GLOBAL TAX WEEKLY
a closer look

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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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US Individual Tax Compliance Round-Up

by Mike DeBlis, Esq., DeBlis Law

Separating The Sheep From The Goats

It was once remarked by baseball great Frank Robinson that "Close don't count in baseball. Close only counts in horseshoes and hand grenades." Since he first turned the phrase in the summer of 1973, others have added a few additional items to the list, most notably dancing and nuclear weapons.

Some may find it surprising, myself included, that "close" might also count in certain tax cases. So, for those of us who have recently been wrestling with our 2016 income tax returns, the vexing questions are: How does the IRS distinguish between a person who makes an honest mathematical error and someone who is trying to pull a fast one, and perhaps more importantly, how does the Tax Court separate the sheep from the goats?

Establishing Accuracy

The stated intent of tax penalties is to "encourage voluntary compliance by supporting the standards of behavior [1] required by the Internal Revenue Code." In other words, by their very nature, penalties should only apply if the taxpayer's behavior fell below the standard of care implicit in the Tax Code. In a general sense, the taxpayer has a duty to:

- Request a tax identification number,
- File all required returns on or before the due date,
- Pay the proper amount of tax at the proper time,
- Provide supporting documentation as required, and
- Cooperate with any investigation or inquiry.

Not surprisingly, most penalties are designed to "encourage" paying on time. But in most cases, the proper amount of tax is somewhat subjective. The former is based on the taxpayer's conduct, while the latter, at least at first blush, is strictly mathematical.

Defending Penalty Cases

Much to the chagrin of some lawmakers, who would prefer an entirely subjective analysis, the Service looks at two basic areas to determine if the taxpayer is a sheep or a goat:

- **Negligence/Disregarding the Rules:** The law assumes that reasonably well-educated people who have filed tax returns before are aware of the rules and therefore are liable for breaking them.
- **Substantial Understatement or Overstatement:** 10 percent is usually the magic number. Typically, the penalty rate is 20 percent, although it can be as high as 40 percent in a few cases. In all scenarios, the deficiency must be related to a trigger and not to something else, like fraud, for the accuracy penalty to apply.

Negligence is a case-by-case decision, so the issue is not the standard of care for the universe of taxpayers but for that particular taxpayer. If the taxpayer is relatively unsophisticated or uneducated, the tax court must take these deficiencies into account. That argument often cuts both ways, because the Service sometimes argues that if the taxpayer was such a hick, then a failure to obtain tax filing assistance was in itself negligence.

Section 6662 [2] throws out phrases like "reasonable attempt to comply" and the IRS in its penalty guidance speaks of "ordinary business care and prudence" when discussing negligence, but these terms are not really defined. The best approach is to look at tax court cases, legislative history, revenue rulings, and anything else which indicates that the taxpayer's conduct was in line with the standard of care for those particular facts.

To overcome the substantial understatement trigger, the taxpayer must show:

- Substantial authority for the understatement (*e.g.*, other people have made the same error), and
- A reasonable basis for the mistake.

So, although this trigger seems mechanical, there are some subjective elements. If a taxpayer can convince a factfinder to look less at the calculator and more at the facts and circumstances, there is a very good chance that the penalties will at least get reduced.

Burden of proof is nearly always the best defense in these cases, because the Service has the burden to prove that the taxpayer's conduct fell so far below the relevant standard of care that a penalty is the only way to encourage compliance, and that's not an easy thing to establish.

Civil Tax Penalties: Not So Fast!

Immediately after the lead juror announces a "not guilty" verdict in a criminal tax lawsuit, nearly everyone at the counsel table reacts with relief. However, a criminal tax trial is only round one. Before the ink is dry on the jury form, the IRS may already be planning its next move.

Yet our intrepid readers may ask themselves: "How can this be in the land of the free and the home of the brave? After all, a jury just looked at the evidence and absolved the taxpayer!" Well, not exactly. A not guilty verdict simply means prosecutors did not present enough evidence to convince the jurors beyond a reasonable doubt, and the outcome may be different in civil court, where the burden of proof is lower.

That burden is clear and convincing evidence, which is the point between the "maybe-and-maybe-not" scales of justice in everyday civil court and the near-overwhelming amount of evidence needed to convict a person in criminal court. What's more, in most civil tax penalty proceedings, the taxpayer has the burden of persuasion (ultimate burden of proof) to establish that a penalty is not due. The Service, in contrast, only has a minimal burden of production under Section 7491(c) to demonstrate that it had a rational basis for bringing the action in the first place.

Fraudulent Returns

Section 6663(a) cases [3] almost always follow unsuccessful criminal prosecutions, although they are not unheard of as stand-alone matters. Filing an utterly baseless return is perhaps the most serious allegation in the realm of civil tax penalties, which is probably why the Service bears both the burden of production and burden of persuasion in these cases. Under the innocent spouse doctrine, signing spouses are not liable unless they knowingly participated in the fraud.

If the IRS proves, by clear and convincing evidence, that at least part of the income understatement involved fraud, a 75 percent penalty presumptively applies to the entire understatement and not just the fraudulent portion; the taxpayer can rebut this presumption, and thus limit the penalty, by showing that the remainder of the understated income was not fraudulent.

The big question in this area is what is the difference between fraudulent and mistaken? Most agents look for two or more badges of fraud before filing a Section 6663(a) matter:

- Failure to file a return,
- "Willful" failure to pay taxes due (which usually means the taxpayer paid any vendors other than the taxman),

- "Intentional" failure to report all income (as a rule of thumb, the Service presumes that anything over about 25 percent was probably intentional),
- False or fraudulent income or deduction claim, and
- A false return.

Statistically, the IRS only brings an infinitesimal number of fraud cases as opposed to honest error cases, which is fairly small comfort if you are the listed defendant.

Fraudulent Failure To File Return

A Section 6651(f) penalty is based on the net tax due as opposed to the fraudulent portion of the return.

Assume that a taxpayer fraudulently did not file a return on April 15 of Year 1, and he would have owed USD1,000. On July 15 of Year 2, his conscience gets the best of him (at least to a limited extent) and he files a Year 1 return showing USD200 in liability. As for the remainder, half is attributable to honest error and half is outright fraud. By filing the fraudulent return, the taxpayer now only owes USD300 (75 percent of the USD400 fraudulent amount) in Section 6663(a) penalties.

If the Service had not brought a previous action against the taxpayer, he is probably looking at felony charges for the fraudulent return; however, a prior criminal matter may be collateral estoppel to a fraudulent failure to file action.

Nonfraudulent Failure To File

In contrast, Section 6651(a) [4] cases are the most common civil tax penalty matters, because the IRS only has to show a mathematical error and the taxpayer has the nearly impossible burden of showing that the amounts were correct. The penalty is usually 5 percent a month up to a maximum 25 percent. Generally speaking, these are *ad valorem* penalties which only apply if tax is due. The major exception is filing an inaccurate Form 8300 (a cash transaction over USD10,000), which carries a maximum penalty of USD25,000 per violation.

The penalty for tax liability declared but not paid is 0.5 percent per month up to a maximum 25 percent. Financial hardship, though not a defense to nonfiling, is a defense to nonpayment. In the event that the failure to file and failure to pay penalties both apply, the failure to pay penalties serves as an offset, to a certain extent.

Finally, there is the failure to pay estimated tax penalty. It kicks in if the estimated tax payment is both insufficient to cover current tax liability and less than 90 percent of the previous year's prepayments. For individuals, the penalty is based on the interest rate of the unpaid portion; the calculation is a little different for corporations.

Endnotes

1. https://www.irs.gov/irm/part20/irm_20-001-001r.html
2. https://www.law.cornell.edu/uscode/text/26/6662
3. https://www.law.cornell.edu/uscode/text/26/6663
4. https://www.law.cornell.edu/uscode/text/26/6651

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The Countdown To VAT In India

by the Global Tax Weekly Editorial Team

Many thought the day would never come: lawmakers in India have finally agreed to introduce goods and service tax (GST) – 14 years in the works – from July 2017. And in April, the President ratified the legislation.

To secure a deal, Finance Minister Arun Jaitley's Bharatiya Janata Party (BJP) has had to make a number of compromises along the way, including providing a significant compensation package for those states that will lose out on revenue. What has resulted is a path forward, but a complex regime for businesses to contend with and just three months to prepare.

In approving the GST, states have finally agreed to cede some indirect tax autonomy; adopt harmonized rules; and abolish a plethora of indirect tax levies.

GST In Place Of VAT

Technically, India already has a value-added tax regime, which was introduced in all but two states/territories in 2005. However, it is not a fully fledged VAT, and the levy means different things in different states; VAT is legislated for in separate laws in each state, based loosely on a model value-added sales tax bill, drafted by the Government in 2003.

States have been allowed broad discretion to craft their own rules, resulting in tax competition; they have been allowed to set their own rates; and, until the recent passage of legislation to amend India's constitution, they were precluded from taxing supplies of services.

The sum of all this, and the numerous other indirect taxes, has been complexity for firms, cascading taxes, and distortions to business and supply chain decisions.

And so GST was put forward as a solution to remove this mismatch of state-level tax regimes, instead installing a uniform regime across India, to facilitate interstate commerce.

The Indirect Tax Overhaul

If all goes to plan, from July 1, 2017, the GST will replace the centrally levied CENVAT, the central excise duty, service tax, customs duties, and any related surcharges. The GST will also replace the state-level levies VAT, sales taxes, entertainment and gambling taxes, the luxury tax, certain entry taxes, and related state surcharges.

The GST will typically involve the completion of just four returns per year, to satisfy both Center and state filing obligations, and its administration will be largely centralized. Those currently registered for some of the main indirect tax levies will not be required to re-register, and interactions between the tax agency and taxpayers will happen electronically.

For what is to be a revenue-neutral reform, it will also yield large benefits for the Indian economy. The IMF projected in February 2017 that India Inc. could grow at a rate 8 eight percent, compared with a projection of 6.6 percent growth in FY2016/17, specifically as a result of the GST.

This echoed what Standard & Poor's stated in its October 2016 report on the Indian economy, which said:

> "The GST passage gives us additional conviction around our 8 percent-ish GDP growth forecast over the next few years. The consumption-driven macro numbers continue to look quite good."

The Long Slog Towards Implementation

It hasn't been smooth sailing for those spearheading the reform. The first indication that the GST might at last be installed came with the approval and subsequent ratification of the Constitutional Amendment Bill – required to allow states to tax services, among other things – at the beginning of September 2016.

Back in December 2015, the deadline for the new GST had been pushed forward from April 2016, after the Government failed to secure enough support for the amendment during the 2015 winter session of parliament. Naysayers said the reform was a dead duck.

After a way forward was secured and states ratified the constitutional amendment bill, much of the rapid progress thereafter can be attributed to the decision to form a GST Council, which held its first meeting days later on September 22, 2016.

The Council was created to push through a compromise between state and center representatives, allowing the debate surrounding the settings for the GST to happen behind closed doors, free from political one-upmanship. Jaitley was instrumental to the process, working behind the scenes to smooth out the schism between the ruling BJP and Congress parties and with reluctant states.

States home to a large number of manufacturers are expected to receive relatively less in revenue. In line with recent changes to other VAT systems, revenues from supplies will newly accrue to the territory where supplies are consumed, rather than where they are produced. In return, the center Government has reassured manufacturing states that any revenue lost will be recouped to them for the first five years.

However, with so many parties involved in the talks, what has resulted is a relatively complex, multilayered regime. Three laws will govern the GST regime, each providing for a different component of the one tax. A fourth will govern the compensation package for states.

The regime will at first feature four tax rates, multiple assessing authorities, and different registration thresholds depending on the territory.

That said, it will be a considerable improvement on the current status quo.

By comparison, China's new VAT regime, installed recently in place of business tax, has been a notable success during its early stages, despite its also complex structure, with the vast majority of businesses said to have received tax savings as a result.

What's To Come

While Chinese tax practitioners were overwhelmed with the sheer quantity of circulars released on how the VAT regime would function, the Indian Government has been relatively less communicative.

The Indian Government released draft legislation on what the GST laws might eventually look like. However, it has released little guidance, leaving the industry to rely on a few government announcements, FAQs, and tidbits of information that have surfaced following GST Council meetings. It will have its work cut out to more fully communicate the changes ahead of July.

What is known, as noted above, is that the regime will be governed by three laws: The Central Goods and Services Tax (CGST) Act 2017, which will provide for rules on the taxation of supplies

of goods or services within a state (intra-state supplies); The Integrated Goods and Services Tax (IGST) Act 2017, which will cover the same for supplies between states (inter-state supplies); and The Union Territory Goods and Services Tax (UTGST) Act 2017, which will cover the rules on intra-Union Territory supplies.

Although there will be three component parts to the GST, supplies will not be subject to "double taxation." All supplies, except exempt supplies, will simultaneously be subject to both CGST and state GST (SGST).

With regards to inter-state transactions, the Center is to levy and collect the IGST – "roughly equal" to CGST plus SGST – on all inter-state supplies of goods and services.

Under the IGST system, the inter-state seller would pay IGST on the sale of their goods to the Central Government after adjusting IGST, CGST, and SGST credits on their purchases (in that order). The exporting state would then transfer to the Center the credit of SGST used in payment of IGST.

The importing dealer would claim an IGST credit while discharging his output tax liability (both CGST and SGST) in his own state. The Center would then transfer to the importing state the IGST credit used in payment of SGST.

Since GST is a destination-based tax, all SGST on the final product will ordinarily accrue to the consuming state. CGST revenue will generally go to the Center.

Although the regime appears confusing, the Government has said the different layers of GST are necessary to ensure the seamless flow of input tax credits from one state to another.

While the regime will install a uniform set of rules on all businesses trading across and within state borders, it is an imperfect regime as it will still require border checks to ensure the correct amount of GST is collected.

Rates And Scope

The regime is to feature four rates, as approved by the GST Council in November 2016, with the scope of each rate to be confirmed in June 2017.

There will be two main rates – 12 percent and 18 percent – which will be levied on most goods and services. A reduced 5 percent rate will apply to some common, non-essential items, and a 28

percent rate is to be levied on "luxury goods" and tobacco products. Further, a cess could be levied on top of the 28 percent rate, potentially meaning that indirect tax levies on certain supplies could exceed this 28 percent rate.

