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# GLOBAL TAX WEEKLY
## a closer look

ISSUE 302 | AUGUST 23, 2018

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

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

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

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# GLOBAL TAX WEEKLY
## a closer look

### Global Tax Weekly – A Closer Look

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

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

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a closer look

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### NEWS ROUNDUP

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## Tax Reporting For Permanent Transfers

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In recent years, the mobility world has seen an increase in permanent transfers and a decrease in the use of long-term assignments. Under a long-term assignment scenario, an individual is sent to work in a Host location for a limited number of years (typically a period of up to five years). The individual usually remains an employee of their Home country employer and continues on Home payroll and benefits. Under a permanent transfer scenario, the individual typically becomes an employee in the Host location, with the Host employer handling payroll and benefits.

While many global mobility managers believe that a permanent transfer comes with less administrative tasks than a long-term international assignment, due to the fact that the employment relationship ends in the Home location, there are still a number of items to consider. From a tax perspective, for example, there can be ongoing Home and Host country payroll complexities on payments made to the permanent transferee. Here the payroll requirements can be impacted by factors such as the timing and location of the payments to the permanent transferee.

Two common concerns faced by companies with permanent transfers are:

- How to report moving expenses and relocation payments for payroll purposes; and
- How to handle trailing tax liabilities on bonus and equity income.

By understanding the tax rules and providing appropriate compensation, companies can proactively manage risk and encourage global mobility within their organizations.

## Moving Expenses And Relocation Payments

To support employee transfers, it is common for employers to provide some level of financial support to assist the employee with move-related costs. For example, the company may cover all, or part of, the cost of moving household goods to the new work location. Many companies will also provide lump-sum relocation allowances to help transferees cover miscellaneous move-related expenses and to provide an incentive to employees to relocate.

From a tax perspective, some companies may rely on the assumption that all payments made on behalf of international transferees are taxable based only on Home country rules or the rules in the country where the payment occurred. There are risks associated with this treatment. For instance, moving expense reimbursements of up to GBP8,000 (USD10,174) may be excludable in the UK. However, the recent US tax reform eliminated the deduction/exclusion for moving expenses. As such, a UK company paying moving expenses for a transferee to the US may either, neglect to withhold, or withhold insufficient US tax, if relying only on the UK tax rules.

Because of the complexity in global payroll reporting, we often see gaps in payroll reporting compliance for permanent transferees. Here are two possible solutions to consider:

- Some companies have their local payroll department in the Home country pay the lump-sum relocation allowance to the transferee. This way, the appropriate amount of withholding can be determined at the time of payment by the company's payroll department. It is important to check the taxability of the lump-sum payment in the transfer country if that country has so-called forward attribution rules.
- Other companies have their relocation firms pay the lump-sum relocation allowance. It is important to ensure they are working with the company's tax provider to calculate the tax withholdings for lump-sum relocation payments made outside the US.

## Trailing Tax Liabilities On Bonus And Equity Income

Permanent transferees sometimes receive payments after moving to the Host location that were earned during the period worked in their Home location. Common examples of income that can be earned in a period prior to payment include bonus and equity income. The company may have a payroll-reporting requirement for these payments in one or more locations.

Many transferees are removed from their Home country payroll system at the time of their transfer. Therefore, trailing payments are often only reported in the transfer country payroll. Unless the transferee is authorized for tax services in years subsequent to the transfer, it is unlikely that these trailing payments are reviewed to determine if a portion should be reported on the Home country payroll or on a Home country tax return.

Understanding the taxation of equity income can be particularly challenging. Countries can differ in the timing of taxation for equity (*e.g.*, grant, vest, exercise). These differences can result in the equity income being taxed in two or more countries on the same income, with the potential for double taxation if foreign tax credits are not allowed.

It may be possible to uncover specific strategies to reduce or eliminate adverse tax consequences resulting from the transfer, such as:

- Realizing the equity income before or after the move;
- Cancellation of awards / use of alternative compensation strategies;
- Delaying or cancelling the transfer to the new location if the tax implications of equity income are significant enough.

It is critical for companies to understand the income and payroll tax rules in the locations their employee has worked. This way, a plan can be created to address any reporting or withholding requirements in the Home, Host, or other locations where the employee earned the income. A matrix summarizing the tax rules by applicable country is a good start in helping your company's payroll team understand the requirements.

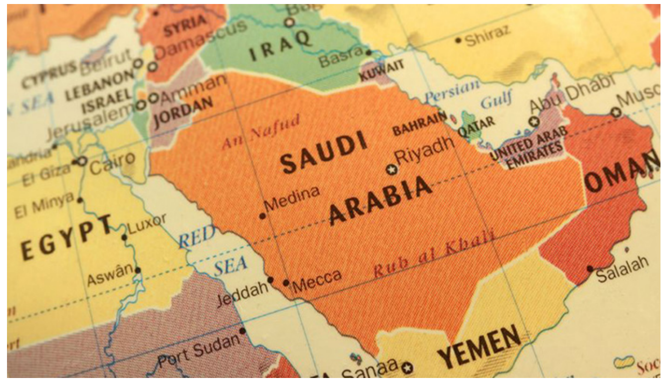
The use of permanent transfers can be an effective part of a company's talent management strategy. Proactive management of the global payroll process is an important step in supporting a global mobility program.

For more information on any of the areas covered above, please contact the author.

*The information provided in this newsletter is for general guidance only and should not be utilized in lieu of obtaining professional tax and/or legal advice.*

# The Gulf Cooperation Council Value-Added Tax - A Progress Report

by the Global Tax Weekly Editorial Team




In April 2018, the Government of the United Arab Emirates announced that it had achieved one of the world's highest value-added tax compliance rates just 100 days after the tax was introduced in the jurisdiction. Elsewhere in the Gulf Cooperation Council region, however, other countries have struggled to get this tax initiative off the ground. This article looks at what progress has been made towards implementing the GCC VAT Framework.

## Introduction

VAT was intended to replace revenues lost as a result of the elimination of tariffs and taxes on trade in the GCC free trade area (Bahrain, Saudi Arabia, Qatar, Oman, the United Arab Emirates, and Kuwait), as well as to diversify revenue streams traditionally reliant on the sale of hydrocarbons.

Initially, the tax was supposed to have been in place by 2012, but certain member states have struggled to put in place the technical and administrative foundations for the measure. Furthermore, there has been a great deal of internal resistance to the proposals from politicians, taxpayers, and businesses. As a consequence of these problems, the timetable slipped for the introduction of VAT slipped repeatedly, fueling tax uncertainty.

Eventually, in June 2016, GCC finance ministers approved the VAT framework[1] setting out the parameters of the regime that will apply in all member states. Signed in 2017, the framework was published in May of that year, with a view to VAT being introduced across the GCC on January 1, 2018. Significantly though, the VAT framework did not require that VAT be introduced simultaneously by the member states on a certain date, and so far only two have done so: Saudi Arabia and the UAE.

## The VAT Framework

In terms of scope, the framework states that VAT shall be imposed on taxable supplies made by a taxable person in the territory of the member state, and imports of goods by any person.

Supplies of goods and services from a taxable person in one member state to a taxable person in another member state are subject to the reverse charge mechanism — that the recipient, rather than the supplier, should collect and remit the VAT due.

The supply of goods is defined as the transfer of ownership of such goods or the right to dispose of goods as the owner. Any supply that does not constitute a supply of goods is a supply of services. The place of supply is generally the location of the customer.

The framework provides for a VAT rate of 5 percent, with individual states permitted to exempt or zero-rate certain supplies as they see fit, including education, local transportation, health services, and real estate sales. In addition, each member state may zero-rate the oil and gas sector under the framework.

A number of other supplies are zero-rated under the framework, including medicines and medical equipment, international transport services, precious metals, and exports to jurisdictions outside the GCC.

The framework also states that member states must exempt financial services performed by banks and financial institutions, which may reclaim input tax on the basis of the refund rates determined by each state.

However, member states are required to subject foodstuffs to VAT at the basic rate, unless an exemption is approved by the Financial and Economic Cooperation Committee.

The mandatory registration threshold is set at SAR375,000 (USD100,000, or its equivalent in the GCC state currencies). There is a voluntary registration threshold, which is 50 percent of the mandatory registration threshold. The Ministerial Committee has the right to amend the mandatory registration threshold after it has been in force for three years.

Upon registration, member states must allocate a taxable person with a Tax Identification Number.

Taxable persons must issue a tax invoice when supplying goods and services for full or partial consideration under the framework. Those making exempt supplies do not have to issue an invoice, except in cases of transactions between member states. The framework allows member states to permit suppliers to issue simplified invoices on low-value transactions.

Member states are free to determine their own tax period, and the conditions and rules for the submission of VAT returns, the payment of tax due, and VAT refunds. However, each member state must create an electronic system for the purposes of complying with VAT requirements.

The framework permits tax groupings for the purposes of VAT, and each member state may treat a tax group as a single taxable person.

The framework is to be ratified and implemented by member states in accordance with their own constitutional and legislative processes. Until a member state has transcribed the framework agreement into local law, it is deemed to be outside the scope of the framework.

## United Arab Emirates

The UAE ratified the VAT Framework in May 2017 and opened its online portal for businesses to register for VAT on September 17, 2017. The Executive Regulation for the Federal Decree-Law No. (8) of 2017 [2] on Value Added Tax was releaseed at a Cabinet meeting on November 7, 2017.

Businesses are required to register for VAT if their taxable supplies exceed AED375,000 in a 12-month period. Businesses not yet required to register but whose supplies will exceed this threshold within a period of 30 days must register. Taxpayers are allowed to register voluntarily if the total value of their taxable supplies exceeded AED187,500 in the past 12 months, or if the business expects its turnover to exceed that threshold within the next 30 days.

As Saudi Arabia has, the UAE has confirmed the zero-rating of exports of goods and services outside the GCC region, supplies related to international transportation, certain high-grade precious metals, and supplies of certain educational and health care services. Supplies of undeveloped land, local transport services, and certain types of financial services are VAT exempt.

