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GLOBAL TAX WEEKLY
a closer look

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

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

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

Combining expert industry thought leadership and the unrivalled worldwide multi-lingual research capabilities of leading law and tax publisher Wolters Kluwer, CCH publishes Global Tax Weekly — A Closer Look (GTW) as an indispensable up-to-the minute guide to today's shifting tax landscape for all tax practitioners and international finance executives.

Unique contributions from the Big4 and other leading firms provide unparalleled insight into the issues that matter, from today's thought leaders.

Topicality, thoroughness and relevance are our watchwords: CCH's network of expert local researchers covers 130 countries and provides input to a US/UK team of editors outputting 100 tax news stories a week. GTW highlights 20 of these stories each week under a series of useful headings, including industry sectors (e.g. manufacturing), subjects (e.g. transfer pricing) and regions (e.g. asia-pacific).

Alongside the news analyses are a wealth of feature articles each week covering key current topics in depth, written by a team of senior international tax and legal experts and supplemented by commentative topical news analyses. Supporting features include a round-up of tax treaty developments, a report on important new judgments, a calendar of upcoming tax conferences, and "The Jester's Column," a lighthearted but merciless commentary on the week's tax events.

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NEWS ROUND-UP

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At The Intersection Of International Tax And Digital Transformation

by Channing Flynn, Stephen Bates and Jess Martin, Ernst & Young LLP, US

TAX UPDATE	TECHNOLOGY IMPACT	ASK YOURSELF
OECD's new country-by-country reports could usher in a new era of tax transparency.	Global digital business models may face greater scrutiny in the coming months.	Are you prepared to confidently present your global tax position to tax authorities, the investment community and the press?
The Australian Government crafts digital economy tax measures.	As one of the first multifaceted digital tax blueprints unveiled at the national level, Australia's approach will be watched closely by governments and industry worldwide for its implementation and impact.	What are the potential risks in your current and proposed tax positions, and is any restructuring required this year?
Media reports say Italy is considering a 25% withholding tax on the virtual presence of foreign multinationals.	Tax policymakers and multinationals worldwide continue to debate what constitutes a locally taxable permanent establishment (PE) in a global digital economy.	By any reasonable measure, could your business activity in any given country be construed as a "virtual PE"?
The OECD's BEPS Project will soon complete its work.	The OECD's lead tax policymaker promises immediate impact, while countries like the US are already implementing BEPS-related tax measures, but digital business models continue to raise difficult questions about remaining BEPS action items on PE and other matters.	Are you weighing in with global and national authorities on the issues that matter most to your tax planning? Moreover, are you getting ready for implementation?

OECD BEPS Project Coming Into The Home Stretch

Now is when the proverbial rubber hits the road, with digital economy tax models expected to be finalized this year by the Organisation for Economic Co-operation and Development (OECD) and its base erosion and profit shifting project (BEPS Project). Countries are already beginning to adapt, adopt – and in some cases co-opt – the pending tax models to suit their own national needs. Multinationals are reviewing their borderless digital business models amid this accelerating tax change.

Did we say "accelerating"? Here is what Pascal Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration, told the BBC in May: "The impact of what we are doing will not

take years, it will be immediate. We are already having an impact. A number of companies are changing their tax structures to anticipate BEPS."[1]

Examples of recent national developments are as game-changing as the UK's recently implemented diverted profits tax (DPT), which preempted work within the OECD's BEPS Project and was soon followed by similar moves against perceived multinational tax avoidance in Australia, the US and elsewhere. Private sector responses have been as headline-grabbing as recent reports of multinationals realigning profit allocations among European countries.

Digital economy tax change is expected to affect not only large but also mid-sized multinationals. Currently favored digital business models could face higher taxes, pressured by such changes as new country-by-country (CbC) tax reporting rules and an expected alignment of some intellectual property (IP) allocations.

Meanwhile, this edition of our regular column looks at impending tax changes from several perspectives:

- ***Item 1:*** Communications strategy becomes more important than ever in the coming era of tax transparency.
- ***Item 2:*** Australia is crafting a multifaceted digital tax blueprint.
- ***Item 3:*** According to Italian press reports, Italy's Government is considering a 25 percent withholding tax on the virtual presence of foreign multinationals.
- ***Item 4:*** This update on the OECD's BEPS Project includes a blunt assessment of its potential impact by the OECD's lead tax policymaker, new related tax measures in the US, and some important matters, such as transfer pricing, that continue to thwart resolution.

These local country and international dynamics present fundamental considerations for tax practitioners and international finance executives:

1) They need to understand the level of uncertainty they face as they monitor and prepare for ongoing change in technology taxation worldwide.
2) They should always keep in mind the current context of potentially varying tax treatment from country to country.
3) They should map the tax treatment of intellectual property (IP), transfer pricing, research and development (R&D) and other technology-related issues to their business models from the very outset, as they first develop their strategies and build in flexibility for the long term.

For the record

EY's tax and technology professionals from our member firms around the world bring a particular focus on today's technology megatrends of smart mobility, social networking, big data analytics, cloud computing and accelerated technology adaptation. Writing regularly for *Global Tax Weekly* is a great way to share our insight and experience with you, so we look forward to receiving your comments and ideas for future topics for this column. Please email your comments and suggestions to Jess Martin, Ernst & Young LLP (US), at jess.martin@ey.com.

We invite you to explore EY's *Worldwide Cloud Computing Tax Guide* (more than 120 countries

and growing), which shows where governments stand today with regard to many of the issues addressed in this column, at ey.com/cloudtaxguide. Nearly every organization is using cloud computing to access new markets, products and services, as well as achieve efficiencies and cost savings through technology that is scalable and flexible. Critical tax issues for both cloud service providers and cloud users are covered in the guide. Whether your arrangement involves a foreign principal providing digital content/services to a customer through a commissioned agent, through a commissionaire or through a buy-sell entity, the guide answers questions about withholding tax, nexus/PE risk, value-added tax/goods and services tax (VAT/GST) and more. You can also read our newly updated *Cloud taxation issues and impacts*, available at http://www.ey.com/GL/en/Industries/Technology/Cloud-taxation-issues-and-impacts.

Item 1: Communicating In An Era Of Tax Transparency

In recognition of an all-too-common tendency in business to leave communications considerations to last, this column begins with a pointed reminder about communicating your tax profile in a changing environment.

There is good cause. CbC tax reporting is expected to usher in a new era of tax transparency, with the first reports to be filed as early as 2017 (covering fiscal year 2016), as other regional and even industry-specific tax transparency initiatives have also emerged. Countries adopting the OECD's CbC guidelines would require more comprehensive global operational reporting by companies resident within their jurisdictions. The information could then be shared with other nations' tax authorities, where relevant, *via* government information exchange mechanisms.

There may be some comfort in knowing that as CbC rules come into force, reports will not automatically be made public. Many participating countries have indicated their support for limiting access to tax authorities and protecting taxpayer confidentiality (as required by law in many places). That said, companies will only have one chance to make a good first impression, as the saying goes, when they file their initial CbC report. They should be prepared to confidently present their global tax position to tax authorities and the press.

Already, intensifying press coverage of tax matters has been presenting some multinationals with difficult choices between tax optimization and reputational risk.

Incorporating Tax Into Communications Strategies

Rigorously crafted communications strategies could help companies to blunt criticism, including the following tactics:

- Proactively identify your company's full economic contribution around the globe – not only in terms of income tax, but also property, payroll, sales and employee income taxes on stock-based compensation
- Make sure that the overall substance, including the operational responsibilities and functionality

of a foreign intellectual property (IP) subsidiary, can be presented to the appropriate constituencies
- Preview all press releases for potential tax significance
- Establish a policy and procedure for responding to tax inquiries from the press
- Maintain a dialogue between the tax and corporate communications functions

The Care And Feeding Of The Investor Community

Investors and securities watchdogs are critical audiences for your overarching communications strategy, not just required financial statements. Institutional investors, in particular, will want to understand the possible implications of global tax reform. And certain companies have begun disclosing potential state aid, BEPS exposure and related transfer pricing issues in their financial statements and securities filings.

Internal Communications Lay The Foundation

All of the advice above assumes that internal communications are proceeding apace, with the tax department already communicating to upper management and the board that increased tax scrutiny and cost could be on the way. If not, Communications Priority No. 1 should certainly be internal. And going forward, a key takeaway, often repeated, is that the tax function should be part of any internal discussion regarding significant business change.

Considerations

Communications strategy – internal and external – is fundamental. All of top management needs to recognize that a low tax rate is no longer guaranteed to produce positive reactions from stakeholders. Standard communications policy and practice should be updated with this new understanding and with close consideration of the messages your company conveys – intentionally or unintentionally – about the taxes it pays as a global corporate citizen. For further insight, go to ey.com/tax and read EY's new report titled *Managing tax transparency and reputation risk*.

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Item 2: Australia Crafts Digital Taxation Blueprint

The Australian Government has crafted digital economy tax measures as part of its recent 2015/16 federal budget proposal. Of particular interest to multinationals operating in Australia are:

- A draft law to counter perceived cross-border tax avoidance by multinationals, akin to the UK's DPT
- A draft law designed to level the playing field for goods and services taxes (GST) between offshore and local digital content providers
- Enhanced transfer pricing documentation requirements consistent with the OECD's new CbC reporting framework

Measure Targets Perceived Profit Diversion

The Government has announced a change to the General Anti-avoidance Rule (Part IVA) to tackle perceived tax avoidance by multinationals. The draft law would affect companies with annual global revenue exceeding AUD1bn (USD760m).

While Australia's proposed measure would operate within the existing tax law framework, it has raised several questions that are expected to be clarified by a consultation period and published guidance from the Australian Taxation Office. Among the questions is whether treaty protection will be available to protect against an assessment of tax, since Part IVA can override various double tax treaty obligations, as drafted.

Australia and the UK differ in the way they address cross-border profit diversion; for example, only the UK has issued a specific new tax. But they have at least one thing in common, as both countries have acted ahead of the conclusion of the OECD BEPS Project's recommendations for a globally coordinated response to the issue.

International Streaming Media Faces GST

Streaming media to Australian consumers, whether by offshore or local providers, would be subject to the same GST treatment under another proposed measure. Included would be the streaming or downloading of movies, music, apps, games and e-books, as well as professional services and other services offered to individuals.

Australia Adopts CbC Reporting

Australia is becoming an early adopter of documentation standards in line with the OECD's CbC reporting guidelines. Multinationals that operate in Australia and have global revenue of AUD1bn or more will be required to provide the following information for any year commencing on or after January 1, 2016:

- CbC report including information on global activities, location of income, and taxes paid
- Master file containing an overview of the global business, organizational structure and transfer pricing policies
- Local file that provides detailed information about the local taxpayer's intra-group/intercompany transactions

Administrative guidance including how this information will be shared with other jurisdictions will follow, but this key issue could have a ripple effect well beyond Australia's borders.

Considerations

As one of the first multifaceted digital tax blueprints unveiled at the national level, Australia's new measure, along with its implementation, will be watched closely by governments and industry around the world for its impact. Implications for multinational technology companies doing business in Australia range from: the administrative (such as GST registration and remittance) to the strategic (such as pricing strategies for affected services) – up to and including, potentially, upward pressure on their effective tax rates. Companies should review their current and proposed tax structures to determine if any restructuring is required before January 2016.

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Item 3: Italy May Consider Taxing Virtual Presence

According to Italian press reports, Italy's Government is considering the introduction of a 25 percent withholding tax on the virtual presence of foreign multinationals. The measure would cover foreign companies selling into the Italian market without the presence of a physical structure that falls within the traditional definition of permanent establishment (PE). The new tax was expected as this column went to press, amid the second phase of a major Italian tax reform set in motion by Parliament in February 2014.

Such a plan would align with an option identified in the OECD BEPS Project to address the challenges that global digital business models can pose for tax authorities, given their reduced need for a local physical presence (PE) in any given country.

"Presence" = Revenue Threshold

The withholding tax would be based on the presence of a virtual PE, defined as a significant digital presence as measured by revenue (with an initial threshold of EUR1m, or USD1.1m, over six months).

Mechanisms to avoid double taxation in connection with taxes already paid in Italy would be expected. The new withholding tax would not apply if a foreign entity discloses a PE in Italy.

Considerations

PE thresholds – virtual or otherwise – continue to resist a consensus definition among global tax policymakers. In the meantime, in Italy, assess your likelihood of additional tax obligations and compliance burdens as tax reform advances. In fact, this exercise should also be repeated in any country in which you do significant business.

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Item 4: OECD BEPS Project Due To Wrap Up

The pressure is on, with less than six months to go, with the OECD promising that its BEPS Project will culminate in a final set of digital economy tax models this year.

While the OECD last year declined to "ring fence" the digital economy for special tax treatment within the BEPS Project, the organization nevertheless declared the overall global economy to be digital and proceeded writing tax models with profound implications for technology companies.

BEPS Impact Described In Blunt Terms

Now, as noted above, the OECD's Saint-Amans is forecasting an immediate impact from the BEPS Project and related CbC reporting, requiring companies to pay more tax in the countries in which they sell goods and services.

As he explained in his BBC interview: "Countries will have to change their domestic legislation, they will have to cooperate, they will have to exchange

information like country-by-country reporting – asking multinationals: Where is your turnover? Where are your profits? Where are your employees? Where do you pay your taxes? This type of information will be collected by all the countries and will be sent to the countries where the companies operate. That's a game changer."

US Joins Countries Advancing On BEPS

Some countries are indeed beginning to implement new BEPS-related measures even before the BEPS Project is finalized, including Australia, Italy and the UK. Joining this group recently is the United States.

In May, the US Treasury Department released proposed revisions to its Model Income Tax Convention. US officials specified that their goal is to address current abuses of US treaties that facilitate non-taxation and create stateless income. One set of provisions, for example, addresses issues arising from so-called "special tax regimes," which provide low rates of taxation in certain countries to royalties, interest and other mobile income. Read our full analysis in a May 21, 2015 *EY Global Tax Alert* titled "US Treasury Department proposes revisions to US model tax treaty," at ey.com/tax.

Deliberations Continue Amid Complexity

Despite this year's looming final deadline, BEPS deliberations continue on several difficult issues, including transfer pricing and PE thresholds.

Recently, in a discussion draft of BEPS Action 8, significant changes were proposed from existing guidance on cost contribution arrangements (CCAs). The changes include new guidance requiring each participant's contribution to be measured at value rather than at cost and a new requirement that CCA participants must have the capability and authority to control risks associated with their activities. Read our full analysis in a May 4, 2015 *EY Global Tax Alert* titled "OECD releases discussion draft on cost contribution arrangements under BEPS Action 8," at ey.com/tax.

Our last column devoted considerable attention to whether BEPS recommendations would force technology companies to establish many more PEs around the world. Notably, new PEs mean additional tax filing obligations and an increased potential for controversy.

A revised discussion draft on preventing artificial PE avoidance (BEPS Action 7) substantially refines and narrows the OECD's focus, although it still would lower the PE threshold and tighten the exceptions to PE status. Questions remain about the degree to which it would do so, and guidance has not yet been developed on appropriate rules for determining the profits attributable to such new PEs.

Comments were being submitted on the new Action 7 discussion draft as this column went to press. But the question regarding profit attribution is one that may remain unanswered until completion of negotiations over the multilateral instrument needed to implement BEPS recommendations in bilateral tax treaties. Work began in May 2015 on this instrument, which is intended to prevent the need to rewrite all the 3,000 bilateral treaties in effect

worldwide. Completion is scheduled by the end of 2016. Read our full analysis in a May 21, 2015 *EY Global Tax Alert* titled "OECD releases revised discussion draft on preventing artificial avoidance of PE status under BEPS Action 7," at ey.com/tax.

Considerations

Companies operating in the digital realm or undergoing digital transformation should stay informed about developments, evaluate how the proposals may affect them, and begin to reflect how to appropriately address these changes. In such specific areas as transfer pricing, for example, companies should be evaluating and scenario planning around proposed CCA changes and their possible impact on tax profile and documentation. At the same time – even at this date – companies should still consider global or national participation in the dialogue regarding the BEPS Project and its underlying international tax policy issues. The US is among the countries encouraging such comment on its recently proposed changes to the US model treaty.

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Note: The views expressed in this column are those of the authors and do not necessarily reflect the views of the global EY organization or its member firms. Check with your local EY tax advisor for the latest information regarding these rapidly developing topics.

Endnote

1 "OECD attacks 'aggressive' tech tax plans," BBC, May 14, 2015, http://www.bbc.com/news/business-32730305.

Defense For Transfer Pricing: Restructuring And Tax Planning

by Dr. Alexander Voegele, Philip de Homont, and Tom Braukmann, NERA Economic Consulting

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This case study shows how to defend a case in a German field tax audit, when the field tax auditors assume that business and intangibles are used by other affiliates without paying a fair amount for the usage.

The Typical Pitfall For Taxpayers In Audits

No one would have believed how much the case would escalate when a mid-sized family-owned company came under audit by German tax authorities.

By itself an audit is hardly untypical – especially in Germany, where even mid-sized companies are normally continuously audited in field tax audits. Also quite typical for audits of companies with subsidiaries abroad is that a dedicated transfer pricing specialist accompanies the tax authorities.

The company was not overly worried by the audit. It would mean some work, but the group had excellent in-house tax specialists and was assisted by a Big Four firm. It also felt that transfer prices would not really be a topic since the entire "Base Erosion

and Profit Shifting" discussion would not apply to it. It enjoyed virtually no low-tax regimes, had high German taxable income, high US taxable income, and high and fully taxed Chinese income.

Audit procedures took more than two years, which is normal in such cases. The tax audit went very well for many months. Besides a multitude of smaller issues from income tax to VAT, the auditors also focused on transfer pricing between Germany and Austria.

Everything seemed to be fine, except an – apparently – minor issue on the usage of intangibles by the Austrian subsidiary. The company and its advisors did not believe this to be very critical. They expected to solve the issue in the final meeting, based on the high German profits and taxes paid.

Alas, such over-confidence with regard to lingering issues is a very typical pitfall for taxpayers, especially for those who are confident that they have done nothing wrong.

And so, the state field tax auditor insisted that some business opportunities and intangibles that had been developed in Germany were now being used by the Austrian subsidiary. He argued that a part of the prior German client base, know-how and business had been taken over by the Austrian subsidiary. The tax authorities proposed a significant adjustment.

The tax payment would have been enormous, significantly impacting the financial planning of the shareholders.

The Austrian tax advisor spoke with the family and proposed to contact us.

In order to assess the merit of the tax authority's case, we first had to look at the background of the company.

An Industry-Changing Company

The company was founded by a former German general manager of a US multinational company some years ago and specializes in supplying electronic niche products to industrial companies.

The engineers of the German company anticipated demand trends and convinced Asian manufacturers to develop the according products, which were sold to large companies in the electronic industry worldwide. The business model worked very well and expanded rapidly over the last 20 years.

The group invested heavily in its core niche business providing technical sales consultation, increased product reliability, and spent enormous amounts in marketing.

The company has contributed to shaping the electronic industry as it is today. Big multinational companies closed certain business lines and opened others. Today, the company is one of the most well-known electronics niche players worldwide.

