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GLOBAL TAX WEEKLY
a closer look

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a closer look

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Remain Vigilant On Indian Permanent Establishments, Even After The Favorable e-Funds Decision

by J. Clark Armitage, Member, Patricia Gimbel Lewis, Member, and Peter A. Barnes, Of Counsel, at Caplin & Drysdale

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The US and Indian competent authorities are famously at loggerheads over the principles to be applied in transfer pricing double-tax cases. Some of the important issues involved are: the appropriate markup on costs for services; when and how to reward location savings; and whether marketing intangibles exist. Virtually all of these double-tax cases involve a US parent company ("US Parent"), its Indian subsidiary, and a transfer pricing adjustment made by the Indian Revenue Service (RS). In recent months, the two competent authorities have been in discussions to establish mutually agreeable principles for resolving the disputes.

But transfer pricing is not the only issue on the table. Many current competent authority cases involve the Indian RS's assertion that a US Parent has a permanent establishment ("PE") in India and that substantial profits should be attributed to that PE. The US competent authority undoubtedly is seeking to establish principles for resolving PE cases as well, and was recently given a boost by the Delhi High Court's taxpayer-favorable decision in the e-Funds case (TS-63-HC-2014 (DEL)).

In this alert, we first discuss the very constructive PE principles laid down by the e-Funds court. We caution, however, that Indian PE risk remains high, and conclude by suggesting some concrete steps for mitigating that risk.

The e-Funds Case

The US parent (e-Funds Corp.) and its indirect US subsidiary (e-Funds, Inc.) conducted an electronic payments business, and engaged their Indian affiliate ("e-Funds India") to perform back office and data entry services. In a comprehensive and articulate analysis, the court drew on the holding of the Indian Supreme Court in the *Morgan Stanley* case, and addressed all three kinds of potential PEs – fixed place of business, services, and agency – and resolved them in a manner consistent with international norms. The court found that neither of the US companies (together, the "assessees") had a PE in India under the terms of the US–India Treaty, and laid out some sensible principles for making that determination:

- The *mere existence of an Indian subsidiary* does not create an Indian PE of a US Parent. Conversely, the fact that an Indian subsidiary exists does not preclude a finding that the US Parent has a PE.
- A US Parent will have a *fixed place of business PE* (under Treaty Article 5(1)) only if US Parent (1) has the right to use a location in India (such as an Indian subsidiary's facilities), (2) in fact carries out activities at that location, and (3) on a regular basis: "None of the authorities including the tribunal have held that the two assessee[s] had right to use any of the premises belonging to e-Fund India. … In the absence of any such finding Article 5(1) cannot be invoked and applied." Other fixed place of business PE considerations:
  - The mere existence of a contract for services between US Parent and the Indian subsidiary does not create a fixed place of business PE of US Parent.
  - US Parent's access to an Indian location on the Article 5(2) list (*e.g.*, "place of management", "branch", "office", "factory") does not necessarily create a PE. The requirements of Article 5(1) must first be satisfied.
- The following factors are *not relevant to a fixed place of business PE analysis*:
  - "The fact that e-Fund India provides various services to the assessee and was dependent for its earnings upon the two assessees is not the relevant test to determine and decide location PE."
  - "The fact that e-Fund India did not bear sufficient risk is irrelevant when deciding whether location PE exists."
  - "The fact that e-Fund India was reimbursed the cost of the call center operations plus 16 percent … is not relevant for determining location or fixed place PE."
  - "Neither provision of any software, intangible data, *etc*. whether free of cost or otherwise, makes e-Funds India an agency or fixed place PE of the two foreign assessees."
  - The "existence of [a] PE does not depend upon transfer of assignment or sub-contracting work/services to India, with an intent and purpose to save costs and to increase profitability of the assessee resident abroad."
  - The "contention and finding recorded that e-Fund India had provided necessary input or information to e-Fund Corp or e-Fund Inc. to enable them to enter into contracts which were sub-contracted or assigned to e-Fund India, will not make e-Fund India a permanent establishment of the assessee."
- A *services PE* (Article 5(2)(l)) exists only if US Parent's "employees or other personnel" perform services in India. The employees of the Indian subsidiary are not automatically US Parent's "other personnel".
  - Where US Parent seconded employees to the Indian subsidiary, no PE exists if the employees' activities are stewardship in nature: "merely because the non-resident assessee[s] to protect their interest, for ensuring quality and confidentiality has sent its employees to provide stewardship services, will not make the Indian subsidiary or another entity, a PE of the non-resident company."

- The court also indicated, though it was not necessary to its opinion because of the particular facts of the case, that no PE exists if the seconded employees are controlled by and engaged in activities that are the business of the subsidiary and not the US Parent.

- If the Indian activities of an enterprise are limited to "*preparatory or auxiliary*" activities described in Article 5(3), there is no PE, even if the PE requirements of Article 5(1)/(2) have been met: "Paragraph 3 … does not create a PE but has a negative connotation and activities specified when carried on do not create a PE."
- The US–Indian treaty includes two *agency PE provisions*:
  - Article 5(4) (based on the OECD model treaty) is the typical dependent agent PE provision, which the court found not to exist in the-Funds case:
    - "It is not the case of the Revenue that e-Funds India was authorized and habitually exercised authority to 'conclude' contract."
    - A dependent agent PE is not created merely because a US Parent assigns or subcontracts services to its Indian subsidiary.
  - Article 5(5) (based on the UN Model treaty): An otherwise independent agent can become a PE if the agent's activities are both "wholly or mostly wholly on behalf of foreign enterprise and the transactions between the two are not made under arm's length conditions." The e-Funds court found no such relationship to exist because there was no dispute that the transactions were made under arm's length conditions.

Takeaway – Risk Of PE Assessment In India Remains High

Although the Delhi High Court gave e-Funds a resounding win, the outcome likely would have been different if the Court had found some of the following facts, which were either not substantiated by the assessing officer or were found not to be present in the e-Funds case:

- US Parent's employees made regular use of the Indian subsidiary's facilities;
- US Parent's non-seconded employees and other personnel performed services in India, either for US Parent or for the Indian subsidiary;
- Employees seconded from US Parent to the Indian subsidiary performed non-stewardship activities and were under the control of or compensated by US Parent;
- Employees of the Indian subsidiary managed operations outside of India (*e.g.*, in the United Kingdom), which might have supported a "place of management" PE assertion;
- The Indian subsidiary had and habitually exercised authority to enter into contracts on behalf of US Parent; or
- The Indian subsidiary acted wholly or mostly "on behalf of" US Parent and their intercompany transactions were not priced at arm's length.

The wide-ranging opinion summarizes numerous other fact scenarios that might or might not have led to a PE determination. PE determinations in India thus remain highly fact-intensive and subjective.

In addition, the court's opinion left doubts on some key issues:

- When, under Article 5(5), will the activities of an agent for a foreign enterprise be treated as "devoted wholly or almost wholly on behalf of that enterprise"?
- What standards/whose views are applied in determining whether the transactions are priced at arm's length?
- What quantum of non-stewardship activities of employees seconded from US Parent to the Indian subsidiary is sufficient to create a PE, and how is the pertinent control test evaluated?

Suggested Practices For Mitigating PE Risk

The e-Funds decision thus highlights the need for continued diligence on the PE front. In that regard, we believe the following practices can be helpful in mitigating PE risk, in India and elsewhere:

Know the local law: The e-Funds court found that US Parent would have been taxable under local law, but that the Treaty trumped. Where a US treaty is not available, local law will provide the rule and be determinative.

Set up and maintain consistent corporate governance: From board resolutions to invoicing, all documentation should be consistent with the chosen form for the local presence. The separate legal status of the local entity must be established and preserved. The entity must be functionally independent and adequately capitalized. Its documented and observed assets and risks must be consistent with the chosen structure. And personnel should be made aware of the chosen structure, and operate within that framework. Decide whether employees should receive regular training on the PE risk, and how that training should be provided to avoid simple mistakes.

Get your transfer pricing right: This is a good practice in itself, but also helps mitigate PE risk. Under the special terms of Article 5(5) of the US–Indian treaty, getting the transfer pricing right will ensure that there is no independent agency PE. Article 5(5) may reflect that non-arm's length transfer pricing, if significant, calls into question whether the subsidiary has the substance – *i.e.*, wherewithal – to fund its own operations. And from a practical standpoint, getting the transfer pricing wrong makes a PE assertion more likely as an alternate assessment for achieving the total local income that the tax authority believes is appropriate. Getting the transfer pricing right, on the other hand, may limit the damage if a (services) PE is found to exist; in the *Morgan Stanley* case, the Indian Supreme Court concluded that arm's length transfer pricing may fully compensate both the Indian subsidiary and any agency PE that it creates for the foreign parent.

Avoid creating a fixed place of business: In the e-Funds case, the US Parent did not have a fixed place of business in India. But, it is easy to create a fixed place, if there is an office set aside at the subsidiary for use by foreign visitors, or if the foreign company regularly rents hotel or apartment rooms on a long-term basis. It is essential for the foreign party to avoid taking actions, intentionally or unintentionally, that could be found to create a fixed place of operations within India.

Decide whether a PE is unavoidable: If the local operation is highly integrated with one or more US or other foreign operations, is a PE avoidable? If not, it may be preferable simply to admit a PE exists, and report accordingly. This ensures that the taxpayer will have good books and records to demonstrate the income attributable to the PE. In addition, a PE filing should help mitigate the local penalties for non-filing (*e.g.*, loss of deductions, penalties, interest, confrontational posture with tax authority), and may reduce the tax authority's incentive to make transfer pricing assessments on the local subsidiary.

* * *

The e-Funds case undoubtedly is a step in the right direction for Indian PE risk. The court referred to and relied on relevant OECD and UN commentary, as well as secondary sources, and reached the right conclusions. But it is only one court. The Indian RS is likely to continue searching for PE issues, and those issues are likely to remain a major sticking point in the US–India competent authority relationship.

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The Importance Of Estate And Succession Planning

by Peter Rice, Senior Relationship Manager, Hawksford International

Over the course of our lives we will all face numerous challenges. We will have to deal with change and, from time to time, we will experience significant events.

Most of us will welcome new family members to the fold and some of us will endure separation and divorce. We will all suffer loss, and for some this results in an inheritance. We may also experience events related to the financial markets – often beyond our control – such as problems with business, cash flow and management, the stock market, and recessions.

No matter what events we're faced with, many of us will spend the majority of our working lives building up a business and/or personal wealth with great care and consideration. Therefore estate and succession planning should form a vital part of our overall wealth management strategies. Apart from the fiscal considerations, the primary goal of such planning is to protect family assets and wealth, ensuring they move to the next generation in a seamless, controlled and tax efficient way.

There are other considerations, which are often overlooked, such as conflicting laws of succession with assets in different jurisdictions. Effective succession planning will avoid much of the complexity, cost and time delays often involved with wills and probate, especially if a person dies intestate. We should be mindful to manage and preserve the wealth for future generations, as adverse tax issues and spendthrift beneficiaries are unfortunately common.

We must think of the ever-changing tax laws and future unperceived family situations, as these can dramatically affect the family nest egg. So, an annual review of statutory and fiscal matters with the advisers and domestic considerations with the settlor is vital to safeguard the trust, beneficiaries and the trust assets.

Over the 27-plus years I have been in the trust and fiduciary business, I can think of many stories of individuals and families who have created wealth or a successful business. Then, within a matter of a few generations, there have been losses, or complex family issues have arisen. Will the children be able to manage the assets or the business? Is there needless spending from some individuals? Take an unfortunate marriage, who is going to overview the investment portfolio to ensure everyone is being treated fairly? What about death duties, inheritance tax, forced heirship? These are just a few of the instances we might encounter.

One recurring theme is that the children, or more so the grandchildren, might not have the same business acumen or consideration of financial matters as the settlor had, so the trustee will have to play a vital and active part.

To enable bespoke structuring, careful consideration should be given to the following:

- Each individual's circumstances;
- Where he/she and the wider family live;
- Where the assets are located;
- The applicable tax and succession laws.

Once this has been considered, minor and major disasters can be mitigated or at least reduced; safeguards can be put in place to preserve and enhance the trust fund for the family's future. This is key to succession planning.

What we see more and more of is effective family governance and consultation as families, their activities and assets become more multi-jurisdictional. We work closely with the families and their advisers, helping them to consider some of the pitfalls they might not have thought of, tax planning aside. We review this with the family at the initial stages and on a regular basis going forward.

This is also recorded in a letter of wishes or, in more complex cases, a family governance agreement or protocol. Trustees also, if possible, like to engage with the younger members of the family at an early stage and, depending on the case in hand, educate them on the trusts (or foundations). This lets them know what they can expect and how the trustees can help them, especially if the settlor has passed away, so that they have a better understanding of the structure and an appreciation of the role of the trustee.

It is also worth mentioning that circumstances change over generations. A settlor's intentions may not always remain relevant for beneficiaries from the second, third or fourth generation.

One of the first cases I worked on was a trust set up in 1902 to take ownership of a small farm in the north east of England. Today it's a very large estate consisting of three working farms, hotels, restaurants and holiday lets. We are regularly involved in tax matters, family governance, farming issues, planning, dealing with the council, exports and so on. Frequently reference was, and still is, made to that letter of wishes, which was drafted over 100 years ago, demonstrating how vital it was and how the family's then-future was guided forward by it.

When planning for the future some important considerations should include:

- Who is involved and at what level;
- Who manages various aspects of the family business or assets?
- Advisers or consultants may be required;
- Regular transparent meetings;

- A family tree;
- Who makes the decisions?
- A dispute-resolving procedure;
- How the family can receive funds and the method of payment (a salary, for example);
- Who should benefit and what percentages upon transferring wealth to the next generation;
- Looking after senior members of the family;
- Guidelines on the family business, training and education in the business;
- Charitable arrangements as this can be a requirement under certain cultures;
- Investment strategy.

In larger families or complex trusts, we often find that the inclusion of a protector or protector committee is valuable. This not only gives the settlor comfort that the trustees will have some "checks and balances" built in, but more so, there can be "positive powers" where the protector can instruct certain actions. "Negative powers" are where permission is sought. Examples might be payments, investments, changes to the beneficial class, or even the termination of the structure/ transfer to new providers. The protector can be a useful party, in between the beneficiaries and trustee. For example, a family member or a family lawyer could be very useful in guiding the trustee in the day-to-day administration.

Finally, there is the issue of control. In some cases it is perceived to be difficult to pass over control of the family assets or complex business. Indeed, it can also be against the culture. Since the early days of a discretionary trust, which is by far the most popular, we now have in our armory settlor reserved powers trusts. These are foundations where the founder or settlor can reside on the council, or a private trust company where the settlor is a trustee. It depends of course on the tax and legal advice on a case-by-case basis, but the flexibility is there to suit the client and their situation to ensure that efficient estate and succession planning is achieved at the start and for generations to come.

Topical News Briefing: Saving For A Rainy Day

by the Global Tax Weekly Editorial Team

In an in-house feature published in Global Tax Weekly earlier this year, we surmised that perhaps Hong Kong had had its day in the sun as it faces stiffer competition from regional financial centers like Shanghai, Singapore and Labuan and contemplates a future structural budget deficits and rising taxes.

In a stark warning issued recently by Hong Kong's Working Group on Long-Term Fiscal Planning, set up last year, it was said that the Government would have no choice but to raise tax revenue to avoid the prospect of a structural deficit from 2029/30 – if spending doesn't rise over this timeframe. However, if the Government continues to increase spending in line with recent trends, structural deficits will emerge as soon as 2021.

Unlike most, probably all, of the heavily indebted developed countries however, Hong Kong is at least attempting to bolt the stable door well before the horse exits. Hong Kong already has huge fiscal reserves – equivalent to about 30% of GDP – and as reported in this issue of Global Tax Weekly, the Government has heeded the fiscal working group's warning by announcing a "Future Fund" to strengthen the SAR's fiscal resilience given its traditional vulnerability to external economic events.

Furthermore, Hong Kong's future as a low tax finance and trade hub looks assured after the Chinese Government endorsed the "One Country, Two Systems" modus operandi in a White Paper issued last month. And if there are worries about Hong Kong's ability to maintain the hitherto successful low-tax, light regulation economic model, investors certainly aren't showing it. Hong Kong was ranked fourth in terms of global foreign direct investment (FDI) inflows in 2013, behind only the United States, Mainland China, and Russia. With an inflow of USD77bn, Hong Kong continued to be the second largest FDI recipient in Asia after the Mainland (USD124bn). The UNCTAD FDI report noted that Hong Kong had been "highly successful" in attracting multinational companies (MNCs), with almost 1,400 such regional headquarters operating in Hong Kong as at 2013. It confirmed that Hong Kong continued to be one of the "major destinations" for the headquarters of MNCs targeting Asia Pacific markets.

Hong Kong also boasts the world's sixth-largest securities market, the fifth-largest foreign exchange market, one of the world's largest container shipping ports, and the fourth-largest ship-registration center. As the world's ninth-largest trading economy, Hong Kong has regular trading ties with almost every country and region in the world.

True, economic growth figures have been rather disappointing over the past couple of years. But writing off Hong Kong's prospects seems altogether premature.

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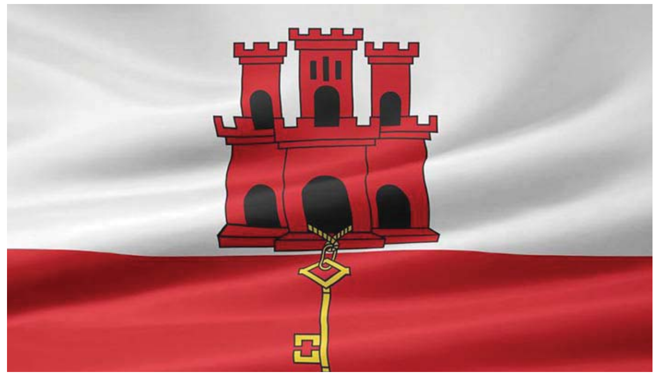
The 'Rock': Tax Developments In Gibraltar

by Stuart Gray, Senior Editor, Global Tax Weekly



It is rare event when a government shares the fruits of a record budget surplus with taxpayers to the extent that Gibraltar has done. So this article looks at the highlights of Gibraltar's 2014 Budget and other noteworthy developments in the area of taxation relevant to businesses in this low-tax European financial center.

Background: About Gibraltar

Gibraltar is a small, four-square-mile peninsula located on the southern coast of Spain and is home to approximately 30,000 inhabitants with ethnic links to the United Kingdom, Spain, Italy, Portugal, and Malta, among other places. The "Rock," as it has come to be known, is a British dependent territory having been ceded to Great Britain 300 years ago in perpetuity by the Treaty of Utrecht, which concluded the War of the Spanish Succession. Gibraltar's sovereignty continues to be a major bone of contention in Spain, however, and the Spanish have had a tendency to make life uncomfortable for Gibraltarians at various points in the past. Madrid's ongoing territorial claim is a major source of friction not only between Spain and Gibraltar, but also between Spain and the UK.

Gibraltar was one of the first jurisdictions to legislate for tax-exempt corporate forms, and this model was subsequently copied by other territories wishing to develop offshore financial services industries. Several corporate forms were available under the former "offshore" system of taxation (since abolished – see below) which enabled foreign companies registered in Gibraltar to pay little or no tax, but the two most widely used were the Exempt Private Company and the Qualifying Company.

Although Gibraltar entered the EU along with the UK, it does not belong to the EU's value-added tax, Common Agricultural Policy or common external tariff regimes. Gibraltar has, however, implemented much EU financial legislation and can apply Common European Passport regulations in the insurance, banking and fund management spheres. The investment fund sector is one that the Government is now particularly keen to push with the coming of the Alternative Investment Fund Managers Directive. Recent changes to Gibraltar's legislative framework are expected to enhance the jurisdiction's attractiveness as a domicile for large funds or those seeking to relocate to Europe to comply with the new EU regulations.

While Gibraltar has undoubtedly benefited from its membership of the EU, it has had an uneasy relationship with Brussels. Most of the friction has been generated by Gibraltar's offshore and low-tax company regimes, and egged on by the Spanish this resulted in a protracted series of legal disputes which have taken about a decade to resolve.

As things stand, Gibraltar's 10 percent corporate tax regime, which replaced proposals for a tax based on a company's payroll – an idea also contested by the EU, is now firmly in place having been introduced on January 1, 2011. At the same time as the new corporate tax system went into effect, the Exempt Company form was fully phased out. However, utility companies and firms enjoying a "dominant" position in the marketplace pay a 10 percent supplemental rate, for an effective corporate tax rate of 20 percent.

Under the Income Tax Act (ITA) 2010,[1] an "ordinarily resident" company pays income tax on its worldwide income.

The remainder of this feature summarizes recent developments pertinent to Gibraltar's tax system.

Budget 2014

On June 30, 2014, Chief Minister Fabian Picardo announced a barrage of tax cuts following the jurisdiction's highest ever budget surplus of GBP65m (USD111m) and gross domestic product (GDP) growth of 10 percent during the financial year 2013/14.

Government revenue collected in the last financial year has exceeded the original budget by around 12 percent. As a clear reflection of the continuing growth in the economy, PAYE receipts increased by around 8 percent over the previous year, and company tax increased by over 20 percent.

