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GLOBAL TAX WEEKLY
a closer look

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GLOBAL TAX WEEKLY
a closer look

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NEWS ROUND-UP

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Dutch Flow-Through Entities In The Netherlands: An Economic Impact Analysis

by Prof. Dr. Gerard T.K. Meussen, Professor of tax law at the Radboud University Nijmegen, the Netherlands and technical advisor to BDO Tax Consultants, Tilburg, the Netherlands

Commissioned by Holland Financial Center (HFC), the Amsterdam based SEO research group researching the economic value of tax structures of foreign companies in the Netherlands.[1] The Holland Financial Center foundation is a public-private initiative set up by organizations from throughout the financial sector, the government and regulators. They include banks, insurers, trading firms, pension funds, asset managers, audit firms, law firms and the government. **As a joint venture, the purpose of the Holland Financial Center is to strengthen the financial sector in the Netherlands.**

The study took place after questions from the House of Representatives to Secretary of Finance Frans Weekers and a series of articles called "Tax Route Netherlands" in *Het Financieele Dagblad* in the years 2011 and 2012. The study includes the special financial institutions (also referred to as letter box companies or SPVs[2]) and non-bank financing (known as shadow banking). The term letterbox is used in this research for companies that are, for tax reasons, without significant commercial or operational presence in the Netherlands.

The survey expresses that the Netherlands is a tax-wise attractive location for the establishment of flow-through entities. Not so much because of the applicable corporate income tax rate (which is reasonable in respect of global tax rates) but because of the absence of source taxation on interest and royalty payments and the vast (98) bilateral treaty network. It should be kept in mind that the absence of source taxation in the Netherlands is not something new, but that it already exists for many decades. Furthermore there is a genuine willingness of the Netherlands tax administration to issue tax rulings in order to give entities established in the Netherlands legal certainty about their present or future tax position.

According to the survey, in the year 2010 there were approximately 12,000 special financial institutions (entities) established in the Netherlands. The dividend, interest and royalty flows in 2010 amounted to a total of around EUR153bn (incoming) and EUR125bn (outgoing). Dividends are here the dominant power, with 70 percent and 60 percent of the total, respectively.

Of the 12,000 entities in the Netherlands there are more than 5,000 belonging to a cluster – companies that are part of the same group. Taking these clusters into consideration, according to the research about 8,500 multinationals have established their finances through the Netherlands by means of one or more SPVs. Special purpose entities contribute according to the survey an estimated amount of EUR3 to EUR3.4bn a year to the Netherlands economy in the form of taxes, labor and services purchased as business services. Of this amount, according to the researchers, EUR1.2bn relates to the payment of corporation tax. In addition, SPVs, as part of that EUR3 to EUR3.4 bn per year in 2011, according to the researchers paid EUR1bn dividend withholding tax. The latter, however is questioned by the tax world as SPVs are set to up to avoid dividend withholding tax.

Thus SPVs are providing (directly and indirectly) according to the researchers, employment of around 8,800 to 13,000 jobs (FTEs).

The researchers clearly state that they have solely engaged in publishing the mere facts concerning the economic impact of flow-through entities in the Netherlands. The analysis in the report is not of any juridical or moral nature. This should contribute to a more objective debate in Netherlands politics and society concerning the future of these international tax structures.

The above shows that there are huge financial flows going through the Netherlands for tax reasons, but on the other hand this also makes a substantial contribution to the Netherlands economy.

However, the study provides no evidence for the assertion of the Netherlands State Secretary of Finance Weekers, that financial SPVs of foreign corporations settled in the Netherlands eventually grow into a headquarters or distribution center.

Politically sensitive is the conclusion of the research group that developing countries, as a result of tax treaties with the Netherlands, based on a rough estimate in the year 2011, are forgoing approximately EUR145m in tax revenues every year. Here according to researchers various nuances have to be taken into consideration, such as the fact that developing countries can also benefit from tax treaties. It is fairly obvious that politicians will ask for more research on the topic of developing countries. A lot of politicians at least find it unethical to use bilateral tax treaties in a way that they deprive developing countries from tax revenues that they so urgently need.

After the summer break, the Netherlands State Secretary of Finance Weekers will come with a comment and reasoned opinion on the report and he will present it to the Netherlands parliament. A discussion will then take place on the future of these kind of entities. It is not difficult to imagine that more severe substance requirements will be proposed by left wing political parties. And the state secretary will tackle that by putting emphasis on the economic factor of these entities as well as the aspect of tax competition between countries. Why should the Netherlands voluntarily give up these structures if they will only be taken over by other countries?

Another aspect is the fact whether the Netherlands tax administration should cooperate in concluding a tax ruling with a Netherlands flow through entity whose only means and purpose is to save foreign corporate and withholding tax. Should this not be dealt with as abuse of tax law in which situation no legal certainty should be provided?[3] Abuse of tax law in that respect should be seen from an international perspective and not purely from a Netherlands perspective. Vleggeert argues that this matter should be evaluated only on the basis of substance requirements. If these requirements are met but the whole structure is only tax driven, should the Netherlands tax administration than deny the issuing of a tax ruling? With these tax structures, the Netherlands may gain tax revenues, but this is to the detriment of foreign tax jurisdictions.

In essence of course the real problem in my view are not the flow-through entities. The real problem is the mere fact that the "at-arms-length" principle in a digitalized global world is not a feasible concept any more. How are intellectual property rights to be valued as well is license fees of these rights between companies in various tax jurisdictions? Multinational companies in this respect will always have far more knowledge of these matters than any government in the world. The at-arms-length principle dates from an era based primarily on the transfer and transportation of physical goods and not on the rendering of digitalized services (digital economy). This also emerges from the recent OECD initiative "Action Plan on Base Erosion and Profit Shifting"[4] in which the OECD urges its members to address the tax challenges of the digital economy. One of the actions from the action plan, Action 8, involves intangibles. There it is said that members should ensure that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation. And furthermore that transfer pricing rules or special measures should be developed for transfer of hard-to-value intangibles. But we all know that any major changes in international tax policy may take many, many years while the OECD can only recommend but not enforce. This leads to the conclusion that in a world that is changing so rapidly, international tax policy cannot keep pace with the digital economy. The digital economy leads to a world without boundaries, but the tax jurisdiction of individual countries is still based on the territoriality principle which is in contradiction to that.

To be continued . . .

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Endnotes

1 SEO economic research, *Uit de schaduw van het bankwezen, Feiten en cijfers over bijzondere financiële instellingen en het schaduwbankwezen*, June 2013, SEO-report nr. 2013-31, ISBN 978-90-6733-702-1.

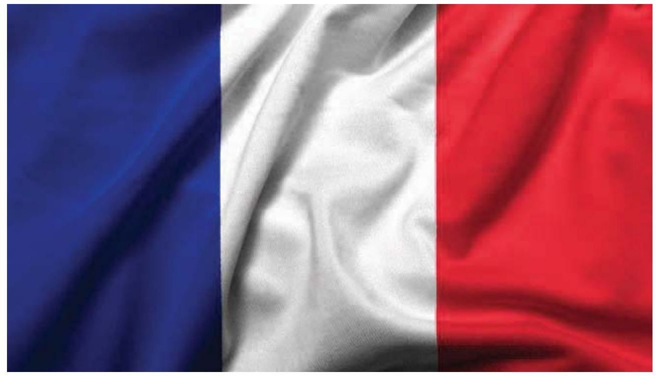
2 Special Purpose Vehicles or Entities.

3 Compare: J.Vleggeert, *Stop met afgeven tax rulings aan brievenbusmaatschappijen,* Weekblad fiscaal recht 2013/916.

4 OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing, *http://dx.doi.org/10.1787/978264202719-en*

The Rising Tide Of Tax In France

by Stuart Gray, Senior Editor, Global Tax Weekly



The International Monetary Fund (IMF) is routinely heard telling governments to wind down fiscal stimulus measures and accelerate the pace of fiscal retrenchment, usually through a mix of tax base broadening, higher taxes and spending cuts. However, it is rare to hear it admonish a government for taxing too much, which is why its latest Article IV consultation[1] with France stands out among its normal conveyor belt of economic releases. This article looks at revenue measures announced so far this year, potential new taxes in the pipeline for future years, efforts by the Government to improve the French business environment in addition to concerns raised by the IMF and others about the negative economic consequences of current tax policy.

Introduction

Like other eurozone governments, France has had to seriously tighten its belt since the crisis began in order to tackle a dangerously high budget deficit and rising public debt. Indeed, there was a point no so long ago when economists feared France would be dragged into the debt maelstrom that has engulfed Greece, Ireland, Italy and Spain. The country appears to have avoided the crises which have struck these other countries: financial stability risks appear to have abated, for now at least, and its budget deficit has fallen from 6.3 percent of gross domestic product (GDP) in 2010 to just under four percent last year, with the IMF predicting that it will drop to below 3 percent of GDP this year before falling to less than 1 percent in 2018.

However, if any credit should be given in the belt-tightening stakes, it should go to France's taxpayers, who have contributed by far the most to the austerity drive, rather than the Government, which, if headline figures are to be believed, has hardly tightened its belt at all. As was noted by the IMF, about 90 percent of the fiscal adjustment so far has been realized through revenue measures, and according to the French national statistics office Insee, compulsory levies in France reached a record level of 45 percent of GDP in 2012, compared to 43.7 percent in 2011, and this is a burden that is going to continue rising this year and next. Insee also revealed that in 2012, taxes on income and on wealth paid by households in France increased by 10.2 percent, notably due to the implementation of a raft of new tax measures, adopted both before and after the elections.

Whenever President Hollande is mentioned in the media, more often than not it seems in connection with new or higher taxes. However, we learn from the Insee report that the fiscal measures adopted at the back end of former French President Nicolas Sarkozy's administration, within the framework of the 2012 State and Social Security Budgets, amounted to around EUR15bn (USD19.3bn), accounting for two-thirds of the tax rises in 2012, while the tax initiatives waved through under Hollande totaled in the region of EUR7bn (summer 2012 Collective Budget).

The key tax rises adopted under Sarkozy included the creation of a seven percent intermediary rate of value-added tax (VAT), the non-indexation of the country's individual income tax scale, changes to the taxation of real estate capital gains, and the 1.2 percent rise in the rate of social levies imposed on income from capital.

Under Hollande, an exceptional wealth tax contribution was imposed, the tax exemption accorded for overtime hours was abolished, the prepayment of the exceptional corporation tax contribution was implemented, and a new increase in the social levies on capital was applied.

As the following section illustrates, however, there are plenty more revenue measures to come from the Hollande Government this year and in future years.

Tax Developments in 2013

It is President Hollande's determination to impose a 75 percent rate of income tax on the highest-paid, an ambition that was thwarted, if only temporarily, by the Constitutional Court last year, that has grabbed most of the headlines. But barely a week seems to go by without a report or announcement that existing taxes will be increased, or new taxes created, and here we summarize some of the key developments since the turn of the year.

Short-Term Contracts

January saw France's social partners finally unite on plans to reform the country's labor market, after a compromise was reached at the eleventh hour ensuring increased taxation of short-term contracts to steer employers towards more permanent agreements.

Providing greater security for employees, following lengthy and difficult negotiations, employer groups and unions overcame a key hurdle, consenting to plans to increase employers' unemployment insurance contributions for short-term contracts (CDDs). Consequently, contributions on short-term contracts of less than one month are to rise by 3 percent, contributions on CDDs of between one and three months are to increase by 1.5 percent, and on seasonal contracts used for example in the hotel industry by 0.5 percent.

Under the plans, to boost the recruitment of young people in France, employers taking on young staff on long-term contracts will be exempt from unemployment insurance contributions for a period of three months, rising to four months for small businesses with fewer than 50 employees.

Employer groups agreed to provide greater protection to employees by creating the conditions for broader access to complementary health care and by introducing new rights.

Dwelling Tax Reform

January also saw reports emerge of the Government's plans to include household income in the calculations of dwelling tax (*la taxe d'habitation*) from 2014.

Dwelling tax is currently calculated according to the cadastral rental value of a property and using a tax rate decided by individual local authorities in France. It is argued that introducing household income into the base of the tax would ensure that the tax is fairer; under the current system, two households living side by side and on very different incomes are subject to the same amount of tax.

The proposals would primarily target the middle class in France as well as the country's wealthiest. Individuals on low and modest incomes are already able to benefit from a tax exemption or from a tax reduction.

However, given the complexities of the task and in view of the fact that previous governments have tried and failed to reform the system, notably by attempting to overhaul and update the cadastral rental values dating from 1970 serving as the basis of the tax, the government does not seem in any rush to push through its plans. It is suggested that the government intends to consider the idea in full following the forthcoming municipal elections in March 2014.

National Tax Evasion Plan

In February, Prime Minister Jean-Marc Ayrault approved a national plan aimed at coordinating efforts to combat tax fraud and tax evasion in France in 2013.

The moves announced at a gathering of the national committee responsible for combating fraud in France (CNLF) include plans to monitor the efficiency of the implementation of signed bilateral tax agreements and to further limit cash payments for both residents and non-residents.

The French Government intends to ensure more effective implementation of bilateral tax agreements, namely by assessing the effectiveness of the exchange of fiscal information between the relevant foreign and domestic tax authorities. This is to constitute a key objective for France at EU, OECD and G20 level.

The existence of signed bilateral tax treaties together with the effectiveness of their implementation will be the two criteria taken into account when establishing the next so-called "black list" of states and territories deemed to be non-cooperative in tax matters (ETNC), as provided for in the country's general tax code (article 238-0 A).

The Government aims to ensure that a decree and legislative measures are adopted by the end of 2013 providing for a reduction in the threshold for cash payments from EUR3,000 (USD4,00) currently to EUR1,000 per purchase for residents and from

EUR15,000 to EUR10,000 per purchase for non-residents. The Government highlights the fact that similar measures have been successfully implemented in both Italy and in Spain in the last few years.

Finally, the Government plans to control transfer pricing better and to reflect on new methods of corporate reporting to reduce the cost of tax audits and to improve fiscal predictability.

Environmental Tax On Cigarette Stubs

In February, French senators submitted a legislative proposal advocating the introduction of an environmental tax imposed on cigarette butts, payable by tobacco manufacturers.

Justifying their proposal, the senators explained that 53 billion cigarettes are sold through official channels each year in France and a further 15 to 18 billion cigarettes sold abroad are subsequently consumed in France. Potentially, 70 billion cigarette butts are disposed of in the environment each year, the senators argued.

Alluding to the fact that environmental associations have for a long time been calling for the issue to be addressed, the senators insisted that pressure from local authorities in France is now also mounting, particularly as a result of the rising costs linked to the new source of pollution.

Given the principle of "polluter pays," it therefore seems appropriate that a tax is introduced to finance efforts to deal with the problem, in the form of a tax levied at source on tobacco manufacturers, the senators said.

The senators suggested that a tax of 0.05 cent per cigarette, or 1 cent per packet of 20 cigarettes, be imposed annually on manufacturers and importers on the basis of volumes sold. The tax would be levied until the problem is finally resolved, the senators stressed, underlining the fact that it would be the responsibility of tobacco manufacturers to propose alternative scientifically proven solutions.

Under the proposal, a third of the revenue from the tax would flow to local authorities to finance environmental operations.

Digital Tax

Also in February, French Digital Economy Minister Fleur Pellerin announced her intention to include plans for an Internet tax in the country's 2014 budget.

Although her plans are vague, it is Pellerin's intention to be able "to integrate something" into next year's finance law.

Last year, President of the French Senate finance committee Philippe Marini submitted a legislative proposal advocating the introduction of a tax on online advertising. Dismissing the idea at the time, Digital Economy Minister Pellerin maintained that the idea was simply not "ripe" at this stage.

However, on January 18, 2013, the French Finance Ministry unveiled details of a report on taxation of the digital economy, submitted by state councilor Pierre Collin and Government auditor Nicolas Colin.

Commissioned in July last year, the report "offers a detailed and striking vision" of the rise in the digital economy and the importance of "the exploitation of personal data" in this growing sector. The report exposes the problem of profit relocation or shifting by companies, warning that this phenomenon will only increase if nothing is done to tax their activity in France.

The report called for a new tax to be introduced as a matter of urgency, based on the amount of personal information collected by Internet companies such as Google, which is used to direct personalized advertising and other services to users.

At the time, the Government made clear that the idea of a national tax based on the use of personal data is to be explored in detail in parallel with other proposals that have already been put forward aimed at resolving the issue, including notably the idea of taxing electronic trade.

Family Allowance Tax

President of the French Court of Auditors Didier Migaud put forward the idea in February of taxing family allowances and retirement pensions as one means of increasing state revenues.

The idea of subjecting family benefits and family allowances to taxation is one that could be put on the table, Migaud said, pointing out that such benefits increase individual income and could therefore be taxed "in some way."

According to Migaud, subjecting pension increases accorded to families with three children could serve to yield around EUR800m (USD1bn) for the state.

The Government is reportedly considering the idea of either taxing family allowances or reducing the benefit by EUR1bn next year and by a further EUR1.5bn in 2015, namely by capping or by means testing.

Heavy Goods Vehicle Tax

Following a planned national trial period, it was announced in March that France's heavy goods vehicle (HGV) eco-tax is to enter into force across France on October 1, 2013, much later than initially intended.

The HGV eco-tax ensures that users pay for the use of the country's non-concessionary roads and motorways, generating revenues to finance vital transport infrastructure. The levy also aims to facilitate the required "ecological shift" in the long term, by encouraging a change in behavior and in the mode of transport used to carry goods, to favor more environmentally friendly forms of transport, notably rail and water.

Both foreign and French HGVs will be required to pay per kilometer to use the 15,000km road network which will be covered by the tax. Vehicles will be fitted with electronic devices operating a system of satellite location.

The Government anticipates annual revenues from the eco-tax of around EUR1bn (USD1.3bn).

Revamped Super Tax Unveiled

Determined to save face and to regain popularity, French President François Hollande announced in March that businesses in France and not individuals will be subject to the Government's planned 75 percent super tax levied on top income earners.

During an interview with France 2, Hollande insisted that the measure is not designed "to punish" companies, but merely to ensure that corporations assume responsibility. Companies will therefore be subject to the 75 percent tax for remuneration paid out to top executives in excess of EUR1m (USD1.28m). The charge is to include all taxes and to apply for a period of two years.

Although the French President's remarks might come as somewhat of a shock announcement, the idea that companies should shoulder the contribution is not new, and was first put forward by French National Assembly budget rapporteur Christian Eckert.

At the end of December 2012, France's Constitutional Court censured the Government's initial plans for a 75 percent tax on individual annual income from professional activity in excess of EUR1m. The Court ruled that the Government had not taken into consideration ability to pay, as the tax was due to be levied on individuals rather than to apply per household, thereby breaching the principle of equality before public charges.

The revised super tax is to be provided for within the framework of the 2014 budget.

Anti-Tax Evasion Bill

The French Government presented a bill to the country's Council of Ministers in April designed to strengthen the fight against tax evasion and financial crime. According to the French Finance Ministry, the text completes the set of anti-tax evasion measures provided for in the 2012 supplementary finance laws.

The bill establishes a "tax police" to combat tax evasion, and creates an "aggravating circumstance" for the most serious types of tax fraud, notably tax evasion committed by an organized group. To deal with such cases, investigators will have recourse to special investigative techniques, including surveillance and infiltration. Sanctions include a seven-year prison sentence and EUR2m (USD2.6m) fine.

Furthermore, the penalties applicable to legal persons in the case of tax fraud will be aligned with those applicable to individuals, the tax administration's control powers will be strengthened, and the regime for confiscating criminal assets will be reinforced to guarantee the efficient recovery of illegally held sums.

The legislative framework for the country's special national prosecutor, who will be responsible for pursuing complex cases of tax fraud and corruption, was presented to the Council of Ministers on May 7.

Smartphone Tax

In his report on how to adapt French cultural policy to the digital age, former head of Canal Plus Pierre Lescure advocated that a tax be imposed on smartphones and tablets "to finance the transition to digital by French cultural industries."

Lescure suggests in the report, published in May, that a tax of one percent could be imposed on the sale of all Internet connected devices, providing Internet access to cultural content. The measure is expected to yield in the region of EUR86m (USD111.6m) in revenue. The proceeds of the tax would benefit French art, music, and film productions, in line with the country's principle of "cultural exception."

The report rules out the idea of a so-called "Google tax," as sought by newspaper editors and the music industry in France. The legal feasibility of such a levy is "doubtful," it claims.

Promoted by France in the 1980s, the notion of the "exception culturelle" is to protect French culture and language from market forces and in particular from English language influences. State intervention is vital to assuring the sustainability of a cultural offer that is "rich, varied, and accessible to the greatest number" of individuals, the report argues.

Tax Regularization Unit

In May it emerged that the French Government was considering the idea of reactivating the special tax "regularization unit," to detect hitherto undeclared accounts held by French residents abroad, and to generate much-needed fiscal revenue for the state.

Defending the move, rapporteur of the Government's anti tax-fraud bill, Yann Galut, told L'Opinion that in view of plans to significantly harden existing legislation, by introducing tougher sanctions and by using new investigative techniques, including infiltration and tapping, the special tax unit should be reconstituted.

Underlining the need for absolute transparency, Galut stressed that sanctions must be determined according to a scale, with penalties varying between 30 percent and 50 percent of the sum of tax evaded.

France's first regularization unit was set up back in April 2009, under former French President Nicolas Sarkozy. Active from April to December 2009, the administrative unit enabled French residents with assets illegally held offshore to repatriate their assets, and at the same time, to settle their accounts. Under the terms of the conditions, individuals were required to regularize their accounts by paying any taxes due, while in return benefiting from favorable penalty rates.

The unit was heralded as a success at the time by the then Budget Minister Eric Woerth. It generated a total of almost EUR1bn (USD1.28bn) in additional revenue, of which EUR887m resulted from late tax payments, and EUR70m derived from penalty payments. Around EUR7bn was repatriated and approximately 4,000 files were presented.

Corporate Tax Transparency

In June, Finance Minister Pierre Moscovici announced his intention to submit an amendment to the Government's banking reform bill, aimed at increasing fiscal transparency within large businesses in France. Under the proposal, all big corporations will be required in future to make public their activities, and to reveal the level of tax due on a country-by-country basis.

The move is an extension of initial plans to compel banks in France to publish details each year of their subsidiaries, their activities, and their income in each country, particularly in so-called "tax havens," or jurisdictions deemed uncooperative in tax matters.

Moscovici also confirmed plans to transpose into national law, via the banking bill, a European limit on bankers' bonus payments, and to include provisions allowing an automatic exchange of information with other countries, in line with the latest developments at international level, to combat tax fraud and tax evasion.

The measures are to apply once similar European initiatives enter into force.

Carbon Tax

Presided over by economist Christian de Perthuis, the French committee on ecological taxation (CFE) put forward ambitious proposals in June aimed at ensuring that the taxation of fuel is more environmentally friendly in France in future.

The committee advocated that the taxation of diesel be progressively aligned with that of petrol from 2015. By gradually reducing the differential between the taxation of diesel and the taxation of petrol by EUR1 a year, the gap would narrow from 18 cents a liter currently to 10.6 cents a liter by 2020.

