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GLOBAL TAX WEEKLY
a closer look

ISSUE 282 | APRIL 5, 2018

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

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

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a closer look

Global Tax Weekly – A Closer Look

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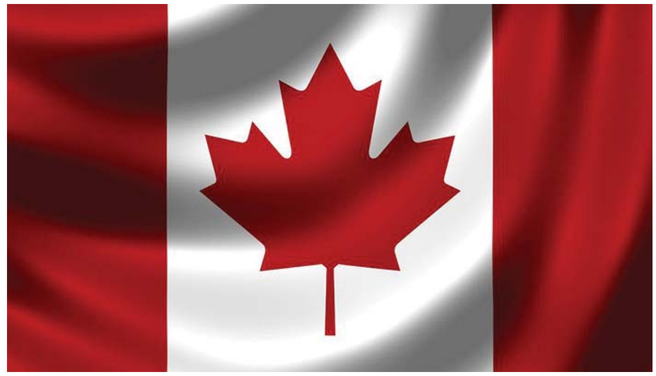
2018 Canadian Federal Budget Increases Trust Compliance And Information Sharing – Big Brother Is Truly Watching

by Ron Choudhury and Jenny Du, Miller Thomson LLP



The 2018 Canadian Federal Budget (the "Budget") was released on February 27, 2018. While many tax practitioners expected that the tax aspects of the Budget would be focused on rate reductions designed to maintain Canada's competitive advantage *vis-à-vis* the United States, Canada has chosen to eschew a race to the bottom in favor of revenue through compliance and enforcement. The Budget contains numerous proposals to enhance compliance activities and further bolster investigative powers to combat evasion and avoidance. To that extent, the perception of "Big Brother watching" is further turned into reality by the Budget proposals.

A number of amendments were proposed in the Budget to enhance the Canada Revenue Agency's (the "CRA") ability to gather and share taxpayer information. In certain circumstances, a "stop the clock" concept is further extended to allow for the CRA to reassess beyond normal reassessment limits. These proposals are summarized below.

Enhanced Trust Reporting Requirements

The Canadian federal government has been considering ways to enhance the transparency of information related to trusts for over a year. Under the current rules, a trust only needs to file an annual return but generally does not need to file the return if it does not earn an income or make any distributions in the year. In addition, there is currently no requirement for the trust to report the identity of all of its beneficiaries. The Budget calls this an information gap that can apparently be exploited by taxpayers engaging in aggressive tax avoidance as well as criminal activities such as tax evasion and money laundering.

The Budget proposes that effective 2021, certain trusts will be required to report on the identity of all trustees, beneficiaries and settlors of the trust, as well as the identity of each person who exerts control over trustee decisions. Aside from certain types of trusts specifically exempted from the new rules (*e.g.*, constructive or resulting trusts, lawyer's trust funds, and trusts governed by registered plans), the proposed requirements will apply to express trusts (*i.e.*, trusts created with the settlor's express intent) resident in Canada as well as non-resident trusts that are currently required to file a tax return in Canada.

Trusts to which the proposed reporting requirements apply will need to file a return each year even when there is no obligation otherwise to file a return under the current rules. A new beneficial ownership schedule will be added to the return and must also be completed if required. To enforce the new reporting requirements, new penalties will be introduced for failing to file the return and/or the beneficial ownership schedule.

Although the proposed reporting requirements for trusts are not scheduled to come into effect until 2021, the overall compliance burden will increase significantly in less than three years. In addition, the beneficial ownership schedule (when created) is expected to require information that trusts (non-resident trusts in particular) may not always be willing to share with the CRA. Moreover, it is unclear how a trust will be expected to report the identity of persons who exert control over trustee decisions (unless such person is a protector).

The new compliance requirements for trusts are expected to be burdensome on trustees and in the context of non-resident trusts, may lead to significant non-compliance due either to lack of awareness or unwillingness to provide the information. It should be noted that the CRA is currently asking the same questions proposed in the Budget in its audits of Canadians with foreign property holdings or beneficial interests in non-resident trusts. The CRA has a standard questionnaire that it issues as part of such audits, which requires complete information on non-resident trusts, trustees, beneficiaries, protectors, investment activities, and assets. To that extent and depending on the reach of the beneficial ownership schedule, the questions currently reserved for audits may very well be extended to all trusts.

Tax Information Sharing

The Budget considers amendments to the *Mutual Legal Assistance in Criminal Matters Act* ("MLACMA"),[1] the *Criminal Code*,[2] the *Income Tax Act* ("ITA"),[3] the *Excise Tax Act*,[4] and the Excise Act, 2001 [5] (the *Excise Tax Act* and the *Excise Act, 2001* are collectively referred to as the "Excise Tax Acts") in order to expand the CRA's ability to share taxpayer information in the following ways:

1. *Sharing tax information relating to serious non-tax offences:* Canada is party to a number of mutual legal assistance agreements which facilitate international cooperation in criminal matters. The MLACMA offers the legal tools for Canada to meet its mutual legal assistance obligations, which include the ability for the Attorney General to obtain court orders to gather and send information in relation to serious criminal non-tax offences. However, tax information currently cannot be shared for non-tax purposes. The Budget proposes to enable the sharing of tax information with foreign authorities in relation to serious non-tax offences such as money laundering, terrorism and organized crime.
2. *Allowing Canadian police officers to obtain taxpayer information under the Excise Tax Act and Excise Act, 2001:* Under subsection 241(9.5) of the ITA, Canadian police officers can access confidential taxpayer information for the investigation or prosecution of serious criminal non-tax offences. No such access is provided for under the Excise Tax Acts. The Budget aims to address this inconsistency and permit the disclosure of confidential taxpayer information relating to GST/HST and excise duties under the Excise Tax Acts to Canadian police officers.
3. *Sharing information relating to tax offences:* Canada is a signatory to the *Convention on Mutual Administrative Assistance in Tax Matters* and has entered into numerous tax treaties and tax information exchange agreements. Pursuant to these agreements, Canada is obligated to share tax-related information to be used in respect of tax-related offences. The Budget proposes to make the information gathering tools under the MLACMA available to enhance Canada's ability to obtain and share criminal tax information under the agreements.

The Government has not indicated what steps it will take to safeguard the privacy of confidential Canadian taxpayer information in conjunction with these proposed measures. The concern remains that once this highly sensitive tax information is placed in the hands of foreign authorities, Canada will lose control over its use, its confidentiality, and the ability to restrict further dissemination of the information.

A myriad of legal concerns are created by the disclosure proposals above, most of which transcend tax laws. The Canadian Civil Liberties Association has expressed concern over the scope of these rules and noted that Canada can be unwittingly "participating in a star chamber investigation and prosecution of somebody in another jurisdiction".[6] From a tax perspective however, individuals, corporations and other non-corporate entities must be aware that Canada now proposes to enhance information sharing across borders and therefore, evidence of tax avoidance or evasion obtained by Canada can be used against them in other countries. Notwithstanding that the scope of these proposals creates numerous concerns centered around privacy, rule of law, and social justice, there is no doubt that such information sharing and coordination will help in combating tax evasion and avoidance.

Extended Reassessment Periods For The CRA

Generally, the CRA may only reassess a taxpayer within three or four years of the CRA's initial assessment of a taxation year (referred to in the ITA as the "normal reassessment period"). However, there are exceptions for certain situations where the reassessment period may be extended. The Budget proposes to add two more "stop the clock" exceptions to the rules:

1. *Extended reassessment periods for contested compliance orders or requirements for information generally.* The CRA has broad information gathering powers in the administration and enforcement of the ITA. Currently, if a taxpayer contests a CRA-issued requirement for foreign-based information in court, the assessment "clock" is temporarily stopped for the reassessment period until final determination of the matter and any appeals. Essentially, the reassessment period is extended by the amount of time during which the requirement is contested.

   The Budget implements a similar "stop the clock" rule when taxpayers contest compliances orders or requirements for information in general (regardless of whether foreign-based information is sought).

2. *Additional extension for reassessment periods relating to transactions with a non-arm's length non-resident person.* An exception to the normal reassessment limitation period is provided for when a taxpayer incurs a loss in a taxation year and carries the loss back to a prior year. In such cases, the reassessment period for that prior year is extended by three years.

When reassessments are made as a consequence of a transaction involving a taxpayer and a non-arm's length non-resident person, the reassessment period is also extended by three years. However, this is not taken into account by the loss carry-back assessment period under the current rules. Thus, in situations where the reassessment reduces the amount of loss claimed in a prior year (which could go back six or seven years), the CRA may be statute-barred from reassessing the year that the loss was carried back to. The Budget addresses this issue by proposing an amendment which will provide a further three year extension where:

(a) A reassessment of a taxation year is made as a consequence of a transaction involving a taxpayer and a non-arm's length non-resident person;
(b) The reassessment reduces the taxpayer's loss for the taxation year that can be carried back; and
(c) All or a portion of the loss had been carried back to a prior taxation year.

As noted earlier, the CRA has broad information gathering and investigative powers in the ITA. Such powers, although important in ensuring compliance, have been known to be misused by the CRA. While the extension of the "stop the clock" rules to contests for all information (as opposed to foreign-based information or documents) ensure fairness across the various rules, counter-balancing rules to prevent the CRA from misusing these powers may have been helpful.

Conclusion

The Budget, although not solely focused on compliance and investigative issues, contains a number of rules and proposals aimed at compliance and investigation. Some (like the sharing of information proposals) are controversial; others (like the trust compliance proposals) are onerous but desired. The recent spate of compliance and investigative powers are responses to the negative publicity arising from leaks of tax information held by advisors in low-tax jurisdictions as well as investigative pieces in the media. Many of the changes are welcome and required.

However, Canada risks compromising principles and policies based on the rule of law through over-zealous policing by the CRA (which has received its recent share of negative publicity in recent times) or if information sharing is not counterbalanced by procedures that safeguard the misuse of that information.

Endnotes

1 RSC 1985, c 30 (4th Supp).

2 RSC 1985, c C-46.

3 RSC 1985, c 1 (5th Supp).

4 RSC 1985, c E-15.

5 SC 2002, c 22.

6 "Canadians' confidential tax info to be shared with police in other countries", March 1, 2018, www.cbc.ca

Summary Of The BEPS Multilateral Convention

by Stuart Gray, Senior Editor, Global Tax Weekly

With Slovenia becoming the fifth jurisdiction to deposit its instrument of ratification, the Multilateral Convention to Implement Tax Treaty-Related Measures to Counter Base Erosion and Profit Shifting[1] will enter into force on July 1, 2018 – and it promises to change the tax treaty landscape. Some of its main provisions are summarized here.

Introduction

The Multilateral Convention (generally referred to as the Multilateral Instrument, and hereinafter referred to as the Instrument or MLI) is one the outcomes of Action 15 of the OECD/G20 BEPS project.[2] It aims to tackle tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low- or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid.

The purpose of the MLI is to enable countries to amend their tax treaties without going to the trouble of renegotiating potentially around 3,000 bilateral agreements on a piecemeal basis – a process that would surely take several years – to incorporate elements of the OECD's BEPS recommendations. However, the Instrument itself is far from simple, and taxpayers with cross-border tax affairs will need to be alert to each country's approach to implementing it.

The Action 15 Report, "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties," concluded that a multilateral instrument, providing an innovative approach to enable countries to swiftly modify their bilateral tax treaties to implement measures developed in the course of the work on BEPS, is desirable and feasible, and that negotiations for such an instrument should be convened quickly. The Action 15 Report was developed with the assistance of a group of experts in public international law and international tax law.

Background to the Convention

The Convention was developed from negotiations involving more than 100 jurisdictions including OECD member countries, G20 countries, and other developed and developing countries, under a mandate delivered by G20 Finance Ministers and Central Bank Governors at their February 2015 meeting.

The negotiations were concluded in November 2016, and in June 2017, 68 jurisdictions jointly signed the Convention at a ceremony held in Paris. On March 22, 2018, Slovenia followed Austria, the Isle of Man, Jersey, and Poland by depositing its instrument of ratification with the OECD. The entry into force of the Convention on July 1, 2018, will bring it into legal existence in these five jurisdictions, plus the United Arab Emirates, which ratified the deal subsequently, and any other that ratifies the pact. As of March 22, 2018, 78 jurisdictions had signed the MLI, which remains open for signature.

Summary of the MLI

The Instrument will transpose BEPS recommendations into over 2,000 tax treaties worldwide. It will implement minimum standards to counter treaty abuse (BEPS Action 6), prevent the artificial avoidance of permanent establishment status (BEPS Action 7), neutralize the effects of hybrid mismatch arrangements (BEPS Action 2), and improve dispute resolution mechanisms (BEPS Action 14). The MLI is designed to provide flexibility to accommodate specific tax treaty policies and allow governments to strengthen their tax treaties with other tax treaty measures developed in the BEPS project. This article focuses on measures to prevent tax treaty abuse and encourage dispute resolution.

Covered Tax Agreements

The MLI modifies tax treaties that are "covered tax agreements." This is a tax treaty that is in force between the parties to the MLI and for which both parties have made a notification that they wish to modify the agreement using the Instrument. Jurisdictions cannot implement the MLI on a treaty-by-treaty basis. Also, the Instrument is not intended to apply to agreements applying solely to shipping and air transport, or to social security.

However, the MLI does not amend treaties like a conventional amending protocol. Instead, the Instrument sits alongside existing tax treaties. To provide clarity to taxpayers, many governments may produce a consolidated text as guidance, although given that signatories' positions could change considerably prior to ratification, most jurisdictions are not expected to prepare consolidated versions immediately, and doing so is not binding on them.

Although it is intended that the MLI would apply to the maximum possible number of existing agreements, there may be circumstances in which a party to a tax treaty prefers not to include a specific agreement in the scope of application of the Instrument. For example, a party may wish not to include an agreement in the scope of application of the MLI because the agreement has been recently renegotiated to implement the outcomes of the BEPS project, or is currently under renegotiation with the intent of implementing those outcomes in the renegotiated agreement.

Flexibility

Jurisdictions are provided with several options when deciding how to implement the MLI. They can choose to apply only certain provisions, such as the text on mandatory binding arbitration (see below); and in certain cases, they may be able to reserve the right not to apply MLI provisions (these opt-outs are known as "reservations"). Reservations may apply to all or some of a jurisdiction's covered tax agreements, but can be withdrawn at a later date, even after ratification. However, signatories cannot opt out of provisions reflecting any of the BEPS minimum standards, although certain elements of the minimum standards can be met in different ways.

Each jurisdiction must set out its MLI position before signing the Instrument. This explains the jurisdiction's choices with respect to different options provided for in the MLI, and indicates the tax treaties that it intends to cover and the reservations it has made.

Treaty Abuse

The MLI contains six articles to address treaty abuse. Two of these provisions reflect the Action 6 minimum standard on treaty abuse and the remainder are anti-abuse rules that target specific anti-avoidance strategies.

The Principle Purposes Test (PPT) is an anti-abuse rule based on the principle purposes of transactions or arrangements. This rule provides a general way to address cases of treaty abuse, including a treaty shopping situation not covered by more specific anti-abuse rules. Once introduced to a treaty through the MLI or bilateral negotiations, the PPT would apply to a treaty in its entirety and would address all cases of treaty abuse.

Under the PPT, if one of the principle purposes of the arrangement was to obtain treaty benefits, such as reduced withholding tax, these benefits would be denied, unless it is established that granting these benefits would be in accordance with the object and purpose of the provisions of the treaty. The PPT is an objective test based on an assessment of the intentions behind a transaction or arrangement. In that sense, the PPT is similar to anti-abuse rules or economic doctrines applied at jurisdictional level.

The PPT rules establish that a tax authority may deny the benefits of a tax treaty where it is reasonable to conclude that one of the principle purposes of an arrangement was to obtain a tax benefit.

Although treaty shopping schemes typically involve the use of layered structures to take advantage of the benefits of multiple tax treaties, the OECD claims that the PPT will effectively block such schemes.

In addition to the PPT, the Action 6 report provides two versions (a simplified and a detailed version) of a specific anti-abuse rule, the limitation on benefits (LOB) provision, which limits the availability of treaty benefits to persons that meet certain conditions.

Paragraph 22 of the Action 6 report states that countries, at a minimum, should implement:

- A PPT only;
- A PPT and either a simplified or detailed LOB provision; or
- A detailed LOB provision, supplemented by a mechanism that would deal with conduit arrangements not already dealt with in tax treaties.

