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a closer look

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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

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a closer look

Global Tax Weekly – A Closer Look

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

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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.

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GLOBAL TAX WEEKLY
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ISSUE 289 | MAY 24, 2018

CONTENTS

FEATURED ARTICLES

The IRS Whistleblower Program And Cryptocurrency – The Feds Eye Bitcoin And Cryptocurrency
Michael DeBlis III, Esq., LLM, DeBlis Law 5

International Developments In Beneficial Ownership Transparency
Stuart Gray, Senior Editor, Global Tax Weekly 9

Common Corporation Purchase Structures To Obtain Step-Up In Tax Basis When Equity Is Purchased
Christopher Klug, Business Tax Attorney, Klug Law Office PLLC, Washington, DC 18

Topical News Briefing: Aussie Tax Rules
The Global Tax Weekly Editorial Team 22

Recent Tax Developments In Mexico
Turanzas, Bravo & Ambrosi 24

Digital Economy: A Good Tax Is Hard To Find
Stéphane Gelin and Rosemary Billard-Moalic, attorneys-at-law, CMS Francis Lefebvre Avocats, Paris 27

Topical News Briefing: The VAT-scape Is Changing
The Global Tax Weekly Editorial Team 32

NEWS ROUND-UP

Country Focus: Australia 34

Australia Announces Foreign Investor Tax Reforms

Ombudsman Reviews ATO's Use Of Asset Seizure Powers

Support Wavers For Australian Corporate Tax Cuts

ATO Guides On July 1 Real Property GST Change

VAT, GST, Sales Tax 38

Malaysia Answers FAQs On GST Repeal

UAE Issues VAT Refund Guidance For New House Builds

Kuwait To Delay VAT Until 2021

Gabriel Resources Provides Update On 'Retaliatory' Romanian VAT Bill

Country Focus: United Kingdom 42

Despite Brexit, UK Tax Regime Still Seen As Competitive: Survey

UK Criticized For Overzealous Offshore Tax Enforcement Plans

UK Mulling Extending Recent IR35 Reforms To Private Sector

BEPS 47

Bahrain Signs Up To BEPS Minimum Standards

New Zealand's BEPS Bill Back Before Parliament

OECD Provides Update On Action 5 Harmful Tax Practices Work

Tax Reform 51

Norway Announces Tax Breaks In Revised Budget

World Bank Urges Uganda To Shore Up Tax Base

Belgian Finance Minister Says Corporate Tax Reform A Success

Digital Taxation 54

Ireland Issues Tax Guidance On Peer-To-Peer Lending

Japan Holding Talks On Virtual Currency Taxation, Regulation

Airbnb Agrees Landmark Tax Deal With Denmark

TAX TREATY ROUND-UP 56

CONFERENCE CALENDAR 58

IN THE COURTS 70

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

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

The IRS Whistleblower Program And Cryptocurrency – The Feds Eye Bitcoin And Cryptocurrency

by Michael DeBlis III, Esq., LLM, DeBlis Law

Introduction

Did you know that the IRS will pay you to turn in tax evaders? While the IRS Whistleblower Program[1] has been around for 150 years, the Tax Relief and Health Care Act of 2006 made whistleblowing a much more lucrative pursuit. In fact, you may receive up to 30 percent of the amount the IRS collects from the culprit.

History Of The IRS Whistleblower Program

In March of 1867, the Secretary of the Treasury was granted the right to award payments to those who assisted in "detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws". However, these payments were left up to IRS discretion, so whistleblowers sometimes didn't get *any* reward for their assistance. For the next hundred years or so, the IRS Whistleblower Program remained essentially unchanged. Finally, in 1996, Congress made two small but significant changes to the program: it added a clause allowing whistleblower payments for "detecting underpayments of tax," and also ruled that payments to whistleblowers would come from the tax money collected based on the whistleblower's tip.

In June 2006, the Treasury Inspector General audited the Whistleblower Program and found that during the fiscal years 2001 through 2005, the program had collected more than USD340m in taxes and related penalties and paid out rewards of more than USD27m to whistleblowers. These results were particularly impressive considering that the IRS had done little to no publicity in relation to the Program; at that point, it was virtually unknown to the public at large. The Treasury Inspector General recommended expanding the program and revising its procedures to reduce inconsistencies in the rules and speed up processing times.

The New And Improved Whistleblower Program

The Tax Relief and Health Care Act of 2006[2] used the Treasury Inspector General's findings to set new rules and limits for the IRS Whistleblower Program. The new rules apply only in cases where total tax, interest and penalties are greater than USD2m and (if an individual rather than a business) the transgressor's annual gross income is greater than USD200,000.

Thanks to the new rules, whistleblower rewards are no longer discretionary. If a whistleblower meets the basic requirements, he or she is guaranteed a percentage of however much the IRS collects from the transgressor. This reward can be anywhere from 15 percent to 30 percent of the amount collected. Thus, if a whistleblower tip led the IRS to collect USD3m in back taxes and penalties, the whistleblower in question would get anywhere from USD450,000 to USD900,000 as a reward.

The law also established the IRS Whistleblower Office. This office reports to the IRS Commissioner and is responsible for managing the entire program. Prior to the 2006 changes, the whistleblower program was managed at a regional level and did not keep any centralized records.

Lastly, the new rules granted whistleblowers the right to appeal the result of their claims to the Tax Court.

The new Whistleblower Office divided the Program into two different branches based on whether or not a claim qualifies for the new rules. Claims that do not meet the USD2m claim/USD200,000 income limits are classed under the Informant Claims Program, which uses the pre-2006 whistleblower rules. Rewards for these claims continue to be discretionary and are capped at 15 percent of the amount collected, up to a maximum reward of USD10m.

The IRS Finds A New Target

Even as the IRS got to work implementing the new whistleblower rules, a brand-new innovation called Bitcoin was emerging that would one day shake up the financial world. Bitcoin software became available to the public in 2009, allowing the first transactions to occur shortly thereafter. The new cryptocurrency went through some rocky times at first; during the earliest years of its existence, only a handful of early adopters jumped onto the Bitcoin bandwagon. Worse, certain shady individuals began using the cryptocurrency to launder money and perform other criminal transactions. But by March 2013, the value of all Bitcoins in circulation had reached USD1bn. In the years to follow, the cryptocurrency became widely adopted by investors despite enormous swings in value.

As growing numbers of taxpayers purchased, mined, or otherwise became involved in Bitcoins, the IRS began to take an interest in the cryptocurrency. According to IRS regulations, virtual currency transactions are taxable – though just how they are treated varies depending on their use. For example, Bitcoins held as investments are taxed as property using the same parameters as stocks and bonds, while Bitcoins used to pay for goods and services are taxed as income.

Unfortunately, many bitcoin owners and recipients either don't know about these tax rules or don't care to follow them. In November 2017, LendEDU released the results of a survey it had conducted that investigated attitudes and behaviors involving Bitcoin investments.[3] The survey found that nearly 36 percent of the respondents planned not to report the results of their Bitcoin transactions on their tax returns.

The IRS is well aware of the high level of nonconformity among Bitcoin owners and has taken steps to identify the culprits. In March 2018, after a drawn-out legal battle, the agency forced Coinbase – one of the largest bitcoin exchanges in the world – to release information on 13,000 of its users.[4] The IRS managed this feat largely through the use of "John Doe" summonses, which allow the agency to compel the release of account information even if they do not know which specific account holders are guilty of violating the tax laws.

Cryptocurrencies And Whistleblowers

As IRS pursuit of cryptocurrency tax evaders heats up, whistleblowers will likely play a major role. A whistleblower who reports someone using cryptocurrency to evade taxes can receive a reward of up to 30 percent of the collected taxes and penalties. The potential reward is even greater for whistleblowers who report cryptocurrency being used for illegal purposes;[5] in that situation, if the IRS seizes the cryptocurrency involved in the transaction, the whistleblower will receive 15–30 percent of the entire value of the seized monies.

What's more, the IRS isn't the only government agency actively soliciting whistleblowers to report cryptocurrency-related lawbreakers. The US Commodity Futures Trading Commission (CFTC) created a bounty for whistleblowers who expose cryptocurrency "pump and dump" schemes.[6] If such a report results in CFTC sanctions of USD1m or more, the whistleblower will receive a reward of 10 percent to 30 percent.

If you know that someone is failing to pay taxes on their cryptocurrency gains or is using crypto-currency for illegal transactions, it is important to file a whistleblower report with the IRS as soon as you possibly can. The entire process, from the moment you submit your report until the IRS collects the proceeds, can easily take several years. If you do not act quickly, the transgressor may be able to hide the evidence and make it far more difficult for the IRS to make a case. And because most tax crimes fall under a statute of limitations, delaying too long may mean that the culprit will get away clean. To file a whistleblower report with the IRS, simply fill out Form 211 and mail it in to the IRS Whistleblower Office.[7] If you're not sure if you should proceed or need help filling out the form, be sure to consult with a tax attorney who specializes in IRS Whistleblower law.

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International Developments In Beneficial Ownership Transparency

by Stuart Gray, Senior Editor, Global Tax Weekly

With the United Kingdom looking to compel its Overseas Territories to put company beneficial ownership information in the public domain, and the Council of the European Union having approved proposals for EU member states to do likewise, this article looks at recent developments in the area of corporate transparency, particularly with respect to who owns and benefits from companies, for the purposes of enforcing tax and other laws. Is this the next big fight in the global tax transparency campaign?

Background

Transparency of beneficial ownership was put at the top of the G8's agenda at the Lough Erne Summit in Northern Ireland in June 2011. Included in the "Lough Erne Declaration,"[1] endorsed by the Summit's participants, and published in June 2013, was a recommendation that "companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily."

The G8 also adopted an Action Plan, which sets out "core principles that are fundamental to the transparency of ownership and control of companies and legal arrangements."[2] It argues that companies should obtain and hold information on their beneficial ownership, and that central registries containing these details should be set up at national or state levels. Likewise, trustees of express trusts ought to acquire such data, and financial institutions and designated non-financial businesses and professions should be placed under effective obligations to identify and verify the beneficial ownership of their customers.

Subsequent to Lough Erne, each G8 member published an action plan outlining how they intended to improve transparency of beneficial ownership information. However, in the meantime, little progress has been made towards this pledge beyond Europe and the UK's offshore territories.

United Kingdom

In fact, excluding the EU, the UK is the only major economy to have independently legislated for a beneficial ownership registry. Under the Small Business, Enterprise and Employment Act 2015,[3] which received Royal Assent on March 26, 2015, and subsequent secondary legislation and regulations, companies have been required to divulge certain beneficial ownership information to the register of "persons with significant control" since June 30, 2016.

A person with significant control (PSC) is defined in the SBEE Act as a person that meets one or more of the following conditions for a single company:

- Directly or indirectly owns more than 25 percent of the shares in the company;
- Directly or indirectly holds more than 25 percent of the voting rights in the company;
- Directly or indirectly has the power to appoint or remove the majority of the board of directors of the company;
- Otherwise has the right to exercise or actually exercises significant influence or control over the company. The definition of this is set out in statutory guidance.
- Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions over the company.

Companies that are required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules (DTR5 issuers) are exempted from having to keep a register of people with significant control.

The legislation defines entities that fulfill one of the conditions as being a PSC, that are required to hold a PSC register or disclose information as a DTR5 issuer (or otherwise) as "relevant legal entities." However, regulations state that not all relevant legal entities should be recorded on the register.

The intention is that, by not requiring all entities to look through their ownership chain in these circumstances, it will be easier for an entity to maintain its own register, while still ensuring that information on all PSCs will be available on the public register.

The details of people or entities that must be recorded include their name, residential address (which does not appear on any version of the register available to the public), a service address, date of birth (in the case of individuals), and information about how they have significant control.

Significantly in the context of the debate on privacy versus transparency, the UK has made its PSC register searchable to anyone, free of charge.

European Union

The EU soon followed suit. The 4th Anti-Money Laundering Directive, endorsed by the European Council in April 2015, required EU countries to establish and maintain central registries containing certain information about the beneficial owners of companies registered in their jurisdictions.

The relevant legislation is Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the Directive).[4] The Directive amends Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repeals both Directive 2005/60/EC of the European Parliament and of the Council, and Commission Directive 2006/70/EC. The 4th AML Directive was published in the Official Journal of the European Union on June 5, 2015.

The directive defines a beneficial owner as the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means.

A shareholding of 25 percent plus one share is sufficient to indicate direct ownership of a company under the proposal. Similarly, a shareholding of 25 percent plus one share which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), is an indication of indirect ownership.

As regards trusts, the central registration of beneficial ownership information will be used where the ownership of a trust has tax consequences.

In a similar manner to the UK PSC rules, companies listed on a regulated market are already subject to disclosure requirements under EU law, so fall outside the scope of the draft directive.

Member states were supposed to have transposed the new requirements into domestic law by June 26, 2017. However, half of the EU's member states failed to fully transpose the directive by the deadline – perhaps a show of resistance on the part of some EU governments to an idea that some argue would deter foreign investment and national competitiveness.

United States

It could be the case that some countries are reluctant to proceed with beneficial ownership laws while there is no such requirement in the world's largest economy, the United States, where, under current state incorporation laws, the ultimate ownership of companies does not need to be disclosed. A bipartisan bill introduced in Congress in August 2017 would change this by introducing minimum disclosure standards and would provide civil and criminal penalties for individuals who do not comply with this requirement.

The Corporate Transparency Act of 2017 was introduced in the Senate on August 3, 2017,[5] with a companion bill introduced in the House of Representatives on the same day. The bill would require corporations and limited liability companies formed in the US to file information about their beneficial ownership by introducing minimum disclosure standards. It would also provide civil and criminal penalties for individuals who do not comply with this requirement.