Among other things, the regulation defines terms used; discusses how to categorize supplies and a taxable event; and discusses mixed supplies and deemed supplies. The regulation also sets out administrative rules, such as:

- The requirement to register and voluntary registration;
- The treatment of supplies between related parties;
- Conditions to be met to register a tax group and appointing a representative member;
- Deregistration;
- Exceptions from the requirement to register;
- Transitional registration rules; and
- The rules surrounding reregistration.

Additionally, the regulation looks at:

- How to determine when a supply takes place;
- The place where a supply is deemed to have occurred;
- The place of supply of services connected with immovable property;
- The treatment of transport services, telecommunications services, and electronic services, and intra-GCC supplies;
- Rules concerning valuation of supplies; and
- Pricing rules, including rules concerning discounts, subsidies, and vouchers.

It also discusses reverse charges, reporting and documentation rules, and the treatment of cross-border supplies.

Of all the GCC member states, the UAE seems to have been the best prepapred for VAT, and the Federal Tax Authority announced earlier this year that 98.8 percent of the first VAT returns due were filed correctly. FTA Director General Khalid Al Bustani disclosed at the time that a total of 275,000 businesses and 21 tax agents had registered for VAT, and the FTA had addressed over 170,000 inquiries. What's more, the UAE is one of the first countries in the world that has implemented a full e-service system, he added.

According to Al Bustani, these highly impressive results are testament to an approach to VAT adopted by the FTA which encouraged self-compliance and voluntary registration for tax purposes.

By April 2018, the UAE had issued 60 VAT guides that cover all legislative and executive aspects of UAE tax regulations, as well as three e-learning modules and 22 infographics. The UAE has since issued additional guidance on several topics, including reclaiming VAT on new-build houses, claiming VAT refunds, and the VAT consequences of labor accommodation and entertainment expenses. The UAE is also set to introduce a VAT refund scheme for foreign tourists.

## Saudi Arabia

Saudi Arabia ratified the VAT framework in February 2017, and in September last year, following a public consultation on the measures, the Board of Directors of Saudi Arabia's General Authority of Zakat and Tax (GAZT) approved regulations allowing for the introduction of VAT in the Kingdom on January 1, 2018.[3]

Most goods and services are subject to VAT, although as per the VAT framework, certain supplies are zero-rated, including supplies of certain medications and medical equipment; precious metals; international transport services, vehicles, and spare parts; and exports to non-GCC jurisdictions. VAT-exempt supplies include most financial services and residential real estate rents.

In line with the VAT framework, Saudi Arabia has set the mandatory registration threshold at SAR375,000; the deadline for registration expired on December 20, 2017. Those obligated to register but which failed to do so face a penalty of SAR10,000.

Saudi Arabia's VAT regime provides for simplified invoicing for the supply of goods and services with a total value of less than SAR1,000. The simplified invoice must include:

- The date of issue;
- The name, address, and VAT identification number of the supplier;
- Details of the goods or services supplied;
- Consideration to be received for goods or services; and
- A clear statement of the tax payable or indication that the total payment (consideration) includes the tax in respect of the supply of goods or services.

A simplified tax invoice may not be issued with respect to an internal supply or exports.

For transactions that exceed SAR1,000, suppliers need to issue a more detailed invoice. This invoice, which must be in Arabic in addition to any other language, must include:

- The date of issue of the invoice;
- The serial number identifying and distinguishing the tax invoice;
- The supplier's VAT identification number;
- The customer's VAT identification number (if the customer is responsible for the calculation of the import tax and a statement thereof);
- The date on which the supply was signed;

- The name and address of the supplier and the customer;
- The amount and nature of the goods supplied;
- The scope and nature of the services provided;
- The amounts subject to tax or specifically exempt;
- The unit price excluding tax, and any discounts or rebates if not included in the unit price; and
- The applicable VAT rate and amount due in Saudi riyals (the local currency).

Judging by a press release issued by the General Authority of Zakat and Tax on August 10, 2018, the implementation of VAT in Saudi Arabia hasn't been the smooth process it appears to have been in the UAE. This release revealed that, during a recent nationwide inspection campaign, a fifth of retailers failed to comply with their VAT obligations. The agency found that during inspections of 1,876 telecommunications businesses in commercial centers, 323 had committed tax offenses. These included issuing the wrong documentation or invoices, failing to disclose a correct tax number, and failing to register.

This came after an announcement by the tax agency in May 2018 that it had followed up on 5,212 violations of the VAT regime since its implementation. Most cases of non-compliance were for failing to comply with administrative obligations, for collecting value-added tax exceeding five percent, and for non-registered persons seeking to collect tax on supplies.

These poor compliance rates are prompting the tax agency to undertake further field campaigns to raise awareness among enterprises of their VAT obligations and to ensure the proper application of all tax procedures.

However, in spite of the compliance issues, Saudi Arabia has also fleshed out the VAT regime with much additional guidance, including on invoicing obligations, transportation services, education services, electronic services, financial services including insurance, hire purchase contracts, and private health care. In addition, guidelines on simplified VAT filing were published in August 2018, and the tax agency is encouraging firms to adopt electronic invoicing using an online platform launched in May 2018.

## Progress By Other Member States

Most of the remaining GCC member states, as outlined below, have indicated that they intend to implement VAT either later in 2018 or in 2019. However, these commitments are far from firm, and have been subject to change in recent months - especially in the case of Kuwait - with governments seemingly reluctant to make promises they might not be able to keep.

### Bahrain

In February 2018, Minister of Finance Ahmed bin Mohammed Al Khalifa was quoted as announcing that the Government was aiming towards the introduction of the VAT framework by the end of the year. "We'll be working with parliament on VAT and aim to have everything set up by the end of 2018," he stated.[4]

### Kuwait

The timetable for the introduction of VAT in Kuwait is less clear, due largely to strong political opposition to the tax. In May 2018, Kuwait's parliamentary budget committee proposed deferring the introduction of VAT until 2021.[5] However, in August 2018, local media reported that Kuwait's Cabinet had agreed to table a bill in parliament in October 2018, which could result in the levy being implemented from January 1, 2019.[6]

### Oman

Oman's position with regards to the GCC VAT is also unclear. And while it is expected that the jurisdiction will introduce VAT on January 1, 2019, the lack of communication with taxpayers on the issue suggests this shouldn't be considered as set in stone.

### Qatar

In a similar vein, the start date for VAT in Qatar is something of a moving target. Initially, the Government was aiming to introduce VAT in January 2019. However, reports suggested in March 2018 that this could be brought forward to the second half of 2018.[7] Again, the Government has exacerbated the uncertainty about businesses' future tax obligations by failing to fully clarify the situation.

### Summary

The haphazard preparations for the GCC-wide VAT have been far from ideal, given VAT's complexities and the fact that many businesses in the region will have had little experience of dealing with the tax. This is perhaps reflected in the poor compliance results in Saudi Arabia, although the UAE seems to have done a much better job of preparing the country's taxpayers for VAT. On the other hand, the ongoing delays to VAT's introduction in the remaining GCC states may be a blessing in disguise, giving taxpayers more time to adapt their businesses to the regime's requirements. However, the danger is that all the while these governments procrastinate and fail to clarify their intentions, the longer businesses may put this off.

## Endnotes

1 https://www.tax.gov.ae/pdf/GCC-VAT-Agreement.pdf

2 https://www.mof.gov.ae/En/lawsAndPolitics/govLaws/Documents/VAT%20Decree-Law%20No.%20%288%29%20of%202017%20-%20English.pdf

3 https://www.vat.gov.sa/en/about-vat/law-regulations

4 https://www.tax-news.com/news/Bahrain_Commits_To_Introducing_VAT_This_Year____76455.html

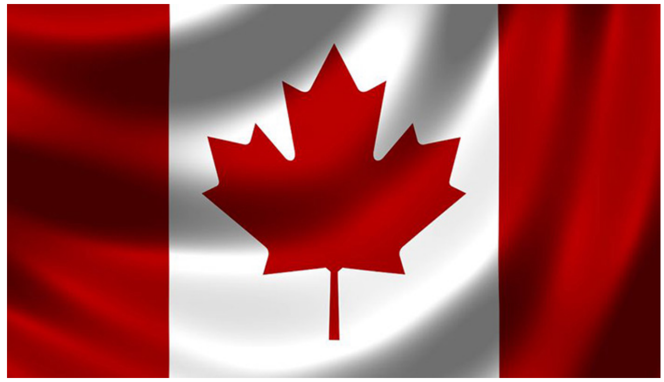
5 http://www.arabianbusiness.com/politics-economics/396651-kuwait-said-to-postpone-vat-launch-until-2021

6 http://gulfbusiness.com/kuwait-plans-vat-bill-vote-year-end-report/

7 https://www.ey.com/gl/en/services/tax/international-tax/alert--qatar-to-implement-vat-during-the-second-half-of-2018

## 'Netflix' Tax In Quebec

by Ron Choudhury & Amina Boudiffa
Miller Thomson LLP



New rules for non-resident suppliers are to be expected in Quebec regarding the Quebec sales tax ("QST").

In a context of a growing digital economy, there are currently no QST rules specifically applicable to transactions made online. Consequently, the general rules apply and provide that a non-resident supplier who makes online sales of movable property or services is not required to register for and collect QST unless it has an establishment or operates a business in Quebec.

Consequently, non-resident suppliers with no physical or significant presence in Quebec are not required to register for and collect and remit the QST on the supplies of movable property or services made in Quebec, including taxable supplies. Consequently, the Quebec consumers that order incorporeal movable property and services online are required to self-assess on the QST, which is rarely done. This is also the case for corporeal movable property from other Canadian jurisdictions. In the case of corporeal movable property, where the property is delivered from outside Canada, the QST is theoretically collected by the Canada Border Services Agency. However, it appears that practically, the QST is collected only on a fraction of the taxable supplies.

As a result, the Quebec government sustains substantial tax revenue losses and the new proposed rules aim to capture such tax. The proposed rules specifically target the e-commerce sector and were introduced in the 2018-2019 Quebec budget (the "Budget") which was published on March 27, 2018.

### New Specified Registration System For Non-residents Of Quebec

The Budget proposed changes to the Quebec legislation in order to create a new specified registration system for certain foreign supplies in the e-commerce sector and thus to capture the QST that is otherwise not collected.