Back in April, the committee underlined the importance of removing the tax break accorded to diesel. At the time, the CFE insisted that the tax advantage is no longer justified given the impact of diesel both on health and on air quality.

In parallel, the CFE suggested that a carbon tax be introduced, within the framework of the domestic tax on consumption (TIC). France's TIC tax includes, for example, the domestic tax on the consumption of energy products (TICPE), the domestic tax imposed on natural gas (TICGN), and the domestic tax levied on the consumption of combustibles, including coal, lignite, and coke (TICC).

Despite plans to apply the carbon tax from 2014, the measure is to be tax neutral for the first year, offset by a corresponding reduction in the TIC. However, the tax is to increase progressively from EUR7 per tonne of carbon dioxide in 2014 to EUR20 per tonne in 2020.

It is not expected that the CFE's carbon tax proposal will meet with opposition from the country's Constitutional Court. Perthuis insisted that the provisions merely modify the base of an existing energy duty, rather than create a new tax. Furthermore, Perthuis made clear that the plans are in accordance with European law.

Established by the French Economy and Ecology Ministries, the committee on ecological taxation was tasked with drafting proposals to reform ecological taxation in France, to save the Government in the region of EUR3bn by 2016.

Culling Corporate Tax Breaks

In June, the Government-commissioned Queyranne report proposed that the amount of financial aid and tax breaks currently benefiting businesses in France be reduced by around EUR3bn.

Led by the French Socialist Jean-Jack Queyranne, this report recommended that two thirds of the proposed budget cuts is realized by reducing the number of corporate tax breaks available to businesses, while the remaining third is achieved by lowering public expenditure.

The report underlines the importance of maintaining certain vital tax shelters, however, including the reduced rate of VAT accorded to the construction industry, and the newly created competitiveness and employment tax credit (CICE – see below).

Furthermore, the report suggests cutting the amount of taxes allocated to the national cinema center to the tune of around EUR150m and reducing levies flowing to the chamber of commerce and industry by approximately EUR400m.

The report also proposes that the tax regime applicable for listed real estate investment companies be revised.

Finally, the report underlines the importance of revising existing tax advantages given to French overseas departments and reviewing fuel tax breaks. These include the reduced rate of the TICPE currently benefiting taxis, farmers, and road hauliers in France. A revision of the *Livret de Développement Durable* (LDD), the tax-free sustainable development savings account, is also recommended.

VAT On Yacht Services

Pleasure yachting charter arrangements are newly subject to value-added tax from July 15, 2013, following the European Commission's decision to send a formal request to French authorities in November 2012 requiring that the VAT exemption offered on the charter of yachts used for pleasure boating purposes be revoked.

In its reasoned opinion, the Commission explained that Article 148 of the VAT Directive allows member states to offer a VAT exemption for certain transactions concerning vessels. However, this exemption does not apply to luxury boats used by individuals for recreational purposes.

This was confirmed by the European Court of Justice in a case in December 2010, involving Bacino Charter Company SA. The court determined that a VAT exemption may only be granted in circumstances where a vessel is chartered for use on the high seas, for the purposes of commercial, industrial or fishing activities, but not recreational purposes.

France intends to offer a 50 percent VAT reduction to chartering arrangements impacted by the ruling, bringing them within the French VAT net but subjecting them to VAT at a rate of 9.8 percent, rather than the headline rate of 19.6 percent. Further guidance on this matter is expected from French tax authorities in due course.

Luxury Hotel Tax

In July, a new report proposed the idea of introducing a tax on luxury hotels, to finance holiday camps and trips away for young people.

A task force attached to the National Assembly Cultural Affairs and Education Committee has suggested that a levy of between 2 percent and 6 percent could be imposed on luxury hotels in France. Proceeds of the tax, estimated at between EUR100m (USD130m) and EUR200m, would go to a national fund to support the plans.

The proposal provoked a predictably frosty response from the hotel industry. The hospitality sector is already facing a further rise in VAT. From January 1, 2014, VAT is to rise from 7 percent currently to 10 percent. It was last increased from 5.5 percent to 7 percent on January 1, 2012.

Led by French Socialist Deputy Michel Ménard, the parliamentary group was tasked with examining accessibility for the young to camps and other such organized trips. In its report, the task force noted that such schemes have become less popular for middle-class families due to rising costs.

Tax Breaks Purge

On July 17, the Government unveiled a raft of measures aimed at simplifying administrative procedures for both companies and individuals in France, and at reducing state spending on tax breaks. The proposals are designed to reduce the public deficit by around EUR3bn next year.

Intending to cut spending on tax shelters (*les niches fiscales*), the Government plans to reduce the income tax shelter benefiting families, the "family quotient," to progressively reduce subsidies for the use of first generation biofuels derived from plant products, and to reform tax breaks currently benefiting listed real estate investment companies in France. Furthermore, the Government intends to lower tax rebates granted to farmers for using off-road diesel, and to cut tax breaks available to French overseas departments and territories, including value-added tax exemptions.

The Government aims to dramatically cut red tape, thereby reducing administrative costs for businesses, notably by simplifying the research tax credit (CIR), and by ensuring that more companies subject to corporation tax (IS) in France are required to declare and pay their tax bills electronically.

In addition, the Government plans to establish a relationship of trust between the Tax Administration and businesses in France. Consequently, rather than tax audits being carried out post-declaration, the Tax Administration will carry out annual reviews, considering tax options and obligations with businesses prior to the submission of a corporate tax declaration. This will result in a binding opinion, enhancing legal certainty for firms.

A bill providing for some of the measures is due to be presented in September. Further cost cutting initiatives are currently being considered.

Capital Gains Tax Reform

On July 18, Budget Minister Bernard Cazeneuve unveiled details of Government plans to reform the taxation of real estate capital gains in France, to give a much-needed boost to the country's stagnant housing market.

The main aim of the reform is to put an end to the current tax system, initiated under the previous Government in 2011. This regime encourages property owners to delay putting their properties on to the market, for fiscal reasons, which has had "very negative" repercussions for the French housing market. As a result, the volume of property transactions has plummeted, and there has also been a corresponding reduction in home improvements undertaken following a change of ownership.

Due to apply from September 1, 2013, the Government's proposed reform will affect capital gains realized from the sale of real estate, other than a taxpayer's main residence and rental property.

Under the plans, the tax reductions accorded depending on the holding period will be more progressive in future. Furthermore, vendors will be granted total exemption from income tax on real estate capital gains after a 22-year holding period, instead of 30 years as is currently the case. In addition, a progressive reduction in social levies (the CSG general social contribution and CRDS contribution for the repayment of social debt) will apply, and a total exemption from social contributions will be granted after a 30-year holding period.

To amplify the effect of this structural reform, and to provide an immediate supply surge to the property market, an exceptional additional tax reduction of 25 percent will apply to sales realized between September 1, 2013, and August 31, 2014. Finally, the Government intends to abolish existing fiscal incentives encouraging constructible land retention, to boost the housing development market.

The Government aims to publish a fiscal instruction shortly, setting out the precise modalities of the planned tax reform. The proposals are to be integrated into the country's 2014 finance bill.

Partial Income Tax Scale Freeze

On July 30, it came to light that the Budget Ministry is examining the idea of extending the freeze on the country's income tax scale in 2014, albeit just for the country's top earners, as part of efforts to redress the public finances.

Used as a basis for calculating individual income tax (IR), France's six income tax brackets are traditionally reviewed and aligned every year with inflation, to ensure that taxpayers do not pay more in tax merely due to an inflationary wage rise or pension increase.

In 2011, former French Prime Minister François Fillon decided to freeze the IR tax scale for a period of two years. Applied to both 2011 and 2012 income, taxed in 2012 and 2013 respectively, the freeze not only affected the country's wealthiest households but also impacted on France's middle class and modest earners. The measure generated EUR1.7bn (USD2.25bn) in supplementary tax revenues for the state in 2013.

According to Le Parisien, the Government is currently considering plans to index the first two tax brackets with inflation and to freeze the four remaining upper tax tranches, within the framework of its upcoming 2014 Budget due to be presented in September. Although the initiative would amount to a tax rise of just a few euros for some, for others the measure would raise tax bills by several thousand euros.

In June, President François Hollande conceded that further tax rises will be necessary next year. The Government has identified that an additional fiscal effort of EUR20bn will be needed in 2014 to reduce the public deficit, of which EUR6bn will flow from tax rises.

The Gallois Report And The CICE Tax Credit

Juxtaposed to this tidal wave of proposed and potential new revenue measures are efforts by the Hollande's Government to encourage businesses to invest for growth and generate new employment.

The IMF had already identified the emergence of a competitiveness gap between France and its peer nations as "the main challenge for macroeconomic stability, growth, and job creation," warning that France must act without delay or risk falling further behind its European competitors.

Last year therefore, the Government commissioned investment commissioner Louis Gallois to study ways in which a business-led economic revival could be brought about. In his 74-page report, submitted in November 2012 to Prime Minister Jean-Marc Ayrault, the former head of European aerospace group EADS recommended that a dramatic reduction in labor costs take place preferably over a period of one year, or over a maximum period of two years, to provide sufficient breathing space for companies in France.

To halt the decline of French industry and to support investment by means of a competitiveness or confidence "shock," Gallois put forward the idea of transferring EUR20bn in employer contributions and EUR10bn in employee wage contributions onto taxation.

Under the plans, two-thirds of this effort would come from a 2 percent rise in the country's general social contribution (CSG), yielding between EUR20bn and EUR22bn. Other proposed measures included plans to increase certain "intermediary" rates of

VAT (excluding basic products), and to initiate a review of environmental taxation (carbon tax), the financial transactions tax, property tax, as well as existing tax breaks.

The country's employment laws would be softened and other measures include the preservation of budgets for research and innovation, the strengthening of training schemes, and the maintenance of fiscal incentives designed to support small- and medium-sized companies.

Shortly after the publication of the Gallois report, Ayrault unveiled details of the government's plans to boost growth, competitiveness and employment in France, by reducing the cost of labor. Underlining the need for "ambitious and courageous decisions" to be taken Ayrault said that the government had decided to implement almost all of the recommendations proposed by French investment commissioner Louis Gallois in his report.

To give companies room to maneuver, the government has decided to retain the first, "massive" and "unprecedented" measure proposed in the report, namely the EUR20bn cut in the cost of labor. This reduction is being implemented over a period of three years, with a cut of EUR10bn planned for 2013, and an additional EUR5bn cut in both 2014 and 2015.

The cuts apply to wages of between 1 and 2.5 times the minimum wage, corresponding to a 6 percent cut in labor costs, and take the form of a tax credit for competitiveness and employment (CICE) rather than employer payroll contribution cuts as Gallois advocated.

The CICE is to have an impact on all the production chain in France, not only on French industry, but also on the country's agricultural and service sectors, and is intended to encourage large groups to create and to maintain jobs in France.

The EUR20bn cut in labor costs is to be financed by EUR10bn in additional cuts in public spending, and by EUR10bn from restructuring VAT rates and from a new environmental tax. The new ecological tax, to be examined within the framework of discussions on a shift in energy policy, is to take effect in 2016.

Changes to VAT will enter into force in France on January 1, 2014. The intermediate VAT rate, currently benefiting the catering and property renovation sectors, will be increased from 7 percent to 10 percent. The standard VAT rate is to rise from 19.6 percent currently to 20 percent.

In contrast, the reduced VAT rate benefiting basic products, in particular food, is to be reduced from 5.5 percent currently to 5 percent, a measure targeting modest households in France, namely those households who spend a significant part of their budget on food and energy.

The CICE is the Hollande administration's flagship measure to boost business investment and employment generation in France. The CICE pre-finance mechanism aims to give immediate cash flow support to companies, by allowing banks to finance up to 85 percent of the CICE tax credit in advance. The scheme was made available to all companies in France, irrespective of their size, on April 5 and in June the Finance Ministry announced plans to waive the EUR150 pre-finance fee for the CICE.

Nevertheless, the IMF said that the Government's response to the Gallois report was a missed opportunity to simplify and re-engineer the tax regime to address its deteriorating competitiveness in Europe.

In its 2012 report, the IMF suggested that with European nations targeting substantial reductions in public expenditure and more attractive tax regimes, France's long-standing policy of a large government funded by high taxes no longer squares up in a post-crisis setting.

"The loss of competitiveness predates the crisis," the IMF report stated. However, it warned that this competitiveness gap could become "even more severe if the French economy does not adapt along with its major trading partners in Europe, notably Italy and Spain which, following Germany, are now engaged in deep reforms of their labor markets and services sectors".

With economic growth sluggish and unemployment expected to rise next year, the report warns that France faces being left behind unless rapid fiscal reform is undertaken to establish a streamlined government and a tax regime bearing a lower tax-to-gross domestic product ratio.

The IMF argues that the new measures, while addressing the competitiveness concerns, fall some way short of the recommendations in both its report and the Gallois report. Gallois had originally called for measures worth up to EUR50bn, but not less than EUR30bn, implemented within two years, but ideally within one, to have "maximum effect".

While France is to make some cuts to the size of government in response to the Gallois report, the IMF warned that the temporary tax breaks announced provide new investors with no certainty that the tax system will be attractive in the medium-term, and merely add an extra layer of complexity to a national tax regime described as prohibitively onerous in both reports.

The Mandon Report

On July 2, 2013, the French Finance Ministry published Thierry Mandon's report on plans to simplify the regulatory and tax environment for businesses in France.

The Mandon report advocates that objectives should be fixed over a period of three years, aimed at abolishing 80 percent of business costs that result from procedural complexities and delays. Proposals to remove unnecessary bureaucracy in the tax and regulatory system should be drawn up collaboratively between taxpayers and the Government says the report, with additional input from Parliament and the Court of Auditors in the drafting and evaluation of the tri-annual action plan.

As a matter of priority, Mandon highlights the urgent need to reform and to streamline the research tax credit (CIR) provisions. To ensure that the CIR tax break is more in line with economic realities in future, certain expenditure that is currently excluded from the CIR calculation, without any economic reason or legal basis, must be included in the scope of the mechanism, Mandon says. Furthermore, the depreciation of all assets allocated to research and development should be taken into account. Mandon also recommends that the financial year and not the calendar year is used for the CIR calculation and that all patent accounting expenses and all social contributions are taken into consideration.

Other tax measures advocated in the report include plans to reduce administrative procedures for tax audits, by imposing a deadline on the Tax Administration for issuing a response to small- and medium-sized companies in France. Tax instructions are to be published by specific dates to ensure visibility, and a clear point of contact is to be established within the Tax Administration, to liaise with businesses and to keep detailed and accurate records during corporate tax audits.

Finally, Mandon suggests that corporate tax return forms are simplified, that reporting procedures for the levy on the value added by a company (CVAE) are simplified and included in the tax return, that the tax on company cars (TVS) is included on the tax return, and that a single form is created to enable taxpayers to file a return online for the local tax on external advertising (TLPE).

It will certainly be another step in the right direction as far as France's beleaguered businesses are concerned if the French Government decides to act on Mandon's recommendations. However, it is not a foregone conclusion that it will do so. While the Government claims to have taken up the majority of Gallois's recommendations, the CICE was not proposed in his report, and the Government stopped short of delivering the "competitiveness shock" that the investment commissioner had called for, preferring instead to follow what it termed a "competitive trajectory." Indeed, before the Gallois report was even published, Finance Minister Pierre Moscovici went on the record to express his opposition to the scale of the report's recommendations. It remains to be seen therefore if words are put into action as a result of the Mandon study. And in the meantime, the general tax burden looks set to continue rising, as illustrated in the following section.

France's Rising Tax Burden and Falling Competitiveness

Recent figures suggest that the barrage of taxation shows few signs of slowing down, with much needed spending cuts still expected to play a minor role in budgetary consolidation efforts. Within the 2013 Budget, tax measures were expected to contribute 1.4 percent out of a 1.8 percent fiscal deficit reduction, with spending cuts supplying the remainder.

In all, the rapid fiscal consolidation of 2011-13 has relied heavily on revenue measures, with a projected increase in the tax-to-GDP ratio of 3.7 percent over the three years. Over the same period, expenditure growth was also reduced considerably, but the ratio of structural spending to GDP has declined by only 0.3 percent.

The French Government feels that its tax measures are justified because they are mainly targeted at the wealthy and large companies. Indeed, in May, French Budget Minister Bernard Cazeneuve defended the fact that around 8,000 households in France paid over 100 percent of their income in tax last year, arguing that these "privileged" taxpayers are among the country's wealthiest individuals and have been able to benefit from tax optimization techniques in the past.

However, the IMF warns that a perceived risk that taxation will increase further appears to be one of the factors holding back spending and investment by households and business, without which the economy stands little chance of fully recovering. What's more, France's reputation as an investment destination among foreign investors must surely be taking a hammering. For example, it is shocking, but perhaps not that surprising given the above, to discover that France is no longer considered a "free" economy by the Index of Economic Freedom, published annually by the Heritage Foundation and the Wall Street Journal. The Index measures 10 freedoms – from property rights to entrepreneurship – in 185 countries, and France is placed 62nd in the league table, just behind Albania, Romania and Bulgaria.[2]

"Institutional strengths related to the protection of private property rights and an efficient regulatory framework are beginning to be eroded by populist policy choices that favor income redistribution and maintenance of costly welfare programs," says the 2013 report. "Undermining productivity and efficiency, the state continues to dominate major sectors of the economy and remains a large shareholder in many semi-public enterprises."

France has also slipped to 53rd place (out of 185 countries) in PwC's latest ease of paying taxes rankings. According to PwC, it now takes businesses on average 132 hours per year to comply with their tax obligations in France, while they can expect to see 65.7 percent of their profits taken by the Government in the form of taxation.[3]

The problem for Hollande's Government now, however, as it attempts to renew economic growth, is that the message being sent with its efforts to improve the business and corporate investment environment in France is being drowned out by the rising tide of taxation generally, and the increasingly negative perception in the mind of foreign investors that France is a high-tax and not-especially-welcoming place to do business. These perceptions are only likely to persist with the President determined to introduce a 75 percent top rate of income tax, even though experience in other countries, like the UK with its 50 percent top rate, shows that it will lead to little or no new revenues, and perhaps even a fall in tax receipts. Indeed, in response to Budget Minister Cazeneuve's comments earlier this year, the President of the National Assembly's Finance Committee Gilles Carrez warned that there is a danger the French tax system is becoming "confiscatory." When such strong words are used within the upper echelons of French political life, investors, especially those located abroad, are going to be very nervous about starting or expanding a business. Still, France's loss could very well be its competitors' gain.

Endnotes

1 http://www.imf.org/external/pubs/cat/longres.aspx?sk=40854.0

2 http://www.heritage.org/index/ranking

3 http://www.pwc.com/gx/en/paying-taxes/data-tables.jhtml

Tax And The Treasury Center: Cash Management And Cash Pooling

by Mark Minihane, Associate Partner, International Tax Services, Ernst & Young LLP, Birmingham, UK

Speed Read:

This article explores the key tax issues involved in a typical group cash management structure. Consideration is given to the primary methods of cash pooling, the potential benefits of cash pooling structures and the key tax issues to should be considered.

What Is Cash Pooling?

Cash pooling can be used to manage cash within an organization. One simple approach is known as "notional cash pooling," which involves interest payments and bank charges being made based on the net position of the group as a whole, rather than based on each entity's individual account balance. Another approach is the physical concentration or sweeping of cash into one central account, which is known as "zero balancing."

In this article we will explore the two different types of cash pooling and discuss some of the reasons why organizations might implement a cash pooling structure. We will also discuss some of the key tax issues that should be considered before implementing a cash pool.

What Are The Different Cash Pooling Models?

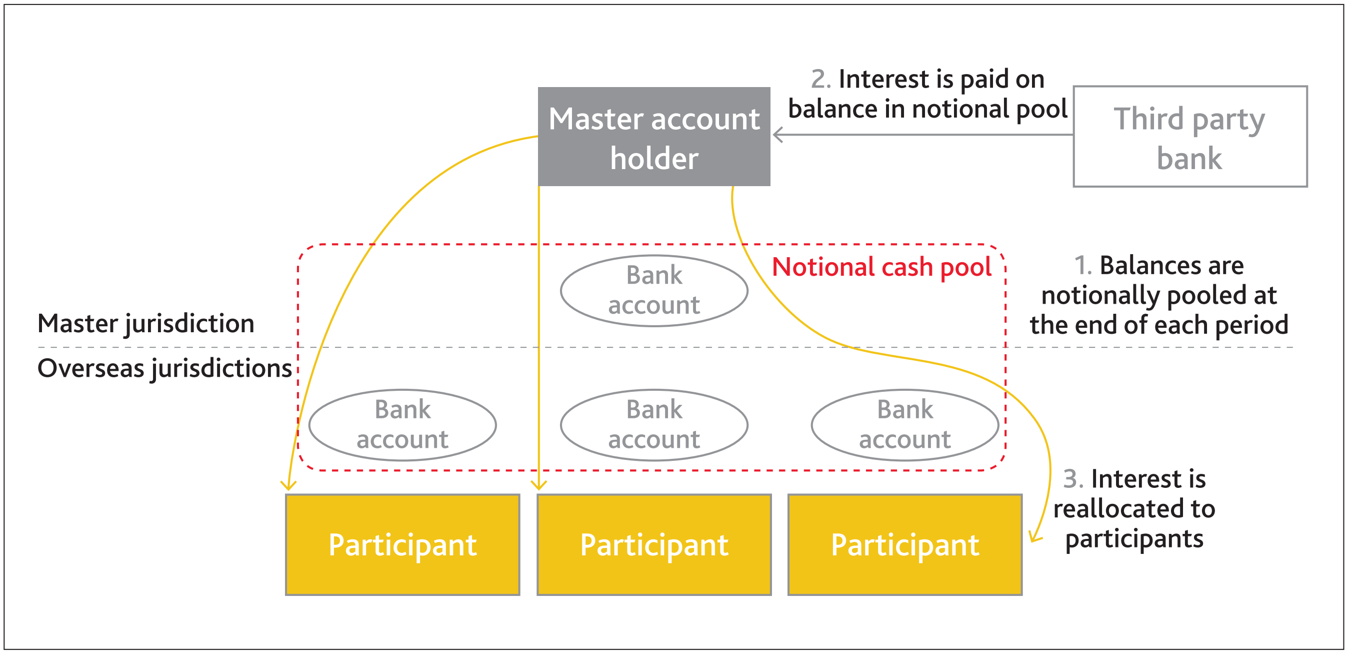
Notional cash pooling is based on the notional consolidation of account balances held by an organization; there are no actual movements of funds between the accounts. Credit and debit balances on the accounts included within the notional pool are brought together and offset to establish a net position for the calculation of interest due and payable.

The overdraft facility attaching to the arrangement is connected to each account covered and the balances remain in the accounts of the respective participants, with no cash actually being transferred.

The key point here is that the cash remains legally owned by the local jurisdiction, although it is notionally reflected in the master account in the lead company's jurisdiction. Interest payments are made by the bank into the master account, based on the combined balance, and this can then be re-allocated to each participant based on their account balance.

This method therefore does not result in any inter-company balances between the master account holder and each participant; a key difference between zero balancing, which is described below.

Figure 1. Notional Cash Pooling



Zero balancing works by each company in the cash pool maintaining an account with a specific bank, the balance in which is automatically set back to zero (or a targeted amount) at the end of each period.

