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a closer look

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

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

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

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Global Tax Weekly – A Closer Look

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CONTENTS

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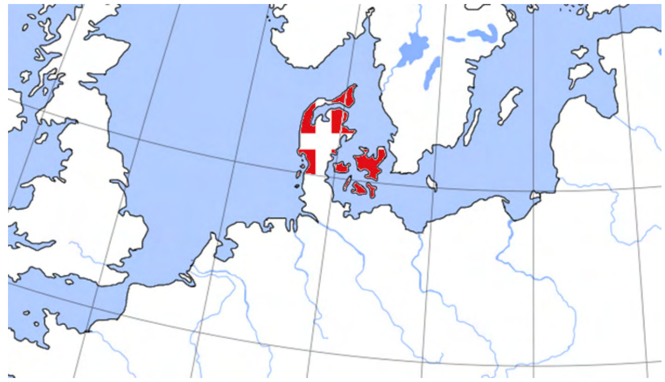
Danish GAAR Used For Denying Benefits Under The EU Parent Subsidiary Directive



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The Danish tax authorities have denied an EU-based parent company and its Danish subsidiary from enjoying the benefits under the Parent-Subsidiary Directive arguing that this arrangement constituted abuse under the Danish GAAR (General Anti-Abuse Rule).

About The Cases

A number of recent binding advanced rulings issued by the Danish National Assessment Council have amplified the understanding and use of the Danish GAAR. The rulings, which all relate to the solvent liquidation or relocation of a Danish holding company, have taken the Danish GAAR into consideration in most cases but have not found that the transactions ultimately constitute abuse or attempts of avoidance. However, one ruling ordered that the company be denied the benefits under the Parent-Subsidiary Directive.

Relevant Sources Of Law

The Danish GAAR is contained in Section 3 of the Danish Tax Assessment Act (*ligningsloven*). It may be applied to deny taxpayers the benefits otherwise applicable under the EU Directives regarding the taxation of parent and subsidiary companies; royalty and interests; and mergers and divisions or other benefits applicable under double taxation treaties.

According to the Danish Corporation Tax Act, Danish tax liability of a company ceases to exist once a company is considered to have gone into solvent liquidation and its proceeds have been distributed to its shareholders. Dividends distributed in the year of solvent liquidation (or exit) are generally considered to constitute capital gains and are, therefore, seldom subject to taxation.

However, the proceeds are still considered to be dividends if a shareholder owns more than 10 percent of the shares in the company and is subject to limited tax liability on dividends according to the Danish Corporation Tax Act.

When the taxation must be waived or lowered pursuant to the Parent Subsidiary Directive or a relevant double taxation treaty, the limited tax liability does not include dividends from subsidiaries.

Facts Of The Cases

A Danish company served as a holding company in a larger international group. The company had been established at a time when Danish tax legislation made Danish holding companies popular. However, the group eventually desired to simplify its structure and wanted to move a holding company in the Bahamas and the one in Denmark to Luxembourg.

Before relocating the Danish company, the group wanted to know if this would trigger Danish tax on dividends and sought a binding advance ruling on the matter. As part of the proceedings, the company informed the tax authorities that it was not the policy of the company to pay dividends to the parent company and that it did not contemplate winding up the company.

The tax authorities denied exemption from dividend tax under the EU Parent Subsidiary Directive as the tax authorities argued that the main reason - or, at the very least, one of the main reasons - for the relocation of the Danish company was to achieve a more favorable tax position and that the move was not based on commercial consideration. This ruling was prompted by the fact that the parent company had previously been relocated from Bahamas to Luxembourg because dividends paid to a parent company in Bahamas would be subject to Danish taxation.

The National Assessment Council agreed with the tax authorities since the company failed to provide documentation proving the commercial reasons for the relocation.

Comments

In this case, the advance ruling of the National Assessment Council seems to put the burden of proving that the contemplated action is based on commercial reasons squarely with the taxpayer. The tax authorities presumed that the purpose of first relocating the parent company and subsequently the subsidiary was to achieve a beneficial tax position and the taxpayer was required to produce documentation that this was not the case. This approach goes against the preliminary work regarding the GAAR which states that it rests with the tax authorities to determine whether a tax arrangement is an artificial one. If the tax authorities are able to lift this burden of proof it will be for the taxpayer to prove otherwise.

Moreover, when compared with some of the other cases taking the GAAR into consideration, it appears, in this case, that the tax authorities and the National Assessment Council did not consider it to be important that no dividends were to be distributed or that the parent company was considered to be the beneficial owner under EU law and should be able to claim the benefits as such.

The case is the first in which the GAAR has been used for denying a company the benefits it could otherwise claim; and what will happen next and to what extent the above approach will apply to these cases going forward will be of great importance to anyone having holding companies in Denmark. The decision has been appealed and the final outcome is, therefore, still pending.

FATCA, The IRS, And You: The Importance Of Reporting

by Mike DeBlis, DeBlis Law

If you have offshore bank accounts, the reality of FATCA should be less mystery and more common knowledge. Short for the Foreign Account Tax Compliance Act, FATCA is the legislation behind the government's ability to find your funds anywhere in the world and, subsequently, bring down punitive actions against those not following the rules. Bottom line? If you have a foreign bank account, whether you live in the US or not, you need to report it to the Internal Revenue Service.

Reporting Requirements For Foreign Bank Accounts

Under FATCA, a majority of foreign banks will take special care to notify US customers as to inquiries by the government, leading to an increased level of information shared between financial institutions and the IRS. If this information isn't in sync with what you report – or if you choose not to report anything at all – you may find yourself in hot water.

Legal Ramifications For Failing To File

In general, making a few mistakes on your tax return leads to an IRS notice and a reassessed tax liability, not charges of fraud and tax evasion. However, ignoring foreign bank accounts can come with far more serious penalties than simple interest charges.

- Failure to report income can lead to an accuracy-related penalty of 25 percent or a civil fraud penalty of 75 percent
- Filing to file an FBAR non-wilfully can carry a civil penalty of USD10,000 per instance
- Failing to file an FBAR wilfully can yield a penalty of the higher of USD100,000 or 50 percent of the amount in relevant off-shore accounts
- Failing to file an FBAR can also come with criminal penalties, including USD500,000 in fines and up to 10 years in prison

- Filing a false tax return has no statute of limitations and can carry a penalty of five years in prison and a fine of up to USD250,000

Getting Back Into The Government's Good Graces

If you forgot to file an FBAR or forgot to check the box on your taxes or have been ignoring inquiries from your foreign bank, you may be panicking right now. However, there are some steps you can take to redeem yourself in the eyes of the government. Known as amnesty programs, these processes are designed to bring you up to date on filings without risking more serious consequences.

Historically, the Offshore Voluntary Disclosure Program has been the most popular option, providing a somewhat bulletproof, no-questions-asked approach to amnesty. The fees are quite high – OVDP requires payment of back taxes and penalties up to 27.5 percent – but the shield against criminal or civil prosecution is beloved indeed. However, this program is coming to an end on September 28th, 2018, leading to a major uptick in participants before the clock runs out.

This leaves one major pathway remaining: the Streamlined option. Available for those who maintain that a failure to file was not willful or done in order to evade authorities, this alternative provides a streamlined way (hence the name) to file amended or delinquent returns as well as offering terms for resolving tax liability and penalties. The largest difference between the Streamlined option and OVDP concerns a risk of legal actions; those going through the Streamlined Program are at risk for potentially facing legal consequences, while OVDP protects against this.

Currently, Streamlined amnesty comes in two forms: Streamlined Domestic and Streamlined Foreign. The Streamlined Foreign option is for those who do not reside in the US who are up to date on all past tax filings and who qualify as non-willful. Unlike OVDP, there are no monetary penalties outside of interest and fees associated with incorrect tax returns, saving taxpayers potentially thousands. Streamlined Domestic, on the other hand, exists for those currently residing in the US who are deemed to be non-willful and are up to date on all past tax filings. This program does differ in one key way from the foreign pathway, however: there is a 5 Percent fee assessed on the annual aggregate value of offshore unreported balances.

Those overwhelmed by the road to amnesty may choose to instead perform what is known as a quiet disclosure, filing belated FBARs and amended tax returns on the sly, but this isn't recommended. Things like amended returns can raise red flags at the IRS, making it more likely your prior mistakes will be noticed, not less. The IRS promises harsh penalties if these kinds of actions arise on their radar, but some filers feel it's better than nothing.

It's easier to jump through the government's hoops than it is to fail to file and scramble for amnesty later, but there's no changing the past. If you're facing the prospect of penalties related to ignoring the IRS' rules, understanding your amnesty options is a big part of getting back on the right foot before the government comes to call.

Cross-Border Electronic Supplies - The VAT Net Closes

by Stuart Gray, Senior Editor, Global Tax Weekly

With Switzerland reportedly the latest jurisdiction about to impose value-added tax on purchases made online from overseas companies, the OECD's vision of the international VAT framework on e-commerce set out 20 years ago in the Ottawa Framework is steadily becoming a reality, as we explore in this article.

Introduction

As those following international developments will know, the growth of the digital economy and the challenges this poses for tax collection is one of the greatest preoccupations of the OECD and individual governments, and is central to the ongoing base erosion and profit shifting project, launched in 2013. However, even at the dawn of e-commerce 20 years ago, the OECD realized that changes to the way consumption taxes worked were needed to capture the expected strong growth in cross-border business-to-consumer sales driven by the rapid spread of the internet.

The Ottawa Framework

It was almost 20 years ago, in the beginnings of the then nascent e-commerce revolution, that the OECD suggested that VATs and GSTs should apply to digitalized supplies in the jurisdiction of consumption, rather than of origin. However, it is only now that this recommendation is being acted upon by countries around the world.

The overarching principle of the report, Electronic Commerce: Taxation Framework Conditions,[1] also known as the Ottawa Framework, published by the OECD Committee on Fiscal Affairs in October 1998, was that while electronic commerce should be allowed to flourish unencumbered by discriminatory and inefficient tax rules, jurisdictions in turn had a right to protect their tax bases.

With regards to consumption taxes, the CFA therefore proposed that rules for the taxation of cross-border trade "should result in taxation in the jurisdiction where consumption takes place," and that "an international consensus should be sought on the circumstances under which supplies are held to be consumed in a jurisdiction."

"Where business and other organizations within a country acquire services and intangible property from suppliers outside the country, countries should examine the use of reverse charge, self-assessment or other equivalent mechanisms where this would give immediate protection of their revenue base and of the competitiveness of domestic suppliers," the report said.

Importantly, such tax systems should "not unduly impede revenue collection and the efficient delivery of products to consumers," the framework stated.

However, while these principles sound fine on paper, in practice they have presented tax authorities with a unique set of problems.

The Destination Principle

Generally, VAT systems have long operated according to the "destination principle," whereby VAT on cross-border supplies is levied in the jurisdiction of final consumption. This is designed to maintain VAT "neutrality" in the international trading system. As the OECD notes in the final BEPS Action 1 report[2] on the digital economy (see below):

"The destination principle is designed to ensure that tax on cross-border supplies is ultimately levied only in the jurisdiction where the final consumption occurs, thereby maintaining neutrality within the VAT system as it applies to international trade."

