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a closer look

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

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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District Of Columbia's Transfer Pricing Enforcement Program And Combined Reporting Regime: Taking Two Bites Of The Same Apple

by Stephen P. Kranz, Diann Smith
and A. Tracy Gomes, McDermott Will & Emery

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In his recent article, "A Cursory Analysis of the Impact of Combined Reporting in the District", Dr. Eric Cook claims that the District of Columbia's (DC or the District) newly implemented combined reporting tax regime is an effective means of increasing tax revenue from corporate taxpayers, but it will have little overlap with DC's ongoing federal-style section 482 tax enforcement.

Dr. Cook is chief executive officer of Chainbridge Software LLC, whose company's product and services have been utilized by the District to analyze corporations' inter-company transactions and enforce arm's length transfer pricing principles. Combined reporting (*i.e.*, formulary apportionment, as it is known in international tax circles) and the arm's length standard are effectively polar opposites in the treatment of inter-company taxation. It is inappropriate for the District (and other taxing jurisdictions) to simultaneously pursue both. To do so seriously risks overtaxing District business taxpayers and questions the coherence of the District's tax regime.

History

Both combined reporting and section 482 adjustments have had a renaissance in the past decade. Several tax jurisdictions, including the District, enacted new combined reporting requirements to increase tax revenue and combat perceived tax planning by businesses. At the same time, some tax jurisdictions, once again including the District, have stepped up audit changes based on use of transfer pricing adjustment authority. This change is due in part to new availability of third-party consultants and the interest in the issue by the Multistate Tax Commission (MTC). States have engaged consultants, such as Chainbridge, to augment state capabilities in the transfer pricing area. At the request of some states, the MTC is hoping to launch its Arm's Length Audit Services (ALAS)[1] program. States thus have increasing external resources available for transfer pricing audits.

International Context

A similar discussion regarding how to address inter-company income shifting is occurring at the international level, but with a fundamentally important different conclusion. The national governments of the Organisation for Economic Co-operation and Development (OECD) and the G20 are preparing to complete (on a more or less consensual basis) their Base Erosion and Profit Shifting action plan. This plan will **reject** formulary apportionment as a means of evaluating and taxing inter-company transactions.[2] Thus, in the international context, formulary apportionment and transfer pricing adjustment authority are not seen as complementary, but instead are seen as mutually exclusive alternatives. The history of formulary apportionment in an international context sheds light on why states make a mistake when they seek to use both combined reporting and transfer pricing adjustments.

A combined reporting basis of taxation seeks to treat the members of a consolidated group as a single entity, consolidating financial accounts of the member entities and allocating a portion of the consolidated income to the taxing jurisdiction based on some formula or one or more apportionment factors. Under the arm's length approach, individual entities of a consolidated group within a single jurisdiction are treated (generally) as stand-alone entities and taxed according to the arm's length value (the value that would be realized by independent, third-party entities) of their inter-company transactions.

National governments have for decades wrestled with the taxation of inter-company transactions among the largest corporations and the most complex transfer pricing arrangements. Going back to the earliest days of corporate income taxation, the "economic experts" to the League of Nations rejected formulary apportionment for cross-border taxation, having found "the methodology has no fundamental basis in economic theory which is capable of easy application".[3]

Arguments in favor of combined reporting (formulary apportionment) generally center on simplicity of concept, administrative ease and reduced compliance burden, along with increased, comprehensive (and thereby, effective?) revenue collection. These arguments are generally from the perspective of the taxing authorities – who struggle with lack of resources, information and a complexity of rules and corporate structures.

And, yet, as is evident from the eight-part article authored by Michael Durst, former Director of the Internal Revenue Service (IRS) Advance Pricing Agreement program – devising and implementation of a formulary apportionment regime is anything but simple, or its results anything but certain or effective.[4] Aside from the structural issues of determining the tax base (in terms of the inclusion of income categories and the disallowance of deductions, as well as inclusion/exemption of corporate members) and the selection of apportionment factors, there is the entire political issue of jurisdictional consensus. Then there are the economic issues, both theoretical and practical – in terms of tax incidence, incentives and economic substance, to name a few.[5] In terms of today's most vexing

transfer pricing problem facing both state and national tax authorities – matching tax receipts with economic activity/value creation – combined reporting offers an imprecise and spurious solution.

States Should Make A Choice

Because transfer pricing adjustments and combined reporting are alternatives, not complements, states should choose which system to adopt. States that seek to utilize both lack a coherent tax imposition policy and create significant risk that their business taxpayers will be double taxed.

The international context explains why states with existing transfer pricing adjustment programs should reject adopting combined reporting. In the case of the District's combined reporting regime, Dr. Cook's claim that the program is both more effective (increases tax revenue) and efficient (non-overlapping) is both unlikely and one-sided. From the District's standpoint, it may be true that they experienced an increase in tax revenue, but what is more likely that this is a "shift" (or more accurately, a double count) in tax liability from one jurisdiction to the next. One of the (other) problems with implementing combined reporting, especially on a unilateral basis, is defining the tax base and segmenting economic activity that originates in one jurisdiction and culminates in another, so as to ensure a single tax on the same unit of economic activity.

It is likely that the reported increased tax revenue cited by Dr. Cook is nothing more than an expanded reporting of revenue among entities established and operating outside of the District and selling into the District – that is, entities whose physical presence and economic talents (activity) are outside the District but whose products are sold within or with nexus to the District. Unless the District's program has some mechanism to identify (and inter-state agreement to credit) the increased tax liability associated with economic activity (value creation) in other tax jurisdiction(s), it will only be taxpayers that will realize a "real" increase in (double) tax.

Dr. Cook incorrectly asserts that combined reporting and transfer pricing should co-exist. The fact that additional revenue can be earned from imposing both regimes does not mean that both regimes should be implemented. He specifically notes that 30 taxpayers, or 10 percent of his sample, would have tax increases based partially on the effects of combined reporting and partially as a result of transfer pricing adjustments. This is an unacceptable overlap of competing tax regimes. Furthermore, Dr. Cook supports imposing both systems because most of the companies sampled did not have an increase in tax under the combined reporting regime but did under a transfer pricing analysis. This does not suggest that both regimes are necessary to properly calculate tax, but rather that both regimes are attractive to state revenue authorities because it increases their odds of finding new tax money. If someone asks us if we would like a cookie, a bowl of ice cream or both, we are always going to take both. This does not mean it is the appropriate thing to do.

Finally, while Dr. Cook does not directly address the issue, it is likely that any valid transfer pricing adjustment in a combined reporting regime is a result of international, rather than purely domestic, inter-company transactions. If this is true, this causes additional problems for Dr. Cook's position. Many subnational tax jurisdictions, including the District, may not have the authority to make transfer pricing adjustments affecting international transactions if the IRS has declined to make such modifications. Furthermore, the taxation of international transactions on an arm's length basis and domestic transactions on a formulary apportionment basis raise significant commerce clause issues for certain taxpayers. Thus, jurisdictions like the District that use these contrary regimes risk undermining the validity of their entire inter-company tax program.

Endnotes

1 We love this acronym so much, we are thinking of getting T-shirts made.

2 *See* Bloomberg BNA, "OECD's Saint-Amans Says BEPS Debate Over Formulary Apportionment is Finished," *Transfer Pricing Report*, April 3, 2014.

3 *See* B. Wells and C. Lowell, "Tax Base Erosion and Homeless Income: Collection at the Source is the Linchpin," 65 *Tax Law Review* 535, University of Houston Public Law and Legal Theory Series, 2011 A-6, p. 549

4 *See* Michael Durst, "Starting the Conversation: A Formulary System For Dividing Income Among Taxing Jurisdictions," 22 *Transfer Pricing Report* 98, May 16, 2013; "Analysis for Dividing Income, Part II: Examining Current Formulary and Arm's-Length Approaches," 22 *Transfer Pricing Report* 270, June 27, 2013; "Analysis of a Formulary System Formulary System for Dividing Income, Part III: Comparative Assessment of Formulary, Arm's-Length Regimes," 22 *Transfer Pricing Report* 653, September 5, 2013; and "Analysis of a Formulary System, Part IV: Choosing a Tax Base," 22 *Transfer Pricing Report* 771, October 17, 2013, "Analysis of a Formulary System, Part V: Apportionment using a Combined Tax Base," 22 *Transfer Pricing Report* 972, November 28, 2013, "Analysis of a Formulary System, Part VI: Building the Formula," 22 *Transfer Pricing Report* 1180, January 23, 2014, "Analysis of a Formulary System, Part VII: The Sales Factor," 22 *Transfer Pricing Report* 1414, March 20, 2014, and "Analysis of a Formulary System, Part VIII: Suggested Statutory, Regulatory Language for Implementing Formulary Apportionment," 23 *Transfer Pricing Report* 70, May 1, 2014.

5 *See* Garry Stone and Elif Ekmekci-Taskiran, "Formulary Apportionment: The Case of Missing Income", 22 *Transfer Pricing Report* 867, November 14, 2013.

Gaining Certainty And Potentially Better Terms: The Case For Bilateral Advanced Pricing Agreements In India

by E. Miller Williams, Ernst & Young LLP (US), Principal, Transfer Pricing Controversy (Washington, DC), International Tax Services, and Ameet Kapoor, Ernst & Young LLP (India), Executive Director, Transfer Pricing Controversy (Delhi, India)

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Tax disputes. Double taxation. For seven years, US companies operating in India have had their share of such headaches. However, improved communication between US and Indian tax authorities is leading to closer cooperation. For companies, this means fairer dispute resolution plus expanded opportunities to reduce the risk of double taxation. All told, this could be the right time to pursue a US–India bilateral Advance Pricing Agreement (APA) for Indian operations.

A Case Of Inflated Earnings?

Double taxation is a risk for any company conducting its business across international borders. For approximately the past 15 years, this has been a recurring problem for not only US companies, but almost any multinational company operating in India. In fact, India today conducts about 3,000 audits each year, with approximately half resulting in some form of proposed upward adjustment – or in other words, India claims more taxable earnings.

The problem is particularly acute for technology companies who may be offshoring such services as software development, testing or call center operations. The tendency is for India's taxation authorities to maintain that these services are generating more value in India than the tax authorities in other jurisdictions are willing to recognize, such as the UK, Japan and Germany, and particularly the US Internal Revenue Service (IRS). Unless the company obtains relief from India or their home country – which is not likely – the end result is double taxation.

Enter The APA (Unilateral)

Many companies would prefer to avoid the cost and uncertainty of such double taxation. One way companies have been attempting to deal with such risk is to pursue an APA with the Indian authorities.

APAs have been available from the IRS since the early 1990s. That is, the IRS has been willing to work with companies to agree, in advance, on the transfer pricing for specific foreign operations. However, it wasn't until 2012 that India announced its own version of the APA program.

The India variety of an APA is available for up to a five-year term. Once negotiated and in place, so long as the local transfer pricing officer (TPO) agrees that the India-based affiliate is following agreed terms, the company's profitability in India for tax purposes is fixed. So far, the program is proving quite popular with multinational companies, with close to 600 applications now in every stage of the process (with approximately half of these from US-based parent companies).

The availability of such unilateral agreements from India is a step in the right direction. However, these are by no means a panacea. To create genuine certainty for both sides of the covered intercompany transactions, such agreements need to be bilateral. That is, to be effective, a US company (or, for example, a Japanese, German or UK company) needs a parallel, ideally mirror-image tax agreement with its host country tax authority.

Observers generally feel that Indian authorities tend to peg India-based profitability at levels significantly higher than most internationally recognized standards, such as those promulgated by the OECD. This lessens the likelihood that a company would be able to negotiate simultaneous unilateral APAs – one with the US and one with India – that could completely eliminate double taxation.

For additional context, consider the controversy taking place surrounding the tax treaty between the US and India. When a company believes it is being unfairly subjected to double taxation – when there is a dispute over transfer pricing – the treaty specifies mutual agreement procedures (MAP) to resolve the double tax dispute. However, observers have been noting that such dispute resolution is, so far, a one-sided affair. That is, when controversy arises, India's position in most instances is that its TPOs are correct and that no relief will be given. In short, India has been saying that it is up to US tax authorities to provide their domestic US company with tax relief; India would not agree that its adjusted share of taxable income is too high.

Shifting Winds

Noting a growing number of treaty-based tax controversies between India and the US, representatives of the two jurisdictions met in January of 2015. Following this meeting, IRS officials and the Indian tax authority both announced that the two Competent Authorities (CAs) had agreed to a framework that will hopefully lead to more give and take between the two nations' taxing authorities – good news for those involved in any tax treaty-driven negotiations. The framework will also allow the authorities to settle as many as one-third of over 250 CA cases pending between the two governments. India realized that it needed to demonstrate to US multinationals that its APA and MAP programs are viable

and provide alternatives to the audit and litigation of the past.

On the US side, the IRS began to better understand that information technology (IT) activities and software development services performed in India should receive higher than a routine return of cost plus 8–10 percent typical in the US due to some unique features of the Indian economy and services business. Also the IRS wanted to minimize the potential double taxation of US multinationals and reduce the 700 outstanding MAP cases currently in proceedings with all countries, 250 of which are with India.

While there has not been another in-person meeting, the two governments are starting to make progress on settling cases. We understand that between 30 and 40 cases have been settled since January, in line with the agreed upon framework. In addition, the IRS and Indian tax authority are preparing or are in the process of discussing the next wave of approximately 70 cases. The goal is to have the majority of the pending MAP cases resolved by September 30, 2015. The settlement of approximately 100 out of 250 pending cases should allow the IRS to give approval for taxpayers to file US–India bilateral APA requests.

More good news stems from a March 2015 announcement that states the IRS is ready to begin working with taxpayers interested in negotiating true bilateral APAs between the US and India by allowing for pre-filing conferences for US–India bilateral APAs. In other words, these are APAs that will be negotiated by the CAs from both nations, greatly improving the odds of a fair outcome.

For example, consider a case where a US company maintains that its Indian affiliate's profit margin on operating costs should be 15 percent, but the local Indian TPO insists on a figure of 32 percent. Direct involvement by the IRS increases a company's negotiating leverage while also increasing the likelihood that the discussion will be premised on objective, internationally recognized transfer pricing guidelines. Checklists, for example, will be introduced to detail which activities are taking place in which jurisdiction. What skills are being utilized in which location? Who owns any intellectual property and where is it in use? Who is taking on which risks? The introduction of a precise, rigorous methodology should lead to more objective conclusions.

In addition, there are complicating factors, such as the growing use of India's Special Economic Zones, which are locations offering lower taxation in India. Such lower tax treatment could leave US authorities wanting a greater share of income.

Generally, as more facts are presented, the likelihood of a fairer outcome increases. In other words, the negotiation may not wind up at the company's desired 15 percent profit margin, but if the facts support such a case, the 32 percent figure could decline significantly. Those close to the US–India negotiation table believe India is generally prepared to accept markups in the 15–16 percent range.

Bear in mind, beyond avoiding double taxation, companies able to successfully negotiate a bilateral APA between India and the US gain the added benefit of being able to focus less on issues of compliance, controversy and litigation and more on their core business. Dispute resolution regarding taxation is a drawn out process in India, often lasting ten years or longer. By comparison, a unilateral APA can often be concluded within one year and a bilateral within 18–24 months; both remain in effect for a full five years. Moreover, once such agreements are in place, intensive annual audits are eliminated, replaced instead by a less intrusive process focused on whether the terms specified within the APA are being adhered to. Finally, once APAs are established, it is hoped that subsequent renewals can be concluded with significantly less effort. Overall, this means more certainty for the business, and also frees up managerial resources.

Signup Begins

Since the inception of India's new APA program, nearly 600 applications have been filed, the bulk of these unilateral. However, the IRS is now scheduling pre-filing conferences for bilateral US–India APAs.