The principal company, which will manage the cash pool, sets up a master account with the provider of the cash pooling facility. The master account is debited to settle all the debit balances on participating accounts, or credited with the surplus if there is a net credit on these accounts.

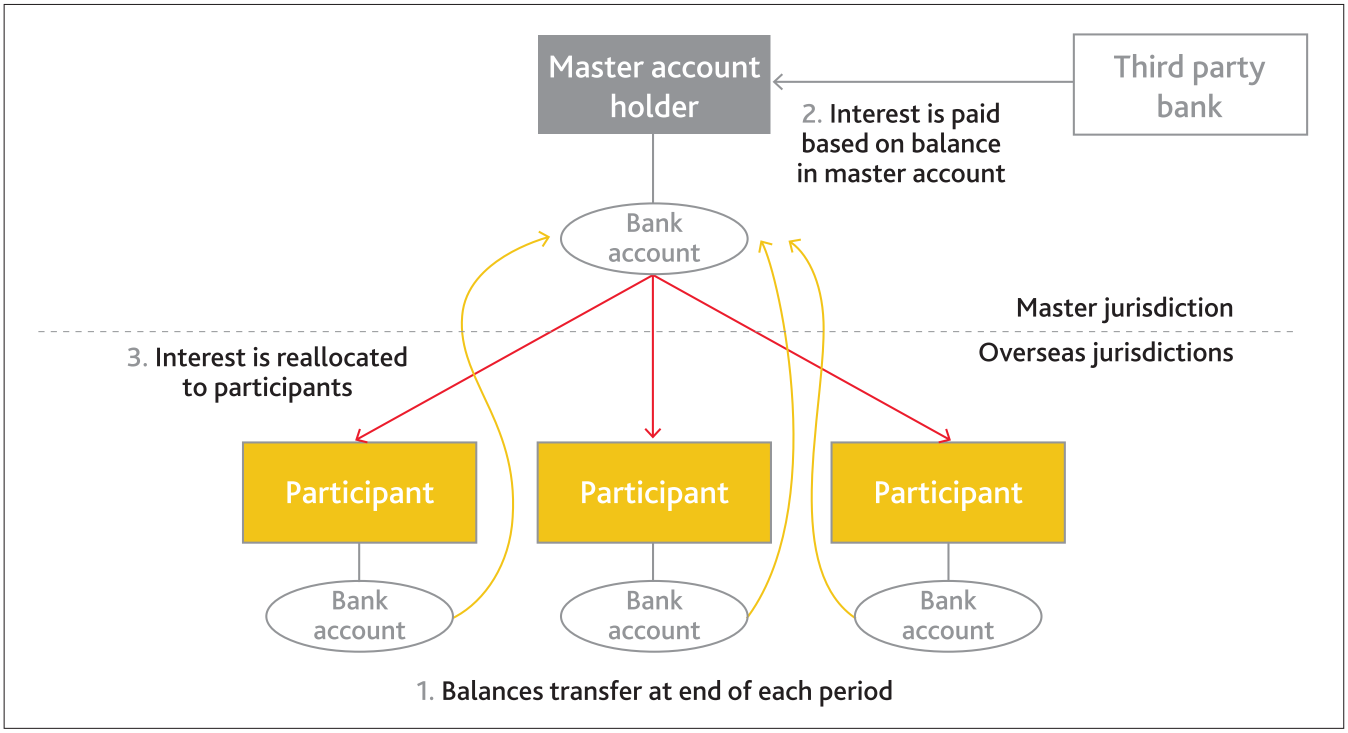
In other words, each company physically transfers their account balance at the end of each period into a master account, effectively combining various accounts into one single account.

A variant on this is target-balancing where each account is automatically brought back to a target balance at the end of each period. The target is usually positive and is set by the group.

The key distinction between zero balancing and notional cash pooling is that under zero balancing, cash is actually transferred from each sub-account to the master account (or *vice versa*) at the end of each period to effectively bring each account balance to zero.

Interest payments are made by the bank into the master account based on the combined balance. This can then be re-allocated to each participant based on their sub-account balance transferred. This method therefore creates, or increases, an inter-company balance between the master account holder and each participant. Interest is also paid between the master account holder and each participant based on these inter-company balances.

Figure 2. Zero Balancing Cash Pooling



Why Do Organizations Use Cash Pooling?

The typical benefits that an organization would look to achieve through a cash pooling arrangement include:

- Increased visibility of cash flows and how cash is generated and used in the organization;
- Access to cash previously trapped in various parts of the business;
- Reduction in working capital tied up in different jurisdictions;
- Improved management of foreign exchange risk arising as a result of having balances in different currencies;
- Centralization of management and control of short-term cash;
- Access to preferential rates of interest on surplus cash and borrowings;
- Concentration of funds from multiple bank accounts in different jurisdictions into a central location, *e.g.*, to repay external debt, fund acquisitions or achieve better investment returns;
- Consolidation of payment activity on intra-group and external payments through a single payment center

The above is by no means an exhaustive list and organizations will need to assess their required objectives for managing cash before they decide to proceed with a cash pooling structure.

What Issues Need To Be Considered Before Implementing A Cash Pool?

A number of issues will need to be determined before an organization is able to proceed with a cash pooling structure, including bank capital adequacy rules, exchange controls and legal requirements in each of the local jurisdictions.

Tax issues in each of the jurisdictions seeking to sign up to the structure could have a significant effect on the viability of the arrangement. The table below summarises the key tax issues that are likely to arise and compares the two main types of cash pooling:

Issue	Notional pooling	Zero balancing
Withholding tax	Interest payable or receivable is bank interest but, in most cases, interest will arise on non-resident accounts. thus any withholding tax on cross-border bank interest should be considered, as well as the impact of relevant tax treaties.	Participating companies now pay or receive intercompany interest. Some jurisdictions have exemption from withholding tax on bank interest but not on intercompany interest. Additionally, interest is now overseas interest rather than interest paid or received locally, therefore there may be different rates of withholding tax.
Stamp / capital duties	Stamp duty may be chargeable on the cash pooling documentation signed by the participating companies.	As for notional pooling, stamp duty may be chargeable on the cash pooling documentation signed by the participating companies in certain jurisdictions.
Transfer pricing	The interest is paid to, or received from, a third party. Any transfer pricing legislation should not, in most cases, apply. However, any allocation of benefits of the cost pooling, guarantees, or recharge of administrative costs/bank fees would have to be in accordance with relevant transfer pricing legislation.	Since the interest is now being received from, or paid to, connected parties, the rate of interest charged should be determined in accordance with any domestic transfer pricing legislation (normally this is an arm's length rate). Similarly, any allocation of benefits of the cost pooling, guarantees, recharge of administrative costs or compensation for increased risk undertaken by master account holder, would have to be in accordance with relevant transfer pricing legislation.
Thin capitalisation	Although any debt will be third party debt, thin capitalisation should still be considered since, for example, the existence of cross guarantees or the "group" nature of the cash pooling arrangement may invoke domestic thin capitalisation legislation to restrict deduction for interest payments.	Since participants are moving from third party debt to connected party debt, any domestic thin capitalisation rules may affect the participating companies. This may result in interest payments not being available for deduction.
Foreign exchange	The cash pool header account may take on additional foreign exchange risk if it manages foreign exchange on behalf of the participating companies, and any gains or losses could be taxable.	As for notional pooling, the cash pool header account may take on additional foreign exchange risk if it manages foreign exchange on behalf of the participating companies, and any gains or losses could be taxable.
Permanent establishment	This issue could arise if, for example, the master account holder and bank are resident in different tax jurisdictions or the cash pool is managed by personnel in another jurisdiction, on behalf of master account holder.	As for notional pooling, this issue could arise if, for example, the master account holder and bank are resident in different tax jurisdictions or the cash pool is managed by personnel in another jurisdiction, on behalf of master account holder.

Conclusion

There is no one right way to structure a cash pooling arrangement, but whichever approach an organization adopts, there are likely to be a number of tax issues which need to be considered for each of the jurisdictions considering signing up to the structure. Transfer pricing would need to be considered, particularly in respect of the allocation of the "pool benefit" across all of the participant territories. The importance of documentation and support for the applicable interest rates that will apply in the structure cannot therefore be underestimated.

Topical News Briefing: Bolting The Door To A Carbon Tax

by the Global Tax Weekly Editorial Team

Just in case there was the remotest chance that President Obama could sneak through a US carbon tax while nobody was looking, the Republican-led House of Representatives has just approved legislation to prevent that from happening.

A carbon tax, or more accurately, a cap-and-trade carbon emissions trading system, appeared on the President's environmental agenda very early in his presidency, but it was always going to be a hard sell while businesses were closing their doors and unemployment lines were growing. So it was quietly shelved. Although the US economy is currently in a slightly healthier position, it could be argued that the odds against a carbon tax being approved by Congress now are even longer, given the preponderance of right-wingers in the House. So the amendment to the so-called REINS bill added by Steve Scalise (R – Louisiana) requiring Congressional authority for any sort of tax or fee on carbon emissions would seem to be overkill on the part of the GOP.

Although not a single Democrat voted in favor of the Scalise amendment (and not a single Republican voted against it), if viewed objectively outside of the highly polarized world of The Hill, there is probably going to be little enthusiasm among Democrats for a carbon tax, or some form of emissions trading scheme, right now anyway. If there is, it is certainly not currently evident. Furthermore, a carbon tax does not appear to be on the list of items that the President wants included in a tax reform Grand Bargain with the Republicans. Instead, tax policy in this area is currently focused on providing tax credits for clean energy generation, and is likely to remain so for the foreseeable future at least.

Carbon taxes, pricing mechanisms and trading schemes are being tried out in various countries around the world, but they are unpopular with both businesses and individuals because they tend to add another layer of cost into the supply chain, while there is little evidence yet that they actually work. So a carbon tax is unlikely to catch on in America.

One benefit for governments is that these schemes raise additional revenue, and the International Monetary Fund recently suggested that a US carbon tax could help reduce the federal deficit. However, a carbon tax that is not much more than a revenue-raiser is only going to raise Republican hackles further, and perhaps even a few Democrat ones too, especially among those who represent constituencies where heavy industry is a major employer.

At least one thing that this exercise has achieved is to emphasize the partisan divide in Congress, for anyone who might have been swayed into believing otherwise by the recent touring double act of Messrs Camp and Baucus, which has been playing to packed houses across the nation. Did they go to Peoria, though? That's the acid test.

Finance Act 2013 Introduces The UK's New Statutory Residence Test

by David Klass and Janice Houghton,
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Implications For Termination Payments And Other Considerations

The Finance Bill 2013 received Royal Assent on July 17, bringing into law the new Statutory Residence Test and abolishing the concept of "ordinary residence" for income and capital gains tax purposes (and also where relevant for inheritance tax and corporation tax purposes) with effect from April 6, as summarized in the June 13 issue of Global Tax Weekly.

This article outlines some of the later stage changes made to how the new rules will work, along with raising some practical pointers to be aware of in applying them.

Amendments To The Statutory Residence Test

The Government introduced changes in the final version of the legislation which, the most minor amendments aside:

- altered the way the third "automatic residence" test (working full-time in the UK over a period of a year) works so that a person does not automatically become UK resident simply because he works one full day in the relevant tax year which is outside the 365 day period;
- amended the "split year" rules, which operate when an individual becomes or ceases to be UK resident part way through a tax year to split the year into two separate UK-resident and non-UK resident portions depending on whether certain factual scenarios ("Cases") apply; and
- limit the "foreign service" exemption for employment service from Tax Year 2013-14 onwards only to duties performed outside the United Kingdom.

Foreign Service Exemption (Termination Payments)

The most significant of these changes is the amendment to the definition of "foreign service" for Tax Years from 2013-14 onwards.

The foreign service exemption applies to exempt termination payments falling within s.401 ITEPA 2003 (broadly speaking, non-contractual "ex gratia" payments) from tax either in full where any of the three threshold-based tests are met:

- at least 75 percent of the employment being foreign service;
- the last ten years being foreign service where service is longer than ten years; or
- at least half of service including the last ten years being foreign service where service is longer than twenty years,

- or to exempt any proportion of the termination payment relating to "foreign service" if none of the threshold-based tests are met.

Whereas previously UK duties during periods when an employee was not ordinarily UK resident would also have counted as foreign service as well as non-UK duties, now only duties actually performed outside the UK will count as foreign service when assessing whether any of the foreign service threshold tests are met for full exemption of a termination payment from tax.

Likewise, where the threshold tests are not met, only non-UK duties count for assessing what element of an employee's termination payment relates to foreign service and is exempt from tax in that proportion.

Split Year Rules

As a reminder, where certain criteria are met, the new statutory split year rules apply split year treatment for Tax Year 2013-14 onwards in a series of scenarios (eight "Cases"), which are, broadly:

"leaver cases"

1. leaving to work full-time overseas;
2. going abroad to live with a partner starting work full-time overseas;
3. leaving to work full-time overseas;

"arriver cases"

4. beginning to have one's only home in the UK;
5. starting to work full-time in the UK;
6. ceasing to work full-time overseas;
7. coming to live in the UK with a partner ceasing to work full-time overseas; and
8. beginning to have one's only home in the UK.

The final changes limit the application of "Case 6," and amend the order of priority in which the various Cases apply where more than one Case is relevant.

Case 6 applies split year treatment for an individual on ceasing full-time work abroad, having been non-UK resident in the previous tax year because of full-time working overseas under the third automatic overseas test and meeting the overseas work criteria; the UK part of the relevant year begins from the point at which the "sufficient hours" test (which involves applying a prescribed calculation to establish whether on average more than 35 hours a week are worked overseas during the "relevant period") ceases to be met.

Case 6 will now not apply if the individual was not UK resident in any of the previous five years, on the basis that the application of split year treatment under Case 6 would be inappropriate for someone with no previous UK connections, who under Case 6 as previously drafted could have split year treatment applied from a date well before they even came to the UK.

The amendments to the order of priority in which Cases apply are intended to more closely replicate the split year treatment previously given under the Extra Statutory Concessions that the new legislation replaces (in the legislation as previously drafted, if several Cases applied, the Case giving the shortest overseas part took priority).

The legislation now applies two separate orders of priority:

Where any of Cases 1, 2 and 3 apply (the "leaver" Cases listed above), Case 1 will take priority over Case 2 and Case 3, and Case 2 will take priority over Case 3.

Where more than one of cases 4, 5, 6, 7 and 8 apply (the "arriver" cases listed above):

- If both Cases 5 and 6 apply, whichever of those Cases produces the earliest split year date will take priority.
- If both Cases 5 and 7 apply but Case 6 does not, again whichever of Case 5 and Case 7 produces theearliest split year date will take priority.
- If, in circumstances where neither Case 6 nor Case 7 apply, but more than one of Case 4, 5 and 8 apply, whichever Case produces the earliest split year date (or Cases if they produce the same date) will apply in priority.

Practical Pointers And Wider Consequences

It should be noted that where an individual is seeking to apply the "full-time work overseas" automatic overseas limb of the Statutory Residence Test, there must be no "significant break" in employment (over 30 days passing without either working more than three hours on at least one day or being on annual leave, sick leave or parenting leave); particular caution is therefore needed when there are changes in overseas employment.

In addition, for split year purposes, the various thresholds based on numbers of days and the reference periods under the applicable Statutory Residence Test limbs are in general proportionately reduced.

Where, in applying the Statutory Residence Test, it is necessary to take into account an individual's residence position in any previous years where the old rules applied, it is possible to elect to use the new rules to determine that position instead. Making this election will not, however, change what the individual's actual residence position was in those years.

It is worth reiterating that now, due to the abolition of the concept of ordinary residence for income and capital gains tax purposes, (but subject to transitional provisions applying the old "ordinary residence"-based relief rules for persons resident but not ordinarily resident in Tax Year 2012-13 for a time limited period) the remittance basis will in future no longer be available for those who are UK domiciled and resident but who previously would have been not ordinarily resident.

However, as explained in the June 13 article, one consequence of the abolition of the concept of ordinary residence is that Overseas Workday Relief will now apply for up to three years on a simpler, statutory basis for all non-UK domiciles who have been non-UK resident for three continuous tax years (again subject to similar transitional provisions) allowing the remittance basis to apply to remuneration paid to them outside the UK for duties performed outside the UK on an apportionment basis according to UK and non-UK duties.

From a practical perspective both for Overseas Workday Relief and for the purposes of evidencing an individual's position under the Statutory Residence Test, it is important to keep adequate records such as a business diary of days worked and relevant evidence such as travel documents.

Depending on where else an individual is living and working, his tax position may also be affected by any double taxation agreements in place with the other country; his residence position under the Statutory Residence Test may be overridden by double taxation agreement residence provisions such as "tiebreaker" clauses. In secondment scenarios, depending on the employment arrangements in place relief may be available under a double taxation agreement and a UK employer may also be able to make an application to HMRC to operate PAYE only on an appropriate percentage of salary.

In addition, anti-avoidance provisions which have effect in relation to periods of temporary non-residence will continue to apply, but in modified form where an individual's year of departure is 2013-14 or later.

It should also be noted that the Statutory Residence Test will not apply for National Insurance Contributions purposes; the existing rules for NICs regarding residence and the concept of ordinary residence continue to apply.

OECD Project On Intangibles: Revised Discussion Draft Released

by PricewaterhouseCoopers

July 31, 2013

In Brief

Approximately one year after publication of the first Discussion Draft on the Revision of Chapter VI of the OECD Guidelines on Intangibles (Intangibles), the OECD released on 30 July 2013 its Revised Discussion Draft on the Transfer Pricing Aspects of Intangibles. This comes shortly after the release of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS) on July 19 where work on intangibles is listed as one of the actions (Action 8). Interested parties are invited to comment on the Revised Discussion Draft by October 1, 2013.

The Revised Discussion Draft has been prepared on the basis of the numerous comments the OECD received on the prior Discussion Draft and contains several important changes. The overarching part of the documents provides additional guidance on the question of how to correctly allocate what may be described as the "return related to an intangible" (or intangible related return). The Revised Discussion Draft states that although contractual relationships between related parties will continue to serve as a starting point for any transfer pricing analysis, the location where material functions related to intangible assets are performed is considered to be key. This focus on functional value creation is being formalised by the OECD through the concept of "important functions," which in content consist of the crucial activities and decisions identified under the prior Discussion Draft.

In Detail

In essence, the legal owner of an intangible will be entitled to all returns attributable to the intangible only if, in substance, it performs and controls the important functions related to the development, enhancement, maintenance and protection of the intangible; provides all assets necessary for the development, enhancement, maintenance and protection of the intangible; bears and controls all of the risks and costs related to the development, enhancement, maintenance and protection of the intangible. The Revised Discussion Draft clarifies that legal ownership by itself does not confer any right to ultimately retain any return from exploiting the intangible.

The OECD takes the view that the legal owner is free to outsource certain intangible asset-related functions. In those cases, however, the legal owner will need to control the functions outsourced and compensate those on an arm's length basis. However, to the extent that all or part of the important functions are being outsourced to or are being performed by one or more members of the MNE group other than the legal owner, all or a substantial part of the return attributable to the intangible would need to be allocated to the parties actually performing the important functions. The revised guidance leaves no doubt that the mere funding of intangible-related costs (and the funding risk related thereto) without the assumption of any further risks, any control over the use of the funds provided or the actual performance of funded activities will only entitle the funder to a risk-adjusted rate of anticipated return on the capital invested. No entitlement to the premium profit generated through the intangible should be granted in such case.

The Revised Discussion Draft confirms a major takeaway of the prior Discussion Draft namely that in matters involving the transfer of intangibles or rights in intangibles, it is important not to simply assume that all residual profit after routine returns should necessarily be allocated to the owner of the intangibles. Instead, the Revised Discussion Draft calls for a functional analysis that provides a clear understanding of the MNE's global business processes and how the intangibles interact with other functions, assets and risks that comprise the global business.

This implies that a one-sided comparability analysis may not provide a sufficient basis for evaluating a transaction involving intangibles and that the reliability of a one-sided transfer pricing method will be substantially reduced if the tested party performs "important functions." Under such circumstances, the comparable uncontrolled price method and the profit split method are clearly appreciated. Moreover, it may be helpful to revert to other (*i.e.* non-OECD recognized methods), which should however not be used to substitute OECD-recognised methods and an in-depth functional analysis.

Additional guidance has furthermore been included with regard to the utilization of valuation techniques. In this respect, the Revised Discussion Draft clearly states that it might be appropriate to determine and use a range of present values evaluated from the perspective of the transferor and the transferee. The indicative use of values determined for accounting purposes (*e.g.* as part of a purchase price allocation) is recognised but it is stated that such valuations are not determinative for transfer pricing purposes and should therefore be utilised with caution within the framework of a transfer pricing analysis.

The most notable other changes are the addition of a new section addressing features of the local market, locations savings, assembled workforce and corporate synergies; explanatory changes to the definition of intangibles; the inclusion of a section on transfer pricing aspects of the use of corporate names and the addition of several new examples and the revision of some of the examples of the prior Discussion Draft providing practical guidance on how to apply the considerations for intangible property. Those changes are further summarised and analysed below.

Changes To Definitional Aspects On Intangibles

The Revised Discussion Draft includes expanded guidance on the categories of intangibles, which continue to be broadly split into marketing ("customer-facing") and trade intangibles (intangibles not being marketing intangibles). Furthermore, a short definition on "unique and valuable intangibles" has been added, although the Discussion Draft makes it clear that the classification of an intangible will not impact the level of transfer pricing analysis to be performed or the transfer pricing methodology to be used. It views that intangibles intend to address "*something which is not a physical asset or a financial asset, which is capable of being owned or controlled for use in commercial activities, and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances."* The Discussion Draft confirms that it remains important to distinguish intangibles from market conditions or circumstances that are incapable of being owned or controlled by a single enterprise.

Amendments To Chapters I And II: Introduction Of New Comparability Features And The Use Of "Other Methods"

In relation to the above, the Revised Discussion Draft provides additional guidance on the application of the arm's length principle in the context of location savings and other local market features, assembled workforce, as well as MNE group synergies. The Discussion Draft recognizes that these elements can have a material impact on the arm's length pricing of related party transactions and that it should be further considered how independent parties would *e.g.* share advantages or disadvantages related thereto.

Location Savings And Other Local Market Features

The OECD had addressed the potential impact of location savings such as lower labor or real estate costs within the context of Chapter IX on business restructurings, but now states that the principles related thereto would as such apply to all situations where such location savings are present. If location savings exist and are not passed on to third party customers, then the question as to how these advantages would be shared among related parties is seen to be best addressed by the use of comparable entities and transactions in the *local* market. If it is not possible to identify reliable local market comparables, comparability adjustments may be required in order to account for the existence of location savings.

Furthermore, other local market features not resulting in location savings (such as the size of the market or the purchasing powers of local households) may affect arm's length pricing and require comparability adjustments. The OECD furthermore emphasizes that it will be important to distinguish between features of the local market and contractual rights or government licenses which may be necessary to exploit a *local* market (*e.g.* regulatory licenses for investment management business). Such valuable contractual rights and government licenses may constitute intangibles, and the contributions of both the local group member and other group members in supplying capabilities necessary to obtain such rights or licenses should be assessed.