The tax cuts include a reduction to the standard rate of tax for individuals, from 30 percent to 20 percent, and to the standard rate of tax for trusts, from 30 percent to 10 percent, with effect from July 1, 2014. The income tax rate on income above the tax exempt threshold, raised to GBP10,500 in the Budget, and up to GBP16,000 has been lowered to 18 percent from 24 percent.

Picardo also announced that the Government would review the Category 2 high net worth income (HNWI) tax scheme to ascertain whether the current system is still "fit for purpose in today's world." Under this scheme, Qualifying (Category 2) Individuals are liable to income tax on the first GBP80,000 of assessable income only. The minimum amount of tax payable by an HNWI in any one year of assessment under this scheme is GBP22,000 and the maximum is approximately GBP30,000.

Other measures include:

- For new companies starting a business in Gibraltar, the Government will offer a 65 percent discount on property tax (Rates) for their first year of trading.
- There will be no increase in duties on fuel and, to encourage shipping, there is to be a 75 percent

reduction in tonnage dues for vessels taking on provisions, spares, stores or crew in Gibraltar at Eastern Anchorage, and bunker fuel at Western Anchorage. In addition, passenger tax at the Gibraltar International Airport is abolished for passengers who are joining vessels in Gibraltar.

- Support will be provided to first-time homebuyers. An income tax deduction of up to GBP6,000 will be allowed against approved expenditure incurred on the purchase of a home during the tax year commencing July 1, 2014.
- Import duty will be removed on a range of products including mobile phones, LED lighting, artwork, and jet-skis. Import duty will be reduced for jewelry and furniture, and incentives for hybrid vehicles will be extended to vehicles that solely use electric power.
- There will be a 20 percent increase in import duty on rolling tobacco (from GBP35 to GBP42 per kilo) and other changes, mainly for environmental reasons, including the introduction of a tax on imported single-use plastic bags, and a doubling of import duty on inefficient white goods.

The new measures have been introduced on the back of a strengthening economy for Gibraltar, with its GDP-per-capita ratio increasing to GBP47,066 (3rd place globally) and debt well under control at 25 percent of GDP.

Corporate Tax

On October 16, 2013, the European Commission opened an in-depth investigation to verify whether the new Gibraltar corporate tax regime selectively favors certain categories of companies, in breach of EU state aid rules. The Commission was keen in particular to examine the exemption for passive income from corporate tax.

The new Gibraltar corporate tax scheme was introduced by the ITA 2010. It is based on the territorial principle: all activities deriving from or accrued in Gibraltar are taxed. However, there exists an exemption for passive income (*i.e.*, dividends, royalties, and certain types of interest), which is no longer subject to tax in Gibraltar irrespective of where the source of the income is located.

In June 2012, the Commission received a complaint from Spain about the ITA 2010, claiming that it would continue to grant a selective advantage to offshore companies through the combined effect of the territorial system and the tax exemption for passive income. Following this complaint, the Commission carried out a preliminary investigation.

The Commission suspected that the tax exemption for passive interest and royalty income may involve state aid because it departs from the general corporation tax system. This could grant a special advantage to the particular group of companies that produce this type of income. Unlike for dividends – the exemption of which can be justified by the need to avoid double taxation – the Commission said that it had found no valid justification for such an exemption.

Gibraltar has introduced an amendment which, as of July 1, 2013, amended the ITA 2010 regarding the taxation of passive interest income. With the amendment, all inter-company loan (passive) interest income, both domestic and foreign-sourced, is subject to tax if the interest received per source company exceeds GBP100,000 (around EUR118,000) per year. Despite this change, the Commission said it needed to examine whether the passive interest exemption was in breach of the state aid rules during the period when it was in force.

The Commission published the decision to open an in-depth investigation into these aspects of Gibraltar's tax regime in the Official Journal on November 28, 2013, inviting comments from third parties.

On December 23, 2013, Chief Minister Picardo outlined a new amendment to the ITA 2010 to parliament, noting that it addresses the Commission's concerns over two aspects of Gibraltar's tax legislation, namely the tax exemptions for inter-company loan interest and royalties income.

"Earlier this year, the EU Code of Conduct Group had found that the exemption for inter-company loan interest was a harmful tax measure under the criteria set out in the Code of Conduct on Business Taxation," Picardo told parliament. "The European Commission was also already indicating that this exemption was likely to constitute a state aid. Members will recall that, without prejudice to our position that the section in question was not a harmful tax measure, we accordingly abolished this exemption by an amendment we made to the Act this summer and which entered into force on 1 July 2013."

"The Bill does exactly the same thing in relation to royalties. Specifically, it will abolish the exemption from taxation that currently exists for royalties income," the Chief Minister explained. "The Bill follows the same format as that we used for the amendment this summer. It amends Table C of Schedule 1 of the Act so that it includes a new heading on 'Royalties.' Table C of Schedule 1 sets out the incomes which are subject to tax under the Act."

Picardo told members that details of the amendment were shown to the Commission by a Gibraltar Government team including Commissioner for Income Tax Frank Carreras and Michael Llamas QC, at a meeting in Brussels on December 5. However, while the Commission's case handlers later stated that they were "content" with the amendment, Picardo cautioned that that response "cannot, for technical reasons, be the formal position of the Commission."

"That is the most we could have expected from them at this stage but that in itself is important," he observed, adding that the Government had "delivered much needed certainty" to companies in Gibraltar.

Tax Compliance And Transparency

On May 2, 2013, the Government of Gibraltar committed to support the UK and the wider international community in enhancing tax transparency and effectively tackling tax evasion.

Gibraltar communicated to UK Prime Minister David Cameron that it is confident that the territory already has in place a robust regime for rooting out tax evasion, particularly through its membership of, and full compliance with the rules of, the EU. In a letter to Cameron, Picardo underscored the territory's wish to pursue tax transparency initiatives with the UK, with input from the local financial services industry, to further build upon the territory's ties with Britain.

"It remains the Gibraltar Government's firm view that tackling tax evasion and fraud is rightly a global priority, necessary to protect the integrity of public revenues, the confidence of taxpayers in the fairness and effectiveness of their tax systems and, ultimately, public confidence in open global capital markets," the Gibraltar Government stated.

"Gibraltar, uniquely amongst all British Overseas Territories and the Crown Dependencies, notes that it is required to comply, and already complies, with all EU requirements in these areas. Despite the increased attention given to tackling evasion and fraud over recent years, in particular through the development of international standards and the Peer Review process by the [OECD's] Global Forum, further action may be considered necessary to deter evasion and clamp down on evaders. In this respect the next necessary step is to move to a global system of automatic exchange of tax information. The action taken by the United States under its Foreign Account Tax Compliance Act (FATCA) gives a unique opportunity to develop a new global standard in the near future and from that to develop a system of multilateral automatic information exchange. Gibraltar has committed to enter [into] the US FATCA and to enter into similar arrangements with the UK in accordance with the same timetable."

"Furthermore, building on our actions as regards the EU Savings Directive, we also commit to the pilot multilateral automatic exchange of tax information announced recently by the UK, France, Germany, Italy, and Spain. We would also call on other jurisdictions to commit to this initiative which will take us to a new level of tax benefit from fraud."

However, the Government emphasized the fundamental importance of maintaining a level playing field in the international financial services area, ensuring that all territories adopt the same frameworks, and the need for firm enforcement action against non-compliance.

Continuing, the Government suggested: "The other element in eliminating any remaining hiding places is to improve the availability of information on beneficial ownership. The work of the Global Forum and the Financial Action Task Force has led to significant improvements. Gibraltar is committed to taking forward this agenda together with other jurisdictions, to review the effectiveness of the existing legal and enforcement framework and to produce an Action Plan, working closely with the UK as part of its G8 agenda, aimed at ensuring that Gibraltar forms part of a group of jurisdictions setting the standards in the context of establishing an international level playing field on this front."

Gibraltar duly signed a FATCA-style intergovernmental agreement (IGA) with the UK on November 21, 2013 to improve cooperation between the two jurisdictions in the area of tax.

Separately, before the IGA was signed, Gibraltar's government solicited feedback from the domestic industry and a Working Group set up to consider FATCA and its impact on the financial services sector.

Gibraltar's Financial Services Minister, Albert Isola, said: "In particular, we should keep in mind our shared objective of the promotion of a single global standard for the automatic exchange of information, which the international community considers to be the most effective way to tackle tax evasion while minimizing costs for governments and business."

The signing of the IGA coincided with an announcement from the OECD that the UK had deposited declarations extending the territorial scope of the OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters to cover Gibraltar. Chief Minister Picardo wrote to Prime Minister David Cameron in June of last year to request that the convention be extended to his jurisdiction. Inclusion in the convention significantly expands Gibraltar's network of information exchange agreements.

Isola signed an IGA with the US to simplify compliance with the FATCA on May 8, 2014. He said: "The signing of FATCA IGA with the United States demonstrates that Gibraltar is committed to working together with partner countries in leading the agenda on tax transparency, thereby boosting global efforts to [eradicate] tax evasion."

Similar IGAs were signed by the Isle of Man, Jersey, and Guernsey in December last year.

Gambling And Gaming

The UK's decision to implement a 15 percent tax on a point-of-consumption basis from December 2014 will reduce the ability of bookmakers to benefit from low-tax jurisdictions such as Gibraltar while reaching British customers via online services. The tax is expected to cost the online gambling industry GBP300m per year.

However, Gibraltar-based bookmaker William Hill does not plan to withdraw from Gibraltar. Managing director of William Hill Online Andy Lee told reporters in January this year that the company has more than 400 employees in Gibraltar, and its global operations are run from there. "Our staff are very happy there and there are reasons why we will remain there in order to be competitive in this market," he said.

The UK's Gambling Commission estimated that the worldwide remote gross gambling yield (excluding telephone betting) in 2012 was GBP21bn. It said that the gross gambling yield (including phone betting) generated by UK consumers for overseas-based regulators grew by roughly 1 percent between 2011 and 2012.

It remains to be seen how many gambling operators in Gibraltar follow William Hill's lead. However, officials in the online gambling industry in Gibraltar are clearly worried about the impact of the UK's new gambling tax regime.

Currently, online gambling companies in Gibraltar are subject to taxes of 1 percent up to a maximum of GBP425,000 per year. The proposed 15 percent tax would be the same as that faced by those who bet within the British mainland and would add significant costs for online betting firms based in Gibraltar

Last year, Gibraltar's gambling commissioner said that the gambling tax runs "clearly against the common-sense logic of electronic commerce," and Steve Buchanan, the head of British gaming company Ladbrokes' operations in Gibraltar, said that the tax would put "a huge and unwanted cost on our business."

In September 2013, a report commissioned by the Remote Gambling Association and carried out by global auditing firm KPMG concluded that the gambling tax will likely fail to achieve its aims unless gross profits are taxed at less than 10 percent and companies are given leeway to offset costs associated with bonuses and incentives.

The study found that the 15 percent tax could put companies out of business or force them to operate in the gray market. It could also drive "a very large number of UK customers" to offshore duty-avoiding gaming firms as these would offer lower priced products.

Pensions

One area of the financial services industry where Gibraltar is taking a lead as a result of UK tax regulations is offshore pensions, especially those aimed at UK expats.

In a recent poll undertaken by Skandia International, registered in the Isle of Man, Gibraltar has been placed second with 26 percent of the vote as the preferred Qualified Recognized Overseas Pension Schemes (QROPS) jurisdiction in a survey of 141 international advisers who use QROPS.

QROPS were introduced by the UK Government in April 2006. They allow a UK taxpayer's pension entitlements to be transferred tax-free to another jurisdiction where he or she is seeking permanent residence, although a scheme has to meet certain conditions in order to achieve QROPS status.

Commenting on the results of the survey, Isola said: "This independent poll is very good news for Gibraltar and represents a clear recognition of the significant work undertaken in the field of imported pensions by a team of industry and government representatives led by my predecessor Gilbert Licudi QC. I view this area of business as one where Gibraltar can prosper significantly and aspire to market leadership."

Since specific legislation was introduced last year, the Finance Centre Department has been highlighting the opportunities in this area and, as the Skandia Poll confirms, "in the space of less than a year, Gibraltar has come from nowhere to become a very strong QROPS center."

Gibraltar is also introducing Qualified Non-UK Pension Schemes (QNUPS), which will enable British expats to make additional contributions to pension schemes that will be administered by Gibraltar-regulated trustees.

A QNUPS allows an individual to transfer UK-based pension assets to overseas-based schemes. These contributions may exceed the usual UK limit of GBP50,000 per year. This scheme is being offered in addition to Gibraltar's traditional QROPS.

Steven Knight, Chairman of Gibraltar Association of Pension Fund Administrators, said: "The introduction of specific QNUPS legislation is a very welcome addition to the Gibraltar pension sector and, based on current UK legislation, provides absolute clarity over the use and taxation exposure of assets held by a Gibraltar QNUPS."

It is anticipated that legislation will be passed very shortly to ensure that the Gibraltar legislation is complete regarding QNUPS. Gibraltar itself levies no inheritance tax, wealth tax or capital gains tax on pensions held. Apart from the proposed 2.5 percent tax on distribution, the only taxes that may arise are those that would apply to residents of other countries. For payments that have arisen from former UK residents, a QNUPS is expressly exempted from UK inheritance tax under Statutory Instrument No. 51 (2010).

Investment Funds

Hedge fund managers are attracted to the British overseas territory because of its low tax rates and laws which allow managers to market funds throughout the EU. The profits of companies in Gibraltar are generally taxed at just 10 percent.

The UK gave its approval for passporting rights designed to allow local investment firms in Gibraltar to offer services to individuals in other EU member states in July 2003. This was the third passporting "badge" that the jurisdiction had received following banking and insurance passports and meant that firms regulated by a recognized competent authority such as the UK's Financial Services Authority (now the Financial Conduct Authority) did not have to seek regulatory approval from regulators in other member states.

In 2005, Gibraltar introduced Experienced Investor Funds (EIFs) under the Financial Services (Experienced Investor Funds) Regulations, 2005. These are funds designed for professional, high net worth or experienced investors. Investors in these funds must have a net worth in excess of EUR1m or invest a minimum of EUR100,000. They can normally be set up in a matter of days and must only notify Gibraltar's Financial Services Commission (FSC) within 14 days of establishment in order to trade.

This legislation also provides for the licensing of Non-UCITS Retail Funds and UCITS Funds. Non-UCITS Retail Funds are licensed by the FSC and are subject to more regulation and certain restrictions on the type of investment activity they may undertake.

UCITS (Undertakings for Collective Investment in Transferable Securities) Funds are generally aimed at retail investors and are allowed to "passport" their services in the EU under the European directives. However, UCITS funds must comply with the Financial Services Ordinance (Collective Investment Schemes) Regulations, 1991, which limits how much a fund may invest in any one issuer to 10 percent.

Important regulations transposing the EU Alternative Investment Fund Managers Directive (AIFMD) into Gibraltar law were signed by Isola in July 2013. The commencement date for this legislation was July 22, 2013.

The rationale for this Directive is to establish commonality in the requirements that govern the authorization and supervision of AIFM's within the EU. The AIFMD is a new regulation, affecting investment managers, particularly those within the EU but also those that are external to the EU and who wish to market their funds within the EU. It determines how such investment managers can conduct their marketing activity.

Earlier changes to the territory's funds legislation in 2012, in anticipation of the AIFMD, have already enhanced Gibraltar's attractiveness as a domicile for large funds or those seeking to relocate to Europe to comply with the new EU fund sector rules. Consequently, Gibraltar is now specifically targeting New York and Latin American funds and fund managers with its promotional efforts.

Isola commented: "This legislation provides Gibraltar with an excellent opportunity and competitive advantage which should provide for further growth in this key area of our financial services industry."

At the request of the funds industry, Gibraltar's FSC lowered its regulatory fees in respect of UCITS funds from 2013/14, to make the territory's funds services offering more internationally competitive.

While the FSC does not currently regulate any UCITS, the industry said that a substantial reduction in fees could encourage fund managers to transfer UCITS to Gibraltar.

Although it accepted the proposal, the FSC surmised that the level of Gibraltar's UCITS fees had not deterred any UCITS applications, stating that "regulatory fees are incidental to the overall cost of setting up a UCITS. However, the FSC understands the importance of the industry remaining competitive and is therefore making proposals to lower this fee."

Before the changes, UCITS fees were higher than those in some other European Economic Area jurisdictions. The FSC therefore decided bring fees in respect of UCITS closer in line with fees charged by Guernsey, Jersey, the Isle of Man, and Malta.

UCITS application fees were lowered from GBP12,000 (USD18,667) to GBP4,000; additional sub-funds face a levy of GBP1,000 per sub-fund, down from GBP3,000. Annual fees in respect of UCITS fell from GBP13,335 to GBP4,000; and additional annual fees in respect of each additional sub-fund fell from GBP3,334 to GBP1,000.

Concluding, the FSC said: "Processing and supervising a UCITS is an onerous job, particularly when there is limited exposure to these entities locally and it is therefore felt that fees should not be lowered beyond this."

Gibraltar's standing as an investment funds domicile of repute has clearly strengthened. The number of funds in Gibraltar was just 20 in 2006. At the end of 2011, there were 199 EIFs registered in Gibraltar (including cells and sub-funds), with total assets of GBP1.35bn. In addition, there were 31 recognized funds established outside Gibraltar, of which 19 were UCITS-recognized funds and 12 were recognized foreign schemes.

Spain

While Gibraltar has successfully defended itself against legal attacks from the powerful European Commission, retaining the right to choose its own tax system – a dispute that threatened its very existence as a financial center – Spain continues to make life very difficult for the territory and its residents.

Some progress towards a rapprochement between Spain, Gibraltar and the UK over the Rock's sovereignty was made during the trilateral talks commenced under the previous administrations in London and Madrid. Prime Minister Mariano Rajoy, elected in late 2011, has taken a much more hard-line approach to the issue however, and since 2012 has significantly increased its pressure on Gibraltar and its people.

These simmering tensions reached boiling point last year when Spain proposed a EUR50 tax to cross the border between Spain and Gibraltar. Such a border tax would be patently illegal under EU law, and Spain unsurprisingly didn't carry out its threat. Spain has, however, increased bureaucratic checks at the border with Gibraltar, leading to long delays for anyone wishing to cross the frontier.

In November 2013, the Commission confirmed that strict border checks currently being implemented by Spanish authorities at the Línea de la Concepción crossing point with Gibraltar do not infringe EU law, although the body says it reserves the right to reconsider its position should the situation change. However, Britain claims that the checks are politically motivated retaliation for the building of an artificial reef in disputed waters.

Recently, the UK Government came under attack from members of parliament for failing to stand up to Spain over Gibraltar, and a report released by the Commons Foreign Affairs Committee on July 1 said that the UK should "get off the fence and take a tougher line with Spain over the latest disputes concerning Gibraltar."[2]

"The behavior of Spain toward Gibraltar is unacceptable," commented Committee Chairman Sir Richard Ottaway. "We have a situation where a NATO and EU ally is deliberately impacting the economy of a British Overseas Territory. But with the FCO taking far too long to register diplomatic protests, we are giving entirely the wrong impression to Spain about how seriously the UK takes these issues."

The report considers the reasons for the increased tension, including Spanish allegations against Gibraltar's financial system and smuggling controls, as well as suggestions that Spain is seeking to distract from its own domestic troubles. The Committee regrets that dialogue between the UK, Gibraltar and Spain has been suspended over the last three years, and asks the Government to set out how it intends to secure talks before the next election.

"We have no doubt that delays imposed by Spain at the border with Gibraltar are politically motivated," Ottaway continued. "The UK Government is right to look to the European Commission to address this matter, but it should state publicly that it will take legal action against Spain in the European Court if there is little improvement in the next six months."

In the meantime, the Committee recommended that the UK Government increase its use of its own diplomatic measures toward Spain, by intensifying its use of diplomatic protests and summoning the ambassador, as well as making the UK's support for Spanish aims on the international stage dependent upon improvements to the situation in Gibraltar.

Up until now, the actions of Spain and ongoing uncertainty over the corporate tax regime haven't set Gibraltar back in economic terms. Indeed, the economic growth figures mentioned by Picardo in the 2014 Budget speech suggest that the economy has been motoring along fairly rapidly. This suggests that Gibraltar's status as a low-tax international financial center looks reasonably assured for the foreseeable future. But Spain's territorial claims over the Rock, and the risk that the EU could once again challenge part or all of its tax regime, are ever-present facts of life for businesses in Gibraltar.

Endnotes

1 http://www.gibraltarlaws.gov.gi/articles/2010-21o.pdf

2 http://www.publications.parliament.uk/pa/cm201415/cmselect/cmfaff/461/46102.htm

Topical News Briefing: 'Harmful Tax'

by the Global Tax Weekly Editorial Team

Algirdas Šemeta has probably pushed the EU's tax agenda – tax harmonization, compliance, and fairness – harder than any of his predecessors, without actually having achieved very much in terms of actual change. Perhaps one of his biggest "achievements," though (depending on one's viewpoint), is the recent capitulation by Switzerland over its corporate tax regime.