And the destination principle is now relatively easy to enforce, because most jurisdictions have well established border control mechanisms in place to track the origin and the destination of the goods in question.

Such mechanisms do not exist, however, in the borderless world of the digital economy, where services can easily be purchased by a customer in one country from a business located in another, irrespective of distance or border controls. These intangible services include such things as consultancy, accountancy, and legal services; financial and insurance services; telecommunication and broadcasting services; online supplies of software and software maintenance; online supplies of digital content (movies, TV shows, music, *etc*.); digital data storage; and online gaming.

Base Erosion And Profit Shifting

However, it wasn't until the OECD began to advance its work on base erosion and profit shifting, which culminated in a series of final recommendations being published in October 2015 – 17 years after the Ottawa Framework – that governments around the world resolved to do something about this uneven playing field, which has been said to deprive national treasuries of substantial sums of VAT and GST revenue.

As the OECD observes in its final recommendations on countering BEPS, the digital economy is fast becoming the economy itself. In 2014, B2C sales alone were estimated to exceed USD1.4 trillion, an increase of nearly 20 percent from 2013. B2C sales are estimated to reach USD2.4 trillion by 2018. Therefore, by failing to tax such sales appropriately, countries are being deprived of substantial amounts of tax revenue every year.

The OECD acknowledges in the report that the digital economy does not give rise to unique BEPS issues. However, it observes that key features of digital businesses do exacerbate BEPS risks:

"These features include mobility, reliance on data, network effects, the spread of multi-sided business models, a tendency toward monopoly or oligopoly and volatility. The types of business models include several varieties of e-commerce, app stores, online advertising, cloud computing, participative networked platforms, high speed trading, and online payment services. The digital economy has also accelerated and changed the spread of global value chains in which [multinational enterprises] integrate their worldwide operations."

The report goes on to note that as a consequence of these features, the digital economy raises broader tax challenges for policymakers:

"These challenges relate in particular to nexus, data, and characterization for direct tax purposes, which often overlap with each other. The digital economy also creates challenges for value added tax (VAT) collection, particularly where goods, services and intangibles are acquired by private consumers from suppliers abroad."

The report therefore identifies the non-collection of VATs, goods and services taxes (GSTs), and similar types of levies on cross-border trade of intangibles as a key risk to national tax bases. These intangibles include such things as consultancy, accountancy, and legal services; financial and insurance services; telecommunication and broadcasting services; online supplies of software and software maintenance; online supplies of digital content (movies, TV shows, music, etc.); digital data storage; and online gaming. In short, these are services that can be supplied remotely, where the supplier and the consumer are not "on the spot" – *i.e.*, those services and intangibles that are not physically performed at a readily identifiable place and ordinarily consumed at the same time and place.

However, the OECD acknowledged that resolving this issue involved considerable challenges, as the final report on Action 1 (the digital economy) duly noted: "According to the traditional approach, the non-resident supplier is required to register in the jurisdiction of taxation and charge, collect, and remit any tax due there. It is recognized, however, that it can often be complex and burdensome for non-resident suppliers to comply with such obligations in jurisdictions where they have no business presence, and equally difficult for tax administrations to enforce and administer them."

As the Ottawa Framework proposed, one solution would be for countries to apply the reverse charge mechanism, whereby the responsibility for collecting and remitting VAT falls on the buyer of taxable supplies, rather than the supplier. However, while this is workable for business-to-business supplies, as the party receiving the supplies is likely to have the necessary VAT accounting systems in place, such an approach would be much less effective for cross border business-to-consumer supplies, "since private consumers have little incentive to declare and pay the tax due, at least in the absence of meaningful sanctions for failing to comply with such an obligation."

In order to ensure the effective collection of VAT on cross-border supplies of services and intangibles, the OECD said that an appropriate balance must be struck between ensuring suppliers do not face prohibitive compliance burdens when attempting to collect and remit VAT in a foreign jurisdiction, and the needs of tax authorities to safeguard revenues.

Based on work carried out by the OECD, as well as other international organizations, the report concluded therefore that the most "effective and efficient approach" to ensure the appropriate collection of VAT on cross-border B2C supplies is to require the non-resident supplier to register and account for the VAT in the jurisdiction of taxation. However, the report stressed that it was incumbent on tax authorities to make these procedures as simple as possible for taxpayers.

"When implementing a registration-based collection mechanism for non-resident suppliers, it is recommended that jurisdictions consider establishing a simplified registration and compliance regime to facilitate compliance for non-resident suppliers. The highest feasible levels of compliance by non-resident suppliers are likely to be achieved if compliance obligations in the jurisdiction of taxation are limited to what is strictly necessary for the effective collection of the tax. Appropriate simplification is particularly important to facilitate compliance for businesses faced with obligations in multiple jurisdictions. Where traditional registration and compliance procedures are complex, their application for non-resident suppliers of [B2C] services and intangibles would risk creating barriers that may lead to non-compliance or to certain suppliers declining to serve customers in jurisdictions that impose such burdens.

A simplified registration and compliance regime for non-resident suppliers of [B2C] services and intangibles would operate separately from the traditional registration and compliance regime, without the same rights (*e.g.* input tax recovery) and obligations (*e.g.* full reporting) as a traditional regime. Experience with such simplified registration and compliance regimes has shown that they provide a practical and relatively effective solution for securing VAT revenues on [B2C] supplies of services and intangibles by non-resident suppliers, while minimizing economic distortions and preserving neutrality between resident and non-resident suppliers. Such mechanisms allow tax administrations to capture a significant proportion of tax revenues associated with supplies to final consumers within their jurisdiction while incurring relatively limited administrative costs."

International VAT/GST Guidelines

Having agreed that this was the best way forward, the OECD published new International VAT/GST Guidelines in November 2015, intended to establish international standards for the "coherent and efficient" application of VAT/ GST to the international trade in services. These were endorsed by representatives from more than 100 countries and jurisdictions at the OECD Global Forum on VAT in Paris and released in finalized form in April 2017.[3]

The Guidelines recommend that foreign sellers register and remit tax on sales of e-books, apps, music, videos, and other digital goods in the jurisdiction where the final consumer is located. The Guidelines also include a recommended mechanism to ensure the effective collection of VAT by tax authorities from foreign sellers.

Commenting on the Guidelines, the OECD's Deputy Secretary-General, Rintaro Tamaki, said: "The effective and consistent implementation of the recommended approaches for collecting the

VAT on these digital sales will help jurisdictions to protect their VAT revenues and level the playing field between domestic and foreign suppliers. It is very encouraging to see that a number of jurisdictions have already implemented the rules and the mechanism recommended by these Guidelines, or have expressed their intention to do so. They expect that these reforms will contribute considerable revenues to government budgets." [4]

Jurisdictional Developments

The following sections summarize related developments at jurisdictional level, including in South Africa, Japan, and Australia, which were some of the first major economies to enforce VAT on cross-border electronic supplies; as well as more recent announcements, as the list of jurisdictions following these early-movers continues to grow.

South Africa

The BEPs project was in its infancy when the South African Government announced plans to require foreign suppliers of electronic services to register for VAT in the jurisdiction in the 2013 Budget. The measures were introduced on June 1, 2014, although the South African Revenue Service began registering foreign-based suppliers of electronic services on April 7 that year.

Final regulations were published by SARS on March 28, 2014, following a consultation process that began on January 30, 2014. This exercise showed that businesses' main concern was that the scope of the regulations was too wide, as they included certain types of electronic services that are predominantly of a business to business nature. These responses prompted the Government to reduce the scope and to exclude certain services from the regulations.

However, it was worthy of note that the Government took issue with those responses which equated the amendment to a new tax. "This is not the case, as the Regulation merely changes the tax liability from the importer of the service to the foreign supplier to address concerns about non-compliance in terms of the current rules and to level the playing field between local suppliers of e-services and foreign suppliers," it stated that the time of the publication of the regulations.[5]

Prior to the amendment taking effect, both taxable and non-taxable persons resident in South Africa were required to account for 14 percent VAT on goods and electronically-supplied services purchased from foreign suppliers under a reverse charge regime, which established an obligation that they self-assess and remit VAT on online overseas purchases. However, the Government, in its 2013 Budget, acknowledged that this framework, as applied to tax electronically-supplied services, was ineffective.

Under the updated regime, foreign suppliers of electronically-supplied services are required to register for VAT once the value of their sales to South African businesses and consumers exceeds ZAR50,000 (USD3,500) during any twelve-month period. To ease the burden on the cash flow of these companies, foreign suppliers are allowed to account for VAT on a cash basis, enabling them to defer accounting for VAT until a consideration is received in respect of a supply. However, deduction is only permitted once the supplier is paid for inputs.

For the purpose of calculating the value of electronically-supplied services to South African recipients, in view of the fact that customer location is often unknown in the case of e-commerce, a proxy for customer location is to be used. This proxy has been confirmed in the regulations. VAT covers supplies of electronic services to a recipient that is a resident of South Africa, or where any payment originates from a bank registered or authorized in terms of the Banks Act, 1990.

The regulations confirm that electronically-supplied services subject to VAT include: educational services; games and games of chance; information system services; internet-based auction services; maintenance services; and miscellaneous services, where such services are supplied by means of an "electronic agent, electronic communication or the internet for any consideration," as defined in the regulations. Miscellaneous services include the provision of e-books, films, images, music, and software as well as software updates.

Japan

In the BEPS era, Japan has also been an early-mover, releasing comprehensive guidance in July 2015 concerning the requirements for foreign businesses to account for sales tax (VAT) on supplies of business-to-consumer (B2C) services and the introduction of a reverse charge on business-to-business (B2B) supplies ahead of their introduction on October 1, 2015. Registration for the regime opened on July 1, 2015.

The regime will be based on the destination principle, rather than the origin principle; if the consumer is based in Japan, the supply will attract VAT. Whether transactions are domestic or foreign is to be determined by whether the address of the electronic service recipient is in Japan. Whether the address is in Japan is determined based on objective and reasonable criteria, for instance by the "country of issue" information connected to a credit used to purchase the services. A reverse charge applies to B2B electronic services.

The NTA guidance, released in English, explains that electronic services are those services provided via electronic and telecommunication networks, namely:

- The provision of e-books, digital newspapers, music, videos, and software (including various applications such as games) via the internet;
- Services that allow customers to use software and databases in the cloud;
- Services that provide customers with storage space to save their electronic data in the cloud;
- Distribution of advertisements via the internet;
- Services that allow customers to access shopping and auction sites on the internet (for example, charges on posting goods for sale, *etc*.);
- Services that allow customers to access the place to sell game software and other products on the internet;
- Provision via internet reservation website for accommodation and restaurants (those who charge on posting for the website from the businesses that operate accommodation and restaurants); and
- English lessons provided via the internet.

Electronic services do not include services enabling a customer's use of telecommunication networks such as telephone, fax, and internet access. Electronic services also exclude services notifying the results of asset transfers via telecommunication networks when the notification is ancillary to the transfer of other assets.