Assembled Workforce

The Revised Discussion Draft states that a "uniquely qualified or experience cadre of employees" may affect the arm's length price of services provided between related parties. To the extent possible, the benefits or detriments of such employee group should be determined in comparison with the workforce of companies engaged in comparable transactions (which in practice might be difficult to achieve). The wording suggests that the mere transfer of workforce, if not "along with other assets" would not give rise to a separate compensation by default. Rather, the existence of assembled workforce may result in time and expense savings for the service recipient and should then be reflected in the arm's length price. There is also a recognition of the fact that workforce transferred may create potential liabilities and limit the transferee's ability to structure its business going forward.

MNE Group Synergies

Member of a multinational enterprise (MNE) may benefit from group synergies which would not be available to independent companies in similar circumstances. Examples thereof are combined purchasing power, economies of scale and increased borrowing capacity. The wording on such group synergies clarifies that under the arm's length principle, remunerations are only considered to be appropriate if there has been a "deliberate concerted group action" which provides MNE members with "material" advantages, *e.g.* under the example of a centralized purchasing organisation. Benefits of group synergies should then generally be shared by MNE members in proportion to their contribution to the creation of the synergy.

The Use Of "Other Methods"

In addition, the Revised Discussion Draft foresees that Chapter II of the OECD Transfer Pricing Guidelines (Transfer Pricing Methods) would be amended in a way to provide tax administrations with the possibility to use methods other than the five recognised OECD-methods (this option was under the initial version limited to MNE groups). However, such "other methods" should not substitute the five recognised OECD methods, and the Revised Discussion Draft also takes a critical stand on the use of rules of thumb which are not considered to provide an adequate substitute for a complete functional and comparability analysis.

Ownership Of Intangibles And Intangible-Related Returns

There have been material changes to Section B of the Discussion Draft dealing with the ownership of intangibles, the functions, assets and risks related to intangibles, as well as the entitlement to intangible-related returns.

Recharacterization Of Transactions

The Revised Discussion Draft now explicitly includes the notion that in "exceptional circumstances" as described in Chapter I of the OECD Transfer

Pricing Guidelines, it may be necessary to recharacterise transactions related to intangible assets in order to reflect arm's length conditions. Chapter I foresees recharacterization of transactions if the economic substance of the transaction differs from its form or in case the arrangements impede the determination of an arm's length transfer price.

Specific Fact Patterns

The Revised Discussion Draft furthermore includes more in-depth consideration of specific fact patterns related to intangible assets which are often observed in practice. This includes considerations of distributorship and R&D arrangements, but also the appropriateness of intra-group charges for the mere use of the company name.

- Distribution arrangements: Careful consideration is required of the compensation of a related-party marketer/distributors for possibly enhancing the value of a trademark, including the review of which party bears the cost of the marketing activities and the substance of the (future) rights of the distributor.
- R&D arrangements: In case of the deployment of unique skills or if the contract R&D entity bears risks related to blue sky research, then a cost plus modest mark up will not always correspond to the value of the service rendered.
- Use of company name: In general, no payment should be recognised from a transfer pricing perspective for "simple" recognition group membership or the use of group names. However, such payments may be appropriate if there is a clear "financial benefit" to the group entity.

Examples

The Revised Discussion Draft continues to include a large number of examples destined to illustrate the application of the principles outlined. The majority of examples have been retained, whereas some have been updated in order to align them to the adjusted guidance. Further examples have been added on comparability considerations and the utilisation of valuation techniques.

Further Work

Further work of the OECD is expected on the issue of hard-to-value intangibles; and the ongoing work on Transfer Pricing Documentation is expected to facilitate the value chain analysis required under the lines of the Revised Discussion Draft.

The Takeaway

PwC Observations

The functional value creation is at the forefront of the Revised Discussion Draft. Where transfer pricing may traditionally have been seen as the mere grappling of pricing on a transactional basis, it is undoubtedly clear that a thorough analysis of the corporate value chain will form the starting point of a transfer pricing exercise. Where the proceedings on Article 7 (Permanent Establishment) put forward the notion of "Significant People Functions" it appears as if the term "important people functions" lies at the heart of the Article 9 (arm's length principle) proceedings. A strong emphasis is put on a thorough comparability analysis which comprises a functional analysis. In the absence of a CUP, it appears as if a rather mechanical application of one-sided methods, leaving the residual profit to the non-tested party, will become under pressure provided the tested party engages in more than mere executing functions. In those circumstances the Revised Discussion Draft empathizes more with the use of valuation techniques and Profit Splits.

The discussion related to § 40 of the June 2012 Discussion Draft has provoked changes as crystallized in the new § 80. An MNE is free to outsource functions to its affiliates though if there is no performing of important functions and controlling of corresponding risk, financial capacity will not suffice to be entitled to a more than risk adjusted return on capital. This is where the messages contained in the BEPS Comprehensive Action Plan released on July 19, 2013 glimmer through in a most visible way, and could very well converge through proposed changes to the Transfer Pricing Guidelines envisaged under the BEPS Action Plan. It is probably also in this context that cases where the OECD will support the disregarding (or requalification) will be found. Even though the limitation to "exceptional cases" will stand, there is more pressure put on the taxpayer to substantiate that the transaction(s) would also be plausible to independent parties. Finally, although the OECD issued its White Paper on Documentation as a separate Report, the two probably come together when the two-tiered approach in the Documentation Report is looked at in more depth. Indeed, the expectation is the Masterfile to serve to explain the global corporate value chain (particularly from a functional perspective), whereas the local files will merely cover pricing matters on a transactional basis.

Let's Talk

For a deeper discussion of how this issue might affect your business, please contact:

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Topical News Briefing: The Double-Edged Sword Of Park's Tax Policy

by the Global Tax Weekly Editorial Team

Governments have a habit of springing surprises on taxpayers in the aftermath of election victories, and the administration of South Korean President Park Guen-hye, who emerged victorious from last December's elections, looks to have done just that.

The new Government's proposed tax policies can be split into two halves. On the one hand, there is plenty to cheer the business community, with new tax incentives being lined up to benefit small businesses and early stage investors in particular. There is also an emphasis on encouraging more spending on research and development, and an array of tax breaks are proposed for those who invest in and sell small, hi-tech companies, while tax payment schedules will be relaxed for venture or start-up employees. There are other tax schemes available mainly for small business – too many to list in this short briefing – which shows that the Government is prepared to back its plans to encourage innovation-led growth (a policy Park has dubbed "the Creative Economy") and maintain South Korea as one of the world's largest manufacturers of high-tech goods.

On the other hand though, these tax breaks will have to be paid for. Added to that are the Government's plans to expand the welfare system and reduce taxation for those on the lowest incomes. All of which are laudable aims, but they will require other taxes to go up. And this has led the political opposition to accuse the Government of not being entirely straight with the electorate about its plans for individual taxation.

The amount that South Korea raises through taxing personal income is actually very low compared with its OECD counterparts, so it appears that there is scope to raise the required revenue without causing too much pain. However, unsurprisingly, President Park promised not to raise taxes while on the campaign trail last year, so the proposals to create a more "equitable" tax system by changing the way deductions are calculated have been seized upon by the opposition because they will effectively raise taxation for between one-quarter and one-third of salaried workers.

Park of course isn't the first politician to break a tax promise, nor will she be the last. However, on a more fundamental level, while there is much to be praised in her tax plans, the country's overall tax burden is due to creep up as a result of them, along with the size of government. This is a familiar pattern for emerging economies as they transition to "high income" countries and governments seek to spread the wealth around. But, as has been demonstrated so visibly in Europe, the high-tax, big-Government economic model hasn't always been the most successful one recently. We are not suggesting that it is Park's intention to create a high-taxing, high-spending Government. But the warning signs are clearly evident!

Tax News From The Middle East

by KPMG Partners In The Region

Sri Lanka – Round-Up Of Income And Indirect Tax Reforms

Sri Lanka is known for its intricate web of taxes. In the past 3 years, many of these taxes have been subject to changes that aim to attract more foreign investment.

Sri Lanka's taxes include both income tax and indirect taxes, such as the Nation Building Tax, Economic Service Charge, Ports and Airports Development Levy and Value Added Tax (VAT). Sri Lanka also levies six different taxes at the point of import. Some important changes to these taxes are discussed below.

2011 Budget Changes Simplification Measures

The 2011 budget strived to rationalize and simplify the tax system. Resident individuals are taxed on worldwide income. Resident employees earning remuneration from employment exceeding LKR600,000 (Sri Lankan rupees) are subject to income tax. Non-residents are taxed on income derived from Sri Lanka only.

Also in 2011, the maximum corporate tax rate was reduced to 28 percent (from 35 percent). Several acts were amended to simplify and rationalize taxation, including the VAT Act, Excise (Special Provisions) Act, and the Nation Building Tax Act.

The Debit Tax Act was repealed and the Debit Tax abolished.

2012 Budget Tax Holidays

In 2012, tax concessions were introduced for companies, depending on whether they qualify as small-, medium- or large-scale enterprises based on the quantum of investment. Under these concessions, companies in the agriculture, tourism, construction and other industries are eligible for tax holidays of:

- up to 4 years for small-scale enterprises;
- up to 6 years for medium-scale enterprises; and
- up to 12 years for large-scale industries.

Customs Duties Simplified

In 2010, the government took major steps towards simplifying and broadening the trade tax structure with effect from June 1, 2010. The complexity of custom duty structure was simplified with a four-band duty structure of 0 percent, 5 percent, 15 percent and 30 percent, while the 15 percent import surcharge was eliminated. Various taxes that applied to imports of most essential commodities have been unified under Special Commodity Levy, to make the tax administration more efficient and taxation simpler.

2013 Budget Foreign Exchange Controls Eased & Other Concessions

The 2013 budget proposals were instrumental in relaxing Sri Lanka's exchange control regulations. Over the next three years, corporate entities are allowed to borrow up to USD10m per annum and licensed commercial banks are allowed to borrow up to USD50m without prior permission from the Exchange Control Department. Previously, foreign currency borrowings were restricted to specified industries.

Another proposal would permit resident Sri Lankans and expatriates to transfer their foreign savings into investments in foreign instruments up to USD5m without prior approval. Currently, such investments require special approval from the Exchange Control Department.

Recent tax amendments exempt interest accruing to any person outside Sri Lanka from investing in a security or bond issued by any person in Sri Lanka. These amendments also provide for half-tax holiday for three years to a new company listed in the Colombo Stock Exchange (CSE), provided 20 percent of its shares are publicly listed.

Any supply of services by a Unit Trust management company to a Unit Trust is deemed an exempt supply for VAT purposes. Additionally, the 10 percent concessionary income tax rate available to Unit Trusts has been extended to Unit Trust Management companies.

Tax Exemptions For Strategic Development Projects

To attract large-scale foreign investment, the 2008 Strategic Development Project Act offers incentives to projects that are in the national interest, are likely to bring economic and social benefits to the country, and are likely to change the country's landscape.

To qualify as a Strategic Development Project (SDP), you must show that the goods and services provided are strategically important in providing public benefits, attracting foreign investment, generating employment, or transforming technology.

Upon receiving Cabinet approval, SDPs enjoy full or partial exemptions for up to 25 years from a wide range of taxes, including income tax, VAT, Nation Building Tax, Economic Service Charge, and Customs Duty.

A recent amendment added the Betting and Gaming to the schedule of taxes covered by the SDP Act. As a result, any casino that is determined to be an SDP also may be exempt from the country's Betting and Gaming Levy.

United Arab Emirates – New Treaties, New Free Zone & Other Updates

Recent tax developments in the United Arab Emirates (UAE) of note to foreign investors include newly signed tax treaties, emerging difficulties in obtaining tax residence certificates, changes in review procedures for banks in Abu Dhabi, and the introduction of a new financial free zone.

Five Tax Treaties Signed

The UAE has been busy forging economic ties, negotiating and signing tax treaties with a number of territories. In the first quarter of 2013, the UAE signed tax treaties with Hungary, Benin, Libya, Japan and Serbia, and an air transport agreement with Senegal. The UAE continued its treaty negotiations with Peru, Kyrgyzstan and Malawi.

UAE-Japan's "Liable To Tax" Criterion

Unlike other recent UAE treaties, the newly signed UAE-Japan tax treaty takes a different approach to the test of residence. Under article 4(1), the term "resident of a contracting state" includes a "liable to tax" criterion for the treaty's application, rather than other criterion (such as "place of effective management" or "incorporation"). This "liable to tax" condition could create potential issues for UAE mainland companies and companies registered in the Free Trade Zones (FTZ), since they arguably could be considered not to be "liable to tax" due to lack of enforcement of corporate tax decree or the tax holiday/exemption applied in the FTZ.

Tax Residency Certificate – Access To Tax Treaty Benefits

Recent experience suggests that it is getting harder to access benefits under UAE tax treaties, both locally and overseas. Increasingly, foreign tax authorities are requiring Tax Residency Certificates (TRC) in order to confirm the tax residency status of a UAE entity.

Previously, obtaining a TRC was relatively straightforward and routine. Now, however, businesses face issues over whether a UAE resident entity can obtain a TRC and whether the UAE resident entity or the counterparty are entitled to the relevant treaty benefits.

Mainland entities generally can obtain a TRC from the UAE Ministry of Finance (MOF). However, the MOF currently is not issuing TRCs to foreign companies that invest into other jurisdictions through entities based in UAE free trade zones (FTZ) that are of a pure "holding" or "investment" nature on the basis they lack substance.

It is understood that the MOF has signed a Memorandum of Understanding with three FTZs – Dubai International Financial Centre (DIFC), Jebel Ali Free Zone (Jafza) and Fujairah. The agreement will require entities established in these locations to provide assurance that they are not "paper" companies and actually have substance. Thus, to obtain a TRC, FTZ entities will need to provide annual audited financial statements or, for newly set up companies, the half-year accounts or an office lease of six months or more.

Even though new companies must satisfy these requirements to obtain a TRC, overseas tax authorities could still challenge their tax residency status if the relevant treaty contains the "liable to tax" criterion for qualifying for treaty benefits.

Foreign Banks – Tax Inspection And Assessments In Abu Dhabi

The MOF has notified branches of foreign banks that it intends to audit their tax affairs to ensure compliance with the Abu Dhabi Bank Tax Decree (2007) and Central Bank Regulations. Although this procedure is routine for (foreign) banks in Dubai, the Ruler's office in Abu Dhabi has implemented the initiative and sub-contracted the inspection and assessment process to an accounting firm.

New Abu Dhabi Financial Free Zone – Enhancing FDI

The UAE Federal Government has announced it will establish a new financial free zone in Al Maryha Island – called the Abu Dhabi World Financial Market (ADWFM). The aim is to promote Abu Dhabi as a leading global market, develop the economic environment, attract financial investment and, like DIFC, contribute to international financial services.

In a bid to attract FDI into the Emirate and the UAE in general, the financial free zone will provide foreign investors with 100 percent ownership – with no requirement for a local sponsor or agent, a guaranteed tax holiday/exemption (for 50 years), and ease of capital repatriation. The ADWFM's licensing categories and permissible operations are expected to have restrictions similar to those of other UAE FTZs.

The ADWFM is scheduled to be open by 2015. In the meantime, there is work to be done on the legal and regulatory framework and how it will be governed. As the initiative is still in its early development stages, the relationship between ADWFM and DIFC – and whether they would co-exist or compete – is unclear. However, given the importance of developing the capital and financial markets, the ADWFM's establishment is expected to ultimately benefit the UAE.

Australian Elections: Assessing The Parties' Tax Plans

by Stuart Gray, Senior Editor, Global Tax Weekly

The Australian Government entered a so-called "caretaker period" last week, as the country gears up for the September 7 election. However, with the opposition Liberal/National coalition promising to roll back the Government's flagship tax measures and reduce business taxation, many changes lay in store for taxpayers in Australia should there be a changing of the guard in Canberra next month – fiscal conditions permitting.

Corporate Tax

On August 7, the Opposition Coalition unveiled its headline business tax pledge as it sets its eyes on victory in next month's election.

Liberal leader Tony Abbot has said that he will cut the company tax rate by 1.5 percent from July 1, 2015, should the Coalition be successful. Abbot claims that a 28.5 percent rate would "encourage investment in Australian businesses and jobs during a time of economic uncertainty."

He also accuses his Labor rivals of breaking promises and failing to deliver on company tax reform after years of discussion. The Government had intended to lower the company tax rate as a trade-off for the higher taxation of certain mining companies under the controversial Mineral Resources Rent Tax (MRRT – see below). Under its proposals, the

rate would have fallen from 30 to 29 percent for 2013-14, and to 28 percent for 2014-15. However, when unveiling his 2013 Budget last May, the then Treasurer Wayne Swan announced that the idea had been dropped.

The Organization for Economic Development and Cooperation (OECD) has since warned that the rate remains "too high."[1]

"Lowering the company tax rate is part of our Plan to build a strong, prosperous economy with more investment and more jobs," said Abbott and Shadow Treasurer Joe Hockey in a joint statement. "This is a tax cut that will boost jobs and strengthen the economy."

"Our company tax cut is part of our Real Solutions Plan to create one million new jobs within five years," they added. "While the Henry Review into Tax noted that a company tax cut 'will not only result in higher growth but is also likely to result in higher wages,' Labor broke its promise to cut the company tax rate."

"For six years [Prime Minister Kevin] Rudd and Labor have talked about a company tax cut but have not delivered. The Coalition understands the clear connection between taxation policy and investment, jobs and increasing wages."

The cost of Abbot's initiative is put at AUD5bn (USD4.5bn) over the forward estimates period.

Carbon Tax

However, the centerpiece of the Coalition's tax plans is arguably its pledge to rescind the unpopular carbon tax, otherwise known as the carbon pricing mechanism (CPM). Indeed, the opposition has said that this will be their first legislative priority.

Just last month, Rudd announced that Australia would move away from the pricing mechanism implemented in July, 2012, and employ an emissions trading system (ETS) from next year.

The CPM requires large carbon emitters to purchase a AUD24.15 (USD24.49) permit for each tonne of pollution they release into the atmosphere. Rudd claims that the switch to an ETS will result in a drop in the carbon price to around AUD6. Treasury estimates put the cost at AUD3.8bn over the forward estimates period.

Opposition leader Tony Abbot has now written to the Secretary of the Department of Prime Minister and Cabinet to alert him of the "Coalition's priority legislative drafting requirements," should it form a government. The Coalition's pledge to scrap the Clean Energy Legislative Package would result in the repeal not only of the carbon tax, but of the ETS also. As the Coalition intends to press forward with this initiative at the earliest opportunity, Abbot has requested that "arrangements are put in place to identify drafters who are expert in the legislative detail of this package." Drafting would begin immediately following the election, and a Coalition cabinet would aim to have the legislation ready within one month.

Abbot says that if the Coalition is successful, it will introduce this legislation on the first day of the new parliament.

The Mineral Resource Rent Tax (MRRT)

The Coalition has also proposed to scrap the mineral resource rent tax, introduced last year, within its first term, although its policy document does not provide details on the potential costs to the Government of doing so, or how it intends to offset any revenue loss. Nevertheless, the Coalition has said that the MRRT "discourages investment by imposing very high effective tax rates on risky projects, while collecting little revenue – particularly after reimbursing States for their mining royalties."

The MRRT was the Labor Government's main response to the Henry Tax Review,[2] but it has been fought by the mining industry ever since it was first proposed (originally as the resource super profits tax, with its replacement, the MRRT, being a watered down version of this tax).

With perfect timing for the Government, the High Court last week unanimously dismissed proceedings brought by the Fortescue Metals Group against the legailty of the MRRT. Australia's third-largest iron ore miner launched its challenge last year, claiming that the MRRT is unconstitutional because only State governments are permitted to impose royalties, and that it discriminated between States. The so-called Melbourne Corporation doctrine was also invoked by Fortescue, on the basis that the federal government's legislative powers do not authorize legislation that can control or hinder the execution by any State of its governmental functions.

The MRRT legislation[3] entered into force on July 1, 2012. This 30 percent tax applies on annual profits from mining activity of AUD75m or more, once certain deductions for expenditure and allowances are taken into account. As the High Court has explained, once MRRT is deemed payable, "it is calculated so that a reduction in the mining royalty payable to a State government would, all other things being equal, result in an equivalent increase in a taxpayer's liability and vice versa."

The Court held that "the treatment of State mining royalties by the MRRT Act and the Imposition Acts did not discriminate between States and that the Acts did not give preference to one State over another." It also rejected the argument that MRRT legislation contravened the Constitution and breached the Melbourne Corporation doctrine.[4]

Reacting to the judgment, the Government said that the MRRT "ensures Australians will receive a fair return from the nation's iron ore and coal resources into the future. The MRRT is an important long-term reform for securing Australia's future. As a profits-based tax, it responds to changing industry conditions, automatically collecting less revenue when profits are low and more revenue when profits are high."

If the Coalition wins the election however, the MRRT's days might be numbered.

Tax Reform

Despite the Labor Government having commissioned the Henry Tax Review – a comprehensive review of the tax system – during its term in office, a report released last month by PwC concluded that Australia's tax system is "all but broken," and that a "long-term, sustainable solution" is desperately needed.

According to "Protecting Prosperity: Why we should talk about tax,"[5] any failure to address the urgency of fundamental tax reform at both federal and state/territory level risks dramatically escalating the deficit. By 2039-40, the combined federal and state/territory deficit could reach AUD213.5bn (USD200bn), and would increase still further to reach AUD583.1bn by 2049-50. Similarly, government debt, as a proportion of gross domestic product (GDP), could grow from the current 12.1 percent to 32.9 percent in 2039-40, and could even hit 77.9 percent by 2049-50.

The report claims that Australia was comparatively fortunate when the global financial crisis hit, because it was "cushioned" by a Budget surplus, negative net debt and record high terms of trade. However, going forward, Australia is expected to become more vulnerable to economic downturns if it does not effectively tackle tax reform.

PwC CEO Luke Sayers believes that the Government now faces a crucial choice: "It could cut government services radically, it could build tax revenues by incremental change, or it could prioritize growth through carefully targeted expenditure cuts and tax reform."

For the Government to it get right, it must achieve a balance between what activities are taxed and by how much, and how this tax is raised. PwC contends that a good tax system preserves social equity, stimulates economic growth, and sustains strong government. In turn, it can boost investment, generate jobs, and provide a fairer return for working people, while funding the needs of an ageing population and providing the infrastructure necessary for a growing economy.

Sayers is keen for a review of all taxes, whether state or federal. The Government must not rush to specific solutions, and should instead concentrate on generating a debate "that considers the needs of individuals, community organizations, businesses and government." Public and political support will be vital, as will a willingness to balance competing interests.

"If government spending, productivity and workforce participation maintain current trends, and tax reform is ignored, we face a future with reduced living standards and poorer community services. Without expenditure constraint and tax reform any surplus will be short lived and we will see deficits growing strongly for at least a generation. Another global economic shock could tip us into disaster," Sawyer warned.

As the election campaign got into full swing, several other organizations have chipped in to the tax reform debate. The Center for Independent Studies (CIS) for example has said that future reform of the Australian tax system should aim at restructuring and reducing taxes

In a new report, "Shrink Taxation by Shrinking Government,"[6] the free market public policy research institute identifies 20 measures aimed at minimizing the economic harm caused by taxation. With a general election fast approaching, CIS Senior Fellow and report author Robert Carling stresses that "reducing, reforming and simplifying taxes should be a high priority for the next federal government post-election."

