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a closer look

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IRS Issues Final Regulations On Material Advisor Penalties

by Mark D. Allison, Caplin & Drysdale

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On July 30, 2014, the Internal Revenue Service (IRS) issued final regulations regarding the imposition of penalties under Internal Revenue Code section 6707 against material advisors who fail to file true, complete or timely disclosure returns with respect to reportable or listed transactions. The effective date of the final regulations is July 31, 2014.

Material advisors generally include any advisors who make or provide a tax statement with respect to any reportable or listed transaction, and directly or indirectly receive certain threshold levels of gross income in connection with such advice. Reportable transactions include listed transactions, transactions of interest, section 165 loss transactions, confidential transactions, and contractual protection transactions.

The final regulations make several changes to the proposed regulations that were published in 2008.[1] The changes include:

- The applicable penalty under section 6707 for a transaction qualifying as both reportable and listed is limited to a single penalty, which is the greater of USD200,000 or 50 percent of the gross income derived by the material advisor (75 percent if the failure is intentional).
- In cases where there is a failure to disclose more than one reportable or listed transaction, a separate section 6707 penalty will be imposed for each transaction.
- For purposes of computing the penalty in the case of a listed transaction, the gross income derived from the listed transaction only includes fees earned in connection with the listed transaction for which the advisor was a material advisor.

The final regulations also modify the factors considered by the IRS for rescission of a material advisor penalty. The final regulations now allow consideration of facts and circumstances relating to whether a material advisor's failure to timely file Form 8918, Material Advisor Disclosure Statement, was unintentional. However, if an unintentionally delinquent Form 8918 was filed either after the IRS had taken steps to identify the person as a material advisor or after the taxpayer disclosed a reportable transaction on Form 8886, Reportable Transaction Disclosure Statement, such a filing will not weigh in favor of rescission.

Lastly, the final regulations include additional examples to help clarify the application of the material advisor penalties.

Attorneys, accountants, financial and investment consultants, and others advising on reportable or listed transactions should remain conscious of the applicable gross income thresholds for each type of transaction, as well as the timing of reporting obligations. The severe penalties and narrow provisions for rescission of such penalties require careful planning and awareness of compliance obligations.

Endnote

1 The text of T.D. 9686 is available at https://www.federalregister.gov/articles/2014/07/31/2014-17932/material-advisor-penalty-for-failure-to-furnish-information-regarding-reportable-transactions.

Classification Of The Canadian TFSA For US Tax Purposes

by Max Reed, White & Case LLP

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This article is intended to give general information on the developments covered, not to serve as legal advice related to individual situations or as a legal opinion. Each TFSA is different and may have a different US tax classification. Consult counsel for legal advice specific to your situation. The opinions expressed in this article are my own and do not represent the views of my employer.

Introduction

The tax-free savings account ("TFSA") is one of Canadians' favorite financial Number 2215 products. Similar to the US Roth IRA, the TFSA is a savings vehicle that allows Canadians to earn tax-free investment income. The parameters of TFSAs, which were first introduced in Canada's 2008 federal Budget, are outlined primarily in section 146.2 of the *Income Tax Act*.[1] As with other common Canadian financial products, the TFSA causes entity classification issues for the estimated one million US persons in Canada who must report it on their US tax returns. Most agree that the TFSA does not shelter investment income from US tax.[2] Unlike the registered retirement savings plan ("RRSP"), for which the IRS[3] has released Notice 2003-75 classifying it as a reportable foreign trust under Internal Revenue Code ("IRC") § 6048,[4] there is no official guidance on the TFSA. Richard Pound wrote to the IRS to seek clarification of a number of points, including the proper reporting procedures for TFSAs. He received no reply. Other advisors report that the IRS is unwilling to issue a Private Letter Ruling resolving the issue.

Absent official IRS guidance, uncertainty as to how to report the TFSA prevails. Different advisors take different positions. The common consensus is that the TFSA is a foreign TFSA under the trust for US tax purposes and thus necessitates the filing of Form 3520, Annual Return To Report Transactions with

Foreign Trusts and Receipt of Certain Foreign Gifts, and Form 3520-A, Annual Information Return of Foreign Trust with a US Owner.[5] For taxpayers, the classification of the TFSA as a foreign trust adds expense and complication to their already complex US tax filing requirements. With the recent implementation of the Foreign Account Tax Compliance Act, increased attention will be paid to US tax compliance issues. Here, I explore the US tax classification of the tax-free savings. I conclude that the TFSA may not be an entity separate from its owner for US federal tax purposes and, thus, no additional reporting is necessary. Alternatively, if a TFSA is subject to the entity classification regime, it may be treated as a disregarded entity for US tax purposes, which would necessitate the filing of Form 8858.

The TFSA Is Different Than An RRSP

The conventional wisdom that the TFSA is a foreign trust is based on an analogy to the IRS's tax treatment of the Canadian RRSP. The foundation of this analogy is IRS Notice 2003-75, in which the IRS stated that taxpayers could use a simpler procedure instead of filing Form 3520 and/or Form 3520-A to report their RRSPs and registered retirement income funds ("RRIFs"). Interestingly, Notice 2003-75 does not provide legal explanation for this classification. Prior IRS notices on the same subject, Notice 2003-25[6] and Notice 2003-57,[7] repeat the assumption, but also lack explanation. It may be, therefore, that the IRS's old position that an RRSP/RRIF necessitates filing Form 3520 and/or Form 3520-A is untenable.[8] Regardless, one cannot simply assume that a short IRS notice about a different financial product automatically applies to the TFSA. The RRSP and TFSA are created under different statutory and contractual arrangements. The TFSA functions a lot more like a normal bank account, and less like a trust, than the RRSP does. Withdrawals from and contributions to TFSAs are almost instantaneous in comparison with the financial institution's interference when withdrawals are made from an RRSP. Tax withholding is required on RRSP withdrawals – but not so for those from TFSAs. Financial institutions issue receipts for most RRSP transactions and do not do so for those related to TFSAs. The analysis of the TFSA needs to be built from the ground up.

The TFSA Is Not Subject To The Entity Classification Regime

Entity classification under the IRC is determined under Treasury Regulations § 301.7701-1–301.7701-4. There are a number of steps to the process. As a preliminary matter, to be subject to the entity classification regime at all, the entity must be separate from its owners.[9] Such a determination is a matter of "federal tax law" and local law does not enter into it. Certain contractual arrangements under which the participants carry on a trade, business, financial operation or venture, and divide the resulting profits, give rise to an entity for US federal tax purposes.[10] A TFSA is a contractual arrangement between two parties. But a holder of a TFSA does not divide the returns that accrue inside it ("profits" in the language of the Treasury Regulations) with the sponsoring financial institution. Such an arrangement would be deeply unattractive.

The IRS has issued Revenue Rulings that explore whether an entity is separate from its owners. In Revenue Ruling 2004-86, the IRS notes: "Generally, when participants in a venture form a state law entity and avail themselves of the benefits of that entity for a valid business purpose, such as investment or profit, and not for tax avoidance, the entity will be recognized for federal tax purposes." TFSAs do not have a business purpose – their only purpose is to minimize Canadian tax. Later in Revenue Ruling 2004-86, the IRS identifies the following reasons why the Delaware Statutory Trust is an entity separate from its owners. As can be seen, the TFSA does not meet all of the stated criteria.

- *Under local law, the entity is recognized as separate from its owners.* It is unclear whether under Canadian law a TFSA is recognized as separate from its owners;
- *Creditors of the owners of the entity may not assert claims directly against the property held by the entity.* Nothing inherent to the TFSA protects property inside it from creditor claims;
- *The entity may sue or be sued and is subject to attachment and execution as if it were a corporation.* The TFSA may not sue or be sued. Only the financial institution sponsoring it or its holder may be sued;
- *The entity's beneficial owners have the same limitation of liability as shareholders in a corporation.* The TFSA provides no limitation of liability to its holder. If an investment held in a TFSA gives rise to a cause of action, the fact that the investment was held inside a TFSA would not, by itself, protect the TFSA's owner from personal liability for that cause of action;
- *The entity can merge or consolidate with or into other entities.* While property can be transferred from one TFSA to another, it is unclear whether a TFSA can be merged or consolidated with another TFSA. A TFSA certainly cannot be merged with a different type of entity.[11]

Case law supports this view. In *ASA Investerings Partnership* v. *CIR*,[12] the DC Circuit held that "the absence of a non-tax business purpose is fatal" to the classification of an entity for US federal tax purposes. The TFSA lacks a non-tax business purpose. As such, it should not be considered an entity for US tax purposes. Absent classification as a separate entity, there is no need to report it on a special form.

If The TFSA Is Subject To The Entity Classification Regime, It Is Not A Trust

Once an entity is determined to be separate from its owner, it is subject to the entity classification regime unless a special regime in the Code or Regulations applies.[13] TFSAs are not addressed by the Code or Regulations. Next, it must be determined whether an entity is a trust.[14] A TFSA does not meet the definition of a trust for US tax purposes. "Foreign trust" is defined in IRC § 7701(a)(31)(B) as any trust that is not domestic. But the concept of a trust is not defined in the IRC. Instead, that definition is found in the Treasury Regulations. Treasury Regulation § 301.7701-4(a) defines a trust as an arrangement in which the trustee "take(s) title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts".[15]

Banks do not, at least for tax purposes, take title to property that is deposited into TFSAs. Tax responsibility for the property remains with the individual. Indeed, a statutory precondition to the qualification of a TFSA set out under paragraph 146.2(2)(*e*) of the Income Tax Act is that at the direction of the customer, the financial institution "shall transfer all or any part of the property held in connection with the arrangement (or an amount equal to its value) to another TFSA of the holder." Put differently, in order for an account to qualify as a TFSA under the Income Tax Act, the customer must be given the right to transfer his or her property to another TFSA, potentially at another financial institution. Such a right assumes that the customer retains title to the property. It strains credulity to believe that the Canadian government would have created a right for a customer to transfer property that belongs to one financial institution to another financial institution.

The obviousness of this point can be illustrated with a simple example. Let's say that Althea, a US citizen in Canada, has a brokerage account with RBC Direct Investing and owns 50 shares of Apple Inc. in her TFSA. Althea exercises all of the rights of those shares, including voting and attending shareholders' meetings, and receives dividends from those shares. Althea then sells her Apple shares on the NASDAQ. She logs into the RBC Direct Investing website and clicks "Sell." Moments later, the shares are sold for whatever the market price happens to be – making Althea a profit of USD500. Recall that for US tax purposes the TFSA does not shelter the capital gains of US citizens. Althea now has a USD500 capital gain to report on her next Form 1040 (the standard US reporting form). If RBC Direct Investing had indeed taken title to those shares, the gain would not belong to Althea. It might be suggested that under various trust attribution rules the gain is attributed to Althea. But this is not how anyone understands (or reports) the tax consequences of this simple transaction. A review of RBC Direct Investing's TFSA agreement confirms this. RBC Direct Investing "administers" and "holds" the property but does not take title to it.[16]

Revenue Rulings Support This "Non-Trust" View

Even if under this example, RBC Direct Investing did take title to the shares held in the TFSA, the TFSA would still not meet the definition of a trust for US tax purposes. Treasury Regulation § 301.7701-4(a) has been the subject of a few Revenue Rulings that clarify its application. Revenue Rulings are public administrative rulings issued by the IRS that clarify the IRS's own position on certain matters. They can be relied upon by taxpayers. In Revenue Ruling 2013-14, the IRS opined that a Mexican Land Trust ("MLT") arrangement was not considered a trust under Treasury Regulation § 301.7701-4(a). The Mexican Federal Constitution prohibits non-Mexican persons from directly owning real property in certain parts of Mexico. In order to get around this, US persons use an MLT. Under this arrangement, a Mexican bank owns the real property directly as a fiduciary of the US person and is paid for its services. But because the US person retains the ability to manage and control the real property, as well as to direct the bank to transfer title, the relationship is not a "trust" as set out in Treasury Regulation § 301.7701-4(a). The same result was reached in Revenue Ruling 92-105,[17] which concerned land trusts in Illinois but was applicable to other states as well. In that ruling, the IRS stated that the definition in Treasury Regulation § 301.7701-4(a) is not met (and thus there is no obligation to file Forms 3520 and/or 3520-A) where:

> (1) the trustee has title to real property, (2) the beneficiary (or a designee of the beneficiary) has the exclusive right to direct or control the trustee in dealing with the title to the property, and (3) the beneficiary has the exclusive control of the management of the property, the exclusive right to the earnings and proceeds from the property, and the obligation to pay any taxes and liabilities relating to the property.[18]

Applying this definition to the very common set of facts above, it is easy to see why the IRS itself, not to mention a reviewing court, would not classify a TFSA as a trust. Even if RBC Direct Investing takes title to the Apple Inc. shares that Althea owns in a TFSA, Althea maintains control and management of those shares and has exclusive control over them; it is her sole obligation to pay any taxes owed on them.

Reviewing Court Would Support This "Non-Trust" Interpretation

If this issue were to ever reach the litigation stage, it is hard to imagine a court concluding that a TFSA is a trust. There is a common sense distinction between a trust and a TFSA. Trusts are complex instruments set up by well-advised taxpayers to achieve certain tax-planning or other goals. Because of their potential for abuse, trusts require complex reporting requirements. A TFSA, on the other hand, is a common consumer financial product set up by the Government of Canada and administered by mainstream Canadian financial institutions to provide a limited amount of Canadian tax relief to millions of Canadians. No one disputes the fact that the TFSA offers no US tax benefits. Consequently, it has no potential to deprive the US Treasury of Revenue. Certainly, a TFSA will be reported as a foreign bank account on a taxpayer's Report of Foreign Bank and Financial Accounts or Form 8938 if required. But it is difficult to see a court concluding that the TFSA is a foreign trust.

Classification Of The TFSA Under The Entity Classification Rules

The TFSA is arguably not a trust. To arrive at its proper classification, further questions must be asked.

(1) *How many members does the entity have?* If an entity is not a trust under Treasury Regulation § 301.7701-4 or subject to special classification under the Code, then its classification is determined by reference to the number of members it has. If it has two or more members, it is either a partnership or a corporation.[19] If the entity has only one member, then it is either an association or an entity that is disregarded from its owner.[20] Although "member" is not defined in the Regulations, it is generally treated as

synonymous with "owner". The TFSA has one member – jointly held TFSAs are not allowed. Thus, it is either a corporation or an entity disregarded from its owner for US tax purposes.

(2) *Does the entity meet one of the definitions of a corporation?* There are seven different definitions of "corporation" that an entity may meet.[21] If it meets any one of those, it is automatically treated as a corporation. A TFSA does not meet any of these definitions of corporation.[22]

(3) *Is the entity foreign or domestic?* An entity is classified as foreign if it is not domestic.[23] Domestic entities are those organized under the laws of the United States.[24] A TFSA is organized under the laws of Canada and as such is a foreign entity.

