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a closer look

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An Introduction To Tax And The Foreign Corrupt Practices Act

by Clinton Long, Manager of International Compliance Research,TRACE International

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When a corporate compliance officer thinks of the Foreign Corrupt Practices Act ("FCPA"), which prohibits bribery of foreign government officials and requires companies to maintain accurate books and records, a number of vulnerabilities for his or her company might come to mind. The company might be in an industry in which government contracts are prevalent and the temptation for paying a bribe is always present. Perhaps the company operates in jurisdictions where bribery is engrained in the local business culture and every activity from importing machinery to acquiring licenses and permits is met with a bribe request or demand. The company's executives may not take FCPA compliance as seriously as the compliance officer would like, and the rest of the company is following suit. These and many more vulnerabilities can be costly to a company and troublesome for a compliance officer.

There is one FCPA vulnerability that might not come to mind as readily but certainly faces every company subject to the FCPA: taxes. Despite the fact that FCPA cases involving tax may not dominate headlines or come to mind as a principal FCPA vulnerability, companies frequently seek tax advantages in ways that violate the FCPA. In fact, two U.S. government agencies that enforce the FCPA – the U.S. Department of Justice ("DOJ") and the U.S. Securities & Exchange Commission ("SEC") – have enforced the law against a number of companies that violate the FCPA in order to gain tax benefits. Companies have sought to avoid an array of taxes around the world, and FCPA enforcement cases have included issues relating to sales tax, value added tax, import tax, export tax, excise tax, and employment tax, among others.

This article discusses the interplay of tax and the FCPA and shows how tax can be an FCPA vulnerability through examples of tax-related FCPA enforcement actions. Furthermore, with the large number of FCPA cases involving tax issues, there are many lessons that companies can learn in order to manage tax liability abroad in a manner that complies with the FCPA. Ultimately the main lesson is that companies should

carefully monitor their interaction with tax officials in other countries, how they resolve tax disputes with foreign jurisdictions, and how accurately they keep records of their taxes in order to prevent FCPA liability. Before discussing these important lessons, this article will first provide a brief overview of the FCPA.

What Is The FCPA?

The FCPA is mostly known as an anti-bribery statute, but the law in fact has two sets of provisions: the "anti-bribery provisions" as well as the "books and records provisions." The FCPA's anti-bribery provisions, in short, prohibit companies and individuals with essentially any connection to the United States from bribing or offering to bribe "foreign officials" for the purpose of "obtaining or retaining business."[1] In general, the DOJ enforces these provisions, and can do so through civil and criminal penalties for corporations and individuals. As is shown in the next section, many anti-bribery enforcement cases have involved tax issues, such as companies seeking to avoid or reduce taxes in foreign countries by paying bribes to tax officials and other government employees in those countries.

The FCPA's books and records provisions impose requirements on issuers of securities who are required to file periodic reports to the SEC. One requirement is that each issuer must "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."[2] Missing from this language are references to bribes or foreign officials. There is no requirement that a bribe be present in the books and records, or that a foreign official be involved, which means that companies can violate these provisions of the FCPA without implicating either a bribe or a foreign official. The books and records provisions also require each issuer, among other things, to create and maintain internal accounting controls that properly record transactions in order for the issuer to prepare accurate financial statements using generally accepted accounting principles.[3] As is shown in the next section, numerous FCPA books and records enforcement cases have involved tax issues, which usually arise when companies disguise bribes or other payments in their books and records in order to avoid taxes or receive tax deductions. In general, the SEC enforces these provisions of the FCPA, although it does enforce aspects of the anti-bribery provisions at times in conjunction with its enforcement of the books and records provisions.

How Does The FCPA Relate To Tax?

There are a number of FCPA cases related to each set of provisions that provide useful lessons on FCPA compliance with respect to taxes. The anti-bribery provisions cases mostly involve bribes to a variety of foreign officials to avoid many kinds of taxes, while the tax-related books and records provisions cases usually involve inaccurately recorded transactions to avoid taxes, receive tax deductions, or disguise bribes to tax officials. Instructive cases for each set of provisions will be discussed here, along with the FCPA compliance lessons that they teach.

A) Tax and the FCPA's Anti-Bribery Provisions

As can be expected, companies subject to the FCPA are interested in minimizing their tax liability in every country where they do business. However, some companies have used less legitimate methods of doing so than others. Specifically, there are numerous instances of U.S. companies directly bribing officials in foreign countries to reduce tax liability. There has been some debate, however, as to whether bribery in exchange for reduced tax liability even violates the FCPA. This issue will be discussed first before delving into the examples of tax-related enforcement actions involving the FCPA's anti-bribery provisions.

As mentioned above, the FCPA's anti-bribery provisions prohibit giving or offering anything of value to "foreign officials" with the purpose of "obtaining or retaining business."[4] In some situations, especially those involving a foreign government's state-owned entities, determining whether a person is a foreign official per the FCPA can be the most challenging aspect of interpreting the statute. This does not appear to be as much of an issue in tax; around the world, congresses, parliaments, or other legislators create tax laws and a variety of government agencies enforce them; both groups are clearly "foreign officials" under the FCPA because they are employees "of a foreign government or any department, agency, or instrumentality thereof."[5]

The question of whether tax-related bribes violate the FCPA's anti-bribery provisions focuses on a different aspect of the statute: whether the bribe is paid or offered with the purpose of "obtaining or retaining business."[6] This phrase is often referred to as the "business purpose test."[7] The DOJ interprets this phrase broadly to include a wide range of activities, and specifically has stated that paying bribes to receive tax advantages falls under the business purpose test.[8] There are individuals and companies, however, that disagree with this assessment.

Such was the situation in *U.S. v. Kay*. Two executives of American Rice, Inc., David Kay and Douglas Murphy, were charged with violating the FCPA's anti-bribery provisions in Haiti, and the indictment of these individuals describes the allegations.[9] Kay and Murphy were alleged to have violated the FCPA by bribing Haitian customs officials in exchange for their approval of inaccurate customs documentation. The amounts of sales tax and customs duties in Haiti were based on the amount of imported rice, and Kay and Murphy allegedly underreported the amount of rice in customs documents in order to pay less in taxes and duties. The United States said that these bribes were made in order to assist American Rice in "obtaining or retaining business" in Haiti.

After the U.S. District Court for the Southern District of Texas rejected the U.S. government's position that avoiding these taxes would help in "obtaining or retaining business," the U.S. Court of Appeals for the Fifth Circuit reversed that decision and agreed that the business purpose test could be satisfied by seeking tax benefits:

> Congress intended for the FCPA to apply broadly to payments intended to assist the payor, either directly or indirectly, in obtaining or retaining business for some person, and that bribes paid to foreign tax officials to secure illegally reduced customs and tax liability constitute a type of payment that can fall within this broad coverage. . . .
>
> [W]e conclude that bribes paid to foreign officials in consideration for unlawful evasion of customs duties and sales taxes could fall within the purview of the FCPA's proscription. We hasten to add, however, that this conduct does not automatically constitute a violation of the FCPA: It still must be shown that the bribery was intended to produce an effect – here, through tax savings – that would "assist in obtaining or retaining business.["][10]

Other federal courts have not opined on the issue, and the United States government continues to apply the business purpose test to bribes paid for tax benefits and advantages. This is an important lesson of the interaction of tax and the FCPA: bribes paid to foreign officials for tax advantages are considered to be covered by the business purpose test and therefore violate the anti-bribery provisions of the FCPA.

In addition to *U.S. v. Kay*, there are a range of taxes that companies have sought to avoid or reduce through bribes, evidencing the significant role that tax issues play in FCPA enforcement. Among the most basic benefits a bribe payer has sought in these cases is to avoid taxes owed to a foreign government. A prime example of this is the DOJ's enforcement action against Tidewater Marine International, Inc. ("TMII"). The deferred prosecution agreement between TMII and the DOJ stipulated the following facts.[11] On three separate occasions, TMII faced a tax audit in Azerbaijan by the General State Tax Inspection Office ("GSTIO") of the Azeri Ministry of Finance. When the GSTIO notified TMII of one of the audits, it specifically asked about a contract that TMII had entered into with a subcontractor.

TMII had hired expatriate workers through this subcontractor, and a local agent told TMII that it could be liable for a significant withholding tax if the GSTIO received the authentic contract because TMII had not paid taxes on wages for its non-Azeri employees. With the knowledge and approval of TMII, the agent then negotiated an arrangement with the auditor: if he reduced the tax liability, he would receive a payment of $50,000. The money was paid and TMII's liability was significantly reduced. This bribe, in addition to other FCPA violations, formed the basis of a $7.35 million criminal penalty paid by TMII to the United States in 2010 and provides additional proof that bribing foreign tax officials violates the FCPA.

Another example of a company seeking to avoid taxes through bribes comes from the SEC's complaint against Universal Corporation ("Universal"),[12] a Virginia-based tobacco company, which alleged these facts. Universal and its local subsidiary wanted to avoid an export tax on tobacco leaving Mozambique. To do so, another Universal subsidiary paid a

bribe through yet another subsidiary to the brother of a Mozambican government official. Also in Mozambique, a Universal subsidiary allegedly promised $20,000 to a government official's wife to help pass a tax law that would be advantageous to Universal's tobacco operations in Mozambique. One payment of $10,000 was made, and the second did not go through because the legislation never became law. That the payments went to family members of the foreign official generally does not matter in FCPA enforcement,[13] and it certainly did not here.

The lessons from these cases are clear. Bribes such as these are clearly violations of the FCPA's anti-bribery provisions: tax authorities and other government employees are "foreign officials" and payments made to them to avoid taxes qualify as bribes paid to "assist in obtaining or retaining business." Furthermore, bribes paid to their family members to influence legislation or administrative decisions regarding taxes also violate the FCPA.

B) Tax and the FCPA's Books and Records Provisions

There are also a number of books and records provisions cases that deal with tax issues. Similar to the anti-bribery provisions, there is usually a single motive for the wrongdoing in each situation: to avoid taxes by inaccurately recording transactions in a company's books and records. A few specific examples of how companies have violated the FCPA in this manner teach helpful lessons on how these provisions are enforced and reiterate the significant interplay between tax and the FCPA.

The SEC's investigation of Baker Hughes[14] serves as an excellent example of tax-related FCPA books and records enforcement, and alleged the following facts. After a division of the Indonesian government told a Baker Hughes subsidiary that its tax return would be audited, the audit found a tax liability of $3.2m. Baker Hughes' external auditor thought this amount to be excessively high, but the company learned that the Indonesian tax official offered to lower the amount of the liability if he were given a substantial sum of money. His last offer was to reduce the liability to $270,000 if the company paid him $75,000. A few executives at Baker Hughes analyzed the company's options, and decided to pay the money through the auditor. The auditor then issued an invoice to Baker Hughes' subsidiary for "professional services rendered," and the amount included the payment for the tax official. This was a violation of the books and records provisions because the payment for the tax official through the auditor was improperly recorded. Baker Hughes was in a difficult situation, with a potential tax liability it believed was excessive in a foreign jurisdiction. However, companies should learn from this and realize that inaccurately recording such a payment in its books and records is a clear violation of the FCPA regardless of how accurate they believe a tax official's decisions to be.

Dow Chemical faced another unfortunate situation in an enforcement action brought by the SEC,[15] which alleged the following. A fifth-tier subsidiary of Dow in India made a number of improper payments to government officials. Among these

payments were thousands of dollars to officials involved with administering sales taxes and excise taxes, and it appears that these payments were not properly recorded in the subsidiary's books and records. Despite the fact that Dow did not know about the payments, the SEC considered Dow to be liable for its subsidiary's FCPA violations. This underscores the long reach of the FCPA in a corporation's organizational structure. Companies can be held liable for the tax-related FCPA violations of their subsidiaries, even if they are distant subsidiaries and regardless of the parent company's knowledge of the wrongdoing.

Finally, an important lesson comes from the DOJ's deferred prosecution agreement with Willbros Group, Inc., which alleged the following facts.[16] The DOJ alleged FCPA violations in multiple countries, including that the company's Bolivian subsidiary avoided value added tax ("VAT") by acquiring VAT credits through falsified invoices for services from companies that never existed. These actions formed part of the FCPA charges against the company, specifically that the presence of false invoices violated the books and records provisions. There are two notable omissions in Willbros' VAT evasion: there is no bribe and there is no foreign official. The books and records provisions do not require that the incorrectly recorded transactions be bribes and no foreign official has to be the recipient of the falsified payments. Therefore, a scheme to lower taxes that has no bribery component still violates the FCPA's books and records provisions if transactions are falsified, omitted, or improperly recorded.

Conclusion

From these cases, it is clear that many companies have sought to avoid or reduce tax liability by paying bribes. Additionally, many companies have maintained inaccurate books and records to hide these bribes or falsify entries to avoid other taxes. Their stories should be useful for other companies as they face a variety of taxes in foreign jurisdictions.

There are many lessons from these cases that contribute to an understanding of the interplay of tax and the FCPA. First and foremost, it is clear that seeking to avoid or reduce taxes through bribes is covered by the anti-bribery provisions' business purpose test. Therefore, paying bribes to tax officials, bureaucrats, and politicians (and any of their family members) to influence tax assessments or tax legislation violates the FCPA.

The books and records provisions cases also provide valuable lessons for companies. Paying a bribe to a foreign tax official and labeling it as "services rendered" in a company's books and records violates both sets of FCPA provisions. Also, a company can be liable for its subsidiaries' mislabeling of payments to tax officials, and this can even include fifth-tier subsidiaries. Lastly, a company does not have to disguise a bribe or a payment to a foreign official to violate these provisions; a scheme to acquire tax deductions through falsified documentation is a violation of the FCPA's books and records provisions regardless of the absence of a bribe and a foreign official.

With the large amount and wide range of taxes that corporations face in their business abroad, companies need to be aware of the FCPA and its relationship to tax. Companies must instruct their employees and subsidiaries about the implications of paying bribes to foreign officials or falsifying books and records in order to obtain tax benefits. Furthermore, these cases make it clear that companies need to engage in consistent audits of their own books and records as well as those of their subsidiaries to identify red flags and mitigate risk. Bribes or falsified transactions are often found through these audits, which can help a company improve its compliance program and take remedial measures if necessary. Through these cases, companies should see that tax can be a vulnerability for FCPA violations in foreign jurisdictions, that it plays a significant role in FCPA enforcement, and that the risk of violating it can be mitigated through effective compliance and auditing.

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Endnotes

1 Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1(a), -2(a), -3(a) (2013).

2 *Id.* § 78m(b)(2)(A).

3 *Id.* § 78m(b)(2)(B).

4 *Id.* §§ 78dd-1(a), -2(a), -3(a).

5 *Id.* §§ 78dd-1(f)(1)(A), -2(h)(2)(A), -3(f)(2)(A).

6 *Id.* §§ 78dd-1(a), -2(a), -3(a).

7 U.S. Dep't of Justice & U.S. Sec. & Exch. Comm'n, A Resource Guide to the U.S. Foreign Corrupt Practices Act 12 (2012) (hereinafter Resource Guide).

8 Id. at 13.

9 Indictment, U.S. v. Kay et al., No. 4-01-914 (S.D. Tx. July 15, 2004), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kayd/12-15-04kay-indict.pdf.

10 *U.S. v. Kay et al.*, No. 02-20588, at **35–36 (5th Cir. Feb. 4, 2004), *available at* http://www.justice.gov/criminal /fraud/fcpa/cases/kayd/12-04-04kay-5th-circuit-opinion.pdf.

11 Deferred Prosecution Agreement, *U.S. v. Tidewater Marine International, Inc.*, No. 10-770 (S.D. Tx. Nov. 4, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/tidewater-intl/11-04-10tidewater-dpa.pdf.

12 Complaint, *Sec. & Exch. Comm'n v. Universal Corp.*, No. 10-01318 (D.D.C. Aug. 6, 2010), *available at* http://www.sec.gov/litigation/complaints/2010/comp21618-universal.pdf.

13 Resource Guide, *supra* note 7, at 16.

14 Administrative Proceeding, *In re Baker Hughes Inc.*, No. 3-10572 (Sec. & Exch. Comm'n, Sept. 12, 2001), *available at* http://www.sec.gov/litigation/admin/34-44784.htm.

15 Administrative Proceeding, *In re The Dow Chemical Co.*, No. 3-12567 (Sec. & Exch. Comm'n, Feb. 13, 2007), *available at* http://www.sec.gov/litigation/admin/2007/34-55281.pdf.

16 Deferred Prosecution Agreement, *U.S. v. Willbros Group, Inc.*, No. 08-287 (S.D. Tx. May 14, 2008), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/willbros-group/05-14-08willbros-deferred.pdf.

Indian Indirect Taxes – An Overview And Perspective

by Saurabh Arora, Head of Indirect Taxes India, Siemens Group

A Slow But Steady March Towards A Rationalized Economic Structure

The author's interactions with global and regional tax heads of many large multinationals generate a sense of common perception that the indirect tax regime in India is quite complex when compared with the tax structure in various other developed economies. Many say it is intricate to understand and difficult in its application to their respective businesses, with the existence of mutually exclusive and multiple indirect tax laws. Others believe that procedures are tough and at times not trade-friendly, and not in the least eased by revenue-hungry tax officials, leading to frequent litigation.

Without addressing the correctness or otherwise of these perceptions, it is possible to say that in the deepest sense the tax regime of independent India even until the early 1980s was reflective of highly controlled practices followed under the British Raj before Indian independence in 1947. Now, with economic development and globalization in the last few decades coupled with India's liberalization policies in opening up its markets for foreign investments, one can witness a steady and gradual mindset shift among tax legislators as well as administrators, with movement towards a regime which is tax neutral and efficient in line with the evolved economies of the world.

This article will describe the evolution of indirect taxes in India post independence, adducing some broad concerns around dual taxation, the cascading and inequality of taxes, and most importantly the gradual march of the current regime towards the much awaited unified "Goods and Services Tax" ("GST"), the philosophy and mechanism of which would work on the same principles as VAT in European countries.

The Tax Regime During The British Raj

Customs Duty: Taxable Event – Levy On Import Of Goods Into India

Organized taxation on imports originated in the year 1786 when Britishers formed the first Board of Revenue in Calcutta (now Kolkata). These "provincial import duties" were replaced by a uniform Tariff Act through the Customs Duties Act, 1859 which was made applicable to all territories in the country. Until independence, customs duty was

managed through various enactments including the Sea Customs Act and the Indian Customs Act[1].

Sales Tax: Taxable Event – Levy On Sale Of Goods Within India

Taxes on commodities first came into existence as a measure to garner revenues to fund war expenses. When World War I was nearing its end in 1918, the Sales Tax as an important fiscal instrument was found in a few small countries and in Germany. By 1934, fifteen years later, this tax had spread over four continents and had become an important part of national taxation in the greater part of Europe, Canada, Australia, South America and the USA.

Before independence, provinces in British India were empowered under the Government of India Act, 1935, to levy taxes on the sale of goods and on advertisements. The Province of Madras (now Chennai/Tamil Nadu) was the pioneer province in India in the matter of introducing a "General Sales Tax". Madras introduced such a tax in 1939 under a multi-point system. In 1941, Bengal implemented a single point taxation system and in the same year Punjab commenced a General Sales Tax under a multi-point system. Shortly after this, almost all the Provinces and some of the Princely States introduced sales taxes in one form or other[2], *viz.*, single-point, multi-point, first point and/or last point taxation schemes, each taxation scheme operating in the respective Provinces, depending upon the economic wisdom of the governing bodies.

Excise Duty: Taxable Event – Levy On The Manufacture Of Goods Within India

The levy of Excise Duty in India began as a political subterfuge on the part of the British when they resorted to taxation on production of salt, which they considered an excellent way of earning revenue. This in a way also led to the world famous Salt Satyagraha in 1930 when Mahatma Gandhi undertook the Dandi March, marching from Ahmedabad to Dandi to protest against imposition of a tax on salt production which he considered to be unjust. During this time the revenue realized from the salt tax was around GBP25m.

Besides this, the Provincial Governments levied excise duties on various other commodities like iron and steel, matches, sugar, silver and mechanical lighters. With more commodities being brought under this tax net, the need for centralizing the administration of excise duties was felt acutely by the colonial British Government. Thus the Central Board of Revenue was constituted in 1934 (which is now the Central Board of Excise and Customs) and the then Government of India took over the administration of Central Excises from the Provincial Governments. Due to the exigencies of wartime finance, the colonial Government had to mobilize additional resources and thereby gradually expanded the tax net and eventually introduced the Central Excises and Salt Act, 1944, which continues until now with various changes and amendments, being known as the Central Excise Act, 1944.

As one would realize even during the era of British Rule, there were dedicated enactments to levy, regulate and administer taxes on imports, production and the sale of goods (notwithstanding that there are many reports and studies to suggest that taxes so imposed were unjust and exorbitant and were collected to mobilize funds to meet Britain's own fiscal and trade deficit).

Evolution Of Indirect Taxes After Independence

After independence, much did not change structurally. The Constitution of India provided for a division of powers between the Union (or Central) Government and various State Governments with regards to the powers to levy different taxes. Under the Federal structure of the country, Article 246 of the Constitution of India provides that the Union Government can exclusively legislate on any matters specified in List I (Union List) of the Seventh Schedule to the Constitution. Similarly, State Governments have the exclusive power to legislate on any matters specified in List II (State List) of the Seventh Schedule to the Constitution. Additionally there is List III (Concurrent List) to the Seventh Schedule which lists matters of importance where both the Union as well as the various State Governments have been given the powers of legislation.

In view of this constitutionally accorded division of powers, the various States have exclusive powers to legislate around:

- Levy of Sales Tax on sales of goods within their respective territory, (local, intra-State sales);
- Levy of Entry Tax/Cess on entry of goods into local limits, for use, consumption or sale therein;
- Constitution of local governments (*i.e.* municipalities) and delegation of powers thereto.

Whereas the Union Government has powers, *inter alia*, to legislate around:

- Levy of Excise Duty as tax on the manufacture of goods (except liquor for human consumption);
- Levy of Customs Duty as tax on the import of goods into India;

Indirect Taxes	Transaction / Taxable Event	Levied On	Levied By	Remarks
Customs Duty	Import of goods into India	Importer	Union Govt.	Fresh law legislated in year 1962
Excise Duty	Manufacture of goods in India	Manufacturer	Union Govt.	Multiple point levy. Continued with law introduced by British but many more commodities were added.
Sales Tax	Purchase and sale of goods within State.	Seller	State Govt.	Single point levy and levied on first sale with generally no set off or input tax credits
Central Sales Tax	Purchase and sale of goods in course of inter-State trade.	Seller	Union Govt.	Legislated by Union but administered by States.
Entry Tax/Cess/ Octroi Duty	On entry of goods into the local limits, for use, consumption or sale therein.	Purchaser/ Importer	State Govt./ Local Municipalities	Certain States delegated taxing power to local Government/ Municipalities

- Levy of Central Sales Tax on the sale of goods in the course of Inter-State trade or commerce, across the various Sates (central, inter-State sales); and
- Levy of tax on the provision of services.

In exercise of the above powers, various enactments were made (superseding those introduced during British Rule) in the first decade of independence to legislate and regulate levies according to the division of taxing powers. Following is a synopsis of various taxing laws that were introduced by the 1960s as enacted by both the Union and the States.

The indirect tax laws as applicable then were quite regressive and especially had the following serious distortions:

- **Cascading impact of taxes.** Each of the above levies worked in isolation with absolutely no input tax credits, which led to cascading of taxes. For instance, Excise Duty was levied at multiple stages with no corresponding tax credits (*i.e.* if a manufacturer bought inputs on payment of Excise Duty, he was again required to pay Excise Duty on the full value of his final manufactured product). Likewise, though Sales Tax was generally a single point levy (either levyable at first stage or the last stage of sale), no credit was however available to the business purchaser, as a result whereof re-sales within the State were exempted on furnishing of declarations/certificates, although the manufacturer was entitled to only a partial set-off, which did not really do away with cascading.
- **Unequal and lacked neutrality as tax base was very small.** Taxes were concentrated only on tangible goods with sales of services remaining outside the tax net. In addition no tax was levied on transactions like leasing, hire-purchase, works contract (involving supply of both goods and services like construction contracts, *etc*).
- **Too much administrative and physical control** as against self assessment procedures which eventually encouraged non-compliance and evasion.

Indirect Tax Reforms In India

Tax reform in India has been debated for several decades as is evident by the number of Government appointed committees post independence right from 1953. Prominent among them were the Lakshmi Kant Jha Committee (in 1978) and the Raja J Cheliah Committee (in the year 1991-92) which advocated revamping of the then existing tax system towards a robust tax system with a broader tax base which promotes investment and is neutral, equal and is simple to administer, coupled with minimal or no cascading impact of taxes.

There was a strong recommendation for a complete change-over to a unified Value Added Tax structure that worked on input tax credit mechanism, which would involve redistribution of tax powers between the Union and the States with a view to reserving all powers of commodity taxation to the Union, with a share of revenue to devolve on the States on the basis of a specified formula.

There was not much political will to implement such a taxation model as State and local Governments wanted to maintain their fiscal

autonomy. However, a start was made in the right direction in 1983, when the President's assent was given to the 46th amendment to the Constitution of India towards achieving a wider tax base to enlarge the scope of taxable events for sales tax purposes. A synopsis of developments is given below:

- **Expansion of the tax base:** In 1983, the Constitution of India was amended and the various State sales tax Acts were amended from April 1, 1984, to, *inter alia*, include transactions such as works contracts, leasing, hire purchase, *etc.*, within the definition of "sale" in order to expand the tax base.
- **Introduction of a credit mechanism for Excise law (at Union level):** In 1986, the MODVAT (Modified Value Added Tax) Scheme was introduced in the Excise Duty law to make it work on Value Added Tax principles. Hitherto (as mentioned earlier) Excise Duty was a multi-stage affair with no input tax credits, causing huge cascading. To fix this and acting on recommendations of various tax reforms committees, MODVAT was adopted under which a manufacturer can take credit for the duty paid by him on the raw materials purchased so that he now pays excise duty only on the final product.
- **Introduction of Service Tax law (at Union level):** In 1994, the Union Government introduced tax on the provision of initially just three specified services (referred to as "Service Tax"). The list was expanded every year and eventually the Positive list approach of taxing services was redefined in the 2012 Union Budget when provision of all services was made taxable except those specified in the Negative list or in the Exempted list.
- **Expansion of the credit mechanism to incorporate services (at Union level):** From 2001 to 2004, MODVAT was replaced with the CENVAT Credit Scheme which integrated a credit mechanism for goods and services but only in respect of taxes (*i.e.* Excise and Service Tax) levied by Union Government. That is to say an inter-sectoral tax credit was allowed to the manufacturer and service provider to get tax credits in respect of the inter-sectoral input taxes against output taxes.
- **Introduction of VAT to replace State level Sales Tax:** In 2005, for the taxable event of sales of goods, after much deliberation, a VAT regime was introduced, albeit only at State level to replace the half a century old sales tax. However the Central Sales Tax continues to hold good for the inter-State sales of goods. The VAT is typically a multiple point levy which provides for levying tax on each stage of the sale of goods within the State with a corresponding mechanism for granting input tax credits. However this VAT based on the principle of a destination-based levy has to co-exist with the extant Central Sales Tax which essentially is a origin-based levy. This fractured VAT is now expected to be corrected with the implementation of the GST (Goods & Services Tax).
- **Proposal to introduce a unified GST to subsume all key indirect tax levies:** In the Union Budget Speech for 2007-08, the then Union Finance Minister made an announcement with

regard to the introduction of a unified tax to be called GST. It was envisaged then that the rationalized GST would be introduced by April 2010. The GST as expected in India is supposed to subsume all key indirect taxes levied at the Union as well as the State level into a unified GST, with a seamless flow in the process of input tax credits, across the different taxable events presently prevalent within and across the States in India.

The GST is expected to work on a model very similar to that of VAT in Europe. However, given that the Union and States in India have always enjoyed fiscal autonomy, the same would continue even under a GST regime with a "Dual GST Structure". That is, all taxable supplies would attract a Centre GST ("CGST") and a State GST ("SGST"). The Union is endeavouring also to have a unified rate structure and procedures across states but there is strong resistance by the States in light of their fear of losing their sovereignty.

The introduction of this GST as a reality means for both Union and State to share their taxing rights in mutual trust, through achievement of a two-thirds majority vote in the Parliament for the requisite amendment to the Constitution of India. It is a fact though that this process is still continuing, and with different political parties holding sway in different States, it is all the more difficult to establish a working consensus.

Now, with general elections in the country due next year, it is unlikely that GST will see the light of the day before at least another couple of years have elapsed.

Current Peculiarities Of The Indirect Tax Regime

Though the indirect tax regime in India has come a long way since its inception, still in the current scheme of things there are certain glaring gaps which are expected to be reduced, if not eliminated totally, with the introduction of GST:

- **Overlaps between Union and States:** Currently there are numerous disputes and frequent litigation on account of taxation by both the Centre and the States on the same supplies of goods and services. Intangibles may be cited as a classic example: at present there exist nebulous ambiguities as to whether the supply of intangibles constitutes a supply of goods or a supply of services. *Temporary transfer of or permission for the use or enjoyment of any IPR is subject to service tax.* However, the State VAT laws also provide that transfers of IPRs shall be treated as goods for the levy of VAT. Thus, the supply of intangibles such as the transfer of rights to use IP is subject to double taxation, *viz.*, service tax and State VAT. This despite the fact that under the Constitution, it is deemed that "Double taxation is bad in law."
- **Cascading impact of taxes:** Though the CENVAT/Input Tax Credit mechanism has been introduced for all key indirect tax levies, the benefit of input tax does not travel across levies imposed by different Governments. For instance, a service provider who is subject to Service Tax levied by the Union Government is not entitled to any tax credits in respect of taxes paid on procurement as levied by State or Local Governments (such as VAT or Entry Tax paid on procurement

of goods). Further, there are certain restrictions on the use of input tax credits on some genuine business expenses which do not have a direct nexus with the taxable activity. This also causes cascading and results in inefficiencies.

- **Narrow tax base:** Certain critical sectors like power and real estate are outside the ambit of the tax net today. It is important that the tax base should be comprehensive with minimal exclusions/exemptions. A wider base would be significant from the perspective of keeping the revenue neutral rate at a reasonable level and also to minimize the cascading effect of taxes.
- **Irrational tax structure and compliance requirements:** As taxing powers are divided amongst the Union and States (and some powers are further delegated to local governments) and coupled with the desire to retain their respective fiscal autonomy, each government legislates its own tax laws along with a rate structure and compliance requirements to meet their development plans. This very fact makes it extremely difficult to rationalize and standardize the rate structure and compliance, something which could very well be achieved if there was a unified levy (imposed say by the Union), with the revenue allocated to respective state and local Governments (a model followed by Australia and Europe).

Parting Words: Hopefully the above effort gives a broad perspective on the framework of indirect tax laws in India. In subsequent articles we shall explore developments on key indirect tax fronts such as the GST (its proposed structure, roadmap and bottlenecks), and other critical issues being faced by large multinationals operating in India.

Nevertheless, we should recall the wise couplet of Alexander Pope:

"Whoever hopes a faultless tax to see,

Hopes what ne'er was, or is, or e'er shall be."

Endnotes

1 http://www.du.ac.in/fileadmin/DU/Academics/course_material/TM_20.pdf

2 http://www.keralataxes.gov.in/history.pdf

Topical News Briefing: Sweet On You

by the Global Tax Weekly Editorial Team

The very idea of an MNC being the "sweetheart" of a tax authority is faintly risible; yet this is the term the media has decided to attach to "closed-door" deals arrived at between the UK's HMRC and some major corporations doing business in the country. See our story in the News Round-Up below.

In fact the media are having a high old time portraying large corporations as slippery, evasive creatures, out to cheat host countries of their "fair" measure of tax by constructing international daisy-chains of holding companies.

Attractive as this concept may be to a journalist in search of sensation, and who probably wouldn't recognize a Dutch Sandwich if he met one in Starbucks, it won't be familiar to most corporate treasurers.

The term that would be familiar is "enhanced relationship," meaning that a long-term, close working partnership between taxpayer and tax authority is more likely to lead to satisfactory and harmonious results than an adversarial relationship.

Tax is a cost, it is true, and shareholders' funds will benefit if tax is lower; but any listed company (and that's most larger companies) tends to be judged by above-the-line results, ie before tax. This is especially meaningful in regimes where dividends are tax-privileged or carry tax credits ("franked"), because then the tax is not a cost at all for the shareholder.

"Enhanced relationship" is perfectly demonstrated in the Goldman Sachs affair, which is one of HMRC's "sweetheart" deals, and which happens to have hit the courts this week, through no wish of the two parties. Goldman, along with other UK banks, had signed a Code of Practice designed to minimize tax avoidance, and HMRC let the company off an interest bill of GBP20m on a settlement related to offshore bonuses, apparently out of concern that Goldman might tear up the Code it had just signed. Absent a settlement, hundreds of millions of tax would remain unpaid, HMRC would have had to drag the bank through the courts at amazing cost, and would probably have lost. But you won't find our friendly, bank-bashing journalist mentioning the Code of Practice.

Widening the canvas a little, let's take IP as a test case. Many types of large corporation have extremely valuable IP, and they have learned to put it in low-tax jurisdictions, whence it is licensed to subsidiaries around the world. Tax aside, it is prudent corporate behavior to put your IP where it can be managed and defended, so that the legal regime is as important as the tax regime. Now we have a competition between host countries to offer tax-friendly regimes to IP holders, and the latest country to join this game, surprise, surprise, is the UK,

which will offer a 10 percent rate for IP profits. So Google (this is just by way of illustration) could put its IP in London instead of Ireland (12.5 percent) and license it to France, which has the highest corporate tax rate in the European Union. It is now in the direct interest of HMRC to agree to the highest possible rate of licensing fee, to get 10 percent on the proceeds rather than nothing. The French will apply transfer pricing principles to dispute the figures of course, if they notice.

How impossible to propose that such Gordian knots (and this is an improbably simple example) can be resolved by internationally-agreed BEPS-avoidance rules, let alone in the courts. Roll out the sweeties! It's the only way.

Status Of IFRS Incorporation Into The U.S. Reporting System

by the CCH Editorial Staff

For ten years, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) (together, the Boards) have been working together to converge U.S. generally accepted accounting principles (U.S. GAAP) with international financial reporting standards (IFRS). Four years ago, the Securities and Exchange Commission (SEC) published the document, "Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers" (Roadmap). The overall goal sought by the Boards and the SEC was a single set of high quality global accounting standards. Now, the Boards' convergence projects are drawing to a close, and the SEC studies and reports have been completed. As said by Paul A. Beswick, Chief Accountant for the SEC, the "consideration of incorporating IFRS may be the single most important accounting determination for the Commission since the determination to look to the private sector to establish accounting standards in the 1930s." Although much work has already been completed, the questions of whether and how the SEC will authorize IFRS to be incorporated into the U.S. financial reporting system remain unanswered. However, there are recent indications that while it is unlikely that the United States will formally adopt unmodified IFRS or some form of identical global accounting standards, the United States likely will focus on the continued development of comparable standards.

Background

For many years, the SEC has been exploring the use of global accounting standards:

- 2007. The SEC announced its intention to consider whether domestic issuers should be required or permitted to use IFRS in their filings and that it would allow foreign private issuers to file reports prepared using IFRS without reconciliation to U.S. GAAP.
- Late 2008. The SEC issued the Roadmap, which was a document that set out a series of necessary steps toward requiring the use of IFRS as issued by the IASB by U.S. issuers, as part of the SEC's consideration of the role a single set of high-quality accounting standards plays in investor protection and the efficiency and effectiveness of capital formation and allocation. The Roadmap addressed the basis for considering the mandatory use of IFRS by U.S. issuers and the milestones

which, if achieved, could lead to the use of IFRS by U.S. issuers in their filings with the SEC. Following the Roadmap as a guide, the SEC expected to determine whether to proceed with rulemaking to require that U.S. issuers use IFRS beginning in 2014, if it determined that would be in the public interest and for the protection of investors to do so.

- 2010. The SEC issued the Commission Statement in Support of Convergence and Global Accounting Standards with a directive to the Office of the Chief Accountant (OCA) to develop and execute a work plan. The purpose of the work plan was to consider specific areas and factors relevant to an SEC determination as to whether, when, and how the current financial reporting system for U.S. issuers (i.e., U.S. GAAP) should be transitioned to a system incorporating IFRS.

In July 2012, the OCA published its final staff report on the SEC's requested work plan related to global accounting standards. (The staff final report is discussed in the October 2012 issue of "International Accounting, Financial Reporting, and Audit: News & Analysis.") The final report provided the following:

- A thorough and detailed analysis of the development of IFRS as high quality standards;
- An evaluation of how IFRS is applied in practice; and
- A discussion of other relevant issues.

The final report did not provide the following:

- An answer to the fundamental question of whether transitioning to IFRS is in the best interests of the securities markets of the United States and U.S. investors; or
- A timetable for a decision by the SEC or a recommendation for an SEC decision.

In the months since the release of the final report, there has been considerable international concern expressed as to whether achieving the goal of a single set of high quality global accounting standards is possible given the uncertainties as to the U.S. position. While it is true that there has been no formal announcement by the SEC, there have been signals from others regarding the direction in which the SEC may be headed. Although direct incorporation of IFRS into the U.S. reporting system seems unlikely, the Boards continue to work toward completion of the remaining convergence projects. Further, SEC staff personnel have indicated that the SEC needs more time and study. All indications are that:

- The United States continues to pursue the goal of creating comparable financial reporting standards, if not directly endorsing or incorporating IFRS into the U.S. reporting system; and
- The United States wishes to remain actively involved with efforts to improve U.S. GAAP, IFRS, and other global accounting standards.

IFRS Foundation Staff Analysis of SEC Report

The trustees of the IFRS Foundation published a staff analysis of the SEC Final Staff Report on International Financial Reporting Standards (Analysis) on October 23, 2012. The IFRS Foundation staff's Analysis addressed the following matters:

- IFRS as global accounting standards;
- The IASB as a global accounting standard setter; and
- The challenges for a U.S. transition to IFRS (including adoption and endorsement).

As explained in the Analysis, the IFRS Foundation's major concern is the absence of either (a) a recommendation for U.S. adoption or incorporation of IFRS into the U.S. reporting system; or (b) a timetable for making a decision. However, despite these issues, Michel Prada, Chairman of the IFRS Foundation Trustees, believed that the United States would be able to adopt IFRS, concluding that "the analysis conducted by the IFRS Foundation staff shows that there are no insurmountable obstacles for adoption of IFRSs by the United States, and that the [United States] is well placed to achieve a successful transition to IFRSs, thus completing the objective repeatedly confirmed by the G20 leaders."

AICPA National SEC And PCAOB Conference

The future of continued U.S. involvement in and adoption of IFRS was a significant theme at the 2012 AICPA National Conference on Current SEC and PCAOB Developments (Conference) held in Washington, D.C., on December 3–5, 2012. Representatives of the SEC, the FASB, and the IASB weighed in on the status of IFRS in the United States.

Hans Hoogervorst, IASB Chairman

Hans Hoogervorst, echoing previous similar statements, expressed disappointment in the lack of a decision from the United States on the incorporation of IFRS and the need for a tangible sign of U.S. commitment to a single set of global standards. He indicated that the use of IFRS continues to grow globally, advising that "over 100 countries now use IFRS, including three quarters of the G20." Hoogervorst noted that the United States has always had a "proud role" in the pursuit of a single set of global standards, and this role continues even without a formal decision by the SEC. For example, the IASB has recently appointed prominent Americans to roles in the IASB. These Americans include Mary Tokar from KPMG, and formerly the SEC, as well as Heidi Miller from JP Morgan. Throughout the decade of convergence projects with the FASB, the United States has had "enormous influence" on IFRS standard setting, with the expectation that the United States would become a permanent participant in the development, application, and enforcement of a single set of global standards. Hoogervorst advised that even without a commitment by the United States, the transition of the world toward IFRS will not end, although five years ago, a standstill in the United States would have risked Europe going its own way while Asia developed its own standards. For many countries, the costs and efforts of the transition to IFRS are behind them, and the global impact of IFRS will not be undone. With respect to the United States, Hoogervorst recognized that determining whether

to adopt IFRS would not be an easy decision for the SEC, but he said he had expected that "the SEC would plot a course towards IFRS." He further warned that the "uncertainty about where the SEC is going to land is not a helpful backdrop for our work on the remaining convergence projects." As the convergence projects are coming to an end, Hoogervorst indicated that the IASB is looking at new, multilateral ways to engage national accounting standard setters, including what he described as a new mechanism to allow the global standard-setting community to be more deeply engaged in our standard-setting processes. That new mechanism is the proposal for a globally staffed Accountant Standards Advisory Forum (ASAF), discussed below at "IASB Proposes a Multilateral Accounting Standard Advisory Forum." Hoogervorst expressed hope that the FASB could become a fully engaged partner in this new global forum, but indicated that U.S. influence will be commensurate with its commitment to IFRS. Hoogervorst's comments at the Conference followed up on his previous statements at the London School of Economics on November 6, 2012, entitled Accounting Harmonisation and Global Economic Consequences.

Addressing the issue of the growing global adoption of IFRS, Hoogervorst said:

We cannot overlook the fact that the United States has yet to decide whether and how to adopt IFRS. As the world's largest national economy, we would very much like the [United States] to be a fully paid up member of the IFRS community. The US Securities and Exchange Commission, or SEC has been a long-term supporter of our work. The SEC has already determined that IFRS is of high quality by permitting its use by non-US companies listed on US markets. It is estimated that over 500 companies – many of which are European – are now listed in the United States using IFRS.

Hoogervorst also spoke at the November meeting of the European Parliament's economic affairs committee. He said, "We are waiting for Godot. That is, we are waiting for the United States." However, in the end, he stated that he still expected that the United States would come on board.

Leslie F. Seidman, FASB Chairman

Leslie Seidman also spoke at the Conference but provided a more optimistic counterpoint to Hoogervorst's concerns. Seidman explained that a number of factors are involved in the U.S. decision with respect to IFRS, some of which differentiate U.S. reporting needs from those of other nations. Due to those factors, the FASB is in a "unique position to understand the needs of U.S. stakeholders," which is due, she said, to the "characteristics of the standards themselves."

Regarding how the characteristics of IFRS affect the decision to incorporate them into the U.S. reporting system, Seidman noted the following:

- Accounting standards must be clear and unambiguous for those who must apply and enforce them and then use the resulting information. Given the U.S. system of rigorous reporting

requirements, standards must be clear. IFRS are principles based, and Seidman does not believe that the U.S. system can function over the long run with only broad principles.

- Accounting standards must be capable of rigorous interpretation and application so that similar events and transactions are accounted for similarly across time periods and among companies, and so that companies are able to comply with them at a reasonable cost. One of the points noted in the OCA staff's final report is the local modification of IFRS and the diversity of application among nations that have adopted IFRS.
- U.S. preparers and auditors are expected to apply the standards as written, and U.S. financial reporting stakeholders demand clarity. As a result, the United States needs an interpretive process conducted in a transparent way, rather than individually through audit or enforcement. U.S. stakeholders frequently need support in interpreting standards, even after they have been issued, and expect the FASB or the Emerging Issues Task Force (EITF) to address interpretive issues in a timely manner.

These factors, Seidman noted, may be ongoing issues for the United States relating to the IFRS standards themselves "that are important to address in a heavily regulated, litigious environment like ours." Seidman also mentioned that there are also governance, due process, and funding concerns with IFRS that are discussed in the OCA staff's final report.

Seidman noted that in her view:

> All of these dimensions are important to achieving the goal of creating *comparable financial information* for investors. Having the same words in a standard can be a good start, but it is not necessarily going to produce consistent information if the standard is interpreted differently or enforced differently within a jurisdiction or across jurisdictions. The SEC staff report indicates that there is some level of diversity in the implementation of IFRS across jurisdictions (emphasis added).

The source of this diversity among jurisdictions comes from their need to adapt IFRS to deal with their individual cultural, business, and economic issues. Seidman said, "This apparent need for some adjustments does not mean that IFRS is flawed … [but it] suggests that a goal of 100 percent comparability (such as a single set) is not achievable in the near term, for very legitimate reasons, in some of the world's largest capital markets."

According to Seidman, the SEC will make a decision in its own timeline. In the meantime, the FASB should work with the IASB to complete the Memorandum of Understanding projects. Further, the FASB would like to be actively involved in discussions with the IASB and other standard setters to continue to improve U.S. GAAP, IFRS, and other global accounting standards and to make those standards more comparable.

At no time did Seidman indicate that the United States wishes to go its own way, even though it may not be able to incorporate IFRS exactly as

promulgated by the IASB. Instead, her focus is on comparable, rather than identical, standards.

Paul A. Beswick, SEC Chief Accountant

Paul Beswick, appointed in late December by President Obama as the SEC Chief Accountant, also discussed the issue of global accounting standards. He indicated that he was encouraged by the level of convergence achieved by the Boards in their joint leasing and revenue recognition projects. Although the Boards remain diverged on the impairment aspect of the financial instruments project, he noted that they are closer to converging on classification and measurement than many would have predicted. He recommended the Boards seek public comment on their impairment models at the same time to see whether they can reconcile the two views.

At a separate panel discussion, members of Beswick's staff indicated that their work was complete related to the work plan, and that the decision is now in the hands of the SEC Commissioners. Neither Beswick nor his staff provided any clarity on a timeframe for an SEC decision on whether to incorporate IFRS into the U.S. financial reporting system. The SEC Commissioners have not spoken publicly as to whether and when they will make a decision on IFRS, or given an indication regarding what that decision will be. In the meantime, the IASB has been moving forward toward inclusion of other jurisdictions in the discussion process as discussed below in "IASB Proposal to Establish an Accounting Standards Advisory Forum."

ICAEW On The Future Of IFRS

Outside the United States, there have been calls for the IASB to move on from convergence and to focus its efforts on IFRS adopters. In mid-December 2012, the Institute of Chartered Accountants in England and Wales (ICAEW) weighed in on the progress of IFRS adoption in its thorough report, "The Future of IFRS." In the report, the ICAEW acknowledged Hoogervorst's concerns about the SEC delay in deciding on IFRS incorporation, the conclusions in the OCA final report, and other indications that the IFRS is not likely to be applied in the United States for some years, if at all. The report notes that despite the widespread adoption of IFRS across the globe, several of the major convergence projects between the Boards have stalled, the progress toward IFRS has lost momentum, and the United States and others are hesitating to commit to IFRS.

Citing these concerns, the ICAEW recommended the following:

- Efforts to converge IFRS and U.S. GAAP should be ended in the near term; and
- The IASB should focus on the needs of the jurisdictions that have either adopted IFRS or are close to doing so.

The IASB, however, should not abandon work with the FASB, and U.S. representation on the Monitoring Board and the IASB should stay in place. The ICAEW also sees a role for the G20 in encouraging the use of IFRS. For some time, the

G20 has called for the development of a single set of high quality, global accounting standards. In the Communiqué of Ministers of Finance and Central Bank Governors of the G20 from the Mexico City meeting of November 4–5, 2012, the G20 expressed concerns about the slow progress in the adoption of such standards and encouraged the Boards "to complete work promptly, and report to our next meeting."

In addition to continuing to encourage the use of global accounting standards, the ICAEW recommended that all G20 members permit issuers in their jurisdictions, including the United States, the optional use of IFRS in reporting.

As the FASB looks toward the adoption of standards that may be internationally comparable rather than identical, the IASB is working on greater inclusion of other jurisdictions.

Comparable Standards And Optional Use Of IFRS

IASB Chairman Hoogervorst recently echoed the ICAEW suggestion that the United States and other G20 jurisdictions permit the optional use of IFRS. Hoogervorst and FASB Chairman Seidman addressed these issues at the New York Society of Security Analysts conference the week of January 7, 2013. While Hoogervorst repeated his concerns with the delay by the United States in deciding the direction to move with IFRS, he also supported U.S. issuers having the option to use IFRS and believed that such an option would show movement toward IFRS adoption. In the absence of a decision by the SEC, the best result, Hoogervorst said, is to "try to move as close together as possible."

Seidman, however, commented that such an IFRS reporting option would be unmanageable. Seidman reiterated the FASB position on comparability of standards, saying that her comments "must be taken in the context that the SEC has not made a decision that we should adopt IFRS." Given that context, she noted that the FASB needs to make a decision concerning how to proceed in the meantime. She said, "What I want to do is emphatically state that we do believe that having globally comparable standards is extremely important." Seidman also believes that the FASB should continue to have a role working with the IASB toward that goal. With respect to when and if the SEC would make a decision on IFRS, however, Jenifer Minke-Gerard, Senior Associate Chief Accountant, OCA, also speaking at the Conference, noted that some commissioners supported a possible IFRS reporting option, but that there was not yet a consensus. She indicated that the SEC needs to do more analysis and consideration before it comes to a decision.

Meeting of the G20 Finance Ministers and Central Bank Governors, February 2013

The FASB and the IASB prepared an update on the convergence process for the February G20 meeting; extracts are given below.

Achievements And Challenges

Most of the short-term projects and several of the longer-term projects have been completed or are nearing completion. In 2012 the boards made significant progress on the remaining joint projects and they continue to appreciate the importance of developing converged accounting standards. The boards have achieved converged solutions for Revenue Recognition accounting and will be exposing converged proposals for accounting for Leases. There have, however, been some challenges to developing completely converged solutions, especially for the Impairment and Insurance Contracts projects.

For the Impairment project, it has been a challenge to bring together the different perspectives of the boards' respective stakeholders and the different markets in which such stakeholders conduct their primary business activities. While the goal continues to be the development of a converged Standard for impairment, the extent of future convergence in this project will depend, in part, on the feedback that is received during the boards' respective comment periods. However, it is also important to note that under both sets of proposals the provisions for loan losses continue to be based on the same information set, updated for changes in loss expectations.

Developing a converged solution for the Insurance Contracts project may be more difficult. IFRS does not currently include accounting requirements for insurance contracts, so the IASB needs a final Standard urgently and will be undertaking a targeted re-exposure of its proposals. The FASB has existing models for insurance contracts but will initially be exposing proposed amendments for public comment in mid-2013. The difference in the scope of the questions in these exposure documents and the need for the IASB to issue timely guidance will make achieving a fully converged solution for the Insurance Contracts project challenging.

Financial Instruments: Classification and Measurement

During 2012, the boards worked together to eliminate differences in their respective classification and measurement models and have converged decisions in the following areas:

- **Contractual Cash Flow Characteristics Assessment:** a financial asset would be eligible for a measurement category other than fair value through profit or loss if the contractual terms of the financial asset give rise to cash flows that are solely payments of principal and interest on the principal amount outstanding, where interest is consideration for the time value of money and for credit risk.
- **Business Model Assessment:** the assessment of the business model would apply to those financial assets that "pass" the assessment of the contractual cash flow characteristics. Financial assets would qualify for amortised cost accounting if the assets are held within a business model whose objective is to hold the assets in order to collect contractual cash flows. The frequency and nature

of sales would prohibit some financial assets from qualifying for amortised cost.

- **Fair value through other comprehensive income:** financial assets would be measured at fair value through other comprehensive income if they "pass" the assessment of the contractual cash flow characteristics and are held within a business model whose objective involves both holding the financial assets to collect contractual cash flows and selling financial assets.
- Fair value through profit or loss would be the residual measurement category that would include all assets that 'fail' the assessment of the contractual cash flow characteristics.

Given the different stages of development of the classification and measurement phases of their respective projects, (the IASB is making limited amendments to IFRS 9 *Financial Instruments* whereas the FASB is proposing completely new guidance), the boards' exposure documents will not be identical.

The IASB published its Exposure Draft in November 2012. These proposed amendments were intended to further align the boards' classification models, address some of the insurance community's concerns about the interaction with accounting for insurance contracts, and clarify the existing classification and measurement requirements for financial assets.

The FASB expects to issue a second Exposure Draft on classification and measurement in February 2013 and will conduct outreach with stakeholders during the exposure period. The comment period will end on 30 April 2013. (See below.)

The boards are planning to begin joint redeliberations about the feedback received on the proposals later this year. The timing of the issuance of final requirements will depend on the nature and extent of the feedback received.

Impairment (Loan Loss Provisioning)

This is probably the most important phase of our project to overhaul the accounting for financial instruments. While the boards worked jointly to develop an "expected loss" approach to impairment, US stakeholders raised numerous concerns about early drafts of the so-called "three-bucket" approach. The most significant concerns related to the use of two different measurement approaches – a portion of the expected losses for all new or purchased financial assets and a full loss recognition approach for financial assets that have exhibited "more than insignificant deterioration." The FASB believed it was necessary to address these concerns before moving to an Exposure Draft.

To address these concerns, the FASB developed a different expected loss model whereby at each reporting date, an entity would recognise an allowance for credit losses for its current estimate of all expected credit losses on financial assets held at the reporting date. The same objective applies to all financial assets held in any period; however, the measure of the allowance would be commensurate with the current assessment of risk for the financial assets held.

In late December 2012 the FASB published its Exposure Draft. The FASB's comment period ends on 30 April 2013.

The IASB decided to maintain the concept of the "three-bucket" approach but will revise it to address concerns that had been raised about the point at which full lifetime expected losses should be recognised. The revised model will result in an initial recognition of a portion of the lifetime expected losses, with full lifetime expected losses being recognised only once a financial asset significantly deteriorates (ie to the point that an economic loss is suffered beyond the level that was originally anticipated and priced into the financial asset).

The IASB is aware of the importance of publishing its proposals as soon as possible, and will publish an Exposure Draft in the first quarter of 2013. There will be a 120-day comment period.

The boards appreciate the importance of converged requirements in this area and continue to have open lines of communication. However, as noted above, challenges to achieving a converged solution include bringing together the different needs of the respective boards' stakeholders and the different markets in which such stakeholders conduct their primarybusiness activities. It is also important to note, however, that under both sets of proposals the provisions for loan losses continue to be based on the same information set, updated for changes in loss expectations.

The boards will continue to discuss developments as they move forward, and participate in each other's outreach during both boards' exposure periods. The comment periods will have some overlap and the boards will consider public comments on both approaches during redeliberations. The timing of the issuance of final requirements will depend on the nature and the extent of feedback received, but the boards expect to complete deliberations in 2013.

Hedge Accounting

The objective of the IASB's project is to improve hedge accounting by more closely aligning the accounting with a company's risk management activities, thereby improving financial reporting. As previously discussed, the Hedge Accounting phase of the Financial Instruments project is not a joint project. However, the FASB sought comments from its stakeholders on the IASB's Hedge Accounting Exposure Draft, and will consider these and the decisions reached during redeliberations in conjunction with feedback on its own proposals, when it recommences its hedge accounting deliberations.

Other Projects

Leases

Lease obligations are widely considered to be a significant source of off balance sheet financing. The objective of the Leases project is to improve financial reporting by lessors and lessees, in particular by recognising leases on the balance sheet.

The boards have completed discussions on the Leases project and have agreed to re-expose the revised proposals for identical standards on lease accounting. The boards plan to publish exposure drafts in the second quarter of 2013 with a 120-day comment period. During the comment period, the boards will conduct additional outreach with users of financial statements and with entities that undertake lease activities. The boards plan to jointly redeliberate the proposals later this year. The timing of the issuance of the final requirements will depend on the nature and extent of the feedback received.

Revenue Recognition

The objective of this project is to improve financial reporting by creating identical standards on revenue recognition that clarify the principles that can be applied consistently across various transactions, industries and capital markets. The project applies to all contracts with customers (except leases, financial instruments and insurance contracts).

In December 2012 the boards completed the substantive redeliberations of the recognition and measurement principles in the 2011 Exposure Draft. The boards plan to redeliberate the remaining topics, including the scope, disclosure, transition and effective date, in the first quarter of 2013 and issue final standards in mid-2013.

Insurance Contracts

The objective of this project is to eliminate inconsistencies and weaknesses in existing practice and to provide a single principles-based Standard to account for all insurance contracts. While the boards are working together on the Insurance Contracts project they have reached different decisions on several basic matters. For example, while both boards have agreed to measure the insurance liability using a current measure of the estimated cost to fulfil the obligation, the boards have reached different decisions on several aspects of the model, including the recognition of changes in estimate, the inclusion of a risk margin in the measurement of the liability and the treatment of acquisition costs. The boards finalised their joint discussions in January 2013.

The obstacles to finding a converged solution for the Insurance Contracts project may be difficult to overcome. In particular, the different decisions reached by the boards are a result of different starting points (IFRS currently does not include accounting requirements for insurance contracts so the IASB needs a final Standard urgently, whereas the FASB is proposing amendments to its long-standing insurance model).

Due to the importance of the project and in view of the extensive debate the IASB has undertaken over the years, the IASB will only seek feedback on five key matters which have significantly changed since the 2010 Exposure Draft. The IASB hopes that this approach will avoid further undue delays in finalising this much-needed Standard for insurance contracts. The IASB plans to publish this Exposure Draft in the first half of 2013.

The FASB plans to publish its first Exposure Draft in mid-2013.

Investment Entities

The Investment Entity project was, in the most part, jointly deliberated. However, the FASB is addressing the accounting for investment entities more broadly than the IASB did, as the latter's focus was solely on an exemption from consolidation. Consequently, the boards' final requirements will be similar but not identical. The IASB issued its final requirements in October 2012. The FASB plans to finalise its redeliberations and issue a final Standard in the first half of 2013.

Second Exposure Draft On Classification And Measurement

This was issued on February 14, with responses due in by May 15; some initial wording from the draft is included below:

> The guidance in this proposed Update focuses on creating a comprehensive framework for the classification and measurement of the financial instruments within its scope. An entity would determine the classification and measurement of a financial asset, upon initial recognition, by first considering whether the contractual terms of the asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding (the contractual cash flow characteristics criterion). If so, an entity then would consider the business model in which the asset is managed along with other financial assets to determine its classification and measurement. An entity would be required to measure financial assets that do not meet the contractual cash flow characteristics criterion at fair value with all changes in fair value recognized in net income.
>
> A financial asset that passes the contractual cash flow characteristics criterion and is managed along with other financial assets within a business model for which the objective is to hold assets for collection of contractual cash flows would be measured at amortized cost.
>
> A financial asset that passes the contractual cash flow characteristics criterion and is managed along with other financial assets within a business model for which the objective is both to hold assets to collect contractual cash flows and to sell assets would be measured at fair value with qualifying changes in fair value recognized in other comprehensive income. That is, for such financial assets, an entity has not yet determined at recognition whether it will hold the individual asset to collect contractual cash flows or to sell the asset.
>
> Financial assets that qualify for neither of those two categories would be measured at fair value with all changes in fair value recognized in net income.
>
> Equity investments would be measured at fair value with all changes in fair value recognized

in net income (other than certain investments that are accounted for under the equity method of accounting). A practicability exception is provided for equity investments without readily determinable fair values that do not qualify for the practical expedient to estimate fair value in accordance with paragraph 820- 10-35-59 (that is, the net asset value per share expedient). An entity that elects the practicability exception would be permitted to measure equity investments without readily determinable fair values at their cost, adjusted for both impairment and changes that result from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.

The proposed guidance also would simplify the impairment method for assessing impairment of equity investments that qualify for the practicability exception and for investments accounted for under the equity method of accounting.

Topical News Briefing: Resource Nationalism Indonesian Style

by the Global Tax Weekly Editorial Team

There was some good news for the Indonesian resource sector last week after it was confirmed that oil and gas exploration firms would get certain tax exemptions to encourage higher output from Indonesian wells. However, it is doubtful whether these concessions will be enough to disperse the dark cloud hanging over the country's extraction industry.

Mining and petroleum firms around the world are battling against a rising tide of resource nationalism in the emerging economies, and Indonesia is certainly no exception. Last May, the Government announced a 20 percent tax on the export of certain ores in order to encourage smelting locally. However, the real shocker in the new mineral legislation was the proposal to ban all mineral exports from 2014 unless mining companies had plans in place to process minerals locally.

It does not take a resource industry expert to conclude that building smelters and other processing plants takes a lot of planning, and more importantly a lot of time and money. So having such facilities up and running by 2014 was always going to be an unrealistic proposition for mining firms. Understandably therefore, the industry was up in arms over the new mining legislation.

After the inevitable backlash comes the inevitable climb-down, however. Just why the Indonesian Government came up with such ill-considered proposals is known only to itself, but it now seems to be realizing that if it wants to attract investment to the country, the best thing it can do is work with foreign investors rather than against them. While it is unclear whether the Government will withdraw the legislation, ministers have recently been doing the rounds at industry conferences to announce that there are ways around the proposals. "Processing" for example, doesn't have to mean smelting. Extraction firms may merely have to separate ore from earth before putting it on the boat to be dealt with elsewhere.

Businesses, especially in investment-intensive industries which have long lead times like mining, do not like to be taken by surprise by radical new laws. But while the Indonesian Government has signaled its willingness to work with the resources sector, with potentially billions of dollars at stake, companies and their backers must be having serious second thoughts about committing to Indonesia. The damage may already have been done.

Germany As A Location For Holdings Based On The 'Company Limited By Shares' Model (KGaA)

by Prof. Dr. Wolfgang Kessler, Steuerberater, Lehrstuhl für Betriebswirtschaftliche Steuerlehre der Albert-Ludwigs-Universität Freiburg

1 Application Of The Exemption Method In German Double Tax Treaties

To avoid international juridical double taxation, Germany has concluded double taxation treaties (short: DTT) for income tax purposes with approximately 90 countries.

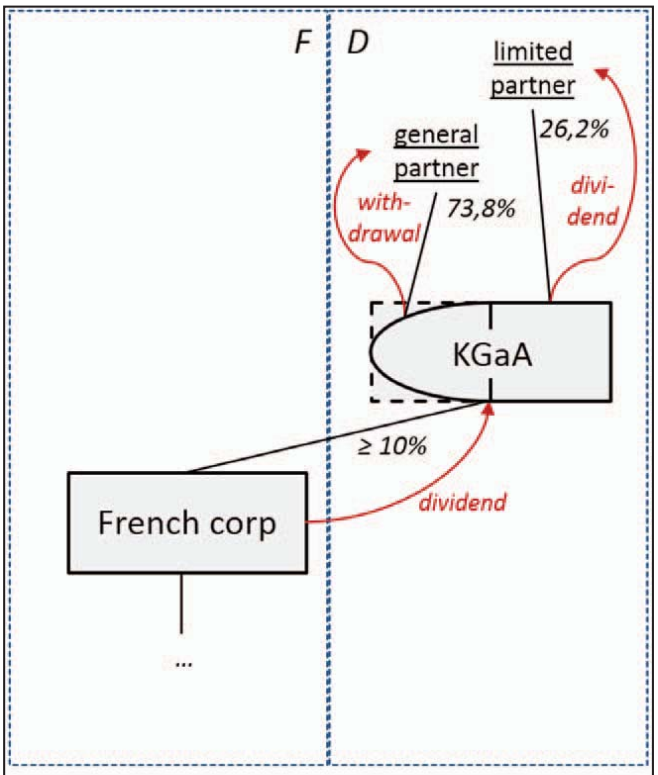
Germany usually avoids double taxation based on the exemption method. For the majority of Germany's DTTs this applies to: (a) income from employment, if the employment is exercised in the other Contracting State, (b) income from immovable property situated in the other Contracting State, (c) profits of an enterprise through a permanent establishment situated in the other Contracting State (subject to active business), (d) payments of dividends in the case of the participation exemption (if there is a qualifying participation of a Germany-based corporation in a non-resident corporation) and (e) capital gains from the transfer of assets attributable to a permanent establishment, immovable assets and qualified shares.

This may lead to double non-taxation, if Germany uses the exemption method and there is no taxation in the other Contracting State.

2 Double Non-Taxation By A Company Limited By Shares (KGaA)

Such double non-taxation could be achieved by investing through a hybrid interposed company *Kommanditgesellschaft auf Aktien*: KGaA – a German company limited by shares), which was confirmed by the German Supreme Tax Court in its judgment of May 19, 2010 (I R 62/09). In this case a "partial fiscal transparency" of the company limited by shares, combined with special features of the DTT between Germany and France, means that dividends paid by a French corporation may flow to the general partner of the company limited by shares without being taxed. The Supreme Court's judgment was based on the following background: (a) participation of a company limited by shares (resident in Germany) in a France-based corporation totals more than 10 percent, (b) dividend distribution of the French corporation to the

company limited by shares, and (c) participation of a German partnership with 73.837 percent in the company limited by shares as a general (personally liable) partner.



Source: own illustration.

According to the German Supreme Tax Court, tax implications for the companies involved were as follows:

No French withholding tax is payable on the dividend of a French-resident corporation to a Germany-based corporation (in this case a company limited by shares) because the company limited by shares is covered by Art. 9, para. 3 of the DTT between Germany and France (Germany-based corporation which owns at least 10 percent of the capital of the France-based corporation). In the meantime, this would (in addition) be a privileged case under the EU Parent-Subsidiary-Directive (Council Directive 90/435/EEC).

Germany also did not exercise any taxing rights on the dividend from the French corporation, because the DTT between Germany and France arranges for the exemption method to be applied ("payment" by a French corporation to a Germany-based corporation holding at least 10 percent of the capital) according to Art. 9, para. 1, Art. 20, para. 1 lit. b s. 1 of the Germany-France DTT. It is crucial that the DTT requests the "payee" to be a Germany-based corporation in applying the exemption method (as is the case in the DTT Germany-France). Since the introduction of the holding privilege in sec. 8b para 1 s. 1 CITA (Corporate Income Tax Act) there is no German taxation of foreign dividends received (only 5 percent box penalty, sec. 8b, para. 5 s. 1 CITA). Nevertheless, sec. 8b CITA and the participation exemption of the DTT are, according to a current judgment of the German Supreme Tax Court, made on January 14, 2009 (I R 47/08), "in principle independent of each other and do not suspend each other."

In German tax law, the company limited by shares is considered (partially) fiscally transparent in respect of the participation of the general partner, so that this income is attributed to them directly and taxed accordingly. According to the German Supreme Tax Court's judgement, even

the general partner could use the DTT's exemption method for the dividends paid, because the "company limited by shares as such" is privileged under the exemption method. Thus no tax is payable in Germany. A subsequent withdrawal of this income is also tax free in Germany, due to the transparency principle that is applied to such companies. In addition – even if the company limited by shares is now privileged by the holding privilege of sec. 8b, para. 1 CITA due to an override of the DTT exemption – the general partner could however use the participation exemption of the DTT, which would be "revived" again for this purpose.

Therefore, providing the general partner holds the shares of the company limited by shares, the result is double non-taxation of the dividend.

3 Treaty Override To Prevent The Company Limited By Shares Model

However, double non-taxation is unwanted from a German fiscal perspective. As a consequence, Germany has, for many years now, been overriding certain undesirable rules of DTTs, introducing so-called national treaty overriding rules.

The Organization for Economic Cooperation and Development (OECD) defines a treaty override as follows: "The enactment of domestic legislation intended by the legislature to have effects in clear contradiction to international treaty obligations" (OECD Model Tax Convention, 2010, R (8) Tax Treaty Override, I.5.)

In order to prevent the model with the company limited by shares and similar arrangements, a new sec. 50d, para. 11 ITA was inserted into the German Income Tax Act recently by the "Act to amend the Municipal Finance Act and tax provisions" of May 8, 2012. Due to its wording ("regardless of the agreement," sec. 50d para. 11 s. 1 ITA), this provision is to be looked upon as a treaty override and is applicable to dividend payments made after December 31, 2011 (sec. 52, para. 59a s. 9 ITA). The purpose of this treaty override is to prevent double non-taxation and the wording is as follows: "[1]When dividends are excluded from the basis of German tax of the payee on the basis of a treaty for avoidance of double taxation, the exemption is granted regardless of the agreement only to the extent that the dividends are not attributable to another person under German tax law.[2] To the extent that – according to German tax law – the dividends are attributable to another person, they are exempted with that person only if the dividends had been exempted by the treaty if this person had been the payee. "

According to the judgment of the German Supreme Tax Court on May 19, 2010 it was crucial for the exemption of dividends that the dividends were "paid" to a corporation. Therefore, the new sec. 50d, para. 11 ITA refers to this concept ("payee") and prevents the application of the exemption method in such cases. Instead it should then come to an application of the credit method on the basis of a switch-over provision.

This treaty override affects the majority of the German DTTs, as the phrase "paid" is used in most treaties, if the exemption method is applicable (*e.g.* in the DTTs with France, United States of America, United Kingdom, Netherlands, Austria, *etc*). The DTTs with Belgium and Switzerland include different wording (Belgium: "receive", Switzerland: "distribute"). The remaining German DTTs apply the credit method (Jersey, Yugoslavia, Mauritius, Saudi Arabia, USSR, United Arab Emirates, Cyprus, Greece) – so that a switch-over provision is not necessary.

Therefore, it should be noted that the model described above, with the company limited by shares, generally no longer works because of sec. 50d, para. 11 ITA. In regard to current income of a general partner who is a resident of Germany or is a non-resident with German income (sec. 49 ITA), sec. 50d para. 11 ITA arranges a switch-over from the exemption to the credit method insofar as the general partner is involved in the company limited by shares.

It should be emphasized that the general legal wording of sec. 50d, para. 11 ITA does not only relate to the model with the company limited by shares. Consequently, sec. 50d, para. 11 ITA is applicable to other hybrid entities (according to the legislative intent: the so-called atypical silent partnership.)

4 Constitutionality Of Treaty Overriding

At present there are considerable doubts about the constitutional legality of national treaty overriding in Germany (German Supreme Tax Court decision of January 10, 2012 in connection with the treaty override of sec. 50d, para. 8 ITA). As a result, the Federal Constitutional Court of Germany must now pass the final judgment as to whether this treaty override constitutes a violation of international law and the German principle of equality.

According to the German Supreme Tax Court, the violation of the international law could be substantiated in the breach of the principle of "*pacta sunt servanda*." Furthermore, this principle of customary law belongs to the general rules of international law, as in Article 2 and Article 27 of the Vienna Convention on the Law of Treaties (concluded in Vienna on May 23, 1969). In light of the recent jurisprudence of the Federal Constitutional Court, the legislature is constitutionally held to observe international treaty law and must accommodate international law in the enactment of tax law. A violation of this should be permissible only in exceptional circumstances. Under such circumstances (even in cases of treaty-overriding), a "necessity test" must show a positive result. In the recent cases, this necessity test was, however, negative according to the German Supreme Tax Court.

In addition to this, sec. 50d, para. 8 ITA could possibly be a violation of the principle of equality under Article 3, para. 1 of the German Federal Constitution. Firstly, this treaty override is unequal as between a taxpayer who provides the required documents stated in sec. 50d, para. 8 ITA, in relation to a taxpayer who doesn't provide these documents (based on the principle of virtual double taxation

there shouldn't be an objective reason). And there is further discrimination between taxpayers with income from employment (documents required) and other taxable income (documents not required).

This would stand in violation of the principle of equality and therefore violate primary international treaty law as well as the constitutional order of Article 20, para. 3 of the German Constitution.

Consequently, it must currently be advised to keep tax assessments open when they include any treaty overrides at the expense of the taxpayer.

5 Arrangements To Circumvent The Treaty Override Of Sec. 50d, Sara. 11 ITA

However, several possibilities are mentioned in recent literature that allow for the use in the model of a company limited by shares despite the introduction of the treaty override in sec. 50d, para. 11 ITA.

5.1 Dividends Paid To A Dual Residence Company Limited By Shares (KGaA) With Place Of Management In A Third Country (Either With Or Without a DTT With Germany)

One possibility is to found a dual-residence company limited by shares (with a registered office in Germany and place of management in a third country), which receives dividends from a corporation established in another EU member state. The company limited by shares shouldn't, in this case, establish a permanent establishment in Germany.

Due to the EU Parent-Subsidiary-Directive (Council Directive 90/435/EEC – the company limited by shares is thereby qualified as a corporation) a tax-free dividend (without withholding tax) could be received from an EU Member State (in this model: France) by the Germany-based company limited by shares.

The dividends would also be tax-free in Germany for the company limited by shares, according to sec. 8b, para. 1 CITA.

German taxation of the general partner would be as follows, depending on whether there is a DTT between Germany and the third country or not. If there is no DTT, a tax exemption, despite sec. 50d para. 11 ITA, could only be achieved for general partners who are not liable to limited or unlimited German income tax owing to their domicile, residence or their German income. If there is, however, a DTT between Germany and the third country, then the exemption method could be applicable for dividend income of the general partner despite sec. 50d, para. 11 CITA. While sec. 50d, para. 11 ITA prevents the application of the exemption method of a DTT between Germany and the EU-country for the benefit of the general partner, the exemption method arranged in the DTT between Germany and the third country could be applicable for the general partner, since the underlying treaty triangle situation is exclusively taxable in the third country (in accordance with Article 20 para. 1 of the DTT between Germany and the

third country). Therefore, the general partner is regularly exclusively tax liable in the third country (due to the fact that the participation in the corporation is regularly located at the company limited by shares' place of management in the third State).

5.2 Interposition Of A Belgium-Based Holding Company

Another model is to position a Belgium-based holding company between the Germany-based company limited by shares and the EU-based subsidiary corporation.

According to one extant opinion there is no application of sec. 50d, para. 11 ITA as, in the DTT with Belgium, the term "draw" is used (Article 24 para. 1 No. 1 letter b DTT: "draw"), which is not comparable to the term "payment" as required by sec. 50d, para. 11 ITA. Therefore, the application of the exemption method by the general partner could be still possible.

5.3 Transformation Of Dividends Received Into Tax-Free Capital Gains

In addition to this, according to another opinion, the application of sec. 50d, para. 11 ITA could be avoided by transforming dividend income into tax-exempt capital gains, as sec. 50d para. 11 ITA is only applicable for "dividends," but not for capital gains.

Therefore, the EU corporation would not distribute its profits to the owner, but would accumulate them. Once a cash transfer is required, the shares of the EU-corporation would then be sold tax free by the company limited by shares to a third party or another corporation. In this case a higher purchase price will be achieved in light of the accumulated profits. Subsequently, the participation could even be purchased back again.

5.4 Multi-Storey Hybrid Capital Company Structures

According to another concept current in the literature, another model is to involve an atypical silent partner in the company limited by shares (so-called GmbH & Atypisch Still), which holds shares of a corporation based in another EU-country (thus making it a multi-storey structure).

This could perhaps avoid sec. 50d para. 11 ITA, because sec. 50d para. 11 ITA apparently exclusively regards the relationship between the hybrid corporation and their shareholders.

6 Action Plans Against Aggressive Tax Planning

It is possible that these above-described arrangements will be restricted by legal agreements of the EU or by switch-over-clauses in future, because at the moment there have been launched various initiatives against aggressive tax planning.

Thus, the EU-Commission announced on December 6, 2012, an "Action Plan to strengthen the fight against tax fraud and tax evasion" (COM (2012) 722 final), including recommendations against so

called aggressive tax planning. In particular, the plan recommends that a general anti-abuse clause and clauses that prevent double non-taxation are used by the Member States in the renegotiation of DTTs. In addition, the EU Commission plans to verify those EU directives (such as the parent-subsidiary directive), which allow double non-taxation.

And currently, the OECD analyses general arrangements for international profit shifting (particularly to hybrid structures) in the so-called BEPS Report ("Addressing Base Erosion and Profit Shifting," published on February 12, 2013). While the report mentions measures to prevent aggressive tax planning (*e.g.* modified requirements for permanent establishments and reformed Transfer Pricing Guidelines for intangible assets), a comprehensive action plan is expected within the current year (see also the studies "Hybrid Mismatch Arrangements," published on March 5, 2012, and "Aggressive Tax Planning based on after-tax hedging," published on March 13, 2013).

However, the German tax law already contains a common general anti-abuse rule (sec. 42 General Fiscal Code), many special abuse clauses (*e.g.* the Treaty overrides in sec. 50 paragraph 9 or 11 para. ITA), and in almost all German DTTs switch-over-clauses (subject-to-tax- or activity-clauses) are regularly used. Thus, Germany has already implemented a number of measures that are recommended by the OECD and the EU Commission.

7 Conclusion

As shown, certain scenarios can be found to avoid sec. 50d para. 11 ITA, and in consequence the described company limited by shares model still is applicable due to the judgment of the German Supreme Tax Court from May 19, 2010.

The practical relevance of this model is based on the opportunity of treaty shopping. Thereby, the extensive German DTT network can be used by persons resident in third countries and a withholding tax on the distribution of an EU-based sub-subsidiary can completely be avoided. Germany can thus be used as a holding location for investments from a third country into Europe.

ASEAN Economic Community 2015: A Progress Report

by Stuart Gray, Senior Editor, Global Tax Weekly

In the Leaders' Statement issued following last month's 22nd Association of Southeast Asian Nations (ASEAN) Summit in Brunei Darussalam, it was emphasized that efforts are to be intensified to realize the ASEAN Economic Community (AEC) by 2015. This article looks at the development of the ASEAN free trade area, and analyzes whether the 2015 target is likely to be achieved.

Introduction

ASEAN was established on August 8, 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration, also known as the Bangkok Declaration.[1] Its founding members were Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999, completing the current ten-country membership of the group.

The overarching aims of ASEAN as set out in the Bangkok Declaration are the joint promotion of economic, social and cultural development and the advancement of regional peace and stability. A commitment to the freedom of trade, investment and eventually the movement of peoples around the bloc underpins ASEAN's economic objectives.

ASEAN Vision 2020

The first major step towards the creation of the ASEAN Economic Community was taken at the bloc's Summit in Kuala Lumpur in December 1997, when the ASEAN Vision 2020[2] was agreed by member states.

According to the Leaders' statement affirming the aims and purposes of the ASEAN Vision 2020, the agreed vision "is of ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies."

As well as envisioning the ASEAN region to be "a Zone of Peace, Freedom and Neutrality," the statement sees ASEAN as "an effective force for peace, justice and moderation in the Asia-Pacific and in the world," and bound by a common regional identity, although aware of its historical cultural differences.

Key economic outcomes are also projected in the ASEAN Vision 2020, notably the forging of closer

economic integration within ASEAN. Central to this is the commitment to "move towards closer cohesion and economic integration, narrowing the gap in the level of development among Member Countries, ensuring that the multilateral trading system remains fair and open, and achieving global competitiveness."

"We will create a stable, prosperous and highly competitive ASEAN Economic Region in which there is a free flow of goods, services and investments, a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities," it says.

In the statement, ASEAN Leaders resolve to undertake the following:

- maintain regional macroeconomic and financial stability by promoting closer consultations in macroeconomic and financial policies.
- advance economic integration and cooperation by undertaking the following general strategies: fully implement the ASEAN Free Trade Area and accelerate liberalization of trade in services, realize the ASEAN Investment Area by 2010 and free flow of investments by 2020; intensify and expand sub-regional cooperation in existing and new sub-regional growth areas; further consolidate and expand extra-ASEAN regional linkages for mutual benefit, cooperate to strengthen the multilateral trading system, and reinforce the role of the business sector as the engine of growth.
- promote a modern and competitive small and medium enterprises (SME) sector in ASEAN which will contribute to the industrial development and efficiency of the region.
- accelerate the free flow of professional and other services in the region.
- promote financial sector liberalization and closer cooperation in money and capital market, tax, insurance and customs matters as well as closer consultations in macroeconomic and financial policies.
- accelerate the development of science and technology including information technology by establishing a regional information technology network and centers of excellence for dissemination of and easy access to data and information.
- establish interconnecting arrangements in the field of energy and utilities for electricity, natural gas and water within ASEAN through the ASEAN Power Grid and a Trans-ASEAN Gas Pipeline and Water Pipeline, and promote cooperation in energy efficiency and conservation, as well as the development of new and renewable energy resources.
- enhance food security and international competitiveness of food, agricultural and forest products, to make ASEAN a leading producer of these products, and promote the forestry sector as a model in forest management, conservation and sustainable development
- meet the ever increasing demand for improved infrastructure and communications by developing an integrated and harmonized trans-ASEAN transportation network and harnessing technology advances in telecommunication and information technology, especially in linking the

planned information highways/multimedia corridors in ASEAN, promoting open sky policy, developing multi-modal transport, facilitating goods in transit and integrating telecommunications networks through greater interconnectivity, coordination of frequencies and mutual recognition of equipment-type approval procedures.

- enhance human resource development in all sectors of the economy through quality education, upgrading of skills and capabilities and training.
- work towards a world class standards and conformance system that will provide a harmonized system to facilitate the free flow of ASEAN trade while meeting health, safety and environmental needs.
- use the ASEAN Foundation as one of the instruments to address issues of unequal economic development, poverty and socioeconomic disparities.
- promote an ASEAN customs partnership for world class standards and excellence in efficiency, professionalism and service, and uniformity through harmonized procedures, to promote trade and investment and to protect the health and well-being of the ASEAN community,
- enhance intra-ASEAN trade and investment in the mineral sector and to contribute towards a technologically competent ASEAN through closer networking and sharing of information on mineral and geosciences as well as to enhance cooperation and partnership with dialogue partners to facilitate the development and transfer of technology in the mineral sector, particularly in the downstream research and the geosciences and to develop appropriate mechanism for these.

At the Bali Summit in October 2003, ASEAN Leaders declared the ASEAN Economic Community (AEC) to be the goal of regional economic integration under an agreement known as the Bali Concord II[3] by 2020. In addition to the AEC, the ASEAN Security Community and the ASEAN Socio-Cultural Community were foreseen as the other two integral pillars of the ASEAN Community.

Subsequently, at the ASEAN Economic Ministers Meeting in Kuala Lumpur in August 2006, it was agreed to develop "a single and coherent blueprint for advancing the AEC by identifying the characteristics and elements of the AEC by 2015 consistent with the Bali Concord II with clear targets and timelines for implementation of various measures as well as pre-agreed flexibilities to accommodate the interests of all ASEAN Member Countries."[4]

However, at the 12th ASEAN Summit in January 2007, member states agreed to accelerate the establishment of an ASEAN Community as envisioned in the ASEAN Vision 2020, and the ASEAN Concord II, by 2015. Consequently, the group's leaders signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015.[5] In particular, Governments agreed to hasten the establishment of the ASEAN Economic Community by 2015 and to transform ASEAN into a region with free movement of goods, services, investment, skilled labor, and freer flow of capital.

AEC Architecture Takes Shape

ASEAN Economic Ministers met on 26 February 2009 on the sidelines of the 14th ASEAN Summit[6] to sign the ASEAN Trade in Goods Agreement (ATIGA), ASEAN Comprehensive Investment Agreement (ACIA), and the Protocol to Implement the 7th Package of Commitments under ASEAN Framework Agreement on Services (AFAS). Other accords signed that day included the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), and Protocols on the Accession of Thailand to the ASEAN-Korea Agreement on Trade in Goods and the Agreement on Trade in Services.

The ATIGA integrates all existing ASEAN initiatives related to trade in goods into one comprehensive framework, ensuring synergies and consistencies among those various initiatives. It contains a number of key features that would enhance transparency, certainty and predictability within the ASEAN legal framework, and enhances the ASEAN Free Trade Area's rules-based system, which is of importance to the ASEAN business community.

According to ASEAN, the ACIA incorporates elements of investment liberalization, promotion, awareness, facilitation, and protection. Investment liberalization will be progressive with a view towards achieving a free and open investment environment in the region in line with the goals of the AEC. It is hoped that the comprehensive provisions of ACIA will improve investors' confidence in the region and encourage further development of intra-ASEAN investment, especially among multinational corporations based in ASEAN through expansion, industrial cooperation and specialization. It should also contribute to enhancing economic integration.

The Secretary-General of ASEAN Dr. Surin Pitsuwan said: "The ATIGA and ACIA allow for a streamlined, consolidated, predictable and transparent set of rules that will facilitate businesses to operate more efficiently in the ASEAN region."

The 7th Package was the most ambitious of commitments made to date under AFAS in line with the targets set under the AEC Blueprint. These include the movement of services supplied across border without restrictions, committing higher foreign equity levels, and progressively removing other restrictions. "Under the 7th package, ASEAN Member States are expected to continue expanding the depth and breadth of their services commitments towards achieving free flow of services by 2015," Dr. Surin said.

As part of the ATIGA, traders and Governments are working towards the launch of the ASEAN Trade Repository (ATR), an online system for accessing trade laws and procedures for all member states which is scheduled to come on stream in 2015. The ATR will allow traders easier access and better compliance with prescribed regulations, reducing the amount of time necessary for each transaction and cutting the cost of trading within the bloc. Likewise, governments will also benefit from the ATR

as voluntary compliance is seen as more effective than enforced compliance.

In January 2011, the ASEAN senior economic officials meeting (SEOM) discussed the ATR's elements at a workshop held in Jakarta. They also discussed possible models for National Trade Repositories (NTRs) that will support the ATR at national level. Both repositories will be a one-stop reference point for all tariff and non-tariff measures to be applied to goods entering, exiting and transiting a member state, including all governmental requirements regarding specific commodities.

"Establishing NTRs in all ASEAN member states is necessary for the implementation of the ATR and the ATR is a critical component of our effort to make trade regulations in ASEAN more transparent," said Mr. Gusmardi Bustami, SEOM's Chair.[7]

Trade facilitation expert, Walter Hekala, stated that "the establishment of the user-friendly and comprehensive ATR will facilitate trade by ensuring that all ASEAN trade rules are available through a single site, while the hosting on the NTRs will give the highest assurance of reliability."

The ACIA entered into force in April 2012. Surin Pitsuwan, the Secretary-General of ASEAN, said of the ACIA that: "This will definitely provide for investor confidence and support the notion for ASEAN to be not only an attractive investment hub but also becomes elected as an investment destination of choice."

ASEAN member states have also made progress in the area of intellectual property cooperation, and the ASEAN IP Offices Patent Examination Co-operation (ASPEC) program was enhanced in 2012 following a regular review at a working group meeting in Bangkok in the previous November.

Launched in June 2009, the ASPEC program was the first regional patent cooperation program and provides for the sharing of search and examination results amongst the participating ASEAN IP Offices. It drew the initial participation of Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam, and Brunei subsequently joined at the beginning of 2012.

As one of the programs to achieve the strategic goals of the ASEAN Intellectual Property Rights Action Plan 2011-2015,[8] the ASPEC program aims to foster "a balanced IP system" that takes into account the varying levels of development of ASEAN member states and differences in institutional capacity of national IP Offices. It should, it is said, "enable them to deliver timely, quality and accessible IP services to promote the region as being conducive to the needs of IP users and generators."

Search and examination work conducted by a participating ASEAN IP Office on a corresponding application serves as a valuable reference to another participating ASEAN IP Office. Patent examiners should be able to develop their search criteria or strategy more quickly, and reduce searching time, by having access to information and assessment on

prior IP found in specific technical databases, local databases and databases in other languages, which the examiner might otherwise not have access to.

It is intended that the ASPEC program will benefit entrepreneurs, small and medium-sized enterprises and inventors in individual ASEAN member states to obtain patents on their innovations on a regional basis.

Following the review, it has now been decided that all documents submitted for the purpose of the ASPEC program at any participating ASEAN IP Office will be in the English language, and the ASPEC request form has also been revised. This should reduce duplication on search and examination work, thereby facilitating applicants in obtaining corresponding patents faster and more efficiently.

It was confirmed that all interested applicants should continue to consult with ASEAN IP Offices, or through their websites, for details on ASPEC's requirements and procedures.

Lowering Tariff And Non-Tariff Barriers

Under the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area,[9] signed in Singapore on January 28, 1992, tariffs on intra-ASEAN trade have fallen considerably.

Under Article 4 of the CEPT, member states agreed to the following schedule of effective preferential tariff reductions:

- The reduction from existing tariff rates to 20 percent within a time frame of five years to eight years, from January 1, 1993
- The subsequent reduction of tariff rates from 20 percent or below to take place within a time frame of seven years. The rate of reduction was at a minimum of 5 percent per reduction.
- For products with existing tariff rates of 20 percent or below as at January 1, 1993, Member States could decide upon a program of tariff reductions, and announce at the start, the schedule of tariff reductions. Two or more Member States may enter into arrangements for tariff reduction to 0 percent-5 percent on specific products at an accelerated pace to be announced at the start of the program.

The three newest member states have been given until 2015 to achieve similar levels of tariff reductions, although the deadline for tariff cuts on certain sensitive items has been put back until 2018.

Article 5 of the CEPT deals with non-tariff barriers (NTBs), and commits member states to eliminating all quantitative restrictions in respect of products under the CEPT Scheme. Member states also agreed to eliminate other non-tariff barriers on a gradual basis within a period of five years.

In the area of NTBs, member states agreed under the CEPT to explore further measures on border and non-border areas of cooperation to supplement and complement the liberalization of trade, including the harmonization of standards, reciprocal

recognition of tests and certification of products, removal of barriers to foreign investment, macroeconomic consultations, rules for fair competition, and promotion of venture capital, among other areas. Member states also agreed to refrain from introducing any new NTBs or measures restricting trade.

The following measures were identified as major NTBs affecting intra-regional trade: customs surcharges, technical measures and product characteristic requirements, and monopolistic measures.

Nevertheless, it is claimed that much progress has been made towards the elimination of NTBS, and with more than 99 percent of the products in the CEPT Inclusion List of the ASEAN-6 (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand), having been brought down to the 0 percent to 5 percent tariff range, trade volumes have increased. The total trade of ASEAN member states grew by 16.8 percent, from USD2.05 trillion in 2010 to USD2.4 trillion in 2011. Over the same period intra-ASEAN trade reached USD598bn from USD520bn, an increase of 15.1 percent.

The Chairman's Statement from the latest Summit also disclosed that ASEAN leaders would progress the member states' work for trade and investment facilitation, including the development of the work program on ASEAN non-tariff measures and the strengthening of the protocol on an enhanced dispute settlement mechanism. The setting up of an inter-agency body in each ASEAN member state to undertake further work in addressing non-tariff barriers is another target.

ASEAN has also allowed its member states to engage with other key economies in the region and globally on trade and economic issues. Notably, ASEAN has agreed free trade agreements (FTAs) with China, Australia, New Zealand, India, South Korea and Japan, a grouping now known as ASEAN plus 6. Significantly, at the 21st ASEAN Summit[10] in Phnom Penh, Cambodia, last November, it was agreed that talks should begin on a new regional trade treaty, the Regional Comprehensive Economic Partnership (RCEP) between ASEAN and its six FTA partners. Such a trade treaty, if it becomes a reality, would link an integrated market comprising over 3bn people with a combined gross domestic product of some USD20 trillion.

After talks were suspended in 2009, momentum is once again building towards an FTA with the European Union (EU), although Brussels has chosen to go down the route of negotiating individual FTAs with ASEAN member states, rather than with the bloc as a whole.

When the foreign ministers of ASEAN and the EU held a meeting in Brunei on April 27, emphasis was laid on the on-going negotiation of free trade agreements between the two regions. Economic and trade relations were said to have featured prominently during the meeting, with an emphasis on implementing the ASEAN-EU Trade and Investment Work Program and on the importance of

the bilateral FTA talks between individual ASEAN member states and the EU as building blocks for a region-to-region FTA.

The European Commissioner for Trade, Karel De Gucht, had, earlier in the month, disclosed that the EU's bilateral FTA negotiations with Singapore are close to conclusion, and that it is making good progress with Malaysia. FTA negotiations are also being launched with Vietnam, after a scoping exercise was concluded earlier in 2012, and he hoped that the EU could advance discussions with other ASEAN countries in the coming months. However, German Foreign Minister Guido Westerwelle expressed the belief of others in the EU when, at the meeting in Brunei, he emphasized the particular importance of re-launching negotiations about a region-to-region FTA as soon as the talks with individual ASEAN member states reached a critical mass that would allow the EU to return to the regional process.

ASEAN also reached an agreement with India last December on trade in services and investments, to add to their existing FTA on trade in goods. It is anticipated that all the nations will have completed their necessary legislative procedures by the first quarter of 2013 allowing for the agreement to be formally signed in August 2013. The new agreement builds upon the existing free trade pact, which under a phased approach will eliminate tariffs on 80 percent of goods by December 31, 2016.

Hong Kong and ASEAN have also agreed to pursue a FTA, and are currently discussing the preparatory work for subsequent formal negotiations. The FTA is expected to cover the elimination and/or reduction of tariffs and non-tariff barriers; preferential rules of origin; the liberalization of trade in services; the liberalization, promotion and protection of investment; and a dispute settlement mechanism. Hong Kong's Government will conduct a public consultation to better gauge business interests in the ASEAN market.

Conclusion

According to the Chairman's Statement summing up the 22nd ASEAN Summit in Brunei last month, 259 measures have been completed under the AEC Blueprint, representing just under 78 percent of the agreed to do list.[11]

However, notwithstanding the rapid progress made towards the AEC so far, the achievement of a fully integrated economic community by 2015 looks to be a tall order.

Although the facilitation of trade and investment has contributed to rising wealth within ASEAN – per capita income of the grouping has risen from USD2,267 since the Blueprint was adopted, to USD3,759 per capita presently – the grouping's development agenda is far from complete, and there are significant differences between the constituent economies. This was also a problem that the European Union had to overcome as it gradually admitted poorer countries from southern and Eastern Europe, so the task is not utterly insurmountable. However, the differences between the richest and

the poorest in ASEAN are stark: Singapore, although still classified as a developing economy, is modern and wealthy, with a per capita income of USD46,000; at the other end of the scale Cambodia's income per head is just USD900.[12]

Additionally, while the lowering of tariffs has eased the flow of trade and investment around the region, non-tariff barriers remain high. Administrative capacity will need to be boosted considerably in poorer member states to smooth customs procedures and streamline entrenched bureaucracies. Also, certain Governments within the grouping will have to commit to opening up all sectors of their economy to foreign investment and competition by privatizing state industries and relaxing company ownership laws, particularly in areas like energy, transportation and telecommunications. Tariffs on certain sensitive products like agricultural produce will also have to be addressed.

Unlike the EU, institutional and infrastructural connectivity within the ASEAN grouping is weak, and this is another important area that will need to be addressed before the AEC can begin to function smoothly.

There are also some delicate political issues for negotiators to tackle, and probably the largest elephant in the room is the ongoing territorial dispute in the South China Sea between China and several ASEAN members, including Brunei, Malaysia, the Philippines and Vietnam. All attempts by the others to convince China to drop its claims have so far failed, and this is an issue which in the past has flummoxed ASEAN's leadership. Indeed, it led to the unprecedented non-publication of a closing statement following a summit last year because agreement could not be reached on how aggressive the tone towards China should be.

Tensions also exist between certain member states as a result of historical territorial claims, particularly between Cambodia and Thailand, and Malaysia and the Philippines. Furthermore, certain countries within ASEAN have suffered from political instability, such as Myanmar. Indeed, Myanmar's turn as the chair of ASEAN next year will throw the spotlight on its poor human rights track record.

As a result of the stalemate in the South China Sea and other political issues, ASEAN ministers have tended to focus on achievable objectives in the areas of trade and economic cooperation, and this is a strategy that has served them well thus far. However, there is clearly a lot hard negotiating still to be done, and it is therefore debatable whether the 2015 target for the AEC is realistic.

ASEAN leaders are not blind to these issues, and the reiteration of the 2015 deadline is likely an attempt to keep minds focused. But ASEAN is not only geographically fragmented, it is also politically, economically and culturally diverse. Therefore, it will be many years yet before it is fully integrated and has a sense of itself.

ENDNOTES

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Topical News Briefing: Will They, Won't They Dance?

by the Global Tax Weekly Editorial Team

The Swiss Government remains determined to defend the country's right to retain banking secrecy, but at the same time seems to be doing all it can to dilute it.

The reality is of course more complicated than that. Adherence to strict confidentiality laws has made Switzerland what it is, a wealthy nation at the heart of Europe and the world's largest private banking center. However, the Government knows that in the current climate, with the OECD and its member nations clamoring for ever greater transparency, it has to make some concessions in order to avoid isolation and derision on the international stage.

This was a process that began in earnest after the UBS scandal in the United States, after which Switzerland was compelled to sign a new information exchange agreement with the US facilitating the handover of details of US citizens accused of evading domestic taxes by using investment structures arranged by Swiss banks.

Then, in February this year, the Swiss Federal Government signed a Foreign Account Tax Compliance Act inter-governmental agreement, which ensures that accounts held by US persons with Swiss financial institutions are disclosed to the US tax authorities either with the consent of the account holder or by means of group requests within the scope of administrative assistance.

Now the Swiss Government is anxious to renegotiate the withholding tax agreement signed with Germany. This treaty would have imposed a 21 percent to 41 percent withholding tax on untaxed assets held by German clients of Swiss banks, plus an ongoing 25 percent withholding tax on capital gains realized in Switzerland from 2013. However, it was rejected by the German parliament because it gave account holders the option to remain anonymous and left wing parties felt it was too lenient on those who in the past may have evaded German taxes.

Last December, Swiss President Eveline Widmer-Schlumpf declared that the treaty was effectively "dead" and that Switzerland wouldn't revisit it for at least a year. However, the Swiss Government seems to have decided that it is better to weaken the agreement from Switzerland's point of view rather than stand by and watch stolen bank data continue to flow over the border to Germany to be lapped up by regional tax authorities.

After meetings in Switzerland last week, German Foreign Minister Guido Westerwelle expressed a willingness to renegotiate the treaty, but there is disharmony back at the ranch: German Finance Minister Wolfgang Schäuble says there is little point in reopening talks because there is little prospect of a compromise emerging. Instead, he says, Germany will concentrate its efforts within the forum of the

EU, which is currently attempting to force automatic exchange of information under changes to the savings tax directive.

So, to summarize, while the era of banking secrecy is by no means at an end, it has suffered a blow, and the Swiss Government now treads a fine tightrope between defending its right to set its own laws as a sovereign nation, and maintaining its international reputation.

Watch this space!

Will The Asian Century Also See The Rise Of Indirect Taxes?

by Tim Gillis, KPMG's Head of Global Indirect Tax tgillis@kpmg.com, and Lachlan Wolfers, KPMG's Asia Pacific Regional Leader, Indirect Tax Services Leader of the Indirect Taxes Centre of Excellence for China, KPMG in China, lachlan.wolfers@kpmg.com

By 2025, four of the 10 largest economies in the world will be in Asia – China, India, Japan, and Indonesia. Asia will account for approximately half of the world's economic output.[1] This is why the 21st century is increasingly being recognized as the "Asian Century" – a period of sustained economic growth and prosperity, already taking place – and expected to continue throughout the region.

This macroeconomic phenomenon will have several important consequences for businesses, governments, and consumers from an indirect tax perspective. Let us explore just a few.

First, as economies grow and develop, domestic consumption tends to increase. This is already visible in countries such as China, with the government seeking to promote domestic consumption, rather than simply export-driven trade, as part of its 12th five-year plan.

The expanding middle class – many of whom previously spent their scarce resources on "needs" such as housing, food, education, and the basic necessities of life – is now able to indulge in "wants" such as motor vehicles, smartphones, and insurance products, purchased using credit cards and/or shopping online.

To minimize regressivity, the indirect tax regimes of many countries either zero rate, exempt, or concessionally tax "needs," while applying full indirect taxation treatment to "wants." As the economic condition of the people of Asia improves, the revenues from indirect taxes, both in absolute and in relative terms, will surely grow. Experiences from countries like Singapore, which has already undergone significant economic transformation, serve as an excellent example. Absent any increase in the goods and services tax (GST) rate in Singapore, the percentage share of total revenues from indirect taxes is increasing.

Second, multinational companies are responding to the rise of Asia by entering new markets, investing in infrastructure and deploying capital, and upskilling and employing local populations,

either to serve local markets or to assist foreign markets through offshoring. The competition by governments for this business is often fierce, with the battlefield typically resulting in downward pressure on corporate tax rates, as corporate profits become increasingly more mobile. The flipside is that this downward pressure on corporate tax rates has been compensated for through a greater reliance on indirect taxes, and introduction of new forms of indirect taxes.

Countries such as New Zealand have increased their indirect tax rate, and the Japanese consumption tax rate is conditionally scheduled to double over the next few years. The emphasis on indirect taxes has gathered so much momentum that it has fast become the preferred type of taxation. In countries such as Australia, many in the business community are advocating an increase in their GST rate as a means of funding the abolition of less-efficient "nuisance" taxes. While some outdated taxes have been abolished, increasing numbers of niche taxes targeting specific types of economic activity have recently been introduced in the Asia Pacific region, including stamp duties to tackle property bubbles in places like Hong Kong, and environmental taxes in Australia. These changes, when combined, create a need for flexibility and adaptability in business operating models.

Going forward, governments need to have more secure revenue streams; indirect taxes are being seen as a more stable revenue source during difficult economic times, because they are generally more efficient to collect, and they are paid to tax authorities on a real-time basis.

Third, the growth of e-commerce and online shopping has effectively created a borderless world. Residents of India, the Philippines, and Indonesia can enjoy the latest gadgets released from the Silicon Valley, or the latest musical sensation from Korea, all at the click of a button.

This increase in cross-border trade in goods and services highlights the importance to governments of having efficient customs and indirect tax policies that serve to promote, rather than hinder, trade flows. The increased regionalization of trade relationships among countries, resulting in new free trade agreements, is a step in the right direction. For companies, tax-efficient supply chain management is no longer a mere buzzword, but a necessity in doing business. Effective management of indirect taxes is a key component to securing the lasting profitability and efficiency of their operations.

Despite these developments, many of the challenges of e-commerce remain. The shift toward electronic delivery of services has highlighted the enormous difficulties for governments in modernizing their indirect tax regimes. Modernization is vital in order to enable the efficient collection of indirect taxes, particularly on business-to-consumer (B2C) transactions involving service providers situated beyond their jurisdictional reach. How (and how quickly) governments respond will be an interesting question,

the resolution of which will be integral to their future growth and dependency on indirect taxes.

Fourth, our increasingly connected world requires taxes, or tax systems, which apply common principles across borders. This shift is most evident in countries such as China, where the VAT reforms are bringing greater alignment with the international best practices of a VAT identified by the Organisation for Economic Cooperation and Development (OECD). India and Malaysia are expected to implement similar reforms in the not-too-distant future. A further benefit of these reforms is the replacement of regional/state taxes with national/federal taxes, which also assist in breaking down internal trade barriers within countries. Very soon, the indirect tax regimes of the Asia Pacific region will be defined more by the commonalities they share, than by their differences.

Winston Churchill once said, "The farther backward you can look, the farther forward you are likely to see." In other words, using history as a guide to the future, in the context of indirect taxes, the modern VAT was first developed in Europe – it began with a low base and at low rates. Now, the average standard VAT rate of the 21 OECD countries that are members of the European Union (EU) exceeds 21 percent, and the VAT systems of EU member states are regarded as being among the most mature in the world.

If this same historical progression holds true for the Asia Pacific region, then the future growth of indirect taxation is enormous. VAT/GST rates in the Asia Pacific region currently average approximately 12.5 percent, suggesting there is a significant room for rate increases. But the story is not limited to headline rates. Base expansion is another alternative.

In the more mature markets of the EU, the management of indirect taxes is increasingly made more efficient with the use of technology tools, sophisticated compliance solutions, tax engines, and direct real-time engagement between taxpayers and revenue authorities. In the Asia Pacific region, the use of these tools and solutions are still in their infancy.

For companies doing business in the region, a collision of trends – the growth of the economies of the region, the growth of indirect taxes, and the increasing interconnectedness of global business – means that progress in measuring performance of indirect tax functions from relative immaturity to the world's best practice needs to occur quickly.

- To chart a course towards these goals, businesses in the region need to ask themselves a number of key questions:
- How is my business managing its VAT/GST obligations and risks, both regionally and globally?
- How is technology deployed to assist my business in managing its VAT/GST obligations?
- Does my indirect tax function have a high performance mentality?
- Am I measuring that performance in a meaningful way?
- Am I keeping pace with change?

How can I recognize and understand the application of ever-changing indirect tax rules and regulations to my business in a timely fashion?

Progress in the region is dynamic, and change is prolific. Standing still is not an option.

For more information, please visit www.kpmg.com/tax

Endnotes

1 Source: Australia in the Asian Century, White Paper, October 2012, Australian Government, pp. 51–2.

Topical News Briefing: Emissions Ain't What They Used To Be

by the Global Tax Weekly Editorial Team

The European Parliament's veto of proposals to artificially restore the price of carbon permits under the EU Emissions Trading Scheme should have sent warning signals to policymakers further afield, and yet South Africa has this week continued to forge ahead with the development of its own cap and trade ball and chain. See our coverage in the News Round-Up below.

Since the launch of its flagship cap and trade initiative, the Emissions Trading Scheme, in 2005, lackluster demand for permits in the EU, on account of excessive exemptions and the system's complexity, has led to a glut in available permits. Permit prices have plummeted from EUR25 in 2008 to below EUR5, undermining the regime's environmental impact. However, parliament's rejection of "backloading" proposals, to restore the carbon price to a more meaningful level by constraining permit supply, has demonstrated that general support for carbon taxation and the ETS is waning, with crisis-time economic considerations taking precedence.

Confidence in the ETS has declined rapidly in the past 12 months, casting its longevity into doubt. Last year, after an international boycott, Brussels was forced into an embarrassing climbdown on extraterritorial proposals to broaden its cap and trade system to include international aviation. With divisions now emerging on home soil, Europe's hopes of using its cap and trade system as a global model must be close to dead in the water.

The United Nations' Climate Change Conference, held in Bonn on April 29-May 3, 2013, would have it that, although international taxation efforts have floundered, national frameworks for taxing carbon emissions are beginning to emerge, pointing to Australia's fledgling carbon tax regime, anticipation that China will draft its own levy, and the ongoing development of legislation in South Africa to implement its own cap and trade-like scheme. The official line is that leaders continue to aspire to agree a legally-binding framework by 2015 to attach a price to global carbon emissions by 2020, but the prospects of a deal being concluded in that timeframe – or at all – are dwindling.

South Africa's efforts to develop effective carbon tax legislation, including the "recycling" of carbon tax revenues for renewable energy development, incorporate the same fundamental pitfalls as the EU's ETS, and also seem doomed to fail. A high headline rate, and excessive tax exemptions during its initial inception will undermine the efficacy of the carbon pricing mechanism, opponents argue, creating a distortive and complex tax environment that will hamper South Africa's economy, already under strain from commodity price instability.

The United States, which has sought to adopt an individualistic approach on climate change, saw sense in abandoning its own carbon tax proposals in the Senate in 2010, and has instead derived environmental gains from encouraging increased investment in natural gas extraction and renewable energy sources, such as biofuels. With Europe lagging behind its peers in the development of sustainable energy, a change in approach, perhaps new research and development incentives, may be the medicine Europe requires.

Carbon tax proponents in Europe will say: just wait until the economy recovers. Yes, well, dream on!

Austerity Versus Growth In The Eurozone

by Stuart Gray, Senior Editor, Global Tax Weekly

Introduction

The dilemma that the crisis-hit countries in Europe have faced over the last two to three years is how to encourage economic growth while maintaining necessary austerity policies. Most economists would conclude that achieving both – deep fiscal retrenchment and economic growth – simultaneously is impossible. Indeed, European Central Bank President Mario Draghi said as much after announcing the recent cut in the bank's key lending rate to a historic low of 0.5 percent: "You are talking about raising taxes in an area of the world where taxes are already very high so no wonder this had a contractionary effect."[1]

However, even Greek Prime Minister Antonis Samaras is now saying that he sees light at the end of the tunnel, and Governments in the four other challenged economies – Italy, Spain, Portugal and Ireland – are all starting to talk more seriously about growth policies.

So, after an unprecedented period of rising taxes in parts of Europe, has the corner finally been turned?

This article examines the current state of play with regard to austerity and growth policies, with an emphasis on taxation, in the aforementioned five economies.

Italy

Italy is on course to meet its fiscal targets, which entail bringing the budget into balance by the end of 2013, and to a large extent this has been achieved as a result of the tough austerity policies pushed through by the previous Government of Prime Minister Mario Monti.

The so-called "Decree Salva Italia," or the "Save Italy" budget, approved on December 22, 2011, was key to restoring Italy's fiscal credibility, and it was largely weighted towards bringing in more revenue rather than cutting unnecessary fat from public expenditure. Additional taxation provided 85 percent of the needed resources in 2012, will provide 79 percent in 2013, and 74 percent in 2014, and these included the introduction in 2012 of the Imposta Municipale Propria (IMU), the new unified property tax, at a rate of 0.40 percent on first residences (with all other residences subject to a standard 0.76 percent rate).

The Save Italy budget also introduced an additional annual levy of 0.4 percent on financial funds declared during previous tax amnesties, which was

made permanent and increased to 1 percent in 2012 and 1.35 percent in 2013. Levies of 0.76 percent on the purchase cost or market value of property held abroad by individuals, and of 0.1 percent (rising to 0.15 percent in 2013) on the market value of their foreign financial assets were also introduced.

Changes were also made to bring in additional revenues from the purchase of "luxury" goods, affecting powerful cars, private airplanes, helicopters and boats. For example, "foreign" private planes (those registered in Italy) will be taxed if they remain in the country for longer than 48 hours, while the level of tax on cars and boats will depend on their age.

Substantial efforts have also been made to persuade Italians to declare their incomes to the state and pay their taxes. High profile campaigns by the revenue authority have targeted wealthy tax avoiders in ski resorts, marinas and popular shopping venues, while the Government has rolled out its flagship "redditometro," system which attempts to detect aggressive tax avoidance and evasion by comparing taxpayers' income declarations with their spending and lifestyle habits.

With much of the hard work seemingly done, towards the end of 2012 Monti began to hint at his desire to plan for growth as well as austerity, and the Government's second decree was passed in December 2012 with the inclusion of tax measures to encourage start-up businesses.

While the new law deals mainly with the implementation of the Italian government's digital agenda, it also provides a legal definition of a start-up company – as a firm which is unlisted on a stock exchange, resident and subject to taxation in Italy, and, above all, has as its objective the development of innovative high-technology products or services. To qualify it should also be owned at least 51 percent directly by individuals, have been established for not more than four years, not have been formed following a merger or corporate sale, have a turnover not greater than EUR5m (USD6.6m), and not be paying dividends. In addition, such a company should satisfy at least one of the following criteria: sustain a minimum level of research and development expenditure; employ highly-qualified individuals amounting to at least one third of its total employees; or be the holder or licensee of, for example, a trademark connected to its productive activity.

Such firms, even if not constituted as a limited company, will be allowed to issue non-voting shares and to institute stock option and work-for-equity schemes to provide employee incentives. Remuneration by way of such incentives will not form part of an employee's taxable income, or be subject to social security contributions.

It is also agreed that, for the three fiscal years 2013 through 2015, individual investors in a start-up company will be able to deduct 19 percent of the amount invested from their taxable income, subject to a maximum of EUR500,000, while corporate investors will be able to deduct 20 percent, subject to a maximum of EUR1.8m. Investments can be made either directly or by way of specialized

start-up funds. After four years of operation, or if any of the other start-up qualifications are exceeded in the intervening period, the above benefits would be revoked and the company would continue its operations under the normal corporate tax code and regulations.

Italy's situation is not helped by the fact that its political system tends to produce fragile coalitions and weak Governments: nobody knows for certain how long the new administration, led by the center-left's Enrico Letta, will last. His first address to parliament as Prime Minister though suggested he was less for austerity, and more for growth.

Letta reminded his audience that Italy's difficult economic situation remains serious, but that, with its huge public debt "hanging like a millstone" over the country's economic growth prospects, the previous Monti Government's policy of fiscal discipline is still "indispensable."

Letta confirmed that his Government would maintain the Italian commitment to the European Union (EU) to reduce its fiscal deficit to a balance by the end of this year. Nevertheless, as there is no need for further measures to reduce that deficit, he will now seek, in a European context, to identify policies that will allow for economic growth to be resumed without compromising the process of restoring the continent's fiscal credibility. Such measures he said would allow for a reduction in tax burdens on jobs, and particularly for the young and newly-employed, without increasing the country's debt.

To help families and consumer spending, Letta committed his Government to a cancellation of the possible further rise in the normal value added tax (VAT) rate later this year, while, to aid businesses' cash flow, the policy of repaying the overhang of public administration debt, including income tax refunds and VAT credits, will be continued.

However, the policy that has caught the headlines was his announcement that, to allow for a period of study on how the tax can be reformed, the interim payment of the local property tax (IMU) on first residences, which would have been due in June this year, will now be postponed.

During the recent elections, Silvio Berlusconi, the leader of the center-right coalition, had said that not only should that part of IMU payable on primary residences be cancelled in 2013, but that taxpayers should also receive back the amount of tax they had paid in 2012, at a total estimated cost of EUR8bn (USD10.4bn) for the two years.

On the other hand, Pier Luigi Bersani, leader of the Italian center-left, proposed that IMU should be made more progressive. He had indicated that he would favor a tax imposed on the value of real estate held by individuals above a threshold of EUR1m, although he would be willing to negotiate on where that threshold should be, and added that IMU could be eliminated for those who, in 2012, paid a tax of EUR400-EUR500.

Letta, drawing together both the center-left and the center-right in his Government, is not yet proposing that the tax on first residences would be eliminated, as demanded by Berlusconi. He has, instead, taken the interim measure of delaying the EUR2bn that the Government could have expected to receive in June, while hoping that the two sides can agree, as soon as possible, on a comprehensive reform to IMU that "would provide a breathing space to families, particularly those on low incomes."

Nevertheless, Italy's politicians will have their work cut out to make the Italian economy truly competitive. Recently, the CGIA of Mestre (the Italian association of sole traders and small businesses) calculated that this year's total tax burden will reach an historical record of 45.1 percent.[2] The CGIA forecasts that, with the total tax burden some 13.7 percent of GDP above the level seen in 1980, every Italian (including children and the elderly) will pay an average of EUR11,735 (USD15,200) in taxes and contributions this year. That is more than twice the 1980 level of EUR5,215.

The CGIA notes that the total tax burden of 45.1 percent is slightly less than the 45.3 percent foreseen late last year in the Government's medium-term targets, due to the effect of the 2013 budgetary measures approved at the end of last year, but also stresses that the actual burden on those who pay their taxes, after subtracting the Italian underground economy from the equation, is much higher at over 54 percent. General Secretary, Giuseppe Bortolussi, pointed out that CGIA "can safely maintain that, in 2013, Italian taxpayers will work for the tax authority until the middle of June – something insupportable."

In another study, Contribuenti.it (an online association of Italian taxpayers), also stresses the need for the Government to continue to attack the "underground" economy, which it values at 21.4 percent of the Italian economy.[3] This puts the value of Italy's underground economy at double that of France and Germany. In a European classification, Italy, at the top of the table, would be followed by Greece and Romania, both at just over 19 percent of GDP.

Interestingly, tax evasion in Italy is found to be concentrated in the north-west of the country (32.5 percent of the total) and north-east (28.2 percent), while the south of the country reaches only 18.2 percent. The most serious tax evasion is to be found in the industrial sector (32.5 percent) followed closely by banks and insurance companies (32.4 percent) – while traders, artisans and professionals represent only 10.7 percent, 9.5 percent and 7.6 percent, respectively.

Vittorio Carlomagno, Contribuenti.it's President, has stressed that the only way to combat Italian tax evasion is to "follow what has happened in the principal European countries that have reduced tax rates, improved the quality of public services and, above all, eliminated waste in public expenditure."

But Italy's economic problems go beyond high tax rates and rampant tax evasion. As the OECD

pointed out in its recent report on the Italian economy, regulatory restrictions that undermine competition in some economic sectors must be removed, the labor market made more dynamic and productivity gains must be made.[4]

Spain

Initially, Spain's center-right People's Party, elected in November 2011, said it wasn't going to raise taxes. However, after a landslide election victory, it had to make a swift u-turn after the Government's inspection of the books revealed that the extent of Spain's fiscal problems were worse than first feared. Indeed, the budget deficit was found to be 2 percent higher than the outgoing socialist Government had claimed.

Approved on December 30, 2011, the government's first savings package included plans to raise income and property tax and to impose a freeze on civil servants pay. In accordance with the plans, income tax rises were implemented across the board, ranging from a 0.75 percent increase in the tax rate applicable to income of EUR9,500 (USD13,000), to a 7 percent hike for those earning above EUR300,000. Savings income is also subject to higher taxes as a result.

One of the Government's early achievements was to make budgetary stability legally binding on the administration, and legislation to this effect entered into force on May 1, 2012. These new provisions act as a "standard" during examination by the Council for Fiscal and Financial Policy of central and regional plans to return finances to balance.

According to Spain's Deputy Prime Minister Soraya Saenz de Santamaria, the Government's policies are now bearing fruit. After the "great efforts" endured by the Spanish people in 2012 under the austerity program, she suggested that the Government can now begin laying the foundations for policies that it is hoped will lead to more sustainable economic growth.

During a recent Government Control Session, Prime Minister Rajoy explained that new fiscal measures will mostly be aimed at increasing competitiveness and flexibility in the Spanish economy and eliminating "bottlenecks" that restrict growth in the production sectors. Rajoy underlined the Government's commitment to economic growth and job creation, noting that "the same reformist spirit" from 2012 is being carried over into 2013. The priority is to clamp down on fiscal fraud and to introduce the necessary measures "to enable Spanish small- and medium-sized companies to gain access to credit," Rajoy made clear.

Rajoy insisted that the policy being implemented by the Government "is the right one given the circumstances." He reiterated that the policy is "all about correcting mistakes, maintaining the deficit reduction policy, eliminating as much debt as we can, implementing reforms, laying the groundwork for the future and taking decisions in Europe."

"Spain will return to the path of growth and job creation" in 2014, Rajoy maintained, stressing that

"what we are doing is the prologue to an improvement in the situation for the Spanish economy and the creation of jobs in 2014."

During a recent Council of Ministers meeting, Spain's Finance Minister Cristobal Montoro insisted that "there will be no tax hikes in Spain" next year. Montoro also clarified that "there will not be any reclassification of products in the different value-added tax (VAT) bands either," pointing out that this is in accordance with the principles of "tax equality and not damaging economic growth." Finally, Montoro warned that raising the reduced VAT rate applicable to transport, the hotel and catering industry and tourism would prejudice the competitiveness of the country.

Finally, after much talk about growth policies, at the end of April Spain's Council of Ministers approved the country's 2013-2016 stability program,[5] together with a national reform program, providing for a raft of fiscal initiatives. Neither document provides for a rise in any of the major taxes in Spain. In the programs, the Government sets out its strategy to redress the public finances, to boost economic recovery, and to create jobs. The approved reforms aim to increase medium-term growth by more than 2 percent, and assume that 2014 will be the year of economic recovery. This is to be achieved without recourse to a rise in either individual income tax or value-added tax (VAT).

Unveiling details of the Government's proposals, Spain's Deputy Prime Minister Soraya Saenz de Santamaria insisted that the agreed measures are vital to correcting economic imbalances and to exiting the recession. The Minister said that the austerity program has enabled the Government to confront "a raft of reforms that will be characterized more by structural reforms than by other adjustment measures." Saenz de Santamaria hinted that income tax might be reduced in the near future.

Furthermore, Saenz de Santamaria underlined the Government's commitment to establishing an Independent Fiscal Authority, to approving a Transparency and Good Governance Act, and to reviewing taxation in accordance with European convergence criteria on environmental taxes and special levies. To support entrepreneurs, the Government plans to implement a number of fiscal measures, including a special VAT regime and tax deductions for the reinvestment of corporate profits or for research and development activities, the Minister revealed.

Defending the Government's fiscal consolidation package, Montoro underlined the "absolute necessity" to reduce the public deficit, to exit the economic crisis. This is an inevitable, unavoidable and positive path for economic recovery, Montoro stressed. Confirming that there will be no rise in any of the major taxes, Montoro indicated that the Government might revise corporation tax as well as indirect taxes, although not those affecting hydrocarbons or the hotel and catering industry.

To guarantee fiscal consolidation, the Government plans to maintain in 2014 the temporary

fiscal measures introduced initially for 2012 and 2013, in the area of corporation tax, personal income tax, and property tax. These measures ensure that large businesses and top income earners make a significant contribution to the joint effort, Montoro argued.

The Government's stability program provides for a deficit of 6.3 percent of gross domestic product in 2013 (revised upwards recently from 4.5 percent), of 5.5 percent in 2014, of 4.1 percent in 2015, and of 2.7 percent in 2016.

In its quest to exit the crisis, the Spanish Government is confronted with many of the same problems facing politicians in Italy, namely rigid labor markets, overregulation of certain economic sectors and inefficient public administration. Tax evasion is also an issue. However, it is the past profligacy of Spain's regional governments that is a major problem for Rajoy's government (as it was for previous governments). It is said that the 17 regional governments spend about 40 percent of Spain's total public budget.

Rajoy's Government does at least appear to be moving in the right direction, although a high tax burden is expected to be maintained.

Greece

Of all the troubled eurozone economies, Greece's is probably the one most desperate for growth. The country has been mired in economic recession since 2008, and its public debt ballooned to EUR355bn in 2011, equal to 170 percent of GDP.

It has been three years since the first bailout of Greece, and while the Government has managed to reduce its budget deficit from 9.5 percent of GDP in 2011 to 6 percent last year, the task of turning the Greek economy round looks a daunting one.

Nevertheless, at a Government roundtable organized by The Economic magazine last month, Prime Minister Antonis Samaras said that he saw "light at the end of the tunnel" as regard's Greece's economic situation, and even the "troika" (the European Union, the European Central Bank and the International Monetary Fund) says that growth could return by 2014.

Despite their obviously disastrous effect on the Greek economy, successive waves of austerity measures have been approved since 2010 in a bid to tackle the fiscal crisis, maintain the markets' confidence and as a condition of Greece's bail-outs.

These have included a 5 percent rise in the 40 percent top rate of income tax in 2010, in addition to the imposition of a solidarity levy of up to 4 percent; reductions in personal tax allowances; a bonus tax on executives employed in the financial services industry of up to 90 percent; a trade tax of up to EUR500 on individuals carrying on a trade or profession; a property tax collected on top of electricity bills to prevent avoidance; a new withholding tax on domestic dividends of 25 percent (increased from 23 percent on January 1, 2012); a one-off levy on corporate profits over EUR100,000 of up to 10 percent; a corporate trade tax of between EUR300

and EUR500; a 30 percent tax on gambling profits; new luxury taxes on items such as yachts, cars and jewelry; and a 2 percent rise in the standard rate of value-added tax to 23 percent.

Last month, Greece's finance minister, Yannis Stournaras, confirmed that the unpopular emergency property tax introduced in 2011 will be replaced by a new uniform progressive tax, following an agreement brokered between coalition leaders hours ahead of new talks with Troika lenders. Property owners in Greece are currently liable to pay between EUR4 to 5 per square meter. The reformed tax will be applicable to a wider range of property, including farmland. However, it is hoped that some property owners will see lower bills. PASOK leader Evangelos Venizelos has also suggested that a tax-free threshold may be introduced.

The fact that the property tax is collected through electricity bills in order to decrease the administrative burden on the country's tax authorities highlights what has been a huge problem for Greece in its attempts to dig itself out of its fiscal hole – the Government's apparent inability to collect taxes legally due. In March, tax collection experts in Greece released a damning report in support of the International Monetary Fund's (IMF) calls for improvements to the nation's tax administration to avert crippling and protracted austerity.[6]The report scrutinizes Greek tax collectors' roles in Greece's underachievement in the field of tax administration last year after the government agreed with international creditors, including the IMF, that it would chase revenues worth EUR2bn in 2012. Lackluster and "muddled" reforms of tax administration were blamed in the report for the country collecting just over half of its target last year.

In a rare display of annoyance from the IMF, experts reviewing progress under the international financial support program for Greece in December rebuked Greece's apathy in implementing the necessary reforms to tackle revenue leakage. The independent report sought to highlight specific systematic inadequacies. The document, which spans 72 pages, points out that Greek tax collectors are often over 50 years old, are underpaid, and some lack the necessary resources, or computer literacy, to efficiently undertake investigations. It also points out that more than one hundred of the nation's tax inspectors have wealth stored in accounts abroad, calling into question their integrity. The report's authors opine that, without immediate improvements, Greece will again miss its debt collection target this year, and advocates the immediate hiring of 200 new tax officials in 2013, and a further 500 in 2014.

At a Government roundtable last month, Prime Minister Antonis Samaras said that he saw "light at the end of the tunnel" as regard's Greece's economic situation.[7] However, he also admitted that the country's tax system had to all intents and purposes collapsed, an eventuality he said was brought on by a "frenzy" of tax evasion.

On April 29, the EU's Task Force for Greece announced that it will focus on streamlining

the country's Tax Procedures Code in the months ahead, as part of the technical assistance it is currently providing in the area of tax administration.[8]

The Task Force was created by EU President José Manuel Barroso in 2011. It organizes the delivery of technical assistance to support a wide range of structural reforms, primarily agreed by the Greek government in the context of the economic adjustment program. The report states that the areas in which it has achieved the most are in public finance management and tax administration, in the acceleration of EU cohesion policy projects, administrative reform of the central government, in the business environment, including the reform of export and customs administration, and in reform of health policy. It adds that recent progress has also been made in reforms in the areas of anti-corruption, anti-money laundering, access to justice and network industries and services.

According to a new progress report produced by the Task Force, it has so far provided technical assistance in a number of tax-related areas, including institutional and governance reform, organizational reform, support and training for key functions such as audits of important categories of taxpayer, and reform of the overall tax system. It has also supported the creation of General Directorates for Financial Services to improve public financial management, and the development of an ongoing Enterprise Resource Planning IT project.

Further, implementation of a Road Map agreed with the Hellenic Court of Audit is also proceeding, and 160 participants have so far been given training in techniques to identify money laundering and to tackle tax evasion.

The report also notes that the appointment of a new head of tax administration in January 2013 means that the implementation of reforms is being coordinated by a high-level Greek counterpart.

The head of the IMF's visiting mission to Greece, Pol Thomsen, recently said that Greece has made significant progress towards meeting its bailout objectives, and that tax reductions will be considered at the next review of Greece's fiscal adjustment program, in June. Growth is predicted by the troika to return to the Greek economy in 2014. However, the troika is expected to demand painful structural changes to the Greek economy as well as the generation of more revenue and public expenditure cuts, including privatizing state-owned industries, the passing of new laws to make the labor market more flexible, and the opening up of restricted economic sectors to new investment.

Even if the country manages to eventually exit the bailout program without any further hitches, it will probably be a long time before confidence is restored in its shattered economy.

Portugal

It is almost exactly two years since then caretaker Prime Minister Jose Socrates unveiled details of

the EUR78bn bailout agreement with the troika.[9] In return for the aid, the EU and the IMF proposed an adjustment program containing "ambitious" austerity measures and structural reforms to be implemented following general elections in Portugal on June 5 that year. "There are no financial assistance programs that are not demanding," Socrates warned.

Key measures outlined in the agreement included plans to reduce the list of products qualifying for lower rates of value-added tax (VAT), as well as to increase the sales tax on cars and tobacco. Other initiatives included plans to scrap the lower rate of corporate tax on income up to EUR12,500, a cap on individual income tax incentives and allowances with all of these benefits to be frozen, and the revaluation of properties for tax purposes in 2012 when the property tax rate was also scheduled to rise. There was also a freeze on most state pensions, including reductions to the most generous pension payouts, in addition to a special contribution levy on pensions in excess of EUR1,500 a month in 2012.

Structural reform measures contained in the deal included plans to reduce the timeframe for entitlement to unemployment benefit from three years to 18 months, to reform both the labor and energy markets, as well as the judiciary system, and to accelerate the country's privatization program.

Despite opposition from the Socialists, the Portuguese National Assembly adopted another austerity budget in November 2012 providing for new taxes totaling around EUR4.3bn (USD5.6bn) in 2013 and for spending cuts of approximately EUR2.7bn. As Portugal prepared to enter its third year of recession, the record tax rises planned for 2013 were expected to increase tax revenues by around 30 percent.

The 2013 budget provided for a reduction in the number of income tax brackets from eight to five. The rate in the third income tax bracket rose from 24.5 percent to 28.5 percent, while the top marginal rate of income tax increased from 46.5 percent to 48 percent, in addition to the imposition of a 2.5 percent solidarity tax. Furthermore, the threshold for application of the top rate of income tax was lowered from EUR153,300 to EUR80,000 under the plans.

The hardest hit, middle-income earners in Portugal with annual income of between EUR40,001 and EUR80,000 are now subjected to a new 45 percent rate of marginal income tax, compared with 35.5 percent previously. An additional 4 percent surtax on personal income exceeding the annual minimum salary was also introduced in 2013.

Other measures contained in the budget included plans to increase corporate capital gains tax from 25 percent currently to 28 percent and to increase excise taxes on alcohol and tobacco. Civil servants would also forfeit their Christmas bonus, and cuts would be made in the area of pensions and public healthcare.

In spite of all these efforts to bring its fiscal house in order, in October 2012 the IMF announced

that Portugal would get an additional year to reduce its budget deficit below 3 percent of GDP after revenue collections fell considerably short last year.[10]Despite recording lower expenditure than budgeted, due to faster public sector redundancies than envisaged, a large fiscal gap emerged as a result of higher unemployment benefit payments, and a large (and persistent) shortfall in tax revenue collections worth some 2 percent of GDP. In granting an extension, the IMF noted that Portugal had made significant advances on fiscal consolidation having implemented an adjustment of 6.5 percent of GDP, against the background of a total required adjustment of 10 percent.

Nevertheless, after two years of austerity, the Government is now talking about measures with the potential to enhance growth.

In March 2013, Finance Minister Vitor Gaspar announced plans to reform Corporate Income Tax (IRC),[11] to ensure that the tax is more modern, stable and competitive in future. Outlining details of the planned reform, Portugal's State Secretary for Fiscal Affairs Paulo Nuncio revealed that after a comparison with corporate tax practices in other European Union member states, the Government plans to focus on ten key areas. As part of the package of new measures, the Government intends to extend the corporate tax base, to reduce the standard CIT rate from 25 percent currently, to simplify the regime, to review the effectiveness of existing tax breaks, and to strengthen territorial taxation on dividends and capital gains.

The Government also intends to revise the group tax regime, to review the loss carry-forward provisions, to revise regulations governing the correction of excessive indebtedness, to strengthen links with accounting regulations, and to revise international tax policy.

The Government is now also attempting to reach its budgetary targets without resorting to higher taxation, and the Council of Ministers recently confirmed that there will be no further tax rises provided for within the framework of the country's 2013 "extraordinary" Budget.[12]In order to ensure compliance with the 5.5 percent deficit target for this year as agreed with the troika, savings are to be realized via expenditure cuts amounting to around 0.5 percent of GDP. Consequently, the Government plans to impose sweeping cuts to "all budget programs," and to renegotiate public-private partnerships. Portugal must comply with its deficit target to guarantee the disbursement of the eighth tranche of its international loan, and to ensure that the loan payment terms are extended.

However the Government suffered a setback in early 2013 when the Constitutional Court's decided to reject some of the austerity measures contained in the initial 2013 Budget. The Court censured plans to remove the 14th month of salaries for civil servants and pensioners, and blocked plans to introduce a levy on unemployment and sickness benefit. To comply with the Court's decision, the Government has said that it intends to establish a minimum limit, below which the contribution will

not be applied. This is to ensure that low benefits are not subject to taxation.

All in all, although the Portuguese Government is attempting to make the right moves, one wonders whether the pace of reform is fast enough, and the Constitutional Court decision could seriously hamper its overall recovery timetable.

Ireland

To a large extent Ireland has stayed out of the economic headlines over the last year or two. This is partly because attention has been focusing on the performance of the eurozone's much larger economies of Italy and Spain, as well as the ongoing plight of Greece and more latterly Cyprus. It is also because Ireland can be said to be off the critical list, while not yet completely ready to be discharged from intensive care.

In fact, Ireland was one of the few eurozone economies to have grown recently; the country's GDP increased in value by 0.9 percent in 2012, and the European Commission has predicted that the Irish economy will continue to expand, by 1.1 percent, in 2013.

As a small open economy, Ireland came perilously close to bankruptcy before accepting bail-out loans from the troika. The Government's budget deficit reached a massive 30 percent of GDP in 2010 as it propped up the country's ailing banking sector. Although a great deal of progress has been made since then towards stabilizing the Government's finances and the economy in general, Ireland's budget deficit is still high compared with the other challenged eurozone economies. In the 2013 Budget, the Government projected that the deficit for 2012 would be 8.2 percent of GDP, although this falls within the required 8.6 percent target set under the bailout agreement with the troika. A deficit of 7.5 percent is expected in 2013, although this is based on a slightly higher estimate of economic growth for 2013 of 1.5 percent. It is then expected to fall to 5.1 percent the following year and 2.9 percent in 2015. These estimates are based on anticipated GDP growth 2 percent in 2014 and 2.9 percent in 2015.

Progress has come at a price however, and taxes have been increased in successive Budgets since the bail-out, which has probably dampened the economic recovery. Unlike the eurozone's other struggling economies, Ireland left income tax rates on hold, but raised revenue in a number of other imaginative ways. In the December 2010 Budget, the threshold at which individuals begin to pay income tax was lowered, and pay-as-you-earn taxpayers earning over EUR16,000 per year were brought into the tax net for the first time since 2006. In addition, almost a dozen tax relief schemes were abolished. In December 2011, a pre-announced 2 percent value-added tax hike was brought forward to 2012, taking the standard rate to 23 percent. In addition, Capital Acquisitions Tax was increased by 5 percent to 30 percent, Deposit Interest Retention Tax (withholding tax) was increased by 3 percent to 30 percent, the social security tax base

was broadened by removing relief on employee pensions and by including rental, investment and other forms of income, retirement fund transfer tax was increased by 10 percent to 30 percent, plans were outlined to increase the scope of the Domicile Levy to catch tax exiles, and the Carbon Tax was increased by EUR5 per ton to EUR20. The main measure in the last Budget was the imposition of a property tax, charged at 0.18 percent of the market value of properties worth up to EUR1m, and at 0.25 percent on any excess value over EUR1m.

However, the Government also found room in the 2013 Budget for some growth measures. The Ten Point Tax Reform Plan,[13] is, according to Finance Minister Michael Noonan, designed to "make a real difference to SMEs" by boosting the cash flow position of small businesses.

Crucially, Noonan affirmed that the Government "remains 100 percent committed" to maintaining the current 12.5 percent corporate tax rate, which is seen by the Government and investors as key to safeguarding the country's economic future.

Although the Government's finances remain in a precarious position, and the country is vulnerable to external shocks, Ireland, unlike the heavily indebted countries in the south of Europe, can be said to have retained many of the fundamentals that attracted foreign investment in a big way prior to the crisis. Indeed, Ireland has continued to attract foreign direct investment, particularly from the United States, at a surprising rate.

It is said that the 700 US firms operating in Ireland directly employ 115,000 people and have to date invested EUR190bn in the country. In fact, US FDI into Ireland equals more than the total invested in the much hyped BRIC economies (Brazil, Russia, India, China). During the decade to 2010, US investment in Ireland was three times the amount invested in China.[14] Analyzed at a sector level, Ireland is the No. 1 location worldwide for US FDI in the information sector and third worldwide in the chemicals sector, which includes pharmaceuticals. In 2011, US firms contributed EUR3bn to the Irish Exchequer in taxes and an additional EUR14bn in expenditure to the Irish economy in terms of payrolls, goods and services employed in their operations.

The Industrial Development Authority (IDA) of Ireland announced a record 148 new overseas investments in 2011. This resulted in 13,000 new jobs and of these positions, typically more than 70 percent originated from US firms. US firms, in 2011, exported in excess of EUR100bn of products and services from Ireland into world markets.[15]

The willingness of US companies to continue to invest in Ireland during the country's current economic difficulties will come to be recognized as one of the most crucial developments of this period, according to Peter Keegan, President of the American Chamber of Commerce Ireland. Speaking at the American Chamber's Annual President's Lunch on February 15, Keegan said that since the start of the crisis five years ago,

employment in US multinationals in Ireland has grown by almost 15 percent.

"This is a stellar achievement given global economic conditions. US multinationals stuck by Ireland and played their part in full. We are not here just for the good times we are ready and willing to play our role when the going gets tough. The strength and on-going success of Foreign Direct Investment in Ireland is playing a crucial role in Ireland's economic recovery. That's part of the reason FDI is so important to economies and it also goes some way towards explaining why competition for FDI from other countries is intensifying with each passing year," he said.[16]

Having comfortably met many of its bailout agreement targets, Ireland is hoping to exit from the troika lending program at the end of this year, a development which according to IDA Ireland Chief Executive Barry O'Leary would give the country "a big reputational boost."

"Looking at things today, there is no doubt the sentiment is improving, and in the US in particular it has improved significantly," he told the Dublin Chamber of Commerce in an address on April 16. "Any challenges about Ireland now are just not raised. In any of the interactions we have with companies, there is a lot of positivity about Ireland."[17]

However, Ireland's greatest strength is perhaps also its major point of weakness as its economic health is tied closely to the fortunes of the US economy, and if America coughs, Ireland could catch flu.

As the troika's ninth review of Ireland's bailout program observed, exports continue to drive the recovery, but this is highly dependent on the pace of recovery in trading partners.[18]

Nevertheless, out of all the countries analyzed here, Ireland is the only one with any hope of sustaining a meaningful economic recovery, and this will hopefully give the Government enough scope to use fiscal policy to generate future growth.

Conclusion

To revisit the question posed in the introduction, it is perhaps too early to say whether the corner has been turned, although there are some encouraging signs. Then again, it depends on which side of the economic argument one stands. Investors want to see lower taxes, less interference in the economy and structural economic reforms to make it easier and cheaper to hire and fire workers, and a more helpful business environment in general. Progress towards these goals is being made in the southern European economies, but in truth, only at a glacial pace. Partly that is because trade unions and other groups representing the interests of workers want the opposite: higher taxes – for the wealthy and businesses at least – more employment regulation, and higher public spending on welfare.

The battle lines have been drawn, but it remains to be seen who will win the war.

Endnotes

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UK Government Receives Billions From Four Sweetheart Tax Deals

A leaked document has revealed that so-called "sweetheart" tax deals, in which tax officials and corporations settle disputes behind closed doors, regularly bring in more than GBP1bn for the British Government.

The document, sent in 2011 by a former head of tax at HM Revenue and Customs to the exchequer secretary at the Treasury, reveals that just four of these secret agreements were worth GBP4.5bn in total. It says: "In 2006, HMRC adopted a new approach to reaching tax settlements with large business through building constructive relationships and encouraging mutual openness and transparency, increasing certainty for business and reducing the time taken to resolve issues.

"Settlements of above GBP1bn are now not uncommon and GBP4.5bn … has come from just four settlements with bespoke governance."

However, the document does not disclose the total tax liability of the firms involved in the four deals. Margaret Hodge, the chair of the Commons Public Accounts Committee, promised to investigate the matter, saying: "If we got GBP4.5bn in, how much did we not get? That is what taxpayers will want to know, and I'll be raising this with HMRC through the committee.

"Whilst it is in the interest of the government to collect monies, these are huge sums. If there were deals involved, we need to know that the companies paid a fair amount on the profits they made from their businesses in the UK."

An HMRC spokesman said the committee could not comment on individual cases. He said: "The National Audit Office looked into the 'bespoke governance' settlements, finding they represented good value for the country and were properly carried out. However, since then we have significantly improved the transparency of the governance around our large business settlements."

Australia Seeks Views On Multinational Profit Shifting

The Australian Government is seeking views on an Issues Paper on multinational profit shifting and aggressive tax minimization.

The paper is the result of a Government request to the Treasury to examine risks to the sustainability of Australia's revenue base and investigate how international tax rules are used to minimize or escape taxation. The Issues Paper, developed in consultation with experts from the community sector, academics, business and the tax profession, outlines the challenges that changes in the global economy pose to the international tax system. The Treasury's conclusions will be

published in a Scoping Paper, with the purpose of the Issues Paper to seek the views of stakeholders and the community more broadly.

Releasing the paper for public comment, Assistant Treasurer David Bradbury said: "We don't want to see a future where hard-working Australian families and businesses have to pay disproportionately high taxes because multinational corporations are not pulling their weight."

In February, the Government announced changes to the general anti-avoidance rule, known as Part IVA. The reforms are intended to ensure that these provisions continue to counter schemes that comply with the technical requirements of the law but which, when viewed objectively, are conducted mainly to avoid tax. Parallel amendments to the transfer pricing regime are designed to construct a comprehensive regime that is better aligned with internationally accepted principles.

Bradbury explained, "We have already moved to tighten a series of loopholes that will protect more than AUD10bn (USD10.25bn) of revenue over the next four years. Just as importantly, governments all around the world also need to re-examine many of the key rules of international taxation, which were designed for the industrial age and are not keeping up with the changing business models and tax planning arrangements of many multinational companies."

The Issues Paper is open for submission until May 31.

Google Faces Renewed UK Tax Scrutiny

Google faces fresh scrutiny of its tax affairs by a Parliamentary committee, after Reuters analyzed job adverts and staff social media profiles which may give the impression that members of Google's sales team are based in the UK rather than in Ireland.

Reuters studied around 150 staff profiles on Linkedin and interviewed clients and former staff. One client suggested that "all the people are based in London," although invoices had a Dublin address.

Reuters' findings prompted Margaret Hodge MP, who heads the Public Accounts Committee, to announce that the committee will be seeking answers "as soon as possible." She also indicated that Google's auditors, Ernst & Young, "have questions to answer."

Google's European head, Matt Brittin, told the committee in November that although customers were "encouraged" to buy advertising by staff in the UK, those who chose to do so were put through to an "expert team" in Dublin.

The company's Director for External Relations, Peter Barron, reiterated that Brittin's account had been "truthful," and he condemned the Reuters article as "willfully misleading." He also explained that references to "sales skills" in job adverts referred to the kind of candidate they were seeking to attract. He added that Google has already made contact with Hodge and the company will be "happy to appear again to set the record straight."

Hodge recently criticized comments made by Google executive chairman Eric Schmidt about the amount of corporation tax the company pays in the UK, and suggested he should be removed from his role as a member of the UK Government's Business Advisory Group.

Miles Dean, the founding partner of Milestone International Tax Partners, expressed skepticism about the strength of the evidence. He accused the committee of going "well beyond its remit" by announcing a new investigation, and of making insinuations that undermine both HMRC and "the rule of law." However, he added: "If Google Ireland are found to have created a permanent establishment in the UK this will amount to perhaps one of the biggest schoolboy tax errors committed by a multi-national in recent years. Avoiding a PE is the cornerstone of many international tax structures and can be achieved provided the framework within which the business is to operate is properly set and adhered to."

Moroccan Federation Seeks Progressive Corporate Tax

President of the Moroccan general business federation CGEM, Miriem Bensalah-Chaqroun has warned that Morocco's tax system is currently "unfair and marred by shortcomings."

During her keynote address at the 2013 conference on taxation held in Skhirat, the CGEM president emphasized that although improvements have indeed been made in the area of taxation, many challenges lie ahead.

The Moroccan tax system has to ensure lasting state resources, and guarantee the future economic development of the Kingdom, Bensalah-Chaqroun stressed. While conceding that taxes and duties currently account for 85 percent of ordinary state budget revenues, compared to just 69 percent in 2001, the CGEM president nevertheless argued that the tax system remains profoundly unjust.

According to Bensalah-Chaqroun, only 2 percent of companies are currently responsible for 80 percent of corporate tax paid, wage deductions make up 73 percent of income tax, and two-thirds of companies report chronic deficits. Bensalah-Chaqroun pointed out that swathes of the economy – the informal economy – are still not subject to taxation.

Alluding to the importance of eradicating distortions within the tax system, the CGEM president underlined the need for a progressive corporate tax system to be introduced in Morocco, adapted according to the contributive capacity of each company, and for value-added tax (VAT) reimbursements to be settled on time, to ensure that VAT remains neutral for Moroccan businesses. Bensalah-Chaqroun also cited distortions in terms of state fiscal spending, with three sectors currently benefiting from 70 percent of the MAD36bn (USD4.3bn) allocated each year. The profound distrust between the tax administration and the taxpayer also needs to be urgently addressed, Bensalah-Chaqroun made clear.

Concluding, Bensalah-Chaqroun underlined the need for the Moroccan tax system to be transparent, competitive and equitable. Bensalah-Chaqroun explained that economic actors and investors need stability, consistency, and a healthy environment, that companies must be competitive and able to compete in a global market, and that taxation should encourage fair competition.

Manx Anti-Money Laundering Regime Revamp Complete

The Isle of Man's new anti-money laundering and countering the financing of terrorism law, the Money Laundering and Terrorist Finance Code 2013, came into effect on May 1, 2013, amalgamating the Proceeds of Crime (Money Laundering) Code 2010 with the Prevention of Terrorist Financing Code 2011. A new Code for the on-line gaming industry, entitled the Money Laundering and Terrorist Financing (Online Gambling) Code 2013, also came into effect from this date.

The Isle of Man's Financial Supervision Commission has launched a consultation on new legislation to transfer oversight responsibility to the Commission in respect of the island's newly-upgraded framework for anti-money laundering and countering the financing of terrorism.

The consultation clarifies that the new legislation, the draft Designated Businesses (Registration and Oversight) Bill 2013, does not seek to make persons affected by the Bill's provisions licenseholders of the Commission. The Commission's role in licensing and supervising financial services licenseholders is distinct and entirely separate from its future role under the Bill, the document underscores. Designated businesses will not become "regulated" by the Commission – and they will retain their current status with the various bodies (if any) responsible for their wider business, competence or other matters, such as the Isle of Man Law Society, the Department of Home Affairs, the Office of Fair Trading etc, the Commission said.

Gibraltar Commits To Tax Evasion Fight

The Government of Gibraltar has committed to support the UK and the wider international community to enhance tax transparency and effectively tackle tax evasion.

Gibraltar has communicated to the UK Prime Minister, David Cameron, that it is confident that the territory already has in place a robust regime for rooting out tax evasion, particularly through its membership in, and full compliance with the rules of the European Union. In a letter to Cameron, Gibraltar's Chief Minister, Fabian Picardo underscored the territory's wish to pursue tax transparency initiatives with the UK, with input from the local financial services industry, to further build upon the territory's ties with Britain.

"It remains the Gibraltar Government's firm view that tackling tax evasion and fraud is rightly a global priority, necessary to protect the integrity of public revenues, the confidence of taxpayers in the fairness and effectiveness of their tax systems and, ultimately, public confidence in open global capital markets," the Gibraltar Government stated.

"Gibraltar, uniquely amongst all British Overseas Territories and the Crown Dependencies, notes that it is required to comply, and already complies, with all EU requirements in these areas. Despite the increased attention given to tackling evasion and fraud over recent years, in particular through the development of international standards and the Peer Review process by the Organization for Economic Cooperation and Development's Global Forum, further action may be considered necessary to deter evasion and clamp down on evaders. In this respect the next necessary step is to move to a global system of automatic exchange of tax information. The action taken by the United States under its Foreign Account Tax Compliance Act (FATCA) gives a unique opportunity to develop a new global standard in the near future and from that to develop a system of multilateral automatic information exchange. Gibraltar has committed to enter [into] the US FATCA and to enter into similar arrangements with the UK in accordance with the same timetable."

"Furthermore, building on our actions as regards the EU Savings Directive, we also commit to the pilot multilateral automatic exchange of tax information announced recently by the UK, France, Germany, Italy, and Spain. We would also call on other jurisdictions to commit to this initiative which will take us to a new level of tax benefit from fraud."

However, the Government emphasized the fundamental importance of maintaining a level playing field in the international financial services area, ensuring that all territories adopt the same frameworks, and the need for firm enforcement action against non-compliance.

Continuing, the Government suggested: "The other element in eliminating any remaining hiding places is to improve the availability of information on beneficial ownership. The work of the Global Forum and the Financial Action Task Force has led to significant improvements. Gibraltar is committed to taking forward this agenda together with other jurisdictions, to review the effectiveness of the existing legal and enforcement framework and to produce an Action Plan, working closely with the UK as part of its G8 agenda, aimed at ensuring that Gibraltar forms part of a group of jurisdictions setting the standards in the context of establishing an international level playing field on this front."

GAO Believes IRS May Be Missing Quiet Offshore Disclosures

In a recently-released study, the United States Government Accountability Office (GAO) has concluded that, while the Internal Revenue Service's (IRS) offshore programs had resulted in over USD5.5bn in additional revenues by the end of 2012, the IRS may be failing to detect taxpayers trying to circumvent taxes, interest and penalties that would otherwise be owed.

The GAO pointed out that the four offshore programs since 2003 have attracted more than 39,000 disclosures by taxpayers, by offering a reduced risk of criminal prosecution and lower penalties than if

the unreported income was discovered by one of IRS's other enforcement programs.

The GAO was asked to review IRS's second offshore program, the 2009 Offshore Voluntary Disclosure Program (OVDP). It analyzed tax return data for all 2009 OVDP participants and examined files for a random sample of cases with penalties over USD1m, interviewed IRS officials, and developed and implemented a methodology to detect taxpayers circumventing monies owed.

It found that, in the 2009 OVDP, nearly all program participants received the standard offshore penalty – 20 percent of the highest aggregate value of the accounts – meaning the account value was greater than USD75,000 and taxpayers used the accounts (for example, made deposits or withdrawals) during the period under review. The median account balance of the more than 10,000 cases closed so far from the 2009 OVDP was actually USD570,000.

The GAO noted that participant cases with offshore penalties greater than USD1m represented about 6 percent of all 2009 OVDP cases, but accounted for almost half of all offshore program penalties.

The IRS has detected some taxpayers with previously undisclosed offshore accounts attempting to circumvent paying the taxes, interest, and penalties not by participating in an offshore program, but instead simply amending past returns or reporting previously unreported offshore accounts on current returns, resulting in lost revenues and undermining the programs' effectiveness.

However, based on a review of its data, the GAO has calculated that the IRS may be missing attempts by other taxpayers to report offshore accounts. GAO analyzed amended returns filed for tax year 2003 through tax year 2008, matched them to other information available to IRS about taxpayers' possible offshore activities, and found many more potential quiet disclosures than IRS detected.

Moreover, it found that the IRS has not researched whether sharp increases in taxpayers reporting offshore accounts for the first time is due to such efforts to circumvent monies owed, thereby missing opportunities to help ensure compliance. From tax year 2007 through tax year 2010, IRS has estimated that the number of taxpayers reporting foreign accounts nearly doubled to 516,000.

The GAO recommended that the IRS should therefore explore options for employing a methodology for identifying and pursuing potential quiet disclosures, to provide more assurance that actual quiet disclosures are not being missed, and then implementing the best option to help ensure compliance, and the IRS agreed.

Zambia Tackles Foreign Investors To Combat Tax Evasion

The Zambian Government is planning to impose a new ruling within the next two weeks with a view to freezing foreign currency made from exports,

mainly in the mining sector, in an attempt to reduce tax evasion.

The Government has estimated it is losing USD-2bn annually due to tax avoidance, equivalent to 10 percent of the country's GDP.

The majority of foreign investment in Zambia is within mining and although it is Africa's biggest copper producer, with the sector providing around 20 percent of export earnings, state revenues from this are worth less than 0.5 percent of GDP.

The Government claims that this discrepancy is a result of tax avoidance, asserting that some foreign companies are sending profits back to their own countries by invoicing loans and consultancy from parent groups at high rates.

The ruling is expected to apply to all imports and exports worth over USD10,000. All companies would have 60 days to deposit funds into a Zambian commercial bank and would be required to provide evidence to justify the transfer of any funds offshore.

In 2011, Zambia doubled its mining taxes to 6 percent after claims it was not receiving reasonable benefits from the industry. It is rumored the Government is in the process of amending its mining tax code which would enable taxes to rise further.

Switzerland Set To Renegotiate German Tax Deal

Marking a swift and somewhat surprising about-turn, Switzerland has announced its willingness to hold talks with Germany on a new withholding tax agreement between the two countries.

During an official working visit to Bern, Germany's Foreign Affairs Minister Guido Westerwelle held economic talks with his Swiss counterpart Didier Burkhalter. During the course of the meeting, Federal Councillor Burkhalter underlined Switzerland's continued commitment to negotiating a bilateral tax deal with Germany. Burkhalter made clear that the Confederation would be prepared to look closely at the German Parliament's decision to reject the original tax accord.

Burkhalter has underlined that the current situation is simply not satisfactory, stressing that chance finds and the questionable use of stolen tax data discs is unpleasant for both sides. Although Swiss banks advise their clients to regulate their tax situation, there is no obligation to do so and therefore no guarantee, Burkhalter explained, emphasizing that a tax accord would serve as a comprehensive solution.

Germany's Foreign Minister Guido Westerwelle welcomed the Swiss Government's willingness to engage in a fresh round of talks, underlining the fact that "tax evasion and tax crime are best fought via treaties and agreements." The German Government intends to continue discussions in a "constructive spirit" to reach a diplomatic solution, Westerwelle stated.

German Opposition parties blocked the initial Swiss-German withholding tax agreement in the German Bundesrat, or upper house of parliament, at the end of last year. The Social Democrats and Green Party argued that the text was too lenient on tax evaders.

Negotiated by German Finance Minister Wolfgang Schäuble, the bilateral tax treaty provided for a 25 percent withholding tax (plus solidarity surcharge) to be imposed from 2013 on capital gains received by German taxpayers with accounts held in Switzerland, ensuring that capital gains realized in Switzerland were in future treated in the same way as in Germany.

The accord also provided for a 50 percent tax to be imposed on inheritances in Switzerland, unless German residents opted to declare their inheritance to the German tax authorities.

The tax deal also provided for the taxation of hitherto undeclared and untaxed assets held by German taxpayers in the Confederation's banks, at withholding tax rates varying from 21 percent to 41 percent.

Germany Divided On Swiss Tax Deal Renegotiation

German Finance Minister Wolfgang Schäuble has ruled out the idea of renegotiating the bilateral tax deal with Switzerland, blocked by the German Bundesrat, or upper house of parliament, in December last year.

Schäuble's remarks follow Swiss Federal Councillor Didier Burkhalter's announcement that Switzerland is willing to hold talks with Germany on a new withholding tax agreement between the two countries. Burkhalter made clear that the Confederation would be prepared to look closely at the German Parliament's decision to reject the original tax accord.

As a sovereign state, Switzerland is not able and not willing to retroactively amend its laws or abolish its banking secrecy, Schäuble explained. He made clear that it was precisely on this issue of preserving anonymity that the red-green led federal states decided to veto the initial agreement with the Confederation in the German Parliament. The Opposition's stance has not changed since then, Schäuble emphasized.

Schäuble alluded to Swiss Finance Minister Eveline Widmer-Schlumpf's recent announcement that the Confederation is willing to discuss the idea of an automatic exchange of information. Rather than focusing on concluding bilateral tax accords, the German Government's aim now is to reach a consensus on a general provision for all capital income at European level, which ensures full information exchange, the German Minister revealed.

Finance Minister Schäuble noted that he is currently in ongoing talks with his counterparts from Switzerland, Austria, and Luxembourg, and from other European Union (EU) member states to achieve this objective. In this way, very swift progress is being made, Schäuble said.

In contrast, Germany's Foreign Minister Guido Westerwelle welcomed the Swiss Government's willingness to engage in a fresh round of talks, underlining the fact that "tax evasion and tax crime are best fought via treaties and agreements." In contrast to Schäuble's remarks, Westerwelle stated that the German Government intends to continue discussions in a "constructive spirit" to reach a diplomatic solution. Several Social Democrat Finance Ministers have also called for fresh talks on a Swiss-German treaty, albeit after the September elections.

Switzerland Tightens Direct Federal Tax Supervision

The Swiss Federal Department of Finance (FDF) has announced that the financial supervision of direct federal tax by an independent cantonal body will be compulsory from 2014.

According to the FDF, from January 1, 2014, the Swiss cantons will be required by law not only to verify collection of direct federal tax, but also to verify transfer of the Confederation's share. The changes are designed to close an existing loophole

with regard to the financial supervision of direct federal tax.

In future, a surveillance report is to be submitted annually to the Federal Tax Administration, as well as to the Federal Audit Office. In the event that a canton fails to comply with the requirements, the Federal Department of Finance may employ an audit firm to carry out the controls.

The Special Committee of the Swiss National Council tasked the Federal Council at the beginning of May 2007 with examining ways in which to improve the financial supervision of direct federal tax collection, to ensure regularity (motion 07.3282). The Swiss Federal Chambers adopted a bill providing for the revision on December 14, 2012. The referendum deadline expired unused.

Swiss Parliamentary Committee Backs US FATCA Deal

The Swiss Committee for Economic Affairs and Taxes of the Council of States (CEAT-S) has given its seal of approval to the Foreign Account Tax Compliance Act (FATCA) Model 2 agreement (IGA) concluded with the US.

The Intergovernmental Agreement, concluded on February 14, 2013, between the United States and Switzerland enables Swiss financial institutions to exchange information with the Internal Revenue Service by way of a centralized authority in Switzerland. On April 10, the Swiss Federal Council approved the IGA, and forwarded the agreement to parliament for its approval.

The CEAT Committee examined the FATCA accord following in-depth consultation with a number of key stakeholders, including the Swiss-US Chamber of Commerce, the Swiss Bankers Association, the Swiss Insurance Association, and the Federal Commissioner responsible for data protection.

Having carefully debated the problem that Switzerland has limited scope to maneuver on the issue, the Committee assessed the concrete implications of rejecting the FATCA deal, on both the Swiss economy and on the Swiss financial center. It also examined the agreement within the context of efforts to find a solution to resolve the past.

The Committee finally approved the decree establishing the accord and the federal law implementing the treaty, by six votes to three with two abstentions and by six votes to two with three abstentions respectively.

A minority put forward the idea of returning the case to the Federal Council and tasking the Federal Council with negotiating a model one accord, providing for an automatic exchange of information.

Commenting on its decision to endorse the agreement at the time, the Swiss Government said that while the United States' extraterritorial legislation had not been well received, it was nevertheless acknowledged that it was favorable to sign an

Intergovernmental Agreement with the United States to simplify compliance with the new regime for Swiss financial institutions.

FATCA requires foreign financial institutions to register with US tax authorities and report information on accounts housing the assets of US taxpayers.

The Government pointed out in particular that the US-Swiss agreement ensures that accounts held by US persons with Swiss financial institutions are disclosed to the US tax authorities either with the consent of the account holder or through normal administrative assistance channels. Consequently, information will not be transferred automatically in the absence of consent, and instead will be exchanged only on the basis of the administrative assistance clause in the two countries' double taxation agreement.

As the United States will phase in FATCA from January 1, 2014, Swiss financial institutions will be forced to implement FATCA from this date, irrespective of an agreement between Switzerland and the United States, if they do not want to be excluded from the US capital market. The agreed simplifications will not apply if there is no agreement, the Government clarified.

US Accountants Make Anti-Tax Fraud Suggestions

On May 1, the American Institute of Certified Public Accountants (AICPA) provided testimony at the Internal Revenue Service (IRS) Oversight Board Forum on its suggestions about how to curb United States tax identity theft and fraud.

"Some actions that we believe would reduce the threat of identity theft would require legislative or regulatory changes," Jeffrey A. Porter, chair of the AICPA's Tax Executive Committee, told the Oversight Board.

He said the IRS's proposed regulations authorizing filers of certain information returns to voluntarily truncate a taxpayer's identifying number is a "positive step towards protecting the privacy and security of personal information." The AICPA is pleased that the proposed regulations would make the truncation program permanent, because it has supported that for several years.

In addition, Porter suggested that the truncation program should be extended to permit truncated Social Security numbers on all types of tax forms and returns provided to a taxpayer. That would require a change in the law that AICPA has already recommended to Congress.

"A fundamental tax administration goal for combating fraud," Porter noted, "is establishing one point of contact within the IRS for prompt resolution of identity theft cases," as called for by former IRS Commissioner Douglas Shulman and National Taxpayer Advocate Nina Olson. Currently, 21 units exist within the IRS to help victims of identity theft.

Porter also emphasized that the IRS "should be provided with the proper resources to fund its mission, since the fight against identity theft fraud is taking a toll on IRS resources."

While praising the expansion of the IRS Law Enforcement Assistance Program to help state and local law enforcement officials obtain tax return data vital to investigating identity theft cases, and the continuing emphasis by the IRS on criminal investigations, he stressed that increased staffing and training are key components of the fight against identity theft.

"We believe the IRS should continue to increase the level of staffing dedicated to identity theft cases and improve its training of agency employees to ensure the proper response and assistance for identity theft victims," he confirmed.

Proposal To Limit US Tax Deductions Resurfaces

The resurfacing, in a recent newspaper article, of a proposal by Harvard economics professor Martin Feldstein to limit itemized deductions at 2 percent of an individual taxpayer's income, so as to reduce the United States fiscal deficit, would slow

economic growth, according to a new analysis by the Tax Foundation (TF).

In his op-ed in the Washington Post, Feldstein wrote that, in order to break the budgetary political impasse and replace the current spending "sequester," he favored "a cap of 2 percent of adjusted gross income (AGI) on the tax benefit that an individual receives from deductions and from the exclusion of municipal bond interest and of the value of employer payments for health insurance. For someone with a 25 percent marginal tax rate, that 2 percent limit on the reduction in taxes translates into a limit of 8 percent of AGI on the deductions and exclusions."

The 2 percent cap would be applied to all deductions except the one for charitable contributions, and, he calculated, "would produce about USD-140bn in additional revenue if it were applied in 2013. Over the next decade, the additional deficit reduction would total more than USD2.1 trillion."

While agreeing with Feldstein's calculations of additional revenue on a static conventional basis, the TF's dynamic simulation (where macroeconomic aggregates, such as national output, employment and investment, are affected by the increased taxes) finds that the higher marginal tax rates stemming from the cap would depress economic activity.

The TF's model estimates that once the US gross domestic product (GDP) has adjusted to the new tax rules, "the smaller economy would have a negative feedback on tax revenues, taking away an estimated 15 percent of the money the Feldstein limitation would otherwise collect. … For every USD1 of new revenue raised, the plan would lower GDP by 73 cents. In assessing the plan, policymakers should be aware of this cost in terms of lost economic output."

The TF believes that "a superior strategy would be to use deduction limits to lower marginal tax rates, either on their own or in conjunction with a long-term plan for deficit reduction. … Using additional revenue to lower marginal tax rates, or splitting the revenue between deficit reduction and lower rates, would create an economic boost that would provide a greater benefit to a greater number of Americans."

It is calculated that the 2 percent cap on deductions could also finance a 17 percent across-the-board cut in individual income tax rates, stimulating the economy, with private business GDP growing by 1.2 percent. At the same time, growth feedback effects would see federal tax revenues actually increase by USD38bn, despite the reduction in rates.

In addition, as a means of cushioning the economic damage if the plan were adopted, while still substantially lowering the federal deficit, the TF has also looked at the effect of using half the additional revenue to reduce the deficit and the other half to finance an across-the-board statutory rate cut.

If the 2 percent cap was to be imposed and all statutory individual rates were cut by 8.5 percent, the TF's model estimated that revenue gains would be

approximately USD100bn annually, while GDP increased very slightly by 0.2 percent.

US Ranks Top For Green Taxes

The US is the country most actively using its tax code to influence sustainable corporate activity, according to KPMG's Green Tax Index.

The index focuses on 21 major economies worldwide which KPMG International says represent a large share of global corporate investment activity. It was created to heighten awareness of the evolving green tax landscape worldwide, aiming to encourage companies to reduce their exposure to environmental tax penalties and help them to understand levels of energy and water efficiency and learn about carbon emissions, green innovations and green buildings.

The US has ranked first among 21 countries, mainly as a result of its extensive program of federal tax incentives for renewable energy, energy efficiency and green buildings. The index reveals that the US tax code offers a variety of tax credits, including tax incentives for the constructions of energy-efficient buildings and a production tax credit on renewable energy.

However, the US uses fewer environmental penalties than any other Western developed nation excluding Canada, which means it ranks 14th on this particular criterion.

Japan ranked second in the index, while the UK ranked third. Russia and Mexico were among the lowest ranking countries.

Principal-in-charge of sustainability tax in the Washington National Tax practice of KPMG LLP, John Gimigliano, said the index provides an important directional insight for corporate sustainability decision makers, CFOs and board members into how countries are using taxes to influence corporate behavior. He said: "Japan, for example, tops the rankings in promotions of tax incentives for green vehicle production, while the US favors a comprehensive system of renewable energy tax incentives. As a result, we're seeing more green cars coming out of Japan and dramatic growth in the US renewable sector."

Advisory partner and US practice leader for Climate Change and Sustainability Services at KPMG LLP, John Hickox, said these activity-based rankings can be of value to corporate sustainability decision makers as they allocate budgets and evaluate investments around the world.

Of over 200 individual tax incentives and penalties of relevance to corporate sustainability the KPMG index has identified, more than 30 have been introduced since January 2011 and Hickox believes this will continue to grow.

He said: "Green investment continues to gain momentum globally and the KPMG Green Tax Index provides a greater understanding of the entire financial picture of green investments, pre- and post-tax."

US Senate Attempts Tobacco Tax Hike

US Senators have introduced a Tobacco Tax and Enforcement Reform Act aimed at reducing illegal

tobacco trafficking, eliminating tax variances between different tobacco products and increasing the federal excise tax rate on many tobacco products.

The legislation, introduced by Democratic US Senators Frank R. Lautenburg, Dick Durbin, Tom Harkin and Richard Blumenthal, lays out a set of comprehensive reforms which could support the government and states in collecting billions of dollars in tobacco tax revenues used to fund children's health insurance programs as well as tackling youth tobacco consumption and criminals and terrorists who profit from illegal trade in tobacco.

Under current law, roll-your-own tobacco and small cigars are taxed at the same rate as cigarettes, with the current federal excise tax sitting at USD1.01. However, cigars, smokeless tobacco and pipe tobacco are taxed at a significantly lower rate, with pipe tobacco tax currently standing at USD0.1769 for a one ounce tin or pouch.

Under the new legislation, the tax rate on many tobacco products would increase by 93 percent, putting it in line with President Obama's budget proposal.

Illegal tobacco trafficking is also a concern for the government, resulting in at least USD5bn of annual lost revenue for federal and state governments, according to the US Department of Justice.

The bill would require that all packages of tobacco products are uniquely labeled in order to aid law enforcement efforts to track and trace tax payments. It also bans the sale, lease and importation of tobacco products manufacturing equipment to unlicensed persons, requires export warehouse proprietors to file reports with the Treasury Department to prevent illegal reentry of tobacco products intended for export, and will increase penalties for violating the law and establish new offenses.

It is not clear that the bill will gain traction in the Senate; and it seems unlikely that House Republicans will contemplate a tax increase of this magnitude.

Irish Solid Fuel Carbon Tax Introduced

A carbon tax on solid fuels, such as coal and peat, came into effect in Ireland as of May 01, 2013, following its announcement by the Minister for Finance in the 2013 Budget.

Any suppliers making a first supply of solid fuel in the State will now be responsible for registering with the Revenue Commissioner, calculating their solid fuel carbon tax (SFCT) liability and paying the tax owed.

Accountable persons must make their tax returns and pay the applicable SFCT liability for that accounting period by July 31, 2013.

As of May 1 the carbon tax for coal, peat briquettes, milled peat and other peat will be levied at EUR26.33, EUR18.33, EUR8.99 and EUR13.62 per tonne respectively. In May 2014 these carbon tax rates will be doubled.

South Africa Consults On New Carbon Tax

The South African National Treasury has issued a second and final policy paper on the introduction of a carbon tax, for public comment before the Government proceeds with the publication of draft legislation later this year, to give effect to the implementation of the tax from January 1, 2015.

It is pointed out that South Africa's strategy to make a contribution towards the mitigation of greenhouse gas emissions was adopted by the Government in 2011 when Cabinet approved the National Climate Change Response White Paper. This was after South Africa had made a commitment at the 2009 Copenhagen conference to undertake appropriate action to curb emissions by 34 percent by 2020 and 42 percent by 2025.

The new Carbon Tax Policy Paper updates the 2010 discussion paper, "Reducing Greenhouse Gas Emissions: The Carbon Tax Option," and specifies that the primary objective of implementing carbon taxes is to change future behavior, rather than to raise revenue.

It therefore starts with a relatively low carbon price, and then progressively raises it significantly after five to ten years and beyond. It is hoped that this approach will provide industry, and other major emitters, sufficient time to innovate and invest in greener technologies for the future.

A carbon tax rate of ZAR120 (USD13.20) per ton of equivalent CO2 (CO2e), increasing at 10 percent per annum, will be implemented during the first phase. When the tax-free threshold and additional relief are taken into account, the effective tax rate will range between ZAR12 and ZARR48 per ton of CO2e.

The National Treasury sees at least three ways in which a carbon tax will work to drive changes in producer and consumer behavior and therefore address climate change – by encouraging a shift in production and consumption patterns towards low carbon and more energy efficient technologies by altering the relative prices of goods and services based on their emissions intensity; by the replacement of carbon intensive factors of production, products and services with low carbon emitting alternatives; and by the creation of incentives for research, development and technology innovation in low carbon alternatives.

The key design features of the carbon tax include a phased approach to the implementation of the carbon tax, with a first (introductory) phase of five years, effective from January 1, 2015 to December 31, 2019, followed by Phase 2 of another five years, from 2020 to 2025. Follow up phases can be explored at a later stage.

There will be an across-the-board basic 60 percent tax-free threshold of actual emissions below which the tax will not be payable; additional 10 percent relief for certain sectors to allow for technical or structural limitations to reduce emissions; and up to an additional 10 percent relief for emissions intensive and trade intensive sectors (e.g. iron and steel, cement and glass) to take into account the risk of competitiveness concerns.

Offsets could also be used by firms to reduce their carbon tax liability up to limits of 5 percent or 10 percent, depending on the sector, and emissions from the agricultural and waste sectors will be exempt during the first phase. This complete exemption will be reviewed during the second phase.

Finally, the electricity sector will qualify for a tax-free threshold of up to 70 percent, and some sectors will be able to qualify for a tax-free threshold of up to 90 percent during the first phase.

The National Treasury notes that economic modeling has suggested that a carbon tax will make a significant contribution towards emissions reduction, while the impact on the country's economic growth would be largely neutral if accompanied by effective revenue recycling measures.

One of the ways to recycle the expected carbon tax revenue is by reducing other taxes. It is suggested that one such tax that could be reduced is the existing levy on electricity produced from non-renewable sources (e.g. coal) and nuclear energy. It is confirmed, however, that this levy will not be abolished, as part of the revenue generated funds some of the demand-side measures currently being implemented by Eskom, the electricity public utility.

On the other hand, as, in the context of energy efficiency savings, the conversion of old technologies to new ones often involves a substantial amount of capital expenditure, and the perceived long payback period tends to discourage businesses form making upfront investments, the carbon tax regulations will provide for the implementation of an

energy efficiency tax incentive, the details of which will be published within the next two weeks. It is confirmed that the tax revenue forgone as a result of this tax incentive should be seen as part of the revenue recycling measures.

In addition, it is noted that the Government already provides support of new and innovative technology through the research and development tax incentive, as well as its on-going support for the carbon capture and storage research project.

Indonesian Oil Explorers Get Tax Breaks

It has been confirmed by the Ministry of Finance that, since last month, Indonesia is providing oil and gas companies undertaking exploration and exploitation activities in the country with exemptions from import duties, value-added tax (VAT) and the sales tax on luxury goods.

The issuance by the Ministry of Regulation 70/PMK.011/2013 is in line with the Indonesian Government's policies to re-invigorate oil and gas production. The tax breaks given to the sector recognize the recent sluggish output in the sector at only around 840,000 barrels per day, and that upstream oil and gas industry operations are capital and technology-intensive and can be riskier than other businesses.

The Ministry is to provide import duty exemptions to goods that are imported temporarily, and goods that are used for the exploration and exploitation of upstream oil and gas, as well as geothermal energy. Goods that are used in exploration activities will also receive incentives in the form of exemptions from VAT and sales tax on luxury goods.

However, those incentives will only be given if the goods involved cannot be produced in Indonesia, or can be produced in the country but not to the required specifications or in sufficient amounts.

Russia To Review Oil Export Duty

Russia's Finance Ministry will propose increasing the country's mineral extraction tax (MET) on oil and gradually decreasing its oil export duty to 57 percent-58 percent from the current 60 percent by the middle of May, Finance Minister Anton Siluanov said on Monday. The adjustment is intended to make the tax system more balanced.

Ministries and agencies began discussions, in March 2013, about the possibility of changing the formula for calculating the export duty for oil and oil products by March next year. They decided that the existing "60-66 taxation system," which was introduced on October 1, 2011, should be replaced with a "55-60 taxation system."

The 60-66 system currently sets the maximum export duty on oil. This is based on the difference between the oil price of USD182.50 per tonne and average global oil prices estimated each month.

The head of the tax, customs and tariff department of the Finance Ministry, Ilya Trunin, did demonstrate caution, however, stating that the change to the 55-60 system "should be made very carefully, and drastic moves should be avoided – the export duty should be reduced by no more than 2 percent-3 percent annually."

Oil companies have been seeking tax relief as the need to tap new oil fields in remote regions is

increasing production costs. However, the Government is not in a position to provide tax relief to the domestic oil industry as its budget is in deficit and it is in the midst of large-scale spending projects such as the 2014 Winter Olympics and the 2018 World Cup.

ARGENTINA - MACEDONIA

Signature

Argentina and Macedonia signed a TIEA on April 26, 2013.

BAHRAIN - CHINA

Forwarded

Bahrain's Cabinet on April 28, 2013 approved the signing of a draft Protocol to the nation's DTA with China.

CANADA - VARIOUS

Forwarded

Canada's pending DTAs with Namibia, Serbia, Poland, Hong Kong, Luxembourg and Switzerland were forwarded to the Banking, Trade and Commerce Parliamentary Committee for its approval on May 2, 2013.

EGYPT - SAUDI ARABIA

Draft

Egypt and Saudi Arabia agreed a DTA draft during negotiations on April 24, 2013.

HUNGARY - UNITED ARAB EMIRATES

Signature

Hungary and the United Arab Emirates signed a DTA on April 30, 2013.

KOREA, SOUTH - COLOMBIA

Forwarded

A bill to ratify the pending South Korea-Colombia DTA was tabled before Colombia's House of Representatives on April 30, 2013 for its approval.

PERU - PORTUGAL

Forwarded

The DTA signed between Peru and Portugal was sent to Peruvian Congress on April 19, 2013 for its approval.

SAN MARINO - SINGAPORE

Initialed

According to an update issued by the Government of San Marino on April 18, 2013, the territory is engaged in negotiations towards a DTA with Singapore and initialled a draft text in December 2012.

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

THE AMERICAS

THE 4TH ANNUAL PRIVATE INVESTMENT FUNDS TAX MASTER CLASS

Financial Research Associates LLC

Venue: The Princeton Club, 15 W 43rd St New York, NY 10036, USA

Co-chairs: Elaine Murphy (Partner, Ropes and Gray), Jay Milkes (Partner, Ropes and Gray), Maury Cartine (Partner, Marcum LLP)

5/16/2013 - 5/17/2013

http://www.frallc.com/pdf/B869.pdf

TAX OFFICERS SUMMIT

Marcus Evans

Venue: MGM Grant At Foxwoods Resort, 350 Trolley Line Boulevard, P. O. Box 3777, Mashantucket, CT, USA

Key speakers: TBA

5/19/2013 - 5/19/2013

http://www.taxofficerssummit.com/

CANADIAN CAPTIVES & CORPORATE STRATEGIES SUMMIT

Insurance Managers Association of Cayman

Venue: Trump International Hotel & Tower, 325 Bay St Toronto, ON M5H 4G3, Canada

Key speakers: Timothy Bunt (Senior Vice President & Chief Risk Officer, CBRE), Mark Roberton (Director of Risk Management and Insurance, Nexen Inc), Peter Flattery (CEO, Health Insurance Reciprocal of Canada), Watson Gale (Vice-President, General Counsel and Corporate Secretary, Canadian Blood Services), Steve Matterson (Director, Risk & Insurance, BC Ferry Services)

5/22/2013 - 5/23/2013

http://www.imac.ky/canadian-captives-and-corporate-strategies-summit

FATCA COMPLIANCE

The Canadian Institute

Venue: Metro Toronto Convention Center, 255 Front St W Toronto, ON M5V 2W6, Canada

Chair: Michael Miles (Partner, Sutherland Asbill & Brennan LLP)

5/29/2013 - 5/30/2013

http://image.exct.net/lib/fef910797d6504/m/6/416L13_Feb28_E.pdf

2013 OECD INTERNATIONAL TAX CONFERENCE

Organization for Economic Cooperation and Development

Venue: Four Seasons Washington, 2800 Pennsylvania Ave. NW, Washington DC 20007

Key speakers: Pascal Saint-Amans (Director of the Center for Tax Policy & Administration, OECD), Grace Perez-Navarro (Deputy Director of the Center for Tax Policy & Administration, OECD), Marlies de Ruiter (Head of Tax Treaty, Transfer Pricing, and Financial Transactions Division, OECD), Joseph Andrus (Head of Transfer Pricing Unit, OECD), Jacques Sasseville (Head of Tax Treaty Unit, OECD)

6/3/2013 - 6/4/2013

http://www.ibfd.org/IBFD-Tax-Portal/Events/2013-OECD-International-Tax-Conference

THE AMERICAS TRANSFER PRICING SUMMIT 2013

IBC

Venue: Biltmore Hotel, 1200 Anastasia Avenue, Coral Gables, FL 33134

Key speakers: Garry Stone (PwC), Joseph Andrus (Head of Transfer Pricing Unit, Organization for Economic Cooperation and Development), Michael Lennard (Chief International Tax Cooperation & Trade, United Nations), Alberto Barreix (Principal Fiscal Economist, Inter-American Development Bank), among numerous others

6/5/2013 - 6/6/2013

http://www.iiribcfinance.com/event/Americas-Transfer-Pricing-Conference/dates-venue

FINANCIAL ACCOUNTING & REPORTING UPDATE

Accounting Conferences and Seminars LLC

Venue: Boston Hyatt Cambridge, 575 Memorial Drive, Overlooking Boston, Cambridge, MA 02139-4896

Key speakers: Tom Adams (KPMG), Chad Arcinue (Ernst & Young), John Benedetti (PwC), Renee Bomchill (Partner, Deloitte & Touche) Luke Cadigan (Assistant Director of Enforcement, US Securities and Exchange Commission's Boston office), among numerous others

6/12/2013 - 6/13/2013

http://www.allconferences.com/c/financial-accounting-reporting-update-conference-cambridge-2013-june-12

2013 FINANCE AND ACCOUNTING FOR FINANCIAL INSTITUTIONS

Grant Thornton

Venue: Seaport Hotel & World Trade Center, 1 Seaport Lane, Boston, MA 02210, USA

Chairpersons: Richard L. Rowe (CPA FMS Chairman), William Kline (CPA FMS Vice Chairman)

6/16/2013 - 6/18/2013

http://www.grantthornton.com/portal/site/gtcom/menuitem.0442c01c1536cc779eb1f810633841ca/?vgnextoid=08f446479771d310VgnVCM1000003a8314acRCRD&vgnextchannel=6d2ecbbdad9c4010VgnVCM100000368314acRCRD

INDEPENDENCE IN A CAPTIVE MARKET

Darla Moore School of Business

Venue: Darla Moore School of Business, Charleston, 151 Market Street, Charleston SC 29401, USA

Key speakers: Michael D. Tarling (Assistant Treasurer, Risk Management and Insurance The Boeing Company), Ian Wrigglesworth (Managing Director, Guy Carpenter & co), Nicolas Depardey (Director of Insurance and Risk Management, Michelin), Dave Adams (Maiden Re), Anthony Valente (Maiden Re), Raymond G. Farmer (Director of Insurance, State of South Carolina), Bill Hodson (Executive Vice President, USA Risk Group Intermediaries) Gary Bowers (Partner, Johnson Lambert LLP)

6/20/2013 - 6/20/2013

http://mooreschool.sc.edu/executiveeducation/workshopsconferences/independenceinacaptivemarketreinsuranceseminar.aspx

REVENUE RECOGNITION ACCOUNTING UPDATE

AAC

Venue: Chicago Marriott Oak Brook, 1401 W. 22nd St., Oak Brook, IL 60523, USA

Key speakers: Tom Adams (KPMG), Chad Arcinue (Ernst & Young), John Benedetti (PwC), Renee Bomchill (Deloitte & Touche), Luke Cadigan (US Securities and Exchange Commission), Andreas Chrysostomou (Duff & Phelps), Wissam Dandan (Deloitte & Touche), Steve DiPietro (Deloitte & Touche), Jonathan Feig (Ernst & Young), Hank Galligan (BDO), among various others

6/20/2013 - 6/21/2013

http://www.allconferences.com/c/revenue-recognition-accounting-update-oak-brook-2013-june-20

BASICS OF INTERNATIONAL TAXATION 2013

Practising Law Institute

Venue: PLI New York Center, 810 Seventh Avenue at 53rd Street (21st floor), New York, New York 10019

Chair: Linda Carlisle (White & Case LLP)

7/23/2013 - 7/24/2013

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2013/_/N-4kZ1z12p29?ID=158672

ASIA PACIFIC

CHANGES TO VISTA AND OTHER TRUST LAWS IN THE BVI

STEP Hong Kong

Venue: HK International Arbitration Centre, 38/F Exchange Square Two, 8 Connaught Place, Central Hong Kong

Key speaker: Richard Grasby (Head of Trusts and Private Wealth, Maples and Calder)

5/15/2013 - 5/15/2013

http://www.step.org/docs/events/Changes%20to%20VISTA%20and%20other%20BVI%20trust%20laws%20-%20Richard%20Grasby%20-%2015%20May%202013.pdf

REGIONAL GST/VAT CONFERENCE

Inland Revenue Authority Singapore/ Organization for Economic Cooperation and Development

Venue: Marina Mandarin Singapore, Marina Square, Singapore 039594

Key speakers: Stephane Buydens (VAT Policy Advisor, OECD), Josephine Drum (Australian Tax Office), Marie Pallot (Inland Revenue, New Zealand), Chia-Tern Huey Min (Inland Revenue Authority Singapore), among numerous others

5/22/2013 - 5/23/2013

http://www.taxacademy.sg/seminars_workshops.html

AUSTRIA - BUILT TAX MITIGATION AND WEALTH MANAGEMENT

Bilanz-Data Wirtschaftstreuhand GmbH/ China Offshore

Venue: Pudong Shangri-La, Level 2, River Wing,

No.33 Fucheng Road, Pudongxin District, Shanghai 200120, China (Lujiazui)

Key speakers: TBA

5/23/2013 - 5/23/2013

http://www.chinaoffshore.com.hk/austria-built-tax-mitigation-and-wealth-management-seminar.html

AUSTRALIAN TRANSFER PRICING

Informa

Venue: Sydney Harbour Marriott Hotel, 30 Pitt St, Sydney, New South Wales 2000, Australia

Key speakers: Pete Calleja (Australia and Asia Pacific Leader, Transfer Pricing, PwC), Patrick Thompson (Head of Transfer Pricing (Asia), Morgan Stanley), William Brown (Head of Tax, Westpac), among others

5/23/2013 - 5/24/2013

https://www.informa.com.au/conferences/financial-services-conference/accountancy-conference/australian-transfer-pricing-summit

PRACTICAL ASPECTS OF INTERNATIONAL TAX PLANNING

IBFD

Venue: Hotel Maya 138, Jalan Ampang, 50450 Kuala Lumpur, Malaysia

Key Speakers: Chris Finnerty (Ernst & Young LLP), Aurobindo Ponniah (Head of IBFD's Asia-Pacific department), Nitin Savara (BMR Advisors), Tom Toryanik (Royal Bank of Scotland, Sydney), Julian Wong (Ernst & Young LLP)

5/27/2013 - 5/31/2013

http://www.ibfd.org/Courses/Practical-Aspects-International-Tax-Planning#tab_program

CHINA OFFSHORE SUMMIT, BEIJING

China Offshore

Venue: Sofitel Wanda Beijing, 93 Jianguo Road, Tower C Wanda Plaza, Chaoyang District, Beijing, China

Key speakers: Hao Wang (Senior Partner, RayYin & Partners), Judy Deng (Jade & Fountain PRC Lawyers), Liu Zangqin (China Venture Capital Association), Shiwei Zhang (Grandfield Law Offices), among numerous others

5/29/2013 - 5/30/2013

http://beijing2013.chinaoffshoresummit.com.hk/index.php/en/

OPTIMISING IFRS IN RUSSIA

Adam Smith Conferences

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

Key Speakers: Igor Sukharev (Head of accounting and reporting methodology, Russian Ministry of Finance), Arndt Roechling (Head of Financial Directorate, Raiffeisenbank Russia) Liubov Aleksandrova (Chief Financial Officer, Unimilk), Michael Raikhman (Deloitte Russia), Andrey Kovalev (Chief Accountant, Transaero), among numerous others

6/4/2013 - 6/6/2013

http://www.adamsmithconferences.com/appdata/downloads/ifrs-financial-reporting-russia/IFRS_premail_2_full_eng.pdf

NATIONAL TAX CONFERENCE 2013 MALAYSIA

Chartered Tax Institute of Malaysia

Venue: Kuala Lumpur Convention Centre, Kuala Lumpur, Selangor, Malaysia

Chair: SM Thanneermalai (President, Chartered Tax Institute of Malaysia)

6/24/2013 - 6/25/2013

http://www.ibfd.org/IBFD-Tax-Portal/Events/National-Tax-Conference-2013-Malaysia

INDONESIA: INVESTMENT AND TAXATION

IBFD

Venue: Novotel Singapore Clarke Quay, 177A River Valley Road, Singapore 179031

Key Speakers: Andreas Adoe (IBFD), Pieter de Ridder (Loyens & Loeff)

7/3/2013 - 7/4/2013

http://www.ibfd.org/Courses/Indonesia-Investment-and-Taxation

MIDDLE EAST AND AFRICA

USING DUBAI AS AN OFFSHORE FINANCIAL CENTRE

STEP Johannesburg

Venue: Discovery's Head Office, The Forum Room, 16 Fredman Drive, Sandton, South Africa

Key speaker: Warren Luyt (Trident Trust Company (UAE) Limited)

6/12/2013 - 6/12/2013

http://www.step.org/events.aspx?eventId=a0XC000000B2AHtMAN

WESTERN EUROPE

DOUBLE TRUST SCHEME AND CONSIDERATION OF DOTAS AND GAAR

STEP Manchester

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

Key speakers: Philip Laidlow (Laytons Solicitors LLP)

5/14/2013 - 5/14/2013

http://www.step.org/events.aspx?eventId=a0XC0000009Qk4HMAS

TAX RISK, STRATEGY & COMPLIANCE

TolleyConferences

Venue: London, UK, TBA

Chair: Mark Kennedy (Director, Deloitte)

5/14/2013 - 5/14/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/tax-risk/

STAMP DUTY LAND TAX

IBC

Venue: London, UK, TBA

Chair: Andrew Campbell (Clarke Willmott)

5/16/2013 - 5/16/2013

http://www.iiribcfinance.com/event/Stamp-Duty-Land-Tax-Conference

IFRS 2013 UPDATE

Informa

Venue: Prospero House, 241 Borough High Street, London, SE1 1GA, UK

Chairpersons: David Cairns (Former Secretary General, International Accounting Standards Committee), Sunil Kansal (Independent Consultant), Shan Kennedy (Former Project Director, Accounting Standards Board)

5/21/2013 - 5/23/2013

http://www.iiribcfinance.com/download/send-file/iddownload/1825

TAXATION AND PARTNERSHIP 2013

TolleyConferences

Venue: London UK, TBA

Chair: Pete Miller (Partner, The Miller Partnership)

5/22/2013 - 5/22/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Taxation-And-Partnership-2013/

GLOBAL CUSTOMS COMPLIANCE

C5

Venue: The Hotel, 38, Boulevard de Waterloo, Brussels 1000, Belgium

Chairs: Bruno Fransman (Regional Director Global Trade Compliance Assurance, Avnet Europe), Arzu Sancili (Import & Export Customs Lead Turkey, Middle East and North Africa, DuPont)

5/22/2013 - 5/23/2013

http://www.c5-online.com/2013/567/8th-advanced-forum-on-global-customs-compliance

TAXATION OF SUPPLY CHAIN RESTRUCTURING

IBFD

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

Key speakers: Monica Erasmus-Koen (PwC), Shee Boon Law (IBFD), Danny Oosterhoff (Ernst and Young), Timothy Sarson, Jan Snel (Baker and McKenzie), Hans van Egdom (Netherlands' Ministry of Finance)

5/22/2013 - 5/24/2013

http://www.ibfd.org/Courses/Taxation-Supply-Chain-Restructuring

TAX PLANNING FOR PRIVATE EQUITY

TolleyConferences

Venue: London UK, TBA

Chair: Paul Marks (Senior Partner, APAX)

5/23/2013 - 5/23/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Tax-Planning-For-Private-Equity/?displayControl=overview

3RD ANNUAL ASSET AND FUND MANAGEMENT

Fleming Europe

Venue: Hilton ParkSA Istanbul, Bayildim Caddesi No 12, Macka, Istanbul 34357, Turkey

Key speakers: Michael Levas (Founder, Olympian

Capital Management), Heinz Bednar (CEO, Erste Asset Management, Austria), Ömer Gencal (HSBC Global Asset Management, Turkey), Renato Guerriero (Dexia Asset Management, Italy)

5/23/2013 - 5/24/2013

http://finance.flemingeurope.com/cee-see-cis-asset-fund-management

EATLP CONGRESS 2013 LISBON

European Association of Tax Law Professors

Venue: University of Lisbon, Campus de Campolide, 1099-085 Lisbon, Portugal

Chair: Bertil Wiman (Chairman, EATLP Executive Board)

5/30/2013 - 6/1/2013

http://www.eatlp.org/uploads/public/2013/congress/Program%202013%20EATLP%20-%20Lisbon.pdf

PRINCIPLES OF INTERNATIONAL TAXATION

IBFD

Venue: IBFD Head Office, H.J.E. Wenckebachweg 210, 1096 AS Amsterdam, The Netherlands

Key Speakers: Roberto Bernales (IBFD Knowledge Centre), Piet Boonstra (Van Campen Liem), Jan de Goede (Senior Principal, Tax Knowledge Management, IBFD), Paul Halprin (Baker & McKenzie), Eduard Sporken (KPMG)

6/3/2013 - 6/7/2013

http://www.ibfd.org/Courses/Principles-International-Taxation-1#tab_program

6TH ANNUAL INHERITANCE TAX CONFERENCE

IBC

Venue: Central London, UK, TBA

Chair: Matthew Hutton, Chartered Tax Adviser

6/4/2013 - 6/4/2013

http://www.iiribcfinance.com/appdata/downloads/Inheritance-Tax-Conference/FKW52544_Draft_Agenda.pdf

THE DEFINITIVE PERMANENT ESTABLISHMENT MASTERCOURSE

IBC

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

Key speakers: Colin Clavey (Organization for Economic Cooperation and Development), Luca Formica (Maisto e Associati), John Taylor (King & Spalding), Louis Lutz(Loyens & Loeff), Andrei Belinski (Centrica), among numerous others

6/5/2013 - 6/5/2013

http://www.iiribcfinance.com/event/Premanent-Establishments-Mastercourse-2013

EUROPEAN FAMILY OFFICE & PRIVATE WEALTH MANAGEMENT FORUM

Opal Financial Group

Venue: Intercontinental Geneve, 7-9, Chemin du Petit Saconnex, 1209 Geneva, Switzerland

Key speakers: Jan-Olaf Willums (Chairman and founder, InSpire Invest), Nabil Hamadeh (CEO & CIO, Capital Growth Management), Odi Lahav (CEO, Allenbridge Investment Solutions LLP), Abbas Hashmi (Chairman, Q&A Consulting), Karim Shariff (Principal, Majlis Investment Management), Philippe Roesch (Managing Partner, Riam Alternative Investments), Julia Balandina-Jaquier (Founder, JBJ Consult), Ron Chandiramani (Group President & founder, Midas International Group), Eric Zwickel (Senior Investment Consultant, Towers Watson), Philippe Szokolóczy-Syllaba (Managing Director, MY Global Advisor), Daniel Koppelkamm (CFA, Principal, Mountain Family Office), Robert Anthony (Chairman, Anthony & Cie), Pierre Condamin Gerbier (Managing Director, Egregore Private Office), Piero Marchettini (Managing Partner, Adelaide Consulting)

6/5/2013 - 6/7/2013

http://www.opalgroup.net/conferencehtml/current/european_family_office_private_wealth/european_family_office_private_wealth.php

DISGUISED REMUNERATION

TolleyConferences

Venue: London, UK, TBA

Key speakers: Andrew Thornhill QC (Pump Court Tax Chambers), Pete Miller (Author and Founder of The Miller Partnership), among others

6/6/2013 - 6/6/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Disguised-Remuneration/

RESTORING TRUST IN FINANCIAL SERVICES

Jersey Finance

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

Key speaker: Geoff Cook (Chief Executive, Jersey Finance)

6/6/2013 - 6/6/2013

http://www.jerseyfinance.je/Events/Non-Jersey-Finance-Events/Restoring-Trust-in-Financial-Services-with-Geoff-Cook/

101 IDEAS FOR CORPORATE TAX PLANNING

IBC

Venue: London, UK, TBA

Key speakers: Peter Cussons (PwC), Paul Smith (Blick Rothenberg), Chaira Bardini (Loyens & Loeff), Dmitry Zapol (IFS), Patrick Soares (Gray's Inn Tax Chambers), Pete Miller (The Miller Partnership), Anne Fairpo (13 Old Square Chambers), John Lindsay (Linklaters), Robert Maas (Blackstone Franks), Giles Clark (Offshore Tax Planning)

6/6/2013 - 6/6/2013

http://www.iiribcfinance.com/appdata/downloads/101-Corporate-Tax-Planning-Ideas-2013/101_Corp_Tax_FKW52579_FINAL_WEB.pdf

INTERNATIONAL TAX PLANNING ASSOCIATION'S JUNE MEETING

International Tax Planning Association

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

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

6/9/2013 - 6/11/2013

https://www.itpa.org/?page_id=3309

IBFD'S 75TH ANNIVERSARY CONGRESS

IBFD

Venue: Beurs van Berlage (former Amsterdam Stock Exchange), Damrak 243, 1012 ZJ Amsterdam, Netherlands

Key speakers: Jan Kees de Jager (Former Netherlands Minister of Finance), Belema Obuoforibo (Director of the IBFD Knowledge Centre), Professor Sweder van Wijnbergen (Former chief economist for the World Bank)

6/12/2013 - 6/12/2013

http://www.ibfd.org/IBFD-Tax-Portal/Events/IBFD-s-75th-Anniversary-Congress-Tax-avoidance-international-arena-legitimate

WHAT THE REVENUE KNOW

STEP London Central

Venue: BDO LLP London, 55 Baker Street, London, W1U 7EU, UK

Key speaker: Senior Official at Offshore Coordination Unit HMRC, TBA

6/13/2013 - 6/13/2013

http://www.step.org/docs/events/STEP%20London%20Central_6.pdf

ICAEW TAX FACULTY CONFERENCE 2013

TolleyConferences

Venue: ICAEW, Moorgate Place, London EC2R 6EA, UK

Chair: Rebecca Benneyworth (Chairman Elect, ICAEW Tax Faculty)

6/14/2013 - 6/14/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Icaew-Tax-Faculty-Conference-2013-London/?displayControl=overview

PRIVATE CLIENT TAX: RUSSIA

TolleyConferences

Venue: The Montague on The Gardens, 15 Montague Street, Bloomsbury, London WC1B 5BJ, England

Chair: Elizabeth Henson (Partner, PwC)

6/14/2013 - 6/14/2013

http://www.conferencesandtraining.com/private-client-russia

TAX RISK MANAGEMENT

IBFD

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

Key speakers: Stijn Euverman (PwC), Koen De Grave (PwC), Sandra Hogeveen (Tax Director Europe, Ahold), Robbert Hoyng (Partner, Deloitte), Sander Kloosterhof(Deloitte), Bas de Mik (PwC), John Piepers (PwC)

6/17/2013 - 6/18/2013

http://www.ibfd.org/Courses/Tax-Risk-Management

FATCA FOR INVESTMENT MANAGERS

Infoline

Venue: London, UK, TBA

Key speakers: Steven A Musher (Associate Chief Counsel International, Internal Revenue Service), Malcolm White (Policy and Technical Adviser, Financial Services, HMRC)

6/18/2013 - 6/18/2013

http://www.infoline.org.uk/event/FATCA-for-Funds-Conference

TRANSCONTINENTAL TRUSTS CONFERENCE 2013

IBC

Venue: Grand Hotel Kempinski Geneva, 19, Quai du Mont - Blanc, Geneva CH - 1211, Switzerland

Chair: Richard Hay (Partner, Stikeman Elliott)

6/19/2013 - 6/20/2013

http://www.iiribcfinance.com/download/send-file/iddownload/9436

TAXATION OF HOLDING COMPANIES IN EUROPE

IBFD

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

Key Speakers: Regina van der Kuip (Partner, PwC Amsterdam), Kannan Raman (Ernst and Young, London), Valéry Civilio (Head, Tax Consulting, PwC Amsterdam)

6/19/2013 - 6/21/2013

http://www.ibfd.org/Courses/Taxation-Holding-Companies-Europe

OFFSHORE TAX AND TRUST FORUM ISLE OF MAN

TolleyConferences

Venue: London, UK, TBA

Key speakers: Giles Clarke (Author, Offshore Tax Planning), John Barnett (Partner, Burges Salmon), Gregory Jones (Tax Director, KPMG), George Sharpe (Tax Director, PwC), John Rimmer (Partner, Appleby), Guy Wiltcher (Partner, Greystone LLC)

6/20/2013 - 6/20/2013

http://www.conferencesandtraining.com/en/Browse-Events/tax-conferences/Offshore-Tax-And-Trust-Forum-Isle-Of-Man/?displayControl=overview

PRACTICAL APPLICATION OF TAX TREATIES

IBFD

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

Key speakers: Roberto Bernales (IBFD), Bruno da Silva (Loyens & Loeff), Jan de Goede (Senior Principal, Tax Knowledge Management, IBFD), Ridha Hamzaoui (IBFD), Bart Kosters (IBFD)

6/24/2013 - 6/27/2013

http://www.ibfd.org/Courses/Practical-Application-Tax-Treaties

THE CYPRUS BAIL-OUT AND FOREIGN CLIENTS

Academy Finance

Venue: Hotel Beau Rivage, Quai du Mont-Blanc 13, 1201 Geneva, Switzerland

Key speaker: Charilaos Stavrakis (former Vice-President of the Eurogroup)

6/26/2013 - 6/26/2013

http://www.academyfinance.ch/v2/next_events/AF466.pdf

FUNDS TAXATION IRELAND 2013

Infoline

Venue: Dublin IFSC, Dublin, Ireland, TBA

Key speakers: Kate Levey (Financial Policy Division, Irish Department of Finance), Jim Byrne (Corporate Business and International Division, Revenue Commissioners)

6/26/2013 - 6/26/2013

http://www.infoline.org.uk/event/Fund-Tax-Ireland-Conference

ICAEW TAX FACULTY CONFERENCE 2013

ICAEW

Venue: Renaissance City Centre Hotel, Manchester, M2 2EQ, UK

Key speakers: Anita Monteith (ICAEW), Paula Tallon (Managing Partner, Gabelle LLP), Rebecca Benneyworth (Expert Tax Writer), Peter Rayney (Independent Tax Consultant), Martin Wilson (Director, The Capital Allowances Partnership)

6/27/2013 - 6/27/2013

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

Icaew-Tax-Faculity-Conference-2013-Manchester/?displayControl=overview

INNOVATIVE FINANCIAL PRODUCTS

IBFD

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

Key Speakers: Severine Baranger (Loyens & Loeff), Floris Andriessen (KPMG), Peter Drijkoningen (BNP Paribas), Shee Boon Law (Manager, Tax Research Services, IBFD), Roger Smith (independent trader), Eelco van der Stok (Freshfields Bruckhaus Deringer), Bob van Kasteren (Freshfields Bruckhaus Deringer)

7/1/2013 - 7/1/2013

http://www.ibfd.org/Courses/Innovative-Financial-Products

ISSUES FOR IMPLEMENTING UCITS IV, V AND VI IN LUXEMBOURG

IBC

Venue: Sofitel Luxembourg Europe, 4 rue du Fort Niedergruenewald, Quartier européen Nord, Plateau de Kirchberg, Luxembourg City 2015, Luxembourg

Chair: Christopher Stuart Sinclair (Director, Deloitte)

7/2/2013 - 7/3/2013

http://www.iiribcfinance.com/download/send-file/iddownload/9523

TAXATION OF HIGH NET WORTH INDIVIDUALS

IBFD

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

Chairperson: Bart Kosters (Senior Principal Research Associate, IBFD Tax Services Department)

7/8/2013 - 7/9/2013

http://www.ibfd.org/Courses/Taxation-High-Net-Worth-Individuals

CREATING A BEST IN CLASS TAX FUNCTION

IBC

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

Key speakers: Ruth Felsing (Global Head of VAT/GST-Taxation, American Express Services), Yiannis

Poulopoulos (General Manager, Global Indirect Taxes, Rio Tinto), Darren Mellor-Clark (Partner Head of Indirect Tax Advisory, Pinsent Masons LLP), Michael Dong (Director of Tax, Sega of America), Philip Geddes (Head of Tax, Europe, Sun Life Financial of Canada), among others

7/9/2013 - 7/9/2013

http://www.iiribcfinance.com/event/Operational-Tax-Conference

HMRC AND HIGH NET WORTH INDIVIDUALS

IBC

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

Chair: Jonathan Levy (Partner, Reynolds Porter Chamberlain)

7/9/2013 - 7/9/2013

http://www.iiribcfinance.com/appdata/downloads/HMRC-and-HNWIs/Final_HMRC_FKW52582_Brochure.pdf

TRANSFER PRICING AND INTRA-GROUP FINANCE

IBFD

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

Key speakers: Michel van der Breggen (PwC), Danny Oosterhoff (Ernst and Young), Antonio Russo (Baker & McKenzie)

7/11/2013 - 7/12/2013

http://www.ibfd.org/Courses/Transfer-Pricing-and-Intra-Group-Finance

ASIA PACIFIC

Australia

The Federal Court of Australia heard an appeal of a Commissioner of Taxation's decision from taxpayers who argued for the refund of overpaid Goods and Services Tax.

The taxpayers searched for and bought products and services on behalf of non-resident travel agencies that advertised them as part of a package tour of Australia, and they contended that this service, which they charged the travel agencies for, amounted to simply booking and arranging the products which were provided by other Australian businesses, and was therefore exempt from GST.

The Commissioner's decision was that the taxpayers acted as the suppliers of the products to the travel agencies and should be subject to the appropriate amount of GST.

The Court considered the services provided by the taxpayers with regard to the GST legislation that sets out the parameters for exemption. The booking of accommodation on behalf of the tourists involved an implied promise from the taxpayers (not the travel agencies as they had no dealings with any supplier in Australia apart from the taxpayers) that the tourist had a right to the specific accommodation, and was therefore a supply of real property which could not be exempt from GST. Regarding everything else supplied by the taxpayers, the Court concluded that the provision of both goods and services fell under the exclusion from the GST exemption, as they were part of an agreement with a non-resident for supplies to another entity.

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

Although the Court agreed with the Commissioner as to the taxability of the taxpayer's dealings with the Australian providers, the taxpayers argued successfully that the excess they charged as a fee to the travel agencies on top of the cost of the products was free from GST. Arranging the products was a service provided to the agencies that was separate from the supply of the products themselves, and as such the Commissioner was ordered to decide on a refundable amount of GST relative to the amount that was incorrectly paid in relation to the services fee.

The judgment was delivered on April 15, 2013.

http://www.austlii.edu.au/au/cases/cth/FCA/2013/341.html

Federal Court: *ATS Pacific Pty Ltd v. Commissioner of Taxation (FCA 341)*

Australia

The Federal Court of Australia heard an appeal by the Federal Commissioner of Taxation from an Administrative Appeals Tribunal decision. The Tribunal had ruled that the General Interest Charges were deductible during the years when they were incurred on the relevant tax debts, while the Commissioner's position was that the expenditure was deductible only during the year of assessment. The Tribunal based its decision on liability for the charges arising at the time of the expense. The appeal was brought to the Court on the basis of the Commissioner's argument that tax liability and by extension liability for the charges does not occur until the assessment is issued, and that the Tribunal had misinterpreted case law.

The Court's own interpretation of case law supported the Commissioner by stating that the time of the assessment determines when tax is due, and that contrary to the assertion of the taxpayer, tax liability is linked to the obligation to pay the charges and the availability of the deductions. The Court also disagreed for various reasons with the cases the taxpayer referred to to support his argument. The conclusion was that the Tribunal had not considered the legal significance of the tax assessment, and therefore the Commissioner's appeal was allowed.

The judgment was delivered on April 16, 2013.

http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2013/2013fca0336

Federal Court: *Commissioner of Taxation v. Nash (FCA 336)*

Australia

The High Court of Australia heard an appeal from the Commissioner of Taxation after a company representing a GST group won its appeal at the Full Court declaring that the scheme which generated a GST benefit for the group was legitimate and did not amount to tax avoidance.

The dispute centered on apartment blocks which were constructed and sold between members of the group before completion. GST on payments from the apartment buyers was calculated by the representative on the sales between the members rather than on the value of the blocks themselves.

When the Commissioner denied them the relevant GST benefit they appealed to the Administrative Appeals Tribunal, which agreed with the Commissioner that the sale of the blocks within the group was for the express purpose of reducing the amount of GST for which the group was liable. The Full Court allowed the appeal of the company and based upon

their interpretation of the GST law disregarded the Commissioner's objection to the GST benefit.

The Commissioner argued to the High Court that there was a direct link between the sales occurring within the group and the GST benefit; the group representative argued that the GST benefit resulted from the decision to base the calculation on the group sales instead of the sales to the buyers, and that the anti-avoidance provision of the GST law did not apply to such a link.

The High Court decided that the scheme encompassed both the sales within the group and the electing of those sales for the calculation of the GST, and that the GST benefit would not have existed had the companies not joined the group and not taken part in the sales. The appeal of the Full Court's decision was allowed and the Commissioner was successful in denying the group the benefit of the lower GST amount.

The judgment was delivered on May 1, 2013.

http://www.austlii.edu.au/au/cases/cth/HCA/2013/16.html

High Court: *Commissioner of Taxation v. Unit Trend Services Pty Ltd (HCA 16)*

Australia

The Federal Court of Australia heard an appeal by a corporate limited partnership situated in the Cayman Islands (established by US residents) against an assessment by the Commissioner of Taxation that included a capital gain resulting from the sale of shares in an Australian mining company. The partnership was treated as a taxable entity under Australian law but not under American law (where as the partnership was a tax transparent entity, the partners themselves would be subject to tax on their share of the partnership's income), and so the major issue for the Court to decide was which law would be more suitable according to the appropriate international tax agreement.

Firstly, the Court found that the partnership was not a resident of the United States for tax purposes as it was registered in the Cayman Islands, and the Commission's argument that the partners being US residents was sufficient was rejected. Secondly it found that Australia could not tax the capital gain because the partnership was not a US resident and the Cayman Islands were not part of the tax agreement between the US and Australia.

Thirdly, the Court recognised international law that put partners in a position of directly receiving income from the source for tax purposes rather than through the partnership, therefore applying the agreement between Australia and the US.

The appeal was allowed and the Commission's assessment ordered by the Court to be rejected on the basis that the partnership could not be taxable as a company, and that provisions of international law allowed the capital gain to be taxed only in the hands of the partners, in the interest of preventing double taxation between Australia and the United States.

The judgment was delivered on April 26, 2013.

http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2013/2013fca0363

Federal Court: *Resource Capital Fund III LP v. Commissioner of Taxation (FCA 363)*

WESTERN EUROPE

Bulgaria

The European Court of Justice was asked for a preliminary ruling regarding the possible refund of VAT which was found to have been incorrectly paid on an exempt supply. A company had refurbished and sold a building to another company, and exempted from the invoice the VAT on the sale of the building but not on any of the other costs. Upon an audit of the receiving company, the tax authority stated that the entirety of the invoice was exempted from VAT. Despite refusing the company the right to deduct the VAT incorrectly included in the invoice, the tax authority claimed that the VAT had been lawfully paid, and that it was the responsibility of the invoicing company to identify and correct the error. The Administrative Court considered that not allowing the VAT refund would go against the concept of fiscal neutrality, and therefore asked the ECJ for an opinion of the matter based on EU law.

The Court pointed out, and the ECJ agreed, that once the tax authority had refused to let the receiving company deduct the VAT invoiced in error, it became impossible for the invoicing company to correct the error. The ECJ then concluded that based on the principle of the neutrality of VAT, the tax authority could not rely on national law to refuse to refund the VAT to a company that was incapable of correcting the error as required by the law. Similarly, a taxpayer may rely on the principle of neutrality to argue against a national law that required them to correct an invoice error in order to receive a VAT refund when the deductibility of the VAT had already been refused.

The judgment was delivered on April 11, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=136148&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=317498

European Court of Justice: *Rusedespred OOD v. Bulgaria (C-138/12)*

Ireland

The European Commission brought a case against Ireland to the European Court of Justice, seeking a declaration that an Irish law which permitted non-taxable persons to join a VAT group treated as a single taxable entity was not allowed under the EU VAT Directive. Both parties presented their own interpretation of the Directive as their argument.

The Commission maintained that to be a taxable entity each member of the group must be a taxable person; otherwise a non-taxable person would

enjoy the VAT benefits of a taxable person contrary to the intent of the VAT system. Ireland suggested that the Directive's provisions did not always refer to a taxable person, and that the eventuality of a VAT group consisting only of non-taxable persons is already denied by Irish legislation. The Commission also claimed that its interpretation of the Directive was supported by case law, but Ireland disagreed.

The ECJ pointed out that the Directive did not expressly deny the possibility of a non-taxable person becoming a member of a VAT group. It also dismissed the Commission's reliance on case law for being irrelevant to the issue.

Its interpretation of the Directive supported Ireland's opinion that the persons being "taken together and closely bound to one another by financial, economic and organisational links" is more important to the concept of a VAT group than individually being taxable. Its conclusion was that allowing non-taxable persons as members may have the effect of reducing the administrative complexity of the group and deny it certain opportunities for tax abuse, thereby supporting the VAT Directive, contrary to the Commission's accusation.

The judgment was delivered on April 9, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=136001&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=888929

European Court of Justice: *European Commission v. Ireland (C-85/11)*

Netherlands

The opinion of the Advocate General was requested on whether VAT paid on management services for an employee pension fund was deductible for being linked to the employer's taxable activity, or whether the pension fund was a special investment fund which enjoyed exemption from VAT on its management fees.

Advocate General Sharpston pointed out that the possibility of a special investment fund had been removed by the judgment of a similar case. Because the fund was used as part of a pension scheme, the employees did not contribute to it and it was created by the employer as an obligation, the facts in this case fulfilled the conditions laid out in the previous case for the fund not being a special investment fund which could be exempt from VAT.

Regarding the VAT on the services employed for the sake of the fund, the Netherlands argued that the services had no link to the economic activity of the employer as a business and therefore the VAT was not deductible. The employer argued that the fund and by extension the services were for the benefit of the employees which carried out the business, providing the link for the deductibility of VAT. The United Kingdom (which also presented an argument on the matter) suggested that the fund was a separate taxable entity, but that some of the services

which were more beneficial to the employees than the fund should be eligible for VAT deduction.

The Advocate General maintained that the fund was separate from the business, evidenced by the fact that the business could not resort to spending the money in the fund during troubled times. The investment activities of the fund itself were not subject to VAT and therefore without the link to the business there was nothing to deduct the VAT from. However the Advocate General agreed with the view of the United Kingdom that VAT on the services that helped the business run the fund for the sake of its employees could be deducted.

The opinion of the Advocate General was delivered on April 18, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=136424&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1695811

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

Romania

The European Court of Justice was asked for a preliminary ruling regarding a taxpayer who brought a case to court in Romania concerning the repayment of a pollution tax that was found to be incompatible with EU law. The court granted the repayment according to case law, but considered that the date from which liability to interest occurs is the date of the claim for repayment, and not the date of the payment of the tax, as was claimed by the taxpayer. The court sought an interpretation of EU law as to whether it prevented the court from limiting the amount of interest the taxpayer was entitled to.

The ECJ accepted that under EU law a taxpayer is entitled to both the repayment of an illegal tax and any income lost as a result of the payment itself. It also stated that each Member State was free to decide the rate and calculation method of the interest, but that such measures must be both equivalent to similar interest payments under national law and effective in bestowing the right to adequate compensation upon the taxpayer.

On the matter of equivalency, the ECJ observed that all interest liability under national law seemed to begin from the claim for repayment by a taxpayer, but that it was for the court to decide if this was accurate. As for the matter of effectiveness, the ECJ concluded that limiting the amount of interest to the date of the claim when the taxpayer unduly suffered a loss at the time of the tax payment went against EU law and should persuade the national court to decide its case in favor of the taxpayer.

The judgment was delivered on April 18, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=136434&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1703777

European Court of Justice: *Irimie v. Romania (C-565/11)*

Spain

The European Court of Justice was asked for a preliminary ruling regarding a request for information to a credit institution established in Gibraltar but operating in Spain. The request was for the identity of its customers following suspicions of money-laundering activity in Spain, but the institution argued that it was subject to the banking secrecy rules of Gibraltar and therefore did not provide the information, which the Spanish authorities considered was a serious offence and imposed a penalty. The institution appealed, and during proceedings the Tribunal Supremo sought an interpretation of EU law relating to the capability of Spain to demand the information in lieu of the law of the institution's established jurisdiction.

The ECJ considered the wording of the appropriate EU legislation and came to two conclusions; that the law does not prevent the financial intelligence unit of one Member State from making a request for information to an institution situated in another Member State in the interest of combating money-laundering, and that the institution is still required to provide the information to the unit in its State (as if the request was made by that unit) to facilitate cooperation with the other State's unit.

The ECJ also considered the nature of a request for information coming from a different State, in that complying might be more expensive and time-consuming than a request from the home State and therefore discriminatory.

It concluded that Spain was in a better position to combat money-laundering resulting from operations in its jurisdiction, which is necessary to protect public order, and that involving the financial intelligence unit of the State where the institution is situated may make the process more difficult. The Spanish law that imposed a penalty on the institution for not providing the requested information was no different from the law that applied to resident institutions, and therefore was compliant with EU law, insofar as it is necessary when there is not another more efficient method to obtain the information from another Member State.

The judgment was delivered on April 25, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=136784&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=246098

European Court of Justice: *Jyske Bank Gibraltar Ltd v. Spain (C-212/10)*

Sweden

The European Commission brought a case against Sweden to the European Court of Justice, seeking a declaration that a Swedish law which prevented financial and insurance companies from forming or joining a VAT group was not allowed under the EU

VAT Directive. Both parties presented their own interpretation of the Directive as their argument.

The Commission's argument was simply that the VAT Directive did not permit a Member State to restrict the application of the VAT grouping provisions, and that Sweden had offered no justification for its exclusion of financial and insurance companies.

The Swedish authorities were of the opinion that the Directive applied "only to undertakings belonging to certain specified sectors", and that by allowing some financial companies (that are "covered by a public monitoring system") to be part of a VAT group it had fulfilled its obligation under the Directive.

The ECJ considered the VAT group provision of the Directive and pointed out that it did not appear to allow any limits on the availability of a VAT group to companies with strong ties.

However, it did provide Member States with the ability to "adopt any measures needed to prevent tax evasion or avoidance". The ECJ concluded that by tying the joining of a VAT group by financial and insurance companies to the requirement that they are subjected to a "public monitoring system", Sweden was fulfilling its duty to combat tax avoidance. The Commission's action was therefore dismissed.

The judgment was delivered on April 25, 2013.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=136781&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=662855

European Court of Justice: *Commission v. Sweden (C-480/10)*

United Kingdom

The UK First-Tier Tribunal (Tax Chamber) heard an appeal from a taxpayer living in Ireland but earning income from the UK, including a civil service pension. The taxpayer relied on the tax treaty between the two nations to claim for double taxation relief which HMRC, accepting that he was an Irish resident, granted for all forms of income except the pension.

A pension paid to a government employee is only taxable in that State (UK) under the treaty, unless the taxpayer is a resident and national of the other State (Ireland). The taxpayer argued that this was discriminatory against nationals of other countries, as his Irish national wife received double tax relief on her UK local authority pension.

The Tribunal considered international and EU laws that were not a part of the taxpayer's appeal. It observed the international standard model for tax treaties and found that the UK has the right to tax its civil service pensions as the source state, and that the rule for nationals of other countries is an exemption that the taxpayer is simply not entitled to.

Whether the UK-Ireland tax treaty was discriminatory, and what it would mean for the taxpayer if it were, was then contemplated in relation to EU law. The Tribunal accepted that each Member State is entitled to impose taxes without regard to how they compare to taxes in other Member States, and that by moving to Ireland the taxpayer benefits from a greater personal allowance, which offsets the amount of tax he then has to pay on his civil service pension.

Following an analysis of EU case law, the Tribunal concluded that the tax treaty in which a national's government pension is taxed in the State where it is received is not discriminatory since it provides for a tax exemption in the other State, despite it not applying to the taxpayer who has a low income and a high personal allowance.

Another point made by the Tribunal was that the taxpayer was not discriminated against with regard to his wife's situation, since a resident and a national are not considered comparable and can legally be subjected to different tax treatments. Therefore the taxpayer's appeal against the taxation of his civil service pension in the UK was dismissed.

The judgment was delivered on April 18, 2013.

http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02654.html

First-Tier Tribunal: *Kenneth Percival v. HMRC (UKFTT 240)*

United Kingdom

The UK Upper Tribunal was asked to decide on three issues brought before it by airline, Ryanair to determine whether HMRC would refund an amount of air passenger duty that Ryanair claimed should be subject to the exemption for connecting flights in the legislation. One of the issues was whether HMRC had treated Ryanair differently from other airlines, and involved a request for a judicial review of its decision not to refund the duty when first approached.

One of the issues was the correct interpretation of the appropriate legislation. The Tribunal explained that the legislation was clear enough to require that a connecting flight passenger have conjunction tickets, or tickets that demonstrated a single journey. Ryanair's argument that the tickets were merely intended as evidence and not a requirement was rejected.

Following interpretation of the law, the second issue was how it related to Ryanair. The Tribunal stated that Ryanair's business practice of supplying different tickets with different Passenger Name Records for what might have been considered connecting flights prevented the duty exemption from applying.

The final issue was Ryanair's accusation that it been treated unfairly by HMRC, based on evidence that there was no advice on how Ryanair specifically could change its business to benefit from the duty exemption, as other airlines had done.

The Tribunal considered that it could intervene if HMRC had been "outrageously unfair". HMRC argued that it recognised that Ryanair could not benefit from the exemption for reasons related specifically to Ryanair's business practices. The Tribunal agreed that Ryanair differed from other airlines in such a way that it did not fulfill the requirements for the exemption, and concluded that HMRC did not have a duty to provide advice to Ryanair when the information that other airlines had used to benefit from the exemption was readily available. Therefore Ryanair's claim for a refund of the air passenger duty it had paid was refused.

During the proceedings it was pointed out that when Ryanair started offering flights electronically, it could have fulfilled the requirements for the exemption by allowing the passenger to view information for connecting flights on the same screen, print them out on the same piece of paper and by assigning a single Passenger Name Record. Unfortunately it took Ryanair years after implementing an electronic system to make these changes to its website.

The judgment was delivered on April 10, 2013.

http://www.bailii.org/uk/cases/UKUT/TCC/2013/176.html

Upper Tribunal: *Ryanair Limited v. HMRC (UKUT 176)*

Dateline May 9, 2013

One swallow doesn't make a summer, and we can't herald an outbreak of competition in the European Union just because the UK has announced an expansion of its fiscal support for film-making. But coming on the heels of the announcement of the Patent Box, and further reductions in the rate of corporation tax, it does show that there are ways for a country to compete even within the straitjacket of the EU's State Aid rules. It seems illogical and even perverse that Brussels allows a range of national corporation tax rates from 10 percent to 33 percent, yet will not allow say an SEZ in the waterlogged fens outside Cambridge with an incentive rate of 10 percent for technology start-ups. Of course that situation is not the Commission's choice – they would prefer a harmonized tax rate across the Union. Let's hope they never get their wish: it would be like entering a boxing match with your hands tied behind your back. One obvious case where a lower rate would pay dividends is Northern Ireland: at present they have to compete against a 12.5 percent rate in the rest of Ireland with the UK's 20 percent rate. With freedom of movement across the border for workers, who would start up a new company in the North?

With Austria's apparent capitulation on the banking secrecy dossier, and the news that a number of the UK's offshore dependencies are going to join the G5's anti-evasion initiative, it certainly looks as if the last shreds of financial privacy are being torn away, at least for individuals. But the picture is a lot more nuanced than that: first of all, Austria will not give up secrecy for its own citizens (so next time you get divorced, make sure you pick a Merry Widow from Vienna for your third wife) and secondly, Austria is making conditions which may prove hard to fulfill, especially in regard to the Savings Tax Directive. And it's worth noting that the offshore dependencies in question already conform to that Directive, so there is nothing much new in that respect for individuals. The Directive really is a paper tiger for anyone with a good lawyer, and even the Commission's "improvements" to it, which they have been struggling to implement now for eight years, won't make much difference, with the biggest loophole being of course that major wealth destinations such as Singapore, Hong Kong and Panama simply refuse to have anything to do with it. Something I do wonder about in respect of the encroaching tide of automatic information exchange is the sheer volume of data that is being exchanged and the cost of the process; HMRC, for instance, in London is going to receive data on bank accounts in forty or so other countries, including, if the reverse FATCA goes into effect, the USA. That's hundreds of millions of bank account details, every year. There are things called computers, of course, but there is no harmonized international identification system and there are ever so many people called John Doe. How will they set

about storing, sifting and analyzing the data? Perhaps, in that haystack of information, the needle of your bank account will even harder to find than if it had stayed behind in cloistered secrecy in Wichita?

We shouldn't perhaps be congratulating Hong Kong for collecting a record amount of tax, but it represents the SAR's business success, while the amount of personal tax fell, not least because for yet another year the Government is giving back a slab of tax to individuals. Companies and regional headquarters continue to flood in, both from Mainland China itself, and from outside, as Hong Kong remains the most convenient and important gateway into the Middle Kingdom. Hong Kong feels its hegemony threatened by Singapore and Shanghai, in different ways, but this is a virtuous circle of competition: a game which all three locations are going to win.

The party has come to a juddering end for Australia's socialist government after four years of spendthrift populism and anti-business tax rises, with a USD15bn hole in its budget. Last year's 3 percent deficit was to have been turned into a budget surplus this year, but there is now no chance of that. The Government says it won't increase taxes, and it's true that debt is fairly comfortably within the Maastricht guideline of 60 percent, so a deficit is not the end of the world, but you have to wonder just how much damage has been done to the all-important resource sector by the successive waves of taxation. The problem is not the dented performance of existing mining giants, it's the investments that are being made in Brazil, Indonesia or South Africa instead of in Australia because of the inimical economic climate, and there is no way of measuring those. And, by the way, it's not true that taxes are being held down: in the very same week as it announced the fall in revenues, the Government hiked social insurance contributions by a whopping AUD20bn over the next five years in yet another redistributive measure. This is money you haven't got, Mrs. Gillard, and you shouldn't be spending it!

I find it really shocking that after five years of pressure and complaints, the Netherlands' Government is still refusing to level the playing field for its state-owned businesses when they compete against private sector equivalents. Of course this was the norm in pre-Thatcher days, when the finances of state-owned corporations were utterly obscure, and notions such as profit and loss were alien to the bureaucrats who had carte blanche to favor themselves over private competitors. Silly me, I thought that had all gone, but evidently not. I was writing about Fannie Mae and Fannie Mac last week, and that's unfair competition as well, although not quite so blatant. Then this week we also had the spectacle of the French government grandly announcing a rapprochement with business, while out of the other side of its mouth it was denying Yahoo's attempt to take over website Dailymotion – something the company itself and its other shareholders wanted – because it didn't suit part-owner France Telecom. France is altogether in a defensive posture as regards the Internet, as President Hollande made very clear back in January when he threatened Google with legislation if it didn't pay through the nose for

linking to French content. The truth unfortunately is that the wave of privatization, or to give it a more accurate name, marketization, which bubbled up in the UK in the 1980s, and which had a major impact in many countries around the world, has largely passed by countries such as France and Italy. Even in a place like Cyprus, where you might have thought that the "Anglo-Saxon" influence would have been stronger, the state clings on to the telephone, electricity and water utilities: last month when the Troika tried to insist on privatization of the electricity company, the feather-bedded bureaucrats who run it as a kind of family retirement home offered to find the EUR1.5bn themselves if they could be spared! That would be funny if it weren't sick. We have a long way to go.

The Jester