While adoption of the standards would be voluntary by individual states, a state choosing not to do so would see companies incorporating there required to register with the Financial Crimes Enforcement Network (FinCEN). The information gathered would be available to state and federal authorities as well as financial institutions who must comply with Know-Your-Customer requirements of the Bank Secrecy Act. The information would not be available to the public.

The bill has, however, made no progress through Congress, and it is debatable how high a legislative priority this is for Congress and the Administration.

Absent a legislative solution, the US Government has been attempting to improve transparency of company beneficial ownership through regulatory action, notably with the introduction a customer due diligence (CDD) final rule, which became effective on May 11, 2018,[6] subject to a two-year implementation period.

The CDD final rule adds a new requirement that financial institutions – including banks, brokers, or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities – collect and verify the personal information of the beneficial owners who own, control, and profit from companies when those companies open accounts.

Specifically, the rule contains three core requirements: identifying and verifying the identity of the beneficial owners of companies opening accounts; understanding the nature and purpose of customer relationships to develop customer risk profiles; and conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

With respect to the new requirement to obtain beneficial ownership information, financial institutions must identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.

The Treasury also announced in May 2016 proposed regulations to require foreign-owned "disregarded entities," including foreign-owned single-member LLCs, to obtain a tax identification number with the Internal Revenue Service (IRS), in order to curb their possible use to avoid US tax. These rules, the Department said, are intended to shine a light on "a narrow class of foreign-owned US entities – typically single member LLCs – that have no obligation to report information to the IRS or to get a tax identification number." Such disregarded entities can be used to shield the foreign owners of non-US assets or non-US bank accounts, it added.

Finalized on December 13, 2016,[7] these regulations should allow the IRS to determine whether there is any tax liability, and to share this information with other tax authorities.

Offshore Financial Centers

Since the Panama Papers affair, the onus has been on offshore financial centers to improve access to beneficial ownership information. The UK has once again been a driving force for greater corporate transparency by extracting commitments from its Overseas Territories to put in place arrangements for the systematic reporting of beneficial ownership information in the wake of the scandal. Consequently, rules are now in place in many offshore financial centers requiring companies to register certain ownership information.

In the Isle of Man for example, declarations are required under the Beneficial Ownership Act,[8] which was enacted last year in line with the jurisdiction's commitment to enhance agreements for the sharing of information about the beneficial ownership of corporate and legal entities. Under the Act, all nominated officers or corporate service providers for legal entities must submit details of registrable beneficial owners who hold more than 25 percent of a legal entity's shares.

In another example, Jersey requires, as from January 1, 2017, all corporate and legal entities (apart from foundations) to complete a confirmation statement including details concerning current beneficial ownership and control.[9] This obligation applies even if there has been no change to beneficial ownership and controller information since incorporation. The reporting of this information is intended to allow the Companies Registry to update and verify information relating to beneficial owners and controllers of each and every corporate and legal entity on the beneficial owner and controller register. Entities also have an ongoing obligation to notify the Companies Registry within 21 days of becoming aware of a change to beneficial ownership and control information.

In a third example, a beneficial ownership database went live in the British Virgin Islands on July 1, 2017 under the Beneficial Ownership Secure Search System Act, 2017.[10] Known as the Beneficial Ownership Secure Search system, this searchable platform provides the territory's law enforcement authorities with direct and immediate access to verified beneficial ownership information on the ownership of companies in the territory.

Other Jurisdictional Developments

In an indication of the way in which the idea of greater corporate transparency is taking hold worldwide, new rules requiring the identification of beneficial owners have been proposed, introduced or committed to in several other jurisdictions recently. Such developments include the following:

- In Hong Kong, legislation was passed by the Legislative Council which requires companies incorporated in Hong Kong to maintain beneficial ownership information by way of keeping registers of significant controllers. The requirement commenced on March 1, 2018.[11]
- Earlier this year, Abu Dhabi Global Market, the low-tax financial hub, codified its corporate beneficial ownership and control regulations into a new regime.[12]
- To tackle tax evasion, in March 2018, Indonesia's President Joko Widodo issued regulations requiring all businesses to disclose beneficial ownership details.[13]
- Earlier this year Switzerland consulted on recommendations made by the Global Forum on Transparency and Exchange of Information for Tax Purposes, to improve the transparency of beneficial ownership information.[14]
- According to an announcement last December, finance ministers from across Canada are committed to ensuring greater transparency of beneficial ownership information.[15]
- In South Africa an amendment to the Financial Intelligence Amendment Act, enacted in 2017, includes new requirements concerning the identification of beneficial owners of legal entities.[16]

Public Versus Private

The idea that the authorities should have a better idea of who owns or controls companies to enable them to better tackle tax evasion and other financial crime is more widely accepted than it was at the time of the Lough Erne Summit. However, the debate has moved swiftly over the last couple of years to include the more controversial issue of public disclosure of beneficial ownership information.

This is an idea that is currently being championed by the EU, and the 5th Anti-Money Laundering Directive, adopted by the European Council in April 2018,[17] would allow the public to view, on the basis of "legitimate interest," beneficial ownership information on trusts and similar legal arrangements. Member states would also retain the right to provide broader access to information, in accordance with their national laws.

The UK is also heightening the transparency bar set for its Overseas Territories. Under amendments to the UK Sanctions and Anti-Money Laundering Bill,[18] which is currently making its way through Parliament, 14 OTs, including Bermuda, the British Virgin Islands, and the Cayman Islands, would be required to introduce public ownership registers by the end of 2020 or face having the requirement legally imposed by the UK Government.

Unsurprisingly, the OTs are firmly against the idea of having such rules imposed on them. In arguing against the proposal, Cayman Premier Alden McLaughlin pointed out that central public registers are not the global standard.[19] Indeed, the Caribbean territories in particular have argued they are unfairly held to higher standards than the vast majority of the rest of the world on tax and corporate transparency matters.

Echoing McLaughlin's sentiments, Guernsey's Chief Minister, Gavin St Pier, told the island's Parliament on May 17 that Guernsey will move to a public register of beneficial ownership if it becomes an international standard. "It must be a standard agreed by all jurisdictions – there must be a level playing field,"[20] argued St Pier, highlighting that public registers are not yet the agreed policy of the G20 countries.

However, critics of publicly available beneficial ownership data argue that ultimately, such measures would be self-defeating, because tax evaders and other criminals are unlikely to register a company in a jurisdiction with a public register. They could also encourage company owners intent on concealing their details to register increasingly complex and opaque chains of corporate entities across multiple jurisdictions. What's more, there is an argument that, while ostensibly discouraging certain types of crime, public beneficial ownership registries could merely encourage others by potentially making company owners and their families the targets of intimidation, violence, extortion and criminal acts.

The counter position is that safeguards can be built in to public beneficial ownership registries, such as special rules for company owners in particularly controversial economic sectors. The UK

PSC, which does not include a person's residential address on any part of the register accessible by the public, could provide a template for other jurisdictions in this regard. The rules also provide a mechanism allowing company owners to apply to the companies registry to prevent their residential address from being disclosed in situations where they fear that they or somebody they live with would be at risk of violence or intimidation due to the activities of a company they are involved with.

In fact, when looking at the recent direction of travel on this matter given legislative developments in the EU in particular, OFCs, which increasingly trade on their reputation as compliant with international tax and legal standards, might have little choice but to go down the public route. The Isle of Man for example is already considering its policy options concerning the adoption of a publicly searchable register showing the beneficial owners of Manx companies, trusts, and other entities, with Chief Minister Howard Quayle recently telling the island's legislature that the European Commission's adoption of the 5th Anti-Money Laundering Directive cannot not be ignored.[21]

Conclusion

In the future, we can expect to see more jurisdictions legislate for central registries of beneficial ownership information. However, until there is a wider international consensus on how such information should be presented, and who has the right to view it, progress in this area could remain slow. Indeed, until all the major economies agree to come on board with this new transparency movement – particularly the United States – and the playing field becomes considerably more level than it is at present, many jurisdictions could be reluctant to move forward with beneficial ownership registries, public or otherwise.

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Common Corporation Purchase Structures To Obtain Step-Up In Tax Basis When Equity Is Purchased

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Introduction

Buyers of businesses conducted through C or S corporations typically prefer to purchase assets to receive a step-up in tax basis of the assets of the corporation to the assets' fair market value. This will allow for additional depreciation on depreciable assets and less gain on the later sale of the assets. It may be difficult to structure transactions as pure asset transactions since the corporation may own certain assets, such as licenses or government contracts, which are subject to restrictions on transfer. It may also be desirable to transfer equity rather than the corporate assets to simplify the documentation needed to effectuate the transaction from a legal standpoint.

It is common for buyers to purchase a corporation's equity and to make elections under either Internal Revenue Code ("*IRC*") § 338(h)(10) or § 336(e) in order for the transaction to be taxed as a deemed asset purchase. Such election allows the buyer to achieve a step-up in tax basis of the assets held by the corporation. Through an F reorganization, the seller may have the opportunity for a tax-free rollover of their retained interest.

IRC § 338(h)(10) – Deemed Asset Sale

A purchase through IRC § 338(h)(10) is common in the merger and acquisition deals. The buyer and seller both need to make an IRC § 338(h)(10) election in a transaction structured as a stock purchase for legal purposes; the transaction is deemed to be treated as a sale of the corporation's assets followed by a liquidation of the corporation for tax purposes. As a result of the election, the buyer will receive the desired step-up in the tax basis of the underlying purchased assets of the corporation.

The following is required to make an IRC § 338(h)(10) election:

1. All shareholders must agree to the election;
2. The target entity must be a corporation;
3. The purchaser must buy at least 80 percent of the total voting power and value of the stock of the target entity over a 12-month period; and
4. The purchaser must be a corporation.

The disadvantage of an IRC § 338(h)(10) election as to other potential structures is that the seller cannot achieve a tax-free rollover of any retained stock. This is due to the fact that if the election is made, the seller must recognize gain or loss on 100 percent of the assets of the corporation even if less than 100 percent of the corporation is sold. Also, the selling shareholders cannot retain more than 20 percent of the stock interest in the corporation.

IRC § 336(e) – Deemed Asset Sale

The final treasury regulations for an IRC § 336(e) election only became effective in 2013. An IRC § 336(e) election has the same general goal of converting a transaction that is structured as a stock sale for legal purposes as a deemed asset sale and subsequent liquidation for tax purposes.

The IRC § 336(e) election is procedurally similar to an IRC § 338(h)(10) election in that:

1. The target entity must be a corporation; and
2. The acquisition must be for at least 80 percent of the stock of the target in a 12-month period.

One key of the IRC § 336(e) election is that the purchaser is not limited to a corporation; the purchaser may be an individual, partnership, or limited liability company.

Similar to an IRC § 338(h)(10) election, under IRC § 336(e) the seller must recognize gain or loss on 100 percent of the built-in gain or loss of the corporation. This election also does not facilitate tax-free rollovers for the sellers. In addition, the seller cannot retain more than 20 percent of the stock of the corporation.

The IRC § 336(e) election is viewed as more flexible than the IRC § 338(h)(10) election and allows for more creative ways to achieve a desirable legal and tax result.

Sale Of Membership Interests In An LLC After An F Reorganization

As more and more transactions desire tax-free equity rollovers, sellers seek structures that allow tax to be deferred on the equity that is not sold in a transaction, the retained interest. It is important for sellers to have a liquidity event prior to being taxed on the transaction.

Since IRC § 338(h)(10) and IRC § 336(e) do not allow the seller to defer taxation on their retained interest, sellers of S corporations can attempt to achieve this goal by converting the existing target S corporation into a single member LLC through an F reorganization prior to the sale and transferring the single member LLC interests to the buyer.

In order to achieve this desired structure for the transaction prior to the closing, a seller needs to take multiple steps, including those listed below:

1. The selling S corporation's ("*Target*") current shareholders form a new corporation ("*NewCorp*") that elects to be an S corporation for tax purposes.
2. The shareholders of Target contribute all of their equity interests in Target to NewCorp in exchange for NewCorp equity in the same proportion to their current equity ownership in Target. After the transfer, Target is wholly owned by NewCorp.
3. A qualified subchapter S ("*Qsub*") election is made for Target. After this election, Target is treated as a disregarded entity for US federal income tax purposes. As a result, its activities will be reported on NewCorp's tax return.
4. Following the Qsub election, Target is converted to a single member limited liability company. Since a single member limited liability company is a disregarded entity for tax purposes, Target's conversion from a Qsub to a limited liability company is not a taxable event. All activity of the limited liability company continues to be reported on the NewCorp's tax return.
5. Buyer purchases a percentage of the membership interest of the limited liability company from NewCorp. NewCorp retains a portion of the membership interests of the limited liability company, with the retained membership interests representing the portion which NewCorp wishes to roll over on a tax-deferred basis.
6. The resulting structure is that Buyer and NewCorp each own a portion of the limited liability company. The limited liability company will be taxed as a partnership.

The sale is treated as a deemed asset sale because the buyer is treated as purchasing a percentage of each asset of the limited liability company. This allows the buyer to receive a step-up in basis to extent of their purchase. NewCorp will defer gain on the interest that was not sold as part of the transaction.

Conclusion

Stock and asset transactions will continue to be prevalent in mergers and acquisitions; however, alternative structures can achieve more desirable results under certain circumstances. The above shows an alternative where the seller is not taxed on their retained interest while the buyer receives a step-up in tax basis to the extent of their purchase.

Topical News Briefing: Aussie Tax Rules

by the Global Tax Weekly Editorial Team

The Australian Government has proved itself adept at passing tax reform legislation in recent years, in spite of its lack of a Senate majority. But try as it might, it just can't seem to cut corporate tax.