Because a PPT is the only approach that can satisfy the minimum standard on its own, it is presented in paragraph 1 as the default option. Parties are then permitted pursuant to paragraph 6 to supplement the PPT by choosing to apply a simplified LOB provision. Given that the detailed LOB provision requires substantial bilateral customization, which would be challenging in the context of a multilateral instrument, the MLI does not include a detailed LOB provision. Instead, parties that prefer to address treaty abuse by adopting a detailed LOB provision are permitted to opt out of the PPT and agree instead to endeavor to reach a bilateral agreement that satisfies the minimum standard. Parties preferring a detailed LOB provision may accept the PPT an interim measure.

Avoidance Of Permanent Establishment Status

Changes to the permanent establishment (PE) definition developed through the work on BEPS Action 7 and included in the MLI address techniques used to inappropriately avoid the existence of a PE. However, the MLI does not change the rules on the attribution of profits to PEs under Action 7; rather, it modifies the PE definition in covered tax arrangements.

Part IV of the MLI contains four Articles arising from the work on Action 7. These Articles seek to amend existing tax treaties to counter the artificial avoidance of PE status through:

- Commissionaire arrangements and similar strategies (Article 12);
- The specific activity exemptions (Article 13); and
- The splitting-up of contracts (Article 14).

Article 15 of the Instrument provides the definition of the term "closely related to an enterprise," which is used in Articles 12–14.

Improving Dispute Resolution

Mutual Agreement Procedure (MAP) arbitration provisions are included in Part IV of the MLI, and it is expected that these will apply in more than 150 existing treaties. MAP rules are intended to provide certainty to taxpayers that double tax disputes will be resolved in a timely manner and that double taxation will be eliminated.

Treaty partners must expressly choose to adopt Part IV in order for MLI arbitration provisions to apply. Therefore, mandatory binding arbitration will only be available to resolve disputes when both jurisdictions have chosen to include this provision in a covered tax agreement.

Where Part IV applies to a covered tax agreement, Article 19 of the MLI provides that a taxpayer will be able to request arbitration with respect to an unresolved MAP case when the competent authorities are unable to reach a resolution within a period of two years. The competent authorities may, however, agree to a different time period with respect to a particular case, provided that they notify the person who presented the case of such agreement prior to the expiration of the two-year period. This different time period with respect to a particular case could be longer or shorter than the two-year period depending on the nature and complexity of the particular case, among other factors. The MLI permits a party to reserve the right to substitute a three-year period for the two-year period for the purposes of applying Article 19 to its Covered Tax Agreements.

As noted in the BEPS Action 14 report, the mutual agreement procedure is available to taxpayers irrespective of the judicial and administrative remedies provided by domestic law. Most tax administrations, however, will require that one process take place before the other, to ensure that a taxpayer's case will not proceed through both the MAP and a domestic court or administrative proceeding at the same time. To accommodate this approach, the instrument provides that the time period will stop running where a competent authority has suspended the MAP because a case with respect to one or more of the same issues is pending before a court or administrative tribunal. The time period will start running again when a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn.

The MLI provides that the arbitration decision is final, meaning that the arbitration decision cannot be changed, either by the competent authorities or by the arbitration panel, unless the provisions of Article 24 apply to permit agreement on a different resolution.

The MLI provides that the arbitration decision shall be binding on both contracting jurisdictions except in three situations:

- If a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision;
- If the arbitration decision is held to be invalid by a final decision of the courts of one of the contracting jurisdictions; and
- If a person directly affected by the case pursues litigation in any court or administrative tribunal on the issues which were resolved in the mutual agreement implementing the arbitration decision.

The Instrument permits jurisdictions which choose to apply Part VI to formulate one or more reservations with respect to the scope of cases that shall be eligible for arbitration.

Tracking And Guidance

Clearly, the MLI still entails a vast number of changes to the world's tax treaties. As the depository of the MLI, the OECD is tracking ratification procedures, and intends to publicize all relevant information on the effects of Instrument's provisions. The OECD Secretariat is also developing toolkits and guidance on the MLI. These currently include a matrix of options and reservations, a legal note on the functioning of the Instrument, an overview of the MLI's applications, and a flowchart on the application of MLI provisions.

Upon signature of the MLI, jurisdictions are required to submit their positions to the depository. Documents explaining a jurisdiction's positions are 10 to 60 pages long, depending on the number of treaties it wishes to modify and its policy choices. The positions are, however, based on a template developed by the OECD to ensure some consistency in the presentation of jurisdictions' positions.

Conclusion

The MLI is a cornerstone of the international community's efforts to reduce cross-border tax avoidance. And it is a much preferable solution than the prospect of jurisdictions renegotiating their tax treaty networks individually, which would not only take several years (if indeed such a task would ever be completed), but would also substantially heighten uncertainty for businesses and investors.

Nevertheless, the flexibility accorded to jurisdictions in deciding how best to implement provisions of the MLI into their treaty networks, and the fact that many jurisdictions' MLI positions could alter, certainly does not help taxpayers attempting to come to terms with what are still a large number of changes and plan accordingly.

Endnotes

1 http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

2 https://read.oecd-ilibrary.org/taxation/developing-a-multilateral-instrument-to-modify-bilateral-tax-treaties-action-15-2015-final-report_9789264241688-en#page1

The New Cyprus–United Kingdom Double Tax Agreement: An Article By Article Analysis

by Alexandra Spyrou and Philippos Aristotelous, Elias Neocleous & Co. LLC

On March 22, 2018, Cyprus and the United Kingdom signed a new double taxation agreement (DTA). Once it has been ratified by both parties it will replace the current agreement, which dates back to 1974. Most of the main provisions of the new agreement are substantially the same as those of the agreement it will replace, but the new agreement, which is based on the 2014 OECD Model Convention, introduces modern-day standards on exchange of tax information and base erosion and profit shifting.

The key features of the new DTA and its protocol are summarized below.

Article 1 – Persons Covered

Article 1 includes a new paragraph dealing with fiscally transparent entities. It provides that income or gains derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either country is to be treated as income or gains of a resident of a country on the same terms as other residents of the country concerned.

Article 2 – Taxes Covered

The agreement follows the wording of the OECD Model Convention. The list of taxes covered in the two countries has been updated to include taxes introduced since it was concluded, but it is exactly the same as the 1974 agreement in effect. In the UK, the taxes covered are income tax, corporation tax, and capital gains tax; in Cyprus, they are income tax, corporate income tax, special contribution for defense, and capital gains tax.

Article 3 – Definitions

The definitions of Cyprus and the UK have been expanded to include their offshore waters, in line with current practice, and the wording has been aligned with the OECD Model Convention.

Article 4 – Residence

The definition of resident has been extended beyond the definition in the OECD Model to include legal persons organized under the laws of a contracting state that are not liable to tax or are generally exempt from tax in that state and are established either for a religious, charitable, educational, scientific or other similar purpose, or to provide pensions or other similar benefits to employees. The inclusion of this provision, which is common to many of the UK's DTAs, is intended to clarify the generally accepted practice of treating an entity that would be liable for tax as a resident under the internal law of a country except for a specific exemption from tax (either complete or partial) as a resident of that state.

The "tie-break" provisions for determining residence for individuals who are resident in both countries are the same as in the OECD Model Convention, namely permanent home and center of vital interests, country of habitual residence, and nationality, in descending order. If none of these criteria is decisive, residence is to be settled by mutual agreement between the two countries' tax authorities.

For legal persons resident in both countries, the competent authorities of the two countries will determine residence by mutual agreement, having regard to the entity's place of effective management, the place where it is incorporated or otherwise constituted, and any other relevant factors. If the authorities cannot agree, the entity will not be considered a resident of either for the purposes of claiming any benefits provided by the agreement, except those provided by Articles 22 (elimination of double taxation), 24 (non-discrimination), and 25 (mutual agreement procedure).

The protocol to the agreement sets out the factors to be taken into account in determining the residence of legal persons as follows:

1. Where the senior management is carried on;
2. Where the meetings of the board of directors or equivalent body are held;
3. Where the headquarters are located;
4. The extent and nature of the entity's economic links with each country; and
5. Whether determining that the entity is a resident of one country but not of the other would entail the risk of an improper use of the agreement or inappropriate application of the domestic law of either country.

Although this list of factors is not exhaustive, the first four factors will generally be decisive unless the final factor applies. The determination of residence is to be made on a case-by-case basis. As circumstances may change over time, the competent authorities may revisit agreements, particularly where there are significant changes in the relevant facts. Where a company was resident in both the UK and Cyprus under the domestic law of those countries before the new agreement enters into force and its residence was determined by Article 4(3) of the 1974 agreement (which uses the criterion of place of effective management), the existing determination will not be revised as long as all the material facts remain the same. In the event of a material change in circumstances and a consequent revision of an entity's residence status after the new agreement enters into force, the new determination will not be retrospective, and will apply only to future income or gains.

Article 5 – Permanent Establishment

Article 5 of the DTA, which defines a permanent establishment, is identical to the corresponding article of the OECD Model Convention. The effect of the article is the same as under the 1974 agreement.

A building site or construction or installation project will constitute a permanent establishment if it lasts more than 12 months. If an enterprise has a representative in the territory of a country who 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 it. An independent broker or agent who represents the enterprise in the ordinary course of business will not fall within the scope of this provision.

Care needs to be taken regarding the issuing of general powers of attorney so as not to risk inadvertently creating a permanent establishment, with potentially unfavorable consequences.

Article 6 – Income From Immovable Property

Article 6, which deals with income from immovable property, reproduces the corresponding article of the OECD Model Convention verbatim, allowing for income derived by a resident of one of the parties derived from immovable property situated in the territory of the other to be taxed in the state in which the property is located. The effect of the article is the same as under the 1974 agreement.

Article 7 – Business Profits

The new agreement includes a word-for-word reproduction of the corresponding article of the OECD Model Convention, with profits (apart from profits of a permanent establishment in the other country) being taxable only in the country in which the enterprise is resident. As with the preceding articles, the effect of the article is the same as under the 1974 agreement.

Article 8 – Shipping And Aviation

This is a slight rewording of Article 10 of the 1974 agreement, but its effect is exactly the same, namely that profits from the operation of ships or aircraft in international traffic, including profits from participation in a pool, a joint business or an international operating agency, are taxable only in the contracting state in which the enterprise concerned is resident.

Article 9 – Associated Enterprises

The article dealing with associated enterprises is a word-for-word reproduction of the corresponding article of the OECD Model, providing for the adjustment of profits from transactions between associated enterprises carried out other than on arm's length terms. The effect of the article is the same as under the 1974 agreement.

Article 10 – Dividends

The article has been considerably shortened and simplified, and aligned with that of the OECD Model Convention.

If the beneficial owner of dividends paid by a company which is a resident of one country is a resident of the other country, the dividends are exempt from any withholding tax, unless the dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax, in which case withholding tax is limited to 15 percent of the gross dividends. However, if the beneficial owner of the dividends is a pension scheme established in the other country, no withholding tax is payable. These provisions are relevant only to dividends paid from the UK, since Cyprus does not impose withholding taxes on dividends.

This exemption does not apply if the dividends derive from a permanent establishment in the country from which the dividends are paid, through which the beneficial owner of the income (who is also a resident in one of the contracting states) carries on business.

Article 11 – Interest

The wording of the article on interest has been aligned with the OECD Model Convention, but the effects of the article are unchanged.

Interest arising in one contracting state and paid to a resident of the other who is its beneficial owner is exempt from withholding tax. This exemption is limited to interest calculated on an arm's length basis. It does not apply if the interest derives from a permanent establishment in the country from which the interest is paid, through which the beneficial owner of the interest (who is also a resident in one of the contracting states) carries on business.

Article 12 – Royalties

The article has been considerably shortened and simplified, and aligned with that of the OECD Model Convention. The withholding tax of up to 5 percent on cinema films and video media for television provided for in the 1974 agreement has been removed.

Under the new agreement, if the beneficial owner of royalties paid by a resident of one country is a resident of the other country, the royalties are exempt from withholding tax. This exemption is limited to royalties calculated on an arm's length basis. It does not apply if the royalties derive from a permanent establishment in the country from which the interest is paid, through which the beneficial owner of the interest (who is also a resident in one of the contracting states) carries on business.

Article 13 – Capital Gains

The 1974 agreement does not include any provisions regarding taxation of capital gains. Under the new agreement, gains derived by a resident of one country from the alienation of immovable property (or of movable property associated with a permanent establishment) situated in the other, or from the alienation of unlisted shares deriving more than 50 percent of their value directly or indirectly from immovable property situated in the other country, may be taxed in the country in which the property is situated. Gains derived from the alienation of all other property (including ships or aircraft operated in international traffic) are taxable only in the country of which the alienator is a resident.

Articles 14–19 – Personal Remuneration

Articles 14–16 and 19, which respectively deal with income from employment, directors' fees, entertainers and sportspersons, and students, replicate the corresponding articles of the OECD Model Convention and do not alter the existing arrangements.

Article 17, which deals with pensions, replicates the basic principle from the OECD Model Convention that in general pensions are taxable only by the country in which the recipient is resident. This is no different from the current provision. In addition, the article introduces new provisions regarding tax deductibility of pension contributions. Contributions made by or on behalf of an individual who is employed or self-employed in one country ("the host state") to a pension scheme that is recognized for tax purposes in the other country ("the home state") are treated as if they were made to a recognized pension scheme in the host state, both for the purposes of determining the individual's tax liability in the host state and for determining the taxable profits of the employer, if any, in the host state.

There is also a substantive change to the provisions for taxation of pensions paid in respect of government service (*e.g.*, pensions paid to retired civil servants or military personnel). Under the 1974 agreement, all pensions, including those payable in respect of government service, are taxed only in the country in which the recipient is resident. Under the new agreement, pensions payable in respect of national or local government service will be taxable only in the country from which they are paid, unless the recipient is both a national and a resident of the other country, in which case the pension is taxable only in the country in which the recipient is resident. This aligns the pension provisions with those in the UK's other DTAs.

Article 20 – Offshore Activities

The new agreement includes comprehensive provisions regulating the taxation of offshore hydrocarbon exploration and exploitation activities, intended to ensure that each state's taxation rights in respect of offshore activities are preserved in circumstances where they might otherwise be limited by other provisions of the agreement, such as those dealing with permanent establishment and business profits. Special rules are required because of the short duration of some of these activities.

A resident of one country undertaking activities offshore in the other country for more than 30 days in any 12-month period in connection with the exploration or exploitation of the seabed or subsoil or their natural resources is deemed to be carrying on business in that other country through a permanent establishment.

Profits from offshore supply and transport operations in connection with the exploration or exploitation of the seabed or subsoil or their natural resources of a country are taxable only in that country. The article also includes rules for determining when the 30-day threshold is exceeded in respect of offshore activities undertaken by associated enterprises.

Salaries, wages and the like earned by a resident of one country from employment in the offshore zone of the other country are taxable in the country in which the activities are carried out. However, the remuneration is taxable only in the country in which the individual is resident if all three of the following conditions are satisfied:

- The employer is not resident in the country in which the activities take place;
- The remuneration is not borne by a permanent establishment there; and
- The recipient's presence there does not exceed 30 days in aggregate in any 12-month period beginning or ending in the tax year concerned.

Salaries, wages and similar remuneration derived from employment aboard ships or aircraft engaged in offshore supply and similar activities are taxable in the country in which the individual is resident.

Gains derived by a resident of one country from the alienation of exploration or exploitation rights, or of property situated in the other country and used in connection with the exploration or exploitation of the seabed or subsoil or their natural resources situated in the second country, or shares deriving more than half their value directly or indirectly from such rights or such property, may be taxed in the second country.

Article 21 – Other Income

In addition to setting out the general principle contained in the OECD Model Convention that other income not dealt with elsewhere in the agreement that is beneficially owned by a resident of a contracting state should be taxed only in the state in which the recipient is resident, the article also includes provisions attributing trust income and tax paid on it to the beneficiaries and, in the case of transactions between connected persons, limiting the benefit of the article to income calculated on an arm's length basis.

Article 22 – Elimination Of Double Taxation

In the UK, Cyprus tax payable, whether directly or by deduction, on profits, income or chargeable gains from sources within Cyprus will be credited against any UK tax computed by reference to the same amounts. Profits of permanent establishments in Cyprus of UK-resident companies and dividends paid by Cyprus-resident companies to UK-resident companies are exempt from UK tax, subject to satisfying the conditions for exemption under UK law. In the case of a non-exempt dividend paid to a UK-resident company which controls 10 percent or more of the voting power of the company paying the dividend, relief for Cyprus tax will be given under the credit method, taking account of the Cyprus tax payable by the company on the profits out of which the dividend is paid.