The German company has been very profitable in all years, despite the difficult German market environment for electronic products. Similarly, most subsidiaries were increasingly profitable, in particular the Austrian entity.

Initially all products were directly sold from Germany. Then a few years ago, the company established subsidiaries in China, Taiwan, the US, and several of other countries.

The company also invested in a "new business" in several European countries. This new business was developed by a newly created subsidiary in Austria, where the company was not established in prior years.

The Position Of The Field Tax Audit

The German companies had been audited by field tax audits regularly before, and the transfer pricing specialists of the field tax audit were always satisfied with the German results.

This time, the new German transfer pricing specialist of the field tax audit looked at customers originally managed by the German company and

concluded that this "client base" along with know-how and business opportunities were transferred to the Austrian subsidiary. He came to the conclusion that the significant Austrian profits could only have arisen from such intangibles and calculated the present value of the "associated" profits in perpetuity. He suggested a huge sales price for the intangibles.

Our Defense: A Profit Split Model

We had to analyze the value of the transferred clients. First, we looked for the sales and profits with these clients in prior years.

The company itself had used a rule of thumb, the Knoppe-formula similar to the US "Goldscheider rule," to determine the associated license fee. As could be entirely expected, the field tax auditors did not accept this rule.

The German and Austrian business operations, but also the other subsidiaries, are very interdependent. We came to the conclusion that neither the standard methods nor TNMM/CPM could be used reasonably. We therefore used the profit split for the determination of the profits of all subsidiaries.

We reviewed the functions, risks and assets, and found that the entities in Germany and Austria contributed five different valuable functions:

- **Quality Management:** Engineers increase the product quality by developing testing procedures for the unrelated manufacturers.
- **Application Engineering:** Engineers provide technical documentations to the sales staff for customer presentations.
- **Market Development:** The external sales staff develop customer relations and sales know-how for the European market.
- **Customer Service:** The internal sales staff coordinate sales with the purchase departments of customers and negotiate contracts.
- **Marketing:** Marketing staff develop new marketing channels and organize exhibitions.

The functions for the European market are jointly performed by companies in Germany and Austria. We used the following four steps to calculate arm's length remunerations for each function in each country.

Step 1: Calculation Of Profits

First, the European profits generated by the Austrian and German companies were calculated. For this, the European results of the Austrian companies had to be separated from the US and Asian operations.

Step 2: Functional Contributions

In the second step, we interviewed a representative sample of experts to determine the value of the five functions for the business success of the group in Europe. For each function, the experts assigned a percentage contribution to the overall European business success. For example, the experts identified that 17 percent of all European profits could be attributed to the marketing function.

Step 3: Contribution Split

In step 3, we analyzed how the entities contribute to the various functions – *i.e.*, to what degree they were conducted in the respective country.

Quality Management: The engineers created technical intangibles. The **capitalized development costs** are most appropriate to allocate the economic ownership of technical intellectual property between Germany and Austria.

Application Engineering: The value contributions of the engineers can best be analyzed by the uncured costs. The function was split between Austria and Germany according the **personnel costs and associated expenses**.

Market Development: External sales staff were employed in both countries and developed the European market. The most suitable allocation key consists of the **personnel costs and associated expenses** for the sales staff in both countries.

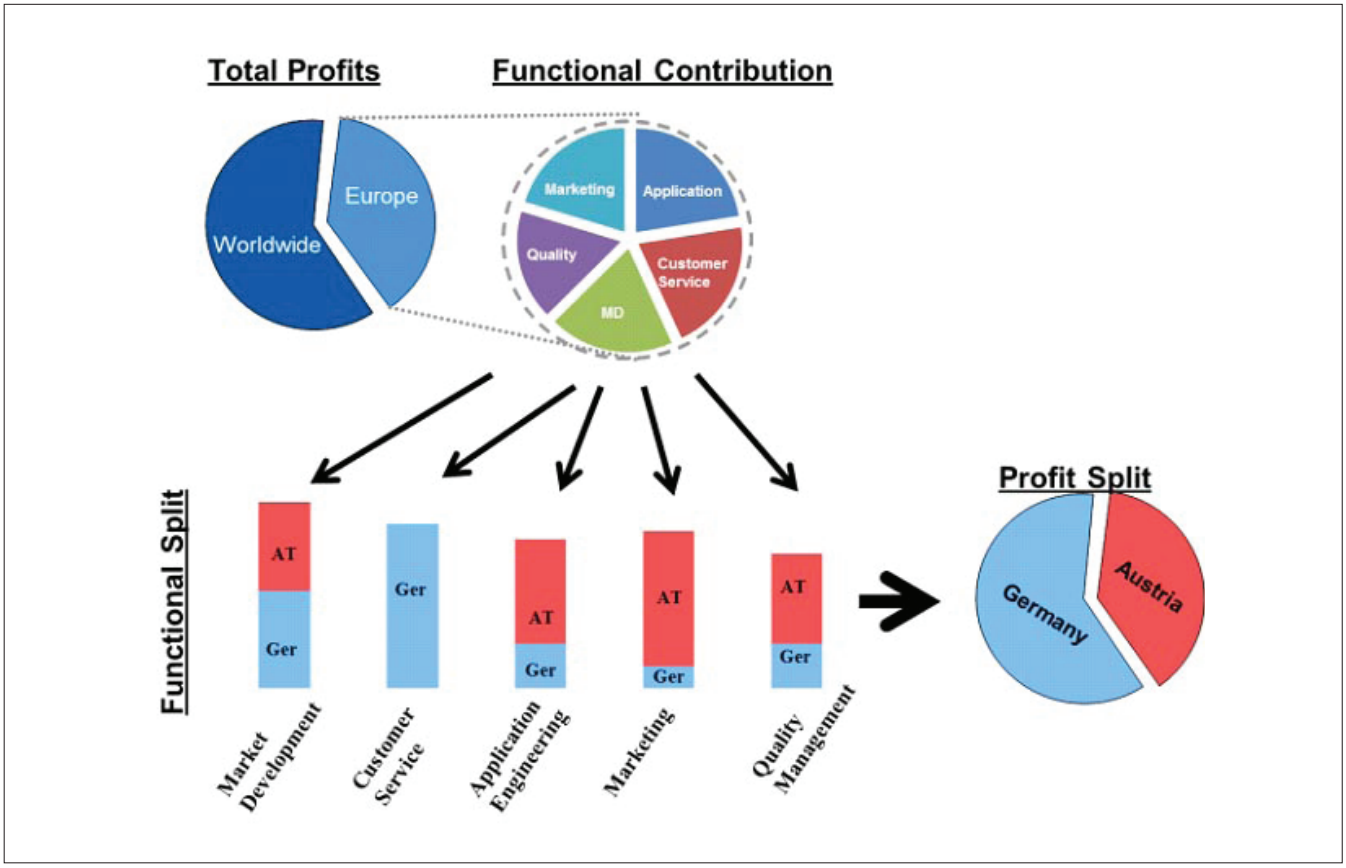
Customer Service: This function was **exclusively performed by the Germany entity**. 100 percent of the function was therefore attributed to Germany.

Marketing: The marketing function was split using the **incurred costs for marketing and relevant personnel** between Austria and Germany.

Step 4: Profit Split

The European profit (step 1) was split between the German and Austrian companies according to the contributions of each function to the European operations (step 2) and the contributions of each company to the functions (step 3).

The following chart summarizes the procedure for the determination of the arm's length ordinary profits.



The contributional profit split calculated the interquartile range of arm's length profits.

The Result

All arguments were finalized in a report and submitted to the tax authorities, who checked it very carefully and discussed it internally.

Then the tax authority phoned the CFO of the client: our entire report has been accepted. No meeting was necessary; all proposed adjustments were dropped.

The client could hardly believe the result; and the senior shareholder wanted to meet us in person to thank us.

The key lessons learned from this case were:

- Concerns of tax authorities in an audit should be taken seriously from the beginning. Even "small" issues can – nearly – spiral out of control.
- Profit splits are an excellent methodology for defending difficult transfer pricing, not only in this case.

The Cyprus Intellectual Property Rights 'Box' - A Limited Time Opportunity

by Philippos Aristotelous, Andreas Neocleous & Co LLC

Introduction

In May 2012, Cyprus introduced a package of incentives and tax exemptions relating to investment in intellectual property rights, commonly known as an "IP box." Intellectual property projects are particularly susceptible to cross-border planning by reason of the mobility of intellectual property rights, which do not consist of physical assets and so can be easily moved between different jurisdictions and tax systems according to prevailing circumstances.

There has been considerable opposition from some countries to IP box regimes, and now that consensus has been reached on the modified nexus approach under Action 5 of the G20/OECD base erosion and profit shifting project, new entries to such schemes will not be permitted after mid-2016. However, companies that join the Cyprus scheme before that date can look forward to benefiting from substantial savings until mid-2021.

Comparison With Other European IP Box Regimes

The table below summarizes the key aspects:

	CYPRUS	BELGIUM	FRANCE	HUNGARY	LUXEMBOURG	NETHERLANDS	SPAIN	UK
Effective tax rate	2.5%	6.8%	15%	9.5%	5.76%	5%	15%	10%
Qualifying IP assets	All IP assets, including patents, trademarks, copyright, formulas, designs, know-how, and processes	Patents and supplementary patent certificates	Patents, extensions, patentable inventions, and industrial fabrication processes	Patents, trademarks, business names, know-how, and copyrights	Patents, trademarks, designs, domain names, models, and software copyrights	Self-developed IP relating to patents or approved R&D	Patents, formulas, processes, plans, models, designs, and know-how	UK and European patents, supplementary protection certificates, and plant variety rights
Ineligible IP assets	None	Know-how, trademarks, designs, models, formulas, or processes	Acquired IP rights held for less than two years	None	Know-how, formulas, or copyrights (other than software),	Trademarks and brands. Acquired IP	Trademarks, copyrights of literary, artistic or scientific work, including software	Trademarks, copyrights and designs

	CYPRUS	BELGIUM	FRANCE	HUNGARY	LUXEMBOURG	NETHERLANDS	SPAIN	UK
Internally developed or acquired?	Applies to both internally developed and acquired IP	Internally developed IP and improvements to acquired IP	Applies to both internally developed and acquired IP	Applies to both internally developed and acquired IP	Applies to both internally developed and acquired IP, but not IP acquired from a related party	Self-developed only	Self-developed only	Self-developed and "actively managed" (used in business) only
Limitations on where R&D takes place	None	Some	None	None	None	Some	Some	None
Qualifying revenue	All income, including compensation for breach of rights	Patent income	Royalties net of cost of managing qualifying IP	Royalties	Royalties net of costs (amortization, R&D costs, interest etc.)	Net income from qualifying assets	Gross income from qualifying assets	Net income from qualifying IP
Deduction rate	80%	80%	None – reduced tax rate	50%	80%	None – reduced tax rate	50%	None – reduced tax rate
Overall limit of deduction	None	100% of pre-tax income	None	50% of pre-tax income	None	None	Six times the cost of developing the IP	None
Gains on disposal included	Yes	No	Yes	Yes	Yes	Yes	No	Yes

Cyprus's IP box regime provides a maximum tax rate of 2.5 percent on income earned from IP assets. The comparable rate in its nearest competitor, the Netherlands, is twice that amount, at 5 percent. Luxembourg (5.76 percent) and Belgium (6.8 percent) are close behind the Netherlands but far behind Cyprus.

The Cyprus IP box regime applies to a wider range of income than any other European scheme, most of which restrict benefits to income from patents and supplementary patent certificates. There is no cap on benefits, such as applies in Belgium, Hungary and Spain; there is no requirement regarding self-development of the IP; and there are no restrictions on where the expenditure on acquisition or development of IP is incurred.

While the French, Hungarian, Luxembourg, Netherlands and United Kingdom schemes offer partial exemption of gains on disposal, the exemptions are less attractive than those provided by the Cyprus scheme, due to limitations on qualifying assets and less generous deduction rates. Furthermore, full exemption can be relatively easily obtained in Cyprus by holding the IP assets in a separate company and disposing of the shares in the company rather than the IP itself, taking advantage of Cyprus's extensive capital gains tax exemptions.

In most comparisons of the benefits offered by different jurisdictions there is a trade-off to be made. One jurisdiction will be better on certain aspects, but another will be better on others, and the differences will have to be assessed and weighed against

one another to arrive at the best overall solution. In the case of the IP box regime there is no need for this, as Cyprus is the clear leader on every single aspect.

In most cases, immediate economic and tax savings can be accomplished by transferring intellectual rights currently held by entities located in low- or no-tax jurisdictions to Cyprus resident companies in order to take advantage of the new exemptions. The transfer of IP rights into a Cyprus company will not attract any form of taxation in Cyprus, and the new benefits and substantial exemptions will become available as soon as the asset is transferred.

The Cyprus IP box provides attractive opportunities for structuring the exploitation of IP assets through Cyprus and in particular through the use of Cyprus-resident IP owners, especially in conjunction with Cyprus's extensive network of double tax treaties, under which withholding tax on royalty income is either eliminated altogether or substantially reduced.

"All Good Things Come To An End"

There has been considerable opposition from some countries to the introduction of IP box regimes and, as part of the G20/OECD base erosion and profit shifting project, a number of countries, including Germany, put forward what has become known as the "modified nexus" approach. This approach seeks to ensure that preferential regimes for intellectual property require substantial economic activities to be undertaken in the jurisdiction concerned, by requiring tax benefits to be connected directly to R&D expenditures within the jurisdiction.

The United Kingdom, which had its own patent box regime, was initially opposed to the modified nexus approach, but once agreement was reached between Germany and the United Kingdom on the matter towards the end of 2014 any other opposition quickly fell away and the G20 meeting in November 2014 endorsed the joint proposal put forward by the two countries.

Countries are required to close existing schemes that do not comply with the modified nexus approach to new entrants no later than June 30, 2016. In order to provide transitional relief to taxpayers, countries are allowed to introduce grandfathering rules, under which all taxpayers benefiting from an existing regime may continue to enjoy the benefits of the scheme until an "abolition date" of no later than five years after the closure of the scheme to new entrants, implying a backstop date of June 30, 2021.

Now that consensus has been reached on the modified nexus approach and the timetable for its introduction, there is only limited time to enter into the Cyprus scheme, since it and all similar schemes will be closed to new entrants from June 2016. However, companies that join the scheme before then can look forward to benefiting from substantial savings until mid-2021. All that is required is to establish a suitable Cyprus structure for holding IP and transferring the business's intangible assets into it.

It would therefore behoove any business with significant IP assets or income to examine the option of benefiting from the favorable Cyprus IP taxation regime while the opportunity lasts.

Country-by-Country Reporting: New Rules And New Challenges

by Stuart Gray, Senior Editor, Global Tax Weekly

Country-by-country (CbC) reporting has been described by international tax experts as the most significant development in the field of transfer pricing since transfer pricing rules themselves first began to be introduced over 40 years ago. The development of the new CbC requirements and some of the challenges awaiting multinational entities (MNEs) and tax authorities alike are explored in this article.

Introduction

The call for MNEs to report certain information about their business activities and tax position in each country in which they have branches and subsidiaries forms just one part of the OECD's wider base erosion and profit shifting (BEPS) work, which seeks to drag the international tax framework into the 21st century. Nevertheless, the transfer pricing aspects of BEPS, which has CbC reporting at its heart, is considered one of the most important pillars of the BEPS project, if it's not *the* most significant.

BEPS

The BEPS project came into being on February 12, 2013, when the OECD's first formal report on the subject, "Addressing Base Erosion and Profit Shifting,"[1] was published. It was noted in that report that due to imperfect interaction between nations' tax regimes, MNEs have been permitted to legitimately structure their tax affairs using profit-shifting arrangements to pay minimal rates of tax, limiting their exposure to corporate tax rates as high as 30 percent, faced by fiscally immobile businesses in some OECD member states.

In July 2013, the OECD released the BEPS Action Plan,[2] consisting of 15 specific actions designed to give governments the domestic and international mechanisms to effectively close loopholes in the international tax system.

Action 13 of the BEPS Action Plan calls on countries to develop rules regarding transfer pricing documentation to enhance transparency for tax administrations, taking into consideration the compliance costs for business. The Action Plan states that the rules to be developed will include a requirement that MNEs provide all relevant governments with needed information on the global allocation of their income, economic activity, and their tax contributions among countries according to a

common template. The Action Plan also stresses that the actions to counter BEPS "must be complemented with actions that ensure certainty and predictability for business."

From Discussion Draft To Guidance

On January 30, 2014, the OECD released its "Discussion Draft on Transfer Pricing Documentation and Country-by-Country Reporting."[3] This formally introduced the concept of a standardized three-tier format on transfer pricing documentation including a master file, a local file, and a CbC reporting template.

The master file would provide an overview of the MNE's affairs. The local file would need to include a detailed transfer pricing study, a group organization chart, and the taxpayer's financial statements. The CbC report was designed to specify some basic items of financial data in each country where an MNE is organized.

After considering the extensive comments received from stakeholders during the consultation process on the transfer pricing documentation proposals, the OECD published a report entitled "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting"[4] on September 16, 2014. The new guidance reduced the amount of information that taxpayers would be expected to provide on the CbC reporting template, in response to concerns from the international business community that these requirements would be too onerous.

Despite concerns about the new reporting burden on MNEs, the OECD said in the document that the transfer pricing documentation requirements would still bring a number of benefits:

> "By requiring taxpayers to articulate convincing, consistent and cogent transfer pricing positions, transfer pricing documentation can help to ensure that a culture of compliance is created. Well-prepared documentation will give tax administrations some assurance that the taxpayer has analyzed the positions it reports on tax returns, has considered the available comparable data, and has reached consistent transfer pricing positions. Moreover, contemporaneous documentation requirements will help to ensure the integrity of the taxpayers' positions and restrain taxpayers from developing justifications for their positions after the fact."

To achieve these objectives, the report confirmed earlier recommendations for a standardized, three-tiered approach to transfer pricing documentation, consisting of a master file, containing standardized information relevant for all MNE group members; a local file, referring specifically to material transactions of the local taxpayer; and a CbC report, containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group.

Taken together, these three documents will require taxpayers to articulate consistent transfer pricing

positions, will provide tax administrations with information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit inquiries. "This information should make it easier for tax administrations to identify whether companies have engaged in transfer pricing and other practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments," the OECD said.

The report recommends the adoption of uniform rules on time frames for the preparation of documentation. Namely, the OECD suggests that:

- The local file should be finalized no later than the due date for the filing of the tax return for the fiscal year in question;
- The master file should be reviewed and, if necessary, updated by the tax return due date for the ultimate parent of the MNE group; and
- As it is recognized that, in some instances, final statutory financial statements and other financial information that may be relevant for the CbC data may not be finalized until after the due date for tax returns in some countries for a given fiscal year, the date for completion of the CbC report should be allowed to be extended to one year following the last day of the fiscal year of the ultimate parent of the MNE group.

In a concession for MNEs, the report states that taxpayers should not be expected to incur disproportionately high costs and burdens in producing documentation. Where a taxpayer reasonably demonstrates that either no comparable data exists or that the cost of locating the comparable data would be disproportionately high relative to the amounts at issue, the taxpayer should not be required to incur costs in searching for such data.