It is quite easy to see how the European Commission managed to browbeat small offshore jurisdictions like Guernsey, Jersey, and the Isle of Man into re-writing their tax legislation to fit in with the EU's "harmful" tax initiative, which requires member states to refrain from introducing taxes that are significantly lower than the general level of taxation in the country concerned. Such measures are deemed "harmful" because they distort competition and erode the tax bases of other jurisdictions.

Switzerland however, fiercely independent and with its generous cantonal corporate tax exemptions, represented a completely different proposition for Brussels. A decade ago, the Commission's case against Switzerland was based on the rather flimsy argument that Switzerland's tax regimes were a form of "state aid" and therefore illegal under the 1972 EU–Swiss free trade agreement. When it came to tax, the conclusions of the regular bilateral talks between the EU and Switzerland began to sound like a broken record, with Brussels raising the same issues time after time, and Switzerland in turn rebuffing them, safe in the knowledge that, as a non-EU member state, there was very little that the EU could do legally to force change. Things went quiet for a while, but then the global tax environment changed rapidly and Switzerland found itself encircled by the tax transparency hawks in Brussels, the US, France, Germany, the UK and any other country with an axe to grind against secretive, low-tax Switzerland.

So it was a something of a shock, but not that much of a surprise, that last month Switzerland agreed to recognize the EU Code of Conduct on Business Taxation, and as reported in this issue of Global Tax Weekly, initialed a memorandum of understanding reaffirming its intention to propose removing certain tax regimes, deemed by the EU to be "harmful." In particular, it is to tackle systems that provide for the different treatment of domestic and foreign revenue, and any new tax measures must be based on international standards. A total of five "harmful" measures will be disassembled which the European Commission said in 2007 were seen to be distorting competition in Europe. According to the Code of Conduct's 2011 Work Plan, other concerns raised are thought to be about ringfenced tax regimes, and the treatment of multinationals headquartered in Switzerland and branches of multinationals located there.

Switzerland is not taking things completely lying down however. The Government is currently in the process of finalizing a major corporate tax reform package that could result in lower cantonal corporate tax rates and the introduction of preferential tax regimes for intellectual property income such as royalty boxes, determined as it is to maintain the country as a favorable location tax-wise. Given that the European Commission has already hinted that the UK's patent box regime is "harmful" though, perhaps the battle over Swiss corporate taxes is far from over.

Statutory Clearances From HMRC

by Pete Miller CTA (Fellow), Partner, The Miller Partnership

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The UK's tax legislation provides for formal clearances from HM Revenue & Customs (HMRC) in a number of situations. HMRC also operates an informal system of non-statutory clearances, available to all "business customers." This article is about statutory clearances, but much of it would apply to non-statutory clearances, too. There is useful advice on HMRC's website at http://www.hmrc.gov.uk/cap/

The most common statutory clearances are those for share exchanges (s138, Taxation of Chargeable Gains Act 1992 (TCGA 1992)), schemes of reconstruction (ss138, 139(5), TCGA 1992), share buy-backs (s1045, Corporation Tax Act 2010 (CTA 2010)), demergers (s1091, CTA 2010, which I once worked on while at the Inland Revenue, one of the predecessor bodies to HMRC), and transactions in securities (s701, Income Tax Act 2007).

Timing

HMRC must give a substantive response to clearance applications within 30 days of receipt. This deadline is taken extremely seriously, and I have never known it not to be adhered to. In practical terms, this means that once you have sent a clearance application, it may take a month before HMRC replies. And if HMRC has material questions, the 30-day clock restarts once you have answered those questions. In extreme cases it may take two or three months to get a clearance.

In practice, the turnaround time depends on how busy the clearance office is and on the complexity of the application. Recently, I have been getting clearances in less than a week, but this cannot be relied upon.

In practical terms, it is important to build the timing into the transaction timetable and to manage clients' expectations. In large corporate finance transactions there will often be a formal timetable for the various work streams, so that the process can be controlled. That timetable should include the timing for tax clearances. If, as advisers, we are asked about tax at the last minute, which happens all too often, it may be impossible to get a clearance in time for the preferred completion date.

In smaller cases, there may not be a formal timetable, but the client often has a timescale in mind, such as the end of the accounting period or before they go on holiday. So it is crucial to manage those expectations.

There is an interaction between timing and the level of detail required in the clearance application. Often the exact details of the transaction elements are not important in the context of the clearance sought. For example, share exchange clearances ask if HMRC is satisfied that the transactions are being carried out for commercial reasons and not to avoid tax. In most cases, details such as the exact terms of the shares or debentures issued in the exchange are not important in this context. So a clearance application can be made at an early stage, even if the exact terms have not been completely determined. Sometimes you might need to update HMRC with the final terms, but this is unusual.

Urgent Applications

Sometimes, it is unavoidable that a clearance is sought on short notice. In these cases, HMRC will do its best to help, but you need to make clear the letter is urgent. I recommend that the top of the first page of the letter be marked in large bold letters with "urgent, please" and the date by which you need your clearance. The urgency should then be explained early in the letter.

Contents

The letter has to tell a story: What is this company? What does it do? How has it reached the current position? What needs to change? And why? You want the HMRC officer to be able to read the letter, understand what needs doing and confirm that the clearance should be given. Speaking from experience as an inspector, a confused or badly written letter is most likely to generate a request for clarification. Worse still, a badly written letter may suggest that clearance should be refused, perhaps through lack of a commercial reason. So clarity of story telling is essential.

Material Information

Equally important is to provide all the material information. A clearance based on an application without all the material facts is not a valid clearance. If this comes to light, it usually happens after the transaction has been carried out, so that the tax consequences we have been trying to prevent will, instead, come home to roost.

My rule of thumb is that, if you are not sure whether a fact is material in a particular case, put it into the clearance application. That way, if it is material we find out before it is too late, and if it is not material, it does not matter.

What Happens At HMRC?

The clearances for capital gains, demergers, transactions in securities, and purchases of own shares are dealt with in a single office, the "one-stop shop." The letters are logged in order of receipt and immediately given to an officer for an initial sift. Many applications, probably the majority, are straightforward, so the officer can grant the clearance immediately.

Some cases need more consideration, so you will receive an acknowledgement of the application, with a reference and a date by when you should have a substantive answer. If you receive one of these, it does not mean that HMRC wants to refuse your application, merely that your case needs the extra thinking time. In the vast majority of cases, clearance is eventually granted.

Refusals

What do you do with a refusal? Some of the clearance facilities, such as those for reorganizations and reconstructions and demergers (but not the transactions in securities rules), contain a right to request a review of the correspondence by the First-tier Tribunal (which should be done within 30 days of HMRC's decision). There is no hearing to attend, but make sure you set out your arguments clearly and logically in a letter, so the Tribunal can consider your case more efficiently. If the Tribunal grants clearance, this is binding on HMRC.

If you have a refusal, from HMRC or the Tribunal, you are still entitled to carry out the transactions. Obviously, this is a high-risk strategy, as HMRC is likely to challenge it and you will have to fight your case through the normal appeals process. So I would not normally recommend this route.

Before any of this, though, consider speaking to the clearance officer. HMRC must explain why it has refused clearance. Sometimes, this is a misunderstanding, and a telephone conversation might clear things up. Or the elements that concern HMRC may not be of commercial importance to your clients, so you can tweak the transactions so that HMRC can grant clearance. This more personal approach is also likely to be faster than asking the Tribunal for a decision.

Meaning Of Clearances

It is important to understand what a clearance actually means, and its limitations. With demergers, for example, the transactions must satisfy the detailed conditions of ss1081–1085, CTA 2010, and clearance implies that HMRC accepts, on the information supplied, that those conditions are all satisfied.

In contrast, clearances for reconstructions only state that HMRC is satisfied, from the information supplied, that the transactions are for genuine commercial reasons and not to avoid corporation tax, capital gains tax or income tax. HMRC is not able to confirm that the transactions will amount to a scheme of reconstruction, so it is up to us, as advisers, to be satisfied that they do.

Or Not Bother!

Finally, remember that you do not have to seek a pre-transaction clearance. The reliefs are generally mandatory, so long as the conditions are satisfied, and the facilities for a pre-transaction clearance are there to give taxpayers certainty. HMRC cannot demand that you apply for a clearance nor express suspicion when you have not. Indeed, there may be occasions when you choose not to apply for a clearance, due to time pressures or because you do not wish to disclose to HMRC any more detail than you have to by law. You are perfectly entitled to exercise your rights not to make an application in those cases.

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Intercompany Credit Guarantees: To Charge Or Not To Charge

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Insights From A Dutch Transfer Pricing Perspective

Introduction

Since the 2008 credit crisis, the economic and financial conditions, both internally as well as externally, have brought continuous pressure to the funding sources of many multinationals. The era of cheap and easy funding seems to have passed for many companies and their lending counterparts, such as banks and other financial institutions.

As an alternative solution to funding, many companies increasingly optimize their internal cash usage through cash pools, intercompany loans and factoring.

At the same time, multinationals that are heavily reliant on external (bank) debt face stricter agreements and increased demand for security, such as the provision of additional intercompany credit guarantees[1], in order to obtain funding at lower costs, or to be able to attract funding at all.

Tax authorities around the world have also noticed this increased usage of intercompany credit guarantees and wish to maintain their respective "fair share" of the multinational profit, by ensuring that guarantees are established based on the arm's length principle. Incorrect charging, and/or pricing, of a guarantee fee may lead to double taxation, retroactive tax adjustments, and penalties.

This article provides a brief summary of the guidance given by the OECD Guidelines[2] on intercompany credit guarantees. In addition, in this article, we share insights from the Dutch transfer pricing practice, particularly in determining whether to charge (or not to charge) guarantee fees, on the basis of a specific distinction, the so called "business-like" and "unbusiness-like" guarantees. Using the results of the most recent PwC Survey "Navigating the complexity" of 40 countries on financial services transfer pricing[3], we also elaborate on the approaches – which still widely differ – across jurisdictions with respect to the treatment of guarantees. Additionally, a brief overview of the various approaches taken in determining the level of a guarantee fee to be charged is included in Tables 1, 2 and 3.

Finally, the article ends with the conclusion that there is yet to be an international consensus among tax authorities on the treatment of credit guarantees. The expected guidance as the outcome of the OECD report "Action Plan on Base Erosion and Profit Shifting" (BEPS)[4], particularly with respect to Action 4 (Limit base erosion via interest deductions and other financial payments)[5] and Action 13 (Re-examine transfer pricing documentation)[6], may provide a starting point for a more consistent approach around the world. In the meantime, having a consistent and robust policy with respect to intercompany credit guarantees is highly recommended.

What The OECD Guidelines Say On Intercompany Credit Guarantees

The guidance in the OECD Guidelines with respect to the application of the arm's length principle to intercompany credit guarantees is not ample. Based on these Guidelines, a multinational needs to establish whether the guarantee qualifies as a "service rendered" (for which a guarantee fee is due) and if so, what the level of the guarantee fee would be, on an arm's length basis.

In accordance with the OECD Guidelines para. 7.6:

"The question whether an intra-group service has been rendered … should depend on whether the [guarantee] provides a group [company] with economic or commercial value … This can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the [guarantee]."

This practically means that in determining whether a service is rendered, a multinational needs to establish the underlying reason for providing the credit guarantee and whether the guarantee provides a commercial benefit for which a third party would be willing to pay – through charging a guarantee fee. Such benefit can come in the form of more relaxed terms and conditions (than otherwise obtained on a stand-alone basis), including but not limited to less strict covenants and a favorable interest rate. In the event that a company is able to obtain better borrowing terms for the loan as a result of the credit guarantee, a commercial benefit seems to exist for the guaranteed company as long as that benefit exceeds the (guarantee) fee paid to the (internal) guarantor. On the other hand, the guarantor in turn needs to cover at least the costs it may incur by providing the credit guarantee (*e.g.*, administration costs, costs to maintain additional capital, higher funding costs as a result of the provision of the guarantee).

Following the above and as described in the OECD Guidelines, such guarantee fee should be determined by taking into account the perspective of both the guaranteed party as well as the guarantor's.[7] An arm's length guarantee fee is therefore typically established between at least the costs that the guarantor needs to cover, and at most the benefit (*e.g.*, interest saved) that the guaranteed company is able to obtain. *See* Table 1 for further reference. Note that it also needs to be taken into consideration that no service is considered to be performed in the case of passive association (*i.e.*, no fee should be charged for the potential synergy effect as a result of being part of the group/the implicit parent guarantee) – on the basis of para. 7.13 of the OECD Guidelines.

The Dutch Transfer Pricing Perspective On Intercompany Credit Guarantees

The Dutch Ministry of Finance recently issued an updated Transfer Pricing Decree[8] which includes – *inter alia* – further guidance on the application of the arm's length principle for transactions such as intercompany loans, captive insurance transactions, and intercompany credit guarantees. These transactions have largely been the focus of tax audits in the past years.

With respect to the treatment of intercompany credit guarantees, even more specific than what is mentioned in the OECD Guidelines with respect to commercial benefit, the Decree makes a clear distinction between business-like guarantees that provide a commercial benefit (for which a fee is due), and unbusiness-like guarantees that are provided because of "shareholder" reasons (for which no fee is due), when determining whether a guarantee is to be considered as a service rendered. In accordance with the Decree, when the borrower is unable to get the loan on a stand-alone basis (*i.e.*, without the credit guarantee) then the provision of such guarantee is considered to lack commercial benefit (for the guarantor), and as such, the guarantee is deemed to have been provided in the guarantor's capacity as a shareholder[9]. Hence, no fee is due. Furthermore, the guaranteed third party loan is therefore considered to be an (indirect) intercompany loan for corporate income tax purposes. If the guarantee is invoked by the (third party) lender, the loss on such invoked guarantee is not tax deductible, as it was provided because of a shareholder's reasons.[10]

On the other hand, in cases where the borrower could obtain the funding on a stand-alone basis (*i.e.*, without the presence of the credit guarantee), obtaining a guarantee may allow for better and favorable funding terms, hence the guarantee can be considered to have a commercial benefit for the borrower. In this situation, charging a guarantee fee is appropriate (and a loss under the guarantee will be deductible). For guidance in setting the guarantee fee from a Dutch transfer pricing perspective, please *see* Table 2.

And What The Rest Of The World Thinks About Intercompany Credit Guarantees

On the basis of a PwC Survey in 2013, unlike the Netherlands, while it is true that many tax offices recognize intercompany credit guarantees as a relevant intercompany transaction within the scope of domestic transfer pricing rules, most countries do not have further specific (and elaborate) guidelines. Instead, the following general rules, which differ widely per country, can be compiled:

- In addition to meeting the arm's length principle, some tax offices only recognize guarantee fees if there are proper contractual formalities (*e.g.*, New Zealand and Singapore).
- Mexico and Indonesia accept guarantee fees as long as a case can be made that such guarantee

arrangement generally provides a commercial benefit for the beneficiary.

- Countries such as France[11] and Switzerland[12] apply local safe harbors when determining the level of guarantee fees.
- Poland and Sweden take as point of departure that guarantees (with a legal character) are services for which a fee should be charged.
- Countries such as New Zealand and Korea will check the financial position of the parties in order to examine whether there is sufficient capital to support the risk guaranteed, or in order to determine the arm's length remuneration.

For an overview of commonly applied methods in setting guarantee fees, please *see* Table 3.

Interestingly enough, most countries do not seem to make further a specific distinction between business-like and unbusiness-like credit guarantees as we see in the Dutch transfer pricing practice. And although the OECD Guidelines stress the importance of being able to demonstrate and substantiate the commercial benefit that is derived from a service (to support the charging of a guarantee fee), as indicated, the OECD also does not make this explicit distinction or provide any other specific guidance.

Need For A Robust And Consistent Policy With Respect To Intercompany Credit Guarantees

As becomes apparent from the above sections, the current guidance provided by the OECD Guidelines on intercompany credit guarantees is limited. So far, domestic transfer pricing regulations in most countries do not carry more specific and elaborate guidance in dealing with intercompany credit guarantees. One of the exceptions is the Netherlands, being one of the few jurisdictions that have published specific and thorough guidance on this matter – particularly with regard to determining whether a guarantee constitutes a service for which a fee is due.

In practice, this lack of clarity and consistency creates uncertainties for multinationals on the tax treatment of intercompany credit guarantees. It also entails that not only the facts and circumstances of a transaction need to be analyzed, but also the specific position of the local tax offices involved with respect to the intercompany credit guarantee at hand.

In the meantime, the OECD BEPS report, specifically Action 13, re-examines transfer pricing documentation and suggests Master File documentation with a specific chapter on financial transactions (with expected final publication in the summer of 2014). Additionally, other developments are the revised discussion draft on the Transfer Pricing Aspects of Intangibles, the white paper on transfer pricing documentation, as well as the OECD BEPS report Action 4 on limiting base erosion via interest deductions and other financial payments which, among other things, plans to develop transfer pricing guidance regarding the pricing of related party financial transactions, in the form of changes to the current OECD Guidelines (with expected publication in the second half of 2015).

The aforementioned is expected to include further guidance on the pricing of related party financial transactions, including credit (and performance) guarantees, derivatives (including internal derivatives used in interbank dealings), and captive and other insurance arrangements.

As also demonstrated by the PwC Survey, to the extent a jurisdiction lacks specific domestic regulations, the broader OECD Guidelines are applied. Therefore, such additional guidance from the OECD should be valuable in creating and maintaining consistent approaches to pricing financial transactions across territories, including intercompany credit guarantees.

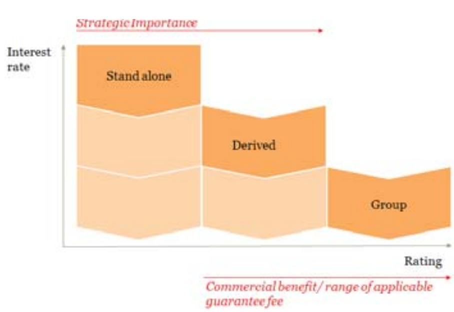
Whether or not this upcoming guidance will also specifically go into further defining what constitutes a commercial benefit when determining whether a service is rendered (for which a fee is due), including the distinction between business-like and unbusiness-like guarantees, remains to be seen. In the meantime, creating a consistent and robust policy with respect to intercompany credit guarantees is highly recommended to avoid potential double taxation, retroactive tax adjustments, and penalties.

Table 1. Various approaches in determining a guarantee fee - OECD Guidelines
Guarantee fees should be priced on an at arm's length basis, taking into account the perspective of both the guaranteed party as well as the guarantor's. Moreover, it also needs to be taken into consideration that no service is considered to be performed in the case of passive association (i.e., no fee should be charged for an "implicit parent guarantee"). [13] The OECD similarly embraces the concept of passive association in the Revised Discussion Draft on Transfer Pricing Aspects of Intangibles, which includes two examples that recognise that passive association is a synergistic benefit and not a compensable benefit. [14]

Table 2. Various approaches in determining a guarantee fee - Dutch transfer pricing practice

In determining the level of a guarantee fee, it should considered to what extent the favourable terms and conditions can be attributed to both the presence of an implicit parent guarantee (i.e., no fee, following the OECD Guidelines) and explicit guarantee (i.e., a fee is due). The extent of an implicit parent guarantee should be considered in conjunction with the potential strategic importance (and other factors) of the borrower, even without any explicit guarantee. Figure 1 below illustrates how to calculate a guarantee fee based on the Dutch approach.

The Decree further elaborates that the borrower's stand-alone credit rating – boosted upwards by passive association/ implicit support/ parental affiliation (i.e., to come to a derived rating) – can rise significantly towards the group rating in case the strategic importance of the borrower vis-à-vis the group's rating is high (e.g., there will be reputational damage if the subsidiary defaults on its obligation).

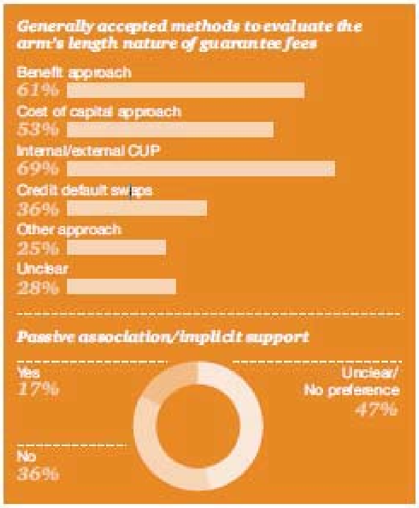


The remaining explicit guarantee (i.e., the area between the derived rating and the group rating) is the "commercial benefit" for which a third party would be willing to pay. However, the Decree does not further formulate how the above mentioned boost by implicit support can be quantified, nor is there further guidance in allocating the commercial benefit between the borrower and the guarantor.

Table 3. Various approaches in determining a guarantee fee - Rest of the world - commonly applied methods

Following the two-sided perspective as mentioned in the OECD Guidelines, in practice, an arm's length guarantee fee is typically established within a range between the costs which the guarantor incurs with respect to a guarantee (e.g., administration expenses, costs of maintaining additional capital, standby credit lines) and the (guarantee) fee that the borrower would, at most, be willing to pay based on the benefit achieved because of the guarantee arrangement (i.e., the guarantee fee cannot be equal or higher than the actual interest rate benefit).