In Cyprus, credit will be given for UK tax payable, up to the amount of the Cyprus tax on the income concerned.

Article 23 – Entitlement To Benefits

Article 23 is a principal purpose test anti-abuse rule identical to the one set out in paragraphs 1 and 4 of Article 7 of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Articles 24–28

Articles 24–28 replicate the provisions of the corresponding articles of the OECD Model Convention as regards non-discrimination, the mutual agreement procedure, exchange of information, assistance in the collection of taxes, and members of diplomatic missions and consular posts.

Article 29 – Entry Into Force

The new agreement will enter into force once both countries have completed their respective domestic ratification procedures. It will take effect in Cyprus from the beginning of the following calendar year. In the UK, it will take effect from the same date in respect of taxes withheld at source. In respect of corporation tax, it will take effect from April 1 following its entry into force; in respect of income tax and capital gains tax, it will take effect from April 6 following its entry into force.

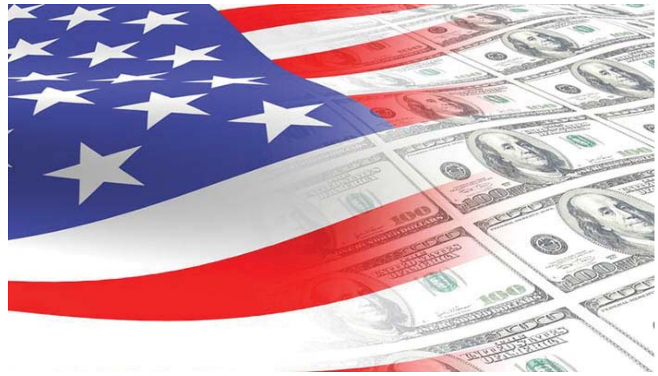
Article 30 – Termination

The DTA will remain in force until terminated. Either country may terminate it by giving written notice of termination through diplomatic channels at least six months before the end of any calendar year beginning no earlier than five years after the agreement entered into force. The DTA will cease to have effect in Cyprus from the beginning of the following calendar year. In the UK, it will cease to have effect six months after the date notice of termination is given for taxes withheld at source, from April 1 following the date notice of termination is given for corporation tax, and from 6 April following the date notice of termination is given for income tax and capital gains tax.

Conclusion

The current agreement between Cyprus and the UK is one of Cyprus's oldest agreements that is still in force. Although the changes introduced in the new agreement will have little direct effect on the tax liability of most taxpayers when it enters into effect, their importance should not be underestimated. The modernization of the provisions, particularly those relating to permanent establishments, the emphasis on beneficial ownership and arm's length pricing, and the introduction of up-to-date information exchange and anti-abuse provisions, align the agreement with present-day best practice, ensuring that it provides clarity and certainty.

A GILTI Trap Waiting To Spring



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Introduction

We are several months into the new tax regime, and we in the tax community are still wrapping our heads around the complex and far-reaching new provisions. The Republicans' goal of a simplified, territorial system was clearly lost on the drafters, as we now live under an even more complicated set of rules that may be more akin to a pure worldwide tax system, largely thanks to one provision: Global Intangible Low-Taxed Income, or GILTI.

US taxpayers are now subject to current tax on their share of their foreign subsidiaries' GILTI. GILTI includes any income over and above a 10 percent return on the tax basis of tangible assets, subject to certain exceptions (earnings generating other forms of Subpart F, effectively connected income, *etc.*). Corporate shareholders of foreign corporations generating GILTI are generally entitled to a 50 percent[1] deduction against such income, lowering the effective rate of tax from 21 percent to 10.5 percent. Further, those shareholders are able to recognize a foreign tax credit for 80 percent of local taxes paid on GILTI income (subject to the foreign tax credit limitation). Therefore, so long as the foreign structure's average effective tax rate is 13.125 percent[2] or more, the tax associated with GILTI should be fully offset by foreign tax credits. Or so that was the idea. The problem is that most companies will not be able to fully offset the tax, and many will have significant exposures, primarily due to the legacy foreign tax credit limitation rules. In this article, we discuss how the expense allocation rules within the foreign tax credit limitations can result in GILTI exposure to many unsuspecting companies.

Revisiting The Foreign Tax Credit Limitation

In enacting GILTI, Congress carved out a new separate foreign tax credit limitation category, or Section 904 basket, for GILTI. Like any Section 904 basket, certain deductions must be allocated and apportioned against GILTI to arrive at a net foreign source income figure in the separate GILTI basket. Consider the Section 904 limitation calculation:

> (*Net Separate Category Foreign Source Income / Worldwide Taxable Income*) × Tax on Worldwide Income

GILTI And 861 Allocations

As mentioned above, GILTI operates such that a full foreign tax credit offset should be available to offset the tax on GILTI, so long as the foreign rate associated with such income exceeds 13.125 percent (the "low-taxed" portion of its name). Consider an example of a high-taxed foreign subsidiary of a US corporation with USD75 of GILTI earnings and USD25 of related taxes, equating to a 25 percent foreign tax rate. This taxpayer would recognize USD75 of GILTI income and USD25 of Section 78 gross-up, then would be entitled to a 50 percent deduction, resulting in USD50 of US income. The tax associated with this income (at 21 percent) is USD10.50. However, the taxpayer generated foreign tax credits of USD25, subject to an 80 percent limitation, or USD20 – more than sufficient to wipe out the USD10.50 US tax. In this simple example, all has operated as intended.

Suppose, however, that the taxpayer had interest expense and USD10 of that expense must be allocated against GILTI basket income. The residual foreign source income in the GILTI basket would, therefore, be USD40, resulting in a foreign tax credit limitation of USD8.40 (USD40 multiplied by 21 percent). Once again, the taxpayer has generated USD20 of creditable foreign taxes but is only allowed to utilize USD8.40 of those credits against the USD10.50 of tax. Despite paying a higher foreign tax rate in its foreign structure than the new US corporate rate, the taxpayer is subjected to GILTI tax, as each incremental dollar of expense allocation results in an additional USD0.21 of tax (until the point at which the limitation becomes USD0).

This may come as a shock to many companies who had reasonably assumed that GILTI was designed to apply companies with low-taxed foreign subsidiaries. You can hardly blame them for assuming high taxed income would not be subject to additional GILTI tax when the words "low-taxed" are part of the name of the income. Companies already expecting to be subject to GILTI may be similarly underestimating the exposure, as their foreign tax credit limitations will be subject to the same phenomenon. In a few words, no one (at least no one with expenses allocable to GILTI) is safe. The expense most likely to cause a problem is interest, but other types of expenses (*e.g.*, R&E and stewardship) can also be problematic.

Conclusion

As companies continue to analyze the impact of Tax Reform on their structures, they should be alert for traps for the unwary. GILTI, often advertised as a minimum tax on foreign earnings, could cause cash tax impacts to companies regardless of their foreign tax rates, as a result of expense allocations that cost USD0.21 in additional tax for every dollar of allocation.

Until the IRS issues guidance, we are modeling out the impact of expense allocation under Sections 904 and 861 to GILTI for our clients, and mining for ways to minimize the impact. In the next edition of our GILTI series, we will discuss how tax reform has changed the landscape of expense allocation at large. In the meantime, let us know what you're seeing in your calculations!

Endnotes

1 37.5 percent for tax years starting after December 31, 2025.

2 16.4 percent for tax years starting after December 31, 2025.

Topical News Briefing: The Corporate Tax Quid Pro Quo

by the Global Tax Weekly Editorial Team

Eyebrows have been raised in the international tax community at the list of conditions companies must satisfy to benefit from Japan's corporate tax cuts (reported in this week's issue of *Global Tax Weekly*). However, Japan is far from the only country legislating for corporate tax cuts with strings attached.

Packaging up corporate tax rate reductions with BEPS-related anti-avoidance measures has been a recurring theme lately. Just last month, we witnessed the Swedish Ministry of Finance announce proposals for a phased corporate tax cut, combined with new measures to restrict the amount of interest payments companies can use to offset their income, among other anti-BEPS measures.

Similarly, the Netherlands is in the process of reducing corporate tax to 21 percent, and the Government intends to make the tax regime even more attractive by partially abolishing withholding tax on dividend payments. But there will be a price to pay, and this comes in the form of several new measures announced in February as part of a comprehensive anti-avoidance package. These measures are designed to align the Netherlands with incoming EU legislation and international standards, and include (but are not limited to) a general interest deduction limitation rule, a new controlled foreign company regime, new exit tax rules, and a general anti-abuse rule.

The US tax reforms enacted in December 2017 also have an element of give and take. Companies are expected to benefit over the long term from a substantially lower corporate tax rate and a less onerous international tax regime. However, corporations will have to suffer the short-term discomfort of the transition tax on repatriated foreign income, and complex rules restricting the shifting of intangible income to low-tax jurisdictions.

Governments appear to be sweetening the bitter pill of BEPS measures with reductions to corporate tax and the introduction of corporate tax incentives, including patent boxes and enhanced credits and deductions for research and development spending. Switzerland would be a good example to cite here, as it is replacing "harmful" cantonal company tax regimes with improved and internationally accepted tax incentives.

Generally, it seems that multinational businesses are prepared to accept more stringent anti-avoidance rules, or nudges towards domestic investment, as a *quid pro quo* for lower rates of corporate tax. However, the Japanese approach remains unusual, and it is open to question whether the effort required to comply with the requirements will outweigh the advantage of a corporate tax saving.

Nevertheless, on the international stage, we are unlikely to have seen the last of such corporate tax bargaining.

Fake Tax Transparency? Leaks And Taxpayer Rights

by Ana Paula Dourado

This article was previously published by Intertax, *Volume 46, Issue 2.*

1. The Role Of International Tax Transparency

International tax transparency is associated with the elimination of obstacles to the cross-border sharing of relevant information concerning a taxpayer or group of taxpayers. The current international standard promotes automatic exchange of information[1] and rejects the possibility for states to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.[2]

Tax transparency requires the exchange of information between tax administrations, and permits the use of different methods in this regard, namely: exchange of information *upon request*, if it is of foreseeable relevance to the enforcement of tax treaties or domestic tax law of the requesting state; *automatic* exchange of information, which implies the periodic supply of information by a source state concerning residents in another state, and mainly targeted at financial account information; and *spontaneous* exchange of information, where there are grounds to suppose that there may be a loss of tax in the other state or that there should be some adjustment of taxes in that other state due to tax savings in the reporting state.[3] The aforementioned methods may be combined and the contracting States may use other techniques such as simultaneous examinations, tax exams abroad and industry-wide exchange of information.[4]

2. The Efficacy Of Tax Leaks

In spite of all the bilateral and multilateral measures on tax transparency that have been taken and expanded since 2009, the media leaks have revived the discussion of tax havens and non-cooperative jurisdictions, and of the efficacy of international measures aiming to dismantle the opacity in those jurisdictions and the related schemes. For example the leaked financial documents that comprise the Paradise Papers expose how public figures, multinationals and high-net-worth individuals can easily transfer their income to non-cooperative jurisdictions.

The Guardian described the Paradise Papers as a special investigation by the Guardian and 95 media partners worldwide into a leak of 13.4 million files from two offshore service providers and the company registries of nineteen tax havens. These files reveal the offshore financial affairs of some of the world's largest multinational companies and richest individuals, and set out the myriad ways in which tax can be avoided using artificial structures.[5]

In the Paradise Papers, the focus is on the Isle of Man, a jurisdiction that is considered to be compliant based on the Global Forum review criteria.[6]

The leak of more than 13 million documents from offshore law firms and registers have exposed in vivid detail the mechanics of a normally invisible and secretive industry – an industry that regards the Isle of Man as one of its global headquarters. (…) Manx companies have been used to transfer Kremlin-controlled state funds into Twitter and Facebook; they have obscured the financial connections between two Premier League football club owners; and they have been used to issue USD1bn (GBP764m) of tax refunds to wealthy private jet owners (…) It's an island where hundreds of "straw" men and women will, for a small fee, stand in as the nominee directors and shareholders of shell companies – a legal, if increasingly dubious way, for the real owners of companies to obscure their real identities. Pity the island's chief constable, Gary Roberts. In May, he sounded the alarm in his annual report. He described financial crime as a "genuinely strategic threat" to the future of the island.[7]

It is reasonable to assume that, similarly to previous leaks, the tax administrations of the residence states of the beneficial owners were unaware of many of those relevant cases.

3. The Efficacy Of The International Tax Standards

The recent leaks highlight the role of artificial structures and the difficulty in detecting them. Mere lists of names revealed by the several leaks and discovered by the international consortium of journalists are not, in and of themselves, proof of tax evasion, but nevertheless raise high suspicion of such behavior or, at least, aggressive tax planning. No doubt, the fact that such leaks still occur can be interpreted as a failure of the current legal framework,[8] and serve as a means of pressure for the G20 and the Global Forum to make that framework more efficient.

On the other hand, it is difficult to argue that international tax coordination on tax transparency could move faster. Since 2009, the internationally agreed standard on exchange of information has changed from exchange of information on request to automatic and multilateral exchange of information.[9] So far, automatic exchange of information applies to financial account information under both the OECD and EU legal instruments, as well as under US Foreign Account tax Compliance Act (FATCA). The Standard for Automatic Exchange of Financial Account Information in Tax Matters was published by the OECD on July 21, 2014 and includes the text of the Model Competent Authority Agreement, the Common Reporting Standard and the Commentaries thereon, as well as guidance on relevant technical solutions related to the IT aspects of data safeguards, confidentiality and encryption for the secure transmission of information under the Common Reporting Standard.[10] Automatic exchange of information in the EU may apply in some years to (all) other categories of income which is appropriate for a territory – the EU territory as defined in Article 52 of the EU Treaty – where no obstacles can be raised to movements that go beyond capital and cover workers, establishment, services, goods and citizens.

Nevertheless, from a worldwide perspective, automatic exchange of information on financial accounts and identification of the beneficial owners of accounts is the core target of transparency, as all other activities – whether licit or illicit – involve movements of capital that can be hidden in opaque structures in more appealing tax jurisdictions.

The above-mentioned scandals revealing the failure of the current legal framework on tax transparency can be interpreted differently. Leaks reveal the dimension of the above-mentioned "normally invisible and secretive industry" of hidden wealth. However, the current international standard on exchange of information also produces results, even if at a slower pace. Suspicions of tax evasion connected with money laundering and corruption schemes have been discovered by tax authorities in connection with criminal investigators and public prosecutors.

Both the leaks and the legal framework will lead to a common goal: to deter taxpayers from investing in tax havens, due to the increasing high risk of their hidden wealth being revealed.

However, the international consortium of journalists is mainly focusing on the inefficacy – or even fallacy – of the international standard, as well as its adoption and implementation, and is not aware that the change of paradigm has been accommodated by both tax authorities and courts.

4. Recent Court Decisions On Exchange Of Information And Taxpayer Rights

The change of paradigm has reached the courts in several jurisdictions, and notably in jurisdictions that were traditionally non-cooperative. For example in a decision of February 13, 2017 [11] the Swiss Federal Supreme Court held that as regards the exchange of information for transfer pricing purposes, the requirement of "foreseeable relevance" cannot constitute an obstacle to supplying copies of financial statements, information on the number of employees and their functions; on the business premises; on taxable profits; or on the tax liability in Switzerland. According to the Court, the requested state must rely on the assessment of relevance in the requesting state, based on the principle of good faith.[12]

In a decision of September 12, 2016 [13] the Swiss Federal Supreme Court interpreted the concept of foreseeable relevance under Article 26(1) of the Switzerland-Netherlands tax treaty. The Dutch tax authorities sought information on all UBS clients resident in the Netherlands that did not comply with the UBS request to provide evidence regarding their tax compliance. The Court relied on a mutual agreement in the Protocol of February 26, 2010, which clarified that persons under investigation may also be identified by means other than their name and address. The Court further emphasized that the purpose of the tax treaty is to provide for exchange of information in tax matters to the broadest extent possible.[14]

In a decision of January 22, 2015 [15] the Singapore Court of Appeal held that it should not substantively review the requirements for exchange of information, such as the foreseeable relevance of the requested information and whether the information could have been obtained under the law of the requesting state. Moreover, relying on the Commentary on Article 26 of the OECD Model (paragraph 10.3), the Court concluded that where a treaty does not limit the temporal scope of the information to be exchanged, Article 26 allows for exchange of information covering periods both before and after the treaty entered into force.