The proposed measures will apply to non-resident suppliers and will extend to third party suppliers of digital property and service distribution platforms. More specifically the new measures will apply to suppliers administering digital platforms providing services to non-resident suppliers so they can make taxable supplies of intangible property or other services in Quebec to specified Quebec consumers. The new rules will apply differently to non-resident suppliers located in Canada, non-resident suppliers not located in Canada and digital platforms that offer services to non-resident suppliers:

1. Non-resident suppliers located in Canada will be required to register to the specified registration system and collect and remit QST when making sales of taxable property and services made in Quebec to specified Quebec consumers;
2. Non-resident suppliers not located in Canada will be required to register to the specified registration system and collect and remit QST when making sales of taxable intangible property and services in Quebec to specified Quebec consumers; and
3. Suppliers administering digital platforms will be required to register to the specified registration system and collect and remit QST on supplies of intangible property or services made by non-resident suppliers to specified Quebec consumers through their platform.

## Suppliers Administering Digital Platforms

The new measures concerning the suppliers administering digital platforms will only apply where the digital platform controls the key element of the transactions with the specified Quebec consumers. As such, the proposed changes will not apply if the digital platforms only provides the following services:

1. Data transmission services;
2. Access to a payment system; or
3. Advertising services along with a link to the supplier's website.

## CAD30,000 Threshold

The mandatary registration will only apply where the value of the consideration for all taxable supplies made by the supplier in Quebec to persons that may reasonably considered as consumers exceeds CAD30,000 (USD22,821). In the case of digital platforms, the value of the consideration for all taxable supplies that a digital platform enables non-resident suppliers to make in Quebec to persons that may reasonably be considered consumers must exceed CAD30,000. The CAD30,000 threshold must include, on a particular date, the value of the considerations for all taxable supplies made in Quebec during the 12-month period preceding the month that includes the particular date

Where a non-resident supplier makes taxable supplies to specified Quebec consumers through a digital platform, it does not have to consider the sales made through the platform in calculating the threshold since it is already taken in to account in calculating the digital platform's threshold.

## Specified Quebec Consumers

The Budget defines the notion of "specified Quebec consumers" as a person that is not registered for the QST and who is resident in Quebec. In order for the non-resident supplier to determine whether a person is a resident in Quebec, the Budget specifies that two, non-contradictory pieces of information, such as the person's billing address, the IP address of the device used or any other geolocalization method or payment-related bank information, must be obtained.

## Input Tax Refunds

Non-resident suppliers registered under the new specified registration system will not be considered as registered under the general registration system. As such, the specified registration system will allow the non-resident suppliers to collect and remit the QST, but not to claim input tax refunds ("ITRs") in respect of property and services acquired in the course of their commercial activities. Also, recipients registered under the general registration system who pay QST to a non-resident registered under the new specified registration system will not be able to recover the QST paid by means of an ITR. However, since the new proposed rules only apply where a supply is made to a specified Quebec consumer, which is, by definition, a person not registered for the QST, such a situation should not happen.

If the non-resident registered under the new specified registration system wishes to claim ITRs, it may elect to register to the general registration system. In such a case, it will be required to comply with all of the rules applicable to QST registrants, including collecting QST from recipients which are not specified Quebec consumers.

## QST Paid In Error

Should a QST registrant pay QST in error to a non-resident supplier registered under the specified registration system, said registrant must communicate with the non-resident supplier in order to obtain a refund of the QST paid by mistake.

## Reporting Period And Remittances

The suppliers registered under the new specified registration system will be required to electronically file QST returns on the basis of calendar quarters. The QST return must be filed in the month following the end of the reporting period.

New online services will be put in place to allow electronic payment of the QST collected.

## Entry Into Force Of The New Measures

The non-resident suppliers not located in Canada must register to the new specified registration system as of January 1, 2019. The non-resident suppliers located in Canada must apply the new rules as of September 1, 2019.

## Penalty

The Budget introduced a new penalty to specified Quebec consumers who provide false information to non-resident suppliers in order to avoid paying the applicable QST. Such penalty will be equal to or greater than CAD100 or 50 percent of the QST payable.

The Budget did not introduce new penalties for non-resident suppliers which do not comply with the new measures. As a matter of fact, no penalty will be imposed on non-resident suppliers for the 12-month period following the application of the new measures. Following said 12-month period, penalties which are existing in the current version of the legislation may be imposed.

## Conclusion

It is unclear whether non-resident suppliers will comply with the new measures given the heavy administrative burden placed upon them. If the suppliers do not comply with the new measures, Revenu Québec may have very limited means to recover the amounts owing. Nevertheless, the changes in Quebec may be a precursor to similar tax changes federally in Canada.

## Topical News Briefing: Safe As Houses

by the Global Tax Weekly Editorial Team

In the world of BEPS and an increasingly digitalized global economy, there remains a great deal of focus on ensuring the appropriate taxation of companies' income and sales. However, few would need reminding that taxation doesn't stop at income, and the taxation of property, particularly of the immovable variety, can be an important and stable source of revenue for governments.

As highlighted in this week's issue of *Global Tax Weekly*, just as income taxes, bar a few very low-tax jurisdictions, are ubiquitous, property and real estate taxes are also to be found in all corners of the globe and come in various guises, from purchase taxes and stamp duties, to recurrent taxes usually based on real estate values. Capital gains are also, of course, often subject to tax upon the profitable sale of immovable property.

However, property taxes aren't always seen purely as revenue raisers. Like other taxes, they are one of the many economic policy levers that governments have at their disposal to encourage certain behaviors and to discourage others. And frequently, new and increased property taxes are used to deter speculative activity in property markets and prevent the emergence of real estate bubbles. In recent times, we have seen the United Kingdom Government change tax rules and increase rates of stamp duty on high-value real estate, particularly by foreign investors, to cool the market.

Other major cities have been subject to similar economic forces and have also used higher rates of property purchase taxes to dampen market activity. For example, last month Singapore raised the rate of the Additional Buyer's Stamp Duty, which is payable on acquisitions of residential property on top of existing stamp duty. Hong Kong has also experienced an influx of foreign investment into its real estate market over the last few years and has taken similar measures to counter speculation; it is due to add a vacant property tax to its arsenal of fiscal measures. A similar measure is also due to be unveiled by the Government in Ireland – a country that has recent and painful memories of real estate bubbles, and which is still living with the consequences of the crash.

However, property tax policy can also be used to encourage real estate purchases by certain groups of taxpayers, particularly those looking to make their first step onto the property ownership ladder. Therefore, in many jurisdictions property tax reductions or exemptions are provided by governments for home purchases, mostly at the lower end of the market. Deductions for mortgage interest have also been used to reward home ownership, although from a budgetary perspective such tax expenditures can be expensive, and governments have tended recently to attempt to reduce or eliminate these tax breaks. A prominent example is that of the United States, where mortgage interest deductions, which cost the federal government an estimated USD70bn a year, have been temporarily (for now) restricted under the tax reform law passed last December. The Netherlands is also phasing down its mortgage interest deduction as part of ongoing tax reforms.

As governments continue to struggle to pin down highly mobile corporate income however, there is little likelihood that they will reduce their reliance on bricks and mortar.

## How to Deal With A Dreaded FATCA Letter From Your Foreign Bank

by Mike DeBlis, DeBlis Law


Have accounts overseas? Think they're hidden from the US government? Think again.

As many Americans with foreign bank accounts are startled to discover, the US government can and will find your bank accounts and use information from your bank to confirm your compliance with US tax law. From millions in the bank to a few dollars sitting in another country, there are few limits to how far the government is willing to go to collect what it believes it is owed.

Whether you're considering opening an offshore account to hide assets – an unwise move – or have already opened an account overseas, here's what you need to know about the reach of the IRS.

### Federal Taxes And You

Unlike the tax authorities in many other countries, the IRS does not care where you live or where you earn a living. If you are a citizen or permanent resident of the US, you're required to report all of your income, regardless of where it came from or where you are keeping it. While the Foreign Earned Income Exclusion often precludes payment of tax on most or all of this income, the IRS still wants to know about it, and you're still obligated to tell them.

### What Is FATCA?

If you have a foreign bank account, FATCA is an acronym you should know, and know well. As unpleasant as it might sound, FATCA can wrap you around the IRS axle and grind you to dust. More formally known as the Foreign Account Tax Compliance Act,[1] FATCA was passed in 2010 and is a federal law that mandates non-US-based financial institutions to comb their records for accounts maintained by US account-holders and report all findings back to the government. This

Act also requires US citizens to report international holdings to the IRS. If you think your bank has your back and won't disclose anything, you may be in for a surprise – many foreign financial institutions are more than willing to turn over their records.

Why are foreign banks succumbing to Uncle Sam's heavy-handed demands to turn over US account-holder information? If you suspected the almighty dollar to be at the heart of it, you'd have guessed wisely. Non-compliant foreign financial institutions face a mandatory 30 percent withholding tax on payments from US-based financial institutions. Faced with the choice between divulging account-holder information or paying a 30 percent withholding tax on payments they receive from the United States, most financial institutions have chosen the former.

Even if you are sure that your bank is one of the tight-lipped ones, that may not matter; the government also has access to a wealth of information on its citizens' holdings, including over 50,000 instances of voluntary disclosure, whistleblowers, banks under investigation, and government witnesses.

The bottom line? As a US citizen, resident, or entity, you can have as many overseas bank accounts as you'd like if you properly disclose them, preferably by checking the "Yes" box on Schedule B and, if necessary, filing Form 8983 with your tax return.

### The Importance Of FBARs

If you have assets of USD10,000 or more, you may also be required to file an FBAR, which has now been rebranded as Financial Crimes Enforcement Network (FinCEN) 114. If you're wondering why both forms are required, that's because FinCEN 114 is not actually a tax form at all; it's filed with the Department of the Treasury, not the IRS.

If you'd rather just ignore the FBAR requirement, you may find yourself in hot water before you know it. Tax evasion can lead to five years in prison and a USD250,000 fine, while failing to file an FBAR entirely can lead to ten years in prison and a USD500,000 fine. Argue a non-willful violation? That comes with penalties, too, with fines up to USD10,000.

