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a closer look

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

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

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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.

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ISSUE 304 | SEPTEMBER 6, 2018

CONTENTS

FEATURED ARTICLES

Recent Transfer Pricing Developments
Duff & Phelps — 5

Swiss Corporate Tax Reform - Take Two
Stuart Gray, Senior Editor, Global Tax Weekly — 22

Too Much Time In The US Can Jeopardize IRS Amnesty
Ephraim Moss, Esq. & Joshua Ashman, CPA, Expat Tax Professionals — 30

Topical News Briefing: All's Fair In Love And Trade?
The Global Tax Weekly Editorial Team — 33

Russia Amends Transfer Pricing Rules
Evgenia Veter, Ekaterina Nikolaeva, Olga Kurilina, EY Moscow — 35

Topical News Briefing: Irish Eyes Are Wondering
The Global Tax Weekly Editorial Team — 37

The Weighty Burden Of The Full FBAR Penalty
Mike DeBlis, DeBlis Law — 39

NEWS ROUNDUP

Trade — 43

EU Drops Anti-Dumping Measures On Chinese Solar Panels

Canada, US Fail To Agree NAFTA Compromise

Australia, India Finalize Trade Agreement

EU Willing To Cut Tariffs On US Cars

US And Mexico Agree Tariff-Free Trade

VAT, GST, Sales Tax — 47

Venezuelan VAT Rate Rose On September 1

Malaysia Replaced GST With Sales Tax On September 1

Lithuania Proposes To Cut VAT On Basic Foodstuffs

Kenya Introduces 16 Percent VAT On Fuel

Country Focus: Ireland — 49

Afilias Decides On US Headquarters From Ireland Citing Tax

Donohoe: Ireland Must Keep Control Of Public Finances

Ireland Likely To Retain Tax Exemptions For Banks

Irish Tourism Industry Warns Against Hiking VAT

Compliance Matters 52

Australia Launches 'Largest Ever' Tax Education Campaign

Denmark Pledges To Reduce Tax Compliance Burden

Pakistan Not Seizing Accounts Of Non-Compliant Taxpayers

Regional Focus: Europe 54

European Tax Advisers Concerned About EU VAT Reform

France May Delay Automatic Personal Tax Withholding

UK Chamber Calls For More Tax Guidance On 'No Deal' Brexit

Panasonic Announces Move From UK To Netherlands

TAX TREATY ROUND-UP 58

CONFERENCE CALENDAR 59

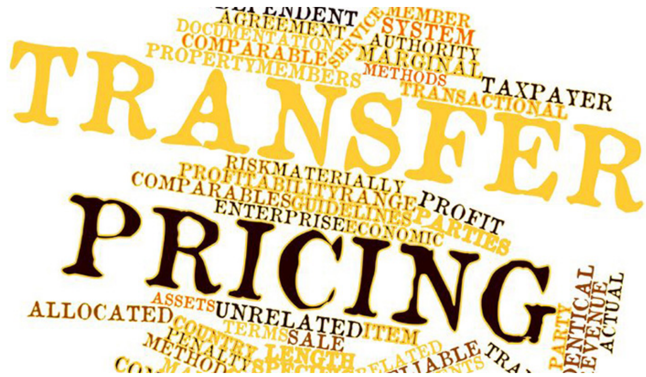
IN THE COURTS 72

THE JESTER'S COLUMN: 78
The unacceptable face of tax journalism

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

Recent Transfer Pricing Developments

by Duff & Phelps



In this article: the OECD released the first public discussion draft on the transfer pricing of financial transactions; a summary of the 2018 National Association for Business Economics transfer pricing conference; the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting entered into force; the US Internal Revenue Service's Large Business & International Division released the Transfer Pricing Examination Process; the Inland Revenue (Amendment) (No. 6) Bill 2017 came into effect in Hong Kong; and Vietnam issued new regulations on technology transfers and challenges for related party royalty payments.

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OECD Publishes Discussion Draft On Financial Transactions

On July 3, 2018, the Organisation of Economic Co-operation and Development ("OECD") released the first public discussion draft on the transfer pricing of financial transactions. This Discussion Draft contains the first official OECD detailed comments and guidance on transfer pricing aspects of financial transactions, and can be found here: http://www.oecd.org/tax/transfer-pricing/BEPS-actions-8-10-transfer-pricing-financial-transactions-discussion-draft-2018.pdf.

The draft addresses specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees and captive insurance.

Comments on the discussion draft are invited by September 7, 2018. They will be made publicly available and are expected to be discussed by the OECD during November of 2018.

The Interaction of Financial Transactions with Section D.1. of Chapter 1 of the OECD Transfer Pricing Guidelines

Capital Structure

Following the introduction, the Discussion Draft first focuses on the accurate delineation of the actual transaction under Chapter I, and states that the former will precede any attempt to price interest on debt, although other approaches (*e.g.* multi-factor analysis) may be used too in addressing issues of capital structure.

The accurate delineation of the actual transaction is also said to consider (a) the factors affecting the performance of the business in the industry sector where the MNE operates (*e.g.* industry life cycle, government regulations, availability of financial resources) and (b) how they respond to these (*e.g.* prioritisation of funding needs, strategic significance of entity within the group, credit rating or debt/equity targets and funding strategy relative to the industry sector).

The Draft mentions examples of economically relevant characteristics that may be useful indicators for accurate delineation of an advance of funds, including the presence or absence of a fixed repayment date, the obligation to pay interest, the right to enforce payment of principal and interest, the existence of financial covenants and security, the source of interest payments, the ability of the recipient of the funds to obtain loans from unrelated lending institutions, the extent to which the advance is used to acquire capital assets, and the failure of the purported debtor to repay on the due date or to seek a postponement.

Economically Relevant Characteristics of the Transaction

The main characteristics of financial products or services are said to be very diverse and thus to affect their pricing. Using intra-group loans as an example, it presents the following characteristics as the primary ones to consider when accurately delineating a financial transaction: the amount of the loan; its maturity, schedule of repayment, nature or purpose of the loan (trade credit, merger/acquisition, mortgage, *etc*.), level of seniority and subordination, geographical location of the borrower, currency, collateral provided, presence and quality of any guarantee and interest rate type (fixed or floating).

Regarding contractual arrangements, it is stipulated that although necessary these may not be sufficient if the real conduct of related parties is not reflected and or these do not provide enough detail. Hence, other documents should be reviewed.

With respect to the fourth comparability factor; economic circumstances, great emphasis is placed on the importance of ensuring that markets in which the independent and associated enterprises operate are as analogous as possible, or otherwise to have the pertinent adjustments made. Although reference is made to factors like currencies, geographic locations, local regulations, business sector of the borrower; and the timing of the transaction, macroeconomic factors appear to be the pivotal ones.

Risk Free Rate of Return

Preceding the topic of treasury functions, the Draft presents informal comments on risk-free rate of return and risk-adjusted rate of return. Commentators then propose the interest rate on certain government issued securities as a reference to risk-free return, while still considering the relevant product characteristics (mentioned above) applicable to all financial instruments (*e.g.* maturity, currency, *etc*.). Still, where the funder assumes some financial risks, commentators suggest the addition of a premium to the risk-free return reflecting these risks.

The Treasury Function

The Draft defines treasury functions as being a "support service to main value-creating operations". In this regard, the general guidance on intra-group services can be applied. However, it is noted that group treasury may sometimes make key decisions with regard to risk management and investments.

The Draft remarks that the three main treasury activities often performed within MNE groups are intra-group loans, cash pooling and hedging activities.

Intra-group Loans

As mentioned, commercial and financial relations, and the economically relevant characteristics of the transaction, from both the lender's and borrower's perspectives should be considered.

A lender needs to decide whether to make a loan, how much to lend, and on what terms. Hence lenders' main concerns are regarding the borrower's creditworthiness, credit risk, wider economic factors (*e.g.* interest rates), and other options realistically available (opportunity cost).

Credit Rating

Credit ratings can serve as a useful measure of creditworthiness and so help to identify potential comparables. Both commercial tools and in-house models can be used in calculating this rating.

However, these tend to have a series of limitations (*e.g.* over-reliance on parameters, their high quantitative nature, lack of clarity on the process and hard to estimate for start-up companies and special vehicles). It is stated that credit rating methodologies applied by independent rating agencies to determine official credit ratings are based on far more rigorous analysis.

Effect of Group Membership

The Discussion Draft recalls the need to consider the potential impact of passive association between entities when assessing a related-party's creditworthiness and invites commentators to bring up new approaches and or consider the appropriateness of existing ones such as, the use of either a credit rating at the group level for each member, or using the former merely as a starting point prior to notch up or notch down adjustments.

Further, it leaves open to discussion whether the relative importance of an entity to the overall group should affect the former's rating.

Covenants, Guarantees, Loan Fees and Charges

Other elements that need to be considered in the arm's length pricing of intra-group loans, as stated in the Discussion draft, include: covenants, guarantees and loan fees and charges. The Discussion Draft does not in fact place too much attention to these, although from the lender's perspective these are important considerations directly linked to their financial protection, and from a borrower's perspective, the availability of any of these can suppose an upgrade of their credit profile.

From a transfer pricing valuation angle, the key considerations here included the importance of evaluating guarantors in the same ways as the original borrower would, and where a guarantee exists and where arrangement or commitment fees exist, these should be evaluated in the same way as any other intra-group transaction.

Pricing Approaches in Determining an Arm's Length Interest Rate

In line with Chapter II of the OECD Guidelines, "the selection of the most appropriate method should be consistent with the actual transaction as accurately delineated, […] through a functional analysis". Given the "widespread existence of markets for borrowing and lending money and the frequency of such transactions between independent borrowers and lenders" the CUP method is recommended, as the tested loan can be easily benchmarked against publicly available data of other borrowers (that could be related-party entities borrowing from independent lenders) with the same credit rating for loans and resembling comparability factors.

Yet, while "bank opinions" should not be thoroughly applied in determining intra-group loan pricing, internal comparables should not be disregarded, and neither should be the cost of funds approach, especially, where only intermediary functions are performed.

Cash Pooling

Views are invited regarding the possible approaches for allocating the cash pooling benefits to the participating cash pool members.

The discussion draft suggests that the accurate delineation of cash pooling arrangements needs to consider not only the facts and circumstances of the relevant balances, but also the context of the arrangements as a whole.

A key point is whether it is appropriate for the transaction to be treated as a short-term cash pool balance, or whether the characteristics support an alternative view such as being a long-term deposit or loan.

Rewarding the Cash Pool Leader

With regards to the pool leader, there is no consensus on the Discussion Draft on the pooling benefit to be allocated to a pool leader, however, via presentation of two examples, reference is made to the correct allocation based on the facts and circumstances, functions performed, assets used, and the risks assumed in effectuating the cash pooling arrangement.

Rewarding the Cash Pool Members

Three approaches can be envisaged by the Discussion Draft for allocating the cash pooling benefits across cash pool members. These approaches are subject to specific facts and circumstances of each pool, and include: enhancing interest rates for all participants, applying the same interest rate for all participants with equivalent credit ratings and allocating the cash pooling benefits to depositors facing potential credit risks.

Hedging

Intra-group financial transactions may include instruments, such as hedging arrangements as a means of mitigating exposure to risks (*e.g.* foreign exchange or commodity price movements). This is a tricky area from the transfer pricing perspective, given that where treasury functions (i.e. hedging functions) are centralized, the overall group might have risks hedged, but at the per entity level, this might not be the case. Thus, closer scrutiny is required regarding the matter of how to treat risk.

Guarantees

The Draft Discussion makes a distinction between guarantees used as a means for a borrower to enhance its credit rating (due to passive association to a higher rated potential guarantor) relative to those to increase its borrowing capacity or lower the interest rate on the existing borrowing capacity. The former would not be regarded as a service provision, and thus would not be allocated any service fee payable.

Determining the Arm's Length Price of Guarantees

As with intra-group loan transactions, the internal or external CUP method is advised, although publicly available and comparable guarantee data is more limited.

In considering the comparability between controlled and uncontrolled transactions, factors affecting the guarantee fee should be accounted for (*e.g.* borrower's risk profile, terms and conditions of the guarantee, term and conditions of the underlying loan (amount, currency, maturity, seniority *etc*.), credit rating differential between guarantor and guaranteed party, market conditions, *etc*.

Regarding the pricing of guarantees, four alternative methods are mentioned. The first of them is the "yield approach", this approach quantifies the benefit that the guaranteed party receives from the guarantee in terms of lower interest rates. The method calculates the spread between the interest rate that would have been payable by the borrower with and without the guarantee. The other methods are the "cost approach", the "valuation of expected loss" and the "capital support method".

Captive Insurance

The Draft suggests that an actuarial analysis may be an appropriate method to independently determine the premium likely to be required at arm´s length for insurance of a particular risk.

Conclusion

The Discussion Draft shows the view of the OECD in terms of addressing financial transactions and leaves room open for commentator's opinions.

Financial transactions are crucial to both individual entities composing a multinational group but also to the economic wellbeing of the group. Given the ever-changing global financial transactions transfer pricing environment, whereby tax authorities have shifted attention to substance over form, it is important to adopt intra-group financing policies that comply with tax authorities' judgement. Whence, the triviality of appropriate pricing in accordance to the arm's length conditions of these transaction type, as well as, the underlying reason as to why this topic remains in the lips of most MNEs and transfer pricing practitioners today.

Summary of 2018 NABE Transfer Pricing Symposium

Introduction

The National Association for Business Economics ("NABE") transfer pricing conference was held in Washington, D.C. from July 17-19, 2018. The topics at this year's NABE symposium (https://www.nabe.com/) were primarily focused on the recent US Tax Cuts and Jobs Act ("TCJA") and its effects on transfer pricing. Leading professionals from business, government and advisory firms discussed and debated hot transfer pricing issues during the symposium, which concluded with a keynote address by Jennifer Best, Director of IRS Treaty and Transfer Pricing Operations.

Highlights

During a discussion on new types of income allocations mandated by TCJA, the panel debated the scope of the services cost method ("SCM") exception under the TCJA in the context of the base erosion anti-abuse tax ("BEAT") payment – particularly the interpretation of the statutory language and its meaning as it relates to the treatment of services costs vs. the mark-up component of charges. The panel noted that further guidance, at least a draft version, providing specifics on BEAT is expected to be issued by the IRS and Treasury by the end of this year and should provide more clarity on this question.

In a keynote address, Roberto Schatan, a senior economist at the IMF, shared his concern regarding the use of a one-sided method when there is an "unexplained profit" in a transaction, arguing that the profit split method should be used in such instances. Schatan indicated that the guidance provided by the OECD is not clear on how to evaluate risk and assess who has control over the risk, in a way controversially allowing global enterprises to choose which entity has high or low risk depending on the tax jurisdiction rules. Schatan concluded his keynote address by stressing that more fundamental revisions or alternatives will be required to understand the risk in arm's length principles such that allocation and/or isolation of the risk is not done arbitrarily. The perspective shared gave the audience a view into the way that developing countries tend to think about one-sided methods and the appropriateness of the profit split and highlighted the tension that might exist between those views and an arguably more restrained view coming out of the OECD guidance on the Transactional Profit Split Method ("TPSM") as part of the BEPS project.