On documentation-related penalties, the report says also that MNEs should not be penalized for failing to submit data to which the taxpayer did not have access. However, it goes on to acknowledge the merit of penalties in incentivizing compliance by MNEs with their transfer pricing obligations.

Implementation

On February 6, 2015, the OECD published guidance in relation to the implementation of the proposed CbC reporting obligations.[5] This document recommended that the master file and local file elements of the new transfer pricing documentation standard be implemented through local country legislation or administrative procedures and that the master file and local file be filed directly with the tax administrations in each relevant jurisdiction as required by those administrations.

The February 2015 guidance note goes on to state that mechanisms will be developed to monitor jurisdictions' compliance with their commitments and to monitor the effectiveness of the filing and dissemination mechanisms.

The guidance note recommends that the first CbC reports be required to be filed for MNE fiscal years beginning on or after January 1, 2016. As it has been proposed that MNEs should be allowed one year from the close of the fiscal year to which the CbC report relates to prepare and file the CbC report, this would mean the first CbC reports would be filed by December 31, 2017, with some reports being filed later, in 2018.

The guidance note also recommends that MNE groups should be required to file the CbC report each year, except for certain groups, including groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR750m (USD850m) or a near equivalent amount in domestic currency. Thus, for example, if an MNE that keeps its financial accounts on a calendar year basis has EUR625m in consolidated group revenue for its 2015 calendar year, it would not be required to file the CbC report in any country with respect to its fiscal year ending December 31, 2016.

It is believed that this reporting threshold will exclude approximately 85 to 90 percent of MNE groups from the requirement to file the CbC report, but that the CbC report will nevertheless be filed by MNE groups controlling approximately 90 percent of corporate revenues.

On June 8, 2015, the OECD released a package of measures for the implementation of the new CbC reporting framework, designed to "facilitate a consistent and swift implementation of new transfer pricing reporting standards."[6]

The implementation package consists of model legislation requiring the ultimate parent entity of an MNE group to file the CbC report in its jurisdiction of residence, including backup filing requirements when that jurisdiction does not require filing. The package also contains three Model Competent Authority Agreements to facilitate the exchange of CbC reports among tax administrations. The model agreements are based on the Multilateral Convention on Administrative Assistance in Tax Matters, bilateral tax conventions, and tax information exchange agreements.

Model Template For CbC Report

The model template for the CbC report in Annex III to Chapter V of the amended Transfer Pricing Guidelines consists of three tables.

Table One provides an overview of allocation of income, taxes, and business activities by tax jurisdiction. It consists of 11 columns with the following headings:

- Tax jurisdiction;
- Revenues, separated into unrelated-party revenues, related-party revenues, and total revenues;
- Profit/loss before income tax;
- Income tax paid (on a cash basis);
- Income tax accrued – current year;
- Stated capital;
- Accumulated earnings;
- Number of employees; and
- Tangible assets other than cash and cash equivalents.

Table Two is a list of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction. It asks for the following information:

- Tax jurisdiction;
- Constituent entities registered in the tax jurisdiction;
- Tax jurisdiction of organization or incorporation if different from tax jurisdiction of residence; and
- Main business activity(ies), which is divided into 13 subheadings:
  - Research and development;
  - Holding or managing Intellectual Property;
  - Purchasing or procurement;
  - Manufacturing or production;
  - Sales, marketing, or distribution;
  - Administrative, management or support services;
  - Provision of services to unrelated parties;
  - Internal group finance;
  - Regulated financial services;
  - Insurance;
  - Holding shares or other equity instruments;
  - Dormant; and
  - Other.

The reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

Table Three enables the MNE to provide any further brief information or explanation considered necessary or that would facilitate the understanding of the compulsory information provided in the CbC report.

Confidentiality

The Implementation Package states that jurisdictions should have in place and enforce legal protections of the confidentiality of the reported information. Such protections would preserve the confidentiality of the CbC report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a tax information exchange agreement, or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Nevertheless, guarantees that governments will be able to safeguard sensitive information provided in CbC reports is a top concern of taxpayers likely to be affected by the new transfer pricing documentation requirements.

The International Chambers of Commerce (ICC), for example, has raised this issue, and last year it called on G20 finance ministers to ensure that information transmitted under the new CbC reporting framework remains confidential.

In a letter submitted to G20 President Australia on September 17, 2014, the ICC warned that the public disclosure of information on the finances and operations of MNEs would undermine the initiative and would harm the relationship between taxpayers and tax authorities.

Commenting on the proposals, the Chair of the ICC Commission on Taxation, Christian Kaeser, said: "The relationship between taxpayers and tax authorities should be characterized by openness and trust. Disclosure of tax data would negatively impact this important dynamic."

The ICC said that if public disclosure were required, the scope of the CbC report would need to be revised to shield commercially sensitive information, which could potentially lead to excessive administration costs and burdens. Kaeser also warned that, "since a report only has to be filed once a company engages in any cross-border activity, this may discourage cross-border trade and investment."

Jurisdictional Developments

Certain jurisdictions have already announced that they will be incorporating the new transfer pricing documentation requirements into domestic legislation.

On September 20, 2014, the UK became the first country to announce that it was adopting the CbC reporting template unveiled by the OECD earlier that month. Draft legislation was published for public consultation in December 2014,[7] with legislation due to be included in Finance Bill 2015 (since enacted with the CbC provision in place), giving the Treasury the power to make regulations to require MNEs to provide the UK tax authority with a CbC report. The Government expects that approximately 1,400 UK-headed MNE groups will be required to complete the CbC template every year.

In April 2015, Spain published draft legislation to introduce CbC reporting for MNEs.[8] Spain's CbC reporting template largely mirrors that provided in the new OECD guidance. Spanish MNEs with a turnover above EUR750m would fall under the new reporting regime.

In May 2015, the Australian Government announced in its annual budget statement that stricter transfer pricing penalties and documentation requirements, including the introduction of a CbC reporting obligation, will be introduced next year. The changes will incorporate the OECD's transfer pricing documentation proposals under Action 13 and will apply from January 2016. Companies with global revenue of AUD1bn (USD770m) or more will be required to lodge with the Australian Tax Office, within 12 months of their income tax year-end, a CbC report, a master file, and a local file.

On June 17, 2015, the European Commission launched a consultation seeking stakeholders' input on how the EU should respond to the OECD's CbC reporting proposals.[9] The consultation, which closes on September 9, 2015, notes that transparency requirements currently exist for banks under the Capital Requirement Directive IV, and for large extractive and logging industries under the Accounting Directive, in the form of CbC reporting. The consultation aims to assess whether extending such public disclosure obligations to MNEs in other sectors could help address tax avoidance.

However, there is growing concern within the international business community that countries are

not adopting BEPS recommendations on a consistent basis – a situation they fear will lead to more uncertainty in the global tax system.

In one notable example, the US is expected to adopt its own obligations on CbC reporting by MNEs, which, although largely based on the OECD's proposed framework, will cater to the US. This was confirmed recently by Brian Jenn, Attorney Advisor at the US Treasury's Office of Tax Policy, who said at a recent conference that the Government will develop a "form for taxpayers to file that looks like the country-by-country reporting template." The US would then share this form with other tax authorities under the framework of existing double tax and tax information exchange agreements.

However, it is anticipated that the US is unlikely to adopt wholesale the framework that the OECD has proposed under Action 13. Instead, it is considered likely that US authorities will look at expanding the scope of information required in Forms 5471 and 5472.

Technological Challenges

It is difficult to gauge at present how the CbC reporting requirements will impact businesses and tax authorities in terms of their monetary cost. Interestingly, the UK Government expects that there will be "negligible" one-off costs of approximately GBP200,000 (USD310,000) in the first year of the new reporting regime.[10] The Government's impact assessment doesn't make clear, however, whether this cost would be spread across all 1,400 affected businesses, or whether it is anticipating that each company will spend around GBP200,000 on new internal systems. If the latter is the case, then the total cost would be GBP280m, which is not an insignificant sum. The Government also said that businesses will incur an annual ongoing administrative burden associated with populating the template, but did not provide an additional cost estimate, although one assumes that this too would be "negligible."

Likewise, the UK tax authority, HM Revenue & Customs (HMRC), is expected to face "modest" costs associated with receiving and processing the reports and also from responding to requests to exchange information with tax authorities in other jurisdictions, in the order of GBP100,000 in the first year and GBP200,000 annually thereafter. We shall wait and see whether these estimates prove to be accurate or wildly underestimated.

Nevertheless, it is unlikely that any MNE groups that become subject to a national CbC reporting regime will be entirely unaffected from an administrative point of view, and the extent to which that impact will be felt will obviously depend heavily on the complexity of the group structure. Indeed, many tax experts would probably suggest that the UK Government is downplaying the significance of these changes, which have been described by many senior tax and business advisors as a "game-changer" in the field of transfer pricing.

An obvious consequence of CbC reporting rules is the sheer volume of information that MNEs will

be required to collect, which could substantially increase the tax compliance burden for many companies. This task would perhaps be eased if companies had the systems already in place to facilitate the collection of this data. The problem is, for the majority of MNEs, that much of this is entirely new territory, and they are unlikely to have the information technology systems in place to collect the requisite data from far-flung parts of their group. Also, certain items of information requested by the CbC reporting template could be difficult for some MNEs to present. For example, some companies don't track related and unrelated revenues separately in their accounting systems. Furthermore, something as seemingly simple as stating the number of the group's full-time employees also isn't going to be as easy to present accurately as it sounds.

To illustrate the scale of the task ahead for businesses as they bid to comply with new transfer pricing reporting requirements, just one-fifth (19.7 percent) of companies expect to obtain all the information needed for CbC reporting "easily," according to a recent poll by business advisory firm Deloitte in the US. A further fifth (20.7 percent) of the respondents said they expect to easily obtain about 25 percent of the data, but 75 percent will be problematic. Just over one-third (35.3 percent) of those polled said that about 50 percent of the data will be easily obtained but the remaining 50 percent will be problematic. Just under one quarter of the respondents (24.4 percent) envisage that they will easily obtain 75 percent of the data, but 25 percent will be problematic.

The results of Deloitte's poll show that, while collecting the necessary data to complete a CbC report might not be the daunting task that some had forecast early in the preparation of the new transfer pricing guidelines, it is certainly not going to be a straightforward procedure either.

However, issues surrounding CbC reporting also go beyond the nuts and bolts process of data management. MNEs are going to have to ensure that the information they present in their CbC reports is accurate and, just as important, consistent from year to year. A major concern for MNEs as they continue to assess the new guidance is that any inconsistencies in their annual CbC reports could raise red flags with tax authorities and increase tax controversy risk. This could lead to some companies being audited on a more frequent basis and spending valuable resources on defending their position even though they may be compliant with transfer pricing rules.

So, unsurprisingly, the prospect of CbC reporting is giving MNE groups plenty of food for thought as regards their internal information gathering systems, and according to Deloitte's poll, 25 percent of companies are planning to make changes to their internal systems in order to deal with the CbC reporting requirements. A further 25 percent expect to implement new data-gathering technology, with an additional 14 percent likely to opt for automated bottom-up data gathering. What is surprising, perhaps, is that the largest portion of the respondents, 35 percent, expects to manually gather and analyze the necessary data.

While much of the focus of CbC reporting has been placed on how MNEs are going to cope with the new requirements, tax authorities are going to be facing many of the same issues as companies. While G20 and OECD member countries have backed the OECD's BEPS work enthusiastically, it is highly doubtful whether all tax authorities in these jurisdictions have the systems in place to handle the new xml file templates that the CbC reports will be received in. If the information technology systems utilized by some tax authorities are incompatible with this, then the flow of data between tax authorities could be seriously inhibited.

Developing countries in particular are expected to struggle with the new requirements. However, CbC reporting is also going to challenge tax authorities even in advanced countries, because many have had their budgets reduced and employee numbers cut. As HMRC observed, staff will need training to deal with the new CbC reports, and some tax authorities may have to recruit extra personnel to administer the system effectively. This is all going to take considerable investment in terms of time and money.

At present, it is impossible to tell whether CbC reporting will be the panacea that governments have been craving with regard to aggressive transfer pricing tax planning techniques. Indeed, CbC reporting is something of a journey into the unknown for both MNEs and tax authorities. But it is clear that companies and governments that fail to prepare adequately for this brave new world of transfer pricing compliance are going to pay the price in terms of tax penalties and lost revenues, respectively. It is therefore questionable whether, as called for under Action 13, the compliance costs of new transfer pricing documentation requirements really have been considered very thoroughly as the new rules have been developed.

Endnotes

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Topical News Briefing: South Korea Walks The Tightrope

by the Global Tax Weekly Editorial Team

The unfortunate outbreak of Middle East Respiratory Syndrome (MERS) has landed itself on South Korea at a time when the Government least needs it, as it battles against the tide of a slowing economy. Tax measures are playing a key part in the hoped-for recovery, but they also might be key when fiscal policy needs to be tightened.

As reported in this week's issue of *Global Tax Weekly*, the Government recently announced its tax policies for the second half of 2015. They include tax breaks and incentives to increase support to small and medium-sized enterprises, encourage a rise in young adult employment, and boost outgoing overseas investment. The Government expects that the new budget package will total some KRW15 trillion (USD13.5bn), although it is only one component of a wider KRW22 trillion stimulus program designed to cushion the impact of the MERS outbreak on the economy. For example, the package will provide support for the tourism and health care sectors and attempt to stimulate consumer spending and private investment. Government figures show that 120,000 tourists have canceled trips to South Korea since the outbreak began, while department store sales fell by almost 30 percent in the two weeks after the first case was reported on May 20.

The problem the Government is facing, however, is that it can scarcely afford to make generous tax giveaways at a time when it is struggling to balance the books and increase welfare payments to the country's poorest citizens. The Government has recorded budget deficits every year since the global financial crisis began in 2008 and a plan to balance the books, first targeted for 2014, has been pushed back year after year, with that target now set for 2017. Public debt as a proportion of GDP is relatively low at 37.5 percent. However, the Government is trying to avert a situation whereby public debt trends upwards and reaches more unsustainable levels.

South Korea's conundrum is one that many advanced and emerging economies found themselves in the midst of the financial crisis: how to stimulate the economy while tax revenues are falling and expenditures are increasing. If Seoul follows the path already well-trodden by a number of other countries recently, its taxpayers may find that once the MERS crisis is behind South Korea, stimulus may be followed by austerity, at least to a certain degree, as the tax breaks are reined in and expenditure is curtailed.

What's more, according to the OECD, South Korea's tax burden is still relatively light. Data for the end of 2013 shows that the individual tax burden is just USD6,300 per person, despite increasing by 25 percent in five years. In addition, while the tax

burden in South Korea for the average single worker increased by 5 percent to 21.4 percent between 2000 and 2013, this was substantially lower than the 35.9 percent average among OECD members. With a headline rate of 22 percent, Korea's corporate tax is also comparatively low. All of which suggests that there is some scope for future tax rises. Consideration would of course have to be given to the health of the economy if and when they do take place. But if the Government wants to establish a Western-style welfare state, it will have to raise the revenue to pay for it.

Update On The Automatic Exchange Of Information (AEOI) In Switzerland

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1. Introduction

The last few weeks have witnessed major progress in Switzerland in the field of Automatic Exchange of Information in Tax Matters (**AEOI**).

On May 27, 2015, Swiss and EU representatives signed in Brussels the Agreement between Switzerland and the EU for Automatic Exchange of Information in Tax Matters (**Swiss/EU AEOI Agreement**). This agreement aims to collect account data from 2017 onwards and exchange this information between Switzerland and EU Member States from 2018 once the necessary domestic legal basis has been created. The approval process of the Swiss/EU AEOI Agreement in Switzerland is currently under way.

In parallel, the process related to the implementation of a legal basis in Switzerland for an AEOI applied worldwide (thus broader than only EU Member States) advances. On June 5, 2015, the Federal Council (Swiss executive power) submitted to the Swiss Parliament the following international agreements together with their respective explanatory messages (called "dispatches") for approval:

- One of the projects concerns the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (**Administrative Assistance Convention**) and the required domestic legal basis for implementing in detail the AEOI standard in Switzerland. The legal basis for AEOI towards non-EU member states could enter into force at the start of 2017, and the exchange of information with Partner States could commence in 2018, according to what Switzerland indicated to the Global Forum in October 2014;
- The other dispatch relates to the Multilateral Competent Authority Agreement (**MCAA**) on the Automatic Exchange of Financial Account Information which is strongly linked to the aforementioned Administrative Assistance Convention. A corresponding Federal Act is required to ensure that the global standard for AEOI can be applied in Switzerland. A new Federal Act on the International Automatic Exchange of Information in Tax Matters (**AEOI Act**) has been drafted in order to meet these requirements.

In light of the foregoing, Switzerland has currently three main projects under way in order to implement the AEOI. After a brief presentation of the standard for AEOI (see section 2), the present article will focus on the characteristics of each of these three projects, that is:

- The Swiss/EU AEOI Agreement (see section 3);
- The Administrative Assistance Convention (see section 4);
- The MCAA (see section 5);
- Further steps of the tax reforms (see section 6).

2. Concept Of AEOI

According to the definition set out by the OECD,[1] the standard for the AEOI requires financial institutions to report information on accounts held by non-resident individuals and entities (including trusts and foundations) to their tax administration. The tax administration then securely transmits the information to the account holders' countries of residence on an annual basis, without previous specific request. The standard sets out clear requirements that must be met by all jurisdictions participating in the AEOI in terms of confidentiality, data safeguards, and proper use of information.

To date, approximately 100 countries have committed themselves to introducing this global standard. All major financial centers and offshore jurisdictions are participating, such as Qatar, Singapore, Jersey, Guernsey, Bermuda, the British Virgin Islands, the Cayman Islands, *etc*. This will ensure a true global level playing field, meaning that the same rules will prevail worldwide, thus avoiding distortion between a country or the other. The Swiss tax system will therefore remain attractive and, at the same time, be in line with internationally accepted standards.

3. Swiss/EU AEOI Agreement

By signing the Swiss/EU AEOI Agreement[2] on May 27, 2015, Switzerland and the 28 EU member states intend to implement between them the global standard for AEOI.

From a formal perspective, the Swiss/EU AEOI Agreement signed on May 27, 2015, is a protocol of amendment to replace the Taxation of Savings Agreement between Switzerland and the EU (**Swiss/EU Savings Agreement**) that has been in force since 2005.

3.1 Today's Situation

Today, the Swiss/EU Savings Agreement regulates the taxation of cross-border interest payments to individuals resident in EU member states. The principle contained in the agreement is the automatic exchange of information on interest payments. There is however an alternative solution consisting in the withholding of a 35 percent tax on interest payments instead of the automatic exchange of information.

The current Swiss/EU Savings Agreement includes a clause on the exchange of information upon request but with limited effect, because it applies only to cases of tax fraud and to income falling within the scope of said agreement.

In addition, cross-border payments of dividend, interest and royalties within group companies are tax exempt between Switzerland and EU member states.

