Wolters Kluwer

GLOBAL TAX WEEKLY
a closer look

ISSUE 226 | MARCH 9, 2017

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

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

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

Wolters Kluwer

GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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

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

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

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

© 2017 CCH Incorporated and/or its affiliates. All rights reserved.

Wolters Kluwer

GLOBAL TAX WEEKLY
a closer look

ISSUE 226 | MARCH 9, 2017

CONTENTS

FEATURED ARTICLES

Financings Into The United States – The Fundamentals
Stephen F. Jackson, Ernst & Young LLP, New York — 5

EU Member States Reach Consensus On Anti-Hybrid Mismatch Measures
Roderik Bouwman, Partner, Global Co-Chair, Amsterdam, and Pie Geelen, Tax Advisor, Head of European Desk, New York, DLA Piper — 9

Tax Developments In The Sharing Economy
Stuart Gray, Senior Editor, Global Tax Weekly — 12

Paying US Taxes As An Expat: The New Indentured Servitude?
Mike DeBlis, DeBlis Law — 22

Topical News Briefing: When 28 Into One Won't Go
The Global Tax Weekly Editorial Team — 25

Interesting Tax Times
Pete Miller, The Miller Partnership — 27

Retaliation Claims By Corporate Whistleblowers – What Is Too Far?
Laura L. Gavioli, PC, McDermott Will & Emery — 29

Topical News Briefing: Testing The Laffer Curve
The Global Tax Weekly Editorial Team — 31

NEWS ROUND-UP

Tax Reform — 33

EU Proposes Willing States Should Harmonize Tax Regimes

Switzerland Gets To Work On New Tax Proposals

Germany Mulls Tax Restrictions On Executive Pay

New Zealand Launches Consultation On New BEPS Measures

US Tax Reform — 36

Republicans Line Up Bill To Replace Obamacare

Vehicle Supply Industry Against US Border Tax

International Trade 39

US Trade Policy Agenda Criticizes WTO, Existing FTAs

EU, New Zealand Conclude Preparatory FTA Talks

South Korean Firms Urged To Anticipate US Trade Spat

Industry Update: Financial Services 42

Bermuda Budget Features New Financial Services Tax, Defers GST

Hong Kong Seeking To Improve Insurance Tax Incentives

Egypt Planning To Introduce Tax On Securities Trading

Country Focus: Canada 44

Canada: US Trade Affected By NAFTA Uncertainty

Canada Counts Revenue Lost On E-Commerce Imports

Canada Extends Mineral Exploration Tax Credit

Compliance Corner 47

EU Consults On How To Tackle VAT Fraud

MEPs Call For Wider Access To Beneficial Ownership Data

UK Labour Would Make Wealthy Taxpayers' Returns Public

Ghana's 2017 Budget Looks For Improved Tax Compliance

ATO To Target Grey Economy Businesses In Canberra, Perth

TAX TREATY ROUND-UP 51

CONFERENCE CALENDAR 53

IN THE COURTS 60

THE JESTER'S COLUMN 67
The unacceptable face of tax journalism

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

© 2017 CCH Incorporated and its affiliates. All rights reserved.

Financings Into The United States – The Fundamentals

by Stephen F. Jackson,
Ernst & Young LLP, New York

Contact: steve.jackson@ey.com

The views expressed in this article are those of the author and do not necessarily reflect those of Ernst & Young LLP or any other member firm of the global EY organization.

Foreign direct investment into the United States can be financed through a mixture of debt and equity. In general, interest on debt incurred by a US corporation is deductible under Internal Revenue Code Section 163(a).[1]

But will this remain the case? The winds of change are blowing in Washington, DC. President Trump is filling in his cabinet, early on naming Steven Mnuchin to be the next Treasury Secretary. This individual lost no time in announcing that tax reform would be the incoming Administration's number-one priority, and pledged it would be the country's biggest tax overhaul since the Tax Reform Act of 1986. Mnuchin was quoted as saying he supported reducing the US corporate tax rate to 15 percent.

The starting point for the reform effort in Congress is likely to be the House Republican Blueprint for Tax Reform (Blueprint), which was released in June 2016. The Blueprint proposed:

(1) A 20 percent corporate tax rate;
(2) A move toward a cash-flow consumption tax base through immediate expensing of capital expenditures, a limitation on business interest deductions, and a border tax adjustment mechanism;
(3) A territorial international tax system; and
(4) Elimination of most business tax credits aside from the R&D tax credit.

The Blueprint proposes a move toward a cash-flow approach for business taxation and a consumption-based tax, not unlike the American Business Competitiveness Act (HR 4377) introduced in

January 2016 by House Ways and Means Committee member Devin Nunes (R – CA). Like the Nunes bill, the Blueprint calls for the tax base to be adjusted (i) by 100 percent expensing of all capital expenditures for tangible and intangible assets (including buildings but not land), and (ii) for most non-financial businesses by denying a deduction for net interest expense. As such, the expensing of interest is clearly under attack.

Treasury's issuance in October 2016 of final regulations under Section 385 (T.D. 9790) can be viewed as a separate wing of this attack. These final regulations: (i) establish extensive documentation requirements that must be satisfied for a debt instrument to constitute indebtedness for US federal tax purposes; [2] and (ii) can recharacterize a debt instrument issued after April 4, 2016 as stock if the instrument is (a) issued in one of a number of specified transactions (herein referred to as tainted transactions), or (b) funds a tainted transaction.[3]

These new rules add yet another layer to the debt-*versus*-equity debate in the related-party context, a debate that has long been very contentious. This is because there remains no bright-line test in tax law or in Section 385 to distinguish debt from equity.

The IRS often litigates to disallow interest expense deductions and recharacterize those payments as non-deductible distributions on stock (*i.e.*, most likely dividends). The ability to obtain loans from third-party lenders clearly indicates debt; however, if the borrower could not have borrowed the same amount on terms comparable to the related creditor arrangement, this could indicate equity.[4] Put another way, the nature and degree of risk assumed by the creditor must be assessed against arm's length standards: how commercially reasonable was the issuance of the related party obligation?

With Treasury and the IRS activity increasing and the winds of change blowing, interest expense remains generally deductible *today*. So, here are some key considerations for intercompany financings into the United States:

1. Thin capitalization of the US corporation is addressed by Section 385 and its regulations. The amount of debt taken on by the US operations cannot be excessive. Solid financial projections and a thorough debt capacity study done at the time that the debt is issued are key to demonstrating the reasonableness of the amount of the debt. A US borrower normally would borrow US dollars (unless a strong business case proves otherwise).
2. Transfer pricing applies in full.[5] The terms and conditions of the debt should reflect arm's length, market requirements. These include the rate of interest, maturity date, schedule for repaying principal, *etc.* The holy grail would be for the US company to be able to

demonstrate that it could have borrowed a like amount from unrelated persons on similar terms and conditions (*e.g.*, documented offers to lend received from third parties).

3. Related-party interest expense of a US person, among other limitations, is only deductible on an as-paid (*i.e.*, cash) basis [6] and is generally subject to possible deferral by the earnings stripping rules,[7] which seek to combat base erosion by limiting the annual deduction for most related party interest expense to approximately 50 percent of cash-basis earnings before interest, taxes, depreciation and amortization (EBITDA).
4. Non-US recipients of US-source interest income are taxed by the United States.[8] Generally, a 30 percent flat tax is owed on interest payments to non-US persons, most often collected *via* withholding, unless reduced by domestic tax law or treaty obligations. Nearly all tax reductions require the lender to provide a valid IRS Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*, to the US payer *before* any interest is paid.
5. Generally, to be eligible for reduced US tax under an income tax treaty, the lender must be resident in its home country and subject to tax there on its worldwide income. Limitation on benefits (LOB) provisions [9] in many treaties require additional qualifications in order to secure benefits. For example, the LOB rules typically require the resident to either be a publicly traded corporation in its home country or be conducting a substantial and active trade or business there.
6. The United States has specific anti-conduit rules [10] – US tax provisions that seek to prevent back-to-back loan arrangements that inappropriately reduce US tax. For example, it could be inappropriate to secure a reduction in US tax that would not occur if the original or first lender had lent the funds directly to the US borrower, rather than lending them to an intermediary that on-lends to the US borrower.
7. If the US operations borrow from an affiliated group finance company (Finco), such Finco generally should be engaged outside the United States in the business of lending money for profit and should not be conducting any US-based trade or business activities. This Finco should carry out other significant business and activities beyond just loaning money to the US companies (*e.g.*, group treasury functions).[11] Further, and in line with anti-conduit litigation, the Finco should invest its earnings in its own name and on its own behalf and should be under no requirement or present intention to make distributions or loan funds to its direct or indirect shareholder.

As previously stated, foreign direct investment into the US can be financed through a mixture of debt and equity. Interest expense remains generally deductible *today*. So, foreign investors should

take appropriate steps to secure those deductions while they remain available. You never know what the winds of change might bring.

Endnotes

1 Except as otherwise expressly provided herein, all references to "Section" are to sections of the Internal Revenue Code of 1986, as amended (the Code), and all references to "Treas. Reg. §" or "Reg. §" are to Treasury regulations issued pursuant to the Code. Furthermore, all references to "IRS" or "Service" are to the Internal Revenue Service. All general references to "tax," such as references to "tax purposes" or "tax consequences," should be read as references to "United States Federal income tax purposes" or "United States Federal income tax consequences."

2 The Documentation Rule is found in Reg. § 1.385-2.

3 The Recharacterization Rule is found in Reg. § 1.385-3 and Reg. § 1.385-3T.

4 *See*, *e.g.*, *Litton Business Systems, Inc. v. Commissioner*, 61 T.C. 367 (1973).

5 *See* Section 482 and its regulations.

6 *See* Section 267. This matches the timing of the deduction to when US withholding tax is owed thereon.

7 *See* Section 163(j).

8 *See* Section 881(a), and related Sections 1441 and 1442.

9 *See*, *e.g*., the 2016 United States Model Income Tax Convention at Article 22.

10 *See*, *e.g*., Section 7701(l) and related Treas. Reg. § 1.881-3. Independent of these rules, there is also a body of anti-conduit case law.

11 This is the direction that the Base Erosion and Profit Shifting (BEPS) Project of the OECD is pointed toward.

EU Member States Reach Consensus On Anti-Hybrid Mismatch Measures

by Roderik Bouwman, Partner, Global Co-Chair, Amsterdam, and Pie Geelen, Tax Advisor, Head of European Desk, New York, DLA Piper

Contact: roderik.bouwman@dlapiper.com,
Tel. +31 020 5419 894; pie.geelen@dlapiper.com, Tel. +1 212 335 4905

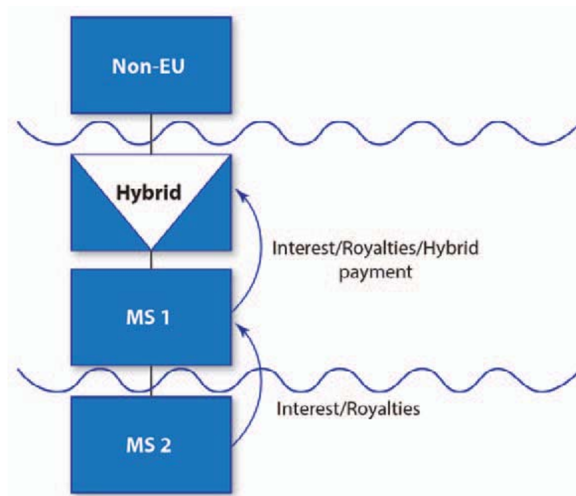
Introduction

On February 21, 2017, the Council of the European Union ("**ECOFIN**") reached political consensus on a directive (known as "**ATAD 2**") amending the EU Anti-Tax Avoidance Directive as adopted on July 17, 2016 (EU 2016/1164, known as "**ATAD**" or "**ATAD 1**"). ATAD 1 provided for rules to neutralize hybrid mismatch arrangements, but only between two EU Member States. The present and final ATAD 2 endorsed by ECOFIN tackles hybrid mismatch structures that involve non-EU countries and a wider variety of mismatches.

Application To Non-EU Countries

ATAD 2 tackles mismatches that happen between an EU Member State and a non-EU country. For example, in a typical hybrid mismatch structure involving a non-EU country, as illustrated in Figure 1, ATAD 2 would require the Member State, MS1, to deny a deduction for the payment made to the hybrid entity, even though the participants of the entity are not in one of the Member States.