Australia

Australia is the latest country to introduce such rules, where suppliers of digital products to consumers in Australia with a turnover of AUD75,000 (USD59,500) or more are required to register for goods and services tax. Once registered, they must report and pay GST to the Australian Tax Office (ATO) on sales made from July 1, 2017, with the change affecting a broad range of products, including the streaming or downloading of films, music, apps, games, and e-books, as well as services such as architectural or legal services.

A simplified electronic system is available for registration, lodgment, and payment of the GST, and sellers are able to register with minimal proof of identity, lodge and pay GST quarterly, and do not need to provide a tax invoice or adjustment note to their customers. The ATO said that sellers can comply with the new rules by taking reasonable steps to obtain information or by using information captured in their business systems to determine if their customer is an Australian resident.

Australia brought imports of low-value goods – those with a customs value of less than AUD1,000 – into its GST net as from July 1, 2018. Consequently, overseas vendors, electronic distribution platforms, and goods forwarders with an Australian turnover of AUD75,000 or more to register for, collect, and remit GST for low-value goods supplied to consumers in Australia.

The Government has also consulted the public on plans to extend the scope of GST to offshore companies that sell accommodation bookings in Australia.[6] Under the current rules, offshore sellers of Australian hotel accommodation are exempt from including these sales in their GST turnover. The Government said that these sellers are often not required to register for and charge GST on their mark-up over the wholesale price of the accommodation. The exemption was designed for offshore tour operators, it pointed out.

The measure will apply to sales made on or after July 1, 2019. The Government said that this will level the playing field by ensuring the same tax treatment of Australian hotel accommodation, whether booked through a domestic or offshore company.

Taiwan

In December 2016 a law was signed in Taiwan to impose tax on foreign online sellers' supplies to Taiwanese consumers. Consequently, foreign online suppliers selling cross-border goods and electronic services to end consumers were obliged to register for tax in Taiwan through a permanent establishment, or appoint a VAT or non-VAT tax representative, by May 1, 2017. However, in an illustration of the difficulties jurisdictions may have in enforcing such measures, the tax agency confirmed in a January 2018 statement that just 75 firms had done so by deadline, of which 70 businesses filed a VAT return, declaring taxable supplies of TWD43.2bn (USD1.47bn) for 2017. Nine taxpayers had to appoint an agent in Taiwan to process the payment.[7]

To ease compliance with the requirements, in June 2018, the National Taxation Bureau announced enhancements made to the online portal for overseas businesses providing electronic services to Taiwanese consumers. The tax agency said at the time that: “To facilitate offshore electronic services business entities to pay their tax on time, a cross-border tax payment account has been established for offshore electronic services business entities, enabling them to remit tax through worldwide financial institutions."[8]

"The Bureau further emphasizes that, upon the completion of aforesaid taxation registration, all citizens can search public information on offshore electronic services business entities in the VAT on Cross-Border Electronic Services Platform. This not only promotes transparent transaction information on both sides and facilitates business activities, but also increases the treasury income, fulfills social responsibilities, and enhances corporate images. It is therefore suggested that offshore electronic services business entities comply with all relevant laws and regulation," the agency concluded.

United Arab Emirates

In January 2018, the United Arab Emirates, which introduced VAT on the first of that month, confirmed that all purchases made through online shopping portals are subject to VAT on the same terms as any other purchase made through traditional outlets if the products purchased online are received within the UAE.

The FTA announced that, according to Federal Decree-Law No. (8) of 2017, on Value Added Tax and its Executive Regulations, "all online sales are subject to VAT where a seller's supplies exceed the mandatory registration threshold of AED375,000 (USD102,100) over the previous 12 months or the coming 30 days."[9]

Uruguay

In Uruguay, legislation introducing a requirement for providers of electronic services to account for, collect, and remit value-added tax on their supplies to Uruguayan consumers became effective at the beginning of July 2018. The requirement is effective retroactively to the beginning of this year.

Announced as part of the 2016 Budget, the measure applies to a broad range of audiovisual services, such as video streaming services, music download services, online games, applications, educational materials provided online, and internet services.

Switzerland

In one of the latest developments, it has emerged that Switzerland will begin charging VAT on online purchases from overseas companies from 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.[10]

At present, there is an exemption from VAT for online purchases from overseas sellers on which the VAT payable would be less than CHF5 (USD5.10). 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.

United States

Although the United States is one of the few jurisdictions not to impose VAT, the state sales tax net is closing on remote sales made from out-of-state vendors thanks to the recent Supreme Court decision in the Wayfair case.[11] Traditionally, states could only tax those sales made by businesses with a physical presence in a sales-taxing state. However, the Wayfair ruling is enabling states with sales and use tax laws to extend tax nexus to online sales exceeding certain thresholds.

Online Marketplaces

However, governments are already coming up with new ideas to ensure that these VAT obligations are harder for retailers to avoid. Notably, some jurisdictions have taken steps to make online marketplaces liable for any VAT evaded by those sellers using such platforms to transact with local consumers, including the United Kingdom[12] and, from 2019, Germany.[13] And it is likely other jurisdictions will follow suit.

Conclusion

Whether or not these VAT measures will encumber e-commerce – something the OECD had hoped to avoid with its Ottawa Framework – remains to be seen, given that many of these measures are relatively new. However, what is more certain is that we can expect to see other jurisdictions making similar changes in the near future.

Endnotes

1 https://www.oecd.org/ctp/consumption/1923256.pdf

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Topical News Briefing: It's Time To Talk About Brexit

by the Global Tax Weekly Editorial Team

In terms of their forward planning, businesses are probably used to taking account of potential worse case scenarios. And this is exactly what the United Kingdom's Government is now doing as it releases a series of information guides to prepare businesses for a "no-deal" Brexit.

However, for businesses, that the Government is doing so could be considered simultaneously comforting and worrying. Comforting because at least the Government is putting in place measures to cushion the blow of the hardest of all Brexits. But worrying in that the Government thinks such a scenario is realistic enough for it to have issued around 25 information guides on the matter. Furthermore, the prospect that the impact of a no-deal Brexit can merely be cushioned and not avoided, at least to a large degree, will hardly have sweetened the pill for businesses.

Brexit is especially relevant for those businesses accounting for value-added tax, especially since the likelihood that the UK will withdraw from the customs union and EU VAT area has grown. From this perspective, the recent release of guidance for businesses on how to manage their value-added tax compliance obligations in the event of a no-deal Brexit (reported in this week's issue of *Global Tax Weekly*) is welcome, as was the Government's commitment to keep the UK VAT regime aligned with the EU's as closely as possible.

But at the same time, the guidance contains some unpalatable truths in the event that the UK does leave the EU on a no-deal basis. One of these is that the UK would likely withdraw from the EU Mini One Stop Shop, meaning that UK businesses supplying digital services to the EU would have to register in another member state. Another is that UK businesses will no longer be able to utilize the EU VAT refund system. Instead they would have to use the more cumbersome version for non-EU suppliers. Businesses would also need to apply the same customs rules to goods moving between the EU and the UK as they would for the rest of the world. In short, higher compliance and administrative burdens look unavoidable, and this is expected to drive up the cost of doing business with the EU considerably. This will have particularly serious implications for small businesses.

It may the case that the UK and the EU come to some arrangement that ameliorates the impact of Brexit in VAT terms. Indeed, the UK Government remains confident that an exit deal can be done. Nevertheless, with the clock ticking down to March 29, 2019 – now barely six months away – the prospects of a no-deal Brexit are growing, and this would appear to be the ideal time for some worse-case scenario planning.

Proposed Law Changes To Stamp Electronic Records In Singapore

by Chua Yee Hoong, Withers Khattarwong

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A Bill to amend the Stamp Duties Act has been proposed by the Ministry of Finance (MOF) on August 6, 2018 in Parliament to introduce the stamping of electronic records that effect certain real estate and company shares transaction.

Despite being a piece of legislation of moderate length, the Stamp Duties Act has wide-reaching implications, and often times requires complex technical analyses that interact with other branches of law. If the Parliament passes the law to stamp electronic records, the already sprawling effect of the Stamp Duties Act is likely to be felt further and will need to be considered even more carefully than before.

Background

In Singapore, stamp duty emanates from the Stamp Ordinance 1929, a piece of tax legislation that pre-dates even income tax. Almost 90 years later, 2 key concepts are still the cornerstone of stamp duty:

1) Duty on instruments.

Firstly, stamp duty is a duty on instruments, and not a duty on the transaction, subject matter nor individual. The Act defines 'instrument' to include every written document, though not all instruments are dutiable; only those instruments that are listed in the First Schedule of the Act. Commonly, instruments such as transfer of stock or shares and real estate, are dutiable instruments, but there are also others. The head of charges in the First Schedule in turn determines the applicable stamp duty rate, and the party that bears the duty.

The established principle is for lawyers, laymen and the Commissioner of Stamp Duties alike to ascertain "the substance of the transaction as expressed by the instrument" to determine whether the instrument falls within one of the heads of charges of the First Schedule.

2) Time of stamping is tied to when documents are executed in or received in Singapore.

Secondly, instruments that are executed in Singapore need to be stamped within 14 days. If the instruments are executed outside Singapore, they need to be stamped within 30 days of being received in Singapore.

In introducing the Bill, the MOF says that "To ensure that our laws keep pace with digitalisation, the key amendments provide for stamp duty to be levied on electronic records that effect a transfer of interest in immovable properties and shares. This move safeguards Singapore's revenue base, and ensures that we continue to raise revenue from a variety of sources, including from asset transfers."

The digital world operates very differently from paper; perhaps an entirely new framework of taxation might be more suitable to tax digital transactions. But if electronic records are to be stamped like written documents under the existing stamp duty framework, that would require a re-conceptualisation of long-held technical concepts of 'instrument', whether they are 'executed in Singapore' or outside Singapore and when they are 'received in Singapore'.

What The Bill Proposes To Introduce And The Implications

The Bill proposes that an electronic record that, by itself or together with a physical document or a verbal communication, effects a transaction or evidences or signifies a matter, be effectively treated as an instrument – called 'electronic instrument' – that is capable of being dutiable. While the Bill does not seek to amend the heads of charges or the stamp duty rates, if passed, the law would effectively expand what constitutes an instrument for stamp duty purposes.

Take for example, contracts for sale and purchase of real estate that are concluded via exchange of emails, are currently not regarded as instruments capable of being stamped. If the Bill is passed, they would be. The next question is, when is such a contract treated to be executed? In this example, the Bill contemplates that one would have to first determine how and when a contract is formed under principles of contract law, *i.e.* where there has been acceptance of an offer. Then, you would have to determine when an electronic signature has been applied to the electronic record to signify the formation of a contract.

The further question is, where is the contract 'executed' which in turns determine the deadline for stamping? In this example, the Bill contemplates that it is executed in the place and at the time where the signing party or the person authorised by the signing party (other than, say, an online intermediary that merely provides any facility for the application of the electronic signature) accepting the offer undertakes the act that results in the application of the electronic signature to the electronic record.

