA on March 4, 2016.

VIETNAM - VARIOUS

Forwarded

On March 1, 2016, the Vietnamese tax authority confirmed that the country's recent DTAs with Mozambique, Kazakhstan, San Marino, Serbia, Uruguay, Turkey, Iran, Macedonia, Portugal, and the US are not yet effective.

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

THE AMERICAS

Hot Issues in International Taxation

3/23/2016 - 3/24/2016

Bloomberg BNA

Venue: Sheraton Raleigh, 421 South Salisbury Street, Raleigh, NC 27601, USA

Key Speakers: TBC

http://www.bna.com/hot-issues-intl-tax/

8th Regional Meeting of IFA Latin America

5/4/2016 - 5/6/2016

IBFD

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

Key speakers: TBC

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

STEP International Tax and Estate Planning Forum: Around the Globe in 2016

5/5/2016 - 5/6/2016

STEP

Venue: Surf & Sand Resort, 1555 South Coast Hwy, Laguna, California, USA

Chairs: M. Katharine Davidson (Henderson, Caverly, Pum & Charney LLP), Lawrence H. Heller (Greenberg Traurig)

http://www.step.org/sites/default/files/STEP_LA_2016_Forum_Formal_Brochure.pdf

The 7th Annual Private Investment Funds Tax Master Class

5/25/2016 - 5/26/2016

Financial Research Associates

Venue: The Princeton Club of NY, 15 West 43rd St., New York, New York 10036, USA

Key Speakers:TBC

https://www.frallc.com/conference.aspx?ccode=B998

US International Tax Compliance Workshop – San Diego

6/20/2016 - 6/21/2016

Bloomberg BNA

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

Key speakers: TBC

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

International Practice Units: The IRS Approach to Auditing International Tax Issues

6/21/2016 - 6/21/2016

CCH

Venue: Webinar

Chair: Robert J. Misey

http://www.cchgroup.com/media/wk/taa/pdfs/training-and-support/seminar/cch-seminars-calendar-fact-sheet.pdf

Athletes and Entertainers – US International Tax Issues

10/18/2016 - 10/18/2016

CCH

Venue: Webinar

Chair: Robert J. Misey

http://www.cchgroup.com/media/wk/taa/pdfs/training-and-support/seminar/cch-seminars-calendar-fact-sheet.pdf

International Tax Issues In The Manufacturing Industries

11/9/2016 - 11/9/2016

CCH

Venue: Webinar

Chair: Robert J. Misey

http://www.cchgroup.com/media/wk/taa/pdfs/training-and-support/seminar/cch-seminars-calendar-fact-sheet.pdf

Tax-Effective Global Value Chain – Post BEPS

11/23/2016 - 11/25/2016

IBFD

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

Key Speakers: Carlos Gutiérrez Puente (IBFD), Tamas Kulcsar (IBFD)

http://www.ibfd.org/Training/Tax-Effective-Global-Value-Chain-Post-BEPS

Fundamentals of US International Taxation

12/6/2016 - 12/6/2016

CCH

Venue: Webinar

Chair: Robert J. Misey

http://www.cchgroup.com/media/wk/taa/pdfs/training-and-support/seminar/cch-seminars-calendar-fact-sheet.pdf

ASIA PACIFIC

The 7th Offshore Investment Conference Hong Kong 2016

6/15/2016 - 6/16/2016

Offshore Investment

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

Chair: Michael Olesnicky (KPMG)

http://www.offshoreinvestment.com/pages/index.asp?title=The_7th_Offshore_Investment_Conference%2C_Hong_Kong_2016&catID=12842

International Corporate Tax Planning Aspects

7/27/2016 - 7/29/2016

IBFD

Venue: InterContinental Kuala Lumpur, 165 Jalan Ampang, 50450 Kuala Lumpur, Malaysia

Key Speakers: Shee Boon Law (IBFD), Chris Finnerty (Ernst & Young LLP) and Julian Wong (Ernst & Young)

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

CENTRAL AND EASTERN EUROPE

Wealth Management & Private Banking Summit – Russia & CIS

4/12/2016 - 4/14/2016

Informa

Venue: Radisson Royal Hotel, 2/1 bld.1 Kutuzovsky Prospekt, Moscow, 121248, Russia