Those goods that are considered essentials will be subject to a zero rate, and services will generally be subject to an 18 percent rate.

After a March 2017 meeting of the GST Council, it was confirmed that the 5 percent VAT rate will apply to services provided by small hotels and restaurants.

Exports will be subject to a zero rate, in line with international norms.

These rates are broadly in line with current state-level rates, which are generally between 12 percent and 15 percent, although states had initially pushed for higher-rate GST.

It is anticipated that alcohol products will fall outside the scope of the GST regime. In June, the GST Council and Government are to clarify how petroleum products will be treated under GST.

By approving the regime, states and territories have ceded the power to introduce indirect taxes in addition to the GST; instead they must now act through the GST Council. Time will tell whether states adhere to these restrictions. Brazil, another country with a VAT-like regime (ICMS) and territorial governments, has seen provinces fail to adhere to rules concerning the unanimous pre-approval by states of tax breaks that would be unilaterally introduced.

Businesses are naturally concerned with the complex multi-rate regime that has come out of GST Council negotiations. The Confederation of Indian Industry has said four rates should be the absolute limit, and recommended that over time the Government should commit to applying just one or two rates. Likewise, the IMF said the GST should have uniform cross-state rates, a simple tax rate structure, and minimal exemptions.

For consumers, the switch to GST is expected to result in a reduction to prices, as businesses should be able to more simply, quickly, and fully recover input tax.

Signing Up

India has set the GST registration threshold at INR2m (USD30,970). A INR1m registration threshold will apply in the northeastern states.

Tax collection will be divided between the states and the Center. States will assess those taxpayers with turnover below INR15m, while both the Center and states will be responsible for assessing tax on businesses with turnover equal to or greater than this threshold. Revenue will be split 50:50 between the Center and states, before compensation.

Registration will be automatic for most taxpayers. The digital framework to administer the GST regime, which has been in development since 2013, reached a significant milestone on November 8, 2016, when taxpayers were added to the systems. Eight million taxpayers currently subject to indirect taxes were to be enrolled: those that were existing VAT, central excise, and service tax payers. Meanwhile, for those not automatically enrolled, support with registration will be offered to SMEs through the pre-existing Tax Return Preparer regime.

In October 2016, the rules concerning enrollment were announced. The following registration rules are proposed to apply:

- New dealers will be required to file an application for registration online with the Goods and Services Tax Network (GSTN), and there will be a single application for all tax authorities. Each dealer will be given a unique ID – a GSTIN.
- Registration applications will be approved within three days.
- Post-registration verification will only be carried out where there is a risk of non-compliance.
- As noted above, most taxpayers will be required to file four returns, covering their supplies and purchases, and monthly and annual returns. Others will file up to eight returns.
- Small taxpayers will be permitted to file on a quarterly basis, and returns must be filed electronically.

Based on wording included in the GST law, it is anticipated that input tax credits for stock preceding registration will be allowed. The legislation provided that:

> "A person, who takes registration under sub-section (3) of section 19, shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of registration."

The law also made provision allowing for the introduction of reverse charge GST, based on a proposal from either the GST Council or Government. A reverse charge – typically applied to counter non-compliance and fraud – requires that the recipient account for both output and

input tax and remit the amount to the tax authority. It is intended to ensure that a supplier cannot charge VAT and then disappear with the revenue without remitting it to the tax agency. The Government has yet to disclose which, if any, goods or services will be subject to the mechanism.

India has also announced plans for a so-called composition levy – a flat rate scheme – which allows businesses with a turnover not exceeding INR5m to apply a fixed rate of GST without credit of 2.5 percent. To be eligible, a business must have a turnover exceeding INR2m, except for firms in northeast territories, where a INR1m threshold will apply.

Conclusion

It has taken considerable effort to arrive at the end of this 14-year journey. GST will undoubtedly bring great benefits: it will make doing business in the country tax neutral, irrespective of where a firm establishes itself, and Indian exporters should find themselves considerably more competitive. All that remains is for the Government to flick the final switch in July to get the GST cogs turning.

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Topical News Briefing: Election Fever

by the Global Tax Weekly Editorial Team

Free and fair elections are usually a sign that a territory is, for the most part, politically and economically stable, characteristics which multinational companies usually seek out when deciding the most suitable territory in which to expand their operations. Nevertheless, there is a flip side to this particular coin, because regular elections tend to breed a certain level of uncertainty about economic policy, including in the area of tax.

This is a particularly pertinent topic at present given the electoral process to find the next President of France is underway, and that the UK's parliament has just voted to accept Prime Minister Theresa May's proposal for fresh elections to be held in June 2017. And both of these democratic events could have a significant bearing on taxation in each country.

As reported in this week's issue of *Global Tax Weekly*, French presidential frontrunner Emmanuel Macron is proposing quite substantial tax cuts, in the order of EUR20bn (USD21.7bn), including a significant cut in corporate tax, which would align France more closely with corporate tax rates prevailing in the rest of Europe. Marine Le Pen's controversial proposal for a tax on companies employing foreign workers – including those from other EU member states – in addition to higher import tariffs could also have a major impact on companies in France, affecting recruitment and international supply chains.

The democratic process is arguably having an even greater effect on taxpayers in the UK, where the electorate must be getting used to trudging to the polling stations to vote on matters of political and constitutional importance. The last two and a half years alone have seen the referendum on Scottish independence (September 2014), a general election (May 2015), and the referendum on the UK's membership of the EU (June 2016), all of which had major implications for tax policy. June's election will make that four major plebiscites in less than three years, and the imminent nature of this poll has resulted in the removal of several key tax measures from the pending Finance Bill 2017. It is expected that these will be reinstated in a supplementary bill after the election, although there are no guarantees.

While the UK might be an extreme case at present – few other countries seem to be on an almost permanent state of high electoral alert – a similar pattern has been repeated in other major democracies of late.

In the US, tax planning was complicated by the presidential election campaign, with the two candidates differing markedly on tax policy.

Australia, with its relatively short electoral cycles, has experienced some sharp oscillations in tax policy in recent years, notably when signature tax reforms introduced by the former Labor administration were scrapped shortly after the conservative Liberal/National coalition was elected in September 2013, including the carbon tax and the Mineral Resource Rent Tax.

Even in Germany, of late a paragon of fiscal virtue and stability, the appearance of a general election on the political horizon has prompted proposals by Finance Minister Wolfgang Schäuble for some EUR13bn worth of tax cuts.

Democracy might be, to paraphrase Winston Churchill, the best of a bad bunch of political systems, but it is probably fair to say that it sometimes makes the lives of taxpayers that little bit more difficult.

New Update To The Italian White List

by Giorgio Vaselli and
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The Italian Government has continued to extend and update its tax white list of States and territories, adding a number of new states to the total of more than 130 States and territories. The Decree, published on April 3, 2017, follows the agreement of exchange of information with these new states.

The new "white list" now includes also:

1. Vatican City and Monte Carlo, which have recently reached agreement with Italy on exchange of information procedures (Monte Carlo has also recently reached a specific agreement with the European Union on the so-called "Savings Directive" – Council Directive No. 2003/48/CE);
2. The Republic of Chile, which has recently reached an agreement with Italy for the avoidance of double taxation based on the OECD model (that also includes standard exchange of information procedures); and
3. Jurisdictions that recently signed the OECD multilateral convention on exchange of information (to which Italy is a party), such as Andorra, Barbados, Nauru, Niue, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, and Uruguay.

This update to the white list follows the previous one in August 2016 (which included other key jurisdictions such as Hong Kong, Taiwan, Channel Islands, Switzerland, *etc.*), and confirms the Italian tax administration's commitment to attracting foreign investment (in fact, applicable laws require that this white list is to be updated every six months).

Tax Exemptions On Financial Instruments Deriving From The White List Regime

The Italian white list has a great impact on foreign investment into Italian entities, as investors based in a State or territory included on the list fall within the scope of several exemptions from Italian withholding/substitutive taxes (generally applied at the 26 percent rate), mainly on financial incomes. These include the following:

- Interest deriving from certain security lending transactions;
- Interest deriving from certain medium-term/long-term loans to Italian enterprises;
- Proceeds deriving from investments into Italian investment funds;
- Interest deriving from bonds issued by the Italian Treasury, talian banks or listed companies and similar securities; and
- Capital gains arising from several Italian securities (including "non-qualified" shares of Italian companies and obligations held in Italy).

Finally, with particular regard to investments into Italian investment funds, the new white list simplifies the most common investment structures based on the recent AIFM EU Directive.

The entitlement to the aforementioned exemptions remains subject to several subjective and procedural conditions that Italian withholding agents still have to carefully assess (*e.g.*, beneficial ownership).

The effects of such amendments on ongoing investments will have to be carefully assessed and will require some clarifications from the Italian tax authorities (since tax exemptions are often also granted on an accrual basis).

Focus On Monte Carlo

The addition of Monte Carlo to the white list from August 2016 was welcomed from investors' perspectives, including high net worth individuals currently living in the jurisdiction.

Nonetheless, it is worth mentioning that, at the time of writing, Monte Carlo still:

- Remains "black listed" for Italian citizens willing to transfer their residence to the state (*i.e.*, they will be deemed as resident in Italy for tax purposes unless they prove their actual residence in Monte Carlo); and
- May fall within the Italian CFC rules, due to its generally low level of taxation on business activities (unless exonerating evidence is provided).

The Rise And Rise Of The Free Zone

by Stuart Gray, Senior Editor,
Global Tax Weekly

This article looks at the development and growth of free zones in various parts of the world, and considers how they fit into the OECD's harmful tax agenda.

Introduction

Free zones can be many things, and they have a history dating back many centuries. But most modern free zones have been created in the post-World War Two era, and go by various names, including special economic zones, free trade zones, free ports, export processing zones, and mere free zones. They have spread rapidly around the world in the last 40–50 years in particular, so fast in fact that it is not entirely clear exactly how many there are!

According to a 2008 OECD study, there were as many as 5,000 free zones worldwide (based on 2003 data) exporting goods valued at USD600bn annually. [1] But the World Freezone Atlas published in 2010 counted 1,735 free zones in 133 countries. [2] The World Free Zones Organization on the other hand suggests that the true number is somewhere in between these two estimates, at 3,500. [3] Whatever the figure is, it is clear that the number is high, and continues to grow.

While each zone operates under a different set of circumstances and rules, they all share one thing in common: companies in these zones are accorded legal, regulatory, or fiscal privileges – or a combination of some or all of these – not available to actors in the regular economy.

Many free zones have a degree of autonomy from the government, and it is common for zones to be administered wholly by private sector organizations or under a public-private sector arrangement. They are sometimes strategically located to take advantage of a country's geographical advantages, such as on key trade routes. For these reasons, free zones are often found in the vicinity of major ports and airports.

Governments may have a range of objectives in mind when demarcating free zones. But generally, they are deployed as a mechanism to encourage industrial development, investment in modern transport and communications infrastructure, and the creation of skilled jobs. Hence, free zones have been used most by developing countries, predominately in Latin America, Africa, and East Asia.

Latin America

One prominent example in Central America is the Colon Free Trade Zone (CFZ) in Panama. [4] Established in 1948, CFZ companies benefit from no sales tax, production tax, and income tax on foreign income; no capital gains tax on assets held for more than two years; no capital investment tax; no municipal taxes; and no tax on shipments sent to or from the CFZ. Located adjacent to the Panama Canal, the CFZ is now home to 1,750 companies, which export or re-export goods worth in excess of USD5bn annually.

Another example in this region is Belize, where the Corozal Commercial Free Zone (CCFZ) was created in 1994 to attract foreign investment after the collapse of the sugar refining industry in the country's northern region. [5] Companies located in the CCFZ are mainly in the business of manufacturing, importing, exporting, fuel distribution, retailing, and the provision of certain services, particularly call centers. It is said that, since its launch, more than 300 companies have set up operations in the zone.

During the first ten years of its operation, a CCFZ business is exempt from income tax or capital gains tax or any new corporate tax levied by the Government of Belize, and any dividends paid by a CCFZ business are exempt from tax for the first 20 years of its operation. A tax credit is also available if a minimum of ten Belizeans are employed by a CCFZ company.

Other regulatory and fiscal benefits available to companies in the CCFZ include:

- No restrictions on foreign exchange, including the sale of foreign currency;
- No government charges and taxes on the use of foreign currency within the zone;
- All merchandise, articles, or goods entering the zone for commercial purposes are exempt from duties; and
- Most imports into and exports from the zone are exempt from all custom duties, excise taxes, and export duties.

Middle East And The Gulf

More recently, free zones have been utilized by wealthy countries to promote economic diversification, particularly by the oil-dependent countries in the Middle East and Persian Gulf regions. Numerous free zones are to be found across the United Arab Emirates (UAE) and neighboring countries, such as Oman, Qatar, and Bahrain. However, it is Dubai that has made the most extensive use of free zones as an economic development and diversification policy tool.

Free zone entities in Dubai are granted a number of fiscal and regulatory benefits, including freedom from corporate taxation for a period of 50 years, a concession which is renewable; exemption from all import duties; 100 percent repatriation of capital and profits; and permission to be wholly foreign owned. And there is a free zone for just about every economic sector one can think of – manufacturing, logistics, IT, healthcare, education, the media, commodity trading, and most things in between. These include:

- Dubai Airport Free Zone
- Dubai Auto Zone
- Dubai Cars and Automotive Zone
- Dubai Design District
- Dubai Flower Centre
- Dubai Gold and Diamond Park
- Dubai Healthcare City
- Dubai Industrial City
- Dubai International Academic City
- Dubai International Financial Centre
- Dubai Internet City
- Dubai Knowledge Park
- Dubai Logistics City
- Dubai Maritime City Authority
- Dubai Media City
- Dubai Multi Commodities Centre
- Dubai Outsource Zone
- Dubai Science Park
- Dubai Silicon Oasis
- Dubai Studio City
- Dubai Techno Park (new name: National Industries Complex)

- Dubai Textile City
- Energy and Environment Park
- International Humanitarian City
- Jebel Ali Free Zone Authority
- Jumeirah Lakes Towers Free Zone, and
- Dubai Production City

Dubai claims to host the world's largest free zone, the Jebel Ali Free Zone (JAFZ). [6] Sprawled across 50 square kilometers of desert near Jebel Ali Port, the JAFZ has attracted well over 7,000 companies from more than 100 countries, employing around 135,000 people. The zone is now a vital cog in the local economy, attracting 20 percent of Dubai's foreign direct investment, accounting for more than half of its exports, and constituting about one-quarter of the emirate's total gross domestic product.