The example above illustrates the multiple-step analytical process in considering the stamp duty implications of real estate transactions that are effected by electronic records. The Electronic Transactions Act currently excludes contract for the sale or other disposition of immovable property or any interest in such property though this may be amended when the digitalization of real estate transactions take flight. Whether transacting parties will be comfortable transacting high value real estate property purchases digitally remains to be seen. But it is anticipated that smaller value transactions such as tenancies could be concluded electronically. In which case it is not inconceivable that a seamless transaction and stamping platform could be made possible.

The above is just an example where the electronic instrument consists of only electronic records. Bear in mind that the Bill anticipates that an electronic instrument can be a combination of an electronic record and a physical document, in which case, the time when the transaction is concluded depends on whether the transaction is concluded by the electronic record, or by the physical document.

The analysis potentially gets more complicated.

Say the electronic instrument – consisting of both the electronic record and the physical document – were signed (electronically or physically as the case may be) outside Singapore. The electronic instrument is treated as received in Singapore – meaning the 30-day clock for stamping starts ticking – when:

a) The electronic instrument is retrieved or accessed by a person in Singapore;
b) An electronic copy of the electronic instrument is stored on a device (including a computer) and brought into Singapore; or
c) An electronic copy of the electronic instrument is stored on a computer in Singapore.

Unlike in the determination of where an electronic instrument is executed, the proposed rule on when an electronic instrument is treated as received does not disregard the 'receipt' by an intermediary.

Different organizations manage their email systems differently. It is also possible that an internet email may travel and be stored on a network or a computer in Singapore without the recipient's or the sender's knowledge. An email could also go into a junk mailbox but nonetheless could potentially render an electronic copy of the electronic instrument as being brought into Singapore. Such an email that goes unnoticed but triggers any of the rules of receipt could have unintended late-stamping consequences.

Notably, the Bill contemplates giving retrospective legitimacy to any sum purportedly paid, collected or recovered as stamp duty (on a transaction that is wholly or partly effected or evidenced by an electronic record) for transactions effected by electronic means without instrument, even prior to the law of the stamping of electronic instruments coming into effect.

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Topical News Briefing: Base Erosion And Transfer Pricing

by the Global Tax Weekly Editorial Team

In many ways, the scrutiny of multinational companies' transfer pricing practices *is* the G20/OECD base erosion and profit shifting project, or, at least, a good 50 percent of it. And in a globalized economy where large companies have operations across multiple jurisdictions, the transfer of goods, services, know-how and finance between related entities is fundamental to the way multinationals now operate.

It is not surprising therefore, that transfer pricing is often at the top of both companies' and tax authorities' tax concerns, and the BEPS project has merely intensified the focus on this most important of tax compliance matters. This is evidenced by companies devoting more of their resources to cross-border tax compliance, and by a now-comprehensive framework of guidance, laws and regulations in place across the world, a web that is expanding at a rapid rate.

Indeed, as the Australian Deputy Tax Commissioner Mark Konza observed in his opening address to the Australian Tax Institute's 2018 National Transfer Pricing Conference in Sydney (reported in the week's issue of *Global Tax Weekly*), the world of transfer pricing rarely stands still. The role of the transfer pricing rules, he noted, has evolved "from one where the task was merely to price what the related parties had agreed, to one where it may be necessary to evaluate all of the economically significant features of the arrangement to ensure it is one that would be expected to exist between unrelated parties."

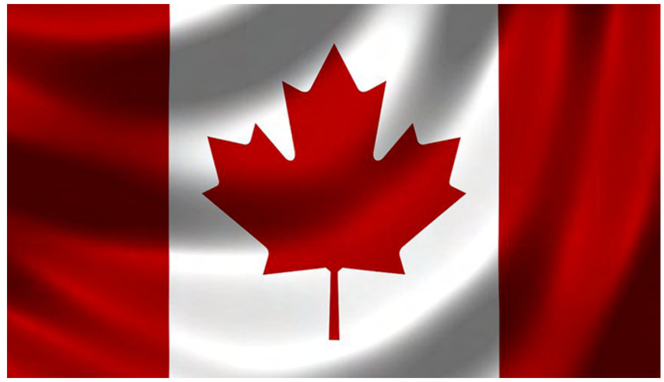
For governments, an increasingly technological and digitized economy poses major challenges in the area of transfer pricing compliance, in particular – and as also referenced by Konza in his address – with respect to hard-to-value intangibles. But this is also a problem for taxpayers, as they risk being drawn into long and complex tax disputes with the tax authorities. Konza explained that such cases are often some of the ATO's most complex, and as we saw with the recent federal appeal court decision in the Medtronic case (also covered in this week's issue), this is a principle that holds true in the United States, as well as other jurisdictions.

However, there is a risk also that overbearing transfer pricing regimes and tax authorities are distorting investment decisions and encouraging multinationals to merely shift capital to less riskier jurisdictions from a tax perspective. Such an outcome was noted in a recent study by the International Monetary Fund, which found that MNC affiliates reduced their investment by over 11 percent following the introduction of transfer pricing regulations or enhancements to existing regulations. However, no overall significant reduction in total investment by MNC groups was found, suggesting that these investments have most likely shifted to affiliates in other countries.

On the other hand, as transfer pricing laws and regulations reach parts of the world previously untouched by such regimes thanks to the BEPS project and its Inclusive Framework, the gaps in the transfer pricing framework are steadily closing.

Recent Tax Developments In The Canadian Courts

by Wolters Kluwer Canada



These cases were first published in 'Tax Topics', August 23, 2018, Number 2424

Appeal Allowed And Taxpayer Found To Be Liable For Part I And Not Part XIV Tax

¶50,011,** Landbouwbedrijf v. The Queen**, 2018 DTC 1104

The Minister issued an assessment for the appellant, a company incorporated in the Netherlands, in relation to the disposition in 2009 of its partnership interest in a farm operation located in Canada. The Minister assessed the company under both Part I and Part XIV of the Income Tax Act (the "Act") in respect of the capital gain which arose on that disposition, and the taxpayer appealed. Prior to the hearing, the Minister conceded that the appellant should not have been assessed concurrently for both Part I and Part XIV tax. Consequently, the issue on the appeal was the determination of whether the appellant was taxable under Part I or Part XIV of the Act and the determination of any tax consequences arising from the alleged disposition.

The appeal was allowed, and the taxpayer held to be subject to tax under Part I of the Act. The Tax Court held that the issues for determination were whether the appellant was a resident of Canada for tax purposes in 2009 (and therefore taxable on any taxable capital gain), and whether, if it was a resident, it was deemed to have disposed of its partnership interest under section 128.1. If the appellant was not a resident of Canada in 2009, then the issue was whether it was liable for tax under the branch tax provisions in Part XIV of the Act or whether any capital gain realizedwas exempt under the applicable tax treaty. The Court held that the residency of the corporate appellant was to be determined based on the common law test of central management and control. Following a review of the ownership structure of the company, and, in particular, the locus of decision-making authority, the Court concluded that the application of that test and the related jurisprudence led to the conclusion that the corporate appellant was a resident of Canada and therefore liable for Part I tax. The Court went on to consider the application of section 128.1 and held that, on the facts, it was likely that the appellant had become a resident of Canada for tax purposes as early as 1998. The adjusted cost base of the farm partnership interest was therefore correctly calculated from that date. The appeal was allowed and the matter was referred back to the Minister for reconsideration and reassessment on the basis that the appellant corporation was liable for Part I tax but not Part XIV tax. The Part XIV assessment was therefore vacated, and there was no order as to costs.

Minister Not Entitled To Issue Notice Of Determination In Respect Of Limited Partnership

¶50,012, 2078970** Ontario Inc**. and 2078702** Ontario Inc. v. The Queen**, 2018 DTC 1105

The applicants, both of which were limited partnerships, filed information returns reporting business losses in their 2006, 2007, and 2008 fiscal periods. The Minister of National Revenue concluded that neither partnership was a valid partnership, as the members of the partnerships were not carrying on business with a view to profit. Having made that determination, the Minister then issued a Notice of Determination to each of the partnerships under section 152(1.4) of the Income Tax Act, indicating that they had nil losses for the relevant fiscal periods. The applicants disputed those Notices of Determination on a Rule 58 application. They sought a determination of the following question: where the Minister has at all times determined that no partnership existed, can the Minister issue a valid Notice of Determination in respect of that purported partnership under section 152(1.4)?

The question posed was answered in the negative and the Notices of Determination held to be invalid. The Court held that there was ambiguity in the text of section 152(1.4) but that the applicants' interpretation provided a means by which all of the relevant statutory provisions would work harmoniously. The Court reviewed and analyzed the wording of each of the relevant subsections under section 152 and determined that a textual, contextual, and purposive analysis of those provisions strongly supported the interpretation argued by the applicants. The Court concluded, therefore, that the Minister may not issue a Notice of Determination in respect of a partnership if, at the time the Minister wishes to issue the Notice of Determination, the Minister has concluded that the partnership did not exist in the period in question. Any Notice of Determination issued to the partnership in such circumstances is invalid. The Minister's only choice in such circumstances is to reassess the purported partners individually under the traditional assessment process.

Chile To Table Corporate Tax Reform Bill

Chile's Government has confirmed that a bill to modernize the country's tax regime, and in particular the corporate tax, will be tabled this month.

The Government said it has been holding regular meetings with business leaders and lawmakers to finalize the design of the framework and said it would tabled shortly.

According to the Government, its "Tax Modernization Bill" would simplify tax legislation, provide greater legal certainty to SMEs, and promote savings, investment, and entrepreneurship.

Chile's tax reform plans were set out by Chilean President Sebastian Pinera upon taking office in March. He said the Government would focus in particular on reforming corporate tax rules, to simplify the country's complex two-tier system. Pinera also pledged to reduce corporate tax, which was raised numerous times under his predecessor Michelle Bachelet.

Under reforms implemented during the Bachelet administration, companies in Chile can be taxed under two alternative corporate tax (First Category Tax) regimes: the standard attribution regime (AIS); and the partially integrated regime (PIS).

Under the AIS, company income is subject to FCT of 25 percent, with shareholders also subject to a withholding tax of 35 percent (regardless of whether or not income is distributed). However, shareholders can credit the full amount of FTC against the final withholding tax.

Under the PIS regime, a company is subject to FCT of 27 percent (2018 - 25.5 percent in 2017). However, the additional withholding tax does not apply until income is distributed to final shareholders. While FTC can also be credited against additional withholding tax under the PIiS regime, the credit is effectively restricted to 65 percent of FTC paid, as taxpayers subject to additional tax under this system must repay 35 percent of the FTC credit.

In June, the country also announced proposals to introduce a VAT collection obligation on overseas providers of electronic services. Then, Finance Minister Felipe Larrain specifically referenced companies Netflix, Airbnb, and Spotify in his announcement. It would also be levied on online advertising, Chilean media reported.

Without specifically discussing supplies of tangible goods to consumers, the Finance Minister reportedly added the country is also looking to ensure that all trade is subject to value-added tax and import duty (in the absence of a free trade agreement).