(4) *Is the entity an "eligible entity"?* If an entity does not meet one of the set definitions of corporation, then it is an "eligible entity" and may elect to be classified as an association or entity disregarded from its owner for US tax purposes.[25] The holder of a TFSA may file an election to be classified as a corporation or a disregarded entity for US tax purposes.

(5) *What is the default classification of the entity?* All foreign eligible entities with only one member may file a Form 8832 to elect to be classified as an association or as a disregarded entity. Absent this election, each "foreign eligible entity" has a default classification as a partnership or a corporation for US tax purposes. A foreign eligible entity with one member is, by default, either (1) an association if that one member has limited liability; or (2) disregarded as an entity from its member if that member has limited liability. A member is not considered to have limited liability if he or she is personally liable for any of the debts of the organization even if he or she is indemnified for those debts.[26] The owner of a TFSA does not have limited liability. If you own an investment inside your TFSA, and somehow that investment leads to a cause of action against you, the fact that the investment is held by the TFSA will not insulate you personally from the liability generated by that cause of action. Thus, a TFSA may, by default, be classified as a foreign disregarded entity for tax purposes.

A US person who has an interest in a foreign disregarded entity must file Form 8858 every year.

The Way Forward

While the precise classification of a TFSA is not certain, there are two possibilities for its classification – neither of which is as a foreign trust. First, a TFSA is not an entity separate from its owner and, thus, the entity classification rules do not apply. If this is correct, then no special reporting of the TFSA is required. Alternatively, if the entity classification rules do apply, the default classification of a TFSA is as a disregarded entity for US tax purposes. If this is correct, then all those who have an interest in a TFSA must file a Form 8858 every year. If, despite the above analysis, the IRS insists on having

Canadians report their TFSAs on a special form, it should, as it did with the RRSP, use its authority under IRC § 6001 and design a user-friendly TFSA reporting form.

In the interim, what are US citizens in Canada and their tax advisors to do? Certainly, the safest option is to file Form 8858 every year. But this adds cost and complexity to preparing a US tax return. Further, delinquent filers entering the offshore voluntary disclosure program or the original or the new streamlined procedure may encounter automatically generated IRS penalties for failing to file in previous years. In our book *A Tax Guide for US Citizens in Canada*, we suggest that taxpayers write to the IRS to describe what a TFSA is and request confirmation on how it is to be reported. To date, the IRS has not replied. Nevertheless, we believe that this disclosure is simpler than a full Form 8858 and makes the taxpayer compliant with the IRS's obligations. Whatever strategy is used, at some point, be it through litigation or diplomatic pressure, the IRS hopefully will take a position and clarify the issue once and for all.

Endnotes

1 R.S.C., 1985, c. 1.

2 Some argue that income inside a TFSA is entitled tax deferral under Article XVIII(7) of the *Canada–US Income Tax Convention* (2007). This may be an aggressive position given the lack of guidance in this area. *See* Kevyn Nightingale and David Turchen, "The US Implications of a Tax-Free Savings Account," *Tax Topics*, No. 2146, April 25, 2013.

3 References herein to the IRS are to the US Internal Revenue Service.

4 Section references herein are to the US Internal Revenue Code of 1986, as amended, or to the US Treasury Regulations thereunder.

5 *See*, for instance, Dawn Haley, "The Drawbacks of TFSAs and RESPs to US Citizens," *Canadian Tax Focus*, Volume 3, Number 1, February 2013.

6 2003-18 I.R.B. 855.

7 2003-34 I.R.B. 397.

8 As discussed below, it is unclear whether the financial institution actually "takes title" of property put into an RRSP. This question is beyond the scope of this article and is purely academic because the IRS has issued Form 8891 for the simplified reporting of RRSP accounts.

9 Treasury Regulation § 301.7701-1(a).

10 Treasury Regulation § 301.7701-1(a)(2).

11 Revenue Ruling 2004-86.

12 201 F. 3d 505 (DC Circuit 2000). *See also Boca Investerings Partnership* v. *United States*, 314 F.3d 625, 631 (DC Circuit 2003), and *Saba Partnership* v. *C.I.R.*, 273 F.3d 1135, 1141 (DC Circuit 2001).

13 Treasury Regulation § 301.7701-1(b).

14 Treasury Regulation § 301.7701-2(a).

15 The full definition is as follows in Treasury Regulation § 301.7701-4(a): "In general, the term 'trust' as used in the Internal Revenue Code refers to an arrangement created either by a will or by an *inter vivos* declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the

trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it will be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit."

16 RBC Direct Investing Inc., "Tax Free Savings Account Trust Agreement," *RBC Direct Investing*, April 2014, online at http://www.rbcdirectinvesting.com/pdf/tfsa_trust_agreement.pdf.

17 1992-2 CB 204.

18 *Ibid.*

19 Treasury Regulation § 301.7701-2(a).

20 *Ibid.*

21 Specifically, an entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) is an "eligible entity that may select its classification."

22 The TFSA does not meet any of the following definitions: (1) Treasury Regulation § 301.7701-2(b)(1) – it is not a business entity organized under a federal or state statute that is referred to as incorporated; (2) Treasury Regulation § 301.7701-2(b)(3) – it is not a business entity organized under a state statute that refers to the entity as a "joint stock-company or joint-stock association"; (3) Treasury Regulation § 301.7701-2(b)(4) – it is not an insurance company; (4) Treasury Regulation § 301.7701-2(b)(5) – it is not a State-chartered entity that conducts banking activities; (5) Treasury Regulation § 301.7701-2(b)(6) – it is not wholly owned by a foreign government; (6) Treasury Regulation § 301.7701-2(b)(7) – it is not taxable as a corporation under a specific section of the IRC; and (7) Treasury Regulation § 301.7701-2(b)(8) – it is not on the *per se* corporations list.

23 IRC § 7701(a)(5).

24 IRC § 7701(a)(4).

25 Treasury Regulation § 301.7701-3(a).

26 The full definition is here: "For purposes of paragraph (b)(2)(i) of this section, a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member. This determination is based solely on the statute or law pursuant to which the entity is organized, except that if the underlying statute or law allows the entity to specify in its organizational documents whether the members will have limited liability, the organizational documents may also be relevant. For purposes of this section, a member has personal liability if the creditors of the entity may seek satisfaction of all or any portion of the debts or claims against the entity from the member as such. A member has personal liability for purposes of this paragraph even if the member makes an agreement under which another person (whether or not a member of the entity) assumes such liability or agrees to indemnify that member for any such liability."

The BEPS Project And The UK's Competitive Tax Policy: Friends Or Foes?

by David Klass and Sally Fildes, Gide Loyrette Nouel

*The department for UK Trade and Investment says that the United Kingdom is very much "open for business." But can a jurisdiction which on the one hand is implementing an aggressively competitive tax policy and on the other is purporting to be a champion of the OECD's Action Plan (the "**Action Plan**") on Base Erosion and Profit Shifting (the "**BEPS project**") really achieve both of its aims? Or is the BEPS project a barrier to it remaining open for business?*

A Dual Role

As the deadline for the first stage of implementation of the BEPS project draws closer, the UK remains committed to achieving its aim of having the most competitive tax regime in the G20. Since 2010, the UK has taken a number of measures to help realize this aim, on a domestic (particularly in the creative and high-tech sectors) and international level.

To name but a few such measures, the UK has reduced its corporation tax rate from 28 percent to 21 percent (and to 20 percent from April next year), implemented substantial tax credits for research and development, introduced the patent box at 10 percent for certain IP income, and improved its controlled foreign companies regime.

At the same time however, the UK has been a flag-bearer for the BEPS project, a project whose central feature is that of collaboration between participating states. How then can the UK reconcile such a collaborative policy with its own highly competitive tax policy?

Some say that the two cannot be reconciled unless participating states are able to reach an agreement on competition. However, one need only contrast the UK's tax policies with those of, say, Germany or France to see that aside from the general consensus that tax competition should be fair, there is no consensus on tax competition within the G20. What complicates things further is that Action 5 of the Action Plan, while recognizing the reality of tax competition, arguably wants to try and restrain it – something that tax-competitive states such as the UK will go to lengths to defend.

How Can The Two Policies Be Reconciled?

So can these two policies that seem so inherently conflicting, really exist together in harmony? In the eyes of the Government – yes, they can. David Gauke, Financial Secretary to the Treasury, insists that "the BEPS project is not about bashing business."[1]

One might argue that the BEPS project will never sit well with tax competition generally, but in the case of the UK perhaps these two unlikely friends do not need reconciling at all. For if by comparison to other tax-competitive G20 member states, the UK is affected by the BEPS project to a lesser extent, then the two policies may indeed be compatible.

Indeed, Gauke claims that there is "a big prize available" for the UK as a result of the BEPS project.[2] He points out that where the UK could end up being a net gainer as a result of the BEPS project could be via the increased pressure on economic substance. With the UK boasting a large economy, a developed infrastructure and skills base, and huge cultural diversity, it is easy to see how such an attractive place for business could profit to a larger extent than many other participating states via the increased economic substance requirements.

Where Are The Areas Of Conflict?

However, there are areas of the BEPS project which do not seem entirely aligned with the UK's competitive aims. The UK is fighting hard in particular for the following three items which it sees as important to maintaining its competitiveness:

(1) **Carve Outs For Regulatory Capital Within The Hybrid Regime:**? Whilst the UK supports the general approach of Action 2 of the Action Plan, which aims to neutralize the effects of hybrid mismatch arrangements, it believes that further consideration needs to be given to whether special rules should be put in place for intra-group hybrid regulatory capital instruments. Without such special rules in place, instruments which are a direct consequence of regulatory requirements in the financial sector will be substantially affected;

(2) **Special Treatment For Certain Sectors With Regards To Interest Deductions:** This is an important request from the UK's point of view in relation to Action 4 of the Action Plan, which seeks to limit base erosion via interest deductions and other financial payments. The UK wants the OECD to take into account and put in place special rules for the financial services and infrastructure sectors, which would be significantly impacted within the UK by the current proposed structural interest restriction rules; and

(3) **The Patent Box:** Although the UK's patent box is less generous than similar regimes in use in other jurisdictions, its existence is important to the sustainability of the growth of the intellectual property sector. However, at this very moment the UK's patent box regime is under examination by the Forum on Harmful Tax Practices on the basis that it may constitute a "harmful tax practice" – exactly the type of regime that Action 5 of the Action Plan is designed to combat.

These items may prove difficult for the UK to achieve, and the potential impact on its competitiveness could be significant should the bid for any or all items fail. Indeed, the mere fact that the UK is battling for things that are tailored heavily in its favor could tell us that it fears that without them, the BEPS project could indeed prove to be a real impediment to its competitive tax aims.

How Do These Areas Of Conflict Sit With The UK's Role As Flag-Bearer?

As a tax-competitive jurisdiction, it is no surprise that the UK is pushing back on the aspects of the BEPS project which could have a material impact on its competitiveness. Yet at the same time it does not take its role as the cheerleader of the BEPS project light-heartedly, which begs the question: Why would the UK take on this role if the BEPS project was a serious impediment to its corporate tax policy?

Country-By-Country Reporting

Other than with regards to the three key areas outlined above, the UK is largely in agreement with the vast majority of actions contained in the Action Plan. Perhaps most notably, the UK has taken a leading role in relation to Action 13 (which deals with country-by-country reporting templates and transfer pricing documentation) by initiating the development of a standardized template document – an initiative seen by many as one of the actions that will be most effective in countering base erosion and profit shifting.

Multilateral Solutions

Further, the UK is open and honest about what it wants to achieve from the BEPS project. The publication of the joint HM Treasury and HM Revenue & Customs (HMRC) document *"Tackling aggressive tax planning in the global economy: UK priorities for the G20-OECD project for countering Base Erosion and Profit Shifting"* in March this year serves to prove that the UK is open to frank discussion and achieving multilateral solutions, which harks back to the collaborative spirit at the crux of the BEPS project.

Non-BEPS Initiatives

The UK has also shown that it is serious on cracking down on tax evasion and reducing tax avoidance not solely within the scope of the BEPS project, for example through the leading role it took within the G8 to force companies to declare their beneficial ownership and to adhere to new standards of transparency.

And let us not forget that over the last few years we have seen a clampdown by HMRC in an effort to counter aggressive tax avoidance – an effort that HMRC claims has raised significant additional revenue from large businesses. Indeed, one of the purposes of the BEPS project is to contribute to improving stability and sustainability of tax revenues. On this issue, therefore, the UK's tax policy and the BEPS project seem totally aligned.

A Fuss Over Nothing?

If the UK has the ability to entice multinational enterprises like Siemens to make large-scale investments on its shores such as the Green Port Hull Project, and the trend of US companies re-domiciling to the UK continues, then the BEPS project cannot be seen by these organizations as a significant obstacle to doing business in the UK. Moreover, surveys indicate that a significant majority of large businesses support the aims of the Action Plan. With such an overwhelming backing from major taxpayers, the aims of the BEPS project surely cannot be contrary to the UK's competiveness?

But what is clear is that one of the main barriers to the UK truly being the most tax-competitive jurisdiction in the G20 is the complexity of its taxation system and the volume and frequency of changes it undergoes. Stability and simplicity have been cited as key concerns when determining the competitiveness of a country's tax regime, but while the BEPS project has brought about some uncertainty, this is not unique to the UK. It is arguable that non-BEPS related matters such as changes to the UK Generally Accepted Accounting Practice, the increased transparency requirements, and the implementation of the General Anti-Abuse Rule, have and continue to contribute to the uncertainty of the UK's tax regime to a larger extent than the BEPS project.

Whether the BEPS project will be able to exist in total harmony with the UK's competitive tax policy appears to rest on whether the UK is able to achieve exactly what it wants out of the BEPS project. Even then, the view from the UK's largest taxpayers seems at the moment to be that of business as usual, so the extent of any discord resulting from the BEPS project may prove insignificant. The result of the UK's efforts to achieve tailored treatment from the BEPS project remains to be seen, but for now at least, the UK appears to remain very much open for business.

Endnotes

1 David Gauke's speech to the Lord Mayor's Taxation Forum, April 30, 2014.

2 *Id.*

Topical News Briefing: Extracting Taxes

by the Global Tax Weekly Editorial Team

There was some good news for the Indonesian resource sector last week after it was confirmed that Newmont Mining had agreed to resume copper concentrate production after a long dispute with the Government over changed contract terms. However, it is doubtful whether the easing of harsh new tax laws will be enough to disperse the dark cloud hanging over the country's extraction industry.

Mining and petroleum firms around the world are battling against a rising tide of resource nationalism in the emerging economies, but Indonesia has been one of the worst offenders. Under a new tax structure announced in January 2014, the export of raw mineral ores was prohibited, and minerals exported in concentrate form were subject to specific export tax rates, which targeted copper in particular. An immediate 25 percent export tax was imposed on Indonesian copper concentrates, increasing to a maximum of 60 percent by July 31, 2016. Exports of concentrates would then also be banned from January 2017.

