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GLOBAL TAX WEEKLY
a closer look

ISSUE 209 | NOVEMBER 10, 2016

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

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a closer look

Global Tax Weekly – A Closer Look

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

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NEWS ROUND-UP

For article guidelines and submissions, contact GTW_Submissions@wolterskluwer.com

G20 Leaders Focus On Promoting Growth Through Tax Policy

by Jeffrey Owens, Senior Policy Advisor, Ernst & Young LLP

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This article was previously published in EY's Global Tax Policy and Controversy Briefing 2016

Introduction

As expected, the G20 leaders pledged to use tax policy to promote innovation-driven, inclusive growth and to strengthen economic governance through heightened transparency and international tax cooperation.

In a communiqué [1] released at the end of the G20 summit held September 4–5, 2016 in Hangzhou, China, the G20 leaders stated that while the global economic recovery is progressing and resilience has improved in some economies, numerous financial and political challenges remain, and growth is "still weaker than desirable." The leaders adopted a package of policies and actions that they believe will help achieve the G20's goal of strong, sustainable, balanced and inclusive growth.

As part of the G20's commitment to shoring up the global economic and financial architecture, the leaders stated that they will continue to support international tax cooperation measures that are designed to achieve a globally fair and modern international tax system and foster growth. This includes a timely, consistent and widespread implementation of the G20/Organisation for Economic Co-operation and Development's (OECD's) BEPS Action Plan, as well as an effective and widespread implementation of the internationally agreed standards on tax transparency.

The leaders stressed the need to improve transparency standards regarding beneficial ownership in order to protect the integrity of the international financial system and prevent the misuse of entities and arrangements for corruption, tax evasion, terrorist financing, and money laundering.

They asked the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and the Financial Action Task Force on Money Laundering to make initial proposals on ways to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information of legal persons and legal arrangements, and the exchange of such information. The proposals are expected to be presented at the G20 finance ministers' October 6, 2016 meeting in Washington.

The leaders also highlighted the importance of using fiscal policy flexibly and making tax policy and public expenditure more growth friendly. "We emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting innovation-driven, inclusive growth, as well as the benefits of tax certainty to promote investment and trade," they said. In that regard, the leaders asked the OECD and the International Monetary Fund (IMF) to continue working on the issues of pro-growth tax policies and tax certainty. China pledged to make its own contribution by establishing an international tax policy research center for international tax policy design and research.

Is Tax Reform The Next Big Priority?

Given the G20's aim of boosting growth through tax policy, structural tax reform is highly likely to become a key area of debate for governments and other intergovernmental and international organizations such as the IMF, the OECD, the United Nations (UN), and the World Bank.

But, unlike the G20/OECD's BEPS project, which focused on modernizing the international framework for taxing the profits of multinational enterprises, this new tax reform effort will likely strive to be more far-reaching by encompassing all components of countries' tax systems.

The Drivers Of Tax Reform

The G20's inclusive growth project is likely to be driven by different factors – economic, social and political – that will vary among OECD countries, developing countries and emerging economies.

The need for revenue will undoubtedly be a major driver.

Many countries – even those that have cut back on expenditures – have significant budget deficits. Some governments will therefore look for new revenue sources through tax code changes.

Another driver will likely come from competition for foreign direct investment (FDI).

At the UN Conference on Trade and Development, held July 17–22, 2016 in Nairobi, Kenya, the attendees noted that FDI levels are still below what they were before the financial crisis.

This means that countries will continue to compete for that investment – both physical and intangible assets – by, for example, reducing certain tax rates or adding special tax regimes.

However, they will have to figure out how to use tax policy to satisfy the inclusive part of the G20's growth agenda – that is, create wealth without exacerbating economic inequalities.

Carbon Taxes?

The role of tax in climate change policy could also be a factor in the tax reform debate.

Under the Paris Agreement, which was reached at the UN Climate Change Conference in Paris on December 12, 2015, 195 countries pledged to keep the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.

Although the agreement was hailed as a breakthrough, critics have pointed out that it does not bind countries to meet their climate targets, nor does it prescribe exactly how to meet them.

Economists are in near-unanimous agreement that if governments want to seriously tackle environmental issues, they must (re)consider the merits of carbon taxes.

Given the growing attention around the concept of corporate social responsibility and the debate over what role companies should play in preserving the environment, environmental taxes could factor into tax reform debates.

Finally, discussions may arise over how governments can achieve inclusive and sustainable growth while minimizing the administrative and compliance burdens on both tax administrations and businesses.

The perception in some quarters that the BEPS project will complicate the international tax framework and ultimately lead to further disputes and uncertainty could influence the direction that tax reform takes in some countries.

How Tax Reform Could Play Out

The push for inclusive growth through tax policy could see governments reconsidering how their tax systems are structured.

Developed countries may continue to move away from corporate income taxes in favor of taxes on consumption, property, capital and wealth.

In contrast, developing countries – many of which rely too heavily on consumption taxes – would likely seek a more balanced tax structure by broadening their personal income tax base and strengthening their taxation of land and buildings.

In India, for example, less than 15 percent of the population is in the personal income tax base.

This rate-reducing and base-broadening trend is already emerging in a number of G20 countries.

The UK has legislated to cut its corporate headline rate to 17 percent, which would be the lowest in the G20, with the possibility of going lower.

Other European countries are likely to come under pressure to match this rate.

In the US, one of the few points for which there seems to be bipartisan support is that the nominal corporate tax must be cut.

Emerging Economies

This trend can also be seen in emerging economies.

In the Philippines, for example, Finance Secretary Carlos Dominguez III said at a congressional hearing on August 22, 2016, that President Rodrigo Duterte's Administration is working on a plan to reduce the corporate tax rate from 30 percent to 25 percent, as well as lower personal income tax rates.

The loss in revenue from the rate reductions would be offset by eliminating some value-added tax (VAT) exemptions, among other proposed measures.

Indonesian President Joko Widodo said at an event on August 9, 2016, that the Government is considering a plan to cut the corporate tax rate from 25 percent to 17 percent to match Singapore's current rate.

The Indonesian Government also plans to change its VAT Law, Income Tax Law and General Taxation Provisions and Procedures Law.

Some governments may be looking very carefully at how India's new goods and services tax (GST) regime plays out.

The Constitution Amendment Bill for GST was approved by President Pranab Mukherjee on September 8, 2016, following its passage in both houses of India's Parliament in early August 2016 and ratification by more than 50 percent of state legislatures.

The new regime could become a game changer for India; some analysts have estimated that it could increase the country's gross domestic product by 2 percent.

India's reform could inspire a country such as Brazil, which has a complicated, multiple-rate indirect tax system with tax levied at the state, federal and municipal levels, to consider whether it, too, should pursue a coordinated consumption tax regime.

Tax Certainty And Competition

With the focus now on increasing growth through tax, the G20 must be careful to avoid promoting tax policies that create further uncertainty.

Given that the global environment is already characterized by high degrees of political and economic uncertainty stemming from factors such as Brexit, the refugee crisis, terrorism, and downgraded forecasts for economic growth in 2017, the G20 leaders must avoid adding tax uncertainty into this mix, especially as countries go about implementing the BEPS actions.

As part of the leaders' commitment to identifying new avenues of growth via the G20 2016 Innovation Action Plan, governments should devote significant time to the question of how tax can be used to stimulate and bring investment in the areas of innovation and R&D.

This could reintroduce the debate on patent boxes and the challenges posed by the digital economy, which could in turn revive the broader questions around tax competition posed by Action 5 of the BEPS Action Plan.

Finding The Right Balance

The extraordinary G20 focus on tax – particularly the move toward greater tax transparency and the push to overhaul long-standing tax policies – is unlikely to diminish anytime soon.

However, the G20's commitment to achieving strong, sustainable and balanced growth will create new challenges for governments.

Governments will now have to seek to craft tax rules that bring in much-needed revenue and drive innovation and growth, while also contributing to the perceived fairness of the tax system and helping to reduce inequalities in the distribution of income and wealth.

Endnotes

1 "G20 Leaders' Communique Hangzhou Summit," G20 2016 – China, g20.org, dated September 5, 2016.

Changes To The Cyprus 'Intellectual Property Box'

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

Introduction

The Cyprus parliament has passed a law amending the Income Tax Law to bring its provisions on taxation of income from the use or sale of intangible assets into line with the "modified nexus" approach.

This approach, which was agreed by G20 leaders towards the end of 2014 and adopted by the OECD and the EU, allows a taxpayer to benefit from an intellectual property taxation regime, commonly known as an intellectual property (IP) box, only to the extent that it can show material relevant activity, including a clear connection between the rights which create the IP income and the activity which contributes to that income.

Countries whose IP regimes were incompatible with the modified nexus approach were required to take steps to amend them, and to allow no new entrants to non-compliant IP regimes after June 30, 2016. However, transitional arrangements were permitted to allow taxpayers benefiting from existing schemes to continue to do so until June 30, 2021.

The Ministry of Finance announced in January this year that it would be taking steps to modify the Cyprus IP box regime in order to conform with the modified nexus approach. The new law, Law 118(I) of 2016, makes good on this commitment. It was published in the government gazette on October 27, 2016. Regulations issued under the law, which will have retrospective effect from July 1, 2016, provide detailed guidance on the calculations and application of the new IP regime.

Transitional Arrangements For IP Assets Developed Prior To June 30, 2016

The existing IP box regime, which was introduced in 2012, provides for 80 percent tax exemption of income from the use of a wide range of intangible assets. Coupled with Cyprus's low corporate income tax of 12.5 per cent, it gives an effective tax rate on such income of 2.5 per cent or less.

Taxpayers already benefiting from the existing scheme may continue to claim the same benefits until June 30, 2021, subject to certain conditions regarding assets acquired from related parties between January 2, 2016 and June 30, 2016. Assets acquired in this period from a related party will qualify for benefits only until the end of the 2016 tax year, unless at the time of their acquisition they were benefiting under the Cyprus IP box regime or under a similar scheme for intangible assets in another state.

Qualifying income will now include embedded income arising from the sale of products directly related to the IP asset and income from intangible assets for which only economic ownership exists. Taxpayers will also be able to opt from year to year whether to benefit from the IP box regime.

In addition, any gain arising on the disposal of an IP asset that would qualify under the provisions of the new regime but had not previously benefited will be completely exempt from tax. Prior to this amendment, 80 per cent of any capital gain was exempt. However, in practice, full exemption of capital gains on all intangible assets can be achieved by transferring the ownership of the intangible assets to a company and selling the shares in the company.

New Arrangements For IP Assets Developed From July 1, 2016

The arrangements for assets developed after July 1, 2016, follow the modified nexus approach. Qualifying assets are restricted to patents, software and other IP assets which are legally protected. IP rights used to market products and services, such as business names, brands, trademarks and image rights, do not fall within the definition of qualifying assets. Relief is geared to the cost incurred by the taxpayer in developing the IP through its research and development (R&D) activities. Costs of purchase of intangible assets, interest, costs relating to the acquisition or construction of immovable property, and amounts paid or payable directly or indirectly to a related person are excluded from the definition of qualifying expenditure.

As was the case under the existing scheme, 80 percent of the overall profit derived from the qualifying intangible asset is treated as deductible expense, preserving the effective tax rate of less than 2.5 percent on such income.

Qualifying Persons

Qualifying persons include Cyprus tax resident companies and individuals, tax resident permanent establishments of non-tax resident persons, and foreign permanent establishments which are subject to tax in Cyprus. The amending law includes provisions allowing taxpayers to elect for a foreign permanent establishment to be taxable in Cyprus so that it can be classified as a qualifying person.

Qualifying Assets

Qualifying assets (QAs) are assets acquired, developed or exploited by a taxpayer in the course of its business which relate to IP, result from R&D expenditure, and of which the taxpayer is the economic owner, excluding any IP relating to marketing.

QAs include patents as defined in the Patent Law, computer programs, utility models, IP assets which provide protection to plants and genetic material, orphan drug designations and patent extensions, as well as other intangible assets protected by law and certified by a competent authority in Cyprus or overseas as being non-obvious, useful and novel, where the person who exploits these intangible assets in the course of its business does not earn revenue from them of more than EUR7.5m (USD8.2m) (EUR50m in the case of a group of companies) per year. For the purposes of this calculation, revenue is averaged over five years.

QAs do not include trade names, brands, trademarks, image rights and other IP used for the marketing of goods and services.

Qualifying Profits

Qualifying profits (QP) are calculated in accordance with the formula:

QP = OI x (QE + UE) ÷ OE

Where:

- OI is the overall income derived from the QA;
- QE is the qualifying expenditure on the QA;
- UE is the uplift expenditure on the QA; and
- OE is the overall expenditure on the QA.

Overall income derived from the QA is defined as the gross profit from the QA, that is, the gross income less any direct expenditure. The amending law gives the following examples, but makes it clear that the list is not exclusive:

- Royalties or any other amounts receivable in relation to the use of the QA;
- Any amount receivable for the grant of a license to exploit the QA;
- Any amount relating to the insurance or compensation of the QA;
- Trading income from the disposal of the QA; and
- Embedded income derived from the sale of goods, services or use of any processes directly related to the QA.

Capital gains arising from the disposal of a QA are not included in overall income and are fully exempt from tax.

Qualifying expenditure (QE) in relation to a QA is the sum of all R&D expenditure which was incurred, in any tax year, wholly and exclusively for the development, enhancement or creation of a QA and is directly related to the QA. QE is included in the calculation of qualifying profits in the year that it is incurred, regardless of the accounting treatment.

QE includes, but is not limited to:

- Wages and salaries;
- Direct costs;
- General expenses associated with R&D activities;
- Commission expenditure associated with R&D activities;
- R&D expenditure outsourced to non-related parties.

The following categories of expenditure are explicitly excluded:

- The acquisition cost of any intangible asset;
- Interest;
- Expenditure relating to the acquisition or construction of immovable property;
- Any amount paid or payable to a related party, regardless of whether it is under a cost sharing agreement;
- Costs which cannot be proved to be directly associated with a specific QA.

The regulations allow expenditure on R&D activities carried out by non-related persons, and expenditure of a pure research nature that cannot be specifically allocated to a QA to be allocated proportionately to the QAs or products concerned.

Uplift expenditure (UE) is the total acquisition cost of the QA plus any R&D costs outsourced to related parties, or 30 percent of the QE, whichever is the lower.

Overall expenditure (OE) of a QA is the total of QE and the total acquisition cost of the QA and any R&D costs outsourced to related parties incurred in any tax year.

For the purposes of the calculations:

- Direct costs include all the expenditure incurred directly or indirectly, wholly and exclusively, for the production of the overall income;
- Any deduction allowed under Article 33(5) of the Income Tax Law by way of a corresponding transfer pricing adjustment in respect of the development or sale of a QA is treated as a direct expense; and
- Any notional interest deduction under Article 9B of the Income Tax Law which is attributable to a QA is considered as an indirect expense for the purposes of calculating the profit.

Other Amendments

Other amendments made by the new law include the introduction of capital allowances for all intangible assets other than goodwill and assets qualifying for the existing IP regime. The capital cost of the assets will be tax deductible, spread over the useful life of the asset in accordance with generally acceptable accounting principles, with a maximum useful life of 20 years, and a balancing allowance or a balancing charge on disposal of the asset.

In addition, relief under Articles 35 and 36 of the Income Tax Law in relation to relief from double taxation will not be allowed if the taxpayer has chosen to claim losses in accordance with Article 13(9).