Willful violations are even worse, with a maximum fine of the *greater* of either (a) USD100,000 or (b) 50 percent of the closing balance in the account as of the last day of filing the FBAR. As if things couldn't get any worse FBAR penalties are determined per account, and not per unfiled FBAR. This means that a taxpayer with multiple unreported accounts in a single tax year could be subject to multiple FBAR penalties. A quick example demonstrates how Draconian this penalty scheme actually is. Assume John fails to report five foreign accounts in 2013. He would then be subject to five separate FBAR penalties in that year alone.

The combination of the six-year statute of limitations for assessing FBAR penalties coupled with the fact that FBAR penalties are determined per account packs a "one-two" punch that can catapult a taxpayer's FBAR liability into the penalty stratosphere.

In short? Don't neglect the filing requirements – ever.

## The Dreaded FATCA Letter

If your bank receives an inquiry from the US government under FATCA, there's a good chance you're going to hear about it in the form of a letter.[2] Your bank will likely reach out to you, disclose the contact made with the government, request information about your compliance, and potentially provide a form W-8 or W-9 for you to fill out.

Should you receive a letter, it's important to realize that this is not an idle threat. US taxpayers residing overseas should fill out all required information as soon as possible and return the letter to the bank. If you choose to abide by the law and send information back to the bank, your responses will be forwarded to the IRS. If you choose not to fill out the letter, all the information available to the bank will be sent to the IRS anyway, and your account status may be disrupted.

However, if you send the letter back but were previously unaware of your obligation to disclose your bank account, there may be some extra hoop-jumping you should keep in mind.

## Amnesty For Violations

If you've neglected to follow the law regarding your foreign bank accounts prior to this point, the safest option is to join a US amnesty program. Currently, there are two primary options – Streamlined and OVDP. OVDP, or Offshore Voluntary Disclosure Program, requires payment of back taxes and a miscellaneous offshore penalty equal to 27.5 percent of the highest year's maximum aggregate balance in the foreign bank accounts over an eight-year ookback period. In exchange, the IRS will recommend that the case not be referred to the US Attorney's Office for prosecution, essentially immunizing the taxpayer from prosecution.

If OVDP has piqued your interest, you must act fast as the IRS announced that it will be discontinuing their flagship program on September 28, 2018 (*ie*, this program will come to a close in September 2018[3]). After September 28, 2018, the Streamlined amnesty opportunity[4] will be your only choice. An option designed for those who are not willful and have already come under civil investigation for any prior year returns, the Streamlined process can help you go through the motions to bring your reporting up to snuff.

While there's a risk of legal action that doesn't exist with OVDP, the monetary penalties associated with this path pale in comparison to that of the OVDP. For example, while the streamlined domestic miscellaneous offshore penalty includes a broader base of foreign assets than the miscellaneous offshore penalty under OVDP, the streamlined domestic miscellaneous offshore penalty is merely 5 percent of the highest end-of-year aggregate balance of the taxpayer's foreign financial assets that are subject to the penalty. And if you're making a streamlined foreign submission, it gets even better than that. Under streamlined foreign, there is no miscellaneous offshore penalty – a veritable windfall for the wayward taxpayer.

If you're thinking about quietly filing amended returns and past-due FBARs without the government's knowledge, don't. Known as a quiet disclosure, this process can actually raise red flags, immediately notifying the IRS of your lack of compliance and potentially triggering a civil audit or criminal proceeding the likes of which could be more painful than a root canal, not to mention which could land you with steep fines – or worse. As is virtually always the case when dealing with IRS, do things by the book. After all, you probably won't like what happens should you take a chance and go off script.

## Endnotes

1 https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca

2 https://americansoverseas.org/en/fatca-letter-bank/

3 https://www.irs.gov/newsroom/irs-to-end-offshore-voluntary-disclosure-program-taxpayers-with-undisclosed-foreign-assets-urged-to-come-forward-now

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

## Topical News Briefing: US Taxpayers - Cursed To Be Living In Interesting Times?

by the Global Tax Weekly Editorial Team

As reported in this week's issue of *Global Tax Weekly*, the International Monetary Fund offered measured praise for the changes brought about by the comprehensive tax reform law in the United States, the Tax Cuts and Jobs Act of 2017. But recent developments provide further evidence that the reforms have generated as many questions as they have answers.

The TCJA left few areas of the US tax code untouched, and as a consequence new guidance and regulations continue to flow thick and fast from the Treasury Department and the Internal Revenue Service. Within the last month, proposed regulations have been issued with regards the transition tax, the expanded depreciation deduction, and the pass-through income deduction, with new guidance also published on small business accounting.

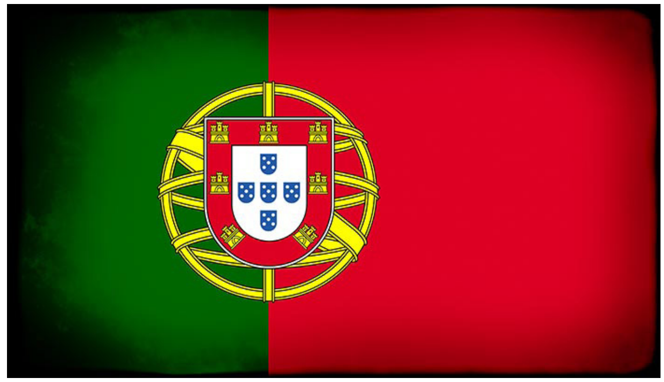
Yet, in an indication of far-reaching the reforms were, tax practitioners continue to ask for new guidance and regulations on a range of other tax issues affecting businesses of all sizes and types. As also reported in this week's issue, one the latest calls for clarification comes from the American Institute of CPAs, which has requested that the IRS address several issues related to the tax obligations of S corporations.

Significantly,Congress has now acknowledged that parts of the TCJA's text fails to fully reflect lawmakers' intentions when the law was drafted, leading to Republican members of the Senate Finance Committee to urge Treasury and the IRS to issue guidance "consistent with the congressional intent" of the law (also reported in this week's issue).

Looking beyond the legislative realm, there has also been some major tax case law developments in recent weeks, not least in the area of transfer pricing, with the US Court of Appeals for the Ninth Circuit having decided to revisit the landmark ruling in favor of the IRS in the Altera. Should the court's earlier decision stand, this is expected to have huge implications for the tax affairs of tech firms in particular with regards their cost-sharing arrangements.

As the IMF concluded in its appraisal of the TCJA, there are many positive aspects to the tax reforms, including the fact that the US is now perceived to be much more competitive on tax than prior to the changes. But it also observed that, with large swathes of the law in need of further clarification, and legislative anomalies requiring correction, there is significant uncertainty as to how the US tax regime will develop from here. Those Treasury employees tasked with drafting new guidance and regulations will certainly be kept busy for a while yet!

# The Foreign Pensions Mismatch For Finnish Pensioners In Portugal: A Fundamental Right (Not) To Tax?



by Ana Carvalho and Joana Pires de Mello, DLA Piper

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Following increased pressure by the Finnish Government for Portugal to ratify the revised treaty between the two countries, on April 30, 2018 the Finnish Parliament voted in favor of denouncing the Portugal-Finland tax treaty signed on April 27, 1970 (the old treaty). As a result the old treaty will be terminated effective as of January 1, 2019, in accordance with Article 30º of that treaty. If Portugal does not ratify the revised treaty by December 1, 2018, Finnish domestic legislation will apply, and private sector pensions sourced in Finland and paid to Portuguese residents will be subject to tax in Finland from January 1, 2019.

## Background

Under the Portuguese Non-Habitual Residents (NHR) Regime, approved in 2009, foreign pensioners who become tax residents in Portugal are not taxed on their foreign source pension income for a period of ten years. In fact, pensions received by a NHR are exempt from Portuguese personal income tax provided that these are (i) not considered to be Portuguese source income, or (ii) are subject to tax in the source country under the applicable double tax treaty. Under domestic legislation, pensions paid by entities with no head office, effective management or permanent establishment in Portugal are not considered Portuguese sourced. Accordingly, these pensions are not subject to tax in Portugal under the NHR regime.

At the same time, the old treaty allocates the right to tax private sector pensions only to the residence state. As a result, private sector pensions received by Portuguese NHRs from Finnish sources are not taxed in either of the two contracting states during a ten-year period.

The old treaty framework follows closely Article 18 of the OECD Model Convention (including the new version approved in 2017), under which private sector pensions received by a resident of a contracting state in consideration of past employment can only be taxed in the beneficiary's state of residence. Since Portugal has adopted the OECD model in almost all its treaties, the mismatch in pension taxation that results in double non-taxation is not limited to the Finnish pensioners.

On November 7, 2016, following Finnish disapproval of the treatment of pensioners under the NHR regime, Portugal and Finland signed a revised treaty that would extend the source country´s taxing rights over private sector pensions. Under the revised treaty, which has not entered into force yet, a private sector pension sourced in Finland and paid to a resident in Portugal would be subject to tax in Finland, and any taxes paid in Portugal on such income would be credited against the Finnish tax. The revised treaty establishes a transitional period of three years during which the provisions of the Old Treaty would continue to apply, provided that the country of residence taxes the pension.

## Key Takeaways

To provide some context, according to unofficial sources, by 2017 there were 500 Finnish pensioners living in Portugal under the NHR regime.[1]Considering the limited number of Finnish pensioners transferring their residence to Portugal, the imminent termination of the Old Treaty may well be too radical as a solution. Besides the impact on pensioners, if the revised treaty does not enter into force in time, cross border transactions between Portugal and Finland will be significantly impacted with limited safeguards against double taxation, and increased withholding taxes at source.

Amid pressure from other countries, the Portuguese Budget Law for 2019 is expected to include changes to the NHR regime, including the introduction of a minimum taxation for foreign-sourced pensions, even though NHRs who are already in the regime are unlikely to be affected.