The introduction of tax on business-to-consumer supplies of goods and services by non-resident businesses was recommended by the OECD in its conclusions on the taxation of the digital economy, in Action 1 of its Base Erosion and Profit Shifting project and subsequent VAT/GST Guidelines.

Colombia To Cut Corporate Tax

The Colombian Government has signaled its intention to widen the tax base and reduce the rate of corporate tax.

Alberto Carrasquilla, Minister of Finance in the newly elected Government of President Ivan Duque, said in a recent address to business representatives that the threshold at which personal income tax becomes payable will be lowered substantially, enabling the 33 percent corporate tax to be reduced.

Currently, income tax is payable on earnings in excess of COP3.5m (USD1,160) per month. Carrasquilla indicated that the Government intends to lower the threshold to COP1.9m per month.

President Duque also pledged to reduce the rate of value-added tax, currently 19 percent, during the election campaign.

Poland Confirms 2019 Tax Changes

In announcing the adoption of the draft 2019 Budget, the Polish Government has confirmed that the rate of corporate tax for small firms will be lowered next year.

Under the measure, a corporate tax rate of nine percent would be payable by firms with revenues of less than EUR2m (USD2.3m) per year. At present, the lower rate of corporate tax is 15 percent for businesses with annual revenues of less than EUR1.2m.

Another planned change for 2019 includes the introduction of a new innovation box under which a preferential rate of tax would apply on income derived from qualifying intellectual property, including patents and designs. IP income would have to be linked with research and development expenditure in Poland in order to qualify for the preferential tax rate.

SARS To Reestablish Large Taxpayers Unit

The South African Revenue Service has announced that it will reestablish the Large Business Unit and Illicit Economy Team.

According to the agency, the two entities will not be a "rehash of the previous units, but rather [...] will be responsive to the challenges currently being faced by SARS."

The announcement comes alongside an ongoing official inquiry into alleged leadership failings at SARS, launched earlier this year. Led by retired judge Robert Nugent, the inquiry is investigating the management of the tax authority in the period from April 1, 2014, to March 31, 2018.

On March 20, President Ramaphosa announced the suspension of SARS Commissioner Tom Moyane with immediate effect, pending the outcome of disciplinary proceedings. This followed reports of allegations of numerous governance failings at SARS, including with regards to the management of value-added tax refunds.

UK Issues 'No Deal' Brexit VAT Guidance

The UK Government has released guidance for businesses on how to manage their value-added tax compliance obligations in the event of a "no deal" Brexit.

The guidance document says that such an outcome remains unlikely, "given the mutual interests of the UK and the EU in securing a negotiated outcome. Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal,' until we can be certain of the outcome of those negotiations."

The Government said the purpose of the notice is to inform UK businesses of the implications for VAT rules for goods and services traded between the UK and EU member states in the event of a "no deal." It outlines the impacts and gives information for businesses to take into consideration.

According to the notice, for most UK businesses there will be no change to VAT rules. It advises that UK businesses that are affected may wish to consult other relevant technical notices, including the "Trading with the EU if there's no Brexit deal" notice, which covers customs, excise, and import processes at the border.

Under current VAT rules:

- VAT is charged on most goods and services sold within the UK and the EU;
- VAT is payable by businesses when they bring goods into the UK. There are different rules depending on whether the goods come from an EU or non-EU country;
- Goods that are exported by UK businesses to non-EU countries and EU businesses are zero-rated, meaning that UK VAT is not charged at the point of sale;
- Goods that are exported by UK businesses to EU consumers have either UK or EU VAT charged, subject to distance selling thresholds; and
- For services the 'place of supply' rules determine the country in which you need to charge and account for VAT.

After March 29, 2019, if there's no deal, the UK will continue to have a VAT system after it leaves the EU. VAT rules relating to UK domestic transactions will continue to apply to businesses as they do now, the notice says.

The Government explained that: "If the UK leaves the EU on March 29, 2019, without a deal, the Government's aim will be to keep VAT procedures as close as possible to what they are now. This will provide continuity and certainty for businesses. However, if the UK leaves the EU with no agreement, then there will be some specific changes to the VAT rules and procedures that apply to transactions between the UK and EU member states. The Government has taken decisions and actions where necessary in order to mitigate the impacts of these changes for businesses."

The notice says the main VAT issues that will affect UK businesses trading with the EU in goods and services if the UK leaves the EU without an agreement on March 29, 2019, are VAT rules when importing goods from the EU, exporting goods to the EU, supplying services to the EU, and interacting with EU VAT IT systems such as the VAT Mini One Stop Shop (MOSS). The notice outlines potential changes in each of these areas.

For UK businesses importing goods from the EU, the current rules for imports from non-EU countries will also apply to imports from the EU, with some additional changes. The Government has said if there is no deal it will introduce postponed accounting for import VAT on goods brought into the UK. This means that UK VAT registered businesses importing goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border. This will apply both to imports from the EU and non-EU countries.

The Government stated that: "In reaching this decision, the Government has taken account of the views of businesses and sought to mitigate any adverse cash-flow impacts keeping VAT processes as close as possible to what they are now. To ensure equity of treatment, in a no deal scenario, businesses importing goods will be able to account for their import VAT from non-EU countries in the same way, which will help UK businesses make the most of trading opportunities around the world. Customs declarations and the payment of any other duties will still be required and more detail on these processes can be found in the 'Trading with the EU if there's no Brexit deal' technical notice. More guidance setting out further detail on accounting and record keeping requirements will be issued in due course."

VAT on Goods

With regard to VAT on goods entering the UK as parcels sent by overseas businesses, VAT would be payable. The Government set out in the Customs Bill White Paper (published October 2017) that Low Value Consignment Relief (LVCR) will not be extended to goods entering the UK from the EU. This note confirms that if the UK leaves the EU without an agreement then LVCR will no longer apply to any parcels arriving in the UK. This means that all goods entering the UK as parcels sent by overseas businesses will be liable for VAT (unless they are already relieved from VAT under domestic rules, for example zero-rated children's clothing).

For parcels valued up to and including GBP135 (USD173), a technology-based solution will allow VAT to be collected from the overseas business selling the goods into the UK. Overseas businesses will charge VAT at the point of purchase and will be expected to register with a HM Revenue and Customs (HMRC) digital service and account for VAT due, the notice says.

On registration, businesses will be provided with a Unique Identifier which will accompany the parcels they send to the UK. They will then declare the VAT due on those parcels and pay this via their online account. To give overseas businesses sufficient time to familiarize themselves with their new obligations, the online service will be available for businesses to register in early 2019, prior to March 29, the notice says.

For goods worth more than GBP135 sent as parcels VAT will continue to be collected from UK recipients in line with current procedures for parcels from non-EU countries. Guidance on these procedures can be found in HMRC Notice 143. VAT will also continue to be collected in line with current procedures for all excise goods sent as parcels and potentially in cases where their supplier is not compliant with HMRC's new parcels policy. HMRC says it is working with the relevant industry stakeholders and will provide further information in due course.

For vehicles imported into the UK, businesses would continue to notify HMRC about vehicles brought into the UK from abroad as they do now. The Notification of Vehicle Arrival Procedures (NOVA) system will continue to be used for this purpose.

The rules on the movement of goods to the UK from the EU will change when the UK leaves the EU. As a result, import VAT will be due on vehicles brought into the UK from EU member states. Certain reliefs will also be available as with current imports of vehicles from non-EU countries. Businesses will need to continue to use NOVA to verify that VAT is correctly paid on imported vehicles.

UK businesses that export goods to the EU will face changes to customs and VAT processes and will need to determine either EU or member state rules and processes that apply to their goods. Distance selling arrangements will no longer apply to UK businesses and UK businesses will be able to zero rate sales of goods to EU consumers.

Current EU rules would mean that EU member states will treat goods entering the EU from the UK in the same way as goods entering from other non-EU countries, with associated import VAT and customs duties due when the goods arrive into the EU.

If the UK leaves the EU without an agreement, VAT-registered UK businesses will continue to be able to zero-rate sales of goods to EU businesses but will not be required to complete EC sales lists.

As UK VAT registered businesses will not be required to complete an EC sales list, there will be changes to how these sales are recorded. Those UK businesses exporting goods to EU businesses will need to retain evidence to prove that goods have left the UK, to support the zero-rating of the supply. Most businesses already maintain this evidence as part of current processes and the required evidence will be similar to that currently required for exports to non-EU countries with any differences to be communicated in due course.

UK businesses would be able to continue to sell goods they have stored in an EU member state to customers in the EU in line with current Rest of World rules. Current EU rules would mean that UK businesses will continue to be required to register for VAT in the EU member states where sales are made in order to account for the VAT due in those countries.

Place of Supply Rules

For services, if the UK leaves the EU without an agreement, the main VAT “place of supply” rules will remain the same for UK businesses. The current “place of supply” rules determine the country in which a taxpayer must charge and account for VAT.

The Government has said, in a “no deal” scenario, rules based on the OECD GST/VAT Guidelines around “place of supply” will continue to apply in broadly the same way that they do now. The notice notes potential deviations from these.

The guidance says that for UK businesses supplying digital services to non-business customers in the EU, the “place of supply” will continue to be where the customer resides. VAT on services will be due in the EU member state where the customer is a resident.

For UK businesses supplying insurance and financial services, if the UK leaves the EU without an agreement, input VAT deduction rules for financial services supplied to the EU may be changed. Guidance will be issued in due course, the notice says.

The guidance further sets out how those businesses that currently use the VAT Mini One Stop Shop should respond to a potential no-deal scenario, as the UK will stop being part of EU-wide VAT IT systems such as the VAT Mini One Stop Shop, and also discusses the impact on the EU tour operators' margin scheme. Businesses that want to continue to use the MOSS system will need to register for the VAT MOSS non-Union scheme in an EU member state. This can only be done after the date the UK leaves the EU. The non-union MOSS scheme requires businesses to register by the 10th day of the month following a sale. Therefore, in a no-deal scenario, taxpayers will need to register by April 10, 2019, if they make a sale from March 29 to 31, 2019, and by May 10, 2019, if they make a sale in April 2019. Alternatively, a business can register in each EU member state where sales are made.

VAT Refunds

In respect of refunds, the notice says that if the UK leaves the EU without an agreement UK businesses will continue to be able to claim refunds of VAT from EU member states but in future they will need to use the existing processes for non-EU businesses. UK business will no longer have access to the EU VAT refund system. UK businesses will continue to be able to claim refunds of VAT from EU member states by using the existing processes for non-EU businesses. This process varies across the EU, the Government said, and businesses will need to make themselves aware of the processes in the individual countries where they incur costs and want to claim a refund.

In a no-deal scenario, UK businesses will be able to continue to use the EU VAT number validation service to check the validity of EU business VAT registration numbers and HMRC is developing a service so that UK VAT numbers can continue to be validated.

The island of Ireland

For businesses in Northern Ireland, the notice is more vague. It references a potential land border with the Republic of Ireland to the south and says that businesses should heed guidance also on value-added tax matters issued by the Irish Government. It concludes: "The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU member states. We would recommend that, if you trade across the land border, you should consider whether you will need advice from the Irish government about preparations you need to make."