Key Speakers: Dmitri Kushaev (Credit Suisse Russia), Anna Matveeva (Sberbank Private Banking), Dmitry Peshnev-Podolskiy (Gazprombank), Elena Lisitsyna (M2M Private Bank), among numerous others

http://www.russianwealthmanagement.com/

MIDDLE EAST AND AFRICA

International Tax Aspects of Corporate Tax Structures

4/13/2016 - 4/15/2016

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)

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

Treaty Aspects of International Tax Planning

5/22/2016 - 5/24/2016

IBFD

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

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

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

Substance in International Tax Planning

11/13/2016 - 11/15/2016

IBFD

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

Key speakers: Boyke Baldewsing (IBFD), Ridha Hamzaoui (IBFD)

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

WESTERN EUROPE

International Tax Aspects of Permanent Establishments

4/19/2016 - 4/22/2016

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).

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

International Cross Border Estate Planning

4/20/2016 - 4/20/2016

Informa

Venue: London, TBC

Key speakers: Richard Frimston (Russell Cooke), Brad Westerfield (Butler Snow), Jim Edmondson (Mourant Ozannes), Richard Dew (10 Old Square), Michael Parkinson (Macfarlanes), Patrick Harney (Forsters), Freddie Bjorn (Payne Hicks Beach).

http://www.iiribcfinance.com/event/International-Cross-Border-Estate-Planning-conference

STEP Tax, Trusts & Estates Conference Exeter 2016

4/21/2016 - 4/21/2016

STEP Worldwide

Venue: Sandy Park Conference Centre, Sandy Park Way, Exeter, EX2 7NN, UK

Key Speakers: TBC

http://www.step.org/events/step-tax-trusts-estates-conference-exeter-2016

STEP Tax, Trusts & Estates Conference Leeds 2016

4/28/2016 - 4/28/2016

STEP Worldwide

Venue: Hilton, Neville Street, Leeds, LS1 4BX, UK

Key Speakers: TBC

http://www.step.org/events/step-tax-trusts-estates-conference-leeds-2016

STEP Tax, Trusts & Estates Conference London 2016

5/13/2016 - 5/13/2016

STEP Worldwide

Venue: Park Plazza, 200 Westminster Bridge Rd, London, SE1 7UT, UK

Key Speakers: TBC

http://www.step.org/events/step-tax-trusts-estates-conference-london-2016

STEP Tax, Trusts & Estates Conference Birmingham 2016

5/19/2016 - 5/19/2016

STEP Worldwide

Venue: Crowne Plaza Birmingham City, Central Square, Birmingham, B1 1HH, UK

Key Speakers: TBC

http://www.step.org/events/step-tax-trusts-estates-conference-birmingham-2016

Tackling Tax Avoidance in Practice

6/2/2016 - 6/3/2016

European Acadamy

Venue: Ramada Hotel Berlin-Alexanderplatz, Karl-Liebknecht-Strasse 32, D-10178 Berlin, Germany

Key Speakers: TBC

http://www.euroacad.eu/events/event/tackling-tax-avoidance-in-practice.html

International Tax Congress 2016

6/21/2016 - 6/22/2016

IIR & IBC Financial Events

Venue: London, TBC

Key Speakers: Ian Brimicombe (Astrazeneca), Kristoffer Knutsen (Nestle Waters), Alain Berlier (Louis Dreyfus Commodities), David Campkin (BBC), among numerous others

http://www.iiribcfinance.com/event/International-Tax-Congress-Conference/key-speakers

Current Issues in International Tax Planning

6/29/2016 - 7/1/2016

IBFD

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

Key Speakers: Tigran Mkrtchyan

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

The 2nd Planning for the Super-Rich, An Offshore Investment Event London 2016

7/6/2016 - 7/7/2016

Offshore Investment

Venue: Royal Thames Yacht Club, 60 Knightsbridge, London, SW1X 7LF, UK

Chair: Paul Stibbard (Rothschild)

http://www.offshoreinvestment.com/pages/index.asp?title=The_2nd_Planning_for_the_Super-Rich%2C_an_Offshore_Investment_Event_London&catID=12851

Global VAT

7/6/2016 - 7/8/2016

IBFD

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

Key Speakers: Jordi Sol (IBFD), Fabiola Annacondia (IBFD), Christine Peacock (IBFD), Wilbert Nieuwenhuizen (University of Amsterdam), Laura Mattes (IBFD), among numerous others.

http://www.ibfd.org/Training/Global-VAT

International Taxation of Banks and Financial Institutions

8/31/2016 - 9/2/2016

IBFD

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

Key Speakers: Francesco Mantegazza (Pirola Pennuto Zei & Associati), Carola Maggiulli (DG TAXUD), Omar Moerer (Baker & McKenzie), Ingrid Rensema (ABN AMRO), Peter Drijkoningen (BNP Paribas).