In the above-mentioned cases, the courts seem eager to follow the international standard on exchange of information, overlooking the legal conditions and in some cases jeopardizing taxpayer rights.[16]

This case law illustrates that the efficiency of exchange of information is one of the main concerns, especially where courts in the requested state do not assess whether the condition of "foreseeable relevance" is met. Instead, in these cases, the courts of the requested state rely on the good faith of the requesting state.

This new trend, in policy and interpretation of legal conditions, is a result of the international standard on automatic (and periodic) exchange of information on financial accounts. Automatic exchange of information is, by definition, incompatible with an assessment of "foreseeable relevance" on a case-by-case basis. The same is true for multilateral exchange of information. There is a force of attraction effect: foreseeable relevance in exchange of information on request becomes irrelevant, because it is irrelevant under automatic and multilateral exchange of information.

Leaks in the press referred to above ignore the enhanced international tax cooperation where the international standards, tax authorities, financial institutions and domestic courts are engaged in achieving tax transparency.

However, the fact that it is not verified whether the condition of foreseeable relevance is met may lead to a significant infringement of taxpayer rights (for example false information may be exchanged or the confidentiality of data may be at risk). The same is true in respect of an exchange of information with retroactive effect.

The exchange of information with retroactive effect has a sanction character, is of dubious international tax justice, and is hardly compatible with the rule of law and with the principle of proportionality. In fact, until recently, many OECD and EU jurisdictions protected bank secrecy as a constitutional right to privacy. The international standard that denies the possibility for states to decline to supply information solely because such information is held by a bank or other financial institution, only goes back to 2002 at the OECD (Article 1 of the 2002 Model Agreement on Tax Information Exchange Agreements (TIEAs)) and 2013 in the EU (entry into force of the Mutual Assistance Directive (commonly referred to as DAC 1)).

However, the jurisprudence is not homogeneous. Other decisions have barred the exchange of information in the case of illicitly obtained data; deemed it to be unconstitutional to make country-by-country reports available to the public; and recognized liability for providing false information.

In a decision of March 17, 2017 [17] the Swiss Federal Supreme Court held that information cannot be exchanged where a request by the French tax authorities is based on illegally obtained information.[18]

France adopted public country-by-country reporting on November 8, 2016 as part of its law concerning transparency, fight against corruption and modernization of the economy.[19] On December 8, 2016 the French Council of State (*Conseil d'État*) held that making country-by-country reports available to the public interferes disproportionally with the freedom of enterprise and is thus unconstitutional.[20]

In its decision on February 11, 2015 in the *Aloe Vera* case,[21] the US District Court of Arizona dealt with the disclosure of taxpayer information under the US-Japan tax treaty and held that the treaty does not authorize the disclosure of false tax return information. The information was false because it was merely an estimate of potential for unreported income and subsequently appeared in the Japanese media.

Finally, data protection has been addressed by the Court of Justice of the European Union (ECJ) in several cases, including as regards the indiscriminate retention of data[22] and the lack of a purpose limitation principle for data collection.[23] An adequate level of protection through its domestic law or international commitments is not addressed by the EU Mutual Assistance Directive (DAC 1), but is a condition for data transfer from Member States to third countries in Article 25 of the Data Protection Directive.[24] The level of protection should be essentially equivalent to that guaranteed within the European Union.[25]

5. Transparency And Taxpayer Rights As An Intertwined International Standard

The media have not delved into the consequences of tax transparency and leaks in jurisdictions where information can be used by authoritarian regimes as a tool to harass opponents of the government or to abuse political power.[26] Moreover, the media are not alert to the challenges that the transparency movement and pressure on international institutions are causing for taxpayer rights, including as regards: whether exchange of information is discussed and approved by national parliaments and whether it is implemented in a rule-of-law state; the necessity of data protection; the necessity of exchanging only reliable data; the question as to whether it is legitimate to use illicitly obtained data; the transfer of data; and the necessity to protect whistle-blowers. The Global Forum has not included the protection of taxpayer rights among its priorities.[27]

The rule of law in international coordination on tax transparency requires a two-pronged assessment, namely of the harm caused by (1) opaque structures and non-cooperative jurisdictions to international tax justice and (2) insufficient protection of data and other taxpayer rights, as well as insufficient protection of whistle-blowers.

The Global Forum should accept and acknowledge only those members that exchange information and respect taxpayer rights. A peer-review process oriented by the Global Forum should not only require an analysis of the legal framework and its implementation, but include the requirement of rule of law, where an independent and impartial judiciary plays a major role.

Endnotes

1 The international standard, which was developed by the OECD in cooperation with non-OECD countries and which was endorsed by the G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax at its October 2008 Meeting, requires the exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes: OECD, *Tax Co-operation 2009: Towards a Level Playing Field* 8 (2009). The situation has evolved: on April 19, 2013, the G20 Finance Ministers and Central Bank Governors endorsed automatic exchange as the expected new standard and on July 20 they endorsed the OECD proposals for a global model for multilateral and bilateral automatic exchange of information. ***See*** A. P. Dourado, "Article 26," in ***Klaus Vogel Commentary on OECD Model Convention*** (E. Reimer & A. Rust eds, Kluwer 2013), at endnote 4.

2 Art. 26(5) of the OECD Model Convention and UN Model Convention; Art. 1 of the 2002 OECD Model Agreement on Exchange of Information on Tax Matters (MA on TIEAs)) and its 2005 Comm.; 2010 Prot. to the Council of Europe/OECD Convention on Mutual Administrative Tax Matters. EU Mutual Assistance Directive: Council Directive 2011/16/EU of February 15, 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EU, OJ L 64/1 (2011), Art. 18(2).

3 Art. 26 of the OECD Model Convention, Comm. 9 (as amended on July 15, 2014).

4 *Id.*, Comm. 9.1.

5 J. Garside, *After Successive Offshore Scandals, Are There Signs of Change in Isle of Man?*, Guardian (November 14, 2017).

6 Global Forum on Transparency and Exchange of information for Tax Purposes, 13 http://www.oecd.org/tax/transparency/GFratings.pdf (accessed November 20, 2017).

7 Garside, *supra* note 5.

8 Questioning the efficacy of the Global Forum and exchange of information, ***see***, ***e.g.***, J. Johannesen, *Taxing Hidden Wealth: Lessons for Policy Making*, EUI Working Papers, 25 RSCAS (2012); N. Johannesen & G. Zucman, *The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown*, WP No. 2012-04, Paris School of Economics; T. Ronfeldt, *Tax Havens and Tax Shelters: The Hidden Money*, 43 Intertax 418 (2015).

9 OECD, *Standard for Automatic Exchange of Financial Account Information: Common Reporting Standard* (February 13, 2014); *id.*, *Standard for Automatic Exchange of Financial Account Information in Tax Matters.*

[10] J. Mosquera Valderrama, *Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism*, 7 World Tax Journal 3 (2015); X. Oberson, *International Exchange of Information in Tax Matters, Towards Global Transparency* (2015).

[11] CH: Bger, Febuary 13, 2017, 2C_411/2016.

[12] *Similarly* CH: Bger, February 13, 2017, 2C_954/2015.

[13] CH: Bger, September 12, 2016, 2C_276/2016.

[14] V. Wöhrer: Dourado, *supra* note 1, update of September 20, 2016 on Art. 26 OECD MC, para. 187.

[15] SG: CA, January 22, 2015, *ABU v. Comptroller of Income Tax*, Civil Appeal 150 (2015) SGCA 4. *See* V. Wöhrer: Dourado, *supra* note 1, update of February 23, 2016 on Art. 26 OECD MC, paras 161, 216, 225.

[16] On exchange of information and the taxpayers' rights, *see inter alia* Dourado, *supra* note 1, paras 208–210, 304–305; *Exchange of Information and Validity of Global Standards in Tax Law: Abstractionism and Expressionism or Where the Truth Lies,* EUI Working Paper RSCAS 2013/11, at 5–6.*General Report, The Practical Protection of Taxpayers' Fundamental Rights* volume 100B, 21 (P. Pistone & P. Baker eds, IFA Cahiers 2015); J. M. Calderón Carrero & A. Q. Seara, *The Taxpayer's Right of Defence in Cross-Border Exchange-of-Information Procedures*, 68 Bull. Int'l Tax'n 498 (2014); A. Cockfield, *Protecting Taxpayer Privacy Rights Under Enhanced Cross-Border Tax Information Exchange: Toward a Multilateral Taxpayer Bill of Rights*, 42 U. B.C. L. Rev. 419 (2010), M. G. De Flora, *Protection of the Taxpayer in the Information Exchange Procedure*, 44 Intertax 447 (2017).

[17] CH: Bger, March 17, 2017, 2C_1000/2015.

[18] Wöhrer: Dourado, *supra* note 1, update of April 11, 2017 on Art. 26 OECD MC, paragraph 296. However, the German Constitutional Court held there was no prohibition in assessing proof if the data were obtained in an illegal or even criminal manner: BVerfG September 9, 2010, 2 BvR 2101/09.

[19] FR: Law 830 of November 6, 2016.

[20] Wöhrer: Dourado, *supra* note 1, update of December 23, 2016 on Art. 26 OECD MC, para. 340

[21] US: USDC D. Ariz., February 11, 2015 *Aloe Vera of America Incorporated et al. v. United States*, Case CV-99-01794-PHX-JAT.

[22] SE: ECJ, December 21, 2016 Cases C-203/15 & C-698/15, *Tele2 Sverige*, para. 127.

[23] *E.g.*, IE: ECJ, April 8, 2014 Cases C-293/12 & C-594/12, *Digital Rights Ireland*, para. 53.

[24] EU Data Protection Directive: Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L281 (1995).

[25] IE: ECJ, October 5, 2015 Case C-362/14, *Shrems*, para. 73. *See* S. Moreno Gonzalez, *The Automatic Exchange of Tax Information and the Protection of Personal Data in the European Union: Reflections on the Latest Jurisprudential and Normative Advances*, 25 EC Tax Rev. 146 (2016); X. Huang, *Ensuring Taxpayers' Rights in the Era of Automatic Exchange of Information – In the Light of Data Protection Rules and Cases in European Union*, Intertax (2018), Issue 3 forthcoming.

[26] *See*, *e.g.*, Tribunal Fédéral of August 13, 2007 1A.15/2007/col: The Swiss federal court rejected a request for exchange of information for criminal purposes in the Yukos case, on the basis that the information would be used for political persecution: "The totality of these elements bears out the suspicion that the penal procedure was therefore used for the purposes of the established power, in order to go after the class of rich 'oligarchs' and to push aside potential or declared political adversaries. It follows that Mutual Assistance cannot be granted."

[27] Dourado, *Exchange of Information and Validity of Global Standards* …, *supra* note 16, at 5–6.

Topical News Briefing: United Kingdom No More?

by the Global Tax Weekly Editorial Team

Many feared that fiscal devolution in the United Kingdom, offered by Her Majesty's Government in Westminster, London, as a compromise to the independence movements in the constituent nations, would complicate the UK tax regime rather than enhance it. And recent developments suggest that these fears were not unfounded.

One of the advantages of doing business in the UK is that, as a rule, there is only one layer of taxation for taxpayers to deal with, with legislative power traditionally centralized in Westminster. This is in contrast to federalized countries, where taxpayers must contend with dual or even multiple layers of taxation.

To appease those calling for more decision-making to take place at the local level, the UK Government has over the last decade or so been legislating to devolve limited tax-raising powers, first to Scotland, then to Wales (as reported in this week's issue of *Global Tax Weekly*), and, with regards to the corporation tax rate, also to Northern Ireland.

However, certainly as far as the new Scottish Rate of Income Tax and other devolved Scottish taxes are concerned, indications are that these reforms have been far from smooth.

According to the National Audit Office (NAO), one of the biggest challenges facing the tax authorities as they administer the new system is the maintenance of millions of new tax records. The NAO report noted that in 2015 HM Revenue & Customs failed to identify as many as 420,000 Scottish taxpayers, although this issue has since been rectified.

Tax professionals have been particularly concerned by the tax devolution process. In December 2017, the Association of Taxation Technicians warned that measures introduced in the Scottish Budget for 2018/19 could introduce further complexity to already challenging income tax computations for Scottish taxpayers.

The Chartered Institute of Taxation (CIOT) has issued repeated warnings about the potential flaws of the devolved taxes. Last year, it said that Scotland's decision to set different income tax bands from the rest of the UK would likely result in increased complexity. "Tax devolution is complicated and this year's decisions represent the first of what could be many divergences in the years to come," said Moira Kelly, Chair of the CIOT's Scottish Technical Committee.

More recently, the CIOT warned that Scotland's plans for a Land and Buildings Transaction Tax relief for first-time buyers could also add complexity to the system, and be difficult to enforce.

It may be the case that these wrinkles will eventually iron out. However, the problem is, with Scotland, Wales, and Northern Ireland likely eager to maintain their new tax powers, in spite of their imperfections, problems may be difficult to reverse, and they represent an extra tax compliance consideration for UK taxpayers.

Japan's 2018 Tax Reform Package Now Law

Following its passage through Japan's parliament, the Diet, measures in Japan's 2018 tax reform package became law on April 1, 2018.

The package cuts the corporate tax rate to 25 percent for companies which increase employee wages by 3 percent. A further reduction to 20 percent is possible for companies investing in improving their productivity or engaging in digitalization. The tax relief starts on April 1, 2018, and lasts for three years only.

Other measures include a rise in duties on tobacco products from October 2018, and a new departure tax of JPY1,000 (USD9.39) per person from January 2019.

Personal tax changes, taking effect from January 2020, include tax rises for workers earning more than JPY8.5m (USD79,783) per year, and reduced tax deductions for company employees.

The changes made are contained in three enactments, which were first announced in a tax reform package approved by the ruling Liberal Democratic Party on December 14, 2017.

Sweden Announces Corporate Tax Reforms

The Swedish Government has announced proposals to tackle corporate tax avoidance, widen the corporate tax base, and reduce the corporate tax rate.

Under the plans, a general limitation on interest deductions will be introduced, and the corporate tax will be gradually lowered to 20.6 percent.

The Government has said that the reforms are designed to create more tax neutrality between debt and equity, counter base erosion and profit shifting, and ensure that Sweden remains tax competitive.

The measures are intended to align Sweden's interest deduction rules with the EU Anti-Tax Avoidance Directive and Action 4 of the BEPS Action Plan. As such, the interest deduction will be capped at 30 percent of earnings before interest, taxes, depreciation, and amortization (EBITDA). The measure will permit excess interest expenses to be carried forward for a maximum of six years.

Deductions for interest paid on intra-group loans will be denied in situations when the objective of the arrangement is to derive a tax benefit, or when interest is paid to a related party in a jurisdiction with a tax rate of less than 10 percent.

Additional measures restrict certain cross-border deductions in relation to hybrid mismatch arrangement. This change is also intended to bring Sweden's tax regime into line with the new EU anti-avoidance rules, as well as BEPS Action 2.

Under the proposed reforms, the corporate tax will be reduced in two stages, from 22 percent to 21.4 percent in 2019, and to 20.6 percent in 2021.

According to the Government, the new interest deduction restriction will affect just 1 percent of companies in Sweden.

"The proposals mean that aggressive tax planning with interest rate deductions becomes more difficult, which increases the legitimacy of the tax system. The incentives for indebtedness also decrease, thus increasing the resilience of the economy," the Ministry of Finance said.

If approved by the legislature, the new rules will be effective from January 1, 2019.

Philippines' Corporate Tax Reform Progressing

Corporate tax reform in the Philippines has moved a step closer with the introduction of House Bill No. 7458 into the country's parliament.

The bill provides for a one-percentage-point reduction in the current 30 percent rate of corporate income tax every year for domestic corporations, resident foreign corporations, and non-resident foreign corporations starting from next year. This will ultimately take the corporate income tax rate to 20 percent.

In addition, fiscal incentives are to be modernized to make them performance-based, targeted, time-bound, and transparent.

According to the Finance Ministry, under the bill's simplified and harmonized menu of incentives, businesses in industries that provide positive spillover to the economy may be granted an income tax holiday for up to three years, a reduced corporate income tax rate of 15 percent for up to 5 years (inclusive of the income tax holiday), and a 50 percent tax allowance for qualified capital expenditure, along with varied rates of tax deductions for research and development, training, labor expenses, infrastructure development, and reinvestment.