3.2 What Is New

The new protocol under review, which is expected to replace the Swiss/EU Savings Agreement, contains the three following essential features:

- The global standard for AEOI. The standard allows states to make reservations; Switzerland has made use of this option. In particular, Switzerland has introduced a regulation on data protection under which Swiss or European laws have to be duly taken into consideration in the field of AEOI, in order to guarantee the confidentiality of the information exchanged;
- The exchange of information on request, which is based on Article 26 of the 2014 OECD Model Tax Convention on Income and on Capital. It shall apply to all types of taxes;
- The existing withholding tax exemption for cross-border payments of dividends, interest and royalties between related entities. Switzerland will therefore remain very competitive in terms of business location.

3.3 Implementation Of The Swiss/EU AEOI Agreement

There is no particular domestic implementation act related specifically to the Swiss/EU AEOI Agreement. The details and procedural aspects of the AEOI should be implemented in Switzerland through the AEOI Act which is part of the tax reform package. The AEOI Act should equally apply to AEOI cases based on bilateral agreements concluded in accordance with the MCAA and the Administrative Assistance Convention (see sections 4 and 5 below). The AEOI Act contains provisions on the organization, formal aspects, legal proceedings and criminal provisions related to the OECD's new global standard.

The principle of exchange of information on request which will also be included in the new Swiss/EU AEOI Agreement will be transposed into domestic laws by means of the existing Tax Administrative Assistance Act (**TAAA**). For that purpose, the TAAA will be amended and serve as an implementation act in respect to exchange of information on request.

No other legislation is required in order to apply the AEOI in Switzerland towards EU member states, meaning that it is not necessary to conclude separate AEOI agreements between Switzerland and each of the EU member states to have this standard applicable. Therefore, the Swiss/EU AEOI Agreement represents an autonomous legal basis for the direct application of the AEOI on the Swiss territory *vis-à-vis* EU member states.

4. Administrative Assistance Convention

One of the two proposals regarding AEOI submitted on June 5, 2015 by the Federal Council to the Swiss Parliament refers to the Administrative Assistance Convention. Signed by Switzerland on October 15, 2013, this convention governs international

administrative assistance in tax matters. By signing this convention, Switzerland confirms its commitment for anti-fraud tax policies in order to maintain the integrity and reputation of the Swiss financial center.

4.1 Three Types Of Exchange Of Information

The Administrative Assistance Convention contains provisions on three forms of information exchange: upon request (article 5 of the convention), spontaneous (article 7), and automatic (article 6). According to the Federal Council's proposal of June 5, 2015, the Administrative Assistance Convention should be limited to taxes levied on income and wealth as a general principal, *i.e.*, income taxes, wealth taxes, corporate income taxes, capital taxes, and withholding tax.

a) Exchange of information on request

The exchange of information on request contained in the Administrative Assistance Convention is a mandatory provision and corresponds to the content of Article 26 of the 2014 OECD Model Tax Convention on Income and on Capital. It also includes group requests, meaning that tax authorities are able to ask for information on a group of taxpayers without naming them individually, as long as the request is not a "fishing expedition."

Switzerland has already incorporated this type of information exchange in double tax treaties (DTTs) and in Agreements on Exchange of Information on Tax Matters (AEIT) which have been amended recently.[3] The Administrative Assistance Convention extends the number of States with which Switzerland can exchange mutually information in tax matters based on OECD requirements.

As new information will be brought to light by the AEOI, the importance of the current standard of exchange of information on request will also increase. The two standards are therefore complementary, enabling tax authorities to ask for further information after receiving each year automatically the basic account data.

The method chosen for implementing the details and procedural aspects of the standard for exchange of information on request contained in the Administrative Assistance Convention consists in selective amendments of the TAAA, which is already in force today in Switzerland (see section 3.3).

b) Spontaneous exchange of information

The spontaneous exchange of information contained in the Administrative Assistance Convention differs from other types of information exchange in that it does not derive from a specific request from a State but is granted spontaneously when a State assumes that certain information may be of interest for another State. This clause is a mandatory provision as well.

As for the exchange of information on request, the detailed implementation of the spontaneous exchange of information in Switzerland will be included in the revised TAAA.

c) Automatic exchange of information

Article 6 of the Administrative Assistance Convention, which is also a compulsory provision, stipulates that one or more States can mutually agree to exchange information automatically. This means that prior to the implementation of the AEOI, additional agreements need to be concluded regarding this specific issue and be approved by Swiss authorities. The MCAA corresponds to an additional agreement in the meaning of article 6 of the Administrative Assistance Convention, but the implementation of the AEOI still requires the conclusion of separate bilateral agreements between Switzerland and Partner States (see section 5).

4.2 Other Forms Of Administrative Assistance

In addition to the exchange of information, the Administrative Assistance Convention sets out other forms of administrative assistance, such as simultaneous tax examinations (article 8 of the convention), tax examinations abroad (article 9), the recovery of tax claims (article 11), or the service of documents under the requirements provided for under article 17. These types of administrative assistance are not mandatory for Contracting States and can thus be excluded by express declaration or reservation.

In its proposal of June 5, 2015, the Federal Council intends to exclude these other forms of administrative assistance – except for the direct service of documents by post from authorities of a Contracting State to persons resident in another Contracting State, which facilitates data exchange and safeguards confidentiality (article 17 paragraph 3 of the Administrative Assistance Convention). In addition, another reservation made by Switzerland should limit the application of the convention to intentional tax offenses to three years prior to the entry into force of the convention.

4.3 Confidentiality And Safeguards

The convention provides strict requirements for the confidentiality of the information exchanged. In particular, the laws on data protection of the requested and requesting State have to be taken into consideration.

The principle of speciality must also be upheld, meaning that the information can only be used for tax purposes unless the requested State gives its consent for a broader use under certain circumstances.

The principle of reciprocity guarantees that a requesting State can obtain administrative assistance regarding taxes for which it would itself grant administrative assistance and not where it would deny administrative assistance if it was the requested State.

5. MCAA

The other proposal concerning AEOI submitted by the Federal Council on June 5, 2015 to the Swiss Parliament concerns the MCAA, which was signed by Switzerland on November 19, 2014.

5.1 Content Of The MCAA

The MCAA deals with the regular automatic exchange of information between Contracting States on accounts opened in a bank of a Contracting State

that are held by individuals or companies resident in another Contracting State. The MCAA provides that financial institutions are responsible for collecting the account data to be exchanged and forward it to the tax authorities of the State where they are resident. This information will then be transmitted to the tax authorities of the other Contracting State where the account holder is resident.

The relevant information encompasses the account balance, all investment income (interest, dividends, capital gains and other income) and the identity of the beneficial owners of the assets. Furthermore, the MCAA contains provisions on the confidentiality and safeguards regarding the use of the exchanged information.

According to the MCAA, the relevant information has to be exchanged in accordance with the provisions of the Common Standard on Reporting and Due Diligence for Financial Account Information. States willing to sign the MCAA have to include this common standard in their domestic laws. For that reason, the common standard has been attached to the MCAA. This common standard regulates in detail who has to collect what kind of information on which type of account. It is based on the FATCA Model.

5.2 Implementation Of The MCAA

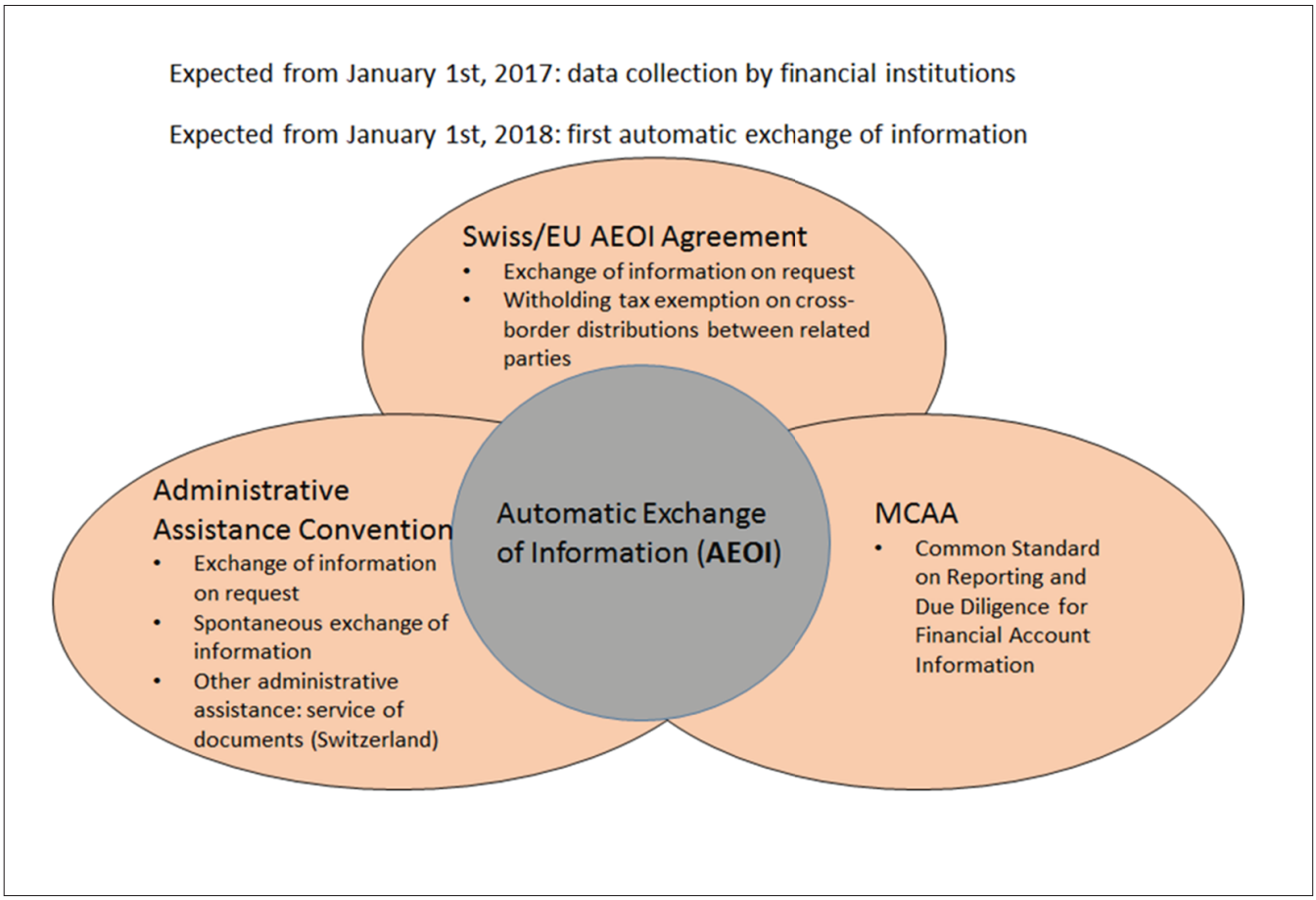
The MCAA is a complementary agreement in the meaning of article 6 of the Administrative Assistance Convention. On the basis of both agreements (Administrative Assistance Convention and MCAA), the AEOI standard can only be actually implemented in Switzerland through an additional bilateral agreement.

Therefore, neither the Administrative Assistance Convention nor the MCAA is directly applicable in Switzerland with respect to the AEOI, whereas the Swiss/EU AEOI Agreement is considered as a sufficient legal basis for implementing the AEOI towards EU member states (note that details and procedural aspects still need to be implemented in domestic laws, *i.e.*, the AEOI Act).

For non-EU member states, bilateral agreements will need to be concluded separately with Switzerland based on the MCAA and the Administrative Assistance Convention. Switzerland is therefore free to decide with which non-EU state information will be exchanged automatically. The Swiss Parliament will have to decide at a later date on the bilateral agreements signed by Switzerland.

The first bilateral agreement with a non-EU member state providing for the AEOI standard is currently under review. It concerns the introduction of the AEOI standard between Switzerland and Australia (both parties have signed a joint declaration in this respect on March 3, 2015).

Details and procedural aspects for implementing the AEOI in Switzerland are included in the new AEOI Act. This new act should thus be applicable in the frame of the Swiss/EU AEOI Agreement as well as in the frame of other bilateral agreements based on the MCAA.



Before the AEOI is effectively implemented between Switzerland and a Partner State, the following conditions have to be met:

- The Administrative Assistance Convention has to be in force in both States;
- Both States must have signed the MCAA;
- Both States must have the necessary domestic legal basis for implementing the AEOI;
- Both States must have indicated to the Secretary of the OECD that they wish to apply the AEOI between them.

6. Next Steps

From January 14 until April 21, 2015, the consultation procedure on the Administrative Assistance Convention, on the MCAA and on related domestic laws took place. It enabled all interested parties (Swiss cantons, political parties, leading professional associations, *etc.*) to make comments on the tax reforms. This consultation procedure resulted in a large acceptance of the projects.

After that, the Federal Council submitted the aforementioned tax reforms on June 5, 2015 to the Swiss Parliament for approval. The deliberations of the Swiss Parliament on these topics will begin in autumn 2015. The approval process is thus still pending. The purpose is to have the Administrative Assistance Convention together with the MCAA and the domestic implementation laws come into

effect on January 1, 2017 in order to be able to exchange automatically the first set of information as from 2018.

Regarding the Swiss/EU AEOI Agreement, the consultation procedure is being carried out since May 27, 2015 with the same interested parties. The deadline for commenting on the Swiss/EU AEOI Agreement expires on September 17, 2015. Thereafter, the Federal Council will submit the agreement together with an explanatory message (dispatch) to the Swiss Parliament and the approval process will go on. As for the Administrative Assistance Convention and the MCAA, the purpose is that the Swiss/EU AEOI Agreement enters into force on January 1, 2017, and the first data be exchanged from 2018, insofar as the internal approval procedures in Switzerland and in the EU are completed.

7. Conclusion

It is expected that the AEOI be quickly and globally implemented in order to guarantee an equal treatment for all countries. All major financial centers and offshore jurisdictions will implement the new AEOI standard in the next two to three years, such as Bermuda, Cyprus, Guernsey, Cayman Islands, British Virgin Islands, Jersey, Liechtenstein, Malta, Bahamas, Monaco, Qatar, Russia, Singapore, *etc*.

Since all competing financial centers will apply the same standard, this situation should still enhance the attractiveness of the Swiss tax system given the advantages of its political stability, staff excellence, and the quality of its infrastructure.

Because of the tax reforms under way, it appears necessary to make use of voluntary disclosure programs in order to declare undisclosed assets and restructure assets in a timely manner so as to be in line with the new standards. IFN Tax & Law is a firm specialized in taxation providing high quality services to clients resident in Switzerland and abroad. We are best positioned to assist you in voluntary disclosure programs and provide you with efficient solutions with respect to tax planning in relation to the introduction of the new standard for AEOI.

Endnotes

1 Organisation for Economic Co-operation and Development.

2 New title of the Agreement: *Agreement between the European Union and the Swiss Confederation on the Automatic Exchange of Financial Account Information to improve international tax compliance.*

3 Switzerland has signed 57 DTTs and Agreements on Exchange of Information on Tax Matters as of May 1, 2015.

Tackling The Profit Lock-Out: A Look At US Repatriation Tax Proposals

by Stuart Gray, Senior Editor, Global Tax Weekly

Introduction

It is generally accepted that under current tax law, US corporations are incentivized to keep income earned from foreign operations out of the United States. The US taxes corporate income on a "worldwide" basis, but there is a deferral system for the active earnings of foreign subsidiaries of US multinational companies, as long as the profits remain abroad. Therefore, tax is only payable when these profits are repatriated as dividends to the US. But rather than repatriate income and face a high statutory corporate tax rate of 35 percent, minus credits claimed for foreign taxes paid, US corporations have instead stockpiled an estimated USD2 trillion overseas, a state of affairs also known as the profit "lock-out."

Finding ways to unlock these profits has become something of an obsession for many in Congress and the Government. We know from successive White House Budget plans that President Obama's preferred solution is to put an end to the deferral system so that the incentive for US multinationals to invest in foreign jurisdictions is removed. This would effectively extend America's worldwide system of taxation further, something that Republicans oppose; they see the solution in tax reform that would move the US towards a territorial regime with a lower income tax rate, as other G7 countries have done. However, with tax reform proving politically difficult, many lawmakers favor a compromise whereby corporations are permitted to pay a special reduced rate of income tax on repatriated profits, usually temporarily and subject to certain conditions concerning domestic investment and employment levels. Some of these proposals are explored and assessed here.

The Foreign Earnings Reinvestment Act

Introduced on February 5, 2015, by Senator John McCain (R – Arizona) and Representative Trent Franks (R – Arizona) in the Senate and House of Representatives, respectively, the Foreign Earnings Reinvestment Act[1] would provide a temporary dividend deduction to reduce the current 35 percent corporate rate to an 8.75 percent effective rate on foreign earnings brought back to the US. If companies are able to show that they are expanding their payroll by 10 percent through net job creation or higher payroll, the bill would allow these corporations to benefit from an effective repatriation rate

as low as 5.25 percent. However, the proposed bill would discourage US companies from reducing employment by adding a USD75,000 penalty per full-time position that is eliminated from a company's gross income calculation.

McCain said of the bill: "It is no secret that one of the main reasons why so much money is laying idle overseas and doing nothing to spur job creation is because our nation has the highest corporate tax rate in the free world. Our common-sense legislation would encourage American companies to bring foreign earnings back to the United States and create strong incentives for those companies to invest these earnings in US employees."

Franks added: "When factoring in state and local taxes, our current corporate tax rate is nearly 40 percent, a staggering number, but, more importantly, a prohibitive one to the large businesses that help drive our economy. By discouraging further business in the United States with exorbitant tax rates, billions of dollars remain overseas that could be added back into the American economy. This bill would be a much-needed boost to our economy."

The Invest In Transportation Act Of 2015

On April 16, 2015, senators Rand Paul (R – Kentucky) and Barbara Boxer (D – California) introduced the Invest in Transportation Act of 2015,[2] which would amend the Internal Revenue Code to allow a domestic corporation to elect to repatriate its overseas income earned prior to 2015 at an effective tax rate of 6.5 percent. To qualify for the reduced rate of tax, the corporation must complete the repatriation of such income during a specified five-year period and establish a domestic reinvestment plan under which not less than 25 percent of such income must be used for investment in the US, including for increased hiring, wages, pension contributions, energy efficiency, environmental and capital improvements, and research and development. No funds may be spent on increases in executive compensation. Additionally, a corporation that enters into a stock inversion to avoid US taxation within ten years after repatriating overseas income at a preferential tax rate would be required to recapture a portion of the income taxed at the preferential rate.

The bill places a requirement on the Department of the Treasury to make an initial estimate of the amount of tax revenue from repatriated income to be received by the Treasury prior to October 1, 2019, and another estimate not later than October 1, 2023, and transfer such estimated amounts to the Highway and Mass Transit Accounts of the Highway Trust Fund (HTF).

Paul said that the bipartisan repatriation proposal "would mean no new taxes, but more revenue, and is a solution that should win support from both political parties."

Boxer added: "This bipartisan repatriation proposal is a win-win for our economy and our country. First, it will bring back hundreds of billions of dollars in foreign earnings that are sitting offshore, which can be

invested here in America to create jobs. Second, the taxes paid on those earnings will be used to extend the HTF, which supports millions of jobs nationwide."