Figure 1.



The new rules also cover so-called imported hybrid mismatches. In particular, Article 9(3) authorizes a Member State to "deny a deduction for any payment by a taxpayer to the extent that such payment directly or indirectly funds deductible expenditure giving rise to a hybrid mismatch …" In a typical hybrid mismatch structure as illustrated in Figure 1, ATAD 2 would authorize MS2 to deny a deduction for the interest paid to MS1 if it funds a hybrid mismatch payment. However, MS2 is unable to apply this rule if MS1 already denies deduction for the payment made to the hybrid.

Other Mismatches Covered

ATAD 2 covers other mismatches such as:

- Permanent establishment (PE) mismatches – Member States are required to deny deduction (and include as income) payments to/from a head office to its PE, or among PEs, that have a deduction, non-inclusion outcome;
- Dual resident mismatches – Member States are required to disallow a deduction for taxpayers that are resident for tax purposes in two or more jurisdictions in certain circumstances;
- Reverse hybrid mismatches – Member States shall deem a reverse hybrid entity as a resident and shall tax its income to the extent that the income is not already effectively taxed elsewhere (in the Member State or any other jurisdiction);
- Hybrid transfers – Member States shall limit the relief from tax where financial instruments have been transferred in such a way to produce such relief for multiple parties.

Exceptions

Member States may exclude from their implementation the defensive measures (*i.e.*, deeming income as a payment where a deduction has been given for the same payment in another state) in relation to PE mismatches and hybrid entity mismatches.

For banks and financial institutions, the hybrid mismatch rules do not apply to some intragroup hybrid instruments that are used for regulatory purposes because of their loss absorption capacity (*e.g.*, contingent convertibles or CoCos), but this exception will expire on December 31, 2022.

Implementation Dates

The new rules must be implemented by EU Member States from January 1, 2020.

Implementation of the reverse hybrid rules can be delayed further by two years, until January 1, 2022.

Comments

ATAD 2 is expected to have a substantial impact on many existing structures used by non-EU businesses to invest into Europe. In addition to the hybrid entity structures illustrated above, other hybrid financial instrument structures and hybrid PE structures are also targeted by ATAD 2. These structures would have to be reviewed in light of ATAD 2 and how it is implemented by EU Member States. For example, it could be relevant to assess, when Member States implement ATAD 2 in their domestic law to deal with third-country mismatches, how each of them implement the apportionment rules that are envisaged in the phrase "to the extent that." It should be interesting also to see how far Member States are prepared to trace the connecting payments when implementing the notion of "directly or indirectly."

Banks and financial institutions relying on intragroup hybrid financial instruments that have loss absorption capacity have until December 31, 2022, to find a different tax deductible alternative.

It needs to be noted further that ATAD 2 outlines a minimum standard and latest implementation dates only. Member States are free to implement rules in line with or more rigid than ATAD 2 before the implementation dates.

Tax Developments In The Sharing Economy

by Stuart Gray, Senior Editor, Global Tax Weekly

The explosive growth in the sharing economy is expected to continue in 2017 and beyond. However, it is an industry that remains fraught with tax and regulatory risk. This article examines some of the major tax issues surrounding the sharing economy and looks at some recent jurisdictional developments.

Introduction

The sharing economy can be briefly defined as a marketplace in which assets or services are shared between private individuals, either free or for a fee. Usually "sharers" find each other via an online platform, enabling them to rent and hire all manner of things, such as a driveway, a car, or even a house. Airbnb, an accommodation platform, and Uber, a transport hailing service, are two high-profile online platforms in the sharing economy.

Until now, the sharing economy has been mainly focused on the transport and hospitality sectors. However, it is soon expected to permeate other areas. A recent study conducted by PwC for the European Commission predicts that in the United Kingdom alone, the sharing economy will grow from its current value of GBP7bn (USD8.6bn) to GBP140bn by 2025.[1] This represents a huge adjustment from the forecasts made by PwC in its study on the sharing economy only a few years ago in 2014, which suggested platform revenues generated in the UK would rise from GBP500m in 2013 to GBP9bn in 2025. Across Europe as a whole, the firm now envisages that sharing economy transactions in five key sectors could increase by over 60 percent this year, equivalent to around EUR27bn (USD28.5bn).

The five leading sectors in the UK economy at present are all being touched by the sharing economy in one way or another. According to PwC, these include collaborative finance, P2P accommodation, transportation, on-demand household services, and on-demand professional

services. However, industries where cost pressures are mounting, such as health care and retail, are predicted to have the most to gain from the sharing economy in the years ahead, and some new models in these sectors may move into public consciousness this year.

Uncertainties And Risks

Despite these impressive numbers, there are huge uncertainties with regards to taxation in the sector, from income tax to value-added tax (VAT) and a range of other levies, and in particular tourism-related taxes in the case of accommodation sharing.

A key decision by the London Employment Tribunal in October 2016,[2] in which two Uber drivers were found to be employees of the firm and not self-employed, also demonstrated the sharing economy's potential incompatibility with employment law in many jurisdictions, opening up further tax risks, particularly in the area of social security contributions.

As Rob Vaughan, economist at PwC, observed: [3]

> "Trust will continue to be the key sharing economy issue in 2017. To tackle this, we expect platforms to implement proactive new forms of self-regulation this year. The interaction between the sharing economy and the tax system is also set to move into the spotlight, as the implications of legal cases become clearer.
>
> Policy makers will need to show a bold appetite to try new policy approaches and foster a spirit of collaboration between all stakeholders to find the right balance between protection and flexibility."

It could be argued that sharing platforms have not helped their cause by largely ignoring these risks themselves. As a 2016 survey of small businesses focusing on participants in the US sharing economy found, 69 percent of respondents had not received any tax guidance from the shared economy platform that they used.[4] In addition, approximately one-third of survey respondents did not know whether they were required to pay quarterly estimated tax payments, and almost half were unaware of any available deductions, expenses, or tax credits they could claim to offset their tax liability.

The survey, which was conducted by the National Association for the Self-Employed in partnership with American University's Kogod Tax Policy Center, "underscores the importance of

educating shared-economy entrepreneurs about the fact that they, too, are operating a self-employed, small business."

However, developments like the London Employment Tribunal ruling, and an increasingly aggressive stance by many tax authorities in this area, are compelling companies to address these risks.

Airbnb, for example, released guidance in January 2017 on how VAT rules globally impact its users. [5] This explains that VAT rates are calculated according to the local rate of the customer's country of residence, and that the company charges VAT on its service fees for customers from Albania, the EU, Iceland, Norway, South Africa, and Switzerland. Meanwhile, Japan's consumption tax (JCT) and New Zealand's goods and services tax (GST) apply to hosts and guests.

For guests, its guidance states:

> "VAT, JCT or GST is charged at the time of payment and is based on the total guest service fee for a reservation. If you change your reservation, VAT, JCT or GST adjusts to reflect any change in the service fee. Airbnb charges JCT from the guests who reside in Japan (and then Airbnb reports and pays the JCT). In this regard, Airbnb (Airbnb Ireland) is registered as a Registered Foreign Business under the JCT Act …"

For hosts, its guidance explains:

> "VAT or GST is deducted from your payout and is based on the total host service fee for a reservation. If you change your reservation, VAT or GST adjusts to reflect any change in the service fee. As to the hosts who reside in Japan, each host is obligated to report and pay the JCT because the hosting services that Airbnb provides to the hosts are subject to the 'reverse charge' system under the JCT Act (Airbnb does not charge or report/pay such JCT)."

Airbnb recommends that hosts in Japan consult guidance from the tax authority, adding that for other countries, "Hosts are advised to consult their nearest local tax offices or their tax advisors as to their specific tax consequences."

Airbnb is also rolling out systems to automatically collect and remit French tourist levies in those cities that permit collection by the company. The home-sharing platform revealed in February 2017 that it collected EUR7.3m in tourist taxes in the 19 most popular destinations in France for

Airbnb guests in 2016, and was in the process of extending this initiative to a further 31 towns and cities, a project it hoped to complete by the spring of 2017.

In fact, Chief Executive Brian Chesky stated in an interview with the *Financial Times* in November 2016 that the company had already agreed to collect and remit local tourism and hotel occupancy taxes in 200 locations around the world, and was looking to add another 500 such agreements.[6] Chesky explained that the agreements are necessary to reduce the risk that the company, or those using its online market place to rent out their homes to tourists, could break local tax laws.

"When you have a tax agreement, you have an explicit agreement, therefore there is not an existential risk," he said.

However, the relative paucity of guidance from tax authorities on tax issues relating to the sharing economy certainly hasn't helped matters. This was an issue picked up by US National Taxpayer Advocate Nina E. Olson in congressional testimony last year, when she accused the Internal Revenue Service (IRS) of failing to help American entrepreneurs to navigate tax rules and regulations in this area. [7]

The hearing's advisory information revealed that 4.2 percent of adults, or 10.3m people, earned income on what it termed the "platform economy" during the three-year period from October 2012 to September 2015 – a 47-fold increase over the three-year period. Yet, despite that growth, it was pointed out that "surprisingly little has been done to understand the tax compliance challenges this new frontier presents, or how it impacts Treasury and IRS's ability to fairly and efficiently administer the US tax code."

"Most of these new entrepreneurs do not have any experience with the relevant tax record-keeping and business filing obligations," the brief stated.

It suggested that these workers represent a rapidly growing class of small business owners whose needs have largely been ignored by Treasury and the IRS.

"A significant number face potential audit and penalty exposure for lack of compliance with tax rules they don't understand," it was noted.

Tax authorities are, however, beginning to fill the vacuum.

The United States

In response to Olson's criticisms, the IRS in August 2016 launched a new web page explaining the tax obligations of those participating in the sharing economy. Developed alongside the National Taxpayer Advocate, the Sharing Economy Resource Center provides key points people involved in the sharing economy should keep in mind, including that income received is generally taxable. It emphasized that this is true if the sharing economy activity is only part time or a sideline business, and even if the recipient is paid in cash. On the other hand, depending upon the circumstances, some or all business expenses may be deductible.

The agency noted that special rules generally apply to the rental of a home, apartment, or other dwelling unit that is used by the taxpayer as a residence during the taxable year. Usually, rental income must be reported in full, any expenses need to be divided between personal and business purposes, and special deduction limits apply. But if the dwelling unit is rented out for fewer than 15 days during the year, none of the rental income is reportable and none of the rental expenses are deductible.

It also confirmed that, to cover their tax obligation, people involved in the sharing economy often need to make estimated tax payments during each year on April 15, June 15, September 15, and January 15. Alternatively, people involved in the sharing economy who are employees elsewhere could avoid needing to make estimated tax payments by having more tax withheld from their paychecks.

Australia

The Australian Tax Office (ATO) has also made several pronouncements in this area, largely to remind taxpayers that any income they make from the sharing economy should be declared in their tax returns. Indeed, the ATO has been particularly blunt in informing sharing economy participants of their tax obligations: "The sharing economy has changed the way we do a lot of things, but it hasn't changed the ATO's definition of income," Assistant Commissioner Graham Whyte remarked in a reminder issued by the ATO in July 2016. [8]

"If you earn money from doing odd jobs or providing a service like task sharing, transporting passengers through things like ride-sourcing, or renting out a room or house, you need to declare it because it counts as assessable income," Whyte continued, before going on to clarify:

> "Your obligations are pretty simple if you earn a fee from task sharing for odd jobs or providing a service, and it counts as assessable income – you just need to include the income in your individual tax return.

> On the other hand, any money earned through accommodation sharing, in other words, where you rent out all or part of your house or a car space, should be included in your individual tax return as rental income.
>
> It is important to remember you are entitled to the same deductions as other rental property owners. However, when working out your deductions, you need to take into account what portion of the house is rented out and for how much of the year.
>
> The key to knowing what you can claim as a deduction is keeping good records of all income and expenses incurred while providing a service."

Somewhat unhelpfully, the ATO says that if goods sold or services performed are a spare-time activity or pastime pursued for pleasure or recreation then the person may be engaged in a hobby, and not subject to tax or reporting obligations. However, the key phrase here is "may be engaged," and the line between recreation and profession is not defined exactly. As the ATO itself acknowledges: "There is no single rule that determines if you're in business."