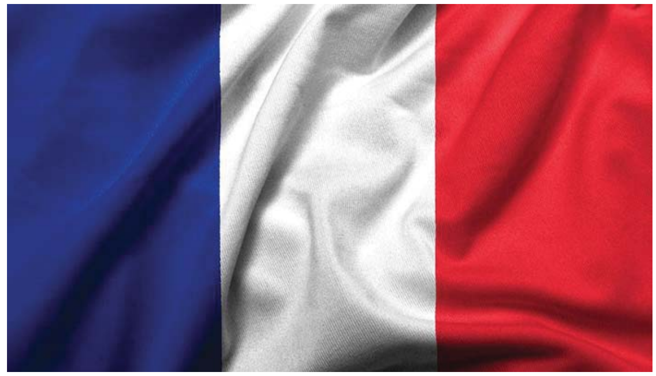
The thinking behind this move was that it would encourage (or, more accurately, force), foreign mining companies to invest in processing facilities in Indonesia, which would help to create jobs and modernize the economy. However, it does not take a resource industry expert to conclude that building such facilities as smelters and other processing plants takes a lot of planning, and more importantly a lot of time and money. So having such facilities up and running in short order to avoid the tax and the export ban was always going to be an unrealistic proposition for mining firms. Understandably therefore, the industry was up in arms over the new mining legislation.

Just why the Indonesian Government came up with such ill-considered proposals is known only to itself, but it now seems to be realizing that if it wants to attract foreign investment to the country, better to work with foreign investors rather than against them; Newmont had launched international arbitration proceedings against the Government's decision to effectively rip up its mining contract, which is never a good sign for other prospective investors.

Businesses, especially in investment-intensive industries which have long lead times like mining, do not like to be taken by surprise by radical new laws. But while the Indonesian Government has now signaled its willingness to work with the resources sector, with potentially billions of dollars at stake, companies and their backers must be having serious second thoughts about committing to Indonesia. So the damage may already have been done.

Taxation In France: Hollande At A Crossroads

by Stuart Gray, Senior Editor, Global Tax Weekly



After two years of raising taxes on individuals and companies in France, and with economic growth barely registering on the scale, President Hollande is at a crucial crossroads as his popularity slumps to an unprecedented low for a leader of the Fifth Republic. He has responded by announcing tens of billions of euro in tax cuts in an attempt to encourage businesses to start hiring again, and by filling key cabinet posts with pro-reformers. This article summarizes these latest tax and political developments.

Background

It has been little more than two years since François Hollande defeated Nicolas Sarkozy in the presidential election, promising an end to German-inspired austerity measures designed to cut France's dangerously high budget deficit. Espousing a traditional socialist agenda, Hollande's platform was that wealthy financiers had got Europe into the mess it was in, and therefore the rich should shoulder the main burden for fixing it through higher taxes. Although he accepted that reductions would have to be made to France's huge public spending bill, which accounts for around 50 percent of the economy, his policies in this area smacked of tokenism. Hollande appealed to the electorate with promises to deliver "tax justice" and prevent the creation of "excessive wealth," with the 75 percent tax on millionaires his emblematic policy.

Unlike many political leaders, Hollande has certainly been true to his word in one respect. Finance bill after finance bill piled yet more taxes on households and businesses, and by 2013 France's overall tax burden had reached 46 percent of gross domestic product (GDP), according to the French macroeconomics research institute Coe-Rexecode,[1] exceeded only by the high-tax Nordic countries in northern Europe. Excluding social contributions, taxes on production are EUR65bn (USD86bn) higher in France than in Germany, says the institute, with the additional tax burden on French companies primarily due to the fact that several taxes are levied in France that are without equivalents in other countries, such as the corporate social solidarity contribution, the tax on value added by a company, and the corporate land tax contribution.

A Tipping Point Reached

Towards the end of last year, however, Hollande's policies began to seriously backfire as the goose began to hiss. A protest against the proposed "eco tax" on heavy goods vehicles turned violent, and there were demonstrations by small business groups and others against the Government's increasingly draconian tax policy, which seemed to be strangling the life out of the economy while much-needed economic reforms were sidelined.

A damning statistic emerged earlier this month from the Public Finances General Directorate showing that the number of people asking for tax payments to be rescheduled or written off rose by 20 percent between 2011 and 2013.[2] The number of such requests, known as "*demandes gracieuses*," reached 1.2 million last year. Of these, requests relating to income tax rose by 22 percent to more than 216,000, while those related to residential tax increased by 14 percent to 459,000. Most requests involved individuals rather than companies.

Solidaires Finances Publiques, the union for DGFiP workers, said that the rise is due to increasing local taxes and to changes that have brought more people into the tax net, such as the tax benefit freeze on single parents in 2011. The union's secretary, Vincent Drezet, warned that there will be a further increase in requests this year.

Underlining the very obvious fact that the French are overtaxed, a recent study analyzing tax freedom day across the EU – the notional day when taxpayers stop funding state expenditure and start earning for themselves – showed that taxpayers are free of taxes later in France than in all other EU countries with the exception of Belgium.

Fiscal Targets Missed

As the economy stalled and unemployment lines grew – breaking a key Hollande pledge to create jobs – it is unsurprising that the French public have become increasingly exasperated with a President seemingly powerless to effect positive economic change. What's more, given Hollande's reluctance to cut spending despite ample rhetoric in that direction – a policy which could make him even more unpopular – the rising tax burden hasn't even helped France to cut its budget deficit to more acceptable levels, with deficit targets missed in the past two years and due to be undershot again this year.

Indeed, France missed both its revenue and deficit targets in 2013, despite a significant rise in compulsory levies and a heightening of controls on public expenditure, the French Court of Auditors said in a recent report on budget performance, which has called in question the Government's budget projections.[3]

The overall tax take stood at EUR284bn last year, up EUR15.6bn compared with 2012. However, this was EUR14.6bn below the forecast for 2013, the Court of Auditors' report said. Compared with the initial estimate, income from corporation tax, individual income tax, and value-added tax (VAT) was down EUR6.4bn, EUR4.9bn, and EUR5bn, respectively.

The Court said the Government's inability to predict annual revenue figures "raises the question of the quality and credibility of the fiscal revenue forecasts." It added that there are now concerns that the revenue and deficit gap will widen further against the estimate in 2014.

Even the European Commission has warned that France must reduce the tax burden on labor, lower direct tax rates, and step up efforts to simplify and increase the efficiency of the tax system, in its 2014 country-specific report.[4]

The Commission said France should lower labor costs for low-paid workers beyond the EUR30bn in tax relief that will be provided to employers through the tax rebate for competitiveness and employment (CICE) and the planned cut in employers' contributions in 2015 and 2016 (see below). These measures will "only bridge half of the gap between France and the Euro area average in terms of employer social security contributions," it said.

Meanwhile, it urged the Government to take measures to remove inefficient personal and corporate income tax expenditures and reduce the statutory rates, starting in the 2015 Budget.

It said: "Little progress has been made so far in lowering the statutory rates of personal and corporate income tax and increasing [VAT] efficiency. Instead a temporary surcharge on large companies has been extended until 2015 and this will result in the all-in statutory corporate income tax rate peaking at 38.1 percent (the basic statutory rate is already one of the highest in the EU at 33.3 percent)."

It pointed out: "The Government has announced a gradual reduction in the statutory rate to 28 percent by 2020 but there is no information on the exact timing of the measure."

Next, the Commission recommended that the Government should broaden the tax base on consumption, increase environmental taxation, and phase out environmentally harmful tax breaks, such as the favorable rate of excise duty on diesel.

Finally, the Commission said the Government should simplify companies' administrative, fiscal and accounting rules, eliminate regulatory impediments to corporate growth, and evaluate the effectiveness of the research tax credit.

The Responsibility Pact And Other Tax Developments

Voters made their feelings known loud and clear earlier this year when the Socialist Party was humiliated in local elections, prompting Hollande to change course dramatically on economic policy. "I have understood your message, it is clear," Hollande declared after the poll. "Not enough change and too much slowness. Not enough jobs and therefore too much unemployment." Crucially, he also accepted that France has "too many taxes."

In April 2014, the Government set out its medium-term economic strategy for the period 2014–2017, hinging on implementation of the so-called Responsibility and Solidarity Pact, which cuts taxes for businesses as long as they create new jobs, combined with efforts to reduce spending by EUR50bn by 2017 (more rhetoric). The measures are designed to enable the nation to meet its public deficit target of 3 percent of GDP in 2015.

The Responsibility and Solidarity Pact is intended to boost growth by 0.5 percent and to create approximately 200,000 additional jobs. Measures contained in the Pact will reduce the cost of labor beyond the EUR20bn wage cost cut already provided through the CICE tax credit for competitiveness and employment, for a total reduction of EUR30bn.

By 2016, employers will no longer be required to pay social security payroll contributions for minimum wage workers, except for unemployment insurance contributions. Family allowance contributions will also be reduced for wages of up to 3.5 times the minimum wage, or EUR5,000 per month, representing 90 percent of payroll employment.

Additionally, corporation taxes will be streamlined and reduced. The corporate social solidarity contribution, based on business turnover rather than profit, will be lowered from 2015 and abolished by 2017. Meanwhile, the exceptional contribution levied on corporate tax, payable by large companies, will be removed by 2015 (originally 2016), and the nominal rate of corporation tax progressively lowered from 2017 to 28 percent by 2020.

At the same time, the Government will reduce taxes for low-income households by EUR5bn by 2017. A reduction in employee wage contributions will increase net pay for minimum wage earners by about EUR500 a year.

It remains to be seen how effective the Responsibility Pact is at lifting France out of its economic malaise, but French employers' federation Medef issued a mixed response to the planned tax cuts.

Medef welcomed the Government's commitment to placing companies at the heart of its medium-term economic strategy, insisting that lowering payroll costs and taxation for businesses is the only way to re-establish corporate margins, which are currently the weakest in Europe.

Medef nevertheless criticized the Government's decision to limit the new wage cost cut to workers paid up to 3.5 times the minimum wage and to introduce the measures in two stages. The existing CICE tax credit, worth around EUR20bn next year, is also restricted to remuneration equal to or below 2.5 times the minimum wage.

Furthermore, Medef urged the Government to clarify its plans to reduce the corporate tax rate to 28 percent by 2020, with a first reduction planned in 2017, warning that the current timeframe for implementation simply does not reflect the urgency of the situation.

Hollande has also promised to introduce a "fairer" income tax system in the budget for 2015, to be announced later this month. He made the promise in an interview with *Le Monde*, when he said the

"Revenu de solidarité active", which ensures a minimum income, would be merged with the income tax credit known as the "Prime pour l'emploi".

His comments came shortly after the Junior European Affairs Minister, Harlem Désir, said that "urgent measures" to provide tax relief to those on low incomes would be announced imminently. The measures will be effective from 2016.

However, one key element of the Government's new tax strategy suffered a setback last month when France's Constitutional Court ruled against a relief that would have reduced social security payments for low-income workers.

The Government had proposed that from January 1, 2015, payments should be progressively cut for those earning between a third above the minimum wage and the minimum wage itself. The move would have benefited 7.4m workers, and cost EUR2.5bn.

However, the Court observed that the plan meant that the social security system would be funding services for all, when a third of beneficiaries had not contributed towards the overall burden. According to the Court, this meant that the relief went against the constitutional principle of equality before the law.

The Government has also substantially changed the proposed "eco tax," and the French Ecology Ministry has said it will instead impose a truck transit toll (*un péage de transit poids lourds*) from January 1, 2015.

The Ministry said the toll aims at ensuring that goods transporters contribute to the future financing of transport infrastructure projects in France, under the "polluter pays" principle.

It said the charge will apply to all HGVs over 3.5 tons that use the territory's major road network, where daily HGV traffic flow exceeds 2,500. The fee will therefore be due on about 4,000 km of national and departmental roads, instead of the 15,000 km covered by the original eco tax.

It said that Italian-led consortium Ecomouv would be tasked with implementing the new truck toll. Ecomouv was initially contracted to collect the HGV kilometric tax; but the Government was forced to suspend the levy at the beginning of the year due to protests from farmers.

However, a proposal for a nearly five-fold increase in the tax on hotel stays in France looks to have been completely ditched after strong opposition from the tourism industry and senior ministers, including the Finance and Foreign Ministers.

On June 25, 2014, a proposal was submitted to raise the so-called "tourist tax" from EUR1.50 a night to EUR8. An additional EUR2 nightly levy for hotel stays in the Ile-de-France region, which encompasses Paris, was also included in the draft law. The proposal was shelved when Finance Minister Michel Sapin slammed the proposed tax hikes as being "much too high".

Bernard Debré, a lawmaker from the opposition UMP party, welcomed the hotel tax law's defeat, arguing that it would make "tourists pay for our country's debt, when they are already spending money in our country, helping our economy and providing employment."

Predictably, industry groups also signaled their concern. Sébastien Bazin, chairman and chief executive of the hotel group Accor, said that "the impact on business margins and on France as a tourism destination will be very damaging." He described the initiative as "unjust, unsustainable, and dangerous."

Hollande's Last Throw Of The Dice?

The sudden change in the Government's ideology in midstream hasn't been possible without a certain amount of bloodletting in the senior ranks of the Socialist Party. Following March's local elections, the Government was dissolved, Prime Minister Jean-Marc Ayrault fell on his sword, and Hollande replaced him with Manuel Valls, a man very much on the right of the Party.

However, while Hollande has earned some praise for switching to a more pro-business and pro-reform agenda, traditionalists in his own party have become angered at this apparent lurch to the right. Outgoing Economy Minister Arnaud Montebourg recently turned up the heat on the President by accusing him of kowtowing to German demands for austerity, going so far as to describe the deficit-cutting policies imposed on the eurozone "the most extreme orthodoxy of the German Right."

In an increasingly desperate bid to assert his authority, Hollande dissolved the Government once again on August 24, and the man he has lined up to replace Montebourg represents how far Hollande has moved politically since 2012. Emmanuel Macron, although another socialist, has distinctly liberal economic views and as an economic advisor to Hollande was thought to have been the brains behind the Responsibility Pact. Controversially, he is a former banker, and his promotion to the cabinet is only serving to alienate Hollande further from the core of the party, some of whom have reminded the President of his pledge to wage war on the world of finance in 2012. Indeed, some of Hollande's quotes from this period, when he regularly repeated his mantra that the finance sector was his "adversary," probably make uncomfortable reading for the President and the new Economy Minister in 2014.

Macron said shortly after his appointment to the post that tax increases between 2010 and 2013 were "too much." Nevertheless, in defense of the beleaguered President, he also suggested in an interview with *Le Point* that rises had been necessary due to the eurozone being in "extreme danger." He said that the previous Government decided to raise an extra EUR30bn through tax annually, and that an extra EUR60bn had been raised between 2010 and 2013.

According to Montebourg, Macron's task is straightforward enough. The minister has to "improve the performance of France, restore the confidence our partners, investors and the world … and also restore the confidence that the French need to have in themselves."