Based on the PwC survey, the Comparable Uncontrolled Price (CUP) method and the benefit approach are the most common approaches used in establishing the arm's length guarantee fee worldwide. See Figure 2 below.[15]



Other methods sometimes accepted are the *cost of* capital approach (i.e., the guarantee fee is determined based on the cost of the guarantee to the guarantor, determined by analysing expected loss on the guarantee and the cost of capital to be maintained in relation to the guarantee), and analysing the fees paid on credit default *swaps* on bonds with similar characteristics to the guaranteed transaction (i.e., taking into account primarily the credit rating of the guaranteed).

Other approaches include calculating the guarantee fee as the value of a put option (whereby the a guarantee is deemed to be equal to the right (but not the obligation) of the lender to sell the loan to the guarantor at a pre-determined price – face value – and under specified event – credit event; the Black Scholes model of corporate finance may be used)[16] , the multiplication of the expected default frequency, the underlying asset valuation and the loss given default of the guaranteed asset. As the results of the PwC survey show, there is no universal approach in accounting for implicit support/ passive association/ passive affiliation in substantiating the arm's length nature of guarantee fees.

Endnotes

1 Herein referring mainly to an explicit guarantee (*i.e.*, a legally binding commitment of the guarantor to the guaranteed party with respect to an obligation by the borrower). Other "soft" forms of guarantees (*e.g.*, keep well agreements, comfort letters, or letters of intent) are out of the scope of this article as most countries do not recognize these soft commitments as intercompany transactions for transfer pricing purposes.

2 The Organisation for Economic Co-operation and Development (OECD) report on "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations", update July 22, 2010.

3 The PwC Survey of 40 countries which focuses on country-specific legislative requirements for pricing, among others, intercompany guarantees, as well as staff's experience with the position of local tax offices on various aspects of pricing of financial transactions. For further details, please visit www.pwc.com/navigatingthecomplexity.

4 OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en, as published on July 19, 2013.

5 Relevant reports published for public consultation on March 19, 2014.

6 Relevant report published for public consultation on January 30, 2014.

7 *See* OECD Guidelines para. 7.29.

8 The Dutch transfer pricing legislation is largely based on the OECD Guidelines, with some modifications to reflect Dutch business practices. The November 14, 2013 Decree (No. IFZ 2013/184M)

replaces the previous transfer pricing Decrees of March 30, 2001 (No. IFZ 2001/295) and of August 21, 2004 (No. IFZ 2004/680M).

9 As no third party would appear willing to accept the risk associated with the transaction.

10 Another example of an intercompany credit guarantee being considered to be provided because of "shareholder" reasons is the Dutch Supreme Court ruling on March 1, 2013 (No. 11/01985). In the context of this ruling, a guarantee is considered to be provided because of shareholder reasons if the guarantor takes on a potential liability (in addition to its capacity as a borrower) that is higher than a liability which the guarantor would have taken, if it had attracted funds on a stand-alone basis. It should be noted that this ruling is specific on the grounds that it involved multiple group companies borrowing under a facility with an external bank – under the provision of a cross "joint and several" guarantee between the borrowers. (The case is also referred to as the "*Umbrella*" guarantee case). Under the cross joint and several guarantee provision, each borrowing entity was liable to the external bank for the total full amount drawn under the facility by all of the borrowing group companies.

11 *See* PwC Survey on France: a remuneration that varies between 0.25 percent and 1 percent of the guaranteed amount.

12 *See* PwC Survey on Switzerland: depending on the case, the safe harbor regulations for intercompany loans might be applied if a parent company provides guarantees (*i.e.*, for funds up to CHF10m, the safe harbor margin applicable for the guarantor is 0.5 percent; for funds exceeding CHF10m, the applicable margin is 0.25 percent).

13 *See* OECD Guidelines para. 7.13.

14 *See* para. 24 to 27 (Example 1 and 2) of the OECD report "Revised discussion draft on transfer pricing aspects of intangibles" dated July 30, 2013.

15 *See* "Progress, but no guarantees for the consistent treatment of intercompany financing transactions," Transfer pricing perspectives: Managing multiple stakeholders in the new economy, by Krishnan Chandrasekhar, Michel van der Breggen, Wout Moelands and Jeff Rogers of PwC.

16 *See* "Transfer Pricing and Intra-Group Financing: Low-Hanging Fruit?", 15 Derivs. & Fin. Instrums. 2 (2013), Journals IBFD (accessed February 4, 2014) by A.J. Bakker through www.IBFD.org.

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Worldwide Free Zone Developments

by Stuart Gray, Senior Editor, Global Tax Weekly

Encouraged by the success of free zones in places like the United Arab Emirates (UAE) and China, an increasing number of countries are either considering whether to create these fiscally privileged areas within their borders or expanding current coverage. This article surveys recent free zone developments from Asia to the Middle East and South America.

Introduction To Free Zones

Free zones offering substantial tax benefits to the companies that choose to set up in them have proliferated rapidly across the globe over the last three decades, to the extent that there are now probably as many countries with free zones as there are without them. The term "Free Trade Zone" (FTZ) generally refers to a specific designated location within a country that is eligible for duty and tax exemptions with respect to the purchase or importation of inputs or finished goods.

Free zones, which come in various flavors, such as export processing zones, Special Economic Zones, Free Trade Zones, free ports *etc.*, have been primarily used by governments in less-developed and emerging economies as a means of boosting employment opportunities and levels of foreign direct investment; hence, they are rarely seen in the more developed economies of North America and Europe (and in the case of the latter, the EU has rather put the boot in with its "state aid" laws which aim

to ensure an even, competitive playing-field and militate against the very existence of free zones).

A recent International Labor Organization paper suggests that in 2006, there were 130 countries with export processing zones, 105 more than there were in 1975. Over the same time span, the number of Export Processing Zones or similar free zones has soared from just 79 to 3,500, employing some 66m people (about two-thirds of these workers are employed in China's free zones).

Loosely, a free zone is a geographical area within which companies are granted significant fiscal advantages compared with the rest of the territory, provided they meet certain criteria. Many free zones are semi-autonomous from government and administered by private sector organizations, so, in a sense, they can almost be described as "offshore," but without being labeled as "tax havens" or carrying all the negative baggage that attaches to this phrase. They offer a range of tax exemptions, from income tax to withholding tax and sales tax, to customs and excise duties. They are commonly found near to national transportation hubs, such as ports or airports, or close to national boundaries. However, they can also be found in some of the more remote or impoverished places in the world because, so the theory goes, the investment made by usually multinational companies that locate in them has positive spillover effects in the surrounding area by providing jobs and generally increasing prosperity.

Recent Free Zone Developments

China

Long Guoqiang, the Director of the State Council's Development Research Center, has said that China will set up a number of new FTZs following the successful pilot scheme in Shanghai.

Long disclosed that a number of local and regional governments have already applied to have FTZs within their borders, and that the Chinese Government has agreed that their spread throughout the country would fit well with current policies to boost foreign trade growth and increase the use of the renminbi.

However, he also confirmed that approval of those applications is being coordinated and is not being rushed, and that they would consequently not all be approved at the same time. Additional FTZs are being considered on the basis of where they would be of the most advantage for the country.

The pilot FTZ in Shanghai was launched in September 2013, and is concentrated on financial services and investment, commodities trading, and logistics. Long pointed out that new FTZs could develop their own unique selling points, and could have unique tax and other financial incentives.

The Shanghai FTZ offers additional tax incentives for investment and trade. Zero customs duties and import taxes apply to goods being transferred between the FTZ and overseas destinations; domestic merchandise entering the FTZ is regarded as having been exported, and exporters enjoy an immediate tax rebate; and tax exemptions have been granted to companies registered in the zone on their imports of machines and productive equipment. In addition, to promote investment in the Shanghai FTZ, companies and individuals are able to pay income taxes by installments over a five-year period for revaluations arising from asset restructuring.

Last month it was announced that the Shanghai Pilot FTZ plans to set up an international assets and equity trading platform for financial leasing companies to diversify the financial services they offer from the zone.

The platform – the first of its kind in China – will enable domestic and overseas financial leasing companies to trade property rights, and debt and equity in leased assets.

Jian Danian, deputy director of the zone's administration, said the platform will provide an open trading environment through transparent evaluation and pricing systems, and a standard trading procedure. "It's an extension of the zone's financial functions. It will help financial leasing companies improve asset management and expand fundraising channels," he said.

Yan Hao, assistant general manager of CMB Financial Leasing, said an open trading market is good for the industry as it enables companies to liquidize assets more efficiently and thus boost cash flows.

Ten financial leasing companies have so far signed agreements to list assets and equities on the platform, including HNA Capital Holding Co, International Far Eastern Leasing Co, Shanghai Guojin Leasing Co, and CMB Financial Leasing Co.

Since opening last September, 225 financial leasing firms have been set up in the free zone.

It is expected that, in the future, the tax measures to be applied in new FTZs will continue to remain subject to study, development, and adaptation by the Government, particularly to avoid an erosion of the country's tax base, and to align them with China's overall tax system regarding inward and outward equity investment.

In other recent developments, the Chinese Government issued in June 2014 a notice providing that goods imported into the Hengqin and Pingtan free zones will be deemed to be exported for value-added tax (VAT) and consumption tax purposes, and therefore will be rebated. The statement says that trade between the two zones will be exempt from both VAT and consumption tax, excluding inputs used in the construction or development of commercial real estate.

The change was implemented through Circular on the Value-added Tax and Consumption Tax Policies for the Development of Hengqin and Pingtan Zones (Cai Shui [2014] No. 51). Through an earlier circular, Circular 26 of March 25, 2014, the Government lowered the corporate tax rate in place on the two zones to 15 percent from 25 percent.

Hong Kong/Guangdong

The 19th Working Meeting of the Hong Kong/Guangdong Co-operation Joint Conference was recently held in Hong Kong, in anticipation that the Pearl River Delta region will become the second Chinese mainland FTZ to be approved, following on from Shanghai.

The FTZ would be situated in the Delta's three main areas – the province of Guangdong, and the special administrative regions of Hong Kong and Macau. In particular, the implication of developments in the Qianhai special economic zone in Shenzhen, as well as those at Nansha and Hengqin, has attained substantial significance for Hong Kong.

The 2013 Work Plan of the Framework Agreement on Hong Kong/Guangdong Co-operation had already agreed on the key directions for co-operation in 2014, which will include cutting barriers to services between Hong Kong and Guangdong, strengthening co-operation in finance and professional services, and promoting the development of Nansha, Hengqin, and Qianhai.

At the Working Meeting of March 10, 2014, the two sides signed the detailed 2014 Work Plan developed on the basis of the above-mentioned objectives, and discussed an implementation strategy. In respect of individual areas of co-operation, the Chinese Government had decided in its 12th Five-Year Plan period that trade in services would be liberalized between the Mainland and Hong Kong by 2015, and Guangdong province then subsequently announced that it would endeavor to achieve that objective one year earlier, in 2014. The Hong Kong business sector should therefore obtain easier access to the Guangdong market in respect of a broad range of services this year.

With regard to financial co-operation, the two sides agreed to focus on: seeking permission for Mainland individual investors to invest directly in overseas markets; introducing cross-border RMB remittance services for individuals; and obtaining support from the Chinese Government for lowering the thresholds that restrict some Hong Kong property insurance companies from entering the Guangdong market.

In addition, Guangdong is formulating the relevant implementation details for the pilot measures agreed by China that granted approval for the province to allow Mainland and Hong Kong law firms to set up partnerships; and to permit Guangdong law firms to second Mainland lawyers to work as consultants on Mainland law in representative offices set up by Hong Kong law firms.

With regards to developments in Qianhai, Nansha, and Hengqin, Hong Kong hopes to aid those Hong Kong business sectors that want to take advantage of the business opportunities arising in the three places.

In respect of Nansha, the two sides will step up co-operation in financial and accounting services, including permission for enterprises and financial institutions in Guangzhou to issue RMB bonds in Hong Kong to support its development, and allow Hong Kong accounting professionals to become partners of accounting firms. For Hengqin, the two sides will enhance support for industries, associations, and agencies from Hong Kong and Guangdong to set up branch offices there.

In respect of Qianhai, the two sides will focus efforts on implementation of the policy to allow Hong Kong professionals to provide engineering consulting, design, surveying, construction, and related services, directly in Qianhai.

Finally, this year, Hong Kong and Guangdong will continue to encourage Guangdong enterprises to establish a foothold in Hong Kong to speed up the "go global" process, and leverage Hong Kong's advantages in the financial and information sectors, to pursue investment as well as merger and acquisition activities in overseas markets.

The Middle East

Dubai

This region has perhaps unleashed the economic potential of free zones more than any other, with free zones extensive across the Gulf states in particular.

There are more than 20 free zones in Dubai alone, either already operational or under development, including: Academic City; Airport Free Zone; Biotechnology & Research Park; Car and Automotive City; Gold and Diamond Park; Healthcare City; Industrial City; International Academic City; International Financial Centre; Internet City; Knowledge Village; Logistics City; Media City; Multi Commodities Centre; Outsource Zone; Silicon Oasis; Studio City; Techno Park; Technology and Media Free Zone; Economic Zones World; and the Jebel Ali Free Zone.

Companies that have established in one of Dubai's free zones enjoy freedom from taxation and capital controls, and tend to be regulated lightly. Typically, free zone companies benefit from freedom from corporate taxes for a period of 50 years (a concession that is renewable), no import or re-export duties, and no personal income taxes. Furthermore, 100 percent foreign ownership is permitted within the free zone and firms can repatriate 100 percent of their capital and profits.

In recent months, some of Dubai's free zones appear to have stepped up their promotional activities in key sources of investment markedly, notably the Dubai International Financial Centre (DIFC) and the Jebel Ali Free Zone (Jafza).

For instance, in May 2014, the DIFC sent a delegation to Beijing to reinforce and build upon its ties with China. The delegation highlighted the DIFC's role as a business and financial hub for the Middle East, Africa, and South Asia (MEASA) region. It also set out to raise the DIFC's profile as offering a stable and transparent business environment that operates within its own jurisdiction with an internationally recognized regulatory and legislative framework.

Essa Kazim, Governor of DIFC and Chairman of DIFC Authority, and leader of the delegation, said: "In 2008, the Dubai Financial Services Authority (DFSA) signed a Memorandum of Understanding with the China Securities Regulatory Commission. Since then our bilateral trade relations have flourished. The DIFC's unique geographical position and its world-class regulatory framework have enabled us to provide Chinese companies with a safe and stable gateway to markets in the West and to the rapidly emerging African markets. China and Africa are working together to double their two-way trade to USD400bn by 2020, meaning that Dubai will become an increasingly important location for Chinese companies looking to access to these markets."

China–UAE trade relations have grown rapidly during recent years with total trade between the two nations rising to USD36.7bn in 2013, the DIFC said.

The DIFC announced on February 2, 2014 that it had 1,039 active registered companies as of

December 31, 2014, a 14 percent increase from a year earlier. According to the announcement, 55 active financial services and 103 non-financial services firms registered last year, bringing the totals to 327 and 565 respectively by the year-end. The combined workforce of DIFC-registered companies is currently 15,600, representing 11 percent growth over 2012.

The DIFC also noted that there is greater diversification in its retail portfolio, with 40 new outlets offering a range of services registered within the last year, taking the total to 145 active retailers.

Essa Kazim remarked: "2013 was a year of significant growth and development for Dubai as a whole, with the UAE being awarded the Expo 2020 bid win, the initiative to move towards an Islamic Economy, and the MSCI upgrade of the UAE to 'emerging market' status. These trends were also reflected within DIFC and in its sustained efforts towards becoming a global financial hub for the region."

Jeffrey Singer, CEO of the DIFC Authority, said: "In 2014 we will concentrate on the development of new markets such as Islamic Finance, Capital Markets, family businesses and growth markets such as Africa, providing additional business opportunities to firms based both within DIFC and the wider region."

The Jafza has also focused its marketing activities on Asia in recent months, with promotional tours of Indonesia, Malaysia, China, and Taiwan, and investment delegations received from India and Japan. Other promotional campaigns have taken in prominent South American markets and Australasia.

The Jafza saw 613 multinational companies join the free zone in 2013, a 28 percent increase over 2012 and the highest rate of growth for six years. Last year, 30 percent of the new companies came from developed and developing economies of Asia, 29 percent from Europe and the Americas, and the remainder from the GCC and the Middle East. In terms of countries, the largest number of foreign investors came from India, followed by China, the UK, and the US. The trend reinforces the Jafza's growing stature as a dynamic hub and a business facilitator for multinationals.

The Jafza is currently home to more than 7,300 of the world's finest companies, including over 120 Global Fortune 500 enterprises. These companies are estimated to have generated trade worth over USD90bn in 2013. The Jafza also recently announced the creation of a new business framework enabling companies in the free zone to apply to directly list shares on the NASDAQ Dubai financial exchange.

Oman

Last month, Sohar Port and Freezone in Oman announced its intention to strengthen economic ties with global shipping powerhouse Singapore.

Speaking at the SCM Logistics and Manufacturing World 2014 event, Asia's largest supply chain and manufacturing event, Commercial Executive

Edwin Lammers discussed Sohar's ambition to establish itself as the gateway to a new trade corridor that will leverage on the port's unique location to connect Asia, the Gulf, and the US through Oman.

Lower costs generated by container volumes that are projected to reach 1.5m twenty-foot equivalent units, and Sohar's ability to provide access to the Gulf from outside the Strait of Hormuz, were highlighted as advantages by Lammers. Oman's free trade agreements with the US and Singapore were also viewed as crucial in pursuit of an increased share of USD68bn in US–Singapore trade flows for the port.

The business incentives offered by the free zone include 100 percent foreign ownership, exemption from Oman's 12 percent corporate tax for up to 25 years, 0 percent import and re-export duties, and 0 percent personal income tax.

Sharjah

In April 2014, the Commercial Bank of Dubai (CBD) and Hamriyah Free Zone Authority signed a Memorandum of Understanding (MoU) to deepen trade and commercial co-operation in the zone as well as throughout the UAE.

Under the MoU, CBD will provide banking services to companies based in Hamriyah Free Zone, which is located in the emirate of Sharjah, as well as to firms that have yet to establish their operations in the area. As the preferred financial services provider, CBD is also tasked to help finance projects executed within the zone.

CBD is expected to provide full banking services, which will include inter alia new accounts, e-services, and financial arrangements in accordance with the rules and regulations of the UAE Central Bank. A bundle of personal banking products designed for free zone employees will also be made available under the MoU.

Rashid Al Leem, Director General Sharjah Department of Seaports and Customs and the Sharjah Free Zones Authority, said: "CBD's banking services and solutions will contribute to the growth and expansion of established companies within the zone. It will also support the vital role played by the Hamriyah Free Zone Authority in Sharjah in strengthening the economic growth in the country, especially in the fields of trade, industry and services."

Hamriyah Free Zone Authority offers a number of investment incentives including 100 percent foreign company ownership and 100 percent exemption from import and export taxes. In addition, there is no corporate profits tax or personal income tax.

South America

Brazil

The House of Representatives approved on June 4, 2014, a proposal to extend the tax benefits of the Free Economic Zone of Manaus (ZFM), located in the northern state of Amazonas, by 50 years.

The investment incentives of the free zone were originally due to expire in 2023. Provided the Senate approves the Proposed Amendment to the Constitution (PEC) 103/11, the validity of the ZFM will be extended until 2073.

The proposed extension was initially presented in 2011. To secure approval from opposition lawmakers, amendments were agreed extending reductions in the IPI tax for the computer products sector until 2029, and extensions for other free trade areas in the north of Brazil until 2050.

Companies that set up factories in the ZFM are granted an 88 percent reduction in import taxes. They are also exempt from paying the IPI tax on industrial goods, the social welfare PIS/Pasep taxes, and the interstate ICMS sales tax.

Chile/Paraguay

Chilean Foreign Minister Heraldo Muñoz and his Paraguayan counterpart, Eladio Loizaga, recently revived negotiations on a free zone for Paraguayan businesses located at the Chilean port of Antofagasta.

During a visit to the Paraguayan capital of Asuncion to attend the 44th General Assembly of the Organization of American States (OAS), Muñoz met with Loizaga. Among the issues discussed was a proposal originally drafted in 1968 to designate the port of Antofagasta as a free trade area through which Paraguay, a land-locked country, could gain easier access to international markets.

A warehouse has already been constructed for the proposed free zone. Muñoz said that the only thing left to do is to seal the deal and make the free zone operational.

During the meeting Muñoz also backed plans to promote dialogue between the Pacific Alliance – a trade bloc comprising Chile, Colombia, Mexico, and Peru – and Mercosur, a political and economic alliance involving Argentina, Brazil, Paraguay, Uruguay, and Venezuela. Chile became an associate member of Mercosur in 1996.

Russia

In March 2014, the Government announced that it may offer temporary tax benefits for companies based in the Crimea region as part of contentious plans to annex the territory.

Russian Deputy Finance Minister Sergei Shatalov told Russian media: "Probably joining Crimea to Russia will require significant changes in tax legislation – the formation of the customs service, tax service, tax register of legal entities and persons, as well as rules to adapt to the Russian tax system. Transition periods will be needed. It is possible that there will be special tax regimes."

