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a closer look

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a closer look

Global Tax Weekly – A Closer Look

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Due Date Clarified For Transition Tax On Foreign Company Owners

by Ephraim Moss, Esq. and Joshua Ashman, CPA, Expat Tax Professionals

Introduction

Of all the income tax provisions in Trump's major tax reform legislation,[1] the so-called "transition tax" is perhaps the most unusual in its scope and breadth. For many US persons owning foreign companies[2] that trigger the transition tax, a certain degree of panic set in at the beginning of this year, because the transition tax statute (IRC Section 965), if read strictly, seems to have given a hard deadline of April 15 for paying the first portion of the tax under the statute's payment installment plan.

In terms of the due date, further angst could be felt among US persons living abroad,[3] who have become accustomed to having at least a two-month reprieve (to June 15) to file and pay their US taxes. The extra time can be crucial for gathering information while abroad, especially in the case of company ownership, where financials are not produced for some time after year end.

In this article, we provide a brief overview of the transition tax and its relevant provisions for US expats, and highlight recent IRS guidance addressing the issue of the due date for US persons living abroad.

The Transition Tax – How Does It Work?

As part of the transition to a so-called participation exemption system, new Section 965 of the Internal Revenue Code uses the mechanics under Subpart F to impose on US shareholders owning at least 10 percent of a foreign subsidiary a one-time mandatory "repatriation tax" or "transition tax" on the undistributed, non-previously taxed, post-1986 foreign earnings and profits ("E&P") of a "specified foreign corporation." A specified foreign corporation is defined as (i) any CFC, and (ii) any foreign corporation with respect to which one or more domestic corporations is a 10 percent United States shareholder. The portion of the E&P comprising cash or cash equivalents is taxed at the rate of 15.5 percent, while any remaining E&P is taxed at the rate of 8 percent.

Section 965 does not distinguish US corporate shareholders from other US shareholders, so the transition tax potentially applies to any US person (including an individual) owning at least 10 percent of a foreign subsidiary. The transition tax rates can be slightly higher for US individual shareholders whose effective tax rate was higher than 35 percent for the 2017 tax year.

Section 965 specifies, importantly, that the transition tax applies to the greater of the accumulated post-1986 deferred foreign income (essentially the previously untaxed E&P) of the foreign corporation determined as of November 2, 2017 or as of December 31, 2017. In order to prevent pre-transition tax avoidance planning, the section adds that E&P is determined by essentially ignoring dividends distributed during the 2017 taxable year (other than dividends distributed to another specified foreign corporation).

Easing The Pain Of The Transition Tax

Other aspects of Section 965 that could potentially ease the pain of the transition tax include the following:

- US shareholders can elect to pay the transition tax in installments over a period of up to eight years;
- Deferred earnings of a US shareholder are reduced (but not below zero) by the shareholder's share of deficits from other specified foreign corporations;
- The transition tax does not apply to previously taxed E&P;
- The portion of earnings subject to the transition tax does not include E&P that were accumulated by a foreign company prior to attaining its status as a specified foreign corporation;
- Owners of foreign companies that are fiscal year taxpayers may not have a payment obligation until next year (although the transition tax rate may be higher at that point); and
- An election is available for an individual to be treated as a corporate taxpayer for purposes of the transition tax in order to claim a credit for foreign taxes paid at the corporate level (although we note that such an election has potential drawbacks that require consideration and analysis).

When Is The Transition Tax Due?

When reading new Section 965, the only due date mentioned for the transition tax is in the context of the eight-year installment election. Section 965 caveats that "the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year." The natural reading of the statute seems to be that the first installment should be due on April 15 even for those living abroad, because June 15 is essentially an extension of the original due date.

In recently published Notice 2018-26,[4] however, the US Treasury and the IRS clarified first that in the case of a taxpayer who otherwise qualifies for the automatic June 15 extension (including US citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States), the date of June 15 (and not April 15) is the general deadline for the transition tax. They further clarified that June 15 (and not April 15) is the deadline for the first payment for those who elect to pay the transition tax in annual installments.

Further Guidance From The IRS

Since the enactment of new Section 965, Treasury and the IRS have issued several rounds of guidance on the transition tax rules, including a FAQs page[5] that gives instructions on reporting and paying the tax, and Publication 5292,[6] which includes worksheets that assist with calculating the tax.

For further guidance, the IRS page dedicated to the transition tax and other provisions of the tax reform can be found at https://www.irs.gov/newsroom/tax-reform

Endnotes

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EU Common Consolidated Corporate Tax Base – A Summary

by Stuart Gray, Senior Editor, Global Tax Weekly

The European Union recently began a process of evaluating how the proposed common consolidated corporate tax base (CCCTB) would affect member states' corporate tax revenues, in an effort to assuage the concerns of those countries that expect to lose out as a result of the reforms.

This article looks at the background to the CCCTB, summarizes its main provisions, looks at recent developments, and briefly gauges the political obstacles that could delay the legislative process or lead to its postponement.

Introduction

The CCCTB is a single set of rules that companies operating within the EU would use to calculate their taxable profits. The idea is that a company or group of companies would have to comply with just one EU system for computing its taxable income, rather than different rules in each member state in which it operates. In addition, under the CCCTB, companies active in more than one EU member state would only have to file a single tax return for the whole of their activity in the EU.

The CCCTB would make it possible for companies or groups of companies to consolidate all profits and losses across the EU. The single consolidated tax return would be used to establish the tax base of the company, after which all member states in which the company is active would be entitled to tax a certain portion of that base, according to a specific formula based on three equally weighted factors (assets, labor, and sales). This would all be done through the tax authorities of the company's principal member state, and companies would benefit from a "one-stop-shop" system for filing their tax returns.

Background

The CCCTB has a long history. The idea was first presented in a European Commission Communication on October 23, 2001. The proposal was discussed extensively in a public consultation, meetings of the European Council of Finance Ministers, and a special CCCTB Working Group over the next few years until finally, on March 16, 2011, a draft Directive arrived incorporating the CCCTB.[1]

Unsurprisingly, given that the CCCTB represents a dramatic change in EU corporate tax rules involving a degree of encroachment onto national tax sovereignty, the proposal was a hard sell for its principle supporters, namely France and Germany (which have redoubled their efforts to explore harmonizing aspects of their own corporate tax regimes[2]) and other key member states, and it was quickly realized that a political agreement was not possible.

Thereafter, the idea lay dormant until June 2015, when the Commission revived the proposals as part of its corporate tax reform Action Plan.[3] Crucially, increased international cooperation to tackle tax avoidance has given the CCCTB fresh impetus, and the proposals have been repackaged by the Commission as a major addition to the EU's anti-avoidance arsenal, as well as a simplification initiative. Indeed, in a speech on tax fairness in 2017, Tax Commissioner Pierre Moscovici described the CCCTB as a "decisive tool against corporate tax avoidance." [4]

For member states, the CCCTB is expected to contribute to efforts to tackle base erosion and profit shifting (BEPS). It would, in theory, no longer be possible for member states to have hidden elements in their tax bases, and the CCCTB would also eliminate mismatches and loopholes in national tax systems. Furthermore, according to the EU, it would dramatically simplify companies' transfer pricing affairs and the enforcement of such.

The CCCTB was officially relaunched in October 2016.[5] Recognizing that the original CCCTB was too ambitious, the latest initiative has been broken down to a two-step process. Another key change would make the rules mandatory for the biggest multinational groups operating in the EU with global revenues exceeding EUR750m (USD907m) a year – the same threshold as currently applies for country-by-country reporting under the OECD's BEPS project.

Under the new two-stage approach (explored in more detail below), harmonized rules would be introduced on how to calculate a company's tax base in all member states. Then, tax revenues would be collected and distributed among member states under the aforementioned formulary apportionment approach, based on factors such as turnover, sales, and employment levels.

The Common Corporate Tax Base

The first step towards an EU-wide corporate tax system, the Proposal for a Council Directive on a Common Corporate Tax Base (the CCTB Proposal),[6] lays down common corporate tax rules for computing the tax base of companies and permanent establishments in the EU. The Explanatory Memorandum to the CCTB Proposal describes the following provisions.

Scope

The directive will be mandatory for companies which belong to groups beyond a certain size. The criterion for fixing a size-related threshold will refer to the total consolidated revenue of a group which files consolidated financial statements. Furthermore, to reach a degree of coherence between the two steps (*i.e.*, common corporate tax base and CCCTB), companies will be required to meet the conditions for consolidation in order to fall within the mandatory scope of the common base. This will ensure that once the full initiative materializes with the adoption of consolidation and the apportionment formula, all taxpayers under the rules of the common base will automatically move into the CCCTB scheme. These common rules will also be available, as an option, for those companies which do not comply with these conditions.

Definition of a permanent establishment

The concept of a permanent establishment (PE) is related closely to the post-BEPS recommended definition in the OECD Model Tax Convention. Differently from the 2011 proposal, the revised definition covers only PEs situated within the EU and belonging to a taxpayer who is resident for tax purposes within the EU. The aim would be to ensure that all concerned taxpayers share a common understanding and to exclude the possibility of a mismatch due to divergent definitions. It was not seen as essential to put forward a common definition of PEs situated in a third country, or in the EU but belonging to a taxpayer who is resident for tax purposes in a third country. The third-country dimension is thus left to be dealt with in bilateral tax treaties and national law.

Tax base

The tax base is designed broadly. Therefore, all revenues will be taxable unless expressly exempted. Income consisting of dividends or proceeds from the disposal of shares held in a company outside the group will be exempt for participations of at least 10 percent, in order to prevent the double taxation of foreign direct investment. In the same vein, the profits of PEs will also be exempt from tax in the state of the group's head office.

Taxable revenues

Taxable revenues will be reduced by business expenses and certain other items. The CCTB Proposal will also replicate, with some necessary adjustments to ensure consistency, the list of non-deductible expenses that featured in the 2011 proposal. To support innovation in the economy, the CCTB Proposal introduces a super-deduction for research and development (R&D) costs to the already generous R&D regime of the 2011 proposal.

The baseline rule of the 2011 proposal on the deduction of R&D costs will therefore continue to apply, meaning that R&D costs will be fully expensed in the year incurred (with the exception of immovable property). In addition, taxpayers will be entitled, for R&D expenditure up to EUR20m, to a yearly extra super-deduction of 50 percent. To the extent that R&D expenditure reaches beyond EUR20m, taxpayers may deduct 25 percent of the exceeding amount.

The CCTB Proposal will also grant an enhanced super-deduction for small starting companies without associated enterprises which are particularly innovative (a category that will in particular cover start-ups). In that context, taxpayers who qualify, according to the directive, may deduct 100 percent of their R&D costs as long as these do not exceed EUR20m, and provided that these taxpayers do not have any associated enterprises.

Interest limitation rule

This is a new rule (absent from the 2011 proposal) which features in the Anti Tax Avoidance Directive (ATAD) and was analyzed in detail as part of the BEPS initiative. It limits the deductibility of interest (and other financial) costs, in order to discourage profit shifting towards low-tax countries. The rule envisages the full deductibility of interest (and other financial) costs to the extent that they can be offset against taxable interest (and other financial) revenues. Any surplus of interest costs will be subject to deductibility restrictions, to be determined by reference to a taxpayer's taxable earnings before interest, tax, depreciation and amortization (EBITDA).

Allowance for growth and investment (AGI)

The CCTB Proposal aims to tackle the asymmetry whereby interest paid out on loans is deductible (subject to some limits) from taxpayers' common base while this is not the case for profit distributions. The CCTB Proposal will include a rule against debt bias, in order to neutralize the current framework that discourages equity financing. Taxpayers will be given an allowance for growth and investment according to which increases in their equity will be deductible from their taxable base subject to certain conditions, such as measures against potential cascading effects and anti tax avoidance rules. As part of the review of the common tax base, the Commission will give specific consideration to the functioning of the AGI as a basis for considering adjustments to its definition and calibration.