While the greatest percentage (44 percent in 2015) of companies operating in the JAFZ are registered in the Middle East, the JAFZ has attracted a global clientele. In 2015, companies from Asia-Pacific and Europe accounted for 23 percent and 21 percent, respectively, while companies from the Americas and Africa accounted for 6 percent each.

Another indication of Dubai's economic ambition is the Dubai International Financial Centre (DIFC), which began operations in 2004 and has its own judiciary and system of common law. The DIFC is vying to become the principle financial trading center in between the European and Asian time zones. By December 31, 2016, there were 1,648 active registered companies in the DIFC, up from 1,445 on the same date in 2015. In addition, 976 non-financial services firms registered in the DIFC in 2016, representing year-on-year growth of 17 percent. The zone's workforce totaled more than 21,600 at the end of 2015, a 9 percent increase on the previous year. [7]

Much like the rest of Dubai, the DIFC is home to a multicultural community. The DIFC's financial services firms originate from across the globe, with 35 percent from the Middle East, 17 percent from mainland Europe, 16 percent from the United Kingdom, 11 percent from Asia, 11 percent from the United States, and 10 percent from other countries.

In addition to Dubai, there are seven free zones in Abu Dhabi, three free zones in Sharjah, two in Fujairah, and four in Ras Al Khaimah. The remaining two of the UAE's emirates, Ajman and Umm Al Quwain, have one free zone authority each.

China

Free zones may also have more specialized objectives. In China, for example, free zones are being used as test beds for China's market-orientated economic reforms. The first four special economic zones were established in the early 1980s in the southern coastal areas of Shenzhen, Zhuhai, Shantou, and Xiamen. They have since proliferated to all parts of the country, and are playing a central role in the integration of China into the global economy. By 2003, there were well over 100 special economic zones at national level, and hundreds more at local level. [8] More than half of the direct jobs created by free zones globally are in China.

While there are many different types of free zone in China, broadly they offer foreign investors lower corporate taxes, tax exemptions on skilled foreign labor, exemptions from customs duties and tariffs, and more flexible local labor laws. However, in more recent years, the central Government has focused its free zone policy on the financial sector and the internationalization of the renminbi. The Shanghai Free Trade Zone (FTZ) was the first of this new breed of free zones.

Established in September 2013 around the existing bonded zones at Waigaoqiao, Yangshan, and Pudong Airport, the Shanghai FTZ attempts to strengthen Shanghai's role in financial services. Foreign-funded banks and joint venture banks are allowed to be set up in the zone and banks permitted to act within a foreign exchange settlement center for international trade.

In April 2015, the FTZ concept was extended to Guangdong, Tianjin, and Fujian, and in April 2017 seven new FTZs came on stream. These are located in Liaoning, Zhejiang, Henan, Hubei, Sichuan, Shaanxi, and Chongqing Municipality. The Chinese Government has also announced its intention to "comprehensively expand reform and [open up] the Shanghai Pilot Free Trade Zone."

Africa

African governments have also been waking up to the potential economic benefits of free zones, and the World Free Zone Atlas counts 17 countries with free zones of varying description across the continent. One of the earliest of these was Kenya's Export Processing Zones program, which was brought about by legislation in 1990.

Tax benefits of Kenyan EPZs include: a 10 year corporate income tax holiday and a 25 percent tax rate for a further 10 years thereafter; a 10 year withholding tax holiday on dividends and other remittances to non-resident parties; perpetual exemption from VAT and customs import duty on inputs and local purchases of goods and services; perpetual exemption from payment of

stamp duty on legal instruments; and 100 percent investment deduction on new investment in EPZ buildings and machinery, over 20 years. According to the Economic Survey 2016 by the Kenya National Board of Statistics, by 2015 there were 57 zones employing over 50,000 Kenyans and almost 600 expatriate workers. In the same year, export sales from the zones were valued at KES60bn (USD570m). [9]

South Africa meanwhile has placed much faith in its Industrial Development Zones (IDZs) to provide the catalyst needed to drive investment and growth in the manufacturing sector. As well as attracting foreign investors, these incentives are designed to encourage investment in industrial undertakings and to boost levels of employment among the previously economically disenfranchised black population.

One of the most significant incentives is the Automotive Investment Scheme (AIS), which is designed to grow and develop the automotive sector through investment in the building of new cars and components. The AIS provides for a non-taxable cash grant of 25 percent of the value of qualifying investment in productive assets as approved by the Department of Trade and Industry. An additional taxable cash grant of 5 percent or 10 percent may be available to projects that maintain their base year employment figure throughout the incentive period, and achieve at least two of the following economic requirements:

- Tooling;
- Research and development in South Africa;
- Employment creation;
- Strengthening of the automotive value chain; and
- Value addition.

The "Section 12I" tax incentive is designed to support "greenfield investments" (new industrial projects that utilize only new and unused manufacturing assets), as well as "brownfield investments" (expansions or upgrades of existing industrial projects). Under this scheme, brownfield projects are entitled to deduct an additional 75 percent of the cost of manufacturing assets (up to a maximum of ZAR550m (USD41.3m)), and greenfield projects can deduct an additional 100 percent (up to a maximum of ZAR900m). An additional training allowance of ZAR36,000 per employee can also be deducted from taxable income.

There are also Special Economic Zones (SEZs), which are geographically designated areas set aside for specifically targeted economic activities, supported through special arrangements. The

Government's 2014/15 to 2016/17 Industrial Policy Action Plan identifies SEZs as key contributors to economic development, and the SEZ Act of 2014 created a special 15 percent corporate tax, 13 percent lower than the headline corporate tax rate. SEZ companies are also entitled to existing industrial tax incentives such as a building allowance and the "Section 12I" tax allowance.

Are Free Zones Harmful?

According to the OECD, ring-fenced low- and no-tax regimes which have traditionally been found in offshore financial centers are one of the primary engines of global tax base erosion and profit shifting (BEPS). Therefore, the elimination of such "harmful" tax regimes is one of the core goals of its ongoing BEPS project. But are free zones such as those described above also to be considered harmful?

To a large degree, the OECD had already succeeded in effectively closing down "offshore" regimes by bringing pressure to bear on tax haven governments to repeal offshore legislation, something which has happened in many jurisdictions. However, in the description of the contents of its final report on BEPS Action 5 (Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance), the OECD says that preferential tax regimes "continue to be a key pressure area" in the campaign to reduce levels of tax avoidance.

This suggests that the OECD and its member governments have much further to go to ensure harmful tax regimes are eradicated, not only among its own membership but globally. But the sorts of regimes now in the sights of the OECD – as well as the European Union, which has also battled to nullify tax regimes considered to be harmful – are those which encourage the separation of profits from economic substance, centering mainly on intellectual property tax schemes such as patent and royalty boxes. According to the OECD: [10]

> "Current concerns are primarily about preferential regimes which can be used for artificial profit shifting and about a lack of transparency in connection with certain rulings. … In the context of IP regimes such as patent boxes, agreement was reached on the 'nexus approach' which uses expenditures as a proxy for substantial activity and ensures that taxpayers can only benefit from IP regimes where they engaged in research and development and incurred actual expenditures on such activities. The same principle can also be applied to other preferential regimes so that such regimes are found to require substantial activity where the taxpayer undertook the core income generating activities."

The Action 5 report does list 27 non-IP regimes that have been considered potentially harmful, ranging from Argentina's promotional regime for the software industry to Turkey's special shipping regime, but 16 of these were named as "not harmful" at the time of the report's publication. The remainder were deemed appropriately amended, or in the process of being eliminated. Four non-IP regimes remained under review, all of which were granted by Indonesia. [11]

The key word here therefore is "substance." And since most free and special economic zones are in existence to encourage the shifting of actual production, rather than merely the shifting of profits, it would appear they are not presently on the OECD's BEPS radar.

Assessing Free Zone Policies

The above facts and figures would appear to suggest that free zones are a sure-fire winner for countries seeking to attract higher levels of foreign investment: that all governments have to do is to legislate for a separate tax-privileged regime and the dollars will come flying in, and unemployment crises will be a thing of the past. However, not all free zones are guaranteed to succeed.

The aforementioned OECD study suggests that the availability of tax incentives is not top of the list when companies consider where best to locate foreign operations. [12] Citing a survey by the Multilateral Investment Guarantee Agency – part of the World Bank Group – the report suggested that market access and proximity to key markets were the most important factors, followed by the political and economic stability of the jurisdiction concerned. While the regulatory environment was also critical, so was the quality of infrastructure, and the ability to hire technical professionals and management staff.

Therefore, it is probably easy to understand why Dubai's free zones have been generally successful in attracting foreign investors, given its government's heavy investment into infrastructure, its location on key trade routes between Europe and Africa and Asia, the availability of skilled labor, and the area's relative stability. The survey may also help to explain why some free zone policies have not led to similar levels of growth and development in other places. Africa could be cited as one example, with the continent still dogged by instability; in 2014, the South African Government conceded that land uptake in the country's Industrial Development Zones had been "slow" with exports sales from the zones "far below expectations."

Conclusion

While it is unclear exactly how many free zones there are in the world at present – the final tally is probably heavily dependent on one's definition of a free zone, and whether zones granted at sub-national, as well as national, level are counted – it is clear they have proliferated rapidly over the last four to five decades, with this growth mainly concentrated in emerging economies in the Americas, Africa, the Gulf region, and Asia.

By establishing these regulatory and fiscal enclaves, governments hope to attract the sort of investment that will lead to economic modernization and diversification, and ultimately increase wealth. In a sense, they provide the opportunity for governments to fast-track industrial development in countries where previously, there was little industry to speak of. And as noted above, in many places, free zones have met these objectives, with often generous tax breaks and other legal privileges often attracting companies in their hundreds, and in some cases thousands.

However, tax incentives alone probably are insufficient to sustain the life of a free zone. Multinational companies are unlikely to expend considerable resources setting up operations in free zones in far-flung territories if they are unable to then bring their products to market, find adequately trained staff in sufficient numbers, and suffer political or economic instability. So perhaps it is the case that the most successful free zones are present in the more stable emerging economies, in regions with high economic growth potential and where the governments have clear policies with specific goals in mind.

Given that free zones are in the clear with regards to BEPS as long as tax incentives are linked to substantive activity, and that free zones are on a strong growth trajectory, it is probable that we will see more countries creating these special regimes in the years ahead. But greater choice for investors will perhaps bring greater competition for investment, and it may be the case that sooner or later, growth will begin to tail off, and numbers plateau.

Endnotes

1 https://www.oecd.org/mena/competitiveness/41613492.pdf

2 http://observatoire-europe-afrique-2020.org/wp-content/uploads/2016/03/World-trade-exchange....104.pdf, at p. 23.

3 https://www.worldfzo.org/Pages/About-Us.aspx

4 http://www.colonfreetradezone.com/freezone-colon.html

5 http://dutyfreebelize.com/duty-free.php

[6] http://jafza.ae/about-us/#gs.kryCDjk

[7] https://www.difc.ae/files/3514/8759/4406/Press_Release_-_2016_Represents_a_Year_of_Firsts_for_DIFC.pdf

[8] https://www.eu-china.net/upload/pdf/materialien/meng_2003_theory_and_practice_of_free_economic_zones_china.pdf

[9] The Economic Survey 2016 can be downloaded at http://www.knbs.or.ke/index.php?option=com_phocadownload&view=category&id=107&Itemid=1181#

[10] https://www.oecd.org/tax/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report-9789264241190-en.htm

[11] http://www.oecd-ilibrary.org/docserver/download/2315321e.pdf?expires=1493135216&id=id&accname=guest&checksum=CF490303B78935E092A3B8F1B8398844, at p. 64 of the downloaded pdf.

[12] *Supra*, note 1.

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Exemption Or Deduction From Income – Indian Supreme Court Clarifies

by Padmini Khare, B.K. Khare & Co., independent member firm of Morison KSi

Late last year, in a decision likely to have significant implications for businesses with operations in the country, the Indian Supreme Court delivered a far-reaching judgment in the case of *CIT v. Yokogawa India Ltd*, TS-661-SC-2016. It ruled that Section 10A of the Income-tax Act, 1961 (the Act), in essence, envisages a deduction after the computation of income of an assessee under Chapter 4 of the Act; it was never contemplated as a deduction under Chapter VI-A of the Act from the assessee's gross total income to arrive at the total income amount.

The Court also considered the provisions of Section 10A as they stood prior to and after the amendment made by the Finance Act, 2000 with effect from April 1, 2001; and also the amendment made by the Finance Act, 2003 with retrospective effect from April 1, 2001. The main findings of the Supreme Court were as follows:

- The retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 is merely suggestive and not determinative of what is provided by the amended, in contrast to the unamended, section. The true purport and effect of the amended provisions will have to be construed from the language used and not from their retention in Chapter III. The introduction of the word "deduction" by the amendment, in the absence of any material to the contrary, seems to indicate the legislative intent to alter the nature of the section from one providing for exemption to that of deduction.

  The Court quoted in this connection the words of Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commissioner* (1921) 1 KB 64, the *locus classicus* for interpretation of taxing statutes:

  > "… in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a

> tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The Court also appears to have accepted the contention of the Revenue, based on the Supreme Court's own observations in *Tata Power Co. Ltd v. Reliance Energy Ltd*, LAWS(SC)-2009-5-93, that where the language used is clear and unambiguous, there is no scope to turn to chapter or marginal notes:

> "It is, however, well settled that if the wordings of the statutory provision are clear and unambiguous, construction of the statute with the aid of 'chapter heading' and 'marginal note' may not arise. It may be that heading and marginal notes, however, are of a very limited use in interpretation because of their necessarily brief and inaccurate nature. They are, however, not irrelevant. They certainly cannot be taken into consideration if they differ from the material they describe."