At the pre-filing conference, interested parties will need to share operational details including information such as their historic markups on total operating costs for their India entities. Meanwhile, those companies already pursuing a unilateral APA from Indian authorities will need to supply the IRS with details of such applications along with an indication of how far they are in the process.

All of this is welcome news for companies whose India-based operations are today facing significant levels of double taxation or those who simply hope to reduce variability in cash flows and accompanying tax risks. The opportunity for US companies to negotiate bilateral APAs, alongside clearer guidance and better cooperation relating to tax treaty disputes, can go a long way toward reducing the business risks of operating in India.

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Topical News Briefing: Brazil's Tax U-Turn

by the Global Tax Weekly Editorial Team

After cutting taxes for much of 2014, the Brazilian Government of President Dilma Rousseff appears to have made an abrupt fiscal policy U-turn in the past few months with new revenue-raising measures seemingly being announced with depressing regularity.

Cynics might suggest that the plethora of tax cuts announced last year were intended to help the unpopular Rousseff's re-election campaign more than anything else. And if this was the case, it seemed to work – at least just about – as Rousseff scraped home in the October 2014 election in a closely fought contest.

Taxes didn't start going up straight after the election however. Perhaps in a gesture of goodwill to the Brazilian people, the Government waited until after Christmas to inform them that tax hikes were in the pipeline. Joaquim Levy, sworn in as Brazil's new finance minister on January 5, 2015, attempted to let them down gently, saying that some adjustments to the tax regime may be necessary to increase domestic savings. He said that he would rein in the use of tax incentives and pointed out that any tax initiative must be consistent with the trajectory of public spending. This statement didn't bear much relation to the plans that Levy announced later that month, which included increases to a number of taxes including the IOF financial transactions tax, a tax on fuel known as CIDE, and the PIS/COFINS social security levies.

More recently, the Government has decided to hike the CSLL social contribution tax on the profits of financial institutions from September this year, as reported in this issue of *Global Tax Weekly*, and raise taxes on a number of imported products, including automotive parts, beer, and pharmaceuticals.

So what has really gone on behind the scenes in Brazil to bring about such an abrupt change in tax policy? The answer to that lies in flagging economic growth and a rising budget deficit. The 2014 tax cuts were as much about reigniting the Brazilian economy as helping Rousseff to get re-elected. However, the policy looks to have failed. The economy grew at less than 1 percent last year, and is expected to remain flat this year. And in January 2015, the Government announced a record budget deficit of BRL344bn (USD108bn), or 6.7 percent of gross domestic product.

Given these unfavorable numbers then, taxpayers in Brazil should probably brace themselves for more bad news in the months ahead.

DLA Piper Global Stock Options Overview: The Americas

by Dean Fealk, DLA Piper, San Francisco

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, DLA Piper has compiled a Guide To Global Equity Stock Options. In the fifth article in an ongoing series, we examine the tax, compliance and other requirements in relation to equity stock options in six countries of the Americas.

Argentina

Securities: As long as: (i) the offer is not advertized or publicized; (ii) the stock is not traded in Argentina; (iii) the offer is limited to employees; and (iv) the offer is intended to compensate employees and not to raise capital, no securities law requirements apply.

Foreign Exchange: The outbound flow of funds for the purchase of shares is prohibited by the Central Bank. For inbound funds, if an employee repatriates more than a designated amount from the sale of foreign shares to Argentina, a percentage of such funds must be placed in a non-interest-bearing account for a fixed period of time.

Tax:

Employee: The employee is taxed on the spread upon exercise (including personal assets tax, if applicable). The employee is not subject to tax when the shares are sold.

Employer:

- *Withholding & Reporting:* Tax withholding and reporting are required upon exercise.
- *Deduction:* Although an Argentine subsidiary's reimbursement of the parent company for the cost of the option benefits (*e.g.*, the spread) may enable the subsidiary to deduct such cost from its income taxes, any such reimbursement is prohibited due to foreign exchange restrictions. Reimbursement also may implicate certain labor law issues.

Social Insurance: Social insurance contributions are generally payable by the employee and employer when an option is exercised.

Data protection: Obtaining an employee's written consent for the processing and transfer of his or her personal data is the most common approach to comply with certain aspects of data protection requirements. The employer is also required to register

any database that includes an employee's personal data with the Argentine privacy authorities.

Labor Issues: Benefits received from an option may be considered part of the employment relationship and included in a severance payment if options are repeatedly granted to an employee. Upon involuntary termination of employment, an employee may be entitled to continued vesting and other rights with respect to his or her option. In order to reduce the risk of employee claims, the award agreement signed by an employee should provide, among other things, that vesting of an option ceases upon termination of employment, and that the plan and any awards under it are discretionary.

Communications: Although plan materials are not required to be translated into Spanish, translation is required for any government filings and is recommended to ensure that employees understand the terms of their awards. Award materials should be addressed to individual employees in order to avoid securities law requirements.

Brazil

Securities: The grant of options generally is not subject to securities law requirements.

Foreign Exchange: Subject to certain foreign exchange requirements, employees may exercise options by sending funds abroad.

Tax:

Employee: Generally, the employee is taxed when the shares are sold. Proceeds from the sale of shares that exceed a monthly exclusion are taxed as a capital gain.

Employer:

- *Withholding & Reporting:* Tax withholding and reporting by the employer generally are not required.
- *Deduction:* If options are offered to all employees in Brazil and the subsidiary reimburses the parent company for the cost of option benefits, the subsidiary should be able to deduct such cost from its income taxes. However, reimbursement requires prior foreign exchange approval and could cause options to be deemed employment income subject to social insurance contributions.

Social Insurance: Although options generally are not subject to social insurance contributions, regularly granting options or reimbursement of option costs could result in the options being deemed employment income subject to such contributions.

Data Protection: Obtaining employee consent for the processing and transfer of personal data is recommended.

Labor Issues: Benefits received from an option may be considered part of the employment relationship and included in a severance payment if such benefits are regularly offered. Upon involuntary termination of employment, an employee may assert that he or she is entitled to continued vesting and other rights with respect to his or her option. In order to reduce the risk of claims, the award agreement signed by an employee should provide, among other things, that vesting of an option ceases upon termination

of employment, and that the plan and any awards under it are discretionary.

Communications: Although plan materials are not required to be translated, translation is required for any government filing and is recommended to ensure that employees understand the terms of their awards.

Canada

Securities: In most instances, there should be no federal securities restrictions applicable to the offer of stock options due to applicable exemptions. However, provincial requirements apply in certain circumstances.

Foreign Exchange: Options generally are not subject to any foreign exchange requirements.

Tax:

Employee: The employee is taxed on the spread upon exercise. 50 percent of the spread may be deducted from the taxable amount if certain requirements are met. Upon the sale of shares, generally only 50 percent of any gain is taxable.

Employer:

- *Withholding & Reporting:* Generally withholding and reporting are required.
- *Deduction:* Even if the subsidiary reimburses the parent company for the cost of the option benefits (*e.g.*, the spread) pursuant to a written reimbursement agreement, it is unable to deduct such cost from its income taxes.

Social Insurance: Generally, social insurance contributions, which are based on an employee's compensation and are subject to a cap, are payable on the spread when an option is exercised.

Data Protection: Obtaining an employee's written consent for the processing and transfer of his or her personal data is the most common approach to comply with certain aspects of data privacy requirements. Additional provincial compliance measures may be necessary.

Labor Issues: Offering stock options may trigger certain employer obligations and employee claims. For instance, benefits received from an option may be considered part of the employment relationship and included in the calculation of a severance payment. Upon involuntary termination of employment, an employee may assert that he or she is entitled to continued vesting and other rights with respect to his or her option. In order to reduce the risk of employee claims, the award agreement signed by an employee should provide, among other things, that vesting of an option ceases upon termination of employment, and that the plan and any awards under it are discretionary.

Communications: Unless an employee in Quebec waives his or her right to receive plan materials in French, such materials must be translated into French. It should be feasible for an employee to execute his or her award agreement electronically.

Chile

Securities: As long as the offer of options constitutes a private offer, generally no affirmative securities law requirements are implicated.

Foreign Exchange: Any investment in excess of USD10,000 by a Chilean resident in shares of a foreign company is subject to reporting requirements. For cumulative investments in excess of USD5m, additional reporting requirements apply.

Tax:

Employee: The employee generally is taxed on the spread upon exercise. Any gain upon the sale of shares is also subject to tax.

Employer:

- *Withholding & Reporting:* If the subsidiary deducts the cost of the option benefits, withholding and reporting are required.
- *Deduction:* Reimbursement of the parent company for the cost of the option benefits (*e.g.*, the spread) and inclusion of such benefits in the employee's compensation should enable the subsidiary to deduct such cost from its income taxes. Reimbursement will trigger employer tax withholding.

Social Insurance: Generally, the spread is subject to social insurance contributions, subject to applicable contribution ceilings.

Data Protection: Obtaining employee consent for the processing and transfer of personal data is recommended. Such consent should be in Spanish.

Labor Issues: Offering stock options may trigger certain employer obligations and employee claims. For instance, benefits received from an option may be considered part of the employment relationship and included in a severance payment if such benefits are routinely offered. Upon involuntary termination of employment, an employee may assert that he or she is entitled to continued vesting and other rights with respect to his or her option. In order to reduce the risk of employee claims, the award agreement signed by an employee should provide, among other things, that vesting of an option ceases upon termination of employment, and that the plan and any awards under it are discretionary.

Communications: The Labor Authority has asserted that plan materials should be translated; however, translation is not legally required. Government filings and any employee consent authorizing the cross-border transfer of personal data must be in Spanish.

Mexico

Securities: The offer of options generally is exempt from affirmative securities requirements.

Foreign Exchange: Option plans are not subject to any specific foreign exchange restrictions.

Tax:

Employee: The spread is taxed at exercise. The gain from the sale of the shares is taxable.

Employer:

- *Withholding & Reporting:* Tax withholding and reporting generally are not required unless the Mexican subsidiary reimburses the parent company for the cost of the option benefits.
- *Deduction:* A local tax deduction generally is allowed if the subsidiary reimburses the parent company for the cost of the option benefits under a written agreement. However, reimbursement may trigger withholding and reporting requirements for the subsidiary.

Social Insurance: The spread likely is subject to social insurance contributions if the Mexican subsidiary reimburses the parent company for the cost of the option benefits.

Data Protection: Mexico has enacted a comprehensive federal data protection law. Employee consent for the processing and transfer of personal data is required.

Labor Issues: Although not common, option benefits may be considered part of the employment relationship and may be included in the calculation of severance or retirement payments. To reduce the risk of claims, employees should expressly agree in writing that: (i) participation in the option plan is discretionary; and (ii) termination of employment will result in the loss of unvested rights.

Communications: Although it is not legally required, it is recommended that documents regarding employee option plans be translated. Any government filings are required to be translated. It should be valid for an employee to execute the award agreement electronically.

Venezuela

Securities: As long as the award options are not deemed to be a public offer, securities requirements generally do not apply. Awards addressed to individual employees should not be deemed public offers.

Foreign Exchange: Foreign exchange restrictions may limit the employees' ability to exercise and hold shares.

Tax:

Employee: Generally, the spread is taxed upon exercise. However, if the options are not granted on a regular basis it is arguable that they are extraordinary benefits and therefore that the spread is not taxable. The gain from the sale of the shares is taxable.

Employer:

- *Withholding & Reporting:* Withholding and reporting requirements do not apply.
- *Deduction:* Because of foreign exchange restrictions, reimbursement of the parent company and a related tax deduction are not likely to be available.

Social Insurance: The spread is not subject to social insurance.

Data Protection: Obtaining employee consent for the processing and transfer of personal data is recommended.

Labor Issues: Although not common, option benefits may be considered part of the employment relationship and may be included in the calculation of severance or retirement payments. To reduce the risk of claims, employees should expressly agree in writing that: (i) participation in the option plan is discretionary; and (ii) termination of employment will result in the loss of unvested rights.

Communications: Although not legally required, it is recommended that documents regarding employee option plans be translated. Any filings with the government are required to be translated.

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Pre-Registration GST Claims Process Will Be Simplified

by Jacqueline Low, chief operating officer of Hawksford Singapore

Introduction

Singapore's Budget 2015 unveiled simplified rules to claim goods and services tax (GST) incurred on purchases prior to GST registration, commonly referred to as pre-registration claims. This change will benefit businesses that are GST-registered with effect from July 1, 2015. This initiative by the Government is appreciated by the business community, though only the newly GST-registered businesses will benefit.

Existing Condition

Businesses that are GST-registered can claim GST incurred on the purchase of goods and services made prior to the GST registration, provided such goods and services are not disallowed under Regulations 26 and 27 of the GST (General) Regulations.

Also, according to Regulation 40, pre-registration GST incurred is claimable only on that portion of the goods and services used or to be used to make taxable supplies after GST registration.

GST incurred on goods and services used to make taxable supplies before the GST registration are not claimable. For recovering GST incurred on services, such services should not have been acquired more than six months before the effective date of GST registration.

Apportioning Pre-Registration GST

If the goods and services purchased by a newly GST-registered business have been partially consumed before the GST registration, or if such consumption straddles across the date of registration, the newly GST-registered business must apportion the GST and claims can be made only on that portion attributable to the supplies made after GST registration.

Proposed Revision

From July 1, 2015, newly GST-registered businesses can claim the pre-registration GST in full on the following goods and services that are acquired within six months before the GST registration date:

- Goods held by the business at the point of GST registration; and
- Property rental, utilities and services which are not directly attributable to any supply made by the business before GST registration.

No Need To Apportion

Irrespective of whether the goods and services were partially used before the GST registration or have been used to make supplies straddling pre- and post-registration, without any hassle of apportioning, GST can be claimed in full. However, such goods and services must be used for making taxable supplies and not exempt supplies.

It must be noted that GST incurred on services used to make taxable supplies before GST registration will continue to remain not claimable. For goods and services acquired more than six months before your GST registration date, the existing pre-registration GST claims rules will prevail.

To claim pre-registration GST incurred on goods and services, you are required to maintain documentary evidence such as tax invoices, import permits, and proof of payment.

You must also maintain a goods stock account with details of quantities purchased, date of purchase, quantities used in making of other goods, and date and manner of subsequent disposal of both the quantities purchased and quantities used in the making of other goods.

To claim GST incurred on services, you are required to maintain the details of services purchased, their description, date of purchase, and date of disposal of services, if any.

Benefits For The Businesses

Apportionment of GST incurred, based on the time period of the usage of goods and services in making taxable supplies, was a cumbersome task for businesses, especially small businesses grappling with the challenges of evolving into a large scale business.

The different apportionment rule to determine the claimable and non-claimable GST expenses was a complicated exercise for many business owners. It led to confusion and included the risk of incorrect computation.

In order to prevent wrongful claims and to save the resources spent on the challenging process of pre-registration claims, some businesses even gave up their right to claim. It was a significant loss for businesses.

With the revised simplified rules to make pre-registration claims, businesses can file without having to pursue the elaborate apportioning exercise. This is a significant relief for businesses, which have had to spend considerable time and resources for the process.

Businesses who are nearing the GST registration threshold can also plan their purchases in order to claim back GST expenses. Businesses need not forego their rightful claims merely for a challenging calculation process.

IRAS will release further details on the simplified pre-registration GST claims rule in June 2015.

The proposed simplification of the compliance is definitely cost and time saving for new companies as well as for the existing companies that are approaching the registration threshold. It provides a lot of clarity and room for small businesses to plan their purchase operations in such a way that they can effectively tap on the GST relief, which many otherwise simply forsake because of the complicated apportioning requirement. GST expenses, incurred by companies before incorporation are also claimable, subject to certain conditions. Such initiatives taken by the government with the concerns of small businesses in mind makes Singapore an ideal launch pad for startups and entrepreneurs."