Depreciation

The thrust of the rule according to which fixed assets are to be depreciable for tax purposes, subject to certain exceptions, remains the same as in the 2011 proposal. However, more assets will now fall within the scope of individual depreciation as medium-life fixed tangible assets have been removed from the pool system.

Losses

As under the 2011 proposal, taxpayers are allowed to carry losses forward indefinitely without restrictions on the deductible amount per year. However, the rule has been reinforced with an anti-abuse provision to discourage attempts to circumvent the rules on loss deductibility through purchasing loss-making companies.

Temporary loss relief with recapture

In order to partially make up for the absence of the benefits of cross-border consolidation during the "first step," there will be a possibility to consider, under strict conditions, losses incurred by an immediate subsidiary or PE situated in another member state. This relief will be temporary since the parent company will add back to its tax base, considering the amount of losses previously deducted, any subsequent profits made by its immediate subsidiaries or PEs. Furthermore, if the incorporation does not occur within a certain number of years, the deducted losses will be reincorporated automatically.

Anti tax avoidance

In a similar way to the 2011 proposal, the system under the CCTB Proposal will include an array of rules against tax avoidance. The General Anti-Abuse Rule (GAAR) is drafted in line with the text featuring in the ATAD and is supplemented by measures designed to curb specific types of tax avoidance. The proposal seeks to ensure that the GAAR applies to domestic situations, within the EU and *vis-à-vis* third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

The rules also include a switchover clause, which is targeted against certain types of income originating in a third country. It aims to ensure that income is taxable in the EU if it was taxed below a certain level in the third country. Controlled foreign company (CFC) legislation largely refers to the rule in the ATAD and has the effect of reattributing the income of a low-taxed controlled subsidiary to its parent company in an effort to discourage profit shifting. CFC rules extend to the profits of PEs where those profits are not subject to tax or are tax exempt in the taxpayer's member state.

Hybrid mismatches

Mismatches are likely to persist in the interaction between the framework of the common base and national or third-country corporate tax systems. Therefore, the CCTB Proposal lays down rules whereby one of the two jurisdictions in a mismatch may deny the deduction of a payment or ensure that the corresponding income is included in the common base.

Consolidation

As mentioned above, this proposal is the second step in a staged approach towards an EU-wide corporate tax system with cross-border consolidation of the tax results among members of the same group. The Explanatory Memorandum to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (the CCCTB Proposal) describes the following provisions.

Scope

Again, unlike the 2011 proposal, which laid down an optional system for all, this proposal will be mandatory for groups of companies above a certain size. The size-related threshold will refer to the total consolidated revenue of the group which files consolidated financial statements and to which a company belongs. In addition, the common rules will be available, as an option, to a wide scope of groups that fall short of the size threshold.

Definition of "group"

These rules follow those presented in the 2011 proposal, in that eligibility for the consolidated tax group will be determined in accordance with a two-part test based on:

(i) Control (more than 50 percent of voting rights), and
(ii) Ownership (more than 75 percent of equity) or rights to profits (more than 75 percent of rights giving entitlement to profit).

The two thresholds for control and ownership or profit rights shall be met throughout the tax year; otherwise, the failing company will have to leave the group immediately. There will also be a minimum requirement of nine consecutive months for establishing group membership.

Business reorganizations and taxation of losses and unrealized capital gains

The CCCTB Proposal in this area is mostly unchanged from the 2011 proposal, and chiefly involves the treatment of losses and unrealized capital gains on entering and leaving the group.

When a company enters the group, pre-consolidation trading losses will be carried forward to be set off against its apportioned share. When a company leaves the group, no losses incurred during the period of consolidation will be allocated to it. This proposal refines the 2011 rule: in cases of more extensive reorganizations where more than one company has to leave a loss-making group, a threshold is fixed to determine under which conditions companies will no longer be leaving a group without losses, but there will instead be a loss allocation across the consolidated group.

There are rules for dealing with unrealized capital gains which have accrued to fixed assets where the assets are disposed of within a short period after their entry into, or exit from, a group. A member state (in the case of an entry into a group) or the group (in the case of an exit from a group) is given the right to tax underlying capital gains to the extent they were created in their taxing territory. Moreover, the tax treatment of capital gains on self-generated intangible assets calls for a customized approach, which will involve assessing them on the basis of a suitable proxy, *i.e.*, R&D, marketing and advertising costs over a specified period.

Withholding taxes

The proceeds of withholding taxes charged on interest and royalty payments made by taxpayers will be shared according to the formula of that tax year. Withholding taxes charged on dividends will not be shared since, contrary to interest and royalties, dividends are distributed after tax and do not lead to any previous deduction borne by all group companies. These rules are unchanged from the 2011 proposal.

Preventing circumvention of tax exemptions

Unchanged from the 2011 proposal, the tax exemption in favor of disposals of shares will be disallowed if this is illegitimately extended to sales of assets other than shares. This occurs if assets are moved within the group, without tax implications, to a group member which is then sold out of the group. The assets will then benefit, under the cover of a sale of company, from the tax exemption which is provided for share disposals. A similar treatment is provided for intragroup transfers of assets which are then sold out of the group within the current or following tax year. In this case, an adjustment will be made in order to treat the asset as having left the group from the member state where it initially was located, *i.e.*, prior to the intragroup transfer.

Formulary apportionment

Also unchanged from the 2011 proposal, this key element will comprise three equally weighted factors (labor, assets, and sales by destination). The labor factor will be divided into payroll and the number of employees (with each item counting for half) in order to account for differences in the levels of wages across the EU and thereby allow for a fairer distribution. The asset factor will consist of all fixed tangible assets. Intangibles and financial assets will be excluded from the formula due to their mobile nature and the risks of circumventing the system. These factors and weightings are an attempt to ensure that profits are taxed where they are actually earned. As an exception, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause will provide for an alternative method of income allocation.

As the general scheme of formulary apportionment cannot address the specificities of certain industries, there will be rules on adjusted formulae, in order to better fit the needs of sectors such as financial services and insurance, oil and gas, and shipping and air transport.

Administrative procedures

Unlike the 2011 proposal, the common administrative rules in the CCCTB Proposal are limited to the consolidated group. As a matter of principle, single taxpayers who opt to apply the rules under the "first step" will continue to fall within their national administrative provisions.

Groups will deal with a single tax administration ("principal tax authority") in the EU; this is also referred to as the "one-stop-shop." This will be based in the member state where the parent company of the group ("principal taxpayer") is resident for tax purposes. Audits will be initiated and coordinated by the principal tax authority. The national authorities of any member state in which the profits of a group member are subject to tax may request the initiation of an audit.

The competent authority of the member state in which a group member is resident or established may challenge a decision by the principal tax authority concerning the notification that there is a group or an amended assessment. For this purpose, an action will be brought before the courts of the member state of the principal tax authority. Disputes between taxpayers and tax authorities will be dealt with by an administrative body which is competent to hear appeals at first instance, according to the law of the member state of the principal tax authority.

Post-Relaunch Developments

The European Council's Working Party on Tax Questions began examining the CCCTB in November 2016, and in the following month, the Council adopted conclusions establishing priority areas in the proposals. Then, in June 2017, the Council held an orientation debate on the initial common corporate tax base (CCTB) element to the reforms, with the aim of establishing a balance between harmonization and flexibility in the application of the rules.

The European Parliament's Economics and Monetary Committee approved the CCCTB in February 2018, and on March 15, the full Parliament voted in favor of the proposals before passing on the relevant resolution to the European Council and the Commission for their consideration. The EU is now evaluating the potential revenue cost to states of the CCCTB to ensure that the reform is revenue-neutral for those member states that otherwise stand to lose out, and which therefore may block the proposals, such as Ireland and the Netherlands.

Digital Agenda

The CCCTB has been given added momentum by the EU's new digital tax agenda, as the proposals are considered an ideal method of ensuring that digital companies pay income tax according to where they generate income. While the Commission proposed a controversial interim revenue tax on digital companies in March 2018,[7] its preferred long-term solution would include reform of corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels.

Under this proposal, a digital platform would be deemed to have a taxable "digital presence" or a virtual permanent establishment in a member state if it fulfills one of the following criteria:

- It exceeds a threshold of EUR7m (USD8.58m) in annual revenues in a member state;
- It has more than 100,000 users in a member state in a taxable year; or
- Over 3,000 business contracts for digital services are created between the company and business users in a taxable year.

The new rules will also change how profits are allocated to member states. The Commission argues that this will better reflect how companies can create value online (*e.g.*, depending on where the user is based at the time of consumption).

The idea is that, eventually, this measure would be integrated into the CCCTB.

Political Obstacles

Despite the CCCTB's potential to simplify corporate tax matters in the EU, while reducing opportunities for tax avoidance, securing a political agreement in the Council is still likely to be an uphill struggle for the proposal's supporters. In particular, small member states collecting relatively large amounts of revenue from corporate tax are expected to lose out the most as a result of the formulary apportionment approach.

The Commission itself acknowledged in January 2017 that seven member national parliaments are opposed to the CCCTB proposals.[8] But perhaps the idea's most vocal critic is Ireland, which, according to the Irish business association Ibec, could see 50 percent of taxable profits wiped out under the formulary apportionment approach. Meanwhile, larger low-exporting countries such as France would see their corporate tax base increase by 73 percent, according to Ibec's April 2017 submission to an independent review of the Irish corporate tax regime.[9]

Ibec is also numbered among many critics of the CCCTB who contend that the proposal is at odds with the OECD's BEPS project. In its report, it suggests that companies in Ireland would see their profits apportioned to other EU member states such as France and Germany, an outcome that would be "in direct contrast to the notion under BEPS" which calls for the realignment of profit with substance.

It is revealing that the Commission has set no firm timetable for the CCCTB's implementation, and unless those member states opposed to the idea can be convinced that they will not lose out fiscally or economically as a result of the new measures, a unanimous vote is difficult to envisage. Indeed, it may be the case that in order for a political compromise to be achieved, substantial changes must be made to the proposals as they stand, meaning that the final version of the CCCTB could differ significantly from what is currently on the table. Another possibility is that while the EU may agree to go down the road towards a common corporate tax base, it may not get as far as the consolidation element, arguably the most contentious aspect of the reforms.

It also cannot be ruled out that if a consensus on the CCCTB is impossible, or highly improbable, then a core group of supportive member states may choose to legislate for the new rules under the enhanced cooperation mechanism, which is being used in an attempt to introduce a financial transaction tax in certain member states – albeit unsuccessfully. This may begin with attempts by Germany and France to harmonize their corporate tax bases. This is an idea that has been discussed by the two governments intermittently in the past few years, but it is now a much higher priority as the two governments redouble their efforts to push the EU economic and fiscal harmonization agenda. Indeed, watching this project get off the ground – if indeed it does proceed – could serve as a barometer to the feasibility of EU tax harmonization in general, and the CCCTB in particular.

Endnotes

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US State Tax Amnesty Programs – Are They A Fit For Your Company?

by Craig Beaty, Managing Director, and Brittany Aleman, Director, Alvarez & Marsal Taxand

Introduction

Companies with known underpaid taxes can accrue a significant amount of delinquent interest and penalties if the unpaid tax amount is substantial and has been increasing over a long period of time. Therefore, when a company becomes aware that a taxing jurisdiction is offering a tax amnesty program, they should strongly consider whether taking advantage of the program is right for their company. This article focuses on the general opportunities and complications associated with tax amnesty programs. As of the date of this article, Alabama, Connecticut, and Texas have amnesty programs scheduled for 2018. Given that the Texas Amnesty Program begins May 1, 2018, we will also provide some helpful information about the program later in this article.

Amnesty programs are considered beneficial to taxpayers because they typically offer waiver of 100 percent of penalties due on unfiled taxes and an abatement of all or a portion of the statutory interest due. However, many amnesty programs do not include the most current periods open for audit. Settling a tax underpayment related to the 2016 tax year through an amnesty program may create a benefit, but it may simultaneously notify the state of a 2017 liability.