- Although "exemption" and "deduction" may appear to be the same – namely to provide immunity from taxation – their practical effect is different. The above implications cannot be more obvious than from some of the pending appeals which have been filed by loss-making eligible units and/or by non-eligible assessees seeking the benefit of adjustment of losses against profits made by eligible units.
- Section 10A(4) provides for *pro rata* exemption, involving deduction of profits arising out of domestic sales. Profits of an eligible unit pertaining to domestic sales would first have to enter into the computation made under "profits and gains from business" under Chapter IV and then denied the benefit of deduction. Section 10A(6), as amended by the Finance Act, 2003, granting the benefit of adjustment of losses and unabsorbed depreciation *etc.* commencing from the year 2001/02, also provides for a deduction which has to be worked out at a future point of time, namely, after the expiry of the tax holiday period. The absence of any reference to the Section 10A deduction in Chapter VI-A of the Act is best understood by the fact that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for similar deductions would become wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of Chapter VI-A of the Act. The retention of the said provisions of the Act – *i.e.*, Sections 80HHC and 80HHE – despite the amendment of Section 10A is indicative of the legislature's intention to grant some additional benefits to eligible Section 10A units, not contemplated by the other two sections. Such a

benefit can only be explained in the context of the fact that the stages for working out the deductions under Section 10A and Sections 80HHC and 80HHE are substantially different.

- Section 10A provides that the deduction contemplated therein is *qua* the eligible undertaking of an assessee standing on its own and without taking into account other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction extends to the individual undertaking but resultantly flows to the assessee.
- The first proviso to subsections 10A(1), (1A) and (4) provide that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking. Deduction under Section 10A would therefore fall prior to the commencement of the exercise to be undertaken under Chapter VI of the Act. The somewhat discordant use of the expression "total income of the assessee" in Section 10A in the overall scenario unfolded in this section can only be reconciled by understanding the expression "total income of the assessee" in Section 10A as "total income of the undertaking".
- Thus, although Section 10A, as amended, is a provision for deduction, the appropriate stage for the grant of the deduction would fall after the computation of the assessee's business income under Chapter IV of the Act and not at the stage of computation of his total income under Chapter VI-A. Deduction under Section 10A is not a deduction from gross total income but a deduction that arises after the computation of the business income of the assessee.

Critique

This decision of the Supreme Court was memorable both for its brevity as well its clarity. The issues involved are so complex, however, that the judgment can be critiqued from several different viewpoints. To appreciate the same, it is necessary to discuss the same with reference to the facts of the leading case in this set of appeals.

Yokogawa India Ltd, the assessee in this particular case, was in involved in the business of trading and manufacture of process control instruments. For the assessment year 2002/03, it claimed exemption under Section 10A of INR39,599,100 in respect of its software technology park unit. The aforesaid income was computed without setting of brought forward losses or depreciation. The Assessing Officer (AO) however was of the opinion that Section 10A provides for a deduction and not an exemption, and has to be allowed from total income, which he construed to mean gross total income. He therefore offset the assessee's brought forward losses and depreciation and held that it was not entitled to any deduction under Section 10A because no business income was left after offset, from which this deduction could be allowed.

Neither the Supreme Court nor the previous Karnataka High Court upheld the AO's action, although the reasons were different – the former agreed with the view taken by the AO that Section 10A contemplated a deduction and not an exemption, but did not agree that brought forward losses could be offset against the income computed under Section 10A. The Karnataka High Court, on the other hand, held that the provision contemplated an exemption, and it was for this reason that the offsetting of brought forward losses was not possible. Conflict between the two lines of reasoning is what the Supreme Court ultimately resolved, although it has to be admitted that even post-resolution much can be said in support of both points of view.

The Karnataka High Court ruled that the Finance Act, 2000, with effect from April 1, 2001, changed the language of Section 10A substantially to provide for a deduction of profits and gains of the eligible undertaking "from the total income of the assessee." Prior to its amendment, the section stipulated that the profits and gains of the eligible undertaking "shall not be included in the total income of the assessee." The assessee was accordingly held to be entitled to deduction under Section 10A for three of its profit-making units; and the losses of the fourth unit could be utilized for offsetting the profits emerging from the non-Section 10A units. The AO's action to re-open the assessment in question was thus struck down.

The principle that, post the amendment introduced by the Finance Act, 2000, Section 10A provided for a deduction was reiterated by the court in *CIT v. Veatech Pvt Ltd*, 20 Taxman.com 727(Bom). But in this case the court did not uphold the AO's action in offsetting the past unabsorbed depreciation and losses of the non-Section 10A undertakings against the income of the Section 10A undertaking. This, the court held, was because the deduction provided by Section 10A has to be given under Chapter IV itself after business income has been determined, at a stage anterior to the aggregation of incomes, and offsetting of losses. In the absence of any statutory provision, the court rejected the Revenue's plea that the provisons of Chapter VI-A should be telescoped into Section 10A. It is precisely this principle which the Supreme Court has now accepted. It is thus not now possible to offset unabsorbed depreciation and carried forward losses against Section 10A income and reduce gross total income.

Implications

The Supreme Court's judgment effected a very practical compromise between the various High Court decisions on this vexed and complex subject:

- In coming to the conclusion that with effect from April 1, 2001, Section 10A provides for a deduction and not an exemption, the Court affirmed the principles laid down by the Bombay High Court in *Hindustan Unilever v. DCIT*, 325 ITR 102 (Bom) and *CIT v. Veatech Pvt Ltd*.
- It ruled that the use of the term "total income" refers to the total income of the undertaking and not the assessee and thus got over the difficulty of how an assessee could obtain a deduction from his total income when the latter is the final figure on which tax is calculated. In arriving at this conclusion, it affirmed the principles laid out by the Karnataka and Delhi High Courts in the case of *Yokogawa* and *Tei Technologies vs. CIT*.
- The Court held that the assessee's unabsorbed depreciation and losses cannot be set off against the profits of a Section 10 undertaking. This is because the stage for grant of deduction u/s 10A, after computation of business income under Chapter 4, is anterior to the stage of set off and carry forward and set off loss. Conversely, the losses of Section 10A undertakings cannot be set off against profits of non-Section 10A undertakings. These principles emerge from High Court decisions in *Yokogawa*, *Tei Technologies v. CIT*, 361 ITR 36, and *CIT v. Veatech Pvt Ltd.* Their affirmation by the Supreme Court makes it the law of the land.

Conclusion

The whole controversy is a sad commentary on the manner in which tax laws are framed in India. If tax relief is to be granted to a class of assessees or incomes, the lawmakers must be clear about the form it should take: if it is to take the form of an exemption, it should figure in Chapter III of the Act; if business deduction, it should find a place in Chapter IV; and if a deduction from the gross total income, it should form part of Chapter VI. A hybrid provision manifesting features of the above three concepts but carelessly placed in the chapter on exemptions is something that should be assiduously avoided, because it leads to avoidable controversies. The time, money, and energy spent in resolving the same would be better utilized in more productive pursuits.

Topical News Briefing: One China, Many Tax Reforms

by the Global Tax Weekly Editorial Team

As observed in this week's other Topical News Briefing, democracies – characterized by frequent changes of government and chop-and-change in key areas of policy – are not always conducive to tax certainty. But then again, perhaps centrally planned economies like China perform no better in this regard.

The Government of the People's Republic is making a concerted effort to improve the tax framework for private enterprises in the country. And given that China is rated 131st in the 2017 Paying Taxes Index, there certainly is considerable scope for the Government to make changes.

As reported in this week's issue of *Global Tax Weekly*, China's State Council has approved a raft of tax reforms that will reduce the tax burden on business by the not insubstantial sum of CNY380bn (USD55.5bn). This includes a simpler structure for the key value-added tax reform, the extension of the small business tax rate, an improved research and development tax incentive, and tax breaks for venture capital firms.

China is also making progress towards integrating more deeply with the global economy, using free trade zones in Shanghai and other major cities as laboratories to test more liberalized economic policies.

Indeed, China is quite unique in using pilot schemes in limited areas of the country to test out new tax measures. But while this can be useful for taxpayers, allowing the Government to foreshadow major reforms in taxation, this method could turn into a hindrance if uncertainty is created over the scope and timing of reforms.

A prime example is the proposed national property tax, which is being trialed in Shanghai and Chongqing. The Government initially intended that the tax would eventually be rolled out nationwide, but it has delayed its expansion on numerous occasions.

Indeed, studies would appear to bear out the perception that the Government's reform measures, while welcome, aren't ambitious enough, and lack a certain amount of coordination. In one

recent survey of small firms in China, published in November 2016 by the Beijing-based Unirule Institute of Economics, 87 percent of respondents said the tax burden is too high, and that the Government's ongoing tax reform policy is failing in its objectives.

Impressive results from the Shanghai FTZ suggest that China as a whole could benefit from an acceleration of economic modernization. According to city authorities, by the end of 2016, just over three years after the zone was launched, the FTZ now houses more than 37,000 enterprises, and accounts for about one quarter of Shanghai's gross domestic product. But while the central Government recently announced that the FTZ scheme would soon be extended to a total of 11 locations, it feels like a nationwide extension of these policies is not close at hand.

It may be the case that these shortcomings in tax policy are indicative of the Government's failure to listen to taxpayers on the ground, to those at the sharp end of the reforms. But then, unlike democratic systems, in a one-party state perhaps there is less of an incentive for political leaders to do so. And this could mean that for the foreseeable future, tax and economic reforms in China will continue to be advanced one small step at a time.

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The Impact Of A European Usufruct On The Foreign Affiliate Status Of A Non-Resident Corporation Held By A Quebec Resident Taxpayer

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Introduction

This article examines the impact of a usufruct created under European law on the qualification of a non-resident corporation as a *foreign affiliate* (herein referred to as "**FA**") or *controlled foreign affiliate* (herein referred to as "**CFA**") of a taxpayer resident in Quebec.

While the ownership of shares of an FA by a Canadian resident results in compliance obligations requiring the disclosure of legal and financial information, the ownership of shares of a CFA results, in addition to complex and extensive compliance obligations in terms of the financial information to be disclosed, in the taxation of passive income (dividends, interests, royalties, *etc.*) earned by the CFA in the hands of the taxpayer, even if such income has not been distributed to the Canadian resident. However, an interest in a corporation which does not qualify as an FA (and which therefore would not qualify as a CFA) results in only minimal compliance obligations.

Facts

For the purposes of this article, let us consider the following example:

> A Canadian resident in the Province of Quebec acquires 99.9 percent of a corporation's shares by way of donation. Such shares are subject to a usufruct created under European law, by which the donor, a European resident, is the usufructuary and the Canadian resident is the bare owner. In addition, prior to the donation, let us assume the Canadian

resident owned 0.1 percent of the corporation's shares. In this particular situation, how would the shares held by the Canadian taxpayer be treated for income tax purposes?

Discussion

Deemed Trust

Under the *Income Tax Act* (herein referred to as the "**Act**"), where a share of the capital stock of a corporation is subject to a usufruct, the usufruct is deemed to be a trust and the share is deemed to have been transferred to the trust by the person that granted the usufruct.[1] Such share is also deemed to be, throughout the period in which it is subject to the usufruct, solely held by the trust, and not otherwise.[2] Additionally, any person who has a right (whether immediate or future and whether absolute or contingent) to receive all or part of the income or capital in respect of such share, is deemed to be beneficially interested in the trust.[3] Ultimately, where a person is a beneficiary of a trust that owns a share, that share is deemed to be beneficially owned by that person.[4]

However, the Act provides that the abovementioned rules only apply to an institution or arrangement that is governed by the laws of the Province of Quebec.[5] Moreover, the Canada Revenue Agency (herein referred to as the "**CRA**") confirms that "when a usufruct is not governed by the laws of the Province of Quebec, subsection 248(3) of the Act does not apply" [translation].[6]

As a result, it appears that when a usufruct is created under foreign law, the rules provided in subsection 248(3) are not applicable. Thus, the classification of the corporation as the taxpayer's FA or CFA becomes relevant.

Relevance And Impact Of The Qualification

When a taxpayer is a Canadian resident and owns either shares of an FA or a CFA, Form T1134 must be completed.[7] Form T1134 is essentially composed of two sections – one for the FAs and the other for the CFAs of the taxpayer. Where a Canadian taxpayer owns shares of a non-resident corporation that may not be an FA or a CFA, a *Foreign Income Verification Statement* may have to be completed using Form T1135, depending on the aggregate cost amounts of the "specified foreign property." [8]

The classification as an FA or a CFA has a significant impact on a taxpayer's reporting obligations, as the information to be disclosed is far more restricted for an FA than it is for a CFA. For instance, where a Canadian taxpayer is a shareholder of a CFA, the CFA's passive income (dividends,

interests, royalties, *etc.*) must be disclosed, as well as its "foreign accrual property income" (herein referred to as "**FAPI**"), even if such income has not been distributed to the taxpayer as a dividend or otherwise. Further, a Canadian taxpayer is taxed on the FAPI earned by his CFAs.

Foreign Affiliate Or Controlled Foreign Affiliate

A non-resident corporation is a taxpayer's FA if: (i) the taxpayer's equity percentage (herein referred to as "**EP**") is not less than 1 percent; and (ii) the total of the EP of the taxpayer and of each person related to the taxpayer is not less than 10 percent.[9]

A taxpayer's EP in a corporation is defined under subsection 95(4) of the Act as the total of: (i) the person's "direct equity percentage" (herein referred to as "**DEP**") in the particular corporation; and (ii) each of the percentages obtained by multiplying the person's EP in any corporation by that corporation's DEP in the particular corporation." [10]

The DEP is defined under subsection 95(4) of the Act as the percentage of issued shares *owned by* a person. Where a corporation has issued different classes of shares, a separate calculation is necessary for each class. The highest percentage of all classes of issued shares constitutes a person's DEP in a corporation.[11] For instance, if a Canadian taxpayer owns 10 percent of all of the issued and outstanding shares in the capital of a non-resident corporation, and that 10 percent is comprised of (i) 20 percent of the issued class A shares, (ii) 5 percent of the issued class B shares, and (iii) 5 percent of the issued class C shares, the DEP in that particular corporation would be 20 percent (*i.e.*, the highest percent) and not 10 percent.