Russian Prime Minister Dmitry Medvedev said at a government meeting on March 24, that Crimea may become a special economic zone (SEZ) similar to the Kaliningrad region, which grants local residents exemption from income and property taxes for six years.

An agreement on the accession of the "Republic of Crimea" by the Russian Federation was signed in the Kremlin on March 18, 2014 following a referendum on March 16. Crimea is considered to have acceded to the Russian Federation from the date of the agreement's signing, but the current and future status of the territory remains very unclear.

A law establishing SEZs in Russia was enacted in 2005, and these offer a number of tax concessions. Currently, SEZs are categorized into four types: Innovation, Industrial, Logistic, and Tourism. Businesses based in SEZs typically pay reduced rates of profits tax, but the extent of the reduction depends on the region where the zone is located and the type of zone in question. Changes to the SEZ law in 2012 mean that the regional authorities cannot lower the profit tax rate below 2 percent, although this is a substantial improvement on the minimum 15.5 percent rate stipulated under the SEZ law prior to the changes. Profits tax in Innovation and Tourism SEZs can be reduced to 0 percent, however. Other incentives available in SEZs include accelerated depreciation, social tax reductions, protection against future tax law changes, and relaxed customs rules. As of mid-2012, 24 SEZs had been created, each guaranteed for a period of 49 years. SEZs set up in Kaliningrad and Magadan prior to new SEZ law, and which apply different rules, levy a 0 percent rate of corporate tax for the first six years and 12 percent for the next six years.

Russian SEZs received RUB30.2bn (USD827m) of investment from residents in 2013 – an increase of RUB12.7bn from 2012, the Government revealed on March 1, 2014. The zones generated RUB50bn of revenues from residents last year, compared with RUB29.7bn in 2012, and created 3,145 new jobs against 1,814 in 2012.

The Government has taken measures aimed at improving the productivity of SEZs and the efficiency of the use of budget funds allocated for the development of their infrastructure.

India

The Ministry of Industry and Commerce has pledged to restore a number of tax concessions for SEZs in the 2014/15 budget to be announced on July 10.

The Ministry said it would call on the Government to reintroduce an exemption for developers and business units operating in the SEZs from the minimum alternate tax (MAT) and dividend distribution tax (DDT). These were introduced on companies based in SEZs in the 2011/12 Budget.

On June 8, 2014, the Associated Chambers of Commerce and Industry of India (ASSOCHAM) called on the Government to support the withdrawal of the two levies to "regain the trust of domestic and global investors."

"If immediate action is taken by implementing these corrective measures it would restore investor confidence and bring back SEZs to the forefront of economic and industrial development," said D. S. Rawat of ASSOCHAM, while releasing a report entitled "Suggestions to Revive Special Economic Zones."

SEZs in India offer a number of tax incentives, including temporary tax holidays and import duty waivers, but uncertainty concerning tax perks for the zones and the current tax burden is said to be stifling investment.

Under the SEZ Act 2005, the five main aims of SEZs are: the generation of additional economic activity; the promotion of exports of goods and services; the promotion of investment from domestic and foreign sources; the creation of employment opportunities; and the development of infrastructure facilities. SEZs offer exemption from central sales and service taxes in certain circumstances, along with certain time-limited income tax exemptions.

In June 2013, the Government announced that a number of services received by units located in an SEZ would be exempt from service tax. The exemption takes the form of a refund of service tax already paid on the specified services received by an SEZ Unit or an SEZ Developer. An SEZ Unit or Developer can opt not to take advantage of this exemption and instead apply for a Central Value-Added Tax credit on the services received.

However, the announcement in the 2011/12 budget speech that SEZ firms would have to pay MAT at a rate of 18.5 percent has rather taken the shine off these free zones.

Hong Kong To Shore Up Finances With 'Future Fund'

The Hong Kong Government has announced an extension to the allocated activities of the Working Group on Long-Term Fiscal Planning to enable it to make further recommendations, including proposed options for a savings scheme (the "Future Fund") for Hong Kong.

The Working Group, set up in June 2013 to look at the state of Hong Kong's public finances, offered the first comprehensive appraisal of their fiscal sustainability since 1997/98 in its initial report issued in March 2014. It cast fiscal policy in a broader, long-term framework, and addressed such matters as how to balance spending and revenues, preserve low tax rates, and reinforce the importance of maintaining a prudent fiscal balance.

In that context, one of its predictions was that Hong Kong could have a fiscal deficit by 2029/30, even if services for education, social welfare (including pensions), and health services were to be maintained at existing levels, or earlier than that if services were to be enhanced.

Among its policy recommendations, the Working Group recommended the setting up of the Future Fund, so that the Government could start saving for the future. Other recommendations included that the Government should look to contain expenditure growth, and preserve, stabilize, and broaden the tax base.

The objective of the Fund would be to set aside a portion of the fiscal reserves and annual surplus, and invest it, so that the savings can be released after a designated period to help relieve the pressure on future generations.

In particular, looking at the stabilization and savings funds established by other countries, such as Australia, the Working Group pointed out that funds should be locked up until after an agreed period, or until the savings have accrued beyond an agreed level. These savings could be used, if absolutely needed, if the territory incurs successive budget deficits.

In recommending that the Government should start to save for the future, the Working Group also considered the special case of the existing HKD220bn (USD28.4bn) Land Fund, which does not have particular expenditure attached to it, and which the Government presently looks on as part of its reserves, or as a stand-by facility. It suggested that the Land Fund, and its investment returns, could be utilized as the starting point for the Future Fund in 2014/15. One-third of future budget surpluses could be added to the fund for "at least the next ten years," it said. On this basis, its total balance in 2023/24 would then be about HKD510bn, or 14.7 percent of gross domestic product.

The Working Group will reconvene this month and seek to report to the Financial Secretary towards the end of 2014. A Government spokesman said: "We are grateful to the non-official members for their kind agreement to continue serving on the Working Group. We will continue to count on their professional support."

Switzerland Agrees Tax Regime Review With EU

Representatives of the EU and Switzerland have initialed a mutual understanding on business taxation, bringing to an end a dispute that has strained relations for almost a decade.

In the document, the Swiss Federal Council reaffirms its intention to propose removing certain tax regimes, deemed by the EU to be "harmful." In particular, it is to tackle systems that provide for the different treatment of domestic and foreign revenue. Any new tax measures will be based on international standards.

In return, the EU has pledged to remove corresponding countermeasures as soon as the regimes in question have been abolished.

Last month, the Federal Council and the EU's Council of Economic and Finance Ministers (Ecofin) announced that they had found common ground on the issue. The freshly initialed text corresponds to the understanding reached on June 20. The Swiss State Secretary Jacques de Watteville and his EU counterpart Heinz Zourek, Director General of the European Commission's Taxation and Customs Union Directorate-General, have now agreed on its final wording.

The Federal Council will now inform the relevant parliamentary committees and cantons, and will decide a date for the formal signing of the understanding. It has already received approval from the EU's Federal and Economic and Financial Affairs Council.

De Watteville told reporters: "We have buried the hatchet after nine years of difficult negotiations with the EU and have created legal certainty."

Ibec Seeks Tax Cuts In Irish Budget

Irish business group Ibec has called for income tax cuts worth EUR300m (USD407.8m) and a EUR100m reduction in consumption taxes in October's Budget.

In its Budget 2015 submission, Ibec says that Finance Minister Michael Noonan must focus on lowering taxes and boosting investment across the economy.

It urges the Government to increase the entry point to the marginal tax rate from EUR32,800 (USD44,583) to EUR34,800, and to reduce the marginal tax rate from 52 percent to 51 percent. It also recommends a change in universal social charge regulations, to ensure that self-employed and pay-as-you-earn workers are treated the same way.

With regard to consumption taxes, Ibec suggests that recent alcohol excise hikes be reversed, and that the reduced 9 percent value-added tax rate for the hospitality sector should remain in place. The "unfair" pensions levy should be dropped, it says.

Ibec argues that Ireland has become less attractive to mobile investment in recent years and that efforts should be made to improve the country's international tax offering. Ibec called for the Government to restate its commitment to the 12.5 percent corporate tax rate, and called for improvements to the intellectual property regime, and greater certainty in relation to the research and development tax credit regime.

In order to create a tax environment appropriate for increased investment in enterprises and infrastructure, the capital gains tax regime should be overhauled, Ibec said, stating that more emphasis should be placed on encouraging companies to reinvest their money in new projects. Ibec would like to see the Employment Investment Incentive Scheme rebranded and reformed to make it easier to use.

The tax cuts recommended in the submission would require the implementation of water charges in 2015, and some further spending reductions. However, Ibec stressed that the proposed overall package will be growth enhancing, and is supported by international evidence on the need for a shift away from labor taxes to indirect taxes, such as property-based taxes.

Ibec CEO Danny McCoy said: "We have an opportunity to put fresh momentum behind Ireland's recovery. Now is the time to draw a line under the period of painful austerity. It was necessary, but the economy has entered a new phase. This needs to be reflected in the Budget."

"We have a chance to give consumers a break, put money back into peoples' pockets and kick-start personal, commercial, and public investment. If we get it right, we can look forward to strong growth in the months and years ahead. This will result in thousands of new jobs."

Hungary Urged To Review Tax On Banks, Labor

The European Commission (EC) has advised Hungary to amend its corporate tax system, and to reduce the tax burden on banks and the tax wedge on low-income earners.

The comments follow the fifth EC mission to Hungary following the expiration of the EU financial assistance program in November 2010. In particular, the delegation highlighted controversial sector-specific taxes, which it described as distortive.

On banks, the EC said that sustainable growth requires the restoration of normal lending, and that banks' operating environment therefore needs to be improved. Reducing the tax wedge on low-income earners, meanwhile, would help to increase employment, it said.

The EC also called for Hungary to accelerate the clean-up of banks' asset portfolios, to address the issue of foreign currency mortgage loans through consultation, and to improve the business environment by stabilizing regulation and removing entry barriers to the service sector. However, the body said that it agreed with Hungarian authorities that 2014 and 2015 deficit targets are in reach, although Government debt is not yet on a firm downward path.

HMRC Roasted After Overstating Enforcement Tax Take

HM Revenue & Customs (HMRC) has admitted that it erroneously claimed to have yielded substantial revenues above targets for its compliance activities for two consecutive years. The error was uncovered after a review by the National Audit Office (NAO).

HMRC reported that it had exceeded its targets by GBP3.9bn (USD6.67bn), but the NAO found that HMRC had set its target – against which it measured its performance – too low, by about GBP1.9bn each year. This made targets easier to achieve, and led HMRC to report incorrectly that it had exceeded its performance targets by GBP1.9bn in 2011/12, and by GBP2bn the following year. HMRC agreed to review how it charts its performance and to have its compliance-related statistical reports vetted by the NAO prior to publication.

After adjusting for the blunder, HMRC said it achieved revenue collections from compliance-related activities that were marginally higher than its targets. HMRC described the mistake as a "historic error," which occurred in 2011.

Margaret Hodge, the Chair of the UK Parliament's Public Accounts Committee, said that the mistake "paints a worrying picture," and she accused HMRC of having "poor governance arrangements." She argued that HMRC being able track its performance accurately is "absolutely crucial," and asked: "If HMRC can't get its own numbers right, how can it ask the same of others?"

Hodge added that she was looking forward to discussing the issue with department officials when they appear before the Committee on July 16.

UK Tax Reliefs Expanding, Going Unchecked: PAC

The UK's 1,128 tax reliefs create a very complex system that in turn creates opportunity for avoidance and evasion, the Public Accounts Committee (PAC) has said.

The Committee's Third Report of Session 2014-15 concluded that tax reliefs are a substantial, complex, and poorly managed element of the system. It found that the Treasury and HM Revenue & Customs (HMRC) have been unable to cope with the growing demands of managing increasing numbers of reliefs, and are uncertain as to the scale and value of different types of relief. Furthermore, to accommodate new legislation and anticipate the actions of avoiders, Finance Bills are four to five times longer than they were 50 years ago, it said.

The PAC acknowledged that reliefs can serve as fundamental components of the tax system – as in the case of the personal income tax allowance. They can also be designed with more specific objectives in mind, such as the intention to change behavior, such as the film tax relief.

HMRC estimates that there may be 150 tax expenditures overall, across its tax streams. Together with the Treasury, it has estimated the value of just 46. Although HMRC publishes online projections of the cost of 180 reliefs online, there is no feedback mechanism to alert parliament when the actual cost outstrips the Treasury's original forecasts.

The National Audit Office has identified 26 tax reliefs which had increased in cost by more than 50 percent in real terms in the past ten years, and 30 where the cost had gone up by more than 25 percent in the last five years.

The PAC said that there is a lack of transparency and accountability for tax reliefs and no adequate system of control once they have been introduced. HMRC and the Treasury share responsibility for the reliefs, but there is no accounting officer charged with their stewardship, as there would be for public spending. It added that, without a clear framework in place, or adequate definitions to distinguish between different types of relief, it is not possible to categorize reliefs effectively, or to understand how they should be managed.

The PAC has therefore called on HMRC and the Treasury to define and establish clear accountabilities, and to deliver on commitments to develop and introduce a framework for the effective assessment, management, and reporting of tax reliefs. Proportionate feedback and analysis should be provided to Parliament on the costs of principal tax reliefs each year, along with a definition of which reliefs are tax expenditures.

Other recommendations included that the departments should report regularly to Parliament on the development of new avoidance products and the action taken to mitigate their impact. Stronger checks and balances should be developed, to guard against increasing complexity. Finally, the PAC encouraged officials to dedicate sufficient resources to implementing plans to simplify the tax system.

Committee chairman Margaret Hodge said: "The Government made a commitment to simplify the tax system and established the very welcome Office for Tax Simplification. However, whilst the Government has so far abolished 43 tax reliefs, another 134 have been introduced since 2011. Much more radical simplification of the tax system is required if we are to get to grips with aggressive tax avoidance."

She added: "If the Government chooses to spend GBP100bn (USD170.5bn) on tax reliefs, at a time of austerity, this expenditure should be considered in the same way as spending programs. Many tax reliefs are introduced without clear objectives and are not evaluated as fully. Departments need to demonstrate the case for introducing new reliefs, as opposed to other options such as direct grants. It must monitor them systematically to ensure they are achieving Government's stated objectives, rather than after risks emerge."

"Governments also need to ensure there are appropriate disincentives and sanctions in the system to inhibit advisers from promoting aggressive tax avoidance schemes."

HMRC Steps Up Property Raids In Anti-Avoidance Crackdown

The number of property raids carried out by HM Revenue & Customs as part of its crackdown on tax evasion jumped by 12 percent in the last year, according to data obtained by Pinsent Masons.

The international law firm says that the number of raids rose from 445 in 2012/13 to 500 in 2013/14. This is more than triple the number undertaken in each year between 2008 and 2011. Raids are often carried out early in the morning, with HMRC's object being to seize as many documents and computers as quickly as possible.

The teams undertaking property raids have the right to search individuals, and many have the power to make arrests without the presence of a police officer or the need to seek an arrest warrant. HMRC's target is to prosecute 1,165 people for tax evasion in 2014/15, five times more than its 2010 target of 250 prosecutions.

Jason Collins, Head of Tax at Pinsent Masons, said: "Even though the value of the tax evaded in those cases is relatively low, HMRC is keen to pursue those cases to the bitter end as a deterrent to other tax evaders. There has always been the problem that tax evaders don't live in fear of HMRC. These raids and arrests are designed to give all tax evaders sleepless nights."

Collins added: "Raiding properties is partly about HMRC demonstrating the police-style powers that it has in a dramatic show of force. HMRC wants to send a very clear signal to individuals and businesses that evading tax has very serious consequences."

EU VAT Place Of Supply Change 'Feasible,' Says EC

With the six-month countdown having begun towards a significant change to EU place of supply rules impacting supplies of all telecommunications, broadcasting, and electronic services, the European Commission has told the EU Council that member states are ready and prepared to implement the change from January 1, 2015.

Currently, services supplied by taxable persons established in the EU to non-taxable persons are, as a rule, taxed at the place where the supplier is established. However, from January 1, 2015, all telecommunications, broadcasting, and electronic services will become taxable at the place where the customer belongs (unless the rule on effective use and enjoyment applies), even if the customer is a non-taxable person.

Algirdas Šemeta, EU Tax Commissioner, said: "We want fair taxation that facilitates business and delivers healthy revenues to national budgets. The change in the VAT rules next year delivers on all fronts. Businesses will enjoy a simplified system and more level-playing field, which should encourage cross border expansion, particularly for start-ups and small- and medium-sized enterprises. Member states will have more equitable taxing rights, creating fairer tax competition within our Union."

In its feasibility report to the Council, the Commission said the changeover will ensure a more level playing field for businesses, and fairer taxation rights among member states. In parallel, a mini One Stop Shop (MOSS) will be launched, greatly reducing costs and administrative burdens for businesses concerned. With the mini One Stop Shop, businesses supplying e-services to customers in more than one EU country will be able to declare and pay all their VAT to a single member state.

The Commission said that the introduction of the new rules represents a major change in the current rules of the EU VAT system, stating that the preparation towards the change has raised a number of challenges, both legal and technical. "However, thanks to the numerous measures taken years ahead of the deadline and to the fruitful cooperation with member states and private-sector stakeholders, a sound framework has been put into place for consistent, efficient and timely implementation."

The following legislative acts to implement the changes have been adopted:

- Council Regulation (EU) No. 967/2012 of October 9, 2012, amending Implementing Regulation (EU) No. 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons. This lists the main obligations of taxable persons under the special schemes and regulates issues such as registration, deregistration, and exclusions;
- Council Implementing Regulation (EU) No. 1042/2013 of October 7, 2013, amending

Implementing Regulation (EU) No. 282/2011 as regards the place of supply of services. This deals with the place-of-supply rules and clarifies how they should be applied; and

- Commission Implementing Regulation (EU) No. 815/2012 of September 13, 2012, laying down detailed rules for the application of Council Regulation (EU) No. 904/2010, as regards special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons. This standardizes declarations and exchanges of data between member states to ensure the full interoperability of the MOSS.

"The Commission has taken the necessary action to ensure that there is a sound legal framework in place, together with practical and detailed guidance for businesses and member states. It has also supported and monitored member states' efforts to prepare for the technical implementation of the electronic interface so as to allow proper functioning of the MOSS," the Commission said.

"Additional initiatives have been carried out in order to raise awareness, inform the stakeholders affected by the new rules and issue guidelines to allow their smooth implementation. The Commission therefore concludes that efficient application of the new rule on the place of telecommunications, broadcasting and electronic services to non-taxable persons as of January 1, 2015, is feasible," the Commission reported to the Council.

In its report, the Commission said that further information on specific member state rules that are relevant for businesses using the MOSS will be uploaded by the end of 2014, together with links to national web portals. This data will reflect existing specific requirements in the member states, notably with regard to invoicing obligations, use and enjoyment rules, use of certain exemptions, *etc*. The Commission highlighted that certain aspects of national legislation will continue to apply in the context of the MOSS. It has recently released guidelines on auditing under the MOSS.

In a question and answer format guide to the changes, the Commission said that the impact on consumers, if any, will be marginal. "The basic price of the product remains the same, and then the VAT (calculated as a percentage of the basic price) may go up or down depending on where the consumer has been previously buying these services. For example, if up to now, a consumer has bought his/her software from a provider located in a member state with a lower VAT rate than his/her own, then he will experience a small price difference (a few cents/percentage points). Conversely, if the VAT rate is lower where the consumer lives than where the supplier is based, there will be a small drop in the overall price. However, these are considered to be short-term effects. It is expected, in the longer term, that the new rules will increase the efficiency of the market and increase the number of suppliers and competition in general. This, in turn, should drive prices down," the report says.

On the impact of the changes on specific member states, the Commission said: "It may be the case that certain member states with a low VAT rate may see their market share reduced as the advantage for companies to relocate to their territories for tax reasons is removed. However, a very long preparation period between the adoption of the Directive and its implementation has allowed any member state in this position to prepare and adapt to the change. Moreover, there is a transitional period until end of 2019 during which the countries of establishment (*i.e.*, where the supplier is based) will keep part of the revenue."

Last, the Commission provided an update on plans to expand the use of the MOSS. It noted that there was an initial proposal in 2004 to extend the scope of the One Stop Shop to other supplies, such as for distance sales of goods. It noted that the high level expert group on taxation of the digital economy made the same recommendation in its report of last May. However, not all member states accepted such a wide scope from the start. Therefore, the Commission said that the application of a MOSS may be an opportunity for member states to experience the benefits of such a system, and may open the way for the wider application in the future.

Czech Government Agrees Second Reduced VAT Rate

The Czech Government on July 2, 2014, confirmed that it intends to introduce a second reduced rate of value-added tax (VAT) of 10 percent.

After months of indecisive debate, the new reduced rate was approved by the Cabinet, and a rival proposal that a 5 percent rate should be introduced was ditched.

If endorsed by the Czech Republic's bicameral legislature and the President, the new 10 percent rate would be effective from January 1, 2015, and would apply to medicines, books, and food for infants. A proposal to include diapers was dropped, after concerns that a concessionary rate would contravene EU VAT rules.