It's a task that is probably going to feel like turning around a tanker with a broken rudder. And there are serious doubts that an increasingly weak Government, led by a President with record low postwar approval ratings and looking more like a dead man walking by the day, can fix it.

Endnotes

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The New Double Taxation Agreement Between Cyprus And Guernsey

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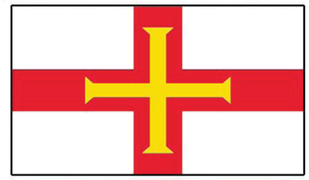

On July 15, 2014, Cyprus signed a new double taxation agreement (DTA) with the States of Guernsey. The Guernsey authorities signed the agreement on July 29. The agreement is the first comprehensive DTA between the two, and will come into force once it has been ratified in accordance with their domestic legal procedures. The 2004 agreement on taxation of savings income between Cyprus and Guernsey will continue in force, but the DTA will be more beneficial to taxpayers once it takes effect.

The new agreement closely follows the 2010 OECD Model Convention, with only minor modifications, and the Protocol to the agreement clarifies the information exchange provisions. The key provisions of the DTA and Protocol are analyzed in the following paragraphs.

Taxes Covered

The agreement covers all taxes on income and capital levied by either party or by any of its subdivisions or local authorities, including taxes on capital appreciation and on gains from the alienation of movable or immovable property. The specific taxes to which it applies are, in the case of Guernsey, income tax; and, in the case of Cyprus, income tax, corporate income tax, Special Contribution for Defense (commonly referred to as SDC tax), capital gains tax, and immovable property tax.

The agreement will also apply to any identical or substantially similar taxes that are imposed in future in addition to, or in place of, existing taxes.

Residence

Article 4 of the DTA reproduces the provisions of the OECD Model regarding residence *verbatim*.

Permanent Establishment

Article 5 of the DTA, which deals with permanent establishment, also reproduces the provisions of the OECD Model *verbatim*, with the same list of ancillary activities that *prima facie* do not give rise to a permanent establishment as appears in the OECD Model, including storage and display of goods, maintenance of stocks for processing by a third party, a purchasing or information-gathering facility, or a facility for preparatory or auxiliary purposes.

A building site, a construction, assembly or installation project, or a supervisory or consultancy activity connected with it will be deemed to be a permanent establishment if it lasts for more than 12 months.

If an enterprise has a representative in the territory of a party that has, and habitually exercises, authority to conclude contracts in the name of the enterprise, the enterprise concerned is deemed to have a permanent establishment in respect of any activities which the person undertakes for the enterprise. As in the OECD Model, the DTA provides that an independent broker or agent that represents the enterprise in the ordinary course of business will not be caught by this provision. Particular care needs to be taken regarding the issuing of general powers of attorney so as not to risk unintentionally creating a permanent establishment, with potential adverse consequences.

Income From Immovable Property

As in the OECD Model, income from immovable property may be taxed in the territory of the party where the property is situated.

Business Profits

The profits of an enterprise are taxable only by the contracting party in whose territory it is resident unless it carries on business in the territory of the other party through a permanent establishment there, in which case the profit attributable to the permanent establishment may be taxed by the contracting party in whose territory it is located.

The agreement follows the OECD Model as regards the apportionment of profits to permanent establishments.

International Shipping And Transport

Profits of an enterprise from the operation of ships or aircraft (including income from containers, trailers and related equipment) in international traffic are taxable only by the contracting party in whose territory the enterprise is resident. If the place of effective management of a shipping enterprise is aboard a ship, it will be deemed to be situated in the contracting party in which the home harbor of the ship is situated, or, if there is no such home harbor, in the party of which the operator of the ship is a resident.

Dividends

Dividends paid by a resident of one contracting party to a resident of the other contracting party are taxable only by the second contracting party.

Interest

Interest arising in one contracting party and paid to a resident of the other is taxable only by the contracting party in whose territory the recipient is resident.

Cyprus-resident natural persons receiving interest income from Guernsey will be subject to a lower tax charge by disclosing the interest and opting for taxation in Cyprus, rather than imposition of withholding tax in Guernsey under the 2004 taxation of savings income agreement.

Royalties

Royalties arising in one contracting party and paid to a resident of the other are taxable only by the contracting party in whose territory the recipient is resident, provided that the recipient is the beneficial owner.

Capital Gains

Gains derived by a resident of one contracting party from the alienation of immovable property situated in the territory of the other, or from the disposal of immovable or movable property associated with a permanent establishment situated in the other, may be taxed by the contracting party in whose territory the immovable property or the permanent establishment is situated.

Gains derived from the disposal of all other property are taxable only by the contracting party of residence of the disponor.

Offshore Activities

Like other recent Cyprus DTAs, the Cyprus–Guernsey agreement includes an article dealing specifically with offshore activities. It provides that a resident of one contracting party undertaking activities on the territory (including the territorial sea or exclusive economic zone) of the other will be treated as exercising a trade or business in the latter territory through a permanent establishment there in respect of the activities concerned, unless the aggregate duration of the activities is no more than 30 days in the fiscal year concerned. Associated companies are treated as one for the purpose of assessing the duration of their activities.

Profits from maritime or air transport, towing, mooring, refueling and similar activities in connection with offshore exploration and exploitation of resources are taxable only by the contracting party of which the enterprise concerned is a resident.

Salaries, wages and other similar remuneration derived by a resident of one contracting party in respect of employment in connection with exploration or exploitation of sub-sea resources of the other contracting party may be taxed by the second contracting party. However, if the employer is not a resident of the second contracting party and the employment amounts to less than 30 days in any 12-month period starting or ending in the fiscal year concerned, the remuneration is taxable only by the party in whose territory the employee is resident.

Remuneration in respect of employment aboard a ship or aircraft engaged in the transportation of supplies or personnel in connection with the exploration or exploitation of sub-sea resources is taxable by the contracting party in which the enterprise providing the services is resident.

Gains derived by a resident of one contracting party from the alienation of exploration or exploitation rights or property used in connection with the exploration or exploitation of the seabed situated in the territory of the other contracting party may be taxed by the contracting party in whose territory the rights or the property are located. The same applies to shares deriving the greater part of their value directly or indirectly from such rights or property.

Elimination Of Double Taxation

Elimination of double taxation is achieved by the credit method. In relation to income or capital that is exempt pursuant to other provisions of the agreement, the contracting party in which the recipient is resident may take into account the exempt income or capital when calculating the tax liability of the recipient (exemption with progression).

Mutual Agreement Procedure

The DTA reproduces the corresponding provisions of the OECD Model, except that it does not include any arbitration procedure to settle issues that cannot otherwise be resolved.

Exchange Of Information

The exchange of information article reproduces Article 26 of the OECD Model Convention *verbatim*.

However, the Protocol to the DTA provides robust safeguards against abuse of the information exchange provisions by requiring the contracting party that requests information to fulfill specified procedures to demonstrate the foreseeable relevance of the information to the request. No request is to be submitted unless the party making the request has reciprocal procedures and means of obtaining similar information, and every request must be accompanied by the following details in writing:

- the identity of the person under examination or investigation;
- the period covered by the request;
- the nature of the information sought and the form in which the requesting party wishes to receive it;
- the tax purpose for which the information is sought;
- the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the party requesting it, with respect to the named person;
- grounds for believing that the information requested is held or is in the possession or control of or obtainable by a person within the jurisdiction of the recipient of the request;
- to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- a statement that the request is in conformity with the law and administrative practices of the party requesting it, that if the requested information was within its jurisdiction the requesting party would be able to obtain the information under its laws or in the normal course of administrative practice, and that the request is in conformity with the DTA;
- a statement that the contracting party requesting the information has pursued all reasonable means available in its own territory to obtain the information.

In effect, this means that the authorities requesting the information must already have a *prima facie* case even before they request the information, and must make a reasoned request for disclosure.

These provisions are in line with the robust safeguards against abuse of exchange of information provisions contained in Cyprus's Assessment and Collection of Taxes Law. Requests for exchange of information are dealt with by a specialist unit and informal exchange of information between tax officers bypassing the competent authority is prohibited. A request must be much more than a brief email containing the name and identifying information of the individual concerned. Rather, a detailed case must be made, with the criteria set out in a formal, reasoned document. In effect, this means that the authorities requesting the information must already have a strong case even before they request the information. As a final safeguard, the written consent of the Attorney General must be obtained before any information is released to an overseas tax authority.

Assistance In The Collection Of Taxes

The DTA does not include any provisions regarding assistance in the collection of taxes.

Entry Into Force And Termination

The agreement will enter into force when the two governments inform one another that the requisite constitutional procedures have been completed. Its provisions will have effect in the territory of both contracting parties from the beginning of the following year.

Termination of the agreement will require written notice by either party given at least six months before the end of any calendar year, whereupon the agreement will cease to have effect from the beginning of the following year. Notice may only be given after the agreement has been in force for five years.

Conclusion

Guernsey is among the world's most important financial centers, and the DTA will be a valuable addition to Cyprus's extensive treaty network. It is hoped that the remaining steps required to bring the new agreement into effect can be achieved quickly.

Topical News Briefing: High Tax Versus Low Tax

by the Global Tax Weekly Editorial Team

Time and again, the experience of financial centers, both offshore and onshore, shows that cut taxes, and they will come. This is certainly the theory that the Chinese Government is banking on with its experimental free trade zone (FTZ) in the city of Shanghai.

In what is seen as an essential step towards upgrading China's economy through the liberalization of services and trade, with an eventual roll-out nationwide in other chosen areas, Shanghai has built the FTZ around its existing comprehensive bonded zones at Waigaoqiao, Yangshan, and Pudong Airport, which are reported to have serviced total trade of more than USD100bn in 2012. The Shanghai FTZ offers a number of 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.

It is very early days in the life of the Shanghai FTZ, but the business world is already starting to take notice: since opening last September, 225 financial leasing firms have been set up in the free zone, and the first wholly foreign-owned shipping management company was established there recently, with another half-dozen applicants awaiting approval. It's probably safe to assume that many more will follow.

However, we just have to look at Hong Kong for a good example of what happens when investors feel that the Government has got the tax system wrong. Foreign companies flock to Hong Kong to take advantage of its accommodating tax system and enviable location on the door step of China, while there has been substantial growth recently in the local asset management and insurance sectors. But Hong Kong real estate investment trusts (H-REITs) have yet to take off, despite offering investors a chance to invest indirectly in Chinese property. And this is largely down to the tax regime that applies to H-REITs. In most jurisdictions REITs are exempt from income tax if they distribute most of their income, but this isn't the case in Hong Kong. Unsurprisingly then, the Hong Kong REIT market has been a slow burner since these vehicles were introduced around 10 years ago: H-REITs accounted for just 5 percent of the listed real estate market capitalization in Hong Kong in 2013, compared to 30 percent in Singapore, where the tax regime is much more attractive.

There are of course many factors that businesses and investors must consider before deciding where to locate foreign operations, and tax isn't always the clincher. But it's a bit of a no-brainer if the choice is between a location offering lighter-touch tax and regulatory regimes, and a nearby one that doesn't.

Ukraine Tax Authority Transfer Pricing Update

by Svitlana Musienko, Partner, Head of Tax, Dmytro Donets, Senior Associate, and Dmytro Rylonvikov, DLA Piper

On July 1, 2014, the Ministry of Revenues and Levies of Ukraine issued Order #368 "On amendment of Generalized tax consultation on transfer pricing related issues, adopted by Order #699" (hereinafter "the Order") which significantly changed the respective tax consultation #699 (hereinafter "the Consultation").

In particular, the Order included additional questions and clarifications and drastically changed certain previous interpretations of the tax authorities. Overall, the restated Consultation contains the position of the tax authorities in respect of 41 questions related to the application of transfer pricing (hereinafter "TP") regulations. Below we have summarized the most important points.

PROS

Exclusion Of Some Transactions From UAH50m Threshold

Dividends, investments, the value of give-and-take raw materials from non-residents and respective final products, the principal amount of loans and credits, deposits and repayable financial aid should be disregarded upon calculation of the UAH50m threshold of controlled transactions. Previously the tax authorities had an absolutely opposite position in this regard.

The new interpretation leads to a decrease in the number of cases where transactions are qualified as controlled ones. This ultimately should reduce the reporting burden for taxpayers.

CONS

Extension Of Scope Of Controlled Transactions

The following transactions are deemed to be controlled (subject to the UAH50m threshold):

- indirect sales of goods to a non-resident related party via a non-related commissioner (agent)
- transactions with related individuals who are residents of Ukraine
- transactions with related parties which are paying value-added tax (hereinafter "VAT") and corporate profit tax (hereinafter "CPT") at standard rates, but paid withholding tax during the reporting period.

The above-mentioned interpretation generally extends the general scope of controlled transactions, which ultimately will increase taxpayers' administrative burden.

Disallowance Of Self-Adjustments During The TP Audits

The tax authorities confirmed that taxpayers are not allowed to submit any adjusting CPT and VAT tax returns for the period which is being subjected to a TP audit (even if such adjustments do not relate to controlled transactions subjected to the audit).

Therefore, during the whole term of the TP audit, taxpayers will not be able to submit adjusting CPT and VAT tax returns for the audited period (the statutory term for a TP audit is six months, with possible prolongation for another six months).

EU Joint Transfer Pricing Forum Reaches Agreement On The Acceptance Of Compensating Adjustments

by Dr. Sven-Eric Bärsch, LL.B and Dr. Sven Kluge, Flick Gocke Schaumburg, Bonn

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Implications For Foreign MNEs

Introduction

The EU Joint Transfer Pricing Forum (hereinafter the "EU Joint TP Forum") has recently finalized its Report on Compensating Adjustments (the Report). In the past, the German tax authorities have been highly critical about compensating adjustments; the Report now provides a common set of criteria for accepting such adjustments. These criteria are not legally binding, but might serve as a point of reference for foreign multinational enterprises (MNEs) investing in Germany, and especially for those that apply the transactional net-margin method (TNMM).

Issues of compensating adjustments arise, in particular, where transactions between affiliates of MNEs are priced with reference to the TNMM. The TNMM is considered appropriate by the OECD in intra-group transactions in which one of the entities involved has a limited functional and risk profile (routine company), *e.g.*, a limited-risk distributor. In such a scenario, there is usually a range of target net margins applicable to that entity. If the routine company's result at year end does not lie within the range of margins, then such compensating adjustments are made *ex post* as are necessary to achieve a result within the arm's length range.