Timing is crucial because most amnesty programs are only open from one to three months. Taxpayers have a limited window of time to comply, requiring taxpayers to move quickly once amnesty is announced and the covered period begins. Frequently the enacting law simply grants a state's Department of Revenue the authority to administer an amnesty program. Furthermore, politicians typically pass the bill granting a tax amnesty program in the year that the program is to occur. As such, timing can be an issue for the Departments because they may only have a few months to assemble amnesty teams, generate forms, issue materials explaining the amnesty program, and create an amnesty website. Likewise, taxpayers may not have enough time to determine if amnesty is the right course of action, especially when there is a disputed technical tax matter that the taxpayer is not ready to concede.

Forewarned Is Forearmed

Tax amnesty programs do not simply create a clean slate. Many amnesty programs require ongoing compliance in future years. Some states may not extend the amnesty program to companies that are under audit or have been notified of a pending audit.

If allowed for, amnesty programs can create a perfect venue to remit tax that has already been assessed or that is being litigated, as generally other programs specifically exclude currently contested matters. Settling an audit assessment by taking advantage of an amnesty program can be tricky because a company may not be able to partially settle an assessment, so both agreed upon adjustments and contested adjustments may have to be remitted to the state. Also, sometimes the state dictates that companies who have previously participated in an amnesty program may not qualify for a current amnesty. The state may also regard taxes collected but not remitted differently, thereby not abating interest and penalties under the amnesty.

The permanency of an amnesty agreement also varies by state. Some states allow amnesty seekers to request refunds for monies remitted through an amnesty program. In other states, taxpayers forfeit all rights to appeal, thus all amnesty payments are final. It is important to note that occasionally states reserve the right to audit amnesty program submissions at a later period, and the failure to participate in an amnesty program might create "claw-back" or increased penalties if a company had an opportunity to participate in an amnesty program but neglected to do so. Accordingly, many taxpayers consider whether to make "protective" payments under amnesty programs. Such payments are made when issues are not yet settled under audit, but, in an effort to avoid stiff future penalties for not utilizing available amnesty, sufficient payments are made to cover all potential audit issues. The taxpayer then must attempt to recover overpaid items through refund claims (if the state allows it).

Each state will have a different procedure for participating in the program. Some amnesty programs may involve reaching out to the state through the filing of a return, remitting the taxes due, and submitting a statement of intent to file the taxes under the amnesty program. Other states may require a special form or application along with a tax return and payment. Typically, the dedicated amnesty program personnel are very responsive and they should be able to explain the nuances of the particular state's program.

Texas Tax Amnesty Program

As mentioned above, the Texas Amnesty Program begins May 1, 2018, and runs through June 29, 2018. The program applies to taxes and fees due before January 1, 2018, and participants of the program will receive a waiver of all penalties and interest. All state and local taxes and fees administered by the Texas Comptroller are eligible for the program except for taxes remitted under the International Fuel Tax Agreement (IFTA), local motor vehicle tax, Public Utility Commission (PUC) gross receipts assessments, and Unclaimed Property fees. A company is eligible for participation if they did not file a required return originally due before January 1, 2018, or underreported taxes or fees for any reason for periods due before January 1, 2018. A company is also expected to pay all taxes due, in full, when the amnesty returns are filed; installment plans are not available.

As expected, the state has provided limitations to exclude specific periods or companies from participating in the program. If a company has signed a settlement agreement or a voluntary disclosure agreement, it is excluded from participating in the program for the same period covered under either agreement. If a company has been identified for audit or is currently under audit, then these periods for the related tax type are not eligible for amnesty. Only liabilities that have not been previously reported to the Comptroller's office are eligible for the program. Accounts which have been certified to the Office of the Attorney General, accounts presently in litigation, or accounts which have been reduced to judgment are also not eligible for the program.

To participate in the program, a company with underreported taxes will amend a paper return to reflect corrected figures with "Amnesty" written across the top of the return and on the check or money order. If submitting a tax application and original returns, the company will prepare original paper returns with "Amnesty" written across the top of the return, check or money order, and the tax application. Electronic submission of documents and payment is not allowed. The deadline to submit amnesty documents is June 29, 2018.

Other Options To Amnesty

Because amnesty programs are typically statutorily mandated, negotiating terms is a significant limitation of most amnesty programs. Companies should be mindful that the normal forms of tax liability mitigation still exist. Voluntary disclosure agreements, offers in compromise, and managed audits can all be negotiated if amnesty terms are not the right fit for a given situation. Companies with long-standing tax exposures in states that can audit amnesty submissions may want to consider a voluntary disclosure agreement that limits the look-back period. An offer in compromise might make sense in states with amnesty programs that do not include the most current periods because a savvy company can settle both past and current periods through one agreement.

Alvarez & Marsal Taxand Says

In summary, make sure you understand all procedures required by an amnesty program prior to beginning the process. It is typically difficult (but not impossible) to negotiate more favorable terms under an amnesty program. Pay close attention to the types of taxes included in the amnesty program as all tax types may not be covered. Also, it is very important to make sure that your federal tax returns reflect any changes amnesty may trigger in your state income tax returns.

Amnesty programs are open for a limited period of time. A company must evaluate whether it has the ability to quantify, document, and remit tax in the time allotted for the amnesty program. Also, be aware that once amnesty is used, it may not be possible to make future changes to years covered by amnesty (*e.g.*, taxpayers may be precluded from obtaining refunds for those years). Because amnesty programs typically require the immediate payment of tax, settling a known liability through amnesty may clean up the financial statements, but the cash impact of an amnesty program must also be considered.

In this article, we addressed areas of focus when considering participation in a state tax amnesty program, along with other options to consider when deciding if amnesty is right for your company. State tax amnesty programs are great mechanisms for remitting known tax liabilities. In summary, every amnesty program will include some favorable terms, and keep in mind that interest abatement is generally uncommon outside of amnesty programs. The key to a successful amnesty submission is timely deciding whether a company should participate and knowing what is and is not included in the program.

Topical News Briefing: Sometimes It's Hard To Say Goodbye

by the Global Tax Weekly Editorial Team

In much the same way that countries use changes to corporate tax rules to attract investment from multinational companies, governments also legislate for special schemes in personal income tax codes to lure foreign workers, in most cases those with in-demand skills and in highly paid professions.

These expat tax schemes are especially commonplace in Europe, where high personal income taxes, often reaching or exceeding 50 percent, make it difficult for companies to recruit talented foreign employees. As reported in this week's issue of *Global Tax Weekly*, Denmark – where personal income tax rates do indeed exceed 50 percent in some cases – has recently issued the latest guide to its expat tax scheme, which allows qualifying workers to pay tax at a more moderate 27 percent, plus social security charges.

Also highlighted in this week's issue is the "30 percent ruling" in the Netherlands, which provides certain expat workers and researchers with a 30 percent income tax deduction, subject to certain conditions, such as academic qualifications and minimum monthly pay.

Some countries, however, are targeting a more exclusive market of investors and financiers, and have designed tax rules to attract business owners, entrepreneurs and other wealthy individuals, in the hope that they will invest substantial sums into the local economy. Malta, for example, currently offers an array of schemes aimed at investors and skilled workers, while according to the Government, around 150 wealthy expats took up residency in Italy in the first year of a flat tax scheme introduced in January 2017 intended to attract investors to the country.

Indeed, just as corporate tax competition appears to be alive and kicking despite public and governmental pressure for fairer, more transparent tax rules, individual tax competition seems to be growing ever more vigorous, especially in Europe. At present this is being driven by the expectation that London, which stands alongside New York as a pre-eminent global finance center, will have its access to the EU market restricted to some extent post-Brexit, with the result that there will be greater employment and investment opportunities for these people in continental Europe, or elsewhere.

Yet, while countries are giving the red-carpet treatment to certain foreign workers and investors, the same cannot always be said when it comes to their own citizens who have expatriated elsewhere.

The US, for example, is almost unique in the world of taxation in requiring American expats to file tax returns with the Internal Revenue Service each year, although deductions and exclusions are in place to minimize the impact of double taxation on these individuals.

Traditionally, it has also been difficult for long-term British expats to prove that they have severed their links with the UK for tax purposes, thanks largely to the concept in UK law of domicile, which stands alongside the more easily understood idea of residence. This has resulted in a number of protracted legal battles between taxpayers and the UK tax authority, HM Revenue & Customs (HMRC), including a key case last year when the High Court in London set limits on the capacity of HMRC to investigate the tax affairs of individuals who claim to have permanently left the UK.

And in another recent example of a government seeking to tax the incomes of expat citizens, Finland announced last month that it was seeking to terminate the existing double tax treaty between it and Portugal to ensure that the pensions of Finns that had retired to Portugal's more benign meteorological and tax climate would be taxed appropriately in Finland.

Indeed, peripatetic individuals have much in common with multinational companies with regards to tax matters, in that their tax affairs are usually much more complex than normal. But while they are often welcomed to foreign shores by special tax incentives, expats, like companies, can often find it more difficult to leave home for taxation purposes than they anticipated.

The Power To Tax In The United States: An Overview

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Background

The Taxing and Spending Clause (Article I, Section 8, Clause 1 of the US Constitution, which contains provisions known as the General Welfare Clause and the Uniformity Clause grants the federal government of the United States its power of taxation. While authorizing Congress to levy taxes, this clause permits the levying of taxes for two purposes only:

(1) To pay the debts of the United States; and
(2) To provide for the common defense and general welfare of the United States.

Taken together, these purposes constitute the federal government's taxing and spending power.

Article I, Section 8, Clause 1 of the Constitution gives the federal government its power of taxation. Congress' power to tax under this clause is limited by the Uniformity Clause.

The Uniformity Clause requires taxes to be geographically uniform throughout the United States. The requirement of uniformity in the levy of indirect taxes has been interpreted to mean geographical uniformity only – identical taxation of the taxed Article in every state where it is found. However, this clause does not require revenues raised by the tax from each state to be equal.

The Uniformity Clause was intended to prevent the legislature and local officials from granting preferential tax treatment to influential property owners, and to protect citizens against unequal and unjust taxation.

In other words, it was another check placed on the legislature in order to keep a larger group of states from "ganging up" to levy taxes benefiting them at the expense of the remaining, smaller group of states.

So long as the federal statute on its face does not define the taxed activity in geographic terms (by expressly naming a state or states), the statute is constitutional. It does not matter if the effect of the statute is to hurt one state and benefit 49 others as long as the statute does not make a geographical distinction. Only if the statute makes an express geographical distinction does it run afoul of the Uniformity Clause.

A tax violates the Uniformity Clause if:

(1) The activity to be taxed is described in geographic terms; (*e.g.*, an amendment that specifically exempts certain states from the operation of the tax); and
(2) The government cannot show that its intention was not to give a state (or certain states) an undue preference.

A tax measure will be upheld if it bears some reasonable relationship to revenue production or if Congress has the power to regulate the taxed activity (*e.g.*, as it has for federal income tax).

To summarize, under the Uniformity Clause, a statute that expressly and unfairly discriminates against states or expressly gives certain states an undue preference is unconstitutional.

The US legal system includes uniformity clauses found in individual state constitutions as well as the federal Constitution.

A notable exception to this limitation has been upheld by the Supreme Court in the seminal case of *United States v. Ptasynski*, in which the Court allowed a tax exemption which was quasi-geographical in nature. In the case, oil produced within a defined geographic region above the Arctic Circle was exempted from a federal excise tax on oil production.

The basis for the holding was that Congress had determined the Alaskan oil to be of its own class and exempted it on those grounds, even though the classification of the Alaskan oil was a function of where it was geographically produced.

To understand the nuance of the Court's holding, consider this example: Congress decides to implement a uniform tax on all coal mining. The tax implemented distinguishes between different grades of coal (*e.g.*, anthracite *versus* bituminous *versus* lignite) and exempts one of the grades from taxation. Even though the exempted grade could potentially be defined by where it is geographically produced, the tax itself is still geographically uniform.

