Wolters Kluwer

GLOBAL TAX WEEKLY
a closer look

ISSUE 281 | MARCH 29, 2018

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

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

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

Wolters Kluwer

GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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

Unique contributions from the Big4 and other leading firms provide unparalleled insight into the issues that matter, from today's thought leaders.

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

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

© 2018 CCH Incorporated and/or its affiliates. All rights reserved.

Wolters Kluwer

GLOBAL TAX WEEKLY
a closer look

ISSUE 281 | MARCH 29, 2018

CONTENTS

FEATURED ARTICLES

An Unexpected Hit To Foreign Tax Credits In The 2017 Tax Reform
Richard Cassell, Partner, Withers — 5

The Digital Economy Tax Challenge – The OECD Interim Report And EU Proposals
Stuart Gray, Senior Editor, Global Tax Weekly — 7

US Tax Considerations For The Digital Nomad Living Abroad
Ephraim Moss, Esq. and Joshua Ashman, CPA, Expat Tax Professionals — 16

Topical News Briefing: A Blacklist With Bite?
The Global Tax Weekly Editorial Team — 20

Beyond The FBAR: Other Penalties Lying In Wait For The Taxpayer With Undisclosed Foreign Accounts
Michael DeBlis III, Esq., LLM — 22

The New Cyprus–Saudi Arabia Double Tax Agreement
Constantinos Christofi, Elias Neocleous & Co. LLC — 26

Topical News Briefing: From Talk To Action – The Real Digital Tax Challenge
The Global Tax Weekly Editorial Team — 33

NEWS ROUND-UP

BEPS — 35

BEPS Multilateral Instrument To Enter Into Force

OECD Releases Extra BEPS Action 7 Guidance

Sweden To Legislate To Adopt BEPS Treaty Changes

EU Tax Blacklist — 37

EU Announces Sanctions For 'Blacklisted' Countries

Caribbean States Appeal To EU Over Tax Blacklisting

Sweden To Review Transactions With States On EU's Tax Blacklist

Digital Taxation — 40

EU Announces New Digital Tax Plans

Canada Considering Digital Tax

Ireland To Resist EU Digital Tax Plans

OECD Reports To G20 Leaders On Digital Tax Options

Country Focus: India — 48

India Consults Taxpayers On Income Tax Law Reform

India Defers Surrogate Entity CbC Reporting Deadline

India, Hong Kong Sign Double Tax Deal

VAT, GST, Sales Tax 50

South Africa To Increase VAT On April 1

UK Tribunal Rules Against VAT Zero Rate For Digital News

UAE Reminds Of Tax-Inclusive Pricing VAT Rules

HMRC Changes Position On VAT On Cost-Sharing Groups

Portugal To Respond To ECJ VAT Ruling On Vacant Property

Country Focus: Australia 55

Australian Firms Promise Investment For Tax Cuts

Australia Closes Tax Consolidation Loopholes

TAX TREATY ROUND-UP 57

CONFERENCE CALENDAR 59

IN THE COURTS 71

THE JESTER'S COLUMN 79
The unacceptable face of tax journalism

For article guidelines and submissions, contact GTW_Submissions@wolterskluwer.com

© 2018 CCH Incorporated and its affiliates. All rights reserved.

ISSUE 281 | MARCH 29, 2018

An Unexpected Hit To Foreign Tax Credits In The 2017 Tax Reform

by Richard Cassell, Partner, Withers

Contact: richard.cassell@withersworld wide.com, Tel. +44 20 7597 9173

The 2017 Tax Reform was drafted in a hurry and behind closed doors, and it is evident in a number of provisions. As well as the headline tax cuts, there have been wide-ranging changes in the corporate income tax rules which particularly affect shareholders of controlled foreign corporations. These have some unexpected consequences for individual Americans with businesses outside the United States.

As part of a series of tax changes aimed at multinationals (particularly the tech companies), the foreign tax credit baskets have been adjusted and two new foreign tax credit baskets have been created. These new baskets are for foreign branch income and for shareholders in 10 percent or more owned foreign corporations. These may sound like purely technical changes worthy of a footnote in a tax journal, but in fact they have a surprisingly broad impact.

Most Americans resident in Europe pay European tax on European source income and rely on the foreign tax credit mechanism to offset the local tax against their US tax liability. If you are US citizen who is employed in London for example, you will probably pay more UK tax than you can use to offset against your US tax and therefore as the years go by, you will build up surplus foreign tax credits which you carry forward. As an employee your foreign taxes will be classified as general limitation foreign taxes and can be offset against any other category hitherto except passive income. This means that the employment income tax credits can be used against other employment income. For employees, broadly this position does not change.

However, for those who are self-employed, such as partners in a business or business owners, there has been a very drastic change in the tax basket. The foreign branch income basket is broader than it would seem at first sight. It is in fact nothing to do with branches. It covers income from

any foreign business which is sufficiently separate (from the taxpayer's personal activities) that it maintains separate foreign currency accounts. This will catch broadly all Americans who are self-employed, including partners in international firms, foreign business owners and international real estate investors. In particular, many Americans who own their own businesses through a UK company may have checked the box (or made an entity election) so that the company is disregarded for US tax purposes. This avoids a double level of US tax on corporate earnings. Since it is now a disregarded entity, the foreign company will be treated as a branch.

Previously when Congress has changed the foreign tax credit baskets, it has provided transition rules so that carry forward foreign tax credits can be applied as appropriate against the new baskets. However, this Congress was in a hurry and no transition rules have been provided. Arguably it is open to the IRS to provide guidance, but this is not on the priority list of guidance published by the IRS.

Many Americans who have very significant balances of foreign tax credit carry forwards may now not know whether these are available to be applied against their self-employment earnings in future. They may find, for example, that they cannot use their foreign tax credit surplus that builds up in the branch basket to offset income that might fall into the general basket such as, for example, tax-free lump sums from pensions.

This is a very frustrating position for lawyers and accountants because we really have no guidance from the IRS about how to handle carry forward foreign tax credits in these circumstances. On the one hand, it may be open to the taxpayer to argue the most advantageous position possible in the absence of guidance. On the other hand, for risk averse taxpayers, it is difficult for an adviser to say definitively whether or not a foreign tax credit is available. Let us hope that the IRS comes to the rescue of self-employed non-resident Americans soon – we are certain that Congress did not have these people in its sights even if some of them are partners in law firms.

The Digital Economy Tax Challenge – The OECD Interim Report And EU Proposals

by Stuart Gray, Senior Editor, Global Tax Weekly

With the taxation of companies trading in the digital economy currently dominating the international tax agenda, this article looks at the OECD's eagerly anticipated interim report on the matter,[1] and summarizes the temporary tax solution proposed by the European Union shortly after the report's publication.

Introduction

The international community has generally been addressing the tax challenges presented by the digital economy indirectly through the wider BEPS project. However, in recent months, much more emphasis has been placed on how specific measures can be put in place to ensure that digital business models pay more tax than they do at present.

Indeed, with the OECD and the EU having issued reports and proposals tackling this subject within the space of a few days, and with individual jurisdictions considering their own options in this area, developments are moving swiftly. A potential consequence of this is that a global consensus on the most appropriate approach to the problem may be harder to reach, risking fragmented and incoherent rules that may harm businesses and damage international commerce and economies.

This issue has arisen because tax systems designed in the first half of the 20th century have failed to keep pace with the rapid growth of the digital economy, within which substantial value can be created in a particular jurisdiction without the taxpayer triggering physical presence thresholds enabling them to be taxed in that jurisdiction. As the European Commission observed in unveiling its recent digital tax proposals: "Profits made through lucrative activities, such as selling user-generated data and content, are not captured by today's tax rules." [2]

Such business models include online marketplaces, social media, sharing economy platforms, cloud computing, and many more. However, this is an economic sector that is developing rapidly. As the OECD's latest report on the issue (see below) observes, while the main objectives and primary activities of digital companies have remained unchanged, the structure of businesses and the process of value creation have "significantly evolved."

Digitalized business models do nevertheless share some common characteristics. Generally, these can be divided into a few broad groups: cross-jurisdictional scale without mass; reliance on intangible assets and data; and user participation. Nevertheless, the tax challenges remain essentially the same regardless of the business model in question: how, in the digital age, should taxing rights on cross-border activities be allocated between jurisdictions? This was the key question for the OECD's base erosion and profit shifting (BEPS) project, which is described in brief in the context of the digital economy in the next section.

BEPS Action 1

The OECD took the lead on this issue when it drew up the BEPS Action Plan in 2013, with the tax challenges of the digital economy designated as Action 1, and when it released its final BEPS recommendations in October 2015. The Action 1 final report observed:[3]

> "Many of the key features of the digital economy, particularly those related to mobility, generate BEPS concerns in relation to both direct and indirect taxes. For example, the importance of intangibles in the context of the digital economy, combined with the mobility of intangibles for tax purposes under existing tax rules, generates substantial BEPS opportunities in the area of direct taxes. … The ability to centralize infrastructure at a distance from a market jurisdiction and conduct substantial sales into that market from a remote location, combined with increasing ability to conduct substantial activity with minimal use of personnel, generates potential opportunities to achieve BEPS by fragmenting physical operations to avoid taxation."

While the Action 1 final report examined certain specific digital tax measures, it made no concrete proposals to jurisdictions other than in the area of VAT, instead taking the stance that digital economy tax issues were likely to be better solved through changes to existing direct tax rules across the spectrum of the BEPS project. It observed:[4]

"Structures aimed at artificially shifting profits to locations where they are taxed at more favorable rates, or not taxed at all, will be addressed by the work carried out in the context of the BEPS Project. At the same time, the work on BEPS will increase transparency between taxpayers and tax administrations and among tax administrations themselves. …

The comprehensiveness of the BEPS Action Plan will ensure that, once the different measures have been implemented in a co-ordinated manner, taxation is more aligned with the location in which economic activities take place. This will address BEPS issues at the level of both the market jurisdiction and the jurisdiction of the ultimate parent company, with the aim of putting an end to the phenomenon of so-called stateless income."

OECD Interim Report

On March 19, 2018, as a result of a push for more concrete options from the G20, more than 110 countries and jurisdictions under the BEPS Inclusive Framework agreed to review two key concepts of the international tax system. Building on the 2015 BEPS Action 1 Report, a new "Interim Report" from the OECD included an in-depth analysis of the changes to business models and value creation arising from digitalization, and identified also the characteristics that are frequently observed in certain highly digitalized business models.[5]

Arranged over eight chapters, the Interim Report looked at the tax challenges of the digital economy, digital business models and value creation in the digital economy, the implementation and impact of the BEPS package, tax policy developments relevant to digital business models, adapting the international tax system to an increasingly digitalized economy, interim measures to address these tax challenges, and the impact of digitalization on other aspects of the tax system.

Of note is Chapter 5, which considers the implications of the changes arising from digitalization for the international tax system with respect to the existing nexus rules, which determine the jurisdiction with taxing rights based on the substance of a business activity, and profit allocation rules, which determine the relevant share of the profits that will be subjected to taxation based on the arm's length principle.

"When considered together, the broader tax challenges raised by digitalisation relate directly to the operation of and interaction between two of the basic concepts that underlie the international tax rules: namely, the rules for determining nexus and the allocation of profit," the report observes.[6]

The report goes on to state that the increase in business models based on "scale without mass" is impacting the distribution of taxing rights over time by reducing the number of jurisdictions where a taxing right can be asserted over the business profits of a multinational enterprise (MNE). "For example, in many instances, scale without mass has led to an increasing share of the profits from cross-border activities not being taxed in the market jurisdiction, including in situations where the foreign enterprise has an important economic presence in that market." [7]

Despite progress being made towards realigning income from intangibles and value creation as a result of the BEPS project, the appropriate allocation of income from intangible assets among different parts of an MNE group may nevertheless still be "very difficult" in many cases, the report notes. "In turn, this may increase the responsiveness of business decisions to tax competition between countries. For instance, the location of the ownership and management of some important intangibles for digitalized firms (*e.g.*, various types of knowledge-based capital) may not always be clearly discernible." [8]

Additional tax challenges may arise from data and user participation, and the ongoing and interactive relationships between digitalized businesses and their customers if they are a source of a firm's value creation. "This could be the case, for instance, if a large base of active online users producing substantial amounts of content and data is considered a material contribution to the value creation of a business, distinct from the algorithms and other intangible assets used for analyzing and processing this content and data." [9]

These points, said the report, "raise very complex technical questions." However, as to the correct way to deal with them, the Inclusive Framework members are clearly split, with Chapter 5 of the report acknowledging "different views" among the jurisdictions. "Further, with respect to data and user participation, there is no consensus on whether, and the extent to which they should be considered as contributing to a firm's value creation, and therefore, any impact they may have on the international tax rules," it said.[10]

Describing the potential implications for the international tax rules, the Interim Report identifies the positions that different countries hold on possible solutions, ranging from countries that consider no action is needed, to those that consider there is a need for action that would take into account user contributions, through to others who consider that any changes should apply to the economy more broadly.

Nevertheless, it was agreed by the Inclusive Framework that maintaining a single set of relevant and coherent international tax rules would increase economic efficiency and was therefore in their common interest. "As such, they have agreed to undertake a coherent and concurrent review of the two key aspects of the existing tax framework, namely the profit allocation and nexus rules that would consider the impacts of digitalisation on the economy," the report said.[11]

Chapter 6 includes a discussion on interim measures that some countries have indicated they would implement, believing that there is a "strong imperative" to act quickly. In particular, it considers an interim measure in the form of an excise tax on the supply of certain e-services within their jurisdiction, which would apply to the gross consideration paid for the supply of such e-services, taxable in the location of the consumer.

However, the report also highlights a number of risks and adverse consequences that could arise in respect of such a tax, including:

- Impact on investment, innovation and growth;
- Impact on welfare (the economic impact of distortions on production);
- Potential economic incidence of taxation on consumers and businesses;
- Possibility of over-taxation;
- Possible difficulties in implementing a tax as an interim measure; and
- Compliance and administration costs.[12]

According to the report, countries in favor of the introduction of interim measures recognize the need to take the following considerations into account:

(i) Be compliant with a country's international obligations;
(ii) Be temporary;
(iii) Be targeted;
(iv) Minimize over-taxation;
(v) Minimize impact on start-ups, business creation, and small businesses more generally; and
(vi) Minimize cost and complexity.

However, as with the issues discussed in Chapter 5, Chapter 6 notes there is no consensus on either the merit or need for interim measures, with a number of countries opposed to such measures on the basis that they give rise to risks and adverse consequences irrespective of their design.

The Interim Report concludes:[13]

> "Ensuring that our tax systems are ready to meet the changes brought by digitalisation, as well as to leverage from its opportunities and provide protection from its potential risks, is a critical challenge. Political support will be required to undertake the detailed, often complex work, needed to deliver on these objectives, noting that the tax system remains a foundation stone in the relationship between States and their citizens."