IoM Comments On Possibility Of 'No Deal' Brexit

Isle of Man Chief Minister Howard Quayle has commented on the possibility of a "no deal" Brexit, stating that work is ongoing to ensure the island is well prepared.

He made the statement following the release of a series of technical notices by the UK Government that set out the economic and social consequences of the UK leaving the EU without a negotiated settlement. The notices include advice for UK citizens, businesses, and public bodies.

Quayle explained that while it would be unhelpful to speculate on the outcome and potential consequences of the Brexit negotiations, it would also be irresponsible to ignore the possibility of a no-deal scenario.

"We are working to ensure the island is as well positioned as possible, whatever the outcome, and that our legislation, vital services, and economic activity continue to function," said Quayle.

The UK technical notices will be published on the Isle of Man Government's Brexit web pages together with comments from relevant departments about any potential impact for the island.

ISSUE 303 | AUGUST 30, 2018

Aruba Announces Support For Individual Tax Filers

Aruba's tax office has announced that, starting next week, it will offer support to individual taxpayers to complete their income tax return for 2017.

It will be offering a number of help sessions locally, for those with an income no greater than AWG75,000 (AWG150,000 for married couples). Self-employed persons and business owners are excluded.

The tax agency has released dates and venues for the support sessions, running from August 27 to 31, 2018.

The deadline for submitting a tax return is September 3, 2018. For those struggling to meet the deadline, an automatic extension of three months will be granted. In this case, the final filing deadline is December 3, 2018.

IRS To Better Protect Taxpayer Data

The US Internal Revenue Service (IRS) has announced a new format for individual tax transcripts that will redact personally identifiable information from personal income tax returns in an attempt to thwart identity thieves.

According to the IRS, the new transcript replaces the previous format and will be the default format available for tax professionals as of September 23, 2018. Financial entries will remain visible, which will give taxpayers and third-parties the data they need for tax preparation or income verification, the agency said.

A tax return transcript shows most line items including a taxpayer's adjusted gross income from their original tax return (Forms 1040, 1040A or 1040EZ) as filed, along with any forms and schedules. It doesn't show changes made after the original return was filed. A tax return transcript usually meets the needs of lending institutions offering mortgages and student loans.

Additionally, based on stakeholder feedback, the IRS also has created a new Customer File Number that lenders, colleges, and other third parties that order transcripts for non-tax purposes can use as an identifying number instead of the taxpayer's social security number (SSN).

Commenting on the changes, Acting IRS Commissioner David Kautter said: "Since the IRS joined in partnership with the states and tax industry in 2015, we've made great progress in our effort to combat stolen identity refund fraud. Our numbers are going in the right direction. To maintain our progress, we continue to evaluate our policies and procedures on an ongoing basis. One area that we identified as in need of change was the individual tax transcript area. We believe the change we are announcing today will better protect taxpayer data from unauthorized disclosure and theft."

France Reminds Taxpayers Of Final Personal Tax Payment Deadline

France's Budget Ministry has issued a reminder to taxpayers that September 17, 2018, is the deadline for individual income taxpayers to make their final payment of any outstanding personal income tax or social security contributions.

Taxpayers will have received a notification on the Government's electronic tax portal between July 31, 2018, and August 31, 2018, if there is tax due.

Payments for amounts exceeding EUR1,000 (USD1,167) must be paid by direct debit. Payment can no longer be made by check or "TIP SEPA" (*Titre Interbancaire de Paiement*).

Those paying through the online mobile application are allowed five more days to make payment – *i.e.* until September 27, 2018.

Next year France is replacing the current payment-on-account system for a pay-as-you-earn regime, removing payment obligations for taxpayers and introducing a tax withholding requirement on employers. However, a personal income tax return will still need to be filed.

Australian Tax Commissioner Explains Transfer Pricing Policy Shift

Australian Deputy Tax Commissioner Mark Konza has set out how Australia's transfer pricing rules have changed in light of the OECD's BEPS project, in his opening address to the Tax Institute's 2018 National Transfer Pricing Conference in Sydney.

Konza explained that the current international consensus is that transfer pricing is "a structural problem as opposed to one merely concerned with pricing." He said that in recent years, the role of the transfer pricing rules has evolved "from one where the task was merely to price what the related parties had agreed, to one where it may be necessary to evaluate all of the economically significant features of the arrangement to ensure it is one that would be expected to exist between unrelated parties."

New transfer pricing laws were passed in Australia in 2012 and 2013.

Konza stated that Australia's strategy when tackling the complex issue of tax compliance by multinationals "has been to actively work with the international community to improve international tax law and administrative practice, to maintain and extend the domestic laws needed to deliver the improved international rules, and to support the Commissioner of Taxation with resources to ensure that these laws are followed."

Konza said that Australia has directly linked its law to the OECD's guidance and in 2016 brought into law revised guidance on how to assess or demonstrate compliance with the arm's length standard. He said that the guidelines retain the arm's length principle at their core but the commentary on the application of the arm's length principle "has been significantly developed by the OECD BEPS reports on Aligning Transfer Pricing Outcomes with Value Creation."

Konza stated that "two of the significant developments in the OECD commentary relate to the proper allocation of risk and the challenges in dealing with hard-to-value intangibles," issues that are often central to some of the ATO's most challenging transfer pricing cases.

Under the new framework, risk "has to be allocated based on a careful analysis of the circumstances of the entities and how they actually operate." In the case of hard-to-value intangibles, "information after the transaction occurs will provide the tax administrator with presumptive evidence of whether the taxpayer appropriately took into account foreseeable developments in pricing the deal," he added.

Turning to Australia's ongoing efforts at international cooperation, Konza pointed out that Tax Commissioner Chris Jordan is Vice Chair of the OECD's Forum of Tax Administration (FTA) and Sponsoring Commissioner of the Joint International Taskforce on Shared Information and Collaboration (JITSIC).

Along with seven other tax administrations, Australia is participating in a pilot of the OECD's International Compliance Assurance Programme (ICAP), under which authorities undertake cooperative multilateral risk assessments on multinational groups using their country-by-country reports and other relevant information. Konza said that the ATO has begun reviewing the documentation packages for ICAP cases and attended risk assessment workshops at which the multinational company in question explained their documentation.

Swiss Government Approves BEPS Multilateral Instrument

The Swiss Federal Council has approved an OECD multilateral convention designed to prevent BEPS-related abuse of the international tax treaty system.

Switzerland signed the convention in June 2017. 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 shift profits to low-or no-tax locations.

The Swiss Federal Council adopted the dispatch on the convention on August 22, after which the dispatch was submitted to parliament.

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

In the case of Switzerland, the convention will initially amend the double taxation agreements (DTAs) with Argentina, Austria, Chile, the Czech Republic, Iceland, Italy, Lithuania, Luxembourg, Mexico, Portugal, South Africa, and Turkey.

The Swiss Council said that these countries are prepared to agree with Switzerland the precise wording of the DTAs to be adapted via the BEPS convention.

The Council added that through bilateral negotiations Switzerland has already implemented the BEPS minimum standards into its DTAs with Brazil, Latvia, Kosovo, Pakistan, Saudi Arabia, the UK, and Zambia. It said that further DTA revisions are ongoing.

El Salvador Updates Transfer Pricing Guidance

El Salvador's General Tax Directorate has updated its transfer pricing guidance, to bring the country's transfer pricing laws into line with new OECD standards.

Guidance DG-001/2018 was released earlier this month and replaces Guidance DG-001/2012 issued in March 2012. It applies to taxpayers entering into transactions with related parties as well as with entities located in low-tax jurisdictions or that have “harmful” tax regimes.

The guidance covers a range of topics including how to choose appropriate comparables when determining arm's length pricing, the various methodologies that can be used and how to choose a methodology, what supporting documentation must be kept to justify pricing, and the obligations of company auditors.

NZ Tax Agency Releases Guidance On BEPS Changes

On August 27, 2018, New Zealand's Inland Revenue Department released five guidance documents on changes made to the country's tax laws to effect the recommendations of the OECD on base erosion and profit shifting.

The guidance concerns New Zealand's new interest limitation rules; hybrid and branch mismatch rules; transfer pricing rules; permanent establishment avoidance rules; and legislative provisions on the definition of the term “large multinational group” for the purposes of new Inland Revenue powers to assess tax and collect additional information on multinationals' tax affairs.

Interest limitation rules

New rules have been introduced requiring related-party loans between a non-resident lender and a New Zealand-resident borrower to be priced using a restricted transfer pricing approach. Under these rules, specific rules and parameters are applied to certain inbound related-party loans to:

- Determine the credit rating of New Zealand borrowers at a high risk of BEPS, which will typically be either one or two notches below the ultimate parent's credit rating; and
- Remove any features not typically found in third party debt in order to calculate (in combination with the credit rating rule) the appropriate amount of interest that is deductible on the debt.

Separate rules apply to financial institutions such as banks and insurance companies.

These measures apply to income years starting on or after July 1, 2018.

Hybrid and branch mismatch rules

The hybrid and branch mismatch rules introduce a number of new concepts to tax legislation. The changes are intended to eliminate opportunities for double non-taxation benefits arising from hybrid mismatch arrangements, which exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions. Hybrid mismatches can otherwise enable a taxpayer to inappropriately claim double deductions for the same income.

The majority of the hybrid and branch mismatch rules apply for income years beginning on or after July 1, 2018.

Transfer pricing rules

New Zealand has amended Sections GC 6 to GC 13 of the Income Tax Act 2007. These changes are intended to strengthen the transfer pricing rules so they align with the OECD's transfer pricing guidelines and Australia's transfer pricing rules.

The guidance states that the key changes are:

- In addition to applying to transactions between associated persons, the transfer pricing rules will also apply when there are transactions between members of non-resident owning bodies and companies, and to cross-border related borrowings. (Section GC 6(2)(b))
- Including a reference to using the 2017 OECD transfer pricing guidelines as guidance for how the transfer pricing rules are applied. (Section GC 6(1B))
- The economic substance and actual conduct of the parties, along with the legal contract, will inform the transfer pricing analysis. In certain circumstances, the economic substance and actual conduct will have priority over the terms of the legal contract. This is achieved by requiring the transfer pricing transaction to be "accurately delineated" using the approach in section D.1 of chapter I of the 2017 OECD transfer pricing guidelines. (Section GC 13(1B))
- Where a transfer pricing arrangement is not commercially rational because it includes unrealistic terms that unrelated parties would not be willing to agree, the approach described in section D.2 of chapter I of the new OECD guidelines may apply to disregard and, if appropriate, replace the transaction. (Section GC 13(1C))
- Requiring the arm's length amount of consideration to be determined using arm's length conditions. This clarifies that it may be necessary to adjust some conditions of the arrangement other than the price, in order to determine the arm's length price. (Section GC 13(1)(b))
- Placing the onus of proof onto the taxpayer for providing evidence (such as transfer pricing documentation) that their transfer pricing positions are correct (that is, they are determined using arm's length conditions). The general onus of proof in section 149A(2)(b) of the Tax Administration Act 1994 will now apply to transfer pricing as well as other tax matters.
- The time bar that limits Inland Revenue's ability to adjust a taxpayer's transfer pricing position can be increased to seven years, in those cases where the Commissioner of Inland Revenue has notified the taxpayer that a tax audit or investigation has

commenced within the usual four-year time bar. (Section GC 13(6))

Permanent establishment anti-avoidance rules

This guidance concerns the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018, which inserted a new anti-avoidance rule into the Income Tax Act for large multinationals (with over EUR750m of consolidated global turnover) that structure to avoid having a permanent establishment (PE) in New Zealand.