In this context, the solution adopted in the revised treaty, when it becomes applicable, may result in an increased compliance burden as the individuals will have to comply with the tax rules of both jurisdictions regarding pension income. Bearing in mind also that the NHR is temporary, after the term of the regime, Finnish pensioners residing in Portugal will be faced with double taxation, coupled with a system of source country tax credit, that may well result in an unnecessary burden with little or no tax due in Finland.

## Endnote

1 https://www.essential-business.pt/2018/04/17/finns-flock-to-portugal-as-double-tax-exemption-under-threat/

## Indian FM Explains Efforts To Simplify GST Compliance

In response to a question in India's Parliament on August 10, India's Minister of Finance has clarified the reforms the Government is to implement to ease the GST compliance burden.

The statement follows an agreement on changes at the most recent GST Council meeting in late July.

Shiv Pratap Shukla said the Council has approved, in principle, new GST return formats and associated changes in law for small businesses.

Under the changes, taxpayers who have a turnover up to INR50m (USD710,000) in the previous financial year will be able to file a GST return quarterly and pay taxes monthly on a self-declaration basis, he said, adding that for these taxpayers, simplified returns have been designed called Sahaj and Sugam.

Meanwhile, those taxpayers who have no purchases, no output tax liability, and no input tax credit to avail themselves of in any quarter of the financial year should file one nil return for the entire quarter, and they will be able to do so via SMS text.

He further explained the Goods and Services Tax Network (GSTN) is presently focusing on developing the new return filing system, improving the user interface, and using analytics to identify non-compliance. It is comparing data included in form GSTR-1 and form GSTR-3B to identify abuse and share this information with the tax authorities so they can take enforcement actions.

The GSTN is also working to improve the "Offline Tool" for returns under GST and is focusing on improving the user interface constantly, he revealed, adding that the user interface of FORM GSTR-3B has been made simpler and user friendly.

## Netherlands Expected To Hike Reduced Rate Of VAT

The Dutch Cabinet is expected to soon approve an increase to the nation's reduced rate of value-added tax from six percent to nine percent, according to local media reports.

The rate would be effective from January 1, 2019, the reports say. The nine percent rate would apply, among other items, to temporary accommodation, admissions to cultural events and theme parks, printed media, meals, and non-alcoholic beverages, and some services.

## Malaysia Announces Scope Of New Services Tax

Malaysia's Customs Department has published a proposed list of services that will be subject to the new consumption tax regime that will be introduced on September 1, 2018.

The service tax, which will 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 will 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.

The service tax, together with the sales tax on goods, will replace the goods and services tax, which was effectively repealed in June.

## Switzerland To Charge VAT On Purchases From Overseas Firms

From 2019, Switzerland will begin charging VAT on online purchases from overseas companies, according to reports.

The news website swissinfo reported that the Swiss Federal Council agreed on August 15 to implement the measure from January 1, 2019. The reform was originally expected to enter into force in January 2018 but was postponed to give companies more time to prepare for the new rules.

At present, there is an exemption from VAT for online purchases from overseas sellers on which the VAT payable would be less than CHF5 (USD5.04).

Under the new law, all overseas companies with a turnover of CHF100,000 or more will be obligated to charge Swiss VAT for purchases made by Swiss customers.

Switzerland's headline VAT rate is 7.7 percent, although a lower rate of 2.5 percent applies to certain items.

## Australia Issues Guidance On Foreign Property Owner Levy

The Australian Taxation Office (ATO) has issued guidance for foreign owners of residential property in Australia, who may be affected by the Government's new annual vacancy fee.

Foreign owners of residential dwellings in Australia are now required to lodge an annual vacancy fee return. The measure was announced in May 2017 and legislation was carried in December. The ATO began administering the regime in February 2018.

The ATO explained that owners are required to pay an annual vacancy fee if their dwelling is not residentially occupied or genuinely available on the rental market for more than 183 days (six months) in a year. Where a dwelling has been occupied or made available for rent during the year, the owner must still lodge a vacancy fee return with the ATO each year.

The rules apply to owners who made a foreign investment application for residential property after 7.30pm AEST on May 9, 2017, or purchased a New Dwelling Exemption Certificate that a developer had applied for after this time and date. May 9, 2017, was Budget day, when the measure was announced.

The ATO said that returns must be lodged within 30 days of the end of each vacancy year. The vacancy year is usually the 12-month period from the settlement date for the property. To lodge, owners will need a copy of their Land and Water Register reference number.

## Singapore Tables Stamp Duty Bill

Singapore's Ministry of Finance recently announced the introduction of the Stamp Duties (Amendment) Bill 2018 into the country's Parliament, which would introduce stamp duty on electronic records that effect a transfer of interest in immovable properties and shares.

Stamp duty is currently levied on physical records used to transfer immovable properties (real estate) and shares. According to the ministry, to keep pace with digitalization, the change is necessary to safeguard Singapore's revenue base.

In addition to charging stamp duty on electronic records, the bill would make a number of technical amendments to improve tax policy and administration. These include making it clear that the minister of finance can recover interest from taxpayers who fail to fulfill conditions for stamp duty remission. The bill also proposes to update provisions for relief of stamp duty for corporate restructuring to align the law with changes made to the stamp duty regime in recent years.

A copy of the bill is available on the website of Singapore's Parliament.

## BVI Property Tax Due September 1

The British Virgin Islands has highlighted that property tax for 2018 becomes due on September 1. Taxpayers can avoid interest by making payment by November 30.

The Property Tax Assessment list, which includes the name of property owners and the amount of tax due, can be viewed at various public buildings throughout the territory, including the Central Administration Complex and the Inland Revenue Department offices on Tortola and Virgin Gorda.

Property owners in Tortola must object to an assessment on August 30, 2018, at 10:00 local time (AST) at the Magistrate's Court in John's Hole, Tortola.

## Finland Announces Plans For Revenue-Neutral Property Tax Reform

The Finnish Government on August 17 announced draft laws to reform the taxation of property so that it better reflects property prices.

The Government said that the existing system "creates unequal treatment between taxpayers" because property values for tax purposes have failed to keep pace with market developments. Therefore, the draft legislation seeks to update property valuations for tax purposes on an annual basis.

"The aim of the reform is to create a clear, understandable, and simple system of valuation for buildings," the Government explained.

According to the Government, the reforms would neither increase nor reduce the overall level of property taxation.

The draft legislation will be debated until September 28, 2018, with legislation due to be released later in the year.

The Government said the new law is expected to enter into force in 2019, with new valuation criteria applying from 2020.

## IMF Praises US International Tax Reforms In TCJA Appraisal

The International Monetary Fund has released an appraisal of the landmark US tax reform law, the Tax Cuts and Jobs Act, including its international tax provisions, against the stated policy objectives of the US Government.

The Working Paper (WP/18/185) looks at the impact of the TCJA from the perspective of both the US itself and the wider world.

In the summary to the paper, the report authors observe that: "The reform has many positive aspects including steps to broaden the base of, and reduce marginal rates under, the personal income tax (PIT), reduce distortions to investment and financing decisions, and mitigate outward profit shifting. But the TCJA has a large fiscal price tag and leaves significant uncertainty as to how the US tax system will develop."

They state that: "The PIT changes could have better targeted relief at low earners, and there is scope to more fully address distortions in business taxation. The novel international provisions create a complex array of both positive and negative international spillovers, and have the potential to significantly reshape the wider international tax system."

The report reviews the provisions of the TCJA against the various policy objectives of the US Government in designing the TCJA, that it should focus on:

- Simplifying the system;
- Making the US business tax competitive in an international context;
- Providing tax relief to lower- and middle-income Americans;
- Not providing income tax cuts to the wealthy;
- Lowering statutory rates and broadening tax bases;
- Creating a more equitable system (including by taxing households at similar levels of income in a uniform way, independent of their type of business or source of income); and
- Achieving these various objectives without adding to the fiscal deficit.

The paper includes a section looking at the impact of international tax provisions in the bill. Much of its commentary focuses on the shift from a corporate tax system with a worldwide basis towards a territorial tax system and it later discusses the transition tax introduced to tax the unrepatriated income of US multinationals held overseas.

It says: "As with the reduction in the statutory rate, the movement towards territoriality restores the US to what has become the advanced country norm. The UK and Japan, most notably, have moved in the same direction in recent years (though China, India, Brazil, and other countries that may well become increasingly prominent as capital exporters remain closer to the worldwide model). In efficiency terms, territoriality has the merit that US firms will compete on equal tax terms in foreign countries with firms based elsewhere (at least, those that are not domiciled in jurisdictions that operate effective worldwide tax systems), including in the acquisition of other companies and productive assets[...]. At the same time, however, inefficiencies arise in that differences in third countries' tax rates mean that territoriality can distort the choice of US companies as to where to operate abroad[...]"

"With the move to territoriality, some tax on deemed repatriated profits in the transition to the territorial approach is necessary and advisable. However, given that this is a tax on past profits, and thus is non-distortionary, the rate was likely set at too low a level given the urgent need for federal budget revenues. This is particularly so since the previous system of tax deferral has already conveyed large tax benefits to those companies that chose not to repatriate profits. Finally, it seems hard to justify a differential tax treatment of past profits based on whether they are currently being held in cash or non-liquid assets, especially given that taxpayers have eight years to meet their liability," it observed.

On multinationals' responses to the corporate tax changes, the IMF stated: "Worth noting too is that the evidence suggests that, while for tax purposes this offshore income is viewed as unrepatriated, the resources are actually not being held offshore in an economic sense and, rather, are likely largely invested in a range of (mostly fixed income) US dollar assets. While there will be some portfolio rebalancing as firms readjust their capital structure to the new provisions of the tax code, this is likely to occur over an extended period of time. Also, because the repatriation is deemed, the low tax rate is available to all firms regardless of whether or not they 'move' (in an accounting sense) their offshore profits. Based on these factors, it is not expected that the taxation of offshore profits will create a visible effect in international financial markets or lead to significant capital flows back into the US, or create measurable movements in currency markets."