Conclusion

The transitional arrangements secure the existing generous benefits for IP developed before June 30, 2016 until June 30, 2021. While the range of assets and the categories of expenditure qualifying for relief after July 1, 2016, are more restricted than under the previous rules, Cyprus's IP box regime still represents a very attractive option for taxpayers, with an effective tax rate of less than 2.5 percent on qualifying income.

Potential Tax Risks For Companies With Globally Mobile Employees: Part 4

by Christopher Hall, Managing Director, Global Tax Network (GTN)

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The information provided is for general guidance only, and should not be utilized in lieu of obtaining professional advice.

This article provides an overview of key global risks and four areas that companies should consider in helping to effectively manage global assignment non-compliance risk.

Managing Global Assignment Non-compliance Risk

Today's global challenges have raised the stakes for both companies and countries. Companies have addressed these conditions through increased global relocations while attempting to balance both cost control and growth, especially in emerging markets. Countries have responded in kind by increasingly tightening regulatory compliance relating to cross-border assignments and business travelers. This increase in global relocation in the face of increased scrutiny has resulted in heightened risk for those managing mobility programs.

Key Global Risks

Given the importance of mobility to many company's growth and talent management, it is critical that key risk areas for both the company and the employee are understood and managed.

Regulatory And Compliance Risk

As an example, Canadian tax authorities continue to audit companies for adherence to withholding tax requirements for business travelers who may otherwise be exempt from income tax under a treaty. The authorities typically look back five years to assess withholding tax, with the companies potentially incurring significant costs relating to compliance and difficulties in filing individual income tax returns to receive refunds.

This example reflects the need to fully understand compliance and regulatory requirements for locations where employees travel on business. In this case, the withholding would have applied after even a single workday in Canada, but could have been avoided if proper waivers had been received in advance. Cross-border assignments can result in requirements for many functions within a company, including human resources, tax, payroll, legal, finance, and relocation departments.

Financial And Budgetary Risk

As illustrated above, failure to comply can lead to unexpected costs and potentially significant penalties and interest. Equally important, however, is the need to understand the costs of proposed scenarios in advance. Through proper review, planning may be possible to lower costs, allowing business units to properly bid on new work and appropriately accrued assignment costs.

Prosecution

The risk of prosecution is not just a scare tactic! There have been numerous cases where individuals have been convicted of federal tax charges for failure to appropriately report bank accounts maintained outside the United States. In some countries, tax evasion can be considered a capital offense. Representatives of the company can be held accountable for failure to meet regulatory and reporting requirements. Understanding and meeting regulatory requirements are critical.

Legal And Employment Law

Failure to properly comply with immigration laws can lead to unexpected costs, project delays, legal challenges or deportation for the employee. Failure to consider local employment law can also be very costly, potentially opening the company up to lawsuits, delays in client deliverables, and unhappy employees.

Reputational Risk

Companies who fail to understand and comply with local requirements risk being portrayed as bad corporate citizens in the local media. It would also not do much for the mobility department if a top executive ended up on the cover of a local newspaper due to a failure to file individual income tax returns or have proper immigration clearance. These types of negative publicity can be extremely damaging when entering new markets.

Employee Satisfaction And Retention

The global mobility program can be extremely important to many companies' talent management and development strategies. While it is obvious that prosecution or negative publicity will lead to issues with employee satisfaction and retention, other more mundane factors, such as ineffective policies, lack of repatriation strategy and poor communication, can be as damaging. International assignments can be a large investment for a company, making it all the more important to retain and effectively deploy the employee within the organization when the assignment ends.

Permanent Establishment

The interaction between the mobility program and the company's corporate tax position is an area that is often overlooked. Employees working outside their home country can result in their home country employer having a permanent establishment (PE) in the host country. An employer with a PE may have additional corporate administration and tax costs. The PE may also prevent the company from utilizing an income tax treaty to shield business travelers from host country taxation. It is important to note that factors such as employee duties and project duration can result in a deemed PE for a company.

Steps You Can Take To Minimize Global Assignment Non-Compliance Risk

Although daunting, there are basic steps that can be taken to help companies manage risk for their mobility programs.

Communicate And Coordinate

As reflected in the risk areas above, the mobility program can touch a number of areas within the company. Given that decisions made by one functional group can impact the requirements for another group, it is critical that a coordinated, cross-functional process be established to share information.

To assist in this process, companies should consider a centralized database to aid in program management and day-to-day regulatory and compliance requirements. Processes should be set up to track and manage both international assignments and business travelers. Employee and business unit education can be very important to allow for upfront planning and ongoing compliance.

Consider The Corporate Tax Position

The corporate tax position can impact the employee, and the employee can impact the corporate tax position. For that reason, it is very important to have good communication between the tax and mobility departments. Some questions that may need consideration (especially for a new location) include:

- Will a new entity be required to meet local legal, immigration or tax requirements?
- As noted above, does the home employer already have a PE in the host location, or is there a danger that the employee will create a PE by their presence or duties?
- Which entity should bear the costs for the employee's remuneration and other costs?

Documentation Is Critical

Proper documentation can be very important in mitigating risk. For example, a properly executed secondment agreement between the home and host entity can assist in reducing PE risk by effectively restricting employee activities in the host location and clearly identifying home and host entity responsibilities and limitations.

Other critical documentation to consider includes:

- Forms to reduce or eliminate withholding requirements, as applicable;
- Assignment and tax equalization policies that are appropriate from legal, market and company risk perspectives;
- Assignment letters that reflect the agreement between the company and employee;
- Certificates of coverage as applicable and obtained from the pertinent social security administration; and
- Employment contracts, as required under local employment law and to support available planning.

Consider A Program Risk Review

A program risk review can be an effective way for companies to identify gaps and risks for high impact areas of the mobility program. Companies can review their internal processes and ability to meet regulatory or other program requirements. Both process focused (*e.g.*, compensation accumulation, talent management, and vendor management) and compliance focused (*e.g.*, tax, immigration, equity) areas can be considered in a risk review.

Conclusion

In short, the current economic, regulatory and legal environment has increased the scrutiny and diligence needed when managing global relocations. However, through communication, coordination and documentation, your organization can manage global assignment risk.

Future Articles In This Series

Financial Reporting

The tax cost associated with mobile employees can be significant. The timing of tax payments can vary greatly. Accruing for the tax cost can avoid surprises in the financial statements.

The Enduring Appeal Of Tax Amnesties

by Stuart Gray, Senior Editor, Global Tax Weekly

There is much skepticism among academics and tax policy experts about the effectiveness of tax amnesty schemes. However, governments appear as keen as ever to deploy them, despite their hardening stance generally on tax avoidance.

Introduction

The terms of tax amnesties or similar types of disclosure schemes may vary markedly from one scheme to the next in one country, let alone across several jurisdictions. But they mostly share the same principle in common: the carrot and the stick.

Those who have in the past failed to comply with a country's tax laws, for example by hiding undeclared income, are encouraged to come clean to the tax authorities by the prospect of penalties that are less severe than they might otherwise be – sometimes considerably so. Those failing to take advantage of such an opportunity, however, can expect to face the full force of the law, if, of course, the tax man catches up with them.

Amnesties International

One recent example is South Africa's special voluntary disclosure program (SVDP), which is intended to encourage taxpayers to come forward to regularize their tax affairs with the South African Revenue Service and avoid the imposition of understatement and administrative penalties. Similarly, the latest version of the United States' Offshore Voluntary Disclosure Program (OVDP) is specifically designed for taxpayers with exposure to potential criminal liability and/or substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets. The OVDP is designed to provide eligible taxpayers with protection from criminal liability and the resolution of their civil tax and penalty obligations.

Governments often use tax amnesties at times of budgetary stress. But they can also be utilized to entice more individuals or companies from the shadows and into the national tax net, thus increasing the size and sustainability of a jurisdiction's tax base. Well, that's the theory anyway. Some studies, as we note later in this piece, have challenged this belief.

For the time being, tax amnesties seem to be as popular as ever with tax authorities, which is probably not that surprising given that government budgets in many countries have not fully recovered from the impact of the financial and economic crisis. Since the beginning of 2007, we have seen many countries announce tax amnesty-related developments. These have included, in alphabetical order, Argentina, Barbados, Brazil, Chile, India, Indonesia, Ireland, the Isle of Man, Italy, Luxembourg, Pakistan, Portugal, Malaysia, Nigeria, Saint Lucia, South Africa, South Korea, Spain, the UK, and the US.

Do Amnesties Work?

Some of these countries have announced the results of their tax amnesties, and proclaimed them as a success. The US is one recent and prominent example, with the Internal Revenue Service (IRS) announcing in October 2016 that 55,800 taxpayers had participated in the various iterations of its OVDP since 2009, yielding almost USD10bn in taxes, interest, and penalties. Another 48,000 taxpayers had used the streamlined filing compliance procedures to correct prior non-willful omissions and meet their federal tax obligations, paying approximately USD450m in taxes, interest, and penalties.

"The IRS has passed several major milestones in our offshore efforts, collecting a combined USD10bn with 100,000 taxpayers coming back into compliance," revealed IRS Commissioner John Koskinen.[1] "As we continue to receive more information on foreign accounts, people's ability to avoid detection becomes harder and harder. The IRS continues to urge those people with international tax issues to come forward to meet their tax obligations."

In September 2016, South Korea announced a surge in disclosures by taxpayers about their overseas financial assets during the first six months of the year as a result of its voluntary disclosure program, under which individuals and companies reporting undeclared overseas income and assets may be entitled to reduced penalties and are absolved from criminal law penalties.

Data from South Korea's National Tax Service (NTS) showed that the number of taxpayers reporting undeclared offshore assets under this scheme totaled 1,053 during the first six months of the year, a 27.5 percent rise over the 826 that reported holdings in the first half of 2015. Assets disclosed by South Korean taxpayers reached KRW56.1 trillion (USD50bn), a year-on-year increase of KRW19.2 trillion, with most disclosures (KRW51.3 trillion) from Korean companies.

The NTS's data also provides a breakdown of the jurisdictions that played host to scheme applicants' undeclared assets. This showed that assets declared by individuals were predominantly situated in Singapore (KRW1.32 trillion), the US (KRW1.29 trillion), and Hong Kong (KRW926bn). Companies had undeclared accounts mainly in Hong Kong (KRW16.5 trillion) and China (KRW6.2 trillion).[2]

In August 2016, Chile's Internal Revenue Service disclosed that it had collected extra tax revenues worth CLP160bn (USD246m) in the first half of the year under its tax amnesty. The scheme, which provides an opportunity for delinquent taxpayers to admit tax violations and to correct underpayments, appears to have been popular, with more than 123,000 taxpayers having tax penalties and interest worth CLP41.5bn waived in the first six months of 2016. The vast majority of the applicants (91 percent), were micro, small, or medium-sized businesses. Micro businesses accounted for more than half of reports.[3]

In a similar vein, Spain's tax agency reported in late May 2016 that more than EUR2.6bn (USD2.9bn) in unreported cash assets was declared last year, as well as property worth more than EUR1bn and financial instruments worth EUR10.1bn. The tax authority said at the time that since introducing the declaration form in 2013, it had learned of more than EUR141bn in previously undeclared assets.[4]

However, with regards to tax amnesties, it is quite difficult to pinpoint what constitutes success or failure. Can the US OVDP be considered successful, as impressive as the results appear at first glance? When you consider the size of the US tax base, perhaps not. There are roughly 120 million personal income tax payers in the US (although a substantial proportion of these have effectively been taken out of the tax net). So the 55,800 people who declared through the OVDP represent less than 0.05 percent of the tax paying population. And against total personal income tax receipts of nearly USD1.4 trillion in 2014, USD10bn is a drop in the ocean.

Likewise, the 1,000 or so taxpayers who came forward under South Korea's tax amnesty in the first half of the year seems like a very small figure in comparison to the country's total population of approximately 50 million. Yet, the KRW56 trillion worth of assets declared represents a significant percentage (16 percent) of total tax revenues in 2015, which stood at KRW347 trillion. However, it is unclear how much tax the NTS will actually collect from these newly declared assets.

In the case of the OVDP, the relatively small figures may mean that there are tens of thousands of other recalcitrant taxpayers out there who have either ignored or been unaware of the OVDP. Or perhaps the scheme did not offer the right combination of stick and carrot. Alternatively, perhaps US taxpayers are more compliant than the IRS thought.

What's more, the raw OVDP figures do not tell the whole story. The IRS may have collected an additional USD10bn because of the program, but we do not know how much the agency spent administering it. So the net proceeds are bound to be lower than the figure publicized.

Short-Term Gain Offset By Long-Term Loss?

For developing and emerging economies, tax amnesties are as much about encouraging more people and businesses to register for tax than providing a short-term revenue boost. Many of these countries suffer from chronically low tax-to-GDP ratios, and tax amnesties are seen as a way of expanding the tax base and securing higher revenues in the long term. But are they?

Several studies into the wider effects of tax amnesties suggest that, generally, tax amnesties make for bad tax policy because they tend to undermine the level of tax compliance over the long term, rather than enforce it. Italy is often cited as a prominent example of a country where frequent tax amnesties have contributed to a poor culture of tax compliance.

In a 2008 report on tax amnesties by the International Monetary Fund (IMF), the authors concluded that "successful" tax amnesties are the exception rather than the norm. "Improvements in tax administration are the essential ingredient in addressing the main problems that tax amnesties seek to address. Indeed, the most successful amnesty programs rely on improving the tax administration's enforcement capacity," the IMF posited. "Experience, however, reveals that the perceived benefits of tax amnesty programs are at best overstated and often unlikely to exceed the programs' costs, which are rarely measured."

The IMF went on to observe in its report: [5]

> "The benchmark that policymakers often use to assess the revenue impact of a tax amnesty is the short-term *gross* revenue gain, and not the *net* revenue gain, not only in the short term, but also over a medium-term horizon. Against a more comprehensive

benchmark, the short-term gross revenue collected, which is often advertised as proof of an amnesty's success, needs to be offset by (1) any eventual reduction in taxpayer compliance (resulting from the loss of credibility of the tax administration and the adverse incentive effects this creates); (2) the direct cost of administering the amnesty (administrative resources, advertising, *etc.*); and (3) the cost in forgone tax revenue (*i.e.*, the incentive component of a tax amnesty program, such as waived penalties and interest rates, for all tax evaders, even though some of them would have been detected by the tax administration and would have eventually paid these financial penalties).

> Over the medium term, potentially the largest and most significant cost of a tax amnesty program can be a reduction in future tax compliance. Several behavioral channels predict such an effect. For example, if citizens expect another tax amnesty program to be offered again, then tax evasion becomes less costly than it was before the launching of the first tax amnesty program; that is, if a 'new' tax evader decides that the benefits of tax evasion outweigh the costs, a legal escape route is expected. Ironically, expectations of a future tax amnesty, which drive up noncompliance, are likely to become self-fulfilling as policymakers try to reduce noncompliance by introducing a tax amnesty aimed at bringing tax evaders back to the tax net."

A 2014 working paper on the impact of tax amnesties in US states by the Oxford University Centre for Business Taxation arrived at similar findings. The authors observed that: [6]

> "Many governments around the world, faced with mounting public deficits after the recent financial crisis, frequently initiated tax amnesties to meet their fiscal needs. Such programs give delinquent taxpayers the opportunity to repay all or parts of unpaid taxes without being subject to prosecution and penalties. However, not all of the amnesties raised considerable tax revenues. Short-term revenues depended crucially on whether a significant amount of taxpayers chose to take part in amnesties or not."