For more details on GST Registration, see http://www.guidemesingapore.com/taxation/corporate-tax/singapore-gst-tax-guide.

Who Needs To Register For GST?

Compulsory Registration

GST registration is compulsory if your business meets any of the following conditions. Registration must be done within 30 days from the date on which your registration liability arises:

- The chargeable income exceeds SGD1m in the past 12-month period;
- If you are making taxable supplies or intend to make taxable supplies and the taxable turnover is expected to exceed SGD1m in the next 12-month period.

If a business that is required to compulsorily register fails to do so, it will be fined up to SGD10,000 or may be liable to pay a penalty of 10 percent of the tax due from the date on which its liability to register commenced. It will be liable to a further penalty of SGD50 for every day during which the offense continues after conviction.

Voluntary Registration

A business not making any taxable supplies or the taxable incomes of which have not exceeded SGD1m may still choose to voluntarily register for GST, if it intends to make taxable supplies, in the due course of the business or in its furtherance, or if it expects taxable turnover to exceed SGD1m.

A business making out-of-scope supplies and exempt supplies can also choose to register voluntarily if it has a business establishment in Singapore or it is resident in Singapore.

By voluntarily registering, the business may claim back the GST paid for its purchases; however, there are compliance costs involved in maintaining proper records, timely reporting, tax payment, audits, *etc.* Once a business is voluntarily registered, it has to remain registered for at least two years.

Exemption From Registration

A business can apply for exemption from GST registration if it makes wholly or substantially zero-rated supplies (export of goods or services). A business if granted exemption from GST registration cannot make claims on input GST, meaning the GST paid on its purchases. If there are any changes in the nature of supplies or proportion of supplies

made by the business, then it must be duly reported to the comptroller of GST.

Overseas Entities

The GST registration requirements are the same for local and overseas entities. An overseas company would be required to register for GST if it makes or expects to make taxable supplies in Singapore exceeding the GST registration threshold.

Overseas entities that are not resident in Singapore or do not have a business establishment in Singapore, but conduct business in Singapore, are also liable for GST registration if they meet the conditions. An overseas entity that is registered for GST must appoint a local agent to manage its GST matters.

It must be noted that transactions between head office and its branch are non-supplies as they are regarded as one entity for Singapore GST purposes.

If the overseas entity's GST liability arises due to importation of taxable supplies into Singapore, it may appoint a GST agent pursuant to section 33(2) of the GST Act. Instead of the overseas entity registering for GST, the appointed agent (referred to as a Section 33(2) agent) will act as the principal of the goods imported, and the overseas entity's imported goods will be reflected in the agent's GST returns.

Developments In Global Carbon Pricing

by Stuart Gray, Senior Editor, Global Tax Weekly

The world is mostly in agreement that in order to avert potentially catastrophic global climate change, nations must drastically cut the amount of carbon their industries pump into the atmosphere. What nations don't yet agree on is the best method to achieve that. However, taxing, or putting a "price" on, carbon is rapidly emerging as the preferred solution, and recent developments in this area are summarized in this article.

Introduction

According to the World Bank's Carbon Pricing Watch 2015 report,[1] published on May 26, 2015, about 40 countries and more than 20 cities, states and provinces now use, or are planning to use, a price on carbon to bring down greenhouse gas (GHG) emissions. Together, the initiatives in operation today are valued at almost USD50bn and are generating revenues of USD14bn.

"Carbon pricing is clearly gaining traction," said Rachel Kyte, World Bank Group Vice President and Special Envoy for Climate Change. "So it's no longer a matter of if or when to price carbon."

"With the focus now on action in the run-up to the Paris climate summit in December, business and governments have walked across the battle lines and are now working together on how and how fast to get prices right," Kyte observed.

The World Bank has been a particularly strong advocate of carbon taxation to reduce GHG emissions and subdue the effects of climate change. Speaking in December 2014, Jim Yong Kim, President of the World Bank Group, said that all countries should commit to placing a price on carbon emissions to prevent global warming from reaching dangerous levels.

"Effective prices on carbon can be discovered by taxes, market mechanisms, or regulation," Kim said during a speech at the Council on Foreign Relations. "Whichever option a country, region or city chooses, a carbon price makes the pollution we don't want more expensive and incentivizes efficiency and clean production."

It is an argument that appears to be making much headway, with 74 national governments and over 1,000 companies announcing support for placing

a price on carbon emissions at talks hosted by the World Bank's Partnership for Market Readiness in November 2014.

Some of the more recent carbon pricing developments are described next.

Canada

One of the latest of the new carbon pricing systems was announced by the Canadian province of Ontario in April 2015, when the provincial Government confirmed plans to introduce a cap-and-trade system to limit GHG pollution. The plan means that more than 75 percent of Canadians will live in a province with some form of carbon pricing.

The decision followed the Ontario Government's consultation with taxpayers and industry in February 2015 on a range of options for attaching a price to carbon emissions. These included a cap-and-trade program, a baseline and credit system, a carbon tax, and regulations and performance standards. More than 1,500 people attended consultations, and more than 300 ideas and 31,000 votes were submitted through an online consultation tool, in a demonstration of just how important the issue of carbon reduction is becoming with the public in some countries.

Under the proposals, businesses will have their own GHG quota, which they will be able to sell if they no longer require it. The Government will reinvest the revenue raised into projects that reduce GHG pollution.

The Office of the Premier said that the system will reward innovative companies, provide certainty for industries, and create more opportunities for investment in Ontario. Ontario has the fastest growing clean-tech sector in Canada, with 2,700 clean-tech firms employing 65,000 people and generating annual revenues of more than CAD8bn (USD6.57bn).

In November 2014, Ontario and Québec signed a Memorandum of Understanding (MoU), agreeing to collaborate in their efforts to fight climate change and accelerate the transition to a low carbon economy. The respective governments have now issued a letter formalizing their intent to link their cap-and-trade systems, once Ontario has developed a mechanism compatible and coherent with Québec and California's carbon market. This will be reflected in an amendment to the MoU.

British Columbia also operates a carbon tax, at CAD30 (USD24) per tonne, and Alberta established a baseline and credit system for large industry and electricity in 2007.

South Korea

One of the most recent significant carbon pricing developments occurred in January 2015 when South Korea's carbon emissions trading scheme (ETS), a key component of the Government's plan to cut GHG emissions, became operational on January 12, 2015. The ETS, which was intended to launch last year, plans to reduce GHG emissions to 30 percent below current levels by 2020.

The ETS will impose a cap on GHG emissions by 525 of South Korea's largest companies, including airlines, and automobile, electronics, petrochemical and steel producers, covering companies responsible for about 65 percent of the country's carbon emissions. However, during the first three years of the scheme's operation, from 2015 to 2017, companies and energy producers will be allowed 100 percent of their benchmarked emissions limit without charge. Companies will have to purchase credits if they wish to exceed their limits, and those that do not use their quota may sell their excess credits. The trading scheme has no links to the international carbon market, with participation being restricted to the 525 companies.

South Korea is the world's seventh-largest carbon emitter, and now has the world's second largest ETS market after the EU (see below).

South Africa

Also in January, climate change advisory firm Prometheum Carbon announced the completion of a program to demonstrate the readiness of the existing South African market infrastructure for the carbon offset trading that will form part of the carbon tax system being introduced from 2016.

A demonstration of market readiness was the culmination of a three-year research project executed by Promethium Carbon in close cooperation with the Johannesburg Stock Exchange (JSE) as the trading platform, the JSE's Silocerts as commodities registry, and Done Technologies as the technology provider to the registry.

The demonstration consisted of performing actual over-the-counter trades of carbon credits. These trades were then mirrored in a test environment on the electronic platforms of the JSE and Silocerts. It was shown that carbon offset credits, as contemplated by the South African Government, can be traded in the country's existing market trading infrastructure.

While it was earlier agreed that measures are needed in South Africa to address climate change and to reduce carbon emissions, the Government decided last year that implementation of a carbon tax should be postponed by a year to 2016, to allow for further consultation. In the meantime, the National Treasury has consulted on proposals for a carbon offset scheme that will enable South African businesses to lower their eventual carbon tax liability. The scheme is meant to complement the carbon tax of ZAR120 (USD10) per ton of CO_2, which is to increase at a rate of 10 percent annually.

To ensure a relatively smooth transitional period, the carbon tax policy incorporates a number of relief measures and a gradual phased-in approach to protect the international competitiveness of local businesses. These measures include a basic tax-free threshold of 60 percent, below which the tax will initially not be payable. Under the regime, a carbon offset is defined as "a measurable avoidance, reduction or sequestration of carbon dioxide (CO_2) or other greenhouse gas emissions." It is intended that carbon offsets will enable firms to cost-effectively lower their carbon tax liability by up to 10 percent of their actual emissions, and will incentivize

investment in GHG emission-mitigation projects that deliver carbon emissions reduction at a cost lower than the carbon tax.

A number of principles must be fulfilled for a project to be awarded a tradable emissions reduction credit, to ensure the credibility of carbon offset projects, namely that allowable GHG emissions reductions would not have occurred under a "business-as-usual" scenario; would need to be permanent and unlikely to be reversed; and should originate from tangible projects with proof that they have occurred or will occur at a specific point in time.

Projects that generate carbon offset credits must occur outside the scope of activities of the entity subject to the carbon tax, and only South African credits will be eligible for use within the carbon offset scheme.

China

Perhaps the biggest endorsement of carbon pricing as the most effective means to reduce global GHG emissions came when China, the world's largest emitter of carbon, put into effect the "Low Carbon Development 2014–2015 Action Plan" in 2014. The Plan is designed to strengthen energy conservation and reduce GHG emissions in the country, partly through modifications to the taxation of its natural resources and the development of a national carbon trading market.

The Plan envisages a reduction in carbon emissions in China of at least 4 percent in 2014 and 3.5 percent in 2015 through the use of a variety of measures, including the promotion of industrial restructuring, a construction program of energy-saving projects, speeding up the renovation of coal-fired boilers, and an increase to motor vehicle emission reduction efforts. However, a significant element of the Action Plan is devoted to the implementation and acceleration of tax reforms and legislation for environmental protection.

The Plan specifies that the existing pilot scheme, initiated in Shenzhen in June 2013, will be promoted and extended to establish a national carbon emissions trading market. Shenzhen was earmarked as the first of seven cities or provinces in China to launch the pilot scheme, with a view to a nationwide rollout of the system.

Under the scheme, a cap is set on the total amount of GHG that may be emitted, with that limit then being allocated to companies involved in the scheme in the form of carbon credits, or the right to discharge a specific volume, based on historical data. Firms receive the initial credits for free, but those with excess emissions will then have to buy credits from others.

China has previously looked at a carbon tax, either separately or as an adjunct to the ETS, but, following opposition from businesses in a period of slower economic growth, it appears to have been shelved in favor of the emissions trading market alone.

The State Council's confirmation occurs simultaneously with reports of the establishment of a

three-year bilateral dialogue between China and the EU, during which European experts will provide their experience and support in the trading market's establishment.

A second important element in the Action Plan will be the use of the existing natural resource tax to pursue environmental goals and to preserve domestic supplies. It is emphasized that the tax will be increasingly applied on an *ad valorem* basis, rather than per tonne, to coal and other resources.

Latin America

Carbon pricing is also gaining a foothold in Latin America.

Shortly after her election to the post of Chilean President in April 2014, Michelle Bachelet presented legislative proposals to tax CO2 emissions by energy companies in Chile, which were subsequently approved. Under the carbon tax legislation, thermal power generators with a capacity of 50 megawatts or greater would be taxed at a rate of USD5 per ton of CO2 emitted from 2018. It is hoped that the tax will encourage companies to switch to clean-energy technologies. In addition, the Government plans to increase taxes on imported vehicles fueled by diesel to encourage the use of environmentally friendly alternative fuels. Tariffs will also be increased on certain imported chemicals, including nitrogen oxide and sulfur dioxide.

Unless another country in the region introduces some form of carbon tax in the meantime, Chile will become the second Latin American country to use taxation to discourage CO2-emitting technologies, after Mexico introduced a similar measure on January 1, 2014.

According to Mexico's Secretariat of Environment and Natural Resources, the carbon tax is intended to create awareness of CO2 emissions, to put a price to carbon, and to promote the use of cleaner fuels. Initially, the tax was to be set at USD5 per ton of CO2 equivalent, but this was reduced to USD3.5 per ton during the parliamentary approval process. Natural gas is exempt from the carbon tax.

Mexico's carbon tax covers fossil fuel sales and imports by manufacturers, producers, and importers. Strictly speaking, it is not a tax on the full carbon content of fuels, but rather on the additional amount of emissions that would be generated if the fossil fuel were used instead of natural gas. The tax rate is capped at 3 percent of the sales price of the fuel, and companies liable to pay the tax may choose to pay the carbon tax with credits derived from clean development mechanism (CDM) projects developed in Mexico, equivalent to the value of the credits at the time of paying the tax.

European Union

A recent development regarding the EU ETS provides something of a cautionary tale about getting the design of carbon pricing systems right.

Launched in 2005, the ETS is said to be the lynchpin of the EU's policy to combat climate change.

Covering 12,000 industrial installations in 31 countries (including the EU and EEA/EFTA member states) and aviation emissions, the ETS works on a cap and trade principle. A cap is set on the total amount of certain GHG that can be emitted by the factories, power plants and other installations in the system. Within the cap, companies receive or buy emission allowances, which they can trade with one another as needed. They can also buy limited amounts of international credits from emission-saving projects around the world. The limit on the total number of allowances available is supposed to ensure that they have a value. After each year a company must surrender enough allowances to cover all its emissions. Otherwise heavy fines are imposed. If it reduces its emissions, a company can keep the spare allowances to cover its future needs or else sell them to another company that is short of allowances.

However, dire economic conditions in the EU following the financial crisis led to a sharp fall in the value of tradable permits, in turn leading the European Parliament to suspend issuance of new tranches of permits in July 2013. The surplus of emission allowances, which has been building up in the system since 2009, is estimated at over two billion and is something that Brussels clearly didn't envisage when drawing up the scheme.

On May 26, 2015, the Environment Committee of the European Parliament backed a reform of the scheme to reduce the surplus of carbon credits available for trading. The proposed law would create a system that automatically takes a portion of ETS allowances off the market if the surplus exceeds a certain threshold. In the opposite scenario, allowances could be returned to the market.

Under the proposed reform, which has been provisionally agreed with the European Council, "backloaded" allowances (900m allowances withdrawn from the market, initially to be returned from 2019) would be placed in a reserve. Remaining allowances unallocated by the end of the current trading phase (2020) would also be placed in the reserve, subject to an overall review of the ETS Directive, to be tabled by the European Commission later this year. The proposal would also see the Market Stability Reserve start operating earlier than initially foreseen, on January 1, 2019, rather than 2021 as proposed by the European Commission.

The provisional agreement is to be put to a full session of the European Parliament in early July 2015.

United States

While most major economies have now introduced, or are considering introducing, some form of carbon pricing, one country that is notable by its absence from this list is the United States.

Although President Barack Obama drew up plans for a national cap-and-trade system early in his presidency, the plans were quickly shelved when they met fierce resistance from business and members of Congress, especially as this was a time when the US economy was struggling to rebound from the financial crisis.

It is probably fair to say that there is a great deal more hostility towards the idea of carbon taxes among Republican members of Congress, who now hold a majority in both chambers of the legislature, than among Democrat members. This was demonstrated last year when the House of Representatives passed the Regulations From the Executive in Need of Scrutiny (REINS) Act.[2] An amendment was proposed to be added to this to prevent the Government from imposing or collecting a tax on carbon emissions without congressional approval. The amendment was offered by Republican Study Committee Chairman Steve Scalise (R – Louisiana) to stop the Administration from using any authority it might have to implement a carbon tax under the regulatory authority of the Clean Air Act or any other statute, although the initiative did not become law and was largely a symbolic effort.