In a discussion of the impact of Tax Reform on IP valuation, the panel discussed the economic perspectives on the effects of aggregation and realistic alternatives principles. In particular, Duff & Phelps' Managing Director, Mark Bronson, noted that, "the broadened definition of intangibles, and the inclusion of the realistic alternatives aggregation principles in the statute could lead to the use of a longer useful life than might have occurred under earlier guidance" indicating that alternative paradigms for valuation analyses relying on market-based evidence would need to be considered as a result of TCJA to ensure that overzealous application of terminal values didn't lead to non-arm's length results. A senior economist at the Treasury agreed that it is time to start thinking about market multiples and market comparables more often to give us alternative views of value. Other panelists added that defining the scope of IP being transferred and delineating the transaction in the intercompany agreement becomes even more crucial.

A panel on a topic of Transfer Pricing in the Digital Age discussed challenges of the digital economy for transfer pricing. The panel including a tax official from Dell Technologies, who argued that traditional transfer pricing frameworks are difficult to apply to price intercompany transactions in the digital economy because of the complexity of the business model requiring attribution of value across multiple drivers such as hardware, software and services and the dispersion of resources contributing to those drivers.

A US representative of the OECD Working Party reiterated that interpretation of the revised OECD TPSM guidance should not be read to say that the profit split method should be the default method; rather, the revised guidance provides three general features of a transaction that may trigger the use of the profit split method: (i) if each party makes unique and valuable contributions, (ii) if business operations are too integrated to evaluate the contribution of each party separately, or (iii) if each parties share significant economic risks. The OECD, it was asserted, "did try to show these were high bars" by including examples that provide helpful direction without allowing tax administrations to use the profit split method disproportionately.

Jennifer Best, Director of IRS Treaty and Transfer Pricing Operations, emphasized the importance of a robust and comprehensive transfer pricing documentation report during her keynote address. Best shared a few examples of "bad" documentation, which included a limited functional analysis and lack of comparability analysis. Best noted that the IRS team has seen quite a few reports with "a list of functions but no real analysis." Further, Best indicated that some reports simply lack explanations or concrete reasoning. She specifically noted the selection of profit level indicator (*e.g.,* why an operating margin was selected for a distributor) and comparability adjustment (*e.g.*, why an over capacity adjustment was performed) as common areas lacking reasoning.

On the other hand, Best also shared an example of "good" documentation. Best and her team have received reports with a clear summary presented upfront, listing all of the intercompany transactions, relevant entities, the transfer pricing methodology selected, and the results. A robust and comprehensive report such as this one would help the IRS "deselect" work and focus on the right work, Best noted.

All of the points are related to the IRS's emphasis on deselecting work in an effort to focus on issues that deserve more time and attention, especially given its budget and resource constraints.

Multilateral Convention To Implement Anti-BEPS Measures Enters Into Force

Following ratification by five signatories, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (also known as the "Multilateral Instrument" or "MLI"), which formed the subject of Action 15 of the BEPS Action Plan, entered into force on July 1, 2018. The MLI was conceived as a fast-track method for enacting the tax treaty-related conclusions of the BEPS Project, sidestepping detailed renegotiation of multiple individual bilateral tax treaties.

The MLI is the first step in a process for implementing bilateral tax treaty changes designed to reduce tax avoidance by multinationals. Treaty measures included in the MLI address such matters as hybrid mismatch arrangements, treaty abuse and strategies to avoid the creation of a permanent establishment.

The OECD states that 83 jurisdictions have now signed the MLI, covering over 1,400 bilateral tax treaties, but implementing the amendments will be a staggered process. The initial phase is limited to the first five of the jurisdictions to ratify the MLI: Austria, the Isle of Man, Jersey, Poland and Slovenia. Effective treaty changes brought about by the MLI will not occur until 2019: for the existing bilateral tax treaties of these five jurisdictions that are affected, the MLI will have effect from January 1, 2019.

Both signatories must have ratified the MLI for the provisions of their mutual tax treaty to be affected. Only three bilateral tax treaties are therefore currently affected: those between Austria/Poland, Austria/Slovenia and Poland/Slovenia.

Four other nations (Serbia, Sweden, New Zealand and the United Kingdom) ratified the MLI after the initial five ratifications. For these later four jurisdictions, the MLI will become effective on October 1, 2018, increasing the number of bilateral tax treaties covered by the MLI to fourteen, with the addition of Austria/Serbia, Poland/Serbia, Poland/Sweden, Poland/New Zealand, Poland/UK, Slovenia/Serbia, Slovenia/UK, Serbia/UK, Sweden/New Zealand, Sweden/UK and New Zealand/UK. For withholding tax purposes, the changes will be effective January 1, 2019, but for all other taxes the changes will not take place until April 1, 2019.

The MLI implements the tax treaty-related aspects of the BEPS minimum standards. However, there are some treaty provisions that were optional, in which case both jurisdictions party to a bilateral tax treaty must have adopted matching positions for the change to apply to the treaty. This creates complexity in assessing the modifications by the MLI to any one bilateral tax treaty. The OECD has created a five-step application process and a matrix detailing each signatory to the MLI's options and reservations, as a way of assisting identification of which MLI provisions apply to a covered tax agreement.

A business-friendly aspect of the MLI is the strengthening of the provisions to resolve treaty disputes, particularly through mandatory binding arbitration, for which 28 signatories opted. Of the initial nine jurisdictions to ratify the MLI, those committing to mandatory binding arbitration are Austria, New Zealand, Slovenia, Sweden and the United Kingdom.

LB&I's Issuance Of The New Transfer Pricing Examination Process

On June 29, 2018, The US Internal Revenue Service ("IRS")'s Large Business & International Division ("LB&I") released the Transfer Pricing Examination Process ("TPEP") which provides a framework and guide for transfer pricing examinations. The TPEP replaced the Transfer Pricing Roadmap ("Roadmap"), originally issued in February of 2014, and can be found here: https://www.irs.gov/pub/irs-utl/P5300.pdf.

The TPEP, issued by the Treaty and Transfer Pricing Operations division of LB&I, provides guidelines on best practices and processes to assist IRS agents while conducting transfer pricing examinations. Primarily designed as a tool to be used by IRS agents, these guidelines also help taxpayers with the planning, execution, and resolution of transfer pricing examinations. Similar to the Roadmap, the TPEP divides transfer pricing examinations into three distinct phases: the planning phase, the execution phase, and the resolution phase. For each phase, the TPEP describes the types of materials to be reviewed, processes to be followed over the course of the examination, and the types of analyses that should be completed to reach a resolution.

The Planning Phase

This phase of the examination process conducts an initial risk assessment and determines the scope of the audit. An assigned team ("Issue Team") compiles an Information Data Request to be sent to the taxpayers. Items requested include, but are not limited to, accounting records, tax and legal organizational charts, segmented accounting data, and financial statements (if available). In addition, the Issue Team reviews materials including the prior year workpapers; the income tax return; the country-by-country report; the taxpayer's information obtained through its website, Form 10-K or Form 20-K filed with the SEC, and the internet. The Issue Team then prepares the ratio analysis and develops a "preliminary working hypothesis" that identifies specific transactions between the US taxpayer and its affiliates that require an examination to be performed. The collaboration with Advance Pricing Mutual Agreement Program ("APMA"), if applicable, will occur during this phase.

The Execution Phase

Under the execution phase, the Issue Team aims to determine facts of the underlying examination, apply law to those facts, and understand the taxpayer and various implications of the issue in more detail. This involves several meetings with the taxpayer in order to help the Issue Team resolve any factual differences and assess the transfer pricing issue at hand.

Under this phase, the Issue Team will review the taxpayer's IRC Section 6662(e) documentation, hold reassessment meetings, review intercompany agreements, conduct functional analyses, and perform economic analyses consistent with the working hypothesis in order to evaluate the taxpayer's best method analysis. The TPEP also instructs the Issue Team to hold frequent meetings throughout the execution phase with LB&I Division Counsel, IRS Practice Network members, and their respective managers to discuss any new information and reassess or adjust the IRS's working hypotheses to further develop specific transactions or issues. As part of the execution phase, the Issue Team prepares a draft report based on the functional analysis performed and continues to build a notice of proposed adjustments ("NOPA"), if applicable.

The Resolution Phase

The goal of the resolution phase is to reach agreement between the taxpayer and the IRS, if possible, on the tax treatment of each issue examined and, if necessary, issue a Revenue Agent Report

("RAR") to the taxpayer. The RAR contains all the necessary information regarding the adjustments and tax liability computation.

During this phase, the TPEP anticipates additional meetings between the taxpayer and the Issue Team to discuss results of all issues and evaluate the taxpayer's position with a focus on identifying the remaining disputed facts and/ or legal arguments prior to finalizing the NOPA and the Economist Report.

If no agreement is reached, the Issue Team finalizes the NOPA and the Economist Report and issues the RAR along with the 30-day letter.

Protest

In case no agreement is reached between under the resolution phase, taxpayers have the opportunity to file an appeal (also referred to as a "Protest") within 30 days from the date of the letter. If a Protest is submitted, the Issue Team will review the Protest, prepare a rebuttal, and begin preparing for the pre-Appeals opening conference.

Final Thoughts

The TPEP is meant to provide IRS agents and taxpayers with guidelines and best practices for transfer pricing examinations. Every transfer pricing case is unique and requires ongoing exercise of judgment and discretion when applying the TPEP framework. The TPEP will be updated regularly based on feedback from examiners, taxpayers, practitioners, and others.

At a recent Transfer Pricing Symposium hosted by the National Association of Business Economics ("NABE") Jennifer Best, Director of IRS Treaty and Transfer Pricing Operations, briefly touched on TPEP, and declared that she believed the new process to be user friendly and allows taxpayers and the IRS to share best practices.

Hong Kong Legislates Long-Awaited Transfer Pricing Framework

On July 13, 2018, the Inland Revenue (Amendment) (No. 6) Bill 2017 ("Amendment Bill") came into effect in Hong Kong, implementing BEPS-driven transfer pricing initiatives into Part 8AA of the Inland Revenue Ordinance ("IRO"). The new rules in the Amendment Bill affirm Hong Kong's commitment to the OECD's BEPS Action Plan recommendations, of most interest to taxpayers being the adherence to the arm's length principle and increased transfer pricing compliance requirements.

Arm's Length Principle

The Amendment Bill formalizes the use of the arm's length principle into Hong Kong tax law (these principles formerly existed as guidelines in Departmental Instruction Practice Note No. 46 ("DIPN 46")), empowering the Inland Revenue Department ("IRD") to adjust transfer pricing arrangements where related party transactions are deemed to be inconsistent with the arm's length principle and have resulted in a tax advantage to the taxpayer. Where a tax advantage is identified, the transfer pricing rules may apply to deem the transaction to have taken place under an arm's length transfer pricing arrangement and empower the IRD to make an adjustment on this basis.

It is important to note that the Amendment Bill will also apply to domestic arrangements, with broad exemptions in place to ensure that only high-risk transactions are caught. In particular, only domestic transactions giving rise to an actual difference to the Hong Kong tax base will be subject to the transfer pricing rules. The most commonly observed example would be where the two entities have a different tax profile due to carry forward losses or the application of an off-shore tax exemption.

Increased Compliance Requirements

Hong Kong will also adopt the three-tier documentation framework (i.e. master file, local file and Country by Country Report or "CbCR") recommended by BEPS Action 13. This will introduce formal transfer pricing documentation requirements to certain Hong Kong taxpayers.

Smaller taxpayers will be exempt from the master file and local file if they satisfy one or both of the following tests:

Business size test	**RPT size test**
Taxpayers will be excluded from preparing any transfer pricing documentation if two of the following three criteria are met:	Taxpayers will be excluded from documenting a specific category of transaction in their Local Files if the applicable criteria for each category is met
a) Total annual revenue does not exceedHKD 400m (USD50.9m)	a) Annual amount of buy-sell transactions of tangible goods do not exceed HKD 220m
b) Total value of assets does not exceed HKD 300m	b) Annual amount of transaction in respect of financial assets /transfer of intangible assets do not exceed HKD 110m
c) Average number of employees does not exceed 100 people	c) Annual amount of other transactions exceeding HKD 44m

Taxpayers should be aware that the master file and local file documentation requirements retrospectively apply for financial years starting from or after April 1, 2018.

Hong Kong taxpayers that are members of groups whose annual consolidated revenue exceeds HKD 6.8 billion may be required to file a CbCR if they are the ultimate parent entity of the group or are nominated as the surrogate filing entity. The documentation requirements for the Country-by-Country Report apply for financial years starting on or after January 1, 2018.

Increased Penalties

The Amendment Bill also introduces administrative penalties up to 100 percent of the undercharged tax where incorrect statements are disclosed on a tax return using incorrect transfer pricing information.

In more severe cases of non-compliance with the Country-by-Country Reporting obligations, the IRD is able to seek criminal charges against directors and tax agents of the offending entity.

Intangibles

Following the introduction of the DEMPE framework into Chapter I of the OECD Transfer pricing guidelines, the new Amendment Bill Section 15F has introduced deeming provisions to align the definitions of 'legal ownership' and 'economic ownership'. Under the new provisions, where the Hong Kong taxpayer performs the DEMPE functions but does not hold legal title or receive an arm's length return, the IRD may deem the intangible related income attributed to another group entity with legal title to be a taxable receipt of the Hong Kong taxpayer, irrespective of where such income is 'sourced' under Hong Kong general tax principles.

It is currently unclear how the deeming provisions will be implemented, and the IRD is expected to release further guidance on this topic shortly.

Attribution of Profits to a Permanent Establishment ("PE")

The new rules further confirm Hong Kong's adherence to the accepted OECD PE principles, by affirming the use of the separate entity concept, treating and taxing any PE operating in Hong Kong as if it were a distinct and separate enterprise operating in Hong Kong. The 'Authorized OECD Approach' has also been adopted as the recognized method of attributing profits to a Hong Kong PE, therefore requiring a well-documented functional analysis be prepared to attribute profit to a PE according to its economic substance (relative to the PE's head office).

Advance Pricing Arrangements ("APA")

Hong Kong previously included guidance on the application of a bilateral and multilateral APAs, with unilateral APAs considered in exceptional circumstances only. The new rules, contained in Sections 50AAP – 50AAW serve to legislate the existing APA regime with the intention of enticing more taxpayers into entering APAs, thereby securing tax and transfer pricing certainty for both the IRD and the taxpayer. While the new administrative procedures underlying the application for an APA are broadly in line with the existing framework, it should be noted that the new rules allow unilateral APAs in more cases. In addition, the application is no longer subject to a fixed application cost, and instead is calculated on the hourly rates of the IRD case officers, capped at a maximum of HKD 500,000.

Dispute Resolution

Additionally, the Amendment Bill introduces a statutory dispute resolution mechanism by way of Mutual Agreement Procedure. While any proposed double tax relief must be negotiated and effected by the Commissioner, the new law is comforting to taxpayers in that cases can be further referred for arbitration under a relevant CDTA.

Vietnam Issues New Regulations on Technology Transfers and Challenges for Related Party Royalty Payments

The new Law on Technology Transfer No.07/2017/QH4 (Law 07/2017) (replacing Law on Technology Transfer No.80/2006/QH11 (Law 80/2006)) and Decree 76/2018/NĐ-CP (Decree 76) both effective from July 1, 2018 have provided legal basis for stricter requirements and challenges for related party royalty payments in Vietnam.

Law 07/2017, Decree 76, and subsequent guidance in the latest draft circular provide clearer stipulations on compliance requirements including the registration of technology transfer contract ("TTC"), payment and audit of technology transfer fee/royalty, *etc*.

We summarize key highlights and recommendations on these matters below.