The Freedom To Invest Act Of 2011

The ideas promoted by the McCain/Franks and Paul/Boxer bills are by no means new. Indeed, such legislative proposals have been introduced in Congress at fairly regular intervals over the last few years as the amount of foreign corporate earnings locked out of the US by its unfavorable tax regime has grown.

In May 2015 (when the amount of foreign profits accumulated overseas was about half today's level), several representatives in Congress, from both the Republican and Democrat parties, introduced into the House of Representatives the Freedom to Invest Act of 2011,[3] which also looked to encourage American companies with profits overseas to bring them back to the US for investment. The bill would provide those multinational companies with the option to repatriate those profits at a very favorable 5.25 percent tax rate for a period of two years, by means of a dividend deduction. The proposed legislation also includes a disincentive designed to discourage US multinationals from repatriating earnings at the lower rate and reducing their workforce. A company would pay a fine of USD25,000 for each job cut during the two years following the low-tax repatriation.

Kevin Brady (R – Texas), the bill's sponsor, claimed that the legislation would create up to three million new jobs and increase the US economy by 1 to 4 percent. "Why, in this weak economic recovery, would we not act now to bring back USD1 trillion in stranded US profits back to America for investment?" he questioned. "This is about creating jobs, expanding US businesses, and strengthening American companies."

"Putting more private sector capital in the US economy will strengthen recovery efforts and help reduce the federal deficit," said Jim Matheson, a Democrat co-sponsor of the bill. "Let's do some good now, for American employers and for the US taxpayer, rather than do nothing by maintaining the status quo."

President Obama's Minimum Tax

President Obama's 2016 Budget[4] proposals in this area attempt to strike a balance between providing incentives to companies to repatriate foreign profits and ensuring that foreign profits are adequately taxed. Under his proposal, previously untaxed foreign income that US companies have accumulated overseas would be subject to a one-time 14 percent tax. Revenues from the tax would be used to replenish the HTF. Earnings subject to the one-time tax could then be repatriated without any further US tax. However, he would also impose a 19 percent minimum tax on the foreign income of US multinationals, reduced (but not below zero) by 85 percent of the effective foreign tax rate imposed on that income. It was said that this minimum tax on foreign earnings "would directly address the incentives under the current system to locate production overseas and to shift and maintain profits abroad."

Homeland Investment Act 2004

The US has actually experimented with a temporary repatriation tax holiday as recently as 2005 (and Brady's 2011 proposal was essentially a copy of this). Under a provision added to the American Jobs Creation Act of 2004,[5] known as the Homeland Investment Act, companies could elect, for one taxable year, to receive an 85 percent deduction for eligible dividends coming from their foreign subsidiaries, effectively reducing the corporate tax rate on such earnings to 5.25 percent. The legislation contained several limitations on the repatriated dividends that were eligible for the reduced tax rate. One key requirement was that the repatriated funds had to be invested by the company in the US pursuant to a domestic reinvestment plan approved by company management before the funds were repatriated.

Assessing The Effectiveness Of Repatriation Holidays

Apart from the experience of the Homeland Investment Act repatriation tax break, there is little hard evidence to support the theory that such measures encourage companies to reinvest foreign profits in the US, while there also seems to be some disagreement on their revenue effect.

An analysis of Internal Revenue Service figures by Grant Thornton suggests that the Homeland Investment Act tax break had mixed success.[6] The repatriated USD312bn in qualified dividends in 2005 generated an estimated USD18bn in revenue for the Treasury, far exceeding the USD2.8bn in revenues predicted by the Joint Committee on Taxation (JCT). Yet, of the 10,000 or so US corporations that had controlled foreign corporations in 2004, only 843 chose to take advantage of the tax break.

Nevertheless, a paper published in August 2011 found that, if a tax break for US companies repatriating profits from their overseas operations were to be reinstated, it would bring into the country a net revenue gain over ten years, plus several hundred billion more for the economy. The study,[7] conducted by Robert Shapiro, the Under Secretary of Commerce for Economic Affairs in the Clinton Administration, and Aparna Mathur, resident scholar at the American Enterprise Institute, looked at reinstating the Homeland Investment Act of 2004. It took issue in particular with the JCT's approach and results for estimating the revenue effects of the legislation. Shapiro and Mathur said that the JCT's approach was "flawed conceptually and its estimates of significant revenue losses are incorrect." Shapiro and Mathur estimated that a reprise of the Homeland Investment Act enacted in 2011 would produce an USD8.7bn gain over ten years, compared with the JCT's estimate of a ten-year revenue cost of USD78.7bn.

"Enacting temporary tax relief for repatriated foreign earnings in 2004 brought back several hundred billion dollars for the US economy, and will end up providing billions for the Treasury," Shapiro noted. "Enacting repatriation again should have the same effects at a time when revenues are scarce. While it would be better for the American economy to put in place corporate tax reforms suited to the realities of our new global economy, taking the temporary

step of another round of 'repatriation relief' would be a fiscally sound option that policy makers should consider in the months ahead."

However, Shapiro and Mathur appear to be in a minority among their academic peers with their support for the principle of repatriation tax holidays. For instance, later in 2011, two studies, coming from both sides of the political spectrum, rejected the argument that a tax break for repatriated profits would generate additional investment and jobs.

The Institute for Policy Studies (IPS) pointed out that the 2004 one-time tax holiday failed to create the jobs that had been promised by the measure.[8] One government study, it said, which looked at the first two years after the repatriation windfall, found that 12 of the top recipients laid off more than 67,000 American workers.

Those firms, it added, collectively brought back home more than USD100bn, nearly a third of the total amount repatriated by all firms that took advantage of the tax holiday and they saved an estimated USD32bn in taxes. In total, during the previous tax holiday, US companies repatriated USD312bn in profits and avoided an estimated USD92bn in federal taxes.

The IPS concluded that the "wave of job destruction soon after the 2004 tax holiday went into effect, reported fairly widely at the time, does not tell the entire story. Dozens of major US corporations that benefited lavishly from the 2004 tax holiday – not just the early job destroyers – have downsized significantly in the years since."

It its report, the Heritage Foundation largely agreed with the IPS and confirmed that a tax holiday, similar to that in 2004, "would, like its predecessor, have a minuscule effect on domestic investment and thus have a minuscule effect on the US economy and job creation." [9]

According to the Heritage Foundation, a tax holiday "would have little or no effect on investment and job creation – the key to the whole issue – simply because the repatriating companies are not capital-constrained. Any investment (in the US) that they would deem worthwhile today can be and is being financed by current and accumulated earnings. For those rare instances in which outside financing is needed, interest rates remain at historic lows and few if any of these repatriating companies are constrained. Adding to their financing abilities will not increase the opportunities for investment."

It considered that a more important reform would be to shift how the US taxes its businesses operating abroad, by a permanent partial exemption for future foreign-source earnings of all US businesses. In its opinion, "a forward-looking step toward territoriality – a system in which companies pay taxes at home only on profits earned at home – would have a far greater effect on US domestic investment and the US economy than a backward-looking tax holiday."

More recently, concerns have grown that the fixation with temporary or standalone solutions to the corporate profit lock-out is distracting Congress and the Government from the task of completing a more fundamental overhaul of the US corporate tax system.

In February 2015, for instance, the Heritage Foundation reiterated its view that a repatriation holiday would have a minimal economic impact and would be the wrong way to pay for the HTF or any other project.[10] While the Foundation pointed out that, as the US is effectively the only country that still taxes its businesses' foreign earnings, "fixing that glaring flaw by instituting a 'territorial' system is a major objective of tax reform." The goal of achieving a territorial system should, however, not be "confused with changes to repatriation policy that would not have similar economic benefits."

In its opinion, a repatriation holiday – involving the provision of a concessionary corporate tax rate for repatriated earnings – "would not create jobs by boosting investment domestically because businesses' incentives for investing would not increase, … [and] it is questionable whether a holiday would lower or raise revenues in the traditional ten-year budget window."

"Whether it does or does not depends almost entirely on how much foreign income the Joint Committee on Taxation (JCT) anticipates businesses will repatriate over the next decade under current law," the Foundation noted. "However, given a one-year or two-year span, there is little doubt that a holiday would shift revenue forward to those years."

The report also examined the idea of "deemed" repatriation, involving the immediate application of a tax on accumulated foreign earnings, even if the company has no intention to repatriate the profits. Such a policy, it said, would be a "tax hike, because a portion of the income that would be taxed would be money that businesses decided to permanently invest offshore." It said it would be a move in the wrong direction as "Congress should be working to eliminate tax on businesses' foreign earnings through tax reform."

Overall, the Foundation stressed that, "even if changes in repatriation policy provided an economic boost or did not raise taxes, it would still be the wrong choice for funding the HTF. Highways have traditionally been funded on the user-pays principle, as exemplified by the gas tax. Congress should not break that commonsense policy by tapping the foreign incomes of multinational businesses."

"Changes to repatriation policy are best left to tax reform," it concluded. "Taking changes to policy on previously earned foreign income off the table by misguidedly using them to pay for transportation would make achieving tax reform more difficult."

A paper published by the American Action Forum (AAF) in April 2015[11] concurred that the US is in "dire need of sweeping tax reform" that would offer "long-term economic growth; a temporary policy offers little economic benefit." Such tax reform, it believes, should produce "a permanently lower, statutory business tax rate that returns the United States to international norms."

As to the President's proposal, while it said "the one-time tax should be imposed as part of an overhaul of the business tax code," it highlighted that,

under the proposal, "the revenues are excluded from the Administration's reserve for business tax reform and devoted instead to its HTF proposal. … Outside of tax reform, the one-time levy supported by the Obama Administration lacks a policy rationale beyond constituting a revenue source. Any meaningful corporate tax reform must permanently address the currently flawed international tax regime."

It added that the other proposals for repatriation holidays "embody several flaws as well. To begin, they are temporary and do not permanently reform the tax treatment of foreign-source income. In addition, the [JCT] has estimated that, relative to current law, similar proposals would lose revenue" over the longer term.

All of the proposals "suffer from a number of flaws," it concluded, "the most significant of which is that they are proposed separately and distinctly from a pro-growth reform of the broken US tax code. Addressing the broken code offers long-term economic growth, whereas a temporary policy offers little economic benefit in the current climate, and fails as an effective financing mechanism for the unsound HTF."

So, to summarize, while special rates of tax for repatriated profits might look like a sound idea at first glance, there are many arguments to suggest that they would be ineffective at best, and at worst counterproductive. Ultimately, the "lock-out" conundrum will probably only be solved by a comprehensive overhaul of the US corporate tax regime. This, however, is proving extremely difficult to achieve in Washington's current political environment.

Endnotes

1 https://www.congress.gov/bill/114th-congress/senate-bill/397/text

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Finding An Intersection Between Intangibles Valuation And Transfer Pricing In The US

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Valuations of intangibles for financial reporting and transfer pricing are prominent and challenging areas in the entire M&A transaction process. The objective of this article is to dissect the differences and find the intersection that can turn the divergence into opportunities for convergence.

Cross-border mergers and acquisitions (M&A) are at their hottest pace since before the financial crisis, and a large proportion of transactions has increasingly involved intangible assets or intellectual property (IP) as the dominant acquired asset. As multinational companies shift ownership of intangible assets between legal entities and across jurisdictions for various strategic purposes, the most critical considerations in cross-border M&A, therefore, are the identification and valuation of intangible assets and transfer pricing. Simultaneously and of equal importance are valuations for financial reporting that involve the allocation of purchase price among the target company's tangible and intangible assets and the resulting annual goodwill impairment testing.

The initial perception is that the value of any transaction and the largely acquired intangible assets is driven by financial reporting valuation rather than by transfer pricing valuation. However, it is important to ask in such transactions whether the valuation of intangible assets in purchase price allocations can be used for transfer pricing purposes, or whether the same can be tweaked to address transfer pricing requirements for intangible assets.

Differences: The Devil Is In The Detail

In recently published papers, the US Internal Revenue Service (IRS) as well as many tax authorities in many countries drew the distinction between valuations for financial reporting purposes and valuations for transfer pricing purposes, stating that financial reporting valuations, specifically purchase price allocations, should only be used as a "starting-point" for transfer pricing purposes and may not be probative. The recent US Tax Court cases involving Veritas[1] and Xilinx[2] sharply demonstrate the divergence of the two perspectives.

The OECD is moving in a direction similar to the IRS in tightening controls, making sure that OECD member countries do not assign a low

Table 1. Valuations for transfer pricing and financial reporting: key differences.

	TRANSFER PRICING	FINANCIAL REPORTING
Regulatory standards	OECD, local transfer pricing regulations, and in the USSection 482 of the Internal Revenue Code	IVSC, IASB, IFRS, ASC 805-Business Combinations, ASC 350 – Goodwill and Other, ASC 820 - Fair Value Measurement
Standard and premise of value	Arm's length standard	Fair value
Reporting unit versus legal entity	Legal entity level analysis	Fair Value measured in aggregate and allocated to RUs
Definition of intangible asset and goodwill	Goodwill is subsumed in the value of intangible asset. Buyer-specific synergies are included in arm's length value	Goodwill is a residual concept, and projections used to value intangible assets include market participant assumptions
Valuation methodologies	Valuation is performed on a pretax basis	Valuation is performed on a posttax basis
Useful lives	Considers fixed term and longer useful lives	Considers perpetual term

ASC – Accounting Standards Committee; IASB, International Accounting Standards Board; IFRS – International Financial Reporting Standards; IVSC – International Valuation Standards Council; OECD – Organisation for Economic Co-operation and Development; RU – reporting unit.

value to intangible assets for purposes of transferring them out of one jurisdiction into a more favorable tax jurisdiction.

The skepticism and hesitancy of the IRS and the OECD stem from intangible asset values determined within the context of financial reporting, being notably different from (and often lower than) the values determined for transfer pricing purposes. To better understand the dynamic between valuations for transfer pricing and financial reporting, we highlight some of the key differences underlying each framework in Table 1.

Most important to note among the differences is that in financial reporting, goodwill is a residual concept as projections used to value intangible assets only include market participant assumptions and exclude buyer-specific synergies. In transfer pricing, goodwill is embedded in the intangible value and consists of buyer-specific synergies, future customer relationships, future technology and all future opportunities that are part of residual goodwill value in financial reporting and are not considered goodwill in transfer pricing. In transfer pricing, there is a broader view of the definition and what comprises intangible asset value.

The difference in the treatments of goodwill and the definition of an intangible asset from the perspective of a specific buyer (transfer pricing) versus a market participant buyer (financial reporting) leads to higher valuations done for transfer pricing than those performed for financial reporting.

Similarities: Shall The Twain Ever Meet?

Given all the differences, financial reporting valuations share general concepts with transfer pricing valuation such as the concept of comparables in a Market Approach, use of present value and discounting under an Income Approach, and the fact-finding process – *i.e.*, the industry

analysis and functional analysis in transfer pricing are conducted and performed in a similar fashion as part of due diligence in financial reporting. In addition, the documentation process is very similar: transfer pricing contemporaneous documentation requirements (*Treas. Reg. 1.6662*) mirror the standards set by the American Society of Appraisers (ASA) and the American Institute of Certified Public Accountants (AICPA) on the requirements of a comprehensive valuation report.

Finding An Intersection

It is clear that valuations done for financial reporting purposes should not be fully relied upon for transfer pricing purposes. Relying on the valuation from a purchase price allocation results in undervaluation of transferred intangibles for transfer pricing purposes because of different treatment, including definitions of intangibles, goodwill, intangible life, buyer-specific synergies, pre-tax versus post-tax analyses, *etc.*, as mentioned above.

However, aligning the two disciplines, especially in the context of M&A, presents opportunities for practitioners to become value-added service providers. This presents tax risks due to differences in value between the two frameworks and misalignment of the placement of intangible assets when setting a company's global transfer pricing policy. In addition, and more importantly, audit risks are higher due to inconsistent values of IP and challenges to post-acquisition transfers.

Coalescing the two disciplines early in the process saves time and cost rather than having to justify different methodologies later when potentially material tax consequences may arise. For instance, fact-finding and due diligence meetings can be conducted as one, and both disciplines leverage from the same information using the same set of projections and one similar set of market comparables. In addition, analytical models from both frameworks can be aligned to have similar inputs and assumptions. The documentation requirements of both can also be synchronized and performed jointly as there are many intersecting portions between the reporting requirements of transfer pricing and financial reporting valuation. This leads to a more enhanced ability to support tax positions and reduce audit risks.

Synchronized project teams and advisers with the skills, knowledge and experience from both disciplines enable both transfer pricing and financial reporting frameworks to be supported more consistently, with fewer discrepancies and potential disputes between all tax, accounting and corporate stakeholders.

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Endnotes

1 *Veritas Software Corp. & Subs. v. Commissioner*, 133 T.C. No. 14 (2009).

2 *Xilinx v. Commissioner*, 125 T.C. 37 (2005), and *Xilinx v. Commissioner*, 598 F.3d 1191 (2010).

Topical News Briefing: Modified Nexus

by the Global Tax Weekly Editorial Team

One only needs to read as far as the introductory paragraphs of the European Commission's study of patent box regimes and their impact on research and development (R&D) activities to realize that the EU's executive body is firmly opposed to the idea of patent box regimes, and strongly supports the "modified nexus approach" put forward by the OECD to combat corporate tax planning surrounding patent boxes.

"The use of such schemes has raised suspicion about yet another tax competition device," the Taxation Working Paper, *Patent Boxes Design, Patents Location, and Local R&D*, observes, before going on to point out how German Finance Minister Wolfgang Schäuble publicly criticized patent box regimes as "going against the European spirit."

"Such concerns appear justified by anecdotal evidence," the paper's authors suggest, citing examples such as Pfizer's failed attempt to take over Astra Zeneca, which it said appeared to be essentially tax motivated, because the merged company would have the ability to benefit from the UK's new 10 percent patent box regime. The expectation that hotel reservation company Booking.com would reduce its tax rate by about 4 percent by taking advantage of the Dutch patent box is "another resounding case" to support the view that "decisions on patent registration by firms may have little to do with developing research and innovation but a lot to do with tax planning," posit the authors.

The paper concludes that the "tax sensitivity" of patent location is reduced when certain conditions are attached to tax incentive regimes, notably when companies are required to undertake the majority of their R&D activities in the jurisdiction offering the patent box to qualify for the special regime. Thus, the nexus approach "could (at least partly) inhibit the still dominant tax competition dimension of patent boxes," the authors state.

The modified nexus approach, agreed to by a number of countries earlier this year, aims to do just this. It will compel jurisdictions that have agreed to incorporate this approach into their tax systems to ensure that a taxpayer would only be allowed to benefit from a special intellectual property (IP) regime to the extent that it can show that it itself incurred expenditures, such as on R&D, that gave rise to IP income in that territory.

However, while most multinational companies support the broad thrust of the OECD's work on base erosion and profit shifting, of which this is a key component, concerns have been raised by some firms that the OECD and the European Commission have failed to fully understand how R&D is conducted in the modern business environment.

They warn that the requirements are overly bureaucratic, especially for small companies, and could stifle innovation.

