GLOBAL TAX WEEKLY
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

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

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The New Double Taxation Agreement Between Cyprus And Andorra

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Introduction

On May 18, 2018, Cyprus and Andorra signed a double taxation agreement (DTA), the first between the two countries. The agreement is closely based on the latest OECD Model Convention and, in line with the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, also includes a preamble making clear that it is not designed to create opportunities for double non-taxation or reduced taxation through evasion or avoidance, and a principal purpose test-based general anti-avoidance rule. A protocol to the agreement sets out residence provisions for pension and investment funds and elaborates the provisions regarding exchange of information. The principal features of the agreement and the protocol are analyzed below.

Taxes Covered

The agreement covers the following categories of taxes:

- In Andorra
  - Corporate income tax (*Impost sobre les societats*);
  - Personal income tax (*Impost sobre la renda de les persones físiques*);
  - Tax on income for fiscal non-residents (*Impost sobre la renda dels no-residents fiscals*); and
  - Tax payable on the increase in value in immovable property transfers (*Impost sobre les plus-vàlues en les transmissions patrimonials immobiliàries*).
- In Cyprus
  - Income tax;
  - Corporate income tax;

- Capital gains tax; and
- Special Contribution for the Defence of the Republic (commonly referred to as SDC tax).

Its provisions will also apply to any identical or substantially similar taxes that may be imposed in future in addition to, or in place of, the existing taxes.

Residence

The "tie-break" provisions for determining residence for individuals who are resident in both countries are identical to those contained in the OECD Model Convention, namely permanent home and center of vital interests, country of habitual residence, and nationality, in descending order. If none of these criteria is decisive, residence is to be settled by mutual agreement between the tax authorities of the two parties.

For legal persons, residence is the place of effective management.

The protocol to the agreement contains specific provisions regarding residence of investment funds and pension funds and specifies the criteria for qualification.

Permanent Establishment

Article 5 of the DTA, which defines a permanent establishment, reproduces the corresponding article of the OECD Model Convention and adds agricultural or forestry sites to the list of possible permanent establishments. A building site or construction or installation project will constitute a permanent establishment if it lasts more than 12 months.

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

Income From Immovable Property

This article is identical to the corresponding article of the OECD Model Convention and provides that income from immovable property may be taxed in the contracting state where the property is situated.

Business Profits

The profits of an enterprise are taxable only in the country in which it is resident unless it carries on business in the other country through a permanent establishment there, in which case the profit attributable to the permanent establishment may be taxed in the country in which it is located.

Profits are to be calculated on an arm's length basis, as if the permanent establishment was a distinct and separate enterprise, after deduction of expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses. If profits of a permanent establishment have customarily been determined by an apportionment of the total profits of the enterprise to its constituent parts, the same method may continue to be used as long as the result is consistent with the foregoing principles.

Profits From Shipping And Aviation

Profits from the operation of ships or aircraft in international traffic, including profits from the rental of ships or aircraft on a full (time or voyage) basis or a bare-boat basis, are taxable only in the country in which the enterprise is resident. Residence is determined by the place of effective management; if the place of effective management of a shipping enterprise is aboard a ship, it is deemed to be in the country in which the home harbor of the ship is located, or, if there is no such home harbor, in the country of residence of the operator of the ship.

Profits derived from the use, maintenance or rental of containers and ancillary equipment are taxable only in the country in which the enterprise is resident, unless the containers and related equipment are used only within the other country.

Associated Enterprises

Article 9 reproduces the corresponding article of the OECD Model Convention verbatim.

Dividends

Dividends paid by a company resident in one country to a resident of the other are taxable only in the country in which the recipient is resident provided that the beneficial owner of the dividends is a resident of the second country. As neither country imposes withholding tax on dividends paid to shareholders resident overseas, the provisions regarding dividends are academic.

Interest And Royalties

Interest paid by a company which is a resident of one country to a resident of the other is taxable only in the country in which the recipient is resident. Royalties are taxable only in the country in which the beneficial owner is resident.

The amounts qualifying for exemption are limited to what would be payable on an arm's length basis.

The exemptions do not apply if the interest or royalties, as the case may be, derive from a permanent establishment through which the beneficial owner of the income (who is also a resident of one of the countries) carries on business in the country from which the income is paid.

Royalties are generally deemed to arise in the contracting state in which the person paying them is resident. However, if the royalties relate to a permanent establishment and their cost is borne by that permanent establishment, then the royalties are deemed to arise in the contracting state in which the permanent establishment is located.

Capital Gains

Gains derived by a resident of one country from the alienation of immovable property (or of movable property associated with a permanent establishment) situated in the other may be taxed in the country in which the property is situated. Gains from the disposal of shares in a company which derive more than half their value directly from immovable property situated in the other country may be taxed in the state in which the property is situated, unless the shares are listed on a recognized stock exchange in one of the two countries or in a member of the European Economic Area, and the person disposing of the shares directly or ind irectly held no more than 25 percent of the capital of the company concerned at any time in the 12-month period preceding the disposal.

Gains derived from the alienation of all other property (including ships or aircraft and ancillary equipment) are taxable only in the country in which the alienator is resident.

Offshore Activities

Like many of Cyprus's recent DTAs, the agreement with Andorra includes comprehensive provisions regulating the taxation of offshore hydrocarbon exploration and exploitation activities, intended to ensure that each state's taxation rights in respect of offshore activities are preserved in circumstances where they might otherwise be limited by other provisions of the agreement, such as those dealing with permanent establishments and business profits. Special rules are required because of the short duration of some of these activities.

A resident of one country carrying on offshore exploration or exploitation activities on the territory (including the territorial sea or exclusive economic zone) of the other is deemed to be carrying on business through a permanent establishment there if the activities are carried out for an aggregate of 30 days or more in any 12 months. The article dealing with offshore activities also includes rules for determining when the 30-day threshold is exceeded in respect of offshore activities undertaken by associated enterprises. Enterprises are deemed to be associated if one participates directly or indirectly in the management, control or capital of the other, or if the same person or group of persons directly or indirectly controls 30 percent or more of the capital of both enterprises.

Profits from maritime or air transport, towing, mooring, refueling and similar activities in connection with offshore exploration and exploitation of resources are taxable only by the country of which the enterprise concerned is a resident.

The general provisions regarding income from employment are modified to the effect that remuneration derived by a resident of one country employed in offshore activities in the other may be taxed in the country in which the employment is performed. However, if the employer is not a resident of the second state and the employment amounts to less than 30 days in any 12-month period starting or ending in the fiscal year concerned, the remuneration is taxable only in the employee's country of residence. Salaries, wages and similar remuneration derived from employment aboard ships or aircraft engaged in offshore supply and similar activities are taxable in the country in which the enterprise carrying on the activities is resident.

Gains derived by a resident of a country from the alienation of assets (either tangible or intangible) deriving the majority of their value from exploration or exploitation rights in the second country or its exclusive economic zone may be taxed in the second country.

Elimination Of Double Taxation

Elimination of double taxation is achieved by the credit method, with the credit being limited to the part of the tax attributable to the income concerned. Any income of a resident of Andorra which is exempt from tax in Andorra under the DTA may be taken into account for the purposes of calculating the tax due on the non-exempt income.

Mutual Agreement Procedure

The article dealing with the mutual agreement procedure reproduces the corresponding article of the OECD Model Convention verbatim, apart from omitting any provision for arbitration.

Exchange Of Information

Article 25, which deals with exchange of information, reproduces the corresponding article of the OECD Model Convention verbatim. Its provisions are further elaborated in the protocol to the agreement, which makes clear that that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent, but that the contracting states are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. The protocol sets out the information which must be provided to support a request for exchange of information, which includes:

- The identity of the person concerned;
- A statement of the information sought and the period it relates to;
- The tax purpose for which the information is sought;
- The reasons why the information requested is foreseeably relevant;
- Grounds for believing that the information requested is available in the contracting state to which the request is addressed; and
- A statement that the request is in conformity with the law and administrative practices of the contracting state making the request, that it would be able to obtain the information under its own laws or in the normal course of administrative practice in similar circumstances and that it has exhausted all reasonable means available in its own territory to obtain the information.

These procedural requirements must be interpreted with a view not to frustrate effective exchange of information.

Cyprus's Assessment and Collection of Taxes Law provides robust safeguards against abuse of any exchange of information provisions. Requests for exchange of information are dealt with solely by the International Tax Relations Unit ("ITRU") of the Tax Department. Exchange of information may take place only via the ITRU: direct informal exchange of information between tax officers bypassing the competent authority is prohibited. As a final safeguard, the law requires the written consent of the Attorney General to be obtained before any information is released to an overseas tax authority.

Assistance In The Collection Of Taxes

There is no article dealing with assistance in the collection of taxes, although both countries are signatories to the OECD Convention on Mutual Administrative Assistance in Tax Matters.

Entitlement To Benefits

The agreement includes a principal purpose test-based general anti-avoidance rule based on the wording of the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. It provides that benefits under the agreement should be withheld if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit.

Entry Into Force And Termination

Article 28 provides that the agreement will enter into force when the two governments inform one another that the requisite constitutional procedures have taken place. Its provisions will have effect in both contracting states from the beginning of the following year.

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

Conclusion

Financial and business services are a significant contributor to both countries' economies, and the conclusion of the double taxation agreement will strengthen economic and commercial relations between them. It is therefore to be hoped that the remaining steps in concluding the agreement and bringing it into effect can be achieved quickly.

DAC 6: The European Union Homes In On Tax Avoidance Schemes

by Stuart Gray, Senior Editor, Global Tax Weekly

In their attempts to reduce levels of aggressive tax avoidance, governments are focusing their attention as much on the activities of tax advisers as the taxpayers they advise, including in the EU, where member states have just approved new tax arrangement reporting requirements. Key elements of the new directive are described in this article.

BEPS Action 12

The EU legislation is intended to broadly reflect recommendations put forward by the OECD in Action 12 of its BEPS Action Plan, which calls on countries to introduce mandatory disclosure regimes for tax avoidance schemes.

The Action 12 final report,[1] published on October 5, 2015, includes an overview of such disclosure regimes, based on the experiences of countries that have them in place, and sets out recommendations for a "modular" framework for use by countries wishing to implement or amend mandatory disclosure rules to obtain early information on aggressive or abusive tax planning schemes and their users.

According to the OECD, the recommendations provide the necessary flexibility to balance a country's need for better, more timely information with the compliance burdens for taxpayers. The Action 12 report also sets out specific recommendations for rules targeting international tax schemes, as well as for the development and implementation of more effective information exchange and cooperation between tax administrations.

The report states:

> "The main objective of mandatory disclosure regimes is to increase transparency by providing the tax administration with early information regarding potentially aggressive or abusive tax planning schemes and to identify the promoters and users of those schemes.

> Another objective of mandatory disclosure regimes is deterrence: taxpayers may think twice about entering into a scheme if it has to be disclosed. Pressure is also placed on the tax avoidance market as promoters and users only have a limited opportunity to implement schemes before they are closed down."

Background To The EU Legislation

New tax transparency proposals were announced by the European Commission on June 21, 2017, in response to recent international tax avoidance scandals. Justifying its "tough" new proposals, the Commission said:[2]

> "Recent media leaks such as the Panama Papers have exposed how some intermediaries actively assist companies and individuals to escape taxation, usually through complex cross-border schemes. Today's proposal aims to tackle such aggressive tax planning by increasing scrutiny around the previously-unseen activities of tax planners and advisers."

Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs, added:[3]

> "We are continuing to ramp up our tax transparency agenda. Today, we are setting our sights on the professionals who promote tax abuse. Tax administrations should have the information they need to thwart aggressive tax planning schemes. Our proposal will provide more certainty for those intermediaries who respect the spirit and the letter of our laws and make life very difficult for those that do not. Our work for fairer taxation throughout Europe continues to advance."

The European Council, the legislative organ representing the member states, reached an agreement on the proposals on March 13, 2018, before adopting them at a meeting of European finance ministers on May 25. The new legislation (Directive 2018/822)[4] takes the form of an amendment to the existing EU Directive on Administrative Cooperation (Directive 2011/16/EU)[5] and is known as DAC 6.

Commenting on the Council's adoption of the measures, Vladislav Goranov, the Minister of Finance of Bulgaria, which holds the Council presidency, explained:[6] "The new rules are a key part of our strategy to combat corporate tax avoidance. With greater transparency, risks will be detected at an earlier stage and measures taken to close down loopholes before revenue is lost."

Directive 2018/822

Summary

Under the measures, intermediaries – such as tax advisers, accountants, banks, and lawyers – will be obliged to report the relevant arrangements before they are used.

The aim is to provide EU member states with more information on the tax planning schemes that intermediaries design and market, so that they can assess whether the schemes facilitate tax evasion and avoidance. The Commission also hopes that intermediaries will be less likely to design arrangements that will be blocked before they can be implemented.

The Commission has identified key "hallmarks" of cross-border tax planning schemes. Examples of the hallmarks include arrangements that:

- Involve a cross-border payment to a recipient resident in a no-tax country;
- Involve a jurisdiction with inadequate or weakly enforced anti-money laundering legislation;
- Are set up to avoid reporting income as required under EU transparency rules;
- Circumvent EU information exchange requirements for tax rulings:
- Have a direct correlation between the fee charged by the intermediary and what the taxpayer will save in tax avoidance;
- Ensure that the same asset benefits from depreciation rules in more than one country;
- Enable the same income to benefit from tax relief in more than one jurisdiction; or
- Do not respect EU or international transfer pricing guidelines.

The proposal covers all intermediaries and all types of direct taxes (income, corporate, capital gains, inheritance, *etc.*). Any company that designs or promotes a tax planning arrangement that has any of the hallmarks will be covered. The characteristics of these hallmarks are set out in more detail below.

The obligation to report a cross-border scheme bearing one or more of these hallmarks will be borne by:

- The intermediary who supplied the scheme for implementation and use by a company or individual;
- The individual or company receiving the advice, when the intermediary providing the scheme is not based in the EU, or where the intermediary is bound by professional privilege or secrecy rules;
- The individual or company implementing the scheme when it is developed by in-house consultants or lawyers.

EU member states will be required to automatically exchange the information they receive from intermediaries through a centralized database. There will be a standard format for the exchange of information, which will include details on the intermediary, the taxpayer(s) involved, and the features of the tax scheme.

Member states will be required to put in place penalties for intermediaries who do not respect the reporting requirements.

Key aspects of the Directive are described more fully in the following sections.

Intermediaries

For the purposes of the Directive, an "intermediary" means any person that designs, markets, organizes, or makes available for implementation of, or manages the implementation of, a reportable cross-border arrangement.

In order to be an intermediary, a person shall meet at least one of the following additional conditions:

- Be resident for tax purposes in an EU member state;
- Have a permanent establishment in a member state through which the services with respect to the arrangement are provided;
- Be incorporated in, or governed by the laws of, a member state;
- Be registered with a professional association related to legal, taxation or consultancy services in a member state.

Relevant taxpayers

A "relevant taxpayer" means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement, or has implemented the first step of such an arrangement.

Cross-border arrangements

"Cross-border arrangements" are defined as an arrangement concerning either more than one member state or a member state and a third country where at least one of the following conditions is met:

- Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

- One or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- One or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment (PE) situated in that jurisdiction and the arrangement forms part or the whole of the business of that PE;
- One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a PE situated in that jurisdiction;
- The arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

An arrangement shall also include a series of arrangements, and may comprise more than one step or part.

Associated enterprises

An "associated enterprise" is defined as a person who is related to another person in at least one of the following ways:

- A person participates in the management of another person by being in a position to exercise a significant influence over them;
- A person participates in the control of another person through a holding that exceeds 25 percent of the voting rights;
- A person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25 percent of the capital;
- A person is entitled to 25 percent or more of the profits of another person.

If more than one person participates in the management, control, capital or profits of the same entity, all persons concerned shall be regarded as associated enterprises.

Scope and conditions of mandatory automatic exchange of information

Member states must put in place measures requiring intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning with whichever occurs first from the following list of events:

- On the day after the reportable cross-border arrangement is made available for implementation; or

- On the day after the reportable cross-border arrangement is ready for implementation; or
- When the first step in the implementation of the reportable cross-border arrangement has been made.

Intermediaries are required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

In the case of marketable arrangements, member states must take measures to require that a periodic report is made by the intermediary every three months providing an update which contains new reportable information that has become available since the last report was filed.

Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one member state, such information shall be filed only in the member state that features first in the list below:

- The member state where the intermediary is resident for tax purposes;
- The member state where the intermediary has a PE through which the services with respect to the arrangement are provided;
- The member state which the intermediary is incorporated in or governed by the laws of;
- The member state where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

In cases of multiple reporting obligations, the intermediary is exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another member state.

Member states may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that member state. Member states must put in place measures requiring that, where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver, the obligation to file information on a reportable cross-border arrangement lies with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

The relevant taxpayer with whom the reporting obligation lies must file the information within 30 days, beginning on the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or is ready for implementation by the relevant taxpayer, or when the first step in its implementation has been made in relation to the relevant taxpayer, whichever occurs first.

Where the relevant taxpayer has an obligation to file information in more than one member state, such information shall be filed only with the competent authorities of the member state that features first in the list below:

- The member state where the relevant taxpayer is resident for tax purposes;
- The member state where the relevant taxpayer has a PE benefiting from the arrangement;
- The member state where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no PE in any member state;
- The member state where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no PE in any member state.

Where there are multiple reporting obligations, the relevant taxpayer is exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another member state.

Member states must put in place measures requiring that where there is more than one intermediary, the obligation to file information on the reportable cross-border arrangement lies with all intermediaries involved in the same reportable cross-border arrangement.

Where the reporting obligation lies with the relevant taxpayer and where there is more than one relevant taxpayer, the relevant taxpayer that is to file information will be the one that features first in the list below:

- The relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;
- The relevant taxpayer that manages the implementation of the arrangement.

Each member state may take the necessary measures to require that each relevant taxpayer file information about their use of the arrangement to the tax administration in each of the years for which they use it.

Information to be exchanged

Member states are required to automatically exchange the following information under the Directive:

- The identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, taxpayer identification number and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;
- Details of the hallmarks that make the cross-border arrangement reportable;
- A summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;
- The date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;
- Details of the national provisions that form the basis of the reportable cross-border arrangement;
- The value of the reportable cross-border arrangement;
- The identification of the member state of the relevant taxpayer(s) and any other member states which are likely to be concerned by the reportable cross-border arrangement;
- The identification of any other person in a member state likely to be affected by the reportable cross-border arrangement, indicating to which member states such person is linked.

The automatic exchange of information must take place within one month of the end of the quarter in which the information was filed. The first information is due to be communicated by October 31, 2020.

Penalties

Member states are required to implement rules on penalties applicable to infringements of national provisions connected with the Directive. These penalties are supposed to be "effective, proportionate and dissuasive."

Main benefits test

Tax avoidance hallmarks are generally split into two categories: generic hallmarks and specific hallmarks (see below). The first two sets of hallmarks listed below can only be taken into account when they satisfy the "main benefits test." That test will be satisfied if it can be established that the main benefit, or one of the main benefits, is the expectation that a tax advantage will be derived from the arrangement.

Hallmarks

Generic hallmarks linked to the main benefit test include:

- An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage *vis-à-vis* other intermediaries or the tax authorities.
- An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
  - The amount of the tax advantage derived from the arrangement; or
  - Whether a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.
- An arrangement that has substantially standardized documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customized for implementation.

Specific hallmarks linked to the main benefit test include:

- An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
- An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.
- An arrangement which includes circular transactions resulting in the "round-tripping" of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

Specific hallmarks related to cross-border transactions include:

- An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
  - The recipient is not resident for tax purposes in any tax jurisdiction;
  - Although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
    - Does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero*; or

    - Is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
  - The payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;*
  - The payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes;*
- Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
- Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.
- There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

*These hallmarks may also only be taken into account where they fulfill the main purpose test.

Specific hallmarks concerning automatic exchange of information and beneficial ownership include:

- An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:
  - The use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
  - The transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;
  - The reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;
  - The transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;
  - The use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;
  - Arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement

of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.

- An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:
  - That do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and
  - That are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and
  - Where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849,[7] are made unidentifiable.

Specific hallmarks concerning transfer pricing include:

- An arrangement which involves the use of unilateral safe harbor rules.
- An arrangement involving the transfer of hard-to-value intangibles. The term "hard-to-value intangibles" covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:
  - No reliable comparables exist; and
  - At the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.
- An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 percent of the projected annual EBIT of such transferor or transferors if the transfer had not been made.

Next Steps

The Directive will enter into force on the twentieth day following the date of its publication in the Official Journal of the EU. Member states have until December 31, 2019, to transpose the Directive into national laws and regulations, and the new reporting requirements will apply from July 1, 2020.

Intermediaries and relevant taxpayers will be required to file information on reportable cross-border arrangements if the first step was implemented between the date of entry into force and the date of application of the Directive. This information would need to be filed by August 31, 2020.

Member states will be obligated to exchange information every three months, within one month from the end of the quarter in which the information was filed. The first exchanges should therefore be completed by October 31, 2020.

Conclusion

Intermediaries and taxpayers resident in jurisdictions where mandatory tax avoidance reporting arrangement are already in place will be familiar with the sorts of requirements laid down by DAC 6. However, tax advisers have warned that the wide scope of the EU legislation, which deviates somewhat from the BEPS Action 12 recommendations, coupled with a lack of knowledge on how member states intend to implement large sections of its provisions and enforce them, could be a major source of uncertainty for both intermediaries and taxpayers.

Coming on top of mounting tax reporting and regulatory requirements, rapid changes to tax rules at international level under the BEPS project, and a more aggressive stance being taken by many tax authorities on compliance matters, this is likely to increase tax risk for those who advise taxpayers, and could lead to changes in the way such advice is designed and delivered.

Endnotes

1 https://www.oecd-ilibrary.org/docserver/9789264241442-en.pdf?expires=1529004547&id=id&accname=guest&checksum=7614CBE40B99AB1073C4A7CEF17BFDED

2 http://europa.eu/rapid/press-release_IP-17-1663_en.htm

3 *Id.*

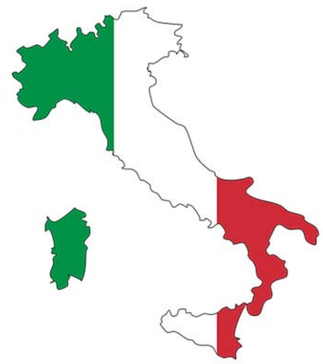
4 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L0822 (© European Union, http://eur-lex.europa.eu/, 1998-2018)

5 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0016

6 http://www.consilium.europa.eu/en/press/press-releases/2018/05/25/corporate-tax-avoidance-transparency-rules-adopted-for-tax-intermediaries/

7 https://eur-lex.europa.eu/legal-content/En/TXT/?uri=CELEX:32015L0849

Italy Releases Final Regulations On Transfer Pricing



by Federico Pacelli and Monia Volpato, DLA Piper

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Introduction

The Italian Ministry of Economy and Finance has signed the final transfer pricing regulations, following public consultation on its draft regulations.[1] The main points of the new regulations are as follows:

- All the definitions and transfer pricing methods outlined in the final regulations were largely unchanged from the draft regulations;
- The definition of related entities includes both juridical and *de facto* control over the entity;
- The concept of comparability factors aligns with the 2017 OECD Transfer Pricing Guidelines (OECD TPG);
- The four criteria used to determine the most appropriate transfer pricing method are consistent with the guidance on method selection provided in the OECD TPG;
- The regulation is an endorsement of the five OECD transfer pricing methods, with an explicit preference for the comparable uncontrolled price method; and
- The regulation includes a definition of an arm's length range.

New Elements In The Final Regulations

The final regulations cover two more aspects that were not included in the draft regulations: the concept of low value-adding services, and updates to transfer pricing documentation.

Article 7 defines the scope of low value-adding services to which a 5 percent markup shall be added (with no need to perform a benchmarking analysis). Services that are considered low value-adding, consistent with paragraph 7.45 of the OECD TPG, include services that:

- Are supportive in nature;
- Are not part of the core business;

- Do not require the use of unique and valuable intangibles; and
- Do not involve the assumption or control of significant risk.

Article 8 of the final regulations anticipates that additional guidance will be issued to update the transfer pricing documentation requirements in light of best international practice and to clarify when penalty protection should be granted.

In this respect, the final regulations clarify that, in any event, transfer pricing documentation should allow taxpayers access to the penalty protection regime when (a) it contains all the data and information necessary for the tax authority to conduct a proper transfer pricing analysis, whether or not there is disagreement on the method selection or the relevant application criteria; and (b) any omissions or misrepresentations do not prevent the tax authority from conducting a proper transfer pricing analysis.

Key Takeaways

As the Italian Government fully aligns its transfer pricing rules with international standards, transfer pricing risks are becoming increasingly relevant for the Italian tax authority and for multinational enterprises with Italian operations. With particular reference to the latter, recent history has shown that correct management of transfer pricing risks is indeed crucial, from both a corporate governance and a reputational perspective.

With this in mind, transfer pricing documentation should be considered an important and strategic tool for proper risk management, rather than just a tool for accessing the penalty protection regime. Clearly, in order to maximize its efficacy, transfer pricing documentation has to meet high-quality standards. In any event, filing for an advance pricing agreement (unilateral or multilateral) still represents the best course of action to prevent exposure to transfer pricing risks.

Further, it is important to note that neither the draft nor the final regulations mention that if the value of a related party transaction falls outside the arm's length range, the transfer pricing adjustment is to be made to the median. Instead, it shall be made to *a point inside the arm's length range*. This will likely prevent the tax authority from making adjustments to the median without a justification, in line with the European Commission Joint Transfer Pricing Forum recommendations, and may help the taxpayer resolve any disputes with the Italian tax authority.

For more information on this or other transfer pricing issues generally, please contact the authors, your regular DLA Piper tax advisor, or Joel Cooper or Randall Fox, co-heads of our International Transfer Pricing group.

Endnotes

1 For details of the content and impact of the draft regulations, which aimed to provide guidance on the application of the arm's length principle based on international best practices, see https://www.dlapiper.com/en/netherlands/insights/publications/2018/03/italy-draft-regulation-on-transfer-pricing/

Is FATCA A Mere Flash In The Pan … Or Here To Stay?

by Mike DeBlis, DeBlis Law

When you drop a large rock into a pool of calm water, ripples appear and spread and eventually they will touch the entire surface of that pond, drastically changing its appearance. And the FATCA rock was a very big one indeed.

Recognizing that there is a substantial amount of money stored overseas that has gone unreported – and that will continue to go unreported if the government didn't put teeth into its thinly veiled attempt to nudge taxpayers into "disclosing [their] foreign accounts or else" – Congress passed FATCA. FATCA, which stands for Foreign Account Tax Compliance Act, is the cornerstone of the US Government's effort to combat tax evasion abroad.

Many expected President Trump's sweeping tax reform to repeal or amend this insidious law. But much to the chagrin of US expats, Trump did not so much as harm a hair on FATCA's head, leaving it completely untouched. A recent decision by the US Supreme Court confirms that FATCA is not going anywhere any time soon.

In April of this year, a legal challenge mounted against FATCA was stopped dead in its tracks when the Supreme Court refused to review the Sixth Circuit Court's decision affirming a federal district court's ruling dismissing the case brought against FATCA.

A Brief History Of The Case

In *Crawford, et al., v. Department of the Treasury, et al.* (CA 6, 08/18/2017),[1] Kentucky Senator and 2016 Republican Presidential hopeful Rand Paul, in partnership with Republicans Overseas and five others, headed to court to stop the Foreign Account Tax Compliance Act crackdown. The lawsuit was a first-of-its kind affair, in that no other Presidential hopeful had sued the IRS in the midst of a campaign. To say that it took courage (or perhaps what some may label, chutzpah) for Rand Paul to sue the government that he wanted to lead is a complete understatement.

The lawsuit was filed in federal district court in Ohio. Before dismissing the lawsuit as a spoof, the arguments raised indeed had merit. First, Senator Paul argued that so-called "Inter-Governmental Agreements" circumvented his Constitutional rights. The Obama Administration labeled FATCA accords with foreign powers as IGAs – a clever term that the Democrat-controlled Congress basically invented *ex nihlio* in 2010. Up until then, the Obama Administration had negotiated and finalized over 100 FATCA treaties, without a sliver of participation from the Senate.

Republicans abhorred these things because they required foreign banks to gather and share financial information about Americans who lived and/or worked abroad; the data would be private if these individuals worked and lived on American soil. As a result, a mind-numbing number of US expats had somewhat reluctantly renounced their citizenship.

Furthermore, the lawsuit maintained that the high penalties, as well as the rather arbitrary nature of these penalties, along with mandatory withholding and a few other provisions, violated the excessive fines clause of the Eighth Amendment.

With respect to the other plaintiffs, they argued that FATCA had effectively denied them access to banking and financial services in foreign countries, because these institutions did not want to mess with expats and their political baggage. Expats have been complaining about this issue for years.

Predictably, the suit was also somewhat politically motivated. "Republicans Overseas" is the brainchild of longtime conservative activist Solomon Yue. Mr. Yue strenuously denied that the suit was all about votes. Instead, he boldly proclaimed, "The best way to defend 8.7 million overseas Americans' right to privacy and constitutional protections is to cripple the IRS, FATCA and enforcement tools through legal action on constitutional grounds all the way to the US Supreme Court."

Unfortunately for Rand Paul and the other plaintiffs, the Ohio federal court dismissed the case for lack of standing. However, the plaintiffs appealed the lower court's ruling to the Sixth Circuit Court of Appeals.

Appeal To The Supreme Court

In affirming the lower court's ruling, the Sixth Circuit Court of Appeals cited numerous different grounds for its decision.

For example, it found that Senator Paul's alleged harm due to being denied the right to vote on the FATCA rules did not amount to a sufficient injury for purposes of establishing "standing" before the court (*i.e.*, standing under the law is the legal right of a plaintiff to bring a lawsuit to court – a veritable passport of sorts to get into the ivory tower courthouse and have the case heard). Because the plaintiffs were unable to demonstrate sufficient connection to and harm from FATCA, the Ohio federal court dismissed the case for lack of standing and the Sixth Circuit Court of Appeals affirmed the lower court's decision.

The petitioners made one last attempt to eradicate FATCA via the US judicial system by appealing the case to the Supreme Court. On April 2, 2018, the Supreme Court dealt the plaintiff a fatal blow by refusing to review the decision of the Sixth Circuit Court of Appeals. Getting down to brass tacks, this means that the decision dismissing the lawsuit against FATCA is now official.

While some members of Congress and activist citizens continue to wage war against FATCA, the harsh reality of the situation is that FATCA remains the law of the land for now and for the foreseeable future.

Endnotes

1 http://www.opn.ca6.uscourts.gov/opinions.pdf/17a0186p-06.pdf

Topical News Briefing: Followers Of Corporate Tax Fashion

by the Global Tax Weekly Editorial Team

If, as the EU's latest Tax Trends report suggests, the downtrend in corporate tax rates is beginning to flatten out, what patterns can we expect to emerge in the area of corporate taxation globally in the coming years?

With the OECD's BEPS project now firmly in its implementation phase, it seems quite likely that we will continue to witness countries putting in place legislative and regulatory measures echoing the recommendations included in the OECD's final reports on BEPS. As reported in this week's issue of *Global Tax Weekly*, Luxembourg is one recent example, where the Cabinet has approved legislation transposing the EU Anti-Tax Avoidance Directive – itself an EU response to BEPS – as well as the BEPS Multilateral Instrument.

Following consecutive years of corporate tax cuts, perhaps governments will pay more attention to tax base-widening measures in general, not only to prevent tax avoidance and ensure that tax regimes meet often-indefinable standards of "fairness," but also to buttress a revenue stream that has tended to diminish in many jurisdictions in recent years as a result of corporate tax rate reductions. As also reported in this week's issue, with regards to tax base protection, there can be few countries where this is a more vital issue than Ireland, a major destination for US-sourced FDI, but also reliant on an alarmingly small number of large corporation tax payers.

Then again, perhaps the corporate tax cut race hasn't fully played out. The Australian Government is doggedly attempting to push its long-term corporate tax cut plan through a reluctant parliament, and some pre-programed corporate tax cuts remain in the pipeline, such as in France, the Netherlands, the UK, and Sweden.

Furthermore, the substantial reduction in the US corporate tax rate, coupled with other aspects of the country's tax reforms, are forcing other advanced economies to evaluate their own tax offerings yet again. Understandably, this competitive pressure is being felt keenly in Canada, given the relative ease with which businesses and skilled workers can take advantage of lower taxes now on offer south of the border. However, as the OECD pointed out recently, even rock-solid Germany, where the economy is seemingly immune to a relatively high rate of corporate tax, could soon feel the pressure, despite the Government having showed absolutely no inclination to cut corporate tax under Chancellor Merkel's leadership.

Indeed, some jurisdictions are removing tax on corporate profits and shifting it instead to income distributions, including in Ukraine, where such proposals were announced in March 2018. This "new model of taxation," as the Government termed it, was inspired by similar moves in Estonia and Georgia, and with flat taxes seemingly falling out of fashion, it will be interesting to see if another tax measure pioneered in Eastern Europe catches on elsewhere.

The traffic isn't entirely one-way, though. A few jurisdictions have increased corporate taxes recently. But they remain the outliers, and the overall direction of travel seems firmly down in the wake of the US tax reforms, even if the downward pressure might be easing, and the size of national tax nets is growing.

IRS

Department of the Treasury
Internal Revenue Service

IRS Adds Foreign Trust Information Reporting to Compliance Campaign Program

by Arielle M. Borsos, Victor A. Jaramillo, Kirsten Burmester, Dianne C. Mehany, Anne J. O'Brien, and Michael G. Pfeifer, Caplin & Drysdale

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On May 21, 2018, the IRS Large Business and International (LB&I) division added foreign trust information reporting[1] to its "compliance campaigns," signaling that the IRS sees a "compliance risk" in this area that requires a targeted response to achieve compliance objectives. LB&I specifically indicated that it will take a "multifaceted approach" to improving compliance, including through the use of "examinations and penalties assessed by the campus when forms are late or incomplete." ***With this latest announcement, individuals who may have foreign trust reporting requirements now face an increased IRS audit risk and should be sure to consult with their legal advisors to avoid potential penalties.***

Form 3520-A,[2] *Annual Information Return of Foreign Trust with a US Owner*, is an annual information return required of a foreign trust with a US owner. Whether a US person that is a settlor or beneficiary of a foreign trust is an "owner" generally depends on the types of powers held by that person with respect to the trust assets. A US person may also be treated as an owner if he or she creates a trust with current or future US beneficiaries. The IRS may look not only to the terms of the trust but also to the conduct of the parties and even foreign law to determine whether a US person has sufficient powers over a trust to be treated as its owner.

The Form 3520-A reports information about the trust, including its income statement, distributions made during the year (whether to US or foreign beneficiaries), its balance sheet, as well as information about its US beneficiaries and US owners on Foreign Grantor Trust Beneficiary Statements and Foreign Grantor Trust Owner Statements (which must be provided to the US beneficiaries and owners in turn). The foreign trustee must sign and file the Form 3520-A. However, because the penalties for failing to file the form are imposed on the US owners, each US owner is effectively responsible for ensuring that the foreign trust files Form 3520-A and furnishes annual statements to its US owners and beneficiaries. If the trustee is unwilling to sign the Form 3520-A, the US owner may do so instead.

Form 3520,[3] *Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*, must be filed by any US person who creates or transfers property to a foreign trust, receives a distribution from a foreign trust, or is deemed an owner of all or any part of a foreign trust, to report such transactions or ownership. In addition, beneficiaries who receive distributions from foreign trusts must ensure they receive either a Foreign Grantor Trust Beneficiary Statement (if there is a US or foreign owner) or a Foreign Nongrantor Trust Beneficiary Statement (if there is no US or foreign owner), that shows the appropriate taxation (if any) of the distribution in order to avoid application of a "default" regime that taxes the entire distribution at ordinary rates and includes a punitive interest charge.

The Form 3520-A is due on March 15th, with an extension available until September 15th, of each year, and Form 3520 is due on April 15th of each year, with an extension available until October 15th. Both forms must be filed with the IRS service center in Ogden, Utah. The failure to timely file or accurately complete either the Form 3520 or the Form 3520-A can come at a steep cost. With respect to a failure to file Form 3520, the IRS can impose a penalty equal to 35 percent of the gross value of the property transferred to or received from a foreign trust if the transfer is not reported.

With respect to the failure to file Form 3520-A, the penalty is imposed on the US owner and is equal to 5 percent of the value of the trust assets treated as owned by the US owner at the close of each taxable year. The failure to timely file a complete and correct Form 3520 or Form 3520-A may result in an additional penalty of USD10,000 per 30-day period for failing to comply within 90 days of notification by the IRS that the information return has not been filed. The total penalty for failure to report a trust transfer, however, cannot exceed the amount of the property transferred.

Individuals may argue against the imposition of penalties by demonstrating that their failure to comply with their reporting obligations was due to reasonable cause and not willful neglect. In addition, if an individual discovers any foreign trust information reporting noncompliance (but no unreported income) prior to the initiation of an IRS examination, he or she may file Form 3520-A or Form 3520, with a reasonable cause statement, through the Delinquent International Information Return Submission Procedures[4] to potentially avoid the imposition of penalties. The Delinquent International Information Return Submission Procedures require Form 3520-A and/or Form 3520 to be filed at the same IRS campus as timely filed returns.

Individuals who have, or believe they may have, foreign trust reporting requirements should consult legal advisors to determine their obligations and the appropriate compliance options. For more information on this, please contact the authors.

Endnotes

1 https://www.irs.gov/businesses/international-businesses/foreign-trust-reporting-requirements

2 https://www.irs.gov/pub/irs-pdf/f3520a.pdf

3 https://www.irs.gov/pub/irs-pdf/f3520.pdf

4 https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures

Topical News Briefing: A Tax Reform That's Somewhat Off-BEAT

by the Global Tax Weekly Editorial Team

Following on from last week's issue of *Global Tax Weekly*, this week we see further evidence presented on alleged flaws in the Tax Cuts and Jobs Act, notably by the International Monetary Fund.

Indeed, the IMF went so far as to suggest that certain changes to the US tax code brought about by the TCJA should be reconsidered and possibly revised. Its strongest criticisms, like other analyses of the law, were reserved for the international tax reforms, in particular the measures intended to deter the shifting of profits to foreign lower-taxed jurisdictions. In this respect, the usual suspects were singled out, *i.e.*, the GILTI, FDII, and BEAT provisions – all of which, according to the IMF, have the potential to distort investment decisions and cause unintended consequences.

However, the likelihood that Congress will revisit these measures in the near future appears remote. So, in a sense, the conclusions of the academics with regards to the TCJA would appear to be just that: academic.

There are a number of reasons why we're probably going to be stuck with the alphabet soup of new additions to the US international tax code. One is that these provisions are very complex. And while complexity is often cited as the problem, complex tax law, as we have seen already, takes a lot of congressional time and effort to change.

Another is that the international tax reforms were central to the overall objectives of this Republican-led tax reform effort, that is, to provide a set of sticks and carrots that would hopefully cajole multinationals into investing more in the US and less overseas. Consequently, there's probably little appetite among Republican lawmakers to admit so early that they might have got some of the detail wrong. Although if predictions that GILTI and FDII have created incentives for the placement of tangible assets in low-tax jurisdictions come to pass, Congress may have to revisit these measures at some point. The US electoral cycle must also be added to the mix, with Democrats expected to make gains in the upcoming mid-term elections, and already pushing to nullify some of the corporate tax cuts.

Furthermore, it is probably unrealistic to expect Congress to make major amendments to a tax reform law that is barely six months old and when the administration is busy fleshing it out with underlying regulations and clarifications. The need for this process to continue was underlined by the AICPA's extensive list of proposed new TCJA-related regulations and guidance (also reported in this week's issue). That barely a week goes by with the tax advisory industry calling for one aspect or another of the TCJA to be clarified suggests that the Treasury Department and the IRS have got their work cut out for some time to come.

Russia To Raise VAT To 20 Percent

Russia has announced that it will hike its value-added tax rate to 20 percent from 18 percent next year, in order to improve funding for welfare.

The measure was included in Bill No. 489169-7 of June 16, 2018, which has now been approved by the State Duma.

Liberia To Table Law To Introduce VAT In 2019

Liberia's Government has this month announced that it will develop legislation to introduce value-added tax from 2019.

The measure is intended to boost the territory's revenues and tax administration efficiency, the Government said in its new Budget. It has constituted a VAT Steering Committee, with the Minister of Finance as chair. The tax agency and Ministry of Finance are developing a VAT White Policy Paper, an implementation roadmap, and a draft VAT Act.

Implementation was put forward to 2019 as a result of a recommendation from the International Monetary Fund, which is providing technical assistance. The Act will be put before Parliament in 2019 and a consultation will be launched to hear stakeholders' input, the Government stated.

Bangladesh Announces VAT Overhaul In Latest Budget

Bangladesh's Budget, released on June 7, includes proposals to overhaul the value-added tax system and lower the corporate income tax for banks and other financial institutions.

In the area of income tax, the Budget proposes to reduce the rates on banks and financial institutions by 2.5 percent, which would bring the rate for publicly traded institutions to 37.5 percent and to 40 percent for institutions whose shares are privately held. The general corporate tax rates remain unchanged for most companies, at 25 percent for publicly traded companies and 30 percent for non-publicly traded companies.

A concessionary tax rate of 15 percent is proposed for manufacturers and exporters of readymade garments, or 12.5 percent if the company is a public limited company. Those garment manufacturers with a green building certificate will benefit from a 12 percent rate.

The Budget also includes an announcement that those subject to one of the two lower rates of Bangladesh's wealth tax should pay a minimum amount of tax.

Like in India's recent Budget, a proposal to introduce digital permanent establishment rules was announced, with the Budget specifically referencing "taxation of virtual and digital sectors such as Facebook, Google, YouTube, *etc.* on their income earned in Bangladesh."

Much of the Budget focused on VAT reform however.

Finance Minister Abul Maal Abdul Muhith announced that the VAT regime will be simplified by replacing the current nine-rate regime with a regime with just five rates, of 2 percent, 4.5 percent, 5 percent, 7 percent, and 10 percent. The VAT reform proposals will be tabled before parliament in August, the Finance Minister said.

In his Budget speech he noted: "At present 1.5 percent VAT is applicable on the sale of flats of sizes up to 1,100 square feet, 2.5 percent VAT is applicable on the sale of flats of sizes up to 1,101-1,600 square feet, and 4.5 percent VAT is applicable on the sale of flats which are above 1,600 square feet."

"In order to incentivize the real estate sector I am proposing to fix 2 percent VAT on the sale of flats of any size which is less than 1,600 square feet and keep the existing rate unchanged applicable for the sale of any flats bigger than 1,600 square feet. Moreover, I am proposing 2 percent VAT on the resale of any flats irrespective of the size."

The Budget also announces that a 5 percent VAT will apply to the sale of furniture, rather than 4 percent, and a rate of 7 percent will apply to those engaged in the manufacturing of furniture, rather than 6 percent.

A 5 percent VAT rate will apply to contractors involved in the transportation of petroleum products, buyers of auctioned goods and branded garment outlets, rather than 4 percent. The 5 percent rate will also apply to the sale of non-branded garment items to the domestic market.

A 5 percent VAT rate will be levied on information technology-enabled services, rather than 4.5 percent, and a 5 percent advance trade VAT (ATV) will be levied on both the import and trading stages, in place of the current 4 percent rate.

Finally, a 5 percent VAT rate will apply on "virtual business" transactions – a term that will be newly defined subsequently. The Budget says this category of supplies will cover certain services provided by information technology, social media, and mobile application platforms.

On VAT administration, the Budget includes an announcement that electronic submission of VAT returns will be piloted by the Large Taxpayers Unit. Likewise, online tax payment will be piloted during 2018, before both are rolled out to smaller businesses.

Bangladesh is also proposing to make the use of "electronic fiscal devices" mandatory, rather than electronic cash registers and point of sale systems, for hotels, restaurants, resorts, and shops nationwide.

Finally, the Budget announces that new VAT exemptions will be introduced for the following goods and services: the sale of agricultural land; cancer and kidney disease medications; certain foodstuffs typically purchased by lower-income taxpayers; sandals made of plastic or rubber; certain animal feed; services provided by the state to aircraft engaged in providing international air transport services; and commission earned by insurance agents.

As well as announcing a general tax overhaul of rules for the sale of automobiles, the Budget includes proposals to provide VAT relief to motorbike manufacturers and mobile phone manufacturers.

Mauritian VAT Amendments Effective June 15

A number of changes to Mauritius's value-added tax regime, announced in the territory's new Budget, became effective on June 15.

The Budget provided that the following goods and services will be exempt:

- The supply of manual labor by an individual to a VAT-registered person operating in the agricultural or construction sector;
- Vehicle frames for buses, to be built onto imported chassis, which are to be used for public transport, under a license granted by the National Transport Authority; and
- Anti-smoking tablets.

Newly, a VAT zero rate will apply to the following goods and services:

- Services for the improvement, repair or maintenance, monitoring, or rental of burglar alarm systems and related patrol services;
- Fees payable for the examination of vehicles under the Road Traffic Act up to June 30, 2020;
- All components forming an integral part of a photovoltaic system; and
- Watch straps, watch bands, and watch bracelets, and parts thereof.

According to the Mauritius Revenue Authority, the Budget also included provisions to "enable VAT refunds" for: purchases of certain agricultural equipment by non-registered persons; land preparation works and the rental of land for agricultural purposes; artists, under certain conditions; and musical instruments.

IMF Calls On US To Tweak New Corporate Tax System

While praising recent income tax cuts in the United States, the International Monetary Fund has said that certain aspects of the tax reform legislation, particularly those related to expensing, interest deductions, small business income, and international taxation, could create additional complexities and lead to economic distortions.

The IMF said in its concluding statement to its latest review of the US economy, released June 14, that, taken in isolation, the reduction in the statutory corporate tax rate to near the OECD average and the enhanced expensing provisions included in the Tax Cuts and Jobs Act will help incentivize investment and lessen the motivations behind base erosion and profit shifting behaviors.

However, the IMF cautioned that certain provisions in the TCJA will distort investment decisions, particularly because the enhanced expensing rules are temporary, and because US tax law continues to allow for the deductibility of debt interest with a cap as a share of earnings.

"Such deductibility for debt-financed investment spending that can be expensed conveys an overly generous benefit and continues to incentivize debt financing," the statement said. "In addition, the cap introduces a procyclical distortion into the system (the cap becomes more binding when earnings weaken which, in a downside scenario, could exacerbate strains and bankruptcies in the corporate sector)."

"Further, the temporary nature of the expensing provision distorts the timing of firms' investment decisions (to favor investing before the provisions expire)."

The TCJA increases to the bonus depreciation percentage from 50 percent to 100 percent for qualified property acquired and placed in service after September 27, 2017, and before January 1, 2023.

In order to improve the tax code further, the IMF recommended that the US move towards a cashflow tax system, allowing for the expensing of all capital outlays and fully eliminating the deduction for interest spending on newly contracted debt on a permanent basis.

The IMF was also critical of the new 20 percent deduction on pass-through business income, which it argued has created a significant opportunity for tax avoidance by individuals on high incomes.

"Allowing for a 20 percent deduction for pass-through income creates an important mechanism for high income individuals to reduce their tax obligations by recharacterizing personal income as pass-through income," the Fund observed. "This is counter to the authorities' objectives of increasing equity – especially between those taxpayers that can, and cannot, arrange their activities to take advantage of the deduction – and simplifying the system."

The statement added that it remains to be seen how provisions intended to limit the use of the pass-through deduction operate in practice, with tax practitioners having already warned that these rules are complex and unclear.

The IMF also commented on the major changes to international taxation under the TCJA, which is said to have the potential to "significantly reshape the international tax system." However, it contended that there is scope to strengthen the design of various of the international provisions in the TCJA, particularly with respect to anti-profit shifting regimes, including the Global Intangible Low Taxed Income (GILTI) and Foreign Derived Intangible Income (FDII) rules, and the Base Erosion Anti-Abuse Tax (BEAT).

The GILTI regime is intended to discourage US corporations from shifting high-yielding intangible assets such as intellectual property rights to low-tax jurisdictions. GILTI is defined as the portion of the income of a controlled foreign corporation owned by US shareholders that exceeds a notional 10 percent return – a rate that is intended to reflect the normal rate of return on tangible assets. After a 50 percent deduction, GILTI is subject to an effective corporate tax rate of 10.5 percent, half the regular 21 percent US corporate tax.

However, the IMF said that to better curtail global tax competition, the GILTI minimum tax should be imposed on a country-by-country basis so that it falls on all profits earned in low tax jurisdictions, instead of on the average global profits of multinationals that are in excess of a deemed 10 percent return on tangible assets.

"As it stands, the link of this provision to worldwide profits and tangible capital will create complex and distortionary effects on firm's global investment decisions and may dilute its effectiveness in disincentivizing cross-border tax competition," the statement cautioned.

The FDII regime, meanwhile, is intended to encourage US corporations to hold IP rights in the United States by providing a 37.5 percent deduction on income exceeding a 10 percent normal rate of return for an effective US tax rate of 13.125 percent. However, the IMF suggested that this provision should be eliminated as the more favorable tax treatment provided to exporters under the regime creates an economic distortion. Removing the FDII rules "would provide more of a level playing field for global investment decisions," the IMF argued.

With regards to the BEAT regime, the IMF explained that this provision would likely "serve its intended function of helping to curtail various base erosion and profit shifting behaviors" but could also affect legitimate commercial activities not linked to tax avoidance and create additional economic distortions.

The BEAT is a minimum tax provision designed to penalize those companies that engage in "earnings stripping" – borrowing excessively from a foreign company or affiliate to increase their interest payments and thereby reducing their US taxable income by using the interest expense deduction.

However, according to the IMF, these rules create "a broad-ranging preference for domestic over foreign production," while also adding "new incentives for companies to rearrange their operations to avoid application of the BEAT."

"These shortcomings would be mitigated, and international tax planning strategies would be better contained, by only applying this provision to those transactions that are designed to transfer profits to related parties located in low-tax jurisdictions," the Fund said.

In conclusion the IMF observed that while many features of the TCJA are "far-reaching and innovative," the reforms have created "a complex array of both positive and negative spillovers for other countries, which stakeholders are still analyzing."

US Announces Final Round Of Opportunity Zone Designations

The US Treasury Department and the Internal Revenue Service have announced the final round of designations under the Opportunity Zone program, which provides tax incentives for those investing in economically distressed areas of the US.

Under the Tax Cuts and Jobs Act, states, the District of Columbia, and US possessions are able to nominate low-income communities to be designated as Qualified Opportunity Zones, which are then eligible for tax benefits.

The scheme enables investors to defer tax on any prior gains until no later than December 31, 2026, so long as the gain is reinvested in a Qualified Opportunity Fund, an investment vehicle organized to make investments in Qualified Opportunity Zones. In addition, if the investor holds the investment in the Opportunity Fund for at least ten years, the investor would be eligible for an increase in basis equal to the fair market value of the investment on the date that the investment is sold or exchanged.

In total, the program designated areas in all 50 states, the District of Columbia, and five US possessions. The final round of submissions were approved for Florida, Nevada, Pennsylvania, and Utah, the Treasury Department said.

Commenting on the move, Treasury Secretary Steven Mnuchi n said: "The creation of Opportunity Zones is one of the most significant provisions of the Tax Cut and Jobs Act. Incentivizing private investment into these low-income communities can be transformational, stimulating economic growth and job creation across the country."

US Further Delays Foreign Currency Regulations

The US Internal Revenue Service has announced another one-year delay to the introduction of new accounting rules concerning the calculation of the taxable income or loss of a qualified business unit (QBU) subject to the rules in Section 987 of the Internal Revenue Code.

QBUs are subdivisions of taxpayers which separately compute their own income/loss, often in a currency that is different than that of its owner. A QBU is defined in Section 989 as: "any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records." QBUs may be of different legal types, both corporate and non-corporate.

The tax provisions applicable to foreign currency are found within Subpart J of the IRC, Sections 985 through 989. Section 987, which the announcement relates to, covers branch transactions.

Notice 2018-57, issued on June 13, states that the applicability date of the final regulations under Section 987, as well as certain related final and temporary regulations, will be delayed by one additional year.

Final regulations were published by the Treasury Department and the IRS on December 8, 2016, relating to the determination of the taxable income or loss of a taxpayer with respect to a QBU subject to Section 987, including the timing, amount, character, and source of any Section 987 gain or loss.

However, last year, the final regulations were identified in Notice 2017-38 "as significant tax regulations" requiring additional review pursuant to President Trump's Executive Order on identifying and reducing tax regulatory burdens (Executive Order 13789). As part of that review, the Treasury Department and the IRS are considering changes to the final regulations that would allow taxpayers to elect to apply alternative rules for transitioning to the final regulations and alternative rules for determining a Section 987 gain or loss.

Subsequently, Notice 2017-57, issued in October 2017, delayed the regulations to January 1, 2019 , for taxpayers whose first taxable year after December 7, 2016, begins on January 1, 2017. Under new Notice 2018-57, the final regulations are delayed further to January 1, 2020. The related temporary regulations will not become applicable because they expire on December 6, 2019.

However, Notice 2018-57 states that a taxpayer may elect to apply the final regulations and the related temporary regulations to a tax year beginning after December 7, 2016, and before the amended applicability date, providing the conditions set out in the Notice are met.

Congress To Quiz IRS On Return Of Seized Funds

A hearing is due to be held by the US Congress on efforts to return taxpayer funds seized by the Internal Revenue Service under its civil asset forfeiture authority.

Lynn Jenkins (R-KS), Chair of the House Ways and Means Oversight Subcommittee, announced on June 13 that the hearing, entitled "Update on IRS and DOJ Efforts to Return Seized Funds to Taxpayers," will take place on June 20.

The IRS has been the subject of much scrutiny in recent years as a result of accusations that it has been abusing its powers to seize taxpayers' assets, especially in suspected cases of "structuring," whereby individuals deposit cash in amounts under the proscribed USD10,000 threshold in order to avoid triggering their bank's mandatory reporting requirements.

The hearing will focus on the process the IRS and Department of Justice used to review taxpayers' petitions for the return of seized funds and the resulting outcomes.

Commenting on the announcement, Jenkins said: "For far too long, the IRS seized property from Americans in cases that were not warranted. Over the past two years, the Oversight Subcommittee has investigated the IRS's civil asset forfeitures and I remain committed to ensuring fair outcomes for those whose funds were wrongfully seized."

Last year, a bill was introduced in the House of Representatives by Peter Roskam (R-IL) and Joseph Crowley (D-NY) that would prohibit the IRS from seizing bank accounts from business owners accused of committing violations unless the money is tied to a crime.

If passed, the bill would require the IRS to show probable cause before seizing assets, although the IRS argues that it already does so.

US CPAs Urge IRS To Prioritize TCJA Guidance

The American Institute of CPAs (AICPA) has drawn up a long list of recommended priorities that the Internal Revenue Service should focus on under the 2018–2019 Priority Guidance Plan, which mainly concentrate on tax changes brought about by the Tax Cuts and Jobs Act (TCJA).

In its more than 150 recommendations to the IRS, included in a June 14 letter to the agency, the AICPA said that the IRS should, among other things, "use the simplest approach to accomplish policy goals, provide safe-harbor alternatives, and offer clear and consistent definitions."

The letter also recommends that the IRS should:

- Use horizontal drafting (a rule placed in one Internal Revenue Code section should apply in all other Code sections) to the greatest extent possible;
- Build on existing business and industry-standard record-keeping practices;
- Provide a balance between simple general rules and more complex detailed rules; and
- Match a rule's complexity to the sophistication of the targeted taxpayers.

In Notice 2018-43, inviting public comment on the 2018/19 Priority Guidance Plan, the Treasury Department and the IRS said that they expect to concentrate on guidance implementing the TCJA for the remainder of the current plan year (2017/18) and during the 2018/19 plan year. Consequently, a number of guidance projects included in the current plan year will be carried over to next year. However, the IRS said that it would also focus on items that are most important to taxpayers and for tax administration.

According to the AICPA, its letter identifies and prioritizes guidance projects that it believes the Treasury Department and IRS should address through regulations, revenue rulings, revenue procedures, notices and other published administrative guidance. The top priority recommendations relate to projects required as a result of the enactment of the TCJA, it said.

Additional recommendations cover a wide range of individual, business, and exempt organization tax issues, including projects related to international issues, partnership issues, crowdfunding and the sharing economy, virtual currency rules, and estate and trust rules, the AICPA added.

The institute's letter also reiterated that the Treasury Department and the IRS should continue pursuing tax simplification.

Cayman Considering Legal Challenge To UK Beneficial Ownership Law

Cayman Premier Alden McLaughlin met with lawyers in London on Monday to discuss the territory's constitutional relationship with the UK in light of UK legislation forcing the territory to set up a publicly accessible register on the beneficial ownership of legal entities.

Under the UK Sanctions and Anti-Money Laundering Act 2018, enacted in late May 2018, the UK is requiring its 14 Overseas Territories to bring in publicly accessible registers concerning the beneficial ownership of legal entities by 2020 or face having them imposed by the UK Government.

A number of Overseas Territories, including the British Virgin Islands and Bermuda, have expressed concern that the legislation infringes existing constitutional arrangements, with the British Virgin Islands having instructed lawyers to consider a legal challenge.

McLaughlin has echoed these concerns saying: "We are concerned about the actions of the House of Commons in seeking to legislate for the Cayman Islands, which amounts to constitutional overreach by forcing the Cayman Islands to adopt public registers of beneficial ownership."

Talks were scheduled for the full working week ending June 15, with McLaughlin to meet with the UK's Minister for the Overseas Territories and the heads of government of other UK Overseas Territories.

Hong Kong Issues Tax Compliance Guide For Property Owners

On June 14, 2018, Hong Kong's Inland Revenue Department released guidance on the tax obligations of landlords.

Owners in receipt of rental income must inform the Department in writing if they are liable to tax and supply the particulars of the property no later than four months after the end of the basis period for the year of assessment (*e.g.*, on or before July 31, 2018, for the year of assessment 2017-18), unless they have already received the appropriate tax returns. Owners should use the form "Notification of Letting of Properties" (IR6129) for this purpose.

Property owners must complete a tax return, even if they do not receive rental income. These are: BIR60, for properties solely owned by an individual; BIR57, for properties jointly owned or co-owned by individuals; and BIR58, for property owned by corporations and bodies of persons.

Sufficient rent records must be retained by property owners, such as lease agreements and duplicates of rental receipts, for at least seven years, and the Department must be informed in writing of a change of ownership or a change in the owner's address within one month of the change.

Where a corporation has been exempted from property tax and there is a change in the ownership or use of the property, or in any other circumstances that may affect the exemption, the corporation must notify the Department in writing within 30 days of the event.

UK Announces Record-Low Tax Gap In 2016-17

The UK tax agency, HM Revenue & Customs, has said its efforts to clamp down on tax avoidance, evasion, error, and fraud has saved GBP71bn (USD94.3bn) in tax receipts since 2005-06, confirming that the "tax gap" was 5.7 percent in 2016 to 2017.

The agency has released its 2018 Tax Gap report. The tax gap is the difference between the tax that should be paid to HMRC and the actual amount received. HMRC credited its performance to its sustained efforts to tackle evasion and avoidance and its work to help taxpayers get their tax affairs right from the start.

The tax gap has fallen from 7.3 percent in 2005 to 2006 to an estimated 5.7 percent in 2016 to 2017. This is the same percentage tax gap as for 2015 to 2016, the tax gap for which was revised down from 6 percent.

Key findings from the Measuring the Tax Gap publication included that:

- Small businesses made up the largest proportion of unpaid tax by group, at GBP13.7bn;
- Taxpayer errors and failure to take reasonable care made up GBP9.2bn of unpaid taxes by behavior, while criminal attacks made up GBP5.4bn;
- Income Tax, National Insurance Contributions (the UK's social security levy), and capital gains tax made up the largest proportion of the tax gap by tax type at GBP7.9bn for 2016 to 2017, equivalent to 16.4 percent of self assessment liabilities;
- The VAT gap has declined over time, falling from 12.5 percent in 2005 to 2006 to 8.9 percent in 2016 to 2017.

Mel Stride, Financial Secretary to the Treasury, observed that: "These really positive figures show that the tax gap is the lowest in the last five years, which reflects the hard work that HMRC and I have been doing to ensure we support businesses to pay the right tax at the right time and clamp down on tax evasion and avoidance. Collecting taxes is essential for funding our vital public services such as the NHS – indeed, had the tax gap remained at its 2005-06 level the UK would have lost

GBP71bn in revenue destined for public services, enough to build 200 hospitals."

Jon Thompson, HMRC's Chief Executive, said: "The UK is the only country in the world to regularly publish [its] tax gap in detail and, at 5.7 percent, it remains at its lowest for five years. I am pleased that the downward trend shows HMRC and HM Treasury's continued hard work to tackle evasion and avoidance is working. HMRC is also working hard to help taxpayers get their tax right by offering support and investing in digital services to improve businesses' record keeping and reduce errors. HMRC is working with small businesses to help them get their tax right first time around. The department aims to make sure the tax system is not a barrier to setting up, running, and growing a business, which is why the department offers businesses support and provides information, to help businesses start up, sustain, and grow."

HMRC is continuing to roll-out Making Tax Digital (MTD) for businesses. MTD is intended to reduce the tax gap by helping to prevent error and failure to take reasonable care. Digital record keeping combined with a modern, more automated tax system will help businesses get their affairs right the first time, HMRC said.

Under MTD, from April 1, 2019, businesses with a turnover above the VAT threshold (currently GBP85,000, or about USD119,500) will have to: keep their records digitally (for VAT purposes only), and provide their VAT return information to HM Revenue and Customs (HMRC) through MTD-compatible software. MTD will be available on a voluntary basis to other businesses, for both VAT and income tax.

The second draft of Finance Bill 2017, published on September 8, 2017, included legislation allowing for the introduction of Making Tax Digital for VAT. This primary legislation gave HMRC the powers to introduce regulations for the regime in December 2017, which set out the detailed requirements that businesses will have to meet – The Value Added Tax (Amendment) Regulations 2018.

Germany Under Pressure From Tax Competition: OECD

Falling rates of corporate tax across much of the developed world could put pressure on Germany to cuts its relatively high corporate tax, the OECD has said.

"The taxation of corporate profits is higher than in other high-income OECD countries. However business investment has been subdued despite strong corporate profitability in recent years, suggesting that corporate income taxes may not constrain investment much at present," the OECD stated in its latest Economic Survey of Germany.

However, it observed that: "In recent years, several high-income OECD countries reduced corporate income taxes, including Spain, Italy, Norway, Luxemburg, the United Kingdom, Japan, and the United States. Recently, France and Australia announced reductions. In the United Kingdom a further reduction is envisaged for 2020. This may put pressure on Germany to reduce its corporate income taxes."

While the German Government currently has no plans to reduce corporate tax, the OECD observed that the coalition agreement includes proposals for other tax cuts that are largely concentrated of alleviating the tax burden on low and middle-income taxpayers.

"The Government intends to reduce the unemployment insurance contribution rate by 0.3 percentage points, shift about 0.5 percentage points of health insurance contributions from employees to employers, and to reduce employee-paid social security contributions for low-paid workers," the report noted, adding that steps to raise the taxation of interest income received by households to the standard income tax rate are envisaged.

In addition, income tax reductions worth EUR10bn (USD11.8bn), mostly for middle-income households, are planned from 2021, it said.

The Government is also considering new research and development tax incentives in order to encourage private research and development spending, especially by SMEs. The OECD recommended that such measures could boost innovation "if designed carefully to benefit fully young firms which have not generated profit."

In other proposals to incentivize start-ups, the Government plans to introduce a "One-Stop-Shop" and a value-added tax exemption for the first years after starting a business, the report said. It will also examine further tax incentives for venture capital, and public health care insurance contributions for low-income self-employed workers will be reduced.

Furthermore, the Government plans to introduce "substantial" tax incentives and grants for private home purchases for families with children, worth EUR1,200 per child per year for a maximum of ten years.

One of the report's main recommendations was the reduction in the tax wedge on second earners to encourage women to work longer hours. "Joint income taxation lowers incentives for second earners in couples, women in most cases, to work full-time," it said.

The OECD also stressed that the Government should seek to reduce the taxation of labor generally, given that Germany's tax revenues relative to GDP have grown to 38 percent – 4 percent above the OECD average – largely due to the effect of bracket creep and the failure to reduce social security tax rates.

"The taxation of low labor incomes is high, mostly on account of social security contributions," the report said. "Steps to reduce this tax burden and prevent future increases should therefore be a priority," it concluded.

Jordan's PM Withdraws Tax Bill From Parliament

Jordan's Prime Minister, Omar Razzaz, has decided to withdraw a controversial income tax bill from the lower house of Parliament, it was confirmed on June 14.

Razzaz confirmed in a Twitter posting that he made the decision following the first meeting of the Cabinet since he was sworn in as Prime Minister earlier this month, at which the draft income tax law was discussed.

The proposed law, which was expected to be effective from January 1, 2019, had been the subject of fierce public protest, leading to the resignation of former prime minister Hani Mulki and his cabinet on June 4.

The bill included several corporate tax measures, including substantial increases in the rate of corporate tax for companies in certain sectors, and new anti-avoidance measures.

For mining companies, the corporate tax rate would have risen from 24 percent to 30 percent, while companies in the insurance and financial leasing sectors would have seen their corporate tax rate rise from 24 to 40 percent. Banks faced a 5 percent corporate tax hike from 35 to 40 percent.

The proposed law would have also imposed corporate tax on income from exported goods manufactured in Jordan, which are currently exempt from income tax.

In addition, the proposed law would have increased income tax on foreign branches of Jordanian companies from 10 to 30 percent.

Furthermore, the introduction of a new thin capitalization rule would have prevented the deduction of related-party interest payments exceeding a 3:1 debt-to-equity ratio. However, companies would have been able to carry forward losses to offset future profits indefinitely instead of for a maximum of five years as is the case under current law.

The proposed law would have also introduced a 15 percent capital gains tax on gains from the sale of unlisted shares.

The proposals also included tax increases for personal income tax payers, including a reduction in annual tax-free allowances and the introduction of two additional income tax brackets with a new top rate of 25 percent. Currently, there are three income tax brackets of seven, 14 and 20 percent.

Luxembourg Cabinet Approves BEPS Laws

The Luxembourg Cabinet has approved a series of new BEPS-related laws, including measures transposing the requirements of the European Union Anti-Tax Avoidance Directive (ATAD) into domestic law and transposing provisions from the BEPS Multilateral Instrument (MLI) into the territory's tax treaties.

The ATAD contains five legally binding anti-abuse measures, which all member states are required to apply against common forms of aggressive tax planning.

According to the Commission, the ATAD "creates a minimum level of protection against corporate tax avoidance throughout the EU, while ensuring a fairer and more stable environment for businesses."

The directive covers all taxpayers that are subject to corporate tax in EU member states, including subsidiaries of companies based in third countries. It does the following:

- Limits the amount of interest that a corporate taxpayer is entitled to deduct in a tax year, to discourage the practice of artificially shifting debt to jurisdictions with more generous deductibility rules;
- Establishes exit taxation rules, to prevent tax base erosion in the state of origin;
- Introduces a general anti-abuse rule, to cover gaps that may exist in member states' specific anti-abuse legislation;
- Introduces controlled foreign company (CFC) rules, to reattribute the income of a low-taxed controlled foreign subsidiary to its (usually more highly taxed) parent company; and
- Introduces rules on hybrid mismatches, to prevent companies from taking advantage of disparities between national tax systems to reduce their overall tax liability.

EU member states have until December 31, 2018, to transpose the directive into their national laws and regulations, with the exception of the exit taxation rules, which must be transposed by December 31, 2019.

According to the Cabinet's June 15 statement, the draft law on the implementation of the BEPS MLI in Luxembourg has also been approved.

Developed through negotiations involving more than 100 countries and jurisdictions as part of the OECD's BEPS project, the MLI is intended to enable countries to incorporate BEPS-related amendments into their tax treaties without having to renegotiate bilateral treaties on a piecemeal basis.

Irish Corporate Tax Reform Pushed By MPs, To Shore Up Tax Base

The highly concentrated nature of Ireland's corporation tax receipts represents "an unacceptable level of risk," according to parliament's Public Accounts Committee.

The PAC has published a new report on Ireland's corporation tax receipts. Corporation tax accounted for 15 percent of total tax receipts in 2016, with 70 percent of all corporation tax paid by the top-100 companies and 37 percent paid by just 10 companies. The Committee set out to examine the risk posed by this high concentration of receipts and how best to resolve such.

According to the Committee, "The highly concentrated nature of corporation tax receipts represents an unacceptable level of risk to the sustainability of the corporation tax regime and to overall exchequer income."

The Committee found that, in 2015, the average effective corporate tax rate applying to all companies was 9.8 percent. However, it also calculated that 13 of the 100 companies with the highest taxable income had an effective rate of less than 1 percent, a figure it said reflected the use of tax credits and reliefs, and in particular of double taxation relief and research and development tax credits.

The PAC recommended that the Finance Department conduct a review of the corporate tax system and publish proposals for dealing with the high concentration of receipts. It also argued that the Government should carry out a detailed analysis of double taxation relief, which reduced corporation tax receipts by EUR948m (USD1.1bn) in 2015.

The PAC additionally found that the Finance Department has identified eight approaches for calculating the effective rate of corporation tax on company profits. Of these eight, the Department has identified two as being the most appropriate measurements. The Committee said that the Department should take steps to ensure that there is general agreement on a single most appropriate calculation methodology.

According to the PAC, it has not been possible for the Irish Revenue to provide accurate details on PAYE paid by participators in close companies. The Committee said that it is not satisfied that Revenue can demonstrate that the application of the close company rules is achieving its intended purpose, and recommended that Revenue determine whether the rules are effective.

The Committee added that Revenue data is also lacking on losses carried forward by companies. It said that greater priority should be given to the sustainability of corporate tax receipts on an annual basis and that the Finance Department should consider the introduction of a 10-year time limit or sunset clause and/or other restrictions in respect of losses carried forward.

Australian Corporate Tax Reform Proposals Tabled In Parliament

The Australian Government has again tabled its income tax reform package in the Senate.

In an interview with Sky News, Finance Minister Mathias Cormann called on the Senate "to vote in support of income tax relief for hard working Australians" on proposals presented to Senators on Monday June 18.

Cormann said that the Government is working with crossbench Senators with the aim of securing the passage of both the income tax and company tax reform packages over the next fortnight.

According to Cormann, if the Government passes the Government's "national plan for a stronger economy and more jobs in full, there will be more investment, stronger growth, more jobs, and higher wages."

The Government claims that its reforms will ensure that 94 percent of Australians will pay no more than the marginal rate of 32.5 percent in tax. Over the next six years to July 2024, the Government intends to phase in amendments to the upper thresholds for a range of tax brackets, and to abolish what is currently the second-highest rate and bracket.

The Government has 30 seats in the Senate but needs 39 votes to pass legislation.

The Government has so far been unsuccessful in its attempts to secure sufficient support in the Senate for its company tax reform package, which aims to reduce the headline rate for all businesses to 25 percent by 2026-27. Cormann said that if the opposition Labor Party "continues to stand in the way of us legislating a globally more competitive business tax rate, then … the Australian Senate would be holding the Australian economy, jobs, and wages back."

"If we continue to impose higher taxes on businesses here in Australia, putting them at a disadvantage with businesses in other parts of the world, we would be putting Australian workers here in Australia at a competitive disadvantage," he added.

ATO To Administer Early Super Release

The Australian Government is to transfer to the Australian Taxation Office (ATO) responsibility for deciding whether to approve the early release of superannuation benefits on compassionate grounds.

The responsibility currently lies with the Department of Human Services. The ATO will assume responsibility on July 1.

The ATO will provide electronic copies of approval letters to superannuation funds at the same time as to the applicant. The Government expects this to help mitigate the risk of fraud and to negate the need for superannuation funds to independently verify the letter with the Regulator.

Individuals will also upload accompanying documentation simultaneously with their application, rather than in a two-step process as at present.

Normally, superannuation funds cannot be used until an individual reaches "preservation age" and retires. However, in certain circumstances, access may be granted to funds on compassionate grounds, including for the payment of medical treatment, payment of a loan to prevent an individual from losing their home, or for the payment of expenses associated with a death, funeral, or burial.

Revenue Minister Kelly O'Dwyer explained that: "These changes will expedite the assessment of early release applications, improve the integrity of the process, and allow the funds to be released more quickly to successful applicants."

Australia To Clarify Taxation Of Managed Fund Industry

The Australian Government is consulting on draft legislation designed to ensure that the new system for attribution managed investment trusts (AMITs) operates as intended.

The attribution tax regime is intended to give greater certainty to investors in managed funds, reduce compliance costs for the funds, and enhance the competitiveness of the funds management industry. The system has been in place since 2016.

The AMIT regime applies to certain MITs if the members of the MIT have clearly defined interests in relation to the income and capital of the trust, and if the trustee of the MIT makes a choice to apply the new tax system.

The benefits of the AMIT regime include: fixed trust treatment for income tax purposes; an attribution regime which allows the trust to attribute amounts of assessable income, exempt income, non-assessable non-exempt income, and tax offsets to members on a fair and reasonable basis for income tax purposes; and an "unders and overs" regime that allows the trust to reconcile variances between the accounts actually attributed to members for an income year, and the amounts that should have been attributed.

The Government's proposed legislative amendments will:

- Clarify that a MIT with a single unitholder that is a widely-held entity can access the AMIT regime;

- Ensure that, in calculating rounding adjustments and trustee shortfall tax under the AMIT regime, discount capital gains are treated consistently;
- Ensure that, in relation to a character that is a discount capital gain, a trustee is liable to pay income tax on the under-attributed component as though it were not a discount capital gain;
- Clarify the rules around capital gains tax (CGT) event E10;
- Align the CGT outcomes for MITs with AMITs;
- Clarify that withholding tax liabilities arise on amounts of fund payments and dividends, interest, and royalty (DIR) payments that are attributed to foreign members by an AMIT or custodian;
- Ensure fund payments for AMITs that includes capital losses from non-taxable Australian property that have been applied against capital gains from taxable Australian property;
- Clarify that AMITs which only make deemed payments are withholding MITs; and
- Clarify that the Tax File Number (TFN) withholding rules apply to AMITs that make deemed payments to members.

Revenue Minister Kelly O'Dwyer suggested thar: "The amendments will clarify the law, providing industry with increased investment certainty, and should assist those entities considering whether to opt into the attribution MITs regime."

The consultation closes on July 16.

EU-Australia Trade Talks Launched

Australia and the EU on June 18 launched negotiations toward a free trade agreement.

A statement by Australian Prime Minister Malcolm Turnbull and Trade Minister Steven Ciobo explained that: "Australian exporters are currently at a disadvantage to many of our biggest competitors because Australia lacks preferential access into the EU. We will be working to secure better access for Australian food and agriculture products, creating the framework for open, fair, and equitable trade."

"We will look to lock in access and create new commercially meaningful opportunities for Australian services exporters, with a focus on education, financial, and professional services. We will also explore rules and initiatives to support the digital economy [and] innovation, and increase opportunities for high-technology state ups," the ministers added.

The EU will seek to put European companies exporting to or doing business in Australia on an equal footing with companies from countries that have signed up to the Trans-Pacific Partnership or to other trade agreements with Australia. It will aim for ambitious provisions on trade and sustainable development, and for better access for EU companies to government procurement processes in Australia.

Trade between Australia and the EU was worth EUR48bn (USD55.6bn) in 2017. According to an impact assessment, an FTA could boost trade in goods and services by around a third.

As a bloc, the EU is Australia's second-largest trading partner, third-largest export destination, and second-largest services market. Talks will commence in July.

ARGENTINA - BRAZIL

Legislation

Argentina has approved a protocol to its DTA with Brazil, the Argentinian Official Gazette reported on May 23, 2018.

BRAZIL - NORWAY

Forwarded

Brazil's upper house of Parliament on May 30, 2018, approved a protocol updating the DTA with Norway.

FINLAND - PORTUGAL

Terminated

On June 14, 2018, Finland confirmed that it had terminated its DTA with Portugal. The decision means that there will be a treaty void from 2019, if Portugal fails to ratify a replacement DTA signed by the two countries by the end of the year.

HONG KONG - FINLAND

Signature

Hong Kong and Finland signed a DTA on May 24, 2018.

LUXEMBOURG - VIETNAM

Negotiations

Luxembourg and Vietnam agreed to continue negotiations towards a DTA Protocol at a meeting on June 15, 2018.

MOROCCO - AZERBAIJAN

Forwarded

A law to ratify the Azerbaijan-Morocco DTA was tabled before Morocco's Cabinet on June 14, 2018.

MOROCCO - CONGO, REPUBLIC OF THE

Forwarded

The Moroccan Government has approved for ratification a DTA with the Republic of the Congo, it announced on May 29, 2018.

QATAR - ARGENTINA

Ratified

Qatar's Government on June 14, 2018, confirmed that it had completed its domestic ratification procedures in respect of a DTA signed with Argentina.

RUSSIA - JAPAN

Forwarded

Legislation ratifying a new DTA between Russia and Japan was submitted to the Russian State Assembly (the Duma) for approval on May 22, 2018.

SINGAPORE - KENYA

Signature

Singapore and Kenya signed a DTA on June 12, 2018.

SWEDEN - SWITZERLAND

Forwarded

Sweden's parliament on June 7, 2018, approved an amendment to the country's DTA with Switzerland to clarify the scope of the term "pension fund" in the agreement.

SWITZERLAND - VARIOUS

Forwarded

Switzerland's lower house of parliament on May 29, 2018, approved DTAs with Kosovo and Pakistan.

UKRAINE - UNITED KINGDOM

Forwarded

Ukraine's Cabinet on June 6, 2018, approved a law to ratify a DTA Protocol signed with the United Kingdom.

UNITED ARAB EMIRATES - VARIOUS

Forwarded

The United Arab Emirates' Cabinet on June 13, 2018, approved DTAs signed with Saudi Arabia, Rwanda, and Turkmenistan.

UNITED KINGDOM - UZBEKISTAN

Legislation

On May 23, 2018, the UK published draft legislation that would ratify the DTA Protocol signed with Uzbekistan.

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

THE AMERICAS

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

STEP Wyoming Conference

9/21/2018 - 9/22/2018

STEP

Venue: Four Seasons Resort and Residences, Jackson Hole, 7680 Granite Loop Road, Teton Village, WY 83025, USA

Key speakers: Amy Castoro (The Williams Group), Joseph Field (Pillsbury Winthrop Shaw Pittman LLP), Michael Karlin (Karlin & Peebles LLP), Carl Merino (Day Pitney), among numerous others

https://www.step.org/wyoming-2018

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/

Family Office Summit: Integrating the Full Balance Sheet

11/1/2018 - 11/1/2018

ClearView Financial Media

Venue: The New York Times Building, 37th Floor, 620 Eight Avenue, New York, 10018-1405, USA

Key speakers: TBC

http://clearviewpublishing.com/events/fwr-summit-complete-view-familys-balance-sheet-long-term-investment-lifestyle-management/

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

New Zealand Conference

6/21/2018 - 6/22/2018

STEP

Venue: Regatta Room AD, The Pullman Hotel, Cnr Quadrant & Princes St, Auckland, New Zealand

Key speakers: Nicola Peart (University of Otago), Jeremy Johnson (Wynn Williams), Vicki Ammundsen (Vicki Ammundsen Trust Law Ltd), Terry Baucher (Baucher Consulting Ltd), among numerous others

https://www.step.org/events/new-zealand-conference-21-22-june-2018

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

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

Operational Taxes for Banks 2018

6/26/2018 - 6/26/2018

Informa

Venue: Address TBC, London, UK

Key speakers: Helen Baird-Parker (HMRC), Mariano Giralt (Bank of New York Mellon), Andrea Mrakic (Wells Fargo Bank), Jenny Turner (UBS), among numerous others

https://finance.knect365.com/operational-taxes-for-banks/

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

Tax Update for Foreign Doms and Non-Resident Clients: Summer Edition

6/28/2018 - 6/28/2018

Informa

Venue: Bloomsbury Hotel, 16-22 Great Russell St, London, WC1B 3NN, UK

Key speakers: Emma Chamberlain (Pump Court Tax Chambers), Giles Clarke (Offshore Taxation), Philip Goeth (Field Court Tax Chambers), Patrick Soares (Field Court Tax Chambers), among numerous others

https://finance.knect365.com/tax-update-for-foreign-doms-and-non-resident/

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

UK Annual Tax Conference

6/29/2018 - 6/29/2018

STEP

Venue: Queen Elizabeth II Centre, Broad Sanctuary, Westminster, London, SW1P 3EE, UK

Key speakers: John Barnett (Burges Salmon LLP), Julie Butler (Butler & Co), Emma Chamberlain (Barrister Pump Court Tax Chambers), Robert Jamieson (Mercer & Hole)

https://www.step.org/tax18

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

Stamp Duty Land Tax 2018

7/3/2018 - 7/3/2018

Informa

Venue: Bloomsbury Hotel, 16-22 Great Russell St, London, WC1B 3NN, UK

Key speakers: Patrick Cannon (15 Old Square Tax Chambers), Sara Maccallum (Boodle Hatfield), John Shallcross (Blake Morgan), David Southern QC (Temple Tax Chambers), among numerous others

https://finance.knect365.com/stamp-duty-land-tax/

Farm Tax 2018

7/4/2018 - 7/4/2018

Informa

Venue: Crowne Plaza London - The City, 19 New Bridge St, London, EC4V 6DB, UK

Key speakers: Catherine Ball (Hewitsons), Abby Buckland (Kingsley Napley), Patrick Cannon (15 Old Square Tax Chambers), Jeremy Moody (CAAV), among numerous others

https://finance.knect365.com/farm-tax/

Inheritance Tax 2018

7/4/2018 - 7/4/2018

Informa

Venue: Address TBC, London, UK

Key speakers: Fiona Poole (Maurice Turnor Gardner), Anne Fairpo (Temple Tax Chambers), Dominic Lawrance (Charles Russell Speechlys), Rory Mullan (15 Old Square Tax Chambers), among numerous others

https://finance.knect365.com/inheritance-tax/

UK Tax, Trusts and Estates Conference 2018

9/4/2018 - 9/4/2018

STEP

Venue: Mercure Manchester Piccadilly Hotel, Portland Street, Manchester, M1 4PH, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell), Lucy Obrey (Higgs & Sons), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/events/uk-tax-trusts-and-estates-conference-2018-manchester-4-september-2018

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

UK Tax, Trusts and Estates Conference 2018

9/21/2018 - 9/21/2018

STEP

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

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell), Lucy Obrey (Higgs & Sons), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/TTE18

International Tax Academy 2018

9/24/2018 - 9/26/2018

Informa

Venue: Downing College, Regent St, Cambridge, CB2 1DQ, UK

Key speakers: Daniel Erasmus (Tax Risk Management), Robert De La Rue (Jardine Motors Group), Jan Weerth (Deutsche Bank), Anne Fairpo (Temple Tax Chambers), among numerous others

https://finance.knect365.com/international-tax-academy/

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 Equity Tax Practices

9/26/2018 - 9/26/2018

Informa

Venue: Address TBC, London, UK

Key speakers: Mary Kuusisto (Proskauer), Mark Baldwin (Macfarlanes), Jenny Wheater (Linklaters), Emily Clark (Travers Smith), among numerous others

https://finance.knect365.com/private-equity-tax-practices/

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

UK Tax, Trusts and Estates Conference 2018

10/2/2018 - 10/2/2018

STEP

Venue: The Principal York, Station Road, York, YO24 1AA, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell), Lucy Obrey (Higgs & Sons), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/TTE18

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, Ger many

Key speakers: TBC

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

THE AMERICAS

United States

The US Tax Court on May 24, 2018, ruled against a taxpayer's eligibility to deduct travel expenses that had been claimed to be connected with conducting a real estate business. The Internal Revenue Service (IRS) successfully argued that the group of taxpayers looking at prospective real estate investments were not carrying on a trade.

A listing of recent key international tax cases.

The case concerned the taxpayer's right to deduct the cost of a round-trip of about 180 miles each weekend during the first half of 2013 and 2014 to pick up persons who were said to be interested in jointly investing in purchasing houses for resale for a profit after developing such. They did not acquire any properties in 2013 and 2014, citing disagreements between the parties.

The Court agreed with the IRS that the taxpayers had failed to demonstrate they were carrying on a trade.

It found that the real estate activity "did not rise to the level of carrying on a trade or business during 2013 or 2014." It noted that under Section 162(a) of the Internal Revenue Code, "[t]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business". However, *Commissioner v. Groetzinger*, 480 U.S. 23, 35 (1987) provided that "not every income-producing and profit-making endeavor constitutes a trade or business."

Citing *Higgins v. Commissioner*, 312 U.S. 212, 217 (1941), the Court pointed out that: "[T]o be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and … the taxpayer's primary purpose for engaging in the activity must be for income or profit."

The Court said: "At best, [the taxpayer's] activity in 2013 and 2014 was in the exploratory or formative stages of forming a business of flipping houses. Carrying on a trade or business requires more than initial research into a potential business opportunity; it requires that the business have actually commenced."

The Court therefore pointed out that, for the purposes of deductions under Section 162(a), activities relating only to "exploratory or formative stages" do not rise to the level of a trade or business.

As well as ruling that the taxpayer should not be entitled to Schedule C deductions for car and truck expenses for 2013 and 2014, the Court agreed that the taxpayer should be liable for accuracy-related penalties under Section 6662(a) for 2013 and 2014.

https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11655

US Tax Court: *Homayoun Samadi et al. v. IRS (TC Summary Opinion 2018-27)*

WESTERN EUROPE

Finland

Finland's Supreme Administrative Court has ruled that depositary and custodian services offered to a mutual fund should be subject to VAT.

The Court said that although mutual fund activities are typically VAT-free under Article 135(1)(g) of the EU VAT Directive, the services offered by the taxpayer in the proceedings did not constitute an essential part of the management of the mutual fund's investment services offering.

This ruling was delivered on March 27, 2018 (in Finnish) and reported on by the Tax Authority, Vero Skatt, on June 1, 2018.

http://www.kho.fi/fi/index/paatoksia/vuosikirjapaatokset/vuosikirjapaatos/1521806578895.html

Supreme Administrative Court of Finland: *Ruling KHO 2018: 44*

Germany

The European Court of Justice (ECJ) on May 31, 2018, released a ruling on German legal provisions which enabled the tax authority to adjust the taxable income of a parent entity that provided loan guarantees to its wholly owned subsidiaries based in another EU state, even though such adjustment would have not been triggered for two domestic entities, ruling the provision does not contravene the EU principle of freedom of establishment but, for the provision to be proportionate, the taxpayer must be afforded the opportunity to argue whether the transaction was in fact negotiated at arm's length.

The ECJ's ruling focused on the legality of Paragraph 1 of Germany's Law on the Reduction of Tax Advantages and Exemptions (AStG). The case concerned the provision of two guarantees on loans provided by Germany-based Hornbach-Baumarkt AG to two of its Dutch, wholly owned subsidiaries. Under the arrangement, Hornbach-Baumarkt provided a guarantee to the bank that it would irrevocably and unconditionally cover the two subsidiaries' liabilities.

The German tax agency had challenged the arrangement, arguing that unconnected parties would not have provided the guarantee without sufficient compensation in return – *i.e.*, that the arrangement was not undertaken at arm's length and that similarly situated unconnected entities would not have entered into it. It therefore made an adjustment to increase the company's taxable income in Germany.

Hornbach-Baumarkt argued that the law provision contravenes the EU principle of proportionality, with the taxpayer contesting that it had not been given the opportunity to demonstrate that the arrangement was in fact at arm's length and could have occurred between similarly situated unconnected parties. The company also argued that the German tax law provision contravenes the EU principle of freedom of establishment, because it would not equally result in the tax agency adjusting the taxable income of a German entity dealing with a Germany-based subsidiary.

The taxpayer challenged the assessment before the Finance Court, Rhineland-Palatinate, Germany, which referred questions to the ECJ.

According to the ECJ, specifically, Hornbach-Baumarkt argued that Paragraph 1 AStG leads to unequal treatment in cases involving domestic and foreign transactions, since in a case involving purely domestic transactions no corrections of income would be made in order to reflect the presumed amount of the remuneration for guarantees granted to subsidiaries.

Responding to the taxpayer's appeal, the regional court referred questions to the ECJ. It asked for its opinion on the taxpayer's argument that the German law at issue is incompatible with the principle of proportionality and the principle of freedom of establishment.

The ECJ concluded that the provision does not contravene the EU principle of freedom of establishment but the taxpayer should be allowed to first argue that the arrangement negotiated with the connected parties was in fact concluded based on terms that unconnected entities may adopt.

In arriving at its conclusion, the ECJ had considered whether the provisions, intended to challenge erosion of the German tax base by companies shifting income to lower-tax states, pursue legitimate objectives – namely the need to maintain the balanced allocation of the power to tax between the member states and that of preventing tax avoidance such that it can be said to be proportionate.

According to the ECJ's settled case-law, a tax measure that is liable to hinder the freedom of establishment enshrined in Article 43 EC is permissible only if it relates to situations which are not objectively comparable or if it can be justified by overriding reasons in the public interest recognized by EU law. The ECJ noted it is further necessary, in such a case, that it is appropriate for ensuring the attainment of the objective in question and does not go beyond what is necessary to attain that objective.

The ECJ agreed that the measure is compatible with the EU principle of freedom of establishment but said that the taxpayer should be allowed to argue whether the arrangement with its subsidiaries was agreed at arm's length, prior to an adjustment being made by the tax authority.

The ECJ noted:

> "In a situation [such as that in the main proceedings] where the expansion of the business operations of a subsidiary requires additional capital due to the fact that it lacks sufficient equity capital, there may be commercial reasons for a parent company to agree to provide capital on non-arm's-length terms. Furthermore, it should be noted that, in the present case, no argument relating to the risk of tax avoidance has been advanced. The German Government has neither identified a wholly artificial arrangement, within the meaning of the Court's case-law, nor a desire on the part of the applicant in the main proceedings to reduce its taxable profit in Germany.

> Accordingly, there may be a commercial justification by virtue of the fact that Hornbach-Baumarkt AG is a shareholder in the foreign group companies, which would justify the conclusion of the transaction at issue in the main proceedings under terms that deviated from arm's-length terms. Since the continuation and expansion of the business operations of those foreign companies was contingent, due to a lack of sufficient equity capital, upon a provision of capital, the gratuitous granting of comfort letters containing a guarantee statement, even though companies independent from one another would have agreed on remuneration for such guarantees, could be explained by the economic interest of Hornbach-Baumarkt AG itself in the financial success of the foreign group companies, in which it participates through the distribution of profits, as well as by a certain responsibility of the applicant in the main proceedings, as a shareholder, in the financing of those companies."

The ECJ concluded:

> "It must be held that legislation such as that at issue in the main proceedings does not go beyond what is necessary to achieve the objective which it pursues, provided that the authorities responsible for the enforcement of that legislation afford the resident taxpayer the opportunity to prove that the terms were agreed on for commercial reasons which could result from its status as a shareholder in the non-resident company, which is a matter for the referring court to assess."

The ECJ explained:

> "It is for the referring court to determine whether Hornbach-Baumarkt AG was in a position, without being subject to undue administrative constraints, to put forward elements attesting to a po ssible commercial justification for the transactions at issue in the main proceedings, without it being precluded that economic reasons resulting from its position as a shareholder of the non-resident company might be taken into account in that regard."

If not, the measure may contravene the EU principle of proportionality.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=202410&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=861364

European Court of Justice: *Hornbach-Baumarkt AG v. Finanzamt Landau (C-382/16)*

Netherlands

The Dutch Ministry of Finance has reassured taxpayers that it is seeking to resolve at EU level reform of the EU's value-added tax rules concerning cost-sharing groups, following the European Court of Justice's (ECJ's) rulings in *DNB Banka* (Case C-326/15) and *Aviva Towarzystwo* (Case C 605/15).

Article 132(1)(f) of the EU VAT Directive provides an additional exemption for certain activities that are in the public interest. The exemption allows persons who carry on these activities to join together to form a cost-sharing group (CSG).

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

The ECJ rulings precluded insurance and financial services from benefiting from the exemption, ruling that these services cannot be said to be in the public interest.

As explained by UK tax agency HM Revenue & Customs in its own response to the rulings, the exemption can now only benefit the following services as being in the public interest: postal services; education; health and welfare; subscriptions to trade unions, professional, and other qualifying bodies; sport, sports competitions, and physical education; fund raising by charities; and cultural services.

It said, as a result of the ECJ's rulings, the cost-sharing exemption may no longer apply to banks, insurance businesses, financial services businesses, and suppliers of land and property, which previously could qualify. This potentially will result in significant costs for those previously benefiting from the exemption.

The Dutch Government said: "A previously announced curtailment of the so-called umbrella exemption, by which companies and local auth orities can, in a joint venture, exempt services from their members from VAT, is suspended." The former government had announced that from January 1, 2019, the Netherlands would no longer allow the VAT exemption for the precluded services, but the new Government has now said that that change will be put on hold. It added: "The curtailment was announced by the previous government on January 1, 2019, as a direct result of judgments of the European Court. Because this can have financial consequences for users of the umbrella exemption, the Government is going to work together with other European member states to prepare for repair via European regulations."

Speaking to the lower house, Menno Snel, the Secretary of State for Finance, said:

> "It is important that nothing gets in the way of this cooperation. The financial consequences can be large, as has recently become clearer. This can only be solved in a European context and I am going to work hard for this in the coming period. I note that this is also supported by other member states.
>
> Because of the judgments of the European Court, this exemption would only apply to specifically stated services of general interest, such as medical care, hospital care, social work and social security, services by retirement homes, and education.
>
> This would greatly limit the exemption as applied in the Netherlands. For example, the provision of good and safe water management would no longer be regarded as a performance of [an activity in the] general interest, as a result of which activities such as these could become more expensive for water boards. That is why the government is committed to repair this curtailment in a European context."

A statement was released (in Dutch) by the Government on June 7, 2018.

https://www.rijksoverheid.nl/actueel/nieuws/2018/06/07/staatssecretaris-snel-zet-zich-in-voor-btw-koepelvrijstelling

European Court of Justice: *DNB Banka (Case C-326/15) and Aviva Towarzystwo (Case C 605/15)*

Dateline June 21, 2018

Earlier this year, in her annual report to Congress, US national Taxpayer Advocate Nina E. Olson remarked that the **Internal Revenue Service's** telephone operations have become a "dying relic" of taxpayer service. However, the United States is not the only country where attempting to speak to a tax authority adviser by phone has almost become an endurance sport.

In **Canada**, over one quarter of calls to the Canadian Revenue Agency (CRA) went unanswered last tax season, and that's according to the CRA's own statistics. This is an issue in the **United Kingdom** too, to the extent that scammers have spotted a lucrative opportunity to cash in on taxpayer demand for tax authority advice by luring them into using premium-rate telephone numbers.

However, after much criticism about long hold times for callers to their contact centers, the tax authorities of Canada and the UK do seem to be getting a grip on the problem.

In the tax season before last, an astonishing **63 percent of calls to the CRA went unanswered**. So, the most recent tax filing season's performance represents a significant improvement, even if you'll still only get through to a human less than half the time – just under 30 percent of calls to the CRA were answered by an "automated service," the agency revealed.

In the UK, most taxpayers can expect to wait about three-and-a-half minutes on average to be connected with an HM Revenue & Customs adviser, well within the department's five-minute target time. According to **HMRC's most recent service performance figures**, "only" 15 percent of callers wait ten minutes or more. Remember though, ten minutes of tinny muzak on a loop interspersed with a recorded message reminding you how important your call is will probably feel like 100.

Following on from Olson's observations however, I guess a ten-minute hold for anyone trying to speak to an IRS agent would feel like a small mercy. I regularly come across horror stories of **people waiting well over an hour to be connected to the IRS by phone**, and there are few signs that the agency is getting a handle on the problem either, unlike Canada and the UK. Indeed, in another depressing observation for US taxpayers, Olson said in her report that only four-in-ten callers can expect to reach a "live assistor" in the 2018 tax year. As opposed to a deceased one? No wonder it's taking so long to get through. This relic isn't so much dying as ossifying!

It could be argued that there is little need for tax authority call centers anymore because **guidance** is, as a rule, available somewhere online, and therefore, in the grand scheme of things, this isn't an important tax issue. The counter argument is that this is obviously important to the millions of taxpayers who phone tax authority call centers each year. And that so many people have something to discuss with a tax agent is probably an indication of **how tax regimes have expanded to encompass nearly all aspects of life**, and have outgrown tax authorities' ability to administer and enforce them.

In the US, legislation is in Congress which attempts to restore the service aspect of the IRS's function. But given that tax authorities generally are doing more with reduced resources, maybe a **trade-off** will need to be made somewhere along the line in order for the human face (and voice) of tax administration to be restored. As discussed here recently, perhaps **technology** provides the solution, freeing up scarce resources so that more can be spent on more taxpayer-facing operations. Maybe we are on the cusp of witnessing **profound changes to the way in which tax authorities operate**. Replacing the fossilized assistors with live ones might be a good place to start.

Further afield, **profound changes** are afoot generally, both politically and technologically. However, it's good to know that beneath the quaking and shaking, it's business as usual. And there's nothing like a good **transfer pricing development** to distract you from the turbulence and turmoil generated at government level in various countries.

In **Italy** for example, we can forget for a moment the uncertainty caused by the recent election of the unlikeliest of coalitions and instead get our teeth into "Provvedimento 108954/2018," setting out how Italian companies can request a "**downward adjustment**" to their taxable income in Italy following a transfer pricing adjustment in another territory, to avoid double taxation. If that doesn't take your fancy, then there's always the **Ministry of Finance's consultation** on whether to support the **EU's digital tax plans**, and in particular, its proposal for an "interim tax" on otherwise untaxed turnover earned by certain digital economy firms.

There's **much doubt** about whether the new Italian administration will be able to **deliver** on its **radical promises**, including in the area of taxation, or, indeed, whether it will survive long enough to even attempt to legislate for them. But at least we now know **government and tax administration continues to function** at a reassuringly mundane level, and that the foundations look firm even if the new house topples down.

Yes, in a world of much uncertainty, it's nice sometimes to hear something familiar. **Denmark's** tax burden for instance, is still massive, even though reducing it is one of the Government's top priorities, according to the Tax Minister. That Denmark needs an **entire ministry dedicated to taxation** tells us something about the size of the tax system!

Another rule that continues to hold firm is that nobody listens to the **International Monetary Fund**. Unless, as a country, it's lending you much-needed cash, that is. But even then, its fiscal recommendations are usually put in place somewhat begrudgingly.

The IMF can complain about the **high level of taxation on labor** until it's blue in face, but is obviously wasting its breath. Just look at the **European Union's latest Tax Trends** report; labor taxes continue to account for a shade under 50 percent of total tax revenues in the EU, Iceland and Norway.

But maybe it's time countries took the IMF's conclusions a bit more seriously. After all, remember that at some point in the future, **humans** may be a **rare sight** in the workplace, if predictions about automated economies and societies are borne out. Robots and algorithms don't tend to earn taxable wages like humans do. So where's the tax revenue going to come from then? Ha, governments! Not so smart now, are you!

The Jester