EU Proposals

Since the OECD views the digital economy as, increasingly, the economy itself, it has consistently suggested that changes to existing tax rules, at multilateral level, to adapt them to digital business models, are likely to be best way to tackle the tax challenges of the digital economy. While the EU also agrees that as wide an international consensus as possible is preferable, it falls into the camp of jurisdictions advocating short-term interim measures to capture digital income in the tax net while an international agreement is being thrashed out. On March 21, the European Commission released a two-pronged EU proposal to ensure digital business activities are taxed "fairly" and in a growth-friendly way in the EU.[14]

The first proposal would enable member states to tax profits that are generated in their territory, even if a company does not have a physical presence there. The new rules would ensure that online businesses contribute to public finances at the same level as traditional "brick-and-mortar" companies. A digital platform will be deemed to have a taxable "digital presence" or a virtual permanent establishment in a member state if it fulfills one of the following criteria:

- It exceeds a threshold of EUR7m (USD8.6m) in annual revenues in a member state;
- It has more than 100,000 users in a member state in a taxable year;
- Over 3,000 business contracts for digital services are created between the company and business users in a taxable year.

The Commission said the measure could eventually be integrated into the scope of the Common Consolidated Corporate Tax Base (CCCTB) – the Commission's already proposed initiative for allocating profits of large MNE groups in a way that better reflects where the value is created.

The second, temporary solution is intended to ensure there is at least a harmonized EU approach to digital taxation, in the absence of a global agreement, to deter member states from introducing

unilateral measures. This would entail the introduction of an indirect tax, with a 3 percent rate, which would apply to revenues created from certain digital activities that escape the current tax framework entirely.

According to the Commission, the tax will apply to revenues created from activities where users play a major role in value creation and those that are the hardest to capture with current tax rules, such as those revenues created from:

- Selling online advertising space;
- Digital intermediary activities which allow users to interact with other users and which can facilitate the sale of goods and services between them;
- The sale of data generated from user-provided information.

Tax revenues would be collected by the member states where the users are located, and will apply only to companies with total annual worldwide revenues of at least EUR750m and EU revenues of EUR50m.

An Elusive Consensus

While the EU proposals deviate from the more measured and cautious approach to digital economy tax challenges adopted by the OECD, they are perhaps an attempt to deter individual member states from taking measures into their own hands, as well as to generate more revenues from digital companies.

"Member states are now starting to seek fast, unilateral solutions to tax digital activities, which creates a legal minefield and tax uncertainty for business. A coordinated approach is the only way to ensure that the digital economy is taxed in a fair, growth-friendly, and sustainable way," the Commission said, no doubt referencing the UK Government's recent position paper on the topic,[15] which includes a proposal to tax certain tech firms on the revenues they derive from their UK users in the absence of an international agreement.

However, responses from EU and other countries to both the OECD report and the EU's tax proposals are an early indication of the uphill task the OECD in particular faces with its attempts to build a multilateral consensus on a common approach to taxing the digital economy by 2020.

Most significant was the statement[16] issued by the US Treasury Department immediately after the release of the OECD's Interim Report, which strongly suggested that the current administration at least would not be supporting these efforts, largely on economic grounds:

> "The US firmly opposes proposals by any country to single out digital companies. Some of these companies are among the greatest contributors to US job creation and economic growth. Imposing new and redundant tax burdens would inhibit growth and ultimately harm workers and consumers. I fully support international cooperation to address broader tax challenges arising from the modern economy and to put the international tax system on a more sustainable footing."

Meanwhile, the Swiss Government has warned against the introduction of interim measures targeted at tackling the problems of taxing the digital economy. It stressed that, to guarantee legal certainty, to avoid over- and double taxation, and to combat high administrative burdens, governments should avoid the introduction of short-term measures.[17]

And while there is strong support for the EU proposals among a core of influential member states, notably France, Germany, and Italy, there is by no means harmony across the EU on this matter either. Indeed, Ireland, the Netherlands, Luxembourg, and Sweden are member states that have expressed reservations about targeting digital companies with specific tax measures, citing legal and economic problems with such ideas. As such, it is highly unlikely that the Commission's proposals will be legislated for at EU level any time soon, given that all member states must agree to their introduction.

Next Steps

The members of the OECD/G20 Inclusive Framework on BEPS will work towards a consensus-based solution by 2020. According to the OECD, analysis of the value contribution of certain characteristics of highly digitalized business models will need to be refined, with a view to studying its impact on any revision of the nexus and profit allocation rules.

Significantly, this will require the Inclusive Framework to assess whether the challenges relating to the principle of aligning profits with underlying economic activities and value creation would be best addressed by a multilateral solution focused on certain highly digitalized business models, or whether such a solution should be applicable to the broader economy.

In addition, the OECD sees scope for the development of a legal instrument to support global implementation of any changes that may be required.

Given the complexity of the issue, and the fact that the digital economy is evolving at a rapid pace, the OECD described these objectives as "challenging," which will require a phased approach, and an update in 2019.

As regards the EU proposals, legislation will be submitted to the Council for adoption and to the European Parliament for consultation. However, as noted above, political agreement on the legislation among all member states could also prove elusive.

Endnotes

1 http://www.oecd-ilibrary.org/docserver/download/2318161e.pdf?expires=1521804762&id=id&accname=guest&checksum=955404A8FEA3183CA4C58D0948B3850C

2 http://europa.eu/rapid/press-release_IP-18-2041_en.htm

3 http://www.oecd-ilibrary.org/docserver/download/2315281e.pdf?expires=1521804954&id=id&accname=guest&checksum=C804317D281E58FADBA593F033485E86 (via pdf link, at p. 86).

4 *Id*.

5 *Supra*, note 1.

6 *Id*, p. 169.

7 *Id*, p. 170.

8 *Id*.

9 *Id*, pp. 170–171.

10 *Id*, p. 166.

11 *Id*.

12 *Id*, pp. 178–179.

13 *Id*, p. 213.

14 *Supra*, note 2.

15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/689240/corporate_tax_and_the_digital_economy_update_web.pdf

16 https://home.treasury.gov/news/press-releases/sm0316

17 https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-70165.html

ISSUE 281 | MARCH 29, 2018

US Tax Considerations For The Digital Nomad Living Abroad

by Ephraim Moss, Esq. and Joshua Ashman, CPA, Expat Tax Professionals

In order to get it right, you should consult with a tax advisor who can weigh the various options depending on your particular circumstances.

Introduction

In today's age of "digital nomads," the idea of working remotely overseas continues to grow in popularity. New programs, such as Remote Year,[1] have further facilitated overseas commuting by organizing year-long trips for employees and freelancers to live in multiple cities abroad. Participants, for example, travel in groups to live in multiple cities throughout Europe, Asia and South America, for one month each over a year period.

Working abroad presents a number of unique US income tax issues and opportunities for the digital nomad. One main issue is qualification for the Foreign Earned Income Exclusion ("FEIE"),[2] which allows US citizens living abroad to exclude their foreign earned income from US federal taxation. Another important issue is a digital nomad's potential liability for state and local taxation even during their time living and working abroad.

Basics Of The Foreign Earned Income Exclusion

Provided that an individual can satisfy either the *bona fide* residence test (substantive change in residence based on facts and circumstances) *or* the physical presence test (present in a foreign country for 330 full days during any period of 12 consecutive months) *and* is able to establish a tax home in a foreign country, such individual can exclude from income a portion of his or her foreign earned income.

Foreign earned income is generally pay for personal services performed overseas, such as wages, salaries, or professional fees. It does not include passive income items, such as dividends, royalties, rent, pensions, and capital gains.

The FEIE amount is adjusted annually for inflation. For tax year 2017, the maximum exclusion amount is USD102,100 per qualifying person. The IRS just recently announced that the maximum exclusion amount is increased for the 2018 tax year to USD103,900.[3]

What Is A Tax Home?

In order for an individual to qualify for the FEIE, his or her "tax home" must be in a foreign country. The general rule is that a "tax home" is located in the vicinity of the taxpayer's regular or principal (if more than one regular) place of business or employment, regardless of where you maintain your family home.

Your tax home is the place where you are "permanently" or "indefinitely" engaged to work as an employee or self-employed individual. If you do not have a regular or principal place of business because of the nature of your work, your tax home may be the place where you regularly live. If you have neither (no regular place of business or living), then you may be considered an "itinerant" and your tax home would be considered wherever you work.

If you have a permanent place of employment in the US but then are put on assignment abroad, the location of your tax home depends greatly on whether your assignment is temporary (precluding the FEIE) or indefinite (allowing the FEIE). If you expect your employment away from home in a single location to last, and it does last, for one year or less, it is temporary unless facts and circumstances indicate otherwise. If you expect it to last for more than one year, it is indefinite. Courts generally consider employees not to be on assignment, however, if they choose to move and work remotely from abroad simply for personal reasons, *i.e.*, if the employer does not require the taxpayer to live and work remotely abroad nor benefit from such an arrangement. In such case, the taxpayer's pre-move place of business can be considered his or her tax home, regardless of the length of stay abroad.

The "tax home" rule is subject to an important overriding exception – an individual is not considered to have a tax home in a foreign country for any period during which the individual's "abode" is in the United States. "Abode" has been variously defined as one's home, habitation, residence, domicile, or place of dwelling. Thus, in contrast to "tax home," "abode" has a domestic rather than vocational meaning. The location of your abode often will depend on where you maintain your economic, family, and personal ties.

Tax Home, Abode And The Digital Nomad

In the case of the digital nomad working abroad, assuming the individual satisfies the *bona fide* residence test or physical presence test (often the latter test is satisfied so an inquiry into the former is not necessary), the critical issues then become the "tax home" and "no abode in the US" requirements.

The claim of a tax home abroad is arguably strengthened if the taxpayer stays in a single location abroad for more than a year and it is shown, for instance, that the move was employer-motivated and not solely for personal reasons. Alternatively, taxpayers who are permanently on the move throughout their career (*e.g.*, freelancers) may be able to argue that they are "itinerant" workers whose tax home follows them to wherever they work.

The claim of "no abode in the US" is generally strengthened to the extent the taxpayer can show that they have weakened their economic, family, and personal ties to the United States and strengthened such ties abroad. The strength of a digital nomad's position will depend on the particular facts and circumstances.

If you'd like to read more about the topic of the FEIE as it relates to the digital nomad, you are welcome to read our three-part series published last year in *Global Tax Weekly*.[4]

State And Local Tax Considerations

Generally, states impose tax only on individuals who are "residents" of the state. Most states use some definition of "domicile" to determine if a taxpayer is a resident. In general, for state tax purposes, an individual may have many residences, or physical dwellings in which he resides, but will have only one domicile, or that permanent residence to which he or she intends to return.

If you move out of your state of residence and it is for a short time only, your domicile normally does not change. A short time can be anywhere from a month or two or up to a year or more. To make a change in domicile permanent, you must combine the acts of making a change in domicile along with the intent to change your domicile. In many states, the requirements for breaking residency are fairly strict and require not only that one move out of the state but also sever other ties they have with the state. Such ties include selling property owned in the state, closing bank accounts, and even relinquishing a state issued driver's license.

For digital nomad employees working abroad for only a year and then returning to their state of residence, it may prove challenging in many states to show an intent to change your domicile.

Each state has its own particular rules, so it is important to understand these rules and how they apply to your particular facts.

Tax Structuring For Digital Nomad Entrepreneurs

For digital nomad entrepreneurs, structuring your business adds additional layers of US tax considerations, especially with the new rules set out in the Republican tax reform (the "Tax Cuts and Jobs Act," or "TCJA").[5]

As an example, doing business in the US through an S corporation can be a great planning technique for minimizing self-employment taxes. However, when using an S corporation, some optimization may be needed. On the one hand, you may want to reduce salary amounts paid from the company in order to minimize self-employment taxes; but on the other hand, you may want to increase salary amounts paid so as not to limit the scope of the new 20 percent deduction under the TCJA.

For those conducting business outside the US via a foreign entity, consideration should be given to the new outbound tax rules that stretch beyond the Subpart F rules that apply to controlled foreign corporations ("CFCs"), including the so-called global intangible low-taxed income ("GILTI") rules.[6]

Endnotes

1 http://www.remoteyear.com/

2 http://www.expattaxprofessionals.com/Form-2555-Foreign-Earned-Income-Exclusion

3 https://www.irs.gov/irb/2018-10_IRB

4 *See Global Tax Weekly*, No. 223 of February 16, 2017; No. 225 of March 2, 2017; and No. 228 of March 23, 2017.

5 https://www.expattaxprofessionals.com/tax-reform-officially-arrived-mean-u-s-expats-2/

6 https://www.expattaxprofessionals.com/expat-tax-information-other-information-foreign-companies/

Topical News Briefing: A Blacklist With Bite?

by the Global Tax Weekly Editorial Team

Clearly, there are disadvantages to be being named on the EU's blacklist of non-cooperative tax jurisdictions, as can be seen from the indignation expressed by blacklisted jurisdictions and their determination to secure removal from the list.

Just as individuals don't like to be named and shamed by their peers when accused of wrongdoing, the reputational damage which accompanies a country being included on a blacklist, while not easily quantifiable, is palpable, and risks leading to attendant adverse consequences such as falling foreign investment and economic decline.

As reported in this week's issue of *Global Tax Weekly*, the Organisation of Eastern Caribbean States, a grouping of 15 Caribbean territories, says it is working hard through its Brussels embassy to address EU concerns, which have led to a number of its members being included on a tax blacklist.

It has been leveled at the EU that naming and shaming is ineffective at country level because, while being blacklisted is undesirable, ultimately such lists lack teeth. The EU, however, is determined that an appearance on its blacklist should have consequences for named jurisdictions not acting on its concerns regarding tax transparency and fairness. As such, certain sanctions hang over those deemed to be uncooperative on an ongoing basis. These sanctions are essentially three-fold.

First, as reported in this week's issue, the European Commission has linked the blacklist with EU funding, including the European Fund for Sustainable Development, the European Fund for Strategic Investment, and the External Lending Mandate, and only direct investment using these funds is permitted in blacklisted jurisdictions (as opposed to investment being channeled through an entity).

Secondly, the Commission refers to the list in other relevant legislative proposals. For example, the public country-by-country reporting proposal includes stricter reporting requirements for multinationals with activities in listed jurisdictions.

Thirdly, member states are able to agree on coordinated sanctions to apply at national level against the listed jurisdictions. These include measures such as increased monitoring and audits, withholding taxes, special documentation requirements, and anti-abuse provisions. Certain member states have already begun to review transactions with listed jurisdictions with a view to applying some of these sanctions, including, as also reported in this week's issue, Sweden.

It remains to be seen whether or not these sanctions, if applied, have real bite. However, perhaps the more fundamental issue with the EU blacklist is its credibility to begin with. Indeed, in the debate over the need for higher levels of tax transparency and fairness, the EU seems to have displeased both sides. For there are those that argue that the blacklist unfairly singles out jurisdictions which have made the requisite legal changes and commitments already, and that the screening methodology was flawed, undertaken as it was by a body, the Code of Conduct for Business Taxation group, which itself has been accused of lacking transparency; a number of Caribbean territories, including Grenada, have said that serious mistakes were made by the assessors when reviewing the commitments that they had made.

Then there are others who say that the blacklist does not go nearly far enough and that the handful of tax havens and low-tax territories placed on the initial list fell well short of what was required to discourage the use of offshore finance.

The EU has also attracted criticism for the frequency with which it has changed the composition of the list (perhaps in response to mistakes made at the screening stage), which has reduced in length to just nine jurisdictions.

