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GLOBAL TAX WEEKLY
a closer look

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

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

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

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Global Tax Weekly – A Closer Look

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

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

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

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

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Transfer Pricing Controversy: Faster, Broader, And More Complex

by EY

Introduction

A survey recently conducted by EY [1] has shown that tax professionals are anticipating a sharp rise in transfer pricing related controversy relative to the recent past. As countries move to implement anti-BEPS recommendations by the Organisation for Economic Co-operation and Development (OECD), 79 percent of survey respondents expressed the belief that dispute resolution is becoming more difficult.

In fact, commenting on the survey results, EY Global Transfer Pricing Leader Peter Griffin says that overall, he believes companies will be experiencing not only more challenging controversies, but also a significant shortening of the transfer pricing life cycle (the period between transfer pricing design/implementation and controversy arising/being resolved). "Thanks to BEPS and other trends leading to greater transparency, tax authorities now have more access to more information than ever before," explains Griffin.

Coupled with government budget deficits in so many jurisdictions, Griffin adds: "Authorities have not only greater incentive to move fast but also more tools to do so." Consequently, says Griffin, "companies need to prepare for an era of not only more rapid, but also more intensive transfer pricing scrutiny."

Zeroing In

That controversy is accelerating and increasing is clear. But understanding the trouble spots requires a closer and more nuanced look at the sources of disputes.

Overall, the fundamental transfer pricing of goods and services is (and likely always will be) the key driver of disputes between taxpayers and collectors. In this fundamental area, the survey shows virtually no expected increase in the frequency or magnitude of disputes; the percentage of

executives reporting that fundamental transfer pricing is a key driver of controversy barely budges from 72 percent in 2013 to 75 percent in 2016.

Instead, the sources of the largest increases in expected tax controversy take three key forms: transfer pricing of intangible property; the tax impacts surrounding expanding definitions of the rules for determining permanent establishment (PE); and transfer pricing of intragroup financial arrangements.

"What all of this tells us," observes EY Global and Americas Transfer Pricing Controversy Leader David Canale, "is that, absolutely, fundamental transfer pricing remains the top driver of controversy." But looking at the areas where concerns are on the rise, Canale adds, "You see that it primarily stems from BEPS actions in these three key areas". "And what's particularly troubling is that in each of these cases, the issues are rife with technical complexity and subjectivity." Consequently, Canale concludes, "controversy in any of these areas is likely to be more difficult to avoid or resolve."

Three Key Trouble-Spots

As noted above, three key areas in which a rise in controversy is anticipated stood out in the survey:

- *Intangible property (IP)* – A key focus of BEPS Action 8 is to require greater substance behind cross-border charges for royalties and other intangibles. In the 2013 survey, only 32 percent of executives indicated such charges as a key source of controversy. However, in the latest survey, the figure surges to 49 percent.

  This is unsurprising, according to EY EMEIA Transfer Pricing Leader Oliver Wehnert: "Regardless of prior justifications for cross-border IP charges, BEPS now requires a focus on the location of DEMPE functions: Develop, Enhance, Maintain, Protect and Exploit," he explains. "IP is an area long suspected by many tax authorities of being a mechanism for shielding income – which is one of the reasons IP attracted its own BEPS Action." Going forward, "IP will likely be a key focus of examinations which will be taking place using what for many will be a new methodology." Consequently, says Wehnert, "for any company with significant cross-border IP charges, this is a recipe for increased controversy."

- *Permanent establishment* – BEPS Action 7 substantially lowers the threshold under which a company's presence can create a PE. Three years prior, only 27 percent cited PE as a significant driver of controversy. But going forward over the next two years, the figure climbs to 44 percent.

  "Challenges as to whether or not in-country operations constitute a taxable presence – or PE – usually arise along the multinational's 'plan/design/manufacture/store/market/sell/

service' value chain," explains Zurich-based Ai-Leen Tan, EY Global PE Project Leader. In the past, a company could operate in two or more of these areas (*e.g.*, warehousing and sales) and yet still avoid creating a PE. But BEPS, says Tan, "introduces rules which will allow tax authorities to view the various operations in the same or different locations on a combined basis, such that these will now create a PE." Because of the new, expanded definition of PE, "undoubtedly, disputes over these issues are going to increase."

- *Intragroup financing* – The means by which companies share intragroup interest charges – another key focus of BEPS – is also expected to become a more frequent source of controversy. Specifically, the number of respondents expecting controversy in this area rises to 48 percent for the next two to three years, up from 39 percent in the 2013 survey.

Regional And National Variations

The survey points to significant regional and national differences. For example, companies from Europe are significantly more concerned by new PE and intragroup financing guidelines than the rest of the participants overall. The differences in these two areas are particularly pronounced between Americas-based and European-based firms.

Taking an even wider look at the difference between regions, it is worth noting that intangibles have grown in importance to Japanese companies, rising from 39 percent over the past two years to 63 percent in the next two years (and, in both cases, well above the overall baseline). In a surprising finding, the transfer pricing of goods and services falls from 84 percent three years ago (well above the overall figure) to 69 percent in the next two years (well below the overall figure).

Differences are also evident country by country. Certain nations, the survey shows, present a relatively higher likelihood of transfer pricing audits. Here, looking back across the past three years shows Germany leading the way, with 29 percent of companies revealing that their German operations experienced a transfer pricing audit. German tax authorities are followed closely by those from the developed world, the US (25 percent) – and, notably from the developing world, India (25 percent).

India's rise to such heights is indicative of yet another observation culled from the research: to a large degree, the survey continues to show a paradox between the markets that attract client resources and the ones that actually create controversy. For example, although Germany, the US and India are cited as sources of revenue authority examination with relatively equal frequency, there is an enormous variation in the outcome of such audits. Specifically, respondents reported

no adjustments in 64 percent of US based inquiries and only 43 percent for Germany.

By contrast, in India, only slightly more than one in five audits (21 percent) resulted in the favorable finding of no adjustment. Meanwhile, 38 percent of respondents indicate that their cases from India remain unresolved. By comparison, just 19 percent and 14 percent of respondents say that their German and US cases were unresolved, respectively – with this comparable to outcomes from France and Italy (although Canada now rivals India for unresolved cases).

One area where multinational corporations say tax authorities from both the US and Germany fall short is in the avoidance of double taxation. In both Germany and the US, executives say 27 percent of controversies result in double taxation, topping the list in terms of frequency.

Also noteworthy is that although interest, usually moderate, is commonly applied across a wide range of jurisdictions, penalties are significantly less common. However, certain jurisdictions offer a substantially higher likelihood of penalties, such as Italy and India, meaning companies should review their methodologies and resources and adjust accordingly.

Avoid Disputes By Becoming More Proactive

The prior sections show where companies are experiencing controversy. However, the best way to address disputes "is to avoid them in the first place," according to Canale. Consequently, "companies should do their best to build transfer pricing defense files based on accepted principles – and stand ready. They should also turn increasingly to tools such as advance pricing arrangements, both bilateral and multilateral, and other mechanisms available to achieve greater up-front confidence in their transfer pricing."

To date, more than a third of respondents (38 percent) have used advance pricing agreements (APAs) of one form or another as a means of improving certainty and avoiding controversy. But going forward, Canale expects this number to increase significantly. "Controversy is most definitely on the rise and so the stakes have been raised."

Moreover, "more nations – like India – are announcing/expanding/improving their APA programs, while many jurisdictions are clearly favoring bilateral APAs over unilateral," Canale adds. So amid increasing risks, along with greater accessibility, "we are already seeing heightened interest." Indeed, the survey findings support this view: 65 percent of respondents say they will be using more APAs in the future.

Among those who have used APA programs, the results are generally positive. For example, 75 percent express satisfaction with APAs from UK authorities. Nearly identical numbers (73 percent) say their experiences have been positive across a wide range of other nation's APA programs, along with 70 percent for the US – but falling to 58 percent for Canada.

Among those expressing dissatisfaction with their APA experience, 69 percent say the process took too long, 15 percent experienced what they viewed as a poor or unexpected outcomes, with 6 percent pointing to onerous compliance requirements.

When All Else Fails: MAP And Litigation

When all else fails, companies are often forced to turn to more drastic dispute resolution measures. Key avenues examined by the survey include mutual agreement procedures (MAP) and litigation.

Experiences With MAP

Three out of four respondents (75 percent) revealed that they have, in fact, submitted issues to competent authorities (i.e., MAP cases). These are cases where authorities from two nations are engaged to reconcile issues, such as alleged double taxation.

Of those turning to this option, 39 percent were satisfied with the process and would use it again. But 44 percent say their issues are as yet unresolved – and 17 percent are dissatisfied. As for those dissatisfied with their MAP basket, the reasons mirror those for APAs: a too long process (44 percent); a less than desirable outcome (24 percent); and onerous compliance (4 percent).

Whatever their current state, going forward, MAP processes are likely to improve significantly. Specifically, explains Marlies de Ruiter, EY Global ITS Tax Policy Leader, "a key focus of BEPS is on BEPS Action 14, which pledges to improve the effectiveness of MAPs by providing measures to overcome the obstacles that prevent countries from resolving treaty-related disputes under MAP, which includes introducing minimum standards by which host nations are expected to adhere." Such standards, de Ruiter says, "address elements such as time to resolution and quality of interaction, with host nations who adopt this measure subject to periodic peer review (by other nations' tax authorities)."

The Action 14 MAP review process will be applicable to members of the OECD's Inclusive Framework, which included 90 jurisdictions at the time of writing. In the years to come, more nations will be expected to participate, which, EY Transfer Pricing Leader for Brazil, Katherine Pinzon, believes is an important next step.

"In an era of profound cross-border activity, it is essential that host governments develop more effective processes for settling disputes."

"Where there is a major dispute, it tends to be material," observes Pinzon, "which is why it is important that any inefficient, slow moving or arbitrary processes be replaced with something more sophisticated, fair and expedient. This is also particularly important for where disputes involve markets which don't use or have irregularly or inconsistently used MAP."

BEPS Action 14, says Pinzon, "is a strong step in the right direction." Nonetheless, at least initially, "we expect the frequency of controversy will initially rise under BEPS." Longer term, says Pinzon, "matters regarding resolution should begin to improve, as jurisdictions and taxpayers learn to work with one another and an equilibrium emerges."

The Litigation Route

About one in six companies (17 percent) have seen controversies so severe that their resolution migrated to the courts. Here, 21 percent express satisfaction with their outcome – and would use litigation again. But 57 percent say their cases are still unresolved – and 22 percent are dissatisfied with their outcome. This highlights the long process to take a matter through to litigation, and the variability in outcomes that can arise.

Beyond MAP and the courtroom, companies today may also look to alternative dispute mechanisms, such as obtaining formal or informal domestic agreements – effectively becoming party to joint audits – or seeking binding arbitration.

Conclusion

It is clearly evident that our respondents are anticipating a surge in transfer pricing related controversy, taking into account the perfect storm of:

- Better resourced tax authorities;
- The additional information that they will be equipped with from the BEPS Action 13 documents regarding master and local file transfer pricing documentation and country-by-country reporting;
- The continual increase in countries with transfer pricing rules and information sharing protocols.

In particular, respondents anticipate controversy will increase in the thorny areas of intangibles and PEs, and will take longer and be more costly to defend.

We recommend that taxpayers equip themselves for this by assessing their structure and risk profile, making adjustments and taking other proactive measures accordingly.

Endnote

1 A version of this article first appeared in the EY 2016-17 Transfer Pricing Survey Series: http://www.ey.com/gl/en/services/tax/ey-2016-transfer-pricing-survey-series

The Repatriation Boogeyman

by Michael Minihan
and Ian Boccaccio, Ryan

"What do you see when you're in the dark and the demons come?"

Infamous words, spoken by Clint Eastwood in the great classic "In the Line of Fire," resonate with me at times like this. A tsunami of change is coming. As it bears down on us, my fellow tax professionals, I ask: Have you done all that you can to prepare? What do you see when you're in the dark and the demons come?

In the international tax arena, the scariest demon that has been keeping us on our toes in this time of great tax uncertainty is foreign earnings. Foreign earnings, heretofore sheltered from true US tax analysis by the cloak of protection that is APB 23, are suddenly, seemingly, about to be extraordinarily relevant. Who can blame an overworked tax department for not putting resources into tax attributes that didn't matter for all of those years? That may have been the right move at the time, but now is the time to catch up; now is the time to slay that demon.

Tax reform feels as close to inevitable as it has ever been, and with a parched highway trust fund, yearning for the invigorating raindrops of a taxable repatriation, the time seems to be upon us to get our Earnings and Profits house in order. Two proposals currently warrant consideration: President Trump's 10 percent and the House Republican's blueprinted 8.75 percent / 3.5 percent. Under both proposals, taxpayers would be taxed on *all* of their previously untaxed foreign earnings, a sum currently estimated to be between two and three *trillion* dollars.