In March, business federations from the Netherlands and Germany issued a joint statement criticizing the modified nexus approach. "While we understand the general target of G20/OECD [efforts] to limit the tax benefits for outsourced R&D," the BDI and VNO-NCW said, "it has to be kept in mind that in an increasingly work-sharing environment it is nearly impossible to provide only local R&D. The direct result of the 'modified nexus approach' therefore could be that the efficiency of R&D processes might suffer." The federations also called for documentation requirements to allow some flexibility to accommodate for IP that is developed out of experience or by chance, where the costs are difficult to trace retrospectively.

The smooth application of the nexus approach could also be inhibited by technical difficulties, the Tax Executives Institute (TEI) has said. In its submission to the consultation on the modified nexus proposals, the TEI observed that multinational enterprises would have to substantially reorganize their operations to continue to take advantage of preferential tax regimes, limiting the benefit for both companies and governments keen to attract investment.

The Institute also said that the approach "presents practical difficulties," observing that "the alignment of returns given tax-favored status with the entity that developed the IP, rather than with the entity that owns the IP, would be a deviation from the arm's length principle should such an approach be applied to determine the return to the IP rather than just whether the return is entitled to tax-favored status."

These comments suggest that there would be merit in the OECD revisiting the modified nexus approach to make it somewhat less restrictive. The European Commission's working paper on the issue suggests, however, that in Brussels at least, minds are made up. It would be ironic though if patent boxes, ostensibly introduced by governments to increase R&D and innovation, lead to a fall in these activities in the countries concerned.

Brazil Cuts Import Duties On 166 Items

Brazil's Chamber of Foreign Trade (CAMEX) announced on June 22, 2015, that import duty on 166 capital goods and computer and telecommunications products has been temporarily reduced.

A reduced rate of 2 percent will apply until December 31, 2016, in the case of capital goods, and until December 31, 2015, in the case of computer and telecommunications products.

The tax breaks are intended for equipment to be used in the industrial projects in the states of Ceará, Santa Catarina, Pernambuco, and São Paulo. The tariffs exclusively cover goods that are not available from domestic sellers and will mainly benefit exporters in Spain, the US, Canada, Italy, and Germany.

Barbados Provides Update On CARICOM Single Market

Barbados has reported that the Caribbean Community member states are making progress towards establishing a Single Market.

Under the Single Market and Economy initiative, the CARICOM states are aiming to harmonize their rules for businesses and remove tax and non-tax barriers to trade. They will collectively levy a common external tariff on goods imported from outside the bloc.

Barbados Prime Minister Freundel Stuart said the agenda is "on the march" but acknowledged that the Single Economy element has been a little more challenging because it calls for more fundamental decisions.

The key elements of the Single Market and Economy include:

- Free movement of goods and services, through measures such as eliminating all barriers to intra-regional movement and harmonizing standards to ensure acceptability of goods and services traded;
- Right of Establishment, to permit the establishment of CARICOM-owned businesses in any member state without restrictions;
- A Common External Tariff – a rate of duty applied by all members of the Market to a product imported from a country which is not a member of the Market;
- Free circulation – the free movement of goods imported from extra regional sources which would require collection of taxes at first point of entry into the region and the provision for sharing of collected customs revenue;
- Free movement of capital, to be achieved through measures such as eliminating foreign exchange controls, convertibility of currencies (or a common currency), and an integrated capital market, such as a regional stock exchange;
- A common trade policy – an agreement among the members on matters related to internal and international trade and a coordinated external trade policy negotiated on a joint basis; and

- Free movement of labor, through measures such as removing all obstacles to intra-regional movement of skills, labor and travel, harmonizing social services (education, health, *etc.*), providing for the transfer of social security benefits, and establishing common standards and measures for accreditation and equivalency.

Stuart said: "I would say that largely we have managed to get all those mechanisms in place. There are always a few remaining things to be done, in particular the Contingent Rights for people who establish businesses in respective countries. That has caused a few challenges because of differences in our legislation and the kind of inequalities between countries in the region at different levels of development. Therefore, the rights that one country might be able to give easily, do not come as easily to countries less resourced, so we are still trying to plough our way through that."

Stuart said the Single Economy is a little more challenging because it will require a harmonized customs environment. "A single economy where there are different taxation regimes in the individual units would create a lot of problems because the scope for playing off one country against the other would continue."

"We would need to harmonize our companies' legislation so that there is a sense of being able to do business anywhere or being able to live anywhere and not feel you are disadvantaged by country A or B," he stated.

Stuart concluded that progress on the initiative had stalled during the crisis, but the talks are being revisited by the members of CARICOM: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

Lower Tariffs Key To Tackling Poverty, Report Says

The World Trade Organization (WTO) and the World Bank said in a new joint report that reducing tariff and non-tariff barriers to trade is essential to eliminating extreme poverty.

The report, *The Role of Trade in Ending Poverty*, says that tariff and non-tariff measures continue to generate significant trade costs for exporters in developing countries, including for goods that are important to the poor.

According to the report, average tariffs levied by importers on products from least-developed countries have been decreasing over time, in line with global declines in most favored nation tariffs, preferential tariff schemes, and the WTO Decision on Duty-Free Quota-Free market access – an agreement by WTO members to enhance market access for least-developed countries.

However, despite these overall declines, tariffs and tariff rate quotas on agricultural products remain, on average, higher than those applied to non-agricultural products, and relatively high duties persist

on a number of products of importance for low-income producers, especially in agriculture and clothing, the report said.

The report calls for further progress on the Doha Round, a global agreement on the reduction of tax and non-tariff barriers to international trade. In particular it urged negotiators to secure a substantive outcome regarding talks on tariff reductions for agricultural goods. The talks have been hampered by disagreements among WTO members.

"The agriculture sector, which employs most of the poor, will continue to play a key role in lifting people out of poverty," the report said. "Its role could be strengthened if more was done to remove remaining obstacles to agricultural exports."

The report also noted that, although trade liberalization may appear to create risks for poorer territories by lowering tariff revenue, strategies to increase revenue collection capacity or raise new taxes can be pursued to offset lost income.

Mexico–Panama FTA Effective

The free trade agreement (FTA) between Mexico and Panama became effective on July 1, 2015, Panama's Ministry of Trade and Industry said.

The FTA was signed in Panama on April 3, 2014. It was ratified by Mexico on April 20, 2015.

Under the FTA, Mexico will immediately receive preferential tariff treatment on 72 percent of agreed products, including copper, aluminum, steel, automobiles, auto parts, paints, cosmetics, and perfumes. Tariffs on the remaining products will be lowered gradually, after five years.

Panama noted that the FTA will give it access to a potential market of over 112m people – a market some 36 times larger than the Panamanian market.

It is expected that the FTA will pave the way for Panama to become a full member of the Pacific Alliance trade bloc, comprising Chile, Peru, Colombia, and Mexico.

Ivory Coast To Slash Taxes On Tech

The Government of the Ivory Coast has announced that it is to drastically cut taxes on computers and mobile phones.

Value-added tax and customs duties will either be substantially reduced or removed. Previously, imported computers had been subject to a combined tax rate of 27 percent, while imported phones and tablets had been subject to a rate of 32 percent. The territory is to legislate to introduce a low single-digit rate on these items.

Minister Bruno Koné announced that the measures are part of a long-term push to encourage the adoption of technology in the country, with the aim of ensuring that every person has access to a computer and the internet. He said that many people in the country do not currently have access to their own computer and that these cuts should make these technologies more accessible. They will also make equipment cheaper for businesses and so encourage investment.

Canadian Budget Measures Receive Royal Assent

Legislation to reduce Canada's small business tax rate, improve tax credits and exemptions, and implement a balanced budget rule has been given Royal Assent.

The Economic Action Plan 2015 Act, No. 1 passed its final legislative hurdle on June 24.

The legislation will gradually reduce the small business tax rate to 9 percent by 2019, an initiative worth approximately CAD2.7bn (USD2.19bn) to eligible firms over the next five years. The first rate reduction will take place on January 1, 2016, when the rate will fall from 11 percent to 10.5 percent. It will then be reduced in 0.5 percent increments until the final reduction on January 1, 2019.

The Act also provides manufacturers with a ten-year accelerated capital cost allowance, to encourage productivity-enhancing investment in machinery and equipment. It increases the Lifetime Capital Gains Exemption to CAD1m for owners of farm and fishing businesses, and extends the Mineral Exploration Tax Credit until March 31, 2016.

In addition, the Act implements several tax measures targeted at families. It implements the Family Tax Cut, a federal tax credit that will allow a higher-income spouse to, in effect, transfer up to CAD50,000 of taxable income to a spouse in a lower tax bracket, effective from the 2014 tax year. It increases the Universal Child Care Benefit for children under age six, and makes it available for children up to age 17. It increases the Tax-Free Savings Account annual contribution limit to CAD10,000, effective for 2015 and subsequent years.

The legislation also increases the Child Care Expense Deduction dollar limits, reduces the minimum withdrawal factors for Registered Retirement Income Funds, and introduces a Home Accessibility Tax Credit for those with disabilities.

Finance Minister Joe Oliver said: "Under the strong leadership of Prime Minister Stephen Harper, our Government made an important promise to Canadians during the dark days of the Great Recession. We said we would set a course towards balanced budgets. Rather than raising taxes to achieve that goal, we would control spending and rein in costs. With Royal Assent, I am proud to say that we have delivered on our promise, and invested in job creation, economic growth, and long-term prosperity for Canadians."

New Australian Enterprise Tax Breaks Enter Into Force

Changes to the taxation of employee share schemes (ESS) in Australia entered into force on July 1.

Small Business Minister Bruce Billson said: "The changes to ESS will allow innovative Australian

firms to attract and retain high quality employees in a globally competitive labor market. These changes unwind the harm caused by the former Labor Government's amendments to the taxation of options issued under an employee share scheme."

Under the reforms, employees who are issued with options will generally be able to defer tax until they exercise the options (convert the options to shares), rather than having to pay tax when those options vest. Eligible start-ups will be able to issue options or shares to their employees at a small discount and have that discount exempt (for shares) or further deferred (for options) for income tax purposes.

From July 1, the maximum time for tax deferral will rise from seven years to 15 years. The limit that currently restricts employee ownership for those accessing ESS tax concessions will double, from 5 percent to 10 percent.

Billson has announced that, from June 30, start-up companies will be able to use standard templates created by the Australian Taxation Office (ATO) to offer employees options in their company. The ATO has created templates for an Employee Option Plan and an Employee Letter of Office. A safe harbor market valuation methodology has also been developed to give certainty to start-ups that are valuing their company.

"By providing these tools we are freeing up start-up companies to get on with what they are best at – innovating. We are committed to ensuring Australia is the best place to start and build a business," Billson said.

South Korea Specifies Its Tax Policies for 2nd Half 2015

The South Korean Ministry of Strategy and Finance has announced its economic policies for the second half of this year, including tax breaks and incentives to increase support to small and medium-sized enterprises (SMEs), encourage a rise in young adult employment, and boost outgoing overseas investment.

The Ministry is hoping that a focus on stimulating the country's economy will halt the current fall in its growth rate, having had to reduce its initial forecast of a 3.8 percent rise in gross domestic product to 3.1 percent. The recovery in the economy, which was already weak, has suffered further from the recent outbreak of Middle East Respiratory Syndrome.

To promote young adult employment, the Government will offer tax incentives to companies, particularly SMEs, that increase the number of young adults they employ, and give businesses tax credits for changing temporary positions to permanent ones, in addition to the existing tax credits they receive for increasing employee wages.

Gift and inheritance tax incentives given to startup SMEs will also be given to existing SMEs, and the ceiling for low tax rates provided to SMEs will be raised. The 50 percent tax cut provided to certain

startup businesses for the first five years after making a profit will be extended.

There will be additional support for sole traders. The Government will encourage "trying again after failure" by providing financial support for starting new businesses and extending tax deferral until 2018.

In addition, tax incentives will encourage savings and investment. A tax-exempt individual savings account will be introduced, and fund investors will in the future pay taxes only once when they sell their investments (thereby avoiding the payment of taxes even when they lose money). Tax incentives will be added for high-yield bond investments, while those intended to encourage venture capital investment will be revisited.

Finally, the Ministry announced that it intends to help individual investors to diversify their assets into foreign holdings to improve their returns. It is hoped that when profits from such investments are repatriated, it will also help the local economy.

Taxes on foreign investments and foreign exchange-related regulations will therefore be improved. For example, there will be tax exemptions for funds investing in foreign stocks, not only on their earnings but also on any foreign exchange profits.

Italians' Long Wait For Tax Freedom Over

CGIA of Mestre, Italy's association of sole traders and small businesses, has calculated that it was only on June 23, after 173 days or almost six months, that middle-income Italian employees had paid all of their taxes and contributions for the 2015 tax year.

CGIA's calculations covered those individuals earning an annual taxable salary of EUR44,658 (USD50,000). Their tax payments were complete in exactly the same number of days as last year.

On the other hand, those employees earning an annual salary of up to EUR24,000, and therefore receiving the new income tax bonus, had already worked through their taxes and contributions by May 13, after 132 days – one day earlier than last year.

In comparison, CNA (the national association of artisans and small and medium-sized enterprises) calculated recently that Italian businesses will have to work until August 14 to have paid off all of their taxes. Although very late in the year, that will actually be six days earlier than in the 2014 tax year.

CGIA has already noted, however, that taxpayers could face the prospect of even higher taxes this year if the local authorities feel they have to increase property or income taxes to shore up their finances, or if the Government is forced to hike value-added tax (VAT) or excise duty rates to compensate for revenue lost in other areas. Notably, the EU has recently rejected the Government's proposed extension of the reverse charge mechanism to the retail sector, which could have reduced the impact on Italian finances of VAT fraud.

CGIA's General Secretary Giuseppe Bortolossi has said the best way to cover any revenue shortfall and to reduce tax burdens would be through a reduction in "unproductive public spending."

Danish High Income Tax Cut Unravels Government

Denmark's new center-right government, led by Venstre party leader Lars Lokke Rasmussen, has lost its major coalition partner, the anti-immigration Danish People's Party (DPP), after a disagreement over tax cuts planned for high-income earners.

Rasmussen's government program includes a reduction of 5 percent in the current 15 percent surtax on the highest taxable incomes over DKK459,200 (USD68,900) a year. The DPP was not able to accept that measure.

While the original center-right coalition defeated the outgoing Social Democrat government in the election, Venstre is now alone in government with only 34 members in the 179-seat Parliament. Its

ability to carry through its policies, including the tax cut, is therefore said to be open to doubt without a good deal of compromise with other parties.

UK Labour Drops Call For 50p Tax Rate

The UK Labour Party has dropped its pre-election commitment to seek the reintroduction of a 50 percent income tax rate, according to Shadow Chancellor Chris Leslie.

In a speech delivered ahead of next week's first all-Conservative Budget in 18 years, Leslie was reported by *City AM* as saying: "When it comes to the 50p rate, that issue is gone."

The former Conservative–Liberal Democrat coalition government cut the additional rate of income tax on income over GBP150,000 from 50 percent to 45 percent from the 2013/14 tax year. There have been calls from within the Conservative Party, which now holds a majority in the UK House of Commons, for a further rate reduction.

Leslie commented: "The question is now whether the 45p rate is going to be reduced. I think the 45p rate is an important part of making sure we have fairness in our tax system. And if you're going to see the Chancellor taking away some of the support for people on middle and lower incomes [through tax credits reform], to give a tax cut down to maybe 42p or 40p, I just don't think that would be fair."

Last week, Prime Minister David Cameron said that the UK needs to "move from a low wage, high tax, high welfare society to a higher wage, lower tax, lower welfare society." He stressed that policymakers must deal with the "ridiculous merry-go-round" of the tax credits system, under which "people working on the minimum wage [are] having that money taxed by the government and then the government [is] giving them that money back – and more – in welfare."

EU Research Paper Supports Modified Nexus Approach

The European Commission has released a working paper that looks at how significant the introduction of the modified nexus approach will be for the tax affairs of multinational companies that use patent box regimes.

Entitled *Patent Boxes Design, Patents Location, and Local R&D*, the paper suggests "that in the majority of cases, the existence of a 'patent box' regime incentivizes multinationals to shift the location of their patents without a corresponding growth in the number of inventors or a shift of research activities."

The paper further finds that "the size of the tax advantage is negatively correlated with the local R&D. This suggests that the effects of 'patent boxes' are mainly of a tax nature."

The findings are significant as countries have agreed on the application of the "modified nexus approach" to determine a company's eligibility to patent box tax incentives, under the OECD's work on BEPS Action 5 on harmful tax practices. Under the proposed change, which countries that offer beneficial tax schemes for research and development (R&D) activities would be required to adopt, a taxpayer would only be entitled to claim the tax benefits from an intellectual property (IP) regime to the extent that it can show that it incurred the expenditures in that country on activities, such as R&D, that gave rise to IP income.

The paper states: "Recent debates on the potentially harmful consequences of 'patent boxes' have addressed the possibility to link the advantages of 'patent boxes' to the requirement of a real research activity in the country of the patent. Our results suggest that it has the potential to decrease the still dominant tax effects of 'patent boxes' on patent location and to raise the level of local inventorship. The 'nexus' approach hence offers some potential to mitigate the role of 'patent boxes' as new tax competition tools."

"'Patent boxes' are found to exert a strong effect on attracting patents mostly due to the specific favorable tax treatment that they bring about. However, this effect varies across sectors and with the specific characteristics of the patents. High-quality patents are shown to be more influenced in their location choices by the tax advantage offered by 'patent boxes' than patents of lower quality."

The paper adds: "The possibility to grant the 'patent box' tax regime to patents that have been acquired, were pre-existing, or contain embedded royalties, seems to make patent location even more sensitive to the tax advantages offered by 'patent boxes.' The same can be said for 'patent boxes' broadening their scope to other rights such as trademarks, design and models, copyrights, or domain names."

The paper concludes: "'Patent boxes' are a relatively recent development in the tools offered to companies to boost R&D activities. They have been criticized for offering additional tax advantages to income already profiting from an intellectual property protection and having potentially little effects on the level of R&D. Their development has raised concerns over the fact that they could exert a significant effect on patent location without a change in real research activity, aiming only at the tax benefits. Our results confirm these fears, with the tax attractiveness of 'patent boxes' being larger the broader their scope."

Luxembourg To Push Forward EU Tax Plans

Luxembourg has committed to carrying forward the EU's recent work in the area of corporate tax avoidance during its six-month Presidency of the EU, which began in July.

Luxembourg said it would aim to successfully conclude negotiations on the proposal on transparency and exchange of information regarding tax rulings. It also hopes to make progress on the proposals to create a Common Consolidated Corporate Tax Base among EU member states.

The Action Plan for fairer corporate taxation, as proposed by the Commission on June 17, 2015, will serve as a starting point for the Luxembourg Presidency in its work on taxation, the Government stated.

The Luxembourg Presidency will also discuss reinforcing the mandate of the Code of Conduct Group for Business Taxation in the Council.

EU Tax Rulings Committee Publishes Country Responses

The European Parliament's Special Tax Rulings Committee on June 26, 2015, published the responses it received from member states explaining their tax ruling practices.

On May 13, 2015, the Committee requested specific information from the European Commission, the European Council, and all member states as part of its ongoing investigation into tax ruling practices across the EU.