The ATO has also, in guidance issued in May 2015, reminded those providing "ride-sourcing" (also known as ride-sharing or ride-hailing) services on a regular basis that they are providing "taxi travel" under the GST law, meaning they must register for GST, regardless of their turnover. Drivers must also charge GST on the full fare, lodge business activity statements, and report the income in their tax returns.

Indeed, the ATO has developed a fairly comprehensive ride-sourcing compliance program, releasing guidance in December 2016 on a data-matching program, developed to address registration, lodgment, and reporting non-compliance risks. The ATO said that it will request details of all payments made to ride-sourcing providers from accounts held by a ride-sourcing facilitator's financial institution for the 2016/17 and 2017/18 financial years. It will match this data against its own records, to identify ride-sourcing drivers who may not be meeting their registration, reporting, lodgment, and/or payment obligations.

The ATO added that it will initially use the data to identify and inform ride-sourcing providers of their taxation obligations as part of an information and education campaign. It may also initiate compliance action based on the data it acquires. The program, the ATO said, aims at promoting voluntary compliance and increasing confidence in the integrity of the tax system, and at assisting

drivers to comply with their obligations. The ATO also intends to use the data obtained to improve its understanding of the behaviors and compliance profiles of individuals and businesses that provide ride-sourcing services.

United Kingdom

Some countries are taking a slightly less heavy-handed approach to the sharing economy, the UK being one example. While HM Revenue & Customs (HMRC) has reminded taxpayers that, generally, they must declare extra income they earn from sharing, in 2016 the Government announced annual tax allowances of GBP1,000 for "micro-entrepreneurs," including for people renting out their homes on websites like Airbnb, and for those selling relatively small amounts of goods via the internet. These are set to apply from April 2017.

"The rapid growth of the digital and sharing economy means it is becoming easier for more and more people to become 'micro-entrepreneurs'," the Government observed in the 2016 Budget Policy Paper. "However, for those making only small amounts of income from trading or property, the current tax rules can seem daunting or complex."

"Individuals with property income or trading income below the level of allowance will no longer need to declare or pay tax on that income," the Policy Paper continued. "Those with relevant incomes above GBP1,000 can benefit by simply deducting the allowance instead of calculating their exact expenses." [9]

It is understood that an individual can choose to calculate their taxable profits by either deducting all their actual business expenses or deducting the fixed allowance of GBP1,000, regardless of their level of actual business expenditure. A separate GBP1,000 allowance will work in the same way for an individual's property business income.

There remains some uncertainty about how the rules will work in practice, however. The Association of Taxation Technicians (ATT) for one has warned that taxpayers may unwittingly fall foul of UK tax rules after their introduction.

It noted that "the Budget announcement in March 2016 had linked the new allowance to the 'sharing economy,' creating uncertainty as to which types of business would qualify. [The draft legislation makes] it clear that the new allowances will apply to all types of property and trading income of an individual but not to partnership income." [10]

The ATT notes that under the draft legislation, individuals with income of less than GBP1,000 will not have to notify HMRC that they are making use of the allowance. The ATT fears that this could result in individuals unintentionally failing to notify HMRC if their annual income subsequently exceeds the allowance. The ATT has recommended that there could possibly be a simple notification process in order for an individual to qualify for the allowance.

"We think that it would be sensible to consider making entitlement to the allowance conditional on notification to HMRC that an individual wishes to use it," explained Michael Steed, Co-chair of ATT's Technical Steering Group. "In that way, the individual would be far less likely to receive an enquiry from HMRC about their income from an apparently undeclared source of income and HMRC could safely disregard information about low levels of income received by someone who had notified their use of the allowance."

So, it seems that with its attempts to create clarity for those earning extra money in the sharing economy, the UK might have created yet more confusion. And recent developments also suggest that governments are struggling to assimilate the sharing economy into their tax and legal frameworks, with a degree of hesitancy on the part of many as to how to proceed.

China

Most recently, on March 1, we witnessed the publication of a draft report by the Chinese National Development and Reform Commission, which disclosed that China is formulating tax policies and regulations for the country's fast-growing sharing economy sector. It was said that 600m people were involved in China's sharing economy in 2016, with transactions worth RMB3.45 trillion (USD501.4bn), and it is projected that the sector's annual growth rate will remain at around 40 percent, reaching more than 10 percent of the country's economy by 2020. This, said the report, called for research into the appropriate tax policies (which could include income and value-added taxes) to be accelerated.

Norway

For its part, Norway's tax administration has announced its intention to improve and simplify the taxation of the sharing economy, and has stated that it intends to make clearer the distinction between activities that are considered business activities and those that should be free of tax. One option, it said, could be to introduce fixed thresholds, so that the rules align with those applicable to VAT registration. The administration has also recommended that companies involved in the

sharing economy should be required to report information on their income directly to the tax authorities, and is considering the introduction of a safe harbor measure in some areas. The current tax exemptions for property rentals in Norway are also being examined in the context of the sharing economy.

Interestingly, the Norwegian tax authority must be one of the first to publicly acknowledge that sharing economy tax issues are as much international as they are domestic, in much the same way as the multilateral approach that is being taken to address taxation of the digital economy in general through the OECD's base erosion and profit shifting project. Norwegian tax officials are reportedly already working closely with their counterparts in other countries, and Norway does not envisage the development of its own reporting requirements for the sharing economy. The tax authority suggested that instead, it would be most effective to pursue international solutions, as the companies concerned are often multinationals.

Uruguay

Uruguay, on the other hand, seems more certain in its belief that the playing field should be leveled between ride-sourcing providers and traditional taxi services. Under proposals outlined in February 2017 by Deputy Economy Minister Pablo Ferreri, drivers will be required to register as a small business and obtain a license and comply with VAT obligations. The services Uber provides to drivers will also be subject to VAT.

In Summary

The sharing economy is predicted to continue to grow rapidly in the years ahead as the industry encompasses more service sectors, despite ongoing tax, regulatory, and legal risks. Tax authorities are slowly beginning to catch up with this. However, in many jurisdictions, tax uncertainty is likely to remain an issue.

Endnotes

1 http://pwc.blogs.com/megatrend_matters/2017/02/disruption-in-unexpected-sectors-and-corporates-adapting-their-business-models-find-out-whats-next-f.html

2 https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf

3 http://pwc.blogs.com/press_room/2017/02/uks-key-sharing-economy-sectors-could-see-transactions-increase-by-8bn-in-2017.html

[4] http://www.nase.org/about-us/Nase_News/2016/04/29/nase-releases-new-survey-data-on-sharing-economy

[5] https://www.airbnb.co.uk/help/article/436/what-is-vat-and-how-does-it-apply-to-me

[6] https://www.ft.com/content/c87a1a0a-aecf-11e6-a37c-f4a01f1b0fa1 (Subscription only).

[7] http://smallbusiness.house.gov/news/documentsingle.aspx?DocumentID=399173

[8] https://www.ato.gov.au/Media-centre/Articles/Declare-what-you-share-this-tax-time/

[9] https://www.gov.uk/government/publications/budget-2016-documents/budget-2016, at 4.6 and 7.12.

[10] https://www.att.org.uk/technical/newsdesk/press-release-tax-professionals-concerned-about-mechanism-new-allowance-small

Paying US Taxes As An Expat: The New Indentured Servitude?

by Mike DeBlis, DeBlis Law

> "The ship *Unity*, William Glover, Master, Will sail in a Week. Has very good Accommodations for Passengers. Healthy young MEN and WOMEN, as indentured Servants will meet with good Encouragement, and be well treated on board this Vessel. Apply as above."

Thousands of advertisements like this one appeared in English newspapers prior to the American Revolution, enticing disgruntled and/or restless Britons to work for a few years (usually five) as slaves in exchange for free passage across the Atlantic. Admittedly, this call-to-action isn't exactly the Siren's Song, and that's one reason the system declined after Bacon's Rebellion in 1676. But in earlier times, up to 90 percent [1] of American colonists in some areas made the trans-Atlantic voyage as indentured servants. A few also made the journey as alternatives to prison sentences in England (*i.e.*, you can spend the next few years in the Tower of London or in Virginia), a choice which speaks volumes about the conditions in many parts of early America.

Today, the flow has reversed, and millions of people leave the United States to live and work in foreign countries. Surveys show that most of these individuals make the move because of marital or employment reasons. These people remain subject to US taxes, however, because the IRS is one of the few taxing authorities in the world that taxes nonresident citizens; a few states do the same thing.

Federal Programs

Regular wages and self-employment income, but not asset-based income like rents or royalties, are subject to a USD101,300 exclusion for tax year 2016; certain taxpayers may also deduct 16 percent of their housing expenses, up to USD16,129. To qualify for the Foreign Earned Income Exclusion (FEIE),[2] taxpayers must meet one of two tests:

- **Bona Fide Resident:** The taxpayer must retain US citizenship and reside in a foreign country for all the previous tax year. The IRS says the residence must be "uninterrupted," but a few weeks away from home, especially if scattered over more than one or two periods, should not be a deal-breaker, especially if the taxpayer kept the same foreign address. Simply living in a foreign country for a year does not render BFR status.
- **Physical Presence:** US taxpayers who physically reside in another country for at least 330 days during a 12-month period are eligible for the FEIE regardless of the domicile/residence question. In some cases, the IRS will waive the minimum time if you had to leave early "because of war, civil unrest, or similar adverse conditions in that country." Taxpayers who fall short of the 330-day threshold can file extensions, so when they file their returns, they are FEIE eligible.

Since the applicable law changed in 2006, the FEIE is now a credit as opposed to an exclusion. For that reason, taxpayers probably cannot claim the FEIE and the Foreign Tax Credit (FTC)[3] on the same return. Essentially, the IRS does not double tax income earned abroad.

So, if taxpayers paid income tax to a foreign country, they are entitled to offsets on their 1040s. That's one of the main reasons the expat return deadline is on June 15 as opposed to April 15 (or April 18 this year). There are some very complicated compliance issues. For example, the amount of the foreign tax is not necessarily the same amount as the FTC, largely because there are apportionment issues in terms of interest income and capital gains taxes, the taxpayer may be entitled to a refund, and contributions to most foreign charitable organizations (unless they are in Israel, Canada, or Mexico) are not tax-deductible in the US.

Private Plans

Essentially to ease the pain of a foreign relocation, many US companies offer their own programs to reduce or eliminate the extra tax burden, or at least cut down on the paperwork. These can include:

- **Tax Equalization:** The expat employee keeps paying withholding to the employer; the hypothetical tax, or "hypo tax," helps ensure that the expat pays the same amount of tax, even if it is to two different governments. If the withholding calculation is off, the company normally pays the difference.
- **Tax Protection:** Rather than go through the hypo tax hassle, the employer simply agrees to pay the difference between last year's taxes and this year's taxes, if any. The expat does all the paperwork and basically bears all the risk.

Tax treaties and foreign tax systems also come into play here, and these distinctions must be accounted for in the tax relief plan.

ENDNOTES

[1] http://www.encyclopedia.com/history/united-states-and-canada/us-history/indentured-servants

[2] https://www.irs.gov/individuals/international-taxpayers/foreign-earned-income-exclusion-what-is-foreign-earned-income

[3] http://www.investopedia.com/terms/f/foreign-tax-credit.asp

Topical News Briefing: When 28 Into One Won't Go

by the Global Tax Weekly Editorial Team

After decades of ever closer union, the only tax in the EU that can be described as harmonized across all member states is value-added tax - and then only in the loosest sense of that word, given the myriad of national derogations from the EU VAT directive.

Indeed, full harmonization of the bloc's tax laws was never really on the radar of the EU or its major decision-making institutions given the sheer scale of that task, and the likelihood that some member states would be much less willing to cede tax sovereignty than others, making an agreement on such a move nigh on impossible. Indeed, the European Commission stated in its tax policy strategy communication dated May 23, 2001, that there is no need for "across the board" tax harmonization in the EU, and that member states should remain free to choose their own taxation systems.

Therefore, beyond the requirement that member states must ensure their tax laws and regulations do not breach EU laws and treaties, there is little in the way of coordination between individual tax regimes. But is this state of affairs about to change?

If the Commission's recent White Paper on the future of Europe, reported in this week's issue of *Global Tax Weekly*, is anything to go by, then we are certainly about to witness a push for more coordination of policy within the EU, including in the area of taxation.

In fact, this process probably began in the aftermath of the financial crisis, which in turn caused various fiscal crises across the EU. This prompted a drive towards more coordination of fiscal policy at national level, and for the EU to have a greater say in budgetary decisions taken in member states in the hope that these crises would not be repeated. A belief that the banking and finance industry should make a contribution to the EU and its member states in return for the public money poured into the sector at the height of the crisis also spawned the proposed EU financial transactions tax (FTT).