Trump's plan is more easily analyzed than the House Blueprint, if only because details are sparse. Guidance is limited to a 10 percent hypothetical tax rate on accumulated untaxed foreign earnings. In the absence of current guidance, we can look to the only previous instance of the tax "holiday" in recent history for possible details. The American Jobs Creation Act of 2004 is our model for this analysis. A "headline" tax rate of 5.25 percent was applied to applicable repatriations of

foreign earnings. In this case, the 5.25 percent represented the maximum incremental US tax rate to be applied to those earnings, after consideration of associated foreign tax credits.

The Trump proposal could work the same way, with just a quick substitution of 10 percent, for 5.25 percent. However, the fundamental difference would be in that this tax would be mandatory, applied to *all* untaxed foreign earnings, *vis-à-vis* the 2004 legislation, where the tax on repatriation was voluntary, and taxpayers made the decision as to the amount of earnings that they wished to repatriate. The concept of "all" *versus* "some" is important, and as we discuss later, should influence tax department behavior.

Conceptually similar to the Trump plan is the House Blueprint, in that taxpayers will be taxed on all untaxed foreign earnings. Divergence comes in two forms. First, the House Blueprint parallels foreign earnings with foreign cash. To the extent foreign cash is able to be repatriated, those earnings will carry a headline incremental US tax rate of 8.75 percent. To the extent the foreign entity does not have cash available for repatriation, those earnings will be taxed at a headline rate of 3.5 percent. In these cases, the second area of divergence applies: the payment plan. Where cash is not available for repatriation, the incremental US tax will be required to be paid over an eight-year period. The element of fairness in this plan, allowing a reduced rate of tax as well as deferral, seems unlikely to be part of any final legislation in its current form. It is an encouragement for taxpayers to actually make a non-US spend of any lingering cash balances to benefit from lower tax rates *and* further defer US tax.

If these proposals all seem favorable, why would a "tax holiday" keep you up at night? Why would any of this stir the demons?

Preparedness, it seems, is the ultimate demon. If you've ever calculated, and I mean *really* calculated, Earnings and Profits, you will know that it is difficult. If your process is US GAAP income plus or minus obvious accruals, it is not surprising that you're up at night. You should be. You have work to do!

Wherever we land with tax reform, there is one thing that is virtually certain: the *amount* of Earnings and Profits (E&P), as of the effective date of the new legislation, will be relevant. The timing, of your timing items, will be relevant. This will quite possibly be the last time any of us will need to compute foreign E&P. It behooves us to not just get it right but to get it right in the most minimized fashion we can. If we can legitimately accelerate USD10m of E&P deductions, it could be worth as much as USD1m under the Trump plan!

Let's slay some demons. Here are some of the key items our clients are evaluating for their foreign E&P:

1. Revenue.

- Is E&P following GAAP recognition rules?
- Is E&P consistent with revenue recognition per the US tax return?
- Are there opportunities for changes in method?
- What revenue can be legitimately deferred?
- Has transfer pricing between the US and the foreign entities been evaluated to ensure the optimal point in acceptable ranges is being utilized?

2. Expenses.

- Have we legitimately maximized our deductions?
- Are there opportunities for changes in method?
- Have we looked at cost segregation opportunities for non-US projects?
- Are there acceleration opportunities that create legitimate E&P reductions by mitigating the economic ability of the foreign entity to pay a dividend?
- Has the impact of non-functional currency items been properly considered in E&P?

3. Local Taxes.

- Have we adequately addressed accrued vs. paid issues with respect to local taxes?
- Are there tax prepayment opportunities that create valuable E&P reductions, albeit at the expense of foreign tax credits for "voluntarily paid" taxes?
- Have the tax pools been adequately calculated and documented?

4. Attributes.

- What is the status of any Section 959 Previously Taxed E&P?
- Have deficits in E&P been optimally utilized within the non-US structure?

5. Accuracy.

- Have all permanent differences been captured?
- Are adjustments properly added or subtracted? In other words, are the signs correct?
- Have long-term timing items properly reversed?

There will be *a lot* more coming on this topic, including more of our commentary on new proposed legislation, once the latest refresh of ideas comes from Washington. In the meantime, fight the good fight. Get your E&P house in order. Slay those demons!

Shining A Light On Beneficial Ownership

by Stuart Gray, Senior Editor, Global Tax Weekly

An increasing number of countries are considering how to increase transparency of information on the beneficial owners of companies and other structures such as trusts for the purposes of enforcing tax and anti-money laundering laws. This article discusses recent developments in this area.

Introduction

With the advent of FATCA, the Common Reporting Standard and other similar mechanisms, the debate about the need for automatic exchange of financial account information between countries for the purposes of tax law enforcement is seemingly settled. But the next battle in the transparency war is just beginning, and is being fought around the issue of beneficial ownership of companies.

This issue has actually been a live one for several years. A proposal for publicly accessible registries of beneficial ownership was one of the main points agreed by the G8 at the Lough Erne Summit in Northern Ireland in June 2013, at which the issue of tax avoidance by companies and wealthy individuals was placed at the top of the agenda by the United Kingdom. And included in the "Lough Erne Declaration" endorsed by the Summit's participants was a recommendation that "companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily."

The G8 also adopted an Action Plan, which sets out "core principles that are fundamental to the transparency of ownership and control of companies and legal arrangements." It argues that companies should obtain and hold information on their beneficial ownership, and that central registries containing these details should be set up at national or state levels. Likewise, trustees of express trusts ought to acquire such data, and financial institutions and designated non-financial businesses and professions should be placed under effective obligations to identify and verify the beneficial ownership of their customers.

Subsequent to Lough Erne, each G8 member published an action plan outlining how they intend to improve transparency surrounding beneficial ownership information. In the months and years that followed, little further progress was made towards an international network of beneficial ownership databases, except in the UK and the EU (as outlined below), the feeling being that such measures could deter investors.

However, governments have found the issue much harder to ignore since the Panama Papers scandal of April 2016. Hence we have witnessed several more jurisdictions start to consider the question of whether companies should be more open about who ultimately owns them, and if so, how such information is presented, and who should be able to access it.

The United Kingdom

Seemingly keen to set an example to the international community, the UK was the first mover in this area. Following the publication of two discussion papers in 2013 and 2014, the framework of the UK's register of "persons with significant control" was included in the Small Business, Enterprise, and Employment (SBEE) Act 2015,[1] which received Royal Assent on March 26, 2015. The rules have subsequently been fleshed out in secondary legislation and new regulations, and companies have been required to disclose the relevant information since June 30, 2016.

A person with significant control (PSC) is defined in the SBEE Act as a person that meets one or more of the following conditions for a single company:

- Directly or indirectly owns more than 25 percent of the shares in the company;
- Directly or indirectly holds more than 25 percent of the voting rights in the company;
- Directly or indirectly has the power to appoint or remove the majority of the board of directors of the company;
- Otherwise has the right to exercise or actually exercises significant influence or control over the company. The definition of this is set out in statutory guidance.
- Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions over the company.

Companies that are required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules (DTR5 issuers) are exempted from having to keep a register of people with significant control.

The legislation defines entities that fulfill one of the conditions as being a PSC, required to hold a PSC register or disclose information as a DTR5 issuer (or otherwise) as "relevant legal entities." However, regulations state that not all relevant legal entities should be recorded on the register.

The intention is that, by not requiring all entities to look through their ownership chain in these circumstances, it will be easier for an entity to maintain its own register, while still ensuring that information on all PSCs will be available on the public register. The Government provided the following example in a consultation document on the PSC register to illustrate how this system might work in practice:

> "Company A is fully owned by B and B is fully owned by C. B and C are both relevant legal entities (they both keep a PSC register) who own more than 25 percent of the share capital of A (B directly and C indirectly). To avoid the duplication of information on the register, in this example, company A would include only the first relevant legal entity (entity B) in its PSC register, and should not include entity C. Observers who wish to delve further may look at the PSC register of entity B and through that would identify C. In this case the first entity in the chain 'entity B' is a registrable relevant legal entity. The other entity 'entity C' is a non-registrable relevant legal entity and should not be included in the register of company A."

The details of people or entities that must be recorded include their name, residential address (which does not appear on any version of the register available to the public), a service address, date of birth (in the case of individuals), and information about how they have significant control.

European Union

As is so often the case with issues of tax and corporate transparency, the EU is also taking a lead on this issue. Consequently, under the 4th Anti-Money Laundering (AML) Directive, endorsed by the European Council in April 2015 and approved by the European Parliament the following month, EU member states are required to establish and maintain central registries containing certain information about the beneficial owners of companies registered in their jurisdictions.

The relevant legislation is Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the Directive).[2] The Directive amends Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repeals both Directive 2005/60/

EC of the European Parliament and of the Council, and Commission Directive 2006/70/EC. The 4th AML Directive was published in the Official Journal of the European Union on June 5, 2015.

The directive defines a beneficial owner as the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means.

A shareholding of 25 percent plus one share is sufficient to indicate direct ownership of a company under the proposal. Similarly, a shareholding of 25 percent plus one share which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), is an indication of indirect ownership.

As regards trusts, the central registration of beneficial ownership information will be used where the ownership of a trust has tax consequences.

In a similar manner to the UK PSC rules, companies listed on a regulated market are already subject to disclosure requirements under EU law, so fall outside the scope of the draft directive.

Offshore

Since the Panama Papers affair was perceived largely as an "offshore" tax scandal, it is significant that the UK has managed to extract commitments towards greater transparency of beneficial ownership from its Overseas Territories and the Crown Dependencies, many of which are low-tax offshore financial centers. And several of these territories have been advancing plans to change the way in which beneficial ownership information is recorded, presented and accessed.

One recent development in this regard saw legislators in the Isle of Man hear the first reading of a bill to introduce a central database of corporate beneficial ownership. Under the bill, information held on the central database will be accessible to certain Isle of Man authorities and, on request, to the island's Financial Intelligence Unit, and by the intelligence and law enforcement agencies of countries with which the Isle of Man has a beneficial ownership sharing agreement (currently only the UK).

In another example, a consultation was launched by the Cayman Islands Government last December on legislation which would allow the jurisdiction to develop a centralized platform for beneficial ownership information.

And in a third example, in November 2016, Jersey announced plans to improve its policies on beneficial ownership and to introduce a register of directors. The policy, which is predominantly relevant to trust and company service providers (TCSPs) who administer Jersey corporate and legal entities, will require the TCSP to update the central registry of beneficial ownership within 21 days of knowledge of a change of beneficial ownership of a corporate they administer.

Other Jurisdictional Developments

Since the Panama Papers scandal, support for greater transparency of beneficial ownership is beginning to spread across the international community, and numerous governments are exploring the issue in more depth, with a view to improving transparency of company ownership. France, the Netherlands, Nigeria, and Afghanistan have proposed launching their own public registers of beneficial company ownership, while New Zealand, Jordan, Indonesia, Ireland, and Georgia will agree to take the initial steps toward making similar arrangements.

The examples of Australia and Hong Kong are explored in more detail below.

Australia

One of the most recent developments took place in Australia, where on February 13 the Government launched a consultation on how to improve transparency surrounding the beneficial ownership of companies. The consultation document asks for input on how to define a beneficial owner with a controlling interest in a company, and on which tests or thresholds should be adopted to determine this controlling interest. It also asks how best to identify those exercising indirect control or ownership, and whether the process for identification of beneficial owners should operate in such a way that reporting must occur on all entities through to and including the ultimate beneficial owner.

Likewise, the Government is seeking feedback on what details should be collected and reported for those identified as beneficial owners, and, in the case of foreign individuals and corporate bodies, what information would be necessary to enable these persons to be appropriately identified by users of the information. The consultation asks what obligations there should be on companies to ascertain who their beneficial owners are, whether each company should maintain their own registers, and if a central register of beneficial ownership information should also be established.

Hong Kong

Last month saw Hong Kong's Financial Services and the Treasury Bureau (FSTB) launch public consultations on legislative proposals to increase the transparency of corporate beneficial

ownership in the city via amendments to Hong Kong's Companies Ordinance. According to this consultation document, "there are increasing international concerns over the misuse of companies, particularly those with complex ownership and control structures, as a way to … facilitate money laundering, or serve illicit purposes such as tax evasion, corruption, or terrorist financing."

It was also noted that the current law in Hong Kong "does not require a company to ascertain, keep or file information about [a company's] ultimate beneficial owner, except in the case of a listed corporation, which is required under the Securities and Futures Ordinance to keep a register of those individuals or entities owning 5 percent or more interests in any class of voting shares (including any beneficial owner of such interests)."

The FSTB therefore intends to amend the Companies Ordinance to require companies incorporated in Hong Kong to obtain and hold up-to-date beneficial ownership information for public inspection upon request. The requirement will apply to all companies incorporated in Hong Kong under the Companies Ordinance, including companies limited by shares, companies limited by guarantee, and unlimited companies.