The General Welfare Clause

There now follows a brief outline of the General Welfare Clause.

Congress may tax and spend for the general welfare. The General Welfare Clause is an enabling provision. One of the limitations on the clause is that Congress can only spend for the general welfare. The clause does not give Congress the power to legislate for the general welfare because that is left to the individual US states through their police power.

Something is authorized by the spending power if, on its face, it is designed to raise revenue. The General Welfare Clause allows the state to impose conditions related to the purpose of the expenditure, but does not enable Congress to compel or prohibit behavior.

Every tax is in some measure regulatory. An act which purports to be an exercise of the taxing power is not any less so because the tax is burdensome or tends to restrict the thing taxed.

Regulation Through Spending Rule

Although the General Welfare Clause does not authorize legislation which compels or prohibits behavior, under the necessary and proper clause Congress has the power to legislate where:

(1) It intends to carry out an express purpose: Congress has the power to expressly penalize unlawful actions that will result in federal money being diverted from its intended purposes. The clause safeguards the integrity of the state and local recipients of federal dollars, thereby reducing the potential for embezzlement of federally ear-marked funds.

(2) The legislation is appropriate for doing so: This is an appropriate way of ensuring that federal money will be devoted to its intended purposes.

Understanding The Mechanics

Congress has the authority under the Article I, Section 8 Spending Clause to appropriate federal money to promote the general welfare, and it has corresponding authority under the Necessary and Proper Clause (Article I, Section 8, Clause 18) to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare and not siphoned off.

Breaking It Down

Congress can use its spending power to regulate areas, even where it otherwise has no power to regulate the area, by requiring entities that accept government money to act in a certain manner, effectively attaching strings to government grants. A key example of this is where Congress conditions aid to states for medical programs on state funding of AIDS research.

Maintenance And Filing Of Master File And Country-By-Country Report

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Introduction

The OECD's BEPS Action Plan 13 recommends a standardized approach for transfer pricing documentation and a template for country-by-country (CbC) reporting of income, earnings, taxes paid *etc.* As a member of the BEPS project, India amended its domestic law in Finance Act 2016 to provide for a specific reporting regime in respect of CbC reporting and master file requirements. Section 92D of the Income-tax Act, 1961 ("the Act") was amended to provide for the maintenance and furnishing of a "master file" of the international group, and Section 286 of the Act was inserted for CbC reporting by either the parent company or an alternate reporting entity. The detailed rules under said sections had been awaited since the Budget 2016 was announced on February 29, 2016. The Rules were notified by the Central Board of Direct Taxes (CBDT) on October 31, 2017. The requirement for filing the master file and CbC report is applicable from financial year 2016/17; however, the due date for filing these was extended by the CBDT from November 30, 2017 to March 31, 2018 in consideration of the complexities involved and preparation time required.

Master File

The master file rules require Rule 10DA to be read with Section 92D of the Act. A master file is required to be filed on Form 3CEAA in the following cases:

(1) Part A of the master file is to be filed by all constituent entities of an international group, irrespective of value of international transactions or consolidated group turnover.

(2) Part B of the master file is to be filed if the threshold given under Rule 10DA is achieved, *i.e.*:

(a) If the consolidated group revenue of the international group, of which the taxpayer in question is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds INR5bn; and

(b) The aggregate value of international transactions:
   (i) During the reporting year, as per the books of accounts, exceeds INR500m; or
   (ii) In respect of purchase, sale, transfer, lease, or use of intangible property during the reporting year, as per the books of accounts, exceeds INR100m.

Information that must be maintained and filed under the master file

- List of all entities of the international group, along with their name, address and legal status.
- Descriptions of:
  - All businesses of the international group, giving details of important drivers of profit;
  - Supply chain of the five largest products or services in terms of revenue and of any other product or service which contributes more than 5 percent of the consolidated group revenue;
  - Important service arrangements between members of the international group;
  - Capabilities of main service providers within the group; and
  - Transfer pricing policies for allocating service costs and determining prices to be paid for intragroup services.
- List of major geographical markets, functional asset and risk analysis of constituent entities that contribute at least 10 percent of the revenues or assets or profits of such group, and description of important business restructuring transactions.
- Description of the overall strategy of the international group for the development, ownership, and exploitation of intangible property, giving details of all constituent entities engaged in development and management of intangible property.
- List of all intangible property owned by the group, along with details of the entity that owns it.
- List and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements, and license agreements, along with group transfer pricing policy in relation to this.
- Description of important transfers of interest in intangible property among entities of the group, along with details of the seller and the buyer and the compensation paid.
- Details of the financing arrangements of the group, including the names and addresses of the top ten unrelated lenders.

- Names and addresses of operations and of effective management of the group entities that provide central financing functions.
- Transfer pricing policy related to financial arrangements among the group members.
- Copy of annual consolidated financial statements of the group.

Country-by-Country Report

The CbC rules require Rule 10DB to be read with Section 286 of the Act. The country-by-country report (CbCR) is required to be filed on Form 3CEAD by the parent entity or any alternate entity designated by the international group, if the consolidated turnover of the group exceeded INR55bn during the preceding accounting year.

The information to be furnished by country is:

(1) Revenue from related and unrelated parties, profits (loss) before tax, income tax paid and accrued, capital, accumulated earnings, number of employees, and tangible assets other than cash and cash equivalent. The information is to be given for each tax jurisdiction.
(2) Details of all constituent entities and business activities of each such entity.

Conclusion

The notified rules provide the procedure and content to be filed with regard to the master file and the CbCR, which are more or less in line with OECD Action Plan except that the threshold for filing the master file remains low, resulting in a greater compliance burden in India. Many multinational corporations which are not required to prepare the master file in their home jurisdiction would be burdened with extra compliance for the Indian constituent entity. The disclosure requirements also include transparency of group financial arrangements, transfer pricing positions, and other information that was previously unavailable to the tax authorities and could open up new avenues for litigation.

Topical News Briefing: French Exceptionalism

by the Global Tax Weekly Editorial Team

Last month, European Commissioner for Taxation Pierre Moscovici suggested that EU member states would have to come to an agreement on the Commission's digital tax proposals by the end of 2018, or quite likely agreement would not be reached at all. But it seems the wheels may fall off far sooner than that.

Judging by the reports that emerged following the recent meeting of EU finance ministers (as reported in this week's issue of *Global Tax Weekly*), France, which is now the most vocal exponent of the Commission's two-part digital tax proposal announced in March 2018, has a shrinking number of friends to count on over this issue. Significantly, it was reported that even Germany, which along with France is driving the tax harmonization agenda, has become ambivalent on the issue, with Finance Minister Olaf Scholz said to have kept his own counsel in what was an otherwise lively meeting, according to Moscovici.

The reason that many EU member states are turning away from the Commission's proposed digital tax seems to be fear of provoking the wrath of US government and industry at a time when trade tensions around the world, including between the EU and the US, are already fragile. Understandably, Germany, whose exports to the US were worth almost USD120bn in 2017, would be especially vulnerable to escalating trade tensions which resulted in new barriers being imposed on transatlantic trade.

Not that EU member states are opposed to the idea of new tax rules for companies operating almost exclusively in the digital domain. Most of those expressing reservations about the Commission's proposal argue that the best way for the issue to be dealt with is through the aegis of the OECD, to provide as wide an international consensus as possible on new tax rules. To do otherwise, many EU governments are warning, would be to not only risk a retaliatory response from Washington, but also to damage the competitiveness of the EU and create major tax distortions in the international trading system. Furthermore, on this issue, the US must be engaged by the EU, not provoked, some argue.

The response of France's Finance Minister, Bruno Le Maire, to this last point has been that the US Government has been highly critical of both the EU's and the OECD's work in this area. Indeed, US Treasury Secretary Steven Mnuchin stated in March after the OECD released its interim report on taxing the digital economy that while the US supported international cooperation to address "broader tax challenges arising from the modern economy," specific rules targeting digital companies, which he said are "among the greatest contributors to US job creation," would be "firmly opposed" by the US.

France argues, therefore, that unless the EU takes some form of action to counter tax avoidance by the digital sector, this issue will forever be discussed, but never acted upon.

However, recent developments suggest that France is becoming increasingly outnumbered, and that this can will be kicked further down the road as the international community awaits the results of the OECD's ongoing deliberations. These are likely to result in recommendations for changes to existing corporate tax rules, especially those defining what constitutes a permanent establishment, rather than the radical ideas supported by the Commission, France, and an apparently dwindling number of other member states.

Malta Voices Opposition To EU's 'Unilateral' Digital Tax Plans

Malta's Minister of Finance, Edward Scicluna, has urged the EU to pursue a multilateral approach to the taxation of digital companies.

Speaking at a recent informal meeting of EU economy and finance ministers, which discussed the European Commission's proposal for a temporary digital tax on global digital companies, Scicluna said Malta recognized there is a common interest in agreeing a new set of international tax rules in the digital economy, and is ready to engage in discussions at an EU level, but that Malta prefers a global solution.

He said he could not see any difference between the short- and long-term solutions proposed by the European Commission, since both involve action affecting third countries, and the re-allocation of taxing rights.

Scicluna explained the EU should be more concerned with whether it wants to risk a unilateral approach or take the more sensible multilateral approach. In support of the multilateral approach he referred to a recent Asia-Europe Finance Ministers meeting at which Asian nations expressed dismay at the EU's proposed unilateral approach.

The European Commission's proposal is to reform corporate tax rules so profits are registered and taxed where businesses have significant interaction with users through digital channels. This is said to be the Commission's preferred long-term solution. The Commission has also proposed an interim tax, which would cover turnover derived from certain digital activities that currently escape tax altogether in the EU.

Schism Emerging Over EU's Digital Tax, CCCTB Plans: Irish MEP

The European Commission does not have sufficient support for either its proposed common consolidated corporate tax base project or its digital tax plans, says Irish Member of European Parliament (MEP) Brian Hayes.

Hayes appeared before the Irish Parliament's Finance Committee last week, where he criticized the EU's proposed approach to taxing the digital economy.

The Commission has proposed two solutions. Its preferred long-term solution is a reform of corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels. In the interim, it has proposed allowing member states to tax turnover generated in their territory, even if a company does not have a physical presence there, where they would otherwise likely go untaxed.

Hayes suggested that opposition to the Commission's proposals is growing. He pointed out that taxation matters are subject to a unanimous vote at the European Council, meaning that Ireland essentially has "the power to veto any piece of EU tax legislation." Hayes stressed that "there is no unanimous support for either the CCCTB or a digital tax at the moment."

Hayes was also skeptical about the possibility of proceeding with the measures under enhanced cooperation, a mechanism which allows smaller groups of EU member states to proceed with EU legislation when unanimity on a proposal cannot be achieved. Given the "failure" to get a financial services tax passed through enhanced cooperation, he said he does not believe the procedure "could yield a different result" in the case of CCCTB or a digital tax.

Hayes acknowledged that digitalization "has moved at such [a] rapid pace and naturally, there are some aspects of the digital economy which are going untaxed." He said that while it is necessary to tax the digital economy, the Commission's proposals pose significant risks.

According to Hayes, the plan targets large US tech firms, something that is not "needed right now, at a time when trade disputes are surfacing all over the world." He argued that a tax based on turnover "deliberately benefits bigger countries because that is where the bigger populations" are using digital platforms. Hayes also posed the question of just what can be classed as "digital."

However, Hayes emphasized that his main concern is that the EU is "moving ahead of the OECD on this issue," thereby creating the impression "of an EU that appears to be unwilling to work at an international level to tackle the tax problem taxing the digital economy."

Canada Urged To Introduce Digital Tax Nexus Rules

The Canadian Parliament's international trade committee has recommended that the federal Government tax products supplied to Canadian consumers by online platforms.

The House of Commons Standing Committee on International Trade has tabled a report entitled "E-Commerce: Certain Trade-Related Priorities of Canada's Firms."