"By removing the backstop of taxation in the US, the move towards territoriality means there is potentially a heightened risk that profits are shifted out of the US into lower tax jurisdictions," the paper says. "For this reason [...] IMF staff and others have argued that such a move would need to be accompanied by some form of minimum taxation of earnings abroad. The GILTI provisions introduce such a tax, though evidently targeted at those companies that derive a large part of the earnings from projects with returns in excess of 10 percent of tangible assets. How to tax such earnings has been a centerpiece of recent debates in international taxation, with a recognition that their inherent mobility has enabled firms with heavy reliance on intangibles – notably the leading 'digital' companies, but also for example some pharmaceutical companies and even some blue chips – to pay relatively little tax. The GILTI provisions take a sword to this Gordian knot, ensuring that such activities pay, somewhere in the world, a tax rate of at least 10.5 percent with no deferral."

Under GILTI, the TCJA imposes a minimum tax on overseas income that is in excess of 10 percent of the return on tangible assets abroad. This provision taxes at the 21 percent corporate rate the aggregate of the income of controlled foreign corporations that is earned in all foreign jurisdictions that is in excess of 10 percent of qualified business asset investment (i.e., the depreciated value of tangible fixed assets of those controlled foreign corporations, calculated not by the rules that apply to investment in the US, or those of the foreign country, but by reference to a less generous depreciation schedule) but with a deduction for corporate recipients of 50 percent of that income, the paper notes. Credit is also given for 80 percent of the foreign tax paid on such income. There is, however, no deferral of the tax and no link to repatriation of the income. This, in effect, imposes a minimum rate on GILTI income of 10.5 percent on such income (when no tax is paid abroad) with the US liability wholly eliminated if the foreign tax on that income is at least 13.125 percent (i.e. 10.5 percent divided by the 80 percent foreign tax credit). The IMF anticipates that the GILTI provisions may have "substantial bite in practice."

On the impact of the GILTI provisions, the paper states: "The core incentive that the GILTI provision creates is towards establishing, in respect of operations outside the US, a low ratio of income (in the numerator) to tangible assets (in the denominator). Looking to the numerator, this points towards arranging to receive income in the US rather than abroad, with income from intangibles (such as royalties and similar payments) evidently very much in the minds of those framing the TCJA (particularly given how much of such intangible income has come to be realized in low tax jurisdictions, so as to defer US tax liability)."

"There is evidently, however, also an effect through the denominator, creating incentives to locate tangible assets outside rather than in the US, perhaps by acquiring foreign companies. Indeed [...] there can be an incentive to locate tangible assets abroad to the point that the associated investments would be unprofitable in the absence of the tax. To put this another way, GILTI can mean that the METR for investment abroad is negative. This does not sit easily with the objective of improving the competitiveness of USbusiness, at least in respect of investment within the US"

"There is no doubt that the GILTI provisions, whose effect is supported by the FDII discussed shortly, are an ingenious approach to the problems posed by intangibles in the prior regime Nevertheless, a case can be made that the approach would be even more effective if it were imposed on a jurisdiction-by-jurisdiction basis, rather than on the aggregate of activities abroad: foreign tax credits from higher ta jurisdictions could not then be mixed with more lightly taxed income to increase the available foreign tax credit. Increasing tangible assets in one jurisdiction would then not have the effect of reducing GILTI income arising in others. there would then be still less to gain by receiving GILTI income in higher tax jurisdictions. By the same token, as taken up later, a jurisdiction-by-jurisdiction minimum tax would support stability in the wider international tax system."

## US CPAs Ask IRS To Clarify S Corporation Issues

The American Institute of CPAs (AICPA) has identified a number of priority issues affecting S corporations that it believes the Treasury Department and the Internal Revenue Service (IRS) should address in the coming months.

In a letter to the Treasury Department and the IRS, Annette Nellen, Chair of the AICPA Tax Executive Committee, wrote that both taxpayers and tax practitioners "need clarity on S corporation issues in order to comply with their 2018 tax obligations and to make informed decisions regarding cash-flow, entity structure, and tax planning issues."

S corporations are generally taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. Income derived, or losses incurred, by S corporations is "passed through" to the owners or shareholders, who report it on their own tax filings and pay any tax liable under the individual income tax regime. A C corporation, on the other hand, is treated as a separate taxable entity, with its own tax returns. Income is taxed under the corporate tax regime, although shareholders are also taxed on their dividend income at personal income tax level.

Specifically, Nellen recommended that Treasury and IRS provide the following items with regards to S corporations:

- Guidance on the application of the new laws on loss carryforwards;
- Guidance on certain provisions relating to elections by taxpayers to terminate S corporation status, including the post-termination transition period (PTTP), which provides relief for taxpayers converting from S corporations to C corporations, and the eligible terminated S corporation (ETSC) period under Section 1371(f), which deals with cash distributions following the PTTP;
- Guidance on the treatment of deferred foreign income upon transition to participation exemption system of taxation (the

transition tax under Internal Revenue Code Section 965) for S corporation trust shareholders; and

- Guidance on what trust transactions are Section 965 triggering events and how a transferee of S corporation stock held in trust might assume the liability for the Section 965 transition tax.

## US Senators Seek Corrections To Tax And Cuts Jobs Act Provisions

Republican members of the US Senate Finance Committee have urged the Treasury Department and the Internal Revenue Service (IRS) to issue guidance "consistent with the congressional intent" of the tax reform legislation, the Tax Cuts and Jobs Act (TCJA).

In their letter to Treasury Secretary Steven Mnuchin and Acting IRS Commission David Kautter, dated August 16, the lawmakers called for guidance on three aspects of the new law, including qualified improvement property expensing (Section 13204), the net operating losses deduction (Section 13302), and the sexual misconduct settlement deduction (Section 13307).

"We write to clarify the congressional intent of this recently enacted tax legislation (specifically, Sections 13204, 13302, and 13307 of H.R. 1), which is reflected in the conference report, revenue estimates, and other legislative history," they wrote.

According to the letter, in eliminating the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property and providing a new single definition of qualified improvement property, "the language in Section 13204(a) failed to designate qualified improvement property as 15-year property under the modified accelerated cost recovery system (MACRS)."

In addition, the letter notes the presence of a typographical error in a cross-reference identifying qualified improvement property as property which is recovered over 20 years under the alternative depreciation system (ADS). "Congressional intent was to provide a 15-year MACRS recovery period and a 20-year ADS recovery period for qualified improvement property," the letter said.

With regards to the NOL deduction, the lawmakers have identified the need for a technical correction to reflect "the legislative intent with respect to the provision."

"Specifically, Section 13302(e)(2) includes language stating that modifications made to NOL carryforwards and carrybacks apply to net operating losses arising in taxable years *ending* after December 31, 2017. Congressional intent was to provide that the NOL carryforward and carryback modifications are effective for NOLs arising in taxable years *beginning* after December 31, 2017."

Last, the letter points out the need for a technical correction to Section 13307 of the TCJA, which denies a deduction for any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a non-disclosure agreement (NDA) or attorney's fees related to such a settlement or payment.

"We have identified a technical correction that is necessary to reflect the legislative intent with respect to this provision," the committee members wrote. "Specifically, the provision arguably prohibits the recipient of any payment of deducting legal fees incurred in pursuing sexual harassment cases because such legal fees are 'related to' a settlement or payment that is subject to an NDA. Congressional intent was that these attorney's fees would not be subject to these rules."

The letter also informed Mnuchin and Kautter that committee members are carrying out a "thorough review" to identify other areas where the language of the law as enacted may need regulatory guidance or technical corrections to reflect the intent of the Congress.

"After this review, we intend to introduce technical corrections legislation to address any items identified in the ongoing review," the letter confirmed.

## Australia To Create New Offenses For Phoenixing Activity

The Australian Government is to create new offenses for those who engage in and facilitate illegal phoenix activity.

Phoenixing occurs when the controllers of a company strip the company's assets and transfer them to another company to avoid paying its debts, including taxes, creditors, and employee entitlements. A recent report by the Phoenixing Taskforce estimated that illegal phoenixing activity costs the Australian economy between AUD2.85bn (USD2.1bn) and AUD5.13bn a year.

Under draft legislation published by the Government, it will be an offense for company directors to engage in creditor-defeating transfers of company assets that prevent, hinder, or significantly delay creditors' access to those assets. A separate offense will apply to any person who procures, incites, induces, or encourages a company to make creditor-defeating transfers of company assets.

These offenses will be both criminal and civil offenses, attaching the highest penalties available under Australian law.

In addition to these new offenses, the Government will extend the existing liquidator asset clawback rules to cover illegal phoenix transactions. The Australian Securities and Investments Commission will be given new regulatory powers to recover property that has been transferred under an illegal phoenix transaction.

The Government has also announced that it will legislate to prevent directors from backdating their resignations to avoid personal liability and to prevent sole directors from resigning and leaving an employee with no directors. The Government will restrict the voting rights of related creditors of the phoenixing company at meetings regarding the removal and replacement of a liquidator.

Directors will be made personally liable for goods and services tax liabilities, as part of extended director penalty provisions. The Government will extend the Australian Taxation Office's existing power to retain refunds where there are outstanding tax lodgements.

A consultation on the proposals will close on September 27.

## Australian Government Thwarted Over Company Tax

The Australian Government had pledged to negotiate with crossbench senators "up until the last minute" in a bid to finally pass its company tax reforms, Finance Minister Mathias Cormann announced on August 17.

The Enterprise Tax Plan Bill went before the Senate again this week. Cormann told Sky News that it was the first item on the agenda in government business. The Government does not have a majority in the Senate and needed the support of nine non-Coalition senators to carry legislation.

The Government had sought to phase in a series of increases in the upper turnover threshold for access to the 27.5 percent small business tax rate over the period to 2023-24. It intended to cut the 27.5 percent rate to 25 percent for all companies by 2026-27. The headline company tax rate is currently 30 percent.

However the Bill, despite concessions made by the Government in response to opposition concerns, was defeated in the Senate on August 22, and will not now be taken to next years planned election.

## Australian Tax Inspector Reports On GST Refunds

Australia's Inspector-General of Taxation (IGT) has published a report on the Australian Taxation Office's (ATO's) verification of goods and services tax refunds.

Ali Noroozi conducted a review of the refunds process after concerns were raised about the ATO's GST refunds risk assessment tools and its engagement with taxpayers and their representatives in cases where refunds are delayed.