Registration of TTC: Royalty will be deemed as nondeductible for income tax purpose if the TTC is not duly registered ■ It is required that a taxpayer's TTC must be registered to government agencies for any type of technology transfer from overseas to Vietnam that covers technology transfer contribution in certain cases, especially investment projects, capital contributions, commercial franchises, and purchases/sales of machinery and equipment with attached technology content (see Articles 4, 5-2, and 31-1, Law 07/2017); ■ The registration is also encouraged for other types of technology transfers; ■ The registration requirement is applicable for agreements starting from July 1, 2018 onwards, including any TTC which will be renewed after July 1, 2018; ■ Both the TTC and the actual technology transfer can only be implemented after the Ministry of Science and Technology (MOST) has issued the certificate of successful registration (including the case of renewed agreements of technology transfer), and it may take days for the certificate issuance. Risks triggered from the new registration requirement: As the compulsory conditions that trigger registration under Article 4, 5 and 31 of Law 07/2017 could be interpreted in a broad understanding, tax authority may view any unregistered TTC as unacceptable. The superseded Law on technology (Law 80/2006) did not strictly require the registration of TTC. Thus, those TTC which were signed previously but renewed on annual basis may be overlooked by enterprises while in fact these routine TTC must also be registered under the new regulations. Enterprises may conduct the technology transfer and even the make payment of any charges under the TTC without notice of the new requirements or make a late registration. In both cases of non-registration or late registration of the TTC (or the renewal of the TTC), any type of charges (including but not limited to technology transfer fee royalty, technical support fee, *etc*.) would be deemed as nondeductible for corporate income tax purpose.
Price testing requirement for technology transfer between related parties ■ Clause 3, Article 27 of Law 07/2017 stipulates that any price/ charge regarding the technology transfer between related parties (as defined by tax regulations) must be tested upon tax authority's requests. ■ The testing of a transfer price for technology must be done by a competent and certified organization/ agency among those listed on MOST's website. However, as of July 2018, there has been no organization listed due to very high requirements for qualifying as technology price valuation agency, and due to the unavailability of relevant training programs by MOST. ■ Law 07/2017 and Decree 76 stipulate that the testing of price/ charge relating to the technology transfer must be done in accordance with transfer pricing regulations, i.e., Decree 20/2017/ND-CP effective from May 1, 2017. Transfer pricing risks from testing requirement of price in technology transfer agreements: With the advent of the TTC registration requirement as well as payment requirements, taxpayers will need to conduct a comprehensive report and benchmarking analysis to justify the price and nature of related party technology transfers. It is noted that the report and the benchmarking study, would serve as a defense documentation during an audit.
The preparation of registration form for technology transfer and supporting documents For technology transfer agreements with related parties that are subject to compulsory registration, enterprises will have to prepare a registration Form (i.e. Form 01) including supporting documents to submit to MOST.

Form 01 has several sections which will need to be consistent with the supporting documentation and benchmarking study or risk the technology transfer being rejected by both MOST and the tax authority.

Those key sections in Form 01 which would trigger issues include, but not limited to:

- Section No.4: Methods of technology transfer (i.e. via documents, training, experts, *etc*.)
- Section No.5 Scope of technology transfer (i.e. transfer of intellectual property, exclusive or nonexclusive transfer, *etc*.)
- Section No.6: Value of technology transfer (i.e. separation of value with regards to each technology factor such as training, know-how, software, technical support, *etc*.)
- In Section 6 of Form 01 may put companies at significant transfer pricing risks if it is made without proper supporting evidence or justification.

Our recommendations for enterprises which have technology transfer with related parties:

- Revisit existing TTC to identify whether these TTC or the amendments/ renewal of such TTC fall into compulsory registration provisions.
- Review the availability of documents and information to evidence the nature of technology transfer before filling Form 01.
- Complete registration for new technology transfer agreements and/or existing agreements with automatic renewal date after July 1, 2018 as soon as possible.
- While there is not yet any clearer instruction from tax authority or from most on the testing requirement and procedure of technology transfer transactions, enterprises would seek to prepare clarification report to explain the nature of technology transferred, accompanied by relevant benchmarking study (for example testing the royalty rate using commercial database) that compares the price in such transactions with similar independent agreements.

Footnotes

1 The Tax Court Case was Altera Corp. v. Com'r., 145 T.C. 91 (2015)

2 T.D. 9456, 1.482-9 Treatment of Services Under Section 482; Allocation of Income and Deductions from Intangible Property; Apportionment of Stewardship Expense (26 CFR Parts 1 and 31, and 602)

3 H.R. 1, Public Law 115–97 (12/22/2017)

4 T.D. 9568, 1.482-7 Section 482: Methods to Determine Taxable Income in Connection With a Cost Sharing Arrangement (26 CFR Parts 1, 301 and 602)

5 We note that the Ninth Circuit did not try and apply the regulations retroactively in the Xilinx case, and we hear again Judge Foley's comments in the opinion in the Veritas case about taxpayers needing to be "compliant but not prescient".

6 Consideration the realistic alternatives of the parties and aggregation were both part of the 1994/1995 rewrite of the Treasury regulations under IRC §482 but the terms were only added to the language of IRC §482 as part of the TCJA at the end of 2017.

7 FAR 31.205-6(i) deems compensation based upon stock performance strictly an unallowable cost, stating in part: "Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable."

8 The Tax Court Case was Altera Corp. v. Com'r., 145 T.C. 91 (2015)

9 The inclusion of much of the substance of these changes in the tax code as part of the Tax Cut and Jobs Act of 2017 may possibly have mitigated the likelihood of such a challenge

Swiss Corporate Tax Reform - Take Two

by Stuart Gray, Senior Editor, Global Tax Weekly

As the Swiss Parliament prepares to scrutinize the Government's latest corporate tax reform proposals, this article looks at recent efforts to bring Switzerland's corporate tax regime into line with new international standards on tax transparency and competition while maintaining the country's well-known competitive tax advantage.

Background

Switzerland was obligated to change its corporate tax regime after long-standing pressure from the European Union, which led to the country accepting the EU Code of Conduct on Business Taxation in June 2014.[1] Jurisdictions recognizing the Code must, among other things, roll back tax measures deemed "harmful" and commit not to introduce new ones.

Consequently, tax reform proposals were drawn up to abolish special tax arrangements at cantonal level, namely holding, domiciliary, and mixed company formats, which allow foreign companies to pay little or no corporate tax. These regimes have long been criticized by the EU for facilitating the shifting of profits from EU member states to Switzerland.

Existing Corporate Tax Rules

Owing to Switzerland's federal structure, there is no centralized tax system, with some taxes being levied exclusively by federal authorities whereas other taxes are concurrently levied at cantonal, communal, and federal levels. Although the rate of tax imposed at a federal level is consistent, that levied at a cantonal level varies. Because significant differences presently exist in the tax rates levied at cantonal level, the choice of canton is an important element in all tax planning.

For corporate income tax (CIT) purposes, a company is deemed to be resident in Switzerland if it is either incorporated in Switzerland or effectively managed from there. The General Assessment Rule is that resident companies are assessed on their worldwide income except for profits generated by enterprises, permanent establishments and real estate situated abroad, whereas non-resident companies are assessed only on profit generated by enterprises, real estate and permanent establishments situated in Switzerland, as well as interest on loans secured on Swiss real estate.

CIT is levied at federal, cantonal, and communal levels. The level of CIT payable varies depending on the rate charged at cantonal level. The federal CIT rate is 8.5 percent flat. However, income and capital taxes are deductible in determining taxable income, meaning that the effective tax rate that a company pays on its profits before deduction of tax at the federal level is 7.8 percent.

Cantonal and communal corporate taxes are based on similar principles to those applying at federal level, with communal tax on corporate income calculated as a small proportion of cantonal tax. In 2018, combined CIT rates in Switzerland range from as low as 12 percent to a maximum of 24 percent. The average CIT rate is approximately 18 percent.

The Swiss branch of a foreign company pays the same rates of CIT on profits, income and capital gains as would be paid by a Swiss-resident corporate entity. Profits remitted abroad by the branch are not subject to any tax in Switzerland.

Cantonal Statuses

Tax-privileged operations may take place within the following forms, all of which are variants of the basic stock corporation.

Holding company

A holding company is a stock corporation with a particular tax status. Holding companies benefit from reductions in CIT and capital gains tax at federal and cantonal levels, and from a reduction in net worth tax at cantonal level.

For federal tax purposes, a company is defined as a holding company if it holds either a minimum of 10 percent of the share capital of another corporate entity, or if the value of its shareholding in the other corporate entity has a market value of at least CHF1m (USD1.06m). This is known as a "participating shareholding."

Although the definition of a holding company varies among cantons, broadly speaking a corporate entity is a holding company for cantonal CIT purposes so long as it either:

- Derives at least two-thirds of its income from dividends remitted by the subsidiary; or
- Holds at least two-thirds of the subsidiary's shares.

Generally speaking, foreign dividends remitted to a Swiss company and any capital gains realized by a Swiss company on the sale of shares in a foreign entity in which it holds a stake are taxable in Switzerland unless they are remitted to a company that, under Swiss fiscal law, is defined as a Swiss holding company.

At federal level, a holding company pays a reduced level of CIT on any dividend income received from the subsidiary or the company in which it holds a "participating shareholding." The reduction in the level of CIT payable depends on the ratio of earnings from the participating shareholding to total profit generated.

At cantonal or municipal level, no CIT is payable on income represented by dividends so long as the corporate entity meets the cantonal definition of a holding company.

Domiciliary company

Domiciliary companies are stock corporations that are both foreign-controlled and managed from abroad, have a registered office in Switzerland (*i.e.*, at a lawyer's premises), but have neither a physical presence nor staff in Switzerland. They must carry out most if not all of their business abroad and receive only foreign-source income. The use of domiciliary companies can result in savings in CIT levied on income and capital gains, and in net worth tax liability.

At federal level, there are no tax advantages for a domiciliary company in terms of CIT payable on income and gains. However, at cantonal and municipal level, the CIT rate may be substantially reduced, or even reduced to zero; taxes levied by the cantons are calculated according to a formula that relates to the company's paid-up share capital and reserves to profit.

Mixed company

Mixed companies are stock corporations that have the characteristics of both domiciliary companies and holding companies, but do not qualify as either. There is no benefit at federal level, but at cantonal and municipal levels there are CIT benefits if the mixed company meets the following conditions:

- The company is foreign controlled;
- A minimum of 80 percent of its total income comes from foreign sources;
- The company has close relationships to foreign entities.

No tax relief is granted to a mixed company at federal level. However, at cantonal and municipal levels, a mixed company may pay reduced tax or be totally exempt if the above conditions are met.

Corporate Tax Reform III (CTRIII)

However, the Swiss Government wasn't content with merely sweeping away the cantonal tax regimes. It is estimated that cantonal status companies employ around 150,000 people and contribute about 20 percent to total cantonal and communal revenues. Therefore, a major goal of the tax reform, which came to be known as Corporate Tax Reform III (CTRIII), was the introduction of more internationally accepted tax incentives, designed to both maintain Switzerland's international tax competitiveness and ensure the corporate tax regime adhered to international standards.

As such, CTRIII also included the following changes:

- A patent box at cantonal level (but not at federal level), offering preferential treatment for revenue from patents and similar rights associated with research and development (R&D) in Switzerland;
- A super deduction for research and development expenses of up to 150 percent of qualifying R&D expenditure incurred in Switzerland, which would have been optional for cantons. This would not be applied at federal level;
- A notional interest deduction on "surplus equity," intended to align the tax treatment of debt and equity financing, and replacing initial proposals for an interest-adjusted corporate income tax;
- A provision allowing cantons more flexibility over corporate tax;
- Targeted capital tax deductions at cantonal level; and
- The abolition of issue tax on equity capital.

CTRIII made steady progress through Switzerland's often laborious legislative process. It was approved by the Swiss Federal Council, the seven-member executive council that constitutes the federal government of Switzerland, on April 2, 2014, and by Parliament in June 2016. However, the measures were rejected by voters at a referendum in February 2017.[2]

Tax Proposal 2017 (TP17)

The Government wasted little time in seeking to restart the corporate tax reform process, and by the end of that month it had tasked the Federal Finance Department (FDF) with drawing up a fresh set of proposals by mid-2017. These new reforms came to be known as tax package 2017 (TP17), and in June they were duly presented by the steering committee to the Federal Council, which largely accepted the recommendations. The FDF was then asked to prepare draft proposals, and these were published for public consultation in September.

TP17 contains the following measures:

- Special arrangements for cantonal status companies, under which they pay only a reduced profit tax or no tax at all, will be abolished;
- Cantons will be required to introduce patent box regimes, under which profits from patents and similar rights will be separated from other profits and taxed at a lower level, with the relief to be no more than 90 percent;
- Cantons will be given the option of introducing additional tax deductions of up to 50 percent for research and development activities;
- The taxable portion of dividends paid to "natural persons" will be increased to 70 percent at federal and cantonal level;
- The cantons' share of direct federal tax receipts will be increased from 17 percent to 20.5 percent;
- Cantons will be permitted to include the capital associated with financial interests, patents, and similar rights at a reduced level in the capital tax calculation;
- Companies that relocate their headquarters to Switzerland will be able to benefit from additional amortization in the first "few" years of operations;
- Swiss operating companies of foreign companies will be entitled to the flat-rate tax credit, which prevents international double taxation; and
- Minimum family allowance to be increased by CHF30 (USD30.80).

The Federal Council estimates that TP17 will impact the federal budget by around CHF750m (USD773m). It will provide a temporary supplementary contribution of CHF180m to financially weak cantons from 2024.

Legislative Progress

During its meeting on January 31, 2018, the Federal Council set the parameters for the dispatch on TP17. Based on the results of the consultation, the Federal Council decided that the cantons' share of direct federal tax should be raised to 21.2 percent, and the FDF was instructed to prepare the dispatch by the end of March, which was adopted by the Federal Council on March 21, 2018.

The proposals were then discussed by the lower house of Parliament, the Council of States, on June 7, which made a number of minor amendments, including that the taxable portion of natural persons' dividend income be reduced to 50 percent at the cantonal level, and that additional revenues from the corporate tax reforms be allocated to the national pension scheme (the AHV) instead of increasing the family allowance. In addition, the chamber renamed the legislative proposals as the "Swiss Federal Act on the tax reform and the financing of the AHV."

TP17 is due to be debated by Parliament in its fall session in September 2018, and the Government hopes that the package will be adopted before the session concludes on September 28. All being well, this could pave the way for the reforms to be introduced in 2019 (including the abolition of cantonal statuses) and 2020.

Impact

According to the Government, as a result of the reforms, companies with cross-border activities will pay "slightly higher taxes," mainly as a result of the elimination of the special cantonal company regimes.[3] However, it said that these companies will gain "greater legal certainty" in return. The overall tax burden for small and medium-sized businesses will be smaller, the Government says, thanks mainly to cantonal profits tax reductions, which should more than offset higher dividend tax for shareholders. Above all, the Government expects that TP17 will enable Switzerland to better compete in a fiercely competitive international tax environment while maintaining creditability with tax standard-setters and increasing tax revenues by CHF2.3bn over the medium to long-term.

TP17 is also expected to benefit some cantons more than others. And according to UBS's Cantonal Competitiveness Indicator report for 2018 the real loser would be "those Central Switzerland cantons that have lured companies to settle in them with aggressive low-tax policies."[4]

According to UBS, while relative location costs for companies in Switzerland are much the same as they were in 2016, the impact of the TP17 package on cantonal tax rates on profits should result in changes to the cost of locating in the different cantons. UBS's analysis of current data shows that Geneva and Vaud would benefit from the changes, becoming considerably more attractive from a tax perspective. The relative competitiveness of Zurich and Aargau would however fall.