The bill proposes to expand the mandate of the Fiscal Incentives Review Board beyond government-owned and government-controlled corporations to include the approval of incentives to all registered enterprises, following a recommendation from one of the various investment promotion agencies.

In step with the goal of making investment incentives time-bound, the bill contains a "sunset" or a phase-out provision for incentives granted to registered enterprises for over two to five years, depending on the length of time these businesses have already benefited from such perks.

Stricter reporting and monitoring requirements are proposed to promote accountability on the part of registered enterprises.

The enforcement powers of the Bureau of Internal Revenue are strengthened, particularly with regard to the prosecution of tax cases.

The administration of allowable deductions and tax payment processes are simplified, and the definition of large taxpayers is expanded.

The measures are part of "Package 2" of the Duterte administration's Comprehensive Tax Reform Program (CTRP). The Department of Finance said it intends to introduce the rest of the CTRP package, which will cover property and capital income taxation, later this year.

IMF Urges Progress From Switzerland On Tax Reform

The IMF has warned that any further delays from Switzerland in meeting international corporate taxation standards could damage the territory's appeal as an investment destination.

The IMF has published the findings of its latest Article IV mission to Switzerland. The IMF urged that meeting these international standards "in a timely manner is critical to dispel uncertainty and avoid reputational risk that could negatively impact investment and growth."

In February 2017, the Government lost a referendum on its Corporate Tax Reform III package. It is now pushing for the adoption of tax proposal 17 (TP17), which would abolish the special arrangements for cantonal status companies and make the introduction of a patent box regime mandatory for all cantons. It would also reform the taxation of dividends.

The IMF noted that as a result of TP17 corporate tax rates are "expected to become less dispersed across firms and cantons, implying some trade off between investment and revenue."

According to the IMF, implementing the Government's proposals could lower the cost of investment for SMEs and in turn help improve competitiveness. It described the reform as an "opportunity to revisit tax competitiveness in light of international developments and to encourage research and development activities and SME investment."

The IMF praised Switzerland for having made "progress on improving tax transparency."

The first automatic exchanges of information are due to take place this year, and Switzerland continues to expand its list of partner countries.

More broadly, the IMF recommended that the Government remove the tax deductibility of mortgage interest payments for private households and eliminate the taxation of imputed rental income.

Australia Expands Multinational Anti-Avoidance Law

The Australian Government has introduced legislation to extend the reach of its Multinational Anti-Avoidance Law (MAAL) to cover a range of corporate structures.

The MAAL covers multinationals operating in Australia which have global revenues of more than AUD1bn (USD766.4m). The law is designed to prevent multinationals from avoiding Australian tax by using artificial or contrived arrangements to avoid having a taxable presence in the country. It requires companies that are deemed to have avoided tax to pay back double what they owe, plus interest.

The new legislation extends the MAAL to corporate structures that involve: foreign resident partners; or foreign trusts that temporarily have their central management and control in Australia.

The MAAL has been in place since January 1, 2016. To date, the Australian Taxation Office (ATO) has identified 38 large companies that have brought or are bringing their sales to Australian customers onshore in response to the MAAL. The ATO expects this to result in an additional AUD7bn in income being returned to the tax base each year.

Australia Keen To Start UK Free Trade Pact Talks

Australia hopes that formal free trade negotiations with the UK can begin on March 30, 2019, the day the UK leaves the EU.

Australian Trade Minister Steven Ciobo is currently in London for discussions with UK ministers and businesses.

Ciobo told a Bloomberg event that Australia wants to be "in a position to act swiftly on securing" a future free trade agreement (FTA) with the UK. He said the two sides should "prepare now, with a sense of urgency, to negotiate as soon as possible a high quality and ambitious trade agreement."

According to Ciobo, "an ambitious, comprehensive Australia–UK FTA will create wealth in its own right." He said that negotiations should commence on March 30, 2019, the day that Brexit implementation begins.

Australia is also seeking an FTA with the EU. Ciobo explained to reporters that "discussions with the UK are entirely separate to discussions with the EU" and that "discussions with the EU are more advanced than they are with the UK."

Ciobo said that Australia is ready to start talks but is waiting for the EU "to complete their internal discussions and processes to have a mandate to commence negotiations." He is hopeful that negotiations can begin before the middle of the year.

Australia Passes Property GST Compliance Reforms

The Australian Government has passed legislation that will enable it to crack down on goods and services tax (GST) evasion in the property development sector.

The legislation will require purchasers of new residential premises and new residential subdivisions to withhold the GST on the purchase price at settlement and then to pay it directly to the Australian Taxation Office. The law will apply from July 1, 2018.

The legislation is intended to prevent tax evasion by property developers that fail to remit the GST on sales of such properties. This practice is often associated with "phoenixing" activity.

Revenue Minister Kelly O'Dwyer explained: "This measure targets illegal phoenix activity in the property development sector. It puts an end to the problem of some developers collecting GST on new properties but then dissolving their business to avoid remitting the tax when it is owed to the ATO."

"These new arrangements will increase compliance with tax law, level the playing field for compliant businesses, and secure GST revenue for the states and territories to provide essential services that Australians rely on."

Denmark's Anti-Avoidance Tools Effective, Says Report

The Danish Government has decided that Denmark's tax rules are sufficiently "robust" to combat cross-border tax avoidance.

According to the Tax Ministry, reviews into the Danish tax system by the Tax Council have concluded that recent domestic measures combined with increased international cooperation have secured the Danish tax base against cross-border tax avoidance. As such the Government should focus on allowing the tax authority to use existing tools in its armory to fight tax avoidance and evasion, rather than legislating for new measures.

"We were asked to uncover potential challenges and point out if there is a need to make Danish legislation more robust," explained Niels Winther-Sørensen, partner for International Tax Services at PwC. "In general, our work has shown that the tax authorities actually have a lot of tools and that recent years' development - especially at international level - has resulted in even more. Therefore, it is first and foremost about using these tools effectively."

However, the Tax Council has recommended certain improvements to Denmark's anti-avoidance defenses, including more effective exchange of information with foreign tax authorities, an increased focus on detecting tax avoidance risks instead of the application of harsher penalties, and closer cooperation between researchers and the tax authority with regards to tax avoidance linked to tax havens.

Welcoming the conclusions, Tax Minister Karsten Lauritzen added: "I am pleased that there is a comprehensive parliamentary parliament behind the fight against tax havens. The tax laws analysis shows that the direction we have put is the right one. Significant progress has been made internationally in recent years, where Denmark has played an active role in changing governments. At the same time, with the latest agreement, we have ensured that the Danish tax authorities are well-equipped, so that effective action can be taken against [tax avoidance]."

Zambia To Probe Mining Companies' Tax Affairs

Canadian mining firm First Quantum Minerals (FQM) has confirmed that it has received a demand from the Zambian Revenue Authority for ZMW76.5bn (USD8bn) in back taxes related to alleged unpaid customs duties.

"The company confirms that it is in possession of a letter from the ZRA, dated March 19, 2018, noting an assessment for import duties, penalties, and interest on consumables and spare parts of ZMW76.5bn," the company said in a statement issued in response to media reports.

"The company unequivocally refutes this assessment which does not appear to have any discernable basis of calculation and will continue working with the ZRA, as it normally does, to resolve the issue," the firm added.

In response to the FQM case, the ZRA said that it has begun a review of the tax compliance record of the country's mining sector, which will look back over the past six years.

France To Create New Tax Enforcement Unit

The French Government has unveiled new legislation intended to increase France's administrative capacity in its fight against tax fraud.

Announced by Budget Minister Gérald Darmanin on March 28, the proposed bill would establish a new "fiscal police" within the Budget Ministry, which would work with members of the Interior Ministry in the investigation of tax evasion cases.

The law would also enable administrative departments to cooperate more closely in the pursuit of tax evaders and allow them to share more information.

In addition, the proposals include a mechanism to allow sharing economy platforms to transfer taxes withheld from users directly to the tax authorities.

Other measures include a revamp of the penalties available to government to punish tax evasion, including new fines for third parties found to have facilitated tax evasion, and a revised methodology for calculating fines so they are fixed in proportion to the severity of the offense.

Argentina Extends CbC BEPS Notification Deadline

Argentina's Federal Administration of Public Income has extended the filing deadline for country-by-country (CbC) notifications.

Taxpayers who are part of multinational enterprises now have until May 2, 2018, to file CbC notifications where the ultimate parent company of the multinational group has a December 2017 fiscal year end.

The CbC reporting requirement is one element of a new three-tiered standardized approach to transfer pricing documentation as proposed in Action 13 of the OECD's base erosion and profit shifting (BEPS) project.

CbC reporting requires multinational enterprises to provide aggregate information annually, in each jurisdiction where they do business, relating to the global allocation of income and taxes paid, together with other indicators of the location of economic activity within the multinational group. It also covers information about which entities do business in a particular jurisdiction and the business activities each entity engages in.

India Adds BEPS Provisions To Qatar Tax Treaty

India has approved amendments to its double tax agreement with Qatar.

The amendments update the information exchange provisions between the two countries in line with current international standards.

A new Limitation on Benefits (LOB) provision has been introduced, which is designed to prevent "treaty shopping" (whereby companies or transactions are structured through third countries to take advantage of favorable tax treaties in place in other jurisdictions).

This brings the double tax agreement into line with the minimum standards on treaty abuse under Action 6, and on improving dispute resolution procedures under Action 14 of the OECD's base erosion and profit shifting Action Plan.

New Zealand Tax Reform Bill Passed By Parliament

New Zealand's Parliament has enacted legislation setting the annual rates of tax for the 2017-18 tax year and implementing PAYE, employee share schemes, property taxation, and income reporting changes.

The Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act reforms the administration of PAYE (wage and salary deductions) to require employers to provide more timely information to New Zealand's Inland Revenue Department, and modernizes the taxation of employee share schemes.

The way banks and other institutions provide information about investment income to the Inland Revenue Department has also been reformed, and residential investment properties sold within five years of purchase are now subject to tax under the so-called "bright line test." Previously, properties were subject to tax if sold within two years of purchase.

Commenting on the law's passage through parliament, Revenue Minister Stuart Nash said: "The bill provides better income information to give more accurate Working for Families entitlements and it will also reduce the number of people getting into debt. The bill achieves this by providing the Inland Revenue with accurate and more timely information from the payers of employment and investment income."

"The other major aspect of this bill is to modernize and strengthen the tax rules relating to employee share schemes. We want to make sure that the tax treatment of employee share schemes is broadly similar to the tax treatment of other forms of remuneration," said Nash.

"The extension of the previous government's bright-line test from two years to five years will help dampen property speculation and make homes more affordable," he said. Adding: "This proposal will ensure that residential property speculators pay income tax on their gains and makes property speculation less attractive."

Wales Begins Collecting Devolved Taxes

In a landmark step, Wales took control of a number of taxes levied in the country from April 1, 2018, under the terms of a tax devolution deal with the UK.

From April 1, 2018, Wales's Land Transaction Tax (LTT) replaced the UK's Stamp Duty Land Tax; and the Welsh Landfill Disposals Tax replaced the UK's equivalent tax. Both taxes are to be administered by the Welsh Revenue Authority.

From April 6, 2019, Wales will also receive greater powers, enabling it to set its own rates of personal income tax. The levy will continue to be collected by HM Revenue & Customs and Welsh taxpayers need not take action. Welsh tax will be levied on a taxpayer in Wales as long as HMRC has their correct address.

Under the new LTT rates, Wales now has the highest starting threshold for the property tax in the UK, of GBP150,000 (USD210,500), up from GBP125,000. Residential properties costing up to GBP400,000 will pay the same or less tax than under stamp duty land tax – nearly GBP500 less tax than under stamp duty land tax on average.

For properties worth up to GBP250,000, the rate will increase to 2.5 percent from 2 percent, and will increase by 2.5 percent at value intervals of up to GBP400,000 (5 percent), up to GBP750,000 (7.5 percent), and up to GBP1.5m (10 percent). A 12 percent rate will apply on property values above GBP1.5m.

Wales will have the lowest starting rate of tax for the purchase of business premises in the UK, with all businesses buying premises up to the value of GBP1.1m in Wales either paying no tax or up to GBP1,000 less tax than under stamp duty land tax.

Ireland Defers Sugar Tax Until May

Ireland's new tax on sugar-sweetened drinks will enter into force in May, rather than in April as originally planned.

Ireland has been in discussion with the European Commission to ensure that the Sugar Sweetened Drinks Tax is in line with EU state aid law. The Irish Finance Department said that a positive decision is expected from the Commission in the coming weeks, which will allow the tax to be implemented.

However, to allow time for the necessary administrative processes relating to state aid approval, the tax will enter into force from May 1, rather than from April 6 as originally intended.

The tax will apply to non-alcoholic, water-based, and juice-based drinks with an added sugar content of five grams per 100 milliliters or above. Sugar-sweetened drinks with between five and eight grams of added sugar per 100 milliliters will attract a tax of 20 percent per liter. Drinks with a sugar content of eight grams or more will be taxed at 30 percent per liter.

The Finance Department explained that: "It is hoped that the introduction of a financial barrier on sugar-sweetened drinks will result in reduced consumption by incentivizing individuals to opt for healthier drinks in tandem with providing motivation for the soft drinks industry to reformulate by reducing sugar content and delivering healthier products."

Scotland Urged To Simplify Proposals For First-Time Buyers' Tax Relief

The Chartered Institute of Taxation (CIOT) has warned the Scottish Government that its plans for Land and Buildings Transaction Tax (LBTT) relief for first-time buyers could be complex and difficult to enforce.

The LBTT replaced UK Stamp Duty Land Tax in Scotland from April 1, 2015, and is administered by Scotland's own tax agency, Revenue Scotland. LBTT is a tax applied to residential and commercial land and buildings transactions (including commercial purchases and commercial leases) where a chargeable interest is acquired.

Responding to a Scottish government consultation on tax relief for first-time buyers, CIOT drew attention to HM Revenue & Customs' earlier research which found that the UK Government's first-time buyers' stamp duty relief had been ineffective. It found a negligible effect on the number of house purchases and the measure only pushed up house prices.

CIOT has cautioned that the Scottish plan to help first-time homebuyers by giving them a relief on property tax could be complex and difficult to enforce under current proposals. The Scottish Government proposals would see first-time buyers purchasing a home in Scotland eligible for a tax break of up to GBP600 (USD850) if they are buying a property for use as their main residence and have never owned a residential property before.

CIOT said: "The Government's proposals for determining whether a buyer plans to use their home as a main residence could be difficult to apply in practice due to the subjective nature of the test. There are also likely to be practical difficulties in establishing whether a buyer has previously owned property, since the conditions include not only residential property in Scotland, but equivalent interests in the rest of the UK and abroad." For instance, it added, "it could be difficult for Revenue Scotland to obtain the required information because not all countries will have registers detailing ownership of residential properties, making it more difficult to identify an equivalent interest abroad."

The Institute noted that existing Revenue Scotland guidance on determining a person's intent to use a property as their main residence

– which the Government has said will be used to determine eligibility for the relief – was simplistic and the consultation silent on whether this would be developed further to ensure it is fit for purpose.

In addition, CIOT said that plans to create a new definition of "major interest in land," for the purposes of determining whether someone had previously owned property, would create confusion and complexity because a similar description exists elsewhere in LBTT legislation covering the wider operation of the tax. Consideration should be given to whether this new definition is actually required or whether different terminology could be used, CIOT said.

Moira Kelly, Chair of the CIOT Scottish Technical Committee, commented: "We are concerned that the Government's plans to introduce an LBTT relief for first-time buyers will not only create extra layers of complexity and confusion, but may also prove very difficult to operate in their current form. This will be to the detriment of the people that the legislation is intended to support. Targeted reliefs such as this will almost always introduce extra layers of bureaucracy and complexity but when this happens, these should be proportionate and support the overall objective of the policy to deliver tax relief for first-time buyers."

"To ensure that the objective can be reached, we think that further action will be needed beyond the measures contained in the consultation to ensure that homebuyers, their advisers, and Revenue Scotland have the information that they need to determine a person's eligibility for the relief and ensure they receive what they are entitled to."

South Africa Increases VAT Rate To 15 Percent

On April 1, 2018, South Africa increased its value-added tax (VAT) rate to 15 percent from 14 percent.

The South Africa Revenue Service earlier released guidance on the impact of the hike, in a "Pocket Guide on the VAT rate increase on 1 April 2018."