The IGT found that, overall, the ATO's approach to GST refund verification works well. The majority of refunds are released without the need for verification. Of those that are stopped for verification, over 50 percent are processed and released within 14 days.

However, Noroozi also concluded that there is scope for the ATO to improve its verification processes and minimize the adverse impacts of refund retention on taxpayers.

Noroozi recommended that the ATO develop a framework of continuous improvement to its GST refund risk assessment tools. He also said the ATO should raise awareness of and improve access to assistance in cases of serious financial hardship, including full or partial release of GST refunds.

Responding to the report, ATO Deputy Commissioner Jeremy Geale said: "The ATO is focused on supporting honest businesses to meet their GST obligations by offering help and assistance for them to get it right in the first instance. At the same time, we will continue to target our compliance resources to identifying those who deliberately do the wrong thing."

"While the vast majority of GST refunds are processed and released without being stopped for verification, it's important that we continue to review refunds we identify as high risk to confirm they are legitimate."

## Zambia To Tax Internet Phone Calls

The Zambian Government has approved a proposal to introduce a tax on telephone calls made over the internet in an attempt to protect the traditional telecoms industry.

Under an executive order recently approved by the Cabinet, a daily tax of ZMW0.30 (USD0.02) will be introduced on phone calls made via online platforms such as Skype and WhatsApp, collected by telecom operators and internet service providers.

According to a Twitter post by Information Minister Dora Siliya, the move is intended to "save jobs in telecoms" and ensure that free-to-use internet call platforms make a contribution to the upkeep of the country's telecommunications infrastructure.

"WhatsApp and Facebook owners don't pay to access citizens phones via our telecom infrastructure yet citizens expect functioning and expanded network," Siliya tweeted.

## Russia Mulls Tax Hike On Mining Industry

Russia may impose a windfall tax on several large companies in the extractive and manufacturing sectors.

A number of reports suggest that President Vladimir Putin has agreed to discuss a proposal for the imposition of additional taxes on the profits of 14 companies in the mining, chemicals, and metal industries.

It is said that the tax targets those companies that have profited the most from the combination of higher commodity prices and a weaker ruble, with most commodities priced in US dollars.

It is believed that revenues from the new tax could reach RUB500bn (USD7.5bn).

## Ireland Mulling Personal Tax Changes

The Irish tax agency has calculated that the Government could raise an additional EUR433m (USD499.5m) a year were it to introduce a new top rate of tax, according to reports.

In preparation for this October's Budget, Revenue has estimated the likely tax take in a range of scenarios in which the income tax rates and bands are amended. Under the current system, there are two headline rates of tax – 20 percent and 40 percent – which apply at different thresholds according to the taxpayer's marital status.

According to the *Irish Times*, Revenue calculated that the introduction of an additional 43 percent rate on earnings over EUR80,000 could generate EUR433m in revenue in a full year. Were the rate applied only to earnings above a EUR120,000 threshold, the yield would be EUR280m.

The *Irish Times* also reported that Revenue estimated that were the current top rate of 40 percent reduced to 39 percent, the cost would be EUR348m in a full year.

The *Irish Independent* separately reported that Revenue had worked out the likely impact on taxpayers were the Government not to introduce any income tax reforms. It said that approximately 57,600 individuals would pay tax for the first time, while an additional 65,000 taxpayers would fall into the 40 percent bracket for the first time. The current thresholds for single workers for entry into the 20 and 40 percent rates are EUR16,501 and EUR38,550, respectively.

## Slovakia Gazettes Insurance Tax Law

A new law imposing an eight percent tax on insurance products in the Slovak Republic has been published in the country's official gazette.

The tax, adopted by Parliament on June 20, will apply to non-life insurance products and will generally be borne by insurance companies, although policyholders may be liable in certain circumstances, including when the policy is held with a non-resident insurer with no presence in the Slovak Republic. However, the tax will not apply to vehicle insurance policies.

The tax is due to apply from January 1, 2019.

## Swiss Government Approves DTA With Saudi Arabia

The Swiss Federal Council has adopted the dispatch on the double taxation agreement with Saudi Arabia signed in February.

Negotiations toward a DTA began in 2010. This is the first such agreement to be signed between the two countries.

According to the Swiss Federal Council, the agreement "contains advantageous regulations on the international taxation of company profits and other income." The agreement also implements a range of provisions from the OECD's base erosion and profit shifting project. It contains an administrative assistance clause that is in accordance with the current international standard for the exchange of information upon request.

For the agreement to enter into force, it must now be approved by the Swiss Parliament and by the relevant Saudi authorities.

## Australia Approves OECD Anti-Treaty Abuse Convention

The Australian Parliament has ratified an OECD convention designed to prevent companies abusing loopholes in the international tax treaty system.

The legislation passed by the Australian Parliament on August 16 will give force to the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The Convention is aimed at countering tax avoidance strategies that lead to base erosion and profit shifting, in which tax treaty loopholes are used to inappropriately shift profits to low-tax or no-tax locations, to avoid paying tax.

The Convention provides countries with a method for modifying their bilateral tax treaties to implement new integrity rules.

Normally, to implement changes to a double tax agreement, the countries involved must renegotiate the agreement. The Convention will mean that Australia can make the changes automatically with those treaty partners who agree to adopt the amendments.

Once Australia and its relevant treaty partners have completed their ratification procedures, the Convention will help ensure that the majority of Australia's bilateral treaties contain international best practice rules that address multinational tax avoidance.

## BELARUS - UNITED KINGDOM: INTO FORCE

On July 27, 2018, the DTA between Belarus and the United Kingdom entered into force.

## CAMEROON - NIGERIA: NEGOTIATIONS

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

## HONG KONG - NEW ZEALAND: INTO FORCE

On August 9, 2018, the amending Protocol to the DTA between Hong Kong and New Zealand 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.

## RUSSIA - BELGIUM: RATIFIED

On August 3, 2018, Russia ratified the protocol to the DTA with Belgium.

## RUSSIA - JAPAN: RATIFIED

On August 3, 2018, Russia ratified its pending DTA with Japan.

## SAN MARINO - GUERNSEY: RATIFIED

On August 3, 2018, San Marino ratified the amending protocol to its TIEA with Guernsey.

## SINGAPORE - LATVIA: INTO FORCE

On August 3, 2018, the second Protocol amending the DTA between Singapore and Latvia entered into force.

## SRI LANKA - OMAN: SIGNATURE

On August 15, 2018, Sri Lanka and Oman signed a DTA.

## TAIWAN - SPAIN: NEGOTIATIONS

On July 30, 2018, Taiwan expressed its desire to negotiate a TIEA with Spain.

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

## 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/

## 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

### 72nd Congress of the International Fiscal Association

9/2/2018 - 9/6/2018

IBFD

Venue: COEX Convention & Exhibition Center, 513, Yeongdong-daero, Gangnam-gu, Seoul 06164, Republic of Korea

Key speakers: TBC

https://www.ifaseoul2018.com/

### 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

11/12/2018 - 11/12/2018

CIS Wealth

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

Key speakers: TBC

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

## MIDDLE EAST AND AFRICA

### 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

### UK Tax, Trusts and Estates Conference 2018

9/4/2018 - 9/4/2018

STEP

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

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

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

## 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

## 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

### 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

## 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=9e33bf77b0e4587e14991159621fbca452436572005942261388893&_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

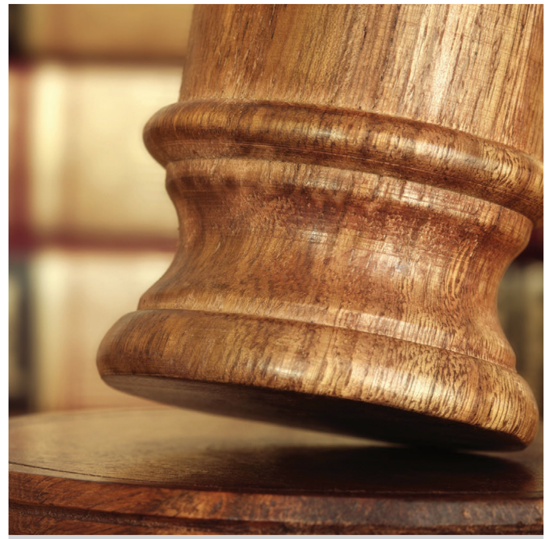
IBFD

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

## THE AMERICAS



*A listing of recent key international tax cases.*

**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

US Court of Appeals for the Ninth Circuit: *Case No. 16-70496 and 16-70497*

## 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

European Court of Justice: *SA.28973: Measures to certain Greek Casinos*

**United Kingdom**

The UK's First Tier Tribunal (FTT) has ruled for the taxpayer on appeal in a case concerning the VAT treatment of fixed odds betting terminals.

The claim concerned VAT paid by the taxpayer, Done Brothers (Cash Betting) Ltd, between December 2005 and January 2013. The UK subsequently approved legislation to exempt such supplies. The taxpayer sought repayment of VAT collected during the period to December 2005.

The FTT considered the taxpayer's appeal on the basis of the tests applied by the European Court of Justice in its landmark ruling in *HMRC v. The Rank Group PLC* (C-259/10 and C-260/10), which concerned the tax treatment of slot machines.

The FTT agreed with the taxpayer that the UK's decision to levy VAT on fixed odds betting terminals (FOBTs) was contrary to the EU principle of fiscal neutrality where the supplies from FOBTs were similar to comparator games, played in casinos and online, which were exempt.

In *Rank*, the ECJ confirmed that the principle of fiscal neutrality precludes a member state from treating similar goods and supplies of services, which are therefore in competition with each other, differently for VAT purposes.

The FTT said that the supplies, of bingo games on FOBTs; virtual card games on FOBTs; virtual racing games on FOBTs; slots games on a B3A machine; and roulette games, were similar to the comparator games – namely those played in casinos and/or online – and therefore the difference in the VAT treatment of the supplies was contrary to the principle of fiscal neutrality. The FTT did not rule on the VAT treatment of "other games" considered, due to a lack of evidence put forward.