They concluded:

> "The corresponding theoretical and empirical results indicate that amnesties are self-fulfilling in the sense that initial compliance [gets] worse if taxpayers believe that amnesties are coming along soon. This reduces initial tax revenues, and in turn reinforces the government's desire to enact future amnesties. Therefore, the long run, revenue success

of such programs might be modest, which should be a warning for fiscal authorities [using amnesties] to obtain quick windfall revenue gains."

Concluding Thoughts

Governments do seem to be aware of the shortcomings of amnesties, and of the public perception that they allow a small group of wealthy people off the tax hook while everyone else must play by the rules. This is why governments have become increasingly keen to avoid using the term "amnesty" when launching such schemes.

In anticipation of the collective groan that may have greeted the announcement of Italy's relaunched voluntary disclosure program, Premier Matteo Renzi and Minister of the Economy and Finance Pier Carlo Padoan stressed that the terms of the VDP are "a long way from being comparable to a tax amnesty." [7] In a similar manner, last month the Office of Portugal's Prime Minister felt compelled to "categorically deny" that its new tax debt repayment scheme is a program for "tax forgiveness." [8]

However governments and tax authorities choose to dress up disclosure schemes, though, as economic pressures force them to face some unpopular decisions on tax and spending, the tax amnesty is likely to remain an expedient tax policy quick-fix for some time to come, as the succession of such programs announced in recent years demonstrates.

Endnotes

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Topical News Briefing: Hung(a)ry For More Tax

by the Global Tax Weekly Editorial Team

Hungary is earning something of a reputation as the jurisdiction of the sectoral tax, and given the generally negative way in which such special taxes are viewed, it's easy to see why they haven't caught on more widely.

Because of their tendency to discriminate against certain taxpayers, and distort the single market, the EU is certainly no fan of sectoral taxes, so this is an area where the EU and Hungary are regularly seen to clash. As reported in this week's issue of *Global Tax Weekly*, the country had its latest brush with the European Commission last week after the EU's executive body ruled that recent adjustments to the progressive tax on advertising revenue were insufficient to bring the law back into line with EU state aid rules.

The Commission also opened two separate in-depth investigations in July 2015 into two Hungarian measures with similarly steeply progressive rate structures, including a food chain inspection fee levied on many common foodstuffs, and a tax on turnover from the production and trade of tobacco products.

Hungary has additionally imposed special taxes on financial institutions, energy service providers, and telecommunications companies, with the latter also challenged by the Commission in 2011, before the proceedings were dropped when the European Court of Justice ruled in favor of a similar levy in France.

Despite their unpopularity with the EU, and, importantly, taxpayers in Hungary – the ones usually bringing the complaints to Brussels in the first place – the Government is determined to assert its right to impose such taxes. Indeed, Hungary has often issued defiant, almost dismissive responses when challenged by the Commission over its sectoral taxes.

Reacting to the Commission's decision to impose injunctions on the food inspection levy and the tobacco tax, a spokesman for the Prime Minister said that Hungary would simply not recognize the Commission's action. And in a similar vein, the Government insisted it would merely refuse any order to recover state aid from companies said to be unfairly benefiting from lower advertising tax rates.

Of course, Hungary's defiance isn't just motivated out of a sense of pride or through sheer stubbornness. The financial crisis hit the country hard, and some degree of fiscal upheaval ensued. So it argues that it should be able to restore budgetary stability in the best way its sees fit.

However, with its over-use of sectoral taxes, Hungary may be exacerbating its problems rather than solving them. This certainly seems to be the view of the International Monetary Fund, which has picked up on this issue on a regular basis, most recently in May 2016, when it said that the country's sectoral taxes have "contributed to historically low investment and productivity growth rates."

The EU has also warned that sectoral taxes may not just be illegal but economically damaging. Back in 2013, the Commission warned that surtaxes have a negative effect on business incentives, "especially when inputs to production are not exempted," and that they discourage foreign investment. Further, it cautioned: "The introduction of specific sectoral taxes also tends to artificially reallocate capital inputs between sectors, creating economic inefficiencies."

Taxpayers in Hungary would certainly argue that there are alternative ways of raising revenue without antagonizing certain industries and the EU, and hurting the country's growth prospects. But if there are more suitable alternatives, the Government doesn't currently seem that interested in looking for them.

Toeing The Foreign Asset Reporting Line

by Mike DeBlis Esq., DeBlis Law

Tax Crimes That The Government Relies Upon In Offshore Bank Tax Prosecutions

If your name was mentioned in the same sentence as Raoul Weil, Carl Zwerner, or Ty Warner, you can rest assured that you haven't been nominated for an academy award or a Pulitzer Prize. Instead, you'd have joined a group of disgraced taxpayers who had the misfortune of being among the first "casualties" in the US government's war on offshore tax evasion.

In this article, I attempt to provide some clarity, not to mention some practical and sound advice, to a real world dilemma facing taxpayers with unreported foreign accounts: "Can I be prosecuted for failing to report my foreign bank account such that I have no other choice but to apply to the Offshore Voluntary Disclosure Program (OVDP)?" This question is so pivotal that it cuts right to the heart of a taxpayer's decision to enter the OVDP.

The government has used one or more of the following tax crimes to prosecute over 100 offshore bank tax cases. The elements of each can be found in the jury instructions for these crimes:

a. Willful Failure To File An FBAR (31 USC §§ 5314 and 5322(a), and 31 CFR § 1010.350)

Willfully failing to file an FBAR is a felony that is subject to criminal penalties under 31 USC § 5322. This is the most common crime that the government charges in connection with the willful failure to report a foreign bank account. A person convicted of failing to file an FBAR faces a prison term of up to ten years and criminal penalties of up to USD500,000. In order for the defendant to be found guilty, the government must prove each of the following elements beyond a reasonable doubt:

- First, the defendant was a United States person;
- Second, the defendant had a financial interest in or signature or other authority over any foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign county;

- Third, the aggregate value of these financial accounts exceeded USD10,000 at any time during the calendar year; and
- Fourth, the defendant willfully failed to file a Report of Foreign Bank and Financial Accounts ("FBAR").

Those who keep their finger on the pulse of the criminal tax enforcement system know all too well that not every case involving the failure to report an offshore bank account is prosecuted.

Instead, the Department of Justice (Tax Division) (DoJ) is very selective when it comes to deciding which cases to bring. As should come as no surprise, it prefers to cultivate "winners" and not "losers."

Indeed, a conviction helps the DoJ maximize the deterrent effect of the criminal tax enforcement system while an acquittal might suggest that the taxpayer could "get off" with the "right" attorney standing by his side.

As a result, the DoJ tends to prosecute only those cases where the taxpayer's conduct was egregious. The most important question faced by every taxpayer with an unreported offshore account is, "How likely is it that I will be prosecuted?" In other words, is the taxpayer's risk of prosecution material?

That question turns on one word: willfulness. This small word is all that distinguishes a civil tax matter from a criminal one. The more evidence there is of willfulness, the greater the likelihood of criminal prosecution. The less evidence there is of willfulness, the lesser the likelihood of criminal prosecution.

Although the concept and its application in the tax crime context will be discussed in more detail later in the article, the best way I've seen the concept of willfulness described is through the creative genius of Jack Townsend, author of the popular tax blog, "Federal Tax Crimes".[1] Professor Townsend views the path between willfulness and non-willfulness as lying on a continuum, with "non-willfulness" at one end and "willfulness" at the other.

A metaphor used by Professor Townsend to help visualize this is to think of an electromagnet spectrum, with short-wavelength radiation at one extreme pole (*i.e.*, gamma radiation) and long-wavelength radiation at the opposite pole. Focusing on these extreme poles, substitute "Not willful" for the "short-wavelength" pole and "Definite willfulness" for the "long-wavelength" pole.

As Professor Townsend so eloquently explains, the facts of some cases will present themselves so far in the direction of one of the extreme poles that determining whether the conduct is willful or non-willful will be as easy as finding a free drink in Las Vegas. These are what might be considered "slam dunk" cases for a specific type of disclosure.

For example, a taxpayer who falls on the "Definite willfulness" end of the spectrum should not think twice about applying to the OVDP. On the other hand, a taxpayer who falls on the "Not willful" end of the spectrum might be able to avail himself of a number of different options, from making a "quiet disclosure" to making a streamlined submission.

But determining willfulness is not always so black and white. Instead, it can be as confounding as assembling a jigsaw puzzle. According to Professor Townsend, this is analogous to when the facts of a particular case lie at points other than at the extreme poles of the spectrum, such as when they lie in the middle. These cases present a real challenge. Indeed, when the needle of the spectrum vacillates in the middle, questions abound. For example, how close must the facts be to either end before one can confidently make a decision?

Without further guidance, the tax community might just have to settle on the now infamous"I know it when I see it" test.[2] In these cases, assessing willfulness, not to mention the corresponding risk of prosecution, becomes exceedingly difficult, requiring a careful balancing of the facts both for and against it. Needless to say, it should be left to the professionals.

In dealing with these gray areas, one should never forget that there will always be risk – it is inherent in a willfulness assessment. Indeed, "a taxpayer not at material risk for prosecution is not the same as a taxpayer at 'no risk' of prosecution" [3] This implies that a person must be willing to assume at least some risk. At the risk of sounding callous, those who are risk-averse should seek shelter in the OVDP bunker, and put themselves out of their misery, rather than subjecting themselves to any further agony.

b. Filing A False Tax Return (IRC § 7206(1))

The tax charge most commonly used by the government to prosecute offshore bank tax cases is filing a false tax return. And for good reason: filing a false tax return requires nothing more than proof of a false item on the return and proof that the false item was material. In other words, the jury must decide whether the item was false and, if so, whether it was material.

Proving materiality is not as difficult as you might expect. Under the law, a statement on a tax return is deemed material if at least one of the following conditions exists: (1) it is necessary to correctly calculate the tax due, or (2) it has a direct impact on the IRS's ability to verify the tax declared or to audit the taxpayer's returns.

In order for the defendant to be found guilty, the government must prove each of the following elements beyond a reasonable doubt:

- First, the defendant made and signed a tax return for the fiscal year that he knew contained false information as to a material matter;
- Second, the return contained a written declaration that it was being signed subject to the penalties of perjury; and
- Third, in filing the false tax return, the defendant acted willfully.

c. Failure To File A Tax Return

Failure to file a tax return is a misdemeanor that carries a maximum sentence of one year in prison for each tax year.

As far as information reporting crimes go, the government's burden to prove failure to file a return is very light. The government must, of course, prove the minimal amount of income required to invoke the duty to file. However, it need not unleash its wrath on the taxpayer by calling to arms a cavalry of Special Agents and Assistant United States Prosecutors as would be required to build an "air tight" case for tax evasion. The government must prove three essential elements beyond a reasonable doubt:

- The defendant was a person required to file a return;
- The defendant failed to file at the time required by law; and
- The failure to file was willful.

There is no requirement that a tax be due. In theory, the failure to file timely would be satisfied by any delinquency – even one day. However, the government will not prosecute for a minor delay.

d. Klein Conspiracy (18 USC § 371)

The defendant is charged in the indictment with conspiracy to defraud the IRS. In order for the defendant to be found guilty, the government must prove each of the following elements beyond a reasonable doubt:

- First, there was an agreement between two or more persons to defraud the United States by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS of the Treasury Department, by deceit, craft, trickery, or means that are dishonest, in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes;
- Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and
- Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of the members agreeing on a particular overt act that was, in fact, committed.

Essential Elements Of Tax Crimes

a. Willfulness

As previously discussed, the concept of willfulness is the cornerstone of any criminal tax matter. Willfulness is an essential ingredient not only of tax crimes but also of the civil willful FBAR penalty. In the criminal setting, the government carries the heavy burden of proving – beyond a reasonable doubt – that the taxpayer acted willfully. It is defined as an "intentional violation of a known legal duty."

i. Proving Willfulness For Purposes Of The Crime Of Failure To File An FBAR

How do courts interpret willfulness? The only thing that a person need know is that he has a reporting requirement. And if a person has that requisite knowledge, the only intent needed to constitute a willful violation of the requirement is a conscious choice not to file the FBAR. The latter is referred to in legal circles as the theory of "willful blindness."

Under the theory of willful blindness, a jury may infer willfulness whenever a taxpayer intentionally fails to inquire and learn about his or her filing obligations. In other words, instead of proving that the defendant intentionally violated a known legal duty, the government need only show that "the defendant consciously avoided any opportunity to learn what the tax consequences were." [4]

At the outset, it is important to recognize that this theory is not widely embraced by all of the circuit courts. There are two reasons. First, it is a "watered-down" substitute for the burden of proof on what is otherwise the most crucial element of a tax crime – the *mens rea* element. Very simply, willful blindness is far easier for the government to prove than an intentional violation of a known legal duty.

Second, for precisely this reason, willful blindness is ripe for abuse in cases where the government does not have sufficient evidence to prove willfulness under the heightened standard. This is why many courts have found its use to be "rarely appropriate." [5]

And those that do permit it have restricted its use to cases where the taxpayer has deliberately buried his head in the sand to avoid learning about the reporting requirements. The fact that the defendant was negligent in failing to inquire is not enough.

How does the government prove willfulness in the prosecution of a taxpayer for failing to file an FBAR? Seldomly are there any witnesses, and only in a rare case would a defendant admit the required state of mind. So what does the government rely on? Indirect evidence. Specifically, conduct or acts from which a person's state of mind can be inferred. These acts are commonly referred to as "badges of fraud." Below are some badges of fraud that are analogous to waiving a red flag in front of a bull and thus, are sure to attract the attention of the IRS:

- A taxpayer who checks the box off "no" on Schedule B in response to the question, "Do you have an interest in or signature authority over a financial account in a foreign country?" when, in fact, he has just such an account.
- Whether the failure to report the account occurred continuously over a period of years or whether it was merely an isolated incident. In other words, did the taxpayer's failure to file an FBAR occur over the course of time or just one year?
- Whether the taxpayer failed to report a foreign account in a later year despite having checked the box off "yes" on Schedule B of his tax return in an earlier year (and/or filing an FBAR in an earlier year). This reveals that the taxpayer knew that he had an FBAR reporting obligation in the later year.
- The high watermark balance of the account: The amount of money at stake is crucial. Unreported accounts with maximum aggregate balances that are half-a-million or greater are heavily scrutinized.
- Whether the taxpayer told his tax preparer about the account(s).
- Whether the account was held in such a way as to conceal ownership. For example, was it in the name of a "foreign shell corporation or foreign trust," or some other entity that would make it difficult for the IRS to learn the true identity of the owner? Was the account a numbered account? Was the taxpayer issued a credit or debit card without his or her name visible on the card itself?

- Did the bank help the taxpayer repatriate cash to the US using covert means? Did bank managers and their US clients use code words in emails to gain access to funds?
- Whether the taxpayer closed the foreign account and transferred the assets to another bank in the wake of a DoJ press release or media coverage reporting that the taxpayer's bank had become the target of an IRS summons demanding US accountholder information or that it had agreed to participate in FATCA.
- Whether a taxpayer who has a duty to file an FBAR checks the box off "yes" to the question, "Do you have an interest in or signature authority over a financial account in a foreign country?" but "no" to the follow-up question, "If 'Yes,' are you required to file Form TD F 90-22.1 [FBAR] to report that financial interest or signature authority?" This question gets to the heart of the matter: "Must an FBAR be filed?"
- The amount of interest generated by the foreign account and whether that interest – no matter how negligible – was reported on the taxpayer's US tax return. If the interest was reported on a US tax return, the IRS generally views the filing of an FBAR as a mere formality. In that case, the taxpayer can usually come into compliance with his US tax obligations by filing a delinquent FBAR.
- Whether the taxpayer instructed bank personnel to hold back his bank statements and not mail them to him in the US (if the US residence was listed as the accountholder's primary residence).
- Whether the taxpayer had been subject to a previous audit involving unreported offshore assets or bank accounts.
- The number of foreign accounts held (*i.e.*, one *versus* six).