So far, however, the German tax authorities have favored the *ex-ante* or arm's length price-setting approach, under which taxpayers must comply with the arm's length principle at the time they undertake their intra-group transactions, and on the basis of information reasonably available to them at such time. Whenever foreign entities are involved in controlled transactions with German affiliates – which are obliged to test the actual outcome of their controlled transactions with a view to demonstrating that the terms of these transactions were at arm's length (the *ex-post*/arm's length outcome-testing approach) – conflicts may arise as to whether compensating adjustments are permissible in the first place. This may result in double taxation. In principle, such conflicts might be resolved *via* mutual agreement procedures (MAPs) provided for under double-taxation treaties or via the EU Arbitration

Convention (EU AC); such means of dispute resolution are, however, generally not available at an early stage. Moreover, it is our practical experience that both MAPs and proceedings under the EU AC are time-consuming, which is why they are not always a viable option for addressing conflicts which arise in the context of compensating adjustments.

Practical Solution Regarding Compensating Adjustments

Against this background, the EU Joint TP Forum — and thus ultimately the EU member states – have finally adopted a common set of criteria as to when compensating adjustments by taxpayers should be accepted by the relevant tax authorities.

The common approach agreed under the Report requires the taxpayer to (cumulatively) fulfill the following criteria:

(1) Ahead of the relevant transaction or series of transactions, the taxpayer has made reasonable efforts to ensure arm's length terms. Usually, these efforts would be described in the taxpayer's transfer pricing documentation;
(2) The taxpayer and its affiliate make symmetrical adjustments in their respective accounts;
(3) The taxpayer applies the same approach consistently over time;
(4) The taxpayer makes the adjustment before filing the tax return;
(5) To the extent required by domestic legislation in at least one of the jurisdictions involved, the taxpayer is able to show why the eventual result differed from his initial forecast.

Moreover, the Report makes it clear that both upward and downward compensating adjustments should be accepted. However, the Report is only applicable to compensating adjustments (i) actually made in the accounts and (ii) explained in the taxpayer's transfer pricing documentation. Accordingly, any compensating adjustments that fail to fulfill these requirements do not fall within the scope of the Report.

Implications For Foreign MNEs Investing In Germany

Technically, the Report is not directly binding on German tax auditors unless the German Ministry of Finance adopts the Report by way of issuing a circular. However, for the time being no such circular is expected despite the EU Commission's recommendation, issued to the EU member states on June 4, 2014, that the Report be implemented. Rather, it is expected that, in the context of a forthcoming legal ordinance, Germany might expressly hold on to the *ex-ante* approach and, in that vein, proceed to impose strict limitations on the application of compensating adjustments.

Nevertheless, there is already some guidance – from existing circulars and from German case law – which does not significantly differ from the criteria laid down in the Report. This existing German guidance includes the following criteria:

(1) The German taxpayer must maintain proper transfer pricing documentation in order to avoid that (a) the burden of proof for the arm's length character of the transfer prices shifts to him and/or (b) any penalties

are imposed on him. It is advisable that the documentation be prepared within six months after the balance-sheet date in order to comply with documentation obligations with respect to extraordinary transactions because those obligations might be applied to compensating adjustments;

(2) One affiliate involved in the transaction must be classifiable as a clear "routine company", and the TNMM is being applied for purposes of determining transfer prices;

(3) Compensating adjustments are carried out only where, otherwise, the result achieved by the routine company would fall outside of the range of arm's length margins. By contrast, as a rule, compensating adjustments should not be made with the sole purpose of arriving at another value within such range;

(4) If compensating adjustments are envisaged, then they are only recognized by the German tax authorities if they are carried out indiscriminately, *i.e.*, irrespective of whether the particular case involves an upward or a downward adjustment. In other words, the taxpayer wishing to apply compensating adjustments must not do so only where this would serve to reduce his German tax burden;

(5) Any compensating adjustment must be accompanied by an invoice or credit note, respectively, between the affiliates. The German tax authorities would not accept any off-balance-sheet compensating adjustments which would result in a decrease of German taxes;

(6) It is advisable that (i) the application of the TNMM, the arm's length range and the target margin be adopted for any compensating adjustments, and (ii) the functions and risks of the parties be set out in a written agreement. Although there is case law according to which no such formal criteria are required, observing the above points increases the chances of successfully asserting such adjustments *vis-à-vis* the tax authorities.

To sum up, the existing German criteria with respect to compensating adjustments do not differ significantly from the criteria laid down in the Report. Under both approaches it is crucial for the routine company to be able to demonstrate that compensating adjustments are necessary in order to arrive at a result that lies within the range of arm's length net margins.

If any forthcoming German legal ordinance were to impose strict limitations on the application of compensating adjustments, then this would be bound to affect foreign MNEs investing in Germany. Accordingly, it is highly advisable for MNEs to closely monitor German transfer pricing developments in the near future in order to ensure that any necessary or desirable transfer pricing modifications are identified and tackled in a timely manner.

Burger King Under Democratic Grill Over Inversion Plan

Despite Burger King's protestations that the proposed merger of its businesses with those of Tim Hortons is based on solid commercial rationale, reaction in the US, and in particular from Democrat lawmakers, has focused almost solely on the disclosure that the new publicly listed company will have its tax residence in Canada – a "corporate inversion."

While it is planned that Tim Hortons and Burger King will still operate as standalone brands, with both existing companies having strong franchisee networks and extremely well known brands, they will benefit from shared corporate services. The merged company would create "a new global powerhouse in the quick service restaurant sector," becoming the world's third largest, with approximately USD22bn in sales and over 18,000 restaurants in 100 countries worldwide.

Burger King has reconfirmed its commitment to its investment and employees in the US, with its current headquarters in Miami, Florida, continuing to be the global home of the Burger King business. Burger King will also "continue to support and preserve its long-standing commitment to local communities and charitable causes in the US."

In addition, aside from the commercial rationale for the deal, it has been pointed out by Burger King that the siting of new company's headquarters and tax residence, not in the US, but in Oakville, Ontario, is not surprising given that Canada would be the largest market of the combined company.

However, it has also been noted that Canada has lower overall corporate tax rates than the US. The new company's overall tax rate in Ontario would be 26.5 percent (the federal rate of 15 percent plus Ontario's provincial corporate tax rate of 11.5 percent), compared with the 35 percent headline rate in the US. Canada also operates a territorial international tax system, rather than the worldwide system in the US – of particular importance for multinationals with substantial overseas earnings.

But while Congress is in recess and its bipartisan legislative proposals are still awaited, and with the White House working on what administrative actions it could take to reduce the tax benefits of inversions, it has been left to individual Democrat Senators to give their adverse reaction to news of the merger, and to inversions.

For example, Dick Durbin (D – Illinois), the Assistant Majority Leader, noted: "with every new corporate inversion, the tax burden increases on the rest of us to pay what these corporations don't. … I call on companies currently mulling this tax dodge to reconsider, and on Congress to protect US taxpayers from more of these schemes."

Joe Donnelly (D – Indiana), Chairman of the Senate Agriculture Committee's Subcommittee on

Commodities, Markets, Trade and Risk Management, sent a letter to President Barack Obama asking that, in the absence of quick action by Congress, the President work with the Treasury Department. "We can all agree that Congress has a responsibility to ensure a fair and efficient tax code, and it is my hope that we will quickly work to address this practice," he said. "However, if Congress is unable to achieve a temporary solution in the coming weeks, then I urge you and the Department of Treasury to use existing authority to stop the ongoing abuse of our current tax code."

Sherrod Brown (D – Ohio), a member of the Senate Finance Committee, also urged Congress to take immediate action to address inversions. "We need an immediate fix to forestall a flood of these dangerous inversions and a long-term solution that lowers corporate tax rates while instituting a country-by-country global minimum tax," he stated.

"Lowering the statutory corporate tax rate would put companies on a level playing field with foreign competitors and reduce the incentive for them to shift jobs and profits overseas," Brown concluded. "Creating a global minimum tax rate will increase investment in the US, raise revenue, and prevent a global race-to-the-bottom."

China's SAT Investigates Transfer Pricing

In its ongoing efforts to control tax evasion, China's State Administration of Taxation (SAT) has recently published an instruction (Tax Office General Fa [2014] No. 146) calling on national and local tax bureaus to investigate transfer pricing practices of Chinese enterprises.

Under scrutiny by the SAT are all transactions involving unreasonable payment of service fees and royalties to related parties located in no or low-tax jurisdictions. The SAT is focusing on transactions carried out between 2003 and 2013 which do not have any reasonable business purpose or economic substance.

Among other things, the SAT is investigating: services fees paid to a shareholder (including services performed in relation to planning, monitoring, and management of the enterprise); services fees that do not relate to the services performed; royalties paid to related parties located in tax havens; and royalties paid to foreign related parties who do not assume any functions.

The SAT has asked the tax bureaus to complete their investigation and submit a report by September 15, 2014.

IRS Sets Out Transfer Pricing Guidance Priorities

The US Internal Revenue Service (IRS) has prioritized a number of transfer pricing projects in its 2014/15 Priority Guidance Plan, published on August 26, 2014.

The updated plan is intended to focus IRS efforts on areas of tax law that have been identified as ambiguous by taxpayers, tax practitioners, and industry groups, to boost voluntary compliance rates. The IRS plans to focus resources towards the following transfer pricing-specific projects:

- The provision of guidance on section 482 of the Internal Revenue Code (IRC), which deals with the allocation of income and deductions among taxpayers. In particular, the IRS proposes to clarify rules on the treatment and allocation of risk;
- The publication of regulations under sections 861, 862, and 863(a) of the IRC on the character and source of income, including income arising in transactions involving intellectual property and provision of digital goods and services;
- The provision of guidance on section 894 of the IRC, including regulations regarding the application of various treaty provisions to payments through hybrid entities;
- The provision of guidance on section 6105 of the IRC on the confidentiality of information transmitted under a tax convention; and
- The preparation of an annual report on the performance of the advance pricing agreement program.

The IRS also intends to clarify a number of issues raised about consolidated returns, tax accounting, and foreign tax credits.

Based on a consultation with taxpayers, tax practitioners, and industry groups in April this year, the 2014/15 Priority Guidance Plan contains 317 projects that are to be prioritized during the 12-month period from July 2014 until June 2015 (the plan year). Some projects that were in the 2013/14 Priority Guidance Plan have not been included in the latest plan because they are no longer considered to be priorities.

The plan is to be updated during the plan year to reflect additional items that have become priorities, and to confirm guidance that has been published during the period.

Newmont To Resume Indonesian Operations After Tax Deal

Newmont Mining has agreed to enter into negotiations with the Indonesian Government and resume copper concentrate production, following the latter's publication of a new regulation confirming its offer of concessionary export duty rates to companies that agree to invest in smelting facilities in the country.

Freeport-McMoRan and Newmont Mining together account for 97 percent of domestic copper concentrate exports from Indonesia, and they had both challenged the Government's original plans, announced in January this year, for a new mining tax structure, which slapped high export duties on exports to encourage value-added and economic activity in the mineral sector through the expansion of domestic smelting activities.

Under that structure, the export of raw mineral ores was prohibited, and minerals exported in concentrate form were subject to specific export tax rates, which targeted copper in particular. An immediate 25 percent export tax was imposed on Indonesian copper concentrates, increasing to a maximum of 60 percent by July 31, 2016. Exports of concentrates would then also be banned from January 2017.

The Government agreed an alternative regime with Freeport-McMoRan on July 25, with export tax rates being substantially reduced for companies making a collateralized commitment to building smelters. It agreed to reduce the initial export duty on copper concentrate exports during smelter development to 7.5 percent. The rate will fall to 0 percent when progress towards its smelter development plans exceeds 30 percent.

However, Newmont Mining had persisted, until now, in continuing to affirm that the Government's action was in direct conflict with its signed production contract, which includes guarantees on the level of taxation to which it should be subject and exempted it from any new taxes and duties.

It had filed for international arbitration, but that has now been withdrawn and it has begun official negotiations to conclude a memorandum of understanding (MOU) with the Government, which, if successful, will lead to a resumption of its copper concentrate production and exports.

It was confirmed that Newmont Mining already has an MOU in place to participate in a process with Freeport-McMoRan "designed to lead towards the development of a smelter. [Newmont Indonesia] has also negotiated and signed conditional concentrate supply agreements with two Indonesian companies that publicly announced plans to build their own copper smelters in the country."

UK Mining Companies Get Transitional Relief Under New Reporting Requirements

Mining, gas, and oil companies registered in the UK will now be required to report on the payments made to governments in all the countries they operate in as of January 1, 2015, Business Minister Jo Swinson announced on August 21, 2014.

The UK Government has released The Reports on Payments to Governments Regulations 2014 (the Regulations), under which extractives companies will have a maximum of 11 months after the end of their financial year to file a report at Companies House detailing their extractives payments. The Regulations have, however, put in place a transitional arrangement for UK-registered subsidiaries of parent companies registered in other EU member states.

The Regulations will apply to all undertakings in relation to a financial year starting on or after January 1, 2015, apart from those undertakings that are subsidiaries of parent undertakings that are obliged to prepare consolidated group accounts in EU member states other than the UK. The Regulations will apply in relation to financial years for these undertakings beginning on or after January 1, 2016.

The exemption offered to UK subsidiaries aims at preventing an undertaking from having to prepare and file a report in the UK for one year only, where from January 1, 2016, such undertakings would be included in a consolidated report prepared in another member state under the requirements in Article 44 of the Accounting Directive 2013/34/EU (the Directive), which requires parent undertakings that prepare consolidated financial statements to prepare consolidated reports.

The introduction of this transparency requirement makes the UK the first EU country to introduce reporting requirements on extractives companies. This follows on from the Prime Minister's commitment to promote transparency in the extractives industry at the Group of 8 (G8) meeting in Lough Erne, in 2013.

Swinson said: "Oil, gas, and mining can, if well managed, deliver precious economic benefits to the populations of developing countries. Too often, though, the assets from resource-rich countries are not benefiting local people or the local economy. The UK is determined to lead by example which is why we have introduced reporting requirements on UK based extractives companies early."

She added: "These changes will result in greater transparency, helping build a stronger economy and ensuring people around the world have the information they need to hold their governments to account. This new reporting requirement implements Chapter 10 of [the Directive], which was agreed in June 2013."

Between March 28 and May 16, 2014, the UK Government invited stakeholders' views on proposals for new reporting requirements for extractive industries. There was a difference of opinion in relation to the reporting of subsidiaries registered in the UK but with a parent company in another EU member state. Civil society responses argued that the subsidiary should report in its own right in the UK until such time as it is able to report through the parent company. Many industry responses disagreed and argued for an exemption for such companies. Accountancy professionals felt that, to avoid confusion, subsidiaries should be exempt from reporting until consolidated reports in the parent member state could be completed.

Spain Claims Loss Of EUR1bn To Gibraltar Tax Regime

A high ranking Spanish politician has claimed that the Spanish Government misses out on EUR1bn (USD1.3bn) of tax revenues each year as a result of Gibraltar's tax regime.

Iñigo Méndez de Vigo, Spain's Secretary of State for the EU, made the claim during an interview with the country's *ABC* newspaper.

"The Ministry for Public Finances calculates that the current tax regime in Gibraltar generates losses to the Spanish treasury of close to one billion euro annually, in the form of lower returns on different types of taxation," he said.