A non-resident corporation is a taxpayer's CFA if: (i) the taxpayer controls the corporation; or (ii) the taxpayer would control the corporation if he *owned*, in addition to the shares he currently *owns*, all of the shares of the capital stock of the foreign affiliate that are owned by:

(a) Persons who do not deal at arm's length with the taxpayer;
(b) Persons described as "relevant Canadian shareholders," being any group of persons, not exceeding four, excluding the taxpayer or persons who do not deal at arm's length with the taxpayer, who are Canadian residents; and
(c) Persons who do not deal at arm's length with any "relevant Canadian shareholder" (…).[12]

The Expression "Owned By"

Bearing in mind the distinction between beneficial and legal ownership, the expression "owned by" used in the definition of DEP under subsection 95(4) of the Act is of paramount importance.

An analysis of the meaning of "owned by" confirms that a non-resident corporation's shares in respect of which a right of usufruct has been attributed to the usufructuary who is a European resident, are not considered to be "owned by" the bare owner, the Canadian resident.

In the context of statutory interpretation where a specific definition is not provided in the Act, the ordinary sense of the words used must be considered. The *Collins* dictionary defines the term "own" as follows:

(i) Used to emphasize that something belongs to a particular person;
(ii) The one or ones belonging to a particular person;
(iii) To have (something) as one's possession.

Consequently, the expression "owned by" connotes ownership.

It is noteworthy that the English version of the Act uses the expression "owned by" as opposed to "belonging to," which would have been the exact translation of the French version, which reads "appartenant à". Canadian courts have addressed the distinction to be made between those expressions and noted that the words "belonging to" have a wider, more flexible sense than the words "owned by." [13]

In view of the above, one might conclude that the term "owned by" as used in the definitions of CFA and DEP needs to be understood in its ordinary meaning, which is the full or absolute ownership of shares. In the absence of a clear indication to the contrary, ownership is to be determined based on the applicable private law,[14] which is, in this particular case, the *Civil Code of Québec* (herein referred to as "**CCQ**").[15]

Under Quebec civil law, ownership of a property constitutes the right to: (i) use,[16] (ii) enjoy,[17] and (iii) dispose[18] of a property fully and freely, subject to the conditions set by the law.[19] Under a usufruct, the bare owner only possesses the bare ownership of the shares, which constitutes nothing more than a limited real right in the shares. On the other hand, the usufructuary has the enjoyment and control of the shares. Upon termination of the usufruct, the bare owner would generally acquire the full ownership of the shares. Thus, section 947 of the CCQ would be groundless if the bare owner, under civil law, would be considered to be the *owner* of the property that is subject to the usufruct.

Accordingly, since the bare ownership and the usufructuary rights constitute real rights, which are distinct from the principle of ownership stated in section 947 of the CCQ, and that "absent a

specific provision of the Act to the contrary or a finding that they are a sham, the taxpayer's relationships must be respected," [20] the shares should not be considered to be *owned by* their bare owner.

Disposition

The above conclusion is supported by the interpretation of the rules in the Act relating to the "disposition" of property. Indeed, under subsection 248(1) of the Act, there is no "disposition" of property where a transaction does not result in a change in *beneficial ownership* of the property.[21] Considering the similarities between the principles of usufruct and *beneficial ownership*, an inference can be drawn from the applicable reasoning under common law. On that point, the Federal Court of Appeal stated that "for purposes of application of the Act in Quebec, Parliament has given the concept of beneficial ownership a broad meaning by likening it, depending on the context and on a non-exclusive basis, to various types of ownership known to civil law, ranging from full ownership to usufruct." [22]

In addition, the Act would have referred to an *interest* (or the concept of *real right* under civil law) under paragraph (*a*) of the definition of DEP provided for in subsection 95(4) and under paragraph (*b*) of the definition of CFA provided for under subsection 95(1) if the intent had been to encompass both the usufructary right (or *beneficial ownership*) and bare ownership (or *legal ownership*).

In the example we are considering, the transfer of the shares' bare ownership did not impact their *beneficial ownership*. As a matter of fact, the *beneficial ownership* of 99 percent of the corporation's shares was kept by the usufructuary, while the legal title (*legal ownership*) of those shares was transferred to the bare owner. Consequently, the transaction may not have resulted in a disposition of the shares such that the bare owner never acquired the ownership of the shares within the meaning of section 947 of the CCQ.

Consequently, the shares acquired should not be considered to be *owned* by the bare owner for the purposes of subsections 95(1) and 95(4) of the Act. Therefore, only 0.1 percent of the corporation's issued and outstanding shares are actually *owned* by the Canadian resident and the first condition of the definition of FA provided for in subsection 95(1) of the Act, namely that the taxpayer's EP in the non-resident corporation is not less than 1 percent, is not met. Therefore, in our example, the non-resident corporation should not be either an FA or a CFA of the taxpayer.

This conclusion is not only reasonable but is also supported by the scheme of Subdivision i of Division B of Part I of the Act, taken as a whole, which establishes the rules applicable to the taxation of the income of a taxpayer's FA.

Under subsection 91(1) of the Act, a Canadian taxpayer must include his CFA's FAPI (passive revenue, *i.e.*, dividends, interests, royalties, *etc.*) in his income based on his "participating percentage" in respect of the corporation, even if such income has not been distributed to the taxpayer.

The concept of "participating percentage" is defined under subsection 95(1) of the Act, which refers to the definition of EP and, indirectly, to the definition of DEP. Hence, to consider that the expression *owned by* includes shares held in bare ownership could result in the taxation of amounts that a Canadian taxpayer could never expect to receive, directly or indirectly, from the CFA. It is also worth recalling that the bare owner of the share has no voting rights, which belong to the usufructuary. If the non-resident corporation in our example were to be considered to be the taxpayer's CFA, this would result in him being taxed on 99.9 percent of the corporation's passive revenues, while in fact he could only expect to receive 0.1 percent of such revenues. The legislator could not have intended such an absurd situation.

A number of tax lawyers from Dentons Canada LLP write commentary for Wolters Kluwer's Canadian Tax Reporter *and sit on its Editorial Board as well as on the Editorial Board for Wolters Kluwer's* Income Tax Act with Regulations, Annotated. *Dentons Canada lawyers also write the commentary for Wolters Kluwer's* Federal Tax Practice *reporter and the summaries for Wolters Kluwer's* Window on Canadian Tax. *Dentons Canada lawyers wrote the commentary for* Canada – US Tax Treaty: A Practical Interpretation *and have authored other books published by Wolters Kluwer:* Canadian Transfer Pricing *(second Edition, 2011);* Federal Tax Practice*;* Charities, Non-Profits, and Philanthropy under the Income Tax Act*; and* Corporation Capital Tax in Canada*. Tony Schweitzer, a Tax Partner with the Toronto office of Dentons Canada LLP and a member of the Editorial Board of Wolters Kluwer's* Canadian Tax Reporter*, is the editor of the firm's regular monthly feature articles appearing in* Tax Topics*.*

Endnotes

1 Subparagraphs 248(3)(*a*)(i) and (ii) of the Act.

2 Subparagraph 248(3)(*a*)(iii) of the Act.

3 Paragraph 248(3)(*d*) of the Act.

4 Paragraph 248(3)(*e*) of the Act.

5 Subsection 248(1) of the Act.

6 Association de planification fiscale et financière, ***Table ronde sur la fiscalité des stratégies financières et des instruments financiers***, 2012-0451281C6 F: Usufruit étranger; 2012-0466081I7 – Canada Revenue Agency, ***Usufruct created under French legislation***; 2000-0048405 – Agence du Revenu du Canada, ***Usufruit sur immeuble en France***; 2001-019445 – Agence du Revenu du Canada, ***Usufruit de droit privé français***.

[7] Section 233.4 of the Act.

[8] Section 233.3 of the Act.

[9] Subsection 95(1) of the Act.

[10] Subsection 95(4) of the Act.

[11] *Id*.

[12] Subsection 95(1) of the Act.

[13] *Kitchener (city) v. Waterloo Regional Assessment Commissioner*, [1982] 94 DLR (3d) 760.

[14] *RC Construction Bérou Inc.*, 99 DTC 5868 (FCA).

[15] CQLR c CCQ-1991.

[16] The *usus*.

[17] The *fructus*, which constitutes the right to enjoy its fruits.

[18] The *abusus*, which constitutes the right to alienate the property. It may be assimilated to the common law principle of *legal ownership*. The *beneficial ownership* principle, on the other hand, may be assimilated to the civil law principle of usufruct.

[19] CCQ, s. 947.

[20] *Shell Canada Ltd. v. Canada*, [1999] 3 SCR 622, at paragraph 39.

[21] *RC Construction Bérou Inc.*, *supra*, note 14; *Minister of National Revenue v. Wardean Drilling Ltd.*, [1969] 2 Ex. C.R. 166 (Can. Ex. Ct.); *Envision Credit Union c Canada*, 2013 DTC 5145, at para. 10.

[22] *RC Construction Bérou Inc.*, *supra*, note 14, at para. 67. *See also Envision Credit Union c Canada*, 2013 DTC 5144, at para. 10; Mark D. Bender, "Symposium: Propriété effective dans la législation fiscale canadienne: Réforme nécessaire et incidences sur l'harmonization de la législation fédérale avec le droit civil du Québec" (2003) 51 Can Tax J 366.

The Tax Policies Of The French Presidential Candidates

As widely predicted, independent centrist Emmanuel Macron and (temporarily) former nationalist party leader Marine Le Pen gained the most votes in the preliminary round of the French presidential election on April 23. Their parties go forward to a run-off election on May 7.

Both candidates have pledged changes to French taxes if elected President.

Macron, a former economy minister in President Hollande's government and thought to be the favorite to win the run-off vote, is proposing to cut taxes by EUR20bn (USD21.7bn), with the reductions divided equally between businesses and individuals.

The program includes a reduction in corporate tax to 25 percent from its existing level of 33.33 percent over five years. This would go beyond the cut to 28 percent for all firms by 2020 approved by the current government.

In addition, Macron wants to remove investment income from the scope of the wealth tax so that it effectively becomes a tax on high-value property, and raise environmental taxes.

Meanwhile, Le Pen's flagship tax measure is a tax on companies employing foreign workers in France, under which employers would be taxed at 10 percent of the wages paid to each foreign worker they employ. Citizens originating from other EU member states would also fall within the definition of foreign workers under this plan.

Another of Le Pen's eye-catching proposals falls under her so-called "intelligent protectionism" policy, which would see a 10 percent tariff imposed on imports.

The right-wing candidate, who has temporarily resigned her position as leader of the National Front Party in the wake of the first round of voting to concentrate on the run-off, also wants to reduce the lower three tax brackets by 10 percent each.

China's State Council Approves Business Tax Relief

China's State Council on April 19 approved tax measures aimed at spurring "economic dynamism and competitiveness."

The measures will cut the tax burden by CNY380bn (USD55.2bn) this year, the state news agency said.

According to its report, the State Council approved a simpler structure for VAT, with the four VAT brackets being reduced to only three:

17 percent, 11 percent, and 6 percent. There will be tax cuts from July for some products, such as for natural gas and agricultural products.

The small business tax rate will be extended to those with profits of below CNY500,000 from CNY300,000 (USD76,636 from USD43,581) by December 2019. Also, the proportion of pre-tax deductions for research and development costs will be increased from 50 percent to 75 percent, from 2017 to 2019.

Tax incentives were also approved for venture capital firms. From January 1, 2017, the coverage will be expanded to incubator and new high-tech companies, securing venture capital support in eight locations as well as Suzhou Industrial Park. There will also be tax relief for commercial health insurance, to be applied nationwide from July 1, with an upper limit of CNY2,400 (USD349) in tax deductions per person.

New Zealand Mulls Hiking 30 Percent Income Tax Threshold

New Zealand's Finance Minister, Steven Joyce, is seeking to increase the country's threshold for 30 percent income tax to above NZD48,000 (USD33,761).

Hinting the measure may not be introduced in May's Budget, Joyce said the increase would certainly be introduced if his National party is re-elected this September.

In an interview with broadcaster TV3's program *The Nation*, he said: "The median wage has been growing in New Zealand … the median wage is now NZD48,000, [and] the average wage is now NZD55,000, so somebody who hits the median wage is now on 30 cents in the dollar, at that point – if they've been paying a student loan off that's another 12, so that's 42 cents in a dollar [in tax], and we rightly worry about whether young people can save for a house."

German Institute Calls For Lower Tax Burden

A new study into the distribution of the tax burden in Germany has found that middle-income taxpayers pay almost half their income in taxes, when health and social security contributions are factored into their taxes.

The study by the Cologne Institute for Economic Research (IW) shows that in general, those with the broadest shoulders bear the highest burden, with the top 10 percent of households in terms of income contributing almost half of total income tax revenue.

According to the IW, approximately 4.2m taxpayers earn enough to pay the top rate of income tax of 42 percent, while 2.7m do not earn enough income to pay income tax. For those at the lower end of the income spectrum, value-added tax is the "greatest burden," the institute said.

However, while the study found that Germany's income tax system is progressive, with those on high incomes paying a greater proportion of tax than those on low incomes, it argued that there is still room for tax reforms, in particular to lighten the tax load on middle-income earners.

"Irrespective of the type of household, middle-income households must pay almost half of their income in the form of income tax, VAT, and social security contributions," the IW said.

"Lowering the income tax rate especially [for lower earners] would not only have the benefit of relieving the burden on citizens, but it would also improve the incentives to take up a job subject to social insurance or to increase working time," the institute concluded.

Bangladesh: Foreign Investors Seek Corporate Tax Cut, VAT Guidance

A body representing foreign investors in Bangladesh has called for a reduction in the corporate tax rate, among other measures, in its pre-budget submission to the Government.

At a meeting with the National Board of Revenue on April 17, representatives from the Foreign Investors Chamber of Commerce and Industry (FICCI) argued that the current rates of up to 45 percent are damaging the country's competitiveness, and argued for them to be reduced by 10 percent.

The Chamber also urged the tax authority to grant equal access to its services to all sectors.

The FICCI finally asked for more guidance from the Federal Board of Revenue regarding the implementation of the new value-added tax (VAT) regime, which is scheduled to be introduced from July 1.

Bangladesh intends to introduce a uniform 15 percent rate of VAT based on a new law drawn up in 2012 that has yet to take effect. Exemptions will be in place for basic goods and services for lower income taxpayers. As well as boosting revenues for Bangladesh, the new VAT regime is intended to make tax compliance significantly simpler, especially for smaller firms.