A beneficial owner in relation to a company will be, for example, an individual who directly or indirectly holds more than 25 percent of its shares; directly or indirectly holds more than 25 percent of its voting rights; directly or indirectly holds the right to appoint or remove a majority of its directors; or otherwise has the right to exercise, or is actually exercising, significant influence or control.

For the purpose of keeping accurate and timely beneficial ownership information in accordance with the Financial Action Task Force recommendation, the FSTB also proposes that a company will be required to identify and keep a "register of people with significant control" over the company.

United States

Naturally, given its status as the world's largest economy, the US's role is going to be a vital one in encouraging the spread of new standards in this area, and therefore it merits especial attention. Company disclosure requirements in the US are largely governed by state law. However, moves were made by the federal Government in May 2016 to improve the transparency of beneficial ownership in the US, including a customer due diligence (CDD) final rule,[3] and proposed regulations related to foreign-owned, single-member limited liability companies (LLCs).

The CDD final rule adds a new requirement that financial institutions – including banks, brokers, or dealers in securities, mutual funds, futures commission merchants, and introducing brokers

in commodities – collect and verify the personal information of the beneficial owners who own, control, and profit from companies when those companies open accounts.

Specifically, the rule contains three core requirements: identifying and verifying the identity of the beneficial owners of companies opening accounts; understanding the nature and purpose of customer relationships to develop customer risk profiles; and conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

With respect to the new requirement to obtain beneficial ownership information, financial institutions will have to identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity. The proposed implementation period of the rule is extended over two years.

The Treasury also announced proposed regulations to require foreign-owned "disregarded entities," including foreign-owned single-member LLCs, to obtain a tax identification number with the Internal Revenue Service (IRS), so as to curb their possible use to avoid US tax.

Overall, it was said, the US federal tax system "has very strong information reporting requirements for most types of entities formed in the United States. These requirements allow the IRS to determine whether there is any federal tax liability and if so, how much, and to share information with other tax authorities as appropriate. However, there is a narrow class of foreign-owned US entities – typically single member LLCs – that have no obligation to report information to the IRS or to get a tax identification number. These 'disregarded entities' can be used to shield the foreign owners of non-US assets or non-US bank accounts."

Finalized on December 13, 2016,[4] these regulations should allow the IRS to determine whether there is any tax liability, and if so, how much, and to share information with other tax authorities.

The Treasury also announced in May 2016 that it had sent to Congress proposed beneficial ownership legislation that would require companies to know and report adequate and accurate beneficial ownership information at the time of a company's creation, so that the information can be made available to law enforcement.[5] As part of the legislation, companies formed within the US would be required to file beneficial ownership information with Treasury. There would be penalties for failure to comply.

The proposals were, however, not taken up by lawmakers before the previous session of Congress expired. It remains unclear how the new Administration intends to approach this issue – that is, if it intends to approach it at all.

Public Or Private?

While there was a largely unenthusiastic response to the G8's initial clarion call on transparency of beneficial ownership at Lough Erne, since the Panama Papers affair, the debate has moved swiftly on to whether such information should be accessible by the public, or merely those with a need to know (*i.e.*, law enforcement authorities), and "obliged entities," (*i.e.*, financial institutions as part of their due diligence and know-your-client duties). Again, this is an area where the UK is the principal flag-bearer, making its PSC register searchable to anyone, free of charge.

However, one of the main arguments against public registers of beneficial ownership is that they are a step too far down the transparency road, and while seeking to discourage certain crimes, they could actually encourage other criminal activity, with company owners and their families vulnerable to threats of intimidation, violence, extortion and any number of other unpleasant experiences.

Therefore, the UK has built in certain safeguards in its PSC register, including that a person's residential address will not appear on any part of the register that the public can see. Furthermore, company owners who fear that they or somebody they live with would be at risk of violence or intimidation due to the activities of a company they are involved with will be able to apply to Companies House to prevent their residential address from being disclosed.

Another argument against public beneficial ownership registries is that they will merely make actual criminals harder to track down. After all, no self-respecting fraudster, money-launderer or extortionist is going to register a company in a jurisdiction where anybody can find out who owns it. Thus, criminals may merely go further to ground, choosing countries with a more relaxed attitude to transparency to register businesses, or increasingly complex chains of corporate entities across multiple jurisdictions, making it more difficult to track down the ultimate beneficial owner.

Nevertheless, recent developments suggest that there is growing support for public beneficial ownership registries among governments and legislators.

Initially, under the new EU AML directive, it was left to the discretion of each member state whether beneficial ownership information should be available to the public. However, in July

2016, the European Commission proposed that the public be given access to certain "essential" beneficial ownership information held in registries regarding companies and trusts.[6]

France has already made clear that it backs such proposals, having made its registry of trusts open to public scrutiny in 2016. And, as mentioned, France has confirmed its intent to do likewise with the proposed registry of company ownership, and under Hong Kong's proposal, beneficial ownership information would be available to the public on request.

However, while the UK has pushed for its Crown Dependencies – Guernsey, the Isle of Man, and Jersey – and its various Caribbean Overseas Territories to introduce publicly accessible registers that would include information on the beneficial ownership of companies and other entities, the idea has been firmly rejected by most of the territories in question. The reason given has been that there is no level playing field in place on beneficial ownership information, and little prospect of one emerging any time soon.

Aware that such registers are almost completely absent elsewhere, these offshore jurisdictions argue that they would commit economic suicide if they gave in to international pressure and introduced such measures. As Cayman Islands Premier Alden McLaughlin observed in a statement in November 2015,[7] "what we are not prepared to do is to adopt a scheme which our competitors (some of whom are G20 member states) do not subscribe to, put ourselves at a competitive disadvantage and thereby cause our business to migrate to competitor jurisdictions."

"That will not serve our interest obviously but ironically neither would it serve the interests of those who would have us do that: business would simply move to less well-regulated jurisdictions," he added.

So, even in a post-Panama Papers world, there is still a degree of hesitancy among nations over putting beneficial company ownership information into the public domain. However, countries are at least willing to share beneficial ownership with each other for the purposes of law enforcement.

In April 2016, France, Germany, Italy, Spain, and the UK agreed to exchange data held on beneficial ownership registers and registers of trusts. Later that month, this pilot scheme was joined by more than additional 20 jurisdictions, including Gibraltar, the Isle of Man, Montserrat, the Netherlands, Romania, Sweden, Finland, Slovakia, Latvia, Croatia, Belgium, Ireland, Slovenia, Denmark, Malta, Lithuania, Cyprus, Bulgaria, Portugal, Estonia, Greece, and the Czech Republic.

In addition, several UK-associated offshore jurisdictions have separately announced deals with the UK Government to improve how they exchange information on the beneficial ownership of companies.

Conclusion

The idea of greater transparency of beneficial ownership information is certainly gaining more traction around the world. And it can be expected that several other countries will follow the lead of the UK and the EU. Yet, this is a highly controversial issue, and those territories with a tradition of upholding privacy are unlikely to fully embrace it unless assured that their competitors will move at a similar pace. The much hoped for level playing field therefore looks elusive.

Endnotes

1 http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted

2 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849

3 https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions

4 https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-29641.pdf

5 https://www.treasury.gov/press-center/press-releases/Documents/20160506%20BO%20Legislation.pdf

6 http://europa.eu/rapid/press-release_MEMO-16-2381_en.htm

7 http://www.gov.ky/portal/page/portal/otphome/announcements/premier-statement-on-beneficial-ownership

Do I Need To Report Bitcoin On My FBAR?

by Mike DeBlis, DeBlis Law

In the United States, as elsewhere in the world, many lawyers are borderline technophobes. In 2014, Chief Justice John Roberts wrote that the Supreme Court still used vacuum tubes[1] to distribute messages long after these systems became available in Washington-area yard sales. "Judges and court executives are understandably circumspect in introducing change to a court system that works well until they are satisfied that they are introducing change for the good," he reasoned. That analysis is basically Lawyerspeak for "judges don't like technological innovation." There may be some basis for that attitude, albeit not much.

For the same reason that many lawyers pine for the good old days when their laptops had A-drives, the law is usually well behind technology, and Bitcoin is an excellent example. Although the crypto-currency has been around for almost a decade, there are very few IRS regulations on the subject and almost no guidance whatsoever when it comes to foreign bank accounts.

Moses has not come down from the mountain with anything definitive, and for a while it seemed like the Service might believe that regulating Bitcoin for FBAR purposes might be more trouble than it's worth. But a recent decision from a California federal judge might be a game-changer.

"Assets" And "Income"

Most of us rightly think that money is money and it does not matter if the money is tied up in a land investment deal or stuck between the sofa cushions. However, most of us don't work for the IRS, and to these bureaucrats, there may be a difference.

Currently, the IRS classifies Bitcoin as a capital asset,[2] as if it were a precious metal or corporate stock. There is some consistency there, as gold and silver bars, no matter how big they are, buy nothing at Walmart. Just like foreign account holders don't have to report precious metals in offshore safe deposit boxes, taxpayers also don't have to report Bitcoin in virtual wallets.

That was the view that IRS analyst Rod Lundquist espoused in June 2014, a date that seems like light-years ago now. Speaking at a conference at the time, Lundquist said "virtual currency is not going to be reportable on the FBAR, at least for this filing season." In legal terms, this pronouncement has exactly zero effect. But it does offer insight into the Service's attitude toward crypto-currency.

There's another caveat as well, in terms of the type of account. To return to the precious metals analogy, gold and silver exchange accounts are reportable on the FBAR, because if the taxpayer has a ready way to convert assets into income, the IRS wants a piece of the action. The same thing applies to Bitcoin exchange accounts. If the taxpayer can convert assets into income with almost literally the click of a mouse, the account is definitely reportable.

Current Thought

A lot has happened since 2014. The Cubs won the World Series, *American Idol* breathed its last breath, there was that whole election thing, and an obscure federal judge ordered a virtual currency exchange in San Francisco to hand over information to the IRS. Earlier, the IRS had served a "John Doe" subpoena on Coinbase, seeking information about people who might have violated US tax law. Why did the Service go sniffing around a Bitcoin exchange that, according to its own rules, may not have contained taxable income?

Predictably, there was a method to the madness. The explosive growth in the crypto-currency sector has created "questions about tax compliance," according to Deputy Assistant Attorney General Caroline D. Ciraolo.[3]

In the same press release, IRS Commissioner John Koskinen dropped this potential bomb: "Transactions in virtual currency are taxable just like those in any other property." Since the Commissioner did not use the i-word (income), he may have been referring to the existing rule regarding Bitcoin exchanges. Or, his pronouncement may signal a more assertive stance. The whole IRS scene is very fluid right now.

According to various reports, Commissioner Koskinen, whom some Republicans tried to impeach last year, may be on his way out. What a new Commissioner would do about the Bitcoin/FBAR rules, if anything, is a matter of reading the tea leaves, and I admittedly failed that class in law school.

With about two months to go before the FBAR filing deadline (which has been moved up from June 30th to April 15th for tax years beginning after December 31, 2015), Bitcoin is probably exempt as long as it's not in an exchange account, but stranger things have happened …

Endnotes

1 http://sblog.s3.amazonaws.com/wp-content/uploads/2014/12/CJ-2014-year-end-report-12-31-14.pdf

2 http://www.forbes.com/sites/kellyphillipserb/2014/03/25/irs-says-bitcoin-other-convertible-virtual-currency-to-be-taxed-like-stock/#3e0ba31d324b

3 https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used

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Topical News Briefing: A Pearl Fades?

by the Global Tax Weekly Editorial Team

In an era when political upsets are becoming commonplace, it's nice to know that some things at least never change. Like, for example, Hong Kong's habitual winning of the world's freest economy contest.

It seems highly anomalous that a territory that is almost a byword for *laissez faire*, hands-off governance should survive under China's communist one-party rule. However, one of the secrets of Hong Kong's enduring success is the commitment by China at the handover of sovereignty from Britain to Beijing in 1997 to allow the territory to continue to run its own affairs for at least a period of 50 years.

Hence, the policies that have underpinned the "Pearl of the Orient's" rise from a low-value manufacturing base to arguably the region's foremost business and finance hubs have remained in place. And at the heart of these is a relatively low-tax, territorial tax regime, which has attracted large multinational investors in their thousands.

Yet, perhaps for the first time in its relatively brief history as a major financial center, Hong Kong is facing challenges to its supremacy on a number of fronts.

On the tax front, it is undeniable that the competitive gap between "midshore" jurisdictions (those that have characteristics of offshore jurisdictions but aren't "tax havens" in the strictest sense of the phrase) like Hong Kong and the rest of the world is narrowing. At 16.5 percent, Hong Kong's corporate tax rate no longer seems as low as it used to be, with the global average now down to about 23 percent. Indeed, some developed countries are catching up fast, notably the United Kingdom, which will have cut corporate tax to 17 percent by 2020.