He called for the European Commission to investigate the British Overseas Territory's tax policies for possible illegal state aid.

The Gibraltarian authorities hit back at the Spanish claims, describing them as "a financial flight of fancy."

The statement said that out of 15,673 active companies, there are only 102 Spanish nationals with a Spanish address holding one or more shares in a total of 66 companies. "This helps to clearly demonstrate that Gibraltar is, unsurprisingly, not seeing significant numbers of Spanish individuals using Gibraltar's financial services," it said.

Gibraltar's Income Tax Act 2010 has, after minor amendments by the current administration, been approved by the Code Group of the EU with only Spain not approving it, according to the statement. "That demonstrates that the relevant Gibraltar legislation fulfills all the criteria required by Brussels in this respect; although Spain is continuing its attempt to ensure our law is nonetheless found to fall foul of the requirements. A state-aid investigation is still under way."

Tax Reforms Boosted Employment, Noonan Says

Irish Finance Minister Michael Noonan has said that the latest employment figures demonstrate the positive impact of his targeted tax measures.

The Central Statistics Office's (CSO's) Quarterly National Household Survey shows year-on-year employment growth of 31,600. There are now 1.9m people in work. There was growth in 10 of the 14 sectors reported on by the CSO.

According to Noonan, the 9 percent value-added tax (VAT) rate he introduced for the hospitality sector in July 2011, together with this year's abolition of the air travel tax, has contributed to the creation of 8,000 jobs over the past year. The Home Renovation Incentive tax relief has helped boost employment in the construction sector by 3,500.

"We have now had seven consecutive quarters of solid annual employment expansion and we have now seen an increase in employment of over 70,000 since the low-point in mid-2012. We are now seeing that the difficult decisions taken by this government over the past few years are bearing fruit."

New French Economy Minister Appointed After Austerity Row

France's new Economy Minister, Emmanuel Macron, has conceded that tax increases between 2010 and 2013 were "too much," after his predecessor's objections to continuing austerity triggered a cabinet reshuffle earlier this week.

In an interview with *Le Point*, Macron explained that rises had been necessary due to the eurozone being in "extreme danger." He said that the previous Government decided to raise an extra EUR30bn (USD39.6bn) through tax annually, and that an extra EUR60bn had been raised between 2010 and 2013.

The previous Economy Minister, Arnaud Montebourg, had launched a public attack on EU-imposed austerity policies, prompting Prime Minister Manuel Valls to say that he had crossed "a yellow line." Montebourg, along with two other rebel ministers, has been excluded from the new cabinet.

Montebourg reiterated his criticisms at a hand-over event with Macron on Wednesday. Montebourg again argued that austerity policies were actually exacerbating the deficit, and restraining consumer spending. He also said that tax rises had unfairly hit the working and middle classes, who had not been responsible for the financial crisis.

Austrian FM Quits Over Tax Reform Disagreements

Austria's finance minister and vice chancellor, Michael Spindelegger, resigned from both posts on August 26, 2014, due to disagreements within his party over how to implement tax reforms.

Spindelegger had rejected calls from high ranking members of his party, the People's Party, or ÖVP, to support Chancellor Werner Faymann's plan to raise taxes on high-income taxpayers and reduce them for low earners.

He argued that the Government should focus on reducing its debt, which is expected to hit 80 percent of gross domestic product this year, rather than cutting taxes.

Spindelegger also stepped down as head of the ÖVP, which is the junior partner in a ruling coalition with the Social Democrats (SPÖ), to be replaced by Economy Minister Reinhold Mitterlehner.

Portugal Plans New Tax On Digital Devices

The Portuguese Cabinet approved on August 21, 2014, a plan to levy a tax on the sale of digital storage devices.

The proposed tax, which is intended to compensate copyright holders for earnings lost to digital piracy, will be applied at a rate between

EUR0.05 (USD0.07) and EUR0.25 per gigabyte of storage capacity.

Revenue from the tax is expected to total EUR15m–20m, and this would be passed to copyright organizations in the country, which would in turn distribute it to copyright holders.

Devices that would be affected by the tax include phones, tablets, and set-top boxes. Devices that are used in a professional capacity would be exempted from the tax.

Having been approved by the Cabinet, the proposal will now be discussed by Parliament.

Bulgarian Finance Minister Warns On Budget

Bulgaria's recently appointed Interim Finance Minister, Roumen Porodzanov, has said that a revision of the country's budget is "inevitable" following an underperformance in revenue collection, and that efforts would be made to increase revenue from value-added tax (VAT) and excise duty.

Porodzanov said that in the first seven months of 2014, the country had collected BNG600m (USD405m) less than had been anticipated. He explained that his department is currently analyzing a discrepancy between the quantities of goods on which VAT and excise duties have been paid, and data relating to actual consumption.

The Minister also said that communication between revenue agencies has been poor, but that there was now improved coordination.

Bulgaria currently has a caretaker government led by Georgi Bliznashki, following the resignation of the previous administration in July after months of protests against austerity and other problems. A general election is scheduled for October.

Israeli Central Bank Calls For Fiscal Restraint

Israel's Central Bank has once again issued a fiscal policy warning to the Government, cautioning that the introduction of value-added tax (VAT) breaks without compensatory tax hikes will push the deficit to as high as 4 percent of gross domestic product (GDP), against a target of 2.5 percent.

In a recent statement, the Bank noted that, based on the country's current fiscal plans, tax rates are not to be raised; a zero rate of VAT will be introduced for certain categories of taxpayers on the first purchase of a home, cutting government revenues by as much as ILS3bn (USD838m) in 2015; and government spending will rise by 2.6 percent in real terms.

"Under these conditions, a deficit of 3.5 percent of GDP is expected, which is equal to a structural deficit of about 3 percent of GDP. This is a deficit level that does not allow reducing the debt-to-GDP ratio," the Bank said.

"It is important to note that the budget's current targets were set after the 2012 budgetary framework was breached, when the government committed to a new deficit path, higher than what had been planned previously. According to this path, the deficit target for 2015 is 2.5 percent of GDP, and is set to continue to decline gradually, to 2 percent in 2016 and onward."

"The increase in the structural deficit to about 3 percent of GDP, which is assumed in the base scenario, derives from decisions already reached on the revenues side before the start of the hostilities (cancellation of the increase in income tax for 2014, and the zero VAT plan), as well as from the need for adjustment on the expenditures side."

"An additional deviation, deriving from increasing the expenditure framework resulting from one of the factors above, will lead to a structural deficit of 3.5 percent of GDP (and an actual deficit of about 4 percent). A deficit at this level not only will not allow continued reduction of the debt-to-GDP ratio, but will even increase it and lead in the future to an increase in interest payments, and ultimately, as well, to the need to increase additional taxes in the future."

The latest biannual report from the Central Bank comes shortly after the latest Israel-Gaza crisis and amid the airing of further proposals to expand VAT breaks for Israelis. The Bank has already spoken out against the economic logic behind plans to zero-rate first purchases of houses – benefiting persons who have served in the army primarily – amid a shortage of housing.

Tourism Minister Uzi Landau is now pushing for the Government to offer a VAT exemption for persons living within 40 kilometers of the Gaza border for one year. An exemption is already offered for households in Eilat. Several lawmakers have also called for a VAT exemption for persons living on the Gaza Belt on the construction of safe rooms in their houses, which – if granted – could further deepen Israel's fiscal woes.

The Central Bank's report concludes: "There is room for some deviation from the deficit target set for 2015 – 2.5 percent of GDP – to about 3 percent of GDP, to the extent that it derives from one-time needs to cover the costs of [Israel's recent military operations] and its consequences, and from the effect on revenues of the slowdown that is apparent. [But] increasing the deficit beyond this one-time deviation means an increase in the structural deficit, which will place Israel on a path of increasing debt-to-GDP ratio over the rest of the decade, and will lead to increased interest expenses for the Government."

Greece Pressured To Adopt Simpler VAT Regime

The troika of international lenders has called on the Greek Government to look towards introducing a single, lower rate of value-added tax (VAT) to improve compliance rates and cut the administrative burden.

Greece levies three VAT rates, but very few items are subject to the headline rate of 23 percent.

The 6.5 percent rate is levied on books, newspapers, and periodicals; theater admission; hotel accommodation; and certain pharmaceutical products.

The 13 percent rate is levied on foodstuffs; water; certain pharmaceutical products; medical equipment for disabled persons; the transportation of persons; admission to cultural services, with the exception of theater admission; social services and social housing that are not otherwise exempt; renovation and repair work to residential housing; agricultural inputs; restaurants; admission to sporting events; funeral services; medical and dental care; repairs; and domestic care services.

The International Monetary Fund (IMF) has proposed that Greece could lower the headline rate, nearer to 20 percent, by cutting the number of tax concessions on offer.

The proposals may meet considerable resistance, however, particularly as Greece fought for several months to be able expand the scope of its higher 13 percent reduced rate to restaurants, eateries, cafes, and tavernas from August 1, 2013.

It is proposed that the reform would be undertaken on a revenue-neutral basis, which could, it is estimated, lead to the introduction of a 19 percent headline rate, while eventually supporting fiscal consolidation efforts. Research has shown that countries that levy VAT rates exceeding 20 percent see a stark increase in non-compliance relative to those with sub-20 percent rates, and the IMF hopes that more uniform rates in the short-term coupled with a lower rate will improve compliance and unlock efficiency gains and higher revenues.

The European Commission meanwhile has been increasing its engagement with Greek tax authorities in the area of VAT. The latest report from the Commission's Task Force For Greece said that it is focusing its technical assistance on reviewing VAT legislation and strengthening the fight against VAT fraud. Three additional international resident experts have been recruited to assist the tax administration in this area.

Meanwhile, in a recent report, the OECD has encouraged simplification efforts to enhance compliance rates and ease administration of Greece's VAT regime.

In particular, it called for the introduction of a clear VAT registration threshold set at EUR10,000 (USD13,700). It also recommended that authorities should remove inactive VAT payers from the VAT register to absolve inactive businesses from the requirement to maintain VAT records. This would free up tax officials to enhance oversight of active taxpayers, it said. Last, it called for simplification of the periodic VAT return to reduce the amount of information that is required monthly or quarterly.

The OECD's report estimated that, if introduced in full, administrative burdens could be reduced by about EUR430m each year.

Singapore Finalizes Changes To GST Law Amendments

Singapore's Ministry of Finance has announced the results of its public consultation on the draft Goods and Services Tax (Amendment) Bill 2014, which was held from June 11 to July 1, 2014.

The Bill contains proposed legislation to implement changes arising from the Ministry's periodic review of the goods and services tax (GST) system and administration. The changes are as follows:

- To allow GST-registered persons to fully claim GST on the re-import of goods belonging to their customers. To facilitate outsourcing arrangements, GST-registered persons who send their customers' goods overseas for value-adding activities will be able to fully claim the GST incurred on re-import of such goods;
- To provide for GST-registered non-legal entities (*e.g.*, partnership, society) to claim and account for GST on goods, land, buildings, and intellectual properties (together described as "properties"). If GST-registered non-legal entities hold such properties, which they use for their businesses through bare trustees, they will be allowed to claim GST incurred on acquisitions of such properties and will be required to account for GST on supplies of such properties; and
- To clarify the scope of GST zero-rating in relation to goods for use or installation on ships. This is a technical change to clarify that the GST zero-rating provision applies only to the sale or rental of goods that are used or installed on ships, and not to services such as procurement or logistics services relating to these goods.

The accepted suggestions will be incorporated into the revised legislation.

Zambia To Relax VAT Rule On Exports

After the leak of a confidential letter dated July 15, 2014, Zambia's Finance Minister, Alexander Chikwanda, has now confirmed that he has asked President Michael Sata to approve the relaxation of a value-added tax (VAT) regulation for exporters.

In the letter, he had informed the President that the regulation requiring exporters to obtain an import certificate from the countries receiving their goods was impractical, and he asked the President for authority to instruct the Zambia Revenue Authority, for which the regulation had been introduced to reduce tax avoidance, to require the document only for export verification purposes.

Although his letter used copper mining companies as an example of the rule's impracticability, pointing out that the equivalent of some USD600m in VAT refunds had already been withheld from them due to their inability to produce import certificates as they often transact through third parties, Chikwanda later confirmed that the regulatory relaxation would apply to all exporters.

It is now expected that the mining sector and the Ministry of Finance will take immediate steps to arrange for the backlog of refunds to be repaid over an agreed time schedule.

Shanghai FTZ Issues Further Development Plans

It has been announced by Shanghai's municipal government that, as part of the liberalization of services and trade within China's first pilot free-trade zone (FTZ) in the city, eight more international commodity trading exchanges will be established by 2015, while the policy of allowing for wholly foreign-owned international ship management companies is already bearing fruit.

With the Shanghai FTZ being used to try out reforms ahead of other parts of China, the municipal government has issued a working plan that contains a provision to introduce platforms for the international trading of oil, gas, iron ore, cotton, liquid chemicals, silver, commodities and non-ferrous metals by 2015. It is expected that an international gold exchange will already have commenced operations by later this year.

The plan also contains a further provision, subject to central governmental approval, for the testing of a "parallel import" program for automobiles into the FTZ, where businesses would be allowed to import foreign vehicles from their countries of origin, in addition to those brought into China by chief dealers.

In addition to the easing of restrictions and rules on trade and investment, such plans in the FTZ are able to take advantage of its tax incentives, with, for example, zero customs duties and import taxes applying to goods transferring between the FTZ and overseas destinations.

It has also been disclosed that the first wholly foreign-owned international ship management companies have been attracted to Shanghai. With a tax exemption on business income arising from international shipping, transporting, warehousing and shipping insurance for companies registered in the FTZ port areas, it was noted that three such ship management companies have already been set up in the FTZ, and another six companies have submitted registration applications.

Singapore's High Compliance Level Sustains Tax Collections

In its 2013/14 Annual Report, the Inland Revenue Authority of Singapore (IRAS) disclosed that its efforts to achieve a high level of voluntary compliance continued to pay off, as on-time filing rates improved across all tax types and tax arrears continued to decline.

Dr Tan Kim Siew, the Commissioner of Inland Revenue, confirmed that IRAS is committed to ensuring that Singapore's tax policies and rules are clear and easy to comply with. To this end, he pointed out that "Singapore scored well in the 2014 Deloitte Asia Pacific Tax Complexity Survey, with a high number of respondents indicating that Singapore's tax environment has good or high level of consistency and predictability."

As part of its efforts to achieve the high level of voluntary compliance, IRAS introduced the Simplified Record-Keeping initiative to lower compliance costs for small businesses by eliminating the need for eligible businesses to keep physical invoices and receipts.

In addition, the agency launched a mobile-friendly version of the myTax Portal, to enable users of mobile devices to use selected services without having to download any applications. The myTax website also reminds businesses of non-deductible business expenses during the filing process, thereby minimizing filing errors and saving them time, and the online Wage Credit Scheme calculator was set up to help employers estimate the Wage Credit they will receive.