The Committee said that the Government should "apply sales taxes on tangible and intangible products that are sold in Canada and by foreign sellers, including when such sales occur using an e-commerce platform."

The Committee's report contained references to a number of comments by witnesses on the taxation of e-commerce. For instance, Canadians for Tax Fairness told the Committee that foreign firms "have been exempted from paying taxes by the Canada Revenue Agency because they have no physical presence," putting Canadian firms at a disadvantage. The Canadian Union of Public Employees argued that the Government should require foreign companies that have Canadian sales to "pay their fair share in taxes."

Fashion firm La Maison Simons Inc. suggested that sales taxes be levied at the point of consumption on tangible and intangible products. Canadians for Tax Fairness called for value-added taxes to be paid in the country where a sale occurs, regardless of whether an e-commerce platform is used.

Regarding the *de minimis* threshold – the amount above which goods imported into the country are assessed for duties and taxes – eBay Canada said that the threshold should be increased. It argued that the current CAD20 (USD15.52) threshold negatively affects the ability of SMEs "to access low-value international supply chains" and "does not support what the Canadian consumer wants: fairness and choice."

Canadian Manufacturers and Exporters called the threshold "ridiculously low" and Startup Canada said that increasing the threshold would enhance the competitiveness of the country's companies.

The Committee also recommended that Canada work with other countries to ensure that "online sales, and the profits earned by firms making such sales, are taxed in the country where the products are consumed and where the economic activities that created the income occur." It said these efforts should be consistent with the recommendations made as part of the OECD's BEPS project.

Support For EU Interim Digital Tax Waning

A growing number of EU member states are wary about plans to impose a short-term tax on the revenues of digital companies for fear of increasing trade tensions between the EU and the US, according to recent reports.

Reports suggest that, following a recent, private meeting of EU finance ministers, only France, which, along with Germany, Italy, and Spain, was one of the driving forces behind the European Commission's proposal, continues to argue strongly in favor of an interim EU-level digital tax.

Notably, the UK has turned against the idea after initially supporting it, reportedly warning of the economic, legal, and diplomatic consequences of the measure, particularly with regards to a hostile reaction by the US Government.

While opposition to an EU digital tax from Ireland and Luxembourg is well established, it was also said that several other member states are concerned about the proposal, including Denmark, Finland, Malta, and Sweden. As with the UK, it is believed that these member states would prefer reforms to international tax rules designed to align digital companies' profits with value creation at global level, under the guidance of the OECD.

Growing skepticism among many EU governments about a unilateral EU solution suggests that an agreement on digital tax legislation would be difficult to obtain.

Business associations have also warned that an EU digital tax could damage investment in the EU and stoke transatlantic trade tensions, including the Federal Association of German Industry (BDI), whose Chief Executive Joachim Lang said last month that the European Commission risks "intensify the trade conflict with the US. Instead of short-term interim solutions at EU level, we believe that an internationally coordinated approach is necessary," he added.

In March 2018, the EU proposed an interim tax on the turnover of certain companies engaged in digital activities that would otherwise go untaxed, at a rate of 3 percent. This would be imposed on revenues created from selling online advertising space; created from digital intermediary activities; and those created from the sale of data generated from user-provided information.

However, the two-pronged proposal also included a longer-term solution, under which the EU will seek to achieve international consensus on under the leadership of the OECD, which would establish new digital permanent establishment rules.

Hong Kong To Ensure ITVF Tax Break For Offshore Investors

Hong Kong's Government has published a draft law preserving the profits tax exemption for offshore venture capital funds who participate in the island's new Innovation and Technology Venture Fund (ITVF).

The ITVF was set up by Hong Kong's Government in 2017 with the aim of encouraging more private investment in Hong Kong's innovation and technology start-ups. Under the ITVF, the Government will co-invest with selected venture capital funds in local innovation and technology start-ups at an overall ratio of about 1:2.

The draft law has been prompted by concerns from offshore venture capital funds that co-investing with the Government under the ITVF scheme could result in the loss of profits tax exemption status. Loss of this status could potentially mean a fund becoming liable to tax in Hong Kong on investment profits, whether arising within or outside Hong Kong, thereby acting as a disincentive to participating in the ITVF.

The draft law, Inland Revenue Ordinance (Amendment of Schedule 16) Notice 2018, was scheduled to be debated in Hong Kong's Parliament on May 2, 2018, and the intended start date is June 22, 2018.

Luxembourg Gazettes New IP Box Regime

The Government of Luxembourg has published in its Official Gazette the law for the introduction of the new intellectual property tax regime.

The Act of April 17, 2018, amending the law of December 4, 1967, concerning the tax treatment of intellectual property was signed on April 17, 2018, and published in the Official Gazette on April 19, following approval by parliament on March 22, 2018.

The new IP box retains the 80 percent tax exemption for IP income, as under the similar regime repealed on June 30, 2016 (which is subject to grandfathering provisions), reducing the effective corporate tax rate on such income to around 5 percent. However, the new law alters the scope of the regime by permitting a wider variety of patents and copyrights on computer software, and excluding trademarks and designs.

Eligible income is determined by the ratio of eligible expenditure to total expenditure. Eligible expenditure includes spending on research and development activities directly related to the intellectual property. Outsourcing for R&D is permitted, provided an unrelated party is engaged.

Ineligible costs include those not directly related to the intellectual property, in addition to real estate, and interest and other financing costs, among other expenses.

The bill is also designed to be compatible with the "modified nexus" approach to special IP tax regimes agreed by countries under Action 5 of the OECD's BEPS project.

Estonia Commits To No New National Taxes In 2019

The Government of Estonia has committed itself to maintaining tax stability next year, in its Budget Strategy for the period 2019 to 2022.

The Government said that "no new taxes" will be introduced in 2019, with the tax burden expected to be stable at approximately 34 percent of gross domestic product.

The frequency with which changes have been made to the tax system in Estonia was a source of criticism for the International Monetary Fund in March 2018, when it said in its latest report on the Estonian economy that "policy volatility should be minimized and the effect of rates on revenue considered." Nevertheless, the IMF praised Estonia's "relatively simple and transparent" tax system.

Ireland Consults On Taxation Of Agricultural Sector

The Irish Government has launched a consultation on the implementation of the tax recommendations made by the 2014 Agri-taxation Review.

The 2014 review was a joint initiative between the Department of Agriculture, Food, and the Marine (DAFM) and the Department of Finance. An inter-departmental working group has now been set up to examine the progress made in implementing the recommendations put forward.

The departments are seeking feedback on the progress made, along with any other views on how the tax system might further address income stability in the primary agriculture sector. They are also interested in comments on how developments such as Brexit, climate change, and the abolition of milk quotas affect the context in which the original review's recommendations were made.

Among the review's recommendations were the following proposed measures:

- Retain relief for certain income from leasing of farm land;
- Increase the income thresholds for relief from leasing land by 50 percent;

- Introduce a fourth threshold for lease periods of 15 years or more with an exemption for the first EUR40,000 (USD48,458) per year;
- Relieve stamp duty on long-term leases (five years or more) for agricultural land;
- Target Agricultural Relief from Capital Acquisitions Tax to qualified or full-time farmers or to those who lease land on a long-term basis; and
- For transfers under Retirement Relief, extend the eligible letting period of a qualifying asset to 25 years.

The Government has implemented certain of the recommendations, including increasing the period covered by the Income Averaging rules from three to five years and permitting averaging to be availed of where a farmer and/or their spouse receive income from an on-farm diversification trade or profession.

The consultation will close on May 26. It is intended that the review group will present its report to the finance and agriculture ministers this summer.

Pakistan Announces Corporate Tax Cut In New Budget

Pakistan's 2018/19 Budget, delivered on April 27, proposes a significant reduction to the corporate tax rate, a reduction in the corporate tax surcharge, and sales tax relief.

Corporate tax is to be cut by one percentage point a year from 30 percent in 2018 to 25 percent in 2023, and the "super tax" on banking companies and non-banking companies with income greater than PKR500m (USD4.3m) will be cut by 1 percent per year (from currently four percent and three percent, respectively), beginning from the 2018-19 financial year.

Tax on undistributed profits will fall to 5 percent from 7.5 percent. It will apply to those companies failing to distribute 20 percent of their earned profits, down from 40 percent currently.

The rate of tax on real estate investment trust dividends is to be cut from 12.5 percent to 7.5 percent.

Existing tax credits for establishing a new industrial undertaking and for the acquisition of certain equipment are to be extended by a year to June 30, 2021.

To promote the setting up of deep conversion refineries, a ten-year tax holiday is to be introduced for refineries with a minimum capacity of 100,000 barrels per day. This exemption also applies to existing refineries where capacity is expanded to this level.

The tax on imported coal is to be cut to 4 percent, down from 5.5 percent for companies and 6 percent for persons other than companies currently.

The rate of withholding tax on bank transactions by "non-filers" is to fall from 0.6 percent to 0.4 percent. The threshold at which tax must be deducted on payments for services will rise to PKR30,000 (currently PKR10,000) and to PKR75,000 for goods (currently PKR25,000).

The withholding tax rates on sales of goods for "non filers" is proposed to increase by 1 percent to 8 percent in the case of companies, and from 7.75 percent to 9 percent for non-corporates.

Computer parts, including certain imported parts, will be exempt from sales tax (Pakistan's value-added tax) to promote local assembly and manufacturing of laptops and computers. Sales tax on agricultural machinery is to be reduced from 7 percent to 5 percent. From July 1, 2018, a reduced uniform sales tax rate of 2 percent will apply to all fertilizers. Sales tax on secondhand clothing, currently of 3 percent, will be repealed.

The additional rate of sales tax imposed where sales tax is not paid on time is increased from 2 percent to 3 percent.

Other announcements include that a taxpayer will not be subject to an audit in respect of income tax, sales tax, and excise duty more than once in three years, and audits will cover all of the taxes simultaneously. Appeals against disputed taxes will be permitted if 10 percent of the tax has been paid. Previously a taxpayer had to pay 25 percent of the disputed tax.

To clamp down on underpayment of tax in the property sector, property transactions will be recorded at the value declared by both the buyer and the seller, with a 1 percent adjustable advance tax payable by the purchaser on the declared value, replacing the existing withholding tax on sellers and purchasers. Provincial rates of stamp duty will be abolished. Restrictions will be imposed on the purchase of property by non-filers.

EU Seeks To Prevent BEPS With New Company Law Rules

The European Commission has announced new company law rules to, on the one hand, make it easier for companies to merge, divide, or transfer from one member state to another, but, on the other, prevent abusive tax avoidance and profit shifting.

Introducing the new EU company law reforms on April 25, 2018, the Commission explained: "The European economy needs a framework that allows companies to easily operate in the Single Market, including when they grow and restructure across borders to adapt to changing market conditions. In the Single Market based on the principle of free establishment, companies must be able to merge, divide, or transfer their registered seat from one member state to another ('conversion') without having to go through liquidation and losing their legal personality, as recognized by the [European] Court of Justice in its *Polbud* ruling of October 2017 [discussed below]."

"However, it is equally important to ensure that these possibilities are not abused. The proposal therefore sets up strong safeguards to protect the rights and interests of employees, shareholders, and creditors, and to prevent these procedures being used to set up artificial arrangements, including those aimed at obtaining undue tax advantages. The initiative introduces common EU procedures for cross-border conversions and divisions and it updates existing rules on cross-border mergers."

The Commission explained that the reforms respond to a risk that cross-border conversions and divisions could be misused to set up fictitious structures for abusive ends, such as tax avoidance or undermining workers' rights.

"The proposals contain strong safeguards to prevent this risk materializing in the future," the Commission said, adding: "A crucial element of the conversion and division procedures is therefore that the member state of departure of the company will have to prohibit operations that constitute an artificial arrangement aimed at obtaining undue tax advantages or undermining the legal or contractual rights of employees, creditors, or shareholders."