In January 2015, a Bill was introduced into Congress that would provide for longer-term funding for Highway Trust Fund transportation projects through a USD50 per tonne tax on carbon emission.[3] However, as the REINS Act amendment shows, the carbon tax issue remains a very politically and economically sensitive issue in the US, suggesting that we are not about to see a carbon tax at federal level anytime soon.

At state level, however, it is a slightly different story. California's cap-and-trade system came into effect on January 1, 2013, initially covering large electric power plants and large industrial plants that emit 25,000 metric tons of CO2 per year. In January 2015, the scheme was extended to fuel distributors that meet the 25,000 metric ton threshold, meaning that around 360 businesses throughout California and nearly 85 percent of the state's total GHG emissions are covered.

California's program imposes a GHG emission limit that will decrease by 2 percent in 2015, and by 3 percent annually from 2015 through 2020. Emission allowances will be distributed by a mix of free allocation and quarterly auctions. The portion of emissions covered by free allowances will vary by industry, but initially will account for approximately 90 percent of a business's overall emissions. The percentage of free allowances allocated to the businesses will decline over time. A business may also buy allowances from other entities that have reduced emissions below the amount of allowances held. Additionally, California has linked its cap-and-trade scheme with a similar system operating in the Canadian province of Québec, with Ontario also set to join.

California's is so far the only state-level emissions reduction scheme in operation. However, other state governments have been exploring the idea of introducing their own carbon pricing systems, including New York, Oregon, and Washington state.

Australia

Not all governments are convinced of the merits of carbon taxes however, with Australia a notable dissenter. Indeed, Australia must be unique in that it first tried a tax, then shifted towards an ETS, and

then scrapped the carbon tax legislation altogether when the government changed hands, all in the space of a couple of years.

The current Australian Government remains unrepentant about repealing the carbon tax, insisting that it left Australian consumers several billion dollars a year worse off as a result of higher energy prices and their knock-on effect across the rest of the economy.

Australia is instead pursuing its emissions reduction target through the Emissions Reduction Fund (ERF), which came into effect on December 31, 2014. It will provide incentives for emissions reduction activities across the Australian economy, rather than disincentives in the form of taxation.

The ERF encourages businesses and organizations to come forward with emissions reduction opportunities they have identified. Auctions will be held and the Government will enter into contracts to buy emissions reductions from successful bidders – from those that plan to achieve the greatest reductions in emissions at the lowest cost. The Clean Energy Regulator will administer the ERF and will be able to enter into contracts worth up to AUD2.55bn (USD2bn). Further funding will be considered in future budgets.

According to Environment Minister Greg Hunt, "unlike the carbon tax, the [ERF] will achieve significant cuts in Australia's emissions because the government will only pay on delivery of real and measurable cuts."

In stark contrast with the emerging consensus about carbon pricing around the world, Hunt insisted that Australia's carbon tax was "truly a policy failure," claiming that the tax "was a AUD7.6bn hit on the Australian economy in its first year of operation yet there was no meaningful reduction in emissions."

In Summary

It remains to be seen if Australia is right (and therefore much of the rest of the world is wrong) by employing the carrot rather than the stick to encourage businesses and industries to reduce their CO2 emissions. However, as the World Bank observed in its Carbon Pricing Watch report, there is a "growing sense of inevitability" regarding the debate on whether to "price" carbon.

Presently, there are more countries without carbon pricing schemes in place than those that have, and there remain some significant gaps in global coverage. As mentioned above, the US is unlikely to introduce a national carbon tax for the foreseeable future. And it is going to be difficult for many developing nations to introduce sophisticated carbon trading systems given their relative lack of resources and technical and administrative know-how.

Governments will continue to balance economic competitiveness and environmental benefits when weighing up carbon taxes and other pricing schemes. Nevertheless, with some significant players in the world economy now having taken the carbon pricing plunge, it does seem somewhat inevitable that

others will follow, and countries like Australia may become the exception, rather than the norm.

Endnotes

1 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/05/22/090224b082eb7959/1_0/Rendered/PDF/Carbon0pricing0e0released0late02015.pdf

2 https://www.congress.gov/bill/113th-congress/house-bill/367/text

3 https://huffman.house.gov/sites/huffman.house.gov/files/gas%20tax%20replacement%20act.pdf

Treasury Proposes Significant Changes To US Model Treaty

by Caplin & Drysdale

On May 20, 2015, the Treasury Department released five proposed changes to the US Model Income Tax Treaty (the US Model). The changes represent part of an extensive and ongoing overhaul of this document, which was last updated in 2006. According to Treasury officials, the proposed revisions are intended to ameliorate the problem of so-called "stateless income" and to influence the work of the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting Project, which is soon due to release its final report on tax treaty abuse.

The proposals were introduced at a May 20 meeting of the District of Columbia Bar's Taxation Section. Danielle Rolfes, Treasury's International Tax Counsel, remarked at the meeting that "when we take a step back and look at our tax treaties, [they are], in fact, facilitating double nontaxation." Rolfes indicated that Treasury had considered and ultimately rejected the possibility of addressing this problem through a general anti-abuse rule, but opted instead for a targeted approach. The release of these provisions, which are discussed below, differs from past revisions of the US Model in two ways. First, the changes have been released as drafts, with Treasury seeking public comment on the new rules. Second, past releases have been of the entire US Model as opposed to this piecemeal approach. Treasury has indicated its intention to release the completely revised US Model by the end of the year, but apparently does not intend to issue any other proposed changes in draft form. It would be easier to assess the overall impact of the proposed changes in the context of the entire revised US Model.

1. Exempt Permanent Establishments

A typical tax avoidance strategy involves a treaty-eligible foreign company setting up a permanent establishment (PE) in a third country that imposes little or no tax on the PE's income. This strategy also requires that the company's country of residence refrain from taxing the income earned by the PE, which may result from either an exemption provision in the residence country's domestic law or a tax treaty between that country and the third country. If the PE earns US source income that is subject to little or no US tax under the treaty between the US and the residence country, and that income is also subject to little or no tax in both the residence

country and the third country, "double [or, indeed, triple] nontaxation" will have been achieved because the income would be subject to low or zero taxation by the country of source, the country of residence, and the jurisdiction in which the PE is located.

The PE need not be located in a third country; the strategy can work equally well if the PE is located in the country of source. For example, a Luxembourg PE located in the United States that is not engaging in a US trade or business will be subject neither to Luxembourg tax (because of its statutory exemption system) nor to US tax (because there is no US trade or business).

A proposed paragraph 7 of Article 1 is intended to stymie this scheme. The paragraph states that when: (1) a resident derives income from the other state; and (2) the residence state's domestic law attributes that income to a PE located outside the company's country of residence, then the treaty benefits that would ordinarily apply are inapplicable if: (a) the PE's profits are subject to a combined, aggregate, effective tax rate of less than 60 percent of the generally-applicable corporate tax rate in the residence state, or (b) the state in which the PE is situated does not have a comprehensive income tax treaty with the residence state (unless the residence state includes the PE's income in its tax base, in which case this prong does not apply).

2. Expatriated Entities

These revisions are targeted at so-called corporate inversions and the earnings-stripping transactions that often accompany them. The new draft paragraphs, which are to be inserted into Articles 10 (Dividends), 11 (Interest), 12 (Royalties), and 21 (Other Income), provide that the United States reserves the right to tax income paid by any "expatriated entity" in accordance with its domestic law for a period of up to ten years following expatriation, notwithstanding treaty provisions reducing or eliminating source-based withholding on such income.

The draft Technical Explanation of the provision defines "expatriated entity" by reference to Internal Revenue Code section 7874(a)(2)(A). Very generally, that section states that where a domestic entity has been acquired by a foreign parent and there is significant continuity of ownership between the domestic entity's former shareholders and the foreign entity's new shareholders, the domestic entity is an "expatriated entity."

3. Special Tax Regimes

These draft paragraphs generally provide that if interest, royalties or "other income": (1) is paid between related parties; and (2) the recipient is "subject to a special tax regime" in its country of residence with respect to that item of income, then the source country may tax the category of income in accordance with its domestic law notwithstanding the treaty.

The phrase "special tax regime" is not defined in any detail in the draft paragraphs themselves; proposed paragraph (l) of Article 3 states cursorily that it "means any legislation, regulation, or

administrative practice that provides a preferential effective rate of taxation" on the relevant item of income. The paragraph fleshes out the definition by providing a list of provisions that would not qualify as "special tax regimes." Those include charitable exemptions, preferences relating to retirement and pension administration, and preferential rates on royalties that entail a "substantial activity" requirement, among others.

According to Treasury, no current US legislation, regulations, or administrative practices that apply with respect to interest, royalty or other income satisfy the definition of a "special tax regime." At the May 20 meeting, Rolfes stated that Treasury would likely refrain from defining "special tax regime" with any greater specificity, explaining that the Department would not be able to "put [its] finger on, at the time of negotiation, all of the ways that a country might give preferences."

4. Limitation On Benefits Article

The Limitation on Benefits (LOB) article has also been substantially revised. Probably the most noteworthy change is the addition of an "equivalent beneficiary" test. Under this test, a company is treaty-eligible if it is at least 95 percent owned by seven or fewer "equivalent beneficiaries" and if it satisfies a base erosion test.

The definition of "equivalent beneficiary" comprises two elements. First, the owner must be entitled to all the benefits of a comprehensive double-tax treaty with the United States (if benefits are being claimed against US tax) or the other treaty country (if benefits are being claimed against the other country); for purposes of gauging an entity's entitlement to treaty benefits, an LOB clause is imputed to treaties that currently lack one.

Second, in the case of passive income (interest, royalties, and dividends), that same double-tax treaty must entitle the owner to a maximum withholding rate on the relevant category of income that is "at least as low" as the rate specified in the US Model. Finally, with respect to income governed by Article 7 (Business Profits), 13 (Gains) or 21 (Other Income), the owner must be entitled to benefits under its treaty that are "at least as favorable" as the benefits granted under the US Model.

In the case of putative equivalent beneficiaries who own companies indirectly, all intermediate owners must be "qualified." The definition of "qualified intermediate owner" is similar to, yet slightly more permissive, than the equivalent beneficiary test.

Other significant changes to the LOB Article include: (1) adding a "base erosion" requirement for a company to qualify for benefits by virtue of its status as a subsidiary of a publicly traded company; (2) applying the base erosion test to the company's consolidated group; (3) imposing a "special tax regime" exception to the acceptable payments rule under the base erosion test; and (4) changing the definition of "gross income" under the base erosion test so as to exclude exempt dividend income.

5. Subsequent Changes In Law

This new draft Article provides that certain changes to the domestic law of either treaty country will cause some of the provisions of the Treaty to be inoperative. Paragraphs 1 and 2 of the Article state that if the highest marginal rate of taxation for individuals or business entities falls below 15 percent in either treaty country, or if either country elects to exempt individual or corporate foreign-source income from taxation, then Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 21 (Other income) will no longer be effective for individuals or companies, as the case may be.

The Technical Explanation provides that the "special tax regime" provision (detailed in (3), above) is intended to apply in cases of specific exemptions or preferences, but that this Article is applicable to broader exemptions or rate reductions.

Rolfes stated at the May 20 meeting that the provision is "less nuclear than terminating a tax treaty [altogether]" but that it would still lead to serious consequences if either treaty partner were to aggressively lower its domestic tax rates in an effort to attract mobile income.

Conclusion

Since the US Model typically represents the United States' opening position in treaty negotiations, these new provisions will likely have a significant impact on the content of US tax treaties going forward. Multinational businesses need to be aware that tax structures that work under current treaties could be rendered obsolete or ineffective as these rules are incorporated into the US treaty network.

For more information concerning this, please contact Neal M. Kochman (nkochman@capdale.com) or Joseph P. Brothers (jbrothers@capdael.com), members of Caplin and Drysdale's International Tax/Transfer Pricing Group.

Topical News Briefing: Considering The Brexit

by the Global Tax Weekly Editorial Team

Last month's general election has removed much uncertainty about the future of the UK's tax and wider economic policies for the next five years. But one important question remains to be answered: the UK's future constitutional relationship with the EU. And the fall-out from a "Brexit" could spread well beyond the UK's boundaries.

To set the scene, the one thing we do know about this issue is that the Conservative Government has pledged to stage an "in-out" referendum on the UK's EU membership before the end of 2017. Everything else is pretty much up in the air. Prime Minister David Cameron is determined to renegotiate the UK's European treaty obligations with the hope that some powers will be transferred from Brussels to London, and put this new settlement before the British people in the referendum. But there's no guarantee that he'll succeed, or even if voters will prefer this option to the one of the UK leaving the EU altogether.

Obviously, either result could have a significant impact on businesses operating in the UK. However, there are also tens of thousands more companies registered in international offshore financial centers with constitutional links to the UK which could be affected by the result of the upcoming EU referendum.

Naturally, in the debate about the UK's future in Europe, commentators are focusing on all the permutations of a Brexit on the UK. Few people seem to be considering how these offshore jurisdictions will fit into the new framework in the event of a treaty change or Brexit. Except, of course, the authorities in these territories themselves.

As reported in this week's issue of *Global Tax Weekly*, this matter was raised recently by the Isle of Man's Chief Minister, Allan Bell. While the Isle of Man isn't a member of the EU, it is a part of the European free trade area by virtue of its relationship with the UK, and has chosen to become part of the EU's VAT regime. However, technically speaking, neither is the Isle of Man part of the UK, so it is not covered by the referendum.

The other UK Crown Dependencies – Guernsey and Jersey – are in similar positions with regards to the UK and the EU. These two jurisdictions also form part of the free trade area but they are not full EU members and also fall outside the EU fiscal area, including the VAT regime.

All three islands apply the EU common external tariff. But Gibraltar, a British Overseas Territory clinging on to southern Spain, doesn't. To complicate matters, Gibraltar entered the EU as a member

along with the UK, and has transposed much EU financial legislation into law.

As Bell observed, there seems little these jurisdictions can do to influence the EU debate in the UK, and their European fate is largely out of their hands. They will probably just be mightily relieved when it's all over, and Britain has decided once and for all in which direction it intends to travel, as will most with a stake in the UK economy.

Isle Of Man Looks To Shore Up Future With EU

Representatives from the Isle of Man recently met with officials and policymakers from the EU and the UK, and subsequently with representatives from Scotland, Northern Ireland, Wales, and Gibraltar, to discuss the impact of a UK exit from the EU.

The Isle of Man's Chief Minister, Allan Bell, was accompanied by Manx Treasury Minister Eddie Teare. They met with representatives of the Conservative Party in London and Brussels to discuss the priorities of the new UK Government, including the proposed renegotiation of the UK's relationship with the EU and the planned referendum on EU membership.

Bell explained the island's predicament with regards to the prospect of the UK leaving the EU: "The Isle of Man is not part of the UK or EU, and so it is not included in the UK referendum on EU membership, which is due to take place before the end of 2017. However, the Isle of Man's relationship with the EU is through the UK and is set out in Protocol 3 to the UK's Act of Accession to the EU."

He said that although Scotland, Wales, Northern Ireland and Gibraltar may wish to remain in the UK, "a potential UK-wide 'no' vote could see them all leave, possibly against the wishes of their people. The Isle of Man is facing a similar prospect in terms of its own relationship with Europe. We cannot control the outcome – that is for the UK as a member of the EU to determine – but we are seeking to understand and address the implications for the island."

EU, Switzerland Sign Tax Transparency Deal

The EU and Switzerland will automatically exchange information on the financial accounts of each other's residents from 2018, under a new tax transparency agreement signed on May 27, 2015.