The desire for a united front against aggressive tax avoidance and evasion has also seen member states agree to new EU anti-avoidance directives and exchange tax information on an automatic

basis with one another. And this had led to calls for greater harmonization of corporate taxation in the EU in particular.

At the end of 2014, finance ministers from Germany, France, and Italy underlined the need to harmonize corporate tax rules in the EU to improve standards for taxing large multinationals. "The lack of tax harmonization in the EU is one of the main causes allowing aggressive tax planning, base erosion, and profit shifting to develop within the internal market," they wrote in a letter to EU Commissioner for Taxation Pierre Moscovici.

Crucially, this desire to tackle BEPS at EU level has given the proposed common consolidated corporate tax base a new lease of life after it seemed to have been shelved indefinitely through a lack of support not so long ago.

However, just because the Commission, Germany, France, Italy, and other key voices in the EU wish for greater harmonization of the EU laws and policies doesn't necessarily mean it will happen. By definition, there will need to be unanimity for harmonization to take place, and several member states don't seem ready yet to cede their national interests to the collective.

And if a demonstration were needed on how difficult it is for a consensus to emerge among the EU's 28 member states on tax matters, one only needs to look at the aforementioned VAT directive, or the state of the FTT negotiations, which appear to be hanging by a thread. In fact, the Commission effectively acknowledges in its White Paper that the EU is divided on this fundamental issue, with its call for a coalition of willing member states to begin to advance the harmonization agenda.

Tax harmonization progress therefore may hang on how long its takes the coalition of the willing to convince the unwilling, and it is impossible to put a timeframe on that.

Interesting Tax Times

by Pete Miller, The Miller Partnership

Contact: pete.miller@themillerpartnership.com, Tel. +44 116 208 1020

Developments In 2016

There is no doubt that 2016 was an eventful 12 months for the UK's corporate tax sector, with 2017 bringing its own set of challenges for businesses and individual taxpayers.

In the year that brought us Brexit – not to mention new incumbents at Number 10 and Number 11 – we also witnessed the implementation of a number of far-reaching tax changes in the Finance Act 2016.

Although some of these rule changes could be accurately described as onerous, and in some instances a little too "one size fits all," there have been some welcome developments.

One notable positive development for the tax sector – and, indeed, for common sense – has been HMRC's decision to roll back some of the worst excesses of the Finance Act 2015.

You may recall that HMRC made a number of amendments to Entrepreneurs' Relief in the 2015 Act, which, although intended to combat avoidance, were so poorly aimed that many commercial structures were unfairly affected.

Fortunately, tax professionals, myself included, sat down with HMRC to thrash out our concerns, resulting in amendments so that the rules were properly and accurately targeted – replacing the original blunderbuss approach with a sniper's rifle – and also backdating the changes to the time when they were originally introduced.

This clearly demonstrates what can be achieved when the tax industry and HMRC come together in a spirit of cooperation.

Looking Forward To 2017

Looking forward to the year ahead, one key change emerging from the Finance Act 2017 concerns the way in which "enablers," such as tax advisers and accountants, are treated from a taxation perspective. Until now, tax avoidance penalties have only ever been targeted at taxpayers themselves, and not the professionals who advise people on their tax affairs, so this is quite a significant step. Once again, we are pleased to see that HMRC's original and draconian proposals have been better targeted.

Under the new, revised proposals, enablers who assist their clients in gaining tax advantages that HMRC believes were never intended by Parliament could be fined up to 100 per cent of their fees. The new rules only apply to tax-saving arrangements that would be subject to the general anti-abuse rule. This is in contrast to HMRC's original suggestion that these penalties might apply to tax advice on normal commercial transactions, such as the transactions in securities rules – an area in which we specialize.

In a related development, taxpayers will find it harder to avoid penalties if they have failed to take proper care when submitting their tax returns. Until now, businesses have only had to prove to HMRC that they sought general professional tax advice, but that is about to change. Under the new rules, business owners must be able to demonstrate that they took "appropriate" advice which is pertinent to their own business's needs and circumstances. So relying on generic advice, taken, for example, from a scheme promoter, will no longer be adequate to prove that the taxpayer was not careless if the scheme fails and that they have therefore submitted an incorrect tax return.

Other measures which come into force courtesy of the Finance Act 2017 include the way business losses are treated for tax. These welcome changes mean that companies will be able to use losses more flexibly, with carried forward losses being available to set against all future sources of income and also being available for group relief. At the moment, carried forward losses can usually only be set against the same kind of income in future years and cannot be used for group relief.

Pete Miller authored two technical tax books in 2016 – Taxation of Partnerships *published by CCH and* Taxation of Company Reorganisations *published by Bloomsbury, and received national recognition from the Chartered Institute of Taxation (CIOT), the UK's leading professional tax body, receiving the CIOT Award of Certificate of Merit in October of that year.*

ISSUE 226 | MARCH 9, 2017

Retaliation Claims By Corporate Whistleblowers – What Is Too Far?

by Laura L. Gavioli, PC,
McDermott Will & Emery

Contact: lgavioli@mwe.com,
Tel. +1 214 295 8079

Recently, a French court announced an indictment against UBS related to its alleged treatment of Nicholas Forissier, a former audit manager who provided information to French authorities a decade ago in a tax evasion investigation of UBS. According to at least one press account,[1] the indictment alleges that Forissier was "forced to work under difficult conditions, including internal criticism and eventual dismissal for gross misconduct in 2009" in retaliation for his cooperation with French authorities. Forissier's case is apparently one of several whistleblower retaliation claims percolating in the French courts against UBS regarding non-disclosure of offshore accounts for tax purposes.

US law provides significant protections of potential whistleblowers for alleged tax violations. Revisions to IRC section 7623, effective from December 20, 2006, make whistleblower awards mandatory in some cases. The revised law has resulted in several large, public awards (the USD104m award given to Bradley Birkenfeld, for example, also related to UBS disclosures).

Protection for IRS whistleblower claimants is found under a number of statutes and rules. IRC section 6103(i)(6) provides stringent confidentiality rules (including personal liability for government violators) regarding the government's disclosure of information tending to reveal the existence of a whistleblower or confidential informant. Also, the grand jury secrecy rule, Fed. R. Crim. P. 6(e), may provide an additional protection in an ongoing grand jury investigation. Further, OSHA, the False Claims Act and the Fair Labor Standards Act may provide protections against termination of whistleblowers and against adverse employment decisions related to a current employee's status as a whistleblower, in an appropriate case.

Practice point: It is also worth noting that these protections are not absolute. In fact, because an IRS whistleblower claimant may be in a privileged relationship with the target of an investigation, the IRS has more recently been called upon to clarify that the agency cannot and should not gather or use privileged information to develop a case, or else undermine the entire case as a violation of that privilege, *i.e.*, the "fruit of the poisonous tree." See our prior coverage on this issue at http://www.taxcontroversy360.com/2016/09/privileged-materials-provided-without-taxpayers-consent-should-not-waive-privilege/

Endnotes

1 *See* http://www.bloombergquint.com/business/2017/02/15/ubs-french-unit-said-to-be-charged-with-harassment-amid-tax-case

Topical News Briefing: Testing The Laffer Curve

by the Global Tax Weekly Editorial Team

Just as they are with companies, countries are competing with each other to lure the world's best and brightest individuals to their shores.

The reason for this is that highly skilled people, executives, and entrepreneurial types tend to make a valuable contribution to a country's economy, by providing skills that aren't readily available, or by investing in businesses and people.

Usually being highly remunerated, they also, of course, tend to pay more tax, and are therefore a useful addition to a country's tax base, as well as its economy.

But governments are often willing to let such individuals pay somewhat less tax in exchange for their contribution. And when a country has a distinct tax advantage in this area, governments are also keen to publicize it at every opportunity.

If we go back to the early years of François Hollande's presidency in France, his British counterpart David Cameron was only too willing to "roll out the red carpet," as he put it, to French business people dismayed at France's apparently skyrocketing tax burden, exemplified by the short-lived 75 percent top rate of income tax.

Now the tables have been turned, and France's presidential candidates are keen to cash in on uncertainty caused by the UK's vote to leave the EU by offering perks to London's high-flying financial sector workers.

Yet, at the same time, high pay is an extremely sensitive issue politically, particularly as the pay gap between workers on the front line and those in the boardroom has widened. So, as is also the case with multinational corporate investors, governments and lawmakers, while encouraging business talent and investment on the one hand, must be seen to be fair on the other.

In recent times we have seen something of a resurgence in measures and proposals intended to tax the highly paid more, or discourage firms from paying them high salaries in the first place.

France's 75 percent tax was probably the most famous recent example, and before that the UK pushed its top rate of personal income tax from 40 percent to 50 percent.

Such proposals can sometimes be popular with the wider electorate, which is no doubt why, as reported in this week's issue of *Global Tax Weekly*, Germany's Social Democratic Party has chosen this moment to publish its plans to curb executive pay, given that federal elections are now a matter of months away. And in France, left-wing candidate Jean-Luc Melenchon would go even further than Hollande dared with a 90 percent income tax on those earning in excess of EUR400,000 (USD425,000) per year.

While Melenchon's idea can probably be considered a non-starter, it remains the case that there is upward pressure on top rates of income tax. Last year, South Africa, Canada, and South Korea agreed to increase their highest rates of personal tax, while in the US, former President Obama, supported by Democrats in Congress, tried but failed to increase taxes on the wealthy in the final years of his leadership.

There is, though, an ongoing debate about how effective such measures are. And there are two key arguments for why high taxes at the top of the income scale may lead to a fall in tax revenue. One is that high taxes are a disincentive to work and investment. Another is that companies can reward senior staff with alternative forms of remuneration, such as with shares, or other forms of payment not classified as "income," while individuals themselves can use corporate vehicles to receive remuneration.

Ultimately, it has been difficult to prove a direct link between high rates of income tax and falling revenues, but it seems to have been the case in both France and the UK that revenues from the section of taxpayers targeted by executive tax hikes actually fell after the measures were introduced. This might have had more to do with falling economic growth rather than the tax measures themselves. But the quiet dropping of France's infamous 75 percent tax after just one year perhaps tells another story, as does the decision by the UK to soften its top rate to 45 percent.

Whether or not you feel that higher taxes on the rich serve their purpose is largely a matter of political belief. And in most democratic countries, there will always be a tension between laying out the red carpet to investors and the highly skilled, and setting "fair" rates of tax.

EU Proposes Willing States Should Harmonize Tax Regimes

The European Commission has outlined possible scenarios in which EU member states could cooperate more on tax.

The Commission on March 1 published its White Paper on the future of Europe. The document presents five scenarios for the potential state of the Union by 2025.

One of these scenarios is, "where certain member states want to do more in common, one or several 'coalitions of the willing' [would] emerge to work together in specific policy areas."

Under this scenario, a group of countries would choose to work more closely together on taxation and social matters.

The White Paper explained: "Greater harmonization of tax rules and rates reduces compliance costs and limits tax evasion. Agreed social standards improve certainty for businesses and contribute to improved working conditions. Industrial cooperation is strengthened in a number of cutting edge technologies, products, and services, and rules on their usage are developed collectively."

A separate scenario, entitled "Doing Much More Together," entails "much greater cooperation on fiscal, social, and taxation matters, as well as European supervision of financial services."

Switzerland Gets To Work On New Tax Proposals

The Swiss Federal Department of Finance has said it is forging ahead with work on a new corporate tax proposal, named "tax proposal 17" (TP17).

A steering committee held its first meeting on March 2. It is led by Federal Councilor Ueli Maurer and comprises members from the government and cantons.

The group agreed the timetable for TP17. In March, hearings will be arranged with the political parties, cities and communes, national churches, and associations. These hearings will determine the next steps to be taken.

The new proposal must then be submitted to the Federal Council in June.

According to the Finance Department: "The swift implementation desired by all sides in order to maintain Switzerland's competitiveness leaves a relatively small amount of leeway, but it also offers the opportunity to involve cities and communes in the work from the outset."

It has been less than a month since the Government lost a referendum on the Corporate Tax Reform III package, which would have abolished a range of special tax arrangements for status companies in an effort to meet evolving international tax standards on harmful tax competition.