The Committee has now published responses from Belgium, Finland, France, Ireland, Latvia, Jersey, Guernsey, Luxembourg, Malta, the Netherlands, Slovakia, Sweden, and the UK.

The Committee had requested that member states provide information on action taken or planned at national level to increase transparency in the area of corporate taxation and to limit corporate tax base erosion and profit shifting; an overview of all tax rulings issued since 1991, including the date of the ruling and the name of the recipient company; a list of current international tax treaties that have the effect of reducing effective corporate tax rates; and the staffing levels of local and national tax authorities that deal with corporate tax matters.

Polish Opposition Puts Forward Election Tax Plans

Law and Justice (PiS), the second-largest political party in Poland, which is believed to be the front-runner in upcoming elections, has put forward a proposal for an asset tax on banks and other financial institutions.

The party told Polish newspaper *Dziennik Gazeta Prawna* that it favors the introduction of a tax on the assets of banks, insurance companies, and investment funds. It has suggested a rate of 0.39 percent.

PiS has also proposed the introduction of a turnover tax on supermarkets, in an effort to improve industry compliance rates.

Italy Slowing Banks' Tax Credits For Bad Debts

While providing for more immediate tax deductions if they write off bad debts this year, those Italian banks that accounted for substantial bad debt losses in 2013 and 2014 will have to wait longer to claim tax credits, under a new decree.

In Italy, there is a distinct difference between the tax treatment of such credit losses and their accounting treatment on balance sheets. For example, while a credit impairment during a financial year is wholly taken as a loss for that year in an Italian bank's profit and loss account, and against the total value of loans in its balance sheet, it can only be offset against tax in annual amounts over a number of years.

The outstanding differences, which amount to billions of euro over the whole banking system, are considered as "prepaid taxes" – in effect, bank finance to the Government without interest. This treatment contrasts with the treatment of competitor banks in other jurisdictions, such as those in Germany, where a loss is taken equally against both audited and taxable profits.

Prior to 2013, loan losses could only be offset against tax over an 18-year period. To encourage Italian banks to "clean up" their accounts, that period was reduced to five years for bad debts accounted for in 2013 and 2014, thereby allowing for a 20 percent deduction in each tax year.

However, under the provisions of a new decree, to protect its tax revenue, the Italian Government has now extended the tax deduction period for bad debts written off in 2013 and 2014 for a further ten years.

Only 5 percent of the tax credits remaining from those loan losses will be deductible in the banks' fiscal year ending on December 31, 2016, followed by 8 percent at the end of 2017; 10 percent at the end of 2018; 12 percent during the six years from 2019 to 2024; and the remaining 5 percent in 2025.

The decree confirms that, as a general rule, Italian banks will now be able to deduct immediately from taxable income all loan losses that have been accounted for during any fiscal year.

Nevertheless, as a temporary measure and to further restrict the loss of Government revenue, that tax deduction has been restricted to only 75 percent of losses during the fiscal year ending on December 31, 2015, with the remaining 25 percent being written off over the same ten-year period as described above.

Swiss Revenue Retained On Behalf Of EU Down

The gross revenue generated from the system of tax retention on interest payments made in Switzerland to EU taxpayers was down from CHF510.1m (USD542.9m) in 2013 to CHF317m in the 2014 tax year.

In compliance with the agreement with the EU on the taxation of savings, in force since July 2005, a withholding tax rate of 20 percent was imposed on such payments from July 2008. Since July 2011, a rate of 35 percent has been applied. Of the proceeds, 75 percent is passed to the EU member states concerned. The remaining 25 percent of the proceeds go to the Swiss Confederation, with 10 percent of this figure transferred to the cantons.

The payment deadline for the EU tax retained in 2014 by Swiss paying agents on interest payments to individuals resident in EU member states expired on March 31, 2015. CHF237.8m will be transferred to EU member states. Switzerland's share amounts to CHF79.2m, of which CHF71.3m will be transferred to the Confederation and CHF7.9m to the cantons.

The savings tax agreement also makes provision for the recipients of interest payments to choose between the system of tax retention and a voluntary declaration to the tax authorities. In 2014, approximately 150,000 declarations were received.

US FTT Would Have Drawbacks, TPC Paper Argues

Despite the prospect of substantial tax revenue from the introduction of a financial transaction tax (FTT) in the US, the Tax Policy Center (TPC) pointed out in a recent paper that it would discourage investment.

The TPC has seen a resurgence in the idea of an FTT in the US, particularly among Democrat lawmakers who are interested in its progressive nature, alongside the revenue it could raise.

In his blog post, co-author of the paper Len Burnam wrote: "TPC estimates that a hypothetical 0.1 percent tax on sales of equities and bonds (and 0.01 percent on derivatives) would raise over USD50bn per year."

He also noted that "three-quarters of the tax would fall on the highest-income 20 percent of households, and 40 percent would be paid by taxpayers

in the top 1 percent. It's not quite the 'Robin Hood Tax' that some proponents claim – some of the burden would fall on middle-income investors and retirees – but it's pretty progressive."

He added that, on balance, "since most international financial centers already have an FTT or are planning to adopt one, there are many fewer opportunities for avoidance."

However, while the tax could reduce high-frequency trading as "even a miniscule FTT would make flash trading less profitable," Burnham considered that it "wouldn't attack the excess leverage that leads to systemic risk, so it is unlikely to prevent the kind of financial market failure that precipitated the Great Recession."

He concluded that it would be "inefficient and poorly targeted, … hitting some asset classes and industries harder than others and thus distorting economic activity. An FTT would be indiscriminate, hitting both speculative and productive trading. It would thus raise the cost of capital and discourage investment."

China Exempts Oil, Gas Industry From Land Use Tax

China's Ministry of Finance has announced that the temporary use of land by the oil and gas sector (including shale gas and coal-bed methane) was made exempt from urban land use tax (ULUT) with effect from July 1, 2015.

The ULUT is usually computed on the basis of the actual size of the land occupied by the taxpayer. The base tax payable per square meter can be up to RMB30 (USD4.80) for large cities, RMB24 for medium-size cities, RMB18 for small cities, or RMB12 for towns and industrial and mining districts.

The Ministry has stipulated that the temporary use of land for geological exploration, drilling, and both the underground and surface operations associated with oil and gas fields are now exempt from the ULUT.

In addition, the use of land for dedicated railways and roads for those fields and oil and gas pipelines is also tax free, as is land used for fire prevention, flood control, and drainage in the mining areas.

Oil and gas production companies are required to record the tax-exempt land with their competent tax authority, in accordance with the relevant tax relief regulations.

OECD Urges Greater Use Of Green Taxes

The OECD has said in a new report that governments are under-utilizing taxation as a tool to curb the environmental consequences of energy use.

The report, *Taxing Energy Use 2015: OECD and Selected Partner Economies*, said that there is strong evidence that taxes are one of the most cost-effective ways to curb the negative side effects of energy use.

OECD Secretary-General Angel Gurría said: "Tax policy is not being used effectively to reduce the adverse health impacts and emissions of greenhouse gases resulting from energy use." He added that there is still considerable scope to use taxation to improve the environment and contain climate change.

The report compared taxes on energy use in 41 countries worldwide, which together use 80 percent of global energy. It found that the weighted average effective tax rate on all energy use across the 41 countries is EUR14.8 (USD16.5) per tonne of CO2 from energy use, well below estimates of the social cost of carbon, at around EUR30 per tonne. When the cost of other negative side effects from energy use are also considered, this strengthens the conclusion that average tax rates are very low relative to the harmful effects of fuel use, it said.

Coal, which contributes significantly to climate change and local air pollution, is the lowest and least frequently taxed fuel, according to the report. Of coal used for heating and processing purposes in the 41 countries, 85 percent is untaxed, and the average tax rate on coal is less than EUR2 per tonne of CO2. By comparison, oil products are taxed at EUR49 per tonne of CO2 on average, with the vast majority of oil products subject to energy taxes.

The report also said that economy-wide tax rates on energy vary widely, from just over EUR0 per gigajoule and tonne of CO2 in Indonesia and Russia, to EUR107.3 per tonne of CO2 in Switzerland.

ANDORRA - FRANCE

Into Force

The DTA signed between Andorra and France entered into force on July 1, 2015.

ANDORRA - ITALY

Forwarded

Andorra's Cabinet on June 17, 2015 approved the signing of a TIEA with Italy.

ARMENIA - DENMARK

Negotiations

Armenia and Denmark completed a four-day first round of negotiations towards a DTA on June 12, 2015.

AUSTRALIA - GERMANY

Negotiations

Australia and Germany are to negotiate a new DTA, the Australian Government announced on June 16, 2015.

CANADA - COOK ISLANDS

Signature

Canada and the Cook Islands signed a TIEA on June 15, 2015.

CANADA - NEW ZEALAND

Into Force

A new DTA between Canada and New Zealand entered into force on June 26, 2015.

GAMBIA - VARIOUS

Ratified

Gambia's Parliament on June 23, 2015 approved legislation to ratify DTAs With Turkey and Qatar.

GIBRALTAR - GUERNSEY

Ratified

Gibraltar on June 4, 2015 ratified the TIEA signed with Guernsey, publishing a notification in its Official Gazette.

HONG KONG - JAPAN

Into Force

Hong Kong and Japan completed the exchange of instruments of ratification on July 6, 2015, bringing their DTA into force.

HONG KONG - MACEDONIA

Negotiations

Hong Kong and Macedonia completed a first round of DTA negotiations on June 12, 2015.

INDIA - THAILAND

Signature

India and Thailand signed a DTA on June 29, 2015.

IRAN - HUNGARY

Negotiations

According to preliminary media reports, Iran and Hungary completed a first round of DTA negotiations on June 17, 2015.

JERSEY - RWANDA

Signature

Jersey and Rwanda signed a DTA on June 26, 2015.

KAZAKHSTAN - MEXICO

Negotiations

Kazakhstan and Mexico discussed the prospect of signing a DTA later this year, at a recent meeting between representatives to mark the opening of a Mexican embassy in Kazakhstan.

LUXEMBOURG - VARIOUS

Forwarded

According to preliminary media reports, Luxembourg has forwarded legislation that would give effect to DTAs with Andorra, Croatia, Estonia, and Singapore, and amend DTAs with France, Ireland, Lithuania, Mauritius, Tunisia, and the United Arab Emirates.

MAURITIUS - INDIA

Negotiations

Mauritius and India held two days of meetings, concluding on June 30, 2015, on a draft Protocol put forward by Mauritius to amend their DTA.

OMAN - PORTUGAL

Ratified

According to preliminary media reports, Oman on July 2, 2015 ratified the DTA signed with Portugal.

SAN MARINO - UNITED STATES

Negotiations

San Marino and the United States are engaged in negotiations towards a DTA, the San Marino Government announced on June 23, 2015.

SINGAPORE - THAILAND

Signature

Singapore and Thailand signed a DTA on June 11, 2015.

SOUTH AFRICA - MAURITIUS

Ratified

South Africa completed its domestic ratification procedures in respect of the DTA with Mauritius on June 17, 2015, publishing a notification in its Official Gazette. The DTA entered into force on May 28, 2015, and it will be effective from January 1, 2016.

SOUTH AFRICA - TURKS AND CAICOS ISLANDS

Signature

According to a June 8 update from the South African Revenue Service, South Africa signed a TIEA with the Turks and Caicos Islands on May 27, 2015.

SOUTH AFRICA - VARIOUS

Into Force

According to a June 8 update from the South African Revenue Service, South Africa's TIEAs with Belize and Liechtenstein entered into force on May 23, 2015.

UNITED ARAB EMIRATES - UGANDA

Signature

The United Arab Emirates and Uganda signed a DTA on June 9, 2015.

ZAMBIA - NETHERLANDS

Forwarded

According to preliminary media reports, Zambia's Cabinet has approved the signature of a DTA with the Netherlands.

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

THE AMERICAS

BASICS OF INTERNATIONAL TAXATION 2015 - NEW YORK

PLI

Venue: PLI New York Center, 1177 Avenue of the Americas, New York 10036, USA

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

7/21/2015 - 7/22/2015

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

GLOBAL TAX TRANSPARENCY FOR LATIN AMERICA & THE CARIBBEAN 2015

Hanson Wade

Venue: Conrad Miami, 1395 Brickell Avenue, Miami, Florida, 33131, USA

Key speakers: Alfredo Revilak (Servicio de Administración Tributaria), Neil M. Smith (Ministry of Finance Government of the Virgin Islands), Álvaro Iván Revelo Méndez (Secretaría Distrital de Hacienda), Nadja Ruiz (Servicio de Administración Tributaria), Miguel Zamora (Noguera, Larraín & Dulanto), among numerous others

8/4/2015 - 8/5/2015

http://globaltaxtransparency.com/

INTERNATIONAL TAX ISSUES 2015 - CHICAGO, IL

Practicing Law Institute

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

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

9/9/2015 - 9/9/2015

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

ADVANCED INTERNATIONAL TAX PLANNING - CHICAGO

Bloomberg BNA

Venue: Baker & McKenzie, 300 E Randolph Street, Chicago, IL 60601, USA

Key Speakers: TBC

9/28/2015 - 9/29/2015

http://www.bna.com/advanced_chicago/

BASICS OF INTERNATIONAL TAXATION 2015 – SAN FRANCISCO, CA

PLI

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

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

9/28/2015 - 9/29/2015

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

INTRODUCTION TO US INTERNATIONAL TAX – LAS VEGAS, NV

Bloomberg BNA

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

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

9/28/2015 - 9/29/2015

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

12TH TAXATION OF FINANCIAL PRODUCTS AND DERIVATIVES

Federated Press

Venue: Courtyard by Marriott Downtown Toronto, 475 Yonge Street, Toronto, ON, Canada

Chairs: Ryan L. Morris (WeirFoulds LLP), David P. Stevens (Gowling Lafleur Henderson LLP)

9/28/2015 - 9/29/2015

http://www.federatedpress.com/12th-Taxation-of-Financial-Products-and-Derivatives.html

INTERMEDIATE US INTERNATIONAL TAX UPDATE – LAS VEGAS, NV

Bloomberg BNA

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

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

9/30/2015 - 10/2/2015

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

INTERNATIONAL TAX CONFERENCE

BNA

Venue: Park Hyatt Toronto Yorkville, 4 Avenue Rd, Toronto, Ontario M5R 2E8, Canada

Key speakers: TBC

10/14/2015 - 10/14/2015

http://www.bna.com/agenda-m17179927392/

GLOBAL TRANSFER PRICING CONFERENCE

BNA

Venue: Park Hyatt Toronto Yorkville, 4 Avenue Rd, Toronto, Ontario M5R 2E8, Canada

Key speakers: TBC

10/15/2015 - 10/16/2015

http://www.bna.com/agenda-m17179927386/

CAPTIVE INSURANCE TAX SUMMIT – WASHINGTON, DC

BNA

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

Key Speaker: TBC

10/26/2015 - 10/27/2015

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

INTERMEDIATE US INTERNATIONAL TAX UPDATE – CHICAGO, IL

BNA

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

Key Speaker: TBC

10/28/2015 - 10/30/2015

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

PRINCIPLES OF INTERNATIONAL TAXATION

Bloomberg BNA

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

Key Speakers: TBC

11/16/2015 - 11/18/2015

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

INTERNATIONAL TAX PLANNING

IBFD

Venue: Av. das Nacoes Unidas, 12901, Sao Paulo, SP 04578-000, Brazil

Key Speakers: Shee Boon Law (IBFD), Boyke Baldewsing (IBFD)

11/25/2015 - 11/27/2015

http://www.ibfd.org/Training/International-Tax-Planning-0

INTRODUCTION TO US INTERNATIONAL TAX – ARLINGTON, VA

Bloomberg BNA

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

Chairs: TBC

11/30/2015 - 12/1/2015

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

THE NEW ERA OF TAXATION

International Bar Association

Venue: TBC, Mexico City, Mexico

Key speakers: TBC

12/3/2015 - 12/4/2015

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=bf91caa6-9df6-454b-a682-8b57c7bf9209

ASIA PACIFIC

3RD GLOBAL CONFERENCE ON FINANCE & ACCOUNTING

Asia Pacific International Academy

Venue: Concorde Hotel, 100 Orchard Rd, 238840 Singapore

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

7/29/2015 - 7/30/2015

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

4TH INTERNATIONAL TAX CONFERENCE

IBFD

Venue: JW Marriott, No. 83 Jian Guo Road, China Central Place, Chaoyang District, Beijing, China

Key speakers: TBC

9/10/2015 - 9/11/2015

http://www.ibfd.org/IBFD-Tax-Portal/Events/4th-International-Tax-Conference#tab_program

CENTRAL AND EASTERN EUROPE

THE TRANSFORMATION OF TAX SYSTEMS IN THE CEE AND BRICS COUNTRIES

IBFD

Venue: Faculty of Law and Administration, University of Lodz, 8/12 Kopcinskiego st., 90-232 Lodz, POLAND

Key Speakers: Mr Porus Kaka (President of the International Fiscal Association), Prof. Frans Vanistendael (Katholieke Universiteit Leuven, Belgium), Prof. Jan de Goede (International Bureau of Fiscal Documentation)

10/9/2015 - 10/10/2015

http://www.cdisp.uni.lodz.pl/images/konferencje/TaxTransformation/Transformation_of_Tax_Systems_CEE_and_BRICS_-_agenda.pdf

WESTERN EUROPE

OFFSHORE TAXATION - A BRAVE NEW WORLD

IIR & IBC

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

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

7/14/2015 - 7/14/2015

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

INTERNATIONAL TAX SUMMER SCHOOL 2015

IIR & IBC Financial Events

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

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

8/18/2015 - 8/20/2015

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

THE 25TH OXFORD OFFSHORE SYMPOSIUM 2015

Offshore Investment

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

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

9/6/2015 - /12/2015

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

DUETS ON INTERNATIONAL TAXATION: GLOBAL TAX TREATY ANALYSIS

IBFD

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

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

9/7/2015 - 9/7/2015

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

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

IBFD

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

Key Speakers: TBC

9/8/2015 - 9/8/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - BRISTOL

CCH

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

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

9/9/2015 - 9/10/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MILTON KEYNES

CCH

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

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

9/15/2015 - 9/16/2015

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

INTERNATIONAL TAXATION OF BANKS AND FINANCIAL INSTITUTIONS

IBFD

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

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

9/16/2015 - 9/18/2015

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

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - MANCHESTER

CCH

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

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

9/22/2015 - 9/23/2015

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

CO-ORDINATED EUROPEAN PLANNING & TAXATION

IIR & IBC

Venue: TBC, London

Key speakers: Filippo Noseda (Withers), Timothy Lyons QC (39 Essex Street), Beatrice Puoti (Burges Salmon), Jonathan Burt (Harcus Sinclair), Line-Alexa Glotin (UGGC Avocats), among numerous others

9/23/2015 - 9/24/2015

http://www.iiribcfinance.com/event/Co-ordinated-European-Planning-and-Taxation

UPDATE FOR THE ACCOUNTANT IN INDUSTRY AND COMMERCE - OXFORD

CCH

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

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

10/6/2015 - 10/7/2015

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

INTERNATIONAL TAX PLANNING ASSOCIATION MONTE-CARLO MEETING

ITPA

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

Chair: Milton Grundy

10/11/2015 - 10/13/2015

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

INTERNATIONAL TAX STRUCTURING FOR MULTINATIONAL ENTERPRISES

IBFD

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

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

10/21/2015 - 10/23/2015

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

EU FINANCIAL ACCOUNTING IN INTERNATIONAL COOPERATION AND DEVELOPMENT PROJECTS

European Academy

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

Key Speakers: TBC

11/26/2015 - 11/27/2015

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

THE AMERICAS

United States

The United States Supreme Court has upheld a key part of President Barack Obama's health care law, allowing premium tax credits granted through both state and federal health insurance exchanges.