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

Trusts and Estate – International Tax Planning

10/12/2016 - 10/14/2016

IBFD

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

Key speakers: Joanna C. Wheeler (IBFD), Bart Kosters (IBFD), Jonathan Schwarz (Temple Tax Chambers), Alessandro Bavila (Maisto e Associati)

http://www.ibfd.org/Training/Trusts-and-Estate-International-Tax-Planning

THE AMERICAS

United States

Two Cayman financial institutions have pleaded guilty in Manhattan Federal Court to conspiring to hide more than USD130m in Cayman bank accounts and have agreed to produce the account files of non-compliant US taxpayers, in the first conviction of a non-Swiss financial institution for tax evasion conspiracy.

A listing of recent key international tax cases.

The US Department of Justice on March 9, 2016, announced the two institutions are Cayman National Securities Ltd. and Cayman National Trust Co. Ltd., two Cayman Island affiliates of Cayman National Corporation, which provided investment brokerage and trust management services to individuals and entities within and outside the Cayman Islands, including US taxpayers.

The two entities admitted that they had helped their US taxpayer clients to hide more than USD130m from the US Internal Revenue Service, as part of plea agreements requiring them to, among other things, produce through the treaty process account files of non-compliant US taxpayers who maintained accounts with them and pay a total of USD6m in penalties.

US Attorney for the Southern District of New York, Preet Bharara, revealed:

> "The guilty pleas of these two Cayman Island companies today represent the first convictions of financial institutions outside Switzerland for conspiring with US taxpayers to evade their lawful and legitimate taxes. The plea agreements require these Cayman entities to provide this office with the client files, because we are committed to finding and prosecuting not only banks that help US taxpayers evade taxes, but also individual taxpayers who find criminal ways not to pay their fair share. We will follow them no matter how far they go to hide their accounts, whether it is Switzerland, the Cayman Islands, or some other tax haven."

Acting Deputy Assistant Attorney General Stuart Goldberg of the Justice Department's Tax Division added: "Today's convictions make clear that our focus is not on any one bank, insurance company, or asset management firm, or even any one country."

https://www.justice.gov/opa/pr/two-cayman-island-financial-institutions-plead-guilty-manhattan-federal-court-conspiring-hide

Manhattan Federal Court: *US DoJ v. Cayman National Securities Ltd and Cayman National Trust Co. Ltd.*

United States

A judge from the US District Court of the Southern District of Florida (Miami) has called on UBS to appear on March 31 to defend its decision not to provide the Internal Revenue Service (IRS) with the bank details of a taxpayer resident in China who is the subject of an ongoing IRS audit.

In a client brief on the matter, law firm Caplin and Drysdale said the US is seeking to enforce a "Bank of Nova Scotia" summons – named after an 1982 appellate decision in which the court compelled the Miami branch of Scotiabank to produce records from the its Cayman branch despite Cayman secrecy laws. In that case, the bank complied; had it failed to do so, the court could have imposed substantial fines on the Miami branch until the Cayman records were delivered to the IRS.

Commenting on the summons, Caplin and Drysdale stated in its client brief:

> "In late February 2016, the Justice Department filed an action in federal court to compel UBS's branch in Miami to produce bank records of a Singapore account purportedly owned by a taxpayer who lives in China and is under IRS audit. With a tactic not used in several years, this heralds the opening of a new front in the US enforcement effort against unreported foreign assets. Much of the activity in the last eight years has been aimed at Switzerland, where the US can declare victory. The Miami summons action reflects that the government will pursue money transferred out of Switzerland, particularly into Singapore, and that the IRS and [Department of Justice (DOJ)] have additional ways to overcome foreign bank secrecy laws, whether or not the taxpayer under scrutiny lives in the US. …
>
> During the past eight years of aggressive US enforcement in the foreign account area, the Justice Department has not resorted to this method of obtaining foreign bank records. Instead,

the IRS/DOJ issued 'John Doe' summonses, treaty requests, and 'required record' summonses to taxpayers under audit or criminal investigation, among other tactics. Now, the DOJ and IRS want records from Singapore, a bank secrecy jurisdiction long thought to have attracted money flowing out of Switzerland once the US crackdown began. Because the taxpayer lives in China, the IRS cannot serve a summons directly on him, and as the US and Singapore have no tax treaty, the Government issued a 'Bank of Nova Scotia' summons. The IRS is demanding that the Miami branch of UBS retrieve from Singapore the sought-after bank statements, irrespective of Singapore law."

http://www.handelszeitung.ch/sites/handelszeitung.ch/files/article/documents/1-main_1.pdf

US District Court S.D. Fl (Miami): *United States of America v. UBS AG (1:16-mc-20653)*

United States

The US Tax Court has ruled in favor of the Internal Revenue Service (IRS) in an appeal brought by Guidant LLC against determined federal income tax deficiencies and an accuracy-related penalty in relation to its transfer pricing affairs.

Guidant's transactions with its foreign affiliates included the licensing of intangibles, the purchase and sale of manufactured property, and services. For many products, the flow involved a "round trip" from the US to Ireland or to Puerto Rico and back. The deficiencies and the accuracy-related penalty arise from the IRS's transfer pricing adjustments, which increased the income of Guidant Corp. and its US subsidiaries (sometimes collectively, Guidant group) by approximately USD3.5bn. The Guidant group filed consolidated federal income tax returns, and the IRS's adjustments stemmed from transactions that the Guidant group engaged in with the group's affiliated foreign entities.

During an audit, the IRS determined that the group's transfer prices were not at arm's length. The IRS, relying on Section 482, adjusted the reported prices at which items were transferred between the group and its foreign affiliates. It then determined the group's true consolidated taxable income (CTI) by posting all of the adjustments to the separate taxable income of the group's parent (which increased *pro tanto* the group's CTI) and without making any specific adjustment to any subsidiary's separate taxable income (STI). The IRS also did not determine any portion of the adjustments that related solely to tangibles, to intangibles, or to services.

The US Tax Court noted that it is the IRS's practice to compute member-specific adjustments when the taxpayer and the audit team can agree on such adjustments or when the audit team has sufficient information to make them. The IRS's practice is to defer making member-specific adjustments in other circumstances until a final resolution has been reached because these determinations often involve complex calculations, as well as extensive and collaborative discussions with the taxpayer. Because the parties did not reach a resolution of the Section 482 issue, the IRS did not expend time or resources to determine member-specific adjustments for each Guidant group-controlled taxpayer.

The IRS said that, due to lacking documentation, it did not believe that it could independently make reliable member-specific adjustments on the basis of the information available to it. The IRS considered the complexity of the activities of each member of the Guidant group and its relationship with the activities of other members of the Guidant group and/or of their foreign affiliates. It also concluded that it could not independently make reliable member-specific adjustments for each of the Guidant group members after considering the flow of products among Guidant group entities, involving multiple steps and multiple transfer pricing transactions.

The IRS submitted that each Guidant group member's available financial statements encompassed all activities the entity performed and all products produced and sold, including those not at issue in these cases. The IRS said it was unable to extract the information necessary to ascertain the income reported by each Guidant group member with respect to the products and transactions at issue and to determine the STI of each Guidant group member for the products and transactions at issue.

The Tax Court noted that Guidant did not maintain its financial records in a manner that allowed the IRS to readily track income and expenses by place of manufacture, and that Guidant could not tie the income and expenses in the business unit financial statements to particular product lines, or to products manufactured in the United States, in Ireland, or in Puerto Rico.

Under Section 482, the Commissioner may "distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among … [controlled enterprises], if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such [enterprises]."

Considering Guidant's motion for a partial summary judgment, the US Tax Court noted that to counter the adjustments, the petitioner must first establish that the Commissioner abused his

discretion by making allocations that are arbitrary, capricious, and unreasonable. Second, a taxpayer must establish that arm's length consideration for the adjusted transactions is consistent with the taxpayer's allocations. Guidant sought to argue that the IRS's adjustments were inappropriately made through a combined group-wide analysis on the basis of multiple types of controlled transactions among multiple corporations.