Two other proposals concerning the Czech Republic's existing VAT rates have been rejected. It had been proposed that the nation's 21 percent and 15 percent rates of VAT could each be lowered by 1 percent, or that they could be amalgamated under a 17.5 percent rate. Concerns were raised that introducing a third rate would make the regime too complex and increase compliance costs.

The cost of introducing a third, 10 percent rate of VAT was originally estimated at CZK4.2bn (USD200m) annually, but new reports attach a cost to the measure of just CZK2.9bn.

Australian Gov't Reviewing GST Sharing Arrangements

The Australian Government has released the Terms of Reference for its White Paper on the Reform of the Federation, in which it warns that the States and Territories have become increasingly reliant on revenue collected by the Commonwealth Government to deliver services in the areas for which they are responsible. About 45 percent of State and Territory revenue now comes from the Commonwealth.

The White Paper will present the Government's position in relation to fiscal sustainability at both Commonwealth (*i.e.*, federal) and State levels, among other topics. It will consider how to best address the issue of State governments raising insufficient revenues from their own sources to finance their spending responsibilities.

The Government aims to ensure that horizontal fiscal equalization (HFE) does not result in individual jurisdictions being disadvantaged in terms of the quality of services they can deliver. It says that this principle needs to be implemented in a way that avoids creating disincentives for them to improve their own revenue generation. HFE provides State governments with funding from pooled goods and services tax (GST) revenue. It is intended to ensure each state has the fiscal capacity to provide services and infrastructure to the same standard, based on each territory's development needs.

Publishing the terms, Prime Minister Tony Abbott said: "We need to reduce and, if possible, end duplication, and make interacting with government simpler. We need to clarify roles and responsibilities for States and Territories so that they are, as far as possible, sovereign in their own sphere. The Commonwealth will continue to take a leadership role on issues of genuine national and strategic importance, but there should be less Commonwealth intervention in areas where States have primary responsibility."

The Federation White Paper will be coordinated with the White Paper on the Reform of Australia's Tax System. Issues papers will be released later this year, with the Green Paper expected in early 2015. The resultant White Paper will be published by the end of 2015.

South Korea, China Seek FTA By End-2014

South Korean President Park Geun-hye and her Chinese counterpart, Xi Jinping, agreed in Seoul on July 3 that their two countries would conclude free trade agreement (FTA) negotiations by the end of 2014.

In addition to a number of economic and financial agreements being announced after their meeting – most notably for the establishment of an offshore renminbi trading center in Seoul – it was confirmed that the 12th round of their FTA negotiations, to be held in South Korea later this month, will seek progress on all chapters of the proposed agreement, including tariffs, non-tariff barriers to trade, services, investment, intellectual property, and e-commerce.

A breakthrough is thought to be unlikely on cutting tariffs on the two countries' highly sensitive goods and services, which may need to be excluded from future talks. In particular, concerns have been expressed in South Korea's farming sector over the probable deleterious effects of increased Chinese imports, if agricultural duties were to be cut. The South Korean Government has now reiterated that any deal will need to protect its food producers.

FTA negotiations started in May 2012, and the two countries have already decided to eliminate tariffs on 90 percent of all goods, and 85 percent of imports by value. Duties on non-sensitive products will be canceled either immediately or within ten years, and those on sensitive products will be abolished within 10–20 years after the FTA becomes effective.

According to Chinese Ministry of Commerce figures, total trade between South Korea and China reached over USD270bn in 2013, and the two leaders have set a USD300bn target for 2015. China is already South Korea's primary trading partner.

It has been pointed out that, if the FTA can be completed, South Korea will then have trade treaties with the three largest global economic powers – the US, the EU, and China.

Its agreement could also provide an added impetus to the talks on the proposed tripartite FTA between South Korea, China and Japan, and to the conclusion of the Chinese-led Regional Comprehensive Economic Partnership, which is planned to bring the Association of Southeast Asian Nations' existing FTAs with China, South Korea, Japan, India, Australia, and New Zealand into a single improved agreement by the end of 2015.

EFTA–Gulf States FTA Enters In Force

Five years after its signing, the free trade agreement (FTA) between the EFTA States – Iceland, Liechtenstein, Norway, and Switzerland – and the Cooperation Council for the Arab States of the Gulf (GCC), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, became operational on July 1, 2014.

Industrial and fish products are to benefit from duty-free access to the markets of all parties, with some transitional periods and exceptions applying on the GCC side. The deal also improves market access and legal certainty, and provides EFTA states with greater access to public tenders.

Since the signing of the FTA, two-way merchandise trade between the EFTA and the GCC countries has increased by an annual average of 9 percent, reaching a value of USD9.2bn in 2013. Free trade negotiations between the EFTA and the GCC were launched in February 2006 and were concluded in April 2008. The deal was signed in Norway on June 22, 2009.

Apart from their agreements with the EU, the EFTA States currently have 25 FTAs with a total of 35 partner countries worldwide.

Bolivia Inches Closer To Mercosur Membership

The government of Uruguay enacted a law on June 25, 2014, to incorporate Bolivia into the South American trade bloc Mercosur.

By joining the bloc – whose members include Argentina, Brazil, Paraguay, Uruguay, and Venezuela – Bolivia will commit to implement the common external tariff on goods from outside Mercosur, and its exporters will gain free trade access to a market of 230 million people.

The country began the process of acceding to Mercosur in December 2012, having been an associate member since 1997. It will only be fully integrated into the bloc when its membership is ratified by all member states. So far, Uruguay and Venezuela are the only countries to do so.

With preliminary approval for its accession bid, Bolivia has four years to make its laws compatible with the regulations of the bloc.

Last month, Mercosur member Brazil expressed interest in deepening cooperation between the trade bloc and the Pacific Alliance, an economic bloc composed of Colombia, Chile, Mexico, and Peru.

Peru To Negotiate FTAs With India, Morocco

Peru is due to start talks on free trade agreements (FTAs) with India and Morocco, according to the South American country's official gazette.

India's Ministry of Foreign Trade recently invited Peru to begin discussions on the possibility of an FTA between the two countries. The Peruvian government agreed to send a technical committee to India in August of this year to begin the talks, which would seek to expand upon bilateral trade that amounted to USD1.5bn in 2013.

Peru also began discussions on an FTA with Morocco on June 30, 2014. The two sides have scheduled a meeting for the first quarter of 2015 to address FTA issues, including the design of the necessary legal framework to realize such an agreement.

Morocco's Minister of Foreign Affairs and Cooperation, Salaheddine Mezouar, noted that both Peru and Morocco have several agreements with different countries and areas, and thus "have the experience and maturity to realize a trade agreement."

Fifth Round Of RCEP Talks Held In Singapore

The fifth round of negotiations for the proposed Regional Comprehensive Economic Partnership (RCEP), between the Association of Southeast Asian Nations (ASEAN) and its free trade agreement (FTA) partners – China, South Korea, India, Japan, Australia, and New Zealand – was held in Singapore from June 21 to June 27.

The RCEP should bring together those existing FTAs completed by ASEAN – whose member countries are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam – into a single comprehensive agreement by the end of 2015.

Its aim is to broaden, deepen, and improve significantly all elements of those agreements, including tariffs, and chapters relating to the market liberalization for services and investment, intellectual property, competition, and legal matters such as dispute resolution.

It was reported that it has not yet been possible to agree on the actual extent of tariff reductions, consensus only having been reached on such matters as methods of tariff bargaining, non-tariff barriers, and other technical issues. As a result, doubts are being expressed whether it will be possible to adhere to the original target of completing the RCEP by December next year.

RCEP negotiations began in Brunei in May 2013, with the first RCEP Ministerial Meeting also being held there in August last year. It is envisioned that an agreement would form one of the largest FTAs in the world, covering three billion people and one-third of the world's gross domestic product at around USD20 trillion. It is expected to become the platform for future trade and investment integration in Asia.

The latest talks also made preparations for the second RCEP Ministerial Meeting, which is scheduled to be held in August this year, and which, it is hoped, will provide an impetus to future negotiations. It was agreed that the next round of negotiations will be held in India at the beginning of December.

Ireland Engaging In International Tax Talks

Ireland's Government is working towards a global solution to challenge aggressive tax planning in the context of the OECD's base erosion and profit shifting (BEPS) work, but a change to Ireland's corporate tax policy is off the cards, according to Eamon Gilmore, Ireland's Minister for Foreign Affairs & Trade.

Delivering his keynote address to the Ireland–France Chamber of Commerce on June 25, 2014, Gilmore reiterated that government officials, including Prime Minister Enda Kenny, "were at the OECD in Paris to discuss [international tax matters] a few months ago, as part of an exercise in planning our post-program economic strategy."

Gilmore said that concern raised about the Irish corporate tax rate, as discussed with the then French President Nicolas Sarkozy, "has not gone away entirely," but ventured that "the French approach at [a] political level is now more level-headed, as indeed is the Irish one."

"The rhetoric has calmed in both directions, and I would stress that it should stay calm. There is, I believe, realization that one country's concerns will not be solved by trying to force a change in another country's tax arrangements," he added.

Michael Noonan, Ireland's Finance Minister, recently confirmed that there would be no shift in Ireland's corporate tax rate. Noonan pointed to the results of an OECD multi-country study, which found that a 1 percent hike to the corporate tax rate could reduce inward investment by about 3.7 percent. A rate reduction, on the other hand, could aid inward investment, but the Government has made it clear that the 12.5 percent rate will stay.

China To Collect More Data On Corporate Overseas Assets

To improve its tax administration and the oversight of those Chinese resident companies with overseas investments and income, China's State Administration of Taxation (SAT) has issued a public notice regarding additional information that those companies must report, with effect from September 1 this year.

Issued on July 3, SAT's "Notice on Resident Enterprise Reporting of Information on Overseas Investments" provides that resident businesses must report to it all relevant information regarding their current holdings of shares in foreign enterprises, when they dispose of shares held in a foreign company, or if they reach a certain threshold of voting shares held in foreign enterprises.

Under the new rules, which should improve tax compliance, Mainland companies, when filing their annual corporate tax returns, will be required to disclose more information on foreign entities in which they have a stake of 10 percent or more, either directly or indirectly, including companies in Hong Kong. That information would include details of other shareholders in those companies and of their distribution of profits.

However, in addition, Mainland companies will be required, under the new regulations, to report to SAT, within the same quarter of the year in which it occurred, when there is a 10 percent or more change in the shareholding of such an overseas company, or when there is any change in the Mainland company's direct or indirect shareholding in the foreign company.

Those Chinese companies that fail to disclose the required information will be liable for heavy penalties on any unpaid tax and for appropriate tax adjustments.

14 IGAs Join 'In Substance' FATCA List Just Before July 1

Fourteen further foreign jurisdictions were included by the US Treasury in its latest monthly list, issued on July 1, 2014, as having reached agreements in substance on June 30, 2014, on the terms of intergovernmental agreements (IGAs) under the Foreign Account Tax Compliance Act (FATCA).

Under US transitional FATCA rules, agreements reached in substance before July 1 can be treated as being in effect through to the end of 2014, as long as the IGA is signed on or before December 31, 2014. After that date, only signed IGAs will be considered to be in effect.

From June 30, Algeria, Anguilla, Bahrain, Cape Verde, the Dominican Republic, Haiti, Malaysia, Montenegro, Serbia, and Uzbekistan were added to the list of countries treated as having reached Model 1 IGAs in substance and to have consented to being included on such list, while Iraq, Moldova, Nicaragua, and San Marino were added to the Model 2 IGA list.

Congress enacted FATCA in 2010 to target noncompliance by US taxpayers using foreign accounts. It requires US financial institutions to withhold 30 percent of certain payments made to FFIs that do not agree to identify and report information on US account holders. Foreign governments have two options for complying with FATCA: they can either permit their financial institutions (FFIs) to enter into agreements with the Internal Revenue Service (IRS), or they can themselves enter into IGAs with the US.

US Treasury has developed two alternative model IGAs. Under Model 1, FFIs report to their respective governments who then relay that information to the IRS. Under Model 2, FFIs report directly to the IRS to the extent that the account holder consents or such reporting is otherwise legally permitted, and such direct reporting is supplemented by information exchange between governments with respect to non-consenting accounts.

New Zealand Removes Tax Pooling Restriction

New Zealand plans to allow taxpayers to use tax pooling arrangements to pay any interest owed as a result of a tax dispute or an amended tax assessment.

Tax pooling assists businesses by making it easier for them to plan for changes in tax obligations. The current rules allow taxpayers to withdraw funds from a tax pool to cover the tax owed, but not any interest that might be due. This can result in further interest accruing on the remaining amount, which the Government said was not the original intention of the legislation. Therefore, New Zealand Revenue Minister Todd McClay has announced that this restriction will be removed.

McClay said: "The current situation is contrary to the original principle of tax pooling and has a real impact for a growing number of taxpayers who are either in dispute with the Inland Revenue or subject to an amended tax assessment."

"This decision will be welcomed by the tax advisory community who were consulted during the process and have been seeking this amendment for some time."

The Government intends to introduce an amendment in the next available tax bill to apply the change retrospectively to July 3, 2014.

"The amendment will help ensure that the pooling regime continues to be helpful for New Zealand businesses and will allow them to conduct their tax affairs with certainty," McClay concluded.

Individual Taxpayer Numbers To Expire, IRS Says

With effect from 2016, Individual Taxpayer Identification Numbers (ITINs) will expire if they have not been used on a federal income tax return for five consecutive years, the US Internal Revenue Service (IRS) has announced.

The new policy applies to any ITIN, regardless of when it was issued. Only about a quarter of the 21 million ITINs issued since the program began in 1996 are being used on tax returns. It is hoped that the measure will ensure that anyone who legitimately uses an ITIN for tax purposes can continue to do so, while at the same time resulting in the likely eventual expiration of millions of unused ITINs.

Developed in consultation with taxpayers, their representatives and other stakeholders, the new policy replaces the existing one that went into effect on January 1, 2013. To give all interested parties time to adjust and allow the IRS to reprogram its systems, the IRS will not begin deactivating ITINs until 2016.

Under the old policy, announced in November 2012, ITINs issued after January 1, 2013, would have automatically expired after five years, even if used properly and regularly by taxpayers. Taxpayers will therefore now no longer face mandatory expiration of their ITINs and the need to reapply starting in 2018, as would have been the case.

Though ITINs issued before 2013 were unaffected by the previous change, the IRS said at the time that it would also explore options for deactivating or refreshing the information relating to these older ITINs.

ITINs particularly assist in the collection of taxes from foreign nationals, resident and nonresident aliens, and others who have filing or payment obligations under US law. Designed specifically for tax administration purposes, ITINs are issued only to people who are not eligible to obtain a Social Security Number.

BAHRAIN - SRI LANKA

Into Force

The DTA between Bahrain and Sri Lanka enters into force on July 11, 2014.

BAHRAIN - TAJIKISTAN

Forwarded

Bahrain's Cabinet on July 6, 2014 approved a law that would ratify the DTA signed with Tajikistan.

GUERNSEY - MAURITIUS

Effective

The DTA signed between Guernsey and Mauritius on December 17, 2013 will become effective on July 27, 2014.

GUERNSEY - URUGUAY

Signature

Guernsey signed a TIEA with Uruguay on July 2, 2014.

KAZAKHSTAN - SINGAPORE

Ratified

Kazakhstan's President on July 1, 2014 approved a law to ratify the DTA Protocol with Singapore.

SPAIN - DOMINICAN REPUBLIC

Effective

The DTA between Spain and the Dominican Republic will become effective on July 25, 2014.

SWITZERLAND - UZBEKISTAN

Signature

Switzerland and Uzbekistan signed a Protocol to amend their DTA on July 1, 2014.

UNITED KINGDOM - TAJIKISTAN

Signature

The United Kingdom and Tajikistan on July 1, 2014, signed a DTA.

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

THE AMERICAS

INTRODUCTION TO PARTNERSHIPS

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Co-chairs: James Gouwar (Partner, Bingham McCutchen), Michael Meisler (Partner, Ernst and Young)

7/14/2014 - 7/16/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

INTRODUCTION TO TRUSTS AND ESTATES

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Chair: Joseph Scorese (Partner, Harwood Lloyd)

7/14/2014 - 7/16/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

INTRODUCTION TO CONSOLIDATED RETURNS

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Chair: Stephen Sacks (Executive Director, Ernst and Young, New York)

7/16/2014 - 7/18/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

WEALTH PLANNING FOR HNWIS AND OWNERS OF CLOSELY-HELD COMPANIES

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Chair: Jerald David August (Partner, Fox Rothschild)

7/16/2014 - 7/18/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

INTRODUCTION TO INTERNATIONAL TAXATION

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Chair: William Sherman (Partner, Holland & Knight)

7/21/2014 - 7/23/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

INTRODUCTION TO STATE AND LOCAL TAXATION

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Co-chairs: Arthur Rosen (Partner, McDerrmott Will & Emery), Leah Robinson (Partner, McDermott Will & Emery)

7/21/2014 - 7/23/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

ADVANCED INTERNATIONAL TAXATION

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Co-chairs: William Sherman (Partner, Holland & Knight), Alan Appel (Professor of Law, New York Law School)

7/24/2014 - 7/25/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

STATE AND LOCAL TAXATION II

New York University School of Continuing and Professional Studies

Venue: The Westin New York, 270 W 43rd St, New York, NY 10036, USA

Co-chairs: Arthur Rosen (Partner, McDerrmott Will & Emery), Leah Robinson (Partner, McDermott Will & Emery)

7/24/2014 - 7/25/2014

http://www.scps.nyu.edu/content/dam/scps/pdf/200/200-4/200-4-4/Summer-Institute-in-Taxation-Brochure.pdf

INTERNATIONAL TAX ASPECTS OF FOREIGN CURRENCY

Bloomberg BNA

Venue: Morgan Lewis Conference Center, One Market Spear Street Tower, 28th fl., San Francisco, CA 94105, USA

Key speakers: TBA

8/4/2014 - 8/5/2014

http://www.bna.com/ForiegnCurrency_SanFrancisco2014/

HOT ISSUES IN INTERNATIONAL TAX

Bloomberg BNA

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

Co-chairs: Rob Bossart (Law Office of Rob Bossart), William H Green (Perelson Weiner)

8/18/2014 - 8/19/2014

http://www.bna.com/uploadedFiles/Content/Events_and_Training/Live_Conferences/Tax_and_Accounting/Conferences_-_Seminars/Aug2014.pdf

INTRODUCTION TO US INTERNATIONAL TAX

Bloomberg BNA

Venue: Minneapolis Marriot City Center, 30 South 7th Street, Minneapolis, MN 55402, USA

Key speakers: TBA

8/18/2014 - 8/19/2014

http://www.bna.com/intro_minneapolis2014/

US INTERNATIONAL TRANSFER PRICING UPDATE

Bloomberg BNA

Venue: Minneapolis Marriott City Center, 30 South 7th Street, Minneapolis, MN 55402, USA

Chairpersons: Robert Bamsey (McGladrey LLP), Michele Martinez (Baker & McKenzie LLP)

8/18/2014 - 8/19/2014

http://www.bna.com/uploadedFiles/Content/Events_and_Training/Live_Conferences/Tax_and_Accounting/Conferences_-_Seminars/Aug2014.pdf

INTERMEDIATE US INTERNATIONAL TAX UPDATE

Bloomberg BNA

Venue: Minneapolis Marriott City Center, 30 South 7th Street, Minneapolis, MN 55402, USA

Key speakers: Craig Barrere (Morgan Lewis), Bart Bassett (Morgan Lewis), Alan Cathcart (KPMG), Fred Chilton (McDermott Will & Emery), Zach Jones (Fenwick & West), Rod Donnelly (Morgan Lewis), Tim Fitzgibbon (PwC)

8/20/2014 - 8/22/2014

http://www.bna.com/uploadedFiles/IntroIntermediateJuneAugSept2014.pdf

NORTH CAROLINA CAPTIVE INSURANCE ASSOCIATION'S ANNUAL CONFERENCE

North Carolina Captive Insurance Association

Venue: Ballantyne Resort, 10,000 Ballantyne Commons Pkwy, Charlotte NC 28277, USA

Chairperson: TBA

8/24/2014 - 8/26/2014

http://www.captive.com/Conferences/confDisplay.php?confid=700

STEP LATAM 2014

The Society of Trust and Estate Practitioners

Venue: St Regis Hotel, Paseo de la Reforma 439, Cuauhtémoc, 06500 Ciudad de México, Distrito Federal, Mexico

Key speakers: Luz Alfonso (Lewin & Wills Abogados), Flavia Andrade (Tozzini Freire Advogados) Ramón Anzola (Anzola Robles & Associates) Patricia Arrazola (Arrazola & Asociados), Ronald Evans (Baker & McKenzie), Ryan Pinder (Minister for Finance, The Government of the Bahamas), among numerous others

9/4/2014 - 9/5/2014

http://www.steplatamconference.com/

11TH TAXATION OF FINANCIAL PRODUCTS AND DERIVATIVES

Federated Press

Venue: Courtyard by the Marriott, 475 Yonge Street, Toronto, Ontario M4Y 1X7, Canada