The changing global tax environment is also challenging Hong Kong in other ways. As a jurisdiction that has traditionally accorded high priority to client confidentiality, and didn't sign double tax avoidance treaties as a matter of policy, the new world of information exchange is forcing a reappraisal of, and changes to, certain tax laws.

Hong Kong has also not been excused from its responsibilities under the OECD's BEPS work. Country-by-country transfer pricing reporting requirements have been put in place, and further changes to the jurisdiction's transfer pricing rules are being considered to align them with those in place internationally. Hong Kong has also committed to the BEPS Inclusive Framework, under which it must implement certain minimum standards pertaining to four of the 15 BEPS "actions."

Additionally, Hong Kong is facing increasingly tough competition from other financial and trading centers in the Asia-Pacific region. One of them is Singapore, which routinely plays second fiddle to Hong Kong in the Heritage Foundation's Index of Economic Freedom, but tends to use each annual Budget to refine its extensive array of tax incentives and sharpen its competitive edge. Labuan in Malaysia is also fast emerging as jurisdiction of choice for many investors in Eastern Asia.

Curiously, Hong Kong is beginning to come up against a new breed of financial center in China itself, particularly Shanghai and Shenzhen, sponsored by the central government. While these pilot schemes are predominately serving as a test bed for China's economic liberalization measures and are not intended to be a direct threat to Hong Kong, the prospect that Hong Kong's role as a platform for the internationalization of the Chinese currency, the yuan, may eventually diminish as a result, cannot be avoided.

For the foreseeable future, however, Hong Kong's place at the top table of the world's financial centers looks reasonably secure. But it will not be immune to the forces of change sweeping the global tax landscape.

Recent Transfer Pricing Developments

by Duff & Phelps

In this edition: 2017 tax reform, important new requirements for Luxembourg finance company tax rulings, and ATO hubs practical compliance guide.

2017 Tax Reform – Transfer Pricing Opportunities?

Corporate tax reform sits near the top of the agenda for both the Trump administration and the Republican controlled House of Representatives. Areas where both parties agree include:

- Tax Rate Reduction;
- Repeal of Corporate AMT; and
- Tax Breaks for Repatriation of Foreign Earnings.

Border Adjustments is another area for potential reform that both Congress and the President have spoken to. Potentially a fundamental shift in the US corporate tax system, Border Adjustments would have the effect of converting the US system of taxing worldwide income to a territorial tax system. Congress has a border adjustment tax explicitly within the House Republican blueprint,[1] while President Trump has said that Border Adjustments are "still on the plate" without endorsing the form of Border Adjustment in the blueprint.

The House Republican Border Adjustments proposal would require that corporations pay a "tax" on sales less inputs (capital expenditures, wages, raw materials, *etc.*). Border Adjustments are made to exclude foreign imports from inputs (effectively taxing those inputs) from deductible costs, and to exclude foreign exports from revenue (effectively rendering those sales tax-free).

Most industry groups have already made an initial determination of winners and losers under such a system. Retailers and other net importers have voiced concerns that their effective tax rates could increase by a factor of two times or more. Net exporters, on the other hand, are projecting

significant reductions in their tax bill. Economists have responded to each side of the agreement with research showing expected movement in exchange rates mitigating both results.

Many companies are currently examining the potential impact of these proposals and assessing the viability of strategies such as repatriation of foreign cash and/or IP as well as potentially shifting other value-added activities to the US.

These US Corporate Tax Reform proposals create uncertainty, but may also create significant tax planning opportunities that will depend on the ultimate form they take. As the process evolves, Duff & Phelps will continue to provide updates.

Important New Requirements For Luxembourg Finance Company Tax Rulings

For a long time, companies have been able to obtain relatively simple tax rulings in Belgium, Luxembourg and the Netherlands that make related party finance passing through those jurisdictions very tax efficient.

Following recommendations by the OECD's Base Erosion and Profit Shifting project, such simple rulings are no longer possible in Luxembourg. Existing tax rulings cease to have effect as from January 1, 2017 for tax years starting after 2016, and new economic studies must be submitted in order to continue to benefit from such rulings.

A new article 56bis has been added to the Luxembourg budget law dated December 23, 2016, and a new Circular Letter LIR – No. 56/1 – 56bis1 has been issued explaining the amended tax treatment of indirect finance of this sort. Rather than being able to assume that the Luxembourg company has a standard amount of equity at risk, and then determining a fair reward for putting this equity at risk, an economic study will now be required to determine how much equity is actually at risk. If the functional analysis indicates that it is appropriate, a minimum after-tax return on equity at risk of 2 percent can be used for simple financing structures or 10 percent for more complex group finance companies acting more like banks (both figures subject to review as market norms change).

In order to calculate the equity at risk, it will be necessary to calculate a credit rating for the final borrower. This can then be used to estimate the likelihood of default on the loan and the associated recovery rate, and from these two inputs the expected and unexpected loss for the Luxembourg financing company can be calculated and used to derive the calculated equity at risk. Where the

functional analysis of the Luxembourg finance company indicates that it is appropriate, the standard 2 percent or 10 percent minimum required rates of return on this equity can be assumed. The expected loss and the cost of the opportunity can then be discounted back to the date of the financing, and this total payment can be annualized into an interest rate.

In addition, the Luxembourg finance company can no longer outsource the management of its risks to a third party or another group company.

It would be reasonable to expect similar changes to be made soon in Belgium and the Netherlands, and then for all three to make similar changes to their tax rulings for related party royalties that pass through those jurisdictions.

ATO Hubs Practical Compliance Guide

On January 16, 2017 the Australian Taxation Office ("ATO") released a Practical Compliance Guideline ("PCG") regarding a risk assessment approach for offshore related-party marketing hubs, with further guidance on other hub structures (*e.g.*, procurement, distribution) to be provided in due course.[2] While the principles outlined in the PCG are relevant to all types of offshore hubs and apply to both outbound and inbound goods and commodity flows, Schedule 1 of the PCG applies only to offshore marketing hubs. It is intended that over time additional schedules will be added for other types of hubs. The PCG is effective January 1, 2017, and applies to all new and existing hub arrangements.

The PCG provides taxpayers with self-assessment criteria to determine their risk category for overseas related-party hubs, as well as options available to reduce the risks of hubs. The PCG assigns hubs with one of six transfer pricing risk categories: White, Green, Blue, Yellow, Amber, or Red. Under such categorization, White and Green categories represent those hubs that have either already been reviewed and confirmed by the ATO in an advance pricing agreement, settlement, or recent court decision, as well as those self-assessed as low risk, respectively. For low risk hubs, the ATO will not generally dedicate compliance resources to test and assess the transfer pricing outcomes beyond factual confirmations. However, for hubs that falls outside the low risk zone, taxpayers can expect that the ATO will monitor, test and/or verify the transfer pricing outcomes of these hubs, where hubs with a high risk rating will be reviewed as a matter of priority.

The ATO has indicated that this guidance is a risk assessment tool, and should not be considered a replacement for the selection and application of the most appropriate transfer pricing method.

Thus, the transfer pricing methods applied in the risk framework are for risk assessment purposes only, and there is no requirement that taxpayers use these methods when pricing their hub arrangements. Further, there is recognition that, if the ATO reviews a taxpayer's hub, it will apply what it considers to be the most appropriate method and comparable benchmarking data. The ATO has clearly identified that the PCG does not constitute a safe harbor, and the information provided does not replace or affect the ATO interpretation of the relevant law.

For more information, contact Mike Heimert, Managing Director, at +1 312 697 4560, or visit us at www.duffandphelps.com

Endnotes

1 Further information on the tax reform is available at http://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-PolicyPaper.pdf

2 Further information about the PCG can be found here: https://www.ato.gov.au/law/view/document?DocID=COG/PCG20171/NAT/ATO/00001&PiT=99991231235958

What You Need To Know About India's 2017–18 Budget

by Mahesh Kumar, Partner and Leader of the India Special Interest Group, Withers

India's 2017–18 Budget is mostly populist with a big focus on infrastructure and rural development. While some proposals seek to improve ease of doing business in India, certain key areas of difficulty and uncertainty will continue to bother global investors. They will be impacted by the Budget as well as other recent developments including the amendment of India's tax treaties with Singapore, Mauritius and Cyprus, and onset of new anti-avoidance rules. The following are ten important takeaways for multinational corporations (MNCs), funds, global entrepreneurs and investors.

Towards A Digital Economy

The Budget provides further stimulus for India's shift from a cash to a digital economy. The number of India's internet users is likely to double to 600 million in 2020. More than half will be located in rural areas where over 70 percent of India's 1.2 billion population resides. Global investors are betting on a fintech boom in India.

The Government is also trying to create an environment for startups to flourish. The Budget proposes to expand some of the tax incentives provided last year including a lower corporate tax rate of 25 percent and a three-year tax holiday within a block of seven years. However, so far, many startups have faced difficulties in claiming such reliefs.

Singapore And Mauritius Treaties Amended

Singapore and Mauritius structures have contributed to almost 50 percent of India's foreign direct investment. This will be impacted by amendments to India's tax treaties with Singapore and Mauritius, which remove the capital gains tax (CGT) exemption for transfer of shares after April 1, 2017. A two-year transition period has been provided within which new investments will be subject to half the CGT upon exit.

Investments made after April 1, 2019 will be subject to full CGT. Investments made prior to April 1, 2017 will be grandfathered. Companies claiming the exemption have to fulfill various expenditure and "substance criteria." Several investors are expediting their Indian investments or considering appropriate restructuring before the April 1, 2017 deadline. Where investments in India are captive – such as outsourcing hubs or wholly owned entities – MNCs have explored limited liability partnerships (as opposed to corporate) structures since they are more tax efficient and operationally less cumbersome.

Share Conversions

The Budget has finally confirmed the tax exempt status of conversions of convertible preference shares (CCPS) into equity shares. Most private equity and venture capital (PE/VC) investors prefer to invest into CCPS issued by Indian companies. There is need for clarity on whether the tax exemption under the Singapore and Mauritius treaties covers CCPS investments prior to April 1, 2017, even if they convert into equity shares after this date.

Debt Investments And Thin Capitalization

Debt investments, both convertible and non-convertible, continue to be popular because of the tax efficiency and relative ease of repatriating capital. Regulatory constraints have also been liberalized over a period of time. The Budget has extended the lower 5 percent interest withholding tax rate to certain types of debt investments made until 2020. These bonds, which include external commercial borrowings and rupee denominated "masala bonds," are long term and subject to certain conditions including ceiling on interest payouts.

For most debt investments, the Indian withholding tax on interest can range between 20 percent and 40 percent, and investors usually claim relief under a tax treaty. Singapore is at a relative disadvantage since the treaty with India reduces the interest withholding tax rate to 10 percent as opposed to 7.5 percent which is offered in India's new treaty with Mauritius.

The Budget also introduces a thin capitalization rule that limits the ability of certain Indian companies to deduct interest payouts beyond 30 percent, with the balance deductible over a period of eight years.

Overseas Share Transfers

India's tax on overseas share transfers with underlying Indian securities poses a big challenge to M&As, group reorganizations, share redemptions and similar transactions involving overseas

companies. Some relief has been provided for certain categories of foreign portfolio investors, while PE/VC funds and other overseas entities are mostly excluded. Investors are inclined to secure appropriate treaty based relief to shield against the tax exposure on indirect share transfers.

Overseas Funds Boosted

The Budget provides further relief to certain categories of overseas funds to promote fund management out of India without incurring tax risks. However, the safe harbor is very narrow and excludes most overseas PE/VC funds which still have an incentive to beef up activities and substance in countries like Singapore, Mauritius, *etc*.

POEM Uncertainty Remains

While some guidance was recently provided in relation to residence of companies based on "place of effective management" (POEM), there is still much uncertainty. Overseas companies risk being taxed in India as residents based on POEM due to presence of directors and decision making in India. Business groups are now determined to employ key decision makers overseas so that the companies are not viewed as being controlled from India.

Singapore has emerged as a key platform for Indian companies to globalize, thanks to the ease of doing business, proximity, and ability to depute senior business leaders. This is also visible from the increasing interest of Indian entrepreneurs in setting up family offices in Singapore.

Anti-Avoidance Rules

India's new (and much feared) general anti-avoidance rules (GAAR) will be implemented from April 1, 2017. The GAAR will override India's tax treaties and could potentially disregard several conventional structures for lack of substance. Going forward, structures will have to be commercially justified, and care has to be taken at each step of implementation.