What if...

...TP17, like its predecessor CTRIII, fell at the last hurdle? The Government suggests that is this were the case, the repercussions could be serious and wide-ranging for the Swiss tax regime. Indeed, at the start of the year, it said that the need for Parliament to expedite the passage of TP17 was becoming increasingly urgent, both to restore much-needed certainty to Switzerland's business tax regime and to avoid the prospect of Switzerland becoming blacklisted by its international peers, which could result in both reputational damage and potential operational restrictions on Swiss-based multinational companies.

Nevertheless, in spite of these risks, TP17's passage this year is far from assured. Given the scale and likely impact of the reforms, the legislative timetable is ambitious, and the possibility remains that Parliament will fail to approve them in the brief fall session, especially if lawmakers disagree over any amendments that are proposed.

Even if Parliament does approve TP17 in relatively short order and largely in its current form, another hazard presents itself in the form of a second referendum, to which the Government appears to have committed itself. According to the FDF, the issues that led to voters' rejection of CTRIII, which centered around a lack of transparency and provisions that were seen as overly generous to businesses at the expense of individual taxpayers, have been addressed in TP17.

"[T]he Federal Council is implementing the will of the people particularly with greater transparency and more balance in the proposal," the FDF says in a section of its website dedicated to frequently asked questions on TP17.[5] "The implementation plans of the cantons and the dynamic effects of the proposal are now being communicated right from the start with TP17. The cities and communes were involved in the development of TP17 at a very early stage, with the result that the proposal comes across as sustainable and balanced for them too. The increase in dividend taxation and the minimum requirements for family allowances ensure a balanced proposal, as do the waiver of a deduction for self-financing (interest-adjusted profit tax) and the tightening of the relief limit for companies."

However, there are no guarantees that the electorate will agree, in which case, the Government may have to go back to the drawing board once again.

The Government expects that, if such a scenario plays out, companies benefiting from the special cantonal company formats would voluntarily withdraw from these arrangements "due to the associated disadvantages abroad." It is thought that the cantons would then take measures into their own hands and reduce taxes in an attempt to retain these companies and attract new investors.

"In the course of international contact, Swiss representatives have always indicated that this reform is also subject to a referendum," the FDF says. "However, it is important that any vote takes place promptly. If Switzerland is not able to demonstrate that it has taken the necessary action as quickly as possible, unilateral countermeasures can be expected."

"Status companies are governed by federal law. As long as this remains unchanged, the regulations continue to apply and a company which meets the requirements has the right to be taxed in accordance with these regulations," the department adds.

"Nonetheless, if TP17 were to fail, it would be assumed that companies would voluntarily renounce the status," the FDF continues. "In such a scenario, it would be expected that the cantons would take autonomous measures in order to counteract the exodus of their tax base. This would result in tougher intercantonal tax competition and upheaval in fiscal equalization."

Whatever the fate of TP17, it would seem that, one way or another, the days of the Swiss holding, mixed, domiciliary and other such harmful tax regimes are numbered.

Endnotes

1 https://www.swissinfo.ch/eng/eu-agrees-to-end-corporate-tax-row-with-swiss/38827374

2 https://www.efd.admin.ch/efd/en/home/dokumentation/legislation/abstimmungen/third-series-of-corporate-tax-reforms--ctr-iii-.html

3 https://www.efd.admin.ch/efd/en/home/themen/steuern/steuern-national/steuervorlage17/QASV17.html

4 https://www.ubs.com/global/en/ubs-news/r-news-display-ndp/en-20180828-swiss-high-tech.html

5 *See Note 3*

Too Much Time In The US Can Jeopardize IRS Amnesty

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

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Currently, over 9 million US citizens are living outside the United States. More and more expats are beginning to realize that their US tax obligations did not end upon their move abroad. Many believe, correctly, that their past delinquency was an honest mistake, a result of non-willful conduct. If this is the case, the IRS Tax amnesty program known as the Streamlined Procedures[1] offers a great way to clean up a non-compliant history.

The Streamlined amnesty program has two major advantages for expats who have not been filing with the IRS:

First, importantly, the eligibility standard for the program is quite low. The IRS has to find that your conduct was merely "non-willful." This contrasts with the general "reasonable cause" standard for defending against penalties, which requires a positive showing of cause for not filing, rather than an explanation of how the non-filing was not intentional.

Second, if you qualify for the program, the IRS will potentially waive all penalties that would otherwise apply to your late filings.

The rules for participating in the Streamlined Procedures can be tricky, however, and spending too much time in the US can jeopardize your eligibility. In this article, we review the Streamlined program's eligibility rules and share with you a typical fact pattern where too much time spent in the US can be a deal breaker.

The Streamlined Procedures – Offshore Versus Domestic Programs

The Streamlined Procedures are available under either the friendlier "foreign offshore"[2] procedures or the harsher "domestic offshore"[3] procedures.

According to the IRS, a US citizen living abroad qualifies for the foreign offshore procedures if – in at least one year during the three-year period that tax returns must be submitted under the streamlined procedures – he or she both:

1. Did not have a US "abode" (generally, one's home, habitation, residence, domicile, or place of dwelling); and
2. Was physically outside the United States for at least 330 full days (meaning, the taxpayer did not spend more than 35 days in the United States).

If you do not pass the above tests, then under the domestic offshore procedures, you cannot participate in the Streamlined Procedures if you have failed to file a US income tax return in any of the three most recent tax years. In contrast, under the friendlier foreign offshore procedures, a person that has been similarly delinquent can participate in the program.

Further, even if you qualify, the domestic offshore procedures require you to pay a 5 percent penalty on the highest aggregate balance/value of your foreign financial assets, while the foreign offshore procedures have no such penalty.

The Expat Who Spent Too Much Time In The US

With these rules in mind, we can analyze the following typical fact pattern of a so-called Canadian "snowbird":

For a number of years, Mr Jones, a dual US and Canadian citizen, has lived in Canada for ten and half months out of the year, and during the remainder of the year, has vacationed in the US with his family. Mr Jones has filed returns in Canada, but has not been filing US tax returns, mistakenly believing that he has no requirement because he primarily lives and solely works in Canada.

Under this fact pattern, unfortunately, Mr Jones does not qualify for the Streamlined amnesty program because he has failed the 330-day physical presence test (and therefore would be required to qualify under the domestic offshore procedures) and he has not filed US tax returns in any of the three previous tax years (and therefore does not qualify under the domestic offshore procedures).

Mr Jones does, of course, have the option of simply late filing outside the Streamlined program in order to catch up with his filing obligations. But keep in mind that Mr Jones, in that case, would not benefit from the lower "non-willful standard" to combat penalties and therefore should expect to be penalized unless he has a strong reasonable cause defense that is accepted by the IRS.

The Takeaway For US Expats

For expats looking to come clean with the IRS, the Streamlined Procedures are a terrific option for those who qualify. Expats should keep in mind, however, that other amnesty options may be available as well, depending on your situation. Each option has its advantages and disadvantages, and choosing the best way forward requires a careful analysis of your particular facts and circumstances.

For more information on the issues discussed above, please contact the authors.

Endnotes

1 https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures

2 https://www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-outside-the-united-states

3 https://www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-in-the-united-states

Topical News Briefing: All's Fair In Love And Trade?

by the Global Tax Weekly Editorial Team

Since tensions between the major economic powers have escalated on trade issues, multinational businesses have had to come to terms with rising import taxes and the possibility that these could severely disrupt long and complex cross-border supply chains, adding to their concerns about BEPS-driven changes to countries' wider tax regimes.

However, certain developments included in this week's issue of *Global Tax Weekly* give cause for some optimism that perhaps the worst of trade wars could be behind us, including the striking of an agreement in principle between Mexico and the United States which should maintain bilateral trade largely free from tariff barriers. In another hint of compromise, on August 30, EU's Trade Commissioner Cecilia Malmstrom, said that the bloc would be willing to reduce its vehicle tariffs, if the US does the same. She even suggested that the EU would reduce such tariffs to zero if the US reciprocated.

The next day saw two major economies in the Asia-Pacific region conclude negotiations on a new trading agreement that will eliminate tariffs on a range of products under the Indonesia-Australia Comprehensive Economic Partnership Agreement. This adds to a growing list of important free trade deals that have been concluded recently or are in the process of negotiation including between the EU and Japan, the EU and Australia, and the EU and New Zealand, and which don't tend to make the headlines in the same way as trade disputes.

However, there is still some cause for concern. While officials claim that significant progress has been made by the US and Canada towards an agreement on a reformed North American Free Trade Agreement, President Donald Trump tweeted recently that ensuring Canada remains a NAFTA member is not a top priority, suggesting there is little room for compromise in the talks.

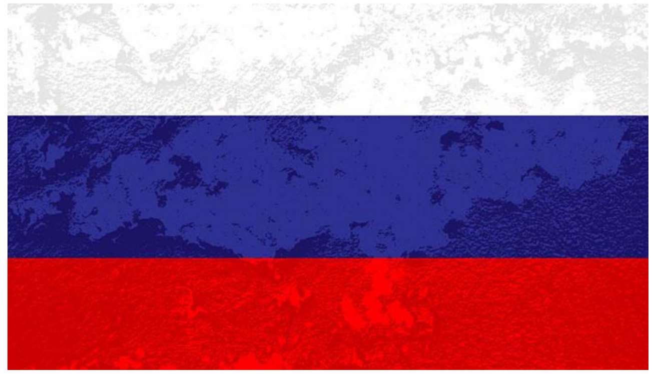
What's more, trade tensions between the world's two largest economies – the US and China – remain at an historic high, with the former poised to impose tariffs on approximately USD200bn worth of Chinese products, a measure that is widely expected to lead to a similarly-proportioned retaliatory measure from Beijing. And hitherto, there have been few signs of either side backing down.

Indeed, that iconic motorcycle manufacturer Harley-Davidson described its plan, annoounced in June 2018, to shift some production from the US to the EU to avoid tariffs as a “long-term” one is indicative that from this company’s point of view at least, the risk of higher tariffs to companies with international supply chains isn’t going to dissipate in a hurry.

In a sense, much of this is nothing new - trade disputes involving certain products, often between some of the largest economies, have arisen from time to time, and there has probably rarely been a period since the formation of the World Trade Organization when certain countries haven’t been at loggerheads. However, the scale of current global trade tensions is not somehing that multinational businesses will have much experience of. But judging by recent words and deeds from world leaders, they might have to get used to it, and attempt to adapt their business strategies accordingly.

Russia Amends Transfer Pricing Rules

by Evgenia Veter, Ekaterina Nikolaeva, Olga Kurilina, EY Moscow



On August 3, 2018, the President of the Russian Federation signed Law No. 302-FZ "Concerning Amendments to Parts One and Two of the Tax Code of the Russian Federation" (hereinafter – "the Law").

The Law exempts a significant number of domestic transactions from the transfer pricing rules.

Once it enters into force, only transactions between Russian companies that apply different tax rates on profits or special tax regimes will be subject to the rules, and only if income from those transactions exceeds RUB1bn (USD14.6m) rubles per year.

Thus, transactions between two parties within Russia will be classified as controlled for transfer pricing purposes only if income generated from the transactions exceeds RUB1bn rubles per year and one of the following conditions is met:

1. The parties to the transaction apply different tax rates on profits derived from that transaction
2. One of the parties pays mineral extraction tax at *ad valorem* rates
3. One party applies or both parties apply a special tax regime (for example, the unified tax on imputed income or the unified agricultural tax)
4. One of the parties is exempt from profits tax
5. One of the parties is an operator or holder of a license to develop a new offshore deposit
6. One or both parties are residents of the Skolkovo research center
7. One or both parties apply an investment tax deduction for profits tax purposes

Currently, no income threshold exists for cross-border transactions between related parties. On the other hand, a threshold of RUB60m rubles is set for other transactions that are equated with transactions between related parties (transactions involving globally traded commodities, transactions with offshore companies). The new law also provides a unified income threshold (RUB60m rubles) for cross-border transactions to be classified as controlled for transfer pricing purposes.

The new law will be effective for transactions for which income/expenses are recognized on or after January 1, 2019, irrespective of when the relevant contract was concluded.

The law also contains amendments that are not directly related to transfer pricing, such as:

- The exclusion of movable property from the scope of assets tax
- A zero percent Value Added Tax (VAT) rate for services involving the exportation or importation of goods by ship under chartering (time chartering) agreements
- The streamlining of documentation required to support the zero percent VAT rate for exported goods
- Changes to the time limits for conducting an in-house tax audit

Topical News Briefing: Irish Eyes Are Wondering

by the Global Tax Weekly Editorial Team

Relatively speaking, the Irish economy is a small point on the global economy map. However, in the world of corporate tax planning and foreign investment flows, its footprint is large. This contradiction is displayed in a statistic attributed to AmCham Ireland, which says that while Ireland represents just one percent of the economy of the European Union, it attracted over 12 percent of US foreign direct investment to the EU in 2016.

Therefore, given that Ireland is already home to over 700 US companies, the recent news that one, Afilias, the world's second largest domain registry, has transferred its headquarters from Ireland to the United States (as reported in this week's issue of *Global Tax Weekly*), wouldn't ordinarily have raised many eyebrows. However, for Ireland – and for jurisdictions facing similar competitive pressures on tax post-US tax reform – these aren't ordinary times. Afilias's decision was made in the context of the recent overhaul to America's corporate and international tax systems, and this begs the question – will this be the first US-bound corporate relocation from Ireland of many? From this flows a second question – is an overhaul of Ireland's own corporate tax rules now necessary to prevent an exodus of foreign investors, particularly those from the US?

A recent report from Ireland's International Tax Strategy Group, formed by the Ministry of Finance, seemed to suggest that this is a time for cool heads to prevail. It concluded that Ireland's 12.5 percent corporate tax rate remains internationally competitive (and is still almost 10 percent lower than the new US federal headline rate), and that Ireland's tax regime is prized for its stability and predictability. Therefore, major changes to the corporate tax system could be counterproductive. However, the fact that the Government has seen the need to create such a strategy group in the first place is a strong indication that it is worried about the impact of international tax trends as well as wider economic ones.

But while the Government is alert to the possibility of Ireland dropping down the competitiveness rankings and potentially suffering the economic consequences, recent comments suggest that senior ministers agree with the strategy group's conclusion that caution should be maintained on corporate tax, and not thrown to the wind. In any case, Ireland, although having undergone a strong economic revival, is in no position to start throwing public money around and slashing taxes. As Finance Minister Paschal Donohoe emphasized in a recent speech (also reported in this week's issue) Ireland "must never lose control of our public finances again."

However, it is not just changes to the US tax regime that Ireland has to worry about. It has several other issues on its plate, including BEPS, which itself has brought about several changes to the corporate tax regime and often cast Ireland in a negative reputational light; and Brexit, which is expected by the business community to give Ireland a serious economic buffeting, particularly in the event that the UK departs the EU with no trade agreement in place.

All this is giving the Government serious food for thought as it prepares the 2019 Budget, due to be announced later in the year. But, with seemingly little appetite for major reform, perhaps taxpayers should expect evolution rather than revolution.