High on the CIS's wish list is abolition of the MRRT, a levy Carling says is a "distorting, complex tax that raises little revenue." On the tax reduction side, the CIS calls for the company tax rate to be dropped from 30 percent to 25 percent. If accompanied by a 15 percent reduction in personal income tax rates, and a merger of the top two rates into a single 35 percent tax, this could result in savings for taxpayers and businesses of AUD28bn (USD25.1bn) a year.

Assessing the options for increased taxation, Carling says that it would be "short-sighted to overlook the long-term risk" of any substantial hikes in the goods and services tax (GST) rate. Were the GST increased, or its base broadened, as a trade-off for the abolition of less efficient indirect taxes, the Treasury could benefit to the tune of AUD12bn-AUD20bn annually.

However, Carling is clear that the way to lower the tax burden is not to hike the GST but to shrink the relative size of government. He believes that for tax reductions to give the Australian economy a long-lasting supply side boost, they should be accomplished in a fiscally responsible way by curbing government spending at the same time. Moreover, he contends, tax reform can be a revenue-neutral exercise in restructuring the tax system to improve its economic efficiency, fairness and administrative ease.

The CIS is campaigning for a cut in the size of government to no more than 30 percent of gross domestic product (GDP) within the next ten years. If this is accomplished, Carling says, taxes could ultimately be slashed by the equivalent of AUD37bn a year.

For its part, the Business Council of Australia (BCA) has called on the Government to undertake a review of the GST system and revise revenue-sharing arrangements between states to benefit those with stronger economic outputs.

The Council's 10 year-plan, which also calls for a reduction in corporate income tax, aims to respond to the economic and fiscal challenges facing Australia, which it believes can be overcome through higher spending on infrastructure and a structural, business-friendly reform of the tax regime.

In its "Action Plan for Enduring Prosperity,"[7] the Council estimates that the Government faces a five percent of gross domestic product budget shortfall by 2050 if preemptive fiscal policy action is not taken. Otherwise, to bridge this gap, the GST rate would need to rise to 25 percent (from 10 percent), the Council has warned.

Therefore, it recommends: "Consideration should be given to raising the rate of GST as well as broadening its base as a means of providing additional revenue to replace revenue forgone from the abolition and reduction of other taxes. This process should include arrangements to provide appropriate compensation for households."

The Action Plan centers around a switch in the focus of the tax system from income to consumption; direct to indirect taxation. Broadening the GST base should include bringing essential goods such as food under the GST net, and higher rates of GST should provide for a corporate income tax rate as low as 25 percent, the Council says.

Among its other recommendations, the Action Plan backs proposals for a rethink of the 80-year-old system of GST revenue-sharing. Around AUD-50bn of GST revenues is apportioned to Australian states each year, with extra revenues granted to less developed states to support economic development. The Council has recommended that the Government phase out this approach over ten years and instead divide GST revenues on a per capita basis. This would primarily benefit Western Australia (to the tune of AUD3.1bn each year), as well as Victoria and New South Wales. The Northern Territory stands to lose revenues worth AUD2.25bn a year under the proposals.

Government Position

In July, Australia's new Treasurer Mark Chris Bowen said that there is a case for an ongoing discussion about tax reform. He made the claim during a television interview, when asked what his stance was on possible changes to the tax system. He explained: "I think there's a case for talking to the states about a more efficient tax system and reducing the number of taxes we have in Australia which don't raise very much money, that are a compliance burden for businesses and an administrative burden for Government."

Bowen was nevertheless keen to stress that he will not consider hikes to the GST rate, stating that there was no reason for increasing the GST or broadening its base. Bowen went on to condemn what he seems to believe is the illogic of the suggestion, arguing that "if you are raising money through the GST to give the states more money to abolish taxes, then you are not giving it back to the people who would be impacted by the increase in the GST, and its necessarily regressive nature."[8]

Despite its failure to follow through on many of the Henry Review's recommendations, the Labor Government still sees itself as reformist when it comes to tax. The latest example of this was demonstrated in June when a new Tax and Transfer Policy Institute was set up with the aid of a AUD3m (USD2.78m) grant from the Australian federal Government, with the aim of encouraging a better understanding of the tax and transfer systems.

The Institute's activities will be research driven. It will work collaboratively and inclusively with other institutions and think tanks, and it will engage with universities and academics across Australia and globally. It will also be expected to cooperate with policymakers from the federal, state and territory governments.

The Institute will be guided by an Advisory Board, which is to provide it with high level strategic advice. The Board will be made up of leading experts, and be chaired by Dr Ken Henry (he of the Henry Tax Review).

According to Assistant Treasurer David Bradbury: "The contributions of the Institute and its researchers will be independent, free of political or ideological influence from governments or advocacy groups, and will be an important touchstone in the public debate on tax and transfer policy into the future."

It remains to be seen if anything concrete emerges from this initiative, and, if Labor loses the election, whether the Coalition will retain the new institute.

Opposition Position

The Coalition promises a debate on the future of the Australian tax system and plans to make further tax reform a priority should it win a second consecutive term.

Its tax policy summary document states that: "If elected, the Coalition will also release the modeling behind the Henry Tax Review to enable an open discussion about the future of Australia's tax system. We would then seek a second-term mandate for a further tax reform agenda by releasing a comprehensive White Paper on tax reform prior to the next general election."[9]

Conclusion

It is clear that if the Coalition wins power next month, then several major changes to Australian taxation could take place over the next few years, and these will affect firms subject to the MRRT and the carbon pricing mechanism in particular, although most corporations should benefit from the proposed corporate tax cut.

If the Labor Government retains power, then the outlook for taxation in Australia is less certain. However, it is likely that Labor will continue its recent policy of piecemeal changes to the tax system as budgetary conditions dictate, with perhaps some minor tax relief given to certain taxpayers.

Indeed, Australia's fiscal situation could dictate tax policy regardless of who wins the election. This was demonstrated recently when the current Government was forced to cancel its proposed corporate tax cut because of a sharp fall in tax revenue.

The Government's most recent Economic Statement,[10] released on August 5, suggests that whoever is in power from September will struggle to find room to cut taxes. This Statement revealed that lower than expected economic growth has had a "major impact" on tax receipts, and a joint statement issued by Bowen and Finance Minister Penny Wong notes "significant downgrades to tax revenue due to lower terms of trade, falling commodity prices and other factors." Personal and corporate income taxes, along with the minerals resource rent tax, have all suffered from weakened outlooks.

Projected tax receipts have now been revised down by AUD7.8bn (USD6.98) in 2013-14, and AUD33.3bn over the period to 2018.

In the medium-term, the Government will aim at "largely absorbing the fall in forecast revenues, while charting a course for return to surplus to keep Australia's fiscal position sustainable," according to Bowen and Wong. They believe that seeking to offset the drop in revenue by introducing budget cuts would risk both jobs and growth, something they say the Government is not prepared to do.

Instead, "protecting growth, employment and essential services in the immediate future has meant the Government has allowed the downwards revisions in expected revenues in the short term to flow through to the budget balance," they said.

The Government anticipates that significant savings will take effect from 2015-16, which will offset slower growth in tax receipts and result in a "modest" deficit that year, and a "modest" surplus of AUD4bn in 2016-17.

Policy decisions taken since ex-Treasurer Wayne Swan's 2013-14 Budget was unveiled earlier this year should boost tax receipts by AUD1.1bn in 2013-14, AUD1.8bn in 2015-16, and AUD5.4bn in 2016-17. A series of hikes in tobacco excise rates, announced last week, will help balance the budget, and the Australian Taxation Office will be given an additional AUD99m over the next four years to address ongoing problems with tax debt and unpaid superannuation.

On the other hand, some recent moves will put a dampener on receipts. These include an earlier than planned switch to an emissions trading system from July 1, 2014, which will have a net cost to the budget of around AUD3.8bn over the forward estimates, in underlying cash balance terms.

The Economic Statement suggests that there will be upward pressure on taxation over the next couple of years if Labor wins the election, as it has pledged to maintain expenditure at near current levels so as not to risk dampening demand in the economy.

By the same token, these unfavorable budgetary conditions may scupper the Coalition's plans to repeal the MRRT and the CPM, and jeopardize its chances of cutting corporate tax, unless it is brave enough to slash spending in order to offset the reduced revenue. While it might be able to get one or two of these election pledges through, perhaps achieving all three in its first term might not be achievable, especially if the budget falls further into the red.

Either way, the next two to three years looks set to be an interesting time for taxation in Australia.

Endnotes

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South Korea To Finalize Property Tax Changes

Finance Minister Deputy Prime Minister Hyun Oh-Seok hosted the first "Meeting on Reinvigorating the Economy" on August 7, and confirmed that the Government is looking at revising South Korea's property tax code.

At the meeting, Hyun led discussions on current economic conditions and key policy initiatives, as, while the South Korean economy shows signs of recovery with the second quarter growth rate exceeding 1 percent for the first time in nine quarters, economic uncertainties persist both at home and abroad.

As part of the Government's effort to help the economy expand in the second half of this year, the Government will firstly work in close collaboration with the National Assembly in order to ensure that the property market measures that were announced on April 1, 2013, and included an extension for 2013 of the capital gains tax exemption on buyers of homes valued at less than KRW900m (USD804,500), are passed as soon as possible.

Hyun also confirmed that plans are to be finalized to lower property acquisition taxes as early as possible. An exemption from property acquisition tax was granted in April, but only until the end of June this year, and the Ministry of Land, Infrastructure and Transport has since been campaigning therefore that it should be, at least, immediately reinstated.

The agreement of another exemption has, however, been delayed because it would have caused substantial revenue losses on local government finances, as the acquisition tax is a major municipal income source. Further discussions have been necessary to make up the revenue losses by the reallocation of other taxes or subsidies from central government.

In addition, Hyun disclosed that there will be an examination as to how other existing property taxes, including the Comprehensive Real Estate Holding tax (payable when property held surpasses a certain value, for example, KRW600m for houses, and KRW500m for land) could be revised, in order to promote an active real estate market in the country.

South Korea Introduces 2013 Tax Bill

The South Korean Ministry of Strategy and Finance has issued its 2013 Tax Revision Bill, which restructures tax incentives and widens the country's tax base, while also supporting small and medium-sized enterprises (SMEs) and those on lower incomes.

Firstly, in support of the priority to develop growth engines in the economy and increase SME support, certain service industries, particularly those in the science-technology or ICT sectors, will be granted increased research and development (R&D) support and SME tax incentives.

In addition, in other SME-related tax revisions, investment tax incentives offered to startup SMEs against their initial investment will be extended from five years to seven years; a 50 percent individual income or corporate tax reduction will be offered for sales of technology by SMEs; and mergers between high tech companies will be exempt from gift tax.

Tax incentives for angel investments will be expanded. Angel investors will generally be eligible to receive a 50 percent tax deduction for investments worth up to KRW50m (USD45,000), and will then be eligible to receive a 30 percent deduction on any additional investments above that level.

There will be tax credits for the acquisition of SMEs, whose investments in R&D exceed 5 percent of revenue and, when company owners sell their shares and reinvest in venture companies, sales taxes will be suspended until the reinvested stocks are sold. Venture or startup company employees will be allowed to pay taxes in three year installments on their stock option transactions.

The same tax rules as in the main KOSDAQ stock exchange will be applied to the KONEX, a new stock market for startup businesses. Startup investment funds will receive tax credits when they invest in KONEX listed companies, and there will be no capital gains taxes on dividends and stock transaction taxes.

To help achieve its employment targets, the Government will increase tax deductions for job-creating investments by counting one regular part time employee as 0.75 of a full time employee, an increase from 0.5. To promote SME employment, the government will continue to provide tax deductions for social security insurance costs, introduce a tax deduction of KRW1m per part-time employee that has been hired as a full-time employee, and expand the job-sharing tax credit to all SMEs.

For individual taxpayers, the Earned Income Tax Credit (EITC) will be expanded and the Child Tax Credit (CTC) will be adopted in 2015. Single-member families will be eligible for the EITC in addition to families with children, and the number of families receiving the EITC and CTC will be increased as the income ceiling will also be raised: families with 2 children or less and annual income of KRW25m or less will be eligible for the EITC, and the CTC of KRW500,000 per child will be given to families earning KRW40m or less per year.

Income tax deductions will be applied to taxes owed instead of income, which should increase the tax burden on high income earners, although the current income tax deduction method will be maintained for the basic income tax threshold, the public pension and national health care insurance deduction, and the earned income tax deduction. The latter will also be adjusted to minimize tax exemptions.

In order to broaden the tax base, value added tax will now be applied to cosmetic surgery, and the income of religious leaders, like monks and priests, will be taxed as gifts from 2015, with religious groups being subject to withholding taxes. High-income farming will be taxed when its earnings exceed a certain level, although necessity food farming, such as rice and barley, will continue to be tax-exempt, and government employees will be subject to income tax on their allowances, also from 2015.

In order to properly tax overseas income and property, individuals who do not meet the requirement of reporting overseas bank accounts and overseas investment will be fined. The issue of receipts will be required for cash transactions of more than KRW100,000.

Overall, the changes are expected to produce a net increase of almost KRW2.5 trillion in tax revenues, with gross revenues increasing by KRW4.5 trillion and being offset by KRW2 trillion in reductions. The tax revision bill will be submitted to the National Assembly at the end of September.

South Korea Government's Tax Policies Under Fire

The Park Geun-hye Government has issued its framework for South Korea's middle to long-term tax policies, through which it hopes to "normalize" the country's tax system, but has already become embroiled in criticism over its individual income tax measures in the recently-issued 2013 Tax Revision Bill.

Over the next five years, the Government will look to make tax burdens "more equitable," while also raising the total burden marginally (from 20.2 percent of gross domestic product (GDP) in 2012 to an expected 21 percent in 2017) in order to raise the funds required for implementing President Park's promised increased welfare spending.

It is planned that additional revenue will be generated by broadening the tax base, such as through modifying tax exemptions and reductions, and exposing the underground economy, but not through any increases to tax rates.

It has been noted, for example, that South Korean individual income tax revenue was only 3.6 percent of GDP in 2010, ranking 30th out of the 32 OECD countries, and only about 37 percent of earned income is taxed due to various tax exemptions and deductions. Therefore, to impose the optimal tax burden according to a taxpayer's income, and to expand the tax base, income tax will be reformed by modifying tax deductions and taxing income that has been tax-exempt.

Similarly, while South Korea's overall consumption tax revenues were around average, its value added tax rate (VAT), at 10 percent, was lower than the OECD average of 18.7 percent. Nevertheless, rather than increasing tax rates, the consumption tax base will be expanded by modifying tax exemptions, reductions and deductions within both VAT and individual consumption tax.

South Korea's corporate tax revenue was 3.5 percent of GDP in 2010, the 5th highest in the OECD. In the future, it is intended to construct a more growth-friendly tax system to boost corporate competitiveness and to tailor it according to corporate size and stage of development, by adjusting non-taxable items, tax exemptions, reductions and deductions.

Finally, South Korea's property tax revenue was 2.9 percent of GDP as of 2010, the 7th highest in the OECD, and the gift and inheritance tax's highest bracket, at 50 percent, tied with Japan for the highest rate in the OECD. The Government will promote the lowering of taxes on property transactions, together with the optimization of taxes on the real estate holdings, and will improve the gift and inheritance tax, in order to rectify imbalances and boost economic efficiency.

However, the Government's initial changes to individual income tax in the 2013 Tax Revision Bill, whereby it is proposing to apply tax deductions to taxes owed instead of income, and to restructure tax thresholds, have come in for some criticism.

The Government has been accused of designing the changes so as to extract additional revenue from salaried workers, said to be an easy target with ascertainable taxable earnings. It is calculated that around 4.34m people, 28 percent of workers, will see their tax burden increase next year under the proposals.

For example, those individual taxpayers with annual earnings from KRW40m (USD36,000) to KRW70m will have to pay an average KRW160,000 more in taxes, and the figure will rise to KRW330,000 and KRW980,000 for the income brackets of KRW70m-KRW80m and KRW80m-KRW90m, respectively. The highest annual incomes, above KRW300m, will pay some KRW8.5m more.

The Government has stressed that the measures are structured to reinforce tax revenues while promoting equality in taxation and enhancing income redistribution, as low income families with earnings below KRW40m will pay less tax. However, with the Bill requiring parliamentary approval, opposition parties are looking to attack it on the grounds that it breaks Park Geun-hye's promise not to raise taxes made during her presidential campaign.

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Offshore Company Formations Have Slowed

The majority of offshore jurisdictions experienced a decline in company incorporation activity in the second half of 2012 compared with the first half, according to legal services consultancy the Appleby Group. However, company registrations in certain jurisdictions offered signs of optimism.

Despite tough economic conditions, levels of new company registration activity in one major offshore jurisdiction continued to increase, according to Appleby's latest "On the Register" report, which provides insight and data on company incorporations in offshore financial centers. Bermuda reported a 7 percent increase in activity compared to the first half of the year, according to the report, which looks primarily at the data for the last six months of 2012.

"There are signs that 2013 will be a watershed year in terms of seeing a universal return to pre-2009 activity levels across the offshore jurisdictions," said Farah Ballands, partner and global head of fiduciary and administration services at Appleby.

Nonetheless, the on-going weakened economic conditions continued to impact the overall market in the second half of 2012. There were 37,881 new offshore company formations in the jurisdictions covered by the report, a decrease of 3.6 percent from the second half of 2011, and a deeper decrease of 11 percent on the preceding six months in 2012.

Taking the entire year into account, the overall number of new company incorporations for the majority of jurisdictions stayed flat in 2012, which proved to be a year of consolidation following large increases in annual new incorporations between 2009 and 2011.

"Continued uncertainty in some markets and the shift in focus from China/Asia to Africa for jurisdictions such as Mauritius and the Seychelles are preventing a speedy return to the numbers of company formations recorded prior to the global economic crisis," Ms. Ballands said. "Add to this several major international events during the second half of 2012 including the US Presidential Elections, continued economic uncertainty in the Eurozone and the once-in-a-decade change in leadership in China, and it's hard to be surprised at the company registrations barometer struggling to quickly improve," she added, "but we are seeing growth in some markets."

The story is similar for the total number of active companies, with most jurisdictions showing little movement from the previous year as new company formations cancelled out the numbers leaving the registries. Hong Kong, as a comparator, saw a 9 percent increase in the total number of active registered companies, with the local register there breaking through the one million mark for the first time. The Mauritius and Cayman registries are steadily returning to their pre-recession peaks, experiencing a 3 percent and 1 percent rise respectively.

Among the report's key findings is that in the second half of 2012:

- Overall volumes of new offshore companies being registered were 11 percent lower in H2 2012 than the preceding six months. After a busy first half of the year, jurisdictions including the Isle of Man, Mauritius, Cayman and the British Virgin Islands were approximately 10 percent down in the latter half.
- The jurisdiction that continues to dominate offshore new company registration activity by volume is the British Virgin Islands, which has consistently maintained a six-fold lead ahead of its nearest comparator, the Cayman Islands.
- The UK and Hong Kong, as comparators, continue to show signs of recovery. Hong Kong in particular showed significant growth between H1 and H2 2012 with a 7 percent increase in registrations. Both Hong Kong and the UK registrations are now well above those recorded in 2009.

Gibraltar Border Tax Row Escalates

Spain has said that it is considering imposing a EUR50 (USD66) fee to cross the border into Gibraltar as its dispute with the United Kingdom over the British territory escalates.

The proceeds of the EUR50 tax would be used to support Spanish fisherman who have allegedly suffered damage to fishing grounds, which they claim has been caused by Gibraltarian authorities.

Spain's foreign minister José Garcia-Margallo also said that Spanish authorities could launch an investigation into property owned by roughly 6,000 Gibraltarians living in Spain. In addition Spain could force online gaming companies operating from Gibraltar to use Spanish servers and thus come under Spain's taxation regime.

Despite the growing tension, the UK government has reiterated its commitment to stand "shoulder to shoulder" with Gibraltar.

"The prime minister has made clear that the UK government will meet its constitutional commitments to the people of Gibraltar and will not compromise on sovereignty," a Foreign Office spokesman said.

Gibraltar has long been a source of tension between the UK and Spain, but these latest tensions were triggered when the British territory began work on an artificial reef, which Spain alleges is damaging to Spanish fisherman in the area.

Hong Kong's Advantages Promoted In New Zealand

During an official visit to New Zealand, Secretary for Commerce and Economic Development Gregory So has expounded on Hong Kong's advantages in government meetings and in speeches at receptions and seminars.

For example, in Auckland, the Hong Kong New Zealand Business Association organized the Connect Hong Kong seminar, in which Hong Kong Trade Development Council and Invest Hong

Kong representatives outlined the city's strengths in attracting investment and developing businesses, while So also addressed the opening reception of the Hong Kong Festival in Wellington.

"Hong Kong provides the shortest and most reliable route for New Zealand companies to do business in the Mainland of China. We are also an effective connector to markets across our region," Mr. So told attendees at the business seminar, noting that Hong Kong is the seventh largest market for New Zealand goods exports, and, in the past decade, those exports had increased by 40 percent, to about HKD5.25bn (USD677m) in 2012.

He pointed out that Hong Kong's unique advantages: "a comprehensive network of professional services, unparalleled access to the Mainland market, bilateral trade agreements with trading partners as an individual member of the World Trade Organization, and the position as the world's freest economy" made Hong Kong a showcase for New Zealand brands of goods and services.

In Wellington, So highlighted Hong Kong's appeal "as a free, open and low-tax platform for business." For his hosts, he emphasized that Hong Kong became the first free wine port among major economies by eliminating tariffs on wine in 2008, helping to promote the city as a wine trading and distribution center.

He confirmed that Hong Kong has, in fact, now overtaken New York and London to become the world's largest wine auction market, and that "New Zealand vintages are becoming increasingly popular and familiar to people in Mainland China and across Asia."

Bermuda, US Treasury Complete FATCA Negotiations

On August 04, 2013 Bermuda's minister of finance, Bob Richards, announced that negotiations between Bermuda and the United States Treasury over the US FATCA Intergovernmental Agreement (IGA) Model 2 have been completed.

US Treasury official Robert Stack said in a statement: "We welcome the conclusion of negotiations with Bermuda on a Model 2 Intergovernmental Agreement to implement FATCA and join our efforts to curtail tax evasion. We are particularly pleased to build upon our decades-old Tax Information Exchange Agreement relationship with Bermuda and the recent Mutual Legal Assistance Treaty.

"We appreciate Bermuda's role as a leader in global tax transparency as well as their role serving alongside the US on the Steering Group of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. The text of the initialed agreement will be made public after it is signed."

The agreement still needs to be endorsed by the United Kingdom's Foreign and Commonwealth Office in accordance with the July 15, 2010 UK Letter of Entrustment to Bermuda for tax information related matters. Bob Richards said that he is confident the FCO will move quickly so that Bermuda's financial institutions are not disadvantaged during the US FATCA registration process.

Jersey To Submit To New Regulations On EU Savings Tax

The Council of the European Union is to ask the States of Jersey to introduce regulations that will make it mandatory, from January 01, 2015, for Jersey to automatically exchange tax information for European Union Savings Tax Agreements. The regulations will repeal the present retention tax provisions for the Savings Tax Agreements that were entered into in 2005 with the Member States of the European Union.