Asset Transfers

The Budget also proposes to tax transfers of assets (beyond shares) to companies, partnerships and trusts as income of the recipient, if the consideration is below fair market value. Some fear that transfer of assets into trusts – a common succession planning strategy – could now result in taxation for the trustee. There is need for clarity that such a provision covers only abusive cases and excludes legitimate transactions.

Clarification Of Treaty Terms

Indian tax authorities have been given additional powers to clarify the meaning of tax treaty terms that are undefined. There is some unease about possible misuse of such unilateral definitions to the extent they are inconsistent with the international understanding, since it can lead to a denial of treaty relief in certain cases.

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Topical News Briefing: A Patient On Life Support

by the Global Tax Weekly Editorial Team

Critics of the US Affordable Care Act (ACA) – now almost universally referred to as Obamacare – have been trying to expunge it from the books almost from the moment President Obama signed the controversial legislation back in 2010. Now with the electorate having delivered a new President and Congress that share their views, these critics might soon get their wish.

The ACA is, of course, a health care law, and is arguably President Obama's most significant domestic reform. However, it is also a tax law. So much so that the Treasury Inspector General for Tax Administration has said that Obamacare prompted the most wide-ranging changes to the US tax code in 20 years.

Obamacare legislation contains USD438bn in revenue provisions in the form of new taxes and fees, and at least 42 of these add to or amend the Internal Revenue Code – too many to list in this briefing, in fact. Some of the better known include the 3.8 percent net investment tax imposed on individuals, estates, and trusts; the 2.3 percent excise tax on medical devices; the individual mandate tax; the health insurer tax; and the reinsurance fee, often known as the "belly button tax."

Consequently, the ACA has become something of an administrative nightmare, with the IRS charged with overseeing a large portion of this hugely complex law at a time when it was already struggling to cope with its ever-expanding remit. The IRS has frequently come in for criticism from government watchdogs like TIGTA and the Government Accountability Office for numerous lapses in enforcing the law, with the latter recently finding that the health insurance marketplaces and premium tax credits set up under the ACA are still vulnerable to fraud. This was despite the agency having been the subject of several rebukes on the matter already.

One of the most unpopular aspects of the law is the individual mandate. This stipulates that those refusing to maintain "minimum essential" health insurance coverage must make "shared responsibility" payments, or tax penalties, to the IRS. Similar penalties exist for employers failing to provide a minimum level of coverage for their employees.

That the IRS has now reversed its policy of refusing to process individual income tax returns with health insurance information omitted could be viewed as a significant development. This move comes in response to another of President Trump's executive orders, and is perhaps the first step in the gradual unraveling of Obamacare, although the IRS insists that taxpayers must continue to adhere to the law while it remains in place.

Republicans are more or less united in the view that Obamacare must go, and go as quickly as possible. But this still begs the question whether all tax measures associated with the law will be reversed. Some look highly likely to be repealed, such as the individual and employer mandates, the medical device tax (which many Democrats also oppose), and the "Cadillac" tax on high-end health policies. But it's by no means certain that all 42 Obamacare measures will be repealed.

Furthermore, there is no consensus about what should come after Obamacare. From the proposals on the table, it seems that tax will still pay a large part in the provision of affordable health care in the US, through such measures as tax credits. But what's more certain is that Obamacare's days are numbered.

Hong Kong Ranked Freest Economy For 22nd Year

For the 22nd consecutive year, Hong Kong has maintained its position as the world's freest economy in the 2017 Index of Economic Freedom from the Heritage Foundation (HF).

The HF highlighted Hong Kong's high degree of economic resilience, high-quality legal framework, high degree of government transparency, regulatory efficiency, and openness to global trade and investment.

Hong Kong's "regulatory efficiency and openness to global commerce strongly support entrepreneurial activity," it said. As "one of the world's most competitive financial and business hubs, … Hong Kong is by far the most significant transit point for exports and imports to and from China."

It also pointed to Hong Kong's low, simple, and efficient tax regime. The overall tax burden equals 14.4 percent of total domestic income, and government spending has amounted to only 18.3 percent of total gross domestic product (GDP) over the past three years. Budget surpluses have averaged 2 percent, and public debt is equivalent to 0.1 percent of GDP.

Finally, the HF welcomed the importance of trade to Hong Kong's economy, with the value of exports and imports totaling 400 percent of GDP. The average applied tariff rate is zero percent.

The 2017 Index of Economic Freedom ranks the degree of economic freedom in 178 economies around the world. Twelve factors are assessed: tax burden, government spending, fiscal health, business freedom, labor freedom, monetary freedom, trade freedom, investment freedom, financial freedom, property rights, judicial effectiveness, and government integrity.

Hong Kong achieved an overall score of 89.8 (on a scale of 0 to 100), an increase of 1.2 points compared with last year. This score was significantly above the global average of 60.9. Singapore was ranked second with 88.6, followed by New Zealand (83.7), Switzerland (81.5), and Australia (81).

"Of the 180 economies whose economic freedom has been graded and ranked in the 2017 Index," the HF pointed out that "only [these] five have sustained very high freedom scores of 80 or more, putting them in the ranks of the economically 'free'."

A further 29 countries, including Chile, the United Arab Emirates, the UK, the US, and Mauritius, have been rated as "mostly free" economies with scores between 70 and 80.

The US scored 75.1 (an annual fall of 0.3), making its economy only the 17th freest in the 2015 Index, below the UK (76.4) in 12th place, and Canada (78.5) in 7th place. The HF noted that the US has "registered its lowest economic freedom score ever. … Large budget deficits and a high level of public debt, both now reflected in the Index methodology, have contributed to the continuing decline in America's economic freedom."

Tax Reform Would Improve US Competitiveness Ranking

The Tax Foundation (TF) has calculated that the current lowly position of the US in its annual ranking of OECD tax systems for competitiveness and neutrality would improve markedly if the House Republican Party's tax reform proposals were implemented.

The TF noted that a competitive tax code is one that keeps marginal tax rates low, while a neutral tax code is one that seeks to raise the most revenue with the fewest economic distortions. "Over the past few decades," it said, "marginal tax rates on corporate and individual income have declined significantly across the OECD. Now, most nations raise a significant amount of revenue from broad-based taxes such as payroll taxes and value-added taxes."

Top of the 35 countries in the International Tax Competitiveness Index is Estonia, followed by New Zealand, Latvia, and Switzerland. The UK is 16th, while France is rated bottom of the list, preceded by Italy, Portugal, and Greece.

The US comes a lowly 31st. The TF indicated that "this is not surprising given [the US] system's combination of high marginal tax rates, especially on capital income, and a rather narrow tax base."

However, the House Republican's tax reforms "would lower marginal tax rates on work, saving, and investment while broadening the tax base."

"If the United States were to enact this reform," the TF concluded, "the US's ranking would improve significantly on the Index. Our tax code would move to 3rd, just behind Estonia and New Zealand."

ECJ Publishes Apple's State Aid Appeal

Apple has claimed that the European Commission erred in its interpretation of Irish law and violated the principle of legal certainty in ordering the recovery of alleged illegal state aid granted to Apple.

Apple's 14-point appeal against the Commission, submitted in December 2016, has now been published on the European Court of Justice's (ECJ's) website. Apple asked that the ECJ annul the Commission's August 2016 decision either in full or in part, and order the Commission to pay the company's legal costs.

The decision concerns two Opinions issued by the Irish Revenue on January 29, 1991 and May 23, 2007, to Apple Sales International (ASI) and Apple Operations Europe (AOE). The Opinions related to the method by which ASI and AOE allocate profit to their respective branches.

After a two-year state aid investigation, the Commission concluded that the rulings had "substantially and artificially lowered the tax paid by Apple in Ireland since 1991." It ordered Ireland to recover "unpaid taxes" from Apple for the years 2003–2013 of up to EUR13bn (USD13.7bn), plus interest.

The appeal stated that, as non-resident Irish companies, ASI and AOE were liable to pay Irish corporation tax under Section 25 of the Taxes Consolidation Act 1997 only on "chargeable profits" attributable to activities performed by their Irish branches. It said that the two Opinions provided by the Irish Revenue reflected the branches' chargeable profits and that the Commission was also incorrect in finding that profit allocation under Section 25 must be under the arm's length principle.

Under Section 25, "A company not resident in the State shall not be within the charge to corporation tax unless it carries on a trade in the State through a branch or agency, but if it does so it shall, subject to any exceptions provided for by the Corporation Tax Acts, be chargeable to corporation tax on all its chargeable profits wherever arising."

Apple further argued that the Commission failed to recognize that the companies' "profit-driving activities, in particular the development and commercialization of intellectual property, were controlled and managed in the United States." It said the profits from those activities were attributable to the US and not to Ireland, and that the Commission had not recognized that the Irish branches "carried out only routine functions and were not involved

in the development and commercialization of Apple IP which drove profits."

According to Apple, by ordering the recovery of the alleged aid under "an unforeseeable interpretation of state aid law," the Commission violated the principle of legal certainty. It also contended that the Commission had exceeded its competence under the state aid provisions of the Treaty on the Functioning of the EU, "by attempting to redesign Ireland's corporate tax system."

Singapore's 2017 Budget Includes International Tax Changes

Singapore's Finance Minister, Heng Swee Keat, has presented the country's latest budget, which includes proposals for a preferential intellectual property (IP) tax regime, and a new safe harbor rule for cost-sharing agreements (CSAs) for research and development (R&D) projects.

The Budget, delivered on February 20, 2017, includes a proposal for a patent box regime that is said to conform with the "modified nexus approach" put forward by the OECD under Action 5 of the base erosion and profit shifting project. BEPS Action 5 proposed that a taxpayer be allowed to benefit from an IP regime only to the extent that it can show it incurred the expenditure, such as on R&D, that gave rise to IP income in that territory. Existing arrangements will remain for companies until June 30, 2021, and will be closed to new entrants from July 1, 2017.

The proposed safe harbor rule would be for payments made under CSAs for R&D projects.

Presently taxpayers claiming tax deduction for R&D expenditure under Section 14D of the Income Tax Act (ITA) for payments made under a CSA ("CSA payments") are subject to specific restriction rules for certain categories of expenditure disallowed under Section 15 of the ITA. As such, the breakdown of the expenditure covered by the CSA payments is examined so as to exclude the disallowed expenditure.

It is proposed that, to ease compliance, taxpayers may opt to claim tax deduction under Section 14D for 75 percent of the payments made under a CSA incurred for qualifying R&D projects instead of providing the breakdown of the expenditure covered by the CSA payments. The change will apply to CSA payments made on or after February 21, 2017.

Finally, the Budget enhances and extends the corporate income tax rebate. The CIT rebate cap is proposed to be raised from SGD20,000 (USD14,064) to SGD25,000 for the 2017 assessment year (with the rebate rate unchanged at 50 percent of corporate tax payable); and

the CIT rebate will be extended for another year to the 2018 assessment year, at a reduced rate of 20 percent of tax payable and capped at SGD10,000.

Irish FM Criticizes EU's BEPS Response

Irish Finance Minister Michael Noonan has criticized the EU's proposals for a common consolidated corporate tax base (CCCTB) and public country-by-country (CbC) reporting as "against the BEPS consensus."

In a speech to an event on corporation tax, Noonan said the consensus over the OECD's BEPS proposals must hold and that the EU should continue to focus on implementing the OECD's recommendations. He welcomed the European Commission's plans for improving dispute resolution and requiring the mandatory disclosure of aggressive tax schemes.

However, he also urged that "where EU action moves away from the BEPS consensus, caution is needed."

In particular, he warned that "no country can implement two competing philosophies on how companies should be taxed." He argued that the Commission's proposal for a CCCTB "would see a move away from the arm's length principle towards allocating profits by formula," and noted that "this idea was rejected by the BEPS process in favor of stronger, more modern transfer pricing rules."

Noonan also suggested that the Commission's proposal for public CbC reporting "goes against the BEPS consensus that the value of these reports is in enabling tax authorities to see what is really happening and carry out more informed audits and assessments." He said that other, non-EU countries have indicated that "any public reporting requirement could result in them no longer sharing the [CbC] reports filed with their tax authorities."

According to Noonan, a consistent global approach must be taken on this and other issues.

"There is a danger that proposals for any reforms that are inconsistent with the BEPS recommendations could create a backwards momentum – countries may not take the vitally important step of implementing what has already been agreed and which they had committed to implementing. In the worst cases we could even see countries abandoning positive processes they had only recently begun implementing," he said.

Brady Confirms Work On Obamacare Replacement

US House of Representatives Ways and Means Committee Chairman Kevin Brady (R – Texas) has confirmed that House Republicans are continuing to work on legislation that will repeal the taxes in the Affordable Care Act (ACA).

On February 16, Brady said House Republicans are beginning to formulate their plans to abolish Obamacare, and "as we come back in the weeks ahead we're going to be moving forward with legislation."