However, in its ruling, the US Tax Court held that neither Section 482 nor the regulations thereunder require that the IRS, when exercising its authority under Section 482, always determine the true separate taxable income of each controlled taxpayer in a consolidated group contemporaneously with the making of the resulting adjustments. Further, it held that Section 482 and the regulations thereunder allow the IRS, when exercising its authority under Section 482, to aggregate one or more related transactions instead of making specific adjustments with respect to each type of transaction.

This judgment was released on February 29, 2016.

http://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=10712

United States Tax Court: *Guidant LLC, et al. v. Commissioner of Internal Revenue (146 T.C. No. 5)*

WESTERN EUROPE

Hungary

Certain Hungarian leisure card and meal voucher schemes, used by employers to provide benefits-in-kind to their employees, confer favorable tax conditions that are incompatible with EU law, the European Court of Justice (ECJ) has decided.

Hungarian legislation enables employers to provide employees with vouchers or cards that may be used by workers to obtain certain benefits-in-kind from third-party suppliers, such as accommodation, leisure, and catering services and ready-to-eat meals. However, the ECJ found that two schemes – the SZÉP leisure card and the Erzsébet meal voucher – provide certain tax advantages not available under other schemes.

According to the European Commission, which brought the action against the Hungarian Government, the schemes infringe EU laws on the freedom of establishment and the freedom to provide services because the tax breaks are only available to users of this card or voucher, and these may only be offered by certain entities.

In its ruling, issued on February 23, the ECJ agreed that a number of aspects of the SZÉP leisure card and Erzsébet meal voucher schemes are contrary to EU law. The court observed that the legislation prevents Hungarian branches of companies established in other member states from offering the SZÉP. Only subsidiaries of companies incorporated under Hungarian law are permitted to issue the card. Further, the ECJ took issue with the requirement that SZÉP card issuers must, in each municipality in Hungary with more than 35,000 inhabitants, have an office open to customers. It said this could only be fulfilled by those financial institutions whose registered office is in Hungary.

While EU law states that the provision of services may be reserved to particular providers, this restriction is only permitted if it is not discriminatory with regards to the location of the registered office of the provider, it noted. In this case, the ECJ found that "such discrimination is established," and said the set of requirements "deprives service providers established in other member states of their right to choose to provide cross-border services without becoming established in Hungary."

The ECJ concluded that the voucher schemes constitute "a restriction of both the freedom of establishment and the freedom to provide services," regardless of the fact that profits arising from the schemes are used by the Hungarian National Foundation for Recreation to fund social and welfare initiatives.

This judgment was released on February 23, 2016.

http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-02/cp160015en.pdf

European Court of Justice: *Commission v. Hungary (C-179/14)*

Dateline March 17, 2016

At the risk of sounding old, there are times when I miss the days before 24-hour rolling news; when news programs offered hefty, solid reporting, and newspaper morning headlines really mattered. These days, news agencies constantly scout around for the latest leak or soundbite to fill their endlessly dreary hours of TV, radio and Internet coverage, and government departments and politicians happily oblige, at the very least to make themselves look like they are actually *doing something*, I suppose, and aren't sitting around on their hands at the taxpayers' expense.

I recall the **United Kingdom's** annual Budget being a lengthy speech announced on Budget Day alone, and at no other time. As I write this, the UK's Channel 4 news program is covering exactly this issue: back then, the Budget details remained in the Chancellor's red box: there were no pre-Budget announcements, leaks were rare, and there was no "half-Budget" announcement dressed up as an Autumn Statement. While George Osborne has become famous for pulling a rabbit out of the hat at each of his budget announcements, these pale against the "oohs" and gasps of those gathered around TVs and radios to witness Budgets of yesteryears, littered with unexpected fiscal treats or tricks. Budget Day really was a grand Parliamentary event.

All a far cry from today's constant layering and drip-feeding of Budget details pre- and post-announcement.