Putting aside the debate over the effectiveness of the blacklist, the question is, will it have consequences for listed jurisdictions beyond mere embarrassment? While the proposed restrictions on EU funding do not appear to be a serious punishment, and public CbC reporting isn't yet a legal requirement in the EU, the prospect of more scrutiny and higher tax burdens on transactions between EU member states and territories on the list could well lead investors to review the structure and location of their investments.

Beyond The FBAR: Other Penalties Lying In Wait For The Taxpayer With Undisclosed Foreign Accounts

by Michael DeBlis III, Esq., LLM

Introduction

While the FBAR (Foreign Bank Account Report) penalty tends to be the most severe penalty outside of the OVDP (Offshore Voluntary Disclosure Procedure) framework, it is by no means the only penalty. There are several others. This article covers all of the other civil penalties that could be assessed by the US Internal Revenue Service (IRS) if the taxpayer makes a quiet disclosure of his unreported foreign accounts by filing delinquent FBARs and amended returns.

Failure To File A Tax Return Penalty

The civil penalty for failure to timely file returns is found in IRC section 6651(a)(1). This penalty applies both inside and outside the OVDP regime. The elements of this penalty are the same as the elements of the section 7203 failure-to-file offense. As a preliminary matter, the taxpayer must have had a duty to file and must have failed to file.

In general, the section 6651(a)(1) penalty is 5 percent per month, plus an additional 5 percent for each month – or fraction thereof – during which the failure continues. The penalty is capped at 25 percent.

The penalty base is the tax required to be shown on the return. However, the base is reduced by the tax that has been paid by the due date of the return (*e.g.*, by withholding or estimating taxes).

Not to be overlooked is the fact that "if the failure to file is fraudulent, the penalty rate becomes 15 percent per month, with a maximum of 75 percent" (*i.e.*, see the discussion of the civil fraud penalty below).

Many taxpayers believe that the statute of limitations is an absolute defense to the failure to file penalty. Unfortunately, this is not always true. In general, "the IRS must assess any tax, or issue

a notice of deficiency, with respect to a tax year within three years of (1) when the return for the year was filed or (2) when the return was due to be filed, whichever is later." For example, if George filed his return on March 15, the statute of limitations would begin to run on April 15.

However, "if the return is filed after the original due date, the statute of limitations begins running the day the return was actually filed, regardless of whether an extension was granted." Continuing from the earlier example, if George was granted an extension to July 1 to file his return, but actually filed it on June 1, the statute of limitations would begin to run on June 1, and not July 1. Tricky indeed!

Many conditions exist that extend or suspend the running of the limitations period and that all but swallow up the general time periods. One such condition is the failure to file a tax return. The statute of limitations for the IRS to assess and collect any outstanding balances does not begin until a return has been filed. In other words, the IRS can go back until time immemorial to assess and collect tax when *no return has been filed*.

Accuracy-Related Penalty

Under IRC section 6662(a), the accuracy-related penalty is 20 percent of the underpayment. It applies both inside and outside the OVDP regime. The penalty applies whenever any one of five conditions is present. The two most common are:

1. "Negligent or intentional disregard of tax rules"; and
2. "Substantial understatement of income tax."

Assuming no return has been filed, the statute of limitations does not expire on the IRS's ability to assert the accuracy-related penalty. As previously discussed, there is no statute of limitations for assessing and collecting tax when no return has been filed.

Here's a quick example for demonstrating how the accuracy-related penalty is calculated. Assuming a tax deficiency of USD500, including interest, the accuracy-related penalty would be USD100 (0.20 × USD500).

A Potential Civil Fraud Penalty Imposed Under IRC Section 6651(f)

When an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for the civil fraud penalty. The civil fraud penalty is the behemoth of civil penalties because

it is "the largest civil tax penalty in monetary amount." It applies not only to cases where the taxpayer files a false return, but also to cases where the taxpayer fails to file a return at all. The former applies only to filed returns and is penalized under section 6663. The latter includes both a failure to file and a late filing. It is penalized under section 6651.

Section 6663(a) imposes a penalty equal to 75 percent of the portion of the underpayment which is attributable to fraud. Under section 6651(a)(1), the normal delinquency penalty is 5 percent per month (or fraction of a month) capped at 25 percent. However, when the failure to file is due to fraud, section 6651(f) raises the stakes by increasing the delinquency penalty to 15 percent per month (or fraction of a month) capped at 75 percent.

The IRS bears the burden of proving civil fraud by clear and convincing evidence, a heightened standard insofar as civil penalties go but substantially less than the "beyond a reasonable doubt" standard required for the government to obtain a conviction in a criminal case. Case law defines civil fraud as follows:

> "The intentional commission of an act or acts for the specific purpose of evading a tax believed to be owing. Fraud implies bad faith, intentional wrongdoing, and a sinister motive. It is never imputed or presumed. Whether fraud has been committed is a question of fact to be determined from the entire record."

Since direct proof of fraudulent intent is rarely available (*Query: When was the last time the IRS cracked open the head of a taxpayer and plucked out a fraudulent strand of thought that provides a roadmap to the fraud?*), the IRS typically infers intent from objective facts otherwise known as "badges of fraud." There are several badges of fraud. Some of the more common badges include the following:

- A pattern of understating income;
- Failing to maintain adequate books and records;
- Failing to file returns;
- Hiding assets;
- Lying to IRS agents;
- Receiving illegal source income;
- Providing inconsistent explanations;
- Overstating deductions;

- Maintaining multiple sets of books;
- Manufacturing false documents;
- Destroying important information; and
- Structuring transactions to avoid the reporting requirements.

Two important points must remain top of mind when it comes to the civil fraud penalty. First, reasonable cause is a defense. And second, when fraud is established, there is no statute of limitations impediment to the assessment of civil liabilities.

The New Cyprus–Saudi Arabia Double Tax Agreement

by Constantinos Christofi,
Elias Neocleous & Co. LLC

Introduction

On January 3, 2018, Cyprus and Saudi Arabia signed a new double taxation agreement (DTA), the first between the two countries. The new agreement was published in the Cyprus government gazette on March 5, 2018.[1] Like all of Cyprus's recent DTAs, it closely follows the 2014 OECD Model Tax Convention. It also includes a protocol elaborating the provisions on offshore activities and information exchange. The key features of the DTA and the protocol are summarized below.

Taxes Covered

The agreement applies to taxes on income imposed by either country, including taxes on gains from the alienation of movable or immovable property. In Saudi Arabia these are currently the Zakat (obligatory alms under the Muslim religion) and the income tax including the natural gas investment tax; in Cyprus they are income tax, corporate income tax, special contribution for defense (known as SDC tax), and capital gains tax.

Residence

The definition of resident has been extended beyond the definition in the OECD Model to include legal persons organized under the laws of a contracting state that are not liable to tax or are generally exempt from tax in that State and are established either for a religious, charitable, educational, scientific or other similar purpose, or to provide pensions or other similar benefits to employees.

The "tie-break" provisions for determining residence for individuals who are resident in both countries are the same as in the OECD Model Convention, namely permanent home and center of vital interests, country of habitual residence, and nationality, in descending order. If none of

these criteria is decisive, residence is to be settled by mutual agreement between the two countries' tax authorities.

For legal persons, residence is to be determined by the place of effective management.

Permanent Establishment

Article 5 of the DTA, which defines a permanent establishment, is almost identical to the corresponding article of the OECD Model Convention, except that a building site or construction or installation project will constitute a permanent establishment if it lasts more than six months, rather than the 12 months required by the OECD Model.

In addition, under Article 5.3(b), provision of services, including consultancy services, gives rise to a permanent establishment if it amounts to more than six months within any 12-month period.

If an enterprise has a representative in the territory of a country who has, and habitually exercises, authority to conclude contracts in the name of the enterprise, or who maintains a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, the enterprise concerned is deemed to have a permanent establishment in respect of any activities which the person undertakes for it. As in the OECD Model, the DTA provides that an independent broker or agent who represents the enterprise in the ordinary course of business will not fall within the scope of this provision. Care needs to be taken regarding the issuing of general powers of attorney so as not to risk inadvertently creating a permanent establishment, with potentially unfavorable consequences.

Income From Immovable Property

Article 6, which deals with income from immovable property, reproduces the corresponding article of the OECD Model *verbatim*, allowing for income received by a resident of one of the parties derived from immovable property situated in the territory of the other to be taxed in the state in which the property is located. It also makes clear that the scope of the article extends to income from immovable property used for the performance of independent personal services.

Business Profits

Article 7, which deals with business profits, reproduces the corresponding article of the OECD Model *verbatim*, with profits (apart from profits of a permanent establishment in the other contracting state) being taxable only in the contracting state in which the enterprise is resident.

An additional paragraph[2] has been inserted to make clear that in determining the taxable profits of a permanent establishment, no deduction is allowed for royalties, commissions, management costs or (except in the case of banking enterprises) interest paid to the head office or other parts of the business. Similarly, income of the permanent establishment from these sources is disregarded in determining its taxable profits. A further additional paragraph[3] provides that any profits derived by an enterprise of a contracting state from the exportation of merchandise to the other contracting state are not subject to tax in the latter contracting state. Where export contracts include other activities carried on in the other contracting state through a permanent establishment, profits derived from such activities may be taxed in the other contracting state.

Shipping And Aviation

Profits from the operation of ships or aircraft in international traffic are taxable only in the contracting state in which the enterprise concerned is resident. For this purpose, profits include profits derived from the rental of ships or aircraft under a full or bareboat charter, and profits derived from the use or rental of containers and related equipment that is incidental to income from the international operation of ships or aircraft.

Residence is determined by the place of effective management; if the place of effective management of a shipping enterprise is aboard a ship, it is deemed to be in the contracting state in which the home harbor of the ship is located, or, if there is no such home harbor, in the contracting state of residence of the operator of the ship.

Associated Enterprises

The article dealing with associated enterprises is a word-for-word reproduction of the corresponding article of the OECD Model, providing for the adjustment of profits from transactions between associated enterprises carried out other than on arm's length terms.

Dividends

Dividends paid by a company resident in one contracting state to a company (but not a partnership) which is a resident of the other contracting state are exempt from withholding tax if the recipient directly or indirectly holds at least 25 percent of the capital of the company paying the dividends. Otherwise withholding tax is limited to 5 percent if the beneficial owner of the dividends is a resident of the second contracting state. These provisions are relevant only to dividends paid from Saudi Arabia, since Cyprus does not impose withholding taxes on dividends.

This exemption does not apply if the dividends derive from a permanent establishment or a fixed base in the contracting state from which the dividends are paid, through which the beneficial owner of the income (who is also a resident in one of the contracting states) carries on business or performs independent personal services.

Interest

Interest (referred to in the agreement as income from debt-claims) arising in one contracting state and paid to a resident of the other who is its beneficial owner is exempt from withholding tax. This exemption is limited to interest calculated on an arm's length basis. It does not apply if the interest derives from a permanent establishment or a fixed base in the contracting state from which the income is paid, through which the beneficial owner of the income (who is also a resident in one of the contracting states) carries on business or performs independent personal services.

Royalties

Withholding tax on royalties paid from a contracting state is limited to 5 percent of the gross amount if the royalties relate to industrial, commercial or scientific equipment, and to 8 percent in respect of all other assets, if the beneficial owner of the royalties is a resident of the other contracting state. This exemption is limited to royalties calculated on an arm's length basis. The exemption does not apply if the royalties derive from a permanent establishment or a fixed base in the contracting state from which they are paid, through which the beneficial owner of the income (who is also a resident in one of the contracting states) carries on business or performs independent personal services.

Royalties are generally deemed to arise in the contracting state of which the payer is a resident. However, where the royalties are borne by a permanent establishment or a fixed base, they are deemed to arise in the contracting state in which the permanent establishment or fixed base is situated.

Capital Gains

Gains derived by a resident of one contracting state from the alienation of immovable property (or of movable property forming part of a permanent establishment or a fixed base for the performance of personal services) situated in the other may be taxed in the contracting state in which the property is situated. Gains from the alienation of shares forming part of what the DTA defines as a "substantial participation" in the capital of a non-listed company may be taxed in the country of which the company is a resident.

A person is considered to have a substantial participation when their holding amounts to 25 percent or more of the capital of the investee company at any time within 12 months prior to the alienation. Gains derived from the alienation of all other property (including ships or aircraft operated in international traffic) are taxable only in the contracting state of which the alienator is a resident.

Independent Professional Services

Article 14 deals specifically with independent professional services. It provides that income derived by a resident of one contracting state from professional or similar services performed in the other are taxable only in the contracting state of which the person concerned is resident, unless the individual has a fixed base regularly available to him in the other contracting state for the purpose of performing his activities or if he is present in the other contracting state for more than 183 days in total during any 12-month period commencing or ending in the fiscal year concerned. In either of these cases the income derived from the activities performed in the host state may be taxed there.

Elimination Of Double Taxation

Elimination of double taxation is by the credit method. The credit against tax in the country of residence is limited to the amount of tax that would be payable on the income concerned in the country of residence. The provisions for elimination of double taxation will not affect the operation of the Zakat collection regime in Saudi Arabia.

Exchange Of Information

Article 26 of the DTA reproduces Article 26 of the OECD Model Convention *verbatim*. In addition, the protocol to the agreement stipulates the supporting information required to demonstrate the foreseeable relevance of any information requested, in line with the provisions of Cyprus's Assessment and Collection of Taxes Law. The protocol also provides that information should not be provided unless the contracting state that made the request has reciprocal provisions or applies appropriate administrative practices for the provision of the information requested.

Insurance Activities

Article 28 of the DTA provides that it will not affect the operation of any law of either contracting state relating to tax imposed on income derived by non-residents from insurance activities.

Entry Into Force And Termination

The two countries are required to notify one another through diplomatic channels once their domestic ratification procedures have been completed, and the DTA will enter into force on the first day of the second month following the month in which the later of the notifications is received. It will enter into effect on the following first day of January. For example, if the second notification is received during November 2018, the DTA will enter into force on January 1, 2019, and will enter into effect on January 1, 2020.

The DTA will remain in force until terminated. Either country may terminate it by giving written notice of termination through diplomatic channels of at least six months no earlier than five years after the agreement entered into force. The DTA will cease to have effect from the beginning of the following calendar year.

Offshore Activities

As well as dealing with exchange of information, the protocol also clarifies the application of the DTA to offshore activities, to ensure that each state's taxation rights in respect of offshore activities are preserved in circumstances where they might otherwise be limited by other provisions of the agreement, such as those dealing with permanent establishment and business profits. Special rules are required because of the short duration of some of these activities.

A resident of one contracting state carrying on offshore exploration or exploitation activities in the other contracting state (including its territorial sea, contiguous zone, exclusive economic zone, or continental shelf) is deemed to be carrying on business through a permanent establishment for as long as the activities are carried out, however short that period may be.

Gains derived by a resident of a contracting state from the alienation of assets (either tangible or intangible) deriving the majority of their value from exploration or exploitation rights in the second contracting state (including its territorial sea, contiguous zone, exclusive economic zone, or continental shelf) may be taxed in the second state.

Non-Discrimination

The usual non-discrimination article is absent, but the protocol provides that the parties will enter into negotiations to introduce one in the event that Saudi Arabia introduces an income tax applicable to its resident nationals.