A major part of their plans, he confirmed, will be "to provide relief from the taxes and the mandates of the ACA, really important to families and our local businesses. … In the Ways and Means jurisdiction, we focus on repealing the taxes, the penalties for the mandates, and the subsidies."

Under Obamacare, those individuals and employers who do not comply with its mandates – the "employee mandate" and "employer mandate" – to maintain "minimum essential" health insurance coverage have to make "shared responsibility" payments, or tax penalties, to the Internal Revenue Service.

Brady noted that the Ways and Means plan would eliminate the mandate penalties, "which forced millions of workers, families, and job creators into expensive, inadequate Obamacare plans that they don't want and cannot afford."

The plan would also eliminate the 2.3 percent medical device tax – imposed on manufacturers and importers of devices such as artificial hips, MRI scanners, and cardiac defibrillators; and the 40 percent "Cadillac" tax – a tax on the "excess benefit" of high-cost health insurance plans paid for by employers.

The Republicans would maintain a tax break for employer-sponsored insurance, but it would be capped to "help keep premiums low, and is a far cry from Obamacare's controversial Cadillac tax that the law's architects admit is a tax on workers."

Obamacare presently includes the premium tax credit to assist eligible taxpayers with paying their health insurance premiums. While the plan has also retained a refundable tax credit to help buy health insurance in the individual market, it would not be tied to premiums. "All Americans," Brady added, would have "access to portable, monthly tax credits that they can use to buy a health insurance plan that's right for them, not one tied to a job or a government-mandated program."

The flexibility of tax-advantaged health savings accounts (HSAs), which are generally used

to pay for out-of-pocket medical expenses, would also be improved. "Critical to restoring the free market in insurance is to make sure that Americans have greater control of their HSAs," Brady continued. "That they're bigger and more flexible."

"For example, our proposal increases the amount of money an individual or family can put into their HSAs, and allows individuals and families to spend money from their HSAs on 'over-the-counter' health care items," he said.

IRS Stops Affordable Care Act Individual Mandate Enforcement

The US Internal Revenue Service (IRS) has decided to continue to allow individual tax returns in the current filing season even if the taxpayer has not indicated their health insurance coverage status.

Within the Affordable Care Act's (ACA's) provisions, most Americans are required to maintain "minimum essential" health insurance coverage. Those individuals who do not comply with the mandate – the individual "employee mandate" – are to make "shared responsibility" payments, or tax penalties, to the IRS.

The instruction for individual taxpayers involving the ACA has been to indicate on their tax return whether they had health insurance, an exemption from coverage, or made a shared responsibility payment. In recent years, tax returns silent in that regard were still processed, but, this year, the IRS had put in place system changes that would reject tax returns during processing in instances where the taxpayer did not provide that information.

While the IRS has decided to make changes that would continue to allow returns to be accepted for processing where health coverage status is not indicated, it has been stressed that the legislative provisions of the ACA are still in force until changed by the US Congress, and taxpayers remain required to follow the law and pay what they may owe.

When the IRS has questions about a tax return, taxpayers may receive follow-up questions and correspondence at a future date, after the filing process is completed.

EU: Canadian Free Trade Agreement Could Apply From April

Members of the European Parliament (MEPs) have approved the Comprehensive Economic and Trade Agreement (CETA) with Canada, in a decision that could allow the deal to be applied provisionally from April.

CETA was approved on February 15 by 408 votes to 254, with 33 abstentions.

The free trade deal could be applied provisionally from the first day of the second month following the date both sides have notified each other that they have completed all necessary ratification procedures. MEPs expect this to be the case on April 1, 2017, at the earliest. However, as CETA is classed as a "mixed agreement," it will also need to be ratified by national and regional parliaments.

Upon CETA's entry into force, Canada will eliminate duties worth EUR400m (USD425.5m) each year for goods originating from the EU. Once the agreement is fully implemented, that figure will rise to more than EUR500m a year.

According to the European Parliament's website, "CETA will not remove tariff barriers in the fields of public services, audio-visual and transport services, or from certain agricultural products such as dairy, poultry, and eggs. Imports from Canada will have to satisfy all EU product rules and regulations."

CETA also contains a new mechanism for the resolution of investor-state disputes: a public Investment Court System.

Artis Pabriks, Parliament's rapporteur for CETA, said: "By adopting CETA, we chose openness and growth and high standards over protectionism and stagnation. Canada is a country with whom we share common values and an ally we can rely on. Together we can build bridges, instead of a wall, for the prosperity of our citizens. CETA will be a lighthouse for future trade deals all over the world."

Trade Commissioner Cecilia Malmström welcomed the vote. She commented: "Canada is an important economic partner, with yearly trade between us worth nearly EUR1 trillion. Once the Canadian Parliament has ratified this agreement, the next step is to put it provisionally in place, which I hope can be done swiftly and effectively. Citizens and companies on both sides of the Atlantic should start reaping these benefits very soon."

Commission President Jean-Claude Juncker called on EU member states to "conduct an inclusive and thorough discussion at national

level with the relevant stakeholders in the context of the national ratification process of the agreement."

US Retailers Talk Tax Reform With Trump

The Retail Industry Leaders Association (RILA) and CEOs of several large US retail companies met US President Donald Trump on February 15 to discuss US tax reform, and to express their opposition to the proposal for border tax adjustability.

In his opening remarks at the "Listening Session" in the White House, the Trump reiterated that his Administration is "going to lower [tax] rates very, very substantially for virtually everybody in every category, including personal and business."

The US tax code, he said, is to be reformed "to help middle-income families and American businesses grow and thrive. Tax reform is one of the best opportunities to really impact our economy. So we're doing a massive tax plan."

"It's coming along really well," he added. "It will be submitted in the not-too-distant future, and it will be not only good and simpler – it will be … big numbers of savings."

He made no mention of the House Republican Party's controversial provision for a border adjustment tax (BAT). That proposal, which would impose a tax on imports and provide tax rebates on exported goods, has been attacked by its opponents as having the potential to increase the cost of everyday imported consumption items, including food, gas, and clothing.

US companies that rely heavily on imports, such as retailers, are therefore pointing out strongly that the introduction of the BAT could outweigh the benefit of a lower headline corporate tax in a future US tax reform framework.

However, the RILA statement issued following the Trump meeting also did not mention the BAT. RILA Chairman Bill Rhodes merely commented that "we stressed the importance of taking a thoughtful approach to tax reform for both individuals and corporations. The retail industry is the nation's largest private sector employer providing and supporting more than 42m American jobs. The President understands we support pro-growth policies that we believe will lead to greater domestic investment."

Dutch Parties Likely To Increase Company Tax Burden

While most of the political parties expected to form the next governing coalition in the Netherlands have pledged to reduce the overall tax burden by 2021, the tax burden on companies will rise under most parties' plans, according to the Netherlands Bureau for Policy Analysis (CPB).

Only two of the numerous parties likely to be involved in forming a government following next month's parliamentary elections say they will ease the company tax burden, the CPB has concluded in an analysis of the parties' manifesto proposals. These include the conservative VNL group, which would ease company taxation by EUR3bn (USD3.2bn) by 2021, and the centrist Christian Democrats (CDA), which would cut company taxation by about EUR800m.

While many parties have proposed to cut the rate of corporate tax, most more than offset the reduction with anti-avoidance and other measures. The largest increases in taxation would come under the plans of the Socialist Party (SP) and the center-left Labor Party (PvdA), by EUR12.6bn and EUR17.4bn, respectively.

Five parties, including the VVD (the center-right People's Party), the CDA, the centrist Christian Union, the right wing SGP, and the VNL have proposed cutting rates of corporate tax. Meanwhile, five others have proposed an increase, namely the PvdA, the SP, the environmentalist GroenLinks, the left-wing DENK, and the centrist Vrijzinnige Partij.

All parties, with the exception of the VVD and the CDA, have proposed restricting the deductibility of interest payments in an attempt to reduce levels of tax avoidance. Most parties would limit interest deductions to 30 percent of earnings, with the SP proposing a maximum deduction of 20 percent of earnings.

The PvdA, the centrist D66, ChristenUnie, GroenLinks, the VNL, and the Vrijzinnige Partij would also implement a "destination-based tax" on interest payments and royalties to countries with a company tax rate of less than 10 percent.

Eleven parties are currently represented in both houses of the Dutch parliament, with a further nine expected to run in the elections, which are due to be held on March 15, 2017.

The next coalition is expected to be formed of the six most popular parties, which according to recent polling would include D66, the CDA, GroenLinks, the SP, the PvdA, and the VVD.

Hearing Studies US Tax Code's Drag On Business Creation

On February 15, the House of Representatives Small Business Committee met for a hearing to examine the extent to which the US tax code operates as a barrier to entrepreneurship and, in particular, new startup businesses.

When calling the hearing, the Committee's Chairman, Steve Chabot (R – Ohio) noted that, while "on many fronts the American economy is recovering, … new business creation is still in long-term decline when compared to levels from the 1980s, 1990s, and early 2000s. While there are likely a number of underlying causes, the current tax code doesn't make entrepreneurship any easier."

In his testimony to the hearing, Troy Lewis from the American Institute of Certified Public Accountants (AICPA) focused on several tax issues that directly impact small businesses and their owners, and that are being considered as part of the current US tax reform debate.

He said that "it is important to recognize that tax relief should not mean a rate reduction for C corporations only. Congress should continue to encourage, or at least not discourage, the formation of sole proprietorships and pass-through entities. If Congress decides to lower corporate income tax rates, small businesses should receive a lower tax rate as well."

Lewis added that providing a reduced rate for income of small businesses will place additional pressure on the need to distinguish between profits of the business and compensation of the owner-operators. Partnerships and sole proprietorships should therefore be required to charge reasonable compensation.

In addition, he testified that the ability to deduct interest expense is an important benefit for small businesses. "We should not take away or limit this critical deduction for many small businesses who, with little or no access to equity capital, are forced to rely on debt financing," he stated.

Finally, Lewis urged the Committee to oppose any new limitations on the use of the cash method of accounting. "The cash method is simpler in application, has fewer compliance costs, and does not require taxpayers to pay tax before receiving the income. … Forcing them to switch to the accrual method, upon reaching a gross receipts threshold, would impose financial hardship on cash-strapped businesses."

Kyle Pomerleau from the Tax Foundation suggested that improvements to the current tax system could also involve a permanent allowance for annual capital expenses of up to US-D1m to be deducted when incurred. "Expensing," he noted, "would simplify small firms' tax returns, reduce compliance costs, reduce small firms' cost of capital, and aid cash flow."

Further, he recommended that the top long-term capital gains tax rate should not exceed 20 percent (including the Affordable Care Act's investment income tax); cash method accounting should be allowed for firms with up to USD10m in gross receipts; and S corporations should be permitted to have more than one class of stock and non-resident alien shareholders (subject to 30 percent withholding on dividends).

Finally, Tim Reynolds, on behalf of the National Small Business Association (NSBA), testified that "the compliance burden on taxpayers, because of the complexity of our [tax] code, is truly staggering. While the actual tax liabilities for small firms is a huge issue, the sheer complexity of the tax code, along with the mountains of paperwork it necessitates, is actually a more significant problem for America's small businesses."

"Nearly half of small businesses spend more than 40 hours per year to comply with federal taxes, and nearly one in three spend[s] more than 80 hours," he continued. "The majority of small businesses, 68 percent, spend more than USD1,000 per year on the administration alone of federal taxes."

He also pointed out that, "according to the NSBA 2015 Small Business Taxation Survey, only 15 percent of small-business owners handle their taxes internally, meaning 85 percent are forced to pay an external accountant or practitioner. … The NSBA membership is almost universally agreed that current compliance costs are too high and that the tax system needs to be simplified."

Microsoft's Bill Gates Pushes For 'Robot Taxes'

Microsoft founder Bill Gates has thrown weight behind a proposal for a tax on companies that automate the jobs of employees who are subsequently laid off.

In an interview with *Quartz*, Gates said: "Right now, the human worker who does, say, USD50,000 worth of work in a factory, that income is taxed and you get income tax, social security tax, all those things. If a robot comes in to do the same thing, you'd think that we'd tax the robot at a similar level."

He proposed a "robot tax could finance jobs taking care of elderly people or working with kids in schools." He added: "Some of [the revenue] can come on the profits that are generated by the labor-saving efficiency there. Some of it can come directly in some type of robot tax. I don't think the robot companies are going to be outraged that there might be a tax."

Gates went further, suggesting that governments could, through tax, deter companies from making rapid advances towards automation to cushion communities.

Seychelles Again Delays Individual Income Tax Changes

In his State of the Nation Address on February 14, Seychelles' President Danny Faure announced that the implementation of a progressive personal income tax regime will be delayed to January 1, 2018.

Under the new regime, a SCR8,555.50 (USD630) tax-exempt threshold will be introduced, but will not be available to expatriates. Income tax above that threshold will be subject to progressive rates of either 15 percent, 20 percent, or 30 percent.