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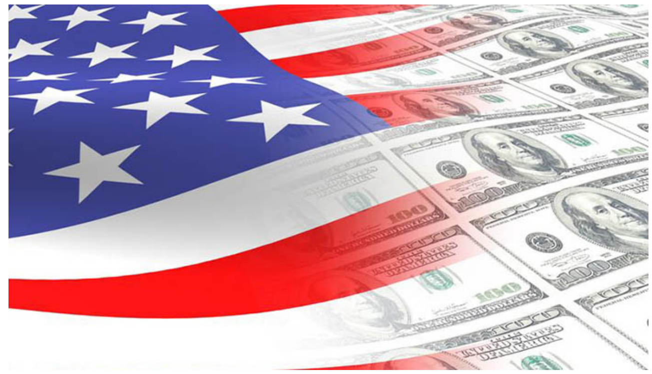
The Weighty Burden Of The Full FBAR Penalty

by Mike DeBlis, DeBlis Law



No one likes paying the IRS as it is, let alone being ordered to pay 50 percent of the assets kept in overseas bank accounts as a penalty for failing to file a Report of Foreign Bank and Financial Account, or FBAR, but that's exactly what happened to Mindy P. Norman. In October 2013, Ms Norman was found to have willfully failed to file the appropriate paperwork associated with having an overseas bank account as a US citizen. While being asked to surrender assets is bad enough, Ms Norman's case was made all the worse by the sky-high balance in her bank account: she was ordered to pay USD803,530.00. She contested the penalty, but the IRS office of appeals refused to back down. After begrudgingly paying up, Ms. Norman proceeded to file a complaint in court that the IRS tried – and failed – to dismiss, eventually leading to the case of *Norman v. United States*[1].

The Curious Case Of Ms. Norman

Regardless of the fairness of the FBAR penalty or Ms Norman's feelings on the subject of regulations surrounding foreign bank account oversight, the fact remains that an FBAR was not filed, and no one is disputing that. Instead, this case revolved around another question: was the failure to file all necessary paperwork a willful effort to defraud the government, or was it a simple act of ignorance?

After Ms Norman filed her initial complaint in court, the IRS attempted to dismiss the case via summary judgment, but the court determined that a summary judgment was not adequate to decide on the willful nature of the defendant's FBAR failings. And so, a trial was scheduled for May 10, 2018 in Brooklyn, New York to hear testimony from witnesses on the subject of Ms Norman's misadventures in reporting. The sole witness? Ms. Norman.

During the trial, Ms Norman provided apparent evidence that did not sufficiently make her case. Soon after the trial, the court determined that the IRS was right and Ms Norman was wrong.

The Requirements In Reporting

You may be reading this synopsis of the case of *Norman v. United States* and thinking to yourself, "but why did Ms Norman need to report her bank accounts at all?" For those without a solid legal background or the possession of overseas accounts, this is a fair question. After all, the IRS generally does not solicit the total balance of bank accounts held by taxpayers, choosing instead to ask only about the interest or dividends accrued in those accounts.

That, of course, is at the crux of this issue: while domestic banks are required to file 1099s for the proceeds of a bank account, foreign banks are not, making it very easy to hide said accruals. In 1970, Congress took action, enacting the Bank Secrecy Act as a response to the "serious and widespread use of foreign financial facilities located in secrecy jurisdictions for the purpose of violating American law." Under this ruling, Americans with foreign accounts must declare any foreign assets held within a particular year by June 30th of the following year in the form of an FBAR, provided account balances are over USD10,000. As an order to file isn't terribly convincing by itself, the FBAR requirement is accompanied by penalties, including a fine of USD100,000 or 50 percent of the account balance, whichever is higher, for those who fail to file willfully.

The nature of these penalties is quite harsh, leading many people to believe that staying silent is the best way to deal with a failure to file. This often results in what is known as a quiet disclosure, in which taxpayers file amended returns and delinquent FBARs without notifying the IRS. To discourage this, the government manages several amnesty programs to minimize the burden of disclosure, including the Offshore Voluntary Disclosure Program, or OVDP. If a taxpayer is eligible for this program, the penalty could drop to 27.5% and all risk of legal penalties will be waived.

Willful Or Not Willful: That Is The Question

The trial held in May 2018 was largely intended to determine whether or not Ms. Norman's actions were willful. In her eyes, the answer was most certainly no.

At the trial, she alleged that she found out about the need to disclose foreign assets in 2009, despite holding foreign accounts since 1999. At this time, she notified her accountant, Stephen Kraft, who she assumed would take the proper procedures to rectify her situation. However, rather than aiming for OVDP, Mr Kraft instead chose a quiet disclosure. She could not recall whether or not Mr Kraft informed her of this decision, just as she also claimed to be unable to recall the origin of her foreign accounts – which included traveling to Zurich and meeting with

UBS officials – or how much money she had withdrawn, and could not remember her account number, the people she met with in Zurich, her own request to close her account, or Mr. Kraft's invoice for the quiet disclosure.

Further, Ms Norman's behavior prior to the trial raised other questions. For example, she stated on her 2007 tax return that she had no foreign assets and claimed the account in question wasn't hers during her 2012 audit.

A Frantic Search For Escape

The court, of course, was having none of Ms Norman's shady behavior and determined that she willfully violated Section 5314. In true form, Ms Norman responded with a letter citing *United States v. Colliot*, a previous decision in 2018 by the US District Court of the Western District of Texas, which found that the original USD100,000 cap on FBAR penalties outlined in the initial legislation still applied, despite the passage of The American Jobs Creation Act of 2004 that increased this penalty to the greater of USD100,000 or 50 percent of the account balance. However, as the court pointed out, the language in this Act stated that the maximum penalty "shall be increased," an imperative turn of phrase that seemingly indicates a definitive conclusion. Thus, the ruling in Colliot was ignored, much to Ms Norman's chagrin.

A Potential Resolution

Due to the startling inconsistencies in Ms Norman's testimony, the evidence provided by the bank, and Ms. Norman's convenient memory problems at trial, the court sided with the IRS: the penalty is a correct response in the correct amount.

While this seems like the end of the story – and it very well may be the conclusion – Ms Norman does have the option to file with the Circuit Court of Appeals to attempt to seek a new ruling. If this happens, it's possible that things will play out differently, changing the course of how FBAR violations are penalized for both Ms Norman and failing filers in the future. Whether this comes to pass remains to be seen.

It may also be interesting to note that this case nearly did not happen. As the Court of Federal Claims is rarely the venue for this kind of case, the government initially argued that Ms Norman's complaint should be ignored as the Federal District Court was more appropriate, leading to the multi-year waiting game that occurred between the initial complaint filing and the trial. The IRS eventually gave up its jurisdictional defense, but as the results of this case make clear, the point was ostensibly moot. The government still won the war – for now, that is.

Endnote

1 https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2015cv0872-44-0

EU Drops Anti-Dumping Measures On Chinese Solar Panels

The EU will not extend the anti-dumping and anti-subsidy measures on solar panels from China that have been in place for the past five years.

The European Commission said that, having considered the needs of both producers and those using or importing solar panels, it decided that it is in the EU's best interests to let the measures lapse. The decision also takes into account the EU's new renewable energy targets.

The decision became effective September 3.

The EU first imposed definitive anti-dumping and anti-subsidy measures on Chinese solar panels in December 2013. The measures were originally scheduled to last for a period of two years. They were renewed in March 2017 for a period of 18 months, as opposed to the usual five years. The 18-month period was part of a compromise designed to find a balance between the interests of users, importers, and EU producers of solar panels.

The level of the measures has been gradually decreased over time to allow the prices of the imports into the EU to align progressively with world market prices.

The Commission said that the market situation has not changed to the extent that a further extension of the measures would be justified. It has rejected the EU solar panel industry's request for an expiry review investigation.

Canada, US Fail To Agree NAFTA Compromise

Canada and the US were unable to reach a deal on a new North American Free Trade Agreement (NAFTA) prior to the US's deadline of August 31.

Chrystia Freeland, Canada's Foreign Affairs Minister, told reporters that "we know that a win-win-win agreement is within reach" but "we're not there yet." She said that the US and Canada "now understand each other's position very well."

"With goodwill and flexibility on all sides, I know we can get there," she added.

On August 27, the US and Mexico announced that they had reached a preliminary agreement in principle on their future trading relationship. US President Donald Trump set a deadline of August 31 for the successful conclusion of talks with Canada, to enable the US Congress to conduct its mandatory 90-day review of the agreement prior to the new Mexican administration taking office on December 1.

US Trade Representative Robert Lightizer issued a statement on August 31 explaining that Trump has notified Congress of "his intent to sign a trade agreement with Mexico – and Canada, if it is willing – 90 days from now." He described the agreement as "the most advanced and high-standard trade agreement in the world," and one that will bring "huge benefits for our workers, farmers, ranchers, and businesses."

Lightizer said that the talks with Canada had been "constructive" and that progress was made. Further meetings began on September 5.

However, on September 1, Trump tweeted that Canada has "taken advantage of our country for many years" and that "there is no political necessity to keep Canada in the new NAFTA deal." He warned: "If we don't make a fair deal for the US after decades of abuse, Canada will be out."

Australia, India Finalize Trade Agreement

Australia and Indonesia have concluded negotiations on a new trading agreement that will eliminate tariffs on a range of products.

On August 31, Australian Prime Minister Scott Morrison and Indonesian President Joko Widodo announced the conclusion of the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA).

Morrison and his Minister for Trade, Simon Birmingham, said in a statement: "IA-CEPA will support Australian industrial producers in areas such as steel, copper, and plastics. Australian service industries including health, mining, telecommunications, tourism, and education will also have greater access to Indonesia's growing economy."

In addition, Australian farmers will be able to export 500,000 tonnes of feed grains, such as wheat, into Indonesia tariff free.

Morrison told reporters that "when you're getting rid of tariffs, you're basically taking taxes off things that are being bought in Australia and our key imports that come out of Indonesia – particularly petroleum and furniture and... wood and even footwear – these are things that will no longer have tariffs on them."

Australia and Indonesia agreed in November 2010 to negotiate a free trade agreement. Negotiations stalled, with only two rounds of talks held between 2010 and July 2013. Negotiations were then "reactivated" in March 2016, following a three-year hiatus.

Both sides agreed to commit to conclude negotiations on the broader Regional Comprehensive Economic Partnership.

The announcement was welcomed by the Australian Chamber of Commerce and Industry. CEO James Pearson said: "We hope that [the] announcement, and the prospect of a formal signing in the near future, will boost trade and investment between our two nations, and build on the fact that Indonesia and Australia are already partners, along with the rest of ASEAN, in our long-standing trade agreement AANZFTA [the ASEAN-Australia-New Zealand FTA]."

However, Pearson warned that Australia must do more to remain competitive, with competition for global markets becoming more intense and the prospect of trade wars looming. He said: "Australia is already suffering from a decline in our ranking in international competitiveness and international trade, which means less investment, fewer jobs, and missed opportunities for Australian businesses."

EU Willing To Cut Tariffs On US Cars

The EU's Trade Commissioner has said that the bloc would be willing to reduce its car tariffs, if the US does the same.

Cecilia Malmstrom appeared before the European Parliament's Committee on International Trade, where she exchanged views with its members on the EU's trading relationship with the US.

She revealed that the EU is "willing to bring down even our car tariffs to zero, all tariffs to zero, if the US does the same." A reciprocal reduction in tariffs "would be good for us economically and good for them."

"We will do it if they do it," she stated.

However, in an interview with Bloomberg News, US President Trump said that the offer is "not good enough." He said that the EU's "consumer habits are to buy their cars, not to buy our cars."

Trump then added that the EU "is almost as bad as China, just smaller."

In May, the US imposed a 25 percent tariff on steel products and a 10 percent tariff on aluminum products originating in the EU, claiming that such imports pose a national security risk. In response, the EU imposed "rebalancing" tariffs on a list of US products worth EUR2.8bn. Trump then tweeted that if the EU's "tariffs and barriers" were not "broken down and removed," the US would place a 20 percent tariff "on all of their cars coming into the US."

In July, both sides agreed to "work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods." They also expressed a willingness to "resolve the steel and aluminum tariff issues and retaliatory tariffs."

Malmstrom told MEPs that the EU "disagrees with the imposition of tariffs" and that the metal tariffs are, in the EU's view, "illegal and not compatible with WTO." She said that the EU had taken the issue to the WTO along with "many other" jurisdictions.

US And Mexico Agree Tariff-Free Trade

The United States and Mexico have agreed to maintain tariff-free trade in industrial, agricultural, and digital goods under the

North American Free Trade Agreement (NAFTA).

The commitments are part of a preliminary agreement in principle, reached by the US and Mexico on August 27 subject to finalization and implementation, to update the NAFTA following recent talks.

According to fact sheets released by the US Trade Representative's Office, the new agreement maintains duty-free treatment for goods originating in either country. It also maintains the prohibition on export duties, taxes, and other charges and the waiver of specific customs processing fees.

Tariffs on agricultural products traded between the United States and Mexico will remain at zero under the revised agreement. In addition, the agricultural chapter is expanded to cover all biotechnologies, including new technologies such as gene editing.

In addition, the agreement in principle prohibits customs duties and other discriminatory measures from being applied to digital products distributed electronically, such as e-books, videos, music, software, and games.

Venezuelan VAT Rate Rose On September 1

Venezuela's top rate of value-added tax rose from 12 percent to 16 percent from September 1.

In addition, financial transaction tax rates were reformed and ranging between zero percent and two percent.

The measures, included in Decree 3,584, were published in the nation's Official Gazette in August.

Malaysia Replaced GST With Sales Tax On September 1

Malaysia installed sales and service tax on September 1, 2018, in place of goods and services tax.

The rate of GST was reduced to zero (from six percent) from June 1, 2018, fulfilling the Malaysian Government's May 2018 election pledge to abolish GST.

SST is a tax levied on the final transaction in a supply chain to the consumer. It was formerly levied in Malaysia but was replaced on April 1, 2015, by the GST.

The service tax, which will now be levied at a rate of six percent, applies to persons who provide taxable services in the course or furtherance of a business in Malaysia and who are liable to be registered or are registered under the Service Tax Act 2018. Most businesses making supplies of taxable services are liable to be registered if the value of their supplies exceeds MYR500,000 (USD121,739) annually. Credit and charge card service providers must register for the service tax regardless of the value of their annual supplies, while the registration threshold for restaurants is MYR1m.

Taxable services include: hotel and other short-term accommodation, insurance, electricity, professional services (legal, accounting, and advertising), telecommunications, credit cards, nightclubs, casinos, other gaming businesses, cafes, restaurants, and other food and beverage offerings.

Sales tax will be levied on goods that are not otherwise exempt at either five percent or 10 percent. The specific rates are set out in the Malaysian Customs Department's guidance "Guide on Proposed Sales Tax Rates for Various Goods," released in late August.

Ahead of implementation, Malaysia issued a number of other guides for taxpayers, including on how to submit a final GST return, industry guides, and information on the scope of the two levies.

Businesses registered for GST will be automatically enrolled in the new system.

Lithuania Proposes To Cut VAT On Basic Foodstuffs

The Lithuanian Government has confirmed that a proposal is before Parliament to add basic foodstuffs to the nine percent reduced rate of value-added tax.

The measure is intended to counteract a 5.9 percent increases to the cost of food in the past five years, with food bills taking up a quarter of taxpayers' disposable income.

Lithuania levies three rates of value-added: a headline 21 percent rate, the nine percent rate, and a five percent rate.

The nine percent rate currently applies to most publications, public transportation services, accommodation services, and energy supplied to heat houses and water.

Kenya Introduces 16 Percent VAT On Fuel

Kenya's Revenue Authority has confirmed that VAT is chargeable on all petroleum products at a rate of 16 percent as of September 1, 2018, including the sale of existing petroleum stocks.

The announcement comes despite a vote in Parliament in favor of deferring the imposition of VAT on petroleum products until 2020 last week. A law to effect the delay has yet to be approved by Kenya's President.