"In medium and large companies where this analysis may be more complex, an independent expert will be involved in providing the factual elements for the assessment by the authority of the member state of departure. The expert report would need to take into account the following: the characteristics of the establishment in the destination member state, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due, and the commercial risks assumed by the converted company in the destination member state and the departure member state."

In its judgment in *Polbud* (C-106/16), the European Court of Justice (ECJ) clarified that based on the principle of free establishment, the member state of departure must allow for cross-border conversions, and that it cannot require the transfer of the "real seat" of the company (*i.e.*, the head office, as opposed to merely the "registered seat"). However, the destination member state may require the real seat on its territory if this forms part of its incorporation requirements. In response to the ruling, the Commission said: "As the [ECJ] has stated, it is for the EU legislator to provide for a procedure for cross-border conversions. Moreover, the legal framework clarified by the *Polbud* judgment needs to be complemented by adequate safeguards with a view to protecting the rights of employees, shareholders, and creditors, as well as preventing abusive use of the cross-border procedure in order to set up artificial arrangements, in particular aiming at obtaining undue tax advantages."

There are currently only 17 member states that provide a fully online procedure for registering companies. Under the new rules, in all member states, companies will be able to register, set up new branches or file documents to the business register online. The Commission considers that going digital makes the process of setting up a business more efficient and cost effective.

The proposal sets out common procedures at the EU level on how a company can move from one EU country to another, merge, or divide into two or more new entities across borders.

In line with the landmark ECJ judgment, companies will be able to move their seat from one member state to another following a simplified procedure.

The new rules are part of the Commission's push for a fairer Single Market. They complement recent initiatives to strengthen the rules on posted workers and the fight against tax evasion and fraud as well as the Commission's proposal on a European Labour Authority. At the same time, the new rules will enable businesses to move or reorganize without unnecessary legal complexities and at a lower cost throughout the Single Market. The Commission estimates cost savings for companies of EUR12,000 (USD14,600) to EUR19,000 per operation and a total of EUR176m to EUR280 million over five years.

EU, Mexico's New FTA To Remove Almost All Taxes On Trade

The EU and Mexico have agreed in principle a replacement free trade agreement (FTA) that will ensure that cross-border trade enters into their respective territories tax-free, notably including agricultural goods.

Welcoming the agreement, the European Commission highlighted it will:

- Provide preferential access for many cheeses such as Gorgonzola and Roquefort, which currently are up to 20 percent, and gain significant new access for many others within annual quotas;
- Secure a considerable volume for milk powder exports in one of the largest markets, starting with 30,000 tonnes from entry into force, rising to 50,000 tonnes after five years;
- Allow the EU to substantially increase its pork exports to Mexico, with duty-free trade for virtually all pork products;
- Eliminate tariffs for products like chocolate (currently up to 30 percent) and pasta (currently up to 20 percent);
- Ensure the protection from imitation for 340 distinctive European foods and drink products in Mexico, so-called geographical indications, such as Comté cheese from France, Queijo São Jorge cheese from Portugal, Szegedi szalámi from Hungary, and Magiun de prune Topoloveni plums from Romania. This means that EU producers of traditional delicacies are not struggling against copies, and when consumers buy these products they can do so knowing they are buying the real thing.

The Commission said: "Today's agreement in principle includes the most important elements of the agreement. In some chapters, technical details still need to be tied up. Based on today's agreement in principle, negotiators from both sides will continue their work to resolve the remaining technical issues and finalize the full legal text by the end of the year. Then, the Commission will proceed with the legal verification and translation of the agreement into all official EU languages, and will subsequently submit it for approval by the European Parliament and Council of the European Union."

Welcoming the deal, European Commission President Jean-Claude Juncker observed: "Trade can and should be a win-win process and today's agreement shows just that. Mexico and the EU worked together and reached a mutually beneficial outcome. We did it as partners who are willing to discuss, to defend their interests while at the same time being willing to compromise to meet each other's expectations. With this agreement, Mexico joins Canada, Japan, and Singapore in the growing list of partners willing to work with the EU in defending open, fair, and rules-based trade."

Commissioner for Trade Cecilia Malmström added: "In less than two years the EU and Mexico have delivered a deal fit for the economic and political challenges of the 21st century. We now open a new chapter in our long and fruitful relationship, boosting trade and creating jobs. Today's agreement also sends a strong message to other partners that it is possible to modernize existing trade relations when both partners share a clear belief in the merits of openness, and of free and fair trade."

Denmark Releases Updated Guide To Expat Tax Scheme

The Danish tax authority, the SKAT, has released an updated guide to the special tax scheme for certain highly skilled and highly paid expatriate workers.

The tax scheme applies to foreign researchers and highly paid employees who are recruited abroad and who are employed by a Danish enterprise or research institution.

Under the scheme, qualifying employees pay income tax at 27 percent (26 percent prior to 2018), in addition to labor market contributions, which covers unemployment and sickness benefits, among other items, for a total tax rate of 32.84 percent. The maximum duration of the scheme is 84 months.

Ordinarily, personal income in Denmark is taxed at progressive rates up to approximately 55 percent.

To avail themselves of the scheme, researchers must be engaged in research at a university or in a private enterprise and have scientific qualifications equivalent to those required at PhD level.

Those applying for the scheme as a highly paid employee must be paid a minimum salary of DKK65,100 (USD10,680) per month, plus labor market supplementary pension fund contributions, in 2018. There are no qualifications requirements for key employees.

Netherlands To Shorten Expat Tax Scheme

The Dutch Government has proposed shortening the duration of the special tax scheme for expatriate workers from eight years to five.

The Ministry of Finance announced on April 20 that the proposal has been agreed by the Council of Ministers and will be effective from January 1, 2019. The reduction will apply to both existing and new users of the scheme.

The decision follows a review of the so-called 30 percent ruling by the research bureau Dialogic, which concluded that around 80 percent of employees do not use the scheme for more than five years. The remaining 20 percent who use the scheme for up to eight years tend to remain in the Netherlands for the long-term, rather than return to their country of origin, it found.

The review also found that comparable expat tax regimes in neighboring countries typically last for five years, the Ministry said.

The 30 percent ruling provides an income tax exemption for qualifying expat workers of up to 30 percent, subject to a minimum salary requirement, which in 2018 is EUR37,296 (USD45,476) per year. This is intended to offset the additional costs expats may encounter when moving to the Netherlands for work.

In order to qualify for the 30 percent ruling, the expat's employer must demonstrate that the employee possesses specific expertise that is either unavailable in the Dutch labor market or is in short supply.

OECD Personal Tax Burden Crept Higher Still In 2017

Belgium, Denmark, and Germany have the highest personal income tax burdens, at over 35 percent, among OECD countries, according to the latest OECD Taxing Wages report, which says that just over half of countries made small increases to their average personal tax rates last year.

Taxing Wages 2018 shows that the "net personal average tax rate" – income tax and social security contributions paid by employees, minus any family benefits received, as a share of gross wages – was 25.5 percent across the OECD. This OECD-wide average rate, calculated for a single person with no children earning an average wage, has remained stable in recent years. The lowest tax burdens were in Chile, Korea, and Mexico.

According to the OECD, increases in the average personal tax rate in 20 of the OECD's 35 member countries in 2017 were mainly due to wage increases that reduced the impact of tax-free allowances and credits. Average tax rates fell in 13 countries and were unchanged in two (Chile and Hungary). The biggest increases to the tax rate were in the Czech Republic (0.5 percentage points), Turkey (0.5 percentage points) and Mexico (0.4 percentage points), and the largest decreases were in Luxembourg (-2 percentage points), Finland (-0.6 percentage points), and Iceland (-0.5 percentage points).

If taxes and costs paid by employers are also considered, Taxing Wages 2018 shows that overall taxes on labor costs decreased on the average worker for the fourth consecutive year in 2017, due to lower employer social security contributions.

In 2017, the highest average net personal average tax rates for single workers with no children earning the average wage were in Belgium (40.5 percent), Germany (39.9 percent) and Denmark (35.8 percent). The lowest were in Chile (7 percent), Mexico (11.2 percent) and Korea (14.5 percent).

Irish Recovery Of Apple Tax Imminent

The Irish Government expects to have collected the EUR13bn (USD15.9bn) in back taxes that Apple is alleged to owe by the end of September.

In September 2016, a European Commission investigation concluded that two rulings provided by the Irish Government to Apple had "substantially and artificially lowered" the tax paid by the company in Ireland since 1991. The Commission ordered Ireland to recover an estimated EUR13bn in illegal state aid from Apple.

The Irish Government is currently appealing the Commission's ruling before the European Court of Justice (ECJ). The recovery money will therefore be placed into an escrow fund while the appeal is heard.

In October 2017, the Commission referred Ireland to the ECJ for its failure to collect the money.

On April 24, Ireland and Apple signed an Escrow Framework Deed, which set out the legal agreement that will govern the collection and eventual payment of the alleged state aid. The Government envisages the funds being paid in the second and third quarters of the 2018 year in "significant tranches." It expects the full recovery to be complete by the end of the third quarter.

The signing of the Escrow Framework Deed allows for the appointment of the escrow agent/custodian and the investment managers of the fund. The London branch of Bank of New York Mellon has been selected as preferred tenderer for the provision of escrow agency and custodian services. Amundi, BlackRock Investment Management (UK) Limited, and Goldman Sachs Asset Management International are to provide investment management services.

These appointments allow for the opening of the formal accounts into which the funds will be paid.

Finance Minister Paschal Donohoe stated that: "The Government fundamentally disagrees with the ruling of the Commission. However, as [a] committed [member] of the European Union, Ireland is intent on complying with our binding legal obligations in this regard."

"This is the largest recovery fund of its kind ever to be established and due to the complexity of such, together with out duty to comply with EU procurement rules, it has taken some time to get to this point."

Donohoe also said that the Government expects its appeal to be heard this autumn, adding that "how long the hearings last will depend on the judges overseeing it and they could be open to either party after that to take any further actions."

EU, New Zealand Customs Agreement Enters Into Force

A new customs agreement between the EU and New Zealand entered into force on May 1, with the aim of facilitating cooperation and ensuring that legislation is properly applied.

The agreement was signed in July 2017. It provides a comprehensive framework for the EU and New Zealand to cooperate in the area of customs, with the objective of both ensuring effective controls and facilitating legitimate trade. It is also designed to help companies and authorities save time and money in getting goods through customs, and to prevent harmful or illegal goods reaching the respective markets.

The EU and New Zealand will work together to prevent, investigate, and combat any customs violations and to ensure that legislation is being properly applied. To facilitate these aims, EU and New Zealand customs authorities will exchange more information.

Total goods trade between the EU and New Zealand was worth EUR8.4bn (USD10.2bn) in 2017. Trade in commercial services totaled EUR4.4bn in 2016.

South Africa Launches VAT Zero Rate Review

Having increased the headline value-added tax rate to 15 percent from 14 percent on April 1, South Africa has appointed a panel to consider a review of the list of food items subject to the zero rate.

The panel has been asked to, first, evaluate whether the current list of 19 zero-rated food items achieves the objective for which they were implemented, including "examining the consumption patterns of low-income households as opposed to higher-income households and the benefits derived from the zero-rating by these households respectively."

Second, it has been asked to consider "whether the policy objective underlying zero rating may be better achieved through disaggregation of those items (which are currently expressed as broad categories) to more specific targeting of products."

A consultation has been launched on the review, which will run until May 11, 2018. The panel will present its recommendations to the Davis Tax Committee no later than June 20, 2018, and a final report will be submitted to the Minister for Finance on June 30, 2018.

EU VAT Cooperation Proposals To Be Amended

The European Parliament's Committee on Economic and Monetary Affairs has requested a number of changes to the EU Commission's proposals for enhanced administrative cooperation in value-added tax matters, according to a document released on April 23, 2018.

The document explains the amendments of the Committee to the Commission's "amended proposal for a Council regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value-added tax."