Ultimately, the jury must "look into the mind of the defendant-taxpayer to determine whether he intentionally violated the statute." [6] To the extent that the government can show the jury enough "badges of fraud" to prove willfulness beyond a reasonable doubt, the government will have satisfied its burden of proving criminal intent through circumstantial evidence.[7]

How many badges of fraud must exist in order for the government to prove willfulness? Two? Three? The premise of this question is flawed. Why? Because it is not the quantity of badges of fraud alone that is determinative of willfulness as much as it is the weight assigned to a given badge of fraud and the extent to which a taxpayer's conduct neatly fits the "mold" of that and any other badge of fraud.

Not surprisingly, the aggregation of multiple badges of fraud – particularly those that are egregious – will paint an unflattering picture of a taxpayer who has demonstrated a callous indifference to comply with his US tax obligations. On the other hand, the government might have a weaker case against a taxpayer that has ten badges of fraud, if those badges are seemingly benign for the type of business that the taxpayer engages in, than it does against a taxpayer that has only three badges of fraud, if those three are particularly condemning.

Very simply, a single badge of fraud, by itself, is rarely enough to prove willfulness, especially if that badge is just as much a characteristic of a legitimate business transaction as it is a fraudulent one. As courts have said time and time again, it is a totality of the circumstances test. For example, consider an offshore account that is in the name of a foreign shell corporation or foreign trust; setting up an account in such a form has any one of a number of legal purposes aside from the fraudulent purpose of concealing ownership in order to evade the reporting requirements.

ii. Proving Willfulness For Purposes Of The Crime Of Failure To File A Tax Return

Willfulness is often the battleground in failure to file cases. And it is a battleground where the odds are stacked against the taxpayer who has failed to file.

While the government must establish that the taxpayer knew of his duty to file the return, how many taxpayers can legitimately argue that they did not know that they had a duty to file? To the extent that the taxpayer asserts such a defense, it can easily be overcome by a showing that the taxpayer filed returns in earlier years.

How does the government prove willfulness in a failure to file prosecution? The most common way is by a pattern of failing to file tax returns for consecutive years in which returns should have been filed. There is also an element of common sense in establishing willfulness. For example, courts will look at the following "human factors" to determine whether the taxpayer was willful in failing to file: the background of the taxpayer; the filing of returns in prior years; whether the taxpayer was a college graduate with accounting knowledge; whether the taxpayer was familiar with books and records and operated a business; and what type of income the taxpayer earned.

How about defenses? The case of *United States v. McCorkle*, 511 F.2d 482 (7th Cir. 1975) (en banc) furnishes a list of defenses that have previously been asserted but which have gone down in flames. They can be grouped in the catch-all category of "factors beyond the control of the taxpayer." As such, they range from the sublime to the ridiculous: the defendant had no funds available to pay his taxes, the defendant feared that the IRS was going to attach a lien on his property, the defendant was going through a bitter divorce, the defendant did not keep accurate records, and the defendant was contemplating suicide.

iii. No Willfulness Required For Klein Conspiracy

Unlike Code Sec. 7206(1) and 31 USC §§ 5314 and 5322(a), the Klein conspiracy does not have a similar willfulness element. Rather, the Klein conspiracy merely requires that the taxpayer intentionally enter the conspiracy and utilize deceit, craft or trickery, or at least means that are dishonest. The taxpayer need not know that defrauding the IRS was a "no-no." However, the government must prove that he acted dishonestly. In this sense, the Klein conspiracy may be easier for the government to prove than the other two crimes.

iv. Practical And Sound Advice Regarding Willfulness

The ease with which willful blindness can be proven is a stark reminder to taxpayers of the risks inherent in making a quiet disclosure. It is the flashing neon sign which warns that: "A quiet disclosure is not an exercise for the faint of heart, the risk-averse, or for anyone without some tolerance for risk." [8] The only guaranteed result is to get in OVDP and stay in it.

b. Criminal Tax Deficiency

The second critical element to any criminal tax case is a tax deficiency. Tax deficiency is defined as "additional tax due and owing." You might be wondering why there is so much fuss about tax deficiency when tax deficiency is not a required element of any one of the tax crimes discussed above.[9] Indeed, only tax evasion requires tax deficiency as an element of the crime and, to date, the government has never charged tax evasion in connection with a foreign bank prosecution.[10]

i. Tax Deficiency In Connection With The Crime Of Failure To File An FBAR

Although willful failure to file an FBAR does not require a tax deficiency, the government usually does not prosecute taxpayers unless it has evidence of a substantial tax deficiency.[11] Why?

There are two reasons. First, criminal tax prosecutions usually result in jail time,[12] thus depriving citizens of what our founders viewed as the most fundamental right protected by the US Constitution: our freedom. And second, the potential backlash from the public. As a preliminary matter, one of the government's primary goals in bringing a criminal tax prosecution is deterrence – in other words, to make an example out of the taxpayer in order to deter others from engaging in similar conduct.

But if the government targets a taxpayer with a small tax deficiency, there is a real risk that this strategy will backfire, resulting in a backlash from the public. For example, it may reinforce the public's perception of Uncle Sam as a greedy "Big Brother" who picks on the little guy. In that sense, the government risks exacerbating the public relations nightmare that has already put it on the defensive in connection with the FATCA controversy.

For this reason, the IRS is often willing to overlook the failure to file FBARs, even for consecutive years, so long as the taxpayer has reported and paid tax on all offshore income.

However, just the opposite is true for a taxpayer who has failed to report and pay tax on all offshore income: such taxpayers are pursued as aggressively as an arctic fox chasing a hare. How much of a tax deficiency must there be before the government will bring a tax prosecution? The unofficial rule is that there must be a USD40,000 tax deficiency for all of the years in question.[13]

ii. Tax Deficiency In Connection With The Crime Of Filing A False Tax Return

In theory, a false statement could have no effect whatsoever on calculating tax liability, yet still be considered material for purposes of violating Code Sec. 7206(1).[14] For example, consider an offshore account that generates no interest and no taxable income (or if it does generate interest, that interest is completely offset by the foreign earned income exclusion and/or the foreign tax credit). Further, assume that the taxpayer fails to report the account on Schedule B not due to any oversight, but instead because he didn't want the government to know about it.

If you thought that was harsh, it doesn't even come close to taking the prize. As ridiculous as this might sound, a taxpayer could be found to have violated Code Sec. 7206(1) even by overreporting income and tax. How is that possible? Because filing a false tax return requires a material false statement and overreporting income is just as much a misrepresentation that could distort the correct amount of tax due and owing as underreporting income could.

c. Remaining Elements Of These Crimes

Proving the remaining elements of these crimes is – as already stated above – as effortless for the government as finding a free drink in Las Vegas,because it is at the extreme end of the "Definite willfullness" pole. For example, to prove that the taxpayer made and signed a return, the prosecutor need only point to the taxpayer's signature on the return while citing Code Sec. 6064, which states that a taxpayer's signature is *prima facie* evidence – for all purposes – that the return was signed by him.[15]

Similarly, to prove that the return contained a written declaration that it was signed subject to the penalties of perjury, the prosecutor need only highlight the jurat beneath the signature space which states that the taxpayer is signing the return under penalty of perjury.[16]

Shorthand Formula For A Criminal Offshore Bank Account Tax Case

At the end of the day, an offshore account tax fraud case comes down to proving two key elements:

1. A substantial tax deficiency; and
2. Badges of fraud (*i.e.*, acts of concealment concerning the non-reporting of the offshore bank account).[17]

Naturally, the larger the tax deficiency and the more badges of fraud it can prove, the stronger the government's case becomes.

Endnotes

1 *Federal Tax Crimes*, available at http://federaltaxcrimes.blogspot.com

2 "I know it when I see it" was a threshold test set by Justice Stewart – albeit in a case not regarding taxation, but obscenity.

3 *Supra*, note 1.

4 *United States v. Bussey*, 942 F.2d 1241, 1428 (8th Cir. 1992).

5 *United States v. de Francisco-Lopez*, 939 F.2d 1405, 1409 (10th Cir. 1991) (relying on several Ninth Circuit cases).

6 Edward Robbins, Steven Toscher, and Dennis Perez, "What's Your Client's Criminal Exposure on His Undeclared Foreign Bank Account?", *Journal of Tax Practice & Procedure*, CCH, October–November 2012, p. 69.

7 *Id*, pp. 69–70.

8 *Supra*, note 1.

9 Joseph Isenbergh, *International Taxation*, Second Edition, Foundation Press (2005), p. 69.

10 *Id*.

11 *Id*.

12 *Id*.

13 *Id*.

14 *Id*.

15 *Id*, at p. 70.

16 *Id.*

17 *Id.*

A Federal Permanent Establishment, But Not A Provincial One

by Kevyn Nightingale, CPA, CA (ON), CPA (IL), TEP, and Amir Pourzakikhani, M. Tax, both of MNP, LLP

This article was first published in 'Tax Topics', Number 2330

Introduction

We recently dealt with a situation where a non-resident individual taxpayer had a permanent establishment ("PE") for federal tax purposes, but no PE for provincial tax purposes. This result was counterintuitive, but the Canada Revenue Agency (CRA) ultimately agreed with the position.

The upshot was that the taxpayer was subject to the non-resident surtax[1] instead of provincial tax. The savings can be significant. For an individual, maximum provincial rates run from 14.7 percent to 21 percent. The federal surtax works out to a top rate of 15.84 percent,[2] better than the top rate in every province east of Saskatchewan, and because of the structure of the federal and provincial brackets, better almost across the board.

We believe the same result would apply to a corporate taxpayer. For a corporation, provincial rates run from 12 percent to 16 percent.[3] The loss of the provincial abatement effects tax at 10 percent,[4] so this answer is unambiguously better.

Facts

The taxpayer was a resident of the United States. He worked as a self-employed contractor in Canada. Substantially all of his income was earned for services physically provided in Canada. He worked at the premises of his client and at third-party locations, and did not have dominion or control over any place of business in Canada. He did not habitually conclude contracts while present in Canada.

He spent more than 182 days physically present in Canada each year.

Canadian Federal Tax

A non-resident carrying on a business in Canada is ordinarily taxable in Canada.[5] There is no requirement under domestic law for such income to be connected to a PE in order to be subject to tax. The Canada–US tax treaty, however, protects such a US resident from Canadian taxation where the American does not carry on business through a PE.[6]

The treaty primarily defines PE in a manner that is similar to Canada's domestic rules. It requires, generally, dominion and control over a physical place of business.[7] In addition, concluding contracts can create a PE.[8] Historically, a person whose connections to Canada did not meet any of these thresholds would be exempt from Canadian tax. Until 2010, mere time spent working in Canada did not create a PE, as *William Dudney* proved.[9]

In response to this case, the treaty was changed to deem a PE to exist where:

> "(a) The services are performed in (Canada) by an individual who is present in that other State for a period or periods aggregating 183 days or more in any 12-month period, and, during that period or periods, more than 50 percent of the gross active business revenues of the enterprise consists of income derived from the services performed in (Canada) by that individual; or
>
> (b) The services are provided in (Canada) for an aggregate of 183 days or more in any 12-month period with respect to the same or connected project for customers who are … residents of (Canada)." [10]

These provisions, taken together, are called the "Services PE."

Both of these conditions were met by the taxpayer, so the income was taxable by Canada. So far, no surprises. Now to the fun stuff.

Provincial Tax

Each province, unsurprisingly, taxes non-resident individuals who earn income in that province. Tax is levied only on income earned in the province. The meaning of that term is defined by importing the federal regulations, including the meaning of a "Permanent Establishment" (a "Factual PE").

Federal regulations do not utilize the treaty concept of a Services PE. They retain the old Factual PE definition:[11]

> "Where … an individual had a Permanent Establishment in a … country other than Canada, and had no permanent establishment outside that … country, the whole of his income from carrying on business shall be deemed to have been earned therein." [12]

> "Where gross revenue is derived from services rendered in the particular province or country, the gross revenue shall be attributable to the Permanent Establishment in the province or country." [13]

The Services PE is a deeming provision which creates a certain tax result rather than establishment of a particular fact. The paragraph applies only if none of the other treaty provisions creates a PE. Application of the Services PE provision admits to there being no Factual PE.

Without a Factual PE, no income is allocated to a province. This is true for each of the "agreeing" provinces (those which have the CRA administer their personal tax): British Columbia,[14] Alberta,[15] Saskatchewan,[16] Manitoba,[17] Ontario,[18] New Brunswick,[19] Prince Edward Island,[20] Nova Scotia,[21] and Newfoundland and Labrador.[22]

Consequently, this income is taxable in Canada, but not earned in a province. It is subject to the federal surtax, which is 48 percent of the federal tax otherwise payable.[23]

The regulations do actually contemplate a situation where business income taxable in Canada is greater than that allocated to each province,[24] so this is not as odd a result as one would think.

In our view, it's the right answer. Consider a situation where the taxpayer worked for over 182 days in Canada but did not exceed that threshold in any one province. How would one impute the PE to any province? One could create a regulation that allocates the income by days worked, as is done for employees,[25] but there is currently no equivalent provision for a business.

Since the non-resident surtax is lower than the provincial tax rate in most cases, this is a largely advantageous result.

Corporate Tax

We believe the same is true for corporations in the general sense (excluding banks, airlines, *etc.*). The federal income allocation and permanent establishment rules[26] are imported by British Columbia,[27] Saskatchewan,[28] Manitoba,[29] New Brunswick,[30] Prince Edward Island,[31] Nova Scotia,[32] and Newfoundland and Labrador.[33]

Alberta[34] and Ontario[35] maintain separate definitions of "Permanent Establishment." Ontario was not an "agreeing province" for corporate tax until 2009, and Alberta still is not. However, both provinces' definitions essentially parallel the federal one, so the result is the same.

Ontario has a provision that does concern itself with treaties. If a treaty determines that a corporation does *not* have a PE in Canada, it is deemed not to have a PE for Ontario purposes.[36] Since the premise is not applicable here, neither is this provision.

In short, the "Services PE" applies only for federal purposes, and not for provincial purposes. We have not researched Quebec or the territories on this matter.

Endnotes

1 *Income Tax Act*, Canada ("ITA") § 120(1).

2 Federal rate of 33 percent; surtax rate of 48 percent.

3 *Preparing Your Corporate Tax Returns*, 2016, 25, Wolters Kluwer.

4 ITA § 124(1).

5 ITA § 2(3)(*b*).

6 *Canada–US Income Tax Convention*, Art. VII(1).

7 *Id*, Art. V(2)-(4).

8 *Id*, Art. V(5).

9 *The Queen v. William A. Dudney*, 2000 DTC 6169 (FCA); Kevyn Nightingale, "If they wanted water, they should have asked for water," CCH *Tax Topics* No. 1461, March 9, 2000.

10 *Canada–US Income Tax Convention*, Art. V(9).

11 ITA § 120(4); *Income Tax Regulations*, Canada ("ITR") Reg. 2600(2).

12 ITR Reg. 2603(1).

13 ITR Reg. 2603(4)(*g*).

14 *British Columbia Income Tax Act*, § 4(1) "income earned in the taxation year in British Columbia."

15 *Alberta Personal Income Tax Act*, § 1(1)(*c*), 6(5)(C).

16 *Saskatchewan Income Tax Act*, § 2(*aa.1*), 3(3).

[17] *Manitoba Income Tax Act*, § 1(1) "Manitoba Income," "permanent establishment."