Conclusion

The new agreement is a further valuable extension of Cyprus's network of DTAs. Saudi Arabia's economy is globally significant, and the country's recently announced diversification program will no doubt result in increased inward and outward investment, which Cyprus aspires to play a role in channeling. It is therefore to be hoped that the remaining steps required to bring the agreement into effect can be achieved quickly. In the meantime, the Cyprus tax authorities will doubtless follow their normal practice of allowing unilateral relief for taxes paid overseas.

Endnotes

[1] Issue 4237.

[2] Paragraph 7.3.

[3] Paragraph 7.4.

ISSUE 281 | MARCH 29, 2018

Topical News Briefing: From Talk To Action – The Real Digital Tax Challenge

by the Global Tax Weekly Editorial Team

Judging by the reaction to the OECD's Interim Report on digital taxation and the EU's proposals for a temporary digital tax, discussing the tax challenges of the digital economy is the easy part. Putting in place solutions could prove to be much more problematic.

From US Treasury Secretary Steven Mnuchin's skeptical response to the OECD report, to Irish Prime Minister Leo Varadkar's claim that at least ten EU member states have concerns about the Commission's proposal for an interim equalization tax on companies with a significant digital presence, there is certainly no consensus yet on the ideal solution, or, indeed, on whether a solution is needed at all.

Without such an agreement, it is difficult to see how new tax rules for the digital economy, either in the form of changes to the definition of a permanent establishment and reforms to other conventional corporate tax rules, or specific taxes on highly digitalized business models, can be brought about across the G20, the OECD, or even the EU.

However, this doesn't lessen the risk that individual jurisdictions will take matters into their own hands in the absence of a multilateral solution to the problem. As has been witnessed with the wider BEPS project, some jurisdictions have had no compunction about veering off the agreed path of recommended tax reforms, and it would be relatively easy for digital taxes to be legislated for at individual country level.

There are signs that unilateral responses are already in the minds of some governments.

In its spring fiscal update earlier this month, the UK Government set out its thinking on tax reform options to generate "fairer tax results" for those transacting with consumers via the internet, focusing on taxation where these businesses' supplies are consumed.

The Canadian Government is also "studying the issue" of how to tax major digital companies, Finance Minister Bill Morneau revealed recently. In an interview with Bloomberg, Morneau said

the Government is "looking at it carefully because we need to understand what if anything happens to our tax base based on a changing of the economy towards a different business model."

It may be only a matter of time before other governments, seeing an opportunity to both fill a "loophole" and assuage public opinion, follow in the UK's and Canada's footsteps.

For taxpayers, such a fragmented and uncoordinated approach would be a worst-case scenario, and would be likely to increase their cross-border tax risk by a substantial degree.

There appears to be much more support for the OECD's more considered approach to this issue, with many warning that the EU's proposals haven't been properly thought through and could therefore unleash all manner of unintended legal and economic consequences which could ultimately affect the bloc's competitiveness. Indeed, even an internal European Council opinion has concluded that the Commission has failed to make an adequate case for its two-pronged digital tax plan.

Not only this, the EU proposals are viewed by some as being targeted at certain US multinationals in particular, a move which could prompt retaliatory measures by the US Government or by Congress.

But will this assessment persuade the core of influential member states in favor of new tax measures to relinquish these proposals, or at least take them back to the drawing board? That seems unlikely with so much political capital invested in them, even if legislating for an EU-level digital tax seems like an unrealistic prospect as matters stand.

The tax challenges of the digital economy will probably continue to dominate the international tax agenda for the foreseeable future, and it is quite possible that we could see some unwelcome developments – from the point of view of certain taxpayers – at jurisdictional level.

BEPS Multilateral Instrument To Enter Into Force

The OECD has announced that its multilateral convention to implement tax treaty-related measures to counter base erosion and profit shifting will enter into force on July 1, 2018.

The Convention, negotiated by more than 100 countries and jurisdictions under a mandate from G20 Finance Ministers and Central Bank Governors, will modify existing bilateral tax treaties to swiftly implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project. Treaty measures that are included in the Convention include those on hybrid mismatch arrangements, treaty abuse, and permanent establishment. The Convention also strengthens provisions to resolve treaty disputes, including through mandatory binding arbitration, which has been taken up by 28 signatories.

The Convention is the first multilateral treaty of its kind, allowing jurisdictions to transpose results from the OECD/G20 BEPS Project into their existing bilateral tax treaties, transforming the way tax treaties are modified. The Convention has been designed to strengthen existing tax treaties concluded among its parties without the need for burdensome and time-consuming bilateral renegotiations, which could take a decade.

"The entry into force of this Multilateral Convention marks a turning point in the implementation of OECD/G20 efforts to adapt international tax rules to the 21st Century," said OECD Secretary-General Angel Gurría. "We are translating commitments into concrete legal provisions in more than 1,200 tax treaties worldwide. Thanks to this drive by the international community, we are ensuring that multinational companies pay their fair share when it comes to fulfilling tax obligations, like citizens do."

The entry into force follows from the deposit of the fifth instrument of ratification by Slovenia on March 22, 2018. Earlier, Austria, the Isle of Man, Jersey, and Poland deposited their instruments with the OECD. The entry into force of the Convention on July 1, 2018, will bring it into legal existence in these five jurisdictions, plus the United Arab Emirates, which ratified the deal subsequently, and any other that ratifies the pact. In accordance with the rules of the Convention, its contents will start to have effect for existing tax treaties as from 2019. The OECD described the milestone as "a significant step in international efforts to update the existing network of bilateral tax treaties and reduce opportunities for tax avoidance by multinational enterprises."

OECD Releases Extra BEPS Action 7 Guidance

On March 22, 2018, the OECD released additional guidance on the attribution of profits to permanent establishments, to add to its recommendations on base erosion and profit shifting (BEPS) Action 7.

In October 2015, as part of the final BEPS package, the OECD/G20 published the report on Preventing the Artificial Avoidance of Permanent Establishment Status. The Report recommended changes to the definition of permanent establishment (PE) in Article 5 of the OECD Model Tax Convention, which is used to determine whether a non-resident enterprise must pay income tax in another state. The report also recommended changes to prevent the use of certain common tax avoidance strategies that have been used to circumvent PE status.

The report also mandated the development of additional guidance on how the existing rules on attribution of profits to PEs under Article 7 would apply to PEs resulting from the changes recommended in the report, and in particular for PEs outside the financial sector. The newly released guidance also takes into account the recommendations put forward by the OECD on transfer pricing related topics, centered on aligning transfer pricing outcomes with value creation, in BEPS Actions 8–10, the OECD said.

The new, additional guidance sets out high-level general principles, which countries agree are relevant and applicable in attributing profits to PEs in accordance with applicable treaty provisions. It also provides examples on the attribution of profits to certain types of PEs arising from the changes to the PE definition under BEPS Action 7, the OECD stated.

Sweden To Legislate To Adopt BEPS Treaty Changes

The Swedish Government has approved a bill to ratify the BEPS Multilateral Instrument and has submitted it to Parliament.

According to a statement issued by the Ministry of Finance on March 20, the bill proposes that Parliament approve the MLI to implement tax treaty measures to counter BEPS and includes Sweden's reservations to the instrument.

The MLI, developed through negotiations involving more than 100 countries and jurisdictions as part of the OECD's BEPS project, is intended to enable countries to incorporate BEPS-related amendments to their tax treaties without having to renegotiate bilateral treaties on a piecemeal basis. It was developed to speed up the introduction of these provisions into treaties, as renegotiating treaties bilaterally could take more than a decade to fully achieve.

The BEPS MLI is also intended to improve dispute resolution mechanisms and provides flexibility to accommodate specific tax treaty policies.

EU Announces Sanctions For 'Blacklisted' Countries

The European Commission is to take steps to ensure that EU external development and investment funds cannot be channeled or transited through entities in countries included on the EU's "blacklist" of non-cooperative tax jurisdictions.

The Commission has published guidelines which set out the applicable legislation on how EU funds should be treated when it comes to tax avoidance and non-cooperative jurisdictions. The guidelines are intended to ensure that the rules are interpreted and applied consistently.

The guidelines provide information on how the EU's implementing partners should assess funding projects that involve entities in jurisdictions listed by the EU as non-cooperative for tax purposes. The assessment process includes a series of checks designed to pinpoint a risk of tax avoidance.

For example, the Commission has stated that before funding is channeled through an entity, it should be established that there are sound business reasons for the particular structuring of a project, which must not take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing a tax bill.

An exemption is made for direct financing, where a project is physically implemented in a listed non-cooperative tax jurisdiction and is not linked to money laundering, terrorism financing, tax fraud, or tax evasion. This exemption is intended to safeguard the EU's development policy.

Tax Commissioner Pierre Moscovici said: "The EU's blacklist of tax havens is a living document and more countries will be added if they don't live up to the commitments they have made to improve their tax systems."

"The Commission will not allow EU funds to contribute to global tax avoidance. These EU level countermeasures should act as a wake-up call for those jurisdictions as they show the EU is serious about tackling tax avoidance on a global scale."

The Commission called on international financial institutions and other bodies involved in the management of the EU budget to review their internal policies on non-cooperative jurisdictions.

The following countries are on the blacklist: American Samoa, the Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago, and the US Virgin Islands.

The "gray list" comprises: Anguilla, Antigua and Barbuda, Bahrain, Barbados the British

Virgin Islands, Dominica, Grenada, Macao, the Marshall Islands, Panama, Saint Lucia, South Korea, Tunisia, and the United Arab Emirates. Jurisdictions on the gray list are subject to close monitoring, having made reform commitments.

Caribbean States Appeal To EU Over Tax Blacklisting

The Organisation of Eastern Caribbean States (OECS), a grouping of 15 Caribbean territories, says it is working hard through its Brussels embassy to address EU concerns, which have led to a number of its members being included on a tax blacklist.

The EU has included the Bahamas and Saint Kitts and Nevis on a list of non-cooperative tax jurisdictions that have failed to meet certain minimum standards on transparency and exchange of information in relation to financial services. Jurisdictions on the blacklist face EU countermeasures including a ban on EU external development and investment funds being channeled or transited through listed countries.

OECS Chairman and Prime Minister of Saint Lucia, Allen Chastanet, said the loss of preferential market access for bananas and sugar, and a rise in non-tariff barriers for other products, had forced many member states to rely on financial services, and that the EU's latest tax blacklist threatens this revenue source. He added that OECS members are increasingly having to deal with decisions by large countries and multinational bodies, such as the EU, which have the effect of promoting the national interests of these larger entities at the expense of smaller economies.

Sweden To Review Transactions With States On EU's Tax Blacklist

The Swedish Government has directed the country's tax agency to review transactions with jurisdictions placed on the European Union's blacklist of non-cooperative territories in the area of taxation.

The review is intended to establish whether there are transactions taking place between Sweden and black-listed jurisdictions which are being conducted for the sole purposes of avoiding tax rather than for sound economic reasons.

As part of the review, the tax agency has been asked to ascertain whether tax-motivated transactions are associated with the legal shortcomings which led to a jurisdiction's inclusion in the black list.

The review will include transactions with jurisdictions on the black list when the review commenced.

Commenting on the announcement, Minister of Finance Magdalena Andersson said: "In order to maintain the legitimacy of the tax system and to fund the school and health care,

every tax crown [the Swedish currency unit] is needed. Therefore, it is important for the EU to continue its efforts to reduce tax avoidance and tax evasion."

The EU blacklist published on December 5 initially included 17 jurisdictions. However, in the meantime the list has been refined several times and now includes nine jurisdictions – namely American Samoa, the Bahamas, Guam, Namibia, Palau, Samoa, St Kitts and Nevis, Trinidad and Tobago, and the US Virgin Islands.

The European Commission says that it has a range of sanctions available to use against non-cooperative jurisdictions, including restrictions on development funding.

However, the Commission has also encouraged member states to agree on coordinated sanctions to apply at national level against the listed jurisdictions. These include measures such as increased monitoring and audits, withholding taxes, special documentation requirements, and anti-abuse provisions.

EU Announces New Digital Tax Plans

The European Commission on March 21 released two proposed amendments to international tax rules to ensure digital business activities are taxed "fairly" and in a growth-friendly way in the European Union.

The proposals are in response to calls from member states for a permanent and lasting solution, to ensure a "fair share" of tax revenues from online activities where digital firms derive revenue from users in their territory, which might otherwise go untaxed.

The Commission noted: "Profits made through lucrative activities, such as selling user-generated data and content, are not captured by today's tax rules. Member states are now starting to seek fast, unilateral solutions to tax digital activities, which creates a legal minefield and tax uncertainty for business. A coordinated approach is the only way to ensure that the digital economy is taxed in a fair, growth-friendly, and sustainable way."

The Commission has proposed two solutions. The first initiative – the Commission's preferred long-term solution – would reform corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels.

The second proposal responds to calls from several member states for an interim tax that would cover the main digital activities that currently escape tax altogether in the EU.

Specifically, the first proposal would enable member states to tax profits that are generated in their territory, even if a company does not have a physical presence there. The new rules would ensure that online businesses contribute to public finances at the same level as traditional "brick-and-mortar" companies.

A digital platform would be deemed to have a taxable "digital presence" or a virtual permanent establishment in a member state if it fulfills one of the following criteria:

- It exceeds a threshold of EUR7m (USD8.58m) in annual revenues in a member state;
- It has more than 100,000 users in a member state in a taxable year
- Over 3,000 business contracts for digital services are created between the company and business users in a taxable year.

The new rules would also change how profits are allocated to member states. The Commission argues that this will better reflect how companies can create value online: for example, depending on where the user is based at the time of consumption.

The Commission said the measure could eventually be integrated into the scope of the Common Consolidated Corporate Tax Base (CCCTB) – the Commission's already proposed initiative for allocating profits of large multinational groups in a way which better reflects where the value is created.

The second, temporary solution is intended to ensure there is at least a harmonized EU approach to digital taxation, in the absence of a global agreement, to deter member states from introducing unilateral measures.

The Commission has explained that its second proposal is the introduction of an indirect tax, with a three percent rate put forward by the Commission, which would apply to revenues created from certain digital activities which escape the current tax framework entirely. According to the Commission, the tax would apply to revenues created from activities where users play a major role in value creation and those that are the hardest to capture with current tax rules, such as those revenues:

- Created from selling online advertising space;
- Created from digital intermediary activities, which allow users to interact with other users and which can facilitate the sale of goods and services between them;
- Created from the sale of data generated from user-provided information.

Tax revenues would be collected by the member states where the users are located, and will apply only to companies with total annual worldwide revenues of at least EUR750m and EU revenues of EUR50m.

These legislative proposals are to be submitted to the Council for adoption and to the European Parliament for consultation.

Releasing its proposals, the EU said it remains committed to global discussions on digital taxation under the auspices of the G20 and OECD and will continue to push for ambitious international solutions to the issues posed by the digital economy.

Valdis Dombrovskis, Vice-President for the Euro and Social Dialogue, said: "Digitalization brings countless benefits and opportunities. But it also requires adjustments to our traditional rules and systems. We would prefer rules agreed at the global level, including at the OECD. But the amount of profits currently going untaxed is unacceptable. We need to urgently bring our tax rules into the 21st century by putting in place a new comprehensive and future-proof solution."

Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation, and Customs, added: "The digital economy is a major opportunity for Europe and Europe is a huge source of revenues for digital firms. But this

win-win situation raises legal and fiscal concerns. Our pre-Internet rules do not allow our member states to tax digital companies operating in Europe when they have little or no physical presence here. This represents an ever-bigger black hole for Member States, because the tax base is being eroded. That's why we're bringing forward a new legal standard as well an interim tax for digital activities."

On March 21, the Commission published the following related documents:

- A Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence;
- An annex to the proposal;
- An impact assessment;
- A Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services;
- A Commission recommendation relating to the corporate taxation of a significant digital presence; and
- A Communication from the Commission to the European Parliament and the Council – Time to establish a modern, fair and efficient taxation standard for the digital economy.

Canada Considering Digital Tax

The Canadian Government is "studying the issue" of how to tax major digital companies, Finance Minister Bill Morneau has said.

In an interview with Bloomberg, Morneau said the Government is "looking at it carefully because we need to understand what if anything happens to our tax base based on a changing of the economy towards a different business model."

The Government is "studying the issue with an intent to have a point of view," he explained.

According to Morneau, an evolving digital economy "presents real differences to how people might be organizing their business over time and where they might be getting profits versus where they might be generating value."

Among the issues being addressed is "how the international community is going to think about digital taxation."

Ireland To Resist EU Digital Tax Plans

Irish Prime Minister Leo Varadkar has described the EU's digital tax plans as "flawed" and claimed that there are now at least ten member states that oppose the scheme.

The Commission this week recommended the introduction of a three percent indirect tax on revenues derived from certain digital activities. The tax would apply to revenues created from activities where users play a major role in value creation and to revenues created from selling online advertising space, from digital

intermediary activities, and from the sale of data generated from user-provided information.

Tax revenues would be collected by the member states where the users are located, and would apply only to companies with total annual worldwide revenues of at least EUR750m (USD925.2m) and EU revenues of EUR50m.

Speaking to reporters ahead of an EU summit, Varadkar said that the Irish Government thinks that the Commission's proposal "is flawed on a number of accounts." He claimed that "there are at least ten if not more than ten countries that have lots of questions, very many questions to ask about this proposal, lots of reservations about it."

Varadkar said that a number of problems would arise from basing the tax on where sales occur rather than where profits are made or value is created. He also warned that the proposal "targets US companies and that will no doubt result in a reaction from the United States."

Varadkar likewise stressed that "there is no point in Europe proposing a tax on itself that may only hand an advantage to countries that are not in the European Union or even countries that are leaving the European Union."

Earlier this week, Varadkar told the Irish Parliament that Ireland is "committed to global tax reform" and that the Government does "not accept that companies, including large digital ones, should pay little or no tax on their profits."

However, he emphasized that the Government believes that "global solutions are needed to ensure that tax is paid by companies where value is created and profits are generated, reflecting the highly international nature of the digital economy."

Varadkar urged that the EU "should wait for the OECD to complete its work before deciding how to act, and should only do so in the context of agreement on an international level."

According to Varadkar, the Commission's proposed temporary tax "would be ill-judged."

The Government's stance was welcomed by the business association Ibec. CEO Danny McCoy said: "The temporary turnover-based measures … are poorly designed, risk significant unintended consequences and ultimately represent a case of prioritizing quick public relations wins over long-term progress in future proofing the global corporate tax system."

"The proposal, which would undermine the established principle of taxing where value is created and instead move to a tax at a point of sale, will in the long run be negative for EU businesses and economies."

OECD Reports To G20 Leaders On Digital Tax Options

The OECD has published the tax report received by G20 finance ministers and central bank governors at its first meeting this year, on March 19–20, 2018, which focused in particular on new tax rules for the digital economy.

The G20 released the following message on tax issues in its communique following the meetings:

"We will continue our work for a globally fair and modern international tax system and welcome international cooperation and pro-growth tax policies. We remain committed to the implementation of the Base Erosion and Profit Shifting (BEPS) package and welcome progress to date. The impacts of the digitalization of the economy on the international tax system remain key outstanding issues. We welcome the OECD interim report analyzing the impact of the digitalisation of the economy on the international tax system. We are committed to work together to seek a consensus-based solution by 2020, with an update in 2019."

On virtual currencies, it said:

"We acknowledge that technological innovation, including that underlying crypto-assets, has the potential to improve the efficiency and inclusiveness of the financial system and the economy more broadly. Crypto-assets do, however, raise issues with respect to consumer and investor protection, market integrity, tax evasion, money laundering, and terrorist financing. Crypto-assets lack the key attributes of sovereign currencies. At some point they could have financial stability implications. We commit to implement the FATF standards as they apply to crypto-assets, look forward to the FATF review of those standards, and call on the FATF to advance global implementation. We call on international standard-setting bodies (SSBs) to continue their monitoring of crypto-assets and their risks, according to their mandates, and assess multilateral responses as needed."

The OECD's new report prepared for the G20 leaders discusses progress towards implementation of the BEPS minimum standards, on preventing treaty abuse, the introduction of country-by-country reporting rules, improved dispute resolution mechanisms, and on tackling harmful tax practices. It notes that 78 territories so far have ratified the BEPS multilateral instrument to rapidly amend existing double tax treaties to introduce provisions to tackle BEPS, and 72 territories will have been assessed under the peer review mechanisms concerning improving dispute resolution mechanisms by December 2019. It said 60 territories already have substantive CbC reporting regimes for the collection of information relevant to the enforcement of transfer pricing regimes.

In its update to G20 leaders on the digital economy, the OECD paper says:

"The challenges of the digitalisation of the economy were identified as one of the main focuses of the BEPS Action Plan leading to the 2015 BEPS Action 1 Report. In March 2017, the G20 Finance Ministers mandated the OECD, through the Inclusive Framework on BEPS, to deliver an interim report on the implications of digitalization for taxation by April 2018. This report, Tax Challenges Arising from Digitalisation – Interim Report 2018 (the Interim Report) has now been agreed by the more than 110 members of the Inclusive Framework."

"The Interim Report provides an in-depth analysis of the main features frequently observed in certain highly digitalized business models and value creation in the digitalized age, as well as the potential implications for the existing international tax framework. It describes the complexities of the issues involved, the positions that different countries have in regard to these features and their implications, and which drive their approach to possible solutions. These different approaches towards a long term solution range from those countries that consider no action is needed, to those that consider there is a need for action that would take into account user contributions, through to others who consider that any changes should apply to the economy more broadly."

"[Inclusive Framework] members agreed to undertake a coherent and concurrent review of the 'nexus' and 'profit allocation' rules – fundamental concepts relating to the allocation of taxing rights between jurisdictions and the determination of the relevant share of the multinational enterprise's profits that will be subject to taxation in a given jurisdiction. They will work towards a consensus-based solution, noting that at present, there are divergent views on how the issue should be approached. It was agreed that the Inclusive Framework would carry out this work with the goal of producing a final report in 2020, with an update to the G20 in 2019. The Inclusive Framework's Task Force on the Digital Economy will meet next in July 2018."

"In addition, the Interim Report discusses interim measures that some countries have indicated they would implement, believing that there is a strong imperative to act quickly. In particular, the Interim Report considers an interim measure in the form of an excise tax on the supply of certain e-services within their jurisdiction that would apply to the gross consideration paid for the supply of such e-services."

"There is no consensus on the need for, or merits of, interim measures, with a number of countries opposed to such measures on the basis that they will give rise to risks and adverse consequences. The Interim Report describes,

however, the framework of design considerations, identified by countries in favor of introducing interim measures, which should be taken into account when considering introducing such measures."

This referenced excise tax was announced on March 21 by the EU in its digital tax plans, as a stop-gap measure proposed to be introduced ahead of a global or EU-level solution to the tax challenges of the digital economy, centered on new digital permanent establishment rules.

The OECD report continues:

"The Interim Report also takes stock of progress made in the implementation of the BEPS package, which is curtailing opportunities for double non-taxation. Country-level implementation of the wide-ranging BEPS package is already having an impact, with evidence emerging that some multinationals have already changed their tax arrangements to better align with their business operations."

"Finally, the Interim Report identifies new areas of work that will be undertaken without delay. Given the availability of big data, international cooperation among tax administrations should be enhanced, in particular, as regards the information on the users of online platforms as part of the gig and sharing economies, to ensure taxes are paid when they are due. The Forum on Tax Administration, working with the Inclusive Framework, will develop practical tools and cooperation in the area of tax administration and will also examine the tax consequences of new technologies (e.g., crypto-currencies and blockchain distributed ledger technology)."

"An update on this work will be provided in 2019, as the Inclusive Framework works towards a consensus-based solution by 2020."

The OECD's earlier Interim Report was short on definitive proposals. However, in the new report to the G20, the OECD fleshed out the possible design features of a future digital tax framework, stating: "Developing, agreeing and implementing a global, consensus-based solution will take time, and, in some countries, there are pressing calls for governments to take more immediate action to address the tax challenges arising from digitalisation. There is no consensus on the need for, or the merit of, interim measures with some countries opposing them. The risks and adverse consequences that these countries believe would arise as a result of such measures include negative impacts on investment, innovation and growth, the possibility of over-taxation, distortive impacts on production, and increasing the economic incidence of tax on consumers and businesses, and increased compliance and administration costs."

"The countries considering interim measures recognize these challenges, but consider there

is a fiscal and political imperative to act, pending a global solution which may take time to develop, agree, and implement. They take the view that there is a sound conceptual basis for an interim measure, that value is being generated within their jurisdiction that would otherwise go untaxed challenging the fairness, sustainability, and public acceptability of the system. They think the challenges need to be weighed against the policy challenges of not acting in the interim and consider that at least some of the possible adverse consequences can be mitigated through the design of the measure."

"The [Interim Report] therefore reflects the framework of design considerations, identified by countries in favor of introducing interim measures, which should be taken into account when considering introducing such measures. This framework takes into account some constraints, including that any such measures should be in compliance with existing international obligations, temporary, targeted and balanced, minimize over-taxation, as well as [be] designed to limit the compliance costs and not to inhibit innovation. The Interim Report considers an interim measure in the form of an excise tax on the supply of certain e-services within their jurisdiction that would apply to the gross consideration paid for the supply of such e-services."

India Consults Taxpayers On Income Tax Law Reform

India has launched a consultation on efforts to reform the country's 1961 income tax law, to be led by a newly constituted task force.

Stakeholders are being invited to submit input via an online form on the Income Tax India website.

The tax authority is seeking information in particular on how it can ease filing and e-filing tax return obligations, improve the accuracy of tax credit calculations, streamline tax return processing and prevent errors, and improve the effectiveness of dispute resolution and refund recovery procedures. The reform will also look at changes to the current penalty regime.

Comments are invited by April 2.

India Defers Surrogate Entity CbC Reporting Deadline

The Indian Central Board of Direct Taxes has issued a statement to defer the filing obligation on surrogate parent entities with regards to country-by-country (CbC) reporting.

Section 286 was inserted into the Income-tax Act, 1961 through the 2016 Finance Act to introduce a requirement to furnish a CbC report. The requirement to complete a CbC report, on groups' international tax and transfer pricing affairs, was proposed by the OECD as part of its base erosion and profit shifting project.

Typically, the CbC report must be furnished by the ultimate parent entity of an international group in the country or territory of its residence (as provided for in subsection (2) of Section 286). The deadline for such reports is March 31, 2018, for the 2016/17 fiscal year (extended in October last year). This remains unchanged.

Subsection (4) of Section 286 provides for situations where a CbC report will instead be filed in India by a "surrogate parent entity," where a group cannot file a CbC report in another territory that will subsequently exchange such multilaterally. Such an obligation arises where a parent entity is resident in a country or territory with which India does not have an agreement providing for exchange of CbC reports or where there has been a systemic failure of the country or territory.

The Indian Government had announced that, following appeals from companies regarding the March 31, 2018, deadline for surrogate parent entities, the deadline would be extended for these entities.

The Government has stated that the deadline for surrogate parent entities to file a CbC report will be deferred and prescribed after the

enactment of the Finance Bill 2018. Finance Bill 2018, which has been endorsed by the lower house, includes a provision providing that the deadline for surrogate parent entities will be a date as prescribed. However, the Bill has yet to be enacted. It also includes a provision to amend the general CbC reporting deadline to twelve months after the end of a group's fiscal year.

India, Hong Kong Sign Double Tax Deal

Hong Kong and India on March 19 signed an agreement to avoid double taxation and limit withholding tax rates on passive income at source.

The DTA caps withholding tax on dividends at 5 percent, and withholding tax on royalty and interest income to 10 percent. In the absence of the agreement, interest income sourced from India is subject to a 20 percent tax rate.

Further, Hong Kong airlines operating flights to India will be taxed at Hong Kong's corporation tax rate, and will not be taxed in India. Profits from international shipping transport earned by Hong Kong residents arising in India and subject to tax there will enjoy 50 percent reduction in tax in India.

The agreement provides that any Indian tax paid by Hong Kong companies will be allowed as a credit against the tax payable in Hong Kong on the same profits, subject to the provisions of the tax laws of Hong Kong. Likewise, for Indian companies, the tax paid in Hong Kong will be allowed as a deduction from the tax payable on the same income in India.

The agreement also includes provisions for the exchange of tax information.

South Africa To Increase VAT On April 1

On April 1, 2018, South Africa will raise its value-added tax (VAT) rate to 15 percent from 14 percent.

The South Africa Revenue Service earlier released guidance on the impact of the hike, in a "Pocket Guide on the VAT rate increase on 1 April 2018."

The guide sets out how to determine the taxable event for transactions. Generally, most transactions occurring on or after April 1, 2018, will be subject to VAT at the new rate unless a special time of supply rule or a rate specific rule applies.

The guide also sets out rules concerning pricing, contractual agreements including the 14 percent rate, changes required of businesses with regards their billing and accounting systems, the obligation on taxable persons to ensure that the correct rate of VAT is levied, including with regards inputs, the specific rules for imported goods, changes to VAT forms, and input tax credit rules for supplies subject to the 14 percent rate.

UK Tribunal Rules Against VAT Zero Rate For Digital News

The UK's First-Tier Tribunal (FTT) ruled against the appellant in *News Corp UK and Ireland Ltd v. HMRC* ([2018] UKFTT 129 (TC)), dismissing arguments from the publishing company that digital editions of newspapers should benefit from the value-added tax (VAT) zero rate for printed newspapers.

News Corp publishes *The Times*, *The Sunday Times*, *The Sun*, and *The Sun on Sunday*. It had argued that the digital editions of the titles are "newspapers" on the basis that they are the digital equivalent of the daily editions produced on ordinary newspaper printing paper.

HMRC successfully argued that they do not fall within the definition of "newspapers," for the purposes of VAT law, which is confined to newsprint newspapers.

The appeal concerned supplies during the periods September 2010 to June 2014 and January 2013 to December 2016, which were the subject of two separate appeals before being eventually consolidated.

UK law included a zero rate of VAT for "newspapers" in 1991 on the basis of EU law. The FTT said the scope of the zero rating provision was effectively "frozen" at 1991, meaning it applies only printed matter, as digital editions of such did not exist. The judge cited the "standstill" references in the earlier ruling in Talacre Beach. In that case, the FTT noted, the EU law principles concerning single supplies

could not be used to expand the scope of a national law zero-rating statute.