The agreement was signed by EU Tax Commissioner Pierre Moscovici, Latvian Finance Minister Janis Reirs (on behalf of the Latvian Presidency of the EU Council), and Jacques de Watteville, the Swiss Secretary for International Finance Matters. It will replace the EU–Switzerland taxation of savings agreement that has been in force since 2005. It includes the existing withholding tax exemption for cross-border payments of dividends, interest and royalties between related entities.

Under the deal, the parties will receive, on an annual basis, the names, addresses, tax identification numbers, and dates of birth of their residents with accounts in contracting states, along with other financial and account balance information.

The agreement is expected to enter into force on January 1, 2017. Switzerland and the 28 EU

member states intend to collect account data from 2017.

Moscovici said: "Today's agreement heralds a new era of tax transparency and cooperation between the EU and Switzerland. It is another blow against tax evaders, and another leap towards fairer taxation in Europe. The EU led the way on the automatic exchange of information in the hope that our international partners would follow. This agreement is proof of what EU ambition and determination can achieve."

A consultation launched by the Swiss Federal Council is open for comment until September 17, 2015. The agreement will then be submitted, together with a dispatch, to the Swiss Parliament for approval. In the coming weeks, the Federal Council will adopt dispatches on the Automatic Exchange of Information Act, the Multilateral Competent Authority Agreement, and the OECD/Council of Europe administrative assistance convention. The European Commission is concluding negotiations for new tax transparency agreements with Andorra, Liechtenstein, Monaco, and San Marino.

Poland Removes Gibraltar From Tax Blacklist

Poland has removed Gibraltar from its list of countries it considers are non-cooperative for tax purposes.

The move releases Gibraltar-based companies from previous restrictions. It follows steps taken by the Gibraltar Government to ensure compliance with international standards in the area of tax transparency, including its adoption of the Common Reporting Standard, its signing of tax information exchange agreements, and its entering into Foreign Account Tax Compliance Act (FATCA) arrangements with the US and "son of FATCA" arrangements with the UK.

Poland now joins a number of other countries which have taken similar measures to recognize Gibraltar as an internationally cooperative jurisdiction in the area of tax information exchange. Over the last six months or so, Canada, Estonia and Italy have removed Gibraltar from their lists.

Gibraltar also reported that a further two countries have confirmed that they are in the process of internal legislative or parliamentary procedures to remove Gibraltar from their lists of countries with preferential tax regimes or similar schedules that attract countermeasures.

Brazil To Hike Taxes On Imports

The Brazilian Senate approved on May 28, 2015, a bill that will raise taxes on a number of imported products, including automotive parts, beer, and pharmaceuticals.

If the bill is approved by President Dilma Rousseff, the PIS and COFINS social contribution taxes will be hiked to 2.1 percent and 9.65 percent, respectively, on various imported products. Currently the taxes are levied at rates of 1.65 percent and 7.6 percent, respectively. For some products, the combined PIS/COFINS rate would increase to 20 percent.

It is estimated that the proposed tax increases would yield an additional BRL694m (USD217.8m) this year, and revenue worth BRL1.19bn in 2016.

The Government is currently seeking to shore up revenue under its "fiscal adjustment" program.

TPA Crucial For US Trade Growth, Ryan Says

Negotiations towards historic trade deals between the US and Asia-Pacific and EU nations will probably fail unless the US House of Representatives renews trade promotion authority (TPA) in an upcoming vote, House Ways and Means Committee Chairman Paul Ryan (R – Wisconsin) has said.

In an op-ed piece for *Fox News*, Ryan, whose committee has jurisdiction over tax and trade legislation, said the US risks losing credibility with its main trading partners if Congress rejects the opportunity to renew TPA.

TPA sets negotiation goals for the President but then prohibits amendments to implementing bills for trade treaties and imposes a timetable for their consideration. It would enable the texts of completed free trade agreements to be fast-tracked through the legislature. Renewing TPA, which last expired in 2007, would therefore allow the US Administration to submit trade deals that are in line with those goals for a yes-or-no vote.

Ryan warned lawmakers that without TPA in place, the countries negotiating the expanded Trans-Pacific Partnership with Asia-Pacific countries and the Transatlantic Trade and Investment Partnership with the EU will not want to make concessions to the US "only to see Congress rewrite the deal."

"Right now, the US is negotiating two historic trade deals – one with countries on the Pacific Rim and the other with the European Union. One of the talks is already far along, but the countries involved have yet to put their best offers on the table – for a simple reason: under the Constitution, the president can negotiate a trade deal, but Congress must approve it. And this division of power makes other countries think twice," Ryan said.

He argues that, contrary to what many opponents of TPA believe, TPA would actually put Congress in the driving seat in negotiations because it gets to set nearly 150 negotiating priorities, such as ensuring that trade barriers to US products are removed. The legislation would also require the Government to consult regularly with Congress during trade negotiations and give every elected representative access to US negotiators and the negotiating text. Additionally, the Government must make the text of a deal public for 60 days before the President can sign it. "Congress then gets the final say on the text of a concluded trade agreement in a vote," he added.

"Only TPA will reassure other countries they can trust the US, and so only TPA can give the US the leverage it needs to win a fair deal for America's workers," Ryan argued.

The Ways and Means Chairman pointed out that, between 2000 and 2010, the countries of east Asia completed 48 trade deals among themselves, while the US negotiated just two. As a result, America's share of East Asia's imports fell by 42 percent, he said.

He concluded: "Less market share means less influence. So we as a country have to ask ourselves: Is China going to write the rules of the global economy, or is America?"

EU MEPs Seek Ambitious And Balanced TTIP

An EU–US trade deal should deepen EU access to the US market, but must not undermine EU standards or the right to regulate in the public interest, said Trade Committee MEPs (Members of the European Parliament) in draft recommendations agreed on May 28. They also agreed that tools for resolving disputes between investors and states should be reformed and improved.

The recommendations to the European Commission negotiators on the Transatlantic Trade and Investment Partnership (TTIP), approved in committee by 28 votes to 13 with no abstentions, still need to be endorsed by the European Parliament as a whole.

EU gross domestic product (GDP) is "heavily dependent on trade and export," so a "well-designed" deal with the US could help boost the industry contribution to EU GDP by 15–20 percent by 2020, says the text, with EU firms – especially small, medium, and micro enterprises – newly benefiting from a market of 850m consumers.

The Committee highlighted that contradictory study findings make the TTIP's real benefits for the EU economy hard to assess. It therefore stressed that the talks must be transparent, in order to deliver an "ambitious" but "balanced" deal, with shared benefits across EU member states, leading to an "effective, pro-competitive economic environment" and precluding non-tariff trade barriers. High levels of protection for EU consumers' data, health and safety must be guaranteed, and social, fiscal, and environmental dumping must be prevented, it added.

It was agreed that, while aiming to eliminate all customs tariffs, the EU and the US should negotiate an "exhaustive list" of "sensitive agriculture and industrial products" that would either be exempted from trade liberalization or subject to longer transitional periods. They ask the EU negotiators to "make every effort" to insert a "safeguard clause," reserving the right to close markets for specific products in the event of import surges that threaten to cause serious harm to domestic food production. They have also asked the European Commission to encourage the US to lift its ban on EU beef imports.

A plenary vote on the text needs to be endorsed by the European Parliament as a whole, with a plenary vote currently scheduled for June 10.

Chile, Philippines To Pursue Free Trade Deal

Chile and the Philippines have agreed to conduct a study to determine the feasibility of concluding a free trade agreement (FTA), Chile's Directorate General of International Relations announced on May 27, 2015.

The two countries will hold meetings in the second half of this year to assess progress.

The head of the Directorate, Andrés Rebolledo, said that an FTA with the Philippines could open up a market of about 100m people to Chilean products.

Rebolledo noted that Chile is already negotiating an FTA with Indonesia. He said that Indonesia and the Philippines account for about 60 percent of the population of the Association of Southeast Asian Nations (ASEAN).

The President of the Philippine Chamber of Commerce and Industry, Alfredo Yao, pointed out that the FTA would also allow Chile to use the Philippines as a hub to reach other markets in Southeast Asia.

Chile currently has 24 FTAs in place with 62 economies, covering 63.3 percent of the world's population and 85.3 percent of global gross domestic product. Most recently, a new FTA for Chile with Hong Kong became effective from November 29.

The Philippines has FTAs with Japan and, as an ASEAN member, with China, South Korea, India, Japan, Australia, and New Zealand. The country began negotiations on an FTA with the European Free Trade Association in March.

EU–Bosnia, Herzegovina FTA In Force

The Stabilisation and Association Agreement (SAA) between the EU and Bosnia and Herzegovina (BiH) entered into force on June 1.

The Agreement is intended to further prepare the country for future EU membership. It provides for the creation of a free trade area between the EU and BiH within five years.

Federica Mogherini, High Representative of the EU for Foreign Affairs and Security Policy and Vice-President of the European Commission, welcomed

the agreement's entry into force, stating: "Today's full entry into force of the [SAA] is a milestone on Bosnia and Herzegovina's EU path. [A] new chapter begins. Political clarity, decisive action and a real, coordinated effort by institutions at all levels are now needed to develop and implement the reform agenda. Tangible results will be fundamental for the [EU] Council to consider a membership application in the future. An overwhelming majority of BiH citizens want their country to join the EU and the leadership of the country needs to redouble its engagement and meet citizens' expectations."

Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations, added: "I welcome the entry into force of the SAA as a defining moment in the relations between the EU and Bosnia and Herzegovina as well as an agreement which firmly sets BiH on an EU-accession path. At the same time, the SAA also brings new responsibilities stemming from its implementation and for BiH authorities to deliver upon. The Commission will spare no effort assisting the country's authorities in the implementation of the necessary reform agenda."

US Reaches Non-Prosecution Deals With Four Swiss Banks

The US Department of Justice (DoJ) has announced that four Swiss banks have reached a resolution with the Government under the DoJ Tax Division's regularization program.

The DoJ's Swiss Bank Program was signed by the two countries on August 29, 2013. It provides a framework for Swiss banks that were not already being investigated to resolve past "cross border criminal tax violations."

By cooperating with US authorities and disclosing detailed information on US account holders, Swiss banks are able to avoid prosecution but will still be subject to a significant fine of between 30 and 50 percent of the total sum of their US clients' undeclared assets.

According to the terms of the non-prosecution agreements signed on May 28, each bank agrees to cooperate in any related criminal or civil proceedings, demonstrate its implementation of controls to stop misconduct involving undeclared US accounts, and pay the penalties in return for the department's agreement not to prosecute these banks for tax-related criminal offenses.

Acting Assistant Attorney General Caroline D. Ciraolo of the DoJ Tax Division said that the agreements "reflect the Tax Division's continued progress towards reaching appropriate resolutions with the banks that self-reported and voluntarily entered the Swiss Bank Program."

However, Ciraolo reiterated the DoJ's zero-tolerance stance on tax evasion: "The department is currently investigating account holders, bank employees, and other facilitators and institutions based on information supplied by various sources, including the banks participating in this Program. Our message is clear – there is no safe haven."

Under the Program, banks are required to:

- Make a complete disclosure of their cross-border activities;
- Provide detailed information on an account-by-account basis for accounts in which US taxpayers have a direct or indirect interest;
- Cooperate in treaty requests for account information;
- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Agree to close accounts of account holders who fail to come into compliance with US reporting obligations; and
- Pay appropriate penalties.

Brazil Hikes Tax On Financial Firms

Brazil's Department of Federal Revenue announced on May 22, 2015, that a social contribution tax on the profits of financial institutions is to

be increased from September 1 as part of its "fiscal adjustment" program.

The tax, CSLL, which is levied before income tax on certain financial institutions, is to be hiked from 15 percent to 20 percent.

The tax agency said that the measure will provide the Government with additional revenues worth about BRL747m (USD237m) this year and about BRL3.8bn next year.

Following the announcement of the tax hike, the Brazilian Government announced that it would freeze about BRL69.9bn of spending in the 2015 Budget.

The change was effected through Official Gazette Provisional Measure No. 675 of May 21, 2015.

UK Banking Sector's Tax Contribution Falls

A new study by the University of Cambridge's Judge Business School has revealed a sharp fall in banking sector corporation tax receipts for the UK.

The research was conducted by Geoff Meeks, Professor of Financial Accounting at Cambridge Judge, and Dr. J. Gay Meeks, Senior Research Associate at the University of Cambridge, and was published in the journal *Fiscal Studies*. In particular, it looks at the "widening gap" between UK corporation tax (UKCT) and global payable corporation tax by the UK's largest banks, as reported in their annual reports to shareholders.

The research shows that, based on current currency valuations, total UKCT receipts from the banking sector declined from GBP7bn (USD10.8bn) in 2005/06 to GBP1.3bn in 2011/12 and to GBP2.3bn in 2012/13. The sector's contribution to total UKCT receipts fell from about 20 percent in 2005/06 to 4 percent by 2011/12.

The study found that a rise in tax-deductible impairments, due largely to bad loans, contributed to the fall in receipts. A decline in the headline rate of corporation tax from 30 percent in 2005/06 to 26 percent in 2011/12 was also said to have caused a "relatively small" reduction of GBP200m in UKCT banking sector receipts.

Since 2011/12, UK banks have been subject to an additional bank levy, and UK Chancellor George Osborne's 2015 Budget included an increase from 0.156 percent of banks' liabilities to 0.21 percent.

The study found that, despite the fall in UK revenues, the operating profits of the six largest UK-incorporated banks increased from GBP139bn in the period 2005–2007 to GBP143bn in the period 2010–2012. The authors also examined the reduction, from 30 percent to 11 percent, in the share of these banks' global tax payments. While global tax payments for those banks increased from GBP12.69bn in the period 2005–2007 to GBP12.85bn in the period 2010–2012, the amount paid to the UK Exchequer in that period fell from GBP3.8bn to GBP1.4bn.

The study also concluded that current reporting rules result in "incomplete disclosures," which severely hamper the forecasting ability of the UK's Office of Budget Responsibility and banks' shareholders.

Puerto Rican Senate Passes Sales Tax Bill

Puerto Rican lawmakers have passed legislation that will increase the island's sales and use tax from 7 percent to 11.5 percent.

The measure was passed by the Senate in a 14–12 vote on May 25. It was then approved by the House of Representatives on May 26. A Senate amendment removed a provision for the extension of the sales tax to certain processed food.

The Government estimates that the hike will raise USD1.2bn in tax revenue. It will be implemented alongside budget cuts of USD500m.

Last month, lawmakers voted against plans for a 16 percent value-added tax and subsequently a 13 percent goods and sales tax.

EU Rejects Italian Reverse Charge Plan

Italian media has reported that the European Commission has rejected the nation's plans to introduce a value-added tax (VAT) reverse charge on the supplies of large retailers.

The plan was included in the 2015 Budget Bill, *la legge di stabilità*. The original Bill had also proposed extending the reverse charge to real estate and construction services.

Intended to prevent fraud, the reverse charge shifts the obligation to account for VAT to the recipient, instead of the supplier.

As had been anticipated, the Commission reportedly said there is insufficient evidence that the reverse charge is necessary or that it would contribute to EU efforts to tackle fraud.

The Government will now need to find extra revenues or spending cuts worth about EUR730m (USD795m). Italy's Budget included a safeguard clause, negotiated with the Commission, which included a package of measures that will be implemented if Italy fails to reach its fiscal targets. In the absence of other policies, Italy will be obliged to hike the 10 percent and 22 percent VAT rates by 2 percent from the beginning of 2016.

IMF: Japan's Planned Consumption Tax Hike 'Not Enough'

The Japanese Government will probably need to increase consumption tax beyond the rise scheduled to take place in 2017 if it is to achieve its fiscal consolidation targets, the International Monetary Fund (IMF) has said.