The guide sets out how to determine the taxable event for transactions. Generally, most transactions occurring on or after April 1, 2018, will be subject to VAT at the new rate unless a special time of supply rule or a rate specific rule applies.

The guide also sets out rules concerning pricing, contractual agreements including the 14 percent rate, changes required of businesses with regards their billing and accounting systems, the obligation on taxable persons to ensure that the correct rate of VAT is levied, including with regards to inputs, the specific rules for imported goods, changes to VAT forms, and input tax credit rules for supplies subject to the 14 percent rate.

China Cuts VAT To Fuel Economic Growth

China's State Council has announced a cut in value-added tax (VAT) rates as part of a CNY400bn (USD63bn) tax reduction package to stimulate growth.

The VAT rate on manufacturing is to be cut by 1 percent to 16 percent, and the rate for transportation, construction, basic telecommunication services, and farm produce will also fall by 1 percent to 10 percent. The rate cuts apply equally to all businesses registered in China, including joint ventures and wholly foreign owned companies.

China's Premier, Li Keqiang, who chaired the State Council executive meeting at which the VAT rate cuts were agreed, said the tax reduction measures are an important element of the overall reform of the country's tax regime, remarking that VAT reform helps to reduce the overall corporate tax burden with flow-on benefits for the economy.

VAT reform was first piloted in Shanghai before being rolled out nationwide in May 2016. It is estimated to have delivered total tax cuts of CNY2.1tn in the past five years, and China's National Bureau of Statistics attributes an 8 percent rise in the value of the services sector during 2017 to the reform, as well as an uptick in entrepreneurship, innovation, and the development of new industries and new forms of business.

Further reforms to lighten the tax burden on businesses are planned by China's State Council, including consolidating the three VAT brackets into two, adjusting tax rates, prioritizing lower rates for manufacturing and transportation, and raising the VAT registration threshold for small-scale taxpayers.

EU Authorizes Danish Flat Rate VAT Scheme For Vehicles

A Council Implementing Decision has been published in the Official Journal of the European Union extending a derogation from the EU VAT Directive with respect to the private use of business vehicles in Denmark.

Danish legislation provides that if a light goods vehicle with a maximum authorized total weight of three tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is allowed to deduct the full input VAT on the purchase and running costs of the vehicle. However, if such a vehicle is subsequently used for private purposes, the taxable person loses the right to deduct the VAT incurred on the purchase cost of the vehicle.

The derogation allows taxable persons who have registered a vehicle only for business purposes to use the vehicle for private purposes, and to calculate the taxable amount of the deemed supply of services pursuant to Article 75 of the VAT Directive on a daily flat-rate basis, rather than lose their right to deduct the VAT incurred on the purchase cost of the vehicle.

Under the simplified calculation method, use of a vehicle with a maximum authorized total weight of three tonnes for private purposes should be limited to 20 days per calendar year, with the flat-rate amount of VAT to be paid fixed at DKK40 (USD6.63) for each day of use for private purposes. According to the decision, this amount has been set by the Danish Government on the basis of an analysis of national statistics.

This measure aims to simplify the VAT obligations of taxable persons who make occasional use for private purposes of a vehicle that was registered only for business purposes.

It would remain possible for a taxable person to choose to register a light goods vehicle as being used for both business and private purposes. In doing so, the taxable person would lose the right to deduct the VAT incurred on the purchase cost of the vehicle but would not be required to pay a daily charge for any use for private purposes.

The authorization for the derogation is due to expire on December 31, 2020.

Quebec Announces New Online Sales Tax Rules

The Quebec Government has announced that it will require sales tax to be collected on services and incorporeal property sold from abroad.

The measure was announced as part of the province's 2018 Budget.

Currently, there are no special rules under the Quebec sales tax (QST) system for online transactions. Supplies of movable property and services made over the internet are generally subject to the QST if the property or services are supplied for consumption in Quebec. However, suppliers are generally required to register for the QST only if they have a physical presence (permanent establishment) or a significant presence (carrying on of a business) in the province.

The Quebec Government intends to implement a new registration system. A mandatory registration requirement will apply when the value of taxable supplies made by the supplier in the province exceeds CAD30,000 (USD23,297). The requirement to register will also apply to digital property and service distribution platforms.

Under the new regime, suppliers with no physical or significant presence in Quebec will be required to collect and remit the QST on taxable incorporeal movable property and services they supply in Quebec.

In addition, suppliers that are located elsewhere in Canada but have no physical or significant presence in Quebec will be required to collect and remit the QST on taxable corporeal movable property they supply in Quebec.

Last October, the federal Canadian Government ruled out the imposition of a new tax on online streaming platforms.

ARMENIA - DENMARK

Signature

Armenia and Denmark signed a DTA on March 14, 2018.

BAHRAIN - THAILAND

Ratified

Bahrain on March 14, 2018, enacted Law No. 32 of 2018, ratifying the DTA Protocol signed with Thailand.

CZECH REPUBLIC - TURKMENISTAN

Into Force

The DTA signed between the Czech Republic and Turkmenistan entered into force on March 27, 2018.

FRANCE - LUXEMBOURG

Signature

France and Luxembourg signed a DTA on March 20, 2018.

GEORGIA - SAUDI ARABIA

Signature

Georgia and Saudi Arabia signed a DTA on March 14, 2018.

HUNGARY - ECUADOR

Negotiations

At a meeting on March 15, representatives from Hungary and Ecuador discussed engaging in talks towards the conclusion of a DTA, Hungary's Ministry of Finance reported on March 21, 2018.

INDIA - HONG KONG

Signature

India and Hong Kong signed a DTA on March 19, 2018.

KAZAKHSTAN - BELARUS

Forwarded

Kazakhstan's Senate on March 29, 2018, approved a law to ratify the DTA signed with Belarus.

KENYA - MOZAMBIQUE

Negotiations

During a meeting on March 29, 2018, representatives from Kenya and Mozambique agreed the two countries should look to put in place a DTA.

LIECHTENSTEIN - UNITED STATES

Negotiations

Liechtenstein and the United States are engaged in negotiations towards a DTA.

NETHERLANDS - MALAWI

Forwarded

The Dutch lower house of Parliament on March 15, 2018, approved a DTA signed with Malawi.

NETHERLANDS - UKRAINE

Signature

The Netherlands and Ukraine signed a DTA Protocol on March 12, 2018.

NIGERIA - SINGAPORE

Ratified

On March 21, 2018, Nigeria completed its domestic ratification procedures in respect of the DTA signed with Singapore.

TAJIKISTAN - UZBEKISTAN

Signature

Tajikistan and Uzbekistan signed a DTA on March 9, 2018.

TURKMENISTAN - UNITED ARAB EMIRATES

Signature

Turkmenistan and the United Arab Emirates signed a DTA Protocol on March 15, 2018.

UNITED KINGDOM - CYPRUS

Signature

The UK and Cyprus signed a new DTA on March 22, 2018.

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

THE AMERICAS

OffshoreAlert Conference: The Miami Beach Edition

4/15/2018 - 4/17/2018

OffshoreAlert

Venue: The Miami Beach EDITION, 2901 Collins Ave, Miami Beach, FL 33140, USA

Key speakers: Lee Martin (IRS), Warren Gluck (Holland & Knight), Christopher Ehrman (Securities and Exchange Commission), David Marchant (OffshoreAlert), among numerous others

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

Trusts: The Ultimate Guide

4/23/2018 - 4/23/2018

National Business Institute

Venue: University of Arkansas RCED – Walton Conference Hub, Donald W. Reynolds Center, Fayetteville, AR 72701, USA

Key speakers: Scott Lar (Quattlebaum, Grooms & Tull), Edwin McClure (Matthews, Campbell, Rhoads, Mcclure & Thompson), Tyler Squires (Allen Squires Law), Michael Collins, among numerous others

https://www.nbi-sems.com/ProductDetails/Trusts-The-Ultimate-Guide/Seminar/80098ER?N=64013%2B4294966381

STEP International Tax & Estate Planning Forum: Around the Globe in 2018

5/3/2018 - 5/4/2018

STEP

Venue: The Surf & Sand Resort, 1555 S Coast Hwy, Laguna Beach, CA 92651, USA

Chairs: Katharine Davidson (Henderson, Caverly & Pum), Lawrence H. Heller (Greenberg Traurig)

https://www.step.org/events/step-international-tax-estate-planning-forum-around-globe-2018-3-4-may-2018-0

STEP CC18 Caribbean Conference

5/7/2018 - 5/9/2018

STEP

Venue: Hilton Barbados, Needham's Point St. Michael, Bridgetown, BB 11000, Barbados

Key speakers: Theo Burrows (Higgs & Johnson), Peter Cotorceanu (G&TCA and Anaford), Eric Dorsch (Kozusko Harris Duncan), Tara Frater (Lex Caribbean), among numerous others

http://www.stepcaribbeanconference.com/

48th Annual Spring Symposium

5/17/2018 - 5/18/2018

National Tax Association

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

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/48th-annual-spring-symposium-2018/

In-Depth HST/GST Course

5/27/2018 - 6/1/2018

CPA

Venue: 48 John Street, Niagara-on-the-Lake, ON LOS 1J0, Canada

Key speakers: David Robertson (CPA), Janice Roper (Deloitte)

https://www.cpacanada.ca/en/career-and-professional-development/courses/core-areas/taxation/indirect-tax/in-depth-hst-gst-course

STEP Canada 20th National Conference

5/28/2018 - 5/29/2018

STEP

Venue: Metro Toronto Convention Centre, 222 Bremner Boulevard, South Building, Toronto, ON, Canada

Speakers: Philip Marcovici, TEP, Hong Kong: Offices of Philip Marcovici, Ed Northwood, JD, TEP, Buffalo: Ed Northwood and Associates, Pamela Cross, LLB, TEP: Ottowa: Borden Ladner Gervais LLP; Deputy Chair, STEP Canada, among numerous others.

http://www.cvent.com/events/step-canada-20th-national-conference/event-summary-3ae3bbc412384eed96b4e18e7df3b266.aspx

Transcontinental Trusts: International Forum 2018

6/3/2018 - 6/5/2018

Informa

Venue: The Hamilton Princess, 76 Pitts Bay Rd, HM08, Bermuda

Key speakers: The Hon. Premier David Burt (Premier, The Goverment of Bermuda), The Hon. Justice Indra Charles (Justice, Supreme Court of The Bahamas), Anthony Poulton (Baker & McKenzie), Jonathan Conder (Macfarlanes), among numerous others

https://finance.knect365.com/transcontinental-trusts-international-forum/

1031 Exchanges

6/6/2018 - 6/6/2018

National Business Institute

Venue: Hotel RL by Red Lion Salt Lake City, 161 West 600 South, Salt Lake City, UT 84101, USA

Key speakers: Michael Anderson (Exchange Services), Adam Dayton (Fabian VanCott), J. Craig Smith (Smith Hartvigsen), Michael Walch (Kirton Mcconkie), among numerous others

https://www.nbi-sems.com/ProductDetails/1031-Exchanges/Seminar/79433ER?N=64013%2B4294966381

Trusts From A to Z

6/7/2018 - 6/7/2018

National Business Institute

Venue: Comfort Inn, 716 New Haven Rd, Naugatuck, CT 06770, USA

Key speakers: Beth Ann Brunalli (Davidson, Dawson & Clark), Michael Clear (Wiggin and Dana), Stephen Keogh (Keogh, Burkhart & Vetter), Katherine Mcallister (Cummings & Lockwood), among numerous others

https://www.nbi-sems.com/ProductDetails/Trusts-From-A-to-Z/Seminar/79049ER?N=64013%2B4294966381

2018 Bermuda Captive Conference

6/11/2018 - 6/13/2018

BCC

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

Key speakers: Jonathan Reiss (Hamilton Insurance Group), Derreck Kayongo (Global Soap Project)

http://bermudacaptiveconference.com/

11th Annual US – Latin America Tax Planning Strategies

6/13/2018 - 6/15/2018

American Bar Association

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

Key speakers: TBC

https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=294841319

Family Office & Private Wealth Management Forum

7/16/2018 - 7/18/2018

Opal Group

Venue: Gurney's Newport Resort & Marina, 1 Goat Island, Newport, RI 02840, USA

Key speakers: TBC

http://opalgroup.net/conference/family-office-private-wealth-management-forum-2018/

STEP Global Congress

9/13/2018 - 9/14/2018

STEP

Venue: The Westin Bayshore, 1601 Bayshore Drive, Vancouver, British Columbia, V6G 2VA, Canada

Key speakers: TBC

http://www.stepglobalcongress.com/About-Congress

Family Office & Private Wealth Management Forum West

10/24/2018 - 10/26/2018

Opal Group

Venue: Napa Valley Marriott, 3425 Solano Ave, Napa, CA 94558, USA

Key speakers: TBC

http://opalgroup.net/conference/family-office-private-wealth-management-forum-west-2018/

111th Annual Conference on Taxation

11/15/2018 - 11/17/2018

National Tax Association

Venue: Sheraton New Orleans Hotel, 500 Canal St, New Orleans, LA 70130, USA

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/111th-annual-conference-on-taxation/

ASIA PACIFIC

China Offshore Shenzhen Summit 2018

5/22/2018 - 5/24/2018

China Offshore

Venue: Grand Hyatt Shenzhen, 1881 Baoan Nan Road, Luohu District, Shenzhen, 518001, China

Key speakers: Simon Guo (Five Lakes World Trade Center), Uny Chan (Fidinam Hong Kong), Timothy Zammit (RSM Malta), Till Neumann (Citizen Lane), among numerous others

http://shenzhen.chinaoffshoresummit.com.hk/en/

NSW 11th Annual Tax Forum

5/24/2018 - 5/25/2018

The Tax Institute

Venue: Sofitel Sydney Wentworth, 61-101 Phillip Street, Sydney NSW 2000, Australia

Key speakers: Andrew Noolan (Brown Wright Stein Lawyers), Jonathan Woodger (PwC), Daniel Butler (DBA Lawyers), Gareth Aird(Commonwealth Bank), among numerous others

https://www.taxinstitute.com.au/professional-development/key-events/nsw-tax-forum

The 4th Annual Asia Offshore Forum

5/29/2018 - 5/30/2018

Asia Offshore Association

Venue: Renaissance Hong Kong Harbour View Hotel, Hong Kong Convention And Exhibition Centre, 1 Harbour Rd, Wan Chai, Hong Kong

Key speakers: Michael Olesnicky (KPMG), Zarrian Liu (Zhong Zhi Wealth Preservation Holdings), Wilson Cheng (Ernst & Young), Gabriel Hai (Lang Di Fintech), among numerous others

http://asiaoffshoreforum.com/

2018 Private Business Tax Retreat

5/31/2018 - 6/1/2018

The Tax Institute

Venue: Palazzo Versace Hotel, 94 Seaworld Drive, Main Beach QLD 4217, Australia

Key speakers: TBC

https://www.taxinstitute.com.au/professional-development/key-events/private-business-tax-retreat

2018 Death… and Taxes Symposium

6/19/2018 - 6/20/2018

The Tax Institute

Venue: Sofitel Gold Coast Broadbeach, 81 Surf Parade, Broadbeach QLD 4218, Australia

Key speakers: TBC

https://www.taxinstitute.com.au/professional-development/key-events/death-and-taxes-symposium

CENTRAL AND EASTERN EUROPE

Wealth Management & Private Banking Summit – Russia & CIS

4/17/2018 - 4/18/2018

Adam Smith Conferences

Venue: Marriott Grand Hotel, 26/1, Tverskaya Street, Moscow, 125009, Russia

Key speakers: Michael Addison (UBS), Evgenia Tyurikova (Sberbank Private Banking), Katerina Mileeva (Alfa-Bank), Evgeny Sivoushkov (PwC), among numerous others

http://www.russianwealthmanagement.com/

International Wealth Forum – Tbilisi 2018

6/6/2018 - 6/6/2018

CIS Wealth

Venue: Courtyard by Marriott Tbilisi, 4 Freedom Square, Tbilisi 0105 Georgia

Key speakers: Anna Pushkaryova (Eurofast Global), Kaha Kiknavelidze (Bank of Georgia), Ekaterine Liluashvili (Bank of Georgia), Otar Sharikadze (Galt & Taggart), among numerous others

http://cis-wealth.com/en/konferencii/20-tbilisi2018.html

Ukrainian Business Forum Kiev 2018

11/12/2018 - 11/12/2018

CIS Wealth

Venue: Fairmont Grand Hotel Kyiv, 1 Naberezhno-Khreshchatytska Street, Kyiv 04070, Ukraine