Chairpersons: Ryan Morris (Partner, WeirFoulds LLP), David Stevens (Partner, Gowling Lafleur Henderson)

9/9/2014 - 9/10/2014

http://www.federatedpress.com/pdf/TFPD1409-E.pdf

US AND EUROPE CROSS BORDER ESTATE PLANNING

STEP New York

Venue: Sotheby's, 1334 York Avenue, 72nd Street, New York, USA

Key speaker: TBA

9/10/2014 - 9/10/2014

http://www.step.org/step-new-york-us-and-europe-cross-border-estate-planning

INTERMEDIATE US INTERNATIONAL TAX UPDATE

Bloomberg BNA

Venue: Morgan Lewis, 1000 Louisiana St #4000, Houston, TX 77002, USA

Key speakers: Craig E. Barrere (Morgan Lewis LLP), Bart Bassett (Morgan Lewis LLP), Alan Cathcart (KPMG LLP), Fred Chilton (McDermott Will & Emery LLP), Zach Jones (Fenwick & West LLP), Rod Donnelly (Morgan Lewis LLP), Tim Fitzgibbon (PWC LLP), among others

9/17/2014 - 9/19/2014

http://www.bna.com/uploadedFiles/IntroIntermediateJuneAugSept2014.pdf

14TH ANNUAL GLOBAL TRANSFER PRICING FORUM

International Tax Review

Venue: Park Hyatt Hotel, 1201 24th St NW, Washington DC 20037

Co-chairs: Sophie Ashley (Managing Editor, TP Week), Todd Wolosoff (Global and US Transfer Pricing Managing Partner, Deloitte)

9/22/2014 - 9/23/2014

http://www.internationaltaxreview.com/pdfs/Global%20TP%202014/GTPF2014.pdf

MEXICO TAX UPDATE

BNA Bloomberg

Venue: Manchester Grand Hyatt, One Market Place, San Diego, CA 92101, USA

Chairperson: TBA

9/29/2014 - 9/30/2014

http://www.bna.com/mexico_sandiego/

US INTERNATIONAL TAX REPORTING & COMPLIANCE

Bloomberg BNA

Venue: Manchester Grand Hyatt, One Market Place, San Diego, CA 92101, USA

Chairperson: James Hemelt (Bloomberg BNA)

9/29/2014 - 9/30/2014

http://www.bna.com/uploadedFiles/Content/Events_and_Training/Live_Conferences/Tax_and_Accounting/Conferences_-_Seminars/September2014.pdf

US TAX ASPECTS OF INTERNATIONAL ACQUISITIONS & REORGANIZATIONS

Bloomberg BNA

Venue: Bloomberg BNA Conference Center, 1801 S. Bell Street, Arlington Virginia 22202, USA

Key speakers: TBA

9/29/2014 - 9/30/2014

http://www.bna.com/acqandreorgs_dc2014/

IFRS FOUNDATION CONFERENCE: MEXICO

IFRS

Venue: Camino Real Polanco, Mariano Escobedo 700, Anzures, Miguel Hidalgo, 11590 Ciudad de México, Distrito Federal, Mexico

Chair: Hans Hoogervorst (IASB)

10/6/2014 - 10/7/2014

http://www.iiribcfinance.com/event/IFRS-Foundation-Conference-Mexico

PRIVATE WEALTH LATIN AMERICA AND THE CARIBBEAN FORUM

Latin Markets

Venue: InterContinental Miami, 100 Chopin Plaza, Miami, FL 33131, USA

Key speakers: David Darst (Chief Investment Strategist, Morgan Stanley Smith Barney (US)), Ernest Dawal (Chief Investment Officer, SunTrust Banks & GenSpring Family Offices), among numerous others.

10/23/2014 - 10/25/2014

http://www.ifcreview.com/eventsfull.aspx?eventId=187

ASIA PACIFIC

INTERNATIONAL TAX PLANNING AND ANTI-AVOIDANCE RULES

International Tax Planning and Anti-Avoidance Rules

Venue: Shanghai, China, TBA

Key speakers: Boyke Baldewsing (Principal Research Associate, IBFD), Shee Boon Law (Manager, IBFD Tailored Tax Courses and Research Services)

8/4/2014 - 8/6/2014

http://www.ibfd.org/Training/International-Tax-Planning-and-Anti-Avoidance-Rules

TRANSFER PRICING AND DISPUTE RESOLUTION

IBFD

Venue: Hotel Maya, 138 Jalan Ampang, 50450 Kuala Lumpur, Malaysia

Key speakers: Piyush Gupta (Principal Research Associate, IBFD's Asia-Pacific Knowledge group), Brett Norwood (Tax Partner, KPMG), Sam Sim (Head of Wholesale Banking Transfer Pricing, Standard Chartered Bank, Singapore)

8/11/2014 - 8/12/2014

http://www.ibfd.org/Training/Transfer-Pricing-and-Dispute-Resolution-Aligning-Strategy-and-Execution-0

TRANSFER PRICING PLANNING: STRUCTURING APPROPRIATE POLICY

IBFD

Venue: Conrad Centennial Singapore, Two Temasek Boulevard, 038982 Singapore

Key speakers: Piyush Gupta (Principal Research Associate, IBFD's Asia-Pacific Knowledge group), Sam Sim (Tax Executive Institute's Asia Chapter), Travis Qiu (Partner, Ernst & Young)

9/8/2014 - 9/9/2014

http://www.ibfd.org/Training/Transfer-Pricing-Planning-Structuring-Appropriate-Policy#tab_program

INVESTPRO KAZAKHSTAN

Bosco conference

Venue: InterContinental Almaty Hotel, Zheltoksan St 181, Almaty 050013, Kazakhstan

Key speakers: Kirill Tkachev (Head of Business Development, Audina Treuhand AG, Liechtenstein), Gabor Kiss (International Tax Manager, Crystal Worldwide Limited, Hungary), Dinars Kolpakovs (board member, Baltic International Bank, Latvia), Sergey Potashev (Senior Relationship Manager, Private Asset Partners. Switzerland), among numerous others

9/15/2014 - 9/16/2014

http://www.bosco-conference.com/en/events/upcoming/investpro-kazakhstan-2014

TP MINDS TRANSFER PRICING SUMMIT ASIA

IBC

Venue: Raffles City Convention Centre, 252 North Bridge Road, Singapore 179103, Singapore

Chair: Arin Mitra (Asia Pacific Transfer Pricing Leader, Deloitte)

9/24/2014 - 9/25/2014

http://www.iiribcfinance.com/event/IBC-Asia-Pacific-Transfer-Pricing-Conference-TP-Minds

DEALING WITH DIGITAL ASSETS IN DECEASED ESTATES

The Society of Trust and Estate Practitioners Queensland

Venue: Queensland Law Society, Law Society House, Level 2, 170 Ann Street, Brisbane 4000, Australia

Key speaker: Peter Worrall (Worrall Lawyers)

10/7/2014 - 10/7/2014

http://www.step.org/2014-october-seminar-dealing-digital-assets-deceased-estates

STEP ASIA CONFERENCE 2014

STEP

Venue: Grand Hyatt Hotel, Hong Kong, 1 Harbour Rd, Hong Kong

Chair: Samantha Bradley (Chair, STEP Hong Kong)

10/8/2014 - 10/9/2014

http://www.step.org/asia2014

CENTRAL AND EASTERN EUROPE

5TH ANNUAL INTERNATIONAL TAXATION IN CEE

GCM Parker

Venue: TBA, Prague, Czech Republic

Key Speakers: TBA

10/16/2014 - 10/17/2014

http://www.gcmparker.com/gcm-conference-listing?menuid=0&conferenceid=74

MIDDLE EAST AND AFRICA

CHARTERED INSTITUTE OF TAXATION (GHANA) ANNUAL CONFERENCE

The Chartered Institute of Taxation Ghana

Venue: College of Physicians and Surgeons, Eight Road, Accra, Ghana

Chairperson: TBA

8/20/2014 - 8/21/2014

http://www.taxghana.org/CITG-WTS%20ATC%202014%20Flyer.pdf

PRINCIPLES OF TRANSFER PRICING

IBFD

Venue: Hyatt Regency Johannesburg, 191 Oxford Road, Rosebank, Johannesburg, South Africa 2132, South Africa

Chair: Shee Boon Law (Manager, IBFD Tailored Tax Courses and Research Services)

9/17/2014 - 9/19/2014

http://www.ibfd.org/Training/Principles-Transfer-Pricing-4

INTERNATIONAL TAX SUMMER SCHOOL

IBC

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

Chairperson: Anne Fairpo (Barrister, 13 Old Square Chambers)

8/19/2014 - 8/21/2014

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

A SUMMARY OF TRUSTEE DUTIES REGARDING PENSIONS

The Society of Trust and Estate Practitioners

Venue: The Claremont Hotel, 18-22 Loch Promenade, Douglas, IM1 2LX, Isle of Man

Key speaker: Annmarie Hughes (Director, Dogherty Quinn Advocates)

8/20/2014 - 8/20/2014

http://www.step.org/summary-trustee-duties-regarding-pensions

TRANSFER PRICING AND INTANGIBLES

IBFD

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

Key speakers: Hans van Egdom (Head, APA team, Dutch tax authority), Sandra Hogeveen (Tax Director Europe, Ahold), Clive Jie-A-Joen (Executive Director, EY's Transfer Pricing & Operating Model Effectiveness group, Netherlands), Ágata Uceda (EMEA transfer pricing director, DLA Piper), Monica Erasmus-Koen (Director, PwC, Dutch Transfer Pricing practice), Danyel Slabbers (PwC Corporate Finance practice, Amsterdam), Kasia Bronzewska (editor, IBFD Tax Risk Management database), Ben Kiekebeld (EY)

9/4/2014 - 9/5/2014

http://www.ibfd.org/Training/Transfer-Pricing-and-Intangibles

CAPITAL CREATION 2014

Capital Creation Europe

Venue: Le Meridien Beach Plaza, 22 Avenue Princesse Grace, Monte Carlo, 98000, Monaco

Chair: Nigel Van Zyl (Partner, Proskauer)

9/8/2014 - 9/10/2014

http://capitalcreationeurope.wbresearch.com/agenda

TAX PLANNING AND SUBSTANCE

IBFD

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

Key speakers: Boyke Baldewsing (Principal Research Associate, IBFD), Jan de Goede (Senior Principal, Tax Knowledge Management, IBFD), Jeroen Kuppens (Director, Transfer Pricing & Value Chain Management, KPMG Meijburg & Co, Amstelveen), João Nogueira (Adjunct of IBFD's Academic Chair), Wim Wijnen (Counsel to the Academic Chair of IBFD)

9/9/2014 - 9/10/2014

http://www.ibfd.org/Training/Tax-Planning-and-Substance

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE, BRISTOL

CCH UK

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

Key speakers: Ralph Tiffin (Principal, McLachlan and Tiffin and author of Complete Guide to International Financial Reporting Standard), Paul Gee (Co-author, Financial Reporting for Smaller Companies, and Interpreting Company Reports and Accounts), Stephen Hill (Managing Director, Snowdrop Consulting Ltd and Trustee Director of the ICAEW Fraud Advisory Panel), Toni Trevett (Director, CompleteHR Ltd), Chris Burns (Tax Consultant), Tony Grundy (Author and Lecturer, Strategy and Corporate Finance, Henley Business School), Louise Dunford (former Associate Senior Lecturer, University of Portsmouth)

9/10/2014 - 9/11/2014

http://www.cch.co.uk/Croner/Attachment/CCH2011/IB/CPD/CCH-AIC-2014-6pp-A5.pdf

AUTUMN RESIDENTIAL TAX UPDATE

The Chartered Institute of Taxation

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

Key speakers: Emma Chamberlain (Pump Court Tax Chambers), Peter Rayney (Tolley Tax Training), James Bullock (Partner, Pinsent Masons LLP) Giles Mooney (The Professional Training Partnership), Simon Nicol (Pensions Director, Broadstone Ltd), among others

9/12/2014 - 9/14/2014

http://www.tax.org.uk/members/events/Autumn-Residential-Tax-Update-Conference-2014

DUETS ON INTERNATIONAL TAXATION: GLOBAL TAX TREATY ANALYSIS

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

Venue: Bloomberg BNA

Key speakers: John Avery (former Judge of the Upper Tribunal, Tax and Chancery Chamber), Philip Baker (Grays Inn Tax Chambers), Sam Ven der Feltz (Chairman, IBFD), among numerous others

9/16/2014 - 9/16/2014

http://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Focus-Non-discrimination-tax-treaties-current

INTERNATIONAL TRUSTS & PRIVATE CLIENT FORUM

IBC

Venue: Mount Murray Hotel, Ballacutchel Road, Santon IM4 2HT, Isle of Man

Key speakers: Nicola Guffogg (Assessor of Income Tax, Isle of Man Government), Robert Ham (Barrister, Wilberforce Chambers), Richard Hay (Partner, Stikeman Elliott), Damian Bloom (Partner, Berwin Leighton Paisner), Toby Graham (Partner, Farrer & Co), Jonathan Hilliard (Barrister, Wilberforce Chambers), Haibin Xue (Partner, Zhong Lun Law Firm), among numerous others

9/17/2014 - 9/17/2014

http://www.iiribcfinance.com/event/International-Trusts-and-Private-Client-Forum-Isle-of-Man

TAXATION IN THE POST-BEPS ENVIRONMENT

IBC

Venue: Grange Tower Hill Hotel, 45 Prescot St, London E1 8GP, United Kingdom

Key speakers: Melinda Brown (Transfer Pricing Advisor, OECD), Paul Morton (Head of Group Tax, Reed Elsevier), Peter Cussons (Partner, PWC), Ian Sandles (Executive Tax Director, EMEA, Nomura), Ashley Greenbank (Partner and Head of Tax group, Macfarlanes), Jonathan Schwarz (Barrister, Temple Tax Chambers)

9/17/2014 - 9/17/2014

http://www.iiribcfinance.com/event/Corporate-Taxation-in-the-Post-BEPS-environment-conference

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE, MILTON KEYNES

CCH UK

Venue: Doubletree by Hilton Hotel, Stadium Way West, Milton Keynes MK1 1ST, UK

Key speakers: Ralph Tiffin (Principal, McLachlan and Tiffin and author of Complete Guide to International Financial Reporting Standard), Paul Gee (Co-author, Financial Reporting for Smaller Companies, and Interpreting Company Reports and Accounts), Stephen Hill (Managing Director, Snowdrop Consulting Ltd and Trustee Director of the ICAEW Fraud Advisory Panel), Toni Trevett (Director, CompleteHR Ltd), Chris Burns (Tax Consultant), Tony Grundy (Author and Lecturer, Strategy and Corporate Finance, Henley Business School), Louise Dunford (former Associate Senior Lecturer, University of Portsmouth)

9/17/2014 - 9/18/2014

http://www.cch.co.uk/Croner/Attachment/CCH2011/IB/CPD/CCH-AIC-2014-6pp-A5.pdf

9TH GREIT ANNUAL CONGRESS

The Group for Research on European and International Taxation

Venue: University of Münster, Schlossplatz 2, 48149 Münster, Germany

Co-chairs: Dennis Weber (Loyens & Loeff), Richard Lyal (Legal Service of the European Commission)

9/18/2014 - 9/19/2014

http://www.jura.uni-muenster.de/download.cfm?DownloadFile=C8E73E71-E59C-3D42-128F347489C2373B

EUROPEAN VALUE ADDED TAX - SELECTED ISSUES

IBFD

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

Key speakers: Walter van der Corput (Editor, IBFD's International VAT Monitor and EU VAT Compass), Carsten Zatschler (Head of Cabinet of Sir Konrad Schiemann, the British judge at the Court of Justice of the European Union), Peter Hughes (chartered accountant), Silvia Kotanidis (European Commission in the Directorate General Taxation and Customs Union)

9/22/2014 - 9/24/2014

http://www.ibfd.org/Training/European-Value-Added-Tax-Selected-Issues-1

INDIRECT TAXES ANNUAL CONFERENCE 2014

The Chartered Institute of Taxation

Venue: London Hilton, 2 Park Lane, London W1K 1BE, United Kingdom

Chair: Jeremy White (Pump Court Tax Chambers)

9/23/2014 - 9/23/2014

http://www.tax.org.uk/members/events/2014indirecttaxes

PRIVATE EQUITY TAX PRACTICES 2014

IBC

Venue: Dexter House - Etc Venues, Sun Ct, Greater London EC3V 3, UK

Chair: Mark Baldwin (Partner, Macfarlanes)

9/23/2014 - 9/23/2014

http://www.ifcreview.com/eventsfull.aspx?eventId=179

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE, MANCHESTER

CCH UK

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

Key speakers: Ralph Tiffin (Principal, McLachlan and Tiffin and author of Complete Guide to International Financial Reporting Standard), Paul Gee (Co-author, Financial Reporting for Smaller Companies, and Interpreting Company Reports and Accounts), Stephen Hill (Managing Director, Snowdrop Consulting Ltd and Trustee Director of the ICAEW Fraud Advisory Panel), Toni Trevett (Director, CompleteHR Ltd), Chris Burns (Tax Consultant), Tony Grundy (Author and Lecturer, Strategy and Corporate Finance, Henley Business School), Louise Dunford (former Associate Senior Lecturer, University of Portsmouth)

9/23/2014 - 9/24/2014

http://www.cch.co.uk/Croner/Attachment/CCH2011/IB/CPD/CCH-AIC-2014-6pp-A5.pdf

TAX PLANNING FOR UK LAND TRANSACTIONS 2014

IBC

Venue: Millennium Gloucester Hotel, 4-18 Harrington Gardens, London SW7 4LH, UK

Chair: Patrick Soares (Barrister, Grays Inn Tax Chambers)

9/24/2014 - 9/24/2014

http://www.iiribcfinance.com/event/UK-Land-Tax-Conference

15TH GLOBAL CONFERENCE ON ENVIRONMENTAL TAXATION

Aarhus University

Venue: Eigtveds Pakhus, Asiatisk Plads 2, indgang 6, 1448 København K, Denmark

Key speakers: Hans Bruyninckx (Executive Director, European Environment Agency), Michael Grubb (Cambridge University Centre for Climate Change Mitigation Research), Thomas Sterner (University of Gothenburg and IPCC lead author)

9/24/2014 - 9/26/2014

http://conferences.au.dk/gcet/

UK LANDSCAPE FOR NON-DOM PROPERTY INVESTMENT

IBC

Venue: Radisson Blu Portman Hotel, 22 Portman Square, London W1H 7BG, United Kingdom

Chair: Andrew Watters (Partner, Thomas Eggar)

9/25/2014 - 9/25/2014

http://www.iiribcfinance.com/event/UK-Landscape-for-Non-Dom-Property-Investment-Conference

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE, OXFORD

CCH UK

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

Key speakers: Ralph Tiffin (Principal, McLachlan and Tiffin and author of Complete Guide to International Financial Reporting Standard), Paul Gee (Co-author, Financial Reporting for Smaller Companies, and Interpreting Company Reports and Accounts), Stephen Hill (Managing Director, Snowdrop Consulting Ltd and Trustee Director of the ICAEW Fraud Advisory Panel), Toni Trevett (Director, CompleteHR Ltd), Chris Burns (Tax Consultant), Tony Grundy (Author and Lecturer, Strategy and Corporate Finance, Henley Business School), Louise Dunford (former Associate Senior Lecturer, University of Portsmouth)

10/7/2014 - 10/8/2014

http://www.cch.co.uk/Croner/Attachment/CCH2011/IB/CPD/CCH-AIC-2014-6pp-A5.pdf

THE ITPA'S JERSEY MEETING

The International Tax Planning Association

Venue: L'Horizon Hotel, La Route de la Baie, St Brelade, Jersey JE3 8EF

Key speakers: Paolo Panico (Adjunct Professor, University of Modena, Italy), Jonathan Conder (Macfarlanes), Marc Guillaume (Appleby), among others

10/19/2014 - 10/21/2014

https://www.itpa.org/?page_id=9574

ASSET TRACING — STRATEGIES TO ATTACK & DEFEND TRUSTS

IBC

Venue: London, UK, TBA

Chairperson: Graeme Kleiner (Partner, Speechly Bircham)

10/20/2014 - 10/20/2014

http://www.iiribcfinance.com/event/asset-tracing-trusts-conference

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE, LEEDS

CCH UK

Venue: Thorpe Park Hotel and Spa, Thorpe Park, 1150 Century Way, Leeds, West Yorkshire LS15 8ZB, UK

Key speakers: Ralph Tiffin (Principal, McLachlan and Tiffin and author of Complete Guide to International Financial Reporting Standard), Paul Gee (Co-author, Financial Reporting for Smaller Companies, and Interpreting Company Reports and Accounts), Stephen Hill (Managing Director, Snowdrop Consulting Ltd and Trustee Director of the ICAEW Fraud Advisory Panel), Toni Trevett (Director, CompleteHR Ltd), Chris Burns (Tax Consultant), Tony Grundy (Author and Lecturer, Strategy and Corporate Finance, Henley Business School), Louise Dunford (former Associate Senior Lecturer, University of Portsmouth)

10/21/2014 - 10/22/2014

http://www.cch.co.uk/Croner/Attachment/CCH2011/IB/CPD/CCH-AIC-2014-6pp-A5.pdf

THE AMERICAS

United States

The United States Tax Court heard the case of a Finnish citizen who was living in New York and eventually became a permanent resident of the US. The citizen worked for "Finland's official diplomatic delegation to the United Nations" and therefore claimed that her income was exempt from US tax under both national and international law; however the IRS disagreed and sought to impose penalties based on inaccurate income tax returns.