[18] *Ontario Taxation Act*, 2007 § 3(1) "Income earned in Ontario."

[19] *New Brunswick Income Tax Act*, § 1 "permanent establishment."

[20] *Prince Edward Island Income Tax Act*, § 1(1)(*k*).

[21] *Nova Scotia Income Tax Act*, § 7(*c*).

[22] *Newfoundland and Labrador Income Tax Act*, 2000 § 2(1)(*m*), 5(*c*).

[23] *Supra* note 1.

[24] ITR Reg. 2606(1).

[25] ITR Reg. 2602(1)(a).

[26] ITA § 124(4) "taxable income earned in the year in a province"; ITR Regs. 402(2), 413(2).

[27] *British Columbia Income Tax Act*, § 2(2), 13.3 "taxable income earned in the year in British Columbia."

[28] *Saskatchewan Income Tax Act*, § 53(*a*).

[29] *Supra* note 11.

[30] *New Brunswick Income Tax Act*, § 54.

[31] *Supra* note 14.

[32] *Nova Scotia Income Tax Act*, § 40(3).

[33] *Supra* note 16.

[34] *Alberta Corporate Tax Act*, § 1(2)(*f*); *Alberta Corporate Tax Regulation*, § 2(2.1).

[35] *Ontario Corporation Tax Act*, § 4.

[36] *Id*, § 4(12).

Topical News Briefing: An Australian Thousand Dollar Bill

by the Global Tax Weekly Editorial Team

If three years ago it had been reported that Australia would repeal its AUD1,000 VAT exemption for imported "low value" goods, very few would have believed it. What a difference the OECD's base erosion and profit shifting project has made.

BEPS, of course, has swiftly brought about changes to international tax rules and reporting obligations, but it's also bringing about a marked shift in VAT policies internationally.

Perhaps this is because governments now believe they can rely on each other for the cooperation necessary to collect tax from the digital economy – seeing each other not so much as competitors for revenues, but newly as partners.

Many countries offer VAT exemptions for low value goods that are imported into their territory, considering that the revenue that would be collected from these would be surpassed by the cost of administration. That said, Australia stands out in the crowd for providing the largest exempt threshold for goods by far, at AUD1,000 – considerable in particular given that it is an island nation.

The OECD's sole report on VAT as part of its BEPS project looked at the tax challenges of the digital economy. The final report in this area came somewhat short of what experts and observers had been expecting, with the conclusion from the OECD that ringfencing the digital economy would be inappropriate. Instead, the OECD put forward underwhelming proposals – based as they were on the EU's already approved plans – that countries cooperate to administer tax on business-to-consumer sales of electronic services, and also that they remove these exemptions for low value consignments.

As reported in this week's *Global Tax Weekly*, the Australian Government has put forward legislation to remove its threshold entirely. Overseas suppliers with a turnover exceeding the VAT registration threshold would be responsible for ensuring that the appropriate tax is collected, under simplified arrangements.

As explained by Treasurer Scott Morrison, "the intention is that low value goods imported by consumers in Australia will face equivalent GST treatment to goods that are sourced domestically."

The issue of the low value threshold was a key issue for politicians in Australia in 2013, with fierce lobbying from domestic industry for change. However, no agreement could be reached on the matter. It was contended that a lower threshold would open up the regime to only more contrived abuse, rather than bring in a net increase in revenue, with talk of a widespread practice where products valued over AUD1,000 were being broken down into parts (for reassembly later) and imported separately to take advantage of the threshold. A stark change to the threshold, to bring it down to two figures, would have been needed, and the political will wasn't there.

At that time, the Australian Bureau of Statistics predicted that 1.8 percent of domestic Australian retail turnover came from overseas retail sales during 2012, and that the VAT lost could be valued at AUD6.226bn in 2011/12. Since then, revenue losses have mounted.

Progress was at last made in late 2015, shortly after the release of the OECD's first report on the digital economy. It took until August 2015, under the leadership of the former treasurer, Joe Hockey, to secure preliminary support from state and territory treasurers for the exemption's repeal.

It will now fall to Australia's current Treasurer, Scott Morrison, to secure final support for the legislation, and for the Australian Tax Office to sufficiently simplify compliance for overseas suppliers.

Australia has persistently failed to pass key VAT reforms in recent years, stymied by the need for some changes to be approved by the states. This has held back a review of how GST revenues are distributed among states as well as a much-needed hike to the 10 percent standard GST rate in the recent past. With billions of new revenues on the line though, and the OECD leading the charge, this change is likely to come to fruition next year.

Ireland Confirms Apple Ruling Appeal

Ireland has appealed the European Commission's USD14.5bn ruling against Apple.

In August, following an in-depth state aid investigation launched in June 2014, the Commission concluded that two tax rulings issued by Ireland to Apple have substantially and artificially lowered the tax paid by Apple in Ireland since 1991. "This selective tax treatment of Apple in Ireland is illegal under EU state aid rules, because it gives Apple a significant advantage over other businesses that are subject to the same national taxation rules," it contended.

The Commission has ordered Ireland to recover "unpaid taxes" from Apple for the years 2003 to 2014 of up to EUR13bn (USD14.5bn), plus interest. The Government will hold the recovery amount in escrow until the case has been concluded, as it may ultimately be returned to the company in the event of a successful appeal.

Ireland's Department of Finance responded to the Commission's conclusions of its investigation into the ruling, stating that the full amount of tax was paid in this case and that no state aid was provided.

By appealing the Commission's decision that Ireland provided selective tax treatment to Apple, the Government "is taking the necessary course of action to vigorously defend the Irish position," Irish Finance Minister Michael Noonan has said. In an address to the Irish Senate, Noonan said: "It is very damaging for our reputation to be called into question. This affects how Ireland could be treated by other jurisdictions and damages Ireland's credibility in the international tax debate and inhibits Ireland in pressing arguments that serve our national interest."

He stressed that "it is simply untrue that Ireland provided favorable treatment to Apple," and said that an appeal is necessary to defend the integrity of the Irish tax system and provide certainty to businesses.

Hungary To Defy EU Over Advertising Tax

The Hungarian Government has announced it is "committed" to retaining the country's advertising tax following the European Commission's recent decision that the levy is in breach of EU state aid rules.

The Commission said in a ruling announced on November 4 that the progressive nature of the tax on advertising revenue gave companies with a low turnover an unfair economic advantage over competitors. It called on Hungary to remove the discriminatory provisions of the advertising tax law and "restore equal treatment in the market."

However, in a statement issued in response to the Commission's ruling, the Hungarian Government pledged to "do everything in order to protect this innovative Hungarian initiative," and argued that the Commission's decision itself is "contrary to EU law."

"The progressive rates of the advertisement tax are not in violation of the state aid rules because businesses in the same position, or in other words, businesses with the same sales revenues are required to pay the same amount of tax. Consequently, the rules in question cannot be selective as a matter of course, and cannot result in state aid. Several relevant rulings of the European Court, too, confirm this," the Government stated.

"The Commission's decision does not only stand in violation of the member states' tax sovereignty and EU law, but is also discriminatory against Hungary, given that the Brussels body does not find objectionable advertising tax regulations in other member states which differentiate on account of the different advertisement publishing methods," it added.

The Commission's ruling raised the possibility that Hungary would have to claw back tax from those companies which enjoyed an unfair advantage. However, the Government suggested that it would refuse to recover what the Commission considers as illegal state aid.

"Hungary will not retroactively impose taxes of any kind on small businesses which enjoy exemption from the payment of the advertisement tax even at Brussels' request," the Government said.

"The Hungarian Government will not allow global digital businesses which obtain significant revenues from advertising activities to avoid the obligation of paying taxes, thereby wronging the Hungarian state budget," the statement concluded.

Australia Pushes Ahead With GST On Low Value Imports

The Australian Government has published draft legislation that, if passed, will require certain overseas suppliers to account for goods and services tax (GST) on sales of low value goods.

Currently, "low value goods" – *i.e.*, goods with a customs value of AUD1,000 or less – are generally not subject to GST when imported directly into Australia by the recipient. The Government has proposed that GST will be extended to low value goods imported by consumers in Australia from July 1, 2017.

Under the plans, GST will be collected through suppliers, electronic distribution platforms, or goods forwarders under either the existing registration system or a simplified system. GST will be applied on each taxable low value item and any shipping or insurance connected with that purchase.

Only those registered, or required to be registered, for GST will be affected. The GST registration turnover threshold is AUD75,000. The GST rate is 10 percent.

The Government will review the arrangements after two years "to ensure they are operating as intended and to take account of any international developments."

According to Treasurer Scott Morrison: "The intention is that low value goods imported by consumers in Australia will face equivalent GST treatment to goods that are sourced domestically."

A consultation on the draft legislation will remain open until December 2.

Complex Four-Rate GST For India

India's GST Council, formed of representatives from both the central Government and the states, has agreed that goods and services tax (GST) should be introduced with four rates.

The two main rates – 12 percent and 18 percent – would be levied on most goods. A 5 percent rate would apply to common, non-essential items, and a 28 percent rate would apply to "luxury goods" and tobacco products. A zero rate would be levied on consumer essentials.

Services would generally be subject to an 18 percent rate.

The Confederation of Indian Industry said that four rates is the absolute limit suggested by the Government. It recommended that over time the Government should commit to applying just one or two rates.

It said it is also important that "the bulk of goods and services should fall within the standard rate of 18 percent and only as an exception to go to the higher rate of 28 percent and a lower rate for essential goods such as unprocessed food items, *etc.*"

Lawmakers have yet to decide on the proposed framework.

Malta To Push EU VAT Reform As EU President

Malta will take forward the EU's proposals on value-added tax (VAT) reform when it assumes the Presidency of the Council of the EU in January 2017, the territory's Minister of Finance, Edward Scicluna, told a recent conference.

Under the EU's VAT reform plans, by the end of 2016, the Commission is to put forward legislation that will extend the current One Stop Shop concept to all cross-border e-commerce, including distance sales. It will also introduce common EU-wide simplification measures to help small start-up e-commerce businesses, and streamline audits for companies engaged in the sector. In line with the OECD's recommendations in its Action 1 report on the tax challenges of the digital economy, it will also remove the VAT exemption for the importation of small consignments from suppliers in third countries.

Further, the Commission will seek to improve cooperation between tax administrations, including from non-EU countries, and with customs and law enforcement bodies, in order to strengthen tax administrations' capacity for a more efficient fight against fraud. A report evaluating the Directive on the mutual assistance for the recovery of tax debts will also be released. This work will be taken forward in 2017, alongside a proposal to enhance VAT administration cooperation and bolster Eurofisc, the anti-fraud agency.

Additionally, the Commission will ensure that member states have greater freedom on setting VAT rates, including providing for technology-neutral VAT treatment for digital economy supplies, by allowing the same VAT treatment for the digital equivalents of traditional supplies (*e.g.*, for e-books and tangible books).

Scicluna highlighted the importance of seeing through the implementation of the reform when addressing the Malta Institute of Management's VAT and EU Conference. He said there are three significant shortcomings with regards current VAT rules.

He said VAT is not responsive enough to the shifting landscape posed by e-commerce.

Furthermore, as a system, VAT puts an undue burden on small entrepreneurs who have to put up with high administrative costs. He added that EU reform should remove restrictions on member states on the imposition of particular rates of VAT on certain goods and services so as to introduce an "element of flexibility to address the needs of certain sectors."

Scicluna also referred to Malta's newly set up Joint Enforcement Task Force, which will use sophisticated intelligence to rein in tax evasion.

China Enhances Export Tax Rebates

China's Ministry of Finance has announced an improvement in export tax rebates for a range of products, including refined oil products, with effect from November 1.

A full 17 percent value-added tax rebate is to be granted to exporters of motor and aviation gasoline, aviation kerosene, and diesel.

Other exported products that now also have a 17 percent rebate include various glass products, vehicle parts, machinery, and electrical, electronic, and photographical goods.

Further Corporate Tax Cut Unnecessary, Say UK Firms

A cross-section of UK businesses surveyed by PwC believe the corporate tax rate should either stay at 20 percent or not go below the 17 percent rate already scheduled to be in place by April 2020.

It found that businesses consider reducing the corporation tax rate beyond the 17 percent set for 2020 will have limited impact, and further cuts risk alienating the public.

While some participants favored a much lower rate to attract inward investment, the consensus was that the current rate is sufficiently competitive and further reductions may give a misleading impression of businesses' role in the tax system.

Kevin Nicholson, head of tax at PwC, said: "The UK's changing relationship with Europe provides an unparalleled opportunity to reshape the tax system. Businesses large and small recognize the benefits of a competitive corporation tax rate, but it's not the be all and end all. There comes a point when rate cuts have diminishing impact and can send unhelpful messages about business's contribution, even though corporation tax is just one of the taxes business bears. Businesses think there should more focus on the taxes that generate the most revenue such as national insurance contributions and value-added tax (VAT)."

Using tax to support specific industries is also relatively unpopular; 60% of respondents feel that tax should not be used in this way.

Kevin Nicholson continued: "Tax is an important lever for the economy, but businesses are wary of intervention that could distort the market. Measures to help smaller domestic businesses are relatively popular, as they're seen as giving a helping hand rather than artificial intervention, and are likely to create jobs and employment."

"Businesses prioritize clarity, stability, and transparency on tax policy, so the focus for reform needs to be simplifying and streamlining the system rather than necessarily throwing new measures into the mix."

Irish Economy To Receive Brexit Blow

The UK's exit from the EU will have a "severe" impact on the Irish economy, according to modeling published by the Irish Finance Department.

The Department undertook the modeling in collaboration with the Economic and Social Research Institute. They considered three scenarios for the UK's post-Brexit relationship with the EU: a Norwegian-type arrangement, with the UK part of the European Economic Area (EEA); a Swiss-style free trade agreement (FTA); and an arrangement whereby the UK and the EU interact on the basis of World Trade Organization (WTO) rules.

"Depending on the scenario considered, the level of Irish output ranges to between 2.3 percent and 3.8 percent below what it would otherwise have been," the report explained.

The EEA scenario was found to be the least detrimental to Ireland; GDP would be 2.3 percent lower, compared with 2.7 percent under the FTA scenario.

The Department said that, after ten years of a WTO scenario, Irish GDP would be "3.8 percent below what it otherwise would have been in a no-Brexit scenario," with the "bulk of the impact occur[ring] in the first five years." In addition, the unemployment rate would be nearly two percentage points higher.

The Finance Department stressed that the Government remains confident that the economy is resilient and that appropriate fiscal policies are in place to help the country adjust to the economic effects of Brexit. It pointed to Budget 2017 measures including the retention of the 9 percent VAT rate for the hospitality sector, the EUR400 (USD442) increase in the earned income tax credit for the self-employed, and a Government "rainy day fund" and new debt-to-GDP ratio target.

"Budget 2017 is just the start, more measures will be implemented as the EU–UK negotiations develop over the two years after Article 50 is invoked. The priority areas for this Government remain unchanged – this is about our citizens, our economy, Northern Ireland, our Common Travel Area, and the future of the EU itself," the Department said.

Crown Dependencies Meet With UK 'Brexit' Minister

The Chief Ministers of Jersey, Guernsey, and the Isle of Man recently met with Robin Walker, one of the UK's "Brexit" Ministers.

It was the first meeting with Walker, which will occur quarterly. He is responsible for ensuring the Crown Dependencies' interests are understood and taken into account as the UK prepares for and engages in negotiations to leave the EU.

Ian Gorst, Chief Minister of Jersey, said: "This meeting was a good opportunity to build on the important joint work that has been taking place at official level between the Crown Dependencies and the UK since the Brexit vote."