In its 2015 review of the Japanese economy, the IMF said that while efforts to contain increases in social security spending are appropriate, they will not be enough on their own to eliminate the budget deficit and that additional measures to bring in more revenue will be required.

The IMF welcomed the approval of legislation to reduce the corporate tax rate and to widen the corporate tax base, intended to encourage business investment. However, it argued that further increases in the consumption tax will be required given the need for "significant medium-term adjustment" to put government debt on a downward trajectory.

The IMF also urged the Government to avoid multiple consumption tax rates, which would soften the blow of the increase in the main rate, and recommended that it maintain a wide consumption tax base.

On March 31, Japan passed legislation to adopt tax reform proposals for the 2015 fiscal year, including the planned corporate tax cuts and the postponement of the country's second consumption tax rate increase from 8 percent to 10 percent.

In a first step, the corporate tax rate was lowered to 32.11 percent on April 1, 2015. From fiscal year 2016, it will be cut to 31.33 percent. The legislation also includes provisions to recoup much of the lost revenue from the rate reduction by broadening the corporate tax base, largely through a reduction in the amount of previous losses that can be offset against declared business income.

The legislation also modified the consumption tax law, postponing the sales tax hike scheduled for October 2015 by 18 months to April 2017 because of weakness in the Japanese economy. However, the bill eliminated a provision that would enable further postponements.

The decision to further defer the consumption tax rise resulted in Fitch Ratings downgrading Japan's long-term credit rating to "A" from "A+" in April. The ratings agency pointed out that the Japanese Government "did not include sufficient structural fiscal measures in its budget for the fiscal year April 2015–March 2016" to replace the programmed consumption tax rate hike that was "the centerpiece of its medium-term fiscal consolidation effort."

Ireland Pledges To Ease Tax Burden On SMEs

Irish Finance Minister Michael Noonan is to consult small and medium-sized businesses on the tax barriers they face.

Noonan announced the initiative during a speech to the Irish Small and Medium Enterprises Association (ISME) annual lunch.

He said: "My Department has been reviewing the tax expenditures currently available, and I am now seeking your views on what measures work in our tax system to encourage entrepreneurs and small businesses, and how they could be improved. I want to know what tax-related barriers you feel there [are] to establishing new enterprises, and what can be done to overcome these barriers."

"I also want to know if, given the difference in the treatment of Pay As You Earn (PAYE) and self-assessed taxpayers, there is scope for greater alignment."

Fine Gael lower house member Liam Twomey, who is the Chairman of the Parliament's Finance Committee, confirmed that details of the consultation will be available on the Finance Department's website from June 2.

He said: "What is clear is that businesses feel their contribution to the economy is not fully recognized. In particular small businesses and the self-employed feel the discrepancy between the tax treatment of the employed and self-employed is unfair."

"To achieve full employment by 2018, we need small business to reach their full potential to allow us to achieve this goal. We want to help small businesses take advantage of the opportunities offered by the economic recovery that is beginning to take hold," Twomey added.

ISME's new chairman, James Coghlan, said: "In recent months ISME has been championing a campaign to end the tax discrimination against the self-employed and proprietary directors who can, in some cases, pay up to eight times more tax than their PAYE counterparts on similar incomes. Our message is simple, those on the same income should pay the same tax."

NI Corporation Tax Cut Delay Deterring Investors

Grow NI, a collective of businesses and business associations in Northern Ireland, has warned the Government of the damage being caused by delays in the implementation of the territory's new corporate tax powers.

Grow NI Chairperson Eamonn Donaghy said: "Continued uncertainty around a start date and an agreed rate of corporation tax means that the private sector cannot compete on a level playing field with businesses in the Republic of Ireland."

Donaghy's comments came after the Welfare Reform Bill failed to pass the Northern Ireland Assembly this week. The UK Government has made clear that devolved corporation tax powers will commence only if the Executive parties "put their finances on a long-term sustainable footing."

Donaghy said: "The power to create tens of thousands of jobs is now within our grasp, but unless politicians seize this opportunity it will jeopardize significant employment growth opportunities and will increase inequality in Northern Ireland."

He added: "Only by having the same rate of corporation tax across the island [of 12.5 percent] will we see any significant increase in employment in Northern Ireland. Such a change would see increased investment from companies at home and abroad, creating jobs which are much needed in communities everywhere."

The devolution of powers comes on the condition of a *pro rata* reduction in the block grant, money which the UK Government provides to each of its regions to fund their day-to-day operations.

Ireland Explains Tax Ruling Practices At EU Hearing

"Ireland does not have a statutory system of binding tax rulings and there is no provision in Irish law for the issuing of such rulings," Revenue Chair Niall Cody has said.

Cody made the comments during an address to a session of the European Parliament's Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE) on May 28.

He explained that the tax authority, the Revenue Commissioners, issues non-binding advisory opinions on the application of tax law in relation to specific transactions or situations. "The provision of such opinions comes within the general administrative functions vested in Revenue under tax legislation. Opinions are only issued where the matter is complex or where there is genuine uncertainty regarding the applicable tax rules."

According to Cody, Revenue's role is to interpret and apply the tax law correctly and consistently. It does not have "the authority or discretion to depart from the applicable rules as set out in tax law." Revenue opinions are not binding and can be reviewed.

Cody said that Ireland has cooperated fully with the European Commission's state aid inquiries into tax ruling practices. He pointed out that, in the case of companies operating in Ireland through a branch, Revenue is "required to charge corporation tax on the full profits arising from their branch activities here – and that is what we do." However, Revenue cannot "charge tax on profits arising from activities outside the state that are unrelated to the Irish branch – such profits are outside the scope of the Irish tax system."

He pointed out that detailed guidelines on the provision of tax opinions are available on Revenue's

website, and the agency publishes a range of information on the application of tax legislation, including tax briefings and guidance notes, which are updated each year. It does not generally publish opinions on the application of the law to the specific circumstances of any one taxpayer. However, in cases that may be of more general interest, the Revenue publishes a tax briefing note that summarizes the issue raised by the taxpayer and the opinion given by Revenue.

The Irish Revenue is statutorily independent in the performance of its functions and is accountable to the Irish Parliament, he told the Committee.

France Looking To Slash Red Tape

The French Government has announced a package of 92 measures to streamline administrative requirements and rules and simplify tax compliance.

The measures were announced by Thierry Mandon, France's Secretary for State Reform and Simplification. They come two years after President François Hollande launched the "*choc de simplification*" initiative.

Of the new measures just announced, approximately 50 relate to businesses and are primarily aimed at cutting red tape.

One significant measure is a proposal to streamline the operation of France's tax and social security authorities. Under the measure, businesses will only have to engage with one authority.

A code of best practice will also be introduced to improve French authorities' dealings with taxpayers and businesses. The website of the social security authority will be revamped and guidance will be made clearer and more definitive.

France is also to ask the European Commission to establish a council for small and medium-sized enterprises, which would be responsible for reviewing the impact on small businesses of EU legislative proposals.

The Government is also to review cases where it has transposed EU regulations in a way that is more burdensome than required, to evaluate whether it is possible to mitigate the impact on businesses.

SARS Boasts High Conviction Rate For Tax Crimes

The South African Revenue Service (SARS) has said it achieved a 92 percent conviction rate on cases involving tax and customs fraud that it handed over to the National Prosecuting Authority of South Africa in the last financial year.

According to SARS, most of the cases involved high-net-worth individuals, those filing fraudulent value-added tax (VAT) refunds, and those engaged in income tax fraud.

Over the 2014/15 financial year, there were 256 individuals and entities convicted in cases involving ZAR196m (USD16.2m), with fines totaling ZAR9.6m also issued.

These cases included 32 convictions for VAT fraud, 73 convictions for income tax fraud, eight for tobacco-related crimes, and nine involving the construction industry (largely for tender fraud), among others.

A further 30 cases were approved for criminal prosecution in May 2015, SARS said.

"These convictions illustrate that SARS has the capability to investigate tax crimes effectively despite

recent speculation that its enforcement capability has been diminished," the tax authority stated.

IRS Hit By Huge Tax Refund Scam

Identity thieves have used information stolen from more than 100,000 taxpayers in the US to claim tens of millions of dollars in fraudulent tax refunds in the latest security breach to hit the embattled agency.

Fraudsters used social security numbers, addresses, dates of birth, and other sensitive pieces of personal information stolen from elsewhere to gain entry into the IRS's Get Transcript system, which allows taxpayers to view previous tax returns and other tax records.

It is believed that the fraudsters made more than 200,000 attempts to view individual tax returns from February to the middle of May, and were successful in just over 100,000 of these, claiming around USD50m in fraudulent refunds.

The IRS, which has launched an investigation into the data breach, said that the scam had all the hallmarks of organized crime.

"We're confident that these are not amateurs," IRS Commissioner John Koskinen told a news conference. "These actually are organized crime syndicates that not only we but everybody in the financial industry are dealing with."

Koskinen said that around 80 percent of tax refund fraud in the US was perpetrated by organized criminal gangs. "These are extremely sophisticated criminals with access to a tremendous amount of data."

However, Koskinen's comments will do little to reassure a public that is growing increasingly concerned at the IRS's apparent inability to protect their data and prevent billions of dollars of improper tax credit claims.

The IRS has estimated that 27 percent of Earned Income Tax Credit payments were issued improperly in the 2014 fiscal year, with the value of these improper payments said to be USD17.7bn.

A recent investigation by the Treasury watchdog also concluded that the IRS had been wrong to consider the Additional Child Tax Credit as low risk to erroneous claims, estimating that the improper payment rate for the 2014 fiscal year was up to 30.5 percent, with improper payments worth an estimated USD7.1bn.

Congress is also likely to demand answers from the agency about what it intends to do to prevent billions of taxpayer dollars going to waste through fraud and error.

"While the committee is seeking more information about the situation, it's deeply concerning that taxpayer information has been compromised," said House Ways and Means Committee Chairman Paul Ryan. "Protecting the taxpayer is supposed to be the IRS's top priority, and we need answers from them."

ARMENIA - SLOVAKIA

Signature

Armenia and Slovakia signed a DTA on May 15, 2015, Armenia's Ministry of Foreign Affairs has confirmed.

BAHRAIN - PORTUGAL

Signature

Bahrain and Portugal signed a DTA on May 26, 2015.

BELARUS - AUSTRIA

Forwarded

Belarus's House of Representatives on May 6, 2015, endorsed legislation to ratify the DTA with Austria, the state news agency reported.

CHINA - CHILE

Signature

China signed a DTA with Chile on May 25, 2015.

CHINA - RUSSIA

Signature

China and Russia signed a DTA on May 8, 2015.

COLOMBIA - CZECH REPUBLIC

Effective

The DTA between Colombia and the Czech Republic will become effective from January 1, 2016, the Czech Ministry of Finance confirmed on May 28, 2015.

ETHIOPIA - MOROCCO

Negotiations

Ethiopia and Morocco are engaged in DTA negotiations, it was confirmed on May 12, 2015.

GEORGIA - VARIOUS

Signature

Georgia signed DTAs with Iceland, Liechtenstein, and Cyprus on May 13, 2015.

GERMANY - JERSEY

Signature

Germany and Jersey signed a DTA on May 7, 2015.

GUERNSEY - MONACO

Into Force

Guernsey's DTA with Monaco entered into force on May 9, 2015.

HONG KONG - JAPAN

Ratified

Hong Kong gazetted an order on May 15, 2015, to ratify the TIEA signed with Japan.

HONG KONG - SAUDI ARABIA

Negotiations

Hong Kong and Saudi Arabia held a third round of DTA negotiations on May 12–14, 2015.

HONG KONG - VARIOUS

Ratified

Hong Kong gazetted two orders on May 15, 2015, to give force to the comprehensive DTAs signed with South Africa and the United Arab Emirates. They were tabled before the Legislative Council on May 20, 2015.

INDIA - KOREA, SOUTH

Forwarded

India's Cabinet on May 6, 2015, approved the pending DTA with South Korea.

INDIA - MONGOLIA

Initialed

India and Mongolia initialed a DTA during Indian Prime Minister Narendra Modi's two-day visit to Mongolia, which began on May 17, 2015.

MALAYSIA - SLOVAKIA

Signature

Malaysia and Slovakia signed a DTA on May 25, 2015.

MOROCCO - GUINEA-BISSAU

Signature

Morocco and Guinea-Bissau signed a DTA on May 28, 2015.

PHILIPPINES - VARIOUS

Forwarded

The Philippines' pending DTA with Germany and a Protocol with Italy were discussed at the May 20, 2015, subcommittee meeting of the Philippines' Committee of Foreign Affairs, as part of the nation's domestic ratification procedures.

QATAR - KENYA

Ratified

Qatar completed its domestic ratification procedures in respect of a DTA with Kenya on May 25, 2015.

SOUTH AFRICA - VARIOUS

Forwarded

Reports concerning South Africa's pending DTAs with Lesotho, Cameroon, and Qatar, and a Protocol with Cyprus, were tabled before South Africa's Parliament on May 12, 2015, as part of the nation's domestic ratification procedures.

SWITZERLAND - GRENADA

Signature

Switzerland and Grenada signed a TIEA on May 19, 2015.

TURKMENISTAN - AUSTRIA

Signature

The Government of Turkmenistan on May 12, 2015, confirmed the recent signature of a DTA with Austria.

UNITED KINGDOM - UNITED ARAB EMIRATES

Negotiations

The United Kingdom and the United Arab Emirates committed to continuing DTA negotiations at a meeting on May 14, 2015.