Its introduction had already been delayed to July 1, 2017, rather than January 1, 2017, in the 2017 Budget announced last December. The further six-month delay, according to the President, is down to "more preparation" being necessary.

He also disclosed that, within its continuing policy to reduce the costs of living in Seychelles, the Government will revise the list of goods which will not be subject to value-added tax. The revised list, which will include new products, will be published as from March 1 this year.

Greece Should Broaden Income Tax Base And Tackle Evasion: IMF

Greece needs to overhaul its tax system as part of the solution to the country's economic woes, the International Monetary Fund (IMF) said in its annual Article IV report for the country.

In a report that echoed previous years' recommendations, the IMF said that Greece must broaden its income tax base, tackle evasion, improve its tax administration, and chase tax debtors.

It said Greece's fiscal system is inefficient and unfair in providing an inadequately low tax burden for middle-income earners and levying significant tax on lower-paid taxpayers.

The report said Greece's inefficient tax system has resulted in tax revenue collections that, compared with the size of the economy, are among the lowest in Europe, while tax rates are high.

It added that the country's tax reform policies, which focus on successive tax hikes, are "not growth-friendly" and could be "difficult to sustain."

The IMF instead recommended a cut in tax rates along with a 1 percent increase in the headline rate of VAT.

Australia Legislates For Low-Value Import GST Reforms

The Australian Government has introduced legislation to extend the goods and services tax (GST) to low-value imports from July 1, 2017.

The legislation, introduced on February 16, requires overseas vendors, electronic distribution platforms, and goods forwarders with an Australian turnover of AUD75,000 (USD57,528) or more to register for, collect, and remit GST for low-value goods supplied to consumers in Australia.

Currently, low-value goods – *i.e.*, goods with a customs value of AUD1,000 or less – are generally not subject to GST when imported directly into Australia by the recipient.

Small Business Minister Michal McCormack said: "The Government understands Australians are increasingly shopping online from overseas vendors who are able to offer items without tax. This means goods they provide can be cheaper than those offered by Australian businesses giving an unfair advantage to foreign businesses. For many Australian small businesses, this has an impact on competitiveness as consumers flock to purchase cheaper imports."

Argentina To Waive VAT On Hotel Stays For Tourists

Argentina is to reimburse value-added tax paid on hotel stays for foreign visitors in a move aimed at boosting its tourism industry.

The measure is expected to cost Argentina more than GBP30m (USD37.4m) in foregone taxes but is expected to attract almost 100,000 more visitors.

The change will apply to accommodation providers that also provide breakfast, with the 21 percent tax rate waived for those demonstrating that they are a foreign national with an address other than in Argentina.

UK VAT Flat Rate Scheme Changes Too Far-reaching, Warn Tax Experts

HM Revenue & Customs' (HMRC's) new measure to crack down on abuse of a VAT simplification scheme for small businesses may be ineffective and have unwelcome consequences for tax-compliant businesses, the Chartered Institute of Taxation (CIOT) has said.

The change concerns the VAT Flat Rate Scheme (FRS), a simplification measure for small businesses, which enables them to pay to HMRC a

fixed rate of VAT determined by their type of business, rather than keep detailed records of input and output VAT. It removes the ability of firms to deduct input tax.

At the Autumn Statement, the Chancellor announced changes to the FRS which mean that a business that falls into a new definition of a "limited cost trader" during an accounting period will pay a higher 16.5 percent rate. HMRC's stated intention is to tackle "widespread abuse" of the scheme by some employment agencies and similar businesses.

The CIOT said that while the Government must tackle abuse of the scheme, changes to the proposed measure are needed to avoid excessive collateral damage to compliant small traders.

Peter Dylewski, Chairman of the CIOT's Indirect Taxes Sub-committee, said: "Targeted action against abuse of the FRS, which is masterminded by a relatively small number of businesses, is preferable to such wholesale changes. We are concerned that HMRC has significantly underestimated the collateral impact of these changes, both in terms of the number of businesses affected, and the financial impact."

The CIOT said it believes that far more than the 4,000 businesses estimated by HMRC will move back into standard VAT accounting, so as not to be affected by the new 16.5 percent rate, and that the costs for businesses of doing this could be significantly higher than the GBP180 per year suggested by HMRC. The proposed changes are also complicated, and could negate the simplification aims of the FRS, it said.

"HMRC will face difficulties building in effective anti-tax avoidance measures, to prevent traders side-stepping the new measure, for instance by buying and selling small amounts of goods to take them over the limited cost trader thresholds. We strongly suspect gaps will remain in the legislation and will be exploited, and we are also concerned that some users might simply ignore the changes, and just liquidate any businesses subsequently assessed by HMRC," Dylewski said.

He added: "The proposed changes add a significant level of complexity on small business owners who will need considerable guidance from HMRC. Many will have to pay for additional accounting advice. One of the main challenges will be for businesses to understand whether they have acquired goods or services, which is often unclear for expenses such as computer software, electricity and gas and professional subscriptions."

Italy Should Pursue Anti-Tax Evasion Measures: OECD

The OECD has said Italy should limit its fiscal plans to those measures that would not inhibit improved economic growth.

In its 2017 Economic Survey for the country, the OECD said that Italy should look to measures to enhance tax compliance and introduce real estate taxes.

The OECD noted that the Government "is committed to fiscal sustainability and continues to reduce the [fiscal] deficit gradually," but that its "mildly expansionary fiscal policy" remains appropriate as economic growth still needs to be supported.

The OECD recommended that Italian tax revenues could be best increased by enhancing tax compliance. It pointed out that, although the Government has had some success in gleaning additional tax receipts from its actions against tax evasion, Italian tax administration "has ample scope to improve human resources management and use more extensively information and technology (IT) tools. IT is crucial to extend the use of e-invoicing and improve value-added tax compliance."

"Moreover, in Italy non-cash means of payments are used little compared to other OECD countries, facilitating tax evasion," it added. "Lowering the threshold on cash payments from EUR3,000 (USD3,200) back to EUR1,000 (the same level as in France) would help lowering tax evasion." The maximum limit for cash payments was increased to EUR3,000 only last year.

The OECD proposed that enhancing tax compliance could "generate large additional revenues to allow for a permanent reduction in social security contributions in a revenue-neutral way. … Permanently lowering social security contributions would raise growth and employment [and future taxes] over the medium and long term, thus accelerating the reduction in the debt ratio."

In that respect, it also pointed out that "recurrent taxes on residential property are another growth-friendly tax. … Such taxes are underused in Italy and in this regard, the recent abolition of the property tax on first residences was a step backward."

It recommended that "the Government should update the taxable value of properties on a regular basis, to ensure that relative property price changes do not induce inequities. The property tax on primary residences should be re-introduced so as to generate the fiscal space to reduce taxes on productive activity."

Think Tank: British Columbia Carbon Tax Not Revenue Neutral

British Columbia's carbon tax is no longer revenue neutral and could result in almost CAD900m (USD687.7m) in higher taxes over the six-year period to 2018/19, according to a new study by think tank the Fraser Institute.

The carbon tax was introduced in 2008 at CAD10 per tonne of CO2 equivalent. To offset the revenue raised, the Government reduced personal and business tax rates and introduced a new tax credit for low-income earners.

The carbon tax was gradually increased to CAD30 per tonne in 2012. Last year the Government said that the carbon tax will only rise if it remains revenue-neutral and every dollar is returned to residents in the form of tax relief.

According to the Fraser Institute, the province's carbon tax ceased to be revenue neutral in 2013/14 "because the Government no longer provided new tax cuts to sufficiently offset the additional carbon tax revenue."

It said: "Beginning in 2013/14, the Government started counting as offsets a number of existing tax credits that pre-dated the introduction of the carbon tax. Indeed, some of the tax credits date back to the 1990s." It calculated that, once the pre-existing tax reductions are excluded, British Columbia taxpayers "paid CAD226m in increased taxes in 2013/14 and CAD151m in increased taxes in 2014/15."

The Institute added that the Government had in fact estimated that the carbon tax will result in a cumulative CAD865m tax increase between 2013/14 and 2018/19.

Germany To Update Energy Tax Laws

The German Government has approved draft legislation updating and clarifying the Energy Tax Act and the Electricity Tax Act.

The main aim of the proposals, approved by the Cabinet on February 15, is to adapt Germany's energy tax incentives with EU legislation, namely the 2014 revision to the EU Energy Tax Directive.

The Directive harmonizes to a certain extent the taxation of energy across the EU. It sets out common rules on what should be taxed, when, and what exemptions are allowed. It also stipulates minimum rates of tax. The Directive was revised to remove distortions to the Internal Market, encourage greater use of clean fuels, and make the legislation more compatible with the EU Emissions Trading Scheme.

The proposed amendments also aim to clarify Germany's energy and electricity tax legislation, and take into account new developments in hybrid and electric vehicle technology.

The draft law also provides for an extension of the tax breaks for natural and liquid gas used as transport fuel from the end of 2018 to the end of 2026.

AZERBAIJAN - DENMARK

Signature

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

FINLAND - TURKMENISTAN

Into Force

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

HONG KONG - AUSTRALIA

Negotiations

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

HONG KONG - KOREA, SOUTH

Signature

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

HONG KONG - PAKISTAN

Signature

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

INDIA - AUSTRIA

Signature

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

INDIA - UNITED ARAB EMIRATES

Negotiations

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

ITALY - MONACO

Into Force

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

JAPAN - AUSTRIA

Signature

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

LUXEMBOURG - BRUNEI

Into Force

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

LUXEMBOURG - HUNGARY

Into Force

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

PORTUGAL - SAINT KITTS AND NEVIS

Ratified

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

SOUTH AFRICA - SAINT KITTS AND NEVIS

Into Force

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

UNITED ARAB EMIRATES - BURUNDI

Signature

The United Arab Emirates and Burundi signed a DTA on February 16, 2017.

UNITED KINGDOM - URUGUAY

Effective

The UK Government on January 12, 2017 confirmed that the new DTA with Uruguay had become effective from that date.

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

THE AMERICAS

The 6th Offshore Investment Conference Panama

3/8/2017 - 3/9/2017

Offshore Investment

Venue: Hilton Panama, Esquina de Avenida Balboa y Aquilino de la Guardia, Av Balboa, Panama

Key speakers: TBC

http://www.offshoreinvestment.com/pages/index.asp?title=The_6th_Offshore_Investment_Conference_Panama_2017&catID=14286

Hot Issues in International Taxation

3/29/2017 - 3/30/2017

Bloomberg BNA

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

Key Speakers: TBC

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

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

5/4/2017 - 5/5/2017

STEP

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

Key speakers: TBC

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

Transcontinental Trusts: International Forum 2017

5/4/2017 - 5/5/2017

Informa

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

Key speakers: TBC

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

STEP Miami 8th Annual Summit

5/19/2017 - 5/19/2017

STEP

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

Key Speakers: TBC

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

The 8th Annual Private Investment Funds Tax Master Class

5/23/2017 - 5/24/2017

Financial Research Associates

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

Key speakers: TBC

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

16th Annual International Mergers & Acquisitions Conference

6/6/2017 - 6/7/2017

International Bar Association

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

Key Speakers: TBC

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

Global Transfer Pricing Conference: DC

6/7/2017 - 6/8/2017

Bloomberg BNA

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

Key Speakers:TBC

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

10th Annual US–Latin America Tax Planning Strategies

6/14/2017 - 6/16/2017

American Bar Association

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

Key speakers: TBC

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

Basics of International Taxation 2017

7/18/2017 - 7/19/2017

Practising Law Institute

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

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

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

71st Congress of the International Fiscal Association

8/27/2017 - 9/1/2017

IFA

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

Key speakers: TBC

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

ASIA PACIFIC

International Taxation of Expatriates

4/3/2017 - 4/5/2017

IBFD

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

Key Speakers: TBC

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

MIDDLE EAST AND AFRICA

3rd IBFD Africa Tax Symposium

5/10/2017 - 5/12/2017

IBFD

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

Key speakers: TBC

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

WESTERN EUROPE

Principles of International Taxation

2/27/2017 - 3/3/2017

IBFD

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

Key speakers: TBC

http://www.ibfd.org/Training/Principles-International-Taxation

Landed Estates 2017

2/28/2017 - 2/28/2017

Informa

Venue: TBC, London, UK

Chair: Rhoddy Voremberg (Farrer & Co)

https://finance.knect365.com/landed-estates/

The 15th Annual Definitive Permanent Establishment & BEPS Mastercourse

3/1/2017 - 3/1/2017

Informa

Venue: TBC, London, TBC

Chair: Jonathan Schwarz (Temple Tax Chambers)

https://finance.knect365.com/permanent-establishment-beps-masterclass/

BEPs Action 15 – Multilateral Convention

3/2/2017 - 3/2/2017

Informa

Venue: TBC, London, UK

Chair: Jonathan Schwarz (Temple Tax Chambers)

https://finance.knect365.com/multilateral-convention-beps-action-15/

22nd Annual International Wealth Transfer Practices Conference

3/6/2017 - 3/7/2017

International Bar Association

Venue: Claridge's, Brook Street, London, W1K 4HR, UK

Key speakers: TBC

http://www.ibanet.org/Conferences/conf771.aspx

TP Minds International

3/6/2017 - 3/9/2017

Informa

Venue: Hilton London Bankside, 2-8 Great Suffolk St, London, SE1 0UG, UK

Chair: Ruth Steedman (FTI Consulting)

https://finance.knect365.com/tp-minds-international-conference/agenda/1

2nd International Conference on Taxpayer Rights

3/13/2017 - 3/14/2017

The Institute for Austrian and International Tax Law

Venue: TBC, Vienna, Austria

Key Speakers: TBC

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

International Trust & Private Client Guernsey

3/21/2017 - 3/21/2017

Informa

Venue: TBC, Guernsey

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

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

International Trust & Private Client Jersey

3/23/2017 - 3/23/2017

Informa

Venue: TBC, Jersey

Chair: Julian Washington (RBC Wealth Management)