"The granting of specific responsibility to Walker within his department for liaising with the Crown Dependencies is a very welcome step, and I look forward to working with him to ensure that the Crown Dependencies' voices are heard at all levels of government in the months and years ahead."

Gavin St Pier, the Chief Minister of Guernsey, said: "During our first quarterly meeting with the new UK Department for Exiting the EU, it was reassuring to find that we have benefited from the preparation we have undertaken before and after the EU referendum."

"As the UK prepares to leave the EU, the working relationship we are creating means that we are well placed to ensure our interests are known, understood, and taken into account. It will also ensure we are ready to react to secure our best interests when it becomes clearer what leaving the EU will mean for the UK."

The recently elected Chief Minister for the Isle of Man, Howard Quayle, added: "I very much welcomed this first opportunity to meet formally with Walker and reiterate the importance the Isle of Man and our fellow Crown Dependencies place on continuing communication and cooperation between our governments through the process of preparing for Brexit."

"As our existing relationship with the EU through Protocol 3 will cease once the UK formally withdraws from the EU, we have a direct interest in the terms of the UK's withdrawal and the negotiation of a future relationship."

UK Firms Seeking Irish Commercial Property After Brexit Vote

The Society of Chartered Surveyors Ireland's (SCSI's) latest commercial property survey shows a 30 percent rise in inquiries to agents in Ireland from firms looking to relocate from the UK following June's Brexit vote.

The SCSI said that 73 percent of respondents to its Commercial Property Monitor also believe there is likely to be an increase in firms looking to move out of the UK over the next two years. It added that Irish agents expect to see an "encouraging" level of capital value growth in most sectors over the next 12 months.

SCSI President Claire Solon described the figures as significant. However, she pointed out that agents in Germany and Poland have recorded a similar increase in interest, and Holland, Spain, and France also saw a rise in queries.

"It's clear that while Brexit may generate opportunities, it will also generate stiff competition from fellow EU members," Solon said.

Solon added that she does not expect the new withholding tax regime for Irish Real Estate Funds, announced at Budget 2017, to "significantly dampen investment activity." The reforms aim at ensuring the Irish tax base is protected where Irish property transactions take place within collective investment vehicles.

Accountancy Profession Adapting To Digital Age: Survey

A recent survey of accountants in the UK has found that 83 percent believe understanding technology is equally as important to their job as understanding accountancy.

The survey, undertaken by Xero, an accounting software company, found that 71 percent consider knowledge of automation in the financial sector to be crucial to their success within the next five years. Respondents said that 48 percent of accounting professionals are taking internal courses and around a quarter are sitting external courses to ensure they are proficient with new technology, including business intelligence tools.

A third of small business owners (31 percent) cited "technology competency" as the skill they consider most important in a business advisor, while UK accountants said skills in risk analysis (43 percent) and management consultancy (27 percent) will be required to thrive in the industry beyond 2025 as tech forces change.

However, the report also highlights that while most accountants recognize the importance of keeping up to date with new technologies, the majority appear to be failing to invest sufficient time in education to enable them and their staff to do so.

The survey also found a shift in the traditional "9-to-5" working day as cloud technology takes over; 40 percent of accountants said that technology has made their working day more flexible, and 75 percent believe they would be more successful if they could choose the hours they worked.

Ninety-three percent of accountants said increased flexibility would be beneficial for those with commitments outside of work, such as for parents.

The report reveals that 16 percent of small business owners expect to interact with their accountant purely through accounting software in the future, followed by instant messaging (10 percent) and video calls (10 percent). Only 42 percent thought they would interact face-to-face at all in the future.

Singapore Adds To Transfer Pricing Requirements

On November 3, 2016, the Inland Revenue Authority of Singapore (IRAS) released details of a new form that certain companies will be required to file from the 2018 assessment year to report their related-party transactions.

The form must be completed and filed together with the income tax return (Form C) if the value of related-party transactions disclosed in the audited accounts for the applicable financial year exceeds SGD15m (USD10.8m). The IRAS noted that the value of related-party transactions as disclosed in the audited accounts is the aggregate of all amounts of related-party transactions as reported in the income statement but excluding compensation paid to key management personnel and dividends; and year-end balances of loans and non-trade amounts due to/from all related parties.

The values of the following categories of related-party transactions are to be reported in the form: sales and purchases of goods; services income and expense; royalty and license fee income and expense; interest income and expense; other income and expense; and year-end balances of loans and non-trade amounts.

A company with cross-border related-party sales or purchases of goods and services has to list the top five foreign related parties that it transacts with (by value of sales or purchases respectively) and provide their entity details, including entity names, countries, relationship, and amounts transacted.

The IRAS said the form will provide it with the relevant information to better assess companies' transfer pricing risks and improve on the enforcement of the arm's length requirement.

US Tax Agencies, Industry To Tackle ID Fraud In 2017

The Internal Revenue Service (IRS), state tax agencies, and the tax preparation industry are to work together to make further inroads against identity fraud and fraudulent tax returns in 2017.

The plans were announced as part of the Security Summit, which brings together the three stakeholders. In 2016, their collective efforts brought about positive change, including preventing fraudulent returns from entering tax processing systems.

It was pointed out, for example, that the number of new people reporting stolen IDs on federal tax returns has fallen by more than 50 percent during the first nine months of this year compared with 2015, with nearly 275,000 fewer victims compared to a year ago.

"We've made remarkable progress this year in our efforts to protect taxpayers following the unprecedented coordination with the states, the tax industry, and the financial sector," said IRS Commissioner John Koskinen. "Working together, this coalition has expanded its activities in many different areas, and we are focused on strengthening our systems and processes even more for the upcoming tax season."

The Summit's focus in the upcoming 2017 tax season will revolve around "trusted customer" features that will help ensure the authenticity of the taxpayer and the tax return – before, during, and after a tax return is filed. Additional protections will build on the 2016 successes that prevented fraudulent returns and protected tax refunds.

New data elements transmitted by the tax industry with every tax return will be further updated and expanded. In all, 37 new data elements will be added for 2017, providing additional information to strengthen the authentication that a tax return is being filed by the real taxpayer.

The tax industry will also share with the IRS and states 32 data elements from business tax returns – extending more identity theft protections to business filers as well as individuals.

In addition, more than 20 states are working with the financial services industry to create their own version of a program that would allow the industry to flag suspicious refunds before they are deposited into taxpayer accounts. Further, the Form W-2 (Wage and Tax Statement) Verification Code initiative started by the IRS last year will expand to 50m forms in 2017 from 2m in 2016.

As part of that effort, the Summit partners will launch a new Identity Theft Tax Refund Fraud Information Sharing and Analysis Center. This project, in its initial stages for 2017, will serve as an improved early warning system, identifying emerging ID theft schemes and quickly sharing that information among Summit partners, so that all of the participants can enact safeguards.

UK Firms' Tax Disclosures Improving, Says FRC

The Financial Reporting Council (FRC) in the UK has welcomed improvements in the transparency of tax disclosures by the UK's largest companies, but said there is room for companies to better articulate how they account for tax uncertainties.

The findings are contained in a report released by the FRC on October 31, 2016, "Corporate Reporting Thematic Review: Tax Disclosures," following a review of the tax disclosure practices of 33 FTSE 350 companies.

The report found, for example, that where tax was identified as a principal risk and uncertainty, some companies expanded their description of the risk to include changes to local and international tax laws arising from the OECD's base erosion and profit shifting project.

The FRC also found examples of disclosures where companies focused on material tax matters where detailed information was likely to be important to investors. These included: discussion of important tax issues arising in the year and the tax impact of exceptional or non-recurring items; identification of major tax risks faced by the company; and explanations of the reassessment of prior year tax estimates where these were significant – for example, changes in assumptions or resolution of open tax inquiries.

The FRC found that, generally, companies have improved how they estimate the effective tax rate that their operations are subject to.

Geoffrey Green, Chairman of the FRC's Financial Reporting Review Panel, commented: "Companies' tax arrangements are currently subject to considerable public interest prompting a demand for clear, concise, and transparent tax reporting in annual reports and accounts. This report shares our findings from the thematic review, including examples of good practice, against which companies are encouraged to assess and enhance their own disclosures to ensure they provide high quality information to users in their annual reports and accounts."

IRS Scopes In On Micro-Captive Tax Evasion Risk

In Notice 2016-66, the US Internal Revenue Service (IRS) has warned that the use of so-called "micro-captive transactions" have "a potential for tax avoidance or evasion," as it believes they may be established more to avoid federal income tax rather than for their stated aim of providing additional insurance for clients.

The IRS said that it is aware of such transactions whereby taxpayers try to reduce their taxable income by entering into insurance contracts with captive micro-insurance companies, thereby claiming income tax deductions for insurance premiums.

On the other hand, the micro-captives (with annual written premiums of less than USD1.2m) are allowed to elect to pay tax only on their investment income, and can thereby exclude the payments they directly or indirectly receive under the insurance contracts from their taxable income.

The IRS believes some of these micro-captives are in place solely in order to lower their clients' taxable incomes and not to insure against risks. In February this year, the agency placed captive insurance contracts on its "Dirty Dozen" list of abusive tax scams.

The IRS added that a micro-captive is often formed to insure against "implausible" risks, which do "not match a business need or risk of the insured," and for which it "does not have capital adequate to assume the risks that the contract transfers from the insured."

Micro-captives may also "use the premium income for purposes other than administering and paying claims under the insurance contracts. … For instance, premium income may be used to provide a loan to the insured."

In its Notice, the IRS said that "the manner in which the contracts are interpreted, administered and applied [can be] inconsistent with arm's length transactions and sound business practices."

However, it added that, so far, it "lacks sufficient information to identify which arrangements should be identified specifically as a tax avoidance transaction, and to define the characteristics that distinguish the tax avoidance transactions from other related-party transactions." At this stage, it can only "alert persons involved in such transactions to certain responsibilities and penalties that may arise from their involvement with these transactions."

In conclusion, the agency confirmed it recognizes "that related parties may use captive insurance companies for risk management purposes that do not involve tax avoidance, but believe that there are cases in which the use of such arrangements to claim the tax benefits of treating [their transactions] as an insurance contract is improper."

OECD Global Tax Forum Hails Milestone Achievement

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes celebrated the end of the first phase of reviews of all countries at its annual meeting on November 2–4.

The Forum's phase one reviews looked at the legal and regulatory framework for transparency and exchange of information in all territories. A country found to have a satisfactory framework would then progress to phase two, under which a peer review is undertaken of how information is exchanged by that territory in practice.

The OECD said: "The meeting marked the completion of the first round of the Forum's peer review process, with the release of 17 new reports assessing the level of compliance with the international standard for exchange of information on request …".

These 17 reports included: a phase one report for Peru; phase two reports for Azerbaijan, Brunei, Burkina Faso, Dominica, Dominican Republic, Lesotho, Marshall Islands, Morocco, Panama, and Romania; and a combined report was released for Bulgaria. Supplementary reports covering phase one were released for Lebanon, Nauru, and Vanuatu, and supplementary phase two reports were released for Barbados and Israel.

Many jurisdictions that received less-than-satisfactory ratings announced they had already taken or were taking steps to address recommendations made in the review process. Marshall Islands agreed to its report, but highlighted recent progress made. Panama reminded the group of recent significant action taken, both in terms of amending legislation, reorganizing its competent authority, and signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on October 28, 2016. Trinidad and Tobago also informed the members of their intention to address outstanding issues at the earliest.

A special fast-track review procedure was agreed at the meeting to enable the Global Forum to recognize, by mid-2017, progress made and to assess changes being made in various jurisdictions.

A second round of peer reviews now underway will include an assessment of the availability of and access by tax authorities to beneficial ownership information of all legal entities and arrangements, the OECD confirmed.

Global Forum members took stock of the tremendous progress being made in the implementation of the standard for automatic exchange of information, with 97 percent of jurisdictions committed to exchanging information in 2017 ready for these exchanges. They noted progress and some challenges for jurisdictions committed to launching exchanges in 2018, and agreed to implement tighter monitoring of the delivery of key milestones as well as providing support for implementation. Governance arrangements for a Common Transmission System for exchanging data were also agreed.

Against a backdrop of calls for preparation of lists of non-cooperative jurisdictions, a constructive discussion was held to ensure that all converge around the Global Forum's transparency standards in their respective transparency initiatives, the OECD said.

In the margins of the Global Forum meeting, Saudi Arabia and Uruguay took an important step towards implementing automatic exchange of financial account information in 2018 by signing the Multilateral Competent Authority Agreement.

Panama Commits To BEPS Minimum Standards

On October 31, 2016, Panama became the 87th territory to join the OECD's new inclusive framework on base erosion and profit shifting (BEPS).

As a member of the framework, Panama will commit to implementing the minimum standards put forward by the OECD on BEPS. These are on: harmful tax practices, tax treaty abuse, country-by-country reporting, and dispute resolution mechanisms. Andorra will also engage in future negotiations on BEPS measures and pay an annual fee.

The framework was announced by the OECD in February 2016 to allow all interested jurisdictions to contribute equally to future work on BEPS and on monitoring BEPS implementation.

In particular, those participating under the framework will: develop standards in respect of remaining BEPS issues; review the implementation of agreed minimum standards; and support developing countries with implementation.

Hong Kong Announces Further Stamp Duty Hike

The Hong Kong Government has introduced a further stamp duty increase to cool the housing market.

The announcement is intended "to address the overheated residential property market and to guard against a further increase in the risks of a housing bubble" in Hong Kong.

The Stamp Duty Ordinance will be amended to introduce a new flat rate of 15 percent for the ad valorem stamp duty (AVD), which is chargeable on transactions for residential property signed on or after November 5, 2016.

The new flat rate replaces the existing doubled AVD rates of up to 8.5 percent and, except for specified exemptions, applies to all acquisitions of residential property by both individuals and companies.

The new measure will continue to adopt the exemptions provided for under the existing AVD regime, whereby a buyer who is a Hong Kong Permanent Resident acting on his/her own behalf, and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of a residential property, will remain subject to the original and lower AVD rates (with a maximum rate of 4.25 percent).

The Government had felt it necessary to double AVD in February 2013, in addition to the measures taken in the previous year when the Special Stamp Duty rate was increased (from 10 percent to 20 percent on properties held for less than 36 months) and a 15 percent Buyer's Stamp Duty was also introduced on purchases of residential properties.

At a press conference on November 4, Hong Kong's Chief Executive, C. Y. Leung, said that, "in view of recent market performance, we believe that this is the right time to do this. We believe that this is [an effective] cooling measure on the private housing market in Hong Kong."

Financial Secretary John C. Tsang added that the measure "is targeted to help us maintain a stable and healthy development in the property market, … which has displayed increasingly high risks due to a rapid rebound in prices and turnover. We need to guard against the possibility of a property bubble. If we do not take some action, the risks are likely to get worse and could endanger macroeconomic and financial stability."

The Secretary for Transport and Housing, Anthony Cheung Bing-leung, pointed out that housing prices began to pick up from the second quarter of this year. In an increasingly active property market, prices increased by 8.9 percent in the period from March to September, mainly driven by small and medium-sized residential units, and continued to rise further in October.

He confirmed that the Government would forward the relevant amendment to Hong Kong's Stamp Duty Ordinance to the Legislative Council for approval as soon as possible.

ATR Warns On New US Estate Tax Rules

On November 1, Americans for Tax Reform (ATR) President Grover Norquist submitted a comment letter to US Treasury Secretary Jacob Lew opposing the proposed regulation that would increase the incidence of the estate tax (or the "death tax," as it is also called).