The Revenue Authority said the change will impact oil importers, depot operators, distributors, oil marketers, and retailers, including gas stations. The agency said: "KRA has instituted measures to support oil industry players in complying with the law. We have also engaged the Energy Regulatory Commission in order to ensure coordinated action by relevant Government agencies."

Afilias Decides On US Headquarters From Ireland Citing Tax

Afilias, the world's second largest domain registry, has announced that it has decamped from Ireland and relocated its headquarters to the United States.

Afilias, which established its initial corporate headquarters in Dublin in early 2001, has now established a new corporate parent entity in Delaware.

Announcing the decision on August 30, 2018, CEO Hal Lubsen said: "We've long had a strong US presence. More of the company's shares are now owned by Americans, and our executive group is increasingly becoming American."

In its announcement, Afilias said its two largest customers, Public Interest Registry (the .ORG registry operator) and GoDaddy (the world's largest domain name registrar), have US headquarters. It said: "These trends, coupled with recent favorable US tax changes, make Afilias' US presence important in maximizing its future growth."

The group added: "Aside from the legal and HQ designation, very few changes are expected from the establishment of Afilias Inc. [...] The company anticipates increased hiring and investment in the US. Otherwise, no new paperwork or other changes will be requested of customers; all our offices worldwide will continue to operate as they have in the past; and pre-existing staff arrangements will not change."

Donohoe: Ireland Must Keep Control Of Public Finances

Irish Finance Minister Paschal Donohoe has said that the Government is focused on prudent budget management and will make "affordable" changes to the tax system.

In a speech to the Collins Institute, Donohoe emphasized that Ireland "must never lose control of our public finances again."

He said that Ireland's social and economy model must be based on the premise of "a steady state economy where we balance our books, invest in the future now, and deliver incremental and sustainable increases in living standards over time."

Donohoe said that the Government is working to balance Ireland's budget, pay down its national debt, and fund its national development plan.

He added that "this is combined with affordable tax reform and reduction."

The Government's Programme for Partnership Government agreement with the opposition established a ratio of 2:1 for the allocation of any fiscal space between public spending increases and tax cuts, respectively.

Last month, Donohoe said that he is committed to reforming the tax system but will not make any "big bang changes" in the Budget.

Ireland Likely To Retain Tax Exemptions For Banks

The Irish Government is unlikely to scrap a tax exemption for banks in October's Budget, according to reports.

The *Irish Examiner* reported that Finance Minister Paschal Donohoe is due to present a review of corporation tax to parliament next month.

The paper reported that a brief prepared by the Department of Finance for Donohoe considered the likely impact of limiting the scope of a measure that currently allows banks to write off taxes against past losses. Banks are currently permitted to defer taxes for up to 20 years.

The paper said that it "understands that Mr Donohoe is opposed to overhauling the tax regime for banks or corporate entities" and is likewise against placing a cap on the level of profits that can be made before tax is applied.

Donohoe is however expected to endorse the continued application of the bank levy, which raises around EUR150m (USD175.5m) a year. According to the *Irish Examiner*, the brief noted that Donohoe regards the bank levy "as the appropriate method of ensuring the banks contribute to the exchequer."

Irish Tourism Industry Warns Against Hiking VAT

Ahead of next month's Budget, the Irish Tourism Industry Confederation is campaigning for the nine percent tourism VAT rate to be retained.

The rate was lowered from 13.5 percent to nine percent in July 2011, and applies to the supplies of restaurants, hotels, and tourist attractions, and to certain media operations. It was originally intended to expire at the end of 2013 but was retained as part of the 2014 Budget.

The ITIC said that the reduced rate has helped the sector create an additional 79,100 jobs since 2011, with 68 percent of these jobs being located outside Dublin. It stressed that "tourism is vital for regional balance and growth, and the VAT rate is a critical component of regional success."

According to the ITIC, the rate ensures that Ireland remains internationally competitive. It said that 16 of the 19 eurozone countries have tourism VAT rates of 10 percent or less and that increasing the rate "would consciously damage our competitiveness at a critical time with the sector seriously exposed to Brexit."

The ITIC argued that that with 39 percent of Ireland's international visitors coming from the UK, the retention of the reduced VAT rate would provide stability in a time of uncertainty. It pointed to estimates which show that "a hard Brexit will cost Irish tourism EUR260m (USD300.7m) in its immediate aftermath with an impact on aviation, tourism demand, and cross border movements."

In July, a report prepared for the Finance Department as part of the Tax Strategy Group review process labelled the rate a "deadweight." It said that the demand for the goods and services covered by the rate would not be "materially affected by a rate increase" and warned that, with the economy reaching full employment, continued stimulus of the tourism sector could "add to overheating pressures."

Australia Launches 'Largest Ever' Tax Education Campaign

The Australian Taxation Office (ATO) is engaged in what it says is its biggest ever education campaign to help taxpayers get their tax returns right.

The campaign is running throughout tax time and includes direct contact with over three million selected taxpayers, as well as the release of specialized guides and toolkits for taxpayers, agents, employers, and industry bodies.

Tax returns cover the financial year from July 1 to June 30. For individuals lodging their own return, the deadline is October 31.

The ATO revealed that work-related expenses and rental property claims are high on its radar this year and that it is aiming to help taxpayers understand what they can and cannot claim.

Assistant Commissioner Kath Anderson explained that: "Last year work-related expenses totalled a record AUD21.3bn (USD15.6bn), and we have already flagged that over-claiming of deductions is a big issue. With so much money at stake, the community expects us to provide help where we can, not just to take action when we see mistakes and errors."

Each occupation has specific circumstances which affect what can and cannot be claimed. However, the ATO said that there are three golden rules that apply regardless of occupation: the taxpayer must have spent the money themselves and not been reimbursed; the claim must be directly related to earning their income; and they need a record to prove it. It has produced a series of sector-specific deductions guides.

Anderson said that more than 50,000 people have downloaded the ATO's guides and toolkit information so far this tax time. The most popular topics include car, clothing, travel, working from home, and self-education expenses.

"We want every taxpayer to have the information they need to know whether they can make a claim, to get it right, and know what records they need to keep. Understanding what you can and cannot claim will help ensure that your tax return is processed quickly and any refund is paid as soon as possible," Anderson said.

Denmark Pledges To Reduce Tax Compliance Burden

The Danish Tax Ministry has announced that political parties have agreed to a package of measures that would considerably reduce the administrative burden on businesses, including in the area of taxation.

According to Tax Minister Karsten Laurtizen, the agreement between the Government, the

Danish People's Party, and the Social Liberal Party simplifies the tax structure, eases certain tax requirements, and abolishes a number of burdensome and redundant charges and levies, the Government said.

For example, taxes on the use of tobacco snuff and coffee substitutes are being removed because it is now illegal to sell the former in a retail store, while the latter are generally no longer used, Laurtizen noted.

The agreement also includes tax relief for breweries, he added.

In all, 30 measures are included in the package aimed at easing the administrative load on businesses.

Pakistan Not Seizing Accounts Of Non-Compliant Taxpayers

Pakistan's Federal Board of Revenue said recently that it had not issued instructions to freeze bank accounts of non-filers of income tax returns, contrary to local media reports.

The Board further clarified that the country's income tax law does not restrict banking transactions out of bank accounts held by any person whether filer or non-filer.

The Board has also debunked media reports, in a statement issued earlier in August, that Switzerland had offered to repatriate funds deposited by Pakistanis in Swiss bank accounts under the double tax agreement between the two countries. The Board said the agreement exists to eliminate double taxation and facilitate the exchange of information on request. It does not provide for the repatriation of assets, it said.

European Tax Advisers Concerned About EU VAT Reform

CFE Tax Advisers Europe, a Brussels-based umbrella association of European tax advisers, has expressed concern that several aspects of the European Union's proposed value-added tax reforms will be detrimental to small businesses in Europe.

While welcoming certain elements of the proposed definitive VAT regime, the association said that it is particularly troubled by the Certified Taxable Persons (CTP) aspect of the reforms, as well as the potential impact of the draft directive on small- and medium-sized businesses more generally.

The EU's plan for a definitive VAT regime were set out in October 2017. The plan aims to reduce fraud, estimated to cost member states EUR50bn (USD58.5bn) per year, by EUR40bn, in particular by centering tax rules around the destination principle – that supplies should be taxed where they are consumed or effectively enjoyed, under that territory's domestic rules. It will also provide member states with greater flexibility on setting rates of VAT.

The plan proposed the introduction of the notion of a Certified Taxable Person, a category of trusted business that would benefit from much simpler rules. Provided that companies, irrespective of size, meet a set of criteria, they can get a certificate allowing them to be considered throughout the EU to be a reliable VAT taxpayer. A business can become a CTP by applying to their national tax authorities and proving compliance with a set of sufficiently harmonized and standardized pre-defined criteria including: regular payment of taxes, reliable internal control systems, and proof of solvency. The status of CTP will be mutually recognized by all EU member states.

However, the CFE is worried that, far from simplifying the EU VAT regime for SMEs, the proposed reforms could make the VAT compliance experience more complex for them.

"CFE understands the wish of the European Commission to tackle fraud and to improve and simplify the VAT system for cross-border transactions within the EU. However it is concerned about the burdens that the proposed system will place on traders," the association said, adding that under the definitive VAT regime, SMEs will face "considerable difficulties and expense" in determining what rates of VAT to charge in other member states.

"CFE fears that rather than facilitating cross-border trade, the proposals will have the reverse effect. It can already be difficult and expensive for businesses to accurately determine their obligations in a purely domestic context. The difficulties are clearly going to be much greater when directed at trying to determine how much VAT should be paid under the laws of a different member state, where any legislation and guidance is likely to be in a different language."

On the issue of CTPs, the association has a number of concerns, including that:

- The vague nature of terms in the proposed Article 13a(2) , such as "serious infringement" or "financial solvency," will give member states significant discretion;
- When there is a VAT group it is not entirely clear whether it is the entire group or the individual member of the group that the status of CTP applies to;
- In the case of a company with fixed establishments in a number of countries, it is not completely clear what entity is expected to apply for CTP status and in what country;
- The length of time it could take to gain CTP status, with the comparable Authorized Economic Operator (AEO), used for customs purposes, currently taking around one year to obtain;
- The VAT Information Exchange System (VIES) will need to be reviewed and updated in order to effectively facilitate the new system;
- Many reputable SMEs could struggle to satisfy the directive's requirements for "a high level of control of his operations" and evidence of "financial solvency" when transposed by member states and consequently suffer reputational damage;
- The current proposed wording may give rise to disputes about whether an "activity" can be considered sufficiently distinct to be considered an "other" activity that is eligible for partial CTP status, particularly when a business makes both taxable and non-taxable supplies;
- The process for applying for CTP status is expensive and arduous and may discourage applicants; and
- CTP status is time-limited and rules are needed to assess whether a person should continue to benefit from it.

CFE also said it has practical concerns in relation to call-off stock and chain transactions, reverse charge supplies, and the special schemes extending the one-stop account for VAT.

France May Delay Automatic Personal Tax Withholding

A project to introduce an automatic pay-as-you-earn withholding tax system in France from next year has been thrown into doubt after President Emmanuel Macron suggested that it could be further delayed.

Initially proposed under the government of previous president Francois Hollande, the change has been delayed numerous times, largely due to the technical complexity of its rollout. It was finally included in the 2017 Finance Bill and scheduled for introduction in January 2018, but was delayed by one year as the Government sought to fix system errors.

France is one of the few advanced countries without a PAYE system.

Most forms of income will be subject to PAYE, including employment income, self-employment income, pensions, annuities, and rental income, although non-resident taxpayers subject to withholding tax, and foreign income which qualifies for the application of a French foreign tax credit will not be taxed at source under the new scheme.

According to reports, Macron said during a press conference with the Finnish Prime Minister Juha Sipila in Helsinki on August 30 that while he intends to press ahead with the project, additional glitches in the new system needed to be fully addressed before it could become operational. It is said that this could push the launch date back further to January 2020.

However, contradictory comments by French Budget Minister Gerard Darmanin on the previous day that the Government would introduce the system in January 2019 as planned has thrown the project into further confusion.

UK Chamber Calls For More Tax Guidance On 'No Deal' Brexit

The British Chambers of Commerce has welcomed the release of guidance from the UK Government on the tax consequences of a potential "no deal" with the European Union on the United Kingdom's exit from the bloc, in particular on value-added tax, but has said more guidance is necessary.

Adam Marshall, Director General of the British Chambers of Commerce (BCC), explained that: "Public preparations for all eventualities – and clear, crisp communication with affected businesses – are long past due. The technical notices being published by the UK government are a good start, but businesses still need more detailed information to trade as smoothly as possible across borders if there is no UK-EU deal on March 30 next year."

"Ministers say they will take unilateral steps to keep trade moving freely but must demonstrate what they will concretely do to limit the impact of delays, inspections, and red tape."

"It is unfortunate that businesses face several weeks wait for further information and clarification. Every additional delay means less time for businesses to prepare ahead of the UK's fast-approaching exit from the EU."

Commenting on the UK Government's recent VAT guidance for businesses, Marshall said: "At last, businesses have a clear answer to one of their biggest worries: import VAT."

"The Government has responded to our campaign to avoid a VAT 'time bomb' for traders by introducing postponed accounting for imports, and has gone further than we expected by saying that these arrangements will cover imports from EU and non-EU markets alike."

"Had ministers not acted, firms faced the prospect of having to pay VAT immediately on each cross-border transaction, creating significant cash flow issues. While we await further detail on how the new postponed accounting rules will work, this commitment defuses the cash flow 'time bomb' that many businesses feared."

On cross-border trade and customs, Marshall added: "The stark reality is that in a 'no deal' scenario, it appears that the Government's intention is to impose full-blown customs controls on trade between the EU and the UK immediately. According to the technical notice, businesses will have to be ready for customs declarations, tariffs, safety inspections, new licenses, and more from day one, which will be cold comfort for many trading firms. Companies trading across European borders need to start preparing for this possibility now, and so too do communities close to border crossing points."

"Given well-publicized concerns surrounding the capacity and readiness of UK customs systems, we question whether this outcome is realistic. Even though there is some welcome practical advice in the Government's technical notes on trading with the EU in these circumstances, we need to know much more. What happens to 'trusted trader' schemes? What about trade that flows under the provisions of existing EU free trade agreements? We anticipate putting many more questions to ministers about cross-border trade in order to get the clarity that businesses need."

Panasonic Announces Move From UK To Netherlands

Panasonic has confirmed that it will shift its corporate headquarters to the Netherlands from the UK.

In an interview published by the Nikkei Asian Review, the group's Chief Executive Laurent Abadie said the move would "avoid potential tax issues" in territories other than the UK were the UK to be deemed to have reduced its corporate tax rate too aggressively following Brexit.

"Given various business implications from Brexit, the company has been considering the relocation for 15 months," Nikkei reported Abadie as saying. He added that moving the company's headquarters would further avoid issues surrounding the free movement of goods and persons between the UK and Europe.

CAMEROON - NIGERIA

Negotiations

On August 3, 2018, negotiations for a DTA between Cameroon and Nigeria were concluded.

ECUADOR - JAPAN

Negotiations

On August 27, 2018, Ecuador and Japan began negotiations towards a DTA.

HONG KONG - SAUDI ARABIA

Into Force

On September 1, 2018, the DTA between Hong Kong and Saudi Arabia entered into force.

JAPAN - LITHUANIA

Into Force

On August 31, 2018, the DTA between Japan and Lithuania entered into force.