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

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

3/28/2017 - 3/28/2017

Infoline

Venue: TBC, London, UK

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

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

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

3/29/2017 - 3/31/2017

IBFD

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

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

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

International Tax Aspects of Permanent Establishments

4/4/2017 - 4/7/2017

IBFD

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

Key Speakers: TBC

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

UK Tax, Trusts & Estates Conference 2017 – Exeter

4/20/2017 - 4/20/2017

STEP

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

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

http://www.step.org/tte2017

The 21st Annual VAT & Financial Services

4/26/2017 - 4/26/2017

Informa

Venue: TBC, London, UK

Chair: Peter Mason (Cuckmere Chambers)

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

The 21st Annual VAT & Property

4/27/2017 - 4/27/2017

Informa

Venue: TBC, London, UK

Chair: Paddy Behan (Simmons Gainsford)

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

UK Tax, Trusts & Estates Conference 2017 – Leeds

5/4/2017 - 5/4/2017

STEP

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

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

http://www.step.org/tte2017

Global Tax Treaty Commentaries Conference

5/5/2017 - 5/5/2017

IBFD

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

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

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

UK Tax, Trusts & Estates Conference 2017 – London

5/12/2017 - 5/12/2017

STEP

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

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

http://www.step.org/tte2017

UK Tax, Trusts & Estates Conference 2017 – Birmingham

5/18/2017 - 5/18/2017

STEP

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

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

http://www.step.org/tte2017

WESTERN EUROPE

Finland

A listing of recent key international tax cases.

The Finnish tax administration on January 26, 2017, issued guidance on how it will apply a Supreme Administrative Court (SAC) ruling on the taxes withheld in Finland on dividends paid to a foreign life insurance company.

In May 2016, the SAC ruled on a case involving a life insurance company in Luxembourg that, among other things, deals in investment-linked insurance products. The company had received Finnish dividends, which were subject to tax at source.

According to the Finnish tax authority, the SAC ruled there should have been no withholding of tax at source for 2014 when the life insurance company received dividends for its holdings of shares and these dividends were added to the company's technical provisions.

The SAC said that because the expenses collected from insurance clients must not be added to the technical provisions, their amount must be accounted for and deducted accordingly. It ruled that the company must give a report on the effects of the received dividends on its technical provisions.

The SAC noted that when dividends are paid on Finnish shares (that are part of the "investment" linked to the insurance), a deduction is permitted from the 2015 taxes at source, in reference to Section 8, subsection 1.10, Business Tax Act, corresponding to the share of dividends received from Finland of the insurance company's turnover. Because the management fees collected from insurance clients cause the value of the insurance policy to diminish, and they also decrease the technical provisions, the amount of such expenses must be deducted, the SAC said.

In its response to the judgment, released on January 26, 2017, the tax agency said the SAC's ruling only applies to the taxes at source paid by life insurance companies with receipts of dividends on the shares they own due to investment-linked insurance.

Companies seeking a refund as a result of the ruling have been advised to look at the agency's guidance on the treatment of foreign pension institutions. The agency said: "The Tax Administration requires the insurance companies that submit a refund application to present, as appropriate, the same facts and information that pension institutions would normally present when submitting a similar request. In addition, the insurance company must enclose an account explaining how much is deducted from its receipts of dividends, and what the reasons for these deductions are. The form to complete is the 'Application for refund of Finnish withholding tax'. The applicants must prepare a calculation of the amount to be deducted and give reasons for the deductions."

https://www.vero.fi/en-US/Tax_Administration/News/Ruling_of_the_Supreme_Administrative_Cou(42250)

Finnish Supreme Administrative Court: *LuxCo (SAC:2016:77)*

Greece

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

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

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

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

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

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

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

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

Spain

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

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

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

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

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

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

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

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

This opinion was released on February 16, 2017.

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

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

United Kingdom

The UK Supreme Court on January 24, 2017, ruled that Parliament must approve the Government's plan to trigger Article 50 to exit the EU.

It stated that Theresa May cannot use her executive powers as Prime Minister to automatically trigger Article 50 and launch the two-year separation process, upon which in-depth negotiations with the EU will begin.

The Supreme Court did not, however, require that lawmakers in Scotland, Northern Ireland, and Wales must also pass the necessary legislation, in a blow to those hoping that a Brexit could be avoided *via* that path.

The announcement could delay May's aim to trigger Article 50 by March, however. Opposition lawmakers may now seek to dictate to some extent the path the UK will take in the future, with May saying recently the UK would divorce itself from the Single Market, which is likely to have far-reaching consequences in a number of areas.

https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf

UK Supreme Court: *Miller v. Secretary of State for Exiting the European Union ([2016] EWHC 2768 (Admin) and [2016] NIQB 85)*

United Kingdom

The UK's Upper Tribunal has ruled in favor of HM Revenue & Customs (HMRC) in a case concerning value-added tax (VAT) avoidance in the adult entertainment industry.

Wilton Park Ltd, the owner of five London-based "gentlemen's clubs" branded "Secrets," issued vouchers to its customers to pay its dancers. The club then charged the self-employed dancers a 20 percent fee to cash-in the "Secrets" branded "money."

The club argued that the fee charged did not attract VAT, stating that it was simply holding the money safely on the dancers' behalf.

However, the Tribunal agreed with HMRC that the club's income from charging dancers for redeeming the vouchers is taxable.

It considered that the company was providing a service to the dancers for those customers that opted to not use cash.

The judge said:

> "[T]he 20 percent charge reflects the fact that the dancer cannot provide her services to the non-cash customers without the much wider bundle of facilities and services provided by the clubs to create the environment in which the dancer can earn the Secrets money. …
>
> I therefore hold that the 20 percent commission payment charged by the club on redeeming the Secrets money is a payment in return for services which go significantly beyond the simple receipt or dealing with security for money … The services provided can accurately be described as the provision of the means whereby the dancers can exploit the opportunity to make more supplies to a wider market thereby increasing their turnover by facilitating the dancers' performances to the non-cash customer base."

Jim Harra, Director General, Customer Strategy and Tax Design, HMRC, welcomed the ruling, stating:

> "HMRC always intervenes when it seems to us that tax due under the law is not being paid. This is a prime example. Our work ensures that everyone pays the tax due, creating a level playing field for all businesses. We're investigating clubs who use similar schemes and there's a potential tax liability running into the millions at stake – money that is needed to pay for the UK's vital public services."

http://taxandchancery_ut.decisions.tribunals.gov.uk/Documents/decisions/Secrets-v-HMRC.pdf

UK Upper Tribunal, Tax And Chancery Chamber: *Secrets v. HM Revenue and Customs ([2015] UKUT 0343 (TCC))*

Dateline February 23, 2017

If I was asked to sum up the history of **sub-Saharan Africa** post-decolonization in one word, I would probably choose the adjective "tragic." For it is difficult to find many positives in an era wracked by war and famine, and marked by despots, corruption, failed states, and opportunities squandered.

There is, though, one ray of sunshine: **Botswana**. Peaceful, stable, and moderately wealthy, it is arguably one the most successful new nations to emerge from colonization. Not all is perfect by any means, but its transformation has been remarkable nevertheless. Fifty years ago, it was one of the poorest countries on earth with GDP per head a mere USD200. Today this nation of 3 million souls is classified as a middle-income country, with GDP per head of USD17,000 – higher than any of the exalted members of the BRICS club of leading emerging nations.

What's been the secret of its success? Well, since this is a tax publication, it's worth noting the role that **low tax rates** have played. Corporate tax is currently 22 percent, and generally government interference in the economy is said to be low. But on a more fundamental level, stable democratic governments, wise political leadership, and sound fiscal management have been key.

So too, it has to be said, has the discovery of diamonds. This industry now accounts for about 25 percent of GDP and 85 percent of export earnings. The Government recognizes it is not wise to put all one's eggs in a single basket and, unlike other African nations dependent on natural resources, has resolved to do something about it. Therefore, it was encouraging to note that Finance Minister Kenneth Matambo saw tax base diversification as an urgent matter in his recent Budget address. I hope they succeed.

However, arguably the most interesting development on the tax front in the past week or so was the rejection by **Swiss voters** of the country's corporate tax reforms. And I must confess that I didn't see this coming. Late polling seemed to suggest that just under half of voters were in favor of the reforms, but considerably fewer were intending to vote against them, with a substantial number of "don't knows" in between. There must have been some very effective lobbying from the "No" campaign in the days ahead of the vote. Or perhaps, as they approached the voting booth, most of the undecided thought, as a friend of mine originating from the north of England would say, "if in doubt, do nowt."

I am somewhat torn by this development. I'm a firm admirer of Switzerland's long-standing tradition of "direct democracy." And it could be argued that these tax reforms were foisted on Switzerland by the European Union from the start. But perhaps this system can be too obstructive. Did most of the people really know what they were voting for (or against)? Not that I'm being patronizing, or suggesting that Nanny knows best. But if people everywhere voted on such things, we probably wouldn't have seen any major changes to corporate tax laws since about 1970.

Perhaps fears over **falling investment** and redundancies played a significant part in the outcome of the referendum, and if it did this is entirely understandable – the Swiss Government, which backs the reforms, has itself said that around 40,000 people are employed by companies benefiting from special cantonal tax statuses.

The flip side is that this casts a long shadow over the Swiss tax regime. The Government will have to go back and tinker with the legislation, but Switzerland's legislative process can be drawn out, and there's no guarantee the tinkerings will be accepted by lawmakers. It's a recipe for prolonged uncertainty, which can often turn out to be worse than the changes.

Now, should **innovative new business models** adapt to the tax system, or should governments and tax authorities adapt to innovative new business models? I rather think, for the sake of human progress, that, for the most part, the latter should apply. But perhaps we are at risk of allowing the former to happen more and more. This especially seems to be the case in the so-called "**sharing economy**."

Take Airbnb for example. It recently announced that by the spring of 2017 it will have the systems in place to remit and collect **France's** various local hotel and occupancy taxes in 50 cities. In other words, the company has spent considerable time and effort on a project that is nothing to do with its core business activities, and all to do the French tax authorities' jobs for them.

Of course, the traditional hotel and hospitality industry would soon be up in arms if this uneven playing field were to persist, and I'm not suggesting taxes shouldn't be paid when they are due. But I posit that avoiding local **tourist taxes** is not the first thing on most people's minds when they hire or rent out accommodation in this way. It almost feels as if the authorities think you're cheating if you spend a few days in someone's apartment, rather than in a city center hotel at exorbitant rates.

It is perhaps unfair of me to single out France here. Airbnb is doing this worldwide, and intends to have arrangements in place in 700 locations. That's going to be some feat, but It's also going to be a necessary one. For Airbnb Chief Executive Brian Chesky revealed in an interview with the *Financial Times* last year that wherever it has a tax agreement in place, an "existential" threat is removed. My word: it's coming to something when paying tourist taxes is seen as a matter of life or death!

And on such a somber note, we arrive at the final curtain. And many of us are well aware that our tax obligations are unlikely to stop even after we've met our maker. Indeed, the seemingly unending layers of tax we face, often on the same source of income, is one of the most frequent complaints about life in the modern world. If you're unlucky enough, you could be taxed on your earnings, taxed on your savings, taxed on your investments, taxed as a shareholder, taxed as a company, taxed in your retirement, and, finally, taxed on the inheritances and gifts you bequeath to your loved ones. So a small encomium goes **Great Britain's** way, where HM Revenue & Customs has waived tax on deceased taxpayers' individual savings account investments.

True, it's a small gesture in the grand scheme of things. But when it comes to tax, we should be thankful for small mercies.

The Jester