Judge Guy Brannan said: "In my view it follows that the scope of the zero rating provision cannot be extended from the supply of goods to the supply services after 1991." He ruled that applying a different VAT treatment to digital editions from that applicable to newsprint editions "does not offend the principle of fiscal neutrality," adding: "although I am satisfied that (with the exception of The Sun Interactive App), the digital editions were similar to the newsprint editions from the point of view of the consumer, I do not consider that the principle of fiscal neutrality can operate to extend the scope of zero rating from its original application to goods (*i.e.*, newsprint) to services (*i.e.*, digital editions)."

The judge attached no import to EU proposals, referenced by the appellant, that member states should be soon empowered to offer the same VAT on such supplies regardless of whether they are provided in a traditional tangible format or digital format. EU law has yet to be amended in this area.

News Corp may appeal the ruling.

UAE Reminds Of Tax-Inclusive Pricing VAT Rules

The United Arab Emirates' Federal Tax Authority (FTA) has reminded all businesses subject to the value-added tax and excise tax regimes that they must display tax-inclusive prices to avoid penalties.

The FTA stated that, "displaying product prices without including the amount of tax charged is considered a violation. The practice misleads consumers who will end up paying more than the amount they expected when deciding to make the purchase … businesses registered for VAT and Excise Tax purposes [are urged] to fully comply with tax laws in order to avoid administrative penalties …"

Not displaying tax-inclusive prices carries a AED15,000 (USD4,084) fine for each tax, the FTA noted.

HMRC Changes Position On VAT On Cost-Sharing Groups

The UK tax agency, HM Revenue & Customs (HMRC), has released new guidance on its policies concerning cost-sharing groups following rulings from the European Court of Justice (ECJ) on their VAT treatment.

It has released Revenue and Customs Brief 3 (2018) and VAT Information Sheet 02/18.

Article 132(1)(f) of the EU VAT Directive (2006/112) provides an additional exemption for certain activities that are in the public interest. The exemption allows persons who carry on these activities to join together to form

a cost share group (CSG) so that they can acquire services and recharge their members for their use of the services at cost without incurring any additional sticking VAT.

A CSG is a separate, independent entity, set up to enable its members to supply themselves with certain qualifying services at cost and exempt from VAT. As a result, a "co-operative self-supply" arrangement is created – a term coined by the EU Commission. Because the CSG is a separate taxable person from its members, it is able to make supplies for VAT purposes to its members. This exemption allows small providers who cannot afford to acquire assets on their own account to benefit from the same overall VAT position as larger providers who can afford to purchase the assets themselves. Therefore, the more members of a CSG there are, the greater the potential savings and lower the costs per member of operating the relevant CSG.

In UK law, the exemption is reproduced in Item 1 of Group 16 to Schedule 9 of the VAT Act 1994. There has previously been some uncertainty over what exactly the exemption was intended to cover, HMRC explained, but this has now been clarified by the ECJ.

The discussed cases are:

- *Commission v. Luxembourg* (Case C-274/15)
- *Polish Finance Ministry v. Aviva Towarzystwo Ubezpieczen na Zycie S.A. w Warszawie* (Case C-605/15)
- *DNB Banka AS (DNB) v. Estonia's state tax administration* (Case C-326/15)
- *Commission v. Germany* (Case C-616/15)

Specifically, the VAT information Sheet explains what transitional arrangements are in force for CSGs that have applied the exemption correctly based on earlier guidance. It also explains where current guidance is amended by Brief 3 (2018), which discusses the judgments' impact in greater depth.

According to the VAT information sheet, the practical, immediate effects of the judgments are as follows:

(a) The CSE will be restricted to members who engage in the exempt activities in the following Exemption Groups in Schedule 9 of the VAT Act 1994, with effect from March 22 (the date on which the brief was released):

- Postal service (Group 3)
- Education (Group 6)
- Health and welfare (Group 7)
- Subscriptions to trade unions and professional bodies (Group 9)
- Sport (Group 10)
- Fund raising by charities (Group 12)
- Cultural services (Group 13)

The judgments do not cover non-business activities and therefore CSGs engaged in these activities are unaffected by this change, HMRC said.

There will be interim measures for existing CSGs that have operated the previous guidance correctly. Housing associations can continue to apply the CSE for the time being until HMRC gives more guidance.

In any case of avoidance or abuse, HMRC will apply the guidance from the court from the date of the judgments.

(b) HMRC policy will be amended to restrict the CSE to members located in the UK. It will no longer be permitted to apply the exemption for transactions with members located in other EU member states. The CSE has not been permitted for members located outside of the EU, and this will remain the position, HMRC said.

(c) A CSE will not be permitted where an uplift has been charged on transactions for transfer pricing purposes. It will remain the position that the CSE will not be permitted in any other case where exact reimbursement cannot be evidenced.

Portugal To Respond To ECJ VAT Ruling On Vacant Property

The Portuguese Government has said that it is reviewing a recent decision by the European Court of Justice (ECJ) with a view to amending the country's value-added tax (VAT) regime with regards to the leasing and letting of property.

Assistant Secretary of State for Finance Ricardo Mourinho Felix told reporters at the last meeting of EU finance ministers that the Government would soon take the necessary steps to align Portugal's VAT law with the ECJ's ruling.

In February 2018, the ECJ decided against the Portuguese tax and customs authority in favor of a taxpayer who challenged the authority's decision that it should be retroactively precluded from deducting tax incurred on inputs in relation to a supply of leasing and letting transactions.

Portugal has elected to derogate from the general rule provided in Article 135(1)(l) of the VAT Directive, that leasing and letting transactions should be generally exempt from VAT. Therefore, in Portugal, such transactions may be taxable, generally allowing taxpayers to claim input tax credits.

However, the tax and customs authority required the taxpayer in the case, Imofloresmira, to make adjustments to VAT deductions on the ground that the properties at issue had been unoccupied for over two years and were therefore regarded as no longer being used for the purposes of its own taxed transactions, even though, during that period, the company always had the intention of letting those properties and undertook the necessary steps to that end.

The ECJ said that, under Article 167 of the VAT Directive, a right of deduction arises at the time the deductible tax becomes chargeable. Consequently, only the capacity in which a person is acting at that time can determine the existence of the right to deduct. It said: "It follows that, once the tax authority has accepted, on the basis of information provided by a business, that it should be accorded the status of a taxable person, that status cannot, in principle, subsequently be withdrawn retroactively on account of the fact that certain events have or have not occurred."

Australian Firms Promise Investment For Tax Cuts

The CEOs of several major Australian firms have pledged to amp up investment if the Senate passes the Government's proposed company tax cut.

Under the auspices of the Business Council of Australia (BCA), the business leaders wrote to senators on 21 March. The letter said that a reduction in the company tax rate "is urgent and vital to keep Australia competitive."

The letter added that if the Senate passes the Government's legislation, "we, as some of the nation's largest employers, commit to invest more in Australia which will lead to employing more Australians and therefore stronger wage growth as the tax cut takes effect."

The letter was signed by the President and CEO of the BCA, and by the CEOs of Woolworths, Wesfarmers, Qantas, and BHP, among others.

This is the Government's second attempt at passing its Enterprise Tax Plan through parliament. The legislation proposes increasing the turnover threshold for access to the lower, small business company tax rate each year to 2023/24, and a reduction in the headline rate to 25 percent for all businesses by 2026/27.

If it is to succeed, the Government will need the support of nine cross-bench senators, as both the Labor Party and the Greens are opposed to the proposals. Four crossbenchers have now indicated that they will vote with the Government.

Pauline Hanson, leader of the One Nation party, told Sky News this week that she is "talking to the Government" and has "an open mind about this." Hanson controls three Senate votes.

Australia Closes Tax Consolidation Loopholes

Australia has passed legislation to close loopholes in the tax consolidation regime, to prevent the creation of unintended and inappropriate tax outcomes.

There are approximately 12,000 tax consolidated groups in Australia. Tax consolidation allows wholly owned corporate groups to be treated as a single entity for tax purposes.

The legislation is designed to prevent multinational groups from sheltering future income tax by "churning" entities by related parties. The aim is to ensure that multinational consolidated groups pay the correct amount of tax on gains from their Australian assets.

The legislation also amends the tax treatment of liabilities that give rise to a future tax deduction, to prevent a double tax benefit from arising. It removes deferred tax liabilities from consolidation calculations and prevents tax deductions from arising when value is shifted across entities.

In addition, the legislation better aligns the tax treatment of certain assets and liabilities with the economic substance of transactions. Finally, it ensures that anomalous outcomes do not arise from securitization transactions commonly undertaken by financial institutions.

ARGENTINA - CROATIA

Negotiations

In a meeting on March 12, 2018, representatives from Argentina and Croatia discussed advancing negotiations towards a DTA.

ARMENIA - DENMARK

Signature

Armenia and Denmark signed a DTA on March 14, 2018.

AUSTRIA - BRAZIL

Forwarded

Austria's Council of Ministers on March 7, 2018, authorized the signing of a DTA with Brazil.

AUSTRIA - ISRAEL

Into Force

The DTA between Austria and Israel entered into force on March 1, 2018.

BAHRAIN - THAILAND

Ratified

Bahrain on March 14, 2018, enacted Law 32 of 2018, ratifying the DTA Protocol signed with Thailand.

FRANCE - LUXEMBOURG

Signature

France and Luxembourg signed a DTA on March 20, 2018.

GEORGIA - SAUDI ARABIA

Signature

Georgia and Saudi Arabia signed a DTA on March 14, 2018.

INDIA - HONG KONG

Signature

India and Hong Kong signed a DTA on March 19, 2018.

LIECHTENSTEIN - UNITED STATES

Negotiations

Liechtenstein and the United States are newly engaged in negotiations towards a DTA.

NETHERLANDS - MALAWI

Forwarded

The Dutch lower house of Parliament on March 15, 2018, approved a DTA signed with Malawi.

NETHERLANDS - UKRAINE

Signature

The Netherlands and Ukraine signed a DTA Protocol on March 12, 2018.

SEYCHELLES - INDONESIA

Negotiations

Representatives from the Seychelles pushed for the conclusion of a DTA with Indonesia in a meeting on March 12, 2018.

SLOVAKIA - ALBANIA

Negotiations

Slovakia's Foreign Affairs Ministry said the country had emphasized the importance of concluding negotiations towards a DTA with Albania during meetings on March 6, 2018.

TAJIKISTAN - UZBEKISTAN

Signature

Tajikistan and Uzbekistan signed a DTA on March 9, 2018.

TURKMENISTAN - UNITED ARAB EMIRATES

Signature

Turkmenistan and the United Arab Emirates signed a DTA Protocol on March 15, 2018.

UNITED KINGDOM - CYPRUS

Signature

The UK and Cyprus signed a new DTA on March 22, 2018.

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

THE AMERICAS

OffshoreAlert Conference: The Miami Beach Edition

4/15/2018 - 4/17/2018

OffshoreAlert

Venue: The Miami Beach EDITION, 2901 Collins Ave, Miami Beach, FL 33140, USA

Key speakers: Lee Martin (IRS), Warren Gluck (Holland & Knight), Christopher Ehrman (Securities and Exchange Commission), David Marchant (OffshoreAlert), among numerous others

https://www.offshorealert.com/conference/miami/

Trusts: The Ultimate Guide

4/23/2018 - 4/23/2018

National Business Institute

Venue: University of Arkansas RCED – Walton Conference Hub, Donald W. Reynolds Center, Fayetteville, AR 72701, USA

Key speakers: Scott Lar (Quattlebaum, Grooms & Tull), Edwin McClure (Matthews, Campbell, Rhoads, Mcclure & Thompson), Tyler Squires (Allen Squires Law), Michael Collins, among numerous others

https://www.nbi-sems.com/ProductDetails/Trusts-The-Ultimate-Guide/Seminar/80098ER?N=64013%2B4294966381

STEP International Tax & Estate Planning Forum: Around the Globe in 2018

5/3/2018 - 5/4/2018

STEP

Venue: The Surf & Sand Resort, 1555 S Coast Hwy, Laguna Beach, CA 92651, USA

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

https://www.step.org/events/step-international-tax-estate-planning-forum-around-globe-2018-3-4-may-2018-0

STEP CC18 Caribbean Conference

5/7/2018 - 5/9/2018

STEP

Venue: Hilton Barbados, Needham's Point St. Michael, Bridgetown, BB 11000, Barbados

Key speakers: Theo Burrows (Higgs & Johnson), Peter Cotorceanu (G&TCA and Anaford), Eric Dorsch (Kozusko Harris Duncan), Tara Frater (Lex Caribbean), among numerous others

http://www.stepcaribbeanconference.com/

48th Annual Spring Symposium

5/17/2018 - 5/18/2018

National Tax Association

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

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/48th-annual-spring-symposium-2018/

In-Depth HST/GST Course

5/27/2018 - 6/1/2018

CPA

Venue: 48 John Street, Niagara-on-the-Lake, ON LOS 1J0, Canada

Key speakers: David Robertson (CPA), Janice Roper (Deloitte)

https://www.cpacanada.ca/en/career-and-professional-development/courses/core-areas/taxation/indirect-tax/in-depth-hst-gst-course

STEP Canada 20th National Conference

5/28/2018 - 5/29/2018

STEP

Venue: Metro Toronto Convention Centre, 222 Bremner Boulevard, South Building, Toronto, ON, Canada

Speakers: Philip Marcovici, TEP, Hong Kong: Offices of Philip Marcovici, Ed Northwood, JD, TEP, Buffalo: Ed Northwood and Associates, Pamela Cross, LLB, TEP: Ottowa: Borden Ladner Gervais LLP; Deputy Chair, STEP Canada, among numerous others.

http://www.cvent.com/events/step-canada-20th-national-conference/event-summary-3ae3bbc412384eed96b4e18e7df3b266.aspx

Transcontinental Trusts: International Forum 2018

6/3/2018 - 6/5/2018

Informa

Venue: The Hamilton Princess, 76 Pitts Bay Rd, HM08, Bermuda

Key speakers: The Hon. Premier David Burt (Premier, The Goverment of Bermuda), The Hon. Justice Indra Charles (Justice, Supreme Court of The Bahamas), Anthony Poulton (Baker & McKenzie), Jonathan Conder (Macfarlanes), among numerous others

https://finance.knect365.com/transcontinental-trusts-international-forum/

1031 Exchanges

6/6/2018 - 6/6/2018

National Business Institute

Venue: Hotel RL by Red Lion Salt Lake City, 161 West 600 South, Salt Lake City, UT 84101, USA

Key speakers: Michael Anderson (Exchange Services), Adam Dayton (Fabian VanCott), J. Craig Smith (Smith Hartvigsen), Michael Walch (Kirton Mcconkie), among numerous others

https://www.nbi-sems.com/ProductDetails/1031-Exchanges/Seminar/79433ER?N=64013%2B4294966381

Trusts From A to Z

6/7/2018 - 6/7/2018

National Business Institute

Venue: Comfort Inn, 716 New Haven Rd, Naugatuck, CT 06770, USA

Key speakers: Beth Ann Brunalli (Davidson, Dawson & Clark), Michael Clear (Wiggin and Dana), Stephen Keogh (Keogh, Burkhart & Vetter), Katherine Mcallister (Cummings & Lockwood), among numerous others

https://www.nbi-sems.com/ProductDetails/Trusts-From-A-to-Z/Seminar/79049ER?N=64013%2B4294966381