JERSEY - LIECHTENSTEIN

Signature

On August 17, 2018, Jersey and Liechtenstein signed a DTA.

KYRGYZSTAN - TURKMENISTAN

Signature

On August 23, 2018, Kyrgyzstan and Turkmenistan signed a DTA.

LATVIA - VIETNAM

Into Force

On August 6, 2018, the DTA between Latvia and Vietnam entered into force.

MOLDOVA - UNITED ARAB EMIRATES

Into Force

On July 26, 2018, the DTA between Moldova and the United Arab Emirates entered into force.

SINGAPORE - GABON

Signature

On August 28, 2018, Singapore and Gabon signed a DTA.

SRI LANKA - OMAN

Signature

On August 15, 218, Sri Lanka and Oman signed a DTA.

VIETNAM - MACAU

Ratified

On August 27, 2018, Vietnam ratified its DTA with Macau.

THE AMERICAS

STEP Global Congress

9/13/2018 - 9/14/2018

STEP

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

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

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

STEP Wyoming Conference

9/21/2018 - 9/22/2018

STEP

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

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

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

Fiduciary Institute 2018

9/27/2018 - 9/27/2018

American Bar Association

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

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

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

STEP LatAm Conference

10/4/2018 - 10/5/2018

STEP

Venue: Hyatt Regency Mexico City, Campos Elíseos 204, Polanco, Polanco Chapultepec, Ciudad de México, 11560, Mexico

Key speakers: Bill Ahern (Ahern Lawyers), Simon Beck (Baker McKenzie), Mauricio Cano del Valle (Brook Y Cano), Ceci Hassan (Baker McKenzie), among numerous others

https://www.step.org/events/step-latam-conference-4th-5th-october

Family Office & Private Wealth Management Forum West

10/24/2018 - 10/26/2018

Opal Group

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

Key speakers: TBC

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

Family Office Summit: Integrating the Full Balance Sheet

11/1/2018 - 11/1/2018

ClearView Financial Media

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

Key speakers: TBC

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

30th Latin American Tax Law Conference

11/4/2018 - 11/9/2018

IBFD

Venue: Radisson Montevideo Victoria Plaza, Plaza Independencia, 11100 Montevideo, Uruguay

Key speakers: TBC

https://www.ibfd.org/IBFD-Tax-Portal/Events/30th-Latin-American-Tax-Law-Conference

TP Minds West Coast

11/13/2018 - 11/15/2018

Informa

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

Key speakers TBC

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

111th Annual Conference on Taxation

11/15/2018 - 11/17/2018

National Tax Association

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

Chair: Rosanne Altshuler (National Tax Association) https://www.ntanet.org/event/2017/12/111th-annual-conference-on-taxation/

8th Annual Institute on Tax, Estate Planning and the World Economy

2/4/2019 - 2/5/2019

STEP

Venue: Fashion Island Hotel, 690 Newport Beach, Newport Beach, 92660, USA

Key speakers: Jay D. Adkisson (Riser Adkisson), Colleen Barney (Albrecht & Barney), Joseph A. Field (Pillsbury), Sandra D. Glazier (Lipson Neilson), among numerous others

http://www.stepoc.org/institute/

ASIA PACIFIC

TP Minds Asia

9/18/2018 - 9/20/2018

Informa

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

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

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

Practical Aspects of Tax Treaties

10/10/2018 - 10/12/2018

IBFD

Venue: Address TBC after registration, Kuala Lumpur, Malaysia

Instructors: Bart Kosters (IBFD)

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

International Tax Planning after BEPS and the MLI

10/15/2018 - 10/17/2018

IBFD

Venue: Address TBC, Singapore

Key speakers: Bart Kosters (IBFD), Tom Toryanik (Deloitte), Hemal Zobalia (Deloitte Haskin & Sells), among numerous others

https://www.ibfd.org/Training/International-Tax-Planning-after-BEPS-and-MLI

STEP Asia Conference 2018, Hong Kong

11/20/2018 - 11/21/2018

STEP

Venue: Grand Hyatt Hong Kong, 1 Harbor Rd, Wan Chai, Hong Kong

Key speakers: Jonathan Midgley (Haldanes), James Lau (Financial Services and the Treasury Bureau, Hong Kong), among numerous others

https://www.step.org/asia2018

The 4th International Conference on Private Capital and Intergenerational Wealth

11/22/2018 - 11/22/2018

STEP

Venue: The University of Hong Kong, Pokfulam, Hong Kong

Key speakers: TBC

https://www.step.org/events/4th-international-conference-private-capital-and-intergenerational-wealth-22-november-2018

International Taxation Conference 2018

12/6/2018 - 12/8/2018

IBFD

Venue: ITC Maratha, Sahar Andheri, Mumbai 400099, Maharashtra, India

Key speakers: Mukesh Butani (BMR Legal), Murray Clayson (International Fiscal Association), Marc Levey (Baker & McKenzie), William Morris (PwC), among numerous others

https://www.ibfd.org/IBFD-Tax-Portal/Events/International-Taxation-Conference-2018

STEP Australia 2019

5/15/2019 - 5/17/2019

STEP

Venue: The Stamford Plaza, Brisbane, Australia

Key speakers: TBC

https://www.step.org/events/step-australia-2019-conference-save-date-15-17-may-2019

CENTRAL AND EASTERN EUROPE

Ukrainian Business Forum Kiev 2018

11/19/2018 - 11/19/2018

CIS Wealth

Venue: Convention and Exhibition Centre "Parkovy", 16a Parkova Road, Kiev, Ukraine

Tatyana Shevtsova (Crowe Horwath AC Ukraine), Anatoliy Guley (Ukrainian Interbank Currency Exchange) among numerous others

https://ubf.international/

MIDDLE EAST AND AFRICA

Tax Planning in Africa and the Middle East

10/28/2018 - 10/30/2018

IBFD

Venue: Hilton Dubai Jumeirah Hotel, Jumeirah Beach Road, Dubai Marina, Dubai

Key speakers: Ridha Hamzaoui (IBFD), Reggie Mezu (Baker McKenzie Habib Al Mulla), among numerous others

https://www.ibfd.org/Training/Tax-Planning-Africa-and-Middle-East-1

TP Minds Africa

10/31/2018 - 11/2/2018

Informa

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

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

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

STEP Arabia Branch Conference

11/11/2018 - 11/11/2018

STEP

Venue: Abu Dhabi Global Markets, Al Maryah Island, Abu Dhabi, UAE

Key speakers: TBC

https://www.step.org/events/step-arabia-branch-conference-11-november-2018-save-date

Introduction to GCC VAT

3/3/2019 - 3/5/2019

IBFD

Venue: Hilton Dubai Jumeirah Hotel, Jumeirah Beach Road, Dubai Marina, Dubai

Key speakers: Reggie Mezu (Baker McKenzie Habib Al Mulla), Jordi Sol (IBFD), Mohamed Faysal Charfeddine (Aujan Group), Saira Menon (PwC), among numerous others

https://www.ibfd.org/Training/Introduction-GCC-VAT

WESTERN EUROPE

Autumn Residential Tax Update Conference 2018

9/7/2018 - 9/9/2018

Chartered Institute of Taxation

Venue: University of Warwick, Coventry, CV4 7AL, UK

Chair: Robert Jamieson (Mercer & Hole)

https://www.tax.org.uk/members/conferences-events/autumn-residential-tax-update-conference-2018

BEPS Country Implementation – MLI and beyond

9/10/2018 - 9/11/2018

IBFD

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

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

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

Commerce & Industry Conference 2018

9/19/2018 - 9/19/2018

Chartered Institute of Taxation

Venue: Freshfields Bruckhaus Deringer, Northcliffe House, London, EC4Y 0BQ, UK

Chair: Robert De La Rue (RSM)

https://www.tax.org.uk/commerceandindustry2018

European Value Added Tax Masterclass

9/20/2018 - 9/21/2018

IBFD

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

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

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

UK Tax, Trusts and Estates Conference 2018

9/21/2018 - 9/21/2018

STEP

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

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

https://www.step.org/TTE18

International Tax Academy 2018

9/24/2018 - 9/26/2018

Informa

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

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

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

International Tax Aspects of Permanent Establishments

9/24/2018 - 9/26/2018

IBFD

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

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

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

Private Equity Tax Practices

9/26/2018 - 9/26/2018

Informa

Venue: Address TBC, London, UK

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

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

Private Investor Middle East International Conference

9/26/2018 - 9/27/2018

Adam Smith Conferences

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

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

http://www.privateinvestormiddleeast.com/

Wealth Insight Forum 2018

9/27/2018 - 9/27/2018

Spear's

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

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

http://wif.spearswms.com/

Principles of Transfer Pricing

10/1/2018 - 10/5/2018

IBFD

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

Instructors: TBC

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

UK Tax, Trusts and Estates Conference 2018

10/2/2018 - 10/2/2018

STEP

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

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

https://www.step.org/TTE18

Indirect Taxes Annual Conference 2018

10/3/2018 - 10/3/2018

Chartered Institute of Taxation

Venue: Etc Venues County Hall, London, SE1 7PB, UK

Key speakers: Mike Cunningham (HM Treasury), Nel Hargrave (HMRC), Andrew Hitchmough QC (Pump Court Tax Chambers), Hui Ling McCarthy QC (11 New Square), among numerous others

https://www.tax.org.uk/indirecttaxes2018

International VAT Expert Academy

10/4/2018 - 10/5/2018

IBFD

Venue: Hyatt Regency Düsseldorf, Speditionstraße 19, 40221, Düsseldorf, Germany

Key speakers: Dr. Aleksandra Bal (IBFD), Bert Gevers (Loyens & Loeff), Ronny Langer (Küffner Maunz Langer Zugmaier), Fernando Matesanz (Spanish VAT Services), among numerous others

https://www.ibfd.org/IBFD-Tax-Portal/Events/International-VAT-Expert-Academy

STEP Europe Conference

10/4/2018 - 10/5/2018

STEP

Venue: Hôtel Le Royal, 12 Boulevard Royal, 2449 Luxembourg, Luxembourg

Key speakers: John Marshall (British Ambassador to Luxembourg), Miguel Poiares Maduro (European University Institute, Italy), Serge Schroeder (Cour Administrative, Luxembourg), Judge Christopher Vajda (Court of Justice of the European Union), among numerous others

https://www.step.org/europe18

Putting Learning into Practice - Addressing the Challenges of International Tax Law

10/8/2018 - 10/9/2018

IBFD

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

Key speakers: Prof. Ruth Mason (IBFD), Dr. Leopoldo Parada (IBFD), Dr. Joanna Wheeler (IBFD), Dr. Svetislav Kostic (IBFD), among numerous others

https://www.ibfd.org/IBFD-Tax-Portal/Events/Putting-learning-practice-Addressing-Challenges-International-Tax-Law

European Value Added Tax – Selected Issues

10/10/2018 - 10/12/2018

IBFD

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

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

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

9th Annual International Taxation in CEE

10/11/2018 - 10/12/2018

GCM Parker

Venue: Address TBC, Prague, Czech Republic

Key speakers: TBC

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

UK Tax, Trusts and Estates Conference 2018

10/16/2018 - 10/16/2018

STEP

Venue: Bristol Marriott Royal Hotel, College Green, Bristol, BS1 5TA, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell Private Wealth), Christopher Groves (Withers LLP), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/events/uk-tax-trusts-and-estates-conference-2018-bristol-16-october-2018

International Tax Planning Association Meeting

10/17/2018 - 10/19/2018

ITPA

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

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

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

Current Issues in International Tax Planning

10/22/2018 - 10/24/2018

IBFD

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

Key speakers: Annemiek Kale (Arla Foods), Adam Zalasinski (European Commission), Tamás Kulcsár (IBFD), Jeroen Kuppens (KPMG Meijburg & Co), among numerous others

https://www.ibfd.org/Training/Current-Issues-International-Tax-Planning-0

Transfer Pricing and Substance Masterclass

10/31/2018 - 11/2/2018

IBFD

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

Key speakers: Eric Vroemen (PwC), Önder Albayrak (Genzyme-Sanofi), Sandra Esteves (SABIC), Monica Erasmus-Koen (Tytho), among numerous others

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

Beyond Borders: International Tax Into 2020

11/7/2018 - 11/10/2018

Taxlinked.net

Venue: Amathus Beach Hotel, Limassol, Cyprus

Key speakers: Alex Cobham (Tax Justice Network), Jeremy Cape (Squire Patton Boggs), Aisling Donohue (Andersen Tax), Thomas Jacobsen (Papilio Services Ltd.), among numerous others

http://unbouncepages.com/taxlinked-international-tax-conference-2018/

The 7th Annual OffshoreAlert Conference Europe

11/12/2018 - 11/13/2018

OffshoreAlert

Venue: Grange St.Paul's Hotel, 10 Godliman St, London EC4V 5AJ, UK

Key speakers: Antonio Flores (Lawbird), Simon York (HMRC), Gretchen King (Vantage Intelligence), Mary Inman (Constantine Cannon), among numerous others

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

Global VAT

11/13/2018 - 11/16/2018

IBFD

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

Key speakers: Fabiola Annacondia (IBFD), Jordi Sol (IBFD), Wilbert Nieuwenhuizen (University of Amsterdam), Bhavna Doshi (independent consultant), among numerous others

https://www.ibfd.org/Training/Global-VAT-0

Global VAT - Specific Countries

11/15/2018 - 11/16/2018

IBFD

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

Key speakers: Bhavna Doshi (Independent consultant), Toon Beljaars (Uber), Vanessa Bacchin Cardo (Unilever), Svetlin Krastanov (Tax Academy Ltd.), among numerous others

https://www.ibfd.org/Training/Global-VAT-Specific-Countries-2

Principles of International Taxation

11/19/2018 - 11/23/2018

IBFD

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

Key speakers: Premkumar Baldewsing (IBFD), Hans Pijl (Independent tax lawyer), Carlos Gutiérrez Puente (IBFD), Ruxandra Vlasceanu (IBFD), among numerous others

https://www.ibfd.org/Training/Principles-International-Taxation-1

Annual Conference on European VAT Law 2018

11/22/2018 - 11/23/2018

Academy of European Law

Venue: TBC, Trier, Germany

Key speakers: TBC

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

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

11/28/2018 - 11/30/2018

IBFD

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

Key speakers: Rens Bondrager (Allen & Overy LLP), Femke van der Zeijden (PwC), Frank de Beijer (Liberty Global), Danyel Slabbers (PwC), among numerous others

https://www.ibfd.org/Training/International-Tax-Legal-and-Commercial-Aspects-Mergers-Acquisitions-0

Capital Taxes Update

12/5/2018 - 12/5/2018

STEP

Venue: Holiday Inn, Impington, Lakeview, Bridge Rd, Impington, Cambridge, CB24 9PH, UK

Key speaker: Chris Whitehouse (5 Stone Buildings)

https://www.step.org/events/capital-taxes-update-5-december-2018

Advanced VAT Optimization

12/6/2018 - 12/7/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Advanced-VAT-Optimization

Transfer Pricing and Intra-Group Financing

12/10/2018 - 12/11/2018

IBFD

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

Key speakers: Antonio Russo (Baker & McKenzie), Alejandro Zavala Rosas (Baker & McKenzie), Rezan Ökten (VEON), Omar Moerer (PwC), among numerous others

https://www.ibfd.org/Training/Transfer-Pricing-and-Intra-Group-Financing-0

Transfer Pricing Masterclass

2/14/2019 - 2/15/2019

IBFD

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

Key speakers: TBC

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

Current Issues in International Tax Planning

2/27/2019 - 3/1/2019

IBFD

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

Key speakers: Jan de Goede (IBFD), Annemiek Kale (Arla Foods), Clive Jie-A-Joen (Simmons & Simmons), Jeroen Kuppens (KPMG Meijburg & Co), among numerous others https://www.ibfd.org/Training/Current-Issues-International-Tax-Planning-1

International Tax Planning Association Meeting

3/20/2019 - 3/22/2019

ITPA

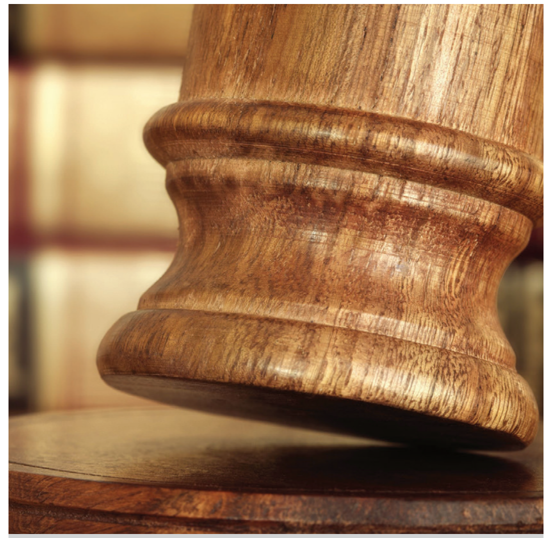
Venue: Kempinski Hotel Bahía, Autovía del Mediterráneo, km 159, 29680 Estepona, Málaga, Spain

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

https://www.itpa.org/meeting/estepona-march-2019/

THE AMERICAS

United States



A listing of recent key international tax cases.