The rule deems a non-resident to have a PE in New Zealand if a related entity carries out sales-related activities for it here under an arrangement with a more than merely incidental purpose of tax avoidance (and the other requirements of the rule are met). This PE is deemed to exist for the purpose of any applicable double tax agreement (DTA), unless the DTA incorporates the OECD's latest PE article.

In addition, the Act inserts further provisions under which an amount of income will be deemed to have a source in New Zealand if that income can be attributed to a PE in New Zealand. If a New Zealand DTA applies to the non-resident, the definition of a PE in that DTA will apply for this purpose. If no New Zealand DTA applies to the nonresident, then a new domestic law definition of a PE will apply.

The Act introduced a new PE anti-avoidance rule in Section GB 54 of the Income Tax Act. The rule deems a PE to exist in New Zealand for a non-resident if all the following criteria are met:

- The non-resident is part of a large multinational group. The OECD has defined a "large multinational group" as a group with at least EUR 750m of consolidated global turnover for the purpose of filing Country-by-Country reports. The same revenue threshold is used for Section GB 54.
- The non-resident makes a supply of goods or services to a person in New Zealand.
- A person (the "facilitator") carries out an activity in New Zealand for the purpose of bringing about that particular supply.
- The facilitator is associated with the non-resident, is an employee of the nonresident, or is commercially dependent on the non-resident.
- The facilitator's activities are more than preparatory or auxiliary to the nonresident's supply.
- The non-resident's income from the supply is subject to a DTA that does not include the OECD's latest PE article.
- A more than merely incidental purpose or effect of the arrangement is to avoid New Zealand tax, or a combination of New Zealand tax and foreign tax.

Where a supply is subject to the rule, the non-resident is deemed to make that supply through the deemed PE. The activities of the facilitator in relation to the supply are also attributed to the PE. The deemed PE exists for all the purposes of both the Act and the applicable DTA, notwithstanding anything in that DTA.

The tax consequences of the deemed PE are determined by the other provisions of the Act and the DTA. For example, New Zealand will have a right to tax the profits attributable to the PE under the business profits article of an applicable DTA (unless that business profits article provides otherwise).

Malaysian Parliament Passes Sales Tax Bills

Both houses of Malaysia's Parliament have now passed the bills necessary to introduce the sales and services tax from September 1, 2018, in place of goods and services tax.

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

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

Malaysia has recently issued a number of guides for taxpayers, including on how to submit a final GST return, industry guides, sales tax rates for goods and services, and details of the proposed regulations and orders for the regime.

As with GST, a business will be obligated to register to collect, account, and remit sales tax once its annual supplies exceed MYR500,000 (USD122,750). Service tax thresholds vary from nil to MYR1m. Businesses registered for GST will be automatically enrolled in the new system.

India Extends Several GST Deadlines

The Indian Government has announced a number of extensions to goods and services tax compliance obligations.

Quarterly GSTR-1 payment deadlines for July to September, October to December, and January to March 2019 have been extended to October 31, 2018, January 31, 2019, and April 30, 2019, respectively.

Meanwhile, the filing deadline for form GSTR-3B for July has been extended until August 24, 2018, for all taxpayers, the Government said August 21, 2018.

Separately, the Government has announced changes to GST return filing deadlines for taxpayers in Kerala, Mahe, and Kodagu due to flooding.

Form GSTR-3B for all taxpayers from these states for the month of July 2018 is newly due October 5, 2018. For August 2018, the due date is October 10, 2018. The due date for form GSTR-1 for the quarter July to September 2018 is November 15, 2018, and October 5, 2018, is the new deadline for monthly returns for July 2018.

Venezuela Announces VAT Hike

With Venezuela's finances, currency, and economy in dire straits, President Nicolas Maduro has announced a plan to stabilize the economy, including by introducing a new currency, the Sovereign Bolivar, equivalent to 100,000 old Bolivars.

The plan includes a plan to increase the rate of value-added tax from 12 percent to 16 percent, charged on luxury goods, and introduce financial transactions taxes of up to two percent. The plan also involves a 60-fold increase to the minimum wage. However, analysts have said the plan is unlikely to remedy the issues the country faces.

The measures were included in the Official Gazette of August 17 in Decree 3,584.

Bahrain Expected To Introduce VAT From January 2019

Bahrain is expected to soon confirm the introduction of the Gulf Cooperation Council's value-added tax from January 1, 2019.

David Stevens, VAT implementation leader at EY, was cited by local news outlets, including Gulf Daily News, as explaining that Bahrain is ahead of the other three GCC states that have yet to implement VAT in its preparations. Qatar and Oman are expected to follow suit and announce a timeframe next year, he said, and Kuwait may introduce the levy only from 2021.

Having introduced value-added tax on January 1, 2018, the United Arab Emirates and Saudi Arabia became the first two states of the six-member Gulf Cooperation Council grouping to follow through on the bloc's commitment to introduce a harmonized value-added tax.

Initially, the tax was supposed to have been in place by 2012, but certain member states struggled to lay 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 repeatedly.

Finally, in June 2016, GCC finance ministers approved the VAT framework, which sets out the parameters of the regime that will apply in all member states. This was eventually signed in 2017, and the framework was published in May of that year, with a view to VAT being introduced across the GCC on January 1, 2018. However, the VAT framework did not stipulate that the tax must be introduced simultaneously by the member states on a certain date and so far only two have done so.

The framework provides for a basic VAT rate of five 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. 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.

Gibraltar Welcomes Clean Bill Of Health From EU On Tax Transparency

The Gibraltar Government has welcomed recognition from the European Commission that Gibraltar's financial services are not "harmful," as assessed by the EU Code of Conduct Group.

The Commission was responding to a question from Spanish member of European Parliament Maite Pagazaurtundua Ruiz (Alliance of Liberals and Democrats for Europe). She had noted that the OECD had found Gibraltar to be in compliance with international tax transparency and information exchange standards.

However, she said: "The Gibraltarian authorities have avoided being blacklisted, despite lax fiscal standards. The OECD itself states that shortcomings persist, such as the absence of any provision for penalties in the law regulating associations or the lack of a systematic supervision of associations' accounting obligations. The obligation to maintain accounting records came into effect in 2013 and has not been fully evaluated. Moreover, a gap has been identified regarding the systematic dissemination of information, together with shortcomings regarding the automatic exchange of information with one of its competent authorities; indeed, it was recommended that this authority improve communication and its systems so as to ensure effective and efficient exchanges."

She asked the Commission whether it plans to carry out case studies for jurisdictions with "shortcomings, such as those in Gibraltar;" and does the EU intend to ensure that those which fail to comply with the law – even if they appear to do so formally – be included on the EU's blacklist.

In its August 17, 2018, response, the Commission said: "According to Article 17 of the Treaty on European Union, the Commission monitors whether member states, including Gibraltar, which has a special status within the European Union, comply with their obligations under EC law."

"Directive 2013/34/EU(1) requires limited liability companies to publish their annual financial statements. The Commission's monitoring of the transposition by Gibraltar to date indicated no potential non-conformities so far that may have an impact on fiscal standards as reported by the Honourable Member. It is important to note that to the Commission's knowledge, no EU legislation aims to regulate associations' accounting obligations, or their supervision, since these are not limited liability companies."

"Directive 2011/16/EU(2) provides for different types of administrative cooperation, which include the exchange of information upon request and automatic exchange of information. So far, the Commission has not identified inconsistencies in the practice of Gibraltar. It should however be recalled that most automatic exchanges started quite recently."

"The Commission will continue to monitor the effective application of the EC law requirements within the Union's territory. The Commission also collects statistics on the exchanges of information under Directive 2011/16/EU. On this basis, it reported on the application of the directive in December 2017(3)."

"Gibraltar has not been part of the 2017 screening exercise launched by the Council to establish the EU list of non-cooperative jurisdictions for tax purposes."

The Gibraltar Government responded: "The Commission's answer confirms the Government of Gibraltar's long-stated position, which the OECD and the EU's own Code Group has confirmed; Gibraltar's financial services are not in any way 'harmful' to the tax authorities of other member states. The prejudice held against Gibraltar by some uninformed sources in Spain can best be countered by a serious analysis of the type published by the Commissioner Moscovici in answer to this question. When a fair and objective assessment is made by an impartial observer, Gibraltar benefits from clear statements that we comply with our international obligations."

"No one should for one moment believe that Brexit is going to change our attitude of compliance to the highest international standards in respect of the financial services offered from our jurisdiction," the Government concluded.

Indonesia's 2016 CbC Reporting Deadline Looms

Indonesia's Directorate General of Taxation has launched an online reporting portal to receive country-by-country (CbC) reports in respect of the 2016 fiscal year ahead of the April 30, 2018, filing deadline.

Indonesian multinational groups with consolidated gross turnover of at least IDR11 trillion (USD791m) are required to file a CbC report.

Multinational groups whose ultimate parent is domiciled outside Indonesia, with gross turnover of at least EUR750m, and who are liable to tax in Indonesia must also file a CbC report where: the ultimate parent is not required to file a CbC report in their home jurisdiction, or that jurisdiction has not agreed to exchange CbC reports with Indonesia or there has been a systemic failure in respect of such.

CbC reports and notifications can be filed online up to April 30, 2018. The portal will be closed to submissions from May 1, 2018, to June 30, 2018, during which time CbC reports will be exchanged with other countries. Following exchange of reports, the portal will then reopen to filings.

CbC reports and notifications must be submitted electronically and may not be filed in paper form. A PDF receipt from the tax agency acknowledging the filing of a CbC report should be included alongside the corporate income tax return.

Australia Issues Guidance On BEPS Multilateral Instrument

The Australian Taxation Office (ATO) has issued guidance explaining how the new Multilateral Instrument (MLI) for the prevention of tax treaty abuse will function in Australia.

The OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting is aimed at countering the inappropriate use by companies of loopholes in international tax treaties to shift profits to low-tax or no-tax locations. It is designed to enable participating jurisdictions to swiftly modify their bilateral tax treaties to implement new international standards.

Australia signed the MLI in June 2017 and legislation to ratify the convention received Royal Assent on August 24, 2018. If Australia notifies the OECD of its ratification by August 31, the MLI will enter into force in Australia on December 1.

The ATO said that, subject to these processes, it is expected that the MLI will take effect: for withholding taxes, on income derived on or after January 1, 2019; for all other taxes, for income years starting on or after July 1, 2019; and for dispute resolution, after the MLI enters into force for each of the parties.