Under present estate tax regulations under Section 2704 of the Internal Revenue Code, the fair market value of an interest in a family-held business where no current market is available is based on the "willing-buyer/willing-seller" test. However, the proposed changes would allow the Internal Revenue Service in the future to produce significantly higher valuations by restricting the use of the valuation discounts that an heir can currently claim.

Norquist explained that "families hit with the death tax are allowed two discounts when determining the value of their estate: a lack of control discount and a lack of marketability discount. A lack of control discount can be claimed when a family holds a minority ownership stake in an asset, resulting in the asset holding less value on the open market. A lack of marketability discount applies when an asset held by the family cannot easily be liquidated because of market barriers."

ATR noted that the new regulation would therefore "increase the tax burden for many family-owned businesses at a time when opposition to the death tax is as strong as ever." It is supporting the proposed Protect Family Farms and Businesses Act, introduced recently in both the Senate and the House of Representatives, that would prevent the new Section 2704 rules, or any future similar regulations, from having any "force or effect."

Norquist concluded that "the death tax hurts economic growth, is unpopular with the American people, and its repeal is supported by a majority of the US House of Representatives. … At a basic level, Americans know that the death tax is not fair. It is a tax you pay on savings you have already paid taxes on at least once, and potentially more than once. Those who are hit hardest generally are first and second generation small business owners, because the truly wealthy can avoid the tax through an army of accountants, attorneys, and charitable planners."

He urged Lew to "side with the will of the American people and withdraw this regulation."

Egypt Prolongs Capital Gains Tax Suspension

Egypt is to extend its decision to suspend capital gains tax (CGT) on gains deriving from listed shares.

Egypt introduced a 10 percent CGT on proceeds from listed shares on July 1, 2015, but suspended the measure for two years with effect from May 17, 2015, to encourage investment in the country's stock market.

According to an announcement by the country's newly created Supreme Investment Council, the CGT suspension will be extended for a further two years, although it is not immediately clear from which date the additional period of suspension is to apply.

The extension is part of a package of measures intended to stimulate the economy and provide support in particular to the country's southern regions.

The Supreme Investment Council, formed last month and chaired by President Abdel Fattah El Sisi, also announced tax incentives for certain "strategic" economic sectors. These include five-year tax holidays for agricultural and industrial enterprises located in the south of Egypt, and for newly established export-focused companies.

In addition to the further extension of the CGT suspension, dividends from stocks listed on the Egyptian stock market will be exempt from tax for three years, although the Council's statement did not specify when this exemption will begin.

ARGENTINA - UNITED ARAB EMIRATES

Signature

Argentina and the United Arab Emirates signed a DTA on November 3, 2016.

BRUNEI - KUWAIT

Signature

Brunei and Kuwait signed a DTA Protocol on October 11, 2016.

CANADA - SAN MARINO

Negotiations

The Canadian Government recently disclosed that it intends to conclude DTA negotiations with San Marino.

CHILE - ARGENTINA

Effective

The new DTA between Chile and Argentina will become effective from January 1, 2017, it was announced on October 17, 2016.

EUROPEAN UNION - MONACO

Forwarded

The European Council on October 11, 2016 agreed a deal with Monaco to automatically exchange information on financial accounts.

FINLAND - PORTUGAL

Signature

Finland and Portugal signed a DTA on November 7, 2016.

FINLAND - SPAIN

Legislation

The introduction of a new DTA between Finland and Spain will be delayed by at least one year, it was announced on October 7, 2016.

GEORGIA - KYRGYZSTAN

Signature

Georgia on October 13, 2016, confirmed the signing of a DTA with Kyrgyzstan.

GERMANY - COSTA RICA

Effective

Germany's Finance Ministry on October 24, 2016 confirmed that the DTA between Germany and Costa Rica will apply from January 1, 2017.

GUERNSEY - SEYCHELLES

Effective

Guernsey's DTA with the Seychelles became effective on October 6, 2016.

INDIA - KOREA, SOUTH

Effective

The DTA between India and South Korea will become effective from January 1, 2017.

KOREA, SOUTH - SINGAPORE

Signature

On October 14, 2016 South Korea signed an automatic tax information exchange deal with Singapore.

LATVIA - SWITZERLAND

Signature

Latvia and Switzerland signed a DTA Protocol on November 2, 2016.

OMAN - HUNGARY

Signature

Oman and Hungary signed a DTA on November 1, 2016.

PAKISTAN - IRELAND

Effective

The DTA between Pakistan and Ireland will be effective from January 1, 2017, according to an update from the Irish Revenue department.

POLAND - TAIWAN

Signature

Poland and Taiwan signed a DTA on October 2, 2016.

SAUDI ARABIA - JORDAN

Signature

Saudi Arabia and Jordan signed a DTA on October 19, 2016.

SINGAPORE - JAPAN

Signature

Singapore and Japan have agreed to automatically exchange financial account information under the OECD's Common Reporting Standard, it was announced recently.

UNITED ARAB EMIRATES - EQUATORIAL GUINEA

Signature

The UAE and Equatorial Guinea signed a DTA on October 19, 2016.

UNITED KINGDOM - COLOMBIA

Signature

The United Kingdom and Colombia signed a DTA on November 2, 2016.

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

THE AMERICAS

Introduction to US International Tax – Houston

11/14/2016 - 11/15/2016

Bloomberg BNA

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

Key speakers: TBC

http://www.bna.com/introhouston2016/

Principles of International Taxation – New York

11/14/2016 - 11/15/2016

Bloomberg BNA

Venue: AMA Conference Center, 1601 Broadway (at 48th and Broadway), 8th Floor, New York, NY 10019, USA

Key speakers: TBC

http://www.bna.com/prinintltax2016/

Intermediate US International Tax Update – Houston

11/16/2016 - 11/18/2016

Bloomberg BNA

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

Key speakers: TBC

http://www.bna.com/interhouston2016/

Tax-Effective Global Value Chain – Post BEPS

11/23/2016 - 11/25/2016

IBFD

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

Key Speakers: Carlos Gutiérrez Puente (IBFD), Tamas Kulcsar (IBFD)

http://www.ibfd.org/Training/Tax-Effective-Global-Value-Chain-Post-BEPS

US International Tax Compliance Workshop – New York

11/30/2016 - 12/1/2016

Bloomberg BNA

Venue: AMA Conference Center, 1601 Broadway (at 48th and Broadway), 8th Floor, New York, NY 10019, USA

Key speakers: TBC

http://www.bna.com/compliancenyc2016/

US Tax Issues for Foreign Persons Investing in the US Real Property: FIRPTA, PATH Act and More – New York

11/30/2016 - 12/1/2016

Bloomberg BNA

Venue: AMA Conference Center, 1601 Broadway, 8th Floor, New York, NY 10019, USA

Key Speakers: TBC

http://www.bna.com/FIRPTA_nyc/

The Private Equity Tax and Accounting Forum

12/5/2016 - 12/5/2016

Financial Research Associates

Venue: The Princeton Club of NY, 15 West 43rd St., New York 10036, USA

Key speakers: TBC

https://www.frallc.com/conference.aspx?ccode=B1028

Fundamentals of US International Taxation

12/6/2016 - 12/6/2016

CCH

Venue: Webinar

Chair: Robert J. Misey

http://www.cchgroup.com/media/wk/taa/pdfs/training-and-support/seminar/cch-seminars-calendar-fact-sheet.pdf

Taxation of Financial Products and Transactions 2017

1/17/2017 - 1/17/2017

PLI

Venue: PLI New York Center, 1177 Avenue of the Americas, (2nd floor), entrance on 45th Street, New York 10036, USA.

Chair: Matthew A. Stevens (EY)

http://www.pli.edu/Content/Seminar/Taxation_of_Financial_Products_and_Transactions/_/N-4kZ1z10p5p?ID=288675

The Leading Forum For Transfer Pricing Professionals in the US and Beyond

2/21/2017 - 2/22/2017

TP Minds Americas

Venue: The Biltmore Hotel, Miami, 1200 Anastasia Ave, Coral Gables, FL 33134, USA

Key speakers: Matthew Frank (General Electric), Brandon de la Houssaye (Walmart), Brian Trauman (KPMG), Katherine Amos (Johnson & Johnson), Michael Cartusciello (JP Morgan), among numerous others

https://finance.knect365.com/tp-minds-americas-conference/

International Tax and Estate Planning Forum: Around the Globe in 2017

5/4/2017 - 5/5/2017

STEP

Venue: Surf & Sand Resort, 1555 South Coast Highway, Laguna Beach, CA, USA

Key speakers: TBC

http://www.step.org/events/international-tax-and-estate-planning-forum-around-globe-2017

Transcontinental Trusts: International Forum 2017

5/4/2017 - 5/5/2017

Informa

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

Key speakers: TBC

http://www.iiribcfinance.com/event/transcontinental-trusts-bermuda

ASIA PACIFIC

Digital Economy Symposium: New Age Tax, Accounting and Valuation Issues

11/14/2016 - 11/14/2016

IBFD

Venue: Conrad Centennial Singapore, Two Temasek Boulevard, 038982, Singapore

Key speakers: Robert Thomson (Australian Taxation Office), Prof. Mary Barth (Stanford University), Prof. Dr Jeffrey Owens (Vienna University), Sunil Golecha (Thomson Reuters), among numerous others.

http://www.ibfd.org/IBFD-Tax-Portal/Events/Digital-Economy-Symposium-New-Age-Tax-Accounting-and-Valuation-Issues

Principles of International Taxation

11/14/2016 - 11/18/2016

IBFD

Venue: InterContinental Kuala Lumpur, 165 Jalan Ampang, 50450 Kuala Lumpur, Malaysia

Key Speakers: TBC

http://www.ibfd.org/Training/Principles-International-Taxation-4

International Taxation Conference 2016

12/1/2016 - 12/3/2016

IBFD

Venue: ITC Maratha, Sahar Andheri (E), Mumbai 400 099, Maharashtra, India

Chairs: Sohrab Dastur (Senior Advocate, India), Girish Vanvari(KPMG), Anita Kapur (Central Board of Direct Taxes), Dinesh Kanabar (Dhruva Advisors LLP), Nishith Desai (Nishith Desai Associates), among numerous others

http://www.ibfd.org/IBFD-Tax-Portal/Events/International-Taxation-Conference-2016#tab_program

CENTRAL AND EASTERN EUROPE

The 2nd Offshore Investment Conference Cyprus

11/23/2016 - 11/24/2016

Offshore Investment

Venue: Amathus Beach Hotel, Amathountos, Agios Tychon, Cyprus

Key Speakers: TBC

http://www.offshoreinvestment.com/pages/index.asp?title=The_2nd_Offshore_Investment_Conference_Cyprus_2016&catID=12854

AML, Financial Crime & Sanctions Forum - Cyprus

12/6/2016 - 12/6/2016

Infoline

Venue: TBC, Nicosia, Cyprus

Chair: Marios Skandalis (Bank of Cyprus)

https://finance.knect365.com/aml-financial-crime-and-sanctions-forum-cyprus/

MIDDLE EAST AND AFRICA

Substance in International Tax Planning

11/13/2016 - 11/15/2016

IBFD

Venue: Hilton Dubai Jumeirah Hotel, Jumeirah Beach Road, Dubai Marina, Dubai

Key speakers: Boyke Baldewsing (IBFD), Ridha Hamzaoui (IBFD)

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

3rd IBFD Africa Tax Symposium

5/10/2017 - 5/12/2017

IBFD

Venue: Labadi Beach Hotel, No 1 La Bypass, Accra, Ghana

Key speakers: TBC

http://www.ibfd.org/IBFD-Tax-Portal/Events/3rd-IBFD-Africa-Tax-Symposium#tab_program

WESTERN EUROPE

5th Annual European OffshoreAlert Conference

11/14/2016 - 11/15/2016

OffshoreAlert

Venue: Grange St. Paul's Hotel, 10 Godliman Street, London, EC4V 5AJ, UK

Key Speakers: Antoine Deltour (PwC Whistleblower), Bradley C. Birkenfeld (UBS Whistleblower), Brooke Harrington (Copenhagen Business School), Daniel Hall (Burford Capital), Dan Reeves (Offshore Compliance & Enforcement Consulting Group & Retired Senior Advisor, IRS Offshore Compliance Initiative), among numerous others

http://www.offshorealert.com/conference/london/

Update for the Accountant in Industry & Commerce

11/15/2016 - 11/16/2016

Wolters Kluwer

Venue: Sofitel London Gatwick, Gatwick Airport, North Terminal, Northway, Horley, Crawley, RH6 0PH, UK

Key speakers: Chris Burns (Chris Burns Consulting Ltd), Louise Dunford, Paul Gee, Dr Stephen Hill, Ralph Tiffin (McLachlan + Tiffin), Toni Trevett (CompleteHR Ltd) and Kevin Bounds.

https://www.cch.co.uk/sites/default/files/aic_2016_brochure.pdf

Coordinated European Planning & Taxation

11/16/2016 - 11/16/2016

Private Client Tax

Venue: TBC, London, UK

Key speakers: Beatrice Puoti (Burges Salmon), Richard Frimston (Russell Cooke), Daniel Bader (Bar & Karrer), Sonia Velasco (Cuatrecasas Gonçalves Pereira), Caroline Cohen (The French Law Practice), Dominic Lawrance (Charles Russell Speechlys), among numerous others.

https://finance.knect365.com/coordinated-european-planning-taxation

US/UK Tax & Estate Planning 2016 Conference

11/17/2016 - 11/17/2016

Private Client Tax

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

Chair: Iain Younger (Frank Hirth)

https://finance.knect365.com/usuk-tax-and-estate-planning/agenda/1

The New Era of Taxation: What You Need to Know in a Constantly Changing World

11/17/2016 - 11/18/2016

International Bar Association

Venue: TBC, Amsterdam, The Netherlands

Key Speakers: TBC

http://www.ibanet.org/Conferences/conf756.aspx

International Tax Audit Forum Munich

11/21/2016 - 11/22/2016

IBFD

Venue: BMW Welt, Am Olympiapark 1, 80809 München, Germany

Chair: Rudolf Mellinghoff (President of the Federal Supreme Court of Finance)

http://www.taxauditforum.eu/Program.html

Meet the Experts 2016

11/21/2016 - 11/22/2016

Informa

Venue: Grange Tower Bridge Hotel, 45 Prescott Street, London, Greater London, E1 8GP, United Kingdom

Key Speakers: Stephen Cooper (IASB), Sue Lloyd (IASB), Patrina Buchanan (IASB), Stig Enevoldsen (FEE Corporate Reporting Policy Group), Chris Nobes (University of London, University of Sydney), among numerous others.

http://www.meet-the-experts.org/

UK HNW Immigration: Post Brexit

11/23/2016 - 11/23/2016

Private Client Tax

Venue: TBC, London, UK

Key Speakers: Jonathan Burt (Harcus Sinclair), Dr Jean-Philippe Chetcuti (Chetcuti Cauchi Advocates), Neil Micklethwaite (Brown Rudnick), James Perrott (Macfarlanes), Elizabeth Henson (PwC), Julia Onslow-Cole (PwC Legal).

https://finance.knect365.com/family-tax-wealth-planning-for-uk-hnw-immigration/agenda/1

Update for the Accountant in Industry & Commerce

11/23/2016 - 11/24/2016

Wolters Kluwer

Venue: Forest of Arden Marriott Hotel & Country Club, Maxstoke Lane, Meriden, Birmingham, CV7 7HR, UK