The ruling in *Done Brothers (Cash Betting) Ltd. v. HM Revenue and Customs ([2018] UKFTT 0406 (TC))* was released on July 25, 2018.

https://www.bailii.org/uk/cases/UKFTT/TC/2018/TC06608.html

First Tier Tribunal: *Done Brothers (Cash Betting) Ltd. v. HM Revenue and Customs ([2018] UKFTT 0406 (TC))*

### United Kingdom

The UK's Court of Appeal held in *Adecco UK Ltd v. HM Revenue and Customs* ([2018] EWCA Civ 1794) that an employment agency should be liable to account for VAT on the entire fee received from clients for work provided by non-employed temporary workers.

The Court said the First-Tier Tribunal had been wrong to rule otherwise in the landmark judgment in *Reed Employment Ltd v HMRC* ([2011] UKFTT 200 (TC), [2011] SFTD 720). As in the case of Adecco, Reed had concerned the provision by an employment bureau of non-employed temps. The FTT said that supplies made by Reed to its clients were "supplies of introductory and ancillary services, and the consideration for those supplies was the gross commission element of the charge rate paid by the client to Reed, that is, the charge rate less the pay rate paid by Reed to the temp worker and associated national insurance contributions." In other words, VAT was not payable on sums paid to Reed by a client in respect of the hours worked by a temp.

However, the Court of Appeal rejected an argument from Adecco on the same basis, agreeing with HMRC that VAT should be levied on the full consideration received by Adecco from the client.

Notably, the non-employed temps that Adecco provided to the clients entered into a contract only with Adecco and not directly with the client.

Judge Newey said: "There can plainly be no question of the temps having provided their services under contracts with the clients: no such contracts existed. Whatever scope there may be for argument as to the extent of Adecco's obligations to its clients, the contractual position must, I think, be that the temps' services were provided to clients in pursuance of the contracts between, on the one hand, Adecco and its clients and, on the other, Adecco and the temps."

He added: "While temps were to be subject to the control of clients, that was something that the temps agreed with Adecco, not the clients. Further, the fact that the contract between Adecco and a temp barred any third party from having rights under the Contracts (Rights of Third Parties) Act 1999 confirms that the relevant provisions were to be enforceable only by Adecco, which, on the strength of them, was able to agree with its clients that the temps should be under their control. Adecco can fairly be described as conferring such control on its clients."

The judgment was released on July 30, 2018.

https://www.bailii.org/ew/cases/EWCA/Civ/2018/1794.html

UK Court of Appeal: *Adecco UK Ltd & Ors v Revenue & Customs [2018] EWCA Civ 1794*

## United Kingdom

The UK Supreme Court has agreed that the UK tax agency does not need to pay compound interest on tax that was levied in breach of EU law but ruled for the taxpayer, Prudential Assurance, on how the tax repayment should be calculated.

The case related to periods running from 1990–2009 and concerns the tax treatment of UK-resident companies that received dividends from portfolio shareholdings (*i.e.* where the investor holds less than 10 percent of the voting power in the company) in overseas companies.

According to the Supreme Court summary, UK tax law at that time had provided that, on receiving dividends from a UK-resident company, a UK-resident recipient company was exempt from corporation tax under Section 208 of the Income and Corporation Taxes Act 1988 (ICTA), and by Section 231(1) of the ICTA, it would receive a tax credit equal to the amount of advance corporation tax (ACT) that the distributing company had paid on the distribution.

By Section 238(1) of the ICTA, the dividend received and the tax credit together constituted "franked investment income" (FII) in the hands of the recipient company, which, by Section 241 of the ICTA, could be used to eliminate or reduce its own liability to ACT on distributions (franked payments) to its own shareholders.

In contrast, a UK-resident company receiving dividends from an overseas company was subject to corporation tax under schedule D of the ICTA (so-called DV tax). Furthermore, it did not receive a tax credit on the dividends, which did not qualify as FII, although it could be entitled to some relief against double taxation under domestic rules, or conventions between the UK and other countries.

PAC brought a claim to recover corporation tax and ACT levied contrary to EU law. Before PAC's claim was heard, the Court of Justice of the European Union (ECJ) concluded in two decisions that the UK's treatment of overseas dividends was contrary to EU law in that it treated dividends received from overseas companies less favorably than dividends from UK-resident companies.

In the case, it was common ground that PAC was entitled to an appropriate tax credit, and to repayment of any tax unlawfully charged. The dispute concerned the amount to be awarded, which depends on issues of domestic and EU law.

On the first of five issues discussed, the Supreme Court ruled for PAC. This issue was whether EU law requires the tax credit to set by reference to the overseas tax actually paid, as HMRC submitted, or by reference to the foreign nominal tax rate, as PAC submitted.

The Supreme Court dismissed HMRC's appeal on this issue. ECJ jurisprudence, particularly *Case C-35/11* "FII ECJ II," clearly establishes that the credit for foreign dividends should be by reference to the FNR, rather than by reference to the actual or effective tax incurred overseas, the UK Supreme Court said. It added that there is no suggestion in the ECJ case law that any distinction is to be drawn in this respect between portfolio and nonportfolio holdings.

The second issue concerned whether PAC is entitled to compound interest in respect of tax which was levied in breach of EU law, on the basis that HMRC was "unjustly enriched" by the opportunity to use the money in question.

The Supreme Court allowed HMRC's appeal on this issue. In *Sempra Metals Ltd v. Inland Revenue Com'rs* ([2007] UKHL 34) a majority of the House of Lords held that a claim would lie in unjust enrichment for restitution of compound interest on money which was paid prematurely as the consequence of a mistake. The Court said: "A number of developments since that decision indicate that it failed to have regard to tax legislation, created problems in the law of limitation, and caused disruption in public finances. Furthermore, it is inconsistent with *Investment Trust Companies v Revenue and Customs Com'rs* ([2017] UKSC 29), which explained the requirement for a defective transfer of value by the claimant to the defendant."

It continued: "The recipient's possession of money mistakenly paid to him, and his consequent opportunity to use it, is not a distinct transfer of value, additional to the payment of the money. Accordingly, there is no right to interest on the basis of unjust enrichment." The Supreme Court therefore departed here from the reasoning in Sempra Metals on this issue and rejected PAC's claims to compound interest.

The ruling in *Prudential Assurance Company Ltd v. HMRC* ([2018] UKSC 39) was released on July 25, 2018.

https://www.supremecourt.uk/cases/docs/uksc-2016-0102-press-summary.pdf

UK Supreme Court: *Prudential Assurance Company Ltd (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant) [2018] UKSC 39*

## Dateline August 23, 2018

Taxpayers in Brazil might have been a little alarmed when they read the headline **"UK Chancellor mulling Amazon tax."** Brazil has a complicated enough tax regime already, as the International Monetary Fund observed again earlier this month, without other countries adding their two cents to the already mind-bogglingly complex equation.

Obviously, Philip Hammond was talking about Amazon the company, not the Amazon river (although both share the distinction of being extraordinarily large). Nevertheless, given the subject matter and the UK Government's intent, his words would have reverberated globally, perhaps even as far as the upper reaches of the Amazon. The river, that is. Though no doubt the upper reaches of Amazon's management structure are well aware that **governments and tax authorities the world over are circling**, hungry for a piece of the pie.

Indeed, in Amazon's home country, states have quickly capitalized on the landmark ruling by the US Supreme Court earlier this year in the Wayfair case, which has provided them with a firmer legal basis to apply **new tax nexus rules** on remote sales. You can't blame them for not looking a gift horse in the mouth I suppose, when revenue generation continues to be a challenge in many state capitols. Jurisdictions beyond the US are also chomping at the bit to for a much more substantial bite of Amazon's sales and profits.

Of course, this isn't all just about Amazon, or the handful of other large tech companies which make up the so-called "GAFA" group (Google, Apple, Facebook and Amazon). As the OECD has repeatedly pointed out, **the digital economy is increasingly the economy itself**, which is probably why it is so determined to avoid the unleashing of half-baked digital tax measures on the global economy. However, in a very trend-driven international tax environment, the worry is that Hammond's words might encourage other jurisdictions to do just that.

Additional developments over the past week or so also provide more reminders of how we are in the midst of a **technological transformation** that, from a taxation point of view, is both benefiting and challenging governments and taxpayers.

In one of the more positive examples, **South Africa** announced the launch of its "eFiling MobiSite," allowing taxpayers to submit individual income tax returns from a mobile device's internet browser. In another, the Internal Revenue Service of Chile launched a new mobile app on August 10 that will allow invoices to be issued and validated also using a mobile device, a move the Government predicts will benefit 730,000 taxpayers.

Some changes are taking place that will more obviously benefit tax authorities rather than taxpayers, such as the August 13 statement by the **Romanian** Ministry of Finance directing companies to make preparations for **mandatory electronic cash registers**, a measure intended to counter tax evasion. In a similar vein, food and beverage vending machines are now connected to the tax authority's computers to ensure that vendors can't escape their VAT obligations.

Other recent measures though, have been more questionable. Take for example **Zambia's** incoming "Skype tax," under which **voice-over-internet calls will be subject to a daily levy.** The Government has justified the move by arguing that free internet calls will send the country's telecoms industry into terminal decline. Funny how other countries haven't made the same connection, though. Still, few things really surprise me in the world of taxation anymore.

But perhaps we have been provided with a real a glimpse into the future courtesy of the **Dubai International Financial Authority**, which announced earlier this month that it is working towards the creation of the first **"Court of the Blockchain."** Can you imagine? Cases argued by virtual lawyers, decided by digital judges and juries, at the speed of light? No, neither can I. But perhaps we should get used to the idea of doing virtual jury service or being virtually subpoenaed.

The dangers of going all electronic were, however, highlighted in a press release issued by the **US Internal Revenue Service** last week as tax practitioners were reminded of the importance of **cybersecurity**. And while the IRS has taken great strides towards reducing levels of tax-related ID theft, which fell by 40 percent from 2016 to 2017, the numbers are still worryingly high. Last year, there were 242,000 reported cases, which represents 663 ID thefts every single day, on average. And this is just tax-related ID thefts, never mind what's going on out in the wider economy. Perhaps it's time to have virtual cops to go with the cyber courts?

**The Jester**