On BEPS, it is arguable that Australia has been more proactive than most jurisdictions in its attempts to tackle corporate tax avoidance, having put in place the Multinational Anti-Avoidance Law. Effective January 1, 2016, this law is designed to prevent large multinationals from minimizing Australian tax liabilities by using artificial or contrived arrangements to avoid having a taxable presence in the country. It requires companies that are deemed to have avoided tax to pay back double what they owe, plus interest, and applies to firms operating in Australia which have global revenues of more than AUD1bn (USD754m). The MAAL's scope has since been extended, and will be extended again under legislation introduced in March 2018 to cover a range of other corporate structures, including those that involve foreign resident partners, or foreign trusts that temporarily have their central management and control in Australia.

Australia is sometimes accused of overstepping its commitments to the BEPS project with unilateral tax measures not included in the OECD's final BEPS report. A notable example is the diverted profits tax, approved by Parliament last year and applicable from July 2017. This imposes a 40 percent penalty tax on profits that have been "artificially diverted" from Australia by multinationals.

The Government also announced significant changes to personal income tax in the 2018 Budget, delivered last month, while in another recent tax development (reported in this week's issue of *Global Tax Weekly*), the Government is consulting on draft proposals to amend the tax treatment of stapled structures.

However, while the Government can be described as reformist on tax, its attempts to cut the corporate tax rate, which at a headline rate of 30 percent is now widely considered on the high side by international comparison, have been frustrated at almost every turn. And, as also reported in this week's issue, the recent decision by the One Nation party in the Senate to withdraw its support for the Enterprise Tax Plan, which will reduce corporate tax for all firms to 25 percent by 2016, could prove fatal to the Government's ambitions in this regard.

That such a political hammer blow was delivered to the Government by a minor party with just three Senate seats also tells us how precarious the Government's position is in the legislature, and how reliant it is on the generosity of opposition parties. Indeed, recent legislative developments suggest that while the opposition, of which Labor is the largest party, are in favor of anti-avoidance measures, they are hostile to tax policies which could be seen to be favoring big business over ordinary taxpayers. Perhaps the 2018 Budget, within which personal tax cuts were announced, was an attempt to alter the balance, and make corporate tax cuts appear more acceptable. But, with Government policy still subject to some fiscal restraints, the task of convincing the opposition of the economic merits of corporate tax cuts remains an unenviable one.

For taxpayers therefore, the Government's corporate tax cut plan is subject to even further doubt. However, with elections to the lower and upper house due in the coming months, corporate tax matters could be settled more decisively one way or the other by a changing of the political guard.

ISSUE 289 | MAY 24, 2018

Recent Tax Developments In Mexico

by Turanzas, Bravo & Ambrosi

Introduction

During the first quarter of 2018 the most relevant developments in Mexican tax regulations were as follows: (1) the publication of double tax treaties concluded by Mexico with Jamaica and Saudi Arabia; (2) the beginning of negotiations on a double tax treaty between Mexico and Kazakhstan; (3) international recognition of the dispute resolution mechanism in tax matters (known as the "Conclusive Agreement Procedure") of the Attorney General Office for the Taxpayer's Defense ("PRODECON"); and (4) publication of the Law regulating Financial Technology Institutions ("Fintech Law") and other law reforms.

1. Publication Of Double Tax Treaties With Jamaica And Saudi Arabia

i. Double Tax Treaty between Mexico and Jamaica

The double tax treaty entered into between Mexico and Jamaica signed on May 18, 2016 entered into force on February 24, 2018. The treaty was published in the Official Gazette of the Federation on February 23, 2018.

ii. Double Tax Treaty between Mexico and Saudi Arabia

The double tax treaty concluded between Mexico and Saudi Arabia signed on January 17, 2016 entered into force on March 1, 2018. The treaty was published in the Official Gazette of the Federation on February 26, 2018.

2. Beginning Of Negotiations On A Double Tax Treaty Between Mexico And Kazakhstan

According to recent reports, Mexico and Kazakhstan have started negotiations for the conclusion of a bilateral double tax treaty.

Currently, Mexico and Kazakhstan are part of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters for the exchange of information and other assistance forms.

3. International Recognition Of The Dispute Resolution Procedure Of PRODECON In Mexico

On January 22 and 23, 2018, PRODECON hosted the first official meeting of the new Subcommittee on Dispute Resolution of the Committee of Tax Experts of the United Nations ("UN") in Mexico City, at which proposals for the improvement of the current Mutual Agreement Procedure ("MAP") in international tax disputes and the design of possible changes to the UN Model Tax Convention were put forward, with the participation of PRODECON's officials.

As a result of the meeting, the UN Subcommittee praised the efforts of PRODECON in its use of the Mexican dispute resolution mechanism known as the "Conclusive Agreement Procedure" established as an alternative for taxpayers for the settlement of tax audits with the tax authorities under Mexican tax legislation (and in force since January 2014), under which PRODECON intervenes as intermediary. A representative of PRODECON was granted the opportunity of drafting a chapter for the UN Manual on international dispute resolution, from which the Mexican experience may eventually be recommended by the UN Committee of Tax Experts as best practice to solve conflicts between tax authorities and taxpayers.

4. Publication Of The Fintech Law And Other Legislative Reforms

On March 9, 2018, the Law regulating Financial Technology Institutions ("Fintech Law"), first introduced by the Ministry of Finance and Public Credit as a draft for public consultation in September 2017, along with other amendments to various financial laws, was published in the Official Gazette of the Federation, becoming effective on March 10, 2018.

The Fintech Law establishes a regulatory framework for IT platforms and tools, mainly regulating the execution of financial transactions and services related to access to financing and investment, management, the transfer of electronic payment funds, as well as the use of virtual assets (such as cryptocurrencies) in these transactions.

In this regard, specific regulations and general rules concerning the use of virtual assets under the Fintech Law are still pending at the time of publication.

Also, among the reforms published on March 9 was an amendment to the Federal Law for the Prevention and Identification of Transactions with Funds from Illegal Sources ("Anti-money Laundering Law").

New legal provisions were added to the Anti-money Laundering Law in order to consider as "vulnerable activity", subject to identification and report for anti-money laundering purposes, the habitual and professional offering of exchange of virtual assets by persons other than financial entities that (i) manage and operate transactions with such assets, or (ii) guard, store or transfer virtual assets different of those recognized by the Mexican central bank (*Banco de Mexico*), either through digital, electronic or similar platforms. This addition will become effective on September 10, 2019.

Digital Economy: A Good Tax Is Hard To Find

by Stéphane Gelin and Rosemary Billard-Moalic, attorneys-at-law, CMS Francis Lefebvre Avocats, Paris

Stéphane Gelin and Rosemary Billard-Moalic, attorneys-at-law at CMS Francis Lefebvre Avocats in Paris, offer an insight into the latest developments on this hot topic both in the European Union and France.

Introduction

The developing digital economy has reshuffled the cards of the tax game as it raises the question of how taxing rights on income generated from cross-border digital activities should be allocated among countries.

Two New Draft Directives By The European Commission

On March 21, 2018, the European Commission[1] presented two draft directives to alter the way large digital companies are taxed (or not taxed …) in Europe. One proposal includes a long-term permanent solution, in line with the OECD's ongoing work and especially the recently expressed view that modes of doing business have changed enough to necessitate a broad rewrite of international tax rules,[2] as physical presence in a country may no longer appear appropriate for identifying tax jurisdiction because of the reduced need for physical presence that digital technologies create.

The second proposal aims at fixing the problem on a short-term basis. The European Commission has stated that the proposed measure is to be understood as an interim measure required by the urgency of the situation and that it should be applied until a comprehensive solution has been agreed upon at the international level. There, the European Commission chooses to depart from the OECD's recommendation not to implement unilateral measures as they are not globally acknowledged as either necessary or of any merit.

The "Interim" Measure: The Digital Services Tax (DST)

The proposed DST[3] is a 3 percent turnover tax that targets digital service providers with annual worldwide revenues exceeding EUR750m (USD880.5m) and total annual revenues from digital activities in the EU exceeding EUR50m. Digital services covered by the DST would include sales of online advertising, digital intermediary activities allowing users to interact with others and facilitate the sale of goods between those users, and the sale of data generated by user-provided information. The European Commission suggests that it would not apply the DST to taxpayers that would be taxed under the comprehensive option. However, there is room for doubt regarding the interim character of the measure as it is straightforward and as such, could become quite hard to dislodge as a source of tax revenue.

The "Comprehensive" Measure: The Digital PE

The European Commission's long-term option aims at amending the permanent establishment definition to include the existence of a "significant digital presence" in a Member State. Some digital services providers would then be taxed in Member States where they have a significant digital footprint as they create value from technology, user interactions and user data. The significant digital presence[4] threshold would be met if the digital services provider's total annual revenue exceeds EUR7m, the number of its users exceeds 100,000, or the number of its business contracts for the supply of such services exceeds 3,000.

For the draft directives to be accepted, EU Member States need to reach unanimity.[5] This will be challenging as, for example, the proposed reforms would reallocate taxing rights from EU Member States that host the European headquarters of large digital economy companies to EU Member States with large user bases. Yet, the European Commission and Member States supporting the initiative – France being fiercely partisan – hope for a swift approval process and a subsequent implementation in domestic law by December 31, 2019 so that the new rules would become effective as of January 1, 2020. However, the lack of global consensus observed by the OECD and persisting opposition by the United-States could jeopardize the whole action.

In a communication released alongside the proposals, the European Commission also invited Member States to include the new digital permanent establishment definition into their tax treaties. If they were to do so and/or if they opted for the adoption of the new definition of the dependent agent included in the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("Multilateral Instrument" or MLI) which will enter into force on July

1, 2018, their tax treaties' permanent establishment provision would be drastically modified and this would pave the way to a challenge of the recent French case law on the issue.

Two Rulings By The French Courts: The *Google* And *Valueclick* Cases

In two recent rulings,[6] Paris first-instance administrative court and the Paris administrative Court of Appeal relied on a legal rather than factual analysis to conclude that foreign companies did not have a permanent establishment in France.

The Google *case*

Paris first-instance administrative court (the court) ruled on July 12, 2017 that Google Inc. was not liable for EUR1.1bn in back taxes as Google Ireland Ltd did (GIL) did not have a permanent establishment in France as a result of activities performed by its subsidiary, Google France (GF) – *i.e.*, the promotion of Google Inc.'s services on the French market.

The French tax authorities had reassessed GIL's corporate income tax and withholding taxes as they believed that GF was acting as GIL's dependent agent in France and as a consequence, GIL had a permanent establishment in France under article 2(9) of the France-Ireland tax treaty.

However, the court found that the facts and circumstances of the case were not sufficient to demonstrate that GF had the legal authority to conclude contracts in France in the name and on behalf of GIL. More particularly, the court considered that the French tax authorities failed to demonstrate that the "AdWords" advertising contracts between French customers and Google could be concluded in the absence of GIL's final validation, as such a validation was a condition of the validity and effectivity of those contracts. The court also emphasized that GF's employees did not take part in the whole "Ad-Words" contracting process as it was based on a web-user click system.

Ruling as such, the court applied the 2010 *Zimmer* precedent by the French administrative supreme court[7] which established a strict construction of the "authority to act in the name and on behalf of" a foreign company, necessary to characterize a permanent establishment of the foreign company. The absence of authority of a French company to put final validation to contracts between customers and its foreign parent characterizes the absence of authority to act in the name and on behalf of the latter. The court ruled that the effective predominant role of the French company in the conclusion of the contracts between French customers and the foreign company was to be disregarded.

The Valueclick *case*

The facts of this case are very similar to those of the *Google* case: the American group Valueclick Inc. (later renamed Conversant) located its European headquarters, Valueclick International Ltd (VIL), in Ireland. This latter company has a subsidiary in France, SARL Valueclick France (VF), whose purpose is to promote the group's services on the French market. To do so, VF provides the following services to VIL: marketing and sales support, which includes the identification and prospection of potential customers of VIL; ongoing management services and a back office support service; administrative assistance, including accounting, human resources management, information technology and treasury.

Using its weapon of mass reassessment, the French tax authorities determined that VF's activities led to the characterization in France of a permanent establishment of VIL under the France-Ireland tax treaty, with the related tax consequences (mainly corporate income tax and value-added tax reassessments).

The Paris administrative Court of Appeal (the court) swept aside the reasoning of the French tax authorities: VF certainly had the necessary staff to operate the full range of marketing operations in France to promote the group's products. It also had the necessary resources to provide extensive management support services to its Irish parent. The court also noted that VF's staff was entitled to negotiate the terms of the advertising contracts and to draft certain key terms with the customers.

Yet, the court considered that these facts and circumstances were not sufficient enough to characterize VF as a permanent establishment of VIL as VF's staff were not allowed to make any decision on their own without final validation by VIL, even if the advertising contracts had been negotiated and developed by VF's staff and VIL's final validation appeared rather automatic and were subject to limited review.

As in the *Google* case and following the 2010 *Zimmer* precedent, the court held that, despite the obvious capacity of VF's staff to promote the services and negotiate the key terms of the advertising contracts, they were not legally empowered to act in the name and on behalf of the VIL.

Going even further than Paris first-instance administrative court did in the *Google* case, the court dismissed the existence of a fixed place of business, which is the other side of the characterization of a permanent establishment. The court ruled that the equipment necessary for the technical implementation of the services was not located in France: if VF certainly had hardware and software, the latter, although connected to the network of the group, was in any case insufficient to deliver all services, much less in a sustainable manner.

The *Google* and *Valueclick* rulings show that it will be difficult to twist the current wording of the OECD Model Convention to tax revenues generated by an offshore intangible asset. The question remains whether the "digital economy" should be seen as a whole, requiring the creation of a "digital sales tax" or a "digital PE." What is commonly designated as "digital economy" actually corresponds to different business models with different value creation processes. Would one tax size fit all?

Endnotes

1 COM (2018) 147 final, 2018/0072 (CNS) and COM (2018) 148 final, 2018/0073 (CNS).

2 OECD (2018), *Tax Challenges Arising from Digitalization – Interim Report 2018: inclusive Framework on BEPS,* OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

3 COM (2018) 148 final, 2018/0073 (CNS).

4 COM (2018) 147 final, 2018/0072 (CNS).

5 A special legal procedure included in the EU treaties could also be used, allowing a group of EU Member States to move forward on their own on a particular regulatory matter, while leaving the door open for others to follow. This "enhanced cooperation" procedure would therefore allow progress among a subset of EU Member States.

6 TA Paris, 1re section, 1re chambre, no. 1505178, July 12, 2017, *Sté Google Ireland Ltd* and CAA Paris, no. 17PA01538, March 1, 2018 Sté *Valueclick International Ltd*.

7 CE, March 31, 2010 no. 304715 and 308525, *Sté Zimmer Ltd*.

Topical News Briefing: The VAT-scape Is Changing

by the Global Tax Weekly Editorial Team

With a few exceptions (notably the US), value-added taxes are commonplace from the Americas to Asia, and from Europe to Australasia. But although VATs and GSTs are now well-established and considered part of the international tax furniture, this doesn't prevent governments and legislatures from bringing about major VAT changes from time to time.

At present, there are several parts of the world in which taxpayers are faced with much VAT uncertainty.

As reported in this week's issue of *Global Tax Weekly*, taxpayers in Malaysia are wondering what will happen next now that the Government has decided to repeal the goods and services tax. The indications are that the GST regime will be replaced by the former Sales and Services Tax, but the Government appears to have made no firm commitments in this direction. What's more, given that GST accounted for almost 20 percent of Government revenue, additional tax measures intended to offset the shortfall cannot yet be ruled out.

Also reported in this week's issue are further developments with regards to the unified Gulf Cooperation Council VAT, which, it has transpired over the last few months, is anything but unified. As matters stand, only Saudi Arabia and the United Arab Emirates managed to introduce VAT on schedule on January 1, 2018 as per the GCC Unified VAT Framework, and both jurisdictions have been busy in the meantime issuing guidance on various VAT matters as they seek to bed in this major tax reform. In the remaining four GCC member states, however, a VAT introduction date seems to be a moving target. Indeed, in the case of Kuwait, the direction of travel is firmly backwards, after its government postponed VAT until 2021.

Taxpayers in the EU are also facing major VAT changes in the years ahead as the bloc attempts to roll out the definitive VAT regime, whereby transactions will be taxable at the point of consumption, not the point of supply, under the destination principle. Several other changes are in the pipeline to help small businesses cope with this upheaval, and to prevent fraud and evasion. Complicating matters further is the UK's decision to withdraw from the EU, which is expected to have an as yet unquantifiable impact on the UK's VAT regime, with the outcome likely to depend heavily on the nature of the country's exit agreement.

Canada is another jurisdiction which has seen major regime changes in this area in recent years, as federal and provincial governments have harmonized their GSTs into a single levy, while elsewhere in the Americas, attempts to consolidate Brazil's complex layers of federal and regional sales taxes into a single VAT have been unsuccessful so far, but are ongoing.

On a more general level, the digitalization of the global economy is presenting a challenge to existing VAT laws, and governments are seeking to level the playing field between domestic vendors with a taxable presence and foreign suppliers existing largely in cyberspace by subjecting digitally-delivered services and goods purchased from online marketplaces to VAT.

In fact, there are few parts of the world where the VAT or GST regime hasn't been subject to instability to one degree or another recently. As governments attempt to bring the digital economy much further into the tax net than it appears to be at present, and as advances in information technology continue drive VAT administrative reforms, the international VAT landscape will continue its evolution.

Australia Announces Foreign Investor Tax Reforms

The Australian Government is consulting on proposals to amend the tax treatment of stapled structures.

The Government first announced the reforms in March. It has now released exposure draft legislation for consultation. The consultation period closes on May 31.

The Government said that an increasing number of foreign investors have sought to convert trading income into more favorably taxed passive income through the use of stapled structures. Stapled structures are not available to domestic investors and are only available for land-rich businesses.

According to the Government, when combined with existing concessions used by foreign pension funds and sovereign wealth funds, some foreign investors can pay tax rates of 15 percent or less.

The Government has proposed the following changes:

- Trade income that is converted to passive income will be taxed at the corporate tax rate;
- Foreign investors will no longer be able to use multiple layers of flow-through entities (such as trusts and partnerships) to "double gear" their investments to generate more favorably taxed interest income;
- Foreign pension fund withholding tax exemption for interest and dividends will be limited to portfolio investments only;
- A legislative framework will be created for the existing tax exemption for foreign governments (including sovereign wealth funds) and to limit the exemption to passive income from portfolio investments; and
- Investment in agricultural land will not be able to access the 15 percent concessional managed investment trust (MIT) withholding tax rate, but new, government-approved infrastructure assets may be eligible to access the concessional rate for 15 years.

The Government will introduce transitional arrangements for seven years for ordinary business staples and for 15 years for economic infrastructure assets.

The draft legislation covers the first four amendments in the package. Draft legislation on the agricultural MIT changes and the conditions stapled entities must comply with to access the infrastructure concession will be released in due course.

Ombudsman Reviews ATO's Use Of Asset Seizure Powers

The Inspector-General of Taxation (IGT) has announced an investigation into allegations that the Australian Taxation Office (ATO) unfairly targeted small businesses and individuals to meet its revenue collection goals.

The investigation will focus on the alleged inappropriate use of garnishee notices – an order issued by the ATO that requires a bank to hand over money from a taxpayer's account whenever money is deposited in the account.

In April, an investigation by Four Corners, an investigative journalism program, and Fairfax Media alleged that the ATO had used "unethical tactics" at the "expense of correct procedure and fairness to taxpayers." According to one whistleblower, ATO staff had been instructed last year to "seize funds from the bank accounts of taxpayers assessed to owe the [ATO] money, regardless of their personal circumstances."

ABC reported that ATO employees had been told to issue standard garnishees in every case. It was also alleged that targets were set, and that staff performance was assessed based on levels of debt collected from taxpayers.

The IGT, Ali Noroozi, observed: "The allegations about the ATO's inappropriate use of garnishee notices [are] of serious concern and, if not addressed, can affect community confidence in the administration of the tax system. As the Taxation Ombudsman, I have a duty to independently investigate these allegations to restore public confidence."

"The ATO has the vital task of collecting government revenue and recovery of tax debt is an important part of that task. However, it must be done equitably, taking into account the particular circumstances of each taxpayer whilst ensuring a level playing field is maintained."

According to the Office of the IGT, garnishee notices are the most common form of firmer action used by the ATO to recover tax debt. It said the cash flow of affected taxpayers may be disrupted as a result of such action, with potentially severe impact on vulnerable small businesses and individuals.

"Cash flow is the lifeblood of small businesses and, if inappropriately disrupted, can have unjustified and devastating effect on them. My investigation will examine the accuracy of the allegations made along with themes emerging from complaints to my office with the aim of finding improvements where necessary and restoring confidence in the system," Noroozi added.

The IGT has invited interested parties to make a submission to the investigation or to lodge a complaint about their personal experience.

Support Wavers For Australian Corporate Tax Cuts

The One Nation party will no longer support the Australian Government's company tax reforms, damaging the coalition's chances of getting the package through the Senate.

One Nation leader Pauline Hanson, whose party controls three Senate seats, had supported the Enterprise Tax Plan Bill in March. She has now told *The Australian* that she has doubts over whether the proposed gradual phase-in of the reforms would succeed in stimulating job creation.

Hanson said that if the Government was "serious about this," they should "start doing something about it now."

"This Government is talking about it six or eight years down the track. Well, that's not good enough."

Hanson also argued that the package has "not been well received," and that the Government "has not been able to sell the package to the people."

The Government wants to increase the turnover threshold for access to the lower, small business rate each year to 2023-24 and to reduce the headline rate to 25 percent for all businesses by 2026-27.

Hanson has now stipulated that in order for her party to support the reforms, the Government must significantly reform the Petroleum Resource Rent Tax. She told *The Australian* that she was also disappointed that the pilot apprenticeship scheme that she had previously negotiated with the Government had not been included in this month's Budget.

Finance Minister Mathias Cormann said he was "very disappointed with this latest development." He told reporters that the Government will continue with its plan and emphasized that "a higher tax on business in Australia is a higher tax on workers in Australia."

Cormann said he hopes the Government "will be able to persuade Pauline Hanson and her team to go back to the position that they adopted earlier this year." He added that the Government "remains 100 percent committed to all of the things that we reached agreement on with One Nation earlier this year."

ATO Guides On July 1 Real Property GST Change

The Australian Taxation Office has updated its guidance on the July 1, 2018, introduction of a requirement that purchasers of new residential premises or potential residential land should withhold the GST component from the price for the supply and remit it on or before settlement.

The property transactions impacted are taxable supplies (for example, sales and supplies by way of long-term lease) of new residential premises or taxable supplies of potential residential land where the contract is entered into before on or after July 1, 2018.

The legislation is intended to prevent tax evasion by property developers that fail to remit the

GST on sales of such properties. This practice is often associated with "phoenixing" activity.

Under the change, to provide certainty to purchasers, a supplier (vendor, seller, etc) of residential premises or potential residential land must notify in writing whether a purchaser is required to withhold an amount. If the purchaser is required to withhold, the supplier must also notify the purchaser what that amount is and when it needs to be paid to the agency.

The general rule is that if the property sale contract specifies an amount that is the price of the supply (for example, the contract price) then the withholding amount is calculated on the contract price. However, there are some situations where the amount to be withheld must be calculated differently.

The new guidance sets out when the amount to be withheld must be calculated differently, when either: the margin scheme applies to the supply; the supply is between associates and is without consideration, or is for consideration that is less than the GST inclusive market value of the supply; there is a mixed supply, for example only partly a supply of new residential premises or potential residential land; or there are multiple purchasers (not joint tenants).

Malaysia Answers FAQs On GST Repeal

The Royal Malaysian Customs Department on May 17, 2018, issued answers to frequently asked questions concerning the Government's intention to replace the goods and services tax (GST) regime with a sales tax regime from June 1, 2018.

From June 1, 2018, and until such time as Malaysian lawmakers have passed the legislation necessary to repeal GST, the single, 6 percent rate of GST will be replaced with a zero rate, which will remain chargeable on supplies. This means that taxable persons will remain eligible to claim input tax credits. The FAQs confirm that exempt supplies will continue to be exempt, meaning that input tax will not be recoverable on such supplies.

The FAQs confirm that any enforcement actions against non-compliant businesses will continue despite the decision to repeal GST. Further, the obligation to file a GST-03 return will continue, with any supplies subject to a zero rate of GST from June 1 to be reported in column 10 of the return.

The FAQs set out any transitional rules that will be in place for contracts and supplies straddling June 1, 2018. It also confirms the rules for imports and exports, for trading within a free zone, and for goods held in a customs warehouse.

Last, it discusses how companies benefiting from a GST special scheme will be affected by the change and sets out invoicing rules. The FAQs confirm that there is no obligation on businesses to deregister for GST purposes.

UAE Issues VAT Refund Guidance For New House Builds

The United Arab Emirates' Federal Tax Authority (FTA) has issued guidance on obtaining value-added tax (VAT) refunds on new homes.

Emirati nationals who incur VAT when building a residence for their exclusive use are entitled to a VAT refund provided the VAT relates to construction costs.

An application for a VAT refund should be made online. The first stage involves downloading, completing, and submitting a VAT refund form to the FTA within six months of completion of the construction works. Applicants who are entitled to a refund will be issued with a reference number.

Applicants must then submit a VAT refund request, including the reference number, blueprints and invoices, to a verification body accredited by the FTA, with an announcement of such to be posted on the FTA's website.

The verification body will then issue a "Verification Report" stating the amount of taxes paid *versus* the recoverable amount and send this to the FTA, which will then process the final VAT refund request.

No fees apply for VAT refund applications.

A comprehensive guide on the VAT refund procedure is available in Arabic on the FTA's website.

Kuwait To Delay VAT Until 2021

Kuwait's Parliamentary budget committee has proposed deferring the introduction of value-added tax (VAT) until 2021, but said the implementation of the selective tax on energy drinks, soft drinks, and tobacco should be sped up.

Both levies have been agreed for introduction across the Gulf Cooperation Council countries in a harmonized way. So far, only the United Arab Emirates and Saudi Arabia have introduced the harmonized VAT, which features a 5 percent headline rate.

The delay was announced in a statement posted on the website of Kuwait's National Assembly on May 14, 2018.

Gabriel Resources Provides Update On 'Retaliatory' Romanian VAT Bill

Mining company Gabriel Resources has provided an update on its value-added tax spat with Romania, with the company claiming that Romanian authorities decided to bring a RON27m (USD6.85m) assessment against the company in retaliation to the company's decision to seek several billion dollars in damages from the nation for being blocked from undertaking a number of projects.

Separate to the tax dispute, Gabriel says it is seeking compensation for "losses and damages suffered by the company and its wholly-owned subsidiary, Gabriel Resources (Jersey) Ltd., resulting from the Romanian State's wrongful conduct and its breaches of the protections afforded by certain treaties for the promotion and protection of foreign investment to which Romania is a party against expropriation, unfair and inequitable treatment and discrimination in respect the Rosia Montana gold and silver project, and the prospective gold, silver, and porphyry copper deposits in the neighboring Bucium concession area and related licenses." When it launched its efforts, the company had said it was seeking a total of USD5.7bn.

Following such, in July 2017, Gabriel Resources announced that its Romanian subsidiary, Rosia Montana Gold Corporation S.A. (RMGC), was served with a decision by the Romanian National Agency for Fiscal Administration (ANAF) assessing a liability for value-added tax (VAT) in the principal amount of approximately RON27m. The company said at the time: "This amount does not include any penalties or fines which the Company understands are also likely to be levied."

"The Company views this VAT assessment as fundamentally flawed and abusive, and plainly retaliatory coming just days after the Company filed its statement of claim in its ICSID arbitration against Romania seeking compensation in an amount equivalent to USD5.7bn."

"The VAT assessment follows the re-run of a prior VAT audit concluded by ANAF in July 2016 which assessed a liability for approximately the same amount, rising with interest and penalties to RON42.9m (then approximately USD13.7m) but which was successfully challenged by RMGC and partially quashed by ANAF in September 2016."

"In common with the quashed 2016 assessment, Gabriel and RMGC will vigorously challenge this decision. The VAT assessment has been issued despite its conclusions being wholly contradictory to the results of at least 18 prior VAT audits conducted by various divisions of ANAF relating to similar categories of expense, suppliers, transactions, and activities and despite the substance of the audit being almost identical to the quashed 2016 assessment."

"The Company also believes that the procedure followed by ANAF to arrive at the VAT assessment was improper and unlawful and that the VAT assessment conflicts with Romanian fiscal laws as well as the mandatory applicable principles of EU law."

"The basis of the VAT assessment continues a remarkable departure from ANAF practice and precedent including ANAF's reliance on submissions from known opponents to the Rosia Montana Project and lawyers who have acted for anti-mining NGOs in opposing permits for the project. This practice, together with the wide-ranging extent of other ongoing enquiries undertaken by a separate directorate of ANAF, previously disclosed by Gabriel, evidences that the actions of ANAF continue to be made in bad faith and are an abuse of power by the Romanian authorities."

Jonathan Henry, Gabriel's President and Chief Executive Officer, said at the time: "The Company believes that the VAT assessment is without merit, enacted by ANAF alongside other actions with an overarching purpose to intimidate Gabriel, RMGC, and their personnel and to frustrate the Company's pursuit of its international arbitration case against Romania. The fact that the VAT assessment has been received immediately after the Company has filed the ICSID Arbitration Claim of USD5.7bon against Romania is not a coincidence; we see this as completely abusive and retaliatory. As an EU member state, Romania should not be resorting to such bad faith tactics in the face of the Company's legitimate pursuit of its treaty claims against the State. Gabriel will assist RMGC to vigorously challenge this unlawful VAT assessment."

In a May 2018 update, the company confirmed that the arbitration is ongoing, with the appointment of a new arbiter.

On the VAT dispute, it said: "On August 9, 2017, RMGC filed an administrative challenge before the Romanian tax authorities against the VAT assessment. It is the Company's understanding that such challenge should have been determined by ANAF within a six-month period, however, to date, no decision has been issued. On April 5, 2018, RMGC initiated an action before the Alba Iulia Court of Appeal (Division for Administrative and Tax Claims) seeking the annulment of the VAT assessment. A hearing date for the annulment proceedings has not yet been set."

"On August 10, 2017, RMGC also filed a request for a stay of enforcement of the VAT assessment before the Alba Iulia Court of Appeal. On October 2, 2017, the Court of Appeal admitted RMGC's request pending the determination of RMGC's annulment challenge of the VAT assessment. On March 2, 2018, RMGC received a copy of the Court of Appeal's written decision. ANAF subsequently filed an appeal against this decision with the High Court of Cassation and Justice, however no hearing date for such appeal has yet been set. RMGC has filed a statement of defence in response to ANAF's appeal."

"The Company intends to pursue all available legal avenues to challenge the VAT assessment along with the interest and penalties and to fully protect its rights and assets."

Despite Brexit, UK Tax Regime Still Seen As Competitive: Survey

The UK continues to offer one of the world's most competitive tax systems, despite Brexit, according to KPMG's Tax Competitiveness Survey 2018, which places Ireland in pole position.

KPMG interviewed senior tax decision-makers at 77 of the UK's largest listed companies and subsidiaries of multinationals, and a further 58 non-UK companies from across the G7 nations. These interviews occurred before the US implemented its comprehensive tax reform plan.

The findings show that, while the overall appeal of the UK's tax regime has weakened slightly, the perception of the attractiveness of many rival jurisdictions' tax regimes has also diminished further over the past year.

Half of all respondents named the UK as one of the three most competitive tax systems in the world, second only to Ireland, which was identified by more than three in five (62 percent) of those interviewed. The gap between the two nations has closed from 15 percentage points to 12 percentage points, thanks to the UK's competitive tax position in business services, property, transport, engineering and construction, and aerospace, KPMG revealed.

For the 58 non-UK companies surveyed this year, the UK sits in joint fifth place, alongside Switzerland, and behind Luxembourg, Singapore, the Netherlands, and Ireland.

The proportion of UK companies that are committed to keeping their tax residency in the UK reached an all-time high in 2017; 76 percent said they do not have plans to move their tax residency. However, the number of companies that said Brexit has made them more likely to move their tax residency increased from 2 percent to 10 percent.

Melissa Geiger, Head of International Tax at KPMG in the UK, observed: "Businesses look for stability and predictability from tax regimes, not just attractive rates. The UK has largely maintained a business-friendly tax regime compared to many of its rivals. This survey shows that once a business starts operating in the UK, they tend to recognize the attractiveness of the country's economic and tax environment and are likely to keep their base here. That stickiness is important. The tax rate in the UK is low and competitive, but is also being paid, which is good news for the Treasury."

"The US tax reforms were just coming through as we spoke to tax decision makers. We have yet to see the extent to which the reforms will set a new dynamic in the international business world. Organizations are still understanding the implications on their operations, and we may yet see governments considering policy responses as they seek to remain attractive to foreign investment. Brexit complicates that picture for the UK and the challenge for policy makers is to balance these tensions and create an environment that harnesses innovation and growth for the future"

When assessing the attractiveness of a tax regime, stability was the most commonly identified factor by UK companies (79 percent), followed by the predictability of actions taken by the tax authority (78 percent). Meanwhile, the rest of the world was more likely to look to a low effective tax rate (90 percent) and then stability over the years (86 percent).

Nearly a fifth (19 percent) of respondents felt that the continued commitment to the reduction in the headline corporate tax rate to 17 percent should be the priority action for the Government to drive growth in the next 12 months. On average, respondents estimated that the reduction in the rate by 2020 could boost capital expenditure by 11 percent, headcount by 10 percent, and research and development investment by 13 percent.

Geiger added: "Businesses are clearly looking for signs to show that the UK can remain a competitive and attractive place to do business, despite the turbulence of Brexit. As such, headline rates are important. However, our research also shows that simplicity and stability in the tax system are important too. While the Government has built a reliable and stable tax regime founded on attractive policies, we are seeing that conversation is increasingly moving towards the current complexity in the code and how it is administered."

UK Criticized For Overzealous Offshore Tax Enforcement Plans

The Chartered Institute of Taxation (CIOT) has criticized a new UK Government proposal to extend significantly the tax assessment time limits in cases involving offshore tax matters.

At the Autumn Budget 2017, the Government announced that the assessment time limit for cases of mistakes or non-deliberate offshore tax non-compliance will be increased to at least 12 years after the end of the relevant tax year or relevant period. Where there is deliberate non-compliant behavior, the current time limit of 20 years will remain, whether offshore matters are involved or not. HMRC says the additional time is needed to address situations where the current assessment time limits of four and six years are not sufficient to establish the facts and determine and assess the amount of tax due.

On May 14, 2018, in response to a consultation on the matter, the Institute said it believes the case for such a large and broadly applied increase has not been made and risks resulting in unfairness for taxpayers and perverse incentives toward the care taken with tax returns.

The CIOT stated it supports HMRC's efforts to tackle offshore tax evasion and agrees that the Government should have appropriate powers and resources for combating and investigating it. However, it said it has concerns about the plan to extend offshore time limits in the way proposed.

John Cullinane, CIOT Tax Policy Director, said: "In our view a better policy outcome would have been achieved if the consultation process had started earlier when the objectives were being set and options first discussed, the kind of approach we argued for strongly in the Better Budget report. This would have enabled stakeholders to engage on a range of possibly better targeted options at a much earlier stage."

In its submission to HMRC, the CIOT said there is no evidential explanation for the rationale behind the measure and challenged the tax authority to publish its analysis to support it.

Cullinane added: "It is perverse that this proposal comes at a time when HMRC have access to a bigger armory to deal with offshore non-compliance than at any time in the past. They are receiving very large amounts of taxpayer data through Exchange of Information Agreements with overseas tax jurisdictions and they have showcased powerful internal systems to analyze the data. Public and media opinion, fueled by recent data leaks, may not have caught up with this fundamental change but that is not a good reason for policy decisions to be made disregarding it."

"One suggestion we are making is that the extended time limits should only be applied to offshore matters involving 'high risk' jurisdictions which attract a Category 3 territory classification; that is, those that have not agreed to share any tax information with HMRC. This seems a more proportionate approach."

The Institute further revealed that it is concerned at the removal of certainty for taxpayers and businesses over the resolution of their tax affairs. This is because a 12-year time limit that can apply even where a taxpayer has taken reasonable care with their tax affairs does not strike the right balance between the public interest in collecting the right amount of tax, and the right of taxpayers to finality in their tax position after a reasonable period of time.

Cullinane explained: "Currently for assessing tax due from periods more than four years in the past, HMRC must demonstrate that the taxpayer failed to take reasonable care or acted deliberately non-compliantly. If they were careless HMRC have six years to assess the tax and if there was deliberate non-compliance, 20 years. By this unprecedented merging of time limits for failure to take reasonable care and accidental errors, applying to a wide range of matters just because there is an 'offshore' element, it risks setting a dangerous precedent and potentially undermining and devaluing carefully compliant behavior."

"Another possible option is to build a process into the proposal which enables HMRC within the existing time limits to issue a notice to inform the taxpayer that an existing investigation will, for specific reasons, be subject to extended time limits. This would provide taxpayers with more certainty over their tax affairs."

"In addition, the planned measure will mean that taxpayers will have to keep records of offshore matters for 12 years against the risk that they have, entirely accidentally, not paid the right UK tax despite taking reasonable care. This is a big increase on the current length of time that legislation dictates records must be kept for which will come with a significant cost and will not be attractive from an international competitiveness perspective."

UK Mulling Extending Recent IR35 Reforms To Private Sector

On May 18, 2018, the UK Government launched a consultation on enhancing rules surrounding "off-payroll" working (the IR35 rules), to ensure that contractors who work through their own company pay the right tax.

As announced at the Autumn Budget, the consultation will specifically look at how to increase compliance with the existing "off-payroll" working rules. These rules mean that contractors such as IT and management consultants who work through their own company but who are in practice employed by a third party pay the right tax as employees.

Evidence suggests that taxpayers could be missing up to GBP1.2bn (USD1.6bn) a year by 2023 as a result of people getting the rules wrong and incorrectly paying tax as if they were self-employed, says the Government. The consultation will look at how to make these rules work better, it said, adding that the genuinely self-employed will not be affected.

The Financial Secretary to the Treasury, Mel Stride, said: "It's very important that we recognize the hard work of contractors across all sectors, who contribute to our growing economy. But it's also right that we have a fair tax system that balances efficiency and simplicity for taxpayers, while also supporting our vital public services. That's why we're consulting carefully and welcome a wide range of opinions and evidence on how to tackle non-compliance."

Last April, the Government reformed off-payroll working in the public sector, successfully increasing compliance. The change has meant GBP410m in additional revenue for the taxpayer, the Government revealed, adding: "This consultation includes the option of extending those reforms to the private sector, although no decisions have been made. It draws upon the lessons from the public sector change, by consulting on how the rules can be improved for the private sector, and includes alternative options for addressing non-compliance."

The change for the public sector placed an onus on public authorities to determine whether the rules apply to the taxpayers they engage to provide services, and to deduct and pay the appropriate taxes.

Bahrain Signs Up To BEPS Minimum Standards

Bahrain has joined the base erosion profit shifting (BEPS) Inclusive Framework and has therefore committed to the implementation of the BEPS Project minimum standards.

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low- or no-tax locations where there is little or no economic activity. The BEPS package provides 15 Actions to equip governments with the domestic and international instruments needed to tackle BEPS, by ensuring that profits are taxed where economic activities generating the profits are performed and where value is created. The minimum standards cover four of these 15 Actions.

In implementing the minimum standards, territories agree to remove any "harmful" tax provisions in their domestic tax regimes, amend their tax treaty rules to prevent treaty abuse, implement country-by-country reporting rules and exchange these reports with other countries, and work together to improve cross-border tax dispute resolution mechanisms.

As well as agreeing to implement the minimum standards, members of the Inclusive Framework agree to work together on an equal footing to develop further BEPS measures, commit to participate in peer reviews on BEPS measures' consistent implementation, and pay an annual fee to the OECD.

The Inclusive Framework is also supporting the development of toolkits for low-capacity developing countries.

There are now 116 countries and jurisdictions party to the Framework.

New Zealand's BEPS Bill Back Before Parliament

On May 15, 2018, New Zealand tabled a bill to implement numerous recommendations from the OECD to tackle base erosion and profit shifting in Parliament for adoption.

The Taxation (Neutralising Base Erosion and Profit Shifting) Bill, which has been amended following a drafting error, aims to prevent multinationals from using:

- Artificially high interest rates on loans from related parties to shift profits out of New Zealand (interest limitation rules);
- Artificial arrangements to avoid having a taxable presence (a permanent establishment) in New Zealand;
- Transfer pricing payments to shift profits into their offshore group members in a manner that does not reflect the actual economic

activities undertaken in New Zealand and offshore; and

- Hybrid and branch mismatches that exploit differences between countries' tax rules to achieve an advantageous tax position.

Many of the measures introduced in the Bill are in line with those that were proposed by the OECD as part of its BEPS Action Plan. However, other changes are made in the Bill to strengthen the transfer pricing rules so they align with the OECD's revised transfer pricing guidelines and Australia's transfer pricing rules.

According to the explanatory memorandum to the Bill, this involves amending New Zealand's transfer pricing rules so that:

- They refer to using the 2017 OECD transfer pricing guidelines as guidance for how the rules are applied;
- The economic substance and actual conduct of the parties have priority over the terms of the legal contract. This is achieved by requiring the transfer pricing transaction to be "accurately delineated" consistent with section D.1 of Chapter I of the revised OECD guidelines;
- Transfer pricing arrangements which are not commercially rational because they include unrealistic terms that third parties would not be willing to agree to can be disregarded or replaced. This is consistent with the Chapter I, section D.2 of the revised OECD guidelines;
- The legislation specifically refers to arm's length conditions (as per Australia's legislation) to clarify that the transfer pricing rules can be used to adjust conditions other than the price;
- The onus of proof for demonstrating that a taxpayer's transfer pricing position aligns with arm's length conditions is shifted from Inland Revenue to the taxpayer (consistent with the onus of proof being on the taxpayer for other tax matters);
- The time bar that limits Inland Revenue's ability to adjust a taxpayer's transfer pricing position is increased from four to seven years (in line with Australia);
- In addition to applying to transactions between related parties, the transfer pricing rules will also apply when non-resident investors "act in concert" to effectively control a New Zealand entity, such as through a private equity manager; and
- The new legislation codifies the requirement for large multinationals to provide Inland Revenue with the information required to comply with the OECD's country-by-country reporting initiative.

It also includes administrative measures for investigating large multinational groups.

The memorandum explains that it can be difficult and resource intensive for Inland Revenue to assess and engage in disputes with multinationals in practice. This is partly due to the difficulties

Inland Revenue faces in obtaining the relevant information. To address these issues, the Bill proposes strengthening Inland Revenue's powers to investigate large multinationals (with at least EUR750m (USD853m) of global revenues) that do not cooperate with a tax investigation. This involves amending the Tax Administration Act 1994 to allow Inland Revenue to:

- Collect any tax owed by a member of a large multinational group from any wholly-owned group member, provided the non-resident fails to pay the tax itself;
- Use section 17 of the Tax Administration Act 1994 to request information that is held offshore by another group member of the large multinational group;
- More readily assess a large multinational group's tax position based on the information available to Inland Revenue in cases where the group has failed to adequately respond to an information request. A failure to provide the requested information to Inland Revenue can also prevent the information from being subsequently admitted as evidence in court proceedings. These proposals are based on an existing provision in section 21 of the Tax Administration Act 1994 which currently applies to deductible payments; and
- Impose a new civil penalty of up to NZD100,000 (USD69,820) for large multinational groups which fail to provide requested information (which replaces the current NZD12,000 maximum criminal penalty).

OECD Provides Update On Action 5 Harmful Tax Practices Work

The OECD has released an update on progress made by various countries to bring their preferential tax regimes into compliance with Action 5 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) standard to counter harmful tax practices.

Action 5 covers preferential tax regimes that apply to mobile business income, such as financial and services income, and income from intellectual property.

The OECD says Lithuania, Luxembourg, Singapore, and the Slovak Republic designed their regimes to comply with the BEPS standard, with the OECD finding that the regimes met all aspects of transparency, exchange of information, ring fencing, and substantial activities. They were therefore found to be not harmful.

Meanwhile, Chile, Malaysia, Turkey, and Uruguay abolished or amended harmful features of their preferential tax regimes. A further three regimes, one in Kenya and two in Vietnam, were said to not relate to geographically mobile income and/or are not concerned with business taxation, and so do not pose any BEPS Action 5 risks.

The OECD revealed that a total of 175 preferential tax regimes in over 50 jurisdictions have now been evaluated since the creation of the BEPS Inclusive Framework, which brings together over 100 countries and jurisdictions to collaborate on the implementation of the BEPS package. Of the 175 subject to an assessment, 31 regimes have been changed; 81 regimes require legislative changes which are in progress; 47 regimes have been determined to not pose a BEPS risk; 4 have been assessed as having harmful or potentially harmful features; and 12 regimes are still under review.

Norway Announces Tax Breaks In Revised Budget

Norway's Government on May 15, 2018, released a revised Budget, including a VAT exemption for electronic publications, changes to tax reliefs for corporates, and a simplified tax regime for foreign workers.

Beginning 2019, the changes to personal taxation for foreign workers will see the introduction of an optional flat 25 percent rate regime, without eligibility for deductions. An existing "special allowance for foreign workers" will be repealed.

Other changes include reforms to rules for natural resources firms. It also includes the introduction of new administrative rules for claims for reduced tax on dividends for foreign shareholders.

The changes for employers focus on tax rules for benefits in kind. Savings tax rules will also be amended, and the beer brewing and reindeer industries will receive new tax breaks.

World Bank Urges Uganda To Shore Up Tax Base

Uganda could substantially increase its capacity to collect tax revenue by curtailing income tax and value-added tax (VAT) exemptions and tackling the large informal economy, the World Bank has suggested.

According to the World Bank, Uganda has one of the most modern tax systems in the region. However, tax revenues, at 14 percent of GDP, are "way below" potential tax receipts, the institution said upon the release of the 11th Uganda Economic Update on May 15.

"Tax avoidance and evasion, partly resulting from generous tax exemptions to investors, weak tax administration, and a large informal sector (now at 80 percent), pose challenges to increasing revenues," the World Bank observed.

Personal income tax contributes roughly 18 percent of GDP compared with up to 40 percent in developed countries, the World Bank said. In addition, the Government could raise VAT collections from 4 to 6 percent of GDP by abolishing VAT exemptions.

The report recommends that Uganda could further boost tax collection by widening the scope of the tax regime, applying tax rules "correctly and fairly," and improving efficiency and transparency in tax administration.

The administrative capacity of the Uganda Revenue Authority and local government should also be strengthened, the report concluded.

Belgian Finance Minister Says Corporate Tax Reform A Success

Belgium's Minister of Finance, Johan Van Overtveldt, has revealed that the nation's corporate tax reform, implemented at the start of the year, is showing early results.

The country's corporate tax reforms were voted through by Parliament on December 22, 2017, before being published in the Official Gazette on December 29, with most changes applying from 2018.

Under the reforms, corporate tax, which had been 33.99 percent including the solidarity contribution, was reduced to 29 percent in 2018 (29.58 percent including solidarity contribution). It will be cut again to 25 percent in 2020. In addition, the solidarity contribution is being phased out, having fallen from 3 percent to 2 percent this year. The rate will fall to 0 percent in 2020.

The reform also included cuts to corporate tax for SMEs. They may qualify for a reduced 20 percent income tax rate on the first EUR100,000 (USD117,850) of income from this year, instead of 25 percent.

SMEs have to meet certain requirements in order to qualify for the reduced rate. These include that at least two of the following conditions are met: a maximum turnover of EUR9m; a maximum balance sheet total of EUR4.5m; and no more than 50 workers employed.

Qualifying SMEs can also benefit from a higher investment deduction of 20 percent (previously 8 percent), which is applicable for investments made in 2018 and 2019.

The corporate tax rate reductions were offset by limitations to the basket of deductions that companies can claim against income, including the deduction of carried forward losses, the notional interest deduction, the carried forward dividends received deduction, and the carried forward income innovation deduction. As a result, these deductions will be restricted to 70 percent of the portion of income exceeding EUR1m.

The reform also introduced restrictions to the notional interest deduction (NID) regime, under which companies are permitted to deduct a fictional, or notional, rate of interest based on their adjusted equity, at a level equal to the average rate of ten-year government bonds. The NID is available only in respect of increases in company equity rather than total equity. Further, the dividends-received deduction will be increased from 95 percent to 100 percent under the reforms, a move designed to ensure that Belgium remains an attractive holding company jurisdiction.

The tax reform also transposed the EU anti-avoidance directives into Belgian law.

According to Overtveldt, who discussed first-quarter revenue receipts in a statement on May 17, a change to the rules concerning interest on underpaid provisional corporate tax has had notable results so far.

The reform increased the interest due on advance corporate tax liability underpayments. Previously, any amount underpaid would be subject to interest of 2.25 percent. From this year, interest accrues at a rate of at least 6.75 percent.

Advance corporate tax payments were up some 50 percent in the first quarter of 2018, said Overtveldt, with an increase of EUR2bn compared with the first quarter of 2017.

He said: "The corporate income tax reform raised serious doubts as to the budgetary neutrality, in terms of both the reform as a whole and the sub-measures. At the end of the first deadline, we now observe an increase by more than EUR2bn in advance payments of corporate tax. Of course, the results of the first quarter cannot be said to be a trend, as they do not yet give a complete picture of the situation. However, they are reassuring us that the budgetary targets can be achieved. Past doubts again prove to be unfounded. The corporate tax reform provides oxygen to our companies. Reduced burdens are beneficial to the economy and also to the budget."

Ireland Issues Tax Guidance On Peer-To-Peer Lending

The Irish Revenue has published new guidelines on the withholding tax obligations of companies paying interest on finance raised through peer-to-peer lending or crowdfunding campaigns.

Tax and Duty Manual (TDM) Part 08-03-05 provides guidance on the rules that apply under Section 246 of the Taxes Consolidation Act (TCA) 1997. It also explains the tax treatment of interest earned by a company or individual lending to companies or non-residents through peer-to-peer lending or crowdfunding.

The TDM sets out the obligations of and procedures to be followed by both the borrower and the underlying lenders.

It states that, as a general rule, Section 246 TCA 1997 requires the deduction of income tax at the standard rate from annual interest paid by companies or by any person to another person whose usual place of abode is outside Ireland.

A company that pays interest on finance raised via peer-to-peer lending or crowdfunding is obligated to withhold income tax at the standard rate of tax on interest payments made on the finance raised. The underlying lenders are liable to pay income tax on any interest they earn on which withholding tax has not been suffered.

Japan Holding Talks On Virtual Currency Taxation, Regulation

Japan's National Tax Authority (NTA) has set up a virtual currency research group with the country's financial services regulator, the Financial Services Authority.

The NTA says the research group, which met for the first time late last month, is intended to coordinate the respective regulators' efforts to ensure virtual currency transactions are properly taxed and regulated.

The NTA has already released guidance on the taxation of virtual currency transactions. The December 2017 guidance states that capital gains derived from the sale or use of virtual currencies, such as Bitcoin, are taxable as miscellaneous income. Unlike profits on currency transactions and stocks, which are taxed at a rate of approximately 20 percent, the guidance means virtual currency profits are liable to tax at rates of up to 55 percent.

The guidance also gives examples of how various virtual currency transactions are taxed, and clarifies that losses can only be offset against profits classified as miscellaneous income.

Earlier, Japan said from July 2017 virtual currency trading is exempt from the nation's VAT, the sales tax.

Airbnb Agrees Landmark Tax Deal With Denmark

Denmark has entered into an agreement with the online accommodation provider Airbnb to ensure hosts' rental income is reported to the Danish tax authorities.

In a statement issued on May 17, the Danish Tax Ministry explained that, under the agreement, software systems will be integrated into Airbnb's website so that information on hosts' rental income will be transmitted automatically to the Danish tax authority "in order to ensure proper tax payments" are made.

Denmark claims to be the first country to enter into such an agreement with Airbnb, although the company has agreed with other national and local jurisdictions to collect and remit tourism and accommodation taxes.

According to the Ministry, the cooperation agreement ensures that all personal data are treated in accordance with incoming EU data protection rules under the General Data Protection Regulation, which will be applicable in all member states from May 25, 2018.

ANDORRA - CYPRUS

Signature

Andorra and Cyprus have signed a DTA, Andorra's Government announced on May 18, 2018.

CZECH REPUBLIC - GHANA

Forwarded

The Czech Senate gave its consent to ratify the DTA with Ghana on May 17, 2018.

FINLAND - SPAIN

Into Force

A new DTA between Finland and Spain will enter into force in January 2019, according to a statement released by the Finnish tax authority on May 18, 2018.

GEORGIA - SAUDI ARABIA

Forwarded

The Georgian Government on May 17, 2018, approved the DTA with Saudi Arabia for ratification.

HONG KONG - SAUDI ARABIA

Ratified

Hong Kong, on May 18, 2018, gazetted an order under the Inland Revenue Ordinance ratifying its DTA with Saudi Arabia.

INDIA - KUWAIT

Into Force

The Protocol to the India-Kuwait DTA entered into force on March 26, 2018, the Indian Government announced on May 7, 2018, having published a notice in its Official Gazette on May 4, 2018.

JORDAN - LUXEMBOURG

Negotiations

According to preliminary media reports, Jordan's Minister of Planning and International Cooperation met with Luxembourg's Finance Minister to discuss enhanced cooperation between the two countries in a number of areas, including the potential creation of a DTA.

JORDAN - SWITZERLAND

Negotiations

Talks are continuing on a DTA between Jordan and Switzerland, according to a statement released by Jordan's Foreign Ministry on May 14, 2018.

PHILIPPINES - VARIOUS

Effective

The renegotiated DTA between the Philippines and Thailand entered into force on March 5, and the DTA with Sri Lanka on March 14, the Filipino Bureau of Internal Revenue announced on May 17, 2018.

TURKEY - AFGHANISTAN

Negotiations

Turkey and Afghanistan are engaged in negotiations towards a DTA, Turkey's Ministry of the Interior announced May 11, 2018.

UZBEKISTAN - LITHUANIA

Negotiations

Talks are continuing on a DTA between Uzbekistan and Lithuania, according to a report from the Uzbekistan National News Agency published on May 9, 2018.

VIETNAM - MACAU

Signature

The DTA between Vietnam and Macau was signed on April 16, according to a statement released by the Vietnamese Ministry of Finance on May 11, 2018.

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

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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

Global Transfer Pricing Conference: Washington, DC

6/6/2018 - 6/7/2018

Bloomberg

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

Key speakers: TBC

https://learning.bloombergnext.com/catalog/product.xhtml?eid=6161

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

Chairs: Monica Reyes (Reyes Abogados Asociados), Lionel Nobre (Dell Computadores do Brasil), Erika Litvak (Greenberg Traurig), Sonia Velasco (Cuatrecasas), among numerous others

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: Chuck Baker (O'Melveny & Myers), Richard Bloom (MAZARS USA), M.K. Palmore (FBI), Catherine Lee Clarke (Sentinel Trust Company), among numerous others

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: Ivan Sacks (Withersworldwide), Jason Sharman (University of Cambridge), Desmond Teo (EY), Leanne Kaufman (RBC Estate and Trust Services), among numerous others

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

Fiduciary Institute 2018

9/27/2018 - 9/27/2018

American Bar Association

Venue: Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, USA

Chairs: Joni Andrioff (Steptoe & Johnson), Peter Kelly (Blue Cross and Blue Shield Association)

https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=320379633

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/

TP Minds West Coast

11/13/2018 - 11/15/2018

Informa

Venue: Four Seasons Silicon Valley, 2050 University Ave, East Palo Alto, CA 94303, USA

Key speakers TBC

https://finance.knect365.com/tp-minds-west-coast/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

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

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/

TP Minds Australia

5/29/2018 - 5/31/2018

Informa

Venue: InterContinental Sydney, 117 Macquarie St, Sydney NSW 2000, Australia

Key speakers: Melinda Brown (OECD), Jamie de Clifford (Toll Group), Jeremy Hirschhorn (Australian Taxation Office), Linda Besenyei (Euronet), among numerous others

https://finance.knect365.com/tp-minds-australia/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

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: Raynuha Sinnathamby (Springfield City Group), Greg Pratt (Deloitte), Mark Molesworth (BDO), Martin Jacobs (ATO), among numerous others

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

Chair: Peter Godber (Grant Thornton)

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

Principles of Transfer Pricing

6/27/2018 - 6/29/2018

IBFD

Venue: Address: Kuala Lumpur, Malaysia (address available after registration)

Instructors: Anuschka Bakker (IBFD)

https://www.ibfd.org/Training/Principles-Transfer-Pricing-10

Transfer Pricing Masterclass

7/2/2018 - 7/4/2018

IBFD

Venue: Address: Singapore (address available after registration)

Instructors: Anuschka Bakker (IBFD)

https://www.ibfd.org/Training/Transfer-Pricing-Masterclass-1

TP Minds Asia

9/18/2018 - 9/20/2018

Informa

Venue: Novotel Clarke Quay Singapore, 177A River Valley Rd, Singapore 179031, Singapore

Key speakers: Melinda Brown (OECD), Monique van Herksen (UN Transfer Pricing Subcommittee), Audrey Low (DBS Bank), Gena Cerny (Goldman Sachs), among numerous others

https://finance.knect365.com/tp-minds-asia/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

Practical Aspects of Tax Treaties

10/10/2018 - 10/12/2018

IBFD

Venue: Address TBC after registration, Kuala Lumpur, Malaysia

Instructors: Bart Kosters (IBFD)

https://www.ibfd.org/Training/Practical-Aspects-Tax-Treaties

CENTRAL AND EASTERN EUROPE

International Wealth Forum – Tbilisi 2018

6/6/2018 - 6/6/2018

CIS Wealth

Venue: Courtyard by Marriott Tbilisi, 4 Freedom Square, Tbilisi 0105 Georgia

Key speakers: Anna Pushkaryova (Eurofast Global), Kaha Kiknavelidze (Bank of Georgia), Ekaterine Liluashvili (Bank of Georgia), Otar Sharikadze (Galt & Taggart), among numerous others

http://cis-wealth.com/en/konferencii/20-tbilisi2018.html

Ukrainian Business Forum Kiev 2018

11/12/2018 - 11/12/2018

CIS Wealth

Venue: Fairmont Grand Hotel Kyiv, 1 Naberezhno-Khreshchatytska Street, Kyiv 04070, Ukraine

Key speakers: TBC

http://cis-wealth.com/en/konferencii/21-ubf2018.html

MIDDLE EAST AND AFRICA

TP Minds Africa

10/31/2018 - 11/2/2018

Informa

Venue: Radisson Blu Hotel Sandton, Rivonia Rd & Daisy St, Sandown, Sandton, 2146, South Africa

Key speakers: Lee Corrick (OECD), Ian Cremer (World Customs Organization), Tanya Bester (MMI Holdings), Mlondie Mohale (Swaziland Revenue Authority), among numerous others

https://finance.knect365.com/tp-minds-africa-transfer-pricing-conference/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

WESTERN EUROPE

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

Tax Treaty Case Law around the Globe 2018

5/24/2018 - 5/26/2018

Fiscal Institute Tilburg

Venue: Dante Building, Tilburg University, Warandelaan 2, 5037 AB Tilburg, Netherlands

Key speakers: Eric Kemmeren (Tilburg University), Daniel Smit (Tilburg University), Peter Essers (Tilburg University), Cihat Öner (Tilburg University), among numerous others

http://www.tilburguniversity.edu/research/institutes-and-research-groups/fit/conferences/tax-treaty-case-law/

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 Congress

6/12/2018 - 6/14/2018

Informa

Venue: Hilton Tower Bridge, London, UK

Key speakers: Dr. Achim Pross (OECD), Paul Morton (HM Treasury), Max Lienemeyer (European Commission), Fabrizia Lapecorella (Italian Ministry of Economy and Finance), among numerous others

https://finance.knect365.com/international-tax-congress/agenda/2

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/

Tax and Technology

6/26/2018 - 6/27/2018

IBFD

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

Instructors: Bart Janssen (Deloitte), Aleksandra Bal (IBFD), Monica Erasmus-Koen (Tytho), Oscar Good (World Bank Group), among numerous others

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

IFRS Foundation Conference: Frankfurt 2018

6/28/2018 - 6/29/2018

Informa

Venue: InterContinental Frankfurt, Wilhelm-Leuschner Strasse 43, Frankfurt, 60329, Germany

Chair: Hans Hoogervorst (IASB)

http://www.ifrs-conference.org/

Tax Planning and Substance

6/28/2018 - 6/29/2018

IBFD

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

Instructors: Annemiek Kale (Arla Foods), Clive Jie-A-Joen (DLA Piper), Jan de Goede (IBFD), Bart le Blanc (Norton Rose Fulbright), among numerous others

https://www.ibfd.org/Training/Tax-Planning-and-Substance

Taxing The Digital Economy: The Way Ahead

6/28/2018 - 6/29/2018

IBFD

Venue: De Industrieele Groote Club, Dam Square 27, 1012 JS Amsterdam, The Netherlands

Chairs: Mariken van Hilten (Netherlands Supreme Court), Pasquale Pistone (IBFD), Dennis Weber (Loyens & Loeff), Stef van Weeghel (PricewaterhouseCoopers), among numerous others

https://www.ibfd.org/sites/ibfd.org/files/content/pdf/Taxing-the-digital-economy-conference.pdf

Summer Course on European Tax Law

7/2/2018 - 7/6/2018

Academy of European Law

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

Key speakers: Tomas Balco (OECD), Daniel Smit (Tilburg University), Fatima Chaouche (University of Luxembourg), Philippe Malherbe (University of Louvain), among numerous others

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

BEPS Country Implementation – MLI and beyond

9/10/2018 - 9/11/2018

IBFD

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

Instructors: Bart Kosters (IBFD), Tamás Kulcsár (IBFD), Ridha Hamzaoui (IBFD), Luis Nouel (IBFD)

https://www.ibfd.org/Training/BEPS-Country-Implementation-MLI-and-beyond

European Value Added Tax Masterclass

9/20/2018 - 9/21/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD), Jan Snel (Baker & McKenzie), Claus Bohn Jespersen (KPMG)

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

International Tax Aspects of Permanent Establishments

9/24/2018 - 9/26/2018

IBFD

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

Instructors: Bart Kosters (IBFD), Carlos Gutiérrez Puente (IBFD), Hans Pijl (independent tax lawyer), Jan de Goede (IBFD), among numerous others

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

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/

Principles of Transfer Pricing

10/1/2018 - 10/5/2018

IBFD

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

Instructors: TBC

https://www.ibfd.org/Training/Principles-Transfer-Pricing-2

European Value Added Tax – Selected Issues

10/10/2018 - 10/12/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD)

https://www.ibfd.org/Training/European-Value-Added-Tax-Selected-Issues-2

9th Annual International Taxation in CEE

10/11/2018 - 10/12/2018

GCM Parker

Venue: Address TBC, Prague, Czech Republic

Key speakers: TBC

http://gcmparker.com/gcm-conference-listing?menuid=0&conferenceid=77

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/

Annual Conference on European VAT Law 2018

11/22/2018 - 11/23/2018

Academy of European Law

Venue: TBC, Trier, Germany

Key speakers: TBC

https://www.era.int/cgi-bin/cms?_SID=9e33bf77b0e4587e14991159621fbca45243657200594226138893&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=127489&idrubrik=1024

ASIA PACIFIC

India

A listing of recent key international tax cases.

The Indian Government has again been blocked in its attempts to obtain an injunction to prevent Vodafone from seeking concurrent international arbitration under the India–UK Bilateral Investment Treaty (BIT) to resolve their long-running tax dispute.

Arbitration is already ongoing under the treaty between the Netherlands and India.

The High Court of Delhi on May 7, 2018, said it is for the Tribunal to be formed under the India–UK BIT to decide on the Government's grievances with Vodafone's request for concurrent arbitration.

Previously, in December 2017, India's Supreme Court said the arbitration panel should be formed once the case is concluded before the Delhi High Court.

The Indian tax authority has long been locked in a tax dispute with Vodafone Group Plc over its 2007 acquisition of Hutchison Essar. Vodafone has consistently maintained that it is not liable for a USD2.2bn bill in back taxes and penalties relating to the deal. Although the Supreme Court ruled in Vodafone's favor in January 2012, retrospective changes to the tax laws were introduced just months later to nullify the ruling. Vodafone has challenged the retrospective changes under the BITs entered into by the Indian Government with the Netherlands and subsequently the UK.

The ruling was released on May 7, 2018.

https://indiankanoon.org/doc/15132051/

Delhi High Court: *Union Of India v. Vodafone Group Plc United Kingdom (I.A.No.9460/2017 & CS(OS) 383/2017)*

Singapore

The Inland Revenue Authority of Singapore (IRAS) has published the reasoning behind the Court of Appeal's landmark ruling that Singapore acted lawfully in exchanging information on the tax affairs of four foreign individuals with South Korea's tax agency following an exchange of information (EoI) request.

In September 2013, Singapore's Comptroller of Income Tax received an EoI request from South Korea's tax authority concerning five individuals and 51 companies. In response, the Comptroller issued statutory production notices to three banks in Singapore requiring these banks to furnish bank account information in relation to the specified individuals and companies.

Four foreign individuals challenged the legality of the notices and, following the dismissal of their case by the High Court, they appealed to the Court of Appeal.

Rejecting the appeal, the Court of Appeal said the Comptroller had taken reasonable steps to clarify the nature of the requests made by South Korea's tax authority to ensure compliance with Singapore's EoI law. It rejected the argument that the Comptroller's decision was tainted by any illegality or irrationality, establishing grounds for judicial review.

The IRAS has revealed that this is the first case involving a challenge to the Comptroller's decision to issue production notices, and that the decisions of both the High Court and the Court of Appeal have put beyond doubt the Comptroller's powers and duties in law in responding to an EoI request from a foreign revenue authority.

Singapore's EoI law arises out of its international commitment to provide assistance in combating cross-border tax offenses. In April 2013, the Global Forum on Transparency and Exchange of Information for Tax Purposes affirmed through a peer review process that Singapore's EoI regime is in line with the international standard.

This decision was announced on May 4, 2018.

https://www.supremecourt.gov.sg/news/case-summaries/axy-and-others-v-comptroller-of-income-tax-2018-sgca-23

Singapore Court of Appeal: *AXY and others v. Comptroller of Income Tax [2018] SGCA 23 Civil Appeal No. 161 of 2016*

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In a press release, the IRAS said this is the first case involving a challenge to the Comptroller's decision to issue production notices, and that the decisions of both the High Court and the Court of Appeal have put beyond doubt the Comptroller's powers and duties in law in responding to an EoI request from a foreign revenue authority.

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The guidance was issued on May 4, 2018.

https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2018/Court-of-Appeal-Affirms-the-Authority-of-the-Comptroller-of-Income-Tax-in-Sharing-Tax-Information-under-a-Tax-Treaty/

Singapore Court of Appeal: *Guidance on Exchange of Information Powers*

Germany

The German Federal Constitutional Court has found the 0.5 percent interest rate charged on unpaid taxes to be unconstitutional and has suspended its application from the 2015 tax year.

Under existing rules, the simple 0.5 percent interest rate applies monthly to unpaid taxes from 15 months after the end of the calendar year in which the tax was assessed, a rule that has remained unchanged since 1961.

In its decision, the Court found that the interest rule, which applies in addition to other tax penalties, was inequitable under the German constitution because the interest rate is fixed regardless of underlying market conditions. In particular, the Court argued that the interest rate, which amounts to 6 percent per year, is out of line with the low interest rates prevailing in the wider economy, which it said had become "structural and consolidated" rather than cyclical and transitory.

The Court held there are no reasonable grounds for such a high rate of interest on late payments of tax. It also held that there is no administrative justification for fixing the interest rate, given the recent advances in information technology.

The German Government had contended that the late payment rules are not unfair because the same rate of interest applies on overpayments.

However, the rule is considered unfair to large taxpayers in particular, as tax assessment disputes can be drawn out for several years, exposing taxpayers to potentially high late-payment penalties.

The Court suspended collection of the underpayment interest from the 2015 assessment period. However, its decision is not final, with similar cases pending on interest payments in relation to tax years dating back to 2010.

This decision was announced via a Court press release No. 23/18 of May 14, 2018 (in German).

https://juris.bundesfinanzhof.de/cgi-bin/rechtsprechung/document.py?Gericht=bfh&Art=pm&Datum=2018&anz=25&pos=2&nr=36403&linked=bes

German Federal Constitutional Court: *Decision of 25.4.2018, IX B 21/18*

Ireland

Advocate General Kokott of the European Court of Justice (ECJ) has recommended that the Court rule in favor of Ryanair in its challenge against the Irish tax authority's decision that it should be blocked from recovering VAT paid on services when it sought to acquire Aer Lingus, another airline, in 2006.

The landmark case concerns Ryanair's right to an input tax deduction for expenditure made in connection with the intended, but ultimately unsuccessful, acquisition of a company's entire share capital with a view to a takeover. In 2006, Ryanair made a bid to take over the Irish airline Aer Lingus. Although the takeover failed for reasons of competition law, Ryanair had already incurred considerable costs for consultancy and other services in connection with the planned takeover. Ryanair therefore claimed deduction of the input tax paid, which was refused by the Irish tax authorities.

The Irish Supreme Court has referred two questions on EU law and jurisprudence to the ECJ.

AG Kokott noted that the Court has previously ruled that deduction of input tax can also be claimed for abortive investments. However, the dispute arises in this case because the mere acquisition and holding of shares does not constitute economic activity within the meaning of the VAT Directive, the AG noted. According to the Court's case-law, a holding company whose sole purpose is to acquire shares is not entitled to deduct input tax.

However, in this case, Ryanair (a taxable person) had sought to make a strategic takeover of a competitor, to expand upon its taxable activities, the AG said. As part of the takeover, Ryanair would make supplies of management services for remuneration to Aer Lingus. That the transaction fell through is said to have had no impact on Ryanair's ability to claim an input tax refund; in the case of costs incurred in the preparation of an economic activity, deduction of input tax can be claimed even where the economic activity is not taken up successfully and the intended taxable transactions do not take place. Instead, the case concerns whether Ryanair should be precluded from obtaining a refund under the same restriction as for holding companies, with the AG looking in particular at the importance of the acquisition of shares for Ryanair's existing economic activity (*i.e.*, whether there is a direct economic link with such).

The first question put forward by the Irish Supreme Court was whether Ryanair's intention to provide management services to Aer Lingus, in the event that the takeover were successful, is sufficient to classify it as a taxable person within the meaning of the VAT Directive.

Under EU law, the AG noted, "the only material factor is the taxable person's intention of engaging in an economic activity, which is to be proven by objective factors. On the other hand, a holding company's economic activity, which is necessary for deduction of input tax according to case-law, may in particular consist in it providing management services to the company in which it has acquired a shareholding."

The second question posed by the Supreme Court was whether an immediate and direct link is necessary for deduction of input tax between the expenditure made in connection with the acquisition of shares in the company and the intended management services.

The AG noted that Ryanair's situation is different from a financial holding company – the sole income of a holding company consists of dividends, which do not constitute remuneration for the economic use of property but are merely the result of ownership of a share.

The AG opined, among other things, that it is immaterial whether Ryanair intended to provide management services and whether these were proportionate.

The Commission had proposed in the proceedings before the Court that input tax deduction be permitted in connection with the acquisition of shares only if proportionate to the output transactions generated by management services.

The AG concluded that the acquisition of a company's entire share capital with the intention of thereby bringing about a direct, permanent, and necessary extension of the taxable activity of the acquiring company constitutes an economic activity within the meaning of EU law.

"Costs incurred by the acquiring company in connection with achieving such a strategic takeover have a direct and immediate link with its taxable activity with the result that the value-added tax paid on that expenditure is to be deducted in accordance with that activity," Kokott recommended the ECJ rule.

The ECJ AG's opinion was released on May 3, 2018.

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CC0249

European Court of Justice: *Ryanair v. The Revenue Commissioners (C-249/17)*

Luxembourg

Luxembourg's highest court has upheld a previous decision to overturn the conviction handed down to Luxleaks whistleblower Antoine Deltour for exposing confidential tax documents belonging to PwC.

The Court of Cassation, which released its decision on May 15 following an appeal hearing in March 2018, followed the European Court of Human Rights by recognizing Deltour's status as a whistleblower, even though it acknowledged that, by copying the documents eventually reported by French journalist Edouard Perrin, he had broken the law.

In so doing, it followed a ruling issued in January 2018 quashing Deltour's conviction.

Deltour, a French national and former employee of PwC, was originally given a one-year suspended jail sentence and a EUR1,500 (USD1,770) fine by a lower court for his part in exposing thousands of confidential documents which purported to show how multinational companies avoided tax through their Luxembourg tax arrangements.

Deltour's suspended sentence was halved on appeal in March 2017, while fellow whistleblower Raphael Halet, also a French national, had his suspended sentence lifted, although both convictions were allowed to stand by the appeal court.

Deltour will be required to pay symbolic damages to PwC of EUR1.

https://www.taxjustice.net/2018/05/15/luxleaks-verdict-hope-for-whistleblowers-as-antoine-deltour-is-acquitted/

Court of Cassation: *Deltour v. PwC*

Romania

The European Court of Justice (ECJ) has ruled against Romanian legislation that prevented a taxpayer that had made a correction to his tax return from claiming a VAT deduction for a period that had earlier been the subject of a tax inspection.

The ECJ said it must be possible for the taxable person to correct his tax return despite such being covered by a tax inspection to ensure fiscal neutrality and legal certainty for the taxpayer.

The taxpayer, Zabrus, was the subject of two VAT inspections – first, covering the period from May 1, 2014 to November 30, 2014; and, second, from December 1, 2014 to April 30, 2015. Before and after the conclusion of the second investigation, Zabrus made amendments to its VAT filings and sought to claim two refunds.

The tax authorities refused to reimburse the VAT on the ground that the sums claimed related to transactions carried out during a tax period, prior to the period under inspection, which had already been the subject of a VAT inspection (the first). They stated that, in accordance with the applicable national legislation, the principle of the unity of tax inspections precluded the reimbursement of the amounts requested by Zabrus because, in respect of the period already subject to inspection, no irregularity concerning VAT contributions had been found and the inspection bodies did not adopt any measure laying down steps to be taken by Zabrus.

Zabrus, by various administrative procedures, tried unsuccessfully to establish its right to reimbursement of the VAT.

In particular, both its request for a review for the period from May 1, 2014 to November 30, 2014, and its request for correction of clerical errors in the VAT returns for the months of May to October 2014 were rejected.

On October 22, 2015, Zabrus brought an action before the Regional Court, Suceava, Romania, for annulment of the tax agency's decision to reject the VAT reimbursement relating to those amounts. Zabrus argued it was entitled to deduct VAT, arguing such is a taxpayer's right which cannot be restricted if the substantive requirements are satisfied, even if certain formal requirements have not been complied with.

The Directorate-General argued that, in accordance with the provisions contained in the Tax Procedure Code and Order No. 179/2007, transactions relating to a period that has already been the subject of a tax inspection cannot be corrected or reviewed except on the initiative of the tax authorities, in the event that they discover new information as a result of cooperation with other institutions or when a measure laying down steps to be taken has been adopted at the time of the previous inspection.

It was these rules that the ECJ said are unlawful. It pointed out that, as the ECJ has repeatedly held, the right of deduction provided in Article 167 (and those articles that follow) of the VAT Directive is an integral part of the VAT scheme and may not, in principle, be limited. It noted that, under Articles 180 and 182 of the VAT Directive, a taxable person may be authorized to make a deduction even if he did not exercise his right during the period in which the right arose, subject to compliance with certain conditions and procedures determined by national legislation. In circumstances when there is no tax inspection, a taxpayer is allowed five years to make an amendment to his tax returns and secure a refund.

The ECJ concluded:

> "The fact that national legislation, such as that at issue in the main proceedings, deprives the taxable person of the opportunity to correct his VAT return by shortening the time available to him for that purpose is incompatible with the principle of effectiveness. Furthermore, the principles of fiscal neutrality and proportionality also preclude legislation such as that at issue in the main proceedings."

The ECJ said that, within EU law, Romania can instead fine companies that make errors in tax returns and subsequently make changes, stating such should cover a taxpayer "who corrects his VAT return by relying on documents proving his entitlement to a VAT deduction which were in his possession at the time his VAT return was filed …".

The judgment was released on April 26, 2018.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=201488&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106581

European Court of Justice (Ninth Chamber): *Zabrus Siret SRL v. Regional Public Finance Administration of Suceava, Romania (Case C-81/17)*

Dateline May 24, 2018

What's this? A political party called Five Star? Founded by who? A comedian? What? In Power?! With whom? You mean Silvio's back? And a flat tax? On corporate income too? In Italy?!

Yes, it can only be the latest edition of "voters do the funniest things."

We've seen some unusual coalitions formed and attempted recently, **unholy alliances** between populist anti-establishment and mainstream parties. But **Italy** must top the lot. It's difficult to pin down exactly where the Five Star Movement stands on the political spectrum, but it's safe to assume, I think, that they are a long way from the nationalist overtones of the Lega Nord.

So what does all this **mean for taxpayers**? It's difficult to say. One thing that the parties do have in common is their euroskepticism. But, given that Lega Nord's previous calls for a referendum on Italy's membership of the European Union aren't included in the coalition agreement, it's **highly unlikely** that taxpayers will have to contend with an Italian **withdrawal from the EU**, which, as we're seeing with the UK, is **wreaking havoc on corporate tax planning**, especially in the area of VAT.

Besides, Italy can't leave the EU because there's not a catchy-enough portmanteau for it. Brexit works. As would Grexit and Frexit in the event these ever came to pass. Itexit just doesn't have the same ring to it. Exitaly? Better. But ideally you need just two syllables. Anything more is a bit of a mouthful in the age of the soundbite. Anyway, it's probably a moot point now.

But what about this **flat tax proposal**? Obviously, this would represent a radical change to Italy's sclerotic and much-criticized tax system. But, by all accounts, it's **too radical**. There's no way the EU's fiscal police are going to allow for a tax measure that could **add considerably to Italy's budget deficit**. The suggestion is that the coalition might just ignore the EU. But can they ignore the markets? Suddenly the outlook is cloudier than it was before, and for taxpayers instability is no joke.

Brexit isn't exactly a barrel of laughs either at the moment. Michel Barnier wears the expression of man who could do with being told a good rib-tickler. And, with the **clock rapidly ticking** down towards March 2019, the UK has now got itself in a tangle over its position on **customs union**. It doesn't bode well for a timely agreement.

Nevertheless, as alluded to above, if there was one country facing the **prospect** of huge legal and **economic instability**, you would have thought it would be the UK. Yet the conclusions of a recent survey of business leaders in the UK and around the world paint a different picture of **corporate attitudes** to the UK. The poll suggested that there is **unlikely to be an exodus of multinational companies** from the UK in the run-up to and after Brexit, with 76 percent of UK-based respondents reporting that they have no plans to switch their tax residence. Although it's not clear what the remaining 24 percent are planning to do, which is a slight worry for the UK – it would be interesting to see the survey repeated under the same tax settings, but in a world where Brexit wasn't happening.

A key conclusion that can be drawn from the survey is that, unlike Italy say, the UK has a relatively **stable and favorable tax regime** to fall back on, and this seems to be **offsetting some of the uncertainty** attached to Brexit.

One other thing we can take from the survey is that companies must be confident that the UK **won't abolish value-added tax** once it has left the Union, replacing it with some hitherto unknown sales tax. Indeed, the rule of thumb in world taxation is that taxes, once introduced, are seldom abolished. As the old maxim goes, there's **no such thing as a temporary tax**.

You probably know the road I'm going down here. Yes, as ever, there are exceptions to the rule. Which brings me onto another major tax development from the last couple of weeks – **Malaysia's** decision to **repeal** its **goods and services tax** regime.

This announcement was not a massive shock. The introduction of GST was a hugely unpopular move by the former Government, and, as in India, the proposal was delayed year after year before it was implemented in 2015. So there was always the risk that an opposition party would seek to gain political capital by **promising to abolish it**.

Nevertheless, it is difficult to downplay the significance of this measure. **Businesses** would have spent a lot of time (and, doubtless, money) **adjusting to the GST** when it replaced the former Sales and Services Tax. Now, just three years later, they are being required to **adjust back** to an as-yet-unknown version of the former levy.

What's more, this may be viewed by investors as a **somewhat retrograde step**. GSTs and VATs are now widespread, and taxpayers operating across multiple jurisdictions have consequently got used to interacting with such regimes. Furthermore, they are often seen as more efficient than the taxes they replaced. So a popular move? Certainly. But a smart one? We'll have to wait and see.

But can you imagine India turning its back on GST now, after all the Government's (and taxpayers') hard work, and going back to the old patchwork quilt of indirect taxes? Or the UK repealing the VAT Act on March 30, 2019? One imagines that that way, chaos awaits. And for taxpayers that's no laughing matter.

The Jester