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

THE AMERICAS

TAX PLANNING FOR DOMESTIC & FOREIGN PARTNERSHIPS 2015 – SAN FRANCISCO, CA

PLI

Venue: PLI California Center, 685 Market Street, San Francisco, California 94105, USA

Co Chairs: Stephen D. Rose (Munger, Tolles & Olson LLP), Eric B. Sloan (Deloitte Tax LLP), Clifford M. Warren (Internal Revenue Service)

6/9/2015 - 6/11/2015

http://www.pli.edu/Content/Seminar/Tax_Planning_for_Domestic_Foreign_Partnerships/_/N-4kZ1z129zc?ID=223947

14TH ANNUAL INTERNATIONAL MERGERS AND ACQUISITIONS CONFERENCE

International Bar Association

Venue: Waldorf Astoria New York, New York, NY 10022, USA

Chairs: Alan M Klein (Simpson Thacher & Bartlett), Stephen Cooke (Slaughter and May), Maximilian Schiessl (Hengeler Mueller)

6/10/2015 - 6/11/2015

http://www.int-bar.org/Conferences/conf628/binary/New%20York%20M&A%202015%20programme.pdf

GLOBAL TRANSFER PRICING CONFERENCE

BNA

Venue: Fairfax Embassy Row, 2100 Massachusetts Avenue Northwest, Washington, DC 20008, USA

Chairs: Douglas W. O'Donnell (Internal Revenue Service), David Varley (Internal Revenue Service)

6/11/2015 - 6/12/2015

http://go.bna.com/transfer-pricing-conference-primer/

INTRODUCTION TO US INTERNATIONAL TAX – BOSTON, MA

Bloomberg BNA

Venue: Morgan Lewis, 225 Franklin Street, Boston, MA 02110, USA

Chair: Bart Bassett (Morgan Lewis LLP), James O'Brien (Baker & McKenzie LLP), Doug Stransky (Sullivan & Worcester LLP)

6/15/2015 - 6/16/2015

http://www.bna.com/intro2015_boston/

THE 6TH ANNUAL PRIVATE INVESTMENT FUNDS TAX MASTER CLASS

Financial Research Associates

Venue: Princeton Club of New York, 15 W 43rd St, New York, NY 10036, USA

Chairs: Elaine B. Murphy (Ropes & Gray), Jay G. Milkes (Ropes & Gray), Anthony Tuths (Withum Smith+Brown)

6/15/2015 - 6/16/2015

https://www.frallc.com/pdf/B957.pdf

INTERMEDIATE US INTERNATIONAL TAX UPDATE – BOSTON, MA

Bloomberg BNA

Venue: Morgan Lewis, 225 Franklin Street, Boston, MA 02110, USA

Chair: Bart Bassett (Morgan Lewis LLP), James O'Brien (Baker & McKenzie LLP), Doug Stransky (Sullivan & Worcester LLP)

6/17/2015 - 6/19/2015

http://www.bna.com/inter2015_boston/

BASICS OF INTERNATIONAL TAXATION 2015 – NEW YORK

PLI

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)

7/21/2015 - 7/22/2015

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2015/_/N-4kZ1z129zs?ID=223955

INTERNATIONAL TAX ISSUES 2015 – CHICAGO, IL

Practicing Law Institute

Venue: University of Chicago Gleacher Center, 450 N. Cityfront Plaza Drive, Chicago, Il 60611, USA

Chair: Lowell D. Yoder (McDermott Will & Emery LLP)

9/9/2015 - 9/9/2015

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2015/_/N-4kZ1z12a24?ID=223915

BASICS OF INTERNATIONAL TAXATION 2015 – SAN FRANCISCO, CA

PLI

Venue: PLI California Center, 685 Market Street, San Francisco, California 94105, USA

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

9/28/2015 - 9/29/2015

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2015/_/N-4kZ1z129zs?ID=223955

INTRODUCTION TO US INTERNATIONAL TAX – LAS VEGAS, NV

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Chairs: Bart Bassett (Morgan Lewis LLP), Doug Stransky (Sullivan & Worcester LLP)

9/28/2015 - 9/29/2015

http://www.bna.com/uploadedFiles/BNA_V2/Professional_Education/Tax/Live_Conferences/IntroIntermediateJuneAugSept2015.pdf

INTERMEDIATE US INTERNATIONAL TAX UPDATE – LAS VEGAS, NV

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Chairs: Bart Bassett (Morgan Lewis LLP), Doug Stransky (Sullivan & Worcester LLP)

9/30/2015 - 10/2/2015

http://www.bna.com/uploadedFiles/BNA_V2/Professional_Education/Tax/Live_Conferences/IntroIntermediateJuneAugSept2015.pdf

CAPTIVE INSURANCE TAX SUMMIT – WASHINGTON, DC

BNA

Venue: McDermott Will & Emery, 500 North Capital Street, NW, Washington, DC 20001, USA

Key Speaker: TBC

10/26/2015 - 10/27/2015

http://www.bna.com/captive_dc2015/

INTERMEDIATE US INTERNATIONAL TAX UPDATE – CHICAGO, IL

BNA

Venue: Baker & McKenzie LLP, 300 East Randolph Drive, 50th Floor, Chicago, IL 60601, USA

Key Speaker: TBC

10/28/2015 - 10/30/2015

http://www.bna.com/inter_chicago2015/

PRINCIPLES OF INTERNATIONAL TAXATION

Bloomberg BNA

Venue: Bloomberg LP, 731 Lexington Avenue, New York, NY 10022, USA

Key Speakers: TBC

11/16/2015 - 11/18/2015

http://www.bna.com/principlesintltax_NYC/

INTRODUCTION TO US INTERNATIONAL TAX – ARLINGTON, VA

Bloomberg BNA

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

Chairs: TBC

11/30/2015 - 12/1/2015

http://www.bna.com/intro_va/

ASIA PACIFIC

THE 6TH OFFSHORE INVESTMENT CONFERENCE HONG KONG 2015

Offshore Investment

Venue: Conrad Hong Kong Hotel, One Pacific Place, Pacific Place, 88 Queensway, Hong Kong

Chair: Michael Olesnicky (KPMG China)

6/17/2015 - 6/18/2015

http://www.offshoreinvestment.com/pages/index.asp?title=The_Offshore_Investment_Conference_Hong_Kong&catID=12190

3RD GLOBAL CONFERENCE ON FINANCE & ACCOUNTING

Asia Pacific International Academy

Venue: Concorde Hotel, 100 Orchard Rd, 238840 Singapore

Chairs: Dr Raymond KH Wong (The Chinese University of Hong Kong), Prof. Dan Levin (Wharton Business School, University of Pennsylvania)

7/29/2015 - 7/30/2015

http://academy.edu.sg/gcfa2015/

MIDDLE EAST AND AFRICA

TRENDS IN INTERNATIONAL TAXATION: AN AFRICAN PERSPECTIVE

IBFD

Venue: Zambezi Sun, Mosi-oa-Tunya Road, Livingstone 20100, Zambia

Key Speakers: Prof. Annet Wanyana Oguttu (University of South Africa), Antonio Russo (Baker & McKenzie), Belema Obuoforibo (IBFD), Eleni Klaver (Carrara Legal), Fredrick Omondi (Deloitte), among numerous others

6/18/2015 - 6/19/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/Trends-International-Taxation-African-Perspective-FULL-REGISTRATION-NOW

WESTERN EUROPE

VAT UPDATE CONFERENCE 2015

MBL

Venue: TBC, London

Chair: Etienne Wong (Tax Chambers, 15 Old Square)

6/5/2015 - 6/5/2015

http://www.mblseminars.com/Outline?progid=5788

THE INTERNATIONAL TAX PLANNING ASSOCIATION 40TH ANNIVERSARY CONFERENCE

ITPA

Venue: Sofitel Legend The Grand Amsterdam, Oudezijds Voorburgwal 197, 1012 EX Amsterdam, Netherlands

Chair: Milton Grundy

6/7/2015 - 6/9/2015

https://www.itpa.org/?page_id=9907

INTERNATIONAL TAXATION OF EXPATRIATES

IBFD

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

Key Speakers: Bart Kosters (IBFD)

6/10/2015 - 6/12/2015

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

INTERNATIONAL VAT CONFERENCE 2015

IBFD

Venue: Seehotel Überfahrt, Überfahrtstraße 10, 83700 Rottach-Egern am Tegernsee, Munich, Germany

Key speakers: Donato Raponi (European Commission), Dermot Donegan (Irish Revenue Commissioners), Prof. Dr Ben J. M. Terra, Ferdinand Huschens (German Federal Tax Administration), among numerous others

6/10/2015 - 6/12/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/International-VAT-Conference-2015#tab_program

TAX EXECUTIVES INSTITUTE EMEA SUMMER CONFERENCE

TEI

Venue: Starling Hotel Conference Center, Route François-Peyrot 34, 1218 le Grand-Saconnex, Geneva, Switzerland

Key Speakers: TBC

6/11/2015 - 6/12/2015

http://www.tei-europe.org/events/agenda.html

TAX FOR OFFSHORE SHIPPING

Informa

Venue: Bonhill House, 1-3 Bonhill Street, London, EC2A 4BX, UK

Key Speakers: Harrie van Duin (KPMG Meijburg), Dorte Cock (EY), Jurjen Bevers (Baker & McKenzie), Gavin Stoddart (Moore Stephens CIS), among numerous others

6/16/2015 - 6/17/2015

http://www.lloydsmaritimeacademy.com/event/offshoretax

INTERNATIONAL TAX ASPECTS OF PERMANENT ESTABLISHMENTS

IBFD

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

Key Speakers: Andreas Perdelwitz (IBFD), Bart Kosters (IBFD), Hans Pijl, Roberto Bernales (IBFD), Walter van der Corput (IBFD), Madalina Cotrut (IBFD), Jan de Goede (IBFD)

6/16/2015 - 6/19/2015

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

TREASURY FOR TAX PEOPLE

IBC

Venue: etc Venues - Marble Arch, Garfield House, 86 Edgware Road, London, W2 2EA, UK

Chair: David Hill (Grant Thornton)

6/18/2015 - 6/18/2015

http://www.iiribcfinance.com/event/treasury-for-tax-people-event

TAX PLANNING WORKSHOP

IBFD

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

Key Speakers: Shee Boon Law (IBFD), Tamas Kulcsar (IBFD), Boyke Baldewsing (IBFD), Carlos Gutiérrez (IBFD)

7/2/2015 - 7/3/2015

http://www.ibfd.org/Training/Tax-Planning-Workshop

SUMMER COURSE ON EU TAX LAW

ERA

Venue: ERA Conference Centre, Metzer Allee 4, 54295 Trier, Germany

Key speakers: Fatima Chaouche (Luxembourg University), Dr Charlène Herbain (Luxembourg University), Miriam Keusen (KPMG Luxembourg), Ine Lejeune (Advocaat/Avocat), Prof Jacques Malherbe (Liedekerke Wolters Waelbroeck Kirkpatrick), among numerous others

7/6/2015 - 7/10/2015

https://www.era.int/upload/dokumente/17230.pdf

PRIVATE CLIENT INTERNATIONAL TAX UPDATES

IBC

Venue: TBC, London

Key speakers: Ian Maston, Suzanne Willis (Westleton Drake), Daniel Sopher (Sopher & Co), Patricia Garcia Mediero (Avantia Asesoramiento Fiscal y Legal), among numerous others

7/7/2015 - 7/9/2015

http://www.iiribcfinance.com/event/International-Private-Client-Tax-Seminars/speakers

PRIVATE WEALTH AFRICA 2015

IIR & IBC

Venue: TBC, London

Key speakers: Richard Howarth (African Private Office LLP), Chris Moorcroft (Harbottle & Lewis LLP), Camilla Dell (Black Brick Property Solutions), Jonathan Burt (Harcus Sinclair), Liam Bailey (Knight Frank)

7/8/2015 - 7/8/2015

http://www.iiribcfinance.com/event/Private-Wealth-Africa-Conference

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – LONDON

CCH

Venue: Sofitel St James Hotel, 6 Waterloo Place, London SW1Y 4AN, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

7/8/2015 - 7/9/2015

https://www.cch.co.uk/AIC

OFFSHORE TAXATION – A BRAVE NEW WORLD

IIR & IBC

Venue: Grange City Hotel, London, 8-14 Cooper's Row, London, EC3N 2BQ, UK

Key Speakers: Emma Chamberlain (Pump Court Tax Chambers), Patrick Soares (Gray's Inn Tax Chambers), Simon McKie (McKie & Co LLP), Giles Clarke (Author - Offshore Tax Planning)

7/14/2015 - 7/14/2015

http://www.iiribcfinance.com/event/offshore-taxation-budget-special

INTERNATIONAL TAX SUMMER SCHOOL 2015

IIR & IBC Financial Events

Venue: Gonville & Caius College, Trinity St, Cambridge, CB2 1TA, UK

Key Speakers: Timothy Lyons QC (39 Essex Street), Peter Adriaansen (Loyens & Loeff), Julie Hao (EY), Heather Self (Pinsent Masons), Jonathan Schwarz (Temple Tax Chambers), among numerous others

8/18/2015 - 8/20/2015

http://www.iiribcfinance.com/event/International-Tax-Summer-School-2015

THE 25TH OXFORD OFFSHORE SYMPOSIUM 2015

Offshore Investment

Venue: Jesus College, Turl Street, Oxford OX1 3DW, UK

Chairs: Nigel Goodeve-Docker (Down End Office), Peter O'Dwyer (Hainault Capital), Richard Cassell (Withers LLP), Nick Jacob (Wragge Lawrence Graham & Co), Andrew De La Rosa (ICT Chambers)

9/6/2015 - 9/12/2015

http://www.offshoreinvestment.com/pages/index.asp?title=Programme_Ox_2015&catID=12148

DUETS ON INTERNATIONAL TAXATION: GLOBAL TAX TREATY ANALYSIS

IBFD

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

Key Speakers: Richard Vann, Pasquale Pistone, Marjaana Helminen, Peter Harris, Adolfo Martin Jimenez, Scott Wilkie

9/7/2015 - 9/7/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Global-Tax-Treaty-Analysis-1#tab_program

DUETS ON INTERNATIONAL TAXATION: SUBSTANCE AND FORM IN CIVIL AND COMMON LAW JURISDICTIONS

IBFD

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

Key Speakers: TBC

9/8/2015 - 9/8/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Substance-and-form-civil-and-common-law

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – BRISTOL

CCH

Venue: Aztec Hotel and Spa, Aztec West, Almondsbury, Bristol, South Gloucestershire BS32 4TS, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

9/9/2015 - 9/10/2015

https://www.cch.co.uk/AIC

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – MILTON KEYNES

CCH

Venue: Mercure Abbey Hill Hotel, The Approach, Milton Keynes MK8 8LY, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among others.

9/15/2015 - 9/16/2015

https://www.cch.co.uk/AIC

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

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

Key Speakers: Ronald Aw-Yong (Beaulieu Capital), Peter Drijkoningen (French BNP Paribas bank), Francesco Mantegazza (Pirola Pennuto Zei & Associati), Omar Moerer (Baker & McKenzie), Pedro Paraguay (NautaDutilh), Nico Blom (NautaDutilh)

9/16/2015 - 9/18/2015

http://www.ibfd.org/Training/International-Taxation-Banks-and-Financial-Institutions

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – MANCHESTER

CCH

Venue: Radisson Blu Hotel Manchester, Chicago Avenue, Manchester, M90 3RA, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among numerous others

9/22/2015 - 9/23/2015

https://www.cch.co.uk/AIC

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE – OXFORD

CCH

Venue: Oxford Thames Four Pillars Hotel, Henley Road, Sandford-on-Thames, Sandford on Thames, Oxfordshire OX4 4GX, UK

Key Speakers: Toni Trevett, Dr. Stephen Hill, Kevin Bounds, among numerous others

10/6/2015 - 10/7/2015

https://www.cch.co.uk/AIC

INTERNATIONAL TAX PLANNING ASSOCIATION MONTE-CARLO MEETING

ITPA

Venue: Hôtel Hermitage Monte-Carlo, Square Beaumarchais, 98000 Monaco

Chair: Milton Grundy

10/11/2015 - 10/13/2015

https://www.itpa.org/?page_id=9909

INTERNATIONAL TAX STRUCTURING FOR MULTINATIONAL ENTERPRISES

IBFD

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

Key Speakers: Boyke Baldewsing (IBFD), Tamas Kulcsar (IBFD)

10/21/2015 - 10/23/2015

http://www.ibfd.org/Training/International-Tax-Structuring-Multinational-Enterprises#tab_program

EU FINANCIAL ACCOUNTING IN INTERNATIONAL COOPERATION AND DEVELOPMENT PROJECTS

European Academy

Venue: Arcotel John F, Wederscher Markt 11, 10117, Berlin, Germany

Key Speakers: TBC

11/26/2015 - 11/27/2015

http://www.euroacad.eu/events/event/eu-financial-accounting-in-international-cooperation-and-development-projects.html

THE AMERICAS

United States

The US Supreme Court has ruled against Maryland's personal income tax, in a case concerning the taxation of the interstate commerce activities of a company.

A listing of key international tax cases in the last 30 days

Maryland's personal income on state residents consists of a "state" income tax and a "county" income tax. Residents who pay income tax to another jurisdiction for income earned in that other jurisdiction are permitted a credit against the "state" tax but not the "county" tax. Nonresidents who earn income from sources within Maryland are required to pay the "state" income tax; and nonresidents not subject to the county tax must pay a "special nonresident tax" in lieu of the "county" tax.

The respondents (Maryland residents) earned pass-through income from a Subchapter S corporation that earned income in several states. The respondents claimed an income tax credit on their 2006 Maryland income tax return for taxes paid to other states. The Maryland State Comptroller of the Treasury, the petitioner in the case, allowed the respondents a credit against their "state" income tax but not against their "county" income tax and assessed a tax deficiency.