The regulations will also enable those who wish to do so to change over to the automatic exchange of information in advance of it becoming mandatory. This option has been included in response to the wishes of those financial institutions in Jersey that have offices in Guernsey and the Isle of Man and who wish to harmonize their systems at the earliest possible date.

Jersey's chief minister, Senator Ian Gorst, said "We have been waiting for the position of the European Union to be clarified. Having regard for the outcome of the European Union Council meeting in June this year, and the call of the G20 Finance Ministers at their meeting in July on all jurisdictions to commit to automatic exchange of information, we consider this is now the right time to announce the proposed change from the retention tax. Also of relevance is that, with the increase in the retention tax rate to 35 percent in July 2012, a significant majority of those subject to the tax have already taken advantage of the voluntary disclosure option in the agreements."

EU Tax Commissioner Semeta said "Automatic exchange of information has long been a cornerstone in the EU's fight against tax evasion and is now set to become the international standard. It is the best way of ensuring that every country can collect the revenues it is rightfully due. I welcome Jersey's decision to join the global move towards more openness and greater information exchange. This will help facilitate fairer and more effective taxation, in Europe and globally."

House Passes Anti-US Carbon Tax Amendment

On August 2, the United States House of Representatives passed the Regulations From the Executive in Need of Scrutiny (REINS) Act, to which was added an amendment so that any government rule that provides for the imposition or collection of a tax on carbon emissions would require congressional approval.

Both the REINS Act, which would require House and Senate votes to approve proposed major regulations, and the anti-carbon tax amendment were passed by the Republican-led House; the latter with a vote of 237 to 176, in which all Republican Representatives voted for the amendment, and all the votes against it were Democrat.

The amendment was offered by Republican Study Committee Chairman Steve Scalise (R – Louisiana) to stop the Administration from using any authority it might have to implement a carbon tax under the regulatory authority of the Clean Air Act or any other statute.

"The House sent a strong message to President Barack Obama that a tax on carbon would devastate our economy and he needs to drop any idea of imposing this kind of radical regulation," Scalise said. "This amendment is necessary to prohibit a carbon tax from being imposed by unelected bureaucrats on behalf of the President without legislative action and oversight."

The House Ways and Means Chairman Dave Camp (R – Michigan) was also a strong supporter of the Scalise amendment, noting that the amendment prevents the President from bypassing Congress and imposing a national energy tax that would affect every American. He added that "it would also be another tax on manufacturers and another increased cost of doing business imposed on middle-class families by the Obama administration."

The American Energy Alliance wrote in support of the amendment, pointing out that "the last thing the American people need is a new tax, especially a carbon tax. A carbon tax would hurt American families by driving up the cost of energy as well as reducing economic growth."

"According to a study of one popular carbon tax proposal," it added, "a carbon tax would reduce the income of a family of four by USD1,000 a year, cost the economy over 400,000 jobs by 2016, and increase the price of gasoline by 30 cents a gallon by 2030."

"Given repeated declarations from the President that he intends to move forward with his global warming agenda unilaterally in the absence of Congressional action," it concluded that the "amendment explicitly requiring any tax or fee on carbon to be approved by Congress is a crucial safeguard for taxpayers."

However, although the Democrat vote against the amendment could be construed as signifying their approval of a carbon tax, and could obviously be used as such by Republicans at a later date, there appears to be little current movement towards the tax in the Administration. For example, while the International Monetary Fund in its recent Article IV Consultation with the US recommended the introduction of a carbon tax to raise additional deficit-reducing revenue, it noted that the Administration had stated that there were no plans for proposing the tax at present.

US Study Criticizes Increased CGT Rates

In one of its case studies on possible tax reform measures, the Tax Foundation (TF) has found that eliminating the reduced tax rates on capital gains and qualified dividends would actually result in a fall in revenue, a lower United States gross domestic product (GDP) and a cut in jobs.

Long-term capital gains and qualified dividends (those paid out of after-tax income by corporations subject to the corporate tax rate) received by individual US taxpayers are currently taxed at preferential tax rates: zero for taxpayers whose other income puts them in the 10 percent and 15 percent tax brackets, 15 percent for taxpayers in the next four income tax brackets, and, since January this year, after the "fiscal cliff" agreement, up to 20 percent for the highest bracket taxpayers.

The TF notes that both the Treasury and the Joint Committee on Taxation regard these differential tax rates as tax expenditures, which could therefore be part of a reform package broadening the country's tax base, while also admitting the purpose of the preferential rates is to offset some of the double taxation of corporate income and the income tax bias against other forms of saving.

"A conventional static revenue estimate, which assumes away tax-induced growth changes, might suggest the federal government would collect more revenue by taxing capital gains and dividends as ordinary income," it points out. "When growth effects are added to the analysis, however, the higher revenue disappears. Ending the individual income tax's rate cap on long-term capital gains and qualified dividends would reduce capital formation, productivity, and wages to such an extent that it would be a major revenue loser for the federal budget."

The TF confirms that "few tax increases would actually cost revenue, but the capital gains (and dividend) tax is one of them."

Under the conventional revenue estimation assumption that tax changes have no effect on macroeconomic aggregates, it was found that treating capital gains and dividends like ordinary income would generate an additional USD108bn per year.

However, because the tax change would "generate a very large percentage increase in the tax rate on the returns to capital at the margin, and the desired capital stock is extremely sensitive to its expected after-tax return," the TF model predicts that "after a several year adjustment period, the capital stock would be 16.9 percent less than otherwise, work hours would be about 1.25 percent less, and GDP would be 6.3 percent lower than otherwise."

It is added that, because tax collections depend on the size of the economy, "the anti-growth effects would be expected to have a negative feedback on tax collections. When the model takes the smaller economy into account, it estimates that ending the rate cap on long-term capital gains and qualified dividends would actually reduce federal revenues by USD122bn."

Furthermore, if the static additional revenue estimate was used to finance an across-the-board cut in tax statutory rates, the TF finds that individual income tax rates could be cut 9.2 percent (for example, cutting the current 25 percent to 22.7 percent). However, while the economy would benefit from the tax rate reductions, those benefits would only partially offset the losses from the higher tax rates on capital gains and dividends, and federal revenue would still fall by USD150bn annually.

The TF concludes that, "although the rate cut would cushion the output plunge and partially pay for itself, the end result would still be a smaller economy and less federal revenue. From the perspective of economic growth and federal revenue, it would not be sensible to trade the rate cap on capital gains and dividends for lower tax rates. It would be wiser to leave the cap in place."

Finally, the TF considers that the revenue loss from ending the capital gains and dividend relief could be even worse than the numbers shown above, because it says, its model does not incorporate "the lock-in effect" – people are taxed on capital gains only when they realize them and, when the tax rate goes up, people sell their capital assets less frequently.

The model also does not incorporate the fact that higher tax rates on capital gains and dividends could be reflected in reduced asset prices, which would mean smaller capital gains and, hence, less capital gains tax revenue; nor does it reflect the likely reduction in dividend payments by corporations if the tax rate reverts to ordinary tax levels.

IRS Disputes Tyco Debt Interest Deductions

The United States Internal Revenue Service (IRS) is looking to disallow USD2.9bn in interest and related deductions filed by Tyco International Ltd in its income tax returns from 1997 to 2000, according to the company's latest filing with the Securities and Exchange Commission.

The IRS has challenged the treatment of the security systems firm's intercompany debt transactions during the period. It has asserted that substantially all of that debt should not be treated as debt for US federal income tax purposes, and should, instead, be treated as equity. Its audits have therefore found that Tyco and its former US subsidiaries owe additional taxes of USD883.3m and penalties of USD154m.

Tyco is the world's largest fire protection and security company with global headquarters in Switzerland and US headquarters in Princeton, New Jersey. It has said that it strongly disagrees with the IRS position and has filed petitions with the US Tax Court contesting the IRS proposed adjustments. The company believes that it has meritorious defenses for its tax filings, in that its intercompany loans all have debt characteristics, such as fixed maturities and interest payments.

In its SEC filings, Tyco states that "the IRS positions with regard to these matters are inconsistent with the applicable tax laws and existing Treasury regulations, and that the previously reported taxes for the years in question are appropriate."

The company has also pointed out that "the issues and proposed adjustments related to such years are generally subject to the sharing provisions of a tax sharing agreement entered in 2007 with Covidien and TE Connectivity (following their spin-off from the Tyco group), under which Tyco, Covidien and TE Connectivity share 27 percent, 42 percent and 31 percent, respectively."

No payments with respect to these matters will be required until the dispute is definitively resolved, which could take several years, and Tyco believes that its income tax reserves and the liabilities in its accounts continue to be appropriate. However, it does add that "the ultimate resolution of these matters, and the impact of that resolution, are uncertain and could have a material impact on Tyco's financial condition, results of operations and cash flows."

In particular, it concludes that, "if the IRS is successful in asserting its claim, it would have an adverse impact on interest deductions related to the same intercompany debt in subsequent time periods, totaling approximately USD6.6bn, which (could) be disallowed by the IRS," and might also affect its divestiture last year of ADT and Pentair, and their respective tax sharing agreements.

US Expats Giving Up Passports To Avoid Tax Obligations

There was a sixfold increase in the number of American citizens living abroad who gave up their United States passports in the second quarter of this year, compared to the same three months in 2012, as the Administration gets more strident in its search for undeclared foreign assets.

American expatriates who renounced their citizenship during the three months to end-June 2013 rose sharply to 1,130, from 679 in the previous quarter and only 189 in the same period last year, according to figures provided by the Internal Revenue Service (IRS) and published recently in the Federal Register.

Their renunciation came as actions being taken by the US Treasury and the IRS to trace American undeclared assets and income held abroad gather pace, particularly as the deadlines within the Foreign Account Tax Compliance Act (FATCA) approach and the US negotiates more agreements with foreign jurisdictions. More Americans living abroad are becoming aware of their unwanted US tax reporting obligations.

FATCA is intended to ensure that the IRS obtains information on accounts held abroad at foreign financial institutions (FFIs) by US taxpayers. Failure by an FFI to disclose information on their US clients, including account ownership, balances and amounts moving in and out of the accounts, will result in a requirement to withhold 30 percent tax on US-source income.

In addition, individuals are still required to file the Report of Foreign Bank and Financial Accounts (FBAR) if they have a financial interest in or signature authority over financial accounts, including bank, securities or other types of financial accounts, in a foreign country, and if the aggregate value of the financial accounts exceeds USD10,000 at any time during the calendar year.

US Treasury Releases 2013-14 Tax Guidance Plan

The United States Treasury Department and the Internal Revenue Service (IRS) have released the 2013-2014 Priority Guidance Plan, which focuses their resources on a wide range of guidance items that are considered to be the most important to taxpayers and tax administration.

Released on August 9, the 2013-2014 Priority Guidance Plan contains 324 projects that are priorities for allocation of the offices' resources during the twelve-month period from July 2013 to June 2014 (the plan year), and has been drawn up in response to suggestions from taxpayers, tax practitioners, and industry groups.

The Plan represents projects it is intended to work on actively during the plan year, but does not place any deadline on their completion. Projects in the new Plan will provide guidance on a variety of issues important to individuals and businesses, including international taxation, health care and the implementation of legislative changes.

In fact, the tax issues in the 2013-14 Plan include consolidated group returns, corporations and shareholders, employee benefits (including retirement benefits, executive compensation and health care) and excise taxes. Following its recent political difficulties concerning its questioning of the eligibility of exempt organizations, guidance is also to be formulated regarding "measurement of an organization's primary activity and whether it is operated primarily for the promotion of social welfare, including guidance relating to political campaign intervention."

Tax issues are also included on financial institutions and products, gifts and estates, trusts, insurance companies and their products, international tax issues, partnerships and S corporations, tax accounting, tax administration and tax exempt bonds.

Some projects that were in the 2012-2013 Priority Guidance Plan have not been included on the 2013-2014 Plan because they are no longer considered priorities for purposes of allocating resources during the 2013-2014 plan year. However, it was confirmed that some of those projects may be considered for inclusion in a future Plan.

Priority Guidance Plans are updated and republished periodically during the plan year to reflect additional items that have become priorities and guidance that has been published during the plan year. The periodic updates allow flexibility throughout the plan year to consider comments received from taxpayers and tax practitioners relating to additional projects, and to respond to developments arising during the plan year.

It was emphasized that "the published guidance process can be fully successful only if (the Treasury and the IRS) are provided with the insight and experience of taxpayers and practitioners who must apply the rules." Therefore, they invited the public to continue to provide them with their comments and suggestions as they write guidance throughout the plan year.

In that regard, the Treasury and the IRS also announced the release of the fourth quarter update to the 2012-2013 Priority Guidance Plan. Published late in November 2012, it originally contained 317 original projects. Previous quarterly updates have included 30 additional projects that became priorities and/or were projects published after the initial publication of the 2012-2013 Plan, and the final quarterly update includes 12 additional projects. In addition, the update reflects three projects closed without publication, and a total of 129 projects in the 2012-2013 Plan were published by June 30, 2013.

IMF Addresses Japanese Consumption Tax Dilemma

Adoption of a ten percent consumption tax rate in Japan is inevitable according to statistical analysis in a new report from the International Monetary Fund, which urges Japanese policymakers to arrive at a decision on when the hikes should be implemented, and consider further rate increases to the levy beyond 2015.

The report underscores that "a credible medium-term fiscal plan should be adopted as quickly as possible as fiscal risks have risen further."

It adds: "Raising the consumption tax rate to 10 percent, while maintaining a uniform rate by 2015 is an essential first step, but the government also needs to formulate a concrete set of growth-friendly revenue and expenditure measures for implementation in the medium term to achieve a declining debt-to-Gross Domestic Product (GDP) ratio."

The report points out that while stronger exports led to quarterly economic growth of 3.8 percent in Q2, private investment was flat because of uncertainty about future growth and corporate tax policies.

"Raising the consumption tax rate is an essential first step to contain fiscal vulnerabilities," the report continues. "The scheduled tax increases in April 2014 and October 2015 should proceed as planned as they are critical to maintaining confidence in the ability of the government to address the fiscal problem. Introducing multiple rates should be avoided as it would severely dilute revenue gains, complicate tax administration, and impose a costly administrative burden on small and medium-sized enterprises (SMEs)."

The IMF has acknowledged that growth will likely moderate to 1.2 percent in 2014, as a result of the withdrawal of stimulus and the hike to the consumption tax, but underscored that this economic outlook is favorable compared to the sustained economic contraction that would occur under a scenario where the nation's debt mountain fails to be tackled from 2014. Strong growth, above 3 percent of GDP, would return from 2018 under the Prime Minister's Abenomics reform plan, IMF graphs demonstrate.

The IMF estimates that even with the two subsequent consumption tax hikes, raising the five percent rate to ten percent by October 2015, the nation's net debt-to-GDP ratio would steadily climb to around 210 percent of GDP by 2030.

The report therefore advocates "gradually increasing the consumption tax to a uniform rate of at least 15 percent," adding: "[VAT] is a stable source of revenue in an aging society, one of the least distortionary taxes, and easy to administer. It would also be fairer than other taxes in addressing inequities between young and old generations."

Another 5 percent increase in the consumption tax rate (worth 2.5 percent of GDP) and expenditure reforms worth 3 percent of GDP could lead to a reduction in Japan's net debt-to-GDP ratio to 155 percent in 2016 before declining to 135 percent of GDP by 2030.

Japanese authorities, in response, acknowledged the importance of formulating a concrete mid-term fiscal plan in the summer including fiscal consolidation measures beyond 2015. They accepted that it may be necessary to consider a potential further hike to the consumption tax rate, above ten percent, but communicated to the IMF that it would be premature to endorse any possible measure at this time.

Bulgaria To Launch Cash Accounting Option

Bulgaria's Deputy Minister of Finance, Lyudmila Petkova, has announced that Bulgaria is to introduce a cash accounting scheme for small and medium sized businesses from January 1, 2014.

The scheme will benefit 220,000 VAT-registered businesses with an annual turnover of no more than EUR500,000 (USD668,750).

The initiative allows eligible businesses to account for VAT when a consideration is received from recipients in respect of taxable supplies, rather than when an invoice is furnished, and also allows these businesses to claim credit against input tax immediately after payment is made to a supplier.

"The cash accounting scheme for VAT will help small and medium-sized enterprises having difficulties paying VAT to the Government in cases where they have not received payment from their clients for the supplies of goods and services they have made," Petkova explained. She added that it would improve small businesses' cash flow, and cut tax fraud cases.

The scheme is to be introduced through amendments to the Value Added Tax Law and to the Rules Implementing the VAT law. Bulgaria's decision mirrors recent announcements from Portugal and Spain to introduce the cash accounting basis from 2014. Presently 20 European Union member states offer the option.

US Small Businesses Pay Highest Tax Rates

A new study showing the high effective tax rates imposed on the S corporations and partnerships paying individual income tax in the United States, when compared to larger corporations under the corporate tax code, has been issued by the National Federation of Independent Business (NFIB).

The study found that S corporations and partnerships will suffer 31.6 percent and 29.4 percent effective tax rates this year, respectively, while C corporations paying corporate tax will see an effective rate of only 17.8 percent.

Quantria Strategies, LLC, who produced the new study, noted that a previous investigation in 2009 had found that small business sole proprietorships faced the lowest average effective tax rate at 13.3 percent. Small business partnerships then faced an average effective tax rate of 23.6 percent, small business C corporations faced a 17.5 percent average effective tax rate, and small business S corporations faced an average effective tax rate of 26.9 percent.

However, since the release of that study, it was pointed out that two significant tax policy changes have occurred – the adoption of the Patient Protection and Affordable Care Act imposed a new 3.8 percent tax on investment income (including some pass-through income) beginning in 2013, while the resolution of the fiscal cliff debate in January this year increased the top statutory tax rate that applies to individual and pass-through business income from 35 percent to 39.6 percent, and the reinstated Pease limitation on itemized deductions raised top marginal tax rates by another 1.3 percent.

Because of these changes, for the first time since 2002, it was confirmed that, in addition to their higher effective tax rates, the top marginal tax rate that applies to individuals and pass-through businesses is significantly higher (44.7 percent) than the top marginal tax rate that applies to C corporations (35 percent).

"The US tax code is unfair and complex," said NFIB's President and CEO Dan Danner. "Today's study provides valuable data that confirms small businesses currently pay a higher effective tax rate than many large corporations. This study delivers a strong counter argument to President Obama's recent announcement that corporate-only tax reform is the best path."

"Over 75 percent of all small businesses in the US are taxed at the individual rate – signifying the need for comprehensive reform that addresses both individual and corporate taxes," he added. "NFIB will continue to advocate for a level playing field so that small-business owners can create jobs and grow their business."

South African Business Warns Over New Carbon Tax

In a statement, the South African Chamber of Commerce and Industry (SACCI) has warned the Government that the impact of the proposed carbon tax "will be significant on the South African economy and may have severe effects on international competitiveness and job creation."

Its CEO, Neren Rau, stated that SACCI "is concerned with the potential malign economic impact of the proposed carbon tax," and that the Chamber had submitted its comments to the National Treasury on the Government's Carbon Tax Policy Paper, which provides a framework discussion on plans to introduce a carbon tax of ZAR120 (USD12.20) per ton of CO2, increasing at a rate of 10 percent annually, from 2015 onwards.

SACCI's notes on the Policy Paper point out that there is very little detail or commitments on revenue recycling options (for example, tax credits for investment in energy efficient machinery). Because the carbon tax will be sizeable and revenue recycling is still unclear, there remains a deep concern that the tax will not actually be applied to mitigate its adverse impact on the country's economic growth.

It claims that there are also serious doubts as to whether the paper accurately reflects the diverse and complex economic impact that a carbon tax will have on South Africa. It is felt that the Paper underestimates the rigidity of the labor market and, by extension, overestimates the ability of businesses to absorb dismissed workers from energy intensive industries.

SACCI stresses that it is supportive of measures to reduce carbon emissions in principle, so long as those measures remain tax neutral. It said that it will "continue to engage with the National Treasury in order to find a policy solution to climate change that will not endanger economic growth and job creation."

US Discusses Future African Trade Initiatives

United States Trade Representative Michael Froman has discussed the review and renewal of the African Growth and Opportunity Act (AGOA), as well as other new African initiatives, with the Trade Advisory Committee on Africa (TACA).

Froman and Assistant US Trade Representative for Africa Florie Liser met with TACA members to discuss the Administration's trade and broader economic initiatives in the sub-Saharan African region. TACA members represent a wide range of business, law and development groups.

The discussion focused on Froman's recent trip to South Africa and Tanzania, where President Barack Obama announced a series of new initiatives in the region, including Trade Africa that aims to double-intra regional trade among the members of the East African Community (EAC) and increase exports to the US by 40 percent. Froman received advice from TACA members on these new initiatives and how to best implement and promote them in Africa and the US.

Froman also discussed the process to review AGOA ahead of its renewal, which he plans to discuss at the upcoming AGOA Forum, to be held on August 12-13 in Addis Ababa, Ethiopia.

AGOA has been, to date, the cornerstone of America's trade and investment policy with sub-Saharan Africa. At its center are substantial trade preferences that, along with its third country-fabric (TCF) provision and the US Generalized System of Preferences (GSP) tariff treatment, allow almost all goods produced in AGOA-eligible countries to enter the US market duty free. AGOA GSP and TCF provisions are currently in effect until September 30, 2015.

The Ambassador spoke with the committee about the future of AGOA and how it might be extended and improved to continue the opening of Africa's markets, increase African regional and global trade, and expand and diversify US-Africa two-way trade and investment.

In 2012, the value of goods imported into the US from sub-Saharan African under AGOA and the related GSP program totaled USD34.9bn, more than four times the amount in 2001. Africa's economic rise and engagement with global trading partners are said to be some of the elements to be examined as part of AGOA's review and extension beyond 2015. As President Obama has already pointed out, "the vast majority of US trade with Africa is with just three countries – South Africa, Nigeria and Angola. We need to broaden that. And one of the best ways to do that is to make sure more African goods can compete in the global marketplace. And that means more opportunities for small and medium-sized companies, and entrepreneurs, and merchants and farmers, including women."

Amended Customs Bills Submitted To SA Parliament

Having completed an extensive consultation process, the South African Revenue Service (SARS) has submitted to Parliament two bills within the amended customs and excise legislation that will eventually replace the current Customs and Excise Act, 1964.

It is proposed that the new legislative framework would consist of three separate pieces of legislation – a Customs Control Act (CCA) that establishes a modern system of customs control, in accordance with current international trends and best practice, for all goods imported into or exported from South Africa and that prescribes the operational aspects of the system; a Customs Duty Act (CDA) that provides for the imposition, assessment and collection of customs duties; and an Excise Duty Act (to be drafted at a later date) that will do the same for excise duties.

The primary aims of the CCA are to provide systems and procedures for customs control of all goods and persons entering or leaving South Africa, and to enable the effective collection of tax on such goods imposed in terms of the tax levying Acts.