2018 Bermuda Captive Conference

6/11/2018 - 6/13/2018

BCC

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

Key speakers: Jonathan Reiss (Hamilton Insurance Group), Derreck Kayongo (Global Soap Project)

http://bermudacaptiveconference.com/

11th Annual US – Latin America Tax Planning Strategies

6/13/2018 - 6/15/2018

American Bar Association

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

Key speakers: TBC

https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=294841319

Family Office & Private Wealth Management Forum

7/16/2018 - 7/18/2018

Opal Group

Venue: Gurney's Newport Resort & Marina, 1 Goat Island, Newport, RI 02840, USA

Key speakers: TBC

http://opalgroup.net/conference/family-office-private-wealth-management-forum-2018/

STEP Global Congress

9/13/2018 - 9/14/2018

STEP

Venue: The Westin Bayshore, 1601 Bayshore Drive, Vancouver, British Columbia, V6G 2VA, Canada

Key speakers: TBC

http://www.stepglobalcongress.com/About-Congress

Family Office & Private Wealth Management Forum West

10/24/2018 - 10/26/2018

Opal Group

Venue: Napa Valley Marriott, 3425 Solano Ave, Napa, CA 94558, USA

Key speakers: TBC

http://opalgroup.net/conference/family-office-private-wealth-management-forum-west-2018/

111th Annual Conference on Taxation

11/15/2018 - 11/17/2018

National Tax Association

Venue: Sheraton New Orleans Hotel, 500 Canal St, New Orleans, LA 70130, USA

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/111th-annual-conference-on-taxation/

ASIA PACIFIC

China Offshore Shenzhen Summit 2018

5/22/2018 - 5/24/2018

China Offshore

Venue: Grand Hyatt Shenzhen, 1881 Baoan Nan Road, Luohu District, Shenzhen, 518001, China

Key speakers: Simon Guo (Five Lakes World Trade Center), Uny Chan (Fidinam Hong Kong), Timothy Zammit (RSM Malta), Till Neumann (Citizen Lane), among numerous others

http://shenzhen.chinaoffshoresummit.com.hk/en/

NSW 11th Annual Tax Forum

5/24/2018 - 5/25/2018

The Tax Institute

Venue: Sofitel Sydney Wentworth, 61-101 Phillip Street, Sydney NSW 2000, Australia

Key speakers: Andrew Noolan (Brown Wright Stein Lawyers), Jonathan Woodger (PwC), Daniel Butler (DBA Lawyers), Gareth Aird(Commonwealth Bank), among numerous others

https://www.taxinstitute.com.au/professional-development/key-events/nsw-tax-forum

The 4th Annual Asia Offshore Forum

5/29/2018 - 5/30/2018

Asia Offshore Association

Venue: Renaissance Hong Kong Harbour View Hotel, Hong Kong Convention And Exhibition Centre, 1 Harbour Rd, Wan Chai, Hong Kong

Key speakers: Michael Olesnicky (KPMG), Zarrian Liu (Zhong Zhi Wealth Preservation Holdings), Wilson Cheng (Ernst & Young), Gabriel Hai (Lang Di Fintech), among numerous others

http://asiaoffshoreforum.com/

2018 Private Business Tax Retreat

5/31/2018 - 6/1/2018

The Tax Institute

Venue: Palazzo Versace Hotel, 94 Seaworld Drive, Main Beach QLD 4217, Australia

Key speakers: TBC

https://www.taxinstitute.com.au/professional-development/key-events/private-business-tax-retreat

2018 Death… and Taxes Symposium

6/19/2018 - 6/20/2018

The Tax Institute

Venue: Sofitel Gold Coast Broadbeach, 81 Surf Parade, Broadbeach QLD 4218, Australia

Key speakers: TBC

https://www.taxinstitute.com.au/professional-development/key-events/death-and-taxes-symposium

CENTRAL AND EASTERN EUROPE

Wealth Management & Private Banking Summit – Russia & CIS

4/17/2018 - 4/18/2018

Adam Smith Conferences

Venue: Marriott Grand Hotel, 26/1, Tverskaya Street, Moscow, 125009, Russia

Key speakers: Michael Addison (UBS), Evgenia Tyurikova (Sberbank Private Banking), Katerina Mileeva (Alfa-Bank), Evgeny Sivoushkov (PwC), among numerous others

http://www.russianwealthmanagement.com/

MIDDLE EAST AND AFRICA

5th GCC VAT Forum

4/9/2018 - 4/9/2018

IQPC

Venue: The Meydan Hotel, Meydan Racecourse Al Meydan Road, Nad Al Sheba, Dubai, United Arab Emirates

Key speakers: Rajesh Pareek (Musafir), David Stevens (EY MENA), Lindsay Degouve De Nuncques (ACCA), Jeremy Cape (Squire Patton Boggs), among numerous others

https://gccvat.iqpc.ae/?utm_source=conferencealerts&utm_medium=portal&utm_campaign=-external-diarylisting&utm_term=homepage&utm_content=text&mac=27287.005_confalerts_dl&disc=27287.005_confalerts_dl

Protecting Client Assets in a Volatile and Uncertain World – STEP South Africa Conference

4/23/2018 - 4/24/2018

STEP

Venue: Sandton Convention Centre, 161 Maude St, Sandton, Johannesburg, 2196, South Africa

Key speakers: Assad Abudullatif (Axis Fiduciary Ltd), Nigel Barnes (Henley & Partners), Lester Basson (Department of Justice and Constitutional Development), Rachel Coyle (S-RM), among numerous others

https://www.step.org/sa2018

4th IBFD Africa Tax Symposium

5/9/2018 - 5/11/2018

IBFD

Venue: Sarova Whitesands Beach Resort & Spa, Off Malindi Road, Mombasa County, Mombasa, Kenya

Key speakers: Belema Obuoforibo (IBFD), Emily Muyaa (IBFD), Jan Maarten Slagter (IBFD), Kennedy Munyandi (IBFD), Michael Lennard (FDO, United Nations), and numerous others (TBC)

https://www.ibfd.org/IBFD-Tax-Portal/Events/4th-IBFD-Africa-Tax-Symposium

WESTERN EUROPE

Principles of Transfer Pricing

4/9/2018 - 4/13/2018

IBFD

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

Instructors: Eduard Sporken (KPMG Meijburg & Co.), Bo Wingerter (EY), Omar Moerer, CFA (PwC), Anuschka Bakker (IBFD), Brian Mulier (Bird & Bird LLP), and numerous others.

https://www.ibfd.org/Training/Principles-Transfer-Pricing-0

18th Annual US – Europe Tax Planning Strategies Conference

4/11/2018 - 4/13/2018

American Bar Association

Venue: Hotel Okura, Ferdinand Bolstraat, 333 1072 LH, Amsterdam, Netherlands

Co-chairs: Carola van den Bruinhorst (Loyens & Loeff N.V., Amsterdam), Peter H. M. Flipsen (Simmons & Simmons LLP, Amsterdam), Carol P. Tello (Eversheds Sutherland (US) LLP, Washington, DC, USA)

https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=282024878

STEP Malta Conference

4/12/2018 - 4/13/2018

STEP

Venue: Hilton Malta, Vjal Portomaso, St Julian's PTM 01, Malta

Key speakers: Marc Alden (Deloitte), Atiq Anjarwalla (AC& H Legal Consultants), Petra Camilleri (Malta Finance Services Authority), Jonathan Conder (Macfarlanes), among numerous others

https://www.step.org/malta2018

Accountancy Conference 2018

4/16/2018 - 4/16/2018

ICAEW

Venue: Derbyshire County Cricket Club, Nottingham Road, Derby, Derbyshire, DE21 6DA, UK

Key speakers: Bill Telford (Baker Tilly) & Guy Loveday (PTP Ltd)

https://events.icaew.com/pd/7401/accountancy-conference-2018?st_t=49%2C46&st_ti=432%2C418&returncom=productlist&source=search

Transcontinental Trusts 2018

4/17/2018 - 4/19/2018

Informa

Venue: Grand Kempinski Hotel, Quai du Mont-Blanc 19, 1201 Geneva, Switzerland

Key speakers: The Honourable Justice David Hayton (The Caribbean Court of Justice), Lewis Baglietto (Hassans), Julia Abrey (Withers), Marco Cerrato (Maisto E Associati), among numerous others

https://finance.knect365.com/transcontinental-trusts/

Global VAT

4/17/2018 - 4/20/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Wilbert Nieuwenhuizen (VAT adviser), Xiaoqiang Yang (Sun Yat-Sen University), Vanessa Bacchin Cardo (Unilever)

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

Global Impact Investment Strategy

4/19/2018 - 4/19/2018

ESAFON

Venue: Mövenpick Hotel & Casino Geneva, Route de Pré-Bois 20, 1215 Geneva, Switzerland

Key speakers: Dr. Willem Schramade (NN Investment Partners), Damian Payiatakis (Barclays), Karen Wilson (OECD), Kurt Morriesen (United Nations Principles of Responsible Investments), among numerous others

http://esafon.com/

Global VAT – Specific Countries

4/19/2018 - 4/20/2018

IBFD

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

Instructors: Xiaoqiang Yang (Sun Yat-Sen University), Vanessa Bacchin Cardo (Unilever)

https://www.ibfd.org/Training/Global-VAT-Specific-Countries-1

Annual Funds Conference 2018

4/24/2018 - 4/24/2018

Jersey Finance

Venue: 8 Northumberland Avenue, London, UK

Key speakers: Geoff Cook (Jersey Finance), Senator Ian Gorst (Chief Minister of Jersey), Sir Simon Fraser (Flint Global), Michael Collins (Invest Europe), among numerous others

https://www.jerseyfinance.je/events/jersey-finance-annual-funds-conference-2018

Private Banking & Wealth Management: Germany 2018 Conference and Awards

4/24/2018 - 4/24/2018

Verdict

Venue: Villa Kennedy, Kennedyallee 70, 60596 Frankfurt am Main, Germany

Key speakers: TBC

https://www.verdict.co.uk/private-banker-international/events/private-banking-germany-2018/

US Corporate Taxation

4/24/2018 - 4/26/2018

IBFD

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

Instructors: John G. Rienstra (IBFD), Paulus Merks (Houthoff Amsterdam)

https://www.ibfd.org/Training/US-Corporate-Taxation-0

Jersey Finance Annual Private Wealth Conference

4/25/2018 - 4/25/2018

Jersey Finance

Venue: 8 Northumberland Avenue, London, UK

Key speakers: Geoff Cook (Jersey Finance), Nick Bostrom (University Of Oxford), Jonathan Evans (Mi5), Andrew Shirley (Knight Frank), among numerous others

https://www.jerseyfinance.je/events/jersey-finance-annual-private-wealth-conference-2018#.WpQ_Oqhl_IU

3rd International Conference on Taxpayer Rights

5/3/2018 - 5/4/2018

IBFD

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

Key speakers: Philip Baker, QC (Field Court Tax Chambers), Kevin M. Brown (PwC), Juliane Kokott (Advocate General, ECJ), Andrew Roberson (McDermitt Will & Emery), among numerous others

https://www.ibfd.org/IBFD-Tax-Portal/Events/3rd-International-Conference-Taxpayer-Rights

Tax and Technology

5/3/2018 - 5/4/2018

IBFD

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

Instructors: Bart Janssen (Deloitte), Aleksandra Bal (IBFD), Monica Erasmus-Koen (Tytho), Eliza Alberts-Muller (Tytho)

https://www.ibfd.org/Training/Tax-and-Technology

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

5/7/2018 - 5/9/2018

IBFD

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

Instructors: Frank de Beijer (Liberty Global), Femke van der Zeijden (PwC), Rens Bondrager (Allen & Overy), Rinze van Minnen (DLA Piper)

https://www.ibfd.org/Training/International-Tax-Legal-and-Commercial-Aspects-Mergers-Acquisitions

Taxation of UK Land and Buildings

5/9/2018 - 5/9/2018

Key Haven Publications

Venue: The Law Society's Hall, London, WC2A, UK

Chair: Robert Venables (Old Square Tax Chambers)

https://www.khpplc.co.uk/products/98/Taxation-of-UK-Land-and-Buildings

Guernsey Funds Forum

5/17/2018 - 5/17/2018

Guernsey Finance

Venue: Etc.Venues, Broadgate City of London, 155 Bishopsgate, London, EC2M 3YD, UK

Key speakers: TBC

https://www.weareguernsey.com/events/2018/guernsey-funds-forum-2018/

Transfer Pricing and Intra-Group Financing

5/24/2018 - 5/25/2018

IBFD

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

Instructors: Antonio Russo (Baker & McKenzie), Andre Dekker (Baker & McKenzie), Francesco Iaquinto (Meijburg & Co.), Krzysztof Lukosz (Ernst & Young)

https://www.ibfd.org/Training/Transfer-Pricing-and-Intra-Group-Financing

Introduction to European Value Added Tax

6/5/2018 - 6/8/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD), Wilbert Nieuwenhuizen (VAT adviser), Marie Lamensch (Institute for European Studies), Christian Deglas (Deloitte), Zsolt Szatmári (IBFD)

https://www.ibfd.org/Training/Introduction-European-Value-Added-Tax-0

International Tax Planning Association Meeting

6/13/2018 - 6/15/2018

ITPA

Venue: The Ritz Carlton, Schubertring 5, 1010 Wien, Austria

Chairs: Milton Grundy (Grays Inn Tax Chambers), Paolo Panico (Private Trustees)

https://www.itpa.org/meeting/vienna-october-2017/

Recent Case Law of the European Court of Human Rights in Tax Matters

7/2/2018 - 7/6/2018

Academy of European Law

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

Key speakers: TBC

https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=127448

Private Investor Middle East International Conference

9/26/2018 - 9/27/2018

Adam Smith Conferences

Venue: The Montcalm London Marble Arch, 2 Wallenberg Place, London, W1H 7TN, UK

Key speakers: Jeffrey Sacks (Citi Private Bank), Michael Addison (UBS), Paul Stibbard (Rothschild Trust), Ian Barnard (Capital Generation Partners), among numerous others

http://www.privateinvestormiddleeast.com/

Wealth Insight Forum 2018

9/27/2018 - 9/27/2018

Spear's

Venue: One Great George Street, 1 Great George St, Westminster, London, SW1P 3AA, UK

Key speakers: Trevor Abrahmsohn (Glentree International), Robert Amsterdam (Amsterdam & Partners), Stephen Bush (New Statesman), Mark Davies (Mark Davies & Associates), among numerous others

http://wif.spearswms.com/

International Tax Planning Association Meeting

10/17/2018 - 10/19/2018

ITPA

Venue: Mandarin Oriental Hyde Park, 66 Knightsbridge, London, SW1X 7LA, UK

Chairs: Milton Grundy (Grays Inn Tax Chambers), Paolo Panico (Private Trustees)

https://www.itpa.org/meeting/london/

WESTERN EUROPE

Belgium

A listing of recent key international tax cases.

Belgium's Constitutional Court has annulled legislation which extended value-added tax (VAT) to the supply of online gaming and gambling services to customers in Belgium.

The landmark decision was issued on March 22 in response to a legal challenge to the legislative change brought by Swedish-listed online gambling group Kindred (formerly Unibet).