To provide greater convenience for taxpayers, IRAS expanded the No-Filing Service (NFS) to 1.23m taxpayers, including 15,000 first-time taxpayers, for the 2014 tax filing season. Since its launch in 2007 benefitting 45,000 taxpayers, the NFS has grown significantly over the years to benefit 27 times as many taxpayers this year.

It has also, however, continued to deter non-compliance, and, for example, in fiscal year (FY) 2013/14, uncovered a total of 15,233 non-compliant cases and recovered about SGD387m (USD310m) in taxes and penalties through co-ordinated audit and investigation programs. At 0.77 percent, current year tax arrears were reduced to a record low.

IRAS Chairman Peter Ong looked at how IRAS has concluded additional double taxation agreements (DTAs) to facilitate cross-border trade and investment. Singapore now has 79 comprehensive DTAs, of which 74 have been ratified. IRAS has also concluded 11 Advanced Pricing Arrangements and resolved two cases through Mutual Agreement Procedure (MAP) discussions. These, he said, have provided greater tax certainty and eliminated the prospect of double taxation faced by businesses engaging in cross-border trade.

IRAS collected SGD41.6bn in tax revenue in FY2013/14, up by 0.5 percent from the previous year, and producing a low cost of tax collection at 0.86 cents per dollar of tax received.

Income tax (corporate income tax, individual income tax and withholding tax) revenue made up 52 percent of IRAS' collection in FY2013/14, but, at SGD21.6bn, was 1.6 percent lower than that for FY2012/13. The decrease was due to corporate income tax rebates given for the 2013 and 2014 assessment years (YAs), the one-off individual income tax rebate given in YA2013, and lower collections from withholding tax.

On the other hand, goods and services tax revenue of SGD9.5bn in FY2013/14 was 5.3 percent higher than the previous year, due to private consumption expenditure growth in 2013; while property tax collected was SGD4.2bn, 10.6 percent higher than in FY2012/13 because of higher annual values and an increase in the number of properties.

Compared to FY2012/13, stamp duty collection decreased by SGD0.4bn, or 8.8 percent, to SGD3.9bn in FY2013/14, largely due to a lower volume of property transactions following the last round of property market cooling measures introduced in January 2013; and betting taxes rose to SGD2.4bn, up by 3.2 percent over the previous year.

Seychelles Commits To Share Tax Info With G5

The Seychelles is the latest country to commit to the automatic exchange of tax information as part of a scheme piloted by the Group of Five (G5) nations.

The G5 pilot is aimed at deterring and cracking down on tax evasion. The five countries – the UK, France, Germany, Spain, and Italy – hope that their framework for the automatic exchange of information will be used as a template for the conclusion of a wider multilateral agreement.

In all, 46 countries and jurisdictions have now agreed to implement a new global standard on the exchange of information. The first exchange is scheduled to take place in 2017, with respect to data collected from December 31, 2015. Parties to the new standard will provide signatures at the October OECD Global Forum meeting in Berlin.

The finance ministers of the G5 countries said: "We warmly welcome Seychelles' decision to join the initiative for early adoption of the new global standard on automatic exchange of information. We call on other financial centers to match the commitment made by the Seychelles, and by 45 other countries and jurisdictions, so that we can rapidly stamp out tax evasion on a global basis."

Hong Kong Relaxes Restrictions For REITs

The Securities and Futures Commission (SFC) has announced that Hong Kong's revised Code on Real Estate Investment Trusts (REITs) was gazetted on August 29, 2014, taking immediate effect.

Since the first REIT was listed in 2005, Hong Kong's REIT portfolios have been widened to offer investors a diverse choice, from retail properties to commercial and hotel properties, and to properties in Mainland China.

Further permission has now been introduced for REITs to invest in properties under development or engage in property development activities; and to purchase financial instruments (including listed securities, unlisted debt securities, government and other public securities, and local or overseas property funds), subject to at least 75 percent of the gross asset value (GAV) of a REIT being invested in real estate that generates recurrent rental income at all times.

In addition, restrictions have been introduced to ensure transparency in a REIT's activities. These restrictions include maximum thresholds on investments (such as a limit on property development investments of up to 10 percent of a REIT's GAV), a minimum holding period of two years after completion of the property development, a restriction on investment in vacant land, and new disclosure and reporting requirements.

It was said that, in finalizing the proposed amendments to the REIT Code, the SFC has been mindful of the need to strike a balance between facilitating market development and competitiveness on the one hand, and ensuring the protection of investors' interests on the other.

The SFC said the revised Code will facilitate the long-term growth of Hong Kong's REIT market, and said Hong Kong's regime is broadly in line with regulations in comparable international markets.

The SFC is also thought to be giving consideration to putting forward proposals to alter the tax regime for Hong Kong REITS (H-REITS).

An earlier report from the Financial Services Development Council warned: "From the lack of tax incentives, to investment restrictions and takeover hurdles, H-REITs are facing a much tougher operating environment than regional markets, such as Singapore and Malaysia, which are more pro-active in growing their REIT markets by addressing issuer and sponsor concerns and facilitating market reforms."

Usually, in other jurisdictions, as long as a REIT satisfies the requirement to distribute most of its income to unit-holders, it is not subject to income tax at the trust level. Currently, H-REITs have to pay 16.5 percent corporate tax on their profits, despite the REIT Code requirement to distribute 90 percent of their after-tax income.

In the conclusion of its report, the Council recommended the removal of profits tax on REITs. However, the SFC said in response that, while such removal could be expected to be beneficial to H-REITs, it should be noted that currently – unlike other jurisdictions – no tax is levied at individual unit-holder level on dividends or capital gains in Hong Kong. "Therefore, a removal of profits tax could result in [H-REITs] becoming completely tax-free," the SFC said. "Whether this would resonate well within Hong Kong's overall tax structure is of course a matter of government tax policy," it concluded.

Nevertheless, the SFC confirmed that it received comments regarding the tax treatment of REITs during its consultation on the new code, and the matter of tax is expected to be the next item on the agenda in Hong Kong's efforts to improve its REITs offering.

Swiss Federal Council Rejects 'Basic Income' Proposals

The Swiss Federal Council has rejected proposals for an "unconditional basic income" and warned that taxes would have to be dramatically increased to fund any such measure.

The scheme would oblige the federal Government to introduce an unconditional basic income that would enable all Swiss residents to lead a dignified life. A basic monthly income of CHF2,500 (USD2,728) for adults and CHF625 for minors had been recommended.

The Federal Council says that it would cost CHF208bn (USD227bn) to fund the project. This would necessitate CHF153bn in additional taxes, and CHF55bn would need to be transferred from the existing social security budget.

The Council estimates that taxes on labor would need to equate to CHF128bn of the CHF153bn total. An 8 percent hike in value-added tax would generate in the region of CHF25bn.

It also cautioned that employment would fall, further impacting tax revenues.

BELARUS - ECUADOR

Negotiations

According to preliminary media reports, Belarus and Ecuador held a first round of tax treaty negotiations over three days concluding on August 22, 2014.

CONGO, REPUBLIC OF THE - MAURITIUS

Ratified

According to preliminary media reports, the Republic of Congo completed its domestic ratification procedures on August 7, 2014, in respect of the DTA signed with Mauritius.

MEXICO - VARIOUS

Into Force

According to preliminary media reports, Mexico's TIEAs with Gibraltar and Aruba entered into force on August 27, 2014, and September 1, 2014, respectively.

POLAND - UNITED ARAB EMIRATES

Ratified

The DTA Protocol between Poland and the United Arab Emirates will enter into force on September 6, 2014, according to a Polish Government announcement confirming its ratification.

POLAND - VARIOUS

Ratified

According to preliminary media reports, Poland completed its domestic ratification procedures on August 22, 2014, in respect of TIEAs signed with Bermuda and the Cayman Islands.

SINGAPORE - RWANDA

Signature

A DTA was signed between Singapore and Rwanda on August 26, 2014.

SWITZERLAND - ESTONIA

Signature

Switzerland and Estonia signed a DTA Protocol on August 25, 2014.

VENEZUELA - PALESTINE

Ratified

According to preliminary media reports, Venezuela completed its domestic ratification procedures on August 21, 2014, with respect to the DTA signed with Palestine.

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

THE AMERICAS

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

INTERNATIONAL TAX ISSUES 2014

PLI

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

Key Speakers: Lowell Yoder, Manal Corwin, Nicholas DeNovio among numerous others.

9/10/2014 - 9/10/2014

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2014/_/N-4kZ1z12fif?ID=177614

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

INTRODUCTION TO U.S. INTERNATIONAL TAX

Bloomburg BNA

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

Co-chairs: Bart Bassett (Morgan Lewis LLP, California), E.Daniel Leightman (Law Office of Dan Leightman, Texas)

9/15/2014 - 9/16/2014

http://www.bna.com/intro_houston2014/

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

BASICS OF INTERNATIONAL TAXATION 2014

PLI

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

Chair Persons: Linda E. Carlisle, John L. Harrington, Kristeen R. Witt.

9/22/2014 - 9/23/2014

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2014/_/N-4kZ1z12fhj?ID=177674

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

THE 21ST WORLD OFFSHORE CONVENTION 2014

Offshore Investment

Venue: The New York Athletic Club, 180 Central Park S, New York, NY 10019, USA

Chair: G.Warren Whitaker (Day Pitney LLP, New York).

10/14/2014 - 10/15/2014

http://www.offshoreinvestment.com/media/uploads/The%2021st%20World%20Offshore%20Convention%20New%20York%202014(1).pdf

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

INTRODUCTION TO U.S. INTERNATIONAL TAX

Bloomberg BNA

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

Chair: TBA

10/27/2014 - 10/28/2014

http://www.bna.com/intro_chicago2014/

INTERMEDIATE U.S. INTERNATIONAL TAX UPDATE

Bloomberg BNA

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

Chair Person: TBA

10/29/2014 - 10/31/2014

http://www.bna.com/inter_chicago2014/

8TH TAX PLANNING FOR THE INTERNATIONAL CLIENT

Federated Press

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

Chairs: Grace Chow (Cadesky and Associates LLP), Greg Kanargelidis (Blake, Cassels & Graydon LLP)

11/5/2014 - 11/6/2014

http://www.federatedpress.com/pdf/TPIC1411-E.pdf

INTRODUCTION TO U.S. INTERNATIONAL TAX

Bloomberg BNA

Venue: Hilton Boston Downtown, 89 Broad Street, Boston, MA 02110, USA

Key Speaker: TBA

11/17/2014 - 11/18/2014

http://www.bna.com/intro_boston2014/

PRINCIPLES OF INTERNATIONAL TAX

Bloomberg BNA

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

Key Speaker: TBA

11/17/2014 - 11/19/2014

http://www.bna.com/principles_newyork_2014/

INTERMEDIATE U.S. INTERNATIONAL TAX UPDATE

Bloomberg BNA

Venue: Hilton Boston Downtown, 89 Broad Street, Boston, MA 02110, USA

Key Speakers: TBC

11/19/2014 - 11/21/2014

http://www.bna.com/inter_boston2014/

2014 CORPORATE TAX DEVELOPMENTS – THE YEAR IN REVIEW: CHICAGO

Bloomberg BNA

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

Key Speakers: TBC

11/20/2014 - 11/21/2014

http://www.bna.com/yearreview_chicago2014/

2014 CORPORATE TAX DEVELOPMENTS – THE YEAR IN REVIEW: NEW YORK

Bloomberg BNA

Venue: Baker & McKenzie, 452 5th Ave, New York, NY 10018, USA

Key Speakers: TBC

11/20/2014 - 11/21/2014

http://www.bna.com/yearreview_newyork2014/

ASIA PACIFIC

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

11TH INTERNATIONAL TAX CONFERENCE

ASSOCHAM Events

Venue: Hotel Le Meridien, Windsor Pl, New Delhi, DL 110001, India

Key Speakers: Shri Shaktikanta Das (Ministry of Finance), Shri K. V. Chowdary (Central Board of Direct Taxes), Dr. Rana Kapoor (ASSOCHAM), among numerous others.

10/9/2014 - 10/10/2014

http://www.assocham.org/events/showevent.php?id=1039

68TH CONGRESS OF THE INTERNATIONAL FISCAL ASSOCIATION

IFA

Venue: NCPA Marg, Nariman Point, Mumbai, Maharashtra 400021, India

Co-chairs: T P Ostwal, Pranav Sayta

10/12/2014 - 10/17/2014

http://www.ifa2014mumbai.com/

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

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

THE 6TH ANNUAL PRIVATE WEALTH MIDDLE EAST 2014

Private Wealth Middle East

Venue: Conrad Dubai, PO Box 115143, Sheikh Zayed Road, Dubai, UAE

Key Speakers: Shaykh Haytham Tamim (Sharia Solutions), Reshmi Manekporia (Berwin Leighton Paisner), Yann Mrazek (M/Advocates of Law), Tim Casben (Lawrence Graham), among numerous others.

11/5/2014 - 11/5/2014

http://www.iiribcfinance.com/event/Private-Wealth-Leaders-Middle-East

WESTERN EUROPE

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

STEP ANNUAL TAX CONFERENCE SERIES 2014, BRISTOL

STEP

Venue: Bristol Marriott Hotel Royal, PO Box 2192, Bristol, BS99 7NF, UK

Key Speakers: John Barnett TEP (Burges Salmon LLP), Amanda Hardy (15 Old Square), Paul Howard (Gabelle LLP), Robert Jamieson (Mercer & Hole Accountants), Oliver Marre (15 Old Square), David Rees TEP, Paula Tallon (Gabelle LLP), Chris Whitehouse TEP, John Woolley TEP (Technical Connection)

9/5/2014 - 9/5/2014

http://www.step.org/autumn-tax-series2014

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

7TH YOUNG INTERNATIONAL CORPORATE TAX PRACTITIONERS CONFERENCE

Chartered Institute of Taxation

Venue: The Auditorium, Deloitte, 2 New Street Square, London EC4A 3BZ, UK

Co-Chairs: Sanjay Mehta (Katten Muchin Rosenman), Martin Walker (Deloitte)

9/16/2014 - 9/16/2014

http://www.tax.org.uk/members/events/7th+Young+International+Corporate+Tax+Practitioners+Conference

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

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.ibfd.org/IBFD-Tax-Portal/Events/GREIT-Annual-Congress-International-Tax-Law-and-New-Challenges-Constitutional

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: etc venues - Dexter House, No. 2 Royal Mint Court, Tower Hill, London EC3N 4QN, 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/

STEP ANNUAL TAX CONFERENCE SERIES 2014, MANCHESTER

STEP

Venue: The Midland Hotel, Peter Street, Manchester, M60 2DS, UK

Key Speakers: John Barnett TEP (Burges Salmon LLP), Amanda Hardy (15 Old Square), Paul Howard (Gabelle LLP), Robert Jamieson (Mercer & Hole Accountants), Oliver Marre (15 Old Square), David Rees TEP, Paula Tallon (Gabelle LLP), Chris Whitehouse TEP, John Woolley TEP (Technical Connection).