These include provisions to ensure greater cooperation between agencies responsible for tackling fraud within the EU. A new Public Prosecutor's Office is proposed to be established, to pool expertise in areas such as crime analysis, tax, accounting, and IT, and provide smooth communication channels without any language barriers, and the EU is seeking VAT cooperation pacts with third countries, having signed its first with Norway in February 2018.

The Committee has recommended that the legislative proposal should be amended to "strike the right balance between requests for and analyzing of information on the one hand and data protection and privacy on the other." Several amendments therefore have been put forward that are said to seek to more clearly define the operating boundaries of Eurofisc, the existing framework for cooperation between member states, as well as the processing and use of information by the authorities.

The proposal has also been amended so as to strike a "better balance" between the interests and responsibilities of the requesting and the requested authorities, the explanatory statement says. "Without undermining the ability for the requesting authorities to launch administrative inquiries, the rights of the requested authorities are now better served. Furthermore, a more simplified mechanism on how the member states deal with outstanding VAT liabilities is introduced," it says.

Finally, it notes that provisions on the concept of "certified taxable person" have been deleted. The proposal for the concept has been a contentious issue during debates on the matter, with some stating that the framework is unnecessary given that the EU will soon adopt a definitive VAT regime centered on taxation under the destination principle – that goods and services be taxable in the location of the consumer or where they are effectively enjoyed, under that state's rules – as these reforms are expected to dramatically reduce the potential for VAT fraud.

The EU's VAT Fraud Prevention Plans

The EU's plans for a definitive VAT regime were set out in October 2017. The plan aims to reduce fraud, estimated to cost member states EUR50bn (USD61.6bn) per year, by EUR40bn. In the area of fraud, the definitive regime provides that VAT should be charged on cross-border trade between businesses. Currently, this type of trade is exempt from VAT, providing an easy loophole for unscrupulous companies to collect VAT and then vanish without remitting the money to the relevant country's government (so-called carousel fraud).

The plan also proposed the concept of a Certified Taxable Person – a category of trusted business that will benefit from much simpler and time-saving rules. Provided that companies – small or big – meet a set of criteria, they would receive a certificate allowing them to be considered throughout the EU to be a reliable VAT taxpayer.

It has also separately proposed that the reverse charge mechanism on a defined list of goods and services, provided for in Article 199a(1) of the VAT Directive, and the Quick Reaction Mechanism (QRM) in Article 199b(1), should be extended beyond December 31, 2018, to tackle VAT fraud, until the new "definitive VAT regime" is introduced.

Saudi Arabia Issues VAT Guidance For Cross-Border Traders

Saudi Arabia has released new guidance on the value-added tax treatment of imported and exported goods and services under the Gulf Cooperation Council's (GCC's) harmonized VAT framework.

It had been proposed that a harmonized value-added tax should be introduced simultaneously by all GCC states based on an agreement between them. However, just the United Arab Emirates and Saudi Arabia have so far introduced value-added tax and the remaining GCC states – Bahrain, Qatar, Kuwait, and Oman – are thought likely to introduce VAT from next year at the earliest.

According to GAZT, the new guide clarifies, among other things, the transitional provisions imposed on the importation of goods and services between GCC countries, as well as how to deduct the input tax and the taxable obligations.

ATO Issues GST Guidance To Foreign Retailers Ahead Of July 1 Change

Australia is to introduce goods and services tax (GST) on supplies of low-value goods imported into Australia from July 1, 2018. The Australian Taxation Office (ATO) has newly issued guidance on how businesses should determine the value of their consignments, to establish if they're to be covered by the new or existing rules.

Currently low-value goods – *i.e.*, goods with a customs value of AUD1,000 (USD754) or less – are generally not subject to GST when imported directly into Australia by the recipient. This exemption will be removed to level the tax playing field for domestic brick-and-mortar retailers.

As a result of the changes, foreign retailers that meet the registration threshold of AUD75,000 (USD56,550) and that supply low-value goods will need to register for GST; charge GST on sales of low value imported goods (unless they are GST-free); and lodge returns to the ATO.

Existing rules will continue to apply after July 1, 2018, to consignments worth over AUD1,000. As such, any GST, customs duty, and clearance charges will be charged to the importer at the border and the onward supply will be made without GST.

The ATO has newly released two draft determinations to provide businesses with options on how they can convert their local currency to Australian dollars to determine whether goods are "low-value goods" and the amount of GST payable on taxable supplies.

Separately, the ATO has released guidance on the margin scheme that applies to sales of property by a business in the course of its business activities.

AUSTRIA - UZBEKISTAN

Negotiations

Austria's Council of Ministers on April 18, 2018, authorized negotiations on a protocol to the DTA with Uzbekistan.

BELARUS - UNITED KINGDOM

Ratified

A bill was tabled in Belarus's House of Representatives on April 19, 2018, to ratify the DTA signed with the United Kingdom.

CHILE - URUGUAY

Forwarded

Chile's Chamber of Deputies approved the DTA with Uruguay on April 19, 2018.

FINLAND - HONG KONG

Forwarded

Finland's President on April 6, 2018, authorized the signature of a DTA with Hong Kong.

KAZAKHSTAN - BELARUS

Ratified

Kazakhstan's President on April 9, 2018, signed legislation ratifying a protocol to the DTA with Belarus.

KYRGYZSTAN - CZECH REPUBLIC

Negotiations

Kyrgyzstan and the Czech Republic agreed a draft DTA during four-day talks that ended on April 19, 2018.

LATVIA - CHILE

Negotiations

Latvia and Chile discussed launching DTA negotiations during a two-day meeting that concluded on April 10, 2018.

LATVIA - COSTA RICA

Negotiations

Latvia and Costa Rica agreed on April 13, 2018, to begin negotiations towards a DTA.

LUXEMBOURG - CYPRUS

Ratified

The DTA between Luxembourg and Cyprus entered into force on April 24, 2018, following its publication in Luxembourg's Official Gazette on April 20, 2018.

MACAU - VIETNAM

Forwarded

Macau's Office of the Chief Executive on April 3, 2018, issued Order No. 63/2018 authorizing the conclusion of a DTA with Vietnam.

MALTA - ETHIOPIA

Signature

Officials from Malta and Ethiopia signed a DTA on April 12, 2018, according to a release published by the Maltese government.

SAUDI ARABIA - LATVIA

Forwarded

Saudi Arabia's Cabinet authorized the Minister of Finance to sign a draft DTA with Latvia on April 17, 2018.

SERBIA - SAN MARINO

Signature

A DTA between Serbia and San Marino was signed in Belgrade on April 16, 2018.

SWITZERLAND - VARIOUS

Forwarded

The Swiss Federal Council on April 18, 2018, submitted for parliamentary approval dispatches relating to a protocol to the DTA with Ecuador, and a new DTA with Zambia.

UNITED KINGDOM - KYRGYZSTAN

Ratified

The United Kingdom on April 24, 2018, released The Double Taxation Relief and International Tax Enforcement (Kyrgyzstan) Order 2018, which would ratify the DTA signed with Kyrgyzstan.

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

THE AMERICAS

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/

IBFD Network Events USA 2018 – New York

5/15/2018 - 5/15/2018

IBFD

Venue: Millennium Broadway, 145 W 44th St, New York, NY 10036, USA

Key speakers: Agnieszka Samoc (Danaher Corporation), Michael Lebovitz (PwC), Premkumar Baldewsing (IBFD), Thomas Fezza (Moodys), Vladimir Samoylenko (NCR Corporation)

https://www.ibfd.org/IBFD-Tax-Portal/Events/IBFD-Network-Events-USA-2018-New-York

IBFD Network Events USA 2018 – Houston

5/17/2018 - 5/17/2018

IBFD

Venue: Hyatt Regency Houston/Galleria, 2626 Sage Rd, Houston, TX 77056, USA

Key speakers: Agnieszka Samoc (Danaher Corporation), Michael Lebovitz (PwC), Premkumar Baldewsing (IBFD), Thomas Fezza (Moodys)

https://www.ibfd.org/IBFD-Tax-Portal/Events/IBFD-Network-Events-USA-2018-Houston

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/

The Private Investment Fund Tax Master Class

5/22/2018 - 5/23/2018

Wilmington FRA

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

Key speakers: Kenneth DeGraw (Withum), Phil Gross (Kleinberg Kaplan Wolff & Cohen), Lee Sheppard (Tax Analysts), Mark Leeds (Mayer Brown), among numerous others

http://events.frallc.com/events/the-private-investment-fund-tax-master-class-b1075-/event-summary-d799e93eb1744a94ba553c800ee40d70.aspx?dvce=1

IFA Costa Rica 2018

5/23/2018 - 5/25/2018

International Fiscal Association

Venue: Hotel Real Intercontinental, In Front Of Multiplaza, San José, 1001, Costa Rica

Key speakers: Adrián Torrealba (Facio & Cañas), Juan Guillermo Ruiz (Posse Herrera Ruiz)

https://ifacostarica2018.cr/

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

Global Transfer Pricing Conference: Washington, DC

6/6/2018 - 6/7/2018

Bloomberg

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

Key speakers: TBC

https://learning.bloombergnext.com/catalog/product.xhtml?eid=6161

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

Chairs: Monica Reyes (Reyes Abogados Asociados), Lionel Nobre (Dell Computadores do Brasil), Erika Litvak (Greenberg Traurig), Sonia Velasco (Cuatrecasas), among numerous others

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: Chuck Baker (O'Melveny & Myers), Richard Bloom (MAZARS USA), M.K. Palmore (FBI), Catherine Lee Clarke (Sentinel Trust Company), among numerous others

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: Ivan Sacks (Withersworldwide), Jason Sharman (University of Cambridge), Desmond Teo (EY), Leanne Kaufman (RBC Estate and Trust Services), among numerous others

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: Raynuha Sinnathamby (Springfield City Group), Greg Pratt (Deloitte), Mark Molesworth (BDO), Martin Jacobs (ATO), among numerous others

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

Chair: Peter Godber (Grant Thornton)

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

Principles of Transfer Pricing

6/27/2018 - 6/29/2018

IBFD

Venue: Address: Kuala Lumpur, Malaysia (address available after registration)

Instructors: Anuschka Bakker (IBFD)

https://www.ibfd.org/Training/Principles-Transfer-Pricing-10

Transfer Pricing Masterclass

7/2/2018 - 7/4/2018

IBFD

Venue: Address: Singapore (address available after registration)

Instructors: Anuschka Bakker (IBFD)

https://www.ibfd.org/Training/Transfer-Pricing-Masterclass-1

CENTRAL AND EASTERN EUROPE

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

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

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

WESTERN EUROPE

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: Jonathan Ford (Financial Times), Simon Osborn (IFI Global Ltd), Leith Moghli (Reed Smith), Fiona Carpenter (PwC), among numerous others

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

Protection of Taxpayers' Rights in the Case Law of the European Courts

5/17/2018 - 5/17/2018

Academy of European Law

Venue: Rue de l'Aqueduc 118, 1050 Brussels/Ixelles, Belgium

Key speakers: María Amparo Grau Ruiz (Complutense University of Madrid), David Hummel (Court of Justice of the European Union), Katerina Perrou (IBFD), Natalia Vorobyeva (European Court of Human Rights), among numerous others

https://www.era.int/cgi-bin/cms?_SID=9e33bf77b0e4587e14991159621fbca45243657200594226138893&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=127723&idrubrik=1024

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

Tax Treaty Case Law around the Globe 2018

5/24/2018 - 5/26/2018

Fiscal Institute Tilburg

Venue: Dante Building, Tilburg University, Warandelaan 2, 5037 AB Tilburg, Netherlands

Key speakers: Eric Kemmeren (Tilburg University), Daniel Smit (Tilburg University), Peter Essers (Tilburg University), Cihat Öner (Tilburg University), among numerous others

http://www.tilburguniversity.edu/research/institutes-and-research-groups/fit/conferences/tax-treaty-case-law/