Australia Welcomes Conclusion Of PACER Plus Talks

Australian Trade Minister Steven Ciobo has welcomed the conclusion of negotiations toward the Pacific Agreement on Closer Economic Relations (PACER) Plus, a trade deal he said will drive economic growth and raise living standards in the region.

The negotiations between 14 participating countries were concluded in Brisbane, Australia, on April 20. Talks began in August 2009.

Ciobo said PACER Plus "is unique in that it is both a trade and development agreement."

"PACER Plus is a landmark agreement covering goods, services, and investment. It will remove barriers to trade, including tariffs, including the flow of goods and investment in the region, generating growth, jobs, and raising living standards," he said.

According to New Zealand Trade Minister Todd McClay, the agreement will "create a common set of trading rules covering goods, services, and investment in support of economic growth." He added that "these rules will help reduce tariff and red tape for exporters and investors, which will increase the attractiveness of the region for trade and investment."

The New Zealand Trade Ministry said the timeframes for tariff elimination are longer than in previous free trade agreements, while a small number of tariffs are excluded.

The participants in PACER Plus are: Australia, Cook Islands, Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. However, Fiji was not included in these negotiations.

The formal signing of the agreement is scheduled to take place in Tonga in June.

Canada Responds To 'Unfair' US Lumber Tariff

The Canadian Government has said it "disagrees strongly" with the US Department of Commerce's (DoC's) decision to impose "unfair and punitive" duties on imports of Canadian softwood lumber.

The DoC has determined that Canadian softwood lumber imports are unfairly subsidized. In a preliminary determination, the DoC said that countervailing duty rates will be imposed on the following major Canadian exporters: Cantor (20.26 percent), JD Irving (3.02 percent), Resolute (12.82 percent), Tolko (19.5 percent), and West Fraser (24.12 percent). A

rate of 19.88 percent will apply for all other Canadian producers.

The preliminary determination was made in response to a petition filed in November 2016 by the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION). COALITION Legal Chair Cameron Krauss said the ruling "confirms that Canadian lumber mills are subsidized by their Government and benefit from timber pricing policies and other subsidies which harm US manufacturers and workers."

DoC Secretary Wilbur Ross said it has "been a bad week for US–Canada trade relations," and also accused Canada of seeking to "effectively cut off the last of dairy products being exported from the United States." He also took aim at the North American Free Trade Agreement, stressing that "this is not our idea of a properly functioning Free Trade Agreement."

The duties will total around USD1bn a year, Ross said.

The Canadian Government has criticized the move, and described the claims of unfair subsidies as "baseless and unfounded."

According to a joint statement by Canada's Natural Resources Minister, Jim Carr, and Foreign Affairs Minister Chrystia Freeland, "the Government of Canada will vigorously defend the interests of the Canadian softwood lumber industry, including through litigation. In ruling after ruling since 1983, international tribunals have disproved the unfounded subsidy and injury allegations from the US industry. We have prevailed in the past and we will do so again."

Carr will re-convene the Federal-Provincial Task Force on Softwood Lumber this week to examine the additional measures available to the Government.

In the longer term, the ministers said the Government will continue to press the US to "rescind this unfair and unwarranted trade action." They added that Canada has put forward a number of proposals, which "ensure security of supply at fair prices to US consumers and US companies that rely on Canadian imports."

The ministers said they remain confident that a negotiated settlement can be reached.

The US Government's decision was also criticized by the British Columbia Lumber Trade Council. The Council's President, Susan Yurkovich, said the duties were unwarranted, and emphasized the industry's willingness to work with Canada's federal and provincial governments to support efforts to reach a new agreement.

British Columbia is the largest exporter of softwood lumber to the US, and the forest industry supports approximately 145,000 direct and indirect jobs in the province.

UK Government Calls Snap Election

UK Prime Minister Theresa May has announced a snap election to take place on June 8, saying the move will strengthen the Government's position ahead of Brexit talks.

Speaking to BBC Radio 4's Today program, she said: "I want this country to be able to play the strongest hand possible in those negotiations to get the best possible deal because that's in our long-term interests."

"That's what this is about, it's about asking the people to trust me, to trust us in government, to give us that mandate to go, and get that really good deal for the UK."

At the end of March, Theresa May invoked Article 50, triggering the formal two-year process for leaving the EU. Under the proposed hard Brexit, the UK will leave the EU Single Market and negotiate new trade deals with the EU and other states.

UK Government Declines To Rule Out Future Tax Rate Hikes

UK Prime Minister Theresa May has declined to confirm that her Government would maintain tax rates should it win the upcoming election.

In 2015, the ruling Conservative Party, which is ahead in polls, promised before that year's election that income tax and value-added tax rates and National Insurance (social security) contributions (NICs) would not be increased.

Asked whether the Party's manifesto would be extended to a potential next term for the Conservative Party, May said: "At this election, people are going to have a very clear choice. They will have a choice between a Conservative Party, which always has been, is, and will continue to be a party that believes in lower taxes … [or] a Labour party whose natural instinct is always to raise taxes."

May recently called a snap election, to be held in June, saying that the move would put the UK in a stronger position in the two-year Brexit negotiations.

Earlier this year, the Government abandoned plans announced in the Budget to increase NICs for the self-employed, following criticism from senior Tories that the measure reneged on the Party's 2015 manifesto pledge.

UK Consults On VAT Changes For Telecoms Services

The UK Government has launched a consultation on proposals to levy value-added tax

(VAT) on all telecommunications services used outside the EU by UK consumers.

At Budget 2017, the Government announced it would remove the use and enjoyment provisions for B2C telecommunication services.

The change will bring the UK rules in line with the international approach agreed in talks led by the OECD.

HM Revenue & Customs said the technical consultation will be of interest to businesses providing telecommunications services to consumers that visit countries outside the EU.

The consultation period ends on May 19, 2017.

Chancellor Urged To Not Rush Through Tax Reforms

UK Chancellor of the Exchequer Philip Hammond should avoid rushing through a large number of tax changes without any real parliamentary scrutiny, the Chartered Institute of Taxation (CIOT) has said.

CIOT said that following the announcement of a snap election on June 8, the timetable for Finance Bill 2017 will inevitably be truncated. Rather than the expected two days of House of Commons debate and 14 to 20 standing committee sessions, plus two days of report stage and third reading debate, precedent suggests that the committee and report stages will be compressed into a single day, it said.

The CIOT is urging the Government to drop the majority of the current Bill and keep only those measures essential to maintain the Government's revenue raising capacity, such as renewing the provision of income tax, and other measures which are required urgently, such as anti-avoidance provisions. It said that measures dropped could be reintroduced in a post-election Finance Bill where they can be scrutinized at greater length.

The CIOT said a truncated timetable would not allow for adequate consideration of the matters it has raised, including areas such as loss relief and interest deductibility.

"A post-election Finance Bill would also enable more of the framework for Making Tax Digital to be put in statute, rather than brought in through regulations," it said in a letter to the Government.

Trump Orders Review Of Recent Tax Regulations

The US Treasury Department is to launch a review into tax regulations introduced since January 1, 2016.

In a new Executive Order, President Donald Trump has asked the Secretary of the Treasury to compile a report by June at the latest into any regulations that "impose undue financial burden on US taxpayers," add "undue complexity to the federal tax laws," or exceed the statutory authority of the Internal Revenue Service.

The Executive Order then asks the Treasury to follow up on these conclusions by proposing, by September at the latest, measures to mitigate the compliance burden on taxpayers; defer their implementation; or, where appropriate, propose their repeal.

US Begins Talks On Amending South Korea Free Trade Deal

The US is to begin discussing changes to its free trade deal with South Korea to ensure the deal is "mutually beneficial" for both countries.

KORUS, which was signed five years ago, provides duty-free access for 95 percent of consumer and industrial goods. Virtually all remaining tariffs are to be eliminated within ten years of the agreement's entry into force. In addition, some 64 percent of South Korea's agriculture imports from the US became immediately duty-free, with most of the remaining tariffs and quotas to be phased out over the first ten years.

In Seoul, US Vice President Mike Pence said that talks between the two nations will look to "level the playing field," to address the growing US trade deficit under the deal. Korea's trade surplus has more than doubled since the deal's entry into force, he said. "Our businesses continue to face too many barriers to entry, which tilts the playing field against American workers and American growth," he told local business leaders.

He said the US would look for changes to make it a mutually beneficial trade deal "as we reform KORUS in the days ahead."

US To Investigate Ten Countries' Steel Exports

The US Department of Commerce has initiated a wide-ranging antidumping duty (AD) and countervailing duty (CVD) investigation into imports of carbon and alloy steel wire rod from ten countries.

The investigation covers Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine,

the United Arab Emirates (UAE), and the UK. All ten countries are subject to AD investigations; only Italy and Turkey are additionally subject to CVD investigations over unfair subsidies.

The alleged dumping margins are as follows: for Belarus, 161.75 percent to 280.02 percent; Italy, 18.89 percent; Korea, 33.96 percent to 43.25 percent; Russia, 214.06 percent to 756.93 percent; South Africa, 128.66 percent to 142.26 percent; Spain, 32.70 percent; Turkey, 37.67 percent; Ukraine, 21.23 percent to 44.03 percent; UAE, 84.10 percent; and the UK, 147.63 percent.

Commerce Secretary Wilbur Ross said: "The Department of Commerce will act swiftly to halt any possible unfair trade practices against US companies while also assuring a full and fair assessment of the facts."

The US International Trade Commission (USITC) is scheduled to make its preliminary injury assessment by May 12. If there is a reasonable indication that these imports are causing injury to the US industry, Commerce will announce its preliminary CVD determinations in June 2017 and AD determinations in September 2017.

Further to this, USITC has newly determined that ferro vanadium, used to strengthen steel, from South Korea is being sold at less than fair value into the US. Commerce will now issue an AD order on affected imports in due course.

Schäuble Unfazed By US Tax Cut Plans

German Finance Minister Wolfgang Schäuble has said he is unconcerned about the prospect of a substantial fall in the US corporate tax rate.

Speaking on the sidelines of the International Monetary Fund and World Bank meetings in Washington DC, Schäuble appeared to reject the suggestion that a tax cut in the US would dent German competitiveness, noting that there is "a lot of leeway" for America to reduce corporate tax.

"If the US cuts its corporate tax rates [to] European or international level, it does not [bother me] at all," he said, noting that, at 35 percent (statutory), US corporate tax "is one of the highest in the world."

However, he did reiterate Germany's opposition to US proposals for taxes on imports to encourage domestic production, although he told reporters following the G20 finance ministers and central bank governors meeting on April 21 that he was confident a "non-confrontational" solution can be found.

Last month, German Economy Minister Brigitte Zypries said Germany could begin legal

action against the US if the Border Adjustment Tax (BAT) proposed by US House of Representatives Speaker Paul Ryan (R – Wisconsin) is introduced.

The BAT is intended to remove a competitive disadvantage for US exporters that arises from sales tax being embedded, without credit, in US goods sold overseas. Meanwhile, exporters in countries that levy a value-added tax (VAT) receive zero-rated treatment for their exports, allowing them to recover input VAT. This means there is no embedded foreign sales tax in supplies to the US, whereas US goods sold overseas include both US sales tax and may be subject to VAT.

US Tax Reform 'Unlikely' By August: Mnuchin

Steven Mnuchin, the US Treasury Secretary, has conceded that tax reform is unlikely to happen by August.

In an interview for the newspaper *Financial Times*, Mnuchin admitted that his ambition of putting in place a plan for tax reform by August was "highly aggressive to not realistic at this point." He said: "it's fair to say that it's probably delayed a bit because of the healthcare," referring to the failed proposal to replace Obamacare with a Republican alternative.

However, he spoke positively about the prospect of passing legislation in 2017. Asked on when a tax reform plan would be rolled out, Mnuchin responded: "I expect this to get done in 2017."

Mnuchin was also asked regarding key aspects of the reform, particularly the Border Adjustment Tax (BAT) and threats from Germany to refer the US to the World Trade Organization (WTO) if it were implemented. He said: "I would say we're more focused on the policy at the moment than we are of WTO compliance."

"Tax reform, regulatory relief, infrastructure investment – [with] those things combined, we think can create 3 percent growth."

UN Updates Transfer Pricing Practice Manual

The United Nations Committee of Experts on International Cooperation in Tax Matters has released, in digital format, the second edition of the UN Practical Manual on Transfer Pricing for Developing Countries (the TP Manual).

The 2017 edition of the TP Manual was launched at the UN Economic and Social Council Special Meeting on International Cooperation in Tax Matters, which was held in New York on April 7.

The updated version of the TP Manual has adopted a new format, and is divided into four parts for better clarity and ease of understanding. Part A relates to transfer pricing in a global environment; Part B contains guidance on design principles and policy considerations, including guidance on the arm's length principle central to transfer pricing analysis; Part C addresses practical implementation of a transfer pricing regime in developing countries; and Part D contains country practices.

The revised TP Manual includes new chapters on intragroup services, cost contribution arrangements, and the treatment of intangibles. It includes significant updates to other chapters. The hard copy is to be released in mid-October.

The latest TP Manual takes into consideration the outputs of the base erosion and profit shifting (BEPS) project, including providing revised guidance on documentation, comparability analysis, and bringing in an additional section on commodity transactions in the "Methods" chapter, also known as "the sixth method," drawn from developing country practice.

The UN Department of Economic and Social Affairs noted that the updated TP Manual "will be of invaluable importance for developing countries wishing to adopt, implement, or further improve their transfer pricing regulations."

India May Freeze Accounts For FATCA Non-Compliance

The Indian Ministry of Finance on April 11 warned that where Foreign Account Tax Compliance Act (FATCA)-related self-certification and due diligence in relation to financial accounts have not taken place by April 30, 2017, affected accounts may be frozen until such time as these checks have taken place.

Under the Inter-Governmental Agreement with the US on the implementation of FATCA, financial institutions were directed to obtain self-certification concerning ownership from

account holders and relevant documentation (relating to all accounts opened between July 1, 2014 and August 31, 2015), and to close accounts for which the required information was not forthcoming.

However, the Ministry explained that: "In view of the difficulties highlighted by stakeholders in following the provision for 'closure' of financial accounts, [an August 31, 2016, press release said] that the financial institutions may not close the accounts by August 31, 2016, in respect of which self-certifications have not been obtained under the alternative procedure, and a revised timeline shall be notified in due course. The financial institutions were also advised to continue to work on completing the required due diligence, including obtaining self-certifications."