While the CDA uses the "platform" of the CCA and is structured around the imposition, assessment, and payment and collection of duties, it is also written to give maximum effect to self-assessment. Persons liable for duties are required, as part of the clearance process, to make their own tariff classification, value determination and origin determination of the goods, to assess the amount of any tax applicable to the goods and to pay tax according to their own assessment. The role of customs is focused on verification of the self-assessment, rather than on assessing the amount of tax.

While the updated legislation aims at modernizing customs administration, it also broadens and tightens customs authorities' powers of enforcement against traders, particularly with regard to the incidence of smuggling. In that respect, SARS has reviewed its current policy of allowing goods to move on the basis of a manifest to inland terminals.

Currently, the Customs and Excise Act, 1964, allows container operators to move containers in bond from a port of entry to an inland container terminal without submitting a customs clearance declaration. The containers are moved on the basis of a manifest. After the arrival of the goods at the inland container terminal the importer will clear the goods for another permissible customs procedure or for home use and pay the duties.

It was pointed out that this does not provide SARS with adequate information as no value is declared on the manifest and only a general description of the goods is provided. To address this deficiency, clearance at the first port of entry envisaged in the CCA will require a declaration of the true value of the goods and duties and taxes that are to be paid, so as to facilitate electronic data processing that contributes to effective risk management and customs control.

However, SARS has stressed that it is still aware of the benefits of inland terminals and is not averse to the retention and establishment of such terminals. The issue is only the use of the manifest that does not contain sufficient information on which basis the goods are risk assessed, and the effect of the change is that goods will still be able to move from port to inland terminal without the payment of duties and taxes.

Morocco Confirms Large Farms To Lose Tax Exemption

During the speech by King Mohammed VI on the occasion of the Throne Day, marking this year the 14th anniversary of his enthronement, he confirmed that large-scale farmers would lose their tax exemptions this year, as part of the ongoing revenue-raising effort in Morocco.

He noted that the "Morocco Green Plan" has been adopted to modernize the farming sector, and particular attention has been devoted to smallholders with a view to improving their living conditions. The adoption of an advanced agriculture strategy reflected his firm belief in the importance of the sector.

As part of his "concern for the well-being of (smallholders)," he announced that "they will continue to benefit from the tax exemption scheme which, for large-scale farmers, will end this year. Medium and small-scale farmers will therefore continue to benefit from tax exemption."

However, he gave no indication as to the size of farms that will be considered as "large-scale." In Morocco, over 85 percent of farms are of less than 5 hectares, and 70 percent do not reach two hectares in area.

BRUNEI – AUSTRALIA

Signature

Australia and Brunei on August 7, 2013 signed a Tax Information Exchange Agreement.

CYPRUS – PORTUGAL

Into Force

The DTA signed between Cyprus and Portugal will enter into force on August 16, 2013.

INDIA – MOROCCO

Signature

India and Morocco signed a DTA protocol on August 8, 2013.

KYRGYZSTAN – VIETNAM

Negotiations

According to preliminary media reports, Krygyzstan and Vietnam launched DTA negotiations on July 30, 2013.

LITHUANIA – MOROCCO

Forwarded

According to preliminary media reports, the Government of Morocco on August 1, 201, approved a law that would ratify the DTA signed with Lithuania.

NEW ZEALAND – VIETNAM

Signature

New Zealand and Vietnam signed a DTA on August 5, 2013.

POLAND – UNITED STATES

Ratified

Poland completed its domestic ratification procedures in respect of the DTA signed with the United States on August 6, 2013.

SOUTH AFRICA – VARIOUS

Forwarded

South Africa's Select Committee on Finance will on August 13, 2013, discuss two Protocols to South Africa's DTAs with Botswana and Oman, and a new DTA signed with Mauritius.

SPAIN – ARGENTINA

Ratified

Spain has completed its domestic ratification procedures in respect of the DTA Protocol signed with Argentina on March 11, 2013, via the publication of Notice 192 in the Official Gazette on July 29, 2013.

SPAIN – CYPRUS

Forwarded

The DTA between Cyprus and Spain was forwarded to Spain's parliament on August 2, 2013, after approval from the Council of Ministers.

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

THE AMERICAS

INTERMEDIATE US INTERNATIONAL TAX UPDATE

Bloomberg BNA

Venue: Philadelphia – Morgan Lewis, 1701 Market Street, Philadelphia, PA 19103, USA

Key speakers: Bart Bassett (Morgan Lewis LLP), Kyle Bibb (KBibb LLC), David Bowen (Grant Thornton LLP), Ramon Camacho (McGladrey LLP), Kevin Cunningham (KPMG LLP), among numerous others

8/21/2013 – 8/23/2013

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

14TH TAX PLANNING FOR THE WEALTHY FAMILY

Federated Press

Venue: Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, Ontario M5E 1W2, Canada

Chairpersons: Martin Rochwerg (Miller Thomson), Michael Morgan (Morgan, Chappell Partners)

9/11/2013 – 9/12/2013

http://www.hg.org/legal-events.asp?action=page&pcomp=9866

7TH TAXATION OF INBOUND INVESTMENT

Federated Press

Venue: Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, Ontario M5E 1W2, Canada

Chairpersons: Paul D Carman (Chapman and Cutler LLP), Eric Xiao (Ernst and Young, Toronto)

9/17/2013 – 9/18/2013

http://www.federatedpress.com/pdf/HGLegal/7TII1309-E.htm

11TH TAXATION OF EXECUTIVE COMPENSATION AND RETIREMENT

Federated Press

Venue: Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, Ontario M5E 1W2, Canada

Key speakers: Elizabeth Boyd (Partner, Blake, Cassels & Graydon LLP), Terra Klinck (Partner, Hicks Morley Hamilton Stewart Storie LLP)

9/17/2013 – 9/18/2013

http://www.federatedpress.com/pdf/HGLegal/TECR1309-E.htm

INTERNATIONAL TAX ISSUES 2013

Practising Law Institute

Venue: Practising Law Institute, 810 Seventh Avenue, New York, USA

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

9/18/2013 – 9/18/2013

http://www.hg.org/legal-events.asp?action=page&pcomp=8060

US ONLINE GAMING LAW 2013

C5

Venue: The Bellagio, 3600 S Las Vegas Blvd, Las Vegas, NV 89109, USA

Key speakers: Lee Amaitis (CEO, Cantor Gaming), Mark Brnovich (Director, Arizona Department of Gaming), A.G. Burnett (Chairman, Nevada State Gaming Control Board), Bo Bernhard (Executive Director, International Gaming Institute. University of Nevada), among numerous others

9/19/2013 – 9/20/2013

http://www.c5-online.com/2014/582/us-online-gaming-law-2013

17TH ANNUAL MEXICO UPDATE

Bloomberg BNA

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

Key speakers: TBA

9/23/2013 – 9/24/2013

http://www.bna.com/mexico-sandiego/

10TH TAXATION OF FINANCIAL PRODUCTS & DERIVATIVES

Federated Press

Venue: Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, Ontario M5E 1W2, Canada

Chairpersons: Ryan Morris (Partner, McMillan LLP), Richard Marcovitz (Partner, PwC)

9/26/2013 – 9/27/2013

http://www.federatedpress.com/pdf/HGLegal/TFPD1309-E.htm

LATIN PRIVATE WEALTH MANAGEMENT SUMMIT

Marcus Evans

Venue: Trump Ocean Club, Calle Punta Colon, Punta Pacifica, Panama City 0833-00321, Panama

Key speakers: Charles Ferraz (CIO and Head of Wealth Planning, Itaú Private Bank), Maria Elena Lagomasino (CEO and Founding Partner, WE Family Offices), Rene A. Werner (President, Werner & Associates), among numerous others

9/26/2013 – 9/27/2013

http://www.me-uk.com/summit/newsletter.asp?eventid=20093&RecID=6802

2013 INTERNATIONAL TRUST CONFERENCE

STEP Wyoming

Venue: Amangani, 1535 North East Butte Road, Jackson, Wyoming 83001, USA

Key speakers: Charles D Fox IV (Lecturer, University of Virginia School of Law), Daniel J Scott (Chadbourne & Parke LLP), Joseph Field (Withers LLP), among numerous others

9/28/2013 – 9/29/2013

http://www.step.org/sites/default/files/STEPWyoming2013.pdf

INTERNATIONAL TRUSTS & PRIVATE CLIENT CONFERENCE 2013

Mourant Ozannes

Venue: Ritz-Carlton Grand Cayman, PO Box 32348, Seven Mile Beach, Grand Cayman, Cayman Islands

Key speakers: Morven McMillan (Partner, Mourant Ozannes), Shan Warnock-Smith QC (Barrister, ICT Chambers, Cayman, and 5 Stone Buildings, London), Clare Maurice (Maurice Turnor Gardner), Joshua S. Rubenstein (Managing Partner, Katten Muchin Rosenman LLP, New York), among numerous others

10/4/2013 – 10/4/2013

http://www.mourantozannes.com/events-seminars/mourant-ozannes-international-trusts-private-client-conference-2013/conference-programme.aspx

INTRODUCTION TO VAT

IBFD

Venue: ACCRA Beach Hotel, Highway 7 Rockley Bb 15139, Christ Church, Barbados

Key speakers: Fabiola Annacondia (Editor, IBFD's International VAT Monitor), Shima Heydari (VAT team, IBFD)

10/9/2013 – 10/11/2013

http://www.ibfd.org/Courses/Introduction-VAT-including-E-Commerce-Financial-Services-and-Transfer-Pricing

STEP LATIN AMERICA CONFERENCE

Society of Trust and Estate Practitioners

Venue: Radisson Victoria Plaza, Plaza Independencia 759, Montevideo 11100, Uruguay

Key speakers: TBA

10/10/2013 – 10/11/2013

http://www.steplatamconference.com/

WEALTHMATTERS NEW YORK 2013

WealthMatters

Venue: McGraw-Hill Conference Center, 1221 6th Ave, New York, NY 10020-1095, USA

Key speakers: TBA

10/24/2013 – 10/24/2013

http://www.wealthbriefing.com/html/event_detail.php?id=55482

US INTERNATIONAL REPORTING AND COMPLIANCE

BNA Bloomberg

Venue: Sheraton Chicago Hotel and Towers, 301 E. North Water St, Chicago, IL 60611, USA

Chair: TBA

11/11/2013 – 11/12/2013

http://www.bna.com/itrc-chicago/

INTERNATIONAL TAX ASPECTS OF MERGERS, ACQUISITIONS AND CORPORATE FINANCE

IBFD

Venue: Novotel Singapore Clarke Quay, 177A River Valley Road, Singapore

Key speakers: Michael Butler (Finlaysons), Ruxandra Vlasceanu (Research Associate, IBFD), Chris Woo (PwC Singapore)

8/19/2013 – 8/21/2013

http://www.ibfd.org/Courses/International-Tax-Aspects-Mergers-Acquisitions-and-Corporate-Finance-0

WEALTHMATTERS SINGAPORE 2013

WealthMatters

Venue: Raffles Hotel, 1 Beach Road, Singapore 189673, Singapore

Chairpersons: Stephen Harris (Managing director, WealthBriefingAsia, ClearView Financial Media), Bruce Weatherill (Chairman, WealthBriefingAsia, ClearView Financial Media)

9/10/2013 – 9/10/2013

http://www.wealthbriefing.com/html/event_detail.php?id=52941

TP MINDS ASIA

IBC

Venue: Raffles City Convention Centre, 80 Bras Basah Road, Singapore, 189560

Chair: Shanto Ghosh (Asia Pacific Transfer Pricing Leader, Deloitte)

9/25/2013 – 9/26/2013

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

ENGLISH LAW WEEK MOSCOW

The Bar Council

Venue: British Embassy in Moscow, Moscow, Russia 121099

Key speakers: TBA

11/19/2013 – 11/20/2013

http://www.barcouncil.org.uk/for-the-bar/international/events/english-law-week-moscow,-19-20-november-2013/

BEPS: INTEREST DEDUCTION, CORPORATE GROUPS AND TAX JURISDICTIONS

IBFD

Venue: Grand Hyatt Jakarta, Jalan M H Thamrin, Kav 28-30, Jakarta 10230, Indonesia

Chair: Sam van der Feltz (CEO IBFD)

11/26/2013 – 11/26/2013

http://www.ibfd.org/IBFD-Tax-Portal/Events/Interest-Deduction-Corporate-Groups-and-Tax-Jurisdictions-Hitchhiker-s-Guide#tab_program

CENTRAL AND EASTERN EUROPE

INTERNATIONAL WEALTH FORUM 2013

Bosco Conference

Venue: Swissotel Tallinn, Tornimae Street 3, 10145 Tallinn, Estonia

Key speakers: TBA

9/9/2013 – 9/10/2013

http://bosco-conference.com/en/events/upcoming/tallinn-2013

MIDDLE EAST AND AFRICA

APPLICATION OF TAX TREATIES

IBFD

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

Key speakers: Jan de Goede (Senior Principal, Tax Knowledge Management, IBFD), Kennedy Munyandi (IBFD), Carlos Gutiérrez Puente (IBFD)

9/25/2013 – 9/27/2013

http://www.ibfd.org/Courses/Application-Tax-Treaties-0#tab_program

WESTERN EUROPE

ISLE OF MAN SUCCESSION LAW & RELATED MATTERS

STEP Isle of Man

Venue: The Claremont Hotel, Loch Promenade, Douglas, Isle of Man

Key speaker: Paul Kerruish (Kerruish Law & Trust)

8/21/2013 – 8/21/2013

http://www.step.org/cpd-event-isle-man-succession-law-related-matters

67TH IFA CONGRESS

IBFD

Venue: Bella Center, Center Boulevard 5, Copenhagen, Denmark

Chairpersons: Barbara Angus (Ernst and Young), Xavier Oberson (Oberson Avocats), among numerous others

8/25/2013 – 8/30/2013

http://www.ifacopenhagen2013.com/

SWISS TAX MODULES FOR STEP PROFESSIONALS

STEP Zurich

Venue: Hotel Glaernischhof, Claridenstrasse 30, Zurich 8002, Switzerland

Key speakers: TBA

8/27/2013 – 8/27/2013

http://www.step.org/swiss-tax-modules-step-professionals-zurich

INTERNATIONAL WEALTH MANAGEMENT RETREAT

Swiss Finance Institute

Venue: Badrutt's Palace Hotel, Via Serlas 27, St. Moritz CH-7500, Switzerland

Key speakers: David Leppan (Chairman, Wealth-X, Singapore), Professor Philippe Bacchetta(University of Lausanne and Swiss Finance Institute), Martin Naville (CEO, Swiss-American Chamber of Commerce, Zurich), Professor Karl Schmedders (University of Zurich and Swiss Finance Institute), among numerous others

9/1/2013 – 9/4/2013

http://www.swissfinanceinstitute.ch/iwmr_guide_a4_cg.pdf

THE 23RD OXFORD OFFSHORE SYMPOSIUM

Offshore Investment

Venue: Jesus College, Oxford University, Turl Street, Oxford OX1 3DW, England

Chair: Andrew De La Rosa (ICT Chambers, Cayman and London)

9/1/2013 – 9/7/2013

http://www.offshoreinvestment.com/pages/index.asp?title=The_23rd_Oxford_Offshore_Symposium&catID=10090

TRANSFER PRICING AND INTANGIBLES

IBFD

Venue: IBFD head office, H.J.E. Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key speakers: Anuschka Bakker (IBFD), Giammarco Cottani (European Tax College, Leuven), Monica Erasmus-Koen (PwC), Danny Houben (Global Transfer Pricing Manager with Shell International BV), among numerous others

9/2/2013 – 9/2/2013

http://www.ibfd.org/Courses/Transfer-Pricing-and-Intangibles#tab_program

CORPORATE TAXATION: TAX TREATIES AND EU ASPECTS

IBFD

Venue: IBFD head office, HJE Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key speakers: Bruno da Silva (Loyens & Loeff), Giuseppe Melis (Professor of Tax Law and of Tax Litigation at the Law Department of the University of Molise), Belema Obuoforibo (Director, IBFD Knowledge Center), among numerous others

9/9/2013 – 9/12/2013

http://www.ibfd.org/Courses/Corporate-Taxation-Tax-Treaties-and-EU-Aspects#tab_program

COMPLIANCE CONUNDRUMS, COPING WITH HMRC ENQUIRIES

Mercia Group

Venue: All Nations Centre, Sachville Avenue, Heath, Cardiff CF14 3NY, Wales

Key speaker: Mark Morton (Head of Tax, Mercia Group)

9/12/2013 – 9/12/2013

http://my.mercia-group.co.uk/Event/EventInfo?EventID=18910

CORPORATE TAX REFORM

TolleyConferences

Venue: Halsbury House. 35 Chancery Lane, London WC2A 1EL, UK

Key speakers: TBA

9/12/2013 – 9/12/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Corporate-Tax-Reform/

PRACTICAL APPLICATION OF THE STATUTORY RESIDENCE TEST

IBC

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

Key speakers: Emma Chamberlain (Pump Court Tax Chambers), Patrick Way (Gray's Inn Tax Chambers), Peter Vaines (Squire Sanders), Keith Gordon (Atlas Chambers), among numerous others

9/12/2013 – 9/12/2013

http://www.iiribcfinance.com/download/send-file/iddownload/9871

WEALTH MANAGEMENT CONFERENCE

Institute of Chartered Accountants in England and Wales

Venue: Chartered Accountants' Hall, London, EC2R 6EA, UK

Chair: Justin Urquhart Stewart (Marketing Director, Seven Investment Management)

9/13/2013 – 9/13/2013

http://www.icaew.com/en/events/2013/september/rlonconf130913-wealthmgmt-conference

ACCOUNTING FOR INCOME TAX

BNA Bloomberg

Venue: London, UK, TBA

Chair: Jim Hemelt (Adjunct professor, Georgetown University McDonough School of Business)

9/16/2013 – 9/16/2013

http://www.bna.com/accounting-income-tax-e17179869443/

BANK INTERNAL FUNDS TRANSFER PRICING

British Banking Association

Venue: Pinners Hall, 105-108 Old Broad Street, London, EC2N 1EX

Chair: Moorad Choudhry (Treasurer, Corporate Banking Division at The Royal Bank of Scotland)

9/16/2013 – 9/16/2013

http://www.bba.org.uk/events-and-training/event/bank-internal-funds-transfer-pricing-ftp

EU FINANCIAL TRANSACTIONS TAX

Infoline

Venue: Central London, UK, TBA

Key speakers: Daniel Rusbridge (Policy Advisor, Financial Services, HM Treasury), Liza Taylor (Head of Product & Operational Tax, Fidelity International), Richard Middleton (Managing Director, Association for Financial Markets in Europe), among numerous others

9/17/2013 – 9/17/2013

http://www.infoline.org.uk/event/financial-transaction-tax-conference

MARKET FORCES: TAX NEUTRALITY, TRADE AND TREATIES

CISX

Venue: Mansion House, 37A Walbrook, The City, London EC4N 8BS, UK

Chair: Tamara Menteshvili (Chief Executive, CISX)

9/17/2013 – 9/17/2013

http://www.jerseyfinance.je/events/cisx-international-business-summit

PRIVATE CLIENT TAX: CHANNEL ISLANDS

TolleyConference

Venue: St Helier, Jersey, TBA

Key speakers: Dr Raymond Ashton (Partner, Ashton Barnes Tee), Simon Airey (Partner, DLA Piper), Andy Sharp (Director, Specialist Taxation Services), Adrian Shipwrigh (Consultant, Mlaw), Tim George (Partner, Withers LLP), Giles Clarke (Author, Offshore Tax Planning), John Barnett (Partner, Burges Salmon), Michael Sherry (Barrister, Temple Tax Chambers)

9/17/2013 – 9/17/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Private-Client-Tax-Planning-Channel-Islands-Sep-13/

CANTON OF SCHWYZ CONFERENCE 2013

IBC

Venue: Pfaffikon SZ, Freienbach, Switzerland TBA

Chair: Kurt Zibung (Chairman of the Department for Economic Affairs)

9/18/2013 – 9/18/2013

http://www.iiribcfinance.com/event/Finance-Valley-Lake-Zurich-Pfaeffikon-SZ-Conference

TAX PLANNING FOR LAND TAX

IBC

Venue: Central London, UK, TBA

Key speakers: Patrick Soares (Barrister, Gray's Inn Tax Chambers), Michael Flesch QC (Barrister, Gray's Inn Tax Chambers), Sean Randall (Partner, Deloitte), among numerous others

9/19/2013 – 9/19/2013

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

THE CHANGING FACE OF CROSS BORDER INSOLVENCY AND RESTRUCTURING

Mourant Ozannes

Venue: Bishopsgate Institute, 230 Bishopsgate, London EC2M 4QH, UK

Co-chairs: Michael Crystal QC (South Square), Robert Shepherd (Senior Partner, Mourant Ozannes)

9/19/2013 – 9/19/2013

http://www.mourantozannes.com/events-seminars/other-events/the-changing-face-of-cross-border-insolvency-and-restructuring.aspx

PAYROLL MANAGERS REVIEW

TolleyConferences

Venue: London, UK, TBA

Chair: Mike Evans (Employment Taxes Consultant, MY Consultancy)

9/19/2013 – 9/19/2013

http://www.conferencesandtraining.com/en/Browse-Events/Payroll/Payroll-Managers-Review/?displayControl=overview

PRIVATE WEALTH LEADERS ASIA

IBC

Venue: London, UK, TBA

Key speakers: Brita Pfister (Director, Rothschild); David Carbon (Managing Director, Economic and Currency Research, DBS); Gurbachan Singh (Senior Partner, Khattarwong); Richard Jerram (Chief Economist, Bank of Singapore)

9/24/2013 – 9/24/2013

http://www.iiribcfinance.com/event/Wealth-Forum-Asia-Event

TAX PLANNING FOR NON-DOMICILIARIES AND EMERGING MARKETS

TolleyConferences

Venue: London, UK, TBA

Key speakers: TBA

9/24/2013 – 9/25/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Tax-Planning-For-Non-Domiciliaries/

PRIVATE EQUITY TAX PRACTICES 2013

IBC

Venue: The Hatton, 51-53 Hatton Garden, London EC1N 8HN

Key speakers: Mark Baldwin (Partner, MacFarlanes), Kathleen Russ (Partner, Travers Smith), Paul Clark (Senior Manager, Investment Management, PwC), Stephen Pevsner (Partner, SJ Berwin), Gemma Harris (Partner, Deloitte), among others

9/26/2013 – 9/26/2013

http://www.iiribcfinance.com/event/Private-Equity-Tax-Practices-Conference

STEP ANNUAL TAX CONFERENCE 2013

Society of Trust and Estate Practitioners

Venue: Hilton Manchester Deansgate, 303 Deansgate, Manchester M3 4LQ, UK

Key speakers: John Barnett (Partner, Burges Salmon LLP), Emma Chamberlain (Pump Court Tax Chambers), Michael Sherry (Head of Chambers at Temple Tax), among numerous others

9/26/2013 – 9/26/2013

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

STEP SWISS EUROPEAN ANNUAL CONFERENCE 2013

Society of Trust and Estate Practitioners

Venue: Crown Plaza Zurich Hotel, 420 Badenerstrasse, Zurich 8040, Switzerland

Key speakers: John Dunne (Grant Thornton), Dr Simone Nadelhofer (Counsel, LALIVE), Eason Rajah (Ten Old Square), among numerous others