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/

Tax and Technology

6/26/2018 - 6/27/2018

IBFD

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

Instructors: Bart Janssen (Deloitte), Aleksandra Bal (IBFD), Monica Erasmus-Koen (Tytho), Oscar Good (World Bank Group), among numerous others

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

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/

Tax Planning and Substance

6/28/2018 - 6/29/2018

IBFD

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

Instructors: Annemiek Kale (Arla Foods), Clive Jie-A-Joen (DLA Piper), Jan de Goede (IBFD), Bart le Blanc (Norton Rose Fulbright), among numerous others

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

Taxing The Digital Economy: The Way Ahead

6/28/2018 - 6/29/2018

IBFD

Venue: De Industrieele Groote Club, Dam Square 27, 1012 JS Amsterdam, The Netherlands

Chairs: Mariken van Hilten (Netherlands Supreme Court), Pasquale Pistone (IBFD), Dennis Weber (Loyens & Loeff), Stef van Weeghel (PricewaterhouseCoopers), among numerous others

https://www.ibfd.org/sites/ibfd.org/files/content/pdf/Taxing-the-digital-economy-conference.pdf

Summer Course on European Tax Law

7/2/2018 - 7/6/2018

Academy of European Law

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

Key speakers: Tomas Balco (OECD), Daniel Smit (Tilburg University), Fatima Chaouche (University of Luxembourg), Philippe Malherbe (University of Louvain), among numerous others

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

BEPS Country Implementation – MLI and beyond

9/10/2018 - 9/11/2018

IBFD

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

Instructors: Bart Kosters (IBFD), Tamás Kulcsár (IBFD), Ridha Hamzaoui (IBFD), Luis Nouel (IBFD)

https://www.ibfd.org/Training/BEPS-Country-Implementation-MLI-and-beyond

European Value Added Tax Masterclass

9/20/2018 - 9/21/2018

IBFD

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

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD), Jan Snel (Baker & McKenzie), Claus Bohn Jespersen (KPMG)

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

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/

Annual Conference on European VAT Law 2018

11/22/2018 - 11/23/2018

Academy of European Law

Venue: TBC, Trier, Germany

Key speakers: TBC

https://www.era.int/cgi-bin/cms?_SID=9e33bf77b0e4587e14991159621fbca4524365720059422613889 3&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=127489&idrubrik=1024

WESTERN EUROPE

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.

A listing of recent key international tax cases.

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*

Germany

Germany's Constitutional Court has ruled that the existing value-based system of assessing property taxation is unconstitutional and must be replaced by parliament.

Property tax in the states located in the former West Germany is based on real estate values from 1964. However, the ratable values of properties for tax purposes in the former East German states have not been updated since 1936. In a statement issued on April 10, the Constitutional Court said this situation results in "serious and extensive unequal treatment, which is not sufficiently justified."

Properties are supposed to be revalued every six years for the purpose of assessing property tax. This regular revaluation ceased because the exercise was too burdensome on government resources.

The ruling, which affects around 35m properties, requires that parliament draw up legislation for a replacement property tax regime by the end of 2019, and that the existing system cease to apply by December 31, 2024.

Property tax is an important source of revenue for local governments in Germany, generating about EUR14bn (USD17.3bn) per year in receipts.

http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2018/bvg18-021.html;jsessionid=0217A95B4DFCA4AA3FABD1966AA56AEA.2_cid361

German Constitutional Court: *Judgment of April 10, 2018 (1 BvL 11/14)*

Spain

The European Court of Justice (ECJ) has ruled that regional taxes on large retail establishments in Spain, designed to counteract the impact of such developments on the environment and on town and country planning, are compatible with EU law.

The case involved taxes introduced by three Spanish autonomous communities (Catalonia, Asturias, and Aragon) to fund environmental action plans and to improve local infrastructure.

These taxes were challenged by the Asociación Nacional de Grandes Empresas de Distribución (ANGED), a national association of large distribution companies, before the Spanish courts, with a complaint also filed with the European Commission.

The Spanish Supreme Court (*Tribuno Supremo*) was unsure of the compatibility of the taxes with the EU principle of freedom of establishment, and referred the matter to the ECJ. It also asked the ECJ to consider whether tax exemptions granted to retail establishments based on size and business type constituted state aid under EU law.

In its judgment, the ECJ said that neither freedom of establishment nor the law on state aid preclude taxes on large retail establishments such as those at issue in the case.

According to a summary of the ruling, on the issue of freedom of establishment, the ECJ found that the criterion chosen for determining which establishments are subject to the tax, relating to the sales area of the establishment, does not give rise to any direct discrimination. It also said that the criterion does not place taxpayers from other member states at a disadvantage.

On the state aid issue, the ECJ said that most of the tax exemptions were justified because the retail establishments benefiting from them had a less adverse impact on the environment than the establishments subject to the taxes, although it was left to the Tribuno Supremo to decide on this matter.

However, the ECJ found that a 60 percent reduction in the tax base for certain retail activities provided by Catalonia differentiated between two categories of large retail establishment that "are objectively in a comparable situation in the light of the objectives of environmental protection and town and country planning." This specific tax break therefore constitutes state aid, it said.

This ruling was delivered on April 26, 2018.

https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-04/cp180057en.pdf

European Court of Justice: *ANGED v. Generalitat de Catalunya et al. (Cases C-233 to C-237/16)*

United Kingdom

The UK's Court of Appeal (Civil Division) has recommended that the First-Tier Tribunal (FTT) rule in favor of HM Revenue & Customs in the case of *HMRC v. Paul Newey*, following guidance received from the European Court of Justice (ECJ).

The basic issue in the appeal is whether the EU law doctrine of abuse of law applies in circumstances where the respondent taxpayer, Newey, who had previously carried on a successful loan-broking business in partnership in the UK under the trading name of "Ocean Finance," took steps to incorporate and restructure the business in Jersey, outside the EU and, abusively, outside the normal territorial scope of value-added tax (VAT).

According to HMRC, in order to avoid irrecoverable VAT, Newey set up a company, Alabaster (CI) Ltd, in Jersey, and granted it the right to use the business name Ocean Finance. Broking contracts were concluded between the lenders and Alabaster, and the broking commissions were paid not to Newey, but to Alabaster. Alabaster then entered into a contract for the supply of advertising services.

HMRC took the view that, notwithstanding the contractual terms, the advertising services concerned were supplied to Newey in the UK and were therefore taxable in the UK. The FTT allowed Newey's appeal against that decision and HMRC appealed to the Upper Tribunal, which referred questions to the ECJ. The ECJ decided that although contractual terms should be taken into consideration, they are not decisive. It argued that they may be disregarded where they do not reflect economic and commercial reality and are a wholly artificial arrangement set up with the sole aim of obtaining a tax advantage.

Lord Justice Henderson said in the Court of Appeal judgment:

> "The decisions of both Tribunals [the FTT and the Upper Tribunal] are (as I have held) vitiated by material errors of law, with the consequence that the evaluation of the facts required by the [ECJ] has not yet been performed by a fact-finding body which has directed itself correctly in law. In those circumstances, I see no escape from the conclusion that the case must be remitted so that this task can for the first time be properly performed in all respects."

He observed that EU case law has been added to substantially, which will support HMRC's case, since the hearing in February 2010 in this case.

In its April 17, 2018 decision, the Court of Appeal decided to refer the matter back to the FTT, recommending that it accept the ECJ's advice on the matter and deny the arrangement.

Earlier, welcoming the preliminary ruling from the ECJ, HMRC stated:

> "The guidance from the ECJ confirms HMRC's view that economic reality must be considered and that contractual relationships do not necessarily determine VAT issues. HMRC will continue to mount in-depth investigations where we believe that a tax advantage may have been claimed artificially."

http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2018/791.html&query=([2018])+AND+(EWCA)+AND+(Civ)+AND+(791)

UK Court of Appeal (Civil Division): *HMRC v. Paul Newey*

Dateline May 3, 2018

If you're worried what the future holds as we draw nearer to an era of artificial intelligence – **more automation**, and fewer humans running the show – then you'd better worry about it a bit more. The robots are already here, and they might be processing your tax return right now.

At least, that could be the case if you live in the United Kingdom, where **HM Revenue & Customs** made the rather startling revelation earlier this month that it has been using artificial intelligence since 2015, and it has processed 10m transactions already. Creepier still if this is the sort of stuff gives you the willies, HMRC's Chief Digital & Information Officer said that the tax office uses "robots" to undertake a multitude of albeit mundane administrative tasks. Robots!

Now, I don't think we're talking your classic "Metal Mickey" type automaton here, sitting at a desk once occupied by a person, diligently punching numbers into a computer at an unsettling speed. By robot, I guess HMRC means a **complex computer code**, silently doing its work deep in a rack of servers at some secure facility somewhere. At least, I hope that's what HMRC's statement meant.

Either way, like it or not, automation is here to stay, including in the area of tax administration, and it's only going to become more prevalent the way things are going. In another recent example, **Italy** was authorized by the European Union to undertake **real-time VAT reporting**, which entails mandatory electronic reporting obligations on all taxable persons except for certain small businesses. And last year, it emerged that the **Chinese Government** plans to use **blockchain technology** to collect tax and issue electronic invoices.

We often dwell on the potential dangers posed by a world driven by algorithms. After all, code is ultimately created by humans, with all their individual flaws and foibles. But in terms of **tax administration and compliance**, there are surely benefits to automation. For taxpayers in a country like Italy, for example, which has garnered something of a reputation for lacking the **culture of compliance** that exists elsewhere in Europe, there would be fewer opportunities for taxpayers to, shall we say, take liberties with their tax obligations. This could allow the Government to narrow the tax gap and address its acute fiscal problems.

But it would be not only the Government that benefits. Tax compliance and administration in a digital environment should be **less cumbersome**, and less prone to error. Taxpayers should, therefore, save thousands of hours attempting to comply with complex tax regimes like Italy's, as well as face a **much-reduced risk** of being fined for mistakes, unintentionally committed or otherwise.

And it's not just taxpayers that buckle under the strain of complex tax codes. Tax authorities often struggle too. The **US Internal Revenue Service** is a classic example, as Congress throws the agency an ever-increasing number of balls to juggle, seemingly while tying one arm behind its back with budget cuts. If HMRC's experience is anything to go by, **computerizing** certain **high-volume administrative processes** could free up substantial resources to be used in areas where the IRS is seen to be failing, particularly in its taxpayer-facing functions.

Potentially therefore, automation is a win-win-win scenario. Until, that is, Metal Mickey decides to go rogue. And there's no telling what will happen then.

Staying on a technology-related theme, I now turn to the subject of **special tax regimes** for income from **intellectual property**, usually known as IP or patent boxes. Such tax incentives have proliferated in the past few years, but are they all they're cracked up to be? If the unenthusiastic take-up of **Ireland's** new **Knowledge Development Box** (KDB) is used as a bellwether, the answer is an emphatic no. Of course, this is just one of many examples.

However, the disappointing KDB figures revealed by Irish Finance Minister Paschal Donohoe in parliament recently are an indication perhaps that we have **reached patent box saturation point**, at least in Europe. Not only this, it almost goes without saying that patent boxes must be worth a company's while to claim. So if the process is too long-winded, bureaucratic, expensive, and **difficult to comply with**, it is hardly going to encourage firms to apply, just for the sake of shaving a few percentage points off their overall tax rate.

The latter point could be especially relevant in Ireland's case. The KDB offers taxpayers an effective tax rate of 6.25 percent on qualifying IP income. Which, on the face of it, is a very attractive outcome. But maybe the fact that **the ordinary corporate tax rate is already low** at 12.5 percent diminishes the value of this incentive somewhat.

However, Donohoe, probably unintentionally, said something very revealing when he told parliament that the low number of KDB applications could be due to the fact that companies have a **two-year window** in which to make an application "given the **large amount of documentation** that is necessary." Two years? Perhaps the Revenue Commissioners should think about borrowing one of HMRC's robots.