It went on to add that, in response to queries from account holders, "the account holders may be informed that, in case self-certifications are not provided till April 30, 2017, the accounts would be blocked, which would mean that the financial institution would prohibit the account holder from effecting any transaction with respect to such accounts. The transactions by the account holder in such blocked accounts may, thereafter, be permitted once the self-certification is obtained and due diligence completed."

Australian Labor Party: Delay GST On Low-Value Imports

The Australian Labor Party has called on the Government to delay by one year the imposition of goods and services tax (GST) on low-value goods purchased from overseas sellers.

The party recommended that the Government postpone implementation until July 1, 2018. In the meantime, it would like the Government to engage with stakeholders and review alternative models, and deliver a Regulation Impact Statement to assure small businesses and consumers that the measure will operate as intended.

The arguments were set out in a joint release from Labor's Shadow Treasurer Chris Bowen, Shadow Assistant Treasurer Andrew Leigh, and Senate Economics References Committee Chair Chris Ketter.

They said: "Labor has supported the removal of GST on low-value imports with a feasible model, and remains supportive in principle." However, they said the Government had "botched" the policy's implementation, and claimed that Treasurer Scott Morrison had "failed to properly consult with stakeholders and develop a workable model for taxing low-value imports."

The Government has introduced legislation to require overseas vendors, electronic distribution platforms and goods forwarders with an Australian turnover of AUD75,000 (USD56,572) or more to register for, collect, and remit GST for low-value goods supplied to consumers in Australia. Currently, low-value goods – *i.e.*, goods with a customs value of AUD1,000 or less – are generally not subject to GST when imported directly into Australia by the recipient.

The legislation is currently before the Senate Economics Legislation Committee, which is holding a number of hearings before it submits its report on May 9. If the legislation is passed in its present form, its provisions will enter into force on July 1, 2017.

Labor's call for delay came after a number of online companies warned against implementing the proposals as they stand. In its submission to the Senate inquiry, eBay warned that it may have to take steps to "prevent Australians from buying from foreign sellers," and described the legislation as "complex, inconsistent, [and] unworkable."

In a separate submission, eBay, together with Alibaba and Etsy, said the proposals "lack an effective compliance and enforcement mechanism," would result in further market

distortions, and result in higher compliance costs that would ultimately be passed on to Australian consumers.

Online retailer Asos pointed out that "there is too little time between the finalization of the legislation and the proposed commencement date." Amazon said that while its supports the reduction of the GST threshold on low-value imported goods to zero, it does not support the proposed collection method and suggested that the Logistics Model be considered instead. It suggested that "logistics providers already have infrastructure in place to collect information on goods coming into Australia, and have well-established processes for GST collection for goods valued at more than AUD1,000."

Labor said: "Applying GST to imports valued at less than AUD1,000 has Labor's in principle support. But Scott Morrison must show that his preferred model is workable and enforceable. Too many stakeholders now have concerns about the Treasurer's ability to implement this measure without it severely disrupting this important and fast-growing part of our economy."

Gulf States Agree List Of VAT-Free Items

Gulf Cooperation Council (GCC) states have confirmed that the oil and gas sector will be exempt from the pan-member 5 percent value-added tax (VAT), which is expected to be introduced next year.

Umm al-Qura, a state news agency, reported that GCC member states – Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman – had agreed that oil and oil-based products and the gas sector should be zero-rated.

It was agreed that individual states will be able to decide whether to exempt education, local transportation, health services, and real estate sales from VAT.

All food commodities in the member states would be subject to the basic rate of tax unless an exemption is approved by the Financial and Economic Cooperation Committee.

At a meeting on June 16, 2016, the GCC ministers of finance approved a common framework for the development of national regimes for customs duties and VAT.

ANDORRA - LATVIA

Negotiations

Andorra and Latvia have begun negotiations on amending their DTA.

AUSTRALIA - CHINA

Negotiations

Australia and China have agreed to discuss the further liberalization of services and investment under their free trade agreement (ChAFTA), and to update their DTA.

AZERBAIJAN - ISRAEL

Forwarded

Azerbaijan's Parliament on April 7, 2017, approved a DTA with Israel.

AZERBAIJAN - KAZAKHSTAN

Signature

On April 3, 2017, Azerbaijan and Kazakhstan signed a DTA Protocol.

AZERBAIJAN - VARIOUS

Negotiations

According to preliminary media reports, Azerbaijan is engaged in DTA negotiations with Albania, Bangladesh, Kyrgyzstan, Syria, India, Turkmenistan, Portugal, and Oman.

ESTONIA - KYRGYZSTAN

Signature

Estonia and Kyrgzstan signed a DTA on April 10, 2017.

GHANA - CZECH REPUBLIC

Signature

Ghana and the Czech Republic have signed a DTA.

INDIA - SINGAPORE

Ratified

On March 23, 2017, India published a notice ratifying the double tax Protocol signed with Singapore, which entered into force on February 27, 2017.

LATVIA - JAPAN

Into Force

The DTA between Latvia and Japan entered into force on March 30, 2017.

LATVIA - SINGAPORE

Signature

Latvia and Singapore signed a DTA Protocol on April 20, 2017.

MOLDOVA - BELGIUM

Signature

Moldova and Belgium signed a DTA Protocol on March 30, 2017.

RUSSIA - JAPAN

Negotiations

Russian and Japanese government representatives met in Tokyo on March 27, 2017 to begin negotiations on updating their DTA.

SINGAPORE - GHANA

Signature

On March 31, 2017, Singapore and Ghana signed a DTA.

SINGAPORE - GUERNSEY

Signature

Singapore and Guernsey signed an automatic TIEA on April 10, 2017.

SWITZERLAND - PAKISTAN

Signature

Switzerland and Pakistan on March 21, 2017, signed an updated DTA.

UKRAINE - MALTA

Ratified

Ukraine's Parliament on April 13, 2017, ratified a DTA with Malta.

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

THE AMERICAS

International Tax and Estate Planning Forum: Around the Globe in 2017

5/4/2017 - 5/5/2017

STEP

Venue: Surf & Sand Resort, 1555 South Coast Highway, Laguna Beach, CA, USA

Chairs: M. Katharine Davidson TEP (STEP), Lawrence H. Heller TEP (Former U.S. Council Representative for STEP Worldwide)

http://www.step.org/events/international-tax-and-estate-planning-forum-around-globe-2017

Transcontinental Trusts: International Forum 2017

5/4/2017 - 5/5/2017

Informa

Venue: The Fairmont Southampton, 101 South Shore Road, Southampton, SN02, Bermuda

Key speakers: Alessandro Amadeu da Fonseca (Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados), Glen Atchison (Harbottle & Lewis), James Brightwell (Barrister), Jonathan Burt (Harcus Sinclair), Russell Cohen (Farrer & Co), among numerous others.

http://www.iiribcfinance.com/event/transcontinental-trusts-bermuda

STEP Miami 8th Annual Summit

5/19/2017 - 5/19/2017

STEP

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

Key Speakers: Mary A. Akkerman TEP (Lindquist & Vennum LLP), Eduardo Arista TEP (Arista Law), Patricia Arrázola Jaramillo TEP (Akro Legal International), Juan Bonet (Guyer & Regules), among numerous others

http://www.step.org/events/step-miami-8th-annual-summit-19-may-2017

International Estate & Tax Planning 2017

5/22/2017 - 5/22/2017

Practising Law Institute

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

Chairs: Dean C. Berry (Cadwalader, Wickersham & Taft LLP), Robert Dumont (Principal, Robert Dumont PLLC)

http://www.pli.edu/Content/Seminar/International_Estate_Tax_Planning_2017/_/N-4kZ1z10ox6?ID=289155

The 8th Annual Private Investment Funds Tax Master Class

5/23/2017 - 5/24/2017

Financial Research Associates

Venue: The Princeton Club, 15 West 43rd Street, New York, NY 10036, USA

Key speakers: TBC

https://www.frallc.com/conference.aspx?ccode=B1039

16th Annual International Mergers & Acquisitions Conference

6/6/2017 - 6/7/2017

International Bar Association

Venue: Plaza Hotel, 768 5th Ave, New York, NY 10019, USA

Key Speakers: TBC

http://www.ibanet.org/Conferences/conf774.aspx

Global Transfer Pricing Conference: DC

6/7/2017 - 6/8/2017

Bloomberg BNA

Venue: National Press Club, 529 14th St NW, Washington, DC 20045, USA

Key Speakers:TBC

https://www.bna.com/global-transfer-pricing-dc-2017/

Tax and Immigration Planning and Compliance for High Net Worth Individuals Acquiring US Citizenship, Green Cards and Expatriating

6/12/2017 - 6/12/2017

Bloomberg BNA

Venue: AMA Conference Center, 1601 Broadway (at 48th and Broadway), 8th Floor, New York, NY 10019, USA

Key speakers: TBC

https://www.bna.com/expatriation_ny2017/

10th Annual US–Latin America Tax Planning Strategies

6/14/2017 - 6/16/2017

American Bar Association

Venue: Mandarin Oriental Miami, 500 Brickell Key Dr Miami, FL 33131-2605, USA

Key speakers: TBC

http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=264529724

Basics of International Taxation 2017

7/18/2017 - 7/19/2017

Practising Law Institute

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

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

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2017/_/N-4kZ1z10oie?ID=299002

71st Congress of the International Fiscal Association

8/27/2017 - 9/1/2017

IFA

Venue: Winsor Barra da Tijuca, Av. Lúcio Costa, 2630 - Barra da Tijuca, Rio de Janeiro - RJ, 22620-172, Brazil

Key speakers: TBC

http://www.ifa2017rio.com.br/index.php

International Tax Issues 2017

9/11/2017 - 9/11/2017

Practising Law Institute

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

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

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2017/_/N-4kZ1z10p5l?ID=288689

Basics of International Taxation 2017

9/18/2017 - 9/19/2017

Practising Law Institute

Venue: PLI California Center, 685 Market Street, San Francisco, California 94105, USA

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

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2017/_/N-4kZ1z10oie?ID=299003

Energy Tax Conference: Maximizing Value

9/25/2017 - 9/26/2017

BNA

Venue: Four Seasons Hotel, 1300 Lamar Street, Houston, TX 77010, USA

Key speakers: TBC

https://www.bna.com/energy-tax-conference-2017/

The 24th World Offshore Convention Cuba 2017

10/25/2017 - 10/26/2017

Offshore Investment

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

Key speakers: TBC

http://www.offshoreinvestment.com/event/24th-world-offshore-convention-cuba-2017/

ASIA PACIFIC

The 8th Offshore Investment Conference Hong Kong 2017

6/14/2017 - 6/15/2017

Offshore Investment

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

Key speakers: Michael Olesnicky (KPMG), Sharon Ser (Withers)

http://www.offshoreinvestment.com/event/8th-offshore-investment-conference-hong-kong-2017/

MIDDLE EAST AND AFRICA

3rd IBFD Africa Tax Symposium

5/10/2017 - 5/12/2017

IBFD

Venue: Labadi Beach Hotel, No. 1 La Bypass, Accra, Ghana

Key speakers: Annet Wanyana Oguttu (University of South Africa), Babatunde Oladapo (West African Tax Administrations Forum (WATAF)), Barassou Diawara (The African Capacity Building Foundation), Belema Obuoforibo (IBFD), Daniel Ngumy (Anjarwalla & Khanna (A&K)), among numerous others

http://www.ibfd.org/IBFD-Tax-Portal/Events/3rd-IBFD-Africa-Tax-Symposium#tab_program

STEP Israel Annual Conference

6/20/2017 - 6/21/2017

STEP

Venue: Dan Tel Aviv Hotel, Ha-Yarkon St 99, Tel Aviv-Yafo, 63432, Israel

Chairs: Meir Linzen (Herzog Fox & Neeman), Dr. Alon Kaplan (Alon Kaplan, Advocate and Notary), Daniel Paserman (Gornitzky & Co.)

http://www.step.org/sites/default/files/STEP%20Annual%20Conference%20program%202017.pdf

WESTERN EUROPE

UK Tax, Trusts & Estates Conference 2017 – Leeds

5/4/2017 - 5/4/2017

STEP

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

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

Global Tax Treaty Commentaries Conference

5/5/2017 - 5/5/2017

IBFD

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

Key speakers: Prof. John Avery Jones, Dr Philip Baker (QC Field Court Tax Chambers), Prof. Dr Michael Beusch (Federal Administrative Court), Prof. Mike Dolan (IRS Policies and Dispute Resolution and KPMG), among numerous others

http://www.ibfd.org/IBFD-Tax-Portal/Events/Global-Tax-Treaty-Commentaries-Conference#tab_program

UK Tax, Trusts & Estates Conference 2017 – London

5/12/2017 - 5/12/2017

STEP

Venue: Park Plaza Westminster Bridge Hotel, 200 Westminster Bridge Road, London, SE1 7UT, UK

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

Tax Planning for Non Doms 2017 – The Future of Non Doms After 6 April 2017

5/17/2017 - 5/17/2017

Private Client Tax

Venue: TBC, London, UK

Chair: John Barnett (Burges Salmon)

https://finance.knect365.com/tax-planning-for-non-domiciliaries/

UK Tax, Trusts & Estates Conference 2017 – Birmingham

5/18/2017 - 5/18/2017

STEP

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

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

Non-Dom, Residence & HMRC

6/21/2017 - 6/21/2017

Private Client Tax

Venue: TBC, London, UK

Chair: Jonathan Burt (Harcus Sinclair)

https://finance.knect365.com/non-dom-residence-hmrc/agenda/1

The 3rd Wealth Planning Conference London 2017

7/5/2017 - 7/6/2017

Offshore Investment

Venue: Marriott County Hall Hotel, London County Hall, Westminster Bridge Rd, Lambeth, London SE1 7PB, UK

Key speakers: TBC

http://www.offshoreinvestment.com/event/3rd-wealth-planning-conference-london-2017/

The 27th Offshore Investment Symposium Oxford 2017

9/3/2017 - 9/9/2017

Offshore Investment

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

Chair: Nigel Goodeve-Docker (Former Solicitor & Former Director at HE Samson Ltd)

http://www.offshoreinvestment.com/event/27th-offshore-investment-symposium-oxford-2017/

International Tax Aspects of Permanent Establishments

9/5/2017 - 9/8/2017

IBFD

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

Key Speakers: Bart Kosters (IBFD)

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

Duets in International Taxation: Single Taxation?