On August 16, 2018, the United States Court of Appeal for the Eighth Circuit overturned a 2016 decision by the US Tax Court in favor of medical device manufacturer Medtronic in a long-running case centering on the firm's transfer pricing arrangements.

The case revolves around the transfer pricing method used to evaluate Medtronic's inter-company finance arrangements, with the Court of Appeals ruling that the Tax Court erred in not applying the correct transfer pricing method when calculating the arm's length royalty rates for Medtronic's intercompany licenses.

Medtronic's parent company, Medtronic US, and its distributer, Medtronic USA, Inc., are located in the United States, and its manufacturing division, Medtronic Puerto Rico Operations Co. (Medtronic Puerto Rico), is located in Puerto Rico.

Medtronic's 2002 consolidated tax return used the comparable uncontrolled transactions (CUT) transfer pricing method to determine the royalty rates paid on its intercompany licenses. This method, the appeal court observed, evaluates whether the amount charged for a controlled transfer of intangible property was arm's length by reference to the amount charged in a comparable uncontrolled transaction.

However, in auditing the return, the IRS was concerned that Medtronic was shifting too much profit from its devices and leads to Puerto Rico in an attempt to avoid tax in the US. Using the residual profit split transfer pricing method, the IRS concluded that 90 percent of Medtronic's devices and leads profit should be allocated to the United States operations and 10 percent to the Medtronic Puerto Rico operations.

To resolve the audit, Medtronic and the IRS entered into a Memorandum of Understanding in which Medtronic Puerto Rico agreed to pay royalty rates of 44 percent for devices and 26 percent for leads on its intercompany sales. However, the IRS and Medtronic could not agree on how the Memorandum should apply to Medtronic's royalty income for the 2005 and 2006 tax years, with the IRS determining that the comparable profits method - not the CUT method - was the best way to determine an arm's length price for Medtronic's intercompany licensing agreements for those two years. Accordingly, the IRS concluded that the rate paid by Medtronic Puerto Rico was too low, resulting in tax deficiencies for 2005 and 2006.

Medtronic disputed the IRS's conclusions, and eventually filed suit in the US Tax Court, arguing that the CUT method, not the comparable profits method, was the best method for determining an arm's length price. The Court rejected both parties' royalty rate valuations, but held that the IRS's allocations were "arbitrary, capricious, or unreasonable." The court also found that the comparable profits method "downplayed" Medtronic Puerto Rico's role in ensuring the quality of the devices and leads, and that it did not reasonably attribute a royalty rate to Medtronic's profit.

The Tax Court ultimately decided that Medtronic's CUT method was the best way to determine an arm's length royalty rate for intercompany agreements, but made a number of adjustments which led to the lowering of the outstanding tax owed by Medtronic, a decision that the IRS appealed.

Key to the appeal court's ruling was that the Tax Court applied the Pacesetter agreement as the best CUT to calculate the arm's length result for intangible property. This agreement was entered into by Pacesetter's parent company and Medtronic US in 1992 in an effort to settle several lawsuits regarding patent and license use. As part of the agreement, the parties cross-licensed their pacemaker and patent portfolios.

However, in its decision, the appeal court said that the Tax Court's factual findings "are insufficient to enable us to conduct an evaluation of that determination." The appeal court went on to conclude that:

"The tax court did not address in sufficient detail whether the circumstances of the settlement between Pacesetter and Medtronic US were comparable to the licensing agreement between Medtronic and Medtronic Puerto Rico. The Pacesetter agreement resolved litigation between the parties, and the Tax Court did not decide whether it was one created in the ordinary course of business."

"Additionally, the Tax Court did not analyze the degree of comparability of the Pacesetter agreement's contractual terms and those of the Medtronic Puerto Rico licensing agreement."

"In the absence of findings regarding the degree of comparability between the controlled and uncontrolled transactions, we cannot determine whether the Pacesetter agreement constituted an appropriate CUT."

"The Tax Court also did not evaluate how the different treatment of intangibles affected the comparability of the Pacesetter agreement and the Medtronic Puerto Rico licensing agreement. The Pacesetter agreement was limited to patents and excluded all other intangibles, including 'any technical know-how or design information, manufacturing, marketing, and/or processing information or know-how, designs, drawings, specifications, software source code or other documents directly or indirectly pertinent to the use of the Licensed patents.' The Medtronic Puerto Rico licensing agreement, on the other hand, did not exclude such intangibles."

"Finally, the Tax Court did not decide the amount of risk and product liability expense that should be allocated between Medtronic US and Medtronic Puerto Rico."

"In the absence of such a finding, we lack sufficient information to determine whether the Tax Court's profit allocation was appropriate."

"Accordingly, we vacate the Tax Court's January 25, 2017, order and remand the case for further consideration in light of the views set forth in this opinion."

http://media.ca8.uscourts.gov/opndir/18/08/171866P.pdf

THE AMERICAS

United States

The US Court of Appeals for the Ninth Circuit has announced that it will revisit the landmark ruling in Altera on October 16, 2018.

In a recent update posted on its website, the Court said the case (No. 16-70496 and 16-70497) will be reargued at 14:00 local time in Courtroom 1, 3rd Floor Rm 338, James R Browning US Courthouse, San Francisco.

The Court withdrew its ruling in this case in early August, to allow a reconstituted panel to confer on the matter. The decision to revisit the outcome follows the death of one of the judges on the three-member panel, Stephen Reinhardt, on March 29, 2018. Earlier, in a footnote accompanying the decision in favor of the IRS, the Court said: "Judge Reinhardt fully participated in this case and formally concurred in the majority opinion prior to his death."

Reinhardt's vote was crucial in the 2-1 decision in favor of the IRS. The Court could now reverse its decision, if newly assigned judge Susan Graber sides with judge Kathleen O'Malley, who dissented.

In its withdrawn ruling, the Court found, among other things, that the Treasury Department had acted lawfully under the Administrative Procedure Act when issuing regulations that provided for a "purely internal" method of allocating costs among related parties (and specifically among cost-sharing groups) for transfer pricing purposes. The ruling would have empowered the IRS to make adjustments to taxpayers' transfer pricing dealings in circumstances where unrelated parties do not enter into the same transactions – where a comparability analysis is impossible.

Although the tax at stake for Altera Corp (now part of the Intel Group) is said to be relatively minor, a ruling for the IRS would have huge implications for the tax affairs of tech firms in particular with regards their cost-sharing arrangements.

According to the court's calendar, just 20 minutes has been allocated to the matter.

https://www.ca9.uscourts.gov/calendar/view.php?hearing=October%20-%20James%20R.%20Browning%20U.S.%20Courthouse,%20San%20Francisco&dates=9-12,%2015-19,%2025&year=2018

THE AMERICAS

United States

Swiss bank Basler Kantonalbank has agreed to pay penalties of USD60.4m to settle a long-standing tax dispute with the United States authorities.

The fine is part of a deferred prosecution agreement (DPA) approved on August 28 by the US District Court for the Southern District of Florida, the Department of Justice has announced.

According to the DoJ, BKB admits in the DPA and related court documents that between 2002 and 2012 it conspired with its employees, external asset managers, and clients to defraud the United States with respect to taxes, commit tax evasion, and file false federal tax returns.

The DoJ said that at its peak in 2010, the bank held approximately 1,144 accounts for US customers, with an aggregate value of approximately USD813.2m. Many - but not all - of these were undeclared accounts that were part of the conspiracy, the department said.

The USD60.4m fine consists of three parts. First, BKB agreed to pay USD17.2m in restitution to the Internal Revenue Service, which represents the unpaid taxes resulting from BKB's participation in the conspiracy. Second, BKB agreed to forfeit USD29.7m to the United States, representing gross fees (not profits) that the bank earned on its undeclared accounts between 2002 and 2012. And, third, the bank agreed to pay a fine of USD13.5m.

The DoJ said that the penalty amount "reflects BKB's thorough internal investigation and cooperation with the United States, as well as the bank's extensive efforts at remediation, and its waiver of any claim of foreign sovereign immunity."

Under the DPA, prosecution against the bank for conspiracy will be deferred for an initial period of three years to allow BKB to demonstrate good conduct.

This is the fourth recent non-prosecution deal concluded by the DoJ after similar arrangements were made with Neue Privat Bank, Swiss asset management firm Mirelis Holding, and Zurcher Kantonalbank.

https://www.justice.gov/opa/pr/justice-department-announces-deferred-prosecution-agreement-basler-kantonalbank

WESTERN EUROPE

Greece

Reversing its previous decision on the matter, the European Commission concluded on August 9 that a tax on admission fees to public and private casinos in Greece from 1995 to 2012 does not involve state aid, in line with decisions by the European courts.

Under Greece's system of casino levies, all casinos in Greece have been required to charge a regulated admission fee to customers. Casinos then have to pass on 80 percent of the admission fee to the Greek state as a tax, while retaining the remaining 20 percent as remuneration for issuing tickets and covering expenses. Until November 2012, the general regulated admission fee was EUR15 (USD17.37). However, state-owned casinos were subject to a lower regulated admission fee of EUR6.

Following a complaint by a private casino operator, the Commission opened a formal investigation into the differentiated tax levied on admissions to public and private casinos in Greece. In May 2011, the Commission found that the measure constituted incompatible state aid in favor of public casinos, and ordered Greece to recover the unlawful aid.

However, the decision was overturned by the General Court of the European Union in September 2014, a ruling which was subsequently upheld by the Court of Justice in October 2015.

The Commission's newly issued decision reflects the findings of the European courts and concludes that the differentiated tax levied on admissions to public casinos and private casinos did not confer a selective advantage to public casinos. According to the Commission, this is because the amounts due to be paid to the Greek state by private and public casinos corresponded to the same percentage (80 percent) of the different regulated admission fees charged to customers by the two categories of casinos. Furthermore, in November 2012, the differentiation between admission fees for private and public casinos in Greece was abolished and a EUR6 admission fee was set for all casinos, the Commission noted.

http://europa.eu/rapid/press-release_MEX-18-4941_en.htm

Dateline September 6, 2018

Taxes aren't just there to raise revenue for the government. They are also there to save us from ourselves. Environmental taxes are intended to stop us from destroying the planet. And the collection of levies which fall under the category of **sin taxes** are supposed to stop us from destroying our bodies and relying on often state-funded health care systems.

The effectiveness of such fiscal nudges (some may argue that "punches" would be a more apt description) is fiercely debated. It was revealed last week that **Ireland** is set to collect EUR30m this year from its **new sugar tax**. But it's hard to judge whether that represents a policy success or failure. The proof of the pudding is in the eating I suppose, which is exactly what governments would prefer us not to do.

Indeed, as befits the times, opinion on such matters is often starkly polarized. Let's continue to focus on sugar taxes. According to a 2016 World Health Organization report, fiscal policies that lead to at least a 20 percent increase in the retail price of sugary drinks tend to result in proportional reductions in consumption. Not so, says the Institute of Economic Affairs in the United Kingdom. "The international evidence is clear," it has said. "There is no correlation between sugary drink consumption and obesity." Well that settles that then!

So who to believe? Governments are clearly coming down on the WHO's side, judging by the growing list of jurisdictions having introduced some form of sugar tax, or which are planning to. Although the revenue motive is bound to color their thinking on the matter to some degree However, I suppose, as with many things in life, the truth lies somewhere in between the two extremes. Adding a few cents to your average can of sugary fizz probably won't be noticed by many regular consumers, but this addition may well discourage at least some. Then again, I could be totally wrong. It's enough to make you reach for a comforting piece of candy.

The **European Union's proposed VAT reforms** are another topic which generates opposing views. According to European Commissioner for Taxation, Pierre Moscovici, the so-called definitive EU VAT regime will make life easier for EU companies trading across borders, slash red tape and simplify VAT-related procedures – "in short, good news for business, consumers and national budgets, bad news for fraudsters." *Au contraire*, argues CFE Tax Advisers Europe, a Brussels-based umbrella association of European tax advisers. Under the definitive VAT regime, **SMEs**, according to CFE, will in fact face **"considerable difficulties and expense"** in determining what rates of VAT to charge, and far from actually encouraging intra-EU trade, "the proposals will have the reverse effect."

So, who's right? Will the definitive VAT system be the best thing to happen to businesses in the EU since sliced bread? Or the definitive tax disaster, leading to a definitive decline in cross-border commerce within the EU? It's **impossible to say with any certainty** given the reforms are at least eighteen months away. But the experience of small firms since the EU began to enforce the destination principle on electronically-supplied service in 2015 does not bode well. And remember, CFE's membership is made up of highly-trained tax experts, those used to working at the coal face of EU taxation. Nothing against Monsieur Moscovici, but can he draw on the same sort of expertise? If I were a small business owner, I might be reaching for something a bit stronger than a bar of chocolate.

On a related matter, it's often said that if you need to go to university to be able to really understand how tax works, then what chance have the rest of us lay people got? No wonder the global tax preparation market was worth USD11bn in 2017, according to one estimate. Indeed, I thought that figure rather low!

Australia is at least attempting to right the balance. Last week, the Australian Tax Office launched what it claims is its largest ever education campaign to help taxpayers get their tax returns right. This implies that up until now, taxpayers have been getting their tax returns wrong, though. Which is obviously a worrying state of affairs. And I doubt Australia is far from alone in this regard. Goodness knows how countries manage to accurately calculate "tax gap" statistics when so many taxpayers can't be sure if they are paying the correct amount of tax.

But, rest assured taxpayers of Australia. For this particular educational campaign includes a "toolkit." These seem to be the answer to all life's complications these days, particularly in the area of taxation. Got a problem? You need a **toolkit**! Is this, I wonder, so you can carry out an emergency repair on the fixture or fitting that received the impact of your frustration as you tried and failed to work out your tax return? Maybe what you really need to do is sit down, take a breath, and relax awhile with something fizzy. And pay through the nose for pleasure.

The Jester