Specifically, the package had proposed the abolition of certain reduced taxation arrangements for holding, domiciliary, and mixed companies. It also proposed giving the cantons the option of introducing a special patent box regime for intellectual property income, and of applying a higher deduction for research and development expenditure.

Germany Mulls Tax Restrictions On Executive Pay

Germany's center-left Social Democrat Party (SPD) has drafted a bill to restrict companies' ability to deduct wages paid to board members in an attempt to curb excessive executive pay.

Under a package of proposals presented by SPD parliamentary leader Thomas Oppermann last week, companies would no longer be permitted to deduct a board member's remuneration over the level of EUR500,000 (USD530,000) per year as an expense.

Legislative efforts to reduce the pay gap between employees and senior managers has cross-party support in Germany, and is a key issue for voters as they prepare to cast their votes in this year's general election, due to take place in September.

However, it is unclear how much support the SPD's initiative has within the center-right Christian Democrat Union (CDU), the senior partner in the grand left-right coalition. It is suggested that the CDU may eventually support parts of the draft bill, but insist on changes to others.

New Zealand Launches Consultation On New BEPS Measures

New Zealand's Inland Revenue Department (IRD) has published three consultation documents on measures to address international tax avoidance through base erosion and profit shifting (BEPS).

The three documents cover BEPS – Transfer pricing and permanent establishment avoidance; BEPS – Strengthening our interest limitation rules; and New Zealand's implementation of the multilateral convention to implement tax treaty-related measures to prevent BEPS.

"Our broad-based low rate tax system continues to perform very well for New Zealand overall," said Finance Minister Steven Joyce. "However it's important that it keeps evolving

to ensure that all companies operating in New Zealand pay their fair share of tax."

"The proposals in these documents are in line with the recommendations from the [OECD's] base erosion and profit-shifting (BEPS) project, which has developed best-practice measures for the global response to BEPS."

The consultation documents contain proposals for tackling concerns about multinationals booking profits from their New Zealand sales offshore, even though these sales are driven by New Zealand-based staff; preventing multinationals from using interest payments to shift profits offshore; and implementing New Zealand's entrance into an international convention for aligning double tax agreements with OECD recommendations.

Republicans Line Up Bill To Replace Obamacare

Republicans in the House of Representatives have released legislation that would repeal the tax aspects of the Affordable Care Act, otherwise known as Obamacare.

The Bill, released on March 6 by House Ways and Means Committee Chairman Kevin Brady (R – Texas), is part of the proposed American Care Act and would dismantle many of the existing tax provisions used to subsidize health care for the low-paid under Obamacare, as well as the controversial individual and employer health care mandates.

Instead, the American Care Act would help low- and middle-income taxpayers who do not receive insurance through work or a government program with a monthly tax credit of between USD2,000 and USD14,000. This would replace the existing premium tax credit.

The proposed legislation would also broaden the scope of tax-advantaged Health Savings Accounts by almost doubling contribution limits and giving taxpayers more choice on how they spend money accumulated in their accounts.

According to the Tax Foundation, 14 of the 21 separate federal revenue raising measures in the Affordable Care Act would be repealed under the House Republican health care reforms, among them the 3.8 percent net investment tax on households earning more than USD200,000 annually, the 2.3 percent excise tax on sales of medical devices, the tax on health insurance providers, and the 10 percent tax on indoor tanning services.

Six Obamacare taxes would remain in place, including the 40 percent "Cadillac tax" on high-cost health care plans, the codification of the economic substance doctrine, and other minor revenue raisers, the Foundation said.

Republicans are seeking to advance their Obamacare replacement measures by including them in the budget reconciliation process, which allows legislation to be passed by a simple majority in the Senate.

However, Democrats say this is a process also lacking in transparency, with Congress given insufficient opportunities to scrutinize the proposals.

"Congressional Republicans are leading a desperate forced march to pass a dangerous bill written in secret which few members of Congress have seen, let alone read," remarked Senate Finance Committee Ranking Member Ron Wyden (D – Oregon).

"This unprecedented process is being used to jam the bill through Congress – without

any numbers on cost or consequences from the Congressional Budget Office – before the American people can learn what they're about to lose," he added.

But Brady argued the Republican legislation "transfers power from Washington back to the American people."

"We dismantle Obamacare's damaging taxes and mandates so states can deliver quality, affordable options based on what their patient populations need, and workers and families can have the freedom and flexibility to make their own health care choices," he said.

Vehicle Supply Industry Against US Border Tax

The Motor and Equipment Manufacturers Association (MEMA) has urged Congress to reject proposals for a border adjustment tax (BAT), warning that the measure threatens to increase costs and disrupt automotive industry supply chains.

In a recent statement, MEMA and its four specialized divisions expressed support for the broad thrust of the corporate tax reforms proposed by President Trump and House Republicans, which would slash the corporate tax rate and simplify the tax code.

However, the association said it is opposed to plans for a BAT, which forms a key element of the tax reform plan advocated by House Republicans, warning that the measure "could disrupt the integrated supply chain for many companies and cause a ripple effect throughout the US economy."

The controversial BAT proposal would adopt a corporate tax provision operating in a similar fashion to other countries' value-added tax systems, whereby tax would be imposed on imports and tax rebates would be provided on exported goods.

But according to MEMA, the BAT would hurt the industry and US consumers in several ways, by increasing costs for vehicle manufacturers, decreasing available capital for new product development, increasing retail prices, lowering vehicle sales, and threatening jobs.

"Many suppliers located in the US import and export vehicle parts and components within the North American market. Depending on supply chain logistics, parts are often exported to be combined with other parts, then imported back to the US for final vehicle assembly," the association said.

"The stability and integration of the North American supply chain has been particularly beneficial to suppliers, contributing to growth in jobs and investments in the United States. MEMA supports reasonable tax reform that will allow this trend to continue," it added.

A number of businesses are lobbying hard against the BAT proposal, particularly in the retail industry, which expects to be hit hard by the measure due to similarly long and complex international supply chains.

The Americans for Affordable Products (AAP) coalition was formed on February 1, 2017, and now counts 150 companies and trade associations among its members, such as Nike, The Gap, Best Buy, Abercrombie & Fitch, Levi Strauss, and the American International Automobile Dealers Association.

On the AAP's website, it is stated that, "under the BAT, a large US company may virtually pay no corporate taxes simply because it exports products, while another American company delivering affordable essentials to their consumers will be faced with crushing taxes simply because many of these essentials must be imported."

The American Made Coalition, on the other hand, supports the principle of border adjustability, arguing in a recent letter to Congress that the BAT "would effectively end the 'Made in America' tax that creates an unfair advantage for foreign-based companies at the expense of US jobs and economic growth."

US Trade Policy Agenda Criticizes WTO, Existing FTAs

The Office of the US Trade Representative (USTR) has released President Donald Trump's 2017 Trade Policy Agenda, which strongly questions the dispute settlement procedures of the World Trade Organization (WTO) and the terms of existing US free trade agreements.

With regard to WTO decisions, the Agenda points out that "even if a WTO dispute settlement panel – or the WTO Appellate Body – rules against the United States, such a ruling does not automatically lead to a change in US law or practice. Consistent with these important protections and applicable US law, the Trump Administration will aggressively defend American sovereignty over matters of trade policy."

It promises the robust use of US trade remedies to impose anti-dumping and anti-subsidy countervailing duties, invoking Section 201 of the Trade Act of 1974, whereby the President can use a "safeguard" provision to "provide relief if increasing imports are a substantial cause of serious injury to a domestic industry," and Section 301 that "authorizes the USTR to take appropriate action in response to foreign actions that violate an international trade agreement or … burden or restrict US commerce."

The Trump Administration will "act aggressively as needed to discourage" WTO rulings that undermine the ability of the US to respond effectively to the "unfair trade practices" perpetrated by the "large portions of the global economy [that] do not reflect market forces," such as China.

In comments that also appear to be particularly targeted at China, the Agenda states "it is time for a more aggressive approach" to countries that sign trade treaties based on free market principles but do not adhere to those principles in their own markets. It warns that "the Trump Administration will use all possible leverage to encourage other countries to give US producers fair, reciprocal access to their markets."

One of the Administration's priorities will be the updating of current US trade agreements "as necessary to reflect changing times and market conditions." Apart from focusing on the North American Free Trade Agreement, which the President has often attacked in the past, the Agenda also puts the free trade agreement with South Korea under a particular spotlight.

It is noted that "the largest trade deal implemented during the Obama Administration has coincided with a dramatic increase in our trade deficit with that country. From 2011 to 2016,

the total value of US goods exported to South Korea fell by USD1.2bn. Meanwhile, US imports of goods from South Korea grew by more than USD13bn. As a result, our trade deficit in goods with South Korea more than doubled."

"The Trump Administration believes in free and fair trade, and we are looking forward to developing deeper trading relationships with international partners who share that belief," the Agenda concludes. "But, going forward, we will tend to focus on bilateral negotiations, we will hold our trading partners to higher standards of fairness, and we will not hesitate to use all possible legal measures in response to trading partners that continue to engage in unfair activities."

EU, New Zealand Conclude Preparatory FTA Talks

Representatives from the EU and New Zealand have concluded preparatory talks that could pave the way for full trade negotiations.

EU Trade Commissioner Cecilia Malmström and New Zealand's Trade Minister, Todd McClay, met in Brussels on March 3 to mark the end of the preparatory talks.

The discussions between the EU and New Zealand began in October 2015, based on new policy orientations set out in the EU's trade and investment strategy, "Trade for All." Over the last several months, representatives from both sides have examined a range of bilateral economic issues in an effort to determine what areas could be covered in, and the level of ambition appropriate for, any future negotiations.

As a next step, the European Commission will ask member states for a mandate to negotiate on behalf of the EU. The Commission is also finalizing its assessment of the potential impact of any such trade deal. The assessment will take into account the new opportunities an agreement could create for EU businesses, as well as sensitive agricultural issues that would need to be accommodated.

Annual trade between the EU and New Zealand is worth more than EUR8bn (USD7.5bn). The EU is New Zealand's second-largest trading partner after Australia, and EU companies hold nearly EUR10bn in foreign direct investment in New Zealand.

Since 1999, the EU and New Zealand have had a bilateral agreement for mutual recognition that aims to facilitate trade in industrial products by reducing technical barriers, including assessment procedures.

South Korean Firms Urged To Anticipate US Trade Spat

South Korean exporters have been urged to put in place strategies to deal with potential changes to trading conditions with the US.

A free trade agreement (FTA) between South Korea and the US – KORUS – entered into force on March 15, 2012. Within three years, the deal was to remove cross-border tariffs on nearly 95 percent of trade in consumer and industrial products, with virtually all tariffs eventually eliminated within ten years. The deal has recently drawn ire from US President Donald Trump, who referenced the significant trade deficit that has emerged since 2012. Observers have now begun to speculate whether the deal will survive the President's term.

A seminar hosted by the Korea International Trade Association (KITA) meeting in Seoul this week discussed the recent release of the 2017 US Trade Policy Agenda, which among other issues outlined the Trump Administration's stance on the dispute settlement procedures of the World Trade Organization (WTO) and the terms of the existing US FTAs with other states.

Although the Agenda was strongly focused on the trade relationship between the US and China, the report released by the Office of the US Trade Representative revealed that one of the Administration's priorities will be the updating of current US trade agreements "as necessary to reflect changing times and market conditions."

Apart from focusing on the North American Free Trade Agreement, which the President has often attacked in the past, the Agenda also put the FTA with South Korea under a particular spotlight. It noted that, from 2011 to 2016, with a fall in total value of US goods exported to South Korea of USD1.2bn, and growth of US imports of goods from South Korea of more than USD13bn, the trade deficit in goods with South Korea more than doubled.

According to Yonhap News, the KITA seminar, held on March 7, underlined concerns that the new Administration is expected to take a different stance to previous governments on these issues. It was highlighted that the trade disputes ongoing between China and the US, in particular in the steel industry, may hurt South Korean economic activities.

Bermuda Budget Features New Financial Services Tax, Defers GST

Bermuda's Minister of Finance, Edward Richards, has announced a new financial services tax (FST) will be introduced in April 2017.

The new tax will be payable by banks, local insurance companies, and money services businesses.

Banks will pay FST at a rate of 0.02 percent on their assets, while local insurance companies will pay FST at a rate of 2.5 percent on gross premiums earned, excluding premiums from health insurance. Money services businesses will pay FST at a rate of 5 percent on their aggregated incoming and outgoing transmission volume.