Key speakers: TBC

http://cis-wealth.com/en/konferencii/21-ubf2018.html

MIDDLE EAST AND AFRICA

5th GCC VAT Forum

4/9/2018 - 4/9/2018

IQPC

Venue: The Meydan Hotel, Meydan Racecourse Al Meydan Road, Nad Al Sheba, Dubai, United Arab Emirates

Key speakers: Rajesh Pareek (Musafir), David Stevens (EY MENA), Lindsay Degouve De Nuncques (ACCA), Jeremy Cape (Squire Patton Boggs), among numerous others

https://gccvat.iqpc.ae/?utm_source=conferencealerts&utm_medium=portal&utm_campaign=-external-diarylisting&utm_term=homepage&utm_content=text&mac=27287.005_confalerts_dl&disc=27287.005_confalerts_dl

Protecting Client Assets in a Volatile and Uncertain World – STEP South Africa Conference

4/23/2018 - 4/24/2018

STEP

Venue: Sandton Convention Centre, 161 Maude St, Sandton, Johannesburg, 2196, South Africa

Key speakers: Assad Abudullatif (Axis Fiduciary Ltd), Nigel Barnes (Henley & Partners), Lester Basson (Department of Justice and Constitutional Development), Rachel Coyle (S-RM), among numerous others

https://www.step.org/sa2018

4th IBFD Africa Tax Symposium

5/9/2018 - 5/11/2018

IBFD

Venue: Sarova Whitesands Beach Resort & Spa, Off Malindi Road, Mombasa County, Mombasa, Kenya

Key speakers: Belema Obuoforibo (IBFD), Emily Muyaa (IBFD), Jan Maarten Slagter (IBFD), Kennedy Munyandi (IBFD), Michael Lennard (FDO, United Nations), and numerous others (TBC)

https://www.ibfd.org/IBFD-Tax-Portal/Events/4th-IBFD-Africa-Tax-Symposium

WESTERN EUROPE

Principles of Transfer Pricing

4/9/2018 - 4/13/2018

IBFD

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

Instructors: Eduard Sporken (KPMG Meijburg & Co.), Bo Wingerter (EY), Omar Moerer, CFA (PwC), Anuschka Bakker (IBFD), Brian Mulier (Bird & Bird LLP), and numerous others.

https://www.ibfd.org/Training/Principles-Transfer-Pricing-0

18th Annual US – Europe Tax Planning Strategies Conference

4/11/2018 - 4/13/2018

American Bar Association

Venue: Hotel Okura, Ferdinand Bolstraat, 333 1072 LH, Amsterdam, Netherlands

Co-chairs: Carola van den Bruinhorst (Loyens & Loeff N.V., Amsterdam), Peter H. M. Flipsen (Simmons & Simmons LLP, Amsterdam), Carol P. Tello (Eversheds Sutherland (US) LLP, Washington, DC, USA)

https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=282024878

STEP Malta Conference

4/12/2018 - 4/13/2018

STEP

Venue: Hilton Malta, Vjal Portomaso, St Julian's PTM 01, Malta

Key speakers: Marc Alden (Deloitte), Atiq Anjarwalla (AC& H Legal Consultants), Petra Camilleri (Malta Finance Services Authority), Jonathan Conder (Macfarlanes), among numerous others

https://www.step.org/malta2018

Accountancy Conference 2018

4/16/2018 - 4/16/2018

ICAEW

Venue: Derbyshire County Cricket Club, Nottingham Road, Derby, Derbyshire, DE21 6DA, UK

Key speakers: Bill Telford (Baker Tilly) & Guy Loveday (PTP Ltd)

https://events.icaew.com/pd/7401/accountancy-conference-2018?st_t=49%2C46&st_ti=432%2C418&returncom=productlist&source=search

Transcontinental Trusts 2018

4/17/2018 - 4/19/2018

Informa

Venue: Grand Kempinski Hotel, Quai du Mont-Blanc 19, 1201 Geneva, Switzerland

Key speakers: The Honourable Justice David Hayton (The Caribbean Court of Justice), Lewis Baglietto (Hassans), Julia Abrey (Withers), Marco Cerrato (Maisto E Associati), among numerous others

https://finance.knect365.com/transcontinental-trusts/

Global VAT

4/17/2018 - 4/20/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Wilbert Nieuwenhuizen (VAT adviser), Xiaoqiang Yang (Sun Yat-Sen University), Vanessa Bacchin Cardo (Unilever)

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

Global Impact Investment Strategy

4/19/2018 - 4/19/2018

ESAFON

Venue: Mövenpick Hotel & Casino Geneva, Route de Pré-Bois 20, 1215 Geneva, Switzerland

Key speakers: Dr. Willem Schramade (NN Investment Partners), Damian Payiatakis (Barclays), Karen Wilson (OECD), Kurt Morriesen (United Nations Principles of Responsible Investments), among numerous others

http://esafon.com/

Global VAT – Specific Countries

4/19/2018 - 4/20/2018

IBFD

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

Instructors: Xiaoqiang Yang (Sun Yat-Sen University), Vanessa Bacchin Cardo (Unilever)

https://www.ibfd.org/Training/Global-VAT-Specific-Countries-1

Annual Funds Conference 2018

4/24/2018 - 4/24/2018

Jersey Finance

Venue: 8 Northumberland Avenue, London, UK

Key speakers: Geoff Cook (Jersey Finance), Senator Ian Gorst (Chief Minister of Jersey), Sir Simon Fraser (Flint Global), Michael Collins (Invest Europe), among numerous others

https://www.jerseyfinance.je/events/jersey-finance-annual-funds-conference-2018

Private Banking & Wealth Management: Germany 2018 Conference and Awards

4/24/2018 - 4/24/2018

Verdict

Venue: Villa Kennedy, Kennedyallee 70, 60596 Frankfurt am Main, Germany

Key speakers: TBC

https://www.verdict.co.uk/private-banker-international/events/private-banking-germany-2018/

US Corporate Taxation

4/24/2018 - 4/26/2018

IBFD

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

Instructors: John G. Rienstra (IBFD), Paulus Merks (Houthoff Amsterdam)

https://www.ibfd.org/Training/US-Corporate-Taxation-0

Jersey Finance Annual Private Wealth Conference

4/25/2018 - 4/25/2018

Jersey Finance

Venue: 8 Northumberland Avenue, London, UK

Key speakers: Geoff Cook (Jersey Finance), Nick Bostrom (University Of Oxford), Jonathan Evans (Mi5), Andrew Shirley (Knight Frank), among numerous others

https://www.jerseyfinance.je/events/jersey-finance-annual-private-wealth-conference-2018#.WpQ_Oqhl_IU

3rd International Conference on Taxpayer Rights

5/3/2018 - 5/4/2018

IBFD

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

Key speakers: Philip Baker, QC (Field Court Tax Chambers), Kevin M. Brown (PwC), Juliane Kokott (Advocate General, ECJ), Andrew Roberson (McDermitt Will & Emery), among numerous others

https://www.ibfd.org/IBFD-Tax-Portal/Events/3rd-International-Conference-Taxpayer-Rights

Tax and Technology

5/3/2018 - 5/4/2018

IBFD

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

Instructors: Bart Janssen (Deloitte), Aleksandra Bal (IBFD), Monica Erasmus-Koen (Tytho), Eliza Alberts-Muller (Tytho)

https://www.ibfd.org/Training/Tax-and-Technology

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

5/7/2018 - 5/9/2018

IBFD

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

Instructors: Frank de Beijer (Liberty Global), Femke van der Zeijden (PwC), Rens Bondrager (Allen & Overy), Rinze van Minnen (DLA Piper)

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

Taxation of UK Land and Buildings

5/9/2018 - 5/9/2018

Key Haven Publications

Venue: The Law Society's Hall, London, WC2A, UK

Chair: Robert Venables (Old Square Tax Chambers)

https://www.khpplc.co.uk/products/98/Taxation-of-UK-Land-and-Buildings

Guernsey Funds Forum

5/17/2018 - 5/17/2018

Guernsey Finance

Venue: Etc.Venues, Broadgate City of London, 155 Bishopsgate, London, EC2M 3YD, UK

Key speakers: TBC

https://www.weareguernsey.com/events/2018/guernsey-funds-forum-2018/

Transfer Pricing and Intra-Group Financing

5/24/2018 - 5/25/2018

IBFD

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

Instructors: Antonio Russo (Baker & McKenzie), Andre Dekker (Baker & McKenzie), Francesco Iaquinto (Meijburg & Co.), Krzysztof Lukosz (Ernst & Young)

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

Introduction to European Value Added Tax

6/5/2018 - 6/8/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD), Wilbert Nieuwenhuizen (VAT adviser), Marie Lamensch (Institute for European Studies), Christian Deglas (Deloitte), Zsolt Szatmári (IBFD)

https://www.ibfd.org/Training/Introduction-European-Value-Added-Tax-0

International Tax Planning Association Meeting

6/13/2018 - 6/15/2018

ITPA

Venue: The Ritz Carlton, Schubertring 5, 1010 Wien, Austria

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

https://www.itpa.org/meeting/vienna-october-2017/

IFRS Foundation Conference: Frankfurt 2018

6/28/2018 - 6/29/2018

Informa

Venue: InterContinental Frankfurt, Wilhelm-Leuschner Strasse 43, Frankfurt, 60329, Germany

Chair: Hans Hoogervorst (IASB)

http://www.ifrs-conference.org/

Recent Case Law of the European Court of Human Rights in Tax Matters

7/2/2018 - 7/6/2018

Academy of European Law

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

Key speakers: TBC

https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=127448

Private Investor Middle East International Conference

9/26/2018 - 9/27/2018

Adam Smith Conferences

Venue: The Montcalm London Marble Arch, 2 Wallenberg Place, London, W1H 7TN, UK

Key speakers: Jeffrey Sacks (Citi Private Bank), Michael Addison (UBS), Paul Stibbard (Rothschild Trust), Ian Barnard (Capital Generation Partners), among numerous others

http://www.privateinvestormiddleeast.com/

Wealth Insight Forum 2018

9/27/2018 - 9/27/2018

Spear's

Venue: One Great George Street, 1 Great George St, Westminster, London, SW1P 3AA, UK

Key speakers: Trevor Abrahmsohn (Glentree International), Robert Amsterdam (Amsterdam & Partners), Stephen Bush (New Statesman), Mark Davies (Mark Davies & Associates), among numerous others

http://wif.spearswms.com/

International Tax Planning Association Meeting

10/17/2018 - 10/19/2018

ITPA

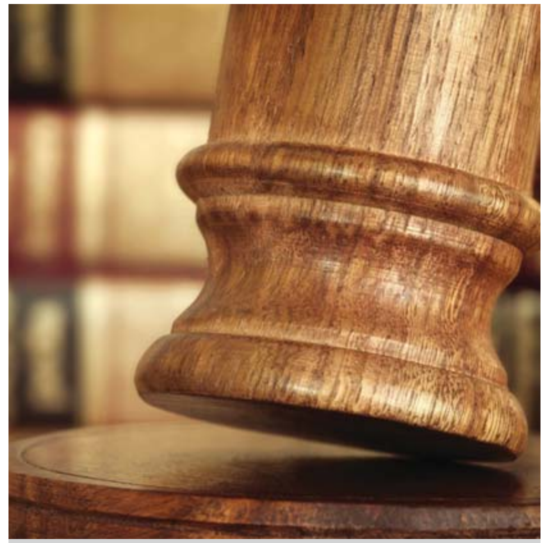
Venue: Mandarin Oriental Hyde Park, 66 Knightsbridge, London, SW1X 7LA, UK

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

https://www.itpa.org/meeting/london/

THE AMERICAS

United States



A listing of recent key international tax cases.

The Internal Revenue Service (IRS) will reportedly appeal a ruling from the District Court for the District of Columbia, released January 13, 2018, in favor of Starr International Company concerning an erroneous refund paid to the taxpayer, which the IRS sought to reclaim.

In 2011, the IRS erroneously issued a USD21m refund to Starr for the 2008 tax year.

Under the applicable statute of limitations, the Government had two years to file suit to reclaim that refund, but it failed to do so.

Instead, four years after issuing the refund, the Government filed a counterclaim in this case, which Starr originally brought to recover taxes withheld for the 2007 tax year.

The IRS argued that it was entitled to an extended limitations period – of five years, rather than two – because, it alleged, it was induced to issue the refund by Starr's misrepresentations of material fact.

The District Court found that Starr had made no such misrepresentations in its refund claim. The Court therefore ruled that the two-year statute of limitations should apply.

The case concerned the US federal income taxes on dividend income attributable to stock held by Starr, a Swiss-based company, in US corporations. These taxes are typically withheld at a rate of 30 percent and remitted directly to the IRS. A tax treaty between the US and Switzerland, however, entitles certain Swiss-resident corporations to a significant reduction in the tax rate applied to US-source dividends – from 30 percent to either 5 or 15 percent. Sometimes the IRS grants a refund claim erroneously. When this happens, the Government generally has two years to realize its error and initiate a lawsuit to recover the refund.

Under US law, the statute of limitations can be extended to five years "if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact." The Government bears the burden of proving a misrepresentation of material fact in order for the five-year statute of limitations to apply.

In December 2007, Starr filed a request with the US Competent Authority (USCA) seeking discretionary benefits – specifically, a reduced rate of withholding paid on dividends it received from AIG stock – under the US–Swiss Treaty.

A Swiss corporation automatically benefits from the Treaty if it meets one of a dozen or so enumerated criteria – *e.g.*, if it does significant business in Switzerland.

While that request was pending before the USCA, Starr filed a refund claim with the IRS's Ogden Service Center (OSC) – a prerequisite for bringing legal action against the IRS to claim a refund before the courts – for the 2007 tax year, seeking a refund in the amount it would be entitled to receive if it were eligible for the treaty benefits.

Starr indicated on the front page of its Form 1120-F that the refund request was a "Protective Refund Claim" and informed the USCA that it was filing this claim. The USCA representative who was reviewing Starr's treaty benefits eligibility request contacted the OSC and instructed it not to issue a refund.

In October 2010, the USCA issued a final determination letter denying Starr its requested treaty benefits for the 2007 tax year.

Starr then filed a refund request with the IRS for USD21m for the 2008 tax year and an amended claim for the 2007 tax year. On the first page of its 2008 Form 1120-F, next to the line indicating the amount to which Starr claimed it was owed, Starr wrote "See Statement 1", referring to an attached five-page statement with several additional attachments. In the first paragraph of this statement, Starr disclosed that it had not been granted benefits by the USCA. The statement went on to detail Starr's legal arguments about why it believed the USCA's determination was incorrect.

Starr also attached about 90 pages of correspondence between Starr and the USCA, including the determination letter that set forth the USCA's basis for deciding that Starr did not qualify for the benefits.

In 2011, the IRS granted Starr's 2008 refund request and issued a refund for USD21,151,745.75. It did not act on Starr's 2007 amended claim.

In 2014, Starr filed suit in the District of Columbia seeking a refund of taxes paid for the 2007 tax year on the basis that the USCA erroneously denied its request for treaty benefits.

The Court held that Starr's refund claim was not subject to judicial review because, in order to grant Starr its requested refund, the Court would need to "dictate the outcome" of the Treaty's mandatory consultation with the Swiss competent authority and would thereby "impinge upon the Executive's prerogative to engage in that [consultation] process."

The Court ultimately ruled that the USCA's determination did not violate the Administrative Procedure Act, and Starr has appealed that ruling.

Meanwhile, in 2015, the Government amended its answer to Starr's complaint before the District Court by adding a counterclaim seeking to recover the 2008 refund as erroneously issued.

Citing IRS regulations, the Government contended that the USCA's denial of benefits was not administratively reviewable by the OSC, and so the OSC did not have jurisdiction to issue the refund in the first place.

As the Government recognized, because it brought suit to recover the erroneous refund almost four years after it was issued, its counterclaim would be untimely under the default two-year statute of limitations. Thus, for the Government's counterclaim to succeed, it had to prove before the Court that Starr induced the IRS to issue the refund "by fraud or misrepresentation of a material fact" for the five-year limitations period to apply. The parties then accordingly filed cross-motions for summary judgment on the issue of whether the Government's claim was timely.