Back then, of course, there was also no devolution. Tax rules generally applied across the Union. Now, with **Scotland** continuing to champ at the bit for more fiscal powers of its own (the latest news is that Scotland wants to cut its Air Passenger Duty by half), and **Northern Ireland** potentially slashing its corporate tax rate to 12.5 percent from April 2018 (in line with the Republic of Ireland's current rate), the UK is fast becoming a confusing mishmash of tax rates and rules that will surely lead to complications for businesses looking to invest across borders.

On the plus side, one might argue that a reduced corporate tax rate for Northern Ireland could be the welcome shot in the arm that is needed. Despite the Republic's post-financial crisis troubles, Northern Ireland very much remains overshadowed by its southern neighbor, so a reduced rate should certainly help level the playing field; that said, I'd say it is worth placing bets that the European Commission will raise concerns over the region becoming a "tax haven" to the wider UK,

which already has its arguably problematic Crown Dependencies and Overseas Territories. Then again, with Northern Ireland weighted down by the UK's regulatory regime and keen interest in BEPS, in contrast to the Republic of Ireland, the latter likely has little to concern itself on competitive terms anytime soon.

The **European Council**, with the Netherlands at the presidency helm, last month released its BEPS Roadmap for the short and medium term. It lays out plans for further work on the Interest and Royalties Directive to include further restrictions on interest deductions, and on the Anti Avoidance Directive, with key focus on tightening controlled foreign company rules across the EU.

This is perhaps an uncomfortable position for the **Netherlands** to be in; during much of the BEPS initiative, it remained largely silent on the proposals being put forward, choosing to wait for recommendations. And while it has made a few changes to its laws to reflect certain BEPS developments, in part in line with EU requirements, the Netherlands has not done so with the sheer gusto demonstrated by, say, the UK.

There are times, owing to the Netherlands' renowned business-friendly tax rules (a tasty Dutch sandwich, anyone?) and wide tax treaty network, that the Commission and the Netherlands have often not seen eye to eye. It is therefore understandable why, as EU Council President, the Netherlands has had to present the Roadmap as a *fait accompli* so as to maintain the EU-BEPS juggernaut. So it probably wasn't too helpful that the Dutch Association of Tax Advisers felt the need to draw attention to the potentially negative BEPS impacts on the Dutch economy, thus denting the Netherlands' temporary, shiny EU presidential crown. With the Association bouncing around words like "overkill" and remonstrating that the EU is going beyond the BEPS "guidance" offered by the OECD and instead binding its BEPS measures into law, it seems the Netherlands' silence has turned out to be anything but golden.

In a world in which indirect tax is becoming more a prominent revenue-raiser in many fiscal regimes, the **United States** is one nation that has largely eschewed the concept of a federal value-added tax. Its uncomfortably liberal Canadian bedfellows north of the land border have had no such qualms, of course, with their various provincial, goods and services, and harmonized sales taxes. However, quite how the US is reacting to a VAT being introduced on its doorstep, in **Puerto Rico** – an unincorporated US territory – is anyone's guess. Perhaps it has been lost in the more boisterous-than-usual bluster of the US election primaries. Or maybe because there literally is clear blue Caribbean water between the States and Puerto Rico means the unthinkable tax is "over there" and hardly worth worrying about.

Of course, as with any jurisdiction (one word: India) introducing a new VAT system, there have been problems, so it is little surprise that the schedule for introducing the tax has been deferred for several months, from April 1 to June 1, 2016.

Admittedly, the new VAT largely replaces the existing sales and use tax, but it's still a VAT. On US territory (even if it is unincorporated).

Could this be the beginning of a VAT being more seriously considered in a wider US tax reform? That's doubtful. Even a strong argument that reduced income taxes and correspondingly raised consumption taxes could potentially be fairer and more cost-effective is unlikely to have any effect. Unless and until there is a key shift in tax policy away from the taxation of US citizens – wherever they are on the globe – on their worldwide income, while much of the rest of the developed world taxes on a territorial basis, fundamental change and the introduction of consumer-based taxes remain a distant dream. And with a skeptical electorate struggling with the ever more complex rules of the US tax code, it can't really be blamed for suspicion over any major reform put forward by politicians at loggerheads, unable to move from their rigid fiscal stances.

Perhaps the November 8 result can be the juncture needed to significantly move US tax reform forward. But as I often say: hope for the best, and expect the worst. That way, you won't be disappointed, whatever happens.

The Jester