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

The Tax Court stated that US residents were required by law to pay tax on their income, but also referred to provisions of national law which exempted from tax income earned by non-US citizens while working for a foreign organization in the US. The exemption must be waived if a foreigner becomes a permanent resident, although the taxpayer in this case argued that for various reasons (English is her second language; she signed the waiver over 20 years ago; the waiver form was difficult to understand) the waiver did not apply to her. The Tax Court dismissed those reasons since she did not present any supporting evidence or legal precedent to justify them, and therefore ruled that under national law her income was subject to tax from the time she became a permanent resident.

With regard to international law, the taxpayer argued for the application of the tax exemption for certain government employees under the double taxation treaty between Finland and the US, but unfortunately the exemption did not apply to "lawful permanent residents" of the relevant State, and therefore because the taxpayer became a permanent resident she was again denied an exemption from tax on her US income.

The taxpayer also contested that her government work entitled her to a diplomatic status under international law which would exempt her income from tax; however, once again she provided no evidence to support her position, and the IRS argued that her role was not sufficiently important for her to be considered a "diplomatic agent" entitled to various privileges.

Despite the Tax Court ruling that the taxpayer's income was not exempt from US tax under either national or international law, it declined to rule on whether the penalty imposed by the IRS should apply, on the basis that it did not have the jurisdiction to make such a decision.

The judgment was delivered on June 9, 2014.

http://www.ustaxcourt.gov/InOpHistoric/AbrahamsenDiv.Lauber.TC.WPD.pdf

Tax Court: Clifford A. Abrahamsen et ux. v. Commissioner (142 T.C. No.22)

ASIA PACIFIC

Australia

The full court of the Federal Court of Australia heard the case of an Australian fundraising company which was part of a network sending money to members in developing countries to fund hunger relief programs. The company petitioned the Commissioner to be recognized as a "public benefit institution" for the purposes of assessing its liability for Fringe Benefits Tax (FBT), but this was refused on the grounds that it was not directly involved in the provision of hunger relief, and could therefore not be exempted from FBT as such an institution.

When the matter was brought before the initial court, the judge ruled, based on an interpretation of a past judgment, that a fundraising company could be considered a public benefit institution even if it was not directly involved in providing relief, despite the Commissioner's arguments to the contrary. The Commissioner appealed against the decision to the full court.

The Commissioner's arguments referred mainly to legislation and past cases similar to those at issue which he claimed supported the interpretation that the ordinary meaning of the phrase "public benefit institution" means being directly involved in providing relief, and even went as far as to call into question the previous judge's interpretation of the past case. The full court took issue with the Commissioner's emphasis on specific words from past judgments and could not accept that any of his claims pointed to historical evidence of direct involvement being necessary for the term to apply.

With regard to the Commissioner's reliance on what it considered to be a similar piece of legislation, the full court disagreed with the comparison between the law at issue and the law referred to by the Commissioner. The full court continued to agree with the initial judge's rejection of the Commissioner's arguments for their lack of relevancy and attempts to draw meaning from different laws and the intention of Parliament in order to discern the ordinary meaning of the words used in the relevant legal provision.

The full court also accepted the judge's interpretation of the past case which it relied upon to reach its decision, and that his "reasoning was directed to determining the ordinary meaning of the relevant expression and whether [Hunger Project Australia] fell within that ordinary meaning."

The full court ruled against the Commissioner's appeal and stated that based on the ordinary meaning of the term "public benefit institution," the company in the present case which funded relief programs in developing countries was "capable of being considered to be an institution organized or conducted for the relief of poverty, sickness, destitution and helplessness." The lack of direct involvement in providing relief did not prevent the term applying, the court therefore ruled.

The judgment was delivered on June 13, 2014.

http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2014/2014fcafc0069

Federal Court: Commissioner of Taxation v. Hunger Project Australia (FCAFC 69)

WESTERN EUROPE

Czech Republic

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning two Czech Republic companies which both objected to a decision by the tax authority that withholding tax was due on the income of temporary employees the companies had hired from the Czech Republic branch of a company established in the Slovak Republic. The court in each case recognized that the relevant national law might be discriminating between a Czech company using a temporary employment agency in the Czech Republic and a Czech company using an agency situated in another EU member state, since in the former example the agency would be required to withhold income tax from the employees it provided. Because this discrimination may result in the restriction of freedom of establishment, freedom to provide services, and the free movement of workers, the courts decided to approach the ECJ for an interpretation of EU law regarding these concepts and their relation to the present circumstances.

The ECJ focused on the freedom to provide services after reasoning that "notwithstanding the possible restrictive effects of that legislation on freedom of establishment and the free movement of workers, such effects are an unavoidable consequence of any restriction on the freedom to provide services". A Czech company that chose to use the service of a business outside the Czech Republic was burdened with the requirement to withhold income tax; a requirement that was not imposed on a company that chose the service of a business in the same country. The tax authority argued that withholding tax was an efficient way of collecting necessary information and appropriate amounts of income tax, which the ECJ accepted as an legitimate justification to restrict the freedom to provide services, and even went so far as to agree that withholding tax ensured that income tax was sufficiently collected on a service provided by an entity established in a different country.

However, in the present case the temporary employment agency had a branch operating in the same country as the companies, and although a branch "does not have legal personality and cannot therefore be obliged to pay taxes under Czech law" it was acting as a representative of the agency in the Czech Republic by signing contracts with the companies and paying the temporary employees in advance. The ECJ also pointed out that it would have been easier for the branch to withhold tax, since it possessed more of the necessary information about the employees for tax purposes, and therefore the need of the Czech Republic to accurately collect tax could be fulfilled without involving the companies. In addition, the information of the branch could be relied upon to prevent tax avoidance, which defeated the Czech Government's argument that the legislation restricting the freedom to provide services was justifiable given the relationship between tax evasion and the international hiring of employees – a relationship that the ECJ doubted.

The ECJ ruled that legislation which required a company employing the service of a temporary employment agency established in another member state to withhold tax, without requiring the same of a company relying on a service provided by an agency in the same country, was contrary to the EU law concept of the freedom to provide services. Given that there was a branch of the foreign agency operating in the same country as the company, there was no justification for the different treatment since the branch could provide the same information necessary for accurate tax collection as if the agency were established in the same country.

The judgment was delivered on June 19, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=153810&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=327919

European Court of Justice: Strojirny Prostejov v. Czech Republic (C-53/13, C-80/13)

Germany

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning a German taxpayer who as a civil servant authenticated the conversion of a company into a different type of company, while not changing its capital or its legal form.

The tax authority determined that a proportion of the fees the taxpayer received for the conversion should have been paid to the Treasury, but the taxpayer contested this decision and the case came before the referring court. The court applied what it considered to be the relevant EU law to the present circumstances and stated that the conversion itself did not result in the formation of a new company and therefore was not subject to capital duty due to be paid to the Treasury as the tax authority believed. It nevertheless approached the ECJ for its interpretation of EU law with regard to the payment of fees resulting from a company conversion that had not changed its capital or its legal form.

The ECJ first stated that EU law prevents the imposition of taxes which are similar in nature to a capital duty, and pointed out that in past cases the fees paid to civil servants for involvement in transactions mentioned in the relevant EU law have been classified as a tax, which includes the transaction in the present circumstances because the conversion was necessary for the company to continue carrying on its business. The fact that the conversion did not alter the company's capital or legal form was irrelevant because the relevant EU law was not to be narrowly interpreted and instead applied to many forms of conversion transactions.

The ECJ ruled that according to the relevant EU law the taxpayer was not prevented from receiving all of the fees due on the conversion of a company's type that did not affect it's capital or legal form, and that the Treasury was not permitted to receive a proportion of the fees as a capital duty. This ruling will aid the national court in its deliberations.

The judgment was delivered on July 3, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=154533&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=114248

European Court of Justice: Eycke Braun v. Germany (C-524/13)

Germany

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning a taxpayer in Germany who had been sent to prison for being involved in a cigarette smuggling operation. The tax authority demanded payment of excise duties on tobacco that the taxpayer sold which had not been cleared through customs, but the taxpayer refused and brought his case to the German Finance Court (Bundesfinanzhof).

The Finance Court, following the facts of the criminal proceedings, found that the taxpayer was liable for excise duties because he was the recipient of the products in Germany. Upon appeal the Federal Finance Court deliberated over the application of EU law to the present circumstances and whether excise duty was owed by every person involved in the selling of products in more than one member state, or simply the first person who first purchased the products for commercial purposes. The Court decided to approach the ECJ for an interpretation of the relevant EU law.

The ECJ first pointed out that the relevant law was intended to ensure that excise duty liability was identical in all member states, and that there was a difference between acquiring products as a business activity and individuals selling products that they had bought themselves. According to the law, "excise duty is due in the Member State in which the products are held, inter alia, from the person receiving the products at issue". Charging excise duty only to the person who first received the products commercially would defeat the purpose of the EU legislation and violate the principle of free movement of goods in the EU by complicating the cross-border process of collecting excise duty, the ECJ held.

The ECJ ruled that for the benefit of the deliberating national court, EU law must be interpreted as allowing excise duty to be imposed on a taxpayer selling goods which were not cleared by customs, purchased from a seller in another member state.

The judgment was delivered on July 3, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=154534&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6315

European Court of Justice: Stanislav Gross v. Germany (C-165/13)

Netherlands

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning a company in the Netherlands which sold discount cards to consumers for a variety of goods and services provided by businesses that had entered into agreements with the company.

When the firm was audited, a VAT liability was imposed based on the transactions that resulted in the signing of the agreements. The company argued before the referring court that the transactions were exempt from VAT under the EU VAT Directive as the cards constituted "other securities" or "other negotiable instruments," but their position was rejected based on a restrictive interpretation of the wording. Upon appeal, the national court deliberated over whether the legislation could be interpreted more broadly and therefore approached the ECJ for an opinion regarding the relevant EU law.

The ECJ recognized that the cards afforded the consumer a price reduction on certain items and that according to past ECJ cases, the reduced price was to be included in the seller's tax return rather than the discount itself. The ECJ also pointed out that there was no connection between the payments to the company by the businesses for participation in the card scheme and the goods and services that the consumer received by benefiting from the cards, and that therefore the value of the benefits resulting from the transactions between the businesses and the company "is uncertain and practically impossible to determine in advance."

In conclusion, the ECJ argued, the transactions that were at issue and might be exempted from VAT were the sale of the cards by the company to consumers, rather than the agreements between the businesses and the company.

Various parties, including the Netherlands Government, argued that the discount cards did not fall within the scope of "other securities" or "other negotiable instruments" and therefore they should not be exempt from VAT; the ECJ stated that the wording should be strictly interpreted because it is an exemption from the general principle of VAT.

The ECJ relied on past cases to support the position that the relevant provision of the EU VAT Directive was intended to exempt financial transactions from VAT, in that it refers to "interests in companies" and "immovable property", and therefore the phrase "other securities" cannot include discount cards because they have nothing in common with the examples provided in the provision.

With regard to "other negotiable instruments," the same interpretation was applied, and since the discount cards did not represent a method of payment as mentioned in the relevant provision, they were not part of a financial transaction. Therefore, the sale of the cards to consumers could not be exempt from VAT.

The judgment was delivered on June 12, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=153578&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=173436

European Court of Justice: Granton Advertising BV v. Netherlands (C-461/12)

Netherlands

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning two Netherlands companies which both owned companies in Germany that owned companies in the Netherlands; the parent companies petitioned the tax authority to treat the Netherlands subsidiaries as separate tax entities, but were refused on the basis that the subsidiaries were directly owned by companies not established in the Netherlands. There was a third company in Germany that owned a few companies in the Netherlands that wanted to be treated as a single tax entity, but again was refused because their common parent company was not established in the Netherlands. When the companies appealed against their tax authority decisions, the courts asked whether not allowing the tax entity regime of the Netherlands to apply to a collection of companies which involved intermediaries and a parent company established in another member state infringed upon their rights to the freedom of establishment under EU law, and therefore approached the ECJ for an interpretation of all present circumstances with regard to the relevant EU legislation.

The ECJ first considered the position of the Netherlands companies which sought to be separate tax entities from their sub-subsidiaries, and identified that Netherlands law allowed resident parent companies and subsidiaries to form a single tax entity for various advantages. The legislation also allowed for intermediaries as long as they were also resident in the Netherlands, which the ECJ decided was a restriction of the right to freedom of establishment since the beneficial tax treatment did not apply to companies that chose to own companies in other member states. Regarding the question of whether the law could be justified, the ECJ stated that there needed to be "an overriding reason in the public interest based on the coherence of the Netherlands tax system", and a direct link between the tax benefit gained from forming a tax entity and the offsetting of the benefit by a particular tax. Because due to national law a tax entity in the Netherlands could not take into account for tax purposes a loss realized by a subsidiary, no matter where the subsidiary was situated, there was no link given the present circumstances, and therefore the ECJ ruled that there was no justification for a restriction on the freedom of establishment resulting from a national law which allowed a subsidiary to be considered a separate tax entity from its parent company when both were established in the Netherlands, but not when the subsidiary was owned by an intermediary situated in another country.

The ECJ then focused on the case of the German company which wanted its Netherlands subsidiaries to be considered a single tax entity, and again recognized that the national law did not apply to subsidiaries which were owned by a company not established in the Netherlands. Becoming a single tax entity would mean that a subsidiary could offset its losses against the profits of another subsidiary, and because the law denied that tax benefit to subsidiaries owned by a foreign parent company, the ECJ again decided that the law was a restriction on the freedom of establishment. The restriction could not be justified by an "overriding reason in the public interest" because the ECJ maintained that there was nothing preventing the same tax treatment of subsidiaries in the same country regardless of where the parent company was located.

The judgment was therefore that the national law was restricting the freedom of establishment without justification by not allowing subsidiaries owned by a foreign company to become a single tax entity.

The judgment was delivered on June 12, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=153585&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4748

European Court of Justice: Netherlands v. SCA Group Holding BV (C-39/13, C-40/13, C-41/13)

Portugal

The European Court of Justice (ECJ) was asked for a preliminary ruling concerning a company in Portugal which claimed a refund of the stamp duty it paid on its share capital increases over two years. When the refund was refused by the tax authority, the company took the matter to court, where it argued that historically speaking stamp duty had not been due on stamp duty increases for many years under national law and in accordance with EU law, meaning that the subsequent change that imposed stamp duty was in violation of EU law.

The tax authority believed that the specific EU provision did not apply because the company's method of increasing its share capital had not been exempt from stamp duty at an appropriate time for the provision to have effect. Only share capital increases resulting from cash contributions had been exempt from stamp duty when the EU law was imposed upon Portugal. The court decided to approach the ECJ for an interpretation of EU law with regard to its historical relationship with Portugal and the latest national law levying stamp duty on all forms of share capital increase.

The ECJ first stated that it was unable "to rule on the interpretation of provisions of national law or on the assessment of the factual context of the main proceedings," and therefore focused on the wording of the EU law provisions at issue. However, according to the wording, the national legislation was important in that if the share capital increases were subject to stamp duty at the time of Portugal's implementation of EU law, then Portugal had the authority to continue to levy stamp duty on those transactions.

With regard to the legislation to levy stamp duty later introduced in Portugal, the ECJ could not rely on the wording of the specific EU law provision but instead had to consider the objectives behind it, and found that member states could continue to impose stamp duty if they chose to simply because of the cost of abolishing it altogether. Therefore, because allowing the continuation of the stamp duty was a necessity, legislation later introduced to impose stamp duty on transactions that had already been exempted was contrary to the objective of abolishing stamp duty sought by the EU law provision and was not acceptable.

The ECJ ruled that Portugal could not implement a law which introduced stamp duty on share capital increases after they had been exempted according to EU law, but that it was for the national court to decide whether the company's transactions fell under the relevant national law given that the exemption was effective for similar transactions in different years.

The judgment was delivered on June 12, 2014.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=153582&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=466992

European Court of Justice: Ascendi Beiras Litoral e Alta v. Portugal (C-377/13)

Dateline July 10, 2014

Switzerland is probably fairly happy that international attention this week was being devoted to a French bank, for a change, and newly announced figures for the money the country generated from applying the EU's Savings Tax Directive may also have created a small frisson of satisfaction among the country's financial leaders. For others, who don't understand why, at first blush USD570m doesn't seem to be a derisory amount of money to have extracted through a tax of 30 percent on interest payments, even if it was down 20 percent on last year, but hold hard: while there are no robust figures for total Swiss assets under management, a semi-official figure published last year suggests that they amount to about USD6 trillion, representing more than a quarter of global AUM. USD570m is 30 percent of USD1.9bn, which is an astronomically small proportion of USD6 trillion. Try it on your calculator: it's far less than a tenth of a percentage point. In other words, the Savings Tax Directive has been a total failure, and as will no doubt be the case with FATCA, the costs associated with implementing it are certainly greater than the returns it has generated. Tax authorities don't care about that: if it costs UBS 10 Swiss Francs to provide 1 Franc in extra tax, then they are still happy, not noticing the appalling waste of productive resources that has been inflicted on the private sector.

Now of course, the EU's Taxation Commissioner Algirdas Šemeta, himself one of the biggest single economic disasters to have been visited on the reeling European Union since its foundation, is ready with answers:

1. The revised Savings Tax Directive, which all member states have agreed to, will plug many of the holes in the first version of the Directive. Except that it has not been agreed until all third-party states agree to it, and many of them, including Switzerland, probably won't do so. Even if they do, savers (and banks) will quickly find ways around the new Directive just as effectively as they did with the last Directive.

2. Withholding taxes were only ever intended as a stop-gap measure while exchange of information regimes were installed worldwide, ensuring that the returns from all revenue-yielding assets are reported to home-country tax authorities. This is a true statement, as far as it goes, but that is not very far, because there is no worldwide understanding that beneficial ownership should be recorded, and it is a simple matter for the ultimate owners of assets to obscure true ownership. FATCA is an attempt to remedy that situation, as was the attempt by the Loch Erne G8 to establish acceptance of the need for beneficial ownership registers. But after initial agreement on such a goal, it has quickly become apparent that no country is prepared to hobble its investors in such a way, and least of all the United States, which doesn't even have a national register of companies.

Now, before this begins to sound like a panegyric in favor of tax cheating, let us be clear: the problem here is that no system short of 100 percent state control will be successful in imposing high taxes on individuals, and even that eventually fails comprehensively, as we saw with the USSR. People will not accept high taxes, not least because they are inevitably associated with high levels of state corruption or incompetence, and usually both at once. Human nature simply does not tolerate such an equation, and apparent exceptions, such as the Scandinavian democracies, operate only at the level of wage-slaves, who have no more choice than the residents of Omsk in 1960. All Norwegian ship-owners are based in Greece, Cyprus, the Isle of Man, or Vanuatu.

I am as bored with saying it as you are probably with hearing it: there is only one solution, which is to reduce government expenditure and taxes, hand in hand. No country in Europe is doing this, despite all their bleating to the contrary; and until they (or rather, their benighted citizens, who keep re-electing the same ineffectual leaders) understand this, there will be no salvation for Europe.

Unfortunately, the prevailing consensus among international organizations and (mostly bankrupt) governments is exactly the opposite of the set of attitudes that might lead to a sane economic order. Tax is good, they say. The more tax the better, so that we can afford more "entitlements" (aka electoral bribes). This week there is a perfect example of that from Ireland, despite its status as one of the more liberal Western democracies: "Ireland Not To Blame For Low MNE Tax Burden" says a prominent association. Excuse me! "To blame"? That says it all. They should be proud of that fact that MNE (Multi-National Enterprises, for the acronymically challenged among you who thought it meant Micro and Nano Engineering) taxation is low in Ireland. In what weird universe have we ended up where more tax is better than less tax?

This why the international organizations such as the IMF, the World Bank and the OECD are so dangerous. I read an article this week in the normally quite sensible Economist magazine which suggested that a new Bretton Woods conference is needed in order to construct a fresh rescension of the original set of institutions. It's true that they have become ossified, have been captured by high-spending bureaucrats, and have transmogrified into instruments of Big Government. But the answer is not to give them yet more power; what we need is a new crusade similar to the market-friendly impetus of the 1970s and 1980s as a result of which redundant mechanisms such as exchange controls were demolished.

But where are the Hayecks and the Friedmans of the noughties? or is it the teenies? The only Bretton Woods body that retains its original mission unsullied is of course the World Trade Organization, and one of the most inexplicable aspects of the current paradigm is the casual disregard in which this institution is held by politicians and economists who seem to derive more pleasure from denigrating it than in supporting its work, which has demonstrably resulted in a true bonanza of international commerce. Both Lamy and Azevedo are genuine free-trade warriors, but neither is a Keynes. Perhaps the world has grown too knowing for there to be another Keynes. No flowers will bloom in a field of PhDs. It is depressing.

The Jester