That decision was affirmed by the Hearings and Appeals Section of the Comptroller's Office and by the Maryland Tax Court, but the Circuit Court for Howard County reversed on the ground that Maryland's tax system violated the Commerce Clause of the Federal Constitution. The Court of Appeals of Maryland affirmed and held that the tax unconstitutionally discriminated against interstate commerce.

Before the Supreme Court, it was highlighted that the Commerce Clause, which grants Congress power to "regulate Commerce … among the several states," also has "a further, negative command, known as the dormant Commerce Clause," which precludes states from "discriminat[ing] between transactions on the basis of some interstate element." Therefore, *inter alia*, a state "may not tax a transaction or incident more heavily when it crosses

state lines than when it occurs entirely within the state [or] impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, or by subjecting interstate commerce to the burden of 'multiple taxation'."

The Supreme Court said this case was all but dictated by its dormant Commerce Clause cases, particularly *J. D. Adams Mfg. Co. v. Storen* (304 U.S. 307, 311), *Gwin, White & Prince, Inc. v. Henneford* (305 U.S. 434, 439), and *Central Greyhound Lines, Inc. v. Mealey* (334 U.S. 653, 662), which all invalidated state tax schemes that might lead to double taxation of out-of-state income and that discriminated in favor of intrastate over interstate economic activity.

Ruling against Maryland's personal income tax regime, the Supreme Court said this conclusion is not affected by the fact that these three cases involved a tax on gross receipts rather than net income, and a tax on corporations rather than individuals.

It observed that:

> "This Court's decisions have previously rejected the formal distinction between gross receipts and net income taxes. And there is no reason the dormant Commerce Clause should treat individuals less favorably than corporations; in addition, the taxes invalidated in *J. D. Adams* and *Gwin, White* applied to the income of both individuals and corporations. Nor does the right of the individual to vote in political elections justify disparate treatment of corporate and personal income. Thus the Court has previously entertained and even sustained dormant Commerce Clause challenges by individual residents of the state that imposed the alleged burden on interstate commerce."

> "Maryland's tax scheme is not immune from dormant Commerce Clause scrutiny simply because Maryland has the jurisdictional power under the Due Process Clause to impose the tax. While a state may, consistent with the Due Process Clause, have the authority to tax a particular taxpayer, imposition of the tax may nonetheless violate the Commerce Clause."

The Supreme Court concluded that Maryland's income tax scheme discriminates against interstate commerce. The "internal consistency" test, which helps courts identify tax schemes that discriminate against interstate commerce, assumes that every state has the same tax structure. Maryland's income tax scheme fails the internal consistency test because if every state adopted Maryland's tax structure, interstate commerce would be taxed at a higher rate than intrastate commerce.

This judgment was released on May 18, 2015.

http://www.supremecourt.gov/opinions/14pdf/13-485_o7jp.pdf

US Supreme Court: *Comptroller of the Treasury of Maryland v. Wynne et ux.*

Germany

The European Court of Justice (ECJ) was asked to consider a dispute between Verder LabTec, a partnership established in Germany, and the Finanzamt (tax office) in Hilden concerning the taxation of the transfer of unrealized capital gains to its Dutch permanent establishment (PE).

From May 2005, Verder LabTec dealt exclusively with the administration of its own patent, trademark and model rights. The Finanzamt said the transfer of those rights to the Dutch PE had to take place with disclosure of the unrealized capital gains pertaining to those rights at their arm's length value at the time of the transfer.

The Finanzamt considered that the gains (the amount of which was agreed by all parties and not under dispute) should not immediately be subject to taxation in full, and instead the amount should be incorporated in profits on a straight-line basis over a period of ten years, for German tax purposes.

Verder LabTec brought an action against the authority's decision to bring forward the taxable event before the Finanzgericht (tax court) in Düsseldorf, arguing that the decision undermines the freedom of establishment guaranteed by Article 49 of the Treaty on the Functioning of the EU (TFEU). The recovery of that tax at the time of the realization of those capital gains would be a less restrictive option, it argued.

The Finanzamt said any infringement of the freedom of establishment is justified by overriding reasons in the public interest related to the preservation of the allocation of powers of taxation as between member states, and that its treatment of the unrealized gains was proportionate to achieve that objective.

Considering whether this was the case, the ECJ agreed that the taxation of the unrealized capital gains did constitute a restriction to freedom of establishment, as the taxation of unrealized gains – effectively an exit tax – would not take place in relation to a similar transfer within the national territory, with those capital gains not being subject to tax until they have actually been realized.

However, the ECJ then went on to consider the Finanzamt's justification of "overriding reasons in the public interest."

The ECJ said, first, that it should be borne in mind that the preservation of the balanced allocation of powers of taxation between member states is a legitimate objective recognized by the Court, and that, in the absence of any unifying or harmonizing measures of the EU, the member states retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation, with a view to eliminating double taxation.

Second, a member state is entitled, in the case of a transfer of assets to a PE located within another member state, to impose tax, at the time of the

transfer, on the capital gains generated on its territory prior to that transfer (according to the fiscal principle of territoriality) – a measure intended to ensure the member state of origin may exercise its powers of taxation in relation to activities carried on in its territory.

Recalling its decision in *DMC* (C-164/12), the ECJ said that member states are entitled to tax capital gains generated when the assets in question were on their territory and have the power, for the purposes of such taxation, to make provision for a chargeable event other than the actual realization of those gains, in order to ensure that those assets are taxed.

Accordingly, it observed:

> "It is proportionate for a member state, for the purpose of safeguarding the exercise of its powers of taxation, to determine the amount of the tax due on the unrealized capital gains that have been generated in its territory pertaining to the assets transferred outside its territory, at the time when its powers of taxation in respect of the assets concerned cease to exist, namely, in the present case, at the time of the transfer of the assets at issue outside the territory of that member state."

It also said it was appropriate to give the taxable person the choice between, on the one hand, immediate payment of that tax, and, on the other hand, deferred payment of that tax, together with, if appropriate, interest in accordance with the applicable national legislation. It cautioned, however, that account should also be taken of the risk of non-recovery of the tax.

It noted that in its ruling in *DMC*, the ECJ had held that requiring the payment of tax on unrealized capital gains within a period of five years had been found to be a proportionate measure. A staggered recovery of tax on unrealized capital gains over ten annual installments, such as that at issue in the main proceedings, can only therefore be considered to be a proportionate measure to attain that objective, the ECJ concluded.

This judgment was released on May 21, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164355&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=104339

European Court of Justice: *Verder LabTec v. Finanzamt Hilden (C-657/13)*

Switzerland

In two judgments announced simultaneously, the Swiss Supreme Court ruled in favor of the Federal Tax Administration (FTA) in respect of its decision to deny two Danish banks their right to a refund of withholding tax in respect of dividend arbitrage trades.

The case concerned two banks that had fully hedged their short-term investments in Swiss equities with counterbalancing investments in either total return

swaps or index futures. The FTA had levied withholding tax of 35 percent on the dividends and rejected the banks' respective claims for a refund under the former Danish–Swiss double tax agreement, which provided for a full refund of dividend withholding tax.

Supporting the FTA's decision, the Supreme Court said that the banks were not effectively the beneficial owners of the dividends and were therefore not entitled to reimbursement of withholding tax under the treaty. Despite there being no explicit provisions on beneficial ownership in that double tax agreement, the court said that, even in treaties without such provisions, there is an implicit beneficial ownership requirement in treaties to prevent treaty abuse.

In particular, the Court said that in order for the banks to have been the beneficial owner, they must have had the right to use, enjoy, or dispose of the dividends, and they must have borne the associated risks concerning the potential non-payment of the dividends. Instead, under the derivatives contracts, the dividends received were agreed to be passed on to the banks' counterparties, which were situated outside Switzerland and Denmark.

The rulings were despite earlier judgments from the Supreme Court being centered on whether the arrangements were contrived – that is, whether they exclusively targeted a tax benefit – and whether the entity claiming a refund had sufficient activity in the treaty state. Interestingly, in these cases, the two banks had substantial activities in Denmark.

The judgment was released on May 5, 2015.

http://www.bger.ch/fr/press-news-2c_364_2012-t.pdf

Swiss Federal Supreme Court: *(2C_364/2012, 2C_377/2012, and 2C_895/2012)*

United Kingdom

The UK's First Tier Tribunal Tax Chamber (FTT) has ruled in a case concerning a taxpayer's contention that its supply of promotions management and marketing services and its provision of a related brochure to customers was a mixed supply for value-added tax.

The case concerned the supplies of the Marketing Lounge Partnership Limited between January 2009 and October 2012. The company's clients were mainly major public companies, and the company provided a comprehensive promotions package on behalf of their clients, providing rewards and incentives free of charge to existing and potential customers of its clients, commonly in the form of hotel accommodation, spa or beauty treatments, or film subscriptions.

For each promotion the company would publish a directory or guide setting out a list of providers of the incentive or benefit. This followed a common form, with the same providers of incentives or benefits, albeit revised to suit each client. It would distribute copies of these to customers of their clients identified by them as qualifying for the benefits. The company would thereafter

undertake all aspects of management of the incentive scheme, providing supporting telephone lines for "take-up" of the incentives, and any related queries thereafter. It also set up websites supplementing the information in the lists of providers. Thus the company relieved its clients of all practical aspects of administering and managing the promotions.

The client would pay the company a sum to meet all outlays relating to the promotion. A fixed sum would be payable in respect of each customer entitled to take up the "free" benefit. The company would then meet the cost of provision of the hotel accommodation or spa or beauty treatment. For film rentals, the company would charge its client for the cost. The company would also provide and meet all other costs of enabling the customer to take up the incentive offered.

In a letter dated December 7, 2012, an HMRC officer said that the whole supply of the company's services to clients should be chargeable to the standard rate – that is, the standard rate should be applied to the whole value of the services provided by the company, for both its fulfillment services and the provision of printed matter.

The FTT ruled in favor of HMRC, after hearing its argument, which was based on the rulings in *Card Protection Plan* (C-349/96) and in *Levob Verzekerngen BV* (C-41/04), that, among other things, a single economic supply should not be "artificially split" to obtain a tax benefit.

HMRC said the role of the company was more extensive than that of supplying written material. It received information in the form of customer lists from its clients. It sent letters to the customers, issued the directories, handled bookings, and dealt with 40 telephone inquiries and complaints. None of these elements, HMRC argued, were "standalones"; they were all parts of one coordinated supply.

The FTT agreed that all the elements provided by the company were integral parts of a whole. It highlighted that from the viewpoint of the customer, it would be purposeless – and probably more costly – to have more than one provider. In effect, by engaging Marketing Lounge Partnership Limited, its clients were relieved of the whole responsibility of running the campaign; it could entrust the operation to one "professional." The FTT said the guides and website were truly complementary and it would be artificial and would likely create additional unnecessary expense were the two functions separated. From the viewpoint of its clients, this was a single supply, the FTT concluded, and it was artificial to divide it between the provision of the directories and the other support services.

The printed material was a subordinate and incidental part of the promotion, it said. Further, it noted that the guides were not similar to tourist guides such as the Michelin guide in that they were not sold independently to the public. The FTT added that even if the booklet were the costliest item, the decision in *College of Estate Management* (Case C-349/96) indicated that this was not decisive;

there the supply was held to be of educational material, not of zero-rated printed materials.

This judgment was released on May 13, 2015.

http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j8365/TC04411.pdf

UK First-Tier Tribunal: *Marketing Lounge Partnership Ltd v. HMRC [2015] 0219*

Dateline June 4, 2015

The ongoing deceleration of the Chinese economy is certainly a worrying development for the world economy as a whole, especially in the context of negative growth in both Canada and the US in the first quarter of the year. But I am going to attempt to put a positive spin on it, because, if nothing else, it is forcing the Chinese Government to increase the pace of liberalization of its foreign investment and trade framework, and the internationalization of its currency, the renminbi (RMB). As is almost customary now, Hong Kong is acting as a facilitator for many of these reforms. One example is the RMB Qualified Foreign Institutional Investor (RQFII) scheme, which has opened the Mainland equity and bond markets to offshore RMB investors. Another is the Hong Kong/Shanghai Stock Connect scheme, launched on a pilot basis six months ago, hopefully representing another step towards the opening up of China's equity markets to foreign investors. The mutual recognition of investment funds in Hong Kong and China is also expected to commence from next month. Furthermore, China recognizes the benefits free trade can bring, even if it hasn't completely embraced the idea yet, as reflected in the Government's decision to cut import taxes on a range of consumer items by at least 50 percent, rather than scrap them completely as an open trading nation should do. Nevertheless, although it is often accused by its trading partners of not playing by the rules of world trade, China is an active participant in regional free trade initiatives, such as the proposed Regional Comprehensive Economic Partnership between the members of ASEAN and its six FTA partners. It's quite a remarkable transformation really, when you consider the China of Chairman Mao.

Okay, in the grand scheme of things, the approval by New Zealand's parliament of the Border Processing (Arrivals and Departures) Levy Bill wasn't the week's most gripping development. But it's worth pointing out because it's yet another example of the propensity of governments to impose taxes on travelers – probably because they won't be noticed as much as, say, a hike in income tax. However, these stealth taxes can raise substantial sums in revenue. In the US for example, several federal taxes on passenger air travel are collected by airlines, including the domestic passenger ticket tax (7.5 percent on the purchase price of passenger tickets), the domestic flight segment tax (USD4 per passenger per domestic flight segment), the international arrival and departure tax (USD17.70 per international flight, or USD8.90 per flight between the US and Alaska or Hawaii), and the excise tax on commercial aviation kerosene use (USD0.044/gallon). These taxes, which raised USD12bn in 2013, are supposed to finance aviation infrastructure through the Airport Improvement Program. I say "supposed," because these revenues disappear into the US Treasury first, with the airports apparently facing something of a fight to get the money back. However, perhaps the most outrageous example of

a revenue-raiser masquerading as something else is the UK's air passenger duty (APD). APD is intended to reduce aviation emissions, but because it is charged on a per-person basis it effectively rewards inefficient, half-empty flights and punishes more efficient full airplanes. Not that the UK Government is that bothered about APD's perverse results. About GBP2bn to GBP3bn is collected from APD in a typical year. Oh, and in case you're wondering, UK air traffic (and presumably aviation emissions) has increased since it was introduced. The New Zealand border levy is intended to cover the cost of the increasingly hard-pressed border protection force, and the Government says it is merely doing what countries like the UK and US do in recovering such costs from passengers. So, it's all our fault for having the temerity of going on vacation in one of these countries!

Depending on which side of the fence one stands, it has either been a very good week for the EU and its crusade against tax avoidance and secrecy, or yet another nail in the coffin of individual privacy (surely we haven't got long to go now before the lid is hammered tightly shut?). Regular readers of this blog will know which side I stand on. The agreement between the EU and Switzerland to replace the existing Savings Tax Directive pact and bring about automatic exchange of information about bank account holders was of course hailed by Brussels as another victory for transparency. It was proudly announced that this agreement will entail the passing on of not only individuals' names and addresses, but also their dates of birth, tax identification numbers, details of their bank balances, and "other" financial information. In fact, just the sort of stuff that the identity thieves who managed to trouser USD50m in fraudulently claimed tax refunds using information stolen from about 100,000 US taxpayers would love to get their hands on. We're constantly reassured by the architects of global automatic exchange of information that such information will be kept secure. But that's going to be the responsibility of not just one agency, but dozens, all over the world, and potentially this could merely multiply the number of weak points in the system. Given the ease with which hackers seem to gain access to supposedly secure government and corporate networks these days, the belief that information exchange and storage systems will be 100 percent watertight is surely incredibly naïve. It's a strange age we live in isn't it? Never has personal information been so valuable, but so de-valued at the same time.

The Jester