The ATO explained that jurisdictions that sign the MLI must identify which of their bilateral treaties they want the MLI to apply to and modify. The tax treaties that a jurisdiction wishes to be covered by the MLI are called "Covered Tax Agreements" (CTAs), and both treaty partners must identify their treaty as a CTA for it to be modified. Should only one jurisdiction – or neither jurisdiction – identify a treaty as a CTA, its provisions will remain unchanged.

Australia nominated all of its existing treaties as being within the scope of the MLI, with the exception of its 2015 agreement with Germany, as this was recently renegotiated and includes all the BEPS minimum standards. Based on the other jurisdictions' known positions on the adoption of the MLI, the MLI will modify (to varying degrees) 31 of Australia's 44 bilateral tax treaties.

The treaties are with the following countries: Argentina, Belgium, Canada, Chile, China, the

Czech Republic, Denmark, Fiji, Finland, France, Hungary, India, Indonesia, Ireland, Italy, Japan, Malaysia, Malta, Mexico, the Netherlands, New Zealand, Norway, Poland, Romania, Russia, Singapore, the Slovak Republic, South Africa, Spain, Turkey, and the UK.

The ATO said that the number of affected treaties could change if more of Australia's treaty partners sign and ratify the MLI and nominate their treaty with Australia.

The ATO also stated that while some MLI articles are mandatory (the "minimum standards"), most are optional. Jurisdictions can choose to adopt the minimum standards only, or to adopt some, or all, of the optional articles. The MLI will modify, but not directly amend, nominated treaty clauses.

The extent to which the MLI will modify Australia's treaties will depend on the final adoption positions taken by each jurisdiction.

The ATO will develop guidance to help stakeholders understand the effect of the MLI on Australia's bilateral treaties. This guidance will provide in a single document: the text of a CTA, the elements of the MLI that have an effect on the CTA, and information on the dates on which the provisions of the MLI have effect in each jurisdiction for the CTA.

AUSTRALIA - VARIOUS

Negotiations

A sixth round of negotiations for a free trade agreement (FTA) between Australia and the Pacific Alliance countries (Chile, Colombia, Mexico and Peru) is scheduled to take place in New Zealand from 22 to 28 September 2018. Negotiations were launched on June 30, 2017 and the first round of negotiations was held in Colombia from 23 to 27 October 2017. Subsequent rounds of negotiations were held in Australia (January 29 to February 2, 2018), Chile (3 to 9 March 2018), Canada (12 to 18 May 2018) and Mexico (7 to 13 July 2018). It is expected that negotiations will be concluded by the end of 2018. Further developments will be reported as they occur.

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.

KYRGYZSTAN - TURKMENISTAN

Signature

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

LATVIA - VIETNAM

Into Force

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

MOLDOVA - UNITED ARAB EMIRATES

Into Force

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

RUSSIA - BELGIUM

Ratified

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

SRI LANKA - OMAN

Signature

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

ISSUE 303 | AUGUST 30, 2018

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

11-19/2018 - 11/19/2018

CIS Wealth

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

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

https://ubf.international/

MIDDLE EAST AND AFRICA

Tax Planning in Africa and the Middle East

10/28/2018 - 10/30/2018

IBFD

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

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

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

TP Minds Africa

10/31/2018 - 11/2/2018

Informa

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

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

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

STEP Arabia Branch Conference

11/11/2018 - 11/11/2018

STEP

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

Key speakers: TBC

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

Introduction to GCC VAT

3/3/2019 - 3/5/2019

IBFD

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

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

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

WESTERN EUROPE

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

Beyond Borders: International Tax Into 2020

11/7/2018 - 11/10/2018

Taxlinked.net

Venue: Amathus Beach Hotel, Limassol, Cyprus

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

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

The 7th Annual OffshoreAlert Conference Europe

11/12/2018 - 11/13/2018

OffshoreAlert

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

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

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

Global VAT

11/13/2018 - 11/16/2018

IBFD

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

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

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

Global VAT - Specific Countries

11/15/2018 - 11/16/2018

IBFD

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

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

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

Principles of International Taxation

11/19/2018 - 11/23/2018

IBFD

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

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

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

Annual Conference on European VAT Law 2018

11/22/2018 - 11/23/2018

Academy of European Law

Venue: TBC, Trier, Germany

Key speakers: TBC

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

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

11/28/2018 - 11/30/2018

IBFD

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

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

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

Capital Taxes Update

12/5/2018 - 12/5/2018

STEP

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

Key speaker: Chris Whitehouse (5 Stone Buildings)

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

Advanced VAT Optimization

12/6/2018 - 12/7/2018

IBFD

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

Key speakers: TBC

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

Transfer Pricing and Intra-Group Financing

12/10/2018 - 12/11/2018

IBFD

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

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

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

Transfer Pricing Masterclass

2/14/2019 - 2/15/2019

IBFD

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

Key speakers: TBC

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

Current Issues in International Tax Planning

2/27/2019 - 3/1/2019

IBFD

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

Key speakers: Jan de Goede (IBFD), Annemiek Kale (Arla Foods), Clive Jie-A-Joen (Simmons & Simmons), Jeroen Kuppens (KPMG Meijburg & Co), among numerous others

https://www.ibfd.org/Training/Current-Issues-International-Tax-Planning-1

International Tax Planning Association Meeting

3/20/2019 - 3/22/2019

ITPA

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

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

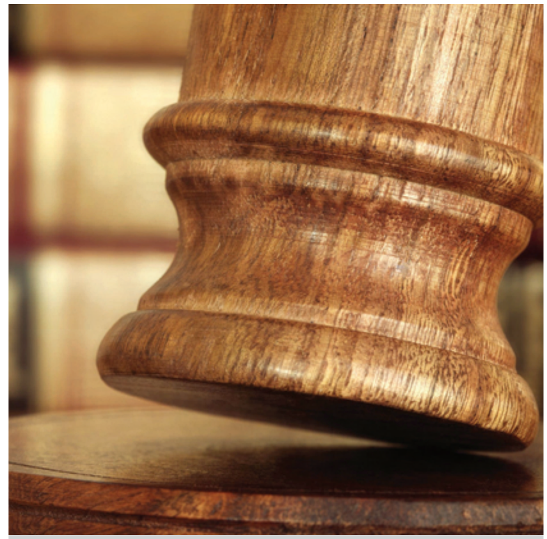
https://www.itpa.org/meeting/estepona-march-2019/

THE AMERICAS

United States

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.



A listing of recent key international tax cases.

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

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

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

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

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

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

THE AMERICAS

United States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WESTERN EUROPE

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

Dateline August 30, 2018

If Machiavelli were alive today, I think he would have swapped Tuscany for the Australian Capital Territory long ago (although with a name more suited to 21st century Australia perhaps – MacVelly maybe?). For renaissance Italy has nothing on Canberra in the political machinations stakes after **Prime Minister Turnbull** became the latest in a growing list of Australian leaders **deposed** by his or her own party. All told, the last 11 years have seen seven Australian PMs come and go. Who needs enemies when you've got friends — or frenemies.

In fact, the rate at which Australia seems to be going through its prime ministers is making the famously unpredictable Italian system look like a paragon of stability. Age doesn't seem to be a barrier to office these days, does it? In Austria, Alexander Kurz is barely out of his 20s. Before long, aspiring leaders will be barely out of their diapers. Not that this situation is unprecedented. In the 18th century, William Pitt the Younger was a fresh-faced 24-year old when he became Prime Minister of Britain at one of the most pivotal points in its history. So what's next? Terry the Teenager? Timmy the Toddler?

But what has all this got to do with tax? Quite a lot actually. **Legal and tax uncertainty** go hand in hand with political instability. In Australia, long overdue corporate tax cuts have been on and off the table more times than tableware at an all-you-can-eat buffet as a result of the government's lack of a full parliamentary majority. Now a sudden change of leadership, and maybe of policy too, is being thrown into the stew.

The problem is, even if new PM Scott Morrison wants to **resurrect the corporate tax cut plan**, it would just be blocked by the Senate, like it was last week, and in the weeks leading up to that, and in the months leading up to that. This raises the prospect of fresh elections (they seem to roll around on a remarkably regular basis too in Australia) to clear the stagnant political air, as a result of which firms may eventually get their tax cut. But taxpayers beware: MacVelly is already writing the next chapter, so who knows what's around the corner.

Certainly, we shouldn't rule out any unexpected turns. We've had plenty of those recently on the political front, and, as we have seen, they can have a major bearing on tax policy. The latest twist comes courtesy of **Colombia**. There, the newly installed government wants to **reduce the jurisdiction's 33 percent corporate tax rate**. Nothing unusual about that, you might think, given how corporate tax rates continue to fall, and that 33 percent is considered high these days. More atypically, the Government also wants to **raise the tax burden** for those at the lower end of the income scale by reducing the income tax threshold. Now that it quite novel. In normal circumstances, you'd think pairing a corporate tax cut with a personal income tax hike on the low-paid would be a guaranteed vote loser, and quite possibly political suicide for whomever proposed it. Clearly, normal circumstances no longer apply.

Now, we all know that corporate taxation entails more than just a simple percentage of a company's profits; it is far, far more involved than that. The 15 weighty tomes that are the final reports of the base erosion and profit shifting project – the fruits of the OECD's countless hours of labor – are a testament to that.

At the heart of it all is **transfer pricing**. But, mention the phrase "transfer pricing" to the uninitiated, and they will probably return a blank, bovine stare, almost puppy-like in its wide-eyed, head-slightly-tilted innocence. You'd almost see cartoon-esque question marks forming in their eyes. Start to talk about transfer pricing to them for any length of time, and you might be in danger of losing a valued friend or acquaintance ("Where are you going? I haven't finished explaining the comparable uncontrolled transaction method yet!"). Forevermore, they would dart into the janitor's store as you approach the office water cooler.

But for those in the know, those of us initiated into the secret codex of international taxation, of multilateral instruments, of hybrid mismatches, of country-by-country reports, transfer pricing is very important. Numerous board-level surveys tell us as much. And not for nothing are four of the 15 BEPS Actions devoted to the subject.

Governments know it too, which is why, emboldened by BEPS, they have become increasingly willing to **scrutinize these intercompany pricing arrangements**, and in many cases it has been worth their while to do so. Take the **United Kingdom** for example, where earlier this month HM Revenue and Customs revealed that in the six fiscal years between 2012/13 and 2017/18, it secured an additional GBP6.5bn (USD8.2bn) by challenging the transfer pricing arrangements of multinationals.

In the United States, the Internal Revenue Service's victory in the **Altera** case is set to shake-up the US transfer pricing environment (although an impending review of that decision by the same court does subject this to some uncertainty). Hot on the heels of Altera was a federal appeals court decision in the Medtronic case, which again backed the IRS.

There can be few doubts that the **ground has shifted considerabl**y in the world of international corporate tax, and it continues to move in governments' favor. Indeed, taxation has probably never been so exciting! Just don't tell your friends.

The Jester