Legislation to remove the broad-based VAT exemption on the gambling sector in Belgium entered into force on August 1, 2016. As a result of the change, all gambling and games of chance that take place online are subject to VAT at the standard rate of 21 percent. However, lotteries and land-based gambling remained VAT-exempt.

Kindred put forward arguments that the decision was incompatible with both Belgium's gaming laws and VAT law, as it discriminated against online operators and in favor of lotteries and land-based casinos.

"The ruling points out the inherent incompatibility between consumer protection and tax revenue objectives, especially when products (lotteries v. other products) and channels (retail v. online) are treated differently," the company said after the ruling.

http://www.kindredgroup.com/kindred-wins-vat-case-in-belgium

Belgian Constitutional Court: *Belgian Government v. Kindred PLC*

Belgium

Belgium's Constitutional Court has decided to partially extinguish the country's fairness tax on constitutionality grounds and following a ruling on the tax's legality by the European Court of Justice (ECJ) in 2017.

The fairness tax applies where companies distribute profits but have paid less than full tax on those profits. The ECJ described the tax as a tax separate from corporation tax and non-residents' tax to which resident and non-resident companies are subject when they distribute dividends not included, owing to the use of certain tax advantages provided for by the national tax system, in their final taxable profits.

Specifically, its calculation is complex but focuses on a company's use of carried forward losses and the risk capital deduction to reduce their taxable profits.

On January 31, 2014, a Belgian taxpayer challenged the legitimacy of the tax before the Constitutional Court on the grounds that it is incompatible with the Belgian constitution, the principle of freedom of establishment under EU law, and the EU Parent-Subsidiary Directive (PSD).

The case was subsequently referred to the ECJ, which in *X v. Ministerraad* (Case C-68/15) on May 17, 2017, ruled that the fairness tax violates the PSD because it could discriminate against taxpayers of other member states. It ruled that the legal provisions in the PSD would be breached where profits received by a parent company from its subsidiary are distributed by the parent company after the year in which they were received, because those profits would be included in the taxable base of the fairness. The question of whether the levy is incompatible with the principle of freedom of establishment was passed back to the referring court.

In its ruling of March 1, 2018, the Constitutional Court concluded that the fairness tax violates the principles of equality and non-discrimination enshrined in the Belgian constitution, and annulled the tax from the date of the ruling's publication.

While deciding to annul the tax, it said it should be retroactively effective for the tax years 2014 through to 2018 except for those circumstances (described above) in the ECJ ruling, concerning the PSD. This means that companies will be able to recover fairness tax incurred by a Belgian company where in a later year it redistributed profits received from a subsidiary in another member state.

http://curia.europa.eu/juris/document/document.jsf?mode=req&doclang=en&docid=190745

Belgian Constitutional Court: *Judgment of the Constitutional Court: 24/2018 of 01-03-2018*

Portugal

The European Court of Justice (ECJ) has provided a ruling against the Portuguese tax and customs authority in favor of a taxpayer who challenged the authority's decision that it should be retroactively precluded from deducting tax incurred on inputs in relation to a supply of leasing and letting transactions. The tax and customs authority required the taxpayer, Imofloresmira, to make adjustments to VAT deductions on the ground that the properties at issue had been unoccupied for over two years and were therefore regarded as no longer being used for the purposes of its own taxed transactions, even though, during that period, the company always had the intention of letting those properties subject to a liability for VAT and undertook the necessary steps to that end.

The ECJ noted that the VAT Directive provides for the right to deduct input taxes incurred on goods or services used to make taxed transactions. The deduction of input taxes is linked to the collection of output taxes; where goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted.

The case concerned the taxation of leasing and letting transactions, which member states may elect to tax under a derogation from the general rule provided in Article 135(1)(l) of the VAT Directive, that such transactions should generally be exempt.

In Portugal, such transactions may be taxable and therefore taxpayers can generally claim input tax credits. When the leases relating to the properties at issue in the main proceedings were concluded, Imofloresmira, a VAT-registered entity, opted for the taxation of the letting of those properties.

The ECJ ruled that, under Article 167 of the VAT Directive, a right of deduction arises at the time the deductible tax becomes chargeable. Consequently, only the capacity in which a person is acting at that time can determine the existence of the right to deduct. It said:

> "It follows that, once the tax authority has accepted, on the basis of information provided by a business, that it should be accorded the status of a taxable person, that status cannot, in principle, subsequently be withdrawn retroactively on account of the fact that certain events have or have not occurred, save in cases of fraud or abuse.
>
> It should be remembered that, according to settled case-law, the right to deduct provided

for in Article 167 to 172 of the VAT Directive is an integral part of the VAT scheme and, in principle, may not be limited. It is exercisable immediately in respect of all the taxes charged on transactions relating to inputs.

> The deduction arrangement is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT therefore ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT.
>
> It is important to recall also that it is the acquisition of goods or services by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods or services are put, or intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 168 of the VAT Directive and the extent of any adjustments in the course of the following periods.
>
> It follows therefore that the entitlement to a reduction is retained in principle, even if subsequently, by reason of circumstances beyond its control, the taxable person does not make use of those goods and services which gave rise to a deduction in the context of taxed transactions."

It concluded:

> "Therefore, the principle of fiscal neutrality precludes national legislation which, by making the final acceptance of the VAT deductions dependent on the results of the taxable person's economic activity, creates, as regards the tax treatment of identical investment activities, unjustified differences between undertakings with the same profile and carrying on the same activity."

The Court said that conclusion cannot be called into question by the argument of the Portuguese Government that, due to the termination of the leases concluded previously, "some change occurs in the factors used to determine the amount to be deducted," so that it would be necessary to carry out a proportional adjustment of the tax deducted.

The ECJ said the right to deduct may only be challenged in instances of demonstrable fraud.

This ruling was delivered on February 28, 2018.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=199766&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=601228

European Court of Justice (Seventh Chamber): *Imofloresmira v. Portuguese Tax And Customs Authority (Case C-672/16)*

Slovakia

The European Court of Justice (ECJ) has ruled in favor of Volkswagen in a case concerning the company's right to claim a refund for VAT not initially charged on the supplies it received, with VAT retrospectively being charged to the company as much as seven years after it received the supplies.

The case concerned national legislation in Slovakia that time-limited the grant of a refund in such circumstances, despite no error by Volkswagen.

The ECJ ruled that EU law must be interpreted as precluding legislation of a member state under which, in circumstances such as those at issue in the main proceedings, the benefit of the right to claim a refund of VAT is denied on the grounds that the limitation period provided for by that legislation for the exercise of that right began to run from the date of supply and expired before the application for a refund was submitted.

The case concerned supplies between 2004 and 2010 by Hella Leuchten-Systeme GmbH, a company established in Germany, and two Hella companies based in Slovakia (together, the Hella Companies), to Volkswagen AG, the auto giant established in Germany, of moulds for the manufacture of lights for motor vehicles.

During this time, the Hella Companies did not include VAT on the invoices they issued, as they considered the transactions not as supplies of goods but of "financial compensation," which is exempt from VAT.

In 2010, the Hella Companies realized that the transactions were not being carried out in accordance with Slovak law. They issued invoices charging the VAT due by Volkswagen for supply of the goods in question, and in accordance with Law No. 222/2004, filed supplementary tax returns for all years from 2004 to 2010, and paid the relevant VAT to the Treasury.

On July 1, 2011, Volkswagen submitted to the Bratislava I Tax Office (Slovak Republic) an application for a refund of the VAT charged on the supplied goods.

On April 3, 2012, the tax office only partially upheld the application, ordering a refund only for the tax periods from 2007 to 2010 and not for the three subsequent years 2004 to 2006. This was due to the expiry of the limitation period of five years provided for by Slovak law.

In this regard, it held that the entitlement to a refund of VAT arose on the date of delivery of the goods, namely the date the VAT had become due, with the result that the right to claim a refund for the period from 2004 to 2006 had expired by the time the application for a refund was submitted.

Volkswagen brought an action seeking the annulment of the latter decision before the Regional Court in Bratislava, which dismissed the action. It then appealed that decision before the Slovak Supreme Court, which referred questions on the legality of the decision to the ECJ.

In ruling against the local tax authority's decision to deny the VAT refund request partially, the ECJ said:

> "In the present case, it is apparent from the order for reference that, even though the supply of goods at issue was carried out during 2004 to 2010, the Hella Companies did not make an adjustment of the VAT until 2010 when they drew up invoices including the VAT, sent supplementary tax returns to the competent national authority and paid the amount of VAT that was due to the State treasury. It is equally apparent that the risk of tax evasion or non-payment of VAT has been excluded. In these circumstances, it was objectively impossible for Volkswagen to exercise its right to a refund before this adjustment, as, prior to that, it had neither been in possession of the invoices nor aware that the VAT was due.
>
> Indeed, it was only following that adjustment that the substantive and formal conditions giving rise to a right to deduct VAT were met and that Volkswagen could therefore request to be relieved of the VAT burden due or paid, in accordance with [the EU VAT Directive] and the principle of fiscal neutrality. Accordingly, since Volkswagen did not demonstrate a lack of diligence, and in the absence of an abuse or fraudulent collusion with the Hella Companies, a limitation period which began from the date of supply of the goods and which, for certain periods, expired before this adjustment, cannot validly deny Volkswagen the right to a refund of VAT."

This ruling was released on Match 21, 2018.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=200484&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=743081s

European Court of Justice (Second Chamber): *Volkswagen AG v. Finance Directorate of the Slovak Republic (C-533/16)*

United Kingdom

HM Revenue & Customs (HMRC) has lauded a ruling in its favor secured before the courts that will save the UK Exchequer tens of millions of pounds in related tax avoidance cases.

The Upper Tribunal upheld an earlier ruling against Cyclops Electronics and Graceland Fixing on appeal, concerning a tax avoidance scheme used by the companies and also employed by over a hundred other businesses.

The businesses used loan notes – a financial instrument that creates or acknowledges indebtedness – to pay company directors' bonuses in an attempt to get around paying tax and National Insurance (the UK's social security levy) on their awards. Specially created companies issued loan notes in GBP10 denominations which matched the bonus amount exactly. Special conditions were included to avoid the tax and National Insurance due when the loan notes were given to the director, HMRC said. The agency said the scheme was designed to take advantage of legislation that provides tax relief for genuine commercial transactions, which has now been amended to prevent any further attempts to exploit the rules.

The scheme was devised to work around the anti-avoidance legislation introduced by Schedule 22 to the 2003 Finance Act into the employment income share schemes provisions in Part 7 of the Income Tax (Earnings and Pensions) Act 2003. The legislation has been amended to prevent any further attempts exploit the rules.

Penny Ciniewicz, HMRC's Director General for the Customer Compliance Group, said: "We cannot allow tax avoidance schemes like these to deprive the UK of vital revenue. The honest majority of people who pay their taxes shouldn't have to carry the burden of paying for the public services we need."

The agency pointed out that, over the last two years, HMRC has won nine out of every ten avoidance cases taken to court, with many more settling before reaching that stage.

The win over Cyclops Electronics, a supplier of electrical components, and Graceland Fixing, a building company, was worth GBP350,000 (USD489,000), with GBP55.2m in related cases.

HMRC commented on the case on March 10, 2018.

http://www.bailii.org/uk/cases/UKUT/TCC/2018/7.html#_blank

Upper Tribunal Tax And Chancery Chamber : *Cyclops Electronics Ltd and Graceland Fixing Ltd v. HM Revenue and Customs*

Dateline March 29, 2018

Thousands of words have been written across countless pages by the OECD to describe, analyze, and consider the **tax challenges of the digital economy**. Yet it took only a 97-word press release from the US Treasury Secretary to potentially consign them all to the trash can. He might as well have used Twitter.

Of course, Mnuchin's statement, and the publication by the European Commission of a proposal for an i**nterim digital tax**, won't kill the OECD's work in this area any time soon. Nevertheless, these developments tell us pretty much straight away that the OECD will struggle to attain the multilateral consensus that will be required to ensure any new tax digital measures are workable. Statements issued by various EU member states, and also Switzerland, inform us of that.

While businesses and tax practitioners against this interim measure might hope these schisms will eventually scupper it, a **lack of a multilateral consensus** may encourage individual jurisdictions to fill the vacuum. And the EU isn't the only one with itchy fingers (or should be itchy digits?).

True to form, the Unilateral Kingdom – sorry, I think that's what you call a Freudian slip. I'll start again: true to form, the **United Kingdom** included options for a digital excise tax in the updated version of its working paper on corporate tax and the digital economy, and **Canada** has also announced that it is studying the issue. Doubtless we'll read about similar developments at jurisdictional level in the coming weeks and months.

An interesting aside: the Unilateral Kingdom (it might as well be as far as the BEPS project is concerned) was named recently as one of the countries that has provided support to the **Platform for Collaboration on Tax** (PCT). How ironic. That's a little like saying Brazil has contributed to a workshop on tax simplification for developing countries.

Nevertheless, the fact that such initiatives exist for the **promotion of international collaboration** on tax shows how important it is for everyone to be **pulling in the same direction** if the desired outcomes are to be achieved. It's a shame, therefore, that the PCT is a joint venture of a group of plurilateral non-governmental organizations, including the OECD, the IMF, the World Bank, and the UN, rather than the governmental ones that need to do the actual collaborating.

Still, if nothing else comes out of the OECD's digital tax work, at least we'll have a **new acronym** to add to the rich lexicon of abbreviations in the world of taxation, courtesy, by the looks of things, of the European Union – **GAFA**, or **Google, Amazon, Facebook, and Airbnb**, those companies most in the sights of the digital taxers. It has a certain ring to it I suppose. A little too close to "gaffe" for comfort perhaps …?

The push to solve the tax challenges of the digital economy, and the wider BEPS project in general, are well intentioned. But perhaps **striving for a perfect global tax system** is an **impossible dream** from policy makers. This isn't to say that governments shouldn't get together to try to improve tax rules. But even the most favorable tax systems have flaws, and **Estonia** is a good example.

By all accounts, as tax regimes go, you're not going to find much better than Estonia's apart from offshore. Estonia's **economic transformation** in the 1990s and 2000s has been attributed largely to the tax reforms put in place around that time. Indeed, according to a recent Tax Foundation report, its tax regime was the **most competitive** in the world, on account of its relatively low corporate tax, well-structured individual income tax, well-designed territorial tax system, and property taxation based on land value rather than real estate value. Estonia's tax system was even **endorsed by the IMF** in its latest review of the nation's economy, an organization normally heard nowadays to bemoan heavy labor taxes, narrow taxes bases, multiple value-added tax rates and exemptions, and inefficient administration, among other things.

But even Estonia's tax regime isn't without blemish. According to a recent European Commission report, its **corporate tax system encourages BEPS**. And in the OECD's opinion, a recent measure reducing tax on distributed dividends discriminates against small firms and complicates the tax system. Sometimes, you just can't win!

But I suppose this is the **crux of the problem** that the OECD and others are trying to solve: How can countries collect an **appropriate level of taxation** from all categories of taxpayer without creating a set of new problems in the form of unintended legal and economic consequences? Or, to put it another way, pluck as many feathers from the goose without the goose noticing too much? The answer has eluded most governments, and, even if progress is being made with BEPS, it will probably remain just out of reach.

The Jester