Other measures announced in the Budget include a move away from the current flat rate of payroll tax. Those earning up to BMD96,000 (USD96,000) a year will see their payroll tax liability fall, while higher earners will pay more. Employment tax on employers will also be amended so that the tax burden falls more on larger companies than on small businesses.

The implementation of the 5 percent general services tax (GST) has been delayed until April 1, 2018. The GST, which was announced last year, will be levied on turnover from the provision of most services by service providers to the public. Banking, insurance and money services businesses will be exempt.

Customs duty has been simplified with a reduction in the number of tariff bands. The top rate of duty has been increased by 1.5 percent to 35 percent. Excise duties on alcohol, tobacco, and petrol have also been increased.

Land taxes for the coming year remain unchanged, and the previously announced rollback of non-legislated tax concessions for hotels, restaurants, and retailers will be completed.

Certain fees will also increase, including annual fees for "investment/holding/trading" permit companies, which will rise from USD1,995 to USD25,000.

Richards said the Budget measures were intended to broaden the tax base and ease cost-of-living pressures on lower-income earners.

Hong Kong Seeking To Improve Insurance Tax Incentives

The Financial Services Development Council (FSDC) released a report on March 3 on the policies, including tax measures, Hong Kong could adopt to improve its position as an insurance hub, especially in reinsurance, marine insurance, and captives.

FSDC Chairman Laura M. Cha said: "The recent departure and downsizing of the Hong Kong offices of various international insurance and reinsurance companies highlights the need for Hong Kong to further develop our insurance and reinsurance industry. Further departures are likely in the near future if action is not taken" to combat the challenges from regional competitors, particularly Singapore.

The report recommends that the Government consider extending the 50 percent profits tax break currently given to professional reinsurers to the offshore non-life business assumed by direct insurers. Tax incentives could also be offered to brokers to encourage the placement of insurance and reinsurance businesses in Hong Kong, and to Hong Kong insurers to place their reinsurance businesses with Hong Kong-registered reinsurers.

Tax incentives could also be given to insurers writing marine risks in Hong Kong and to brokers placing marine risks to Hong Kong registered insurers, it said, adding that a tax concession could be provided to Hong Kong registered/flagged ship owners while taking insurance policies from Hong Kong insurers.

Finally, it recommended that the negotiation of double taxation agreements could be sped up with other countries, so that Hong Kong has an equally extensive double tax agreement network as Singapore and London.

Egypt Planning To Introduce Tax On Securities Trading

Egypt looks set to adopt a financial transactions tax, after earlier shelving plans for a steep capital gains tax.

Various media reports, in English and Arabic, said there would soon be an official announcement on the plans. The rate is expected to be either 0.175 percent or 0.2 percent. It would be levied in the form of a stamp duty, with that rate applying to both the buyer and the seller for all transactions on the Egyptian bourse.

Egypt introduced a 10 percent capital gains tax on proceeds from listed shares in 2015 but suspended the measure for two years with effect from May 17, 2015, to reinvigorate investment in the country's stock market. This decision was extended until 2020 in November 2016.

Canada: US Trade Affected By NAFTA Uncertainty

Canada's Ambassador to the US has warned that continued uncertainty over the future of the North American Free Trade Agreement (NAFTA) will have a negative impact on investment.

In an interview with Bloomberg, David MacNaughton said: "People are sitting on their wallets and they're not investing as much as they would if there was more certainty."

He explained that investors are concerned over the future of NAFTA, and over the likely impact of "Buy-American" provisions and the border adjustment tax proposed by senior US Republicans.

"The reality is that uncertainty will hurt Canada and the United States, so we need to work together to remove that," he said.

MacNaughton added he believes there to be a "genuine desire" on the part of the new US administration "to find a way to continue NAFTA and to remove some of the irritants with Mexico in particular."

"Whether or not they can get there I don't know," he admitted.

MacNaughton said he anticipates that the US will issue a notice of its intention to renegotiate NAFTA "sooner rather than the later." He does not however expect the US to issue a six-month notice of withdrawal from NAFTA.

Canada Counts Revenue Lost On E-Commerce Imports

The Canadian Government is losing up to CAD1.3bn (USD972m) in revenue a year through the incomplete collection of sales tax and import duty on e-commerce imports, according to a new report by Copenhagen Economics (CE).

According to the report, "the missed collection of sales tax and import duty on e-commerce inbound postal shipments results in a significant loss of public revenue to Canada. Moreover it distorts competition between Canadian retailers and foreign competitors. Finally, it distorts the competition between postal and express operators."

CE was commissioned by UPS to examine the extent to which e-commerce shipments to Canada are correctly processed upon import. It researched whether there is a difference in compliance with customs-related processes (sales tax and import duty) for international shipments inbound to Canada, depending on the type of operator used (*i.e.*, postal or express carrier). In addition, it investigated the impact of any difference on public sector revenue.

CE conducted an experiment involving a fully completed e-commerce transaction for 200 online purchases. These packages were shipped by e-sellers from five key Canadian trading partners (China, France, Japan, the UK, and the US), and contained general consumer goods, all of which are subject to sales tax and import duty under Canadian laws. For each of the shipments, CE observed whether sales tax or import duty were collected in the customs clearance process. It also ran a separate experiment regarding controlled goods and compliance in the customs treatment of such imports.

The study found that there is a "statistically significant difference in customs compliance depending on whether the shipment is carried by a national postal operator or an express carrier." It said sales tax is collected on only 25 percent of postal shipments imported into Canada, whereas express operators collected on 100 percent of shipments. Import duty is collected on only 6 percent of postal shipments imported into Canada, compared to 98 percent of express shipments.

"The lack of application of sales tax makes goods coming from outside Canada cheaper than comparable items purchased by Canadian consumers from Canadian sellers (both online and offline). This gives an advantage to manufacturers and sellers located outside Canada, relative to their Canadian competitors, when a postal operator is used to deliver the goods. The lack of application of import duty fails to implement the applicable legislation, in a way that ends up favoring non-Canadian manufacturers and sellers," the report explained.

Canada Extends Mineral Exploration Tax Credit

The Canadian Government has announced it will extend the 15 percent Mineral Exploration Tax Credit (METC) for investors in flow-through shares for an additional year.

The credit was scheduled to expire on March 31, 2017. The Government has proposed to extend eligibility to flow-through share agreements entered into on or before March 31, 2018.

Under the existing look-back rule, funds raised in one calendar year with the benefit of the credit can be spent on eligible exploration up to the end of the following calendar year. Funds raised with the credit during the first three months of 2018 can therefore support eligible exploration until the end of 2019.

Flow-through shares allow resource companies to renounce or "flow through" tax expenses associated with their Canadian exploration activities to investors, who can deduct the expenses in calculating their own taxable income. The METC provides an additional income tax benefit for individuals who invest in mining

flow-through shares, which is intended to augment the tax benefits associated with the deductions that are flowed through.

The credit is equal to 15 percent of specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors.

The Government estimates that extending the credit will help junior exploration companies raise more equity and result in a net tax reduction of CAD30m (USD22.4m) over the 2017/18 to 2018/19 period.

Jim Carr, Minister of Natural Resources, said: "By extending the [METC], our Government is supporting an industry that is increasingly recognized for its innovation and sustainability on the ground here in Canada. Mining in Canada is an essential economic driver and source of good middle-class jobs, including in remote communities across Canada."

EU Consults On How To Tackle VAT Fraud

The European Commission has launched a consultation on improving administrative co-operation and increasing efforts to tackle cross-border value-added tax (VAT) fraud.

The Commission intends to update rules in these areas. It said its aim is to improve the functioning of the Single Market and to tackle the heavy losses to member states and EU revenues resulting from fraud.

The Commission has measured the VAT gap for 2014 at EUR159.5bn (USD168.2bn), or 14 percent. Member states' estimated VAT gaps ranged from 1.2 percent in Sweden and 3.8 percent in Luxembourg, to 36.8 percent in Lithuania and 37.9 percent in Romania.

Under the present rules for combating cross-border VAT fraud, member states must implement additional reporting requirements and checks for cross-border trade. According to the Commission, this can hamper the proper functioning of the Single Market. In addition, the current VAT system for intra-EU supplies requires crosschecking of information between member states, and businesses can be audited on the basis of information or requests from other member states.

The consultation document states: "Fraudsters are thriving by using cross-border schemes to sell goods on the black market without VAT, potentially putting legitimate companies out of business. Fraudsters, including criminal organizations, also establish dedicated structures in different member states to extort money from national budgets. It has been estimated that a loss of EUR50bn a year is due to cross-border fraud."

The consultation forms part of the Commission's broader plan to modernize the European VAT system. It has put forward four proposals, concerning: administrative cooperation and the fight against VAT fraud; VAT rates; a simpler, fraud-proof definitive VAT system; and an SME VAT package.

The consultation will close on May 31.

MEPs Call For Wider Access To Beneficial Ownership Data

EU citizens would be able to view information in registers of beneficial ownership without having to demonstrate a "legitimate interest," under proposed amendments the Anti Money Laundering Directive.

The amendments were agreed to in a report passed by the European Parliament's Economic

Monetary Affairs and Civil Liberties committees. The report was carried by 89 votes to one, with four abstentions.

At present, those seeking to access beneficial ownership registers must demonstrate a "legitimate interest" in the information. According to Parliament, this restricts access to authorities and professionals such as journalists and lobbyists.

Judith Sargentini, a co-rapporteur on the file, said: "Complex company structures and shelf companies make it easy for people to hide money. Through a public register for companies and trusts, the European Parliament wants to shed light on these structures and thereby combat them."

The committees also voted in favor of imposing upon vital currency platforms the same obligation as banks and other payment institutions to scrutinize their customers. They would be required to verify identity details and monitor financial transactions, to reduce the risk of virtual currencies being used to launder criminal proceeds.

In addition, the amendments would expand the scope of the Directive to cover trusts and "other types of legal arrangements having a structure or functions similar to trusts." Trusts would therefore have to meet the full transparency requirements, including the need to identify beneficial owners.

The committees voted by 92 votes to one, with one abstention, to enter into negotiations with the Council. Parliament as a whole must now give the go-ahead during its March plenary for three-way talks between Parliament, the Commission and the Council to begin.

UK Labour Would Make Wealthy Taxpayers' Returns Public

The opposition Labour Party in the UK has said it would introduce legislation to make public the tax returns of those earning more than GBP1m (USD1.23m), if it won the next general election.

Ahead of the Chancellor of the Exchequer's Budget Announcement on March 8, Shadow Chancellor John McDonnell said Labour's proposal would be based on similar arrangements that have been successful in Nordic countries.

"Transparency and fairness is at the heart of building a decent, open society," he said.

"This will help restore public trust in the tax system – and help clamp down on any avoidance."

The next general election is set for May 2020.

Ghana's 2017 Budget Looks For Improved Tax Compliance

As promised in the recent elections, and despite the country's significantly increased fiscal

deficit in 2016, Ghana's new Government has decided to balance its election promise of beginning a program of tax cuts to boost private sector growth, with an attack on tax non-compliance.

In its 2017 Budget, introduced by Finance Minister Ken Ofori-Atta on March 2, the Government plans to cut Ghana's budget deficit to 6.5 percent of gross domestic product (GDP) in 2017, from 8.7 percent on a cash basis last year (against an original target of 5.3 percent). Tax revenue fell to only 15.2 percent of GDP in 2016 (budgeted 17.5 percent), but is expected to reach 16.9 percent of GDP this year.

"Revenue administration remains a challenge," Ofori-Atta said. "To boost revenue streams, we will strengthen tax administration, reduce tax exemptions, plug revenue loopholes and leakages, and combat tax evasion. We will broaden the tax base whilst reducing and abolishing some taxes and levies."

For example, the Government has commenced stakeholder consultations to revive and roll out the National Identification Scheme in 2017. With all registered persons being provided with a Unique Identification Number and an ID Card, the program will support the Government's "efforts to rope in economically active but undocumented citizens and the informal sector of the economy, thereby broadening the tax base."

In addition, to curb tax evasion and improve revenue collection under the value-added tax (VAT) system, electronic point of sales devices will be deployed nationally by the third quarter of 2017. Employee tax compliance will be improved by ensuring all employers file Annual Employee Returns, and by identifying self-employed professionals to ensure they pay tax for themselves and individuals working for them.

There will be a comprehensive review of import duty exemptions and tax reliefs, including the duties and taxes payable by both domestic and foreign companies, suppliers and contractors, and their employees, with projects and contracts in the country. As a transitional arrangement, all applicants for exemptions and tax reliefs will be required to pay due taxes in full, before then applying for refunds.

On the other hand, within the Government's effort to stimulate private sector growth, a number of taxes that impede such growth and have low revenue-yielding potential will be reviewed, and if necessary abolished or amended in the short to medium term.

The abolitions include the 1 percent Special Import Levy; the 17.5 percent VAT on financial services, on selected imported medicines that are not produced locally, and on domestic airline tickets; the 5 percent VAT on real estate sales; and excise duty on petroleum.

Furthermore, the special petroleum tax rate will be reduced from 17.5 percent to 15 percent; the 17.5 percent VAT rate will be replaced with a flat rate of 3 percent for traders; and tax credits and other incentives will be implemented for businesses that hire young graduates.

ATO To Target Grey Economy Businesses In Canberra, Perth

The Australian Taxation Office (ATO) has said its officers will visit more than 400 businesses in Perth and Canberra over the next month as part of a campaign to help small businesses manage their tax affairs.

The ATO will focus in particular on businesses operating in the grey and hidden economy.

Assistant Commissioner Tom Wheeler explained: "Our officers will be visiting restaurants and cafes, hair and beauty, and other small businesses in Perth and Canberra to make sure their registration details are up to date. These industries are on our radar because they have ready access to cash, and this is a major risk indicator."

"Visiting these businesses in person is about helping them to meet their obligations. Through the visits we can quickly identify who needs extra support and make it easier for them to comply."

Wheeler added that the industries earmarked for these visits "have some of the highest rates of concerns reported to us from across the country."

AZERBAIJAN - DENMARK

Signature

Azerbaijan and Denmark signed a DTA on February 17, 2017.

FINLAND - TURKMENISTAN

Into Force

A DTA between Finland and Turkmenistan entered into force on February 10, 2017.

HONG KONG - AUSTRALIA

Negotiations

Hong Kong's new Financial Secretary, Paul Chan, is pushing for the completion of both a free trade agreement and a double taxation agreement with Australia.

HONG KONG - KOREA, SOUTH

Signature

According to a January 24, 2017 announcement from the Hong Kong Government, the territory has signed a TIEA covering financial account information with South Korea.

HONG KONG - PAKISTAN

Signature

Hong Kong and Pakistan signed a DTA on February 17, 2017.

INDIA - AUSTRIA

Signature

India and Austria have signed a DTA Protocol, the Indian Government announced on February 6, 2017.

INDIA - UNITED ARAB EMIRATES

Negotiations

According to preliminary media reports, India and the UAE intend to revise their DTA to improve its information exchange provisions.

ITALY - MONACO

Into Force

The Italian Finance Ministry announced on February 17, 2017 that Italy's new TIEA with Monaco entered into force on February 4, 2017.

JAPAN - AUSTRIA

Signature

Japan and Austria signed a DTA on January 30, 2017.

JERSEY - MAURITIUS

Signature

Jersey and Mauritius signed a DTA on March 3, 2017.

LUXEMBOURG - BRUNEI

Into Force

According to preliminary media reports, the DTA between Luxembourg and Brunei entered into force on January 26, 2017.

LUXEMBOURG - HUNGARY

Into Force

The DTA between Luxembourg and Hungary entered into force on January 19, 2017.

PORTUGAL - SAINT KITTS AND NEVIS

Ratified

Portugal completed its domestic ratification procedures in respect of the TIEA signed with Saint Kitts and Nevis on February 2, 2017.

SINGAPORE - INDIA

Into Force

Singapore's DTA Protocol with India entered into force on February 27, 2017.

SINGAPORE - URUGUAY

Into Force

The DTA between Singapore and Uruguay will enter into force on March 14, 2017.

SOUTH AFRICA - SAINT KITTS AND NEVIS

Into Force

The TIEA between South Africa and Saint Kitts and Nevis entered into force on February 18, 2017.

UNITED ARAB EMIRATES - BURUNDI

Signature

The UAE and Burundi signed a DTA on February 16, 2017.

VIETNAM - UNITED STATES

Ratified

According to recent media reports, Vietnam will soon ratify its new DTA with the United States.

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

THE AMERICAS

Hot Issues in International Taxation

3/29/2017 - 3/30/2017

Bloomberg BNA

Venue: Bloomberg BNA, 1801 S. Bell Street, Arlington, VA 22202, USA

Key Speakers: TBC

https://www.bna.com/hot-issues_arlington2017/

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

5/4/2017 - 5/5/2017

STEP

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

Key speakers: TBC

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

Transcontinental Trusts: International Forum 2017

5/4/2017 - 5/5/2017

Informa

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

Key speakers: TBC

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

STEP Miami 8th Annual Summit

5/19/2017 - 5/19/2017

STEP

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

Key Speakers: TBC

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

The 8th Annual Private Investment Funds Tax Master Class

5/23/2017 - 5/24/2017

Financial Research Associates

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

Key speakers: TBC

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

16th Annual International Mergers & Acquisitions Conference

6/6/2017 - 6/7/2017

International Bar Association

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

Key Speakers: TBC

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

Global Transfer Pricing Conference: DC

6/7/2017 - 6/8/2017

Bloomberg BNA

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

Key Speakers:TBC

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

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

6/12/2017 - 6/12/2017

Bloomberg BNA

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

Key speakers: TBC

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

10th Annual US–Latin America Tax Planning Strategies

6/14/2017 - 6/16/2017

American Bar Association

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

Key speakers: TBC

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

Basics of International Taxation 2017

7/18/2017 - 7/19/2017

Practising Law Institute

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

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

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

71st Congress of the International Fiscal Association

8/27/2017 - 9/1/2017

IFA

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

Key speakers: TBC

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

ASIA PACIFIC

International Taxation of Expatriates

4/3/2017 - 4/5/2017

IBFD

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

Key Speakers: TBC

http://www.ibfd.org/Training/International-Taxation-Expatriates-2

The 8th Offshore Investment Conference Hong Kong 2017

6/14/2017 - 6/15/2017

Offshore Investment

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

Key speakers: TBC

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

MIDDLE EAST AND AFRICA

3rd IBFD Africa Tax Symposium

5/10/2017 - 5/12/2017

IBFD

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

Key speakers: TBC

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

WESTERN EUROPE

2nd International Conference on Taxpayer Rights

3/13/2017 - 3/14/2017

The Institute for Austrian and International Tax Law

Venue: TBC, Vienna, Austria

Key Speakers: TBC

https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/eventsn/ITRC_RegistrationFlyer_101216.pdf

International Trust & Private Client Guernsey

3/21/2017 - 3/21/2017

Informa

Venue: The Old Government House Hotel, Guernsey

Chair: Paul Hodgson (Butterfield Trust (Guernsey) Limited)

https://finance.knect365.com/international-trust-private-client-guernsey/

International Trust & Private Client Jersey

3/23/2017 - 3/23/2017

Informa

Venue: L'Horizon Beach Hotel and Spa, Jersey

Chair: Julian Washington (RBC Wealth Management)

https://finance.knect365.com/international-trust-private-client-jersey/

Investment Company: Regulation Accounting & Taxation – 9th Annual Forum

3/28/2017 - 3/28/2017

Infoline

Venue: TBC, London, UK

Key speakers: Nick Pearce (Alliance Trust Investments), Ronald Paterson (Eversheds), Anne Stopford (Grant Thornton), Peter Swabey (ICSA: The Governance Institute), among numerous others

https://finance.knect365.com/investment-company-accounting-taxation-regulation/agenda/1

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

3/29/2017 - 3/31/2017

IBFD

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

Key Speakers: Frank de Beijer (Liberty Global Plc Amsterdam HQ), Hugo Feis (ABN AMRO), Bart Weijers (PwC), Rens Bondrager (Allen & Overy LLP), among numerous others

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

International Tax Aspects of Permanent Establishments

4/4/2017 - 4/7/2017

IBFD

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

Key Speakers: TBC

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

17th Annual Tax Planning Strategies – US and Europe

Western Europe

4/5/2017 - 4/7/2017

American Bar Association

Venue: Ritz Carlton Hotel Arts Barcelona, Marina 19-21 08005, Barcelona, Spain

Chairs: Albert Collado (Garrigues), Carol P. Tello (Eversheds Sutherland (US) LLP), Sonia Velasco (Cuatrecasas)

http://shop.americanbar.org/PersonifyImages/ProductFiles/255529330/17Barcelona_brochure.pdf

UK Tax, Trusts & Estates Conference 2017 – Exeter

4/20/2017 - 4/20/2017

STEP

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

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

http://www.step.org/tte2017

The 21st Annual VAT & Financial Services

4/26/2017 - 4/26/2017

informa

Venue: TBC, London, UK

Chair: Peter Mason (Cuckmere Chambers)

https://finance.knect365.com/vat-and-financial-services/agenda/1

The 21st Annual VAT & Property

4/27/2017 - 4/27/2017

informa

Venue: TBC, London, UK

Chair: Paddy Behan (Simmons Gainsford)

https://finance.knect365.com/vat-and-property/agenda/1

UK Tax, Trusts & Estates Conference 2017 – Leeds

5/4/2017 - 5/4/2017

STEP

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

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

http://www.step.org/tte2017

Global Tax Treaty Commentaries Conference

5/5/2017 - 5/5/2017

IBFD

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

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

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

UK Tax, Trusts & Estates Conference 2017 – London

5/12/2017 - 5/12/2017

STEP

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

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

http://www.step.org/tte2017

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

5/17/2017 - 5/17/2017

Private Client Tax

Venue: TBC, London, UK

Chair: John Barnett (Burges Salmon)

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

UK Tax, Trusts & Estates Conference 2017 – Birmingham

5/18/2017 - 5/18/2017

STEP

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

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

http://www.step.org/tte2017

THE AMERICAS

United States

The US Court of Federal Claims has turned down a claim from an Irish citizen that more than USD5m in US tax withheld on gambling winnings should be refunded under the US–Ireland double tax avoidance treaty.

A listing of recent key international tax cases.

The claim was filed by the plaintiff, John P. McManus, after USD5.22m in tax was withheld from winnings of USD17.4m connected to a three-day backgammon game held in the US.

McManus, who claims citizenship in Ireland but lives in Switzerland, argued that he is entitled to a refund under the tax treaty because, at the time the event took place in 2012, he paid the Irish domicile levy and was therefore a resident of Ireland for the purposes of Article 22 of the treaty, and exempt from the tax on gambling proceeds.

Introduced in 2010, the domicile levy applies to Irish-domiciled individuals who own property in Ireland valued at more than EUR5m (USD5.3m), whose worldwide income exceeds EUR1m, and whose liability for Irish income tax in the relevant tax year was less than EUR200,000.

Citing Article 4 of the treaty, McManus argued that he was a "resident" of Ireland in 2012 because he was "liable to tax" in Ireland "by reason of his domicile." He also contended that the domicile levy falls into the definition of a "full" and "comprehensive" tax liability under the OECD's Model Tax Convention.

In her judgment, senior judge Nancy B. Firestone agreed with the US Government's view, based on a letter received by the Irish tax authority, that payment of the domicile levy in itself is not sufficient to show that an individual is "resident" in Ireland for tax purposes.

This letter stated that: "The payment of the domicile levy does not entitle [McManus] to receive treaty benefits in accordance with the provisions in the Ireland–USA Double Taxation Convention. The domicile levy is not a covered tax for the purposes of this Convention."

Judge Firestone wrote:

> "In sum, none of Mr. McManus's arguments regarding his claim for a refund based on Articles 4 and 22 of the Tax Treaty have merit. The court finds that Mr. McManus's payment of the domicile levy alone did not make him a resident of Ireland in 2012 for the purposes of Article 4 of the Tax Treaty and thus his claim for a refund based on Article 22 is denied."

McManus also argued that the US tax on gambling winnings violates the treaty's non-discrimination clauses, which he contended apply to nationals of the US and Ireland regardless of residence status under the agreement.

However, Judge Firestone stated that the plaintiff's claim in this regard is barred under the Federal Circuit's doctrine of "substantial variance," because this argument was not presented to the Internal Revenue Service prior to the court hearing, and was made for the first time at the oral argument on the parties' cross-motions for summary judgment.

This opinion was released on March 3, 2017, having previously been filed under seal.

https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2015cv0946-50-0

US Court of Federal Claims: *John P. McManus v. The United States (No. 15-946T)*

WESTERN EUROPE

European Union (EU)

The General Court of the European Union has upheld anti-dumping duties on imports of Chinese solar panels to the EU, finding that EU institutions followed the correct methodology in applying the taxes.

The duties in question were imposed by the European Council on December 2, 2013, following a lengthy investigation which concluded that Chinese solar panels were being sold in Europe at well below their normal market value – a practice known as dumping.

The investigation also found that the manufacture of these products was being illegally subsidized by the Chinese Government, and anti-dumping duties (ADs), and anti-subsidy import taxes, known as countervailing duties (CVDs), were imposed at an average rate of 47.7 percent to mitigate the impact on the European solar panel industry of these dumped imports.

Twenty-six companies affected by the measures applied to the General Court for an annulment of the ADs and CVDs, arguing that the EU was wrong to apply the duties in cases where crucial components manufactured elsewhere were shipped with final products from China.

In its ruling, the Court explained that:

> "[I]n determining the normal value of the products concerned (solar panels) in the exporting country, the term 'exporting country' did not necessarily have to be defined in the same way for the entirety of the product, irrespective of its origin. Accordingly, the EU institutions were entitled validly to consider that, for cells and modules originating in and consigned from China and for modules originating in China but consigned from third countries, the exporting country corresponded to the country of origin (China), whereas, for modules consigned from China but originating in a third country, the exporting country corresponded not to the country of origin but to the intermediate country (also China)."

The Court also rejected the argument that the rates of duties determined by the Council are excessive compared with what is necessary to remedy the injury caused to the EU industry by the dumped imports.

This judgment was reported upon on February 28, 2017.

http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170018en.pdf

General Court of the European Union: *JingAo Solar and Others v. EU Council (Case T-157/14)*

Greece

The European Commission has referred Greece to the European Court of Justice (ECJ) in a case concerning the reduced rate of excise duty that it applies to the alcoholic spirits Tsipouro and Tsikoudià.

The Commission argued that under EU law, the same excise duty rate should apply to ethyl alcohol used in the production of alcoholic beverages, unless exemptions or derogations apply.

It explained that Greece does not have a derogation for Tsipouro or Tsikoudià, and currently applies a reduced rate of excise duty (50 percent) to both, along with a super-reduced rate (of around 6 percent) to the production of the same spirits by small producers.

Tsipouro and Tsikoudià are traditional alcoholic drinks, produced in the north of Greece and in Crete. Both drinks have protected geographical indications.

According to the Commission, the application of these reduced rates infringes EU rules because it favors spirits produced in Greece. The Commission stated that this runs counter to the principle that prohibits internal taxation which affords indirect protection to domestic products, or the imposition on the products of other member states of any internal taxation in excess of that imposed on similar domestic products. It added that although small distilleries may benefit under certain conditions from a reduced rate of excise duty, this cannot be less than 50 percent of the standard national rate.

In September 2015, the Commission formally asked Greece to amend these rules. As Greece has not complied with this to the Commission's satisfaction, it has now been referred to the ECJ.

http://europa.eu/rapid/press-release_IP-17-242_en.htm?locale=en

European Court of Justice: *European Commission v. Greece*

Netherlands

The Dutch Supreme Court has ruled that the national tax authority cannot use camera evidence to prove whether individuals have exceeded their company car mileage allowances and are therefore liable to pay more tax.

Under Dutch tax rules, company car users driving more than 500km per year for personal use must pay additional payroll tax, and the tax authority had been using footage from police-operated roadside automatic vehicle number plate recognition (ANPR) cameras in an attempt to disprove individuals' claims that they had not exceeded this limit.

The case progressed to the Supreme Court after three individuals complained that assessments made by the tax authority on the basis of such footage were illegitimate and violated their right to a private life under the European Convention of Human Rights.

In its judgment of February 24, the Supreme Court came down on the side of the taxpayers, ruling that the tax authority was not entitled to use such footage to enforce tax rules.

"The issue here is not about one or a few observations in public spaces, but the systematic collection, capture, editing, and storage for years of data on the movement of vehicles at various locations in the Netherlands," a court statement explained.

"The additional tax assessments payroll taxes imposed on taxpayers should not be based on the ANPR data," the statement added.

The Court dismissed one of the cases, and passed the other two back to the lower courts with the proviso that they cannot use evidence collected through ANPR cameras to reach a decision.

The judgment was released on February 24, 2017, in Dutch.

https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Nieuws/Paginas/Belastingdienst-mag-fotos-snelwegcameras-niet-gebruiken.aspx

Dutch Supreme Court: *X v. Financial Secretary (ECLI: NL: HR: 2017: 286, 287, 288)*

Poland

The European Court of Justice (ECJ) has rejected a challenge brought by the Polish Government concerning the inability of member states to levy a reduced rate of value-added tax to electronic publications, which would be in line with the VAT treatment of tangible publications.

The case concerned whether the European Parliament had the opportunity to be sufficiently involved in the legislative procedure for the adoption of point 6 of Annex III of the EU VAT Directive.

Under this provision, member states may apply a reduced rate of VAT to printed publications such as books, newspapers, and periodicals. Digital publications, by contrast, must be subject to the standard rate of VAT, with the exception of digital books supplied on a physical support (*e.g.*, a CD-ROM). This was confirmed in a relatively recent ECJ ruling, which had outlawed reduced rates levied by Luxembourg and France, in *European Commission v. France* (Case C-479/13) and *European Commission v. Luxembourg* (Case C-502/13).

In a ruling on March 7, the ECJ pointed out that the European Parliament should be consulted afresh when the text finally adopted, as a whole, differs in essence from the text on which the

Parliament has already been consulted, except in cases where the amendments substantially correspond to a wish of the Parliament itself.

The ECJ examined whether fresh consultation of the Parliament was necessary in relation to the provision of the directive limiting the application of a reduced rate of VAT to solely the supply of books on a physical support.

The ECJ held in this regard that the final text of the provision concerned is nothing other than a simplification of the drafting of the text which was set out in the proposal for a directive, the substance of which was fully preserved. The Council was thus not required to consult the Parliament afresh, the ECJ ruled, saying that the provision of the directive is not invalid.

This judgment was released on March 7, 2017.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=188625&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=25609

European Court of Justice: *Rzecznik Praw Obywatelskich et al. (Case C-390/15)*

Spain

A tax exemption provided to church-run schools in Spain could breach EU state aid rules if premises are provided on a commercial basis, an Advocate General (AG) to the European Court of Justice (ECJ) has said.

Various tax exemptions are provided to the Catholic Church under an agreement between Spain and the Vatican dating from before Spain's accession to the EU, and the ECJ was asked by a Spanish court to consider the application of this tax exemption to school buildings used by the church to provide both standard and voluntary education services.

The premises in question are used predominantly for compulsory education, which is equivalent to the education provided by the mostly publicly funded state school system in Spain. The buildings are also used to provide education services on a voluntary basis, for which a fee is charged.

The Catholic Church is seeking repayment of municipal tax amounting to EUR23,000 (USD24,400) that it was obliged to pay in respect of construction work on a school building.

In her opinion, published on February 16, AG Juliane Kokott concluded that the tax exemption does not contravene state aid rules if the school buildings are used by the Catholic Church to provide education which is line with its social, cultural, and educational mission.

On the other hand, the tax exemption would constitute state aid if the buildings concerned were used for genuinely commercial objectives. Therefore, because, in this case, the education provided on a voluntary basis is "commercial" in nature, the use of the tax exemption represents state aid, Kokott opined. Only where such voluntary schemes constitute less than 10 percent would they be regarded as an "entirely ancillary" non-economic activity.

The AG ruled that the tax exemption at issue should be notified to the European Commission as a new state aid measure, since the Spanish tax on constructions, installations, and works to which it relates was introduced after Spain's accession to the EU.

Furthermore, while the pre-accession agreement with the Vatican allows a temporary derogation from the state aid laws, Kokott urged Spain to seek a revision of the agreement to remove economic activity from its scope. If this is not possible, Spain should seek to terminate the agreement, she concluded.

This opinion was released on February 16, 2017.

http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170015en.pdf

European Court of Justice: *Congregación de Escuelas Pías Provincia Betania v. Ayuntamiento de Getafe (Case C-74/16)*

Dateline March 9, 2017

The **German Government** deserves much credit for the prudent management of its budget, and of its economic affairs in general, which has resulted in a record post-reunification budget surplus of EUR24bn (USD25.3bn). But I could also mark the country down for its extreme reluctance to share the surplus in the form of tax cuts. And there's plenty of scope for those. According to Paying Taxes, an average-size company in Germany hands over just under 50 percent of its profits in income, labor, and other taxes. What's more, individuals face a top rate of 45 percent, plus the solidarity surcharge and social contributions.

The counter argument is that some of the best public services in the world must be paid for somehow, and that somehow is inevitably through taxation – a bargain accepted in northern Europe much more than it is anywhere else in the world. But there is of course another reason why "Mutti" Merkel is keeping such a tight grip on the purse strings. And that is Germany's role as the Eurozone's **fiscal firefighter**. Yes, we might not hear about the crisis in Greece, and the problems afflicting Italy, Spain, and Portugal so much anymore, but the fire is still smoldering below the surface, and many believe it could erupt again at any moment. There is an election coming up, so no doubt we can expect the usual promises of minor tax relief to be delivered through tweaking tax allowances and thresholds, but not much more than that, I suspect.

To **South Africa** now, and much more than a few tweaks will be required to guide this country away from the rocks. If most estimates turn out to be correct, economic growth slowed to less than a crawl last year (0.1 percent), and such stagnation isn't going to help the Government rein in a budget deficit that looks likely to have exceeded 3.5 percent of gross domestic product last year. Indeed, if South Africa were in the European Union, it would have undergone the EU's dreaded excessive deficit procedure by now, and suffered the indignity of having Commission officials running the rule over its fiscal affairs.

South Africa does of course have a very unique set of problems to deal with, mostly linked to the end of the apartheid system over 20 years ago and the assimilation of millions of economically and politically disenfranchised people. But on recent evidence, the Government looks to be the architect of many of its problems, particularly by letting spending outpace growth in tax revenues. This has resulted in **significant tax rises** in the last three budgets, including the one announced recently by Finance Minister Pravin Gordhan. And the way things are going, more tax hikes are on the cards.

Things are looking more optimistic for the **Philippines** however, which is hopeful that a **tax reform program** will be completed by 2018. But "hope" is the key word here, for I wouldn't hold my breath for a dramatic improvement in this country's tax environment.

In fact, the scale of tax task is daunting. The Philippines finds itself languishing in 115th place in the global Paying Taxes index, with a tax incentive system so complex that it actually deters companies from the Philippines rather than encouraging them to invest there. And don't take just my word for it – the head of the Bureau of Internal Revenue said so herself in a seminar in New York not so long ago.

And last year Finance Department spokesperson Paola Alvarez said that the Philippines and Thailand collect the same amount in **VAT revenues**, even though the VAT rate in the Philippines (population 102m) is 12 percent and Thailand's (population 68m) is 7 percent. This, he said, "demonstrates the gross inefficiency of our system." Problems associated with tax inefficiency, a narrow tax base and complexity seem to plague the tax regimes of emerging economies like the Philippines. Still, at least in this case, the problem has been recognized and acknowledged, which is half the battle won.

Not that **developed economies** have a better track record on tax complexity. They are just as guilty of undermining their tax bases with countless tax incentives, tax reliefs, and other narrowly targeted tax breaks and loopholes, which collectively tend to be known as tax expenditures. And, despite widespread realization that tax expenditures are starting to run out of control, there has been an almost complete failure to do anything about this.

Canada, for example, has just released its annual tax expenditure report, which is supposed to keep track of such things. But I haven't seen much in the way of meaningful base-broadening measures in recent federal budgets. Indeed, they have all been peppered with new and expanded tax breaks of one form or another. The **United States** meanwhile "spends" around USD1 trillion a year on tax expenditures, despite numerous congressional reports and hearings on how this situation must be reversed. And even with the presence of the Office of Tax Simplification, tax reliefs in the **United Kingdom** have actually risen by 100 since the Government came into office less than two years ago to a mind-boggling 1,140.

Perhaps the Office of Tax Complexity would have been a more appropriate name.

The Jester