Key speakers: Chris Burns (Chris Burns Consulting Ltd), Louise Dunford, Paul Gee, Dr Stephen Hill, Ralph Tiffin (McLachlan + Tiffin), Toni Trevett (CompleteHR Ltd) and Kevin Bounds.

https://www.cch.co.uk/sites/default/files/aic_2016_brochure.pdf

Offshore Taxation 2016

11/24/2016 - 11/24/2016

Private Client Tax

Venue: TBC, London, UK

Key speakers: Imran Afzal (Field Court Tax Chambers), Giles Clarke (Offshore Taxation), Patrick Soares (Field Court Tax Chambers), Philip Baker QC (Field Court Tax Chambers), Emma Chamberlain (Pump Court Tax Chambers).

https://finance.knect365.com/offshore-taxation/

3rd Annual Corporate Tax Summit

11/24/2016 - 11/25/2016

IBFD

Venue: TBC, Berlin, Germany

Key speakers: Georg Berka (Raiffeisen Bank), Harm J. Oortwijn (Paramount), Evelyn Arnold (Zurich Insurance Group), Sophia Reismann (OMV), among numerous others

http://www.ibfd.org/sites/ibfd.org/files/content/marketing/Uniglobal%202016%20Berlin%20conference%20programme.pdf

International Tax Aspects of Corporate Tax Planning

11/30/2016 - 12/2/2016

IBFD

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

Key speakers: Jeroen Kuppens (KPMG), Ágata Uceda (KPMG), Luis Nouel (IBFD), among numerous others

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

Practical Implications of CRS

12/7/2016 - 12/7/2016

Informa

Venue: TBC, London, UK

Chair: Filippo Noseda (Withers)

https://finance.knect365.com/crs-implications/agenda/1

Taxation of Collective Investment Schemes

12/7/2016 - 12/7/2016

Informa

Venue: TBC, London, UK

Chair: Malcolm Richardson (M&G Investments)

https://finance.knect365.com/taxation-of-collective-investment-schemes-conference/agenda/1

Tax & Accounting for Oil & Gas Companies

12/7/2016 - 12/8/2016

Informa

Venue: TBC, London, UK

Key Speakers: Greg Stinson (KPMG), Preben Joker Thorsen (Maersk Oil), Zoe Leung-Hubbard (HMRC), Alan McCrae (PwC), among numerous others

https://finance.knect365.com/tax-and-accounting-for-oil-gas-companies-conference/agenda/1

Update for the Accountant in Industry & Commerce

12/7/2016 - 12/8/2016

Wolters Kluwer

Venue: Sofitel London St James, 6 Waterloo Pl, St. James's, London, SW1Y 4AN, UK

Key speakers: Chris Burns (Chris Burns Consulting Ltd), Louise Dunford, Paul Gee, Dr Stephen Hill, Ralph Tiffin (McLachlan + Tiffin), Toni Trevett (CompleteHR Ltd) and Kevin Bounds.

https://www.cch.co.uk/sites/default/files/aic_2016_brochure.pdf

International Taxation of Oil and Gas and Other Mining Activities

12/7/2016 - 12/9/2016

IBFD

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

Key speakers: Patrick Ellingsworth (IBFD), Bart Kosters (IBFD), Antonio Russo (Baker & McKenzie), among numerous others

http://www.ibfd.org/Training/International-Taxation-Oil-and-Gas-and-Other-Mining-Activities-0

The New Tax Planning For Non-Domiciliaries – Legislation Changes & Updates

12/8/2016 - 12/8/2016

Private Client Tax

Venue: TBC, London, UK

Chair: Beatrice Puoti (Burges Salmon)

https://finance.knect365.com/tax-planning-for-non-domiciliaries/agenda/1

Update for the Accountant in Industry & Commerce

12/29/2016 - 12/30/2016

Wolters Kluwer

Venue: Hilton Glasgow Hotel, 1 William St, Glasgow, G3 8HT, UK

Key speakers: Chris Burns (Chris Burns Consulting Ltd), Louise Dunford, Paul Gee, Dr Stephen Hill, Ralph Tiffin (McLachlan + Tiffin), Toni Trevett (CompleteHR Ltd) and Kevin Bounds.

https://www.cch.co.uk/sites/default/files/aic_2016_brochure.pdf

Court of Justice of the European Union: Recent VAT Case Law

1/11/2017 - 1/13/2017

The Institute for Austrian and International Tax Law

Venue: WU (Vienna University of Economics and Business), LC building on the New Campus, Welthandelsplatz1, 1020 Vienna, Austria

Chairs: Donato Raponi (European Commission), Antonio Victoria-Sanchez (European Commission), Michael Lang (WU)

https://www.wu.ac.at/en/taxlaw/conferences-seminars-lectures-events/recent-vat-case-law-conference/

6th Annual IBA Tax Conference

1/30/2017 - 1/31/2017

International Bar Association

Venue: TBC, London, UK

Key Speakers: TBC

http://www.ibanet.org/Conferences/conf779.aspx

Global Transfer Pricing Conference

2/22/2017 - 2/24/2017

WU Transfer Pricing Center at the Institute for Austrian and International Tax Law

Venue: WU (Vienna University of Economics and Business), Welthandelsplatz 1, 1020 Vienna, Austria

Key speakers: Krister Andersson (Lund University, Joe Andrus (OECD), Piero Bonarelli (UniCredit), Melinda Brown (OECD), among numerous others

https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/institute/transfer_pricing_center/TP_Conf/Global_TP_Conference_2017_-_Brochure_19.8..pdf

22nd Annual International Wealth Transfer Practices Conference

3/6/2017 - 3/7/2017

International Bar Association

Venue: Claridge's, Brook Street, London, W1K 4HR, UK

Key speakers: TBC

http://www.ibanet.org/Conferences/conf771.aspx

CENTRAL AND EASTERN EUROPE

A listing of recent key international tax cases.

Albania

Albania's natural resources agency has decided to appeal against a recent arbitration ruling in favor of Canadian firm Bankers Petroleum ("Bankers") in its tax dispute with the Albanian Government.

The dispute centered on expenditure that the company offset against profit tax in 2011. The Albanian National Agency for Natural Resources (AKBN) was of the view that the expenditure was outside the scope of the company's Petroleum Agreement and License Agreement, and the country subsequently issued Bankers with a USD57m bill for back taxes. This was subsequently appealed by the firm.

Bankers obtained a commitment from the AKBN to engage a third-party international auditor to resolve the tax dispute in September 2015.

The third-party audit was conducted by a joint panel of individuals from PricewaterhouseCoopers and Navigant Consulting Company, and according to an August 29 statement by Bankers, this panel determined that the company correctly stated its 2011 expenses as cost recoverable according to the Petroleum Agreement and the License Agreement.

According to Bankers, all parties committed to using the results of this third party audit as the basis for determining recoverable petroleum costs in subsequent years.

However, in an announcement on October 24, the AKBN said it has decided to appeal the decision in the International Court of Arbitration, after consulting with the Ministry of Energy and the State Advocacy.

The AKBN argued that the issue remains "of public interest," adding that it is "convinced that the details found in the audit report, which were rejected by the experts, will be sufficient for [the International Court of Arbitration] to give the right to the Albanian state."

http://www.akbn.gov.al/national-agency-of-natural-resources-seeks-arbitration-on-audit-report-in-tax-dispute-with-bankers-petroleum/?lang=en

International Court of Arbitration: *Albanian National Agency for Natural Resources v. Bankers Petroleum*

WESTERN EUROPE

Switzerland

UBS has been granted "party status" by a Swiss court in the ongoing administrative assistance procedures initiated by the French tax authorities, allowing the bank to have a greater say in the handover of bank account data to France.

According to a statement from Switzerland's Federal Administrative Court (FAC), which ruled on the matter on October 25 (Judgment A-4974/2016), UBS was granted party status in light of the "special circumstances" of the case. As a result, the Federal Tax Administration (FTA) must allow UBS to inspect the files and serve it with all final decisions.

The FAC noted that the bank has been asked to hand over to France information on an unusually high number of banks accounts linked to French citizens – said to be in the five-digit region.

Normally, financial institutions in Switzerland involved in administrative assistance proceedings act only as a provider of requested information to the FTA and have no right to take part in the procedure as a "party." However, the FAC decided to make an exception in this case because the large amount of data requested "creates an incomparably high workload to UBS."

Significantly, the FAC also granted the bank party status to help protect its reputation, arguing that "the unusually high number of clients concerned by the request for administrative assistance could leave one with the impression that UBS systematically helped clients to evade taxes."

The FAC also raised the possibility that the data might be used in criminal proceedings already launched against UBS in France in its reasoning.

However, the FAC emphasized that UBS can only challenge the tax authority's final decisions, and not the order to hand over the data in the first place.

"The FAC has not dealt with the question whether the request for administrative assistance itself is admissible," the court confirmed.

It is believed that the French administrative request, which was sent to the FTA on May 11, 2016, is based on information passed on by German authorities, and involves around 45,000 bank accounts.

http://www.bvger.ch/index.html?lang=en&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1ad1IZn4Z2qZpnO2Yuq2Z6gpJCDdYB_fGym162epYbg2c_JjKbNoKSn6A--

Swiss Federal Administrative Court: *UBS v. Direction Générale des Finances Publiques (Judgment A-4974/2016)*

United Kingdom

The London Employment Tribunal has ruled against Uber in a landmark case concerning the rights of its drivers, which could have significant implications for Uber's – and similar companies' – tax affairs.

GMB, the union for professional drivers, brought a case on behalf of two drivers. It said the Tribunal had determined that Uber had acted unlawfully in not providing the drivers with basic workers' rights. It has decided that Uber drivers are entitled to receive holiday pay, a guaranteed minimum wage, and an entitlement to breaks.

GMB found last year that a member working exclusively for Uber received just GBP5.03 (USD6.20) per hour in August after costs and fees were taken into account, significantly below the national minimum wage of GBP7.20.

Maria Ludkin, GMB Legal Director, said: "This is a monumental victory that will have a hugely positive impact on over 30,000 drivers in London and across England and Wales and for thousands more in other industries where bogus self-employment is rife."

"GMB is reviewing similar contracts masquerading as bogus self employment, particularly prevalent in the so called 'gig economy.' This is old fashioned exploitation under newfangled jargon, but the law will force you to pay GMB members what they are rightfully due."

Although the ruling did not discuss tax implications for Uber, experts believe the ruling could open the door to Uber becoming liable to taxes in the UK for its drivers, such as National Insurance. It could also potentially change the VAT position of the company, experts say, depending on whether there is a change to how the company is seen in terms of its relationship in drivers' supplies to consumers.

This judgment was released on October 28, 2016.

https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf

London Employment Tribunal: *Mr. Y. Aslam and others v. Uber (2202550/2015)*

Dateline November 10, 2016

I've watched **India's GST** debacle from the bitter beginning, and had formed the belief that, after year upon year of broken promises, the tax would never see the light of day. However, now, I've been pleasantly surprised by the uncharacteristic speed with which some of the final, essential steps needed to implement this long-awaited tax reform have been taken.

The Rajya Sabha's landmark vote in favor of the tax took place in August, and by early September more than half of India's states had ratified the constitutional amendment bill, removing a major roadblock to the introduction of GST. By the end of the month, the GST Council had been formed and had already resolved the tricky question of the GST registration threshold. The digital framework underpinning the new tax is already well advanced, and there is the very real prospect that GST could be in place by April 2017 after countless false starts.

That is, if lawmakers can agree on the four-tier GST rate structure, which will surely add much needless complexity to a law intended to simplify India's indirect tax system. I suppose a four-rate GST still represents a vast improvement on the existing hodge-podge of inefficient and cascading indirect taxes, and with so many stakeholders to please, the GST Council was always going to struggle to find a single rate that would please everybody. But I'd hate to see all the good work of recent months unravel at the final hurdle.

Now we move more decisively into the **digital realm**, and while some countries are busy trying to tax, restrict, or shut down innovative new businesses in the so-called **sharing economy**, such as Airbnb and Uber, others are attempting to remove obstacles to their growth.

On the one hand, we heard recently that **French lawmakers** voted for a bill that would subject to professional tax those making a significant amount from "sharing." One could argue that this is only fair, as there is a difference between a taxpayer renting out their home for a couple of weeks in a year and, say, for half the year.

On the other hand, some countries are taking a more hands-off approach to the issue. Rather than being so prescriptive in this area, some tax authorities have issued new guidance to inform people where the line between "pocket money" and declarable income exists, including the **US Internal Revenue Service**, the **UK's HM Revenue & Customs**, and the **Australian Tax Office**.

Still, guidance or no guidance, ultimately it will be the tax authorities that will decide where the line exists, so the trapdoors haven't been entirely removed for taxpayers.

At least one country is actively trying to ease the tax compliance burden on users of sharing platforms. The **United Kingdom** is introducing tax allowances – albeit modest ones – to encourage the new breed of "micro-entrepreneurs." Except that the UK cannot claim to be the bastion of micro-entrepreneurialism just yet, as the London Employment Tribunal recently ruled that Uber drivers should be classified as employed and not self-employed.

Not only has the ruling cast much uncertainty over UK employment laws, it has opened a tax can of worms. Will it mean that Uber is responsible for the payment of employment taxes, principally National Insurance (social security) contributions? The ruling could also have value-added tax implications for Uber in terms of how drivers' supplies to consumers are treated.

Perhaps the radical UK tax reform plan proposed by the Institute of Economic Affairs (IEA) last week would help. Its proposal to scrap most taxes in favor of a few would likely strike a chord with numerous members of the ruling Conservative Party at any rate, coming as it did from a free-market think tank. If we were living in a more uneventful political era, the Government might have given some of these ideas serious consideration. Times are, however, far from dull, and the UK Government has rather more pressing matters on its plate.

I refer of course to **Brexit**. And if the prospect of negotiating with an increasingly impatient – and possibly vengeful – EU wasn't daunting enough for a rookie Prime Minister like Theresa May, the waters have been muddied further by the High Court's ruling that Parliament must be consulted before the Government can trigger Article 50 and formally launch these negotiations.

Potentially, this is a big problem for the Government. In the House of Commons, remainers outnumber leavers, so if a Brexit bill is put to the vote, MPs could reject it. And given that the UK's nebulous constitution never envisaged such events, no one can be sure what would happen next.

This state of paralysis may not come to pass. A further ruling by the UK's highest court, the Supreme Court, is anticipated in the coming weeks, and many remainers in the Commons have indicated that they would respect the will of the people and not stand in the way of the Brexit process.

Nevertheless, despite the assurances that the parliamentary vote to trigger Article 50 would probably be a formality, at least in the Commons (let's not mention the House of Lords yet!), the reaction from the Brexit camp has been nothing short of vitriolic, as if the ruling were the result of a conspiracy by the pro-EU liberal elite to derail the Brexit process.

This will be the most important decision the UK takes economically for generations, and surely it is only healthy that all the legal implications are examined. However, the legal proceedings do raise a tantalizing prospect: what if the Supreme Court agrees with the lower court? What then? Will it be appealed to the European Court of Justice? How ironic that would be!

Still, as entertaining as this situation is for an outsider, there's no denying that these developments have added ambiguity to an already highly uncertain outlook for the UK. For taxpayers, this might not have entirely negative consequences.

Certainly, on the one hand, it is impossible to predict the nature of the post-Brexit relationship between the EU and the UK, so we are none the wiser about how EU tax legislation and case law would be applied in the UK. But on the other, we may see a period of relative calm and stability in the UK tax system in anticipation of potentially major changes ahead. Indeed, radical change in the area of taxation of the magnitude advocated by the IEA is likely to be the last thing businesses want to think about right now.

The Jester