9/25/2014 - 9/25/2014

http://www.step.org/autumn-tax-series2014

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

GLOBAL TAX FOR SHIPPING FORUM

Informa Maritime Events

Venue: Le Meridien Piccadilly, 21 Piccadilly, London, W1J 0BH, UK

Key Speakers: Holger Schildt (Hapag-Lloyd AG), David Evans (Ernst & Young), Harrie van Duin (KPMG Meijburg), Oyvind Hatlestad (Viking Supply Ships), among numerous others.

10/15/2014 - 10/16/2014

http://www.informamaritimeevents.com/event/Tax-for-Shipping-Seminar

STEP ANNUAL TAX CONFERENCE SERIES 2014, EDINBURGH

STEP

Venue: The Caledonian (A Waldorf Astoria Hotel), Princes Street, Edinburgh, EH1 2AB, UK

Key Speakers: John Barnett TEP (Burges Salmon LLP), Amanda Hardy (15 Old Square), Paul Howard (Gabelle LLP), Robert Jamieson (Mercer & Hole Accountants), Oliver Marre (15 Old Square), David Rees TEP, Paula Tallon (Gabelle LLP), Chris Whitehouse TEP, John Woolley TEP (Technical Connection).

10/16/2014 - 10/16/2014

http://www.step.org/autumn-tax-series2014

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

TAXATION IN THE POST-BEPS ENVIRONMENT 2014

IBC

Venue: Grange Tower Bridge Hotel, 45 Prescot St, London E1 8GP, UK

Key Speakers: Melinda Brown (Transfer Pricing Advisor, OECD), Paul Morton (Head of Group Tax, Reed El Sevier Group), Peter Cussons (Partner, PwC), Matthew Whipp (Director, KPMG), Anne Fairpo (Barrister), among numerous others.

10/21/2014 - 10/21/2014

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

STEP ANNUAL TAX CONFERENCE SERIES 2014, LONDON

STEP

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

Key Speakers: John Barnett TEP (Burges Salmon LLP), Amanda Hardy (15 Old Square), Paul Howard (Gabelle LLP), Robert Jamieson (Mercer & Hole Accountants), Oliver Marre (15 Old Square), David Rees TEP, Paula Tallon (Gabelle LLP), Chris Whitehouse TEP, John Woolley TEP (Technical Connection).

10/24/2014 - 10/24/2014

http://www.step.org/autumn-tax-series2014

TAX PLANNING FOR NON-DOMICILIARIES CONFERENCE

IIR & IBC Financial Events

Venue: TBC, London, UK

Key Speakers: Jonathan Burt (Harcus Sinclair), Richard Frimston (Russell Cooke), John Barnett (Burges Salmon), Michael Sherry (Temple Tax Chambers), among numerous others.

11/25/2014 - 11/25/2014

http://www.iiribcfinance.com/event/Tax-Planning-For-Non-Domiciles

OFFSHORE TAXATION CONFERENCE

IIR & IBC Financial Events

Venue: TBC, London, UK

Key Speakers: Patrick Soares (Field Court Tax Chambers), Emma Chamberlain (Pump Court Tax Chambers), Patrick Way QC (Field Court Tax Chambers), Philip Baker QC (Field Court Tax Chambers).

12/3/2014 - 12/3/2014

http://www.iiribcfinance.com/event/offshore-tax-planning-conference

THE AMERICAS

United States

The US Court of Appeal for the Fifth Circuit heard the appeal of a company against a district court decision that subjected a transfer of royalty interests to tax.

The company gathered royalty interests from businesses it owned and assigned them to an entity it created, with the income then passing through a complicated series of partnerships and trusts, and finally being transferred into life insurance segregated accounts which paid out to the taxpayers that owned the company.

The result of these transactions was that 31 percent of the company's royalty income was deposited into the accounts and escaped tax liability by being withdrawn as tax-free policy loans; the district court ruled that the transactions "do not qualify as tax deductible business expenses or valid transfers of income to third parties."

The Court of Appeal first considered the issue of whether the company retained beneficial ownership of the royalty interests after they were transferred, in which case the company would have remained liable for tax. The district court reasoned that the taxpayers "owned and controlled the assets at issue before and after the transaction," but the company argued that it lost the royalty income it was due because of the transfer to other entities.

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

The Court of Appeal agreed with the district court's interpretation of the facts in that the taxpayers which owned the company also owned the other entities and therefore the assignment of income was invalid. The company then attempted to prove that the district court had erred in reaching this decision, but the Court of Appeal supported the district court's findings and argued that the company remained in control of and continued to benefit from the transferred interests.

With regard to the question of whether the transactions lacked economic substance as concluded by the district court, the Court of Appeal ruled in agreement that "the royalty interest transfer did not effect a change in control, did not ultimately change the flow of economic benefits, and did not cause 'real dollars to meaningfully change hands'."

The company stated that it was wrong for the district court to focus on the entire series of transactions and find that they were made for the sole purpose to avoid tax, but the Court of Appeal dismissed the company's claims on the basis that a court must look at the entire scheme in order to determine whether it has economic substance.

The Court of Appeal rejected the company's appeal and disregarded the transfer of royalty interests for tax purposes due to the fact that it was intended to avoid tax, and because control and ownership of the interests remained with the taxpayers which ran the company.

The judgment was delivered on July 31, 2014.

http://www.ca5.uscourts.gov/opinions/pub/13/13-10799-CV0.pdf

Court of Appeal Fifth Circuit: *Salty Brine I Ltd. et al.* v. *United States* (No. 13-10799)

ASIA PACIFIC

India

The Delhi High Court was asked for a ruling concerning the tax treatment in India of capital gains arising from the sales of shares in an Indian company, Copal, and a US company, Exevo, made by two companies incorporated in Mauritius, the effect of which was the indirect transfer of ownership of an Indian subsidiary. The companies involved in both transactions applied to the Indian authority for a ruling that the capital gains were not subject to tax according to the double tax treaty between India and Mauritius, which the authority granted; however, the Indian Revenue argued for the imposition of withholding tax based on the notion that the sales were connected as part of a single transaction designed to "structurally transfer the entire businesses and interest" between the company groups involved in the sales, and that the capital gains were therefore taxable in India.

The Revenue also stated its belief that the transactions were designed to avoid tax, which the High Court considered to be an important issue. The Revenue suggested a series of transactions on the basis that the method chosen by the companies was a less legitimate option than one that would have been more tax disadvantageous. However, the High Court rejected the Revenue's suggestion because it was not sustainable or similar enough to what the companies had intended, and was therefore not a viable alternative.

The High Court also considered the taxability of the transactions in India, in relation to whether "the sale of shares of an overseas company which derives only a minor part of its value from the assets located in India could be deemed to be situated in India". According to national law, the income to be taxed must have a territorial nexus with

India, and "all income arising from transfer of a capital asset situated in India would be deemed to accrue or arise in India and would thus be exigible to tax". This was core issue in the 2012 Vodafone case, in which the Supreme Court found in Vodafone's favor, following which retroactive legislation was introduced to catch such income arising through the sale of assets in India, even if all parties involved were non-resident. However, further explanation of the retroactive legislative change states that "it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest *derives, directly or indirectly, its value substantially* from the assets located in India …" (emphasis added).

The Delhi High Court went on to consider territorial nexus and the meaning of "substantially". It regarded the word "substantially" as synonymous to the expressions "principally," "mainly," and "majority." The Court referred to the Shome Report into the retroactive legislation, and its interpretation of "substantially". The Report, in the absence of a fixed meaning in the current legislation, turned instead to the Direct Tax Code Bill 2010, in which it is proposed that gains arising from the sale of assets held overseas, but which derive more than 50 percent of their value from assets held in India, are liable to be taxed in India. Consequently, the Shome Report recommended that the 50 percent derived value should be used as a threshold for tax purposes. Such recommendation would also fall within the provisions of double tax treaties based on the OECD and UN models, in terms of apportioning the taxation of capital gains fairly and reasonably between the contracting states.

The High Court therefore held that "gains arising from sale of a share of a company incorporated overseas, which derives less than 50 percent of its value from assets situated in India would certainly not be taxable [under India's tax laws]."

Further consideration was given by the Court to the residence status of the companies involved in the case, and whether the India–Mauritius double tax treaty was applicable. However, the key takeaway here is whether – despite the fact the Shome Report recommendations have not been implemented – the 50 percent threshold will be applied in other court actions in India, particularly in the ongoing disputes between the Indian Revenue and Vodafone, Nokia and other multinational companies.

The judgment was delivered on August 14, 2014.

http://lobis.nic.in/dhc/VIB/judgement/19-08-2014/VIB14082014CW20332013.pdf

High Court: *DIT* v. *Copal Research Mauritius Ltd* (W.P.(C) 2033/2013)

Dateline September 4th, 2014

A bit of a theme this week: how the powerful like to bully the small and the weak. And we start with Spain, which, according to one senior figure in the Spanish Government, is deprived of EUR1bn every year in tax revenue as a result of Gibraltar's low-tax regime. Gibraltar isn't exactly a country. In fact its constitutional status confuses many people. Gibraltar is an Overseas Territory of the United Kingdom, but although Britain is responsible for its defense, foreign affairs and internal security, the Rock is self-governing based on a constitution written in the 1960s. It also has a sort of half-in, half-out relationship with the EU which it entered along with the UK while remaining outside of the common external tariff and EU VAT regimes, something which also probably irritates Spain. Essentially though, Gibraltar is a little piece of Britain welded to the Spanish mainland and has been so since the early 18th century when the Treaty of Utrecht ceded the territory to Britain in perpetuity. Superficially, it is understandable why a relic from the colonial age like this should pique Spanish pride so much, and given that the world has changed considerably in the last 300 years, with Gibraltar's importance as a key military outpost in the British Empire much diminished, I suppose it is not unreasonable for Spain to now ask for it back. However, the way it has asserted its claim has been very unreasonable. Short of actually invading the place, the Spanish Government seems to have done everything in its power to make life uncomfortable for Gibraltarians, like restricting use of Spanish airspace, imposing unnecessarily bureaucratic checks at the border post, levying a border tax (at least, attempting to), and prompting long legal challenges over its tax regime and indeed its right to exist as a separate entity at all. But it is not just the presence of a foreign colony on Spanish soil that so angers Spain. It is the fact that this colony is a tax haven. If you are against tax havens, as most politicians claim to be, including Spanish ones, then you are never going to subscribe to the view that they can actually be a force for good in the world economy. But, just look at the billions of capital poured into London and the wider UK economy through Jersey, Guernsey and the Isle of Man. So instead of spending substantial sums of taxpayers' money trying to usurp Gibraltar and close its finance industry, perhaps Madrid should be looking at this from an entirely different angle. Maybe Gibraltar could be to Spain what Hong Kong is to China, albeit on a smaller scale. One wonders whether the periodic attacks on the Rock are just an attempt by the Spanish Government to deflect attention away from Spain's own problems. But I like to look at it this way: if I were a Brit, would I object so strongly if there was some rocky outcrop, on the Cornish coast say, that was forever Spanish? Actually I think it would be quite interesting. At least there'd be somewhere you could go to get some decent tapas. But then the Spanish don't really have an appetite for fish and chips.

Another country attempting to dictate what its neighbor can and can't do is China (the People's

Republic of). It's good news that the People's Republic and Taiwan have resumed bilateral trade talks, but Beijing is still insisting that it has the right to tell Taiwan (officially known as the Republic of China) whether or not it can negotiate and sign its own trade treaties. The status of Taiwan is another confusing one for outsiders, since both places claim to be the real China. Taiwan is where the former nationalist Chinese leadership fled in the 1940s after the communist revolutionaries took power, and almost 70 years later the authorities there still consider themselves to be China's legitimate Government, although, sensibly perhaps, Taiwan dropped its constitutional claim on mainland China in 1992. China of course (we're now talking about the People's Republic) disputes this, arguing that Taiwan is a part of the PRC as its 23rd province. However, as Taiwan has become a notable trading nation in its own right, the rest of the world has long since forgotten the pretence that China and Taiwan are one and the same country. Still, there have been consequences for those, often small, countries that have chosen to align themselves diplomatically and economically with Taiwan, usually in return for money. This in Beijing's eyes is tantamount to a declaration of war, although retribution tends to come in the form of severed trade ties rather than military action. Nevertheless, it is quite a sad fact that largely as a result of intimidation by China (the People's Republic of) only 21 UN member states and the Vatican maintain formal diplomatic relations with Taiwan. I'll never pretend to understand the bitter enmity that exists between these two peoples as a result of the Chinese revolution. But surely, as the terrible events of that period in history move out of living memory, it's time for hatchets to be buried? Economic ties have improved in recent years and presumably the potential for increased trade is fairly significant if amicable relations become the norm. The ideologues in Beijing won't have it of course. Although China is to all intents and purposes a capitalist country, it likes to maintain the illusion that it is a communist state and therefore it probably suits the Party to keep the pressure on what it considers a nation of traitors, even if for nothing more than propaganda purposes. Indeed, Chinese warplanes (from the People's Republic) continue to buzz Taiwanese airspace as I write, in the hope of provoking some sort of reaction.

Now we move from the bullying of smaller nations by their larger neighbors, to the bullying by nations of their taxpayers. And the UK is coming across as a most unpleasant bully in this respect at the moment. I have condemned David Cameron's Government in this blog in the past for giving HM Revenue & Customs powers to take money from people's banks accounts. If you evade taxes, you deserve everything you get, the compliant taxpayer might say. And this is true. But there must be checks and balances in place, and punishing people before they've even had a chance to defend themselves is no way to go. Now the UK is going even further: it wants to apply the "strict liability" standard to establish whether an individual has evaded tax with an offshore bank account. This means that even if there has been no intent to evade tax, but HMRC finds that taxable income has been under-declared, the accused could face an unlimited fine and prison. It's certainly going to make filling out a tax return a stressful experience for some if this becomes law. Some commentators suggest that this is a stepping stone to making offshore bank accounts illegal, and I have to say that the way things are going this is not a completely outlandish conclusion. Let's hope members of parliament are busily reviewing their own tax records to ensure they aren't embarrassed by this rule. Then again, let's hope not!

Singapore on the other hand takes a completely different approach. True, it doesn't have a huge budget deficit to fill like the UK does. But here's a novel concept: as the Inland Revenue Service's latest report shows, Singapore has managed to achieve astonishing rates of tax compliance by actually helping taxpayers to file on time and pay the right amount of tax. It contrasts sharply with the tax compliance situation in the UK, which is becoming akin to sending someone across a minefield wearing a blindfold. It probably helps also that taxpayers in Singapore, where taxes are relatively low, feel they get much better value for money than their counterparts in the UK, with its creaking infrastructure and a national health service seemingly at breaking point. It's reminiscent though of the good cop/bad cop scenes in the movies. The bad cop might have the fun, but the good cop usually gets the prize in the end.

The Jester