10/5/2017 - 10/6/2017

IBFD

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

Chairs: Prof. Frans Vanistendael (KU Leuven), Prof. Pasquale Pistone (IBFD), Prof. Dennis Weber (ACTL, University of Amsterdam and Loyens & Loeff), Prof. Stef van Weeghel (University of Amsterdam, PWC global thought leader)

https://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Single-Taxation#tab_program

THE AMERICAS

United States

The Internal Revenue Service (IRS) has lost a case against online retailer Amazon, with the ruling thought to be worth USD1.5bn in corporate income tax, plus future liabilities.

A listing of recent key international tax cases.

The case centered on transfer prices in a cost-sharing agreement (CSA) between Amazon's operations in the US and its European subsidiary in Luxembourg.

Pursuant to the CSA, the Amazon group granted the subsidiary the right to use certain pre-existing intangible assets in Europe, including the intangibles required to operate Amazon's European website business. This arrangement required the subsidiary to make an upfront "buy-in payment" to compensate the US parent for the value of the intangible assets that were to be transferred to the subsidiary.

Thereafter, the subsidiary was required to make annual cost sharing payments to compensate the US operations for ongoing intangible development costs. The IRS contended that the size of the "buy-in payment" was not at arm's length, resulting in a lower than reasonable US tax liability.

Amazon contended – and the US Tax Court agreed – that the IRS's determinations are arbitrary, capricious, and unreasonable, and that the comparable uncontrolled transaction (CUT) method is the best method to calculate the requisite buy-in payment.

The Court held further that the IRS Commissioner abused his discretion in determining that 100 percent of Technology and Content costs constitute intangible development costs (IDCs); and that Amazon's cost-allocation method, with certain adjustments, supplies a reasonable basis for allocating costs to IDCs.

Although this represents a victory for Amazon, the European Commission is currently investigating the tax ruling granted to Amazon by Luxembourg to establish whether it gives the US company an unfair advantage compared with companies in comparable circumstances.

This judgment was filed on March 23, 2017.

http://www.ustaxcourt.gov/USTCInOP/OpinionViewer.aspx?ID=11148

US Tax Court: *Amazon, Inc. and Subsidiaries v. IRS Commissioner (148 T.C. No. 8)*

ASIA PACIFIC

Australia

In a ruling delivered on April 21, 2017, Australia's Federal Court ruled against Chevron, supporting the Australia Tax Office's assessment of AUD340m (USD256.1m) in taxes and penalties.

Chevron had challenged the ATO's assessments for taxes owed in the income years 2004–2008. The assessments relate to interest paid by Chevron Australia Holdings Pty Ltd (CAHPL) to Chevron Texaco Funding Corporation (CFC) under a 2003 agreement. The case had previously been heard in a trial court and a federal court.

As the Full Federal Court ruling explained:

> "Each of the assessments in question was in substance made upon the basis that the interest paid by CAHPL, an Australian company, to its United States subsidy, CFC, was greater than it would have been under an arm's length dealing between independent parties."

CAHPL claimed tax deductions in Australia for the interest it paid to CFC and returned as income the dividends it received from CFC as non-assessable non-exempt income.

The ATO had argued that this internal financing structure resulted in a reduction in CAHPL's Australian taxable income. It had decided to disallow the deductions claimed by Chevron.

In its judgment, the Full Federal Court noted that the trial judge had accepted that "the internal funding arrangements put in place resulted in CAHPL increasing its untaxed dividends from CFC as CAHPL's interest payments to CFC increased whilst CFC would make significant profits

from borrowing at 1.2 percent and on-lending at 9 percent which would not be taxed either in the United States or in Australia."

The judgment explained:

> "The economic effects of the internal financing structure put in place, in other words, included CAHPL's Australian taxable income being reduced by the deductions it claimed for the interest payments it made to its United States subsidiary and the receipt by CAHPL of non-taxable income from dividends CFC was able to declare to CAHPL from the interest CFC had derived from CAHPL."

The Full Federal Court also agreed with the trial court's original judgment that CAHPL's debt level of USD2.5bn was chosen by Chevron because "it was the most tax efficient corporate capital structure and gave the best after-tax result for the Chevron group."

http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2017/2017fcafc0062

Australia Federal Court: *Chevron Australia Holdings Pty Ltd v. Commissioner of Taxation [2017] FCAFC 62*

India

In a ruling that will impact foreign companies doing business with India, the Indian Supreme Court has held that motor racing events give rise to a permanent establishment (PE) in India and income attributed to such activities is taxable in India.

Formula One World Championship (FOWC), which conducts Formula One car racing events, was appealing against a ruling delivered by the New Delhi High Court last year, in which the court had concluded that FOWC carried on business in India for the duration of the race within the meaning of expression under Article 5(1) of the India–UK double taxation avoidance agreement.

Confirming the High Court's decision, the Supreme Court said the motor racing championship had a PE in India, and income attributable to the PE shall be subject to Indian tax. "We have held that FOWC has PE in India and income that is attributable in India will be taxed. The amount that is to be taxed is to be assessed by an assessing officer," the Court stated.

This judgment was released on April 24, 2017.

https://barandbench.com/wp-content/uploads/2017/04/formula-1-judgment.pdf

India's Supreme Court: *Formula One World Championship Limited v. Commissioner of Income Tax*

MIDDLE EAST AND AFRICA

South Africa

A South African taxpayer has lost an appeal concerning a request for a reassessment of tax on capital gains, with the Supreme Court ruling in favor of the South African tax agency.

The appellant, New Adventure Shelf 122 (Pty) Ltd, purchased a piece of immovable property in 1999. Subsequently, in the 2007 tax year, the appellant sold the property to a development company at a much greater price, incurring capital gains tax.

The purchaser defaulted on making payments and it was agreed in 2011 that the purchaser would surrender the property and an amount equal to less than a third of the agreed price as compensation. The company then sought to have the capital gain lowered for tax purposes, given the change in circumstances.

The South African Revenue Service (SARS) refused the request for reassessment, noting that three years had elapsed from the time of the sale.

The taxpayer's negotiations with SARS to re-open its 2007 assessment proved fruitless and, in due course, it instituted proceedings in the Western Cape High Court, Cape Town, seeking an order setting aside its 2007 assessment. This relief was refused. The appellant appealed to the Supreme Court of Appeal against such refusal.

SARS argued on appeal that under Section 81(1) of the Income Tax Act 58 of 1962, as more than three years had elapsed from the date of the 2007 assessment of the appellant's tax, such assessment was final and conclusive and could not be revisited.

The appellant, however, sought to overcome the provisions of that Section by arguing that it did not apply in respect of the tax levied on the capital gain. This argument was founded in the main upon the provisions of paragraph 35 of the Eighth Schedule to the Income Tax Act.

The Supreme Court of Appeal analyzed the provisions of the Eighth Schedule and concluded that they did not oblige SARS to re-open the 2007 tax assessment. Instead, it was agreed that

the taxpayer had incurred a capital loss, despite the taxpayer having no corresponding gain to utilize against it.

This judgment was delivered on March 28, 2017.

http://www.sars.gov.za/AllDocs/LegalDoclib/Judgments/LAPD-DRJ-SCA-2017-01%20-%20New%20Adventure%20Shelf%20122%20vs%20CSARS%20-%2028%20March%202017.pdf

Supreme Court of Appeal, South Africa: *New Adventure Shelf 122 (Pty) Ltd v. SARS Commissioner*

WESTERN EUROPE

Switzerland

Switzerland's highest court has ruled that the Swiss Government cannot honor a request by the French tax authorities for information on two clients of a Swiss bank because the information at issue was obtained illegally.

The case in question involved a married French couple whose bank account details were among those stolen by Hervé Falciani, a former employee of HSBC in Switzerland. While Switzerland originally agreed to pass the couple's financial details to France in 2014 under the Franco–Swiss double tax treaty, this was overruled by the Swiss Federal Administrative Court on appeal in 2015, a decision upheld by Switzerland's Federal Supreme Court in a judgment issued last month.

In reaching its decision, the Supreme Court concluded that such an administrative request cannot be fulfilled by Switzerland if the information in question was obtained by means which are punishable under Swiss law.

"The criminal origin of the Falciani data is undisputed," the Court stated, noting that Falciani was convicted by the Swiss Federal Criminal Court for his actions in 2015.

Falciani copied information on more than 100,000 HSBC clients onto an encrypted device while employed as an IT specialist at the bank, before fleeing to France – his country of nationality – in 2008. He was later sentenced to five years in prison in absentia by the Swiss Federal Criminal Court.

This judgment was delivered on March 17, and published, in German, on April 5, 2017.

http://www.bger.ch/press-news-2c_1000_2015-t.pdf

Swiss Federal Tribunal: *2C_1000 / 2015*

Dateline April 27, 2017

We often hear how **trade barriers** hinder trade between nations. But they can also inhibit trade within a country, particularly in ones with federalized systems of government. So, credit is due to **Canada** for introducing its own internal free trade agreement, which should ease trade in goods and services across provincial and territorial borders.

As I've observed here before, trade is something of a touchy subject politically at the moment, and depending on what you believe, **free trade** either destroys industries and jobs by opening them up to cheap competition with which they cannot hope to compete, or is the bringer of prosperity to all corners of the world.

From a purely business perspective, **tariff and non-tariff barriers** add a further layer of complication to international commerce, especially for companies with long international supply chains, which already battle to remain compliant with complex and shifting domestic tax and regulatory regimes the world over. And what a bizarre situation it is that in some countries, as observed by the Canadian Federation of Independent Businesses, due to internal regulatory differences, it's sometimes easier for individuals and businesses to trade with counterparts half way across the world, than in the province, state, or region next door.

Talking of being unpopular with the neighbors, we move to the **United Kingdom**, which set the cat among the pigeons once again after Prime Minister Theresa May caught many off guard by calling a **snap general election** last week. Added to the weight of uncertainty already bearing down on the UK as a result of Brexit, the timing of this election is hardly ideal, and the announcement demonstrated just how flexible politicians can be with their views, with May having repeatedly rejected the idea of calling an early election to consolidate her and the Conservative Party's position in power on numerous occasions recently.

But while this development could strengthen May's hand in the upcoming **Brexit negotiations** – provided, of course, she gets the comfortable victory pollsters are predicting – it is not, however, going to be very helpful for taxpayers. The 2017 Budget was announced only six weeks ago, and the Government has already performed a u-turn on the most significant proposal, the 2 percent increase in self-employed social security contributions. Now the Government faces a rush to

legislate for the **2017 Finance Bill** before parliament dissolves shortly before the June 8 election. And that won't be easy.

The Chartered Institute of Taxation has pointed out that, under normal circumstances, we could expect two days of debate on the bill in the House of Commons, in addition to 14 to 20 standing committee sessions, and two days of report stage and third reading debate – in other words, plenty of parliamentary scrutiny of the proposed measures. Precedent suggests that, instead, the committee and report stages will be compressed into a single day. And such a truncated timetable, the CIOT warned, would not allow for adequate consideration of the matters it has raised, including areas such as loss relief and interest deductibility.

The CIOT is urging the Government to drop the majority of the current bill and keep only those measures essential to maintain the Government's revenue-raising capacity, such as renewing the provision of income tax, and other measures that are required urgently, such as **anti-avoidance provisions**. It said that measures dropped could be reintroduced in a post-election Finance Bill where they can be scrutinized at greater length. We must wait and see if the Government listens to what seems like a reasonable proposal. And this gives taxpayers in the UK yet another reason to fret.

Another group of people who are getting used to fretting are **American expats**, which, mounting evidence suggests, are becoming financial pariahs, denied access to even basic financial services in their country of residence due to the increasing reluctance of foreign financial institutions to deal with anybody with a US passport. Why? In a word (or, more accurately, in an acronym): **FATCA**.

Attention was drawn to this issue again last week, when the **Indian Finance Ministry** warned account holders that where Foreign Account Tax Compliance Act-related self-certification and due diligence in relation to financial accounts have not taken place by April 30, 2017, affected accounts may be frozen until such time as these checks have taken place.

But are **FATCA's days numbered?**

President Donald Trump has been strangely silent on the matter of FATCA, not only during the campaign phase, but also as President-elect, and now as President. So too has the Republican leadership in the House of Representatives, from where the tax reform process, if it ever gets started, will begin. But if FATCA is ever going to be **repealed**, surely now is the time, while there is a pro-business, anti-regulation President in the White House, and a Republican Congress in place to support him.

The pre-election 2016 Republican Platform called for FATCA's repeal, calling it a "warrantless seizure of personal financial information without reasonable suspicion or probable cause" and a threat to the "ability of overseas Americans to lead normal lives." So the **injustices of FATCA** are close to the heart of the GOP rank and file, it would seem. Furthermore, it could be argued that FATCA may be superfluous once the OECD's global version, the Common Reporting Standard, comes on stream over the next 18 months.

Clearly, President Trump has had other items at the top of his agenda on the domestic front, principally the repeal of Obamacare. But **tax reform** is expected to come next, and we'll have to wait until then to see if the President maintains his silence on FATCA.

Remaining on the theme of deregulation, I mentioned last week how **India** is on the final straight towards the introduction of **goods and services tax**, which is due to replace a plethora of cascading and inefficient state and central indirect taxes, and usher in a much more rational and modern system of taxing consumption. I have always been slightly skeptical that GST would actually happen, fearing that the deadline would be pushed back *ad infinitum*, with the central and state governments unable or unwilling to fully embrace this unprecedented, dually administered law. However, after the President **ratified the necessary legislation** last week, even I am beginning to believe. Still, the transition is unlikely to be smooth.

By all accounts, India seems quite unprepared for GST. The Federation of Small Medium Enterprises has said that **70 percent of SMEs** are not even close to being ready for the upcoming changes, and in something of an ironic turn of events, the very businesses that have been urging successive governments to accelerate this long-awaited reform are now calling for the law to be delayed.

With just over two months to go before the Government's preferred **July 1 introduction date**, companies with inter-state trade are now in a race to ensure compliance with the GST, which, due to the various compromises struck along the way, is by no means a simple law, even if it does simplify the existing system. Oh, how the tables have turned in India!

The Jester