The IRS argued that Starr made three misrepresentations of material fact that induced the refund:

(1) It indicated on line nine of the Form 1120-F that it was entitled to a USD21m refund;
(2) It failed to notify the representative overseeing the matter at the USCA that it was filing the refund request with the IRS; and
(3) It failed to notify the Ogden Service Center that it lacked jurisdiction to issue a refund.

The Court found that none of these acts or omissions were material misrepresentations for purposes of the statute of limitations.

The Court therefore ruled:

> "Starr properly completed and filed its 2008 Form 1120-F, accurately indicating the amount it believed it was due while repeatedly alerting the IRS to the fact that the USCA had denied it treaty benefits. The [OSC's] erroneous payment of the refund claim does not mean that Starr misrepresented a material fact. … The Court will therefore apply the standard two-year statute of limitations to the Government's counterclaim, rendering it untimely."

https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv1593-110

United States District Court for the District of Columbia: *Starr International Company, Inc. v. United States of America (Case No. 14-cv-01593 (CRC))*

WESTERN EUROPE

Belgium

Belgium's Constitutional Court has annulled legislation which extended value-added tax (VAT) to the supply of online gaming and gambling services to customers in Belgium.

The landmark decision was issued on March 22 in response to a legal challenge to the legislative change brought by Swedish-listed online gambling group Kindred (formerly Unibet).

Legislation to remove the broad-based VAT exemption on the gambling sector in Belgium entered into force on August 1, 2016. As a result of the change, all gambling and games of chance that take place online are subject to VAT at the standard rate of 21 percent. However, lotteries and land-based gambling remained VAT-exempt.

Kindred put forward arguments that the decision was incompatible with both Belgium's gaming laws and VAT law, as it discriminated against online operators and in favor of lotteries and land-based casinos.

"The ruling points out the inherent incompatibility between consumer protection and tax revenue objectives, especially when products (lotteries v. other products) and channels (retail v. online) are treated differently," the company said after the ruling.

http://www.kindredgroup.com/kindred-wins-vat-case-in-belgium

Belgian Constitutional Court: *Belgian Government v. Kindred PLC*

Denmark

A Danish court has ruled in favor of Microsoft in a transfer pricing case involving an arrangement between units of the company in Ireland and Denmark.

The case concerned whether Microsoft Danmark ApS had received appropriate consideration for activities performed for Microsoft Ireland Operation Limited, which sells Microsoft programs on the Danish market.

Under an agreement between the two companies, Microsoft Danmark would market Microsoft software in Denmark. However, the Tax Ministry argued that the Danish unit also had a right to receive commission fees for the sale of devices with software with a pre-installed Microsoft operating system.

The Tax Ministry therefore concluded that Microsoft Danmark had understated its Danish income and assessed it for an additional DKK308m (USD51m) in tax for the years 2004 to 2007.

However, in a judgment issued on March 28, the high court for the eastern district said that the tax authority had failed to prove its case.

"The District Court did not find that Microsoft Danmark ApS had carried out marketing activities that had not been settled after the agreement," a court statement said.

This ruling was delivered on March 28, 2018.

http://www.domstol.dk/oestrelandsret/nyheder/domsresumeer/Pages/DomMicrosoft.aspx

Østre Landsret: *Case No. B-2008-16*

Slovakia

The European Court of Justice (ECJ) has ruled in favor of Volkswagen in a case concerning the company's right to claim a refund for VAT not initially charged on the supplies it received, with VAT retrospectively being charged to the company as much as seven years after it received the supplies.

The case concerned national legislation in Slovakia that time-limited the grant of a refund in such circumstances, despite no error by Volkswagen.

The ECJ ruled that EU law must be interpreted as precluding legislation of a member state under which, in circumstances such as those at issue in the main proceedings, the benefit of the right to claim a refund of VAT is denied on the grounds that the limitation period provided for by that legislation for the exercise of that right began to run from the date of supply and expired before the application for a refund was submitted.

The case concerned supplies between 2004 and 2010 by Hella Leuchten-Systeme GmbH, a company established in Germany, and two Hella companies based in Slovakia (together, the Hella Companies), to Volkswagen AG, the auto giant established in Germany, of moulds for the manufacture of lights for motor vehicles.

During this time, the Hella Companies did not include VAT on the invoices they issued, as they considered the transactions not as supplies of goods but of "financial compensation," which is exempt from VAT.

In 2010, the Hella Companies realized that the transactions were not being carried out in accordance with Slovak law. They issued invoices charging the VAT due by Volkswagen for supply of the goods in question, and in accordance with Law No. 222/2004, filed supplementary tax returns for all years from 2004 to 2010, and paid the relevant VAT to the Treasury.

On July 1, 2011, Volkswagen submitted to the Bratislava I Tax Office (Slovak Republic) an application for a refund of the VAT charged on the supplied goods.

On April 3, 2012, the tax office only partially upheld the application, ordering a refund only for the tax periods from 2007 to 2010 and not for the three subsequent years 2004 to 2006. This was due to the expiry of the limitation period of five years provided for by Slovak law.

In this regard, it held that the entitlement to a refund of VAT arose on the date of delivery of the goods, namely the date the VAT had become due, with the result that the right to claim a refund for the period from 2004 to 2006 had expired by the time the application for a refund was submitted.

Volkswagen brought an action seeking the annulment of the latter decision before the Regional Court in Bratislava, which dismissed the action. It then appealed that decision before the Slovak Supreme Court, which referred questions on the legality of the decision to the ECJ.

In ruling against the local tax authority's decision to deny the VAT refund request partially, the ECJ said:

> "In the present case, it is apparent from the order for reference that, even though the supply of goods at issue was carried out during 2004 to 2010, the Hella Companies did not make an adjustment of the VAT until 2010 when they drew up invoices including the VAT, sent supplementary tax returns to the competent national authority and paid the amount of VAT that was due to the State treasury. It is equally apparent that the risk of tax evasion or non-payment of VAT has been excluded. In these circumstances, it was objectively impossible for Volkswagen to exercise its right to a refund before this adjustment, as, prior to that, it had neither been in possession of the invoices nor aware that the VAT was due.
>
> Indeed, it was only following that adjustment that the substantive and formal conditions giving rise to a right to deduct VAT were met and that Volkswagen could therefore request to be relieved of the VAT burden due or paid, in accordance with [the EU VAT Directive] and the principle of fiscal neutrality. Accordingly, since Volkswagen did not demonstrate a lack of diligence, and in the absence of an abuse or fraudulent collusion with the Hella Companies, a limitation period which began from the date of supply of the goods and which, for certain periods, expired before this adjustment, cannot validly deny Volkswagen the right to a refund of VAT."

This ruling was released on Match 21, 2018.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=200484&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=743081s

European Court of Justice (Second Chamber): *Volkswagen AG v. Finance Directorate of the Slovak Republic (C-533/16)*

United Kingdom

The UK's First-Tier Tribunal (FTT) ruled against the appellant in *News Corp UK and Ireland Ltd v. HMRC* ([2018] UKFTT 129 (TC)), dismissing arguments from the publishing company that digital editions of newspapers should benefit from the value-added tax zero rate for printed newspapers.

News Corp publishes "The Times," "The Sunday Times," "The Sun," and "The Sun on Sunday." It had argued that the digital editions of the titles are "newspapers" on the basis that they are the digital equivalent of the daily editions produced on ordinary newspaper printing paper.

HMRC successfully argued that they do not fall within the definition of "newspapers," for the purposes of VAT law, which is confined to print editions of newspapers.

The appeal concerned supplies during the periods September 2010 to June 2014 and January 2013 to December 2016, which were the subject of two separate appeals before being eventually consolidated.

UK law included a zero rate of VAT for "newspapers" in 1991 on the basis of EU law. The FTT said the scope of the zero rating provision was effectively "frozen" at 1991, meaning it applies only to printed matter, as digital editions of such did not exist. The judge cited the "standstill" references in the earlier ruling in Talacre Beach. In that case, the FTT noted, the EU law principles concerning single supplies could not be used to expand the scope of a national law zero-rating statute.

Judge Guy Brannan said: "In my view it follows that the scope of the zero rating provision cannot be extended from the supply of goods to the supply services after 1991." He ruled that applying a different VAT treatment to digital editions from that applicable to newsprint editions "does not offend the principle of fiscal neutrality," adding: "although I am satisfied that (with the exception of The Sun Interactive App), the digital editions were similar to the newsprint editions from the point of view of the consumer, I do not consider that the principle of fiscal neutrality can operate to extend the scope of zero rating from its original application to goods (*i.e.* newsprint) to services (*i.e.* digital editions)."

The judge attached no import to EU proposals, referenced by the appellant, that member states should be soon empowered to offer the same VAT on such supplies regardless of whether they are provided in a traditional tangible format or digital format. EU law has yet to be amended in this area.

News Corp may appeal the ruling.

http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j10349/TC06385.pdf

UK First-Tier Tribunal: *News Corp UK and Ireland Ltd v. HMRC ([2018] UKFTT 129 (TC))*

United Kingdom

HM Revenue & Customs (HMRC) has lauded a ruling in its favor secured before the courts that will save the UK Exchequer tens of millions of pounds in related tax avoidance cases.

The Upper Tribunal upheld an earlier ruling against Cyclops Electronics and Graceland Fixing on appeal, concerning a tax avoidance scheme used by the companies and also employed by over a hundred other businesses.

The businesses used loan notes – a financial instrument that creates or acknowledges indebtedness – to pay company directors' bonuses in an attempt to get around paying tax and National Insurance (the UK's social security levy) on their awards. Specially created companies issued loan notes in GBP10 denominations which matched the bonus amount exactly. Special conditions were included to avoid the tax and National Insurance due when the loan notes were given to the director, HMRC said. The agency said the scheme was designed to take advantage of legislation that provides tax relief for genuine commercial transactions, which has now been amended to prevent any further attempts to exploit the rules.

The scheme was devised to work around the anti-avoidance legislation introduced by Schedule 22 to the 2003 Finance Act into the employment income share schemes provisions in Part 7 of the Income Tax (Earnings and Pensions) Act 2003. The legislation has been amended to prevent any further attempts exploit the rules.

Penny Ciniewicz, HMRC's Director General for the Customer Compliance Group, said: "We cannot allow tax avoidance schemes like these to deprive the UK of vital revenue. The honest majority of people who pay their taxes shouldn't have to carry the burden of paying for the public services we need."

The agency pointed out that, over the last two years, HMRC has won nine out of every ten avoidance cases taken to court, with many more settling before reaching that stage.

The win over Cyclops Electronics, a supplier of electrical components, and Graceland Fixing, a building company, was worth GBP350,000 (USD489,000), with GBP55.2m in related cases.

HMRC commented on the case on March 10, 2018.

http://www.bailii.org/uk/cases/UKUT/TCC/2018/7.html#_blank

Upper Tribunal Tax And Chancery Chamber: *Cyclops Electronics Ltd and Graceland Fixing Ltd v. HM Revenue and Customs*

Dateline April 5th, 2018

By definition, this is supposed to be a somewhat light-hearted look at developments in global taxation. But it's no joke for **natural resource companies operating in Africa** at present. Resource nationalism, if it ever went away, is now back with a vengeance, and several companies have found themselves on the receiving end of unrealistic and seemingly arbitrary **demands for back taxes** in recent weeks and months. First Quantum Mineral's receipt of an assessment for back taxes in the order of USD8bn is but one of the latest examples. To put that amount into some sort of context, it is double the amount the Zambian Government collected in tax revenues last year.

This was not even the most extreme of recent examples. Last year, **Tanzania's revenue authority** served up an incredible back tax claim of USD190bn on Acacia Mining, an amount almost four times the size of Tanzania's entire project GDP for 2018. Something doesn't quite add up here, does it? Nevertheless, these demands are merely part of a **renewed trend** that is resulting in natural resource companies questioning their investments in certain African states. In one notable example, **several mining firms** recently pulled out of the chamber of commerce in the **Democratic Republic of Congo** amid recent tax changes.

So why do some governments behave in such a way? After all, for all the **criticisms the mining sector** receives about its operations in the **developing world**, mining firms are a major source of employment, often funding vital infrastructure projects, and providing substantial tax revenue. So, making the operating environment so difficult would hardly appear to be a sensible economic strategy. I'm guessing that certain African governments, particularly those with acute budgetary problems, are playing to the gallery, a show of strength to the people against the rich mining firms, all the while hoping that the companies will quietly settle for a billion or two, maybe even a few, to make the dispute go away. And then things will carry on as normal, until the next fiscal crisis.

For small businesses and their owners, **tax reform in the United States** is hardly turning out to be a barrel of laughs either. This is, of course, a contentious point, and those responsible for pushing through the Tax Cuts and Jobs Act last year would hotly dispute the accusation that the tax reforms favor large corporations to the **detriment of SMEs**, especially as small firms are the backbone of the US economy. Therefore, it follows that they would be unlikely to go out of their way to upset them. Doesn't it? That would seem like a logical argument to make. However, it is undeniable that the TCJA has given **individuals in business** some very **tough choices** to make, even though they are not yet armed with sufficient informational tools to make them.

The Democrats are certainly attempting to make some political capital out of this. A **report released recently** by Senate Finance Committee Ranking Member Ron Wyden (D – Oregon) says that the TCJA has resulted in **financial uncertainty** for small firms and suggests that the new pass-through deduction could result in small business owners **spending more on tax professionals' advice** than on growing their operations. Wyden also pointed to how the tax deduction picks winners and losers: "architects are in, accountants are out; engineers made the cut, doctors did not," he observed.

At least accountants will be able to recoup what they lose in tax terms by advising all those wealthy doctors, I suppose. Certainly, the accusation could be leveled at Wyden that by raising this issue, he is trying to score political points. But **other tax concerns have been flagged** by organizations representing the interests of **US expats**, including those affiliated to both major parties, and those with no particular political leanings. Specifically, they are worried that the **transition tax on deferred foreign income** and its reporting requirements will cripple individuals with interests in **controlled foreign corporations** with a heavy tax burden, and they are calling for the introduction of a transition tax *de minimis* rule.

The fact that nobody apparently foresaw such problems when the TCJA was being legislated would tend to support the view that the **tax reform legislation was rushed** through Congress. So, in a sense, with many legislative and regulatory loose ends still to be tied up, tax reform remains only half done.

Companies in the **remote gambling sector** aren't exactly having a happy time of it either, as they **face an increasingly dangerous tax** and regulatory minefield in the jurisdictions in which they operate, especially in Europe. Two recent cases highlight how the European market has become something of a lottery for the remote gambling sector. The first was in **Germany**, where a **recent court decision** appeared to all but slam the door on e-gaming and gambling firms, but, with this ruling apparently contradicting earlier jurisprudence, including from the EU courts, this situation is far from clear. The other was in **Belgium**, where **remote gambling firms won a major tax victory** after legislation that imposed value-added tax on the supply of e-gaming services, while leaving the legacy gambling sector exempt from VAT, was annulled.

Culturally, some countries, including in Europe, have been hostile to the gambling industry, and governments have seen it as their role to protect vulnerable citizens against the scourge of gambling addiction. However, just as it has done with most other areas of life, the **borderless world of the internet** has come along and completely changed the game. And governments have reasoned that it is probably better to open up to the gambling industry and keep a firm eye on it through regulation, rather than turn a blind eye to those gambling and gaming on their home computers.

Despite these contradictory developments, we are nevertheless witnessing a **trend of "liberalization"** in the gambling markets, as legislatures pass laws allowing foreign providers to compete with domestic counterparts and lifting bans on e-gaming. However, as we know, the word "liberal" has become increasingly flexible in its meaning. And in the context of the gambling industry, "liberalization" usually means "regulation." And for many governments, there is to be **no regulation without taxation**.

The price it seems for access to the internet connections of country's citizenry is tax. And the industry is often heard to bemoan how these taxes often make their businesses uneconomic. **Poland**, for example, introduced a 12 percent **tax on the turnover** (not profit) of **sports betting operations** as part of a new regulatory framework, then sat by and watched as an exodus of bookmakers became a stampede. With rumblings of discontent in the industry over the **Dutch Government's new gambling regulations**, which will impose a 29 percent **tax on gross gaming revenue** in July, I'm willing to wager that gambling firms won't exactly be falling over themselves to enter the Dutch market.

Nevertheless, for the remote gambling firms, the **penalties for defying regulations** or prohibitions on gambling **can be severe** in many jurisdictions, not to mention the reputational damage a company may suffer from having its name dragged through the mud by the authorities. Anybody who's been to Las Vegas knows that the house never loses. Perhaps the world of tax is the exception.

The Jester