10/2/2013 – 10/2/2013

http://www.step.org/zurich2013

FEDERATION OF EUROPEAN ACCOUNTANTS TAX DAY 2013

IBFD

Venue: Royal Museum of Art and History, Jubelpark, 10 Parc du Cinquantenaire, B-1000 Brussels, Belgium

Key speakers: TBA

10/2/2013 – 10/2/2013

http://www.ibfd.org/IBFD-Tax-Portal/Events/FEE-Federation-European-Accountants-Tax-Day-2013

WEALTHMATTERS LONDON OCTOBER 2013

WealthMatters

Venue: America Square Conference Centre, 1 America Square, 17 Crosswall, London EC3N 2LB, UK

Key speakers: TBA

10/2/2013 – 10/2/2013

http://www1.wealthbriefing.com/brochure/WM-LondonBrochure2Oct13.pdf

INTERNATIONAL TRUSTS AND PRIVATE CLIENT FORUM, ISLE OF MAN

IBC

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

Key speakers: Christopher McCall QC (Barrister, Maitland Chambers), Tom Maher (Director, Dougherty Quinn), Christopher Tidmarsh QC (Barrister, 5 Stone Buildings) Nick Jacob (Partner, Lawrence Graham), Elspeth Talbot-Rice QC (Barrister, XXIV Old Buildings), Lesley Lintott (Partner, Penningtons), John Machell QC (Barrister, Serle Court), among numerous others

10/8/2013 – 10/8/2013

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

OVERSEAS ESTATES

Society of Trust and Estate Practitioners

Venue: Brown Shipley, 3 Hardman Street, Manchester, M3 3HF, UK

Key speakers: TBA

10/8/2013 – 10/8/2013

http://www.step.org/overseas-estates

CITIZENSHIP BY INVESTMENT AND INTERNATIONAL RESIDENCE SUMMIT

IBC

Venue: Jumeirah Carlton Tower Hotel, On Cadogan Place, London SW1X 9PY, UK

Chair: Micha-Rose Emmett (Managing Director, CS Global Partners)

10/8/2013 – 10/9/2013

http://www.iiribcfinance.com/download/send-file/iddownload/10310

IFRS 4 PHASE II FOR INSURERS

Deloitte

Venue: Central London, UK, TBA

Chair: Hitesh Patel (Finance Director & Chief Investment Officer, Lucida)

10/8/2013 – 10/9/2013

http://www.infoline.org.uk/download/send-file/iddownload/10353

RECENT CASE LAW ON TAX TREATIES

IBFD

Venue: IBFD head office, H.J.E. Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key speakers: Jan de Goede (Senior Principal, Tax Knowledge Management, IBFD), Bart Kosters (Senior Principal Research Associate, IBFD), Shee Boon Law (Manager, Tax Research Services, IBFD), Tigran Mkrtchyan (Ernst and Young, Amsterdam), among others

10/9/2013 – 10/11/2013

http://www.ibfd.org/Courses/Recent-Case-Law-Tax-Treaties

SHOREX WEALTH MANAGEMENT FORUM LONDON

Shorex

Venue: The Westbury Hotel, Bond Street, Mayfair, London W1S 2YF, UK

Key speakers: Bryon Lake (Head of EMEA ETF, Invesco PowerShares), Carmen González-Calatayud (Director, Senior Passive Equity Product Specialist, HSBC), Alain Vandenborre (Founder & Executive Chairman, Singapore Diamond Exchange), James Bernard (Director of Business Development, Dubai Multi Commodities Centre), Anthony John (CEO, The ECU Group plc)

10/10/2013 – 10/10/2013

http://www.shorexlondon.com/

EUROPEAN VALUE ADDED TAX – SELECTED ISSUES

IBFD

Venue: IBFD head office, H.J.E. Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key speakers: Walter van der Corput (Editor, IBFD's International VAT Monitor), Peter Hughes (Chartered Accountant), Silvia Kotanidis (Case Handler, European Commission in the Directorate General Taxation and Customs Union), Carsten Zatschler (Court of Justice of the European Union)

10/14/2013 – 10/16/2013

http://www.ibfd.org/Courses/European-Value-Added-Tax-Selected-Issues-0

HEDGE FUND REGULATION AND COMPLIANCE

IBC

Venue: Central London, UK, TBA

Key speakers: Phil Bartram (Partner, Travers Smith), William Amos (Financial Conduct Authority), Jon Hanifan (Principle, Hedge Fund Tax, Akin Gump), among numerous others

10/15/2013 – 10/15/2013

http://www.infoline.org.uk/download/send-file/iddownload/10294

GLOBAL TAX POLICY CONFERENCE

The Harvard Kennedy School and the Irish Tax Institute

Venue: Dublin Castle, Dame Street, Dublin 2

Key speakers: Michael Noonan (Irish Minister for Finance), Pascal Saint-Amans (Director, Centre for Tax Policy & Administration, OECD), Micheal D'Ascenzo (Former Commissioner for Taxation for the Australian Tax Office), Carlo Cottarelli (Director, Fiscal Affairs Department, International Monetary Fund), among numerous others

10/17/2013 – 10/18/2013

http://www.ibfd.org/IBFD-Tax-Portal/Events/Global-Tax-Policy-Conference

PRINCIPLES OF INTERNATIONAL TAX PLANNING

IBFD

Venue: IBFD head office, HJE Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key speakers: Boyke Baldewsing (Principal Research Associate, IBFD), Piet Boonstra (Van Campen Liem), Ronald van den Brekel (Ernst & Young), Patrick Ellingsworth (IBFD), Paul Halprin (Baker & McKenzie), among numerous others

10/21/2013 – 10/25/2013

http://www.ibfd.org/Courses/Principles-International-Tax-Planning

TAX PLANNING FOR THE FAMILY COMPANY AND BUSINESS

IBC

Venue: Millennium Hotel London Knightsbridge, 17 Sloane Street, Knightsbridge, London SW1X 9NU, UK

Key speakers: David Heaton (Partner, Baker Tilly), Pete Miller (Author of Taxation of Company Reorganisations), Patrick C Soares (Tax Editor of the Property Law Bulletin), Clive Weir (Director, Albert Goodman Pension Consultants), Matthew Woods (Partner, Withers), among numerous others

10/24/2013 – 10/24/2013

http://www.iiribcfinance.com/download/send-file/iddownload/10590

OFFSHORE TAX REGULARIZATION

Chartered Institute of Taxation

Venue: The Chartered Institute of Taxation, 11-19 Artillery Row, 1st Floor, Artillery House, London SW1P 1RT, UK

Chair: John Whiting (Tax Director, Office of Tax Simplification)

10/31/2013 – 10/31/2013

https://www.tax.org.uk/members/events/Offshore+Tax+Regularisation+%28Disclosure+Facilities+and+Agreements%29+Half-Day+Conference+2013?NRMODE=Published&NRNODEGUID=%7b89F8E0CB-48F0-452B-B416--28638757595B%7d&NRORIGINALURL=%2fmembers%2fevents%2fOffshore%2bTax%2bRegularisation%2b%2528Disclosure%2bFacilities%2band%2bAgreements%2529%2bHalf-Day%2bConference%2b2013&NRCACHEHINT=NoModifyLoggedIn&time=635082645413927805

TRANSFER PRICING AND ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS

IBFD

Venue: IBFD head office, HJE Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key speakers: Patrick Ellingsworth (IBFD), Luis Nouel (IBFD), Antonio Russo (Partner, Baker & McKenzie)

11/4/2013 – 11/6/2013

http://www.ibfd.org/Courses/Transfer-Pricing-and-Attribution-Profits-Permanent-Establishments#tab_program

TAX PLANNING FOR AMBITIOUS SMES

TolleyConferences

Venue: London, UK, TBA

Chair: Mike Truman (Editor of Taxation magazine)

11/5/2013 – 11/5/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Tax-Planning-SMEs/

FAMILY OFFICE FORUM, ZURICH

Prestel and Partner

Venue: The Dolder Grand, Kurhausstrasse 65, 8032 Zurich, Switzerland

Key speakers: Ida Beerhalter (Co-Head, IOME Family Office), Max von Bismarck (Partner and CEO, SkyBridge), Cherie Blair (Founder, Cherie Blair Foundation), Peter Brock (Head of Family Office Services, Ernst and Young), among numerous others

11/5/2013 – 11/6/2013

http://www.prestelandpartner.com/familyofficeforumzurich.html

STEP JERSEY 21ST ANNUAL INTERNATIONAL CONFERENCE

STEP Jersey

Venue: Pomme d'Or Hotel, Liberation Square, St Helier, JE1 3UF, Jersey

Key speakers: Stephen Arthur (Temple Tax Chambers), Russell Bussey (IPS Capital), Christopher Butler (Boodle Hatfield), Andrew De La Rosa (ICT Chambers), John Harris (Jersey FSC), Natasha Hassall (Boodle Hatfield), Pamela Pitcher (Pamela Pitcher Consulting), Eason Rajah (Ten Old Square), John Riva (KPMG), Shân Warnock-Smith (5 Stone Buildings)

11/8/2013 – 11/8/2013

http://www.step.org/sites/default/files/STEP%20Jersey%2021st%20Annual%20International%20Conference%20programme.pdf

INTERNATIONAL TAX PLANNING ASSOCIATION'S FLORENCE MEETING

International Tax Planning Association

Venue: The Westin Excelsior Florence, Piazza Ognissanti 3, 50123 Florence, Italy

Chairman: Milton Grundy (President, International Tax Planning Association)

11/10/2013 – 11/12/2013

https://www.itpa.org/?page_id=7717

TAX PLANNING: RESIDENCE AND EMIGRATION

TolleyConferences

Venue: London, UK, TBA

Key speakers: Priya Dutta (Gabelle LLP), Christopher Groves (Withers LLP), Phillip DeDearden (Chartered Accountant)

10/12/2013 – 10/12/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Tax-Planning-Residence--Emigration-Nov-13/?displayControl=overview

FUTTER AND PITT: MISTAKES BY TRUSTEES

Institute of Law

Venue: Pomme d'Or Hotel, Liberation Square, St Helier, JE1 3UF, Jersey

Key speakers: Richard Wilson (Barrister), Matthew Slater (Barrister), Lord Millett (former Lord of Appeal in Ordinary), among numerous others

11/20/2013 – 11/20/2013

http://www.lawinstitute.ac.je/downloads/Futter%20and%20Pitt%20-%20Mistakes%20by%20trustees%20-%20updated.pdf

ASIA PACIFIC

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

India

The Delhi Income Tax Appellate Tribunal heard the case of a company in India which was charged with reporting to a German company the results of clinical tests being run at a company in Sri Lanka. The Indian company applied to the tax authority for permission to not withhold tax on the payments to the Sri Lankan company because it did not have a presence in India, and also because the payments could not be considered royalties under the India-Sri Lanka tax treaty.

The assessing officer disagreed and ordered the Indian company to withhold 10% of the payments as tax. The Commissioner of Taxation agreed with the company, after which the officer appealed to the Tribunal.

The officer maintained that the payments were consideration for "information concerning industrial, commercial or scientific experience" under the tax treaty and should be subjected to the withholding tax on royalties, despite the lack of a provision for 'fees for technical services'. The company argued that it performed services for the Sri Lankan company which meant that the payments were business profits which were not taxable in India because of the lack of a permanent establishment, and that providing the information to the German company was a general duty which did not fall under the treaty.

The Tribunal accepted the company's argument and agreed with the Commissioner's ruling, stating that the company was paying for and passing commercial information from Sri Lanka to the German company as an ancillary company without the involvement of any technical know-how, and therefore the payments were not royalties but business profits not subject to withholding tax.

The judgment was delivered on July 26, 2013.

http://www.itatonline.in:8080/itat/upload/563264923170258495613$5%5E1REFNO3879_Kendles_India.pdf

Income Tax Appellate Tribunal: *ITO v. Kendle India Ltd. (ITA No.3879/Del/2011)*

Belgium

In these joined cases, the European Court of Justice was asked for a preliminary ruling concerning Belgian companies which had buildings used for their business activities that were also lived in by managers and their families without any consideration being paid.

Both companies claimed deduction of VAT from the entire construction costs of the buildings, but the tax authorities refused to allow the deduction of a percentage of VAT equal to the degree each building was being used for residential purposes. Both companies won in their respective Courts of Appeal on the basis that the buildings were provided to the managers in order for them to carry out the business activities of the companies, and therefore the costs related to their private use of the buildings were deductible as capital expenditure. The tax authority in both cases appealed to the Court of Cessation, which approached the ECJ for an interpretation of EU law regarding private use of a company building for VAT purposes.

The ECJ was asked whether the EU VAT Directive prevented a company from providing part of its building to an employee without receiving any form of consideration while expecting to be able to deduct VAT from that building, and whether it was relevant that use of the building was part of the employee's contract or a result of their performance. The ECJ stated that a company may deduct the entire VAT amount from the construction costs of a building used for its business and made available to its employees for private use, but that the company would be liable for VAT on the cost of providing it for private use as the supply of a service.

However, the letting of property as a service is exempt from VAT according to EU law as long as the principles of letting are fulfilled, specifically the imposition of rent for a fixed period of time. The ECJ concluded that it was for the national court to decide whether provision of the buildings to the managers for private use constituted letting of property based on EU law, such as to allow the deduction of VAT from the cost of the letting (which in these cases would be relative to the amount of private use of each building), despite the service being considered a benefit in kind under national law.

The judgment was delivered on July 18, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=139764&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3659182

European Court of Justice: *Medicom v. Belgium and Maison Patrice Alard v. Belgium (C-210/11 and C-211/11)*

Bulgaria

The European Court of Justice was asked for a preliminary ruling concerning a Bulgarian company which had its staff provided by another company.

The former company wanted to deduct VAT from the cost of providing transportation, work clothes and protective gear to the employees but the tax authority refused on the basis that the staff were employed by the latter company. Appealing against that decision, the former company maintained that it was the economic employer of the staff and was legally responsible for their health and safety. The court approached the ECJ for an interpretation of EU law.

The ECJ stated that there was a sufficient connection between the employees and the hiring company so that goods and services supplied to them were expenses incurred for the sake of the business, and that not allowing the deduction of VAT would have interfered with "the principle of neutrality of VAT" since the company was carrying out an economic activity for which the expenditure was necessary.

The ECJ was also asked to consider the impact of a national law which expanded the scope of exclusions of the right to deduct VAT after Bulgaria had joined the European Union, but ultimately commented that it was a matter for the national courts to decide. However, the general ruling was that a national law that is found to be incompatible with the EU VAT Directive must be set aside.

The judgment was delivered on July 18, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=139758&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2825762

European Court of Justice: *AES-3C Maritza East 1 EOOD v. Bulgaria (C-124/12)*

Denmark

The European Court of Justice was asked for a preliminary ruling concerning a company which sold products in Denmark but did not provide any delivery services. Goods were purchased for both private and commercial purposes by customers from several Member States; however the company did not require knowledge of their intent or their nationality before making the sale, and paid Danish VAT and excise duty on all sales of spirits.

The Swedish Tax Agency decided that the company was required to accept a "simplified accompanying document" when selling spirits to Swedish customers, but the company complained to a Danish court which approached the ECJ for an interpretation of EU law regarding whether the company was required to ascertain whether its goods were purchased for private or commercial use and where the customer was situated.

The ECJ revealed that under EU law it is "the person who is responsible for the intra-Community movement" who must prepare the document when goods are intended to be consumed in a different Member State from where the excise duty is paid. It found that due to the nature of the company, it was the customer that was moving the goods between Member States, as the company did not deliver its products. The company was therefore not responsible for checking whether a customer must prepare a document.

The ECJ also stated that under EU law goods bought by private individuals were subject to excise duties in the Member State where they were purchased, but products "being held for commercial purposes in another Member State" were liable for excise duties in that Member State. The conclusion reached was that the national tax authority had to consider each case on its own merits with regard to excise duties on products sold for both private and commercial use.

The judgment was delivered on July 18, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=139755&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2806412

European Court of Justice: *Metro Cash and Carry v. Denmark (C-315/12)*

Netherlands

The European Court of Justice was asked for a preliminary ruling during proceedings concerning a company in the Netherlands which had established a pension fund separate from its business and paid into it on behalf of its employees. A subsidiary of the company arranged for administration and management services for the fund, and the company deducted the VAT on the cost of those services.

The company was assessed for the amount of VAT which it contested, arguing at the Regional Court of Appeal that the services provided to the pension fund were normal VAT-deductible business costs, or alternatively that the pension fund was exempt from VAT as an investment fund. The tax authority's argument was that the company itself was not the beneficiary of the services, did not provide consideration for them and so could not deduct the VAT, and that the pension fund was not exempt from VAT. The court approached the ECJ for an interpretation of EU law.

The ECJ stated that for the deduction of VAT there must exist a link either between the input and output transactions of a business for which VAT is paid and deducted, or between the costs of the services in general and the company's economic activity, and that that link depended on the relationship of the expenses with the company, given the independence of the pension fund.

Firstly, the ECJ reasoned that the company had a legal obligation to provide a pension to its employees, and so the costs of the services were a part of its taxable business activities. Secondly, it argued that not allowing the deduction would disrupt the system of VAT deduction with regard to the tax benefit it provides, and undermine the neutrality of VAT. Thirdly, it stated that the separation of the fund from the company should not impact its ability to deduct VAT; otherwise its freedom to choose the most beneficial method to fulfill its obligation to provide a pension to its employees would be restricted.

Therefore, the ECJ concluded that under EU law a company is permitted to deduct VAT from administration and management services provided to a separate pension fund, as long as "the existence of a direct and immediate link" can be established. Given this decision, there was no need for the ECJ to consider whether the fund was exempt from VAT as a "special investment fund".

The judgment was delivered on July 18, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=139742&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2957873

European Court of Justice: *PPG Holdings BV v. Netherlands (C-26/12)*

Deadline August 15, 2013

Competition is the number one operating principle between countries as between species, individuals and companies, so Switzerland and Luxembourg are demonstrating their evolutionary fitness by seizing leadership of the continental European Renminbi market. Of course, the very assets that have allowed them to become two of the most successful "offshore" jurisdictions are the ones that are making it easy for them to make the running in renminbis: low tax rates, flexible corporate forms, openness to international business flows and a high level of financial expertise. It might have been expected that London would emerge as the preeminent European location for renminbi activity, especially given its historical links with Hong Kong, but this doesn't appear to be the case: renminbi deposits in London in June, 2013 appear to have been largely static at about RMB14bn, compared to Luxembourg's RMB40bn and Switzerland's RMB10bn. Trade-related renminbi transactions in London were running at RMB20bn annually in mid-2013, however. Luxembourg's success probably owes something to the fact that the three top Chinese banks have all chosen to locate their European headquarters there.

But these European renminbi volumes are dwarfed into insignificance by those in Hong Kong. HSBC's forecast for renminbi-denominated bond issuance in Hong Kong in 2013 is in the region of RMB280bn to RMB360bn. Taiwan and Singapore have both launched challenges, with the former boasting deposits of RMN70bn just four months after opening for renminbi business; but Hong Kong has easily fended them off, with deposits of RMB677bn last April. Hong Kong settled 85 percent of China's external renminbi-denominated trade (worth a total of RMB1.7 trillion) in 2012. Eat your heart out, London! As with Luxembourg and Switzerland, but even more so, Hong Kong has built-in advantages when it comes to renminbi business, and has been fully supported by China (of which it is after all a part) in developing it. And it was Hong Kong, rather than London, that launched a HIBOR fixing, just a month ago. Mind you, after the LIBOR scandal, it would have been a stretch for London to have had a shot at that. Given China's large and growing trading involvement with the Middle-East and Africa, Dubai, another low-tax location, is the other place we shouldn't disregard in terms of renminbi usage – volumes are minimal so far, but that is probably just a temporary situation. Anyway, for now, Hong Kong rules the Yuan, in international terms at least.

The Vodafone affair drags on. The company evidently doesn't believe it will get a fair hearing from the Indian Government, and who can blame it after India simply changed the rules when Vodafone had won fair and square in the courts. It's difficult to understand the Government's motivation: the Vodafone case is worth a fair slab of change in itself (USD2.2bn), but surely the Government isn't being driven simply by cupidity? Recent news about tax collections seemed to be mildly positive, although it won't have much of an impact on the budget deficit, which is running at about 5 percent and doesn't seem likely to fall in the near future. Debt has shot up over recent years – it is not high in relation to GDP, but the maturity profile is worrying. Anyway, that is beside the point: with elections imminent, the current, ineffectual government is not going to do anything about the country's poor economic situation. Why then continue to persecute foreign investors? At least the Government is consistent in that sport, as is shown by its long-running dispute with Mauritius over their tax treaty, although the underlying motive in that case was to try to stop "round-tripping" by Indian investors. The result, however, is the same as with the Vodafone case (and other foreign investor tax spats) – to deter foreign investment. Heaven knows there are enough barriers – bureaucratic, fiscal and unmentionable – to foreign investment already, without adding uncertainty to the mix. Yet the Government persists. Perhaps, in the rarefied atmosphere of the governing circles of the world's largest democracy, foreign investment simply doesn't signify.

I suppose that the EU thinks it should be congratulated in having escaped from a major trade confrontation with China over its anti-dumping and countervailing measures in the solar panel sector. But this was a disaster of its own making, and the game is not over yet. The mad jumble of EU trade policy is also demonstrated this week by the UK pottery affair, in which, as with the solar panel dispute, a small coterie of inefficient producers has "captured" the naive arbiters of trade at the Commission and bullied them into applying penal duties to competing products. Excellently, the Chairman of the (British) company being hurt by the pottery duties said that one "can't sit at home being a little European hiding behind tariffs and duties." Of course that's exactly what the protectionist complainants are doing. The rules underlying the protective actions that are taken by the Commission are mind-bendingly complex. You can prove anything with statistics, indeed, and in its rush to appear responsive to the supposed imminent demise of European producers (a frenzy calculatedly whipped up by the lobbyists who line the rue de la Loi – hah! – in Brussels) the Commission simply reaches for the nearest instrument to hand. It's the amazingly high level of the protective duties that really gets to me: 36 percent in the case of the pottery, and up to 60 percent in the case of the panels. In a modern world, with out-sourcing available for virtually every step in the manufacturing process, how can it possibly be true that a Chinese producer can sell goods for less than half of what it costs a European producer to make the self-same objects? Why isn't the European producer using a Chinese supplier, as was the British pottery producer? Nonetheless, in their dreamworld in Brussels the bureaucrats shake the statistical kaleidoscope and come up with nonsense.

The real problem is that the trade protection process is opaque and totally undemocratic, both in Europe and in the US, where the odious Commerce Department completely matches the EU Commission in its capacity to be taken in by producer lobbies. Neither in Europe nor in the USA is there any mechanism by which democratic oversight is applied to the process. Arguably, the Congress could interfere, but in reality that is unfeasible, and how would it expect to overturn a ruling which has been made under the President's administrative fiat? In Europe the process could be slightly more direct, via the European Parliament, but that body is about as democratic as my little finger. If anything it's captured just as thoroughly as the Commission: it was a British MEP who was responsible for the pottery debacle. My proposal is that a completely independent auditing body should be set up, staffed by non-political trade experts recruited from the real world, and that any "anti-dumping" or "countervailing" ruling should be subject to approval by that body. And I would ban those weasel words, anyway.

The Jester