Under the Affordable Care Act (ACA), premium tax credits were introduced to defray the cost of purchasing health insurance and, in May 2012, the Internal Revenue Service (IRS) issued a final rule (IRS Rule) for their implementation.

The ACA requires the creation of an Exchange in each state – basically, a marketplace that allows people to compare and purchase insurance plans. The Act gives each state the opportunity to establish its own Exchange, but provides that the federal Government will establish "such Exchange" if the State does not.

In related language, the ACA provides that tax credits "shall be allowed" for any "applicable taxpayer," but only if the taxpayer has enrolled in an insurance plan through "an Exchange established by the State," under US Code Title 42 – Public Health Service Act – subsection 18031. An IRS regulation in 2012 interpreted that language as making tax credits available on "an Exchange … regardless of whether the Exchange is established and operated by a state … or by [the US Department of Health and Human Services – *i.e.*, a Federal Exchange]."

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

The case was brought by four individuals living in Virginia, which has a Federal Exchange. They did not wish to purchase health insurance. They argued that Virginia's Exchange does not qualify as "an exchange established by the State" under the aforementioned provision, making them ineligible for tax credits. That would have made the cost of buying insurance more than 8 percent of their income, thereby exempting them from the requirement under the ACA to maintain health insurance coverage or make a payment to the IRS.

The individuals challenged the IRS Rule in the Federal District Court. The District Court dismissed the suit, holding that the ACA unambiguously made tax credits available to individuals enrolled through a Federal Exchange. The Court of Appeals for the Fourth Circuit affirmed this. The Fourth Circuit viewed the ACA as ambiguous, and deferred to the IRS's interpretation under *Chevron USA Inc. v. Natural Resources Defense Council, Inc.* (467 US 837).

The Supreme Court noted that the tax credits are one of the ACA's key reforms and highlighted that whether they are available on Federal Exchanges is a question of deep "economic and political significance." Therefore, had Congress wished to assign that question to an agency, it surely would have done so expressly, the Supreme Court observed, adding that it is especially unlikely that Congress would have delegated this decision to the IRS, which has no expertise in crafting health insurance policy of this sort.

The Supreme Court therefore noted that the case concerned determining the correct reading of Section 36B of the ACA. It said that, in arriving at its decision, it first considered whether the statutory language was plain. It noted that, if so, the Court must enforce it according to its terms. However, where wording is ambigious, the Court must determine the meaning by the context. When deciding whether the language is plain, the Court must read the words "in their context and with a view to their place in the overall statutory scheme," it said, noting the ruling in *FDA v. Brown & Williamson Tobacco Corp* (529 US 120, 133).

The Court ruled that, when read in context, the phrase "an Exchange established by the State" is ambiguous. "The phrase may be limited in its reach to State Exchanges. But it could also refer to all Exchanges – both State and Federal – for purposes of the tax credits. If a state chooses not to follow the directive in Section 18031 to establish an Exchange, the Act tells the Secretary of Health and Human Services to establish 'such Exchange.' And by using the words 'such Exchange,' the Act indicates that State and Federal Exchanges should be the same," the Court said.

It concluded: "State and Federal Exchanges would differ in a fundamental way if tax credits were available only on State Exchanges; one type of Exchange would help make insurance more affordable by providing billions of dollars to the States' citizens. The other type of Exchange would not."

This judgment was released on June 25, 2015.

http://www.supremecourt.gov/opinions/14pdf/14-114_qol1.pdf

US Supreme Court: *King v. Burwell (No. 14-114)*

WESTERN EUROPE

France

The European Court of Justice (ECJ) has provided a preliminary ruling that could spell the end for French group tax provisions that offer concessionary treatment limited to domestic group entities.

French legislation on corporation tax stipulates that distributions of profits from a subsidiary to a parent company are not, in principle, taxed at the parent. Excluded from this, however, is a 5 percent proportion, which represents the charges incurred by the parent company in connection with its holding in the subsidiary. These charges are not to be deductible because they serve the realization of non-taxable income by the parent company, namely the distribution of profits from its subsidiaries.

This (effectively partial) taxation of profit distributions does not occur, however, if the parent company and the subsidiary are taxed jointly under a regime known as *intégration fiscale*. Since foreign companies are not allowed to take part in this form of group taxation, the Court had been asked to examine whether such a regime is consistent with the freedom of establishment and the corporation tax legislation of the EU.

The case concerned Groupe Steria, which was seeking to deduct the 5 percent proportion for costs and expenses, which is non-deductible under point 1 of Article 216 of the General Tax Code (CGI), in respect of revenue that one of its French subsidiaries received from its holdings in companies established in other EU member states.

The French authorities had refused this deduction because it is only possible under paragraph 2 of Article 223B of the CGI if the holdings' revenue originates from a member of the tax group. Under paragraph 2 of Article 223A of the CGI, however, companies resident abroad may not be members of a tax group.

Groupe Steria in fact accepted the exclusion of foreign companies from group taxation. However, it took the view that the French legislation is inconsistent with the freedom of establishment in so far as it refuses to allow deduction of the 5 percent proportion in respect of holdings that could be part of the tax group were they not resident abroad.

In its ruling in the case, the ECJ agreed with the taxpayer that the regime is contrary to the EU law of freedom of establishment.

The ECJ recommended that the referring court, the Administrative Court of Appeal of Versailles (*Cour Administrative d' Appel de Versailles*) answer as follows:

> "The freedom of establishment under Article 43(1) EC and Article 48 EC precludes legislation of a member state which under a special rule on group taxation available only to domestic companies allows group companies to deduct the charges relating to holdings in other group companies when this deduction is otherwise excluded."

This judgment was released on June 11, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164945&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=223500

European Court of Justice: *Groupe Steria SCA v. French Finance Ministry (Case C-386/14)*

Hungary

The European Court of Justice (ECJ) has provided a preliminary ruling concerning Hungary's decision to substantially increase tax on amusement arcades in 2011. It said Hungarian legislation which prohibits the operation of slot machines outside casinos may be contrary to the principle of freedom to provide services.

Up until October 9, 2012, slot machines could be operated in Hungary either in casinos or in amusement arcades. Until October 31, 2011, the flat-rate tax on the operation of slot machines amounted to HUF100,000 (USD361) per playing position per month. As from November 1, 2011, that amount was increased to HUF500,000. From that date, the operation of slot machines in amusement arcades was also subject to a proportional tax which, for each playing position, amounted to 20 percent of the net quarterly revenue from the machine in excess of HUF900,000.

The operation of slot machines in casinos was subject to a separate system of taxation, which was not changed in the fall of 2011.

Under a law adopted on October 2, 2012, the operation of slot machines was restricted to casinos, with effect from October 10, 2012. Since that date, such activity can no longer be carried out in amusement arcades.

Several companies that operated slot machines in amusement arcades brought an action before the Hungarian courts, claiming that EU law precludes measures which initially drastically increased their tax burdens and then, at a later stage, prohibited, with almost immediate effect, the operation of the machines concerned. Those companies are seeking compensation for the damages they claim to have suffered as a result of those measures.

The ECJ found that, first of all, national legislation which authorizes the operation and playing of certain games of chance only in casinos constitutes a restriction on the freedom to provide services. Likewise, a measure that drastically increases the amount of taxes levied on the operation of slot machines in amusement arcades can also be considered restrictive if it is liable to prohibit, impede, or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades. In that regard, the ECJ observed that that would be the case if the national court found that the tax increase prevented profitable operation of slot machines in amusement arcades, thereby effectively restricting it to casinos.

The ECJ referred a number of other matters to the national court for it to decide upon. It said the national court must decide whether the objectives pursued by the contested measures, namely the protection of consumers against gambling addiction and the prevention of crime and fraud linked to gambling, are, in principle, capable of justifying restrictions on gambling. Those restrictions must, however, pursue those objectives in a consistent and systematic manner, it argued.

The ECJ did note, however, that Hungary seems – subject to verification by the referring court – to be pursuing a policy of controlled expansion of gambling activities, which included the issuing of new casino operating licenses in 2014.

It observed that such a policy can only be regarded as pursuing the abovementioned objectives if, first, it is capable of remedying in Hungary a real problem linked to criminal and fraudulent activities concerning gambling and addiction to gambling, and, secondly, it is not on such a scale as to make it impossible to reconcile with the objective of curbing addiction to gambling, which it stated is for the national court to determine.

The ECJ also announced that it is for the national court to determine whether the measures at issue comply with the principles of legal certainty and the protection of legitimate expectations and the right to property of amusement arcade operators. In that context, the ECJ noted that, when the national legislature revokes licenses that allow their holders to exercise an economic activity, it must provide a reasonable compensation system or a transitional period of sufficient length to enable that holder to adapt.

Finally, the ECJ pointed out that, if it is found that there is an unjustified restriction of the freedom to provide services, the operators of amusement arcades could obtain from the Hungarian state compensation for the damage suffered as a result of the infringement of EU law, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage suffered. This latter point was also left for the national court to determine.

This judgment was released on June 11, 2015.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=164955&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=297553

European Court of Justice: *Berlington Hungary and Others v. Hungary (Case C-98/14)*

United Kingdom

The UK Supreme Court has ruled in favor of an appellant concerning his right to double taxation relief on income remitted to the UK from the US.

The appellant's eligibility for double tax relief depended on the interpretation of article 23(2)(a) of the UK/US Double Taxation Convention 1975 and its successor, article 24(4)(a) of the UK/US Double Taxation Convention 2001. The relevant question under both provisions was whether the UK tax is "computed by reference to the same profits or income by reference to which the United States tax is computed."

The relevant period was the seven UK tax years running from April 6, 1997, to April 5, 2004, during which the appellant was a member of a Delaware limited liability company (the LLC), classified as a

partnership for US tax purposes. As such, the appellant was liable to US federal and state taxes on his share of the profits.

The appellant remitted the balance to the UK and was liable to UK income tax on the amounts remitted, as "income arising from possessions outside the UK." The UK tax authority, HM Revenue & Customs (the respondent), decided that he was not entitled to any double taxation relief, on the basis that the income that had been taxed in the US was not the appellant's income but that of the LLC.

On the appellant's appeal, the First-tier Tribunal (FTT) found that the combined effect of the Delaware LLC Act (the LLC Act) and the LLC agreement made between the members was that profits of the LLC belong to the members as they arise. It concluded that the appellant was taxed on the same income in both countries, so he was entitled to double taxation relief.

The Upper Tribunal allowed HMRC's appeal. Later, the Court of Appeal dismissed the appellant's appeal, but the Supreme Court unanimously allowed the appellant's appeal.

The FTT had decided that the profits belonged to the members, referring to a personal right rather than a proprietary right. This was consistent with the appellant's expert evidence and with the comparison that the FTT made between the LLC and a Scottish partnership. However, the Upper Tribunal disagreed. The Supreme Court noted that in coming to its decision, the FTT had based its judgment on expert evidence as to the combined effect under Delaware law of the LLC Act and the LLC agreement.

The Court of Appeal focused on whether the appellant had a proprietary right to the profits of the LLC as they arose, rather than addressing whether the income taxed in one country is the same as the income taxed in another. The Court of Appeal also accepted HMRC's submission that the FTT's finding that the profits belonged to the members as they arose was a holding on UK domestic tax law, with which the Upper Tribunal was entitled to interfere. However, questions about whether the members had a right to the profits, and if so, what is the nature of that right, were questions of non-tax law, governed by Delaware law. The FTT's conclusion on them was a finding of fact, the Supreme Court stated, adding that the Court of Appeal had been diverted by its consideration of the case of *Memec plc v Commissioners of Inland Revenue [1998]* STC 754, which was concerned with article 23(2)(b) of the 1975 Convention, not article 23(2)(a). Eventually, the Supreme Court agreed with the ruling of the FTT.

The Supreme Court said, if the words used in article 23(2)(a) are given their ordinary meaning, it is necessary to identify the profits or income by reference to which the taxpayer's UK tax liability is computed, being primarily a question of UK tax law. Next one must identify the profits or income from sources within the US on which US tax was

payable under the laws of the US and in accordance with the Convention – primarily a question of US tax law. Then it is necessary to compare the profits or income in each case, and decide whether they are the same.

The Supreme Court concluded that the FTT was right in finding that the appellant was entitled to the share of the profits allocated to him, rather than receiving a transfer of profits previously vested (in some sense) in the LLC. The Court said it follows that his "income arising" in the US was his share of the profits. The Supreme Court found that the appellant's liability to UK tax was computed by reference to the same income as was taxed in the US. Accordingly, the Supreme Court ruled that the appellant should qualify for double taxation relief under article 23(2)(a).

This judgment was released on July 1, 2015.

https://www.supremecourt.uk/cases/docs/uksc-2013-0068-press-summary.pdf

UK Supreme Court: *Anson v. HM Revenue and Customs [2015] UKSC 44*

Dateline July 9, 2015

I never thought I'd see the day, at least in the remainder of President Barack Obama's second term, when Democrats and Republicans would agree on a piece of legislation vital to the United States' economic interests. But there was an uncharacteristic bout of bipartisanship in Washington last week as Congress passed the long-awaited renewal of trade promotion authority (TPA) legislation. Without TPA, also known as fast-track, contentious free trade agreements could be filibustered in Congress, so there would probably be no Trans-Pacific Partnership. Actually, it is stretching the truth somewhat to suggest that TPA was approved in a spirit of total political harmony. For many months, senior Democrats in the Senate put up a good fight against a bill they argued would allow unbalanced free trade deals to be rammed through Congress without adequate scrutiny.

Indeed, the real acrimony here was between Democrats and their own President rather than the usual Democrat versus Republican, left wing versus right wing narrative we have become so used to. In fact, I'm struggling to remember an occasion during President Obama's two terms when the White House and the GOP were so closely aligned. Given the President's protectionist utterings in the early phase of his presidency, it is also remarkable how far he has moved on the issue of free trade. He has therefore proved that he can be flexible. Perhaps it's now time he softened his stance on other issues, like tax reform, so he could be remembered as a President who got things done, instead of a leader paralyzed by his own stubbornness. Probably too late for that now though.

Staying on the issue of trade, Brazil made the news again recently with its announcement that import tariffs would be cut on more than 160 items. A good thing, no? On the face of it, yes, I suppose it is. Except that when it comes to trade and tax policy in Brazil, one doesn't know whether one is coming or going anymore! It's barely more than one month ago that the Brazilian Senate approved a bill that will raise taxes on a number of imported products, including automotive parts, beer, and pharmaceuticals. And about one month before that, CAMEX, Brazil's Chamber of Foreign Trade, announced that import tariffs would be reduced on certain automotive components. In 2014, Brazil's Government claimed to be a champion of trade liberalization in Latin America, yet it has been locked in trade disputes with Mexico and the EU, and has been handing out anti-dumping duties like confetti.

If you run a business in Brazil, you could probably spend months attempting to stay abreast of the latest developments in trade and tax policy. Indeed, when it comes to tax compliance, that is almost quite literally the case, if PwC's Paying Taxes Index is to be believed. Governments in emerging nations like to justify tariff increases on the basis that they are protecting their economies. However,

they must be serving as a hindrance to economic growth as much as a help. And ironically, high tariff and other trade barriers are said to undermine governments' attempts to reduce poverty, as observed in a new joint report by the World Trade Organization and the World Bank, which was published last week. Unfortunately, progress in this area will depend on whether the deadlock entrenching the Doha Round of world trade talks can be broken, and that doesn't look like happening anytime soon.

Another area where developing nations in particular tend to thwart themselves economically is through import and other taxes on high-tech products like computers, laptops, and smartphones. So it made a refreshing change to read that the Government of the Ivory Coast is slashing taxes on imported computers, phones, and tablets, to encourage the adoption of technology in the country. According to the findings of a 2014 study by the Information Technology and Innovation Foundation, this could turn out to be a smart move by the Ivorian Government. This report says that taxes on hi-tech goods are having a major impact on economic productivity. In India, for instance, for every dollar raised from taxes, USD1.30 is lost as a result of lower productivity.

Yet, of the 125 nations examined in the Foundation's study, 31 impose combined ICT tax and tariff rates of over 5 percent of product or service costs, with several countries adding more than 20 percent to costs. Bangladesh, one of the poorest countries in the world in terms of GDP per capita, imposes the highest taxes on the industry, averaging tax of 57.8 percent in addition to the country's 15 percent value-added tax. In second and third place are Turkey and the Democratic Republic of Congo, which add taxes and tariffs of 26.1 percent and 23.8 percent, respectively. The report concludes that taxes have a noteworthy impact on the adoption of ICT goods and services, lowering demand by as much as 20 percent in Bangladesh, DR Congo, and one other nation – yes, you've guessed it – Brazil!

How much tax is too much tax? The answer to that will depend very much on your political beliefs, although I suspect it would take quite a while before you spoke to somebody who professed to be paying not enough tax, unless, that is, you happen to bump into Warren Buffett in the near future. Still, a consensus seems to have emerged that once a government starts taking the best part of a half or more of a person's income, then tax rates are punitive. Indeed, 50 percent seems to have become something of a psychological boundary in many countries in tax terms.

A key battleground in British politics of late has been whether the top rate of income tax should be 50 percent or slightly less than that. The Labour Party recently lost an election with its policy to restore taxation to 50 percent for those earning GBP150,000 (USD235,000) per year or more, while the Conservatives won after having nudged that rate down to 45 percent while in coalition with the Liberal Democrats. This of course isn't the only reason why Labour was punished by voters in May, but it says something that the party recently dropped its 50 percent tax policy.

However, it is Italy that I really want to write about. Although Italy's top personal tax rate is 43 percent, according to CGIA Mestre, Italy's association of sole traders and small businesses, "tax freedom day," the notional day when individuals stop effectively working for the government and begin to pocket their income, only arrived on June 23 this year. So, in reality, the tax burden for a person earning the equivalent of USD50,000 in Italy is more than 50 percent.

But businesses have it even worse. They won't see tax freedom day until August 14, says CAN, the national association of artisans and small and medium-sized enterprises. This is going to be six days earlier than last year, which I guess represents a modicum of progress. And at least the Government is trying to turn things round; earlier this year Prime Minister Matteo Renzi pledged that Italy will not raise taxes for three years. The CGIA suggests that this promise will be very difficult to keep however. The association claims that the Government faces a choice between increasing taxes by more than EUR16bn or making drastic and unpopular spending cuts to reach its fiscal targets. A politician making promises on tax (s)he can